



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

Agency	Bureau of Meteorology
FOI applicant	CR
Date of decision	5 February 2024
OAIC reference number	RQ24/00494
Agency reference number	FOI30/123

### Decision

1. I refer to the application made by Bureau of Meteorology (the Agency) under s 15AC(4) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of time to process CR's (the FOI applicant) request of 18 December 2023 (the FOI request).
2. As a delegate of the Information Commissioner, I am authorised to make decisions on applications for further time under s 15AC(5) of the FOI Act.
3. Under s 15AC(5) I have decided to grant the Agency further time to deal with the request to **1 March 2024**. My reasons are outlined below.

### Background

4. On 18 December 2023, the FOI applicant made an FOI request to the Agency. The FOI decision was due to be provided to the FOI applicant on 31 January 2024.
5. On 2 February 2024, the Agency applied to the Information Commissioner for further time to process the FOI applicant's request under s 15AC(4) on the basis that the processing period is insufficient to adequately deal with the FOI request. A copy of the Agency's reasons are included at **Attachment A**.

### Reasons for decision

6. Subsection 15AC(5) of the FOI Act provides that I may allow further time that I consider appropriate for the agency or Minister to deal with the request.
7. In granting this application for further time under s 15AC(5), 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 [3.164] – [3.167]
  - the scope and complexity of the FOI request
  - the reasons for delay in making an initial decision

- the period of time sought, and the total estimated processing time
  - whether discussions with the applicant about the delay and extension of time application have occurred
  - the desirability of the decision being decided by the agency or minister rather than by IC review
  - the FOI applicant's views on this extension of time request as shown on the Right to Know website.
8. On the information before the OAIC, I am satisfied that the application for further time until **1 March 2024** is justified, for the following reasons:
- The further time sought by the Agency does not appear to be excessive in the circumstances noting it is expected that third party consultation will be required.
  - Granting this further time will also reinstate the applicant's right to seek an internal review of the Agency's decision, and to extend the timeframe for the applicant to apply for an IC review of the Agency's decision.
9. In granting this further time, I have also considered the work already undertaken by [the Agency] to finalise the request/ measures taken by the Agency to ensure a decision is made within the extended time period/ steps taken by the Agency to first request [or obtain] a s 15AA agreement from the FOI applicant and/or to utilise relevant extension of time provisions available under the FOI Act to allow for third party consultation/ steps taken by the Agency to keep the FOI applicant informed of progress/ the FOI applicant's agreement to this further time being granted.
10. The new due date for the agency's decision on the FOI request is now **1 March 2024**.
11. This further time granted under s 15AC of the FOI Act means that the deemed refusal is taken never to have applied if the agency makes a decision on the request by **1 March 2024**. Such an extension can only be granted once and cannot be extended by a variation.
12. I note that the *Freedom of Information (Charges) Regulations 2019* provides if an applicant is not notified of a decision on a request within the statutory time limit (including any extension of time), the agency or Minister cannot impose a charge for providing access, even if the applicant was earlier notified that a charge was payable (regs 7(2), (3)). This further time granted under s 15AC of the FOI Act means that charges cannot be reimposed and any deposit the applicant has paid should be refunded.
13. If the Agency does not provide the applicant a decision by **1 March 2024**, or the applicant disagrees with a decision from the agency, it will be open to the applicant to seek Information Commissioner review (IC review). 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.
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 on 1300 363 992 or by email at [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au), quoting reference number RQ24/00494.

Yours sincerely,



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

5 February 2024

## Attachment A

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. \*

- From receipt of FOI request, the Bureau engaged Applicant to revise scope.
- Following initial engagement, the Bureau had issued notice pursuant to s 24AB(2) and entered into formal consultation process with Applicant to further reduce scope.
- During consultation process, the Bureau and Applicant engaged in efforts to reduce.
- The Applicant submitted a revised request.

What work is required to finalise the request? \*

- The Bureau had issued notice pursuant to s 24AB(2) and entered into consultation process with Applicant.
- Although the Applicant submitted a revised request, the Bureau must now:
    - conduct further searches for document/s in scope;
    - based on the nature of revised request, some documents (being emails) may be 'archived. This therefore requires effort to locate and retrieve document/s, and in addition to which staff will need to review document/s in scope;
    - based on the nature of revised request, the Bureau anticipates the need to consult with and obtain views of 3rd parties. Accordingly, document/s will need to be prepared and consultation will be undertaken; and
    - there will be a need for time review of materials for any exemptions; the preparation of document/s; and the preparation of document schedule and decision notice.

Please describe the scope and complexity of the request. Please provide the number of documents at issue and the number of folios, as well as any complexity in the nature of those document \*

- The Bureau notes the following:
- The Applicant initial request was very broad in scope. Following initial informal engagements, the Bureau had issued notice pursuant to s 24AB(2) and entered into consultation process with Applicant. One basis of the decision maker's view was and is the consideration that there would be an unreasonable diversion of limited specialist staff from their crucial operational duties during this current peak weather season. Many of the Bureau's operation staff necessary to the task of processing the request are focused on their operational duties during this crucial peak weather season. To divert these and other operational resources remains a significant and substantial diversion of resources and poses grave concern to ongoing operations.
  - The Bureau has sought to take as reasonable steps as practicable in the circumstances to support of the objects of the FOI Act, and continued in good faith to engage the Applicant during consultation process to reduce the scope.
  - The Bureau has, in dealing with the Applicant's access request, been open with the Applicant regarding the complexity of what has been requested, and the demands placed on the Bureau's resources to process the request (in its various iterations) particularly during this crucial peak weather season. The Bureau has twice, unsuccessfully, requested further time in lieu of circumstances.
  - The Applicant has now provided a revised request. However, based on the revision, the Bureau requires further time to process the revised request, particularly in view of its other current operational demands.
  - Although the Applicant submitted a revised request, the Bureau must now: conduct further searches for document/s in scope. Based on the nature of revised request, some documents (being emails) may be 'archived. This therefore requires effort to locate and retrieve document/s, and in addition to which staff will need to review document/s in scope.
  - We further note that based on the terms of the revised request, it is likely some documents in scope affect 3rd parties- namely various emergency management agencies. The documents likely to be relevant to the request 'service arrangement documents' that concern ongoing inter-agency cooperation and operational requirements. The Bureau anticipates the need to consult with and obtain views of 3rd parties because of the sensitive and complex nature of these documents and intrinsic operational relationship between parties.

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

- The Bureau anticipates the need to consult with and obtain views of 3rd parties - being various emergency management agencies.

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 Bureau will as efficiently as possible: conduct searches; undertake any relevant consultations with 3rd parties; review and prepare materials (including decision notice). In taking all necessary and reasonable steps to process the revised request, the Bureau will keep the Applicant informed of progress.

## Review rights

### Review by the Administrative Appeals Tribunal

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 is available on our website:

<https://www.oaic.gov.au/freedom-of-information/reviews-and-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>.