

GPO Box 869, Brisbane QLD 4001



Australian Government
Australian Taxation Office

Mr Patrick Conheady
Foi+request-1436-ea906229@righttoknow.org.au

Our reference: 1-7LC4YEN
Contact officer: Rod Durnan
Phone: (07) 3213 5579
Fax: (07) 3213 5005

4 March 2016

Dear Mr Conheady,

FREEDOM OF INFORMATION ACT 1982 – Notice of Decision

FOI Request No: 1-7LC4YEN

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (FOI Act).

Summary

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

You requested access to documents on 15 December 2015. Specifically you sought access to:

- *The ATO's Data Asset register including data dictionaries*

We contacted the relevant business line within the ATO and had an officer from that area conduct a reasonable search of all relevant ATO computer systems or hard copy files that may contain documents within the scope of your request. For further information about what constitutes a reasonable search for documents see the Guidelines issued by the Australian Information Commissioner under section 93A of the Freedom of Information Act 1982 (2010) Part 3 (Processing requests for access).

I have identified 83 documents which fall within the scope of your request. I have decided to deny access to all of these documents.

Of the 83 documents found 82 documents were data dictionaries and 1 document was the data asset register.

More information is set out below. I have addressed the data dictionaries separately to the data asset register for clarity.

DECISION AND REASONS FOR DECISION

Material taken into account

I have taken the following material into account in making my decision:

- the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act
- advice provided by our IT security area

Data dictionaries

Section 47E(d) – Operations of an agency

Section 47E(d) of the FOI Act provides that a document is conditionally exempt if its disclosure would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The data dictionaries requested are internal ATO documents which contain identifiers, pointers, references, and database addresses which provide leads to ATO systems. The ATO considers that the release of these data dictionaries could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the ATO.

The nature of the adverse effect primarily relates to increased risk of compromising the security and safety of ATO systems. A successful attack on our IT systems would lead to loss of confidentiality, integrity and/or availability of affected systems and related taxpayer information.

I, therefore, consider that data dictionaries are conditionally exempt from disclosure under section 47E(d) of the FOI Act.

Public Interest

Section 11A(5) provides that I must give you access to the parts of documents that are conditionally exempt unless (in the circumstances) access to the documents or parts of the documents would, on balance, be contrary to the public interest.

I find that the following public interest factors favour access to the conditionally exempt parts of the documents being provided to you:

- access to the conditionally exempt parts of the documents would give you access to information held by a Commonwealth agency, which is information that is a national resource, managed for public purposes, and;

I also find that the following public interest factors do not favour access to the conditionally exempt parts of the documents being provided to you:

- data dictionaries contain sensitive information about our internal IT systems;
- in the event of unauthorised access to ATO systems, access to data dictionaries would provide pointers, addresses and references which would allow an unauthorised attacker to navigate our systems with increased ease;
- a successful attack on our systems would have the effect of decreasing the confidentiality, integrity and availability of information stored on those systems;
- a successful attack on our systems would lead to a loss of trust from the Australian public;

- while data dictionaries in and of themselves may not provide all of the information needed for an unauthorised attack they provide one layer of security, if used in conjunction with other pieces of information which on their own may also pose no threat, then the risk of a security breach is increased dramatically; and
- data dictionaries have little value to the public in themselves, as they contain reference material and data definitions or rules that relate to our data sets, hence they do not actually represent any data or information.

Having considered all of the public interest factors set out above, I have decided that providing you with access to the conditionally exempt documents would, on balance, be contrary to the public interest. In coming to this conclusion, I did not take into account any of the factors set out at section.11B(4) of the FOI Act.

As such, I have decided that the documents that are conditionally exempt under section 47E are exempt documents.

Data asset register

The data asset register is a relatively new product that the ATO is working on. At this point in time the data asset register is an internal product which assists ATO officers to search for existing or proposed data exchanges. Your request would require us to pull the 'back end' of the data asset register. The data asset register in its current incarnation was not intended to be made available to the public therefore no thought about what could or could not be made publicly available was considered in its creation.

Although the data asset register itself was not made to go public at this time many of the ATO's special purpose data acquisition projects and data matching relationships have been made available to the public on the ATO's website and I would encourage you to look there for further information regarding the ATO's data matching.

I find that the following exemption provisions prevent release of the data asset register in its current form.

Section 37 – Documents affecting enforcement of law and protection of public safety

I have found that the data asset register is exempt in pursuant to sub-section 37(2)(b) of the FOI Act.

For a document to be exempt under this sub-section disclosure of the document, or information contained in the document, must reasonably be expected to:

... disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures.

At paragraph 5.101 of the Guidelines issued under section 93A of the FOI Act, the Australian Information Commissioner explains that the exemption in sub-section 37(2)(b) consists of two elements:

This exemption requires satisfaction of two factors. There must be a reasonable expectation that a document will disclose a method or procedure and a reasonable expectation or a real risk of prejudice to the effectiveness of that investigative method or procedure [Re Anderson and Australian Federal Police [1986] AATA 78].

