



Our reference: RQ23/01954  
Agency reference: FOI30/100

### Weather User

By email: [foi+request-10145-951b226d@righttoknow.org.au](mailto:foi+request-10145-951b226d@righttoknow.org.au)  
Cc: [FOI@bom.gov.au](mailto:FOI@bom.gov.au)

## Extension of time under s 15AB

Dear Weather User

On 24 April 2023, the Bureau of Meteorology (Bureau) applied to the Office of the Australian Information Commissioner (OAIC) for further time to make a decision on your FOI request of 7 April 2023, under s 15AB of the *Freedom of Information Act 1982* (Cth) (the FOI Act).

This application was made on the basis that the processing period is insufficient to deal adequately with your FOI request, because it is complex.

The Bureau attempted to obtain an agreement under s 15AA of the FOI Act for an extension of time from you. The Bureau advised that you refused the request for a 30-day extension.

### Contact with you

On 24 April 2023, I wrote to you to seek your view on the Bureau's application. You responded to my inquiries and advised that:

I am opposed to this request from the BOM for an extension of time.

In relation to the BOM's responses to the OAIC, please see my each relevant quote (with a ">>") and my response.

>> In the context of the above, the further 30 days is required is process the request in circumstances where the Bureau (particularly the small team that manages FOI matters) are dealing with a number of other comparatively complex FOI matters. The 30 days will enable the Bureau to be in position to process the request, particularly in regards to remaining work set out in the response to the following question.

This response appears to suggest that:

1) Other requests received by the BOM are comparatively complex - I am unable to influence the requests made by others, nor am I able to assess them in this forum as they have not

been provided to me. It would appear unreasonable that entity could delay a request from one individual who should receive information within 30 days on the basis of other requests.

2) There is a small team that manages FOI matters - My view here is that the BOM should be aware of its FOI obligations and have sufficient capacity of personnel to comply with its legal obligations. I am unaware of what "small team" relates to, what the ordinary FOI workload is for this agency over multiple years, and whether there is an attributable peak for this month that would suggest this statement is valid. This, coupled, with Part 1 may suggest that, if the default position is to call all matters "complex" but then rely upon "small team" as a defensive argument, that there may be insufficient resourcing as a baseline (and therefore seeking to frustrate the objectives of the FOI Act.

I therefore do not agree that this provides a justification.

>> What work is required to finalise the request?... (and whole section)

All information here appears to be the routine steps expected in response to a FOI request.

>> Why is the request considered complex or voluminous? Enquiries being undertaken in the agency includes locating and review hardcopy archived material to understand whether any relevant hardcopy materials fall in scope.

Given this is a recent decision by the BOM (no more than several months old) - I find it difficult to believe that hardcopy information would be relevant. Regardless, should there be responsive material in hardcopy, I see no reason why electronically available material can not be prioritised.

>> The Bureau has requested an extension to 6 June 2023. I will take any comments you may have to make into account when deciding the application.

Please see my quote above. It should be noted that the subject of this information request is on a website service that was deprecated without a warning made to the public. It is evident some form of decision making occurred recently that should be responsive to this request. However, the FOI Act does implicitly require production of said materials within 30 days of making a request. An inability to do may suggest that there is a broader issue with its ability to comply (and therefore for the public to hold agencies to account) and undertake routinely expected tasks. An extension should not be granted on that basis, and rather should be an opportunity to assess whether the entity is complying with the intent of the FOI Act.

## Decision

As a delegate of the Information Commissioner, I am authorised to make decisions on applications for extensions of time under s 15AB of the FOI Act.

I have considered Bureau's application and have decided to decline an extension. My reasons and considerations follow:

- While the Bureau has advised that the extension 'is required to process the request in circumstances where the Bureau are dealing with a number of other comparatively complex FOI matters', I note that para 3.155 of the FOI Guidelines

states that ‘a lack of staff because of inadequate allocation of resources to FOI processing or failure to assign additional temporary resources to FOI processing at peak times will not normally justify an extension in the absence of other extenuating circumstances’. I therefore do not consider it a relevant consideration to the complexity of the request that the Bureau has other complex matters on foot. This is also in line with para 3.152 of the FOI Guidelines, which states that ‘the complexity or volume described in a s 15AB application ... does not relate to the complexity and volume of the aggregated FOI caseload of the agency or minister’.

- I am not satisfied that inquiries as to ‘hardcopy archived material’ are sufficient to warrant the request being complex for the purposes of s 15AB. Instead, it appears in the application that these are matters relevant to the ordinary processing of the request that have been delayed due to resourcing issues.
- In the absence of additional aspects of complexity or volume, I am not satisfied that the request is complex, nor that the Bureau requires an additional 30 days to deal adequately with the request on the basis of complexity or volume.

The effect of this decision is that if the Bureau does not make a decision by 8 May 2023, it is deemed to have made an access refusal decision on your FOI request. However, as per paragraph 3.163 of the FOI Guidelines, the Bureau continues to have an obligation to provide a statement of reasons on the FOI request. It will remain open to the Bureau to apply to the OAIC for further time to deal with the request under s 15AC of the FOI Act if the request becomes deemed, or to extend the processing time under s 15(6) if a need for consultation under ss 26A, 27 or 27A is identified [before the request becomes deemed].

If the Bureau does not make a decision by 8 May 2023, or you disagree with the decision you receive, you may wish to seek Information Commissioner review [here](#). Further information on [applying for IC review](#) is available on the OAIC [website](#). An application for IC review would need to be made within 60 days of the Bureau’s decision or deemed decision.

## Contact

If you have any questions about this letter, please contact me on 1300 363 992 or via email to [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au). In all correspondence please include OAIC reference: RQ23/01954.

Yours sincerely



**Noah Harris**  
**Assistant Review Adviser**  
FOI Regulatory Group

4 May 2023

## 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 Court 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 OAI 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/reviews-and-complaints/make-an-foi-complaint/>.