



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

<b>Agency</b>	Department of Defence
<b>FOI applicant</b>	MBV
<b>Date of Decision</b>	31 July 2023
<b>OAIC reference number</b>	RQ23/04142
<b>Agency reference number</b>	FOI 743/22/23

### 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 MBV's (the FOI applicant) request of 23 May 2023 (the FOI request).
2. As a delegate of the Information Commissioner, I am authorised to make decisions on extensions of time applications made under s 15AB(2) of the FOI Act.
3. On the information before the Information Commissioner, I have decided to decline the Department's request to extend the processing period. A decision on the FOI applicant's request therefore remains due by 22 July 2023. My reasons are outlined below.

### Background

4. On 23 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 22 July 2023.
5. On 21 July 2023, the Department applied to the Information Commissioner for further time to process the FOI applicant's request under s 15AB(1) of the FOI Act, 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 declining to extend the processing period 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
  - the work already undertaken, and still required, to finalise the request
8. On the information before the OAIC, I am not satisfied that the application to extend the processing period is justified, for the following reasons:
  - The FOI applicant’s request does not appear particularly complex, based on the nature of the documents requested, the limited range and number of documents captured by the request, and the limited evidence of any technical or practical challenges involved in the processing of the request.
  - In accounting for the work required to complete the request, the Department has submitted that:

In order to ensure a robust decision is made for this request, the decision maker will be required to consider legal advice and advice received from subject matter experts.

Having already extended the processing timeframe to 60 days by way of s15AA of the FOI Act and relied upon this extension to ensure a ‘robust decision’ was made in this initial extension of time request, the Department has not adequately justified why an additional extension of 21 days is necessary to consider legal advice, which should already have been undertaken in the processing of this request.
  - Additionally, while I acknowledge the Department’s submissions regarding its current resourcing challenges and the steps being taken to assign additional FOI resourcing, there do not appear to be other extenuating circumstances to demonstrate that the FOI applicant’s request is otherwise sufficiently complex for the Department to deal with so as to justify an extension under s 15AB(2).

9. In declining this extension, I have also considered the limited available evidence of work undertaken by the Department to process the FOI request to date, limited explanation as to the steps involved, and processing time required, to finalise the request.
10. The Department must provide the FOI applicant with a decision by 22 July 2023.
11. If the Department does not provide the FOI applicant a decision by 22 July 2023, the FOI applicant may seek review by the Information Commissioner of the Department's deemed access refusal decision of 22 July 2023. Further information on [applying for IC review](#) is available on the OAIC [website](#). Any application for IC review should 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 wish to discuss this matter, please contact us by email at [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au) quoting reference number RQ23/04142.

Yours sincerely



**Thomas Hanaee**  
Assistant Review Adviser  
Freedom of Information Branch

31 July 2023

## Attachment A

### 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 23 May 2023, the FOI request was received from the applicant.

On 24 May 2023, Defence requested to transfer the request to another Australian Government Department in accordance with s16 of the FOI Act as the Department believed the subject was more connected to the functions of another agency, however on 30 May 2023 the transfer was denied.

On 31 May 2023, the request was formally acknowledged by the Department via email to the applicant. Following the denial of the transfer, Defence undertook search and retrieval of documents within the scope of the request. This process took additional time due to competing priorities and as the relevant business area was processing a larger than usual number of FOI requests in unison, and had very limited resources to process these matters in time.

On 19 June 2023, Defence requested a 14-day extension from the applicant, and on 20 June 2023 the applicant agreed in accordance with section 15AA of the FOI Act (OAIC Ref: RQ23/03633).

On 20 June 2023, the FOI team initiated a courtesy consultation with another Australian Government Department as the identified document related to their functions, the response was received ten days later.

On 3 July 2023, Defence requested a further 16-day extension from the applicant, and on 6 July 2023 the applicant agreed in accordance with section 15AA of the FOI Act (OAIC Ref: RQ23/03897).

Defence has sought internal legal advice and is continuing to consider the decision in response to this FOI request. Defence continues to consider the decision on access with the limited resources being experienced within the relevant business area.

What work is required to finalise the request? \*

In order to ensure a robust decision is made for this request, the decision maker will be required to consider legal advice and advice received from subject matter experts.

Why is the request considered complex or voluminous? \*

The request is considered to be complex by the Department.

This request is considered to be complex due to the nature of the request. The request seeks access to information in relation to Special Purpose Aircrafts. Furthermore, it seeks the travel and catering details of senior political representatives, in particular the Australian Prime Minister.

In addition, the Department considers the request to be complex due to limited staff within the relevant business area. The relevant line area is currently processing a higher than normal volume of FOI requests as well as unplanned absences, which has reduced the capacity of the business area to process this FOI request.

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

The content of the documents in scope of this request is of interest to multiple parties as it requests details of the Prime Ministers Travel on Special Purpose Aircraft.

As this matter is of high interest to the Australian public, interested parties include but are not limited to, relevant Australian Senators and Ministers, other Australian Government Agencies, and the media.

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 \*

To ensure this FOI request is completed within the requested period, relevant personnel within Defence will work together to ensure resources are dedicated to make an informed and robust decision.

We consider that this process will take a maximum of an additional 21 days and we will strive to release the decision as soon as possible.

## 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/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> .