



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

Agency	Australian Public Service Commission
FOI applicant	Foibles Right To Know
Date of decision	22 December 2023
OAIC reference number	RQ23/06496
Agency reference number	LEX 690

Decision

1. On 21 December 2023, Australian Public Service Commission (the Agency) applied to the Information Commissioner under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of 34 days to 26 January 2024 to process Foibles Right To Know's (the FOI applicant) request of 24 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 20 days to 12 January 2024. My reasons are outlined below.
4. I note the Agency has requested an extension of time to 26 January 2024, however, based on the information before the OAIC, I have decided to grant an extension to 12 January 2024. While the request appears to involve some complexity, I am not satisfied that a 34 day extension of time is justified in the circumstances based on the steps involved, or processing time required, to finalise the request and the limited nature of the complexity involved.

Background

5. On 24 October 2023, the FOI applicant made an FOI request to the Agency. The FOI decision was due to be provided to the FOI applicant on 24 October 2023.
6. On 21 December 2023, the Agency 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 agency's reasons is included at **Attachment A**.

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 Agency'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 Agency
 - any extension to the processing timeframes utilised under s 15(6)
 - 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 **12 January 2024** is justified, for the following reasons:
 - Based on the scope of the Department's submissions, I am satisfied that the request is complex, based on the nature of the documents requested, the absence of key decision-making personnel due to the Agency's shutdown period and difficulties incurred in obtaining timely responses from business areas or consulted third parties.
10. In granting this extension, I have also considered the work already undertaken by the Agency to finalise the request and steps taken by the Agency to first obtain a 15AA agreement from the FOI applicant..
11. The Department must provide the FOI applicant with a decision by 12 January 2024.
12. If the Agency does not provide the FOI applicant a decision by 12 January 2024 the FOI applicant may seek review by the Information Commissioner of the Agency's deemed access refusal decision of 12 January 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 Agency's decision or deemed decision. It also remains

open to the Agency 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 RQ23/06496.

Yours sincerely,



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

22 December 2023

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 24 October 2023, the applicant requested certain documents under the FOI Act.

A search minute was conducted to reveal that the documents require consultations with numerous third parties, and government agencies, including the Minister's office.

On 20 November, we also notified the applicant of the 30 day extension due to consultation with third parties.

We sent out consultations from 13 - 20 November 2023 to the Minister's office and government agencies parties. From 20 November 2023 until now, we consulted third parties, considered the responses from agencies that were consulted.

Awaiting responses and back and forth communication with consulted parties contributed to the delays.

What work is required to finalise the request? *

We are close to finalising the request, however we require more time to notify many of the agencies and third parties that we had consulted with. I note that key decision makers at the Commission and other agencies are on leave until the new year. We require their final input before finalising this request.

Why is the request considered complex or voluminous? *

The FOI request is in relation to senate estimates brief, and required numerous consultations with third parties, internal business areas and other government agencies.

These consultations have provided varying responses and application of relevant exemptions, which require diligent analysis and consideration of the documents before release.

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

Yes. We have consulted with 3 third parties, the Minister's Office, 6 government agencies and several business areas within the Commission.

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 *

Within the extended period, the Commission would have capacity to process the applicant's request and make the relevant considerations before release of the documents. Noting the Commission closes over the Christmas shut down period and staff have taken leave over New Years.

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> .