



4 March 2020

Our reference: LEX 52503

Mr Andy Johnson

Only by email: foi+request-6159-df38b10e@righttoknow.org.au

Dear Mr Johnson

Your Freedom of Information Request

I refer to your request to Services Australia on 15 February 2020 for access under the *Freedom of Information Act 1982 (FOI Act)* to the following documents:

'I would like to request a copy of all reports / documents delivered by consulting firm McKinsey & Company 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).'

Currently your request is broad and does not sufficiently identify the documents you require. In its current form I would either need to construe your request more narrowly than I believe it can be construed; or attempt to process it in its current form which would likely be voluminous and lead to a practical refusal reason.

This is a notice to advise you that Services Australia is formally consulting with you under section 24AB of the FOI Act regarding your request.

This notice is giving you an opportunity to provide us with specific information about the documents you need. Providing this additional information may assist Services Australia to process your request.

If you decide not to provide further information or revise your request, I will have to refuse your freedom of information (FOI) request as a 'practical refusal reason' exists. For a more detailed explanation of what this means, including some suggestions on what to consider when revising your request, please see **Attachment A**.

How to send us a 'revised request'

Before I make a final decision on your request, you can submit a revised request.

Within the next 14 days (consultation period) you must do one of the following, in writing:

- withdraw the request;
- make a revised request; or

- tell us that you do not want to revise your request.

If you do not contact us during the consultation period, we will assume you do not want to continue with your request. See **Attachment A** for relevant sections of the FOI Act.

If you decide to make a revised request you should be specific about what documents you actually want. This could help the agency find the documents.

We have 30 days to give you a decision about your request, however the time taken to consult with you now is not included in this 30 day time period.

Contact officer

I am the contact officer for your request. During the consultation period you are welcome to ask for my help in revising your request. You can contact me:

- in writing to the address at the top of this letter; or
- via email to FOI.LEGAL.TEAM@servicesaustralia.gov.au

Note: When you contact us please quote the reference number **FOI LEX 52503**.

Your response will be expected by **12 March 2020**. If no response is received, your matter will be taken as withdrawn.

Further assistance

If you have any questions please email FOI.LEGAL.TEAM@servicesaustralia.gov.au.

Yours sincerely

Alex
Authorised FOI Decision Maker
Freedom of Information Team
Employment Law and FOI Branch | Legal Services Division
Services Australia

What I took into account

You requested access under the *Freedom of Information Act 1982 (FOI Act)* to the following documents:

'I would like to request a copy of all reports / documents delivered by consulting firm McKinsey & Company 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).'

It is unclear based upon the current wording of your request how broadly you intend your request to be construed.

In your request you have asked for copies 'of all reports / documents delivered by ... McKinsey & Company...', considering your use of the word 'delivered' I consider it to be reasonable to interpret your request to be for copies of all final reports or documents that were produced by McKinsey & Company and provided to Services Australia.

However, I also consider that your request could be read broadly to include every document that has been provided by McKinsey & Company to Services Australia in some manner.

The guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act provide at paragraph 3.54 that:

'A request should be interpreted as extending to any document that might reasonably be taken to be included within the description the applicant has used.'

And further, paragraph 3.110 notes that:

'A request can be described quite broadly and must be read fairly by an agency or minister, being mindful not to take a narrow or pedantic approach to its construction.'

As such, I am consulting with you to seek sufficient clarity of the documents you are seeking so a responsible officer of Services Australia can identify them.

I am also consulting with you because if interpreted broadly your request is too large for Services Australia to process. To help inform my decision regarding the size of your request I undertook preliminary searches with relevant business areas.

Based on these searches, I have conservatively estimated that it will take more than 170 hours to process your request if read broadly. This includes time for examination of the documents for exempt material and decision-making. The estimate above is equivalent to a staff member working full time for approximately 22 days.

I consider my estimate to be conservative as I have excluded search and retrieval time from my estimate and there are further areas of the department that I need to consult with which may result in additional documents being identified.

For this reason, read broadly I consider that processing your request would substantially and unreasonably divert Services Australia from its other operations. Therefore, to assist Services Australia to process your request you may wish to revise your request to be more specific about the documents you are seeking. For example, you may wish to revise your request to be for:

'A copy of:

- all final versions of reports delivered to Services Australia by McKinsey & Company since 1990; and
- each invoice paid to McKinsey for each report (including \$ fees paid, rate card applied, and other commercial terms).'

If you do not revise, I intend to refuse your FOI request under section 24 of the FOI Act as a 'practical refusal reason' still exists following a consultation process. The practical refusal reason is that your request does not satisfy the requirements in section 15(2)(b) of the FOI Act (section 24AA(1)(b) of the FOI Act - identification of documents) and would substantially and unreasonably divert the resources of the agency from its other operations (section 24AA(1)(a)(i) of the FOI Act – voluminous).

Relevant sections of the *Freedom of Information Act 1982*

Section 24AA(1)(a)(i) of the FOI Act provides that a practical refusal reason exists in relation to a request for a document 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)(b) of the FOI Act provides that a practical refusal reason exists in relation to a request for a document if the request does not satisfy the requirement in section 15(2)(b) of the FOI Act.

Section 15(2)(b) of the FOI Act provides that a request must provide such information as is reasonably necessary to enable the agency to identify the documents that are being requested.

Section 24AB(6) says that the applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:

- withdraw the request,
- make a revised request, or
- indicate that the applicant does not wish to revise the request.

Section 24AB(7) of the FOI Act provides that the request is taken to have been withdrawn at the end of the consultation period if:

- the applicant does not consult the contact person during the consultation period in accordance with the notice, or
- the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.