



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

Agency	Attorney-General's Department
FOI applicant	C B
Date of decision	11 December 2023
OAIC reference number	RQ23/05952
Agency reference number	FOI23/548

Decision

1. I refer to the application made by Attorney-General's Department (the Department) under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of time to process C B'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 **21 days to 8 January 2024**. My reasons are outlined below.
4. I note the Department has requested an extension of time to 17 January 2024, however, based on the information before the OAIC, I have decided to grant an extension to **8 January 2024**. While the request appears to involve some complexity and volume, I am not satisfied that a full 30 day extension of time is justified in the circumstances based on the steps involved, or processing time required, to finalise the request. In particular noting that delays with internal clearance processes would not generally justify or support extensions of time, as these are internal processes within the Department's control.

Background

5. On 24 October 2023, the FOI applicant made an FOI request to the Department. The FOI decision was due to be provided to the FOI applicant on 18 December 2023.

6. On 7 December 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 and voluminous. A copy of the Department'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 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 **8 January 2024** is justified, for the following reasons:
 - Based on the scope of the FOI applicant's request, I am satisfied that the request is somewhat complex, based on challenges involved in the search and retrieval of any relevant documents.
 - Based on the Department's submissions that the FOI applicant's request captures approximately more than 1000 documents, I am satisfied the request is also voluminous in nature.
10. The Department must provide the FOI applicant with a decision by **8 January 2024**.
11. If the Department has not provided the FOI applicant a decision by 8 January 2024 the FOI applicant may seek review by the Information Commissioner of the Department's deemed access refusal decision of 8 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 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.

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 RQ23/05952.



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

11 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 department received the FOI request requesting all ministerial submissions sent to the AG from 1 June 2022 to the date of request.
On 27 October 2023, the department clarified with the applicant whether they sought to include the subject of the ministerial submissions.
On 30 November 2023, the applicant confirmed they wished to include the subject of ministerial submissions.
On 31 November 2023, the department acknowledged the applicant's FOI request.
On 10 November 2023, the department wrote to the applicant informally to advise the request in its current form was too broad and would result in a large number of documents and provided the applicant with an opportunity to revise their request before considering undertaking a formal consultation process under s 24AB of the FOI Act.
The applicant responded the same day and agreed to narrow the scope of request to 12 months and for results at Branch Level.
On 10 November 2023, the department wrote to the applicant and requested an EOT under 15AA for 25 days to process their request.
On 11 November 2023, the applicant responded and agreed to the EOT request.
On 15/16 November 2023 business areas were emailed spreadsheets broken down by Branch to review titles/subjects of ministerial submissions and to be cleared by their Groups Dep Sec by 30 November 2023.
On 4 December 2023, the applicant wrote to the department seeking an update on the request and whether a decision will be met by the 18 December statutory timeframe.
The department responded the same day to the applicant advising that the department was coordinating and pulling together the list for further assessment and that a large internal consultative process was required in order to prepare a decision. Further the department advised that it would communicate with the applicant at the beginning of 11 December 2023 how the department was tracking.

What work is required to finalise the request? *

The department is waiting on one Group to provide their cleared ministerial submissions by their Dep Sec. In the meantime, FOI have commenced reviewing and cross-checking responses from other Groups. FOI require additional time to check in again with some of the business areas on the proposed exemptions. Once FOI have reviewed all 1000+ ministerial submissions and settled with line areas on exemptions a draft decision package will be provided to the decision maker for review/consideration.

Why is the request considered complex or voluminous? *

FOI23/548 is complex and voluminous for the following reasons:
* in order to meet the FOI request the department must create the document under s 17 of the FOI Act
* there are approx 1000+ ministerial submissions identified for the requested period
* internal consultation departmental wide is required to review and assess each individual subject of the 1000+ ministerial submissions (5 Groups, 13 Divisions, 40+ Branches)
* internal clearance processes (i.e. SES Band 1, 2 and Dep Sec, Secretary's Office and Chief Operating Officer and their availability to do s in line with other BAU.
*consultation with HA regarding ministerial submissions created by areas that have since MoG'd out of the department.

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

HA

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 *

As indicated above, the department advised that they would communicate with the applicant the week beginning 11 December 2023 to provide a further update.
If the department is in a position to provide a decision by the 18 December 2023, it will do so. The request is receiving priority.
The submission by the department for an EOT to process this request also considers the proximity to Xmas and staff taking leave.

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> .