



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

Agency	National Disability Insurance Agency
FOI applicant	Je Je
Date of decision	9 February 2024
OAIC reference number	RQ24/00544
Agency reference number	FOI-3 23/24-0627

Decision

1. On 7 February 2024, National Disability Insurance Agency (the Department) applied to the Information Commissioner under s 15AC(4) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of 48 days to 7 February 2024 to process Je Je's (the FOI applicant) request of 22 November 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 Agency's request for further time to deal with the request. A decision on the FOI applicant's request therefore remains due by 22 December 2023. My reasons are outlined below.

Background

4. 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.
5. On 7 February 2024, 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 an agency or Minister to deal with the request.
7. 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 agency or minister rather than by IC review
8. On the information before the OAIC, I am not satisfied that the application for further time is justified, for the following reasons:
- The application provides limited evidence of appropriate work being undertaken by the Agency to process the FOI request to date. As such, it appears the Agency did not utilise the initial processing period effectively and I cannot find that an extension is justified.
 - While I acknowledge the Agency’s submissions regarding its resourcing challenges, a lack of staff because of inadequate allocation of resources or failure to assign additional temporary resources to FOI processing at peak times does not justify an extension in the absence of other extenuating circumstances. On this occasion, there do not appear to be other circumstances to demonstrate that the Applicant’s request is otherwise complex or voluminous for the Agency to deal with so as to justify an extension under s 15AC(5).
9. The effect of this decision is that the agency remains deemed to have made an access refusal decision on the applicant’s request on **22 December 2023**.
10. 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 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 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.
11. It is open to the applicant to seek Information Commissioner review (IC review) of the agency’s deemed access refusal decision of **22 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 agency’s decision or deemed decision.
12. This extension of time matter is now closed. Your review rights are set out below.

13. 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 RQ24/00544.

Yours sincerely,



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

9 February 2024

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. *

22 November 2023 - Request was received by the Agency. At this time, the NDIA's FOI team was experiencing a shortage in senior staff who could take on non-personal requests. This was further exacerbated by the upcoming December/January period in which the Agency went into a Reduced Activity Period and multiple senior staff took leave. Also at this time, the FOI team was dealing with a large volume of significantly older FOI requests which were being prioritised due to their age. As such, the matter remained unallocated as there was no suitably experienced staff member able to process it.

31 January 2024 - This matter was allocated to me for action.

5 February 2024 - I sent a search consultation to the business area who may hold the documents the applicant is seeking.

5 February 2024 - I sent an acknowledgement email to the applicant.

6 February 2024 - The Agency business area responded to the search consult.

7 February 2023 - I have drafted the notice of decision letter.

7 February 2024 - I have sent the draft notice of decision to senior staff for visibility prior to intended release at close of business today, 7 February 2024. This means I have processed this request in one week.

7 February 2024 - I have submitted this request for a 15AC extension so that the deemed refusal is wiped in order to enable the applicant to apply for internal review.

What work is required to finalise the request? *

I am waiting until close of business today to release the decision, to ensure relevant business areas get visibility before it is released / published on the Right to Know website. No other further steps are required.

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 the definition of the word "exhausted" as used in Agency Operational Guidelines. Zero documents were identified within this scope.

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 *

I am going to release the notice of the decision to the applicant today and I will not be waiting for the OAIC's response about whether the 15AC extension is approved. This will avoid any further unnecessary delays for the 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>