



Decision to grant an extension of time under s 15AB of the *Freedom of Information Act 1282*

Agency	Australian Public Service Commission
FOI applicant	Mr Paul Williams
Date of decision	22 December 2023
OAIC reference number	RQ23/06498
Agency reference number	LEX 729

Decision

1. On 21 December 2023, Australian Public Service Commission (the Agency) applied to the Information Commissioner under s 15AB(1) of the *Freedom of Information Act 1282* (Cth) (FOI Act) for an extension of 33 days to 1 February 2024 to process Mr Paul Williams's (the FOI applicant) request of 30 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 13 days to 12 January 2024. My reasons are outlined below.
4. I note the Agency has requested an extension of time to 1 February 2024, however, based on the information before the OAIC, I have decided to grant an extension to 12 January 2024. While the request appears to involve some complexity, I am not satisfied that a 33 day extension of time is justified in the circumstances based on the limited nature of the complexity involved.

Background

5. On 30 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 30 November 2023.
6. On 21 December 2023, the Agency 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 agency's 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
 - the Agency’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 Agency
 - 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 **12 January 2024** is justified, for the following reasons:
 - Based on the scope of the Department’s submissions, I am satisfied that the request is complex, based on the absence of key decision-making personnel due to the Agency’s shutdown period.
10. In granting this extension, I have also considered the work already undertaken by the Agency to finalise the request and steps taken by the Agency to first obtain a 15AA agreement from the FOI applicant.
11. agreement under s 15AA to facilitate an agreed extension, prior to seeking a s 15AB extension.
12. The Department must provide the FOI applicant with a decision by 12 January 2024.
13. If the Agency does not provide the FOI applicant a decision by 12 January 2024 the FOI applicant may seek review by the Information Commissioner of the Agency’s deemed access refusal decision of 12 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 Agency’s decision or deemed decision. It also remains open to the Agency to apply for a further extension of time from the Information Commissioner if considered appropriate.
14. This extension of time matter is now closed. Your review rights are set out below.

15. If you would like to discuss this matter, please contact our office by email at FOIDR@oaic.gov.au, quoting reference number RQ23/06498.

Yours sincerely,



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

22 December 2023

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. *

On 30 November 2023, the applicant requested documents in relation to meetings with between APSC and registered unions.

Consultations with several internal business areas have been conducted, and concerns regarding the scope of the request were raised.

On 8 December 2023, the applicant had revised the scope of the request in terms of a date range.

At present there are conflicting views on what is captured under the scope of the request.

What work is required to finalise the request? *

The following work is remaining:

1. Ascertain whether documents will within the scope of the request
2. Potential redaction of documents
3. Consultations with third parties
4. Writing statement of reasons and decision letter

Why is the request considered complex or voluminous? *

Because of the nature of the request and its complexity, we require input from key decision makers to ascertain the relevancy of the documents and what is considered in scope. However, noting that the decision date falls during our Christmas shutdown, the key decision makers are on leave, and will not return until the New Year.

Further, the requested documents are in relation to internal meetings, therefore diligent examination must also be made to every document, consultations are to be made internally, and is likely that there is to be significant redactions if considered within the scope of this request.

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

We will require consultation with third parties, i.e. Unions, in relation to this 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 *

Within the extended period, the Commission would have capacity to process the applicant's request as key decision makers and the rest of the Commission's FOI team will be return from their Christmas and New Years leave.

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 1277*.

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 1282* (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>.