



Decision to grant an extension of time under s 15AB of the *Freedom of Information Act 1982*

Agency	Department of the Prime Minister and Cabinet
FOI applicant	Alex Pentland
Date of decision	7 June 2023
OAIC reference number	RQ23/02557
Agency reference number	FOI/2023/119

Decision

1. On 22 May 2023, Department of the Prime Minister and Cabinet (the Department) applied to the Information Commissioner under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of 18 days to 9 June 2023 to process Alex Pentland's (the FOI applicant) request of 23 May 2023 (the FOI request).
2. As a delegate of the Information Commissioner, I am authorised to make decisions on extension of time applications under s 15AB(2) of the FOI Act.
3. Under s 15AB(2) of the FOI Act, I have decided to extend the processing period by 18 days to 9 June 2023. My reasons are outlined below.

Background

4. On 23 March 2023, the FOI applicant made an FOI request to the Department. The FOI decision was due to be provided to the FOI applicant on 22 May 2023.
5. On 22 May 2023, the Department applied to the Information Commissioner for further time to process the FOI applicant's request under s 15AB(1) on the basis that the processing period is insufficient to adequately deal with the FOI request, because it is complex and/or voluminous. A copy of the Department's reasons is included at **Attachment A**.

Reasons for decision

6. Subsection 15AB(2) of the FOI Act requires that I consider whether the application is justified on the basis that the processing period referred to in s 15(5)(b) is insufficient for dealing with the request, on the basis that the request is complex or voluminous.
7. In granting this extension of time under s 15AB(2), I have considered the following factors:
 - Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act, to which I must have regard, in particular [3.150] – [3.155]
 - the scope of the FOI request
 - the Department's reasons for seeking an extension
 - whether an agreement to extend the processing period under s 15AA of the FOI Act has first been attempted or obtained by the Department
 - the work already undertaken, and still required, to finalise the request
8. On the information before the OAIC, I am satisfied that an extension to the processing period until 9 June 2023 is justified, for the following reasons:
 - Based on the scope of the Department's submissions, I am satisfied that the request is complex, based on the sensitive nature of the documents requested, absence of key decision-making personnel, the requirement to obtain subject matter expertise from relevant business line areas in relation to any potential sensitivities involved.
9. In granting this extension, I have also considered the work already undertaken by the Department to finalise the request and steps taken by the Department to first obtain a 15AA agreement from the FOI applicant.
10. The Department must provide the FOI applicant with a decision by 9 June 2023.
11. If the Department does not provide the FOI applicant a decision by 9 June 2023 the FOI applicant may seek review by the Information Commissioner of the Department's deemed access refusal decision of 9 June 2023. Further information on applying for IC review is available on the OAIC website. Any application for IC review would need to be made within 60 days of the Department's decision or deemed decision. It also remains open to the Department to apply for a further extension of time from the Information Commissioner if considered appropriate.
12. This extension of time matter is now closed. Your review rights are set out below.
13. If you would like to discuss this matter, please contact our office by email at FOIDR@oaic.gov.au, quoting reference number RQ23/02557.

A handwritten signature in black ink, appearing to be 'L' with a flourish.

Thomas Hanaee
Assistant Review Adviser
Office of the Australian Information Commissioner

7 June 2023

Attachment A

The agency's reasons for requesting an extension of time, as included in the extension of time request form.

The Department will complete enquiries to ensure that all documents that are captured by the scope of the request have been retrieved. Internal stakeholder consultation response will be considered and the assessment of the documents under the FOI Act will be completed. The matter will then proceed to decision and the finalisation of the request.

Why is the request considered complex or voluminous? *

There are a small number of Advisers within the Department with specialised knowledge of the subject matter of the request. The demands on this small number of Advisers' time have only increased due to number of FOI requests they are engaged with and the approach of Estimates. The acceptance of a partial transfer with no option for the Department to seek a s 15AA extension, as well as the nature of the documents requested, has introduced a level of complexity into the processing of this request. An 18 day extension will allow the Department sufficient time to manage and produce a well-reasoned FOI decision.

Do other agencies or parties have an interest in the request? *

This request was transferred in part from the Attorney-General's Department

Please describe the measures that would be taken to ensure a decision is made within the period of the requested extension and to keep the applicant informed of the progress of the request *

The Department's FOI Team monitors the due dates and actions required through its FOI case management system. Due dates for will be entered for each of the remaining work stages to ensure timeliness and that a decision can be issued within time.

Review rights

If you disagree with the Office of the Australian Information Commissioner's (OAIC) decision you can apply to the Federal Court of Australia or the Federal Circuit and Family Court of Australia for a review of a decision of the Information Commissioner, if you think that a decision by the Information Commissioner to grant an extension of time is not legally correct. You can make this application under the *Administrative Decisions (Judicial Review) Act 1977*.

The Court will not review the merits of your case, but it may refer the matter back to the Information Commissioner for further consideration if it finds the decision was wrong in law or the Information Commissioner's powers were not exercised properly.

An application for review must be made to the Court within 28 days of the OAIC sending the decision to you. You may wish to seek legal advice as the process can involve fees and costs. Please contact the Federal Court registry in your state or territory for more information, or visit the Federal Court website at <http://www.fedcourt.gov.au/>.

Further information

Further information about how applications to extend the timeframe to process an FOI request are handled by the OAIC can be found published on our website:

For FOI applicants: [How to make an FOI request: Extensions of time](#)

For agencies and ministers: [Guidance and advice: Extension of time for processing requests](#)

The OAIC has the power to investigate complaints about an agency's actions under the *Freedom of Information Act 1982* (FOI Act). This is a separate process from asking for an Information Commissioner review following a decision made under the FOI Act. Complaints usually focus on how an agency has handled your FOI request or complied with other obligations under the FOI Act, rather than the decision itself.

In some cases, the Information Commissioner's investigation of a complaint may lead to the agency addressing the issues that you have complained about. In other cases, the Information Commissioner may make suggestions or recommendations that the agency should implement. The Information Commissioner can only make non-binding recommendations as a result of a complaint. You and the agency will be notified of the outcome of the investigation.

FOI complaints to the OAIC must be made in writing. Our preference is for you to use the [online FOI complaint form](#) if at all possible.

Further information about how to make a complaint can be found published on our website: <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints/make-an-foi-complaint>.

Making a complaint to the Commonwealth Ombudsman

If you believe you have been treated unfairly by the OAIC, you can make a complaint to the Commonwealth Ombudsman (the Ombudsman). The Ombudsman's services are free. The Ombudsman can investigate complaints about the administrative actions of Australian Government agencies to see if you have been treated unfairly.

If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au> .