



Decision to decline an extension of time under s 54D of the *Freedom of Information Act 1982*

Agency	Department of Veterans' Affairs
Applicant	Alan Ashmore
Date of decision	12 March 2024
OAIC reference number	RQ24/00866
Agency reference number	64862

Decision

1. On 7 March 2024, the Department of Veterans' Affairs (the Agency) applied to the Information Commissioner under s 54D(3) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of 30 days to 31 March 2024 to process Alan Ashmore's (the Applicant) FOI internal review request of 31 January 2024 (the internal review request).
2. The Applicant's internal review request has been deemed as affirmed as a decision has not been made by the Agency by 1 March 2024.
3. I am a delegate of the Information Commissioner. I am authorised to make decisions on applications for further time under s 54D(4) of the FOI Act.
4. On the basis of the information before me, I have decided to decline the Agency's request for further time to deal with the internal review request. The Agency is therefore deemed to have affirmed the original FOI decision on 1 March 2024. The Agency is encouraged, in the interested of administrative efficiency, to continue to process the request and release documents administratively if the applicant has not yet applied for IC review of the deemed decision.

Background

5. The background to this application is summarised in **Attachment A**.
6. A copy of the Agency's reasons for seeking an extension are included at **Attachment A**.

Reasons for decision

7. Subsection 54D(4) 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.

8. In making my decision under s 54D(4), I have considered the information provided by the Agency, and the FOI Guidelines issued by the Information Commissioner under s 93A of the FOI Act, in particular paragraphs [3.150] – [3.157].
9. 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 internal review request to date. As such, it appears the Agency did not utilise the processing period effectively and I cannot find that an extension is justified.
10. The effect of this decision is that the Agency remains deemed to have affirmed the original FOI decision on **1 March 2024**.
11. It is open to the applicant to seek Information Commissioner review (IC review) of the Agency's deemed affirmation decision of **1 March 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 affirmation decision.
12. For further information, the OAIC website provides a resource containing information on [applying for an extensions of time to process freedom of information requests](#).
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 on 1300 363 992 or by email at FOIDR@oaic.gov.au, quoting reference number RQ24/00866.

Yours sincerely,



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

12 March 2024

Background to processing period

Background	Processing period	Due date
FOI internal review request made on 31 January 2024	30 days	1 Mach 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. *

31/01/24 - Application for internal review received
5/02/24 - Application registered in processing system
08/02/24 - Application allocated to processing officer
23/02/24 - Internal review transferred to different processing officer as primary officer on leave
29/02/24 - Primary decision reviewed and statement from applicant considered.
29/02/24 - Primary search minutes reviewed.
1/03/24 - Officer contacted an additional business area which may hold additional documents within scope of the request.
1/03/24 - Business areas advised they will investigate and respond asap
4/03/24 - Formal search minute sent to Policy and research branch - due COB Friday 8/3
This applicant has another ongoing matter with DVA which has been the primary focus for the Information Access Unit to finalise. This has delayed the progression of this matter.

What work is required to finalise the request? *

Additional searches need to be conducted within the DVA Research and Ethics Team to identify if there are further documents within scope. Given the context of the request and consultations which took place with third parties for the primary request, it is likely that any additional documents found would need third party consults which will delay processing.
Any additional documents will also need assessment of sensitive material, redactions applied, and a decision made regarding release.

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

Only private third parties have a potential interest.

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 *

Proactive follow up with business areas to ensure searches are conducted swiftly and thoroughly. Updates to be provided to the applicant regarding any further consultations or delays in processing.

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 Court 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 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> .