



Australian Government

Office of the Australian Information Commissioner

Our reference: RQ23/04802
Agency reference: LEX 75376

Frank N Fearless

Sent by email: foi+request-10545-2432c164@righttoknow.org.au

Extension of time under s 15AC

Dear Mr Fearless,

On 12 September 2023, Services Australia advised this office that it had not made a decision on your FOI request of 10 August 2023 within the statutory period provided by the *Freedom of Information Act 1982* (Cth) (the FOI Act). Consequently, the FOI Act deems that Services Australia 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. Services Australia has applied for further time to finalise your request.

Services Australia attempted to obtain an agreement under s 15AA of the FOI Act for an extension of time from you. Services Australia advised that you refused the request for an extension.

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 Services Australia further time to **2 October 2023** to process your request. My reasons and considerations follow:

- Services Australia has informed the OAIC:
 - Application of comments received from the Department of Social Services (the Department) is to be undertaken by Services Australia following completed courtesy consultation with the Department.
- I have considered that the additional time requested by Services Australia to additionally process the request is not substantial. I have had regard for Services Australia's previous attempts to apply for additional time under s 15AA and s 15AB of

the FOI Act; acting in good faith to best enliven your rights to apply for internal and Information Commissioner (IC) reviews.

- I have also considered that granting this extension of time is expected to provide you with a substantive decision by Services Australia on your request by 2 October 2023. Granting this extension is also expected to reinstate your right to seek an internal review of a substantive decision by Services Australia.

This extension of time under s 15AC of the FOI Act means that the deemed refusal is taken never to have applied if Services Australia makes a decision on your request by 2 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.

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: RQ23/04802.

Yours sincerely



Thomas Hanaee
Assistant Review Adviser
Freedom of Information Branch

27 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/>.