



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

Office address (inc courier deliveries):
Level 7, 120 Collins Street,
Melbourne VIC 3000

Mail address for Melbourne office:
GPO Box 9827,
Brisbane QLD 4001

Tel: +61 1300 935 075
Fax: +61 1300 729 000

www.asic.gov.au

Gene Liu
By email: foi+request-8683-9038379a@righttoknow.org.au

Our Reference: FOI 072-2022

8 April 2022

Dear Mr Liu

Freedom of Information Request 072-2022 – Notice to Identify under Section 24AB of the FOI Act

I refer to your request dated Saturday 2 April 2022 under the *Freedom of Information Act 1982 (FOI Act)*, seeking access to documents in the possession of the Australian Securities and Investments Commission (ASIC).

Your request has many parts and seeks access to:

Specifically, I am seeking information regarding:

1. *Communications from Dr. Ken Henry as Secretary of the Treasury of Australia to initiate investigations using coercive powers available under project Wickenby at the request of the anonymous whistleblower or based on the "anonymous" whistleblower's information.*
2. *Communications from Dr. Ken Henry as Secretary of the Treasury of Australia instructing ASIC, or any other multi-agency task force which ASIC was a part of at the time authorizing the anonymous "whistleblower" access to investigative records and the ASIC investigation team.*
3. *Documents that Dr. Ken Henry as Secretary of the Treasury of Australia or the anonymous "whistleblower" provided to ASIC or in ASIC possession:*
 - a. *ASIC's Investment Banking team, Michael Parker, Grantly Brown and Belinda Renshaw information about the Fortune Astarra Montford Fund. Information provided to the principals of Fortune Capital during a phone call on 9/30/2009 to cancel DPAs:*
 - i. *ASIC barcode #S01772324 DPA for AUD\$12.85 Mil*
 - ii. *ASIC barcode #S01772325 DPA for AUD\$4.087 Mil*
 - iii. *ASIC barcode #S01772326 DPA for AUD\$19.043 Mil*
 - iv. *ASIC barcode #S01772326 DPA for AUD\$12.7 Mil*

- v. ASIC barcode #S01772328 DPA for AUD\$0.100 Mil
- vi. ASIC barcode #S01772329 DPA for AUD\$1.5 Mil

b. Dr. Ken Henry as Secretary of the Treasury of Australia or the anonymous "whistleblower" provided during a phone call on 9/30/2009 information asserting that the individuals involved with Absolute Alpha and Trio Capital were also the individuals responsible for Pacific Continental Securities and assured Fortune that the DPA's could be cancelled with no follow up from the regulators or administrators.

4. Information about Huntleigh Investment fund and possible naked short selling of securities through the use of foreign broker dealers, market maker exceptions through the use of owned broker dealers and joint back-office agreements.
 - i. Emails between traders of brokerage firms in Canada and individuals associated with Huntleigh Investment Fund. (Screen name of trader is evil olive)
 - ii. Brokerage records of any associated BD trading securities owned by Huntleigh Investment Fund.
 - iii. Communications and documents from Dr. Ken Henry, the anonymous whistleblower, or contractors of AllyGroup in attempting to hide the existence of naked short selling and characterizing Trio as fraud instead.
5. If the "whistleblower" has provided documents to ASIC, Dr. Ken Henry, other Australian government agencies.
 - a. Information about the individuals who provided input into the public submission and details of any other cooperation.
 - b. Information about the restrictions on the use of any such information such as if the submission would be permitted to be used as an endorsement from ASIC or Treasury in soliciting clients.
 - c. Due diligence conducted on the "whistleblower", if they had legal proceedings in Australia or in other jurisdictions for making unfounded accusations of fraud for personal gain or if to ASIC's knowledge such, they had previously been accused but cleared of criminal, civil or internal company procedures at the time. Additionally about the anonymous "whistleblower":
 - i. if the whistleblower is a registered broker dealer in the United States.
 - ii. if the whistleblower is a registered investment advisor in the United States.
 - a. if the whistleblower has an Australian Financial Services License
 - iii. if at the time the whistleblower had potentially contravened any securities laws or regulations.
 - iv. if the whistleblower was at the time raising funds from victims of Trio Capital after prior legal issues.

Section 15(2)(b) of the FOI Act

I am writing to tell you that your request does not satisfy the requirement set out in section 15(2)(b) of the FOI Act which states that a request for access to a document must '*provide such information concerning the document as is reasonably necessary to enable a responsible officer of an agency... to identify it*'.

It is unclear to me which specific documents you are seeking to access. It is my intention to refuse access your request. However, before I decide to do this, you have an opportunity to revise your request.

Request consultation process

This is called a 'request consultation process' as set out under s 24AB of the FOI Act. As part of the request consultation process, I make the following comments.

The bulk of your request seeks access to 'information' more broadly, rather than specific documents. Some parts of your request are also phrased as questions, rather than a request for a specific document. The FOI Act concerns access to documents, rather than general information or answering questions. Parts 3i to vi list specific barcodes and will allow me to identify documents. Although this level of detail is not required for every document that you seek; currently, this is the only part of your request that I can work out what documents you want and how to search for them.

Your request also does not include a time frame of documents to search for. For example, part 1 of your request mentions Project Wickenby, which ran from 2006 to 2015. Other parts of your request mention emails, it is unclear what time frame these are meant to have been sent, or when they were provided to ASIC.

Your request refers to certain incidents, but it is not always clear what they are or in what context. For example, you refer to a public submission in part 5 of your request but it is not clear to me what public submission you are referring to.

We ask that you clearly identify which specific documents you are looking to access and a time frame to search for. As part of your request mentions Trio, you may also be interested in viewing ASIC's FOI disclosure log on our website, as ASIC has previously published information about Trio Capital on our website. You may also be interested in viewing ASIC documents available on the Australian Parliament website regarding the Parliamentary Joint Committee Inquiry into the collapse of Trio Capital.

We are giving you a formal opportunity to revise your FOI request before we make a final decision. If you would like to revise your request, please consider what specific documents you want, and the issues raised in this notice.

Before the end of the consultation period, you must do one of the following, in writing:

1. withdraw your request
2. make a revised request.
3. tell us that you do not wish to revise your request.

The consultation period runs for 14 days and starts on the day after you receive this notice. During this period, you are welcome to seek my assistance and I am available at fiona.crowe@asic.gov.au. As Easter falls during this time and given the public holidays and leave, I am prepared to extend the consultation period, if needed. Please contact me by email if you need more time to respond.

If you revise your request in a way that adequately addresses the issues outlined above, we will start processing it.

Please note that the time taken to consult you about the scope of your request is not considered for the purposes of the 30-day time limit for processing your request.

If you do not do one of the three things listed above during the consultation period or consult during this period, your request will be **withdrawn**.

If you have any questions, please contact me by email at fiona.crowe@asic.gov.au

Yours sincerely

A handwritten signature in black ink that reads "Fiona Crowe". The signature is written in a cursive style with a large, stylized 'F'.

Fiona Crowe
Authorised decision maker under subsection 23(1) of the FOI Act
For the Australian Securities and Investments Commission