



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

Agency	Services Australia
FOI applicant	Frank N Fearless
Date of Decision	31 August 2023
OAIC reference number	RQ23/04646
Agency reference number	LEX 75376

Decision

1. I refer to the application made by Services Australia under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of time to process Frank N Fearless's (the FOI applicant) request of 10 August 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 9 September 2023. My reasons are outlined below.

Background

4. On 10 August 2023, the FOI applicant made an FOI request to Services Australia. The FOI decision is due to be provided to the FOI applicant on 9 September 2023.
5. On 30 August 2023, Services Australia 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 Services Australia'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
 - Services Australia’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 Services Australia
 - 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 complex or voluminous, based on the nature of the documents requested which relate to procedural documents of Services Australia and the limited evidence of any technical or practical challenges involved in the processing of the request. I am also not satisfied that the request is complex merely because 'the information requested is associated with both Services Australia and DSS' as Services Australia has claimed, or because of any potential delay caused by undertaking a courtesy consultation.
9. In declining this extension, I have also considered the limited explanation as to the remaining steps involved.
10. Services Australia must provide the FOI applicant with a decision by 9 September 2023.
11. If Services Australia does not provide the FOI applicant a decision by 9 September 2023, the FOI applicant may seek review by the Information Commissioner of Services Australia’s deemed access refusal decision of 9 September 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 Services Australia’s decision or deemed decision. It also remains open to Services Australia 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 quoting reference number RQ23/04646.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Thomas Hanaee', written in a cursive style.

Thomas Hanaee
Assistant Review Adviser
Freedom of Information Branch

31 August 2023

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. *

Services Australia received the FOI request on 10 August 2023 from Frank N Fearless (Right to Know).

On 11 August 2023, the FOI Team began consulting with internal business areas regarding documents potentially in scope of the request. It was further noted the Department of Social Services (DSS) was the author of documents potentially in scope. The FOI Team sent search and retrieval requests to the internal business areas.

On 15 August 2023, the FOI Team contacted DSS with a request to transfer the FOI request under s 16 of the FOI Act. On 17 August 2023, DSS declined the s 16 transfer request, however requested to be informally consulted on the documents retrieved.

On 17 August 2023, the internal business areas requested further time in order to undertake further searches. The FOI Team granted the extension.

On 24 August 2023, the FOI Team contacted the applicant requested an extension of time of 15 days under s 15AA of the FOI Act, with a response due date of 25 August 2023. On 28 August 2023, the applicant declined the request.

On 28 August 2023, the internal business areas provided documents, with the recommendation DSS is consulted on the documents.

What work is required to finalise the request? *

Services Australia will need to consult with DSS on the documents to receive advice on any sensitivities they consider relevant for the FOI decision maker to consider. The decision will be made and clearance of the decision internally before notification of the decision.

Why is the request considered complex or voluminous? *

This request is considered complex as the information requested is associated with both Services Australia and DSS. We are in the process of undertaking a courtesy consult with DSS for documents that may be within the scope of this FOI request.

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

Department of Social Services

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 *

The time provided by an extension will be used to conduct a informal consultation with DSS and to finalise the FOI request.

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> .