



## New Zealand Fire Service

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A J

By email: [fyi-request-5298-b0606d7a@requests.fyi.org.nz](mailto:fyi-request-5298-b0606d7a@requests.fyi.org.nz)

Dear A J

### OFFICIAL INFORMATION REQUESTS RELATED TO MYFIRE

#### Background

In your correspondence of 28 - 30 January 2017, you requested a range of information from the New Zealand Fire Service Commission ('**NZFS**') pursuant to the Official Information Act 1982 ('**OIA**').

Namely, your requests were as follow:

1	If this request is to be denied via the reason that the software is in fact a trade secret of the supplier; I would expect to see the section of the original contract (or the contract in its entirety) that states that the IP and software still belongs to the supplier and not the NZ Fire Service Commission. <sup>1</sup>
2	I'm unsure how the old supplier's trade secrets could be protected from every potential future competitors / supplier (given the new supplier would be working with the old source code) and Guidance in this area would be appreciated as to how exactly the New Zealand Fire Service Commission believes the trade secrets of suppliers will be protected into the future.
3	What unit test framework and language(s) are used for the development of the myFire mobile app?
4	Who has the rights over the myFire source code? Specifically, the right to make this information public? If it is the developer, please provide the developers details. If it is the NZ Fire Commission, please revisit the OIA request which was declined as releasing trade secrets. If the developer has rights over the source code, does this mean the developer is also able to withdraw the source code from the fire service to protect his/her trade secrets from their competition had the latest tender been won by a different supplier? Is the expenditure on the myFire app therefore considered a donation, as the NZ Fire Commission does not actually have rights over what was paid for? If this was a donation, is the developer a registered charity?

<sup>1</sup>We have assumed the request referred to is your request, dated 13 December 2016, for the myFire Source Code.

5	How many submissions were made for the latest myFire tender (Nov/Dec 2016 period)?
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NZFS sent you a letter on 22 February 2017 providing certain information that you requested in connection with OIA Request [1] and notifying you that your request for the contract governing the supply of the myFire Source Code had been transferred to the Ministry of Business, Innovation, and Employment in accordance with subsection 14(b)(ii) of the OIA.

The purpose of this letter is to provide you with NZFS's responses to your OIA Requests [2] – [5].

For clarity, where an OIA Request was constituted by more than one part, I have separated those OIA Requests into its constituent parts, and provided NZFS's responses immediately under each of those parts.

### **OIA Request [2]**

In OIA Request [2], you asked:

*I'm unsure how the old supplier's trade secrets could be protected from every potential future competitors / supplier (given the new supplier would be working with the old source code) and Guidance in this area would be appreciated as to how exactly the New Zealand Fire Service Commission believes the trade secrets of suppliers will be protected into the future.*

The myFire Source Code is hosted in NZFS's secure cloud computing environment. NZFS's systems provide both practical protection, and legal protection, to that environment. The myFire Source Code (including trade secrets of suppliers incorporated into that source code) is subject to the entirety of those protection measures, which I set out in detail below.

#### *Practical measures to protect source code*

NZFS's secure cloud computing environment is rights-controlled by NZFS. It is able to be viewed or accessed only by people or organisations that NZFS expressly authorises to do so. This ensures that:

- a. source code is not able to be viewed or accessed by members of the public;
- b. source code is not able to be viewed or accessed by regular users of myFire (except for the presentation layer source code);
- c. source code is not able to viewed or accessed by employees or contractors engaged by NZFS; and
- d. source code is able to be viewed only by people or organisations expressly authorised by NZFS for that purpose (and only following appropriate scrutiny of that person / organisation, and subject to the legal restrictions set out below).

#### *Legal measures to protect source code*

In order to receive authorisation to view source code, NZFS first requires that a person or organisation is subject to express legal restrictions that restrict the manner in which that information can be used. Amongst other matters, those relate to related to confidentiality, restraints from trade, and conflicts of interests. In the case of NZFS employees, those restrictions are set out in employment agreements and / or the NZFS Code of Conduct. In

the case of contractors (including suppliers selected to provide IT services to NZFS applications), those obligations are set out in the contractual terms governing a given contractor's engagement.

