



Our reference: RQ23/04829
Agency reference: FOI23/417

Thomas RTK

Sent by email: foi+request-10542-db0d67c1@righttoknow.org.au
CC: foi@ag.gov.au

Extension of time under s 15AC

Dear FOI Applicant,

On 13 September 2023, the Attorney-General's Department (Department) advised this office that it had not made a decision on your FOI request of 4 September 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 attempted to obtain an agreement under s 15AA of the FOI Act for an extension of time from you. The Department advised that you refused the request for a 14-day extension.

Contact with you

On 18 September 2023, I wrote to you to seek your view on the Department's application. You responded to my 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 **11 October 2023** to process your request. My reasons and considerations follow:

- The Department has informed the OAIC:
 - 'On 1 September 2023 the initial line area sent an email advising that they had located documentation belonging to a separate line area and suggesting

that, if the other line area agreed, the request should transfer to a different line area in the Attorney-General's Department';

- 'Searches were conducted on 5 September and sent back to the case officer on 8 September 2023 which was the statutory due date';
 - '22 documents are within scope. 16 have Cabinet classifications. All 22 documents are of interest to the Department of the Prime Minister and Cabinet and adequate time will need to be provided to the Department of the Prime Minister and Cabinet to consider the material'; and
 - 'Once external consultations have occurred, the documents have to be prepared with any redactions applied, then bundled up and reviewed by the line area. A decision package also has to be drafted for the decision maker's review and signature.'
- Due to these delays in the search and retrieval process, the necessity to undertake external consultations with affected agencies and the above listed factors of complexity and volume, I believe it is necessary and reasonable to allow the Department additional time process the FOI Applicant's request.
 - While I note the FOI Applicant's objections to the extension of time, particularly that the matter is time sensitive and in the public interest for timely release, I believe it is still reasonable to extend the processing timeframe for the reasons set out above.
 - I have also decided to partially increase the extended timeframe for processing this request afforded to the Department from 9 October 2023 to 11 October 2023, in order to allow the Department time to consider this extension of time decision when finalising your FOI request.
 - I have considered that granting this extension of time is expected to provide you with a substantive decision by the Department on your request by 11 October 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 11 October 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 11 October 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: RQ23/04829.

Yours sincerely

A handwritten signature in black ink, appearing to be 'L' with a flourish at the bottom.

Thomas Hanaee
Assistant Review Adviser
Freedom of Information Branch

9 October 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/>.