



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

Agency	Australian Bureau of Statistics
FOI applicant	Grace n/a
Date of decision	15 December 2023
OAIC reference number	RQ23/06145
Agency reference number	FOI202324-14

Decision

1. On 13 December 2023, the Australian Bureau of Statistics (the ABS) applied to the Information Commissioner under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of 30 days, to 27 January 2024, to process Grace n/a's (the FOI applicant) request of 28 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 28 days to 25 January 2024. My reasons are outlined below.
4. I note the ABS has requested an extension of time to 27 January 2024, however, based on the information before the OAIC, I have decided to grant an extension to 25 January 2024 noting 27 January 2024 is a Saturday and 26 January 2024 is a public holiday.

Background

5. On 28 November 2023, the FOI applicant made an FOI request to the ABS. The FOI decision was due to be provided to the FOI applicant on 28 December 2023.
6. On 13 December 2023, the ABS 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 ABS' 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
 - ABS' 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 ABS
 - any extension to the processing timeframes utilised under s 15(6)
 - 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 **25 January 2024** is justified, for the following reason:
 - Based on the scope of the FOI applicant's request and ABS' submissions, I am satisfied that the request is complex, based on the range and highly technical nature of documents captured by the request, the challenges involved in the search and retrieval of any relevant documents, and the requirement to consult with the Australian Electoral Commission (AEC) and obtain subject matter expertise.
10. In granting this extension, I have also considered the work already undertaken by the ABS to finalise the request, measures taken by ABS to ensure a decision is made within the extended time period, steps taken by the ABS to first obtain a 15AA agreement from the FOI applicant, and steps taken by the ABS to keep the FOI applicant informed of progress.
11. The ABS must provide the FOI applicant with a decision by 25 January 2024.
12. If the ABS does not provide a decision by 25 January 2024 the FOI applicant may seek review by the Information Commissioner of the ABS' deemed access refusal decision of 25 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 ABS' decision or deemed decision. It also remains open to the ABS 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 RQ23/06145.

Yours sincerely,



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

15 December 2023

The ABS' 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. *

28/11/2023 - The request was received by the ABS.

On 29/11/2023 The agency emailed the Australian Electoral Commission (AEC), seeking their approval to transfer the matter to them under section 16 of the FOI Act. They responded on 6/12/2023, refusing the transfer.

On 6/12/2023 and 11/12/2023 emails were sent to the applicant asking for an extension of time.

The ABS has begun conducting searches for documents that fall within the scope of the request. Initial searches have indicated that the request will be substantial and complex in nature, requiring a significant amount of processing time, and will require consultation, at least with the AEC.

What work is required to finalise the request? *

In order to finalise the request:

- finalise the search and retrieval of documents in scope of the request;
- a consultation with the AEC will likely need to occur;
- the documents will need to be reviewed and prepared with any applicable exempt material redacted; and
- a final decision letter to be prepared and documents provided to the applicant.

Why is the request considered complex or voluminous? *

The request involves documents that were supplied as part of an agreement between the ABS and the AEC. This will require a significant consultation process and possible involvement from both agencies' legal departments. Additionally, there will likely be additional delays resulting from staff leave from relevant AEC staff in the FOI, subject matter expert area and legal department over the holiday period.

Furthermore, the request concerns documents related to the way that population projections were created as part of the 2023 redistribution of electorates. These type of documents contain information of a highly technical and statistical nature, as well as having legal implications due to the agreement in place between the ABS and AEC. Additional resources will need to be allocated in order to analyse these documents to determine the release.

The ABS has attempted to ask for a phone number from the applicant in order to have a phone conversation, with a view of identifying specific key documents that may satisfy the applicant's request and reduce processing time. The applicant has not responded to any of the emails sent to them by the ABS.

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

The AEC will need to be consulted as part of the request.

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 *

In order to ensure a decision is made within the period of the requested extension, the ABS will apply strict timeframes for consultation with the AEC and any legal departments that must be consulted with as part of the request.

If an extension is granted, the ABS will contact the applicant by email to inform them of the new due date. If the applicant responds to the ABS' request for a contact number, we will organise a phone call to discuss further and ensure the applicant remains informed of the progress of the request.

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> .