



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	5 February 2024
OAIC reference number	RQ24/00409
Agency reference number	ABC FOI 202324-042

Decision

1. I refer to the application made by the Australian Broadcasting Corporation (ABC) under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of time 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 previously granted to the agency by 16 days to **9 February 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 24 January 2024.
5. On 24 January 2024, 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 and/or voluminous. A copy of the ABC's reasons is included at Attachment A.
6. On 25 January 2024, the Office of the Australian Information Commissioner (OAIC) consulted with the FOI applicant to seek their views on the ABC's application. The OAIC invited the FOI applicant to provide any comments by 30 January 2024, but no response has been received.

7. Please note that, although the ABC's email to the FOI applicant of 3 February 2024 states that 'The ABC has noted your response to the OAIC, of 1 February, granting the ABC an extension of processing time until Friday 9 February.', the OAIC records show that the OAIC did not receive a response from the FOI applicant on 1 February 2024.
8. When an agency applies to the Information Commissioner for an extension of time under s 15AB(1) of the FOI Act, it ordinarily proposes a new due date for notifying a decision to an FOI applicant. Notwithstanding the FOI applicant 'granting the ABC an extension', in considering the s 15AB(1) application, it remains at the Information Commissioner's discretion under s 15AB(2) to 'extend the period by a further period of 30 days, or such other period as the Information Commissioner considers appropriate.'

Reasons for decision

9. 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.
10. 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 Department]
 - any extension to the processing timeframes utilised under s 15(6)
 - the work already undertaken, and still required, to finalise the request.
11. On the information before the OAIC, I am satisfied that an extension to the processing period until **9 February 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 challenges involved in search and retrieval of the documents and the ABC's advice that :
'the complexity is liaising with various internal parties who have competing priorities and who have been on leave for an extended period.'
 - Based on the Department's submissions that the FOI applicant's request captures approximately 220 documents, I am satisfied the request is also voluminous in nature.

12. In granting this extension, I have also considered the work already undertaken by the ABC to finalise the request, measures taken by the ABC to ensure a decision is made within the extended time period, steps taken by the ABC to first obtain a 15AA agreement from the FOI applicant and/or to utilise relevant extension of time provisions available under the FOI Act to allow for third party consultation and the steps taken by the ABC to keep the FOI applicant informed of progress.
13. The ABC must provide the FOI applicant with a decision by 9 February 2024.
14. If the ABC does not provide the FOI applicant a decision by 9 February 2024, the FOI applicant may seek review by the Information Commissioner of the ABC's deemed access refusal decision of 9 February 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.
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 by email at FOIDR@oaic.gov.au, quoting reference number RQ24/00409.

Yours sincerely,



Lakshmi Gopinath
Assistant Director
Freedom of Information Branch

5 February 2024

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. *

The ABC received search results in December for a large number of documents (over 220 documents). It has been time consuming to read assess these against the scope, amongst other matters. Unfortunately many documents were unrelated in the end, however the administrative labour to get to this point was significant.

The FOI team has circulated relevant information for internal consultation so it can finalise its position on the matter and finalise the decision letter.

Due to relevant staff being absent over the Christmas break, these consults have only been seen by some staff yesterday and today.

What work is required to finalise the request? *

Given the nature of the scope and the seniority of staff required to be consulted, such persons have returned from leave this week.

The FOI team is verifying whether any further searches are required, and consulting about internal procedures which impact the final scoping of documents.

Once the remaining documents are confirmed, the document schedule can be finalised, redactions applied and the letter finalised.

The ABC is processing a high volume of original decisions, particularly those received in January. In order to keep those files moving and meet deadlines of February and March, the FOI team needs to allocate time to those files as well as to the final stages of this file.

The ABC FOI team is currently temporarily under-resourced by 0.4FTE in its team (impacting Dec to February) which has impacted productivity until this staffing is replaced in approximately March. This leaves 1.6FTE to handle all original files including this one and other regulatory duties under the FOI Act).

Why is the request considered complex or voluminous? *

The file was initially voluminous based on the first lot of search results. The ABC FOI team is small and is currently facing an extraordinarily high file load in January that it is trying to manage alongside files received in 2023. To assist we have sought approval for additional resourcing to manage the workload in time for statutory timeframes. Please refer information above re work remaining on the file - the complexity is liaising with various internal parties who have competing priorities and who have been on leave for an extended period.

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

Not the knowledge of the ABC.

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 extension sought is a short period of about 2 weeks (16 days minimum or 3 weeks maximum). We appreciate the discretion is with the OAIC and that less time may be granted. If there is any possibility for 3 weeks that would be most appreciative. The steps included seeking extra resourcing to facilitate the remaining stages of this file. We understand this has been approved in principle, we anticipate we will implement it once the final searches come back over the coming days. The ABC understands that the applicant will receive formal notice of the extension (if kindly granted) from the OAIC and that would serve to update the applicant on progress. We can also send a separate email update should that be helpful as we do not have a phone contact for this applicant. If the extension is not approved the ABC would issue a s 55G decision later in February to replace a deemed refusal.

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> .