



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

Agency	Department of Health and Aged Care
FOI applicant	Eperke Barsony
Date of decision	1 March 2024
OAIC reference number	RQ24/00740
Agency reference number	FOI 4876

Decision

1. On 23 February 2024, Department of Health and Aged Care (the Department) applied to the Information Commissioner under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of 15 days to 11 March 2024 to process Eperke Barsony's (the FOI applicant) request of 12 December 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 15 days to 11 March 2024. My reasons are outlined below.

Background

4. On 12 December 2023, the FOI applicant made an FOI request to the Department. The FOI decision was due to be provided to the FOI applicant on 12 December 2023.
5. On 23 February 2024, the Department 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 [agency]'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 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 Department’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
8. On the information before the OAIC, I am satisfied that an extension to the processing period until **11 March 2024** is justified, for the following reasons:
 - Based on the scope of r the Department’s submissions, I am satisfied that the request is complex, based on difficulties incurred in obtaining timely responses from consulted third parties.
9. In granting this extension, I have also considered the work already undertaken by the Department to finalise the request, measures taken by the Department to ensure a decision is made within the extended time period/ and steps taken by the Department to first obtain a 15AA agreement from the FOI applicant.
10. The Department must provide the FOI applicant with a decision by 11 March 2024.
11. If the Department does not provide the FOI applicant a decision by 11 March 2024 the FOI applicant may seek review by the Information Commissioner of the Department’s deemed access refusal decision of 11 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 Department’s decision or deemed decision. It also remains open to the Department to apply for a further extension of time from the Information Commissioner if considered appropriate.
12. This extension of time matter is now closed. Your review rights are set out below.

13. If you would like to discuss this matter, please contact our office by email at FOIDR@oaic.gov.au, quoting reference number RQ24/00740.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Hannah Holswilder', with a long horizontal flourish extending to the right.

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

1 March 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. *

An extension of time was granted under s15AA as the request was received on 12 December 2024 and the Department had holiday shutdown within 2 weeks of this date.

When the Department reopened documents had been located and third parties were required to be consulted due to business and personal information.

There were 49 documents located that were found to be in scope. Due to the very sensitive nature of some of these documents we sought clarification with the applicant as to whether these could be out of scope. The applicant agreed. This took the count to 40 documents in scope and 509 pages.

There were 20 third parties that were consulted on 12 Jan 2024, requesting a response by 19 Jan 2024. 7 of these third parties were sent follow up emails on 23 January 2024.

The decision maker took into account the third party submissions and the document pack was marked up accordingly. Internal areas were consulted regarding some documents that may have contained exempt material. This was also taken into account. The FOI team sought additional information from the business area processing the request, as to the reasoning to some of the sensitivities marked up. A further extension of time was requested from the applicant on 19 February 2023 to finalise the decision and the preparation of final documentation for release. No response was received. A new decision maker started in the role on 19 February 2024 and an extension of time is requested in order for them to consider the request and to make an informed decision based on what the previous decision maker had found.

What work is required to finalise the request? *

The new decision maker needs to review the request and document pack to make an informed decision. The final decision and document pack can then be finalised based on the new decision makers view.

Why is the request considered complex or voluminous? *

The request was received shortly before Dec/Jan shut down. There were 20 third parties that needed to be consulted. There were a number of follow ups required. A large number of the documents being sought contains sensitive personal information. There are 40 documents with a total of 509 pages. Internal areas of the department needed to be consulted. The initial decision maker left the role and a new decision maker started in the role on 19 February 2024

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

No

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 business area is very engaged and the new decision maker will be considering the request, submissions from third parties and documents and potential exemptions in the next week. We can then finalise the document pack and decision.

We will advise the applicant of any delays in the processing of this 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> .