NZFS does not provide any person or organisation with access to its cloud computer environment until both (a) that access is considered necessary and appropriate for that person / organisation, and (b) that person / organisation formally agrees to the legal restrictions described above. (One outcome of this practice is that people / organisations that lodge tender proposals to support NZFS IT applications are not provided with access to the source code of the application until NZFS and that party have entered into a formal contractual relationship.)

### **OIA Request [3]**

In OIA Request [3], you asked:

***What unit test framework and language(s) are used for the development of the myFire mobile app?***

No unit testing framework (or testing automation framework) was used for the development of the myFire mobile app. Manual unit testing was undertaken. The language used for the development of the myFire app was C# (Xamarin Studio).

### **OIA Request [4]**

In OIA Request [4], you asked:

***Who has the rights over the myFire source code? Specifically, the right to make this information public? If it is the developer, please provide the developers details. If it is the NZ Fire Commission, please revisit the OIA request which was declined as releasing trade secrets. If the developer has rights over the source code, does this mean the developer is also able to withdraw the source code from the fire service to protect his/her trade secrets from their competition had the latest tender been won by a different supplier? Is the expenditure on the myFire app therefore considered a donation, as the NZ Fire Commission does not actually have rights over what was paid for? If this was a donation, is the developer a registered charity?***

*Who has the rights over the myFire source code? Specifically, the right to make this information public?*

Certain information (namely, intellectual property incorporated into the myFire Source Code, which was created or developed by the myFire supplier before the myFire Supplier was engaged by NZFS) is owned by the myFire Supplier (the '**Supplier IP**'). NZFS does not have the right to make the Supplier IP public.

With the exception of the Supplier IP, NZFS commissioned and owns the myFire Source Code. NZFS has the discretion to make that information public if it considers appropriate.

*Revisit OIA request (8 December 2016) for myFire Source Code*

You asked:

*If it is the NZ Fire Commission, please revisit the OIA request which was declined as releasing trade secrets*

NZFS has reassessed your request, previously received on 8 December 2017, for the myFire Source Code.<sup>2</sup>

NZFS's reassessment has found, in accordance with the provisions of the OIA, that it is necessary to withhold the myFire Source Code.

Particularly, NZFS findings are that:

1. in accordance with subsection 9(2)(b) OIA, it is necessary to withhold the myFire Source Code in order to protect information where making the information available would disclose a trade secret ('**Ground A**');
2. in accordance with subsection 9(2)(b)(ii) OIA, it is necessary to withhold the myFire Source Code in order to prevent likely unreasonable prejudice to the commercial position of the person who supplied or who is the subject of the information ('**Ground B**'), and
3. in accordance with subsection 9(2)(c) OIA, it is necessary to withhold the myFire Source Code in order to prevent likely prejudice to measures protecting the health or safety of members of the public ('**Ground C**').

In finding that it is necessary to withhold the myFire Source Code due to Grounds A and B, NZFS's assessment had particular regard to the following:

1. notwithstanding that NZFS owns the myFire Source Code (as set out above) the source code incorporates trade secrets of the supplier (as earlier set out in my letter of 26 January 2017);
2. the myFire Source Code discloses unique methods and techniques, developed by the Supplier, to prepare the myFire Source Code;
3. the Supplier incurred significant cost in developing the myFire Source Code for NZFS;
4. the myFire Source Code could be duplicated, reverse-engineered, and / or repurposed by a third party;
5. the myFire Source Code would be of commercial value to a competitor of the supplier, and
6. the myFire Source Code is not known outside of NZFS and the supplier (Within NZFS's IT environment, the myFire Source Code is able to be accessed only by persons or organisations expressly authorised by NZFS and subject to appropriate legal restrictions. Whilst it was within the supplier's IT environment, the myFire Source Code was able to be accessed only by persons or organisations expressly authorised by the supplier).

