



11 August 2014

Mr Geordie Guy  
By email: [foi+request-672-4e47a173@righttoknow.org.au](mailto:foi+request-672-4e47a173@righttoknow.org.au)

Our reference: LEX 9353

Dear Mr Guy,

### **Your Freedom of Information request**

1. I refer to the request that you have made for access to the following under the *Freedom of Information Act 1982* (Cth) (FOI Act):

*"a copy of the source code for the MyGov web application".*

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

### **Decision**

3. I have decided to refuse access to the document requested under section 24(1) of the FOI Act because, following a consultation process under section 24AB of the FOI Act, a 'practical refusal reason' still exists under section 24AA of the FOI Act. I am satisfied that the work involved in processing your request would substantially and unreasonably divert the resources of the department from its other operations.

### **Information considered**

4. In reaching my decision, I have considered:
  - the terms of your request, dated 8 July 2014;
  - your email response of 29 July 2014 to the department's practical refusal notice;
  - consultations with departmental officers about the nature of the document;
  - the department's operating environment and functions;
  - the FOI Act; and
  - Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines)

## Reasons for decision

### The request consultation process

5. The department notified you on 28 July 2014 of its intention to refuse your request under section 24AB of the FOI Act, on the basis that processing your request would involve a substantial and unreasonable diversion of the department's resources.
6. The practical refusal notice invited you to engage in a request consultation process, providing you with an opportunity to consult the department to revise your request so as to remove the practical refusal reason.
7. You responded by email on 29 July 2014, in which you sought to clarify your request as follows:

*"The scope of my request is for those code modules (likely to be an overwhelming majority with only a few obvious exceptions) which are not or even not likely to be exempt under the act for the reasons the act sets out".*
8. You also provided a number of submissions supporting your view that processing the request would not be a resource-intensive exercise. In particular, in response to the department's estimate that the code would exceed 20,000 pages of information if reproduced in written form, you stated:

*"I would like to clarify that I don't want or need access to it on pages of any sort, in fact I'm broadly unaware of any circumstances where source code is stored on pages or produced in pages for any useful purpose other than perhaps in text books or other educational material. Producing the code as computer files or indeed a single compressed file would be quite sufficient and indeed the normal way to provide the information. There is no sensible reason to think that doing this would divert the resources and time of the department; copying and pasting a file on a computer is not commonly held to be arduous".*
9. In relation to the department's assertion that the time required for decision-making would be substantial and would require significant input from subject-matter experts, since a decision-maker could not uniformly apply a decision to the code in its entirety, you stated (among other things):

*"As an example, source code may contain 10,000 lines of code in a module named Provide\_Centrelink\_Customer\_Bank\_Details, with the contents of the module enclosed in parenthesis or some other grouping marker depending on the programming language used. In this example it is not necessary for anybody to evaluate 10,000 lines of code to determine their technical function or FOI exemption status – the name of the module clearly indicates that it is unsuitable for release...*

*It should be entirely unnecessary to review 20,000 pages of computer programming line-by-line for technical and legal status – rather it should be a much simpler matter of reviewing the documentation that exists alongside the code to determine which named modules represent which application purpose, and releasing those which are safe and in the public's interest to do so".*
10. After considering your submissions, including the clarification of your request in paragraph 7 above, I am satisfied, in accordance with section 24AB of the FOI Act, that a practical refusal reason still exists in relation to your request on the basis that the work involved would substantially and unreasonably

divert the resources of the department from its other operations. The reasons for my decision, including consideration of the factors that I am required to take into account in section 24AA(2) of the FOI Act, are outlined below.

**Practical refusal reason**

11. Section 24AA of the FOI Act provides that a practical refusal reason exists in relation to a request for a document if the work involved would 'substantially and unreasonably divert the resources of the agency from its other operations'.
12. The word 'substantial' has previously been interpreted to mean severe, of some gravity, large or weighty or of considerable amount, real or of substance and not insubstantial or of nominal consequence.
13. In determining whether processing your request would substantially and unreasonably divert the department's resources, section 24AA(2) of the FOI Act requires me to have regard to the resources that would have to be used for the following:
  - a) identifying, locating or collating the documents within the department's filing system;
  - b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for examining the document or consulting in relation to the request;
  - c) making a copy, or an edited copy, of the document; and
  - d) notifying any interim or final decision on the request.
14. In accordance with section 24AA(3) of the FOI Act, I have not considered your reasons for requesting access to the document.

