



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

Agency	Department of Finance
Applicant	'Me" Right to know
Date of decision	15 May 2024
OAIC reference number	RQ24/01737
Agency reference number	23-24/034 IR

Decision

1. On 10 May 2024, the Department of Finance (the Department) applied to the Information Commissioner under s 54D(3) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of 24 days to 13 May 2024 to process 'Me" Right to know's (the Applicant) FOI internal review request of 20 March 2024 (the internal review request).
2. The Applicant's internal review request has been deemed as affirmed as a decision was not made by the Department by 19 April 2024.
3. I am a delegate of the Information Commissioner. I am authorised to make decisions on applications for further time under s 54D(4) 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. The Department is therefore deemed to have affirmed the original FOI decision on **19 April 2024**. The Department is encouraged, in the interests of administrative efficiency, to continue to process the request and release documents administratively if the applicant has not yet applied for IC review of the deemed decision.

Background

5. The background to this application is summarised in **Attachment A**.
6. A copy of the Department's reasons for seeking an extension are included at **Attachment B**.

Reasons for decision

7. Subsection 54D(4) 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 making my decision under s 54D(4), I have considered the information provided by the Department and the FOI Guidelines issued by the Information Commissioner under s 93A of the FOI Act, in particular paragraphs [3.150] – [3.157].
9. On the information before the OAIC, I am not satisfied that the application for further time is justified, for the following reasons:
 - The Applicant’s internal review request does not appear to involve sufficient complexity so as to warrant extra processing time, based on the limited evidence of any technical or practical challenges involved in the search and retrieval or processing of documents.
 - The application provides limited evidence of appropriate work being undertaken by the Department to process the internal review request to date. I note that the Department’s application states the searches commenced on 10 April 2024, 3 weeks after the internal review request was received by the Department on 20 March 2024. As such, it appears the Department did not utilise the processing period effectively and I cannot find that an extension is justified.
10. The effect of this decision is that the Department remains deemed to have affirmed the original FOI decision on **19 April 2024**.
11. It is open to the applicant to seek Information Commissioner review (IC review) of the Department’s deemed affirmation decision of **19 April 2024**. 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 affirmation decision.
12. For further information, the OAIC website provides a resource containing information on [applying for an extensions of time to process freedom of information requests](#).
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 on 1300 363 992 or by email at FOIDR@oaic.gov.au, quoting reference number RQ24/01737.

Yours sincerely,



Lakshmi Gopinath

Assistant Director

Freedom of Information Branch

Office of the Australian Information Commissioner

15 May 2024

Background to processing period

Background	Processing period	Due date
FOI internal review request made on 20 March 2024	30 days	19 April 2024



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. *

Finance considered the multiple elements of the applicants review request, and engaged in discussions with the relevant business area regarding the contentions raised. It was agreed that the business area would undertake another search exercise to locate any documents that may have been missed in the primary request.

On 10 April 2024, the relevant business area commenced searches for documents.

On 16 April 2024, Finance engaged in consultations with other Commonwealth departments and a third party regarding the proposed changes to the exemptions that were applied during the primary request. The FOI Act does not allow for additional time to engage in a third party consultation in an internal review. See: Paragraph 9.40 of the FOI Guidelines.

While the business area continued the searches for relevant documents, the FOI team commenced reviewing the documents in the primary request subject to the submissions made by the departments.

On 16 April 2024, the FOI team wrote to the Applicant and sought their agreement for additional time to process the internal review.

On 17 April 2024, the applicant responded and granted an extension of 24 days to process the internal review.

On 1 May 2024, the business area advised that 1 additional document was located in scope of the request.

It was not until the business area provided their response regarding the searches, that the FOI team could commence drafting the decision letter. This is due to various factors of the internal review request, such as how many documents would be located and whether the approach to the decision would substantially vary.

On 2 May 2024, the FOI team finalised the documents (which were varied) and commenced drafting of the decision letter.

On 10 May 2024, the documents and statement of reasons were provided to the decision maker for consideration.

What work is required to finalise the request? *

As at 10 May 2024, the decision maker is considering the drafted statement of reasons and the varied documents. On 13 May 2024, we anticipate clearance by the decision maker and to finalise this request.

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

Yes

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 FOI team will keep up communication with the decision maker regarding any potential issues or concerns so that it can be addressed immediately. There are no anticipated concerns with the finalisation of this request by 13 May 2024.

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 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> .