



Andy Johnson

**By Email Only:**  
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Our reference: 1-KSCATOD

18 March 2020

Dear Mr Johnson

**Notice of intention to refuse your request for access to documents**

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1. I refer to your FOI Request dated 25 February 2020, seeking access to documents relating to consulting firm McKinsey held by the Australian Taxation Office (**ATO**).
2. I am an officer authorised under section 23 of the *Freedom of Information Act 1982* (**FOI Act**) to make decisions regarding access to documents.
3. This is a formal notice of my intention to refuse the FOI request pursuant to section 24 of the FOI Act.

To assist you, I have made further suggestions on how to revise the scope of the request (from paragraph 47). Please also note that the FOI Act requires a response from you within 14 days, or your request will be deemed withdrawn. I discuss this in more detail from paragraph 50.

**Your request**

4. On 25 February 2020, you requested:
  1. A copy of all reports / documents delivered by consulting firm McKinsey & Company to the ATO 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).
5. On 3 March 2020, your request was acknowledged by ATO General Counsel.

**Formal notice under subsection 24AB(2) of the FOI Act**

6. This is a formal notice of my intention to refuse the FOI request pursuant to section 24 of the FOI Act.
7. After having considered your request, I am satisfied that a 'practical refusal reason' within the definition in paragraph 24AA(1)(a) of the FOI Act exists in respect of the request, because the work involved in processing the request would substantially and

unreasonably divert ATO resources from its other operations given the broad scope of documents captured as being relevant to your request, and subsequently the substantial volume of documents which will require complex processing.

8. On this basis, I intend to refuse access to the documents you have requested. However, before I make a final decision to do this, you have an opportunity to revise your request. This is called a 'request consultation process' as set out under section 24AB of the FOI Act.
9. To assist you, I have made further suggestions on how to revise the scope of the request.
10. You have 14 days to respond to this notice in one of the ways set out below. If you do not respond to this letter, your request will be taken to be withdrawn.

### **Time and resources required to process your FOI request**

11. Following completion of an initial assessment of your request, I am satisfied that the entirety of your request would involve a large volume of documents, where a significant amount of time would be required to process the request.
12. I am also satisfied that the request is complex, which will require more resources to be devoted to processing it. Accordingly, I am satisfied that processing the request in its present form would be an unreasonable diversion of ATO resources.

### *Onerous search and retrieval process*

13. A preliminary search and review process for documents in the scope of your request was completed.
14. The ATO has identified three separate agreements since 1999. Many details of those agreements, including their value, are publically available online through Austender: <https://www.tenders.gov.au/Search/CnAdvancedSearch?Page=1&ItemsPerPage=0&SearchFrom=AdvancedSearch&Type=Cn&AgencyStatus=0&Keyword=Mckinsey&KeywordTypeSearch=AllWord&DateType=Publish%20Date&LatestAmendment=True> .
15. In examining the nature of your request, we have identified five separate business areas of the ATO that would be required to be diverted from their usual work activities in order to respond to your request.
16. Those areas are:
  - a ATO Finance;
  - b Smarter Data Program;
  - c Private Groups and High Wealth Individuals;
  - d Public Groups and International; and
  - e Enterprise Solutions and Technology.
17. From a preliminary search in respect to one of the agreements, I have identified at least 13 ATO staff members that, as a starting point, would be required to be diverted from their usual duties in order to search for documents. A further unknown number of ATO staff members would need to be diverted for each of the other 2 agreements.
18. For each agreement, numerous ATO staff would be involved, and in order to complete a sufficient search, all of those staff would need to be diverted from their usual activities to ensure all relevant documents are captured.

19. The request itself is broad and requires canvassing “all documents”. Accordingly, those staff members would be required to search across numerous electronic formats and systems in order to ensure that all documents were retrieved. This is a time consuming exercise, and noting that the engagement of McKinsey occurred across several months, on an ongoing and interactive basis, the volume to be searched and retrieved is significant.
20. In order to complete the search process for the request, the relevant ATO officers in each business area will be required to complete the following:
  - review the detailed and complex request, and consult, where required, to confirm the scope of the request;
  - extract the relevant documents from the appropriate case files;
  - check each document to see if duplicate copies of the document was already extracted;
  - examine the contents of each document against the scope to ensure the document is relevant;
  - review the list of documents extracted and conducting further checks to ensure all documents in the scope of the request have been provided; and
  - transfer all files to the FOI officer for review.
21. As shown above, there are a considerable number of teams, and individual within those teams that would need to be diverted from their usual duties in order to search for documents.
22. Notwithstanding the fact that the ATO have a dedicated FOI team resourced to assist in processing request, in the circumstances the searches will need to be undertaken by the numerous staff across several business areas, the disruption to usual duties is significant. Those business lines are responsible for ongoing deliverables. Some of those areas work in active compliance, in roles that a pivotal to the operation of the ATO as an Agency.

*Records pre-1999*

23. The ATO Finance Business Line has advised that records pre-dating 1999, are not easily accessible by staff.
24. Searching for records prior to 1999 has not been completed, as it has been identified that a search for those records would be burdensome. Searching for records prior to 1999 would require diversion of ATO Finance Staff, to search and then retrieve from archives. Some documents may require physical retrieval from archives.
25. Generally speaking, this request is self-evidently voluminous. In the absence of additional context to this request, at least 5 business areas will be required to conduct searches for all formats, noting that the request requires ‘all reports and documents’ relating to one entity. It is known that there has been ongoing engagement with that entity, across a significant time period.
26. It is conservatively estimated, that it will take 50 hours of search time in total, excluding the records to be obtained from archives.