The data asset register details all of the data exchanges that the ATO has and by default the relationships that we do not have. The risk of releasing the register in one document is that we are clearly exposing any deficiency in our data exchanges that could then be exploited by those deliberately attempting to evade detection.

While the general practice of the ATO conducting data matching may be in the public domain, all of the relationships are not. As such, release of this non-publicised information, in this form, could disclose the methods and procedures used by the ATO to detect discrepancies in reporting by taxpayers.

If released, the document may enable taxpayers to conduct their dealings so as to avoid detection by the ATO. Data exchanges are designed to ensure compliance with tax obligations, and there is a genuine risk to the collection of revenue if various income producing activities can be conducted in places where they would escape scrutiny by the ATO.

As such, I find that the release of this document could reasonably be expected to prejudice the effectiveness of the ATO's methods and procedures for detecting and investigating potential breaches of the law.

For the reasons discussed above, I have found that the material is exempt from release under sub-section 37(2)(b).

Section 47E(d) – Operations of an agency

Section 47E(d) of the FOI Act provides that a document is conditionally exempt if its disclosure would or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The data asset register in its current form is an internal ATO document which contains details of the data exchanges or potential data exchanges that the ATO has with hundreds of third parties, including both government and non-government. The ATO considers that the release of this spreadsheet could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the ATO.

The nature of the adverse effect primarily relates to the diminished value of the data asset register and the effectiveness of all of these external relationships if they were to be made publicly available.

I, therefore, consider that the data asset register is conditionally exempt from disclosure under section 47E(d) of the FOI Act.

Public Interest

Section 11A(5) provides that I must give you access to the parts of documents that are conditionally exempt unless (in the circumstances) access to the documents or parts of the documents would, on balance, be contrary to the public interest.

I find that the following public interest factors favour access to the conditionally exempt parts of the documents being provided to you:

- access to the conditionally exempt document would give you access to information held by a Commonwealth agency, which is information that is a national resource, managed for public purposes, and;

I also find that the following public interest factors do not favour access to the conditionally exempt parts of the documents being provided to you:

- release of the data asset register would diminish the value of some of the relationships represented;
- release of the document could reasonably be expected to damage the ATO's relationship with some of the third parties which would lead to a loss of confidence in the ATO and could jeopardise the relationship we have with some of those third parties;
- part of the ATO's function is to ensure compliance of taxpayers, releasing every data exchange we have would hinder our ability to do that by alerting the public of places where, currently, they can hide certain income producing dealings;
- there is a large amount of information that is already publicly available on the ATO website regarding the ATO's data matching, the public has open access to this information, if members of the public have an interest in the ATO's data matching they can readily access that material.

Having considered all of the public interest factors set out above, I have decided that providing you with access to the conditionally exempt document would, on balance, be contrary to the public interest. In coming to this conclusion, I did not take into account any of the factors set out at section 11B(4) of the FOI Act.

As such, I have decided that the document that is conditionally exempt under section 47E is an exempt document.

Although sections 37 and 47E are the only 2 exemptions I am relying on they are not the only things that I considered in coming to the decision to exempt the document. There are over 300 data exchanges or potential data exchanges included in the data asset register. Other factors taken into consideration when making my decision included;

- Numerous data matching protocols are already on the public record, releasing those in the format requested would add no extra value to the public,
- Numerous data exchanges are sensitive and would not be released as genuine harm could be expected to result,
- There are a large number of external parties involved in the data exchanges, we would need to consider each relationship and in many cases consult with those external parties. There is a potential of having to conduct over 100 consults with external bodies in addition to extensive internal consultations with relevant business lines to ensure that nothing is released inappropriately. This would be an enormous drain on our resources leading us to turn our minds to refusing access based on the request being an unreasonable diversion of our resources.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or review by the Information Commissioner 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.

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.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian 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:

post: GPO Box 5218, Sydney NSW 2001

email: enquiries@oaic.gov.au

More information about review by the Information Commissioner is available on the Office of the Australian Information Commissioner website, www.oaic.gov.au.

You may also apply to the Information Commissioner if you have not been informed of the outcome of an internal review within 30 days.

Complaints

Any complaint about the processing of your FOI request can be directed to the Commonwealth Ombudsman. The complaint should set out the grounds on which you consider the action should be investigated. Complaints can be made in writing, by phone, in person or by using an online form available from their website.

- 1300 362 072
- ombudsman@ombudsman.gov.au
- GPO Box 442 Canberra ACT 2601
- www.ombudsman.gov.au/pages/making-a-complaint/

More information

If you have any questions, please phone **13 28 69** between 8.00am and 4.00pm,
Monday to Friday, and ask for Rod Durnan on extension **35579**.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Rod Durnan', written in a cursive style.

Rod Durnan
Senior Legal Adviser
General Counsel