



Mr Fraser Tweedale

Our reference: 1-Q1HU99Q

By email only:
foi+request-7565-3bb53558@righttoknow.org.au

10 August 2021

Decision regarding your Freedom of Information request

Dear Mr Tweedale

I refer to your request for documents under the Freedom of Information Act 1982 (FOI Act) dated 13 July 2021.

I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.

Your request

The original scope of your FOI request was as follows:

- (1). *Source code of the MyGovID iOS and Android apps, and server applications that form part of the MyGovID system, including build scripts, manifests, software license terms, and media assets (icons, audio files, etc).*
- (2). *Technical documentation about the MyGovID system, such as API documentation, architecture diagrams, security assessments, technical presentation slides, "whitepapers" and similar documents.*

On 28 July 2021 a request consultation process was initiated under section 24AB of the FOI Act. You provided a revised scope the same day. That revised scope included the following:

Source code of the most recent public release of the MyGovID Android client application, including program source files build scripts, manifests, software license terms, and media assets (icons, audio files, etc).

...

*...instead of the previous release of the Android app, the source code for the ****upcoming release**** (that is, of a recent test build or pre-release build thereof). With critical security work already being undertaken (or soon to be), a review of this ***new*** code pursuant to my request should require fewer resources, and such a diversion could less easily be regarded as unreasonable. If you reach a similar conclusion such that it improves the likelihood of access to the documents being granted, please consider my request thus revised.*

In light of this revised scope, I have treated your request to be for the source code for the upcoming release of the myGovID android application (e.g. the test build or pre-release build).

Decision

I have decided refuse access to the documents full, on the grounds the information is exempt under sections 47 and 47E(d) of the FOI Act.

Section 47 – Trade secrets or commercially valuable information

Trade Secrets

A document (or parts of a document) is exempt under paragraph 47(1)(a) of the FOI Act if its release would disclose trade secrets. The FOI Guidelines provides a list of factors that may assist in deciding whether information constitutes a trade secret. I have taken these into account in reaching my decision.

The ATO has invested a significant amount of information and time in developing the myGovID applications. The myGovID application source code is not shared outside of the ATO delivery team working on it. The source code is updated in segments, and only very limited ATO staff who would have clear knowledge of the full end to end source code.

The ATO also currently takes measures to protect the secrecy of the source code, including providing under the 'terms of use' the following conditions:

The ATO makes the myGovID app and software (Software) available to you to use, in unaltered form, solely in connection with the myGovID system.

You may not:

- *decompile, reverse engineer, disassemble or attempt to derive the source code for the Software*
- *create derivative works based the Software or modify it in any way*
- *distribute copies of the Software or versions of it.*

Source code has previously been found to be a trade secret for the purposes of the FOI Act, see *Cordover and Australian Electoral Commission (Freedom of information)* [2015] AATA 956 (11 December 2015).

I consider that the source code of the myGovID android application constitutes a trade secret and is therefore exempt under paragraph 47(1)(a) of the FOI Act.

Commercially valuable information

I consider the information is also commercially valuable information.

A document (or parts of a document) is exempt under paragraph 47(1)(b) of the FOI Act if its release would disclose information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed. The FOI Guidelines provide it is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value.

The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have 'exchange value', in the sense that it can be sold as a trade secret or intellectual property.

The FOI Guidelines also provide a list of factors that may assist in deciding whether information has commercial value. I have taken these into account in reaching my decision.

I have been advised that the ATO does not share this information outside the ATO, and that disclosure of the source code could provide someone with a competitive advantage or enable them to look for vulnerabilities to exploit. I further understand the source code contains or will contain components commercially licensed to the ATO.

I consider that the source code of the myGovID android application constitutes commercially valuable information, the nature of which would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed. The information is therefore exempt under paragraph 47(1)(b) of the FOI Act.

Section 47E Public interest conditional exemptions – certain operations of agencies

Section 47E provides that documents are conditionally exempt where disclosure would, or could reasonably be expected to, prejudice or have a substantial adverse effect on certain listed agency operations, including a substantial adverse effect on the proper and efficient conduct of operations.

Releasing the source code would provide an authenticated version of the source code to the general public. This could be used to masquerade as myGovID, and allow malicious individuals to exploit any potential vulnerabilities in the system. I consider that this would, or could reasonably be expected to, prejudice or have a substantial adverse effect on the security and effectiveness of the ATO's digital identification and verification operations.

As subsection 47E(d) is a conditional exemption, I also need to consider if the release of the information is contrary to the public interest.

There is no definition of 'public interest' in the FOI Act. However, section 11B of the FOI Act sets out a number of factors which favour disclosure of the document, as well as factors that are irrelevant and must not be taken into account when determining whether disclosure is in the public interest.

While there is some public interest in promoting the objects of the FOI Act, this in my opinion is outweighed by a stronger public interest in protecting the security of the ATO's digital identity services as a Commonwealth agency.

I consider that the balance of public interest is against release and the information requested is therefore exempt under subsection 47E(d) of the FOI Act.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the ATO for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter, quoting our reference number at the top of this letter, and be lodged in one of the following ways:

email: FOI@ato.gov.au
post: Australian Taxation Office, General Counsel, GPO Box 4889, Sydney NSW 2001.

Where possible please attach reasons why you believe review of the decision is necessary.

The internal review will be carried out by another officer within 30 days. If you have not been informed of the outcome of the review within that time, you may apply to the Australian Information Commissioner under section 54L of the FOI Act.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be sent to:

email: foidr@oaic.gov.au
post: Office of the Australian Information Commissioner, GPO Box 5218, Sydney NSW 2000
online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

Your application must include a copy of this letter (and any attachments), your name and contact details and the reason(s) why you disagree with the decision.

More information about review by the Information Commissioner is available on the Office of the Australian Information Commissioner website at the following page:
<https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>

Complaints

Any complaint about the processing of your FOI request can be forwarded to the Information Commissioner. The complaint needs to be in writing and identify the agency against which the complaint is made. There is no particular form required to make a complaint, however using the online form is preferable.

email: foidr@oaic.gov.au
post: Director of FOI Dispute Resolution, GPO Box 5218, Sydney NSW 2001
online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1

The Information Commissioner can be contacted on 1300 363 992 for the cost of a local call (within Australia only).

Yours sincerely,

S Sword
Senior Lawyer
General Counsel
Australian Taxation Office