



Australian Government

Australian Taxation Office

GPO Box 1797 MELBOURNE VIC 3001

Our Reference:FOI MYM 60089

Contact officer: Julie Galeotti

Telephone :03 928 51810

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Issue date: 10 May 2013

Mr Ben Grubb

By email:foi+request-6163577b05@righttoknow.org.au

Dear Mr Grubb,

FREEDOM OF INFORMATION ACT 1982 (FOI Act)

I refer to your request of 11 February 2013 for documents pertaining to the breach of the Tax Agent Portal and your email of 10 April 2013 agreeing to reduce the scope of the request to briefings to senior officers.

I am an officer authorised under section 23 of the FOI Act to make decisions regarding access to documents.

Decision

I have decided to grant access in part to the information requested. The attached schedule sets out the documents considered relevant to your request and indicates where the documents have been released in full or in part. Documents containing exempt material have been edited and released in part in accordance with s 22 of the FOI Act.

Reasons for the decision

Section 37(1)(a)

A number of documents contain material which relate to an on-going investigation. This investigation is about the recent theft of tax agents' identities and the fraudulent use of AUSkeys to obtain access to ATO online systems. The material exempted includes details of how this specific fraud was carried out, steps we have taken to obtain further information about the fraud and discussion of a number of possible actions that could be taken to obtain further information about the fraud. Disclosing the information obtained at this stage of the investigation or disclosing future possible steps could prejudice the conduct of the investigation by alerting those responsible for the fraud. It is possible that these people could then take steps to frustrate the on-going investigation.

I consider that the release of this material could reasonably be expected to prejudice the conduct of this investigation and the material is exempt under s 37(1)(a) of the FOI Act.

Section 47E(d)

A number of documents discuss risks to ATO processes, interim measures introduced to overcome identity fraud and discussion of possible longer term changes to mitigate these risks.

Releasing these details before permanent changes are introduced could assist others trying to conduct similar attacks on the ATO. Multiple attacks could reduce the effectiveness of our processes and have major repercussions on ATO operations generally. I consider that releasing this material could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

As section 47E(d) is a conditional exemption only, I need to consider if the release of the information is in the public interest. There is a public interest in how government operations are conducted and in open and accountable government but I consider that, in this instance, the possible effect of attacks on ATO processes and the risk to revenue outweighs the general public interest in release. I consider that the release of this information is not in the public interest and have therefore exempted this material under s 47E(d).

Section 47F(1)

I have exempted the mobile phone numbers of a number of senior staff. While names and office phone details have been released, I consider it to be an unreasonable disclosure of personal information to release mobile numbers that may be required to be left on outside of work hours.

As this is also a conditional exemption, I have considered the public interest in the release of the information. While there is a public interest in officers being responsible for their actions and in open and accountable government generally, I consider that the risk of officers having to turn off their phones to avoid being contacted by the public outside of business hours, resulting in limited communications at senior levels of the office, and the possible interruption to their personal lives outweighs the factors for release. I consider that this information is exempt under s47F(1).

Section 47G(1)(a)

A small number of documents contain information about the business affairs of tax agents. This information includes the general location of one of the agents impacted by the fraud and business information about a number of other agents not related to this specific incident. The release of this information could reasonably be expected to unreasonably affect the agents' business affairs if members of the public decide to avoid using these agents.

I consider that it is not in the public interest to release this information. I consider that the possibility that agents will be reluctant to cooperate with the ATO and the difficulties this would cause in administering the taxation laws outweighs the public interest in open and accountable government and the general public interest in making sure that relationships between the office and agents are conducted openly.

Your rights of review

If you are unhappy with the decision, you can either request an internal review or request an independent review by the Australian Information Commissioner. You can also apply to the Australian Information Commissioner after an internal review has been conducted.

A request for an internal review needs to:

- ☑ be in writing
- ☑ be sent to us within 30 days of being notified of my decision, and
- ☑ be sent, quoting reference number MYM 60089 via:
 - email at foi@ato.gov.au or
 - mail to:
 - Australian Taxation Office
 - GPO Box 1797, Melbourne Vic 3001

The internal review will be done by an officer who did not make the initial decision.

A request for an independent review by the Australian Information Commissioner needs to:

- ☑ be sent within 60 days of being notified of my decision
- ☑ include a copy of this notice
- ☑ include an address where notices can be sent (eg your email address), and
- ☑ be sent to:
 - GPO Box 2999
 - Canberra City
 - ACT 2601

For further details regarding the Information Commissioner visit 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

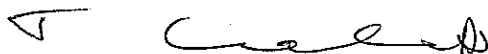
Any complaint about the processing of your FOI request can be forwarded to the Information Commissioner. The complaint needs to be in writing and identify the agency against which the complaint is made. There is no particular form required to make a complaint, but the complaint should set out the grounds on which you consider the action should be investigated. The Information Commissioner can be contacted on 1300 363 992 for the cost of a local call.

The Commonwealth Ombudsman also has the power to investigate the ATO's actions and make recommendations where appropriate. The Ombudsman will consult with the Australian Information Commissioner before deciding who should investigate your complaint.

You can contact the Commonwealth Ombudsman from anywhere in Australia by phoning 1300 362 072 for the cost of a local call.

For more information

If you have any questions, please phone **13 28 69** between 8.00am and 5.00pm, Monday to Friday, and ask for Julie Galeotti on extension 51810.



Julie Galeotti
Senior FOI Adviser
Legal Services Branch
Australian Taxation Office

