



Our ref. 180/2020

3 April 2020

Andy Johnson  
[foi+request-6192-6317153a@righttoknow.org.au](mailto:foi+request-6192-6317153a@righttoknow.org.au)

Dear Andy,

1. I refer to your application dated 29 February 2020 to the Digital Transformation Agency (DTA) seeking access under the *Freedom of Information Act 1982* (FOI Act) to:

*All reports / documents delivered by consulting firm McKinsey & Company to the Agency since inception. 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).*

2. In accordance with s 23(1) of the FOI Act, I am authorised to make a decision regarding access under the FOI Act.

**Decision**

3. I have decided to refuse access to the documents you have requested under s24(1) of the FOI Act because I am satisfied that a 'practical refusal reason' still exists under s24AA of the FOI Act.
4. The practical refusal reason is that the work involved in processing the request would substantially and unreasonably divert the resources of the DTA from its other operations as specified in s24AA(1)(a)(i) of the FOI Act.

**Material taken into account**

- The terms of your request
- The searches we have conducted
- Advice provided by the officers with relevant business knowledge
- Relevant provisions of the *Freedom of Information Act 1983*
- Guidelines issued by the Office of the Information Commissioner

**The request consultation process**

5. On 19 March 2020, the DTA wrote to give you notice of an intention to refuse your request under s24AB(2) of the FOI Act and to give you the opportunity to consult with DTA to revise your request to remove the practical refusal reason.
6. In DTA's letter to you dated 19 March, you were advised you should contact Morgan to discuss your request to consult with a view to removing the practical refusal reason.

7. You did not contact the officer on the phone number provided to discuss your request but you did respond to the notice by email on 20 March 2020, asking that the notice be subject to an Internal Review. As there was no decision at this point, we told you that we could not conduct an Internal Review.
8. At the time of writing you have not responded to the concerns outlined in the s24AB(2) notice.

***Reasons for my decision***

***Practical refusal reason***

9. Section 24AA 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 been interpreted to mean severe, of some gravity, large or weighty or of considerable amount 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 and considerations.

In determining whether processing the request would substantially and unreasonably divert DTA's resources, s 24AA(2) requires me to have regard to the resources that would be needed to:

- Identify, locate or collate the documents within the filing system of DTA
- Decide 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
- Make a copy or an edited copy of the document, and prepare a decision on the request.

10. The reasons for my decision, including consideration of the factors I am required to take into account in s24AA(2), are outlined below.

***Request is substantial***

11. Following our electronic searches of documents, I have identified 98 documents totalling 793 pages relevant to your request as presently framed. I estimate that retrieval and processing of these documents so they can be reviewed for decision making would require 5 hours.
12. The nature of the documents you have requested captures deliberations and decision documents that are likely to include commercial information.
13. In addition to the significant volume of material that would need to be reviewed, the inherent complexity of the material will require a detailed and careful analysis and review to make a decision. I estimate 2 minutes per page would be required for document review and decision making. I also estimate that consultation with up to 17 third parties would be required and would take 7 hours. It is also reasonable to expect that a significant amount of material might require redaction to exclude exempt parts and would require a further 2 minutes per page. Further time would be required to prepare a decision and statement of reasons and reflect this in a schedule of documents.
14. In total, I estimate this would require over 80 hours of processing time to deal with this request. In other words, if one person were to dedicate themselves to processing this request full time, it would take them two weeks. I am satisfied that this is a 'substantial' request.

***Request is unreasonable***

15. The Administrative Appeals Tribunal in *VMQD and Commissioner of Taxation (Freedom of information)* [2018] AATA 4619 (17 December 2018) about the threshold for a practical refusal reason where SM Puplick commented that:

*[100] The Information Commissioner has noted in relation to the other element of the test that, “whether or not disclosure would be “unreasonable” is a question of fact and degree which calls for a balancing of all the legitimate interests involved.”*

*[101] What constitutes valid practical refusal grounds is thus agency specific and resource dependent. Nevertheless for any agency, a burden in excess of 200 hours would almost certainly make the threshold of a rational and objective test. As is illustrated above, burdens as (relatively) small as 74 hours have been so characterised.*

16. In balancing the legitimate interests involved, I have considered that the substantial resource burden would be unreasonable having regard to:
- the fact that the work involved in processing your request will require DTA staff to be taken away from their usual duties for a substantial period of time.
17. In my view, the above factors satisfy a conclusion that the processing of your request would be substantial and unreasonably divert the resources of DTA from its other operations.
18. I am satisfied that a practical refusal reason still exists in relation to your request and have decided to refuse it under s24 of the FOI Act on the basis that a practical refusal reason exists.

***Review rights***

19. If you are dissatisfied with this decision, you have certain rights of review available to you.
20. Firstly, under section 54 of the FOI Act, you may apply to DTA for an internal review of the decision. Your application must be made by whichever date is the later between:
- 30 days of you receiving this notice; or
  - 15 days of you receiving the documents to which you have been granted access
21. An internal review will be conducted by a different officer from the original decision-maker. No particular form is required to apply for review although it will assist your case to set out in the application the grounds on which you believe that the original decision should be overturned. An application for a review of the decision should be addressed to:
- foi@dta.gov.au
22. If you choose to seek an internal review, you will subsequently have a right to apply to the Australian Information Commissioner for a review of the internal review decision.

***Review by the Australian Information Commissioner***

23. Alternatively, under section 54L of the FOI Act, you may seek review of this decision by the Australian Information Commissioner without first going to internal review. Your application must be made within 60 days of you receiving this notice.

24. The Australian Information Commissioner is an independent office holder who may review decisions of agencies and Ministers under the FOI Act. More information is available on the Australian Information Commissioner's website [www.oaic.gov.au](http://www.oaic.gov.au).

25. You can contact the Information Commissioner to request a review of a decision online or by writing to the Information Commission at:

Director of FOI Dispute Resolution  
GPO Box 5218  
SYDNEY NSW 2001

***Complaints to the Australian Information Commissioner***

26. You may complain to the Australian Information Commissioner about action taken in relation to your request.

27. Your enquiries to the Australian Information Commissioner can be directed to:

- Phone 1300 363 992 (local call charge)  
Email [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

28. There is no particular form required to make a complaint to the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the DTA as the relevant agency.

***Contacts***

29. If you have any queries about this notice, please contact the FOI team by email [foi@dta.gov.au](mailto:foi@dta.gov.au).

Yours sincerely,

Lucy Poole  
Head of Government Digital Experience