



New Zealand Fire Service

National Headquarters
Level 12
80 The Terrace
PO Box 2133
Wellington

New Zealand

Phone+64 4 496 3600, Fax +64 4 496 3700

23 June 2017

A J

By email: fyi-request-5298-b0606d7a@requests.fyi.org.nz

Dear A J

TRANSFER OF OFFICIAL INFORMATION REQUEST FROM MBIE

Background

The Ministry of Business, Innovation, and Employment ('**MBIE**') recently received a request for official information from you. That request related to information you had earlier requested from the New Zealand Fire Service Commission ('**NZFS**').

MBIE transferred the following part of that request to NZFS:

I do not see how the NZFSC can say they are unable to open source the FireApp due to the rights of the provider. Can you please explain.

Previous correspondence exchanged by NZFS

Prior to receiving the transfer of your request from MBIE, NZFS had exchanged the following correspondence with you:

- a. Your request for the MyFire Source Code (8 December 2016)
- b. NZFS response request for the MyFire Source Code (26 January 2017)
- c. Your further request for the MyFire Source Code (28 January 2017)
- d. NZFS response to your further request for the MyFire Source Code (27 February 2017)

NZFS considers that information set out in the above correspondence has previously responded to your question. In particular, we refer you to the excerpts from that correspondence set out in the attached **schedule**.

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 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.

Yours sincerely

Leigh Deuchars
Director, Office of the Chief Executive

Schedule
Excerpts of correspondence previously exchanged

Your previous question	NZFS's previous response
<p>Please provide the FireApp source code for mobile app and web service</p>	<p>NZFS has considered your request in accordance with the OIA, and determined that it is necessary to withhold the myFire Source Code, in accordance with the OIA, for the following reasons:</p> <ol style="list-style-type: none"> a. In order to protect information where making the information available would disclose a trade secret.¹ (The myFire Source Code constitutes a trade secret of the supplier that developed the myFire Source Code for NZFS); b. In order to prevent likely unreasonable prejudice to the commercial position of the person who supplied or who is the subject of the information.² (Providing the myFire Source Code would allow likely unreasonable prejudice to the commercial position and trade practices of the supplier that developed the myFire Source Code), and c. In order to prevent likely prejudice to measures protecting the health or safety of members of the public.³ (Providing the myFire Source Code could prejudice mission-critical IT infrastructure, used to deploy emergency responses, in the course of NZFS carrying out its statutory function to protect life and property from fire and emergencies). <p>In accordance with subsection 9(1) OIA, NZFS has considered other matters that may render it desirable, in the public interest, to make that information requested available. It does not consider that those factors outweigh the matters set out above.</p>
<p>If it is the NZ Fire Commission, please revisit the OIA request which was declined as releasing trade secrets</p>	<p>NZFS has reassessed your request, dated 8 December 2017, for the myFire Source Code. NZFS's reassessment has found, in accordance with the provisions of the OIA, that it is necessary to withhold the myFire Source Code.</p> <p>Particularly, NZFS findings are that:</p> <ol style="list-style-type: none"> 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'). <p>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:</p> <ol style="list-style-type: none"> 1. notwithstanding that NZFS owns the myFire Source Code as set out above, NZFS considers that 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). <p>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 possibility that</p>

¹ In accordance with subsection 9(2)(b)(i), OIA.

² In accordance with subsection 9(2)(b)(ii), OIA

³ In accordance with subsection 9(2)(c), OIA.

	<p>providing the myFire Source Code could prejudice mission-critical IT infrastructure used to protect life and property from fire and emergencies.</p> <p>More particularly, the myFire Source Code interfaces with a number of systems in NZFS's IT environment. Providing the myFire Source Code would allow the recipient (and / or any subsequent viewers of that source code) to identify and exploit vulnerabilities in NZFS's IT infrastructure. This could disrupt the delivery of NZFS's life-critical services to member of the public, and / or compromise the accuracy of information hosted on NZFS's IT infrastructure.</p> <p>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.</p>
<p>Who has the rights over the myFire source code? Specifically, the right to make this information public?</p>	<p>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.</p> <p>With the exception of the Supplier IP, NZFS commissioned and owns the myFire Source Code (including the intellectual property rights in it). NZFS has the discretion to make that information public if it considers appropriate.</p>
<p>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.</p>	<p>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 has been transferred to MBIE in accordance with subsection 14(b)(ii) of the OIA.</p>