



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI/2020/048

Mr Andy Johnson

By email: foi+request-6157-e3e51e86@righttoknow.org.au

Dear Mr Johnson

I refer to your letter of 15 February 2020 in which you made a request to the Department of the Prime Minister and Cabinet (the Department) under the *Freedom of Information Act 1982* (the FOI Act) in the following relevant terms:

I would like to request a copy of all reports / documents delivered by consulting firm McKinsey & Compang to the Department since 1990. In addition, I would like to request a copy of each invoice paid to McKinsey for each report (including \$ fees paid, rate card applied, and other commercial terms).

Given the recent, significant public interest in McKinsey due to their controversial activities in anti democratic or corrupt governments such as South Africa, Saudi Arabia and Malaysia (IMDB), I request that the FOIA request fees be waived.

The decision-maker for your request is Mitchell Johnson, Assistant Secretary, Finance, Property and Security Branch.

Records in the open access period under the *Archives Act 1983*

We note that you have requested documents 'since 1990'.

Section 12(1)(a) of the FOI Act provides that a person is not entitled to obtain access to document, or a copy of a document, which is, under the *Archives Act 1983* (the Archives Act), within the open access period within the meaning of the Archives Act unless the document contains personal information (including personal information about a deceased person).

Under the Archives Act, records that came into existence on or prior to 31 December 1999 are in the open access period.

This means that you have no right of access under the FOI Act to any documents that are otherwise within the scope of your request, if they exist, that came into existence on or prior to 31 December 1999.

If you wish to access records within the timeframe 1 January 1990 to 31 December 1999, then you will need to contact the National Archives of Australia (the NAA).

More information about access to records under the Archives Act can be found on the NAA's website: <https://www.naa.gov.au/help-your-research/using-collection/access-records-under-archives-act>.

The effect of the open access period for your request in its current form is that our searches for documents in the Departments possession would be limited to a time frame of 1 January 2000 to 15 February 2020 (the date we received your request), inclusively.

Notice and reasons for intention to refuse your request

Section 24(1) of the FOI Act provides that an agency may refuse a request if it is satisfied that the request raises a practical refusal reason.

Section 24AA of the FOI Act provides that for the purposes of section 24 of the FOI Act a request raises a practical refusal reason in relation to an agency if:

- the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations (section 24AA(1)(a)(i) of the FOI Act); and/or
- the request does not satisfy the requirement in section 15(2)(b) of the FOI Act that a request provide such information concerning the document as is reasonably necessary to enable a responsible officer of an agency to identify it (section 24AA(1)(b)).

However, before an agency can refuse an FOI request in this manner, it is required by section 24AB of the FOI Act to give the applicant a notice advising of the decision-maker's intention to refuse the FOI request and giving the applicant an opportunity to either withdraw, make a revised request or not revise the request. This is called a 'request consultation process'.

The FOI request does not provide sufficient information to enable identification of the document sought (section 24AA(1)(b) of the FOI Act)

To enable us to identify the documents you are seeking, we seek clarification of the following part of your request '*all reports / documents delivered by consulting firm McKinsey & Compang*'. The decision-maker's understanding of this part of your request is that you are seeking:

all documents received by the Department of the Prime Minister and Cabinet (the Department) from McKinsey & Company (McKinsey) after 1 January 2000, in relation to any contract between McKinsey and the Department

If our understanding of your request is not correct, please provide more information.

The work involved in processing the FOI request would substantially and unreasonably divert the resources of the agency from its other operations (section 24AA(1)(a)(i) of the FOI Act)

In deciding if a practical refusal reason exists, an agency must have regard to the resources required to perform the following activities specified in section 24AA(2) of the FOI Act:¹

- identifying, locating or collating documents within the filing system of the agency;

¹ 'Guidelines issued by the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982*', Part 3 – Processing and Deciding on Requests for Access (Version 1.6, January 2018), [3.116].

- examining the documents;
- deciding whether to grant, refuse or defer access;
- consulting with other parties;
- redacting exempt material from the documents;
- making copies of documents;
- notifying an interim or final decision to the applicant.

