



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

Department	Department of Employment and Workplace Relations
FOI applicant	Trent Morrison-Francis
Date of decision	13 December 2023
OAIC reference number	RQ23/05916
Department reference number	LEX 853

### Decision

1. On 6 December 2023, Department of Employment and Workplace Relations (the Department) applied to the Information Commissioner under s 15AC(4) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension to 15 January 2024 to process Mr Morrison-Francis' (the FOI applicant) request of 31 October 2023 (the FOI request).
2. I am 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. On the basis of the information before me, I have decided to decline the Department's request for further time to deal with the request. A decision on the FOI applicant's request therefore remained 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 6 December 2023, the Department applied to the Information Commissioner for further time to process the FOI applicant's request under s 15AC(4). A copy of the Department's reasons are included at **Attachment A**.
6. On 7 December 2023, the Office of the Australian Information Commissioner (OAIC) consulted with the FOI applicant to seek their views on the Department's application. The OAIC invited the FOI applicant to provide any comments by 11 December 2023, but no response has been received.

### Reasons for decision

7. Subsection 15AC(5) of the FOI Act provides that I may allow further time that I consider appropriate for an Department or Minister to deal with the request.

8. In declining 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 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 Department or minister rather than by IC review
9. On the information before the OAIC, I am not satisfied that the application for further time is justified, for the following reasons:
  - The FOI applicant's request does not appear to involve sufficient complexity so as to warrant extra processing time, based on the limited evidence of any technical or practical challenges involved in the search and retrieval or processing of documents.
  - The further time sought by the Department appears excessive. Its requested extension of a further period of 46 days, if granted, would yield a total processing period of 76 days which would be over two times the processing period referred to in s 15(5)(b) of the FOI Act. I note that should the applicant choose to lodge a new FOI request, it would be required to be processed within a shorter period.
10. The effect of this decision is that the Department remains deemed to have made an access refusal decision on the applicant's request on 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. 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 the Department 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 extension under s 15AC of the FOI Act means that charges cannot be imposed and therefore any deposit the applicant has paid should be refunded.
12. It is open to the applicant to seek Information Commissioner review (IC review) of the Department's deemed access refusal decision of 6 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 Department's decision or deemed decision.
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 on 1300 363 992 or by email at [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au), quoting reference number RQ23/05916.



## 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 request was sent to the department's FOI mailbox on 31 October 2023 but appears to have been misfiled into a deleted folder due to administrative error. Due to this error, the request was not registered and the department remained unaware of the existence of the request until the applicant contacted the department after the statutory period had expired querying if the request was deemed refused. The department is reviewing its FOI inbox handling processes to avoid similar errors in the future but from the review so far, it appears to human error rather than an error in process.

Since the identification of the request, the department has formally registered it as a new request, and has written to the applicant to acknowledge receipt. The department is also consulting with internal business areas in order to identify where any relevant documents that may be held by the department are stored.

What work is required to finalise the request? \*

The department will be required to complete the following to finalise the request:

- perform searches for any documents held by the department that are within scope of the request
- if required, consult with the applicant to clarify the scope of the request
- if documents within scope of the request are identified, the department will need to review them for any exempt material, and mark-up any redactions that may be required
- draft a schedule outlining any documents that may be identified
- if any documents are identified, it is likely that the department will need to consult with other agencies, and possibly other third parties, regarding their release.
- draft a notice of decision.

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 \*

At this stage, the scope and complexity of the request is somewhat unclear as the department is currently undertaking reasonable searches.

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

If the department identifies relevant documents, it is likely that one or more agencies will have an interest in the request noting that the documents sought are agreements between multiple agencies.

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 action the request as a matter of priority, and will notify the applicant if clarification of scope or third party consultation is required. The department is seeking a 46-day extension from the original FOI request due date. This is because the department only became aware of the existence of the request on 4 December, when the applicant emailed the department querying if the request was deemed refused. 30 days from 4 December plus the 11-day shutdown period makes a standard processing decision due date approximately 15 January 2023. That said, the department is processing this request as a priority and is hopeful of finalising the outcome before that period. However, this extension will enable the department to ensure it conducts searches reasonably, adequately consults and has sufficient time to review materials and draft the correct and preferable decision.

## 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 Department'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 Department 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 Department addressing the issues that you have complained about. In other cases, the Information Commissioner may make suggestions or recommendations that the Department should implement. The Information Commissioner can only make non-binding recommendations as a result of a complaint. You and the Department 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>.