



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI/2020/066

FREEDOM OF INFORMATION ACT 1982

REQUEST BY: Mr John Smith

DECISION BY: Mitchell Johnson
Assistant Secretary
Parliamentary and Government Branch

Mr John Smith

By Email: foi+request-6219-0ed490cc@righttoknow.org.au

Dear Mr Smith

I refer to your email of 12 March 2020 in which you made a request to the Department of the Prime Minister and Cabinet (the Department) under the *Freedom of Information Act 1982* (the FOI Act) in the following terms:

Please supply a copy of the following documents:

All final reports delivered to DPMC since 18 September 2013, that are stored in either a PDF or Word document format.

All powerpoint presentations delivered [sic] to DPMC since 18 September 2013, that are stored in a powerpoint document format.

As advised in the Department's email of 25 March 2020, the Department has understood the above request to be as follows (on the basis of information in your email):

Please supply a copy of the following documents:

All final reports delivered [by McKinsey & Company] to DPMC since 18 September 2013, that are stored in either a PDF or Word document format.

All powerpoint presentations delivered [by McKinsey and Company] to DPMC since 18 September 2013, that are stored in a powerpoint document format.

Decision-maker

I am authorised to make this decision in accordance with arrangements approved by the Department's Secretary under section 23 of the FOI Act.

Refusal of requests – diversion of resources

Section 24(1) 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.

Section 24AA(1)(a)(i) of the FOI Act provides that, in relation to an agency, a request raises a practical refusal reason if the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations.

However, before an agency can refuse an FOI request in this manner, it is required by section 24AB of the FOI Act to give the applicant a notice advising of the decision-maker's intention to refuse the FOI request and inviting the applicant to consider revising it to make it more manageable. This is called a 'request consultation process'.

On 2 April 2020, the Department wrote to you to advise that your request raised a practical refusal reason, on the basis that processing your request would substantially and unreasonably divert the resources of the Department from its other operations, in that at least 6,900 documents have been identified that would need to be reviewed for relevance to your request, and invited you to revise the scope of your request. On the same day, you responded as follows:

I agree to limit my request to only include in scope any documents that are stored as email attachments, within the inboxes of SES-level employees of the department only, and only when sent to that inbox directly from a McKinsey organisational email address.

Decision

I have decided to refuse your request under section 24(1)(b) of the FOI Act, on the basis that, following a request consultation process, the practical refusal reason remains in relation to your revised request, namely the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations.

In making this decision, I have had regard to the following material:

- your initial request;
- correspondence and communications between the Department and yourself as part of the request consultation process;
- your revised request;

- the FOI Act; and
- the ‘Guidelines issued by the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982*’¹ (the FOI Guidelines).

Reasons

In deciding if a practical refusal reason exists, an agency must have regard to the resources required to perform the following activities specified in section 24AA(2) of the FOI Act:²

- identifying, locating or collating documents within the filing system of the agency;
- examining the documents;
- deciding whether to grant, refuse or defer access;
- consulting with other parties;
- redacting exempt material from the documents;
- making copies of documents;
- notifying an interim or final decision to the applicant.

Other matters may be relevant in deciding if a practical refusal reason exists such as the staffing resources available to an agency for FOI processing, whether the processing can only be undertaken by one or more specialist officers in an agency who have competing responsibilities, the impact that processing may have on other work in an agency including FOI processing, and whether there is a significant public interest in the documents requested.³

The Department has undertaken further searches for documents within the scope of your request (as revised). Based on searches undertaken to date, a sample of eight attachments in scope of the request was reviewed by the Department. This sample equates to over 900 pages which the Department has estimated would take approximately 69 hours to process. Assuming the sample represents 10% of the documents in scope, it is estimated that processing the revised request would involve over 690 hours. This is a conservative estimate, as the total number of documents in scope of the request is likely to be in excess of 80 documents. Accordingly, the revised request remains manifestly voluminous.

As the Department advised in its practical refusal consultation notice, in addition to document search and retrieval, the documents would need to be individually examined to decide whether that material should be released, possible redactions made, a schedule of documents prepared and a decision letter written, which would also add to the time required to process your revised request.

Further, the Department considers that the complexity of this FOI request is high. The documents identified as a result of the document searches would need to be individually examined for relevance. We expect the documents that are ultimately identified as within the scope of your FOI request will potentially require consideration of a range of exemptions under the FOI Act, such as section 45 (confidential information), section 47E(d) (substantial adverse effect on the operations of an agency), section 47F (personal information) and section 47G (business information). Separate consultations would need to be undertaken on a tailored basis for third parties.

¹ FOI Guidelines combined November 2019 published on the web site of the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>

² ‘Guidelines issued by the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982*’, Part 3 – Processing and Deciding on Requests for Access (Version 1.6, January 2018), [3.116].

³ Ibid, [3.117].

Ordinary hours of work for full-time employees in the Department are 38 hours per week.⁴ Having regard to the estimate of time to process the revised request, this means it would take one officer 18 weeks, at a minimum, to process the revised request.

I am of the view that a practical refusal reason remains in relation to your revised request, namely that the work involved in processing your revised request would substantially and unreasonably divert the resources of the Department from its other operations. Accordingly, I have decided to refuse your request under section 24(1)(b) of the FOI Act.

Review rights

Information about your rights of review can be found on the website of the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

Complaint rights

Information about your complaint rights can be found on the web site of the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>.

Yours sincerely



Mitchell Johnson
Assistant Secretary
Finance, Property and Security Branch

14 April 2020

⁴ Department of the Prime Minister and Cabinet, *Enterprise Agreement 2017-2020*, [315].