

Applicant: Fraser Tweedale

Respondent: Chief Executive Officer of Services Australia

Tribunal Number: 2025/4916

Tribunal: Deputy President P Britten-Jones

Place: Melbourne

Date: 3 August 2026

Decision: Pursuant to subsection 70(2) of the *Administrative Review Tribunal Act 2024* (Cth), the Tribunal orders that the publication or disclosure of the redacted parts of the confidential affidavit of Mr Garrett McDonald affirmed on 26 May 2026 is restricted to:

1. the respondent, the respondent's legal advisers and other persons who are directly involved with the preparation and conduct of the respondent's case; and
2. members and staff of the Tribunal, including transcription service providers, performing duties in relation to the proceeding.

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

Deputy President P Britten-Jones

Catchwords

INTERLOCUTORY APPLICATION – application under s 70(2) of the Administrative Review Tribunal Act 2024 (Cth) – whether to restrict publication or disclosure of national security information contained in an affidavit – application granted

Legislation

Administrative Review Tribunal Act 2024 (Cth)

Freedom of Information Act 1982 (Cth)

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

Cases

Tweedale and Chief Executive Officer of Services Australia (Practice and procedure) [2026]
ARTA 88

Statement of Reasons

1. The Respondent seeks an order under s 70(2) of the *Administrative Review Tribunal Act 2024* (Cth) (**ART Act**) to restrict the publication of an affidavit of Mr Garrett McDonald affirmed 26 May 2026 (the **closed affidavit**). The closed affidavit together with an open affidavit of Mr McDonald affirmed 25 May 2026 (the **open affidavit**) have been filed by the Respondent in the Applicant's application for a review of a decision to refuse disclosure of the source code of the Android version of the myGov Code Generator app (the **source code**) pursuant to ss 33(a)(i) and 47E(d) of the *Freedom of Information Act 1982* (Cth) (**FOI Act**).
2. On 23 January 2026, I directed¹ that this review application proceed in the Intelligence and Security jurisdictional area because it was likely that evidence would be given in relation to the threat environment faced by myGov as a critical government information system and that this evidence would address the expected effect on Australia's national security if the source code was disclosed. Evidence of this nature has now been included in the closed affidavit.
3. The closed affidavit explains in detail how the disclosure of the source code would or could be expected to cause damage to the security of the Commonwealth. I have read the closed affidavit and I consider that it contains 'national security information' within the meaning of the ART Act. 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.*
4. Under s 8 of the NSI Act, 'national security' means Australia's defence, security, international relations or law enforcement interests.

¹ *Tweedale and Chief Executive Officer of Services Australia* (Practice and procedure) [2026] ARTA 88

5. Whether the disclosure of the source code has the asserted effect will be one of the issues for the Tribunal to determine at the hearing of the substantive review application which is listed on 2 to 4 September 2026.
6. In my view it is appropriate for the national security information in the closed affidavit to be restricted from publication pursuant to s 70(2) of the ART Act. Disclosure of the national security information in the closed affidavit would result in the very harm that is asserted by the Respondent in the substantive application for review. In reaching that view I have had regard to:
 - (a) the matters in s 71(2) of the ART Act;
 - (b) the necessity of avoiding disclosure to the Applicant of exempt matter as set out in s 63(1)(a) of the FOI Act; and
 - (c) the duty of the Tribunal set out in s 156(2)(a) of the ART Act.
7. However, I accept the submission of the Applicant that the closed affidavit should only be restricted from publication to the extent that it contains national security information. On 15 July 2026, pursuant to a direction of the Tribunal, the Respondent provided to the Tribunal a copy of the closed affidavit redacted only to the extent that it contains national security information. I have considered that material and I accept that it has been appropriately redacted so that the redacted passages are the only parts of the closed affidavit that contain national security information. Consequently, it is appropriate for a confidentiality order to be made over the redacted parts of the closed affidavit provided to the Tribunal on 15 July 2026 (**the redacted parts of the closed affidavit**).
8. I make an order pursuant to s 70(2) of the ART Act that the publication or disclosure of the redacted parts of the closed affidavit is restricted to the Respondent and the Tribunal. Upon receipt of this order and these reasons, the Respondent will provide to the Applicant a copy of the closed affidavit as redacted.

I certify that the preceding 8 (eight) paragraphs are a true copy of the reasons for the decision herein of Deputy President P Britten-Jones.

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

Associate

Dated: 3 August 2026

Date of hearing: **9 July 2026**

Applicants' Representative **Jason Bosland**

Respondent's Representative: **Trent Glover SC**