



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

Agency	Australian Broadcasting Corporation
FOI applicant	Mr Simon Harris
Date of decision	21 December 2023
OAIC reference number	RQ23/06437
Agency reference number	ABC FOI 202324-042

Decision

1. On 20 December 2023, the Australian Broadcasting Corporation (ABC) applied to the Information Commissioner under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of 34 days to 29 January 2024 to process Mr Simon Harris's (the FOI applicant) request of 26 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 29 days to 24 January 2024. My reasons are outlined below.

Background

4. On 26 November 2023, the FOI applicant made an FOI request to the ABC. The FOI decision was due to be provided to the FOI applicant on 26 December 2023.
5. On 20 December 2023, the ABC 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 ABC'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 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 ABC’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 ABC
 - the work already undertaken, and still required, to finalise the request.
8. On the information before the OAIC, I am satisfied that an extension to the processing period until **24 January 2024** is justified, for the following reasons:
 - Based on the scope of the FOI applicant’s request and the ABC’s submissions, I am satisfied that the request is complex, based on the range of documents captured by the request, the requirement to consult third parties and the ABC’s advice that: ‘There is a large number of documents to read and then consider exemptions for. The decision currently falls due on 27 December (initial 30 day period) which is during a fortnight where the agency is closed for Xmas shutdown. Internal consultation cannot take place until approx mid January once stakeholders are back from annual leave.’
9. In granting the extension of 29 days to 24 January 2024, I have also considered the steps taken by ABC to first obtain a 15AA agreement from the FOI applicant and the ABC’s Christmas shutdown period
10. I note the ABC has requested an extension of 34 days to 29 January 2024, however, based on the information before the OAIC, I have decided to grant an extension to 24 January 2024. While the request appears to involve some complexity, I am not satisfied that a full 34 day extension of time is justified in the circumstances based on the limited available evidence of work undertaken on the FOI request to date and the ABC’s request to the FOI applicant for an extension of time to 24 January 2024, under s 15AA of the FOI Act.
11. The ABC must provide the FOI applicant with a decision by 24 January 2024.
12. If the ABC has not provided the FOI applicant a decision by 24 January 2024 the FOI applicant may seek review by the Information Commissioner of ABC’s deemed access refusal decision of 24 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 ABC's decision or deemed decision. It also remains open to the ABC 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, quoting reference number RQ23/06437.

Yours sincerely,



Lakshmi Gopinath
Review Adviser
Freedom of Information Branch

21 December 2023

The agency's reasons for requesting an extension of time, as included in the extension of time request form.

Please also explain the reasons for the request and why an extension would be justified. Requests for longer extensions of time (more than 30 days) will require greater justification.

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 FOI team believes it has received most search results back however these need to be reviewed to ensure other documents or attachments are not missing, to see if more searches are needed

What work is required to finalise the request? *

There is a large number of documents to read and then consider exemptions for. The decision currently falls due on 27 December (initial 30 day period) which is during a fortnight where the agency is closed for Xmas shutdown. Internal consultation cannot take place until approx mid January once stakeholders are back from annual leave

Why is the request considered complex or voluminous? *

The amount of documents and pages involved

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

It concerns personal information of a person who is not the applicant. Unsure yet as to whether we need to approach that person under s 27A as it depends what exemptions may apply which are still being assessed.

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 ABC would communicate by email as per the emails attached with this form to update the applicant. If possible, the ABC would appreciate a 45 day extension as there currently a number of files due on 29 January (or close to it) and to factor in the 2 public holidays in January as well as annual leave being taken by the FOI team. However we would accept a 30 day extension if that is the OAIC's preference and do our best to work to this timeframe

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> .