In finding that it is necessary to withhold the myFire Source Code due to Ground C (and as previously noted in NZFS's response of 26 January 2017) NZFS had particular regard to the

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<sup>2</sup> NZFS responded to that request on 26 January 2017.

likelihood that providing the myFire Source Code could prejudice mission-critical IT infrastructure used to protect life and property from fire and emergencies.

More particularly, the myFire Source Code interfaces with a number of systems in NZFS's IT environment. Providing the myFire Source Code would allow any viewers of it to identify and exploit vulnerabilities in NZFS's IT infrastructure. This could disrupt the delivery of NZFS's life-critical services to members of the public, and / or compromise the accuracy of information hosted on NZFS's IT infrastructure.

NZFS has reconsidered other matters that may render it desirable, in the public interest, to make the myFire Source Code available. NZFS does not consider that those matters outweigh the reasons for withholding the myFire Source Code in these circumstances.

#### *Supplier's ability to withdraw source code*

You asked:

***Is the developer able to withdraw the source code from the fire service to protect his/her trade secrets from their competition had the latest tender been won by a different supplier?***

NZFS (a) legally owns the myFire Source Code to the extent that it was created for NZFS, and (b) legally owns the rights to use Supplier IP in the myFire Source Code to the extent required to use myFire.

Accordingly, the developer of the myFire Source Code would not have the right to withdraw the myFire source code from NZFS without NZFS's express consent.

For completeness, NZFS adds that, any subsequent ICT service suppliers, authorised by NZFS to access the myFire Source Code, would be bound by the legal obligations set out above. NZFS considers that those appropriately protect the trade secrets, incorporated into the myFire Source Code, belonging to the supplier.

#### *Donation and myFire Expenditure*

You asked:

***Is the expenditure on the myFire app therefore considered a donation? If this was a donation, is the developer a registered charity?***

NZFS does not consider any expenditure incurred in the development of myFire to date has been incurred for a charitable purpose, nor paid / treated as a donation. NZFS does not consider that the myFire Supplier is a registered charity.

Charities Services maintains a public record of all organisations with registered charitable purposes in accordance with the Charities Act 2005. The Charities Register is public, and can be accessed at: <https://www.register.charities.govt.nz/CharitiesRegister/Search>.

#### **OIA Request [5]**

In OIA Request [5], you asked:

**How many submissions were made for the latest myFire tender (Nov/Dec 2016 period)?**

By way of background, NZFS issued an RFP (Request for Proposals) for *Web / App Development Services – myFire* (NP2211) on 23 November 2016. The deadline for proposals to be lodged with NZFS in response to the RFP was 22 December 2016.

NZFS has assessed your request for the number of proposals lodged with NZFS, in response to the RFP, in accordance with the OIA.

NZFS considers it is necessary to withhold that information until after NZFS has entered into an agreement with a supplier of the services that the RFP related to (the '**Agreement Date**').

In particular, NZFS considers it is necessary to withhold the information to that time because:

- a. in accordance with section 18(d) OIA, the information will be publically available, by being published on the *Government Electronic Tendering Service* ('**GETS**'), no later than 30 days after the Agreement Date. GETS is available at [www.gets.govt.nz](http://www.gets.govt.nz); and
- b. in accordance with section 9(2)(j) OIA, to enable NZFS to carry on negotiations with suppliers without prejudice or disadvantage.

NZFS has considered other matters that may render it desirable, in the public interest, to make this information available prior to the Agreement Date. NZFS does not consider that those matters outweigh the reasons for withholding this information until after the Agreement Date.

NZFS presently anticipates that the Agreement Date will occur in mid-March 2017, and following that looks forward to advising you how many proposals were received in response to the RFP.

### **Review of decision(s)**

If you are dissatisfied with any decision(s) made in connection with your requests, you have the right to seek a review of the decision(s) through the Office of the Ombudsman in accordance with section 28(3) of the OIA. The Office of the Ombudsman can be contacted on 0800 802 602 or online at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

I trust that the information provided is sufficient for your purposes. In the event that you have any further queries, please do not hesitate to contact NZFS.

Yours sincerely



Leigh Deuchars  
Director, Office of the Chief Executive