***Why your request is substantial***

15. In order to assess the work that would be involved in processing your request, I have undertaken further consultations with the department's Online Services Branch, following your email of 29 July 2014.
16. I accept your submission that there is no need to produce the code in written form in order to process your request. However, in relation to your contention that portions of code could easily be assessed for potential release by reference to the names of modules or grouping markers, I understand that a decision-maker could not simply take this approach if the material was to be properly considered. Specifically, I am advised that module names are not necessarily a reliable indicator of the presence or otherwise of security functions, given that the framework of the code is complex and highly integrated. As such, the code set is not simple and not separable in the manner that you have suggested. All code elements would need to be reviewed because of the core nature of security related functions.
17. While I am not able to accurately quantify the time that would be required to review the code for purposes of decision-making, I am satisfied that such time would be substantial and significant, taking into account that there would be in excess of one million lines of code to consider. Your clarification of the scope of your request in paragraph 7 does not remove the need to undertake that task. Given the sensitivities associated with the document you have requested, I am also satisfied

that a number of senior executive officers in several divisions of the department would likely need to be consulted before a decision is made by the decision-maker regarding release. In addition to this consultation, I note that certain information contained in the code would likely relate to work undertaken by other Commonwealth agencies. In my view, the decision-maker would also need to identify those other agencies and consult with them in relation to the potential release of code material.

18. While I accept your contention that you are not seeking any “information that is contentious and poses a risk to privacy or security”, the importance of careful, thorough decision-making is arguably amplified in this area, since the potential release of IT infrastructure design information into the public domain increases risks to system integrity and the potential for customer data to be compromised. Given the complexity of the code framework, substantial decision-making time would be required to sufficiently review the code material, to protect against the inadvertent release of any material that may increase the effectiveness of malicious activity targeting government networks.

*Why your request is unreasonable*

19. As well as involving a substantial diversion of the department’s resources, I also consider that directing those resources to processing your request would be unreasonable on the basis that making a decision on the code you seek would require departmental staff to consider sensitivities contained in voluminous material which would detract from their day to day responsibilities.
20. As a service delivery agency, the department’s primary function is to deliver services to the broader Australian community. Senior executive officers of the department have specified responsibilities to ensure that services are delivered to Australians in a timely manner and a number of these responsibilities are subject to statutory imposed time limits. In my view, as discussed above, a number of senior officers would need to be involved in the processing of your request and consulted on possible sensitivities and I am satisfied that this would unreasonably divert those officers from their operational duties.
21. On the basis of the factors set out above, I am satisfied that the processing of your request would unreasonably divert the department’s resources from its other operations.
22. In summary, I have decided that a practical refusal reason exists under subparagraph 24AA(1)(a)(i) of the FOI Act in relation to your request, as the work involved in processing your request would substantially and unreasonably divert the resources of the department. Accordingly, I have decided to refuse your request under section 24(1) of the FOI Act.

**Rights of review**

23. I have enclosed information about your rights of review under the FOI Act at **Attachment A**. Should you have any enquiries concerning this matter, please contact the FOI Legal Team at [FOI.Legal.Team@humanservices.gov.au](mailto:FOI.Legal.Team@humanservices.gov.au).

Yours sincerely



Julian Russell  
Government Lawyer  
FOI and Information Release Branch

## **Attachment A**

### **INFORMATION ON RIGHTS OF REVIEW**

#### ***FREEDOM OF INFORMATION ACT 1982***

#### **Application for review of decision**

The Freedom of Information Act 1982 (FOI Act) gives you the right to apply for a review of this decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of this decision by:

- (i) an internal review officer in the Department of Human Services; or
- (ii) the Information Commissioner.

#### **Internal Review**

If you apply for internal review, it will be carried out by a different decision-maker who will make a fresh decision on your application. An application for review must be:

- made in writing;
- made within 30 days of receiving this letter; and
- sent to the address at the head of this letter.

No particular form is required, but it is desirable to set out in the application the grounds upon which you consider the decision should be reviewed.

If the internal review officer decides not to grant you access to all of the documents to which you have requested access, you have the right to seek a review of that decision by the Information Commissioner. You will be further notified of your rights of review at the time you are notified of the internal review decision.

Please note that if you apply for an internal review and a decision is not made by an internal review officer within 30 days of receiving the application, you have the right to seek review by the Information Commissioner for a review of the original FOI decision on the basis of a 'deemed refusal' decision. An application for Information Commissioner review in this situation must be made within 60 days of the date when the internal review decision should have been made (provided an extension of time has not been granted or agreed).

## Information Commissioner review

You must apply in writing within 60 days of the receipt of the decision letter and you can lodge your application in one of the following ways:

Online: <a href="http://www.oaic.gov.au">www.oaic.gov.au</a> Post: GPO Box 2999, Canberra ACT 2601 Fax: +61 2 9284 9666 Email: <a href="mailto:enquiries@oaic.gov.au">enquiries@oaic.gov.au</a>	In person: Level 8, Piccadilly Tower, 133 Castlereagh Street, Sydney NSW
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If a person has sought an internal review and no result of that review is provided within 30 days, then the applicant may apply to the Information Commissioner to review the matter.

An application form is available on the website at [www.oaic.gov.au](http://www.oaic.gov.au). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

## **Complaints to the Commonwealth Ombudsman and Information Commissioner**

### ***Commonwealth Ombudsman***

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072

Website: [www.ombudsman.gov.au](http://www.ombudsman.gov.au)

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.

### ***Information Commissioner***

You may also complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act, There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992

Website: [www.oaic.gov.au](http://www.oaic.gov.au)