



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

Agency	Department of the Prime Minister and Cabinet
FOI applicant	Alex Pentland
Date of decision	29 January 2024
OAIC reference number	RQ24/00357
Agency reference number	2023/366

Decision

1. On 23 January 2024, Department of the Prime Minister and Cabinet (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 14 days to 8 February 2024 to process Alex Pentland's (the FOI applicant) request of 27 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 14 days to 8 February 2024. My reasons are outlined below.

Background

4. On 27 November 2023, the FOI applicant made an FOI request to the Department. The FOI decision was due to be provided to the FOI applicant on 27 November 2023.
5. On 23 January 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. 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
 - 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 **8 February 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 challenges involved in the search and retrieval of any relevant documents and the absence of key decision-making personnel due to the Department’s shutdown period.
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 8 February 2024.
11. If the Department does not provide the FOI applicant a decision by 8 February 2024 the FOI applicant may seek review by the Information Commissioner of the Department’s deemed access refusal decision of 8 February 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 RQ24/00357.

Yours sincerely,



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

29 January 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. *

We note that this request was originally received by the Attorney-General's Department (AGD) on 26 November 2023. AGD was also the Department responsible for seeking the 30-day extension of time from the applicant. This was sought and actioned before the Department became aware of this matter.

The Department did not receive the request on transfer until 11 December 2023. The additional time was not used by the Department, instead it was used by the original agency ahead of its decision to seek transfer.

Since accepting the matter on transfer it is noted that the Office was closed between 22 December 2023 and 2 January 2024. The Department is also facing an influx of matters. FOI officers have undertaken, and continue to undertake, investigation within the Department to determine the existence and location of relevant document holdings, made arrangements for staff to gain access to restricted folders to undertake detailed document review, and have identified the delegate for the decision on access.

What work is required to finalise the request? *

The Department continues to work through the document search process, noting that the documents relate to the work of the Robodebt Royal Commission Response taskforce. This taskforce was staffed with officers for a variety of APS agencies, who no longer remain within the Department, and the documents sought are highly specific.

Once all responsive documents are identified and access to restricted files are granted to FOI officers, the delegate will be able to complete their preliminary assessments on sensitivities and necessary consultation. We anticipate that it will be necessary for the Department to undertake consultation with other Commonwealth agencies ahead of finalising its decision. After conducting a review of the documents, the Department will also need to consider whether any exemptions apply, redact any exempted material and prepare and settle its decision in accordance with the protocols set out in our Business Rules.

Why is the request considered complex or voluminous? *

The request is complex, as the applicant has sought access to highly specific documents, which are difficult to locate. The relevant taskforce has wound up and no taskforce officers remain within the Department to assist in the identification of documents responsive to the request. The documents sought are highly specific and specialised knowledge would be highly assistive to reduce the time required to undertake document review.

The request is also complex due to the nature of the taskforce, being a jointly-led taskforce. Due to staffing pressures over the Government Christmas shutdown period, unexpected illness affecting the responsible case officers, and a surge in FOI requests, the Department is not in a position to finalise its decision.

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

The Robodebt Royal Commission Government Response Taskforce sought input from a number of relevant agencies and worked closely with numerous stakeholders in the development of the Government's response to the final report of the Royal Commission into the Robodebt Scheme. We anticipate it will be necessary for the Department to undertake consultation with other Commonwealth agencies ahead of finalising its decision. It is noted any such consultation will not trigger extension of time provisions under the FOI Act.

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 *

FOI case officers have put in place measures to ensure the request will be able to be actioned within the requested additional time. We have sought support from centralised IT teams to undertake searches of all systems to identify responsive documents, and the delegate is supporting all activities related to the processing of the FOI request in a prompt manner.

To keep the applicant informed of the progress of their request, the Department has written to the applicant to advise that an extension of time request will be sought under section 15AB. We note that the Department provides its FOI specific phone number, and email in all correspondence with all applicants, and that we have invited the applicant to contact the Department if they have any concerns.

In the event that we receive a response from the applicant ahead of the OAIC's decision under 15AB, we endeavour to provide a copy to you.

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> .