



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

Agency	Services Australia
FOI applicant	Frank N Fearless
Date of decision	8 November 2023
OAIC reference number	RQ23/05449
Agency reference number	LEX 76245

### 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 3 October 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 21 days to 23 November 2023. My reasons are outlined below.

### Background

4. On 3 October 2023, the FOI applicant made an FOI request to Services Australia. The FOI decision was due to be provided to the FOI applicant on 2 November 2023.
5. On 26 October 2023, Services Australia 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 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 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
  - 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
  - the FOI applicant’s views on this extension of time request.
8. On the information before the OAIC, I am satisfied that an extension to the processing period until **23 November 2023** is justified, for the following reasons:
  - Based on the scope of the FOI applicant’s request and Services Australia’s submissions, I am satisfied that the request is complex, based on the sensitive nature of the documents requested and Services Australia’s need to undertake a ‘significant amount of consultation required with other agencies’ as advised in its email to the FOI applicant of 20 October 2023.
9. In granting this extension, I have also considered the work already undertaken by Services Australia to finalise the request, measures taken by Services Australia to ensure a decision is made within the extended time period, and steps taken by Services Australia to first obtain a 15AA agreement from the FOI applicant. I have also considered that the length of the extension sought does not appear excessive in the circumstances.
10. Services Australia must provide the FOI applicant with a decision by 23 November 2023.
11. If Services Australia does not provide the FOI applicant a decision by 23 November 2023 the FOI applicant may seek review by the Information Commissioner of Services Australia’s deemed access refusal decision of 23 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 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 would like to discuss this matter, please contact our office by email at FOIDR@oaic.gov.au, quoting reference number RQ23/05449.

*Bernie L*

**Bernie Lai**

Assistant Director

Freedom of Information Branch

Office of the Australian Information Commissioner

8 November 2023

## Attachment A

### The agency's reasons for requesting an extension of time, as included in the extension of time request form.

Please also explain the reasons for the request and why an extension would be justified. Requests for longer extensions of time (more than 30 days) will require greater justification.

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. \*

3 Oct 2023 - FOI matter received  
4 Oct 2023 - Document search minute sent to relevant business area  
17 Oct 2023 - Documents received from business area  
18 Oct 2023 - Courtesy consultation sent to DSS with a return date of 25 Oct 2023  
20 Oct 2023 - Response from DSS requesting an extension until 27 Oct 2023

What work is required to finalise the request? \*

Receive and consider response from DSS in relation to the sensitivities surrounding the documents  
Prepare decision  
Push the documents and decision through internal clearance channels

Why is the request considered complex or voluminous? \*

As the request relates to income apportionment which is a very topical matter at the moment, there will be a significant number of stakeholders who will want to have input on the documents.

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

DSS are an interested party as the recipient of the emails.

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 \*

There have been no undue delays on the part of the SA FOI team. Delays are caused by the complexities and the requirement to consult with other parties.

## 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> .