27. The preliminary search itself has already expended a significant amount of resources. I conservatively estimate that 5 hours has already been expended in order to ascertain the scope of the request.

*Review process*

28. Not only does the FOI request in its current form involve a large amount of search and retrieval hours, but due to the likely volume of documents responsive to your request and the complexity of the documents, a substantial amount of time and resources will be required to review and process each document retrieved.

*Volume of Documents*

29. It is difficult to provide an estimate of this review process in circumstances where the searches will encompass such a large number of ATO employees.
30. It is self-evident from the agreement engagements and the number of ATO staff involved, that the number of documents that will be retrieved will be voluminous. Based on a preliminary search, 218 pages of documents have been identified and provided to me for initial review, in order to identify the relevant ATO areas and business lines for this request.
31. From my preliminary review, I have been able to ascertain that in respect of one agreement, the engagement of McKinsey occurred over a series of months. It was a multi-stage work, with ongoing communication with various parts of the ATO. The volume is self-evidently expansive.

*Complexity of Documents*

32. Each page identified in the search and retrieval process will need to be considered carefully to ensure that they are within the scope of your request, and to determine whether any documents would be exempt (or conditionally exempt) from release under the FOI Act.
33. As a preliminary view, in respect of one of the agreements, the ATO engaged McKinsey for data analytics work, directly related to taxation compliance activity. The development of analytics underpinning compliance is by its nature, sensitive information.
34. The documents are therefore likely to attract exemptions or conditional exemptions; particularly those relating to personal privacy of third parties, and documents that may prejudice the administration of the taxation law.
35. Notably, almost all of the documents contain potentially exempt material relating to a third party that will need to be carefully reviewed.
36. The third party may need to be consulted in respect of the documents to be released. This consultation process will include preparing separate documents for each third party and providing those individuals with a reasonable opportunity to make submissions.
37. Further, in addition to review of the documents generally with ATO staff, the technical nature of the documents will require ATO specialists to be diverted from their duties, in order to explain analytics or technical information conveyed, so that appropriate exemptions may be determined.

38. As this request will require involvement from a significant number of ATO Officers who work within compliance areas this FOI Request will impact on their ability to continue with their other day-to-day functions, in a timely and efficient fashion.
39. All these factors add to the complexity of your request.
40. Further, time may be spent by the decision maker to obtain clarification on documents, and the additional time it would take actually process the request, where further time would also be required to compile the documents, make a copy or an edited copy of the documents, produce a schedule of documents, and provide a final decision and reasons for decision on your request.
41. Based on the above grounds, there is a considerable amount of work that would need to be undertaken, in addition to the time that has already been spent on the FOI request.

#### *Additional considerations*

42. I also consider it relevant to consider that there is material available to you that may assist with your request. Information available on Austender identifies key aspects of the ATO's engagement.
43. I consider that the request for the ATO to retrieve an extremely broad request for documents, in circumstances where the publically available information provides some guidance in respect of the ATO's activities, adds to the unreasonable nature of the diversion of ATO resources to comply with your request.
44. Accordingly, I consider that processing the request in its current format would substantially and unreasonably divert the resources of the ATO from its other operations.
45. Taking into account all of these factors, including the size and complexity of the documents, the ensuing work required to process the request, the diversion of the relevant officers' time from other duties and the impact that this will have on access to FOI resources by other taxpayers, I consider that a practical refusal reason exists under subsection 24(1) of the FOI Act.

#### **Means by which your FOI request could be narrowed**

46. Subsection 24AB(4) of the FOI Act requires that I provide you a 'reasonable opportunity to consult' with me, and that I provide you with 'any information that would assist' you to revise your request.
47. You may wish to consider revising the scope of your request in the following ways:
  - revising the time frame over which you seek documents (eg. seeking only documents over the past 3 years);
  - restricting your request to copies of final reports and invoices only;
  - revising or reducing the categories of documents sought for the request (eg. seeking only one type of document, such as invoices, or limiting your request to one of the particular agreements named on the Austender website);

- excluding draft documents and email correspondence; and/or
  - otherwise simplifying the request.
48. These suggestions are intended as a starting point, and may not, by themselves, sufficiently reduce the scope of your request so as to remove the practical refusal reason.
49. I am available to discuss other ways that we might be able to get you the information you have requested without imposing a substantial burden on the ATO.

### **What you need to do now**

50. You now have an opportunity to revise your request to enable it to proceed.
51. The standard consultation period runs for 14 days from receipt of this notice. This period can be extended, in writing, with your agreement.
52. During this period, you are welcome to seek assistance by contacting me. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, we will recommence processing it. (Please note that the time taken to consult you regarding the scope of your request is not taken into account for the purposes of the 30 day time limit for processing your request.)
53. Within 14 days of receipt of this notice (or a further agreed period) you are required to do one of the following, in writing:
- Withdraw your request; or
  - Make a revised request; or
  - Indicate that you do not wish to revise the request.
54. I note that any written response must be received by me before the end of the consultation period.
55. **Please note: If you do not consult with me or provide a written reply within 14 days, your request will be taken to be withdrawn under subsections 24AB(6) and 24AB(7) of the FOI Act.**
56. If you indicate that you do not wish to revise your request, I will proceed to make a decision on whether to refuse the request on resource grounds under subsection 24(1) of the FOI Act.
57. If you need more time to respond, please contact me within the 14 day period to discuss an extension of time.

**For more information**

58. If you would like to revise your request or have any questions, please contact [FOI@ato.gov.au](mailto:FOI@ato.gov.au) .

Yours sincerely

L.Carley  
Principal Lawyer  
General Counsel  
Australian Taxation Office