



Australian Government
Department of Defence

BN1437939

FOI 442/19/20 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the application by Mr Andy Johnson under the *Freedom of Information Act 1982* (FOI Act), for access to:

“...I would like to request a list of all tenders awarded to consultancy McKinsey & Company in the last five years. In addition I would like to know the name and type of the tender as well as a copy of McKinsey’s tender materials for each submission.”

FOI decision maker

2. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Decision

3. I have decided to refuse access under section 24 [Power to refuse request- diversion of resources] of the FOI Act.

Material taken into account

4. In making my decision, I had regard to:
- the terms of the request;
 - relevant provisions in the FOI Act;
 - the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and

Reasons for decision

Section 24 – Power to refuse request – diversion of resources

5. On 4 March 2020, the Department notified the applicant that the request in its current form was likely to attract a practical refusal under section 24 of the FOI Act. It was considered the work involved in identifying, locating and collating the documents within the Department of Defence filing system would substantially and unreasonably divert the resources of the agency.

6. The applicant did not respond to this notification.

7. Section 24 of the FOI Act provides that:

(1) If an agency or Minister is satisfied, when dealing with a request for a document that a practical refusal reason exists in relation to the request (see section 24AA), the agency or Minister:

(a) must undertake a request consultation process (see section 24AB); and

(b) if, after the request consultation process, the agency or Minister is satisfied that the practical refusal reason still exists—the agency or Minister may refuse to give access to the document in accordance with the request.

8. Section 24AA of the FOI Act provides that:

*(1) For the purposes of section 24, a **practical refusal reason** exists in relation to a request for a document if either (or both) of the following applies:*

(a) the work involved in processing the request:

(i) in the case of an agency – would substantially and unreasonably divert the resources of the agency from its other operations.

(b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).

9. In considering whether a practical refusal reason exists I have had regard to the matters set out in section 24AA(2), namely the resources required to perform the following activities:

(a) identifying, locating or collating documents within Defence filing systems;

(b) deciding whether to grant, refuse or defer access to documents to which the request relates, or to grant access to an edited copy of such a document, including resources that would have been used for;

(i) examining the document; or

(ii) consulting with any person or body in relation to the request;

(c) making an edited copy of the document; and

(d) notifying an interim or final decision on the request.

10. I have also had regard to the matters set out in paragraph 3.117 of the Australian Information Commissioner's Guidelines.

- a. the staffing resources available to the Department for FOI processing;
- b. whether the processing work requires the specialist attention of a minister or senior officer, or can only be undertaken by one or more specialist officers in an agency who have competing responsibilities;
- c. the impact that processing a request may have on other work in an agency, including FOI processing;
- d. whether an applicant has cooperated in framing a request to reduce the processing workload;
- e. whether there is a significant public interest in the documents requested; and
- f. other steps taken by an agency or minister to publish information of the kind requested by an applicant.

11. In an attempt to clarify the scope of the request the applicant was requested to provide further details to locate the documents subject to the request. This requested information included which Group/Service in the Department and the subject of the tenders.

12. Further to the above, requesting access to 'any', 'or other' documents, 'etc.', concerning a particular subject will likely attract refusal because, with few exceptions, it would simply not be possible for me, as the decision maker, to certify that I have identified every copy of every document in the Department's possession. To do so would require a search of every

hard copy file and the electronic communication and records management systems used by Defence.

13. The practical refusal ground is to ensure that the capacity of agencies to discharge their normal functions is not undermined by processing FOI requests that are unreasonably burdensome. Noting this, it is considered that the workload involved in conscientiously attempting to identify all documents (as outlined in the request) would involve a substantial and unreasonable diversion of Defence resources.

14. The Department does not possess one-single database that can carry out such a search. Searches for documents potentially matching the scope would need to be undertaken within, but not limited to, the following:

- a. Objective (the Defence Records Management System);
- b. Shared and personal 'G' and 'H' drives;
- c. Desks / drawers / cabinets / safes / vaults;
- d. Hard copy files retrieved from Defence Archives; and
- e. Personal email and Skype accounts.

15. I did not have regard to any of the factors listed in subsection 24AA(3) of the FOI Act.

16. Having considered all of the above, I am satisfied that a practical refusal reason exists in relation to this request and, on this basis I have decided to refuse the request under section 24 of the FOI Act.

Mrs Joanne Groves
Accredited Decision Maker
Associate Secretary Group