



16 March 2020

Our reference: LEX 52503

Mr Andy Johnson

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

Dear Mr Johnson,

Decision on your Freedom of Information Request

I refer to your request, received by Services Australia on 15 February 2020 for access under the *Freedom of Information Act 1982* (the **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).

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 (1MDB), I request that the FOIA request fees be waived.'

My decision

I have decided to refuse your request under section 24(1) of the FOI Act because a 'practical refusal reason' still exists under section 24AA of the FOI Act. I am satisfied that the work involved in processing your request would substantially and unreasonably divert the resources of Services Australia from its other operations as specified in section 24AA(1)(a)(i) of the FOI Act.

The reasons for my decision, including the relevant sections of the FOI Act, are set out in **Attachment A**.

You can ask for a review of our decision

If you disagree with the decision you can ask for a review. There are two ways you can do this. You can ask for an internal review from within Services Australia, or an external review by the Office of the Australian Information Commissioner. You do not have to pay for reviews of decisions. See **Attachment B** for more information about how to arrange a review.

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



REASONS FOR DECISION

What you requested

'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).

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 (1MDB), I request that the FOIA request fees be waived.'

Request consultation process

On 4 March 2020, I wrote to you providing a notice of intention to refuse your request under section 24AB(2) of the FOI Act as your request didn't sufficiently identify the documents you were requesting and was too big to process. I gave you an opportunity to consult with Services Australia to revise your request so as to remove the practical refusal reason. Specifically, I suggested that you might wish to revise your request to specify that you were only seeking final versions of the reports commissioned by Services Australia from McKinsey & Company.

On 7 March 2020, you wrote to us and made the following revision to the scope of your original request:

'Can I please modify the request to cover the last 3 years?'

Therefore, I understand your revised request to be for the following:

'I would like to request a copy of all reports / documents delivered by consulting firm McKinsey & Company to the Department between 15 February 2017 and 15 February 2020. 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).

What I took into account

In reaching my decision I took into account:

- your original request dated 15 February 2020 and your revised request on 7 March 2020;
- the documents that fall within the scope of your request;
- consultations with Services Australia officers about:
 - the nature of the documents; and
 - Services Australia's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act; and
- the FOI Act.

Reasons for my decisions

I am authorised to make decisions under section 23(1) of the FOI Act.

Following the request consultation process outlined above, in accordance with section 24AB of the FOI Act, I am satisfied that a practical refusal reason still exists in that the work involved in processing your request would substantially and unreasonably divert the resources of Services Australia from its other operations. The reasons for my decision, including consideration of the factors I am required to take into account in section 24AA(2), are outlined below.

Practical refusal reason

Section 24AA 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'.

The word 'substantial' has previously been interpreted to mean severe, of some gravity, large or weighty or of considerable amount, real or of substance and not insubstantial or of nominal consequence. The use of the word 'unreasonable' has been interpreted to mean that a weighing of all relevant considerations is needed, including the extent of the resources needed to meet the request.

In determining whether processing the request would substantially and unreasonably divert Services Australia's resources, section 24AA(2) of the FOI Act requires me to have regard to the resources that would have to be used for the following:

- identifying, locating or collating the documents within the filing system of Services Australia;
- deciding whether to grant, refuse or defer access to a document including resources used for examining the document and consulting with any person or body in relation to the request;
- making a copy or an edited copy of the document; and
- notifying of any decision on the request.

In accordance with section 24AA(3), I did not consider any reasons you might have for requesting access to the documents.

Why your request is substantial

When I first notified you that a practical refusal reason existed, I estimated that over 170 hours of processing time would be required to deal with this request (excluding the time required to search for and retrieve electronic documents).

I acknowledge that your revised scope has substantially limited the time period of relevance for your request. However, this has not reduced the volume of material identified as being relevant to your request and that will require retrieval and processing.

This is because all material identified as relevant for the time period of your original request was produced within the last 3 years.

Since I notified you that I considered a practical refusal reason existed in relation to your request, Services Australia's searches and enquiries have identified further documents in scope and I have also reviewed a sample of the documents in scope.

