



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

<b>Agency</b>	Services Australia
<b>FOI applicant</b>	Frank N Fearless
<b>Date of Decision</b>	2 January 2024
<b>OAIC reference number</b>	RQ23/06237
<b>Agency reference number</b>	LEX 77492

### Decision

1. I refer to the application made by Services Australia under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of time to process Frank N Fearless's (the FOI applicant) request of 4 December 2023 (the FOI request).
2. As a delegate of the Information Commissioner, I am authorised to make decisions on extensions of time applications made under s 15AB(2) of the FOI Act.
3. On the information before the Information Commissioner, I have decided to decline Services Australia's request to extend the processing period. A decision on the FOI applicant's request therefore remains due by 3 January 2024. My reasons are outlined below.

### Background

4. On 4 December 2023, the FOI applicant made an FOI request to Services Australia. The FOI decision is due to be provided to the FOI applicant on 3 January 2024.
5. On 15 December 2023, Services Australia applied to the Information Commissioner for further time to process the FOI applicant's request under s 15AB(1) of the FOI Act, 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 Services Australia'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 declining to extend the processing period 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
  - Services Australia’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 Services Australia
  - any extension to the processing timeframes already utilised under s 15(6)
  - the work already undertaken, and still required, to finalise the request
  - the FOI applicant’s views on this extension of time request.
8. On the information before the OAIC, I am not satisfied that the application to extend the processing period is justified, for the following reasons:
  - Based on publicly available information,<sup>1</sup> Services Australia already notified the FOI applicant of a decision on the FOI request on 21 December 2023 – within the initial decision period. Therefore, despite Services Australia’s claim about the impact of the request’s complexity on its processing of the request, the initial decision period is sufficient for Services Australia to adequately deal with the FOI request. Granting the extension requested (to 2 February 2024) where a decision on the FOI request has been issued is also not warranted in the circumstances.
9. This extension of time matter is now closed. Your review rights are set out below.
10. If you wish to discuss this matter, please contact us by email at [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au) quoting reference number RQ23/06237.

Yours sincerely



**Bernie Lai**  
Assistant Director

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<sup>1</sup> [https://www.righttoknow.org.au/request/unlawful\\_calculations\\_resulting#incoming-33138](https://www.righttoknow.org.au/request/unlawful_calculations_resulting#incoming-33138)

Freedom of Information Branch  
Office of the Australian Information Commissioner

2 January 2024

## Attachment A

### 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. \*

4/12/2023 - Request received  
6/12/2023 - Search minute sent out  
12/12/2023 - Documents received

What work is required to finalise the request? \*

Consultation with internal business areas  
Consultation with minister's office  
Consultation with other government agencies

Why is the request considered complex or voluminous? \*

The request is for reports on sampling exercises done in relation to income apportionment which is a very high profile topic currently. Clearances will need to be provided by a number of internal and external interested stakeholders. Time on the clock will also be taken up by Christmas shutdown periods.

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

Yes

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 \*

Will consult with all relevant parties, making allowance for the shutdown periods.  
Will prepare a decision and obtain associated clearances.

## 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 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> .