



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 January 2024
OAIC reference number	RQ24/00150
Agency reference number	FOI23/548

Decision

1. On 8 January 2024, Attorney-General's Department (the Department) applied to the Information Commissioner under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of 21 days to 29 January 2024 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 7 days to 15 January 2024. My reasons are outlined below.
4. I note the Department has requested an extension of time to 29 January 2024, however, based on the information before the OAIC, noting that third party consultation is required and has not yet been commenced, and this will further extend the processing period, I have decided to grant an extension to 15 January 2024. While the request appears to involve some complexity and volume, I am not satisfied that a 21 day extension of time is justified in the circumstances, noting this is the second granted extension under s 15AB.

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 24 October 2023.
6. On 8 January 2024, 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 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 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
 - any extension to the processing timeframes forecasted to be 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 **29 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 absence of key decision-making personnel during the Department's shutdown period and the requirement to obtain subject matter expertise from relevant business line areas in relation to any potential sensitivities involved.
 - Based on the Department's submissions that the FOI applicant's request captures more than 1000 documents, I am satisfied the request is voluminous in nature.
10. In granting this extension, I have also considered the work already undertaken by the Department to finalise the request.
11. The Department must provide the FOI applicant with a decision by 15 January 2024.
12. If the Department does not provide provided the FOI applicant a decision by 15 January 2024 the FOI applicant may seek review by the Information Commissioner of the Department's deemed access refusal decision of 15 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.

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 RQ24/00150.

Yours sincerely,



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

11 January 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. *

Please see the earlier application RQ23/05952 for work undertaken to 7 December 2023. The attached supporting document contains all emails between the department and the applicant to 8/1/24 as printed from the RTK platform. Emails from 13 December 2023 commence on page 17.

13-18 December 2023 the department consulted with the applicant to exclude certain categories of request. The applicant did not agree to exclude all the categories proposed by the department.

21 December 2023 - the department advised the applicant the decision would not be made before the end of the calendar year.

5 Jan 2024 the department wrote to the applicant to advise that the department would seek a 21 day EOT from the OAIC. The department did not receive a response to that email.

5 January 2024 the department is currently reviewing the 1000+ ministerial submissions and the sensitivities identified by the business areas of the department to undertake required consultations to facilitate the decision on access.

What work is required to finalise the request? *

Finalise review of the 1000+ ministerial submissions and the sensitivities identified by the business areas of the department
Undertake required consultations to facilitate the decision on access. Consultations have been identified as necessary for 26A, 27 and 27A. Courtesy consultation on matters of joint interest have also been identified.

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)

Consultations for 26A, 27 and 27A stakeholders have been identified following internal consultation.

Courtesy consultation on matters of joint interest with other agencies have been identified following internal consultation

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

Yes agencies and parties identified as requiring consultation

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 department will continue to communicate with the applicant on the progress of the request.
The request is continuing to receive priority.

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> .