



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

Agency	Norfolk Island Regional Council
FOI applicant	Mr Bob Neil
Date of decision	23 January 2024
OAIC reference number	RQ24/00313
Agency reference number	912/2023

Decision

1. On 18 January 2024, Norfolk Island Regional Council (the Agency) applied to the Information Commissioner under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of 30 days to 17 February 2024 to process Mr Bob Neil's (the FOI applicant) request of 19 December 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 30 days to 17 February 2024. My reasons are outlined below.

Background

4. On 19 December 2023, the FOI applicant made an FOI request to the Agency. The FOI decision was due to be provided to the FOI applicant on 18 January 2024.
5. On 18 January 2024, the Agency 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 agency'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 Agency’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 Agency
8. On the information before the OAIC, I am satisfied that an extension to the processing period until **17 February 2024** is justified, for the following reasons:
 - Based on the scope of Agency’s submissions, I am satisfied that the request is complex, based on the absence of key decision-making personnel due to the Agency shutdown period and difficulties incurred in obtaining timely responses from another commonwealth agency.
9. In granting this extension, I have also considered the work already undertaken by the Agency to finalise the request, measures taken by the Agency to ensure a decision is made within the extended time period and steps taken by the Agency to first obtain a 15AA agreement from the FOI applicant.
10. The Department must provide the FOI applicant with a decision by 17 February 2024.
11. If the Agency does not provide the FOI applicant a decision by 17 February 2024 the FOI applicant may seek review by the Information Commissioner of the Agency’s deemed access refusal decision of 17 February 2024. 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 Agency’s decision or deemed decision. It also remains open to the Agency 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 RQ24/00313.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Hannah Holswilder', with a long horizontal flourish extending to the right.

Hannah Holswilder
Director
Freedom of Information Branch
Office of the Australian Information Commissioner

23 January 2024

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. *

- o 19.12.2023 – FOI request received by Council
- o 02.01.2024 – Council sent the applicant an acknowledgment letter by email confirming receipt of the FOI request and providing a reference number
- o Council commenced initial consideration and searches for the request
- o 10.01.2024 – Council issued a letter to the Supreme Court of Norfolk Island requesting its agreement to the transfer of the FOI request
- o 11.01.2024 – Council received a response to its letter from the Registrar of the Supreme Court of Norfolk Island.
- o 16.01.2024 – Council issued a letter responding to the letter from the Registrar of the Supreme Court of Norfolk Island.
- o 16.01.2024 – Council issued a letter to the applicant seeking a 30-day extension under s 15AA of the Act.

What work is required to finalise the request? *

- o Council must await a response from the Supreme Court of Norfolk Island agreeing or not agreeing to the transfer of the FOI request under section 16(1)(b) of the FOI Act.
- o If the Supreme Court of Norfolk Island does not agree to the transfer of the FOI request, Council will decide the request on the basis that Council's searches of its records indicate that it does not hold any documents responsive to the request.

Why is the request considered complex or voluminous? *

- o Norfolk Island Regional Council's office closed on 22 December 2023 and reopened on 2 January 2024. From 23 December 2023 to 2 January 2024, being a significant portion of the processing period, Council was unable to advance the request.
- o The request sought access to administrative records held by the Supreme Court of Norfolk Island but was directed to the Norfolk Island Regional Council.
- o It was necessary for Council to consider whether it was appropriate to transfer the request on the basis that the subject-matter of the documents requested were more closely connected to the functions of the Supreme Court of Norfolk Island.
- o Council awaits a response from the Supreme Court of Norfolk Island agreeing or not agreeing to the transfer of the request.
- o It is for these reasons that Council seeks an extension until 17 February 2024.

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

- o The Supreme Court of Norfolk Island has an interest in the request as outlined above.

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 *

- o Council has asked for a response from the Supreme Court of Norfolk Island to the transfer request by 30 January 2024.
- o If the Supreme Court of Norfolk Island agrees to the transfer of the request, Council will immediately notify the applicant that the request has been transferred.
- o If the Supreme Court of Norfolk Island does not agree to the transfer of the request Council intends to immediately decide the request on the basis that Council's searches of its records indicate that it does not hold any documents responsive to the request.
- o If an extension of time is granted, Council intends to immediately advise the applicant and provide an update as to the status of the application.

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> .