



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

Agency	Australian Taxation Office
FOI applicant	Trent Morrison-Francis
Date of decision	15 December 2023
OAIC reference number	RQ23/06108
Agency reference number	1-100BRRC2

Decision

1. On 13 December 2023, Australian Taxation Office (the Agency) applied to the Information Commissioner under s 15AC(4) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension to 19 January 2024 to process Mr Morrison-Francis' (the FOI applicant) request of 31 October 2023 (the FOI request).
2. As a delegate of the Information Commissioner, I am authorised to make decisions on applications for further time under s 15AC(5) of the FOI Act.
3. Under s 15AC(5) I have decided to grant the Agency further time to deal with the request to **19 January 2024**. My reasons are outlined below.

Background

4. On 31 October 2023, the FOI applicant made an FOI request to Agency. The FOI decision was due to be provided to the FOI applicant on 31 October 2023.
5. On 13 December 2023, the Agency applied to the Information Commissioner for further time to process the FOI applicant's request under s 15AC(4) on the basis that the processing period is insufficient to adequately deal with the FOI request. A copy of the Agency's reasons are included at **Attachment A**.

Reasons for decision

6. Subsection 15AC(5) of the FOI Act provides that I may allow further time that I consider appropriate for the agency or Minister to deal with the request.
7. In granting this application for further time under s 15AC(5), 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 [3.164] – [3.167]
 - the scope and complexity of the FOI request
 - the reasons for delay in making an initial decision

- the period of time sought, and the total estimated processing time
 - whether discussions with the applicant about the delay and extension of time application have occurred
 - the desirability of the decision being decided by the agency or minister rather than by IC review
8. On the information before the OAIC, I am satisfied that the application for further time until **19 January 2024** is justified, for the following reasons:
- Based on the Agency's submissions, I am satisfied that the request is complex based on the range of documents captured by the request and the challenges involved in the search and retrieval of any relevant documents.
 - The further time sought by the Agency does not appear to be excessive in the circumstances, nothing third party consultation is required.
 - Granting this further time will also reinstate the applicant's right to seek an internal review of the Agency's decision, and to extend the timeframe for the applicant to apply for an IC review of the Agency's decision.
9. In granting this further time, I have also considered the work already undertaken by the Agency to finalise the request and measures taken by the Agency to ensure a decision is made within the extended time period, steps taken by the Agency to first request a s 15AA agreement from the FOI applicant.
10. The new due date for the agency's decision on the FOI request is now **19 January 2024**.
11. This further time granted under s 15AC of the FOI Act means that the deemed refusal is taken never to have applied if the agency makes a decision on the request by **19 January 2024**. Such an extension can only be granted once and cannot be extended by a variation.
12. I note that the *Freedom of Information (Charges) Regulations 2019* provides if an applicant is not notified of a decision on a request within the statutory time limit (including any extension of time), the agency or Minister cannot impose a charge for providing access, even if the applicant was earlier notified that a charge was payable (regs 7(2), (3)). This further time granted under s 15AC of the FOI Act means that charges cannot be reimposed and any deposit the applicant has paid should be refunded.
13. If the Agency does not provide the applicant a decision by **19 January 2024** or the applicant disagrees with a decision from the agency, it will be open to the applicant to seek Information Commissioner review (IC review). 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.
14. This extension of time matter is now closed. Your review rights are set out below.
15. If you would like to discuss this matter, please contact our office on 1300 363 992 or by email at FOIDR@oaic.gov.au, quoting reference number RQ23/06108.

Attachment A

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. *

* The ATO received the Freedom of Information (FOI) request via the Right to Know (RTK) portal on 31 October 2023. Upon receipt of the FOI request, the FOI decision maker considered the scope of the request.
* On 10 November 2023 the FOI decision maker sent a practical refusal notice to the applicant. This notice advised that the scope of the applicant's request as written would encompass every single agreement that the ATO had made to provide or receive taxpayer information with other government agencies or external bodies, and that searching for and processing all the documents that fell within the scope of the request would impose an unreasonable diversion of the ATO's resources from its ordinary operations. The notice invited the applicant to revise their request to address the practical refusal reason. The applicant responded to this notice with a revised scope on 14 November 2023.
* Search requests for the revised scope were sent to the relevant business areas to conduct searches to identify, collate and produce copies of any relevant documents.
* The relevant business areas have undertaken reasonable searches and provided the FOI decision maker with relevant documents. Due to the nature of the request, these searches were complex and required the ATO officers carrying out the searches to liaise with other officers to ensure that all reasonable efforts were made to locate documents.
* The FOI decision maker has been provided with documents by the business lines and is considering the documents identified as falling within the scope of the request for applicable exemptions under the FOI Act.
* The FOI decision-maker sent a request to the applicant on 27 November 2023 requesting a 30-day extension of time under section 15AA of the FOI Act. The FOI decision-maker advised that if the request was not granted the ATO would approach the OAIC for an extension of time. The ATO received a response from the applicant on 28 November 2023 which stated that the ATO's request was "not granted".

What work is required to finalise the request? *

* The FOI decision maker will assess the documents that have been provided and will consider whether any exemptions apply under the FOI Act to the information that is contained within the documents.
* As the documents contain information about persons who worked for other government agencies at the time the documents were created, the ATO is required under section 27A of the FOI Act to consult with the persons concerned to allow them to make submissions in support of the information being exempted. In order to facilitate the consultation, the FOI decision maker will send marked up versions of the documents to the relevant external agencies to allow them to advise whether they have any concerns with the information being released.
* The FOI decision maker will finalise their assessment of the documents, draft a decision letter, and prepare to release their decision and any documents to the applicant.

Please describe the scope and complexity of the request. Please provide the number of documents at issue and the number of folios, as well as any complexity in the nature of those document. *

* The applicant's request is very broad and has required a wide search to be carried out by multiple ATO business areas.
* In addition, the applicant has also requested agreements that were 'active' (as opposed to created) within the last ten years, which has required a more extensive search.
* A preliminary review of the documents that have been provided to date indicates that the applicability of paragraphs 38, 47E (in particular subparagraphs (c) and (d)), and paragraph 47F will require significant consideration.
* It will be necessary to determine the exact nature of the material contained within these documents before they can be considered and processed (with redactions) for a decision under the FOI Act, again stressing that very serious scrutiny will be required in respect of documents relating to the confidentiality of taxpayer information, the effect on the operations of the ATO, and the personal privacy of individuals named in the documents.
* The nature of the documents – agreements between the ATO and external agencies – will require the ATO to consult with those other agencies.

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

* Yes. The documents that have been identified are agreements made between the ATO and other government agencies. These agencies will need to be consulted under section 27A of the FOI Act before the decision maker can finalise processing the document or draft a decision letter.
* The FOI decision maker is aware that the upcoming holiday period including the Australian Public Service shutdown will mean that consultations with other agencies may take a bit longer due to staff taking annual leave.

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. *

* All documents that the ATO holds that fall within the scope of the request have been provided to the FOI decision maker.
* The FOI decision maker will finalise their decision and issue to the FOI applicant as soon as possible.
* The additional time will also enable the FOI decision maker to provide a well-reasoned decision notice to the FOI applicant.

Review rights

Review by the Administrative Appeals Tribunal

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 is available on our website:

<https://www.oaic.gov.au/freedom-of-information/reviews-and-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>.