



Our reference: RQ23/03749  
Agency reference: LEXD 6570

**Mr Jake Gerlach**

Sent by email: [foi+request-10325-67173802@righttoknow.org.au](mailto:foi+request-10325-67173802@righttoknow.org.au)

## Extension of time under s 15AC

Dear Mr Gerlach

On 27 June 2023, the Australian Nuclear Science and Technology Organisation (ANSTO) advised this office that it had not made a decision on your FOI request of 1 May 2023 within the statutory period provided by the *Freedom of Information Act 1982* (Cth) (the FOI Act). Consequently, the FOI Act deems that the ANSTO has refused your request.

However, s 15AC of the FOI Act allows the Information Commissioner to extend the processing time for an FOI request where the initial decision period has ended and the agency or Minister has not provided the applicant with notice of a decision. The ANSTO has applied for further time to finalise your request.

The ANSTO advised that the statutory timeframe had been suspended under s 24AB of the FOI Act.

## Contact with you

On 28 June 2023, I wrote to you to seek your view on the ANSTO's application. I invited you to provide any comments by 30 June 2023. You have not responded to my inquiries.

## Decision

As a delegate of the Information Commissioner, I am authorised to make decisions on applications for extensions of time under s 15AC(5) of the FOI Act.

I have decided to grant the ANSTO further time to **26 July 2023** to process your request. My reasons and considerations follow:

- The revised scope of your request still appears broad, as the ANSTO advised:

The revised request is still considerably broad because it would require ANSTO identifying which scientists has supervisory duties for the 4-year period and then review emails and other correspondence for any 'instruction' given on the importance of calibrating pH meters.

- I have also considered the steps taken by the ANSTO to date to process your request, as advised in its application.
- The extension of time sought by the ANSTO does not appear excessive, especially where the extension sought, if granted, would be the first and final extension available to the ANSTO [pursuant to 15AC(9) of the FOI Act].

This extension of time under s 15AC of the FOI Act means that the deemed refusal is taken never to have applied if the ANSTO makes a decision on your request by 26 July 2023. Such an extension can only be granted once and cannot be extended by a variation.

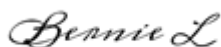
I note that the *Freedom of Information (Charges) Regulations 2019* provides if an applicant is not notified of a decision on a request within the statutory time limit (including any extension of time), the agency or minister cannot impose a charge for providing access, even if the applicant was earlier notified that a charge was payable (regs 7(2), (3)). This extension under s 15AC of the FOI Act does not mean that charges can be reimposed and any deposit you have paid should be refunded.

The effect of this decision is that the ANSTO is deemed to have refused your FOI request. If you do not received a decision by 26 July 2023 or you disagree with the ANSTO's decision, you may wish to seek Information Commissioner review [here](#). Further information on [applying for IC review](#) is available on the OAIC [website](#).

## Contact

If you have any questions about this letter, please contact me on 1300 363 992 or at [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au). In all correspondence please include OAIC reference: RQ23/03749.

Yours sincerely



**Bernie Lai**  
Assistant Director  
Freedom of Information

7 July 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 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/reviews-and-complaints/make-an-foi-complaint/>.