



Our reference: RQ23/04585
Agency reference: FA23/06/01261

Mr Oliver Smith

Sent by email: foi+request-10397-34bd2f07@righttoknow.org.au
CC: foi@homeaffairs.gov.au

Extension of time under s 15AC

Dear Mr Smith,

On 24 August 2023, the Department of Home Affairs (Department) advised this office that it had not made a decision on your FOI request of 21 June 2023 within the statutory period provided by the *Freedom of Information Act 1982* (Cth) (the FOI Act). Consequently, the FOI Act deems that the Department 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 Department has applied for further time to finalise your request.

The Department previously obtained agreement under s 15AA of the FOI Act for a 32-day extension of time from Mr Smith to 21 August 2023, by utilising s 36(2) of the *Acts Interpretation Act 1901* (Cth) (OAIC reference: RQ23/04123).

Contact with you

On 25 August 2023, I wrote to you to seek your view on the Department's application. You responded to our inquiries and provided comments that I have taken into consideration.

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 Department further time to **21 September 2023** to process your request. My reasons and considerations follow:

- The Department has informed the OAIC:
 - 30 Documents with 1075 titles have been requested; and

- 30 business areas are being consulted with approval being sought from each Assistant Secretary, causing delay in processing the FOI request.
- For the above reasons I have found it to be reasonable in the circumstances to allow the Department extra time to process the FOI request.
- While I have had consideration for the FOI Applicant's contentions in response to the consultation issued on 25 August 2023, particularly that the consultations should have been resolved within the original and agreed extended timeframe under s 15AA, the number of affected business areas and clearances required therein is reasonable additional volume and complexity to justify allowing the Department further time to process the request.
- I have also considered that granting this extension of time is expected to provide you with a substantive decision by the Department on your request by **21 September 2023**. Granting this extension is also expected to reinstate your right to seek an internal review of a substantive decision by the Department and to extend the timeframe for you to apply for IC review of a decision by the Department.

This extension of time under s 15AC of the FOI Act means that the deemed refusal is taken never to have applied if the Department makes a decision on your request by 21 September 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.

If you do not receive a decision **by 21 September 2023** or you disagree with the Department's decision, you may wish to seek IC 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 via email at foidr@oaic.gov.au. In all correspondence please include OAIC reference: RQ23/04585.

Yours sincerely



Thomas Hanaee
Assistant Review Adviser
Freedom of Information Branch

8 September 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/>.