



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

Agency	Department of Veterans' Affairs
FOI applicant	Ms Julie Anderson
Date of Decision	4 December 2023
OAIC reference number	RQ23/05759
Agency reference number	LEX62181

Decision

1. I refer to the application made by Department of Veterans' Affairs (the Department) under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of time to process Ms Julie Anderson's (the FOI applicant) request of 26 October 2023 (the FOI request).
2. As a delegate of the Information Commissioner, I am authorised to make decisions on extensions of time applications made under s 15AB(2) of the FOI Act.
3. On the information before the Information Commissioner, I have decided to decline the Department's request to extend the processing period. A decision on the FOI applicant's request therefore remained due by **25 November 2023**. My reasons are outlined below.

Background

4. On 26 October 2023, the FOI applicant made an FOI request to the Department. The FOI decision was due on 25 November 2023. As this is a Saturday, I note that the Department had until the next business day, 27 November 2023 to notify the decision.
5. On 27 November 2023, the Department applied to the Information Commissioner for further time to process the FOI applicant's request under s 15AB(1) of the FOI Act, on the basis that the processing period is insufficient to adequately deal with the FOI request, because it is complex and/or voluminous. A copy of the Department'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 declining to extend the processing period 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
 - the FOI applicant’s views on this extension of time request.
8. On the information before the OAIC, I am not satisfied that the application to extend the processing period is justified, for the following reasons:
 - the Department’s assertion that “the complexity arose from the scope ambiguity, which could be interpreted in differing ways” is an insufficient reason to support the complexity of the request. The application notes the Department did not commence informal consultation with the applicant to clarify the scope until 11 days after receipt and a follow-up to that consultation did not occur until 21 days after receipt. In addition to these significant delays in attempting to informally consult with the applicant, the Department failed to utilise the formal request consultation process provided under s 24AB of the FOI Act which would have allowed for further processing time in this request. As such, it does not appear that the processing period for this request is insufficient on the basis of complexity.
 - There do not appear to be other extenuating circumstances to demonstrate that the FOI applicant’s request is otherwise sufficiently complex for the Department to deal with so as to justify an extension under s 15AB(2).
9. In declining this extension, I have also considered the limited available evidence of work undertaken by the Department to process the FOI request to date and limited explanation as to the steps involved, and processing time required, to finalise the request. I also note that the Department has not first attempted to obtain the FOI

applicant's agreement under s 15AA to facilitate an agreed extension, prior to seeking a s 15AB extension.

10. the Department was required to provide the FOI applicant with a decision by **25 November 2023**. The Department continues to have an obligation to provide a statement of reasons on the FOI request.
11. If the Department has not provided the FOI applicant a decision by 25 November 2023, the FOI applicant may seek review by the Information Commissioner of the Department's deemed access refusal decision of 25 November 2023. Further information on [applying for IC review](#) is available on the OAIC [website](#). Any application for IC review should 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 wish to discuss this matter, please contact us by email at FOIDR@oaic.gov.au quoting reference number RQ23/05759.

Yours sincerely



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

4 December 2023

THE DEPARTMENT'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. *

Request received on 26/10/2023, registered and allocated to a team within the IAU in DVA on the 31st of October. On Friday 3 November a search minute was sent to the appropriate business area in order to obtain the documentation being requested. On Monday 6 November, I engaged with the business area on the scope. The business area requested clarification in relation to the scope. The Scope: 'Around mid 2020 the Department of Veterans Affairs commissioned a training video narrated by Mr Scott Weeding, the video surrounded the role of Contracted Medical Advisors. Under FOI I request all and any legal advice surrounding the role the Contracted Medical Advisors.'

The business area were unclear whether the request was related to documents surrounding the role of the Contracted Medical Advisors holistically and historically, or whether it was in relation to the video only. Additionally was there a specific period of time they were requesting documents?

I email the applicant on the 6th, requesting the following:
With regards to your request, is there a specific date range that you are seeking "legal advice surrounding the role the Contracted Medical Advisors?"

Additionally, is the advice you are seeking specifically relating to the video or any and all legal advice surrounding the role of Contracted Medical Advisors?

On Wednesday 15 November emailed the applicant again, following up on the original email requesting clarification that was sent on the 6th. In the discuss On 27 November, the applicant provided a response to the request for clarification.

What work is required to finalise the request? *

The clarification on the applicant's scope has been received and is to go to the business area to conduct their searches. Once documents have been recognised, they will require analysis and comment by the business area before being provided to IAU in order to make a decision. At this point in time it is unknown how many documents fall into scope and therefore the body of work that would be required after.

Why is the request considered complex or voluminous? *

The complexity arose from the scope ambiguity, which could be interpreted in differing ways. DVA has sought clarification in order to capture what the applicant is actually searching for. The applicant has since provided a response allowing DVA to focus their searches in line with the applicant's scope.

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

As the documents related to internal operations, specifically a video, it is unlikely that other agencies or parties have an interest in this request. Within DVA however, in addition to the IAU's analysis of the document required to provide response to the client, there could be multiple business divisions that would require their considerations and an opportunity to provide insights

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 *

With the scope only clarified today and with no knowledge on the amount of documents this scope entails, there is no way to provide concrete assurances that the decision is made within the period of the requested extension. Taking into consideration the Christmas period with mandatory stand down and return in January, the only assurance given is one where the client will be kept informed of the status of their request leading into this period with changes to the status to be communicated as they occur.

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 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> .