



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

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| Agency | Department of Health and Aged Care |
| FOI applicant | Rob Cawthorne |
| Date of decision | 4 October 2023 |
| OAIC reference number | RQ23/04771 |
| Agency reference number | 4621 |

Decision

1. I refer to the application made by Department of Health and Aged Care (the Department) under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of time to process Rob Cawthorne's (the FOI applicant) request of 12 August 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 11 October 2023. My reasons are outlined below.

Background

4. On 12 August 2023, the FOI applicant made an FOI request to the Department. The FOI decision was due to be provided to the FOI applicant on 11 September 2023.
5. On 8 September 2023, the Department 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. A copy of the Department's reasons is included at **Attachment A**.
6. On 15 September 2023, the Office of the Australian Information Commissioner [OAIC] consulted with the FOI applicant to seek their views on the Department's application. The OAIC invited the FOI applicant to provide any comments by 20 September 2023, but no response has been received.

Reasons for decision

7. 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.
8. 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 Department’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 Department
 - the work already undertaken, and still required, to finalise the request
9. On the information before the OAIC, I am satisfied that an extension to the processing period until **11 October 2023** is justified, for the following reasons:
 - Based on the scope of the FOI applicant’s request and the Department’s submissions, I am satisfied that the request is complex, based on the sensitive nature of the documents requested, the range of documents captured by the request, the affected business area’s difficulties in conducting search and retrieval of the requested documents, and the requested additional time may be required to undertake third party consultation.
10. In granting this extension, I have also considered the work already undertaken by the Department to finalise the request, measures taken by the Department to ensure a decision is made within the extended time period, and steps taken by the Department to first obtain a 15AA agreement from the FOI applicant.
11. The Department must provide the FOI applicant with a decision by 11 October 2023.
12. If the Department does not provide the FOI applicant a decision by 11 October 2023 the FOI applicant may seek review by the Information Commissioner of the Department’s deemed access refusal decision of 11 October 2023. 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 Department’s decision or deemed decision. It also remains open to the Department to apply for a further extension of time from the Information Commissioner if considered appropriate.

13. This extension of time matter is now closed. Your review rights are set out below.
14. If you would like to discuss this matter, please contact our office by email at FOIDR@oaic.gov.au, quoting reference number RQ23/04771.

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
Office of the Australian Information Commissioner

4 October 2023

Attachment A

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. *

On 22 August 2023, a business area for the request was identified and the request was assigned to the business area for processing.

The request was reviewed and the required searches to be completed considered. The scope was found to capture a broader range of documents than was initially thought to be the case.

On 5 September 2023, the department sent to the applicant a request for an extension of time under s 15AA of the FOI Act in order to undertake the necessary searches and to ensure all reasonable steps to identify all documents relevant to the request had been identified. No response has been received to date.

What work is required to finalise the request? *

Currently, the following work is expected to be required:

- Complete search and retrieval process
- Review documents
- Conduct any necessary consultations
- Prepare draft decision
- Prepare documents for release
- Notify applicant of decision

Why is the request considered complex or voluminous? *

The request is broad in scope and due to its nature a number of individuals will need to be involved in the search and retrieval process for documents. The business area responsible for the request is a relatively small team and at this time they do not have the resources to complete the search and retrieval process due to urgent competing work. Consultation with affected third parties may also be required following search and retrieval.

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

Currently, no other agencies or parties have an interest in the request. However, following completion of search and retrieval process it may be necessary to conduct consultations.

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 *

Given the expected completion date for the business area's urgent competing work, the business area expects the search and retrieval process to be completed within the next 14 days. The department will devote further resources to conducting the search and retrieval as may be necessary to ensure a decision is made within the period of the requested extension. The department will continue to keep the applicant updated on the 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 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> .