



**Ministry of Business,  
Innovation & Employment**

24 September 2012

Joshua Grainger  
Email: [requests@fvi.org.nz](mailto:requests@fvi.org.nz)

Dear Mr Grainger

**OFFICIAL INFORMATION ACT REQUEST**

I refer to your email of 28 August 2012 seeking further clarification of my response to your request to the Ministry of Business, Innovation and Employment ("the Ministry") under the Official Information Act 1982 ("OIA") dated 2 August 2012. You have asked the following three questions:

1. *Can you please identify which of [section 9(2)(b)(i) or (ii) of the OIA] was the reason for decline? Alternatively, was the reason for reply meant to be both (i) and (ii), rather than either or?*
2. *Can you please provide the explanation why answering my OIA request would result in compromising the values protected by s9(2)(b)?*
3. *May I clarify here whether MOBILE owns the code, or whether ownership and control of the code is still retained by the third party that developed the code?*

In response to these questions I advise that the Ministry considers that both section 9(2)(b)(i) and (ii) provide good grounds for withholding the source code for the Mobile Business Toolbox app. While the Ministry commissioned and owns the app, including its source code, aspects of the source code relate to tools within the app that the developer considers as its proprietary information. The Ministry considers that this information constitutes a trade secret which should be protected under section 9(2)(b)(i).

Section 9(2)(b)(ii) also provides a ground for withholding the source code because its release would potentially cause competitive disadvantage to its developer. The release of the source code would also have implications for the ability for the Ministry to attract developers in the future, and to the cost the Ministry would incur in doing so.

Access to the source code could make it easier to hack the app and to compromise the developer's systems. If the source code were released this would require the developer to incur time and cost in order to review its systems to ensure that they were protected from this possibility.

If the app were hacked this could also disrupt the Ministry's delivery of services through the app or compromise the accuracy of information provided through the app.

As noted in my initial response to your request, in making my decision to withhold the source code I have considered the public interest considerations in section 9(1) of the Official Information Act. I am satisfied that there is not a significant countervailing public interest in the release of the source code for the Mobile Business Toolbox app that would outweigh the grounds cited for withholding that information.

You have the right by way of complaint under section 28(3) of the Official Information Act 1982 to an Ombudsman, to seek an investigation and review of my refusal to release the source code for the Mobile Business Toolbox app.

Yours sincerely



Katie Wellington  
Manager Business.govt.nz  
Ministry of Business, Innovation and Employment