



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

<b>Agency</b>	APSC - Australian Public Service Commission
<b>FOI applicant</b>	Mr Paul Williams
<b>Date of decision</b>	20 December 2023
<b>OAIC reference number</b>	RQ23/06448
<b>Agency reference number</b>	LEX 718

### Decision

1. On 20 December 2023, the Australian Public Service Commission (the Agency) 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 22 January 2024 to process Mr Paul Williams's (the FOI applicant) request of 22 November 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 21 days to 12 January 2024. My reasons are outlined below.
4. I note the Agency has requested an extension of time to 22 January 2024, however, based on the information before the OAIC, I have decided to grant an extension to 12 January 2024. While the request appears to involve some complexity, I note that the Agency has commenced a request consultation process and the outcome of this process, and any revision to the scope of the request that may occur through this process, is not known at this time. As such, I am not satisfied that a 31 day extension of time is justified in the circumstances based on the limited available evidence relating to the ongoing complexity of this matter.

### Background

5. On 22 November 2023, the FOI applicant made an FOI request to the Agency. The FOI decision was due to be provided to the FOI applicant on 22 December 2023.

6. On 20 December 2023, the Agency 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. A copy of the agency's reasons is included at **Attachment A**.

## Reasons for decision

7. 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.

8. 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 Agency'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 Agency
- the work already undertaken, and still required, to finalise the request.

9. On the information before the OAIC, I am satisfied that an extension to the processing period until **12 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 absence of key decision-making personnel due to the Agency's shutdown period and the requirement to consult with multiple third parties.

10. In granting this extension, I have also considered the work already undertaken by the Agency to finalise the request, measures taken by the Agency to ensure a decision is made within the extended time period and steps taken by the Agency to first obtain a 15AA agreement from the FOI applicant.

11. The Department must provide the FOI applicant with a decision by 12 January 2024.

12. If the Agency does not provide the FOI applicant a decision by 12 January 2024 the FOI applicant may seek review by the Information Commissioner of the Agency's deemed access refusal decision of 12 January 2024. 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. It also remains open to the Agency to

apply for a further extension of time from the Information Commissioner if considered appropriate.

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 by email at [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au), quoting reference number RQ23/06448.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Hannah Holswilder', with a long horizontal flourish extending to the right.

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

20 December 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. \*

On 22 November 2023, the applicant requested certain documents under the FOI Act in relation to bargaining conditions.  
A search minute was conducted to reveal that there is likely to be a large number of documents that fall within the scope of the request.

On 20 December 2023, we issued a request consultation process, under section 24AB, notifying the applicant that a practical refusal reason exists. We have requested an extension to the consultation period, for an additional 7 days, due to Christmas shutdown and staff absences. The extended consultation period will enable us to be available to assist the applicant in the revision of their scope.

No formal extension of time under s15AA of the FOI Act has been agreed upon by the applicant.

What work is required to finalise the request? \*

The following work is remaining:  
1. Redaction of remaining documents  
2. Consultations with agencies and third parties  
3. Writing statement of reasons and decision letter

Why is the request considered complex or voluminous? \*

Processing the documents involve numerous consultations, noting about 103 APS agencies, about 10 unions and over 250 individual employee bargaining representatives were involved in APS-wide bargaining.

The contents of the documents also require diligent examination and likely involve significant redactions.

We have estimated that it would take approximately 54 hours to process this request.

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

We require consultation with third parties, i.e. unions and business.  
We require consultation with APS 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 \*

Within the extended period, the Commission would have capacity to process the applicant's request if the scope is revised noting that the Commission has issued a section 24AB Request Consultation notice to the applicant. Additionally, the Commission's FOI team will have capacity to process the request noting the Commission closes over the New Year shut down period and staff have taken leave over that period.

## 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>.