



## Decision to decline an extension of time under s 54D of the *Freedom of Information Act 1982*

Agency	Department of Home Affairs
FOI applicant	Sebastian Johnny
Date of decision	8 December 2023
OAIC reference number	RQ23/05821
Agency reference number	FA23/10/00061

## Decision

1. On 1 December 2023, Department of Home Affairs (the Department) applied to the Information Commissioner under s 15AC(4) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension to 18 January 2024 to process 's (the FOI applicant) internal review request of 20 October 2023 (the FOI request).
2. Mr Sebastian's request has been deemed as affirmed as a decision has not been made by the Department within the statutory timeframe. You have therefore sought further time to process the request.
3. I am a delegate of the Information Commissioner. I am authorised to make decisions on applications for further time under s 54D of the FOI Act.
4. On the basis of the information before me, I have decided to decline the Department's request for further time to deal with the internal review request. As such, Mr Sebastian's request has been deemed as affirmed on 19 November 2023. My reasons are outlined below.

## Background

5. On 20 October 2023, the FOI applicant made an FOI internal review request to the Department. The FOI decision was due to be provided to the FOI applicant on 19 November 2023.
6. On 1 December 2023, the Department applied to the Information Commissioner for further time to process the FOI applicant's request under s 54D to adequately deal with the FOI request. A copy of the Department's reasons are included at Attachment A.

## Reasons for decision

7. Subsection 54D of the FOI Act provides that I may allow further time that I consider appropriate for an agency or Minister to deal with the request.

8. In declining this application for further time under s 54D, 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 [3.164] – [3.167]
  - the reasons for delay in making an initial decision
  - the period of time sought, and the total estimated processing time
  - whether discussions with the applicant about the delay and extension of time application have occurred
9. On the information before the OAIC, I am not satisfied that the application for further time is justified, for the following reasons:
- The Department’s submissions contained very little detail to explain the extensive delays in processing the applicant’s internal review request. For example, it appears no action occurred to progress this matter between 25 October to 20 November 2023.
  - The further time sought by the Department appears excessive. Its requested extension of a further period of 60 days, if granted, would yield a total processing period of 90 days, which would be 3 times the processing period given for internal review requests.
  - I note that if the applicant lodged a fresh FOI request for these documents, the Department would be required to process the request within 30 days which is a shorter period than the Department has requested in its extension application .
10. The effect of this decision is that the agency remains deemed to have made a decision affirming the original decision on the applicant’s request on 19 November 2023.
11. It is open to the applicant to seek Information Commissioner review (IC review) of the agency’s deemed affirmation decision of 19 November 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 agency’s decision or deemed decision.
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 on 1300 363 992 or by email at [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au), quoting reference number RQ23/05821.

Yours sincerely,



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

8 December 2023

## Attachment A

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. \*

23/10 - request acknowledged.  
25/10 - incorrect reference in IR submission - email to client to provide correct details.  
25/10 - response from client  
20/11 - assessment of BA initial response and searches undertaken.  
22/11 - request to BA for additional searches to be conducted.  
23/11 - Initial response from BA  
27/11 - BA follow-up  
29/11 - response from BA  
30/11 - further response from BA - additional documents located.

What work is required to finalise the request? \*

BA have identified additional documents they MAY fall within scope of request  
Assessment of relevance to scope by FOI - 2 days  
Collation of documents - 2 days  
Initial assessment by FOI staff / mark-up - 3 days  
consultation with BA regarding proposed redactions if any (between 0 - 7 days)  
preparation of decision - 2 days  
final consultation with BA / Decision to be signed. (4 days)

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

no

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 \*

FOI review staff to monitor progress in conjunction with BA

## Review rights

### Review by the Administrative Appeals Tribunal

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 is available on our website:

<https://www.oaic.gov.au/freedom-of-information/reviews-and-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>.