



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

Agency	Department of Defence
FOI applicant	Andrew Quilty
Date of decision	7 July 2023
OAIC reference number	RQ23/03726
Agency reference number	687/22/23

Decision

1. I refer to the application made by Department of Defence (the Department) under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of time to process Andrew Quilty's (the FOI applicant) request of 26 April 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 45 days to 9 August 2023. My reasons are outlined below.

Background

4. On 26 April 2023, the FOI applicant made an FOI request to the Department. The FOI decision was due to be provided to the FOI applicant on 26 April 2023.
5. On 26 June 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. A copy of the Department's reasons is included at **Attachment A**.
6. On 26 June 2023, the Office of the Australian Information Commissioner [OAIC] consulted with the FOI applicant to seek their views on the Department's application. The FOI applicant responded to our enquiries and provided comments which I have taken into consideration.

Reasons for decision

7. 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.
8. 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
 - any extension to the processing timeframes utilised under s 15(6)
 - the work already undertaken, and still required, to finalise the request
 - the FOI applicant's views on this extension of time request.
9. On the information before the OAIC, I am satisfied that an extension to the processing period until **9 August 2023** is justified, for the following reasons:
 - Based on the scope of the FOI applicant's request and the Department's submissions, I am satisfied that the request is complex, based on the sensitive nature of the documents requested, the range of documents captured by the request, challenges involved in the search and retrieval of any relevant documents, and the requirement to obtain subject matter expertise from relevant business line areas in relation to any potential sensitivities involved.
10. While I have considered the FOI applicant's objections, I am satisfied that this extension of time remains justified for the reasons outlined above.
11. In granting this extension, I have also considered the work already undertaken by the Department to finalise the request, steps taken by the Department to first obtain a 15AA agreement from the FOI applicant, steps taken by the Department to keep the FOI applicant informed of progress, the FOI applicant's agreement to the categorisation of the matter being complex in nature.
12. The Department must provide the FOI applicant with a decision by 9 August 2023.
13. If the Department does not provide the FOI applicant a decision by 9 August 2023 the FOI applicant may seek review by the Information Commissioner of the Department's deemed access refusal decision of 9 August 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.

14. This extension of time matter is now closed. Your review rights are set out below.
15. If you would like to discuss this matter, please contact our office by email at FOIDR@oaic.gov.au, quoting reference number RQ23/03726.

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

Thomas Hanaee
Assistant Review Adviser
Office of the Australian Information Commissioner

7 July 2023

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

Please provide a timeline setting out the work already completed in order to process this request. Where an extension of time has previously been granted, describe the work that was undertaken during that extended period. *

On 26 April 2023 the applicant sought documents under the Freedom of Information Act 1982 (FOI Act) to the Department of Defence (Defence). A search for documents was commenced by the responsible area of Defence (Joint Operations Command, Army and Office of the Chief of the Defence Force).

On 11 May 2023 the responsible area for the request was required to ensure all relevant records were available and digitised. At this time a separate in-person search of Defence Archive records was initiated and expected to take between 1 and 3 business weeks to complete.

On 16 May 2023 Defence sought a 30 day extension with the applicant due to the considerable sensitivities related to the request. In addition, multiple lines of internal consultation and collaboration would be required.

On 02 June 2023 the responsible area for the request confirmed the Defence Archives records searches were complete.

On 09 June 2023 the Accredited Decision Maker began reviewing and preparing the documents for internal consultation.

On 14 June 2023 the Accredited Decision Maker sought internal consultation with the Office of the Chief of the Defence Force, Vice Chief of the Defence Force and the Head of the Afghanistan Inquiry Response Task Force. These consultations are ongoing and yet to be finalised.

On 16 June 2023 the Accredited Decision Maker notified the Freedom of Information Directorate that they would be unable to progress the decision until after 11 July 2023 due to travelling overseas to serve in ADF operations.

On 20 June 2023 it was identified that internal legal advice would be required to progress the decision in the Accredited Decision Maker’s absence

What work is required to finalise the request? *

The Office of the Chief of the Defence Force, Vice Chief of the Defence Force and Head of the Afghanistan Inquiry Response Taskforce are continuing to review and assess technical aspects of the potential release of documents related to the request.

In addition to the above, the Accredited Decision Maker is away on leave overseas (ADF operational purposes) until 11 July 2023. They are expected to return to their office-based role by Friday 14 July. It is anticipated that they will have capacity to continue working on the request from 17 July 2023.

In order to manage the risk of vicarious trauma associated to the content of the documents, Defence does not find it appropriate to appoint an interim decision maker as this does not support trauma informed principles. Defence are confident that the most appropriate Decision Maker is appointed.

In the interim, in the absence of the Decision Maker, Defence are continuing to seek legal advice on the best next-steps to support a decision on access in a timely manner.

Why is the request considered complex or voluminous? *

The request is considered complex due to the sensitive nature of the information sought (response letters from the leadership of Combined Team Uruzgan and Joint Task Force 633 to the Afghan Independent Human Rights Commission (AIHRC)).

Careful consideration is being taken by Defence to seek complex legal advice and finalise necessitated internal consultation prior to the Decision Maker returning from duty to make a robust decision on access.

Prior to release trauma-informed consideration are required to be meticulously assessed to mitigate any broader impact on the well-being of both current and former serving personnel and the general public upon release of the decision (the applicant has an influential position as a journalist).

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

It is likely other parties have an interest in the request.

Due to the delicate nature of the information, any consultation will require formal internal, external, or a combination of, legal advice.

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. *

Upon the Accredited Decision Maker’s return the document pack and decision will be progressed to finalisation.

It is expected that all internal consultation will have been facilitated by this time.

It is unclear whether external consultations will be finalised by this time, if it is determined they will be sought.

If the external consultations are sought, this may impact the time required by the Decision Maker to finalise the request.

Defence intend to continue to keep the applicant informed of the progression of their request and any actions that may create unexpected delay.

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> .