



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

Agency	Australian Public Service Commission
FOI applicant	Mr Watson Norwood
Date of decision	14 June 2023
OAIC reference number	RQ23/03254
Agency reference number	LEX 559

Decision

1. On 5 June 2023, the Australian Public Service Commission (the APSC) applied to the Information Commissioner under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of 25 days to 30 June 2023 to process Mr Watson Norwood's (the FOI applicant) request of 6 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 25 days to 30 June 2023. My reasons are outlined below.

Background

4. On 6 May 2023, the FOI applicant made an FOI request to the APSC. The FOI decision was due to be provided to the FOI applicant on 5 June 2023.
5. On 5 June 2023, the APSC 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 APSC'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 APSC’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 APSC
 - 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 **30 June 2023** is justified, for the following reasons:
 - Based on the APSC’s submissions, I am satisfied that the request is complex, based on the sensitive nature of the documents requested, challenges involved in the search and retrieval of any relevant documents and the likely need to consult with third parties. In particular, the APSC has advised that the request involves ‘third party personal and/or business information and staff information’, with ‘likely...numerous third parties named in the logs who may wish to object to the release of such information’ which ‘may require extensive consultation’. Additionally, the APSC advised that the request ‘captures documents over a large time period’, which has required contact with the Department of Education and Workplace Relations and the Merit Protection Commissioner ‘regarding the Commission’s historical record-keeping to ensure all documents within the scope of the request are retrieved’.
9. In granting this extension, I have also considered the work already undertaken by the APSC to finalise the request and the steps taken by the APSC to keep the FOI applicant informed of progress.
10. The APSC must provide the FOI applicant with a decision by 30 June 2023.
11. If the APSC has not provided the FOI applicant with a decision by 30 June 2023 the FOI applicant may seek review by the Information Commissioner of the APSC’s deemed access refusal decision of 30 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 APSC’s decision or deemed decision. It also remains open to the APSC 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 RQ23/03254.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Noah Harris', written in a cursive style.

Noah Harris
Assistant Review Adviser
Office of the Australian Information Commissioner

14 June 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. *

This request was received by us on Saturday 06 May 2023. As per the Freedom of Information Act 1982 (FOI Act), we formally acknowledged the request on Tuesday 16 May 2023. The request seeks access to the Australian Public Service Commission's (the Commission's) Freedom of Information (FOI) logs for a period of 10 years from 2013 to 2023; as well as logs held by any secondary departments controlled by the Commission. We have completed internal searches of our agencies' records and liaised with the Merit Protection Commissioner (MPC) and Department of Employment and Workplace Relations (DEWR) over possible historical records.

In our document retrieval, we have generated a PDF of our active FOI matter spreadsheet. We have also located some individual FOI reports and a disclosure report provided by our records manager in the Enabling Services group.

Additionally, on Tuesday 30 May 2023, we also sought the applicant's consent to extend the timeframe for the decision under s 15AA of the FOI Act and limit the scope of their request to exclude third party information (see attached). This was done after extensive consultation with the Australian Government Solicitor (AGS). We invited the applicant to revise their request as the documents within scope may contain a large amount of third party personal and business information. We have not received a response from the applicant.

We have not sought any other extension.

What work is required to finalise the request? *

We will need to continue to liaise with the applicant to limit the scope of their request so as to exclude third party personal and/or business information and staff information. If the applicant doesn't agree to limit the scope, the Commission will need to consider whether third party consultation is required and/or practicable given the number of third parties. If it is not practicable, the Commission will consider whether to start a formal consultation process with respect to a practical refusal reason.

Otherwise, we will have to write a decision record and mark up any documents within scope with any exemption claims as appropriate.

Why is the request considered complex or voluminous? *

This request has required an in-depth search of our internal records to locate documents potentially within the scope of the request, as well as appropriate identification and contacting of other government agencies who we consider may have held the Commission's records relevant to this request (DEWR, MPC).

The request is broad in that it captures documents over a large time period. This has resulted in us seeking the applicant's agreement to limit the scope of the request to exclude third party information, as there may be third parties who wish to contend that information in the documents should be exempt. The Commission has not formed a final view as to whether consultation would be practicable, even accounting for the automatic extension of 25 days.

Furthermore, the problems we are facing with respect to processing this request in a timely manner circle back to a significant lack of Freedom of Information (FOI) resourcing at the Commission currently. In early May, the Commission unfortunately saw a complete departure of our legal team and FOI expertise. Since that time, the processing of FOI requests has been centrally handled by a two-person team who are also responsible for their own day-to-day work.

In addition, we draw your attention to a further extenuating circumstance in that the FOI function at the APSC has only recently been allocated to the two-person team; who have very limited experience in FOI compared to our former legal division.

Steps have been taken by the Commission to address this shortfall; including implementing a decentralised FOI structure rather than relying on one central team, staff training, and the commencement of a new General Counsel and Assistant Director in July.

Lastly, we have been seeking external legal counsel from the AGS to assist with vital processing work and problem solving while we have a shortfall of legal knowledge.

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

Since this request relates to our historical FOI logs, there are likely to be numerous third parties named in the logs who may wish to object to the release of such information; including third parties subject to highly sensitive, ongoing matters. This may require extensive consultation. Due to the broad date range of the request, and the resourcing issues discussed above, it will be difficult for our two-person team to assess, in isolation, the potential sensitivities from disclosure for some of third parties without engaging in consultation.

Beyond that, we have been contacting DEWR and MPC regarding the Commission's historical record-keeping to ensure all documents within the scope of the request (including those created prior to 2019) are retrieved and considered in our decision.

It may also be the case that information in the FOI logs reveal transfers to external agencies under s 16 of the FOI Act. If so, and these agencies are named, they may need to be consulted.

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 *

We would continue to engage with the applicant to try to limit the scope of the request and, if necessary, consult with selected third parties during the extended timeframe. Alternatively, if appropriate, we will consider commencing a formal request consultation process for a practical refusal reason.

If the applicant consents to excluding third party information, we will finalise collating documents, redact the third party information, consider any other sensitivities in the documents, and process the request within the extended timeframe.

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> .