



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

Agency	Department of Employment and Workplace Relations
FOI applicant	Trent Morrison-Francis
Date of decision	19 December 2023
OAIC reference number	RQ23/06223
Agency reference number	LEX 853

Decision

1. I refer to the application made by Department of Employment and Workplace Relations (the Department) under s 15AC(4) 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 applications for further time under s 15AC(5) of the FOI Act.
3. Under s 15AC(5) I have decided to grant the Department further time to deal with the request to **22 December 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 31 October 2023.
5. On 15 December 2023, the Department 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 Department's reasons are included at **Attachment A**.
6. On 15 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 18 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 the agency or Minister to deal with the request.
8. 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.
9. On the information before the OAIC, I am satisfied that the application for further time until **22 December 2023** is justified, for the following reasons:
- The further time sought by the Department does not appear to be excessive in the circumstances.
 - Granting this further time will also reinstate the applicant’s right to seek an internal review of the Department’s decision, and to extend the timeframe for the applicant to apply for an IC review of the [Department]’s decision.
10. In granting this further time, I have also considered the work already undertaken by the Department to finalise the request and measures taken by the Department to ensure a decision is made within the extended time period.
11. The new due date for the agency’s decision on the FOI request is now **22 December 2023**.
12. 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 **22 December 2023**.. Such an extension can only be granted once and cannot be extended by a variation.
13. 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.
14. If the Department does not provide the applicant a decision by **22 December 2023**, 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.
15. This extension of time matter is now closed. Your review rights are set out below.
16. 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 RQ23/06223.

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 formally registered on 4 December 2023 on receipt of the applicant's follow-up email.

On 5 December 2023, the department contacted the applicant to acknowledge the request, apologise for the error, and outline next steps for processing the request. Document searches were commenced the same day, with various business areas within the department that were identified as likely to hold relevant documents being consulted to advise on likely locations for relevant documents.

On 8 December 2023 after consultation with various areas within the department, 3 business areas were identified as reasonably holding documents within scope of the request, and a formal search request was sent to these areas for action.

The department has taken significant steps to process this request and has expedited searches in a period where the department is experiencing skeletal staff due to approved staff leave, is attempting to finalise all other incoming requests in a truncated timeframe due to the upcoming shutdown and where a significant number of staff have also been away due to various illnesses. Those searches have now been finalised and a decision can be made over a few business days.

What work is required to finalise the request? *

The department will be required to draft a decision explaining the searches conducted and their outcome and undertake relevant clearances. The department anticipates this can be done quickly if it is granted further time to deal with the request.

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 scope of the request was quite broad noting the request wanted various data sharing arrangements that would result in the sharing of veteran data, including agreements that were active in the past 10 years but may be currently expired. This involved significant system searches during a busy period of the year (as described above) but the department has now completed its searches.

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

Not applicable.

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 has actioned the request as a matter of priority, and will be able to finalise the request as soon as it is granted further time to deal with the request. The department will also take reasonable steps to ensure that this type of incident does not occur in the future.

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>.