



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

Agency	Department of Infrastructure, Transport, Regional Development, Communications and the Arts
FOI applicant	Mr Andrew Terhorst
Date of decision	15 August 2023
OAIC reference number	RQ23/04444
Agency reference number	FOI 23-279

Decision

1. On 14 August 2023, Department of Infrastructure, Transport, Regional Development, Communications and the Arts (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 4 days to 18 August 2023 to process Mr Andrew Terhorst's (the FOI applicant) request of 16 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 4 days to 18 August 2023. My reasons are outlined below.

Background

4. On 16 May 2023, the FOI applicant made an FOI request to the Department. The FOI decision was due to be provided to the FOI applicant on 16 May 2023.
5. On 14 August 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**.

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 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 **18 August 2023** is justified, for the following reasons:
 - Based on the Department’s submissions, I am satisfied that the request is complex, based on challenges involved in the search and retrieval of any relevant documents, particularly last minute technical errors arising in the processing of the request, and difficulties incurred in obtaining timely responses from business areas or consulted third parties.
9. In granting this extension, I have also considered the work already undertaken by the Department to finalise the request, measures taken by the Department to ensure a decision is made within the extended time period, steps taken by the Department to first obtain a 15AA agreement from the FOI applicant, and steps taken by the Department to keep the FOI applicant informed of progress.
10. The Department must provide the FOI applicant with a decision by 18 August 2023.
11. If the Department does not provide the FOI applicant a decision by 18 August 2023 the FOI applicant may seek review by the Information Commissioner of the Department’s deemed access refusal decision of 18 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.
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 RQ23/04444.

A handwritten signature in black ink, appearing to be the name 'Thomas Hanaee' written in a cursive style.

Thomas Hanaee
Assistant Review Adviser
Office of the Australian Information Commissioner

15 August 2023

Attachment A

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

Please also explain the reasons for the request and why an extension would be justified. Requests for longer extensions of time (more than 30 days) will require greater justification.

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. *

Search and retrieval
Scoping
3rd party consults
Assessing documents
further 3rd party consults
Assessing documents
Assessing sensitivities

What work is required to finalise the request? *

A further 3rd party has responded with suggestions.
Further assessment of the documents
assessing sensitive's
drafting decision
finalising request

Why is the request considered complex or voluminous? *

This case has been made complex due to the large volume of agencies and third parties involved. In addition, an unexpectedly late consultation response was received and requires assessment.

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

Yes.

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 *

This case has been made complex due to technical errors arising at the last minute resulting in documents requiring re-preparation from the beginning. In addition, an unexpectedly late consultation response was received and requires assessment.

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> .