I now estimate that it would take over 210 hours to process your request.

Sampling of documents for the purposes of the estimate

I determined it was appropriate to sample 7% of the documents in scope. The sampled documents revealed a range of deliberative material, confidential material, commercial information and personal material that will need to be considered for redaction.

I am satisfied on the basis of that sample that I would have needed to consider applying the following redactions under FOI Act:

- a. section 47G to material concerning the commercial or financial affairs of an organisation which could be reasonably expected to unreasonably adversely affect that organisation's commercial or financial affairs;
- b. section 47C to material relating to a deliberative process;
- c. section 47F(1) to material containing third party information, the disclosure of which would be unreasonable; and
- d. section 45 to material obtained in confidence;

I am also satisfied that the sampled documents contain third party information that it is appropriate to consult in relation to. I am satisfied that the time taken to properly consult all third parties would be in excess of 6 hours. I have made this assessment on the basis that Services Australia would only consult each party once regardless of circumstances where they may be named in more than one document.

Why your request is unreasonable

For the purposes of deciding whether your request would unreasonably divert the resources of Services Australia from its other operations, I considered whether the substantial resource burden would be unreasonable having regard to the following:

- one individual processing your request would be required to spend over 5 weeks processing your request;
- your request involves duplication of documents (for example your request in its current form would cover not just final documents, but each draft used to create that final document); and
- beyond satisfying public curiosity your submissions do not demonstrate that releasing these documents will benefit the broader public and advance the public interest.

As discussed above, I have estimated that your request would take approximately 210 hours to process. Services Australia receives approximately 300- 400 FOI requests per month, the majority of which are requests from people seeking their own information. I am satisfied that the processing of your request would divert Services Australia resources from the processing of these other requests.

Conclusion

In summary I am satisfied that the work involved in processing your request would substantially and unreasonably divert the resources of Services Australia from its other operations, namely the processing of other FOI requests and the delivery of social services to all Australians more broadly.

I have found that a practical refusal reason exists in relation to your request for access to the documents. Accordingly, I have decided to refuse your request under section 24(1) of the FOI Act.



INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

Asking for a full explanation of a freedom of information (FOI) decision

Before you ask for a formal review of a FOI decision, you can contact us to discuss your request. We will explain the decision to you. This gives you a chance to correct misunderstandings.

Asking for a formal review of an FOI decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982 (FOI Act)* gives you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by:

1. an Internal Review Officer in Services Australia; and/or
2. the Australian Information Commissioner.

Note 1: There are no fees for these reviews.

Applying for an internal review by an Internal Review Officer

If you apply for internal review, a different decision maker to Services Australia delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be:

- made in writing
- made within 30 days of receiving this letter
- sent to the address at the top of the first page of this letter.

Note 2: You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision.

If you do not receive a decision from an Internal Review Officer in Services Australia within 30 days of applying, you can ask the Australian Information Commissioner for a review of the original FOI decision.

You will have 60 days to apply in writing for a review by the Australian Information Commissioner.

You can **lodge your application**:

Online: www.oaic.gov.au
Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001
Email: enquiries@oaic.gov.au

Note 3: The Office of the Australian Information Commissioner generally prefers FOI applicants to seek internal review before applying for external review by the Australian Information Commissioner.

Important:

- If you are applying online, the application form the 'Merits Review Form' is available at www.oaic.gov.au.
- If you have one, you should include with your application a copy of the Services Australia decision on your FOI request
- Include your contact details
- Set out your reasons for objecting to Services Australia's decision.

Complaints to the Australian Information Commissioner and Commonwealth Ombudsman

Australian Information Commissioner

You may complain to the Australian Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act, There is no fee for making a complaint. A complaint to the Australian Information Commissioner must be made in writing. The Australian Information Commissioner's contact details are:

Telephone: 1300 363 992
Website: www.oaic.gov.au

Commonwealth Ombudsman

You may also complain to the Commonwealth Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Commonwealth Ombudsman may be made in person, by telephone or in writing. The Commonwealth Ombudsman's contact details are:

Phone: 1300 362 072
Website: www.ombudsman.gov.au

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.