Other matters may be relevant in deciding if a practical refusal reason exists such as the staffing resources available to an agency for FOI processing, whether the processing can only be undertaken by one or more specialist officers in an agency who have competing responsibilities, the impact that processing may have on other work in an agency including FOI processing, and whether there is a significant public interest in the documents requested.²

We have undertaken preliminary searches for documents potentially relevant to your request. The date range of the searches was 1 January 2000 (the date from which you are entitled to seek access to documents under the FOI Act, as explained above) to 15 February 2020 (the date we received your request) using the search term 'McKinsey'. As a result of the preliminary searches, we have identified at least 3,600 documents that would need to be reviewed for relevance to your request. If your request were to proceed in its current form, there would be further searches that the Department would need to conduct, which we expect would increase the number of documents requiring review.

For the at least 3,600 documents identified to date, the process of reviewing for relevance would require, at minimum, opening the relevant document, reading the document, extracting the document if relevant to your request, and closing the document. We estimate that this process would take one officer at least 1 minute per document. The task of reviewing all 3,600 documents would therefore take one officer at least 60 hours.

Ordinary hours of work for full-time employees in the Department are 38 hours per week.³ Having regard to the estimate of time process the request, this means it would take one officer at least 1.5 weeks to merely undertake the task of search and retrieval.

For any documents identified as relevant to the request, there would be further work required to process the request that may include consulting with any parties, deciding whether to grant, refuse or defer access, redacting any exempt material, and preparing and notifying a decision. It is not possible to estimate the time required to undertake these tasks at this time.

The Department acknowledges that the processing of requests for access to documents is a legitimate part of each agency's functions, and that FOI requests may require reallocation of resources within an agency. However, the Department could not reasonably divert resources to assist in processing the request. In reaching this view, the Department has had regard to the public interest in access to information held by the Department but considers the public interest in access is outweighed by the competing public interest in the ability of the Department to undertake its ordinary functions without substantial impairment, including the processing of other FOI requests.

For the reasons given above, the decision maker considers that processing your request in its current form would be a substantial and unreasonable diversion of the Department's resources from its other operations.

² Ibid, [3.117].

³ Department of the Prime Minister and Cabinet, *Enterprise Agreement 2017-2020*, [315].

Request consultation process

You now have an opportunity to revise your request to enable it to proceed. The information published on the AusTender web site (<https://www.tenders.gov.au/>)⁴ regarding contracts that the Department has entered into with McKinsey and Company may be able to assist you to identify a subject-matter of interest to you.

Revising your request can mean narrowing the scope of the request to make it more manageable or explaining in more detail the specific documents you wish to access. We will assess whether any revised request has removed the practical refusal reason.

You may wish to consider revising your request in one or more of the following ways:

- narrowing the time frame for your request;
- limiting your request by subject-matter;
- withdrawing or revising the part of your request seeking '*a copy of each invoice paid to McKinsey for each report (including \$ fees paid, rate card applied, and other commercial terms)*' in the light of the information published on the AusTender web site (<https://www.tenders.gov.au/>);
- limiting your request by document type. For example, you may wish to revise your request to seek only reports that have been provided by McKinsey to the Department in relation to a specified contract between McKinsey and the Department (again, AusTender may assist you to identify a specific contract).

No guarantee of access

Please be aware that even if you revise your FOI request to enable it to be processed, there is still no guarantee that documents will ultimately be released. That is a matter for the decision-maker to decide in the usual manner after examining the relevant documents. The issue we are addressing at the moment is whether your FOI request can be processed – not what the eventual outcome may be if it is processed.

Action required

Section 24AB of the FOI Act provides that you must do one of the following, in writing, within the next 14 days:

- revise your FOI request;
- indicate that you do not wish to revise it; or
- withdraw the FOI request.

If you do *not* do one of the above within the next 14 days, your FOI request will be taken to have been withdrawn.

If you were to revise your FOI request in a way that adequately addresses the above concerns and makes it manageable, the Department will recommence processing it.

⁴ The Australian Government's procurement information system, AusTender, publishes all publicly available Government Approaches to Market, Annual Procurement Plans, standing offer arrangements and contracts awarded. The AusTender website has a search facility that enables you to search for contracts awarded by the Australian Government agencies, including the Department of the Prime Minister and Cabinet. The information published on AusTender includes the name of the agency, the category of the contract, the contract period, and the contract value.

Calculation of 30 day period

Please note that the time taken to consult with you regarding the scope of your FOI request is not taken into account for the purposes of calculating the 30 day period during which the Department is required to take all reasonable steps to process your FOI request.

Should you wish to discuss your request, please contact the Department's FOI and Privacy Section on (02) 6271 5849, or by email to foi@pmc.gov.au, quoting reference number FOI/2020/048.

Yours sincerely



Senior Adviser
FOI and Privacy Section

6 March 2020