

Reply to: GPO Box 4889, Sydney NSW 2000

Andy Johnson

Our reference: 1-KSCATOD

By Email Only:

foi+request-xxxxxxxxxxxxx@xxxxxxxxxxx.xxx.xx

31 March 2020

Dear Mr Johnson

Decision regarding your Freedom of Information request

I refer to your request dated 19 August 2019 seeking access under the *Freedom of Information Act 1982 (FOI Act)* to documents held by the Australian Taxation Office (**ATO**).

I am an officer authorised under section 23 of the FOI Act to make decisions regarding access to documents.

Decision

I have decided to refuse you access to the requested documents pursuant to paragraph 24(1)(b) of the FOI Act

Reasons for decision

Following a 'request consultation process', I consider that the 'practical refusal reason' still exists because the work involved in processing your request as you have proposed to revise it would substantially and unreasonably divert the ATO's resources from its other operations (subparagraph 24AA(1)(a)(i)).

Request consultation process

Before a decision can be made to refuse a request for documents for a 'practical refusal reason', an agency or Minister is required by paragraph 24(1)(a) of the FOI Act to undertake a 'request consultation process' in accordance with section 24AB.

On 18 March 2020 I sent you a notice (**the Notice**) advising of my intention to refuse you access to the documents requested on the basis that a 'practical refusal reason' existed.

The scope of your FOI request was initially for the following documents:

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).

In the Notice, I advised you that publically available information on Austender showed details of agreements since 1999. There are 3 agreements detailed on the Austender website that fall within the scope of your request. In order to complete your request in respect of just one

of those agreements, not less than 13 staff members across five separate business areas would be required to be diverted from their usual work activities.

I noted that searches would be required to be conducted across numerous electronic formats and systems in order to ensure that all documents were retrieved. I also identified that the engagement of McKinsey was on an ongoing basis, and for each agreement their engagement occurred across several months.

The Notice invited you to narrow your request and, to assist you in doing so, I suggested that you:

- revise the time frame over which you seek documents (eg. to seek only documents over the past 3 years);
- restrict your request to copies of final reports and invoices only;
- revise or reduce the categories of documents sought for the request (eg. seek only one type of document, such as invoices, or limit your request to one of the particular agreements named on the Austender website);
- exclude draft documents and email correspondence; and/or
- otherwise simplifying the request.

Those suggestions were intended as a starting point, and I advised that they may not, by themselves, sufficiently reduce the scope of your request so as to remove the practical refusal reason.

In the request consultation process, you proposed to revise the scope to:

“We can restrict the request to only cover the last 24 months and only include reports written by the firm.”

Practical refusal reason

Subparagraph 24AA(1)(a)(i) of the FOI Act provides that a ‘practical refusal reason’ exists if the work involved in processing the request would ‘substantially and unreasonably divert the resources of the agency from its other operations’.

In determining whether processing your proposed revised request would *substantially* and *unreasonably* divert the ATO’s resources, subsection 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 systems of the ATO;
- 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 documents; and
- notifying you of any decision on the request.

Your request is substantial and complex

While you have made an effort to reduce the scope of your request, I find that your proposed revised request remains substantial and complex for the following reasons:

- Limiting the request to the last 24 months only reduces the requirement for the ATO to search its archives. As shown on the Austender Website, and advised in the Notice 3 separate agreements all fall within your revised proposed scope.
- I have consulted with the Business line again to obtain a conservative estimate of the volume of pages for one agreement noting that there are three agreements that still fall within the scope of this request.
- They have identified that for one agreement, from a preliminary search at least 13 separate reports were prepared and delivered to the ATO from McKinsey. For the reports identified, it is identified that from a sample, at least 120 pages would be caught within the scope of the request. Further searches, would still be required to identify any additional reports provided by email.
- Notwithstanding the volume of documents, the nature of the documents themselves is complex. In respect of one of the agreements, the ATO engaged McKinsey for data analytics work, and risk analysis directly related to taxation compliance activity. The development of analytics underpinning compliance is by its nature, sensitive information.
- 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.
- Your proposed revisions have had little impact on mitigating the need to carefully consider several exemption provisions, which, overall, add to the time and FOI resources required to process your request, and the complexity I referred to in the Notice.
- The technical nature of the documents will still 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

The volume of documents caught by the revised scope would only be slightly reduced and the complexity of the request as a whole remains unchanged under the revised scope.

Your request diverts resources from the ATO's other operations

Despite your proposal to revise your request, I have found that the business line resources that would be diverted from their normal operations to process your request, remain almost the same as for the initial scope of your request. That is:

- Aside from the necessity to search through the archives, the number of personnel to be consulted remains unchanged.
- The personnel involved would span across numerous business lines, and would still need to be diverted from their regular duties, to search extensively for documents spanning a long period of time, as well as to advise extensively in relation to the majority of documents and any proposed exemptions.
- Further, the requirement to consult with a third party, extensively in respect of the documents still remains.

- As foreshadowed in the Notice, technical content would need to be reviewed by the officers with appropriate speciality.

Your request is unreasonable

I further note that the considerations outlined in the Notice, with respect to FOI resources required to process your request, remain the same. That is, based on your proposed revisions:

- Information available on Austender identifies key aspects of the ATO's engagement of McKinsey. This remains a broad request, in circumstances where publically available information provides guidance as to the ATO's engagement of McKinsey.

Relevant material

In reaching my decision, I have relied on the following evidence and authorities:

- your FOI application;
- consultation with the relevant ATO business area;
- the FOI Act; and
- the FOI Guidelines issued by the Australian Information Commissioner (**OAIC**) under section 93A of the FOI Act.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. I encourage you to seek internal review as a first step, as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the ATO for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter, quoting our reference number at the top of this letter, and be lodged in one of the following ways:

email: xxx@xxx.xxx.xx
post: Australian Taxation Office, General Counsel, GPO Box 4889, Sydney NSW 2001.

Where possible, please attach reasons why you believe review of the decision is necessary.

The internal review will be carried out by another officer within 30 days. If you have not been informed of the outcome of the review within that time, you may apply to the OAIC under section 54L of the FOI Act.

Information Commissioner Review

Under section 54L of the FOI Act, you may apply to the OAIC to review my decision. An application for review by the OAIC must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review/>

email: enquiries@oaic.gov.au
post: GPO Box 5218, Sydney NSW 2001
in person: Level 3, 175 Pitt Street, Sydney NSW

Your application must include a copy of this letter (and any attachments), an address where notices can be sent to you (eg. your email address) and particulars of the basis on which you dispute the decision.

Visit the OAIC website, www.oaic.gov.au/freedom-of-information/foi-reviews, for more information about Information Commissioner review.

Complaints

Any complaint about the processing of your FOI request can be forwarded to the OAIC. The complaint needs to be in writing and identify the agency against which the complaint is made. There is no particular form required to make a complaint, however using the online form is preferable.

online: https://forms.business.gov.au/aba/landing.htm?formCode=ICCA_1
email: enquiries@oaic.gov.au
post: GPO Box 5218, Sydney NSW 2001
in person: Level 3, 175 Pitt Street, Sydney NSW

The OAIC can be contacted on 1300 363 992 for the cost of a local call.

For more information

If you have any questions in respect of your request, please email the contact officer on xxx@xxx.xxx.xx.

Yours sincerely

L.Carley

Principal Lawyer

General Counsel

Australian Taxation Office