

**Decision and  
Reasons for Decision**

**Applicant/s:** Fraser Tweedale

**Respondent:** Chief Executive Officer of Services Australia

**Tribunal Number:** 2025/4916

**Tribunal:** Deputy President P Britten-Jones

**Place:** Melbourne

**Date:** 23 January 2026

**Determination:** Being satisfied the proceeding in this application involves national security information, exercising the delegated power of the President under s 134(2) of the *Administrative Review Tribunal Act 2024*, I direct that the Tribunal's powers in respect of the proceeding are to be exercised in the Intelligence and Security jurisdictional area.

.....[SGD].....

Deputy President P Britten-Jones

### **Catchwords**

*PRACTICE AND PROCEDURE – freedom of information – application for exercise of powers in the Intelligence and Security jurisdictional area – ‘national security information’ – respondent says that the document in issue is an exempt document under s 33(a)(i) of the Freedom of Information Act 1982 (Cth) – respondent says that the proceeding would involve national security information and that the Tribunal should exercise discretion under s 134(2) of the Administrative Review Tribunal Act 2024 (Cth) - satisfaction – exercise of discretion – direction made*

### **Legislation**

*Administrative Review Tribunal Act 2024 (Cth)*

*Freedom of Information Act 1982 (Cth)*

*National Security Information (Criminal and Civil Proceedings) Act 2004 (Cth)*

### **Cases**

*Director, Australian War Memorial and Patrick (Practice and procedure) [2025] ARTA 540*

## **Statement of Reasons**

1. The respondent has requested that the President direct under s 134(2) of the *Administrative Review Tribunal Act 2024* (Cth) (the **ART Act**) that the Tribunal’s powers in relation to this proceeding be exercised in the Intelligence and Security jurisdictional area (**ISJA**). The President has delegated to me his powers under s 134(2) of the ART Act.
2. The applicant opposes the respondent’s request. The parties have provided written submissions.
3. The request is to be determined by reference to s 134 of the ART Act:

*(1) The Tribunal’s powers in relation to a proceeding that relates to an intelligence and security decision are to be exercised in the Intelligence and Security jurisdictional area.*

*Other proceedings involving national security information*

*(2) If the President is satisfied that any other proceeding in the Tribunal would involve national security information, the President may direct that the Tribunal's powers in relation to the proceeding are to be exercised in the Intelligence and Security jurisdictional area.*

*(3) The President may do so:*

*(a) on application by a party to the proceeding; or*

*(b) on the President's own initiative.*

*Other proceedings generally*

*(4) To avoid doubt, this section does not limit the President's power under subsection 196(4) to direct that the powers of the Tribunal in relation to any other proceeding are to be exercised in the Intelligence and Security jurisdictional area.*

4. As delegate of the President, I have a discretion to direct that the Tribunal's powers in relation to this proceeding are to be exercised in the ISJA. The precondition to the exercise of discretion is that I am satisfied that this proceeding 'would involve national security information.'
5. National security information by definition in s 4(1) of the ART Act has the same meaning as in s 7(1) of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth) (**NSI Act**), namely:

*information:*

  - (a) that relates to national security; or*
  - (b) the disclosure of which may affect national security.*
6. Under s 8 of the NSI Act, 'national security' means Australia's defence, security, international relations or law enforcement interests.
7. It follows that the relevant issue is whether I am satisfied that this proceeding would involve information that relates to national security or information the disclosure of which may affect national security, noting that national security includes Australia's defence, security and international relations.
8. The proceeding in the Tribunal is an application made by the applicant on 4 July 2025 for review of a decision under the *Freedom of Information Act 1982* (Cth) (**FOI Act**). The applicant has been denied access to the source code of the myGov Code Generator iOS and Android apps and related information. In response to the access request, the

respondent has claimed that the document in issue is an exempt document pursuant to s 33(a)(i) of the FOI Act which provides relevantly:

*A document is an exempt document if disclosure of the document under this Act:*

*(a) would, or could reasonably be expected to, cause damage to:*

*(i) the security of the Commonwealth;*

9. The respondent's written submissions dated 23 December 2025 say that the case will involve demonstrating that the disclosure of the source code would or could be expected to damage the security of the Commonwealth. Further, the respondent says that the evidence presented in the proceeding will likely include evidence from one or more of the Commonwealth's national security agencies, as well as evidence in relation to the threat environment faced by myGov as a critical government information system. The respondent says that this evidence will constitute national security information within the meaning of the ART Act because it will address the expected effect on Australia's national security if the document in issue is disclosed.
10. The respondent is entitled to raise s 33(a)(i) of the FOI Act in the Tribunal proceedings to support its claim that the document in issue is an exempt document that should not be disclosed to the applicant. The issue for the Tribunal on the substantive application will be whether the disclosure of the document in issue would, or could reasonably be expected to, cause damage to the security of the Commonwealth.
11. Satisfaction under s 134(2) of the ART Act that the proceeding would involve national security information does not require the respondent to establish that disclosure of the document in issue would, or could reasonably be expected to, cause damage to the security of Commonwealth.<sup>1</sup> Section 134(2) is not intended to require satisfaction as to the substantive issue and yet that is the effect of what the applicant contends.
12. The applicant contends that the respondent's application does not address the statutory precondition in s 134(2) of the ART Act, namely that the proceeding would involve national security information. Further, the applicant contends that the respondent's application is unsupported by appropriate evidence. I will deal with this second contention first.

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<sup>1</sup> *Director, Australian War Memorial and Patrick (Practice and procedure)* [2025] ARTA 540 at [39].

13. The respondent has not filed any affidavit evidence or given oral evidence in support of its interlocutory application. It is not unusual on an interlocutory application for the Tribunal to inform itself about the facts of the matter from written and oral submissions, correspondence and the T documents. There is no need for formal evidence to be given under oath or on affirmation. The Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it considers appropriate.<sup>2</sup>
14. I will now address the applicant's primary contention that the respondent has not established the statutory pre-condition that the proceeding would involve national security information.
15. In support of its contention that the proceeding will involve national security information, the respondent has said in its submissions dated 23 December 2025 that evidence will likely be given by one of the Commonwealth's national security agencies in relation to the threat environment faced by myGov as a critical government information system. The respondent contends that this evidence will constitute 'national security information' because it will address the expected effect on Australia's national security if the document in issue is disclosed.
16. I accept the statement in the submissions from the respondent. There is no reason to reject it. It is hardly surprising, on an application for review in which s 33(a)(i) of the FOI Act is relied upon, that evidence relating to national security will be given. Indeed, it would be open to the Tribunal to infer that on any application in which s 33(a)(i) is relied upon, evidence relating to national security will be given. In this case, no such inference is required because the respondent has advised the Tribunal what evidence will likely be given.
17. It follows that, based on the material before the Tribunal, I am satisfied that the 'proceeding in the Tribunal would involve national security information'. It involves national security information because evidence relating to national security will be given at the hearing. Having satisfied myself in terms of s 134(2) of the ART Act, I would exercise my discretion to direct that the Tribunal's powers in relation to the proceeding are to be exercised in the

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<sup>2</sup> Section 52 of the ART Act.

ISJA. I do so for the purpose of ensuring that national security information is treated appropriately and is not disclosed to the public.

I certify that the preceding 17 (seventeen) paragraphs are a true copy of the reasons for the decision herein of Deputy President P Britten-Jones.

.....[sgd].....

Associate

Dated: 23 January 2026

Applicants' Representative

**Jason Bosland (Wise Law)**

Respondent's Representative:

**Elena Arduca (Australian Government Solicitor)**