



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

<b>Agency</b>	Department of Finance
<b>FOI applicant</b>	Trent Morrison-Francis
<b>Date of Decision</b>	4 December 2023
<b>OAIC reference number</b>	RQ23/05813
<b>Agency reference number</b>	FOI 23-24/049

### Decision

1. I refer to the application made by Department of Finance (the Department) under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of time to process Mr Trent 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 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 was due by 30 November 2023. My reasons are outlined below.

### Background

4. On 31 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 30 November 2023.
5. On 30 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. 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
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 has not provided sufficient information to support that the request is complex. I note that an initial view that the Department held no documents relevant to the request appears to have been provided to the applicant on 13 October 2023 and the applicant responded to this correspondence on 14 October 2023. It is unclear what, if any, action has been taken since this time noting the Department’s application advises further searches are required.
9. In declining this extension, I have also considered the limited available evidence of work undertaken by the Department as the requested timeline of work completed was not provided with the application.
10. The Department was required to provide the FOI applicant with a decision by **30 November 2023**. If the Department did not provide a decision to the applicant by this date, the Department continues to have an obligation to provide a statement of reasons to the applicant on the FOI request.
11. If the Department does not provide the FOI applicant a decision by 30 November 2023, the FOI applicant may seek review by the Information Commissioner of the Department’s deemed access refusal decision of 30 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](mailto:FOIDR@oaic.gov.au) quoting reference number RQ23/05813.

Yours sincerely



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

4 December 2023

## Attachment A

### 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. \*

The business area has undertaken a search of their documents and more time is required to ensure that there are no documents. There was also a delay due to the Decision Maker being on leave and a restructure of the division during the period.

What work is required to finalise the request? \*

Final search of systems for any documents in scope.

Why is the request considered complex or voluminous? \*

Complex due to the nature of the documents requested and to ensure that all appropriate searches are undertaken.

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

No.

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 business area is currently finalising the search and should be completed by COB 1 December.

## 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> .