



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

Agency	Minister for Foreign Affairs
FOI applicant	Foifoi Mcgee
Date of decision	28 November 2023
OAIC reference number	RQ23/05743
Agency reference number	LEX9365

Decision

1. On 24 November 2023, the Office of the Minister for Foreign Affairs (the Office) applied to the Information Commissioner under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of 31 days to 26 December 2023 to process Foifoi Mcgee'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 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 14 days to 9 December 2023. My reasons are outlined below.

Background

4. On 26 October 2023, the FOI applicant made an FOI request to the Office. The FOI decision was due to be provided to the FOI applicant on 25 November 2023.
5. On 24 November 2023, the Office 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/or voluminous. A copy of the Office'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
 - the Office’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 Office
 - the work already undertaken, and still required, to finalise the request
8. On the information before the OAIC, I am satisfied that an extension to the processing period until **9 December 2023** is justified, for the following reasons:
 - the Office’s submissions provided limited information regarding the complexity or sensitivity of the request. Based on this limited information, I am satisfied that the request is somewhat complex, based on the sensitive nature of the documents requested and the range of documents captured by the request.
 - the timeline of work already undertaken indicates the initial processing period was not utilised effectively and I am not satisfied that the requested 31 day extension of time is warranted in full.
 - I noted the applicant’s agreement, outside of time, to a 14 day extension of time under s 15AA of the FOI Act on the Right to Know website.
9. I note the Office has requested an extension of time to 26 December 2023 however, based on the information before the OAIC, I have decided to grant an extension to 9 December 2023. While the request appears to involve some complexity, 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.
10. The Office must provide the FOI applicant with a decision by 9 December 2023.
11. If the Office does not provide the FOI applicant a decision by 9 December 2023 the FOI applicant may seek review by the Information Commissioner of the Office’s deemed access refusal decision of 26 December 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 the Office’s decision or deemed decision. It also remains open

to the Office 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 RQ23/05743.



Hannah Holswilder

Director

Freedom of Information Branch

Office of the Australian Information Commissioner

28 November 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. *

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.

- October 26- Request for transfer of the FOI request communicated to the Foreign Minister's Office by the Department of Foreign Affairs and Trade
- October 30- Request for transfer accepted by FMO
- October 31- Discussion with Middle East adviser as to how to progress FMO response.
- Urgent events relating to the crisis in the Middle East then proved a significant impediment to searches being undertaken and the request progressed.

What work is required to finalise the request? *

- Documents relating to the request have been partially discovered, but further searches are required. These will then need to be examined with exemptions possibly applied on a range of grounds given the content of the request.

Why is the request considered complex or voluminous? *

- The request goes to a complicated area of policy, one that has required a significant, ongoing response from the FMO.
- Significant resources have been allocated to dealing with urgent matters associated with the crisis in the Middle East, and this has limited the Office's ability to discover all documents that could be considered to fall within the scope of the request.

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

- It is possible that the Department of Foreign Affairs will need to be consulted. It is possible that other Government Department's may need to be consulted.

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 additional time would allow for discovery to be undertaken and the documents examined.
- Work patterns in the Office are returning to something like approaching normality and so it is expected that the additional time would be sufficient to process this request.

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> .