



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

Agency	Services Australia
FOI applicant	Frank N Fearless
Date of decision	8 May 2024
OAIC reference number	RQ24/01636
Agency reference number	LEX 78943

Decision

1. On 2 May 2024, Services Australia (the Agency) applied to the Information Commissioner under s 15AC(4) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of 11 days to 6 May 2024 to process Frank N Fearless' (the FOI applicant) request of 26 March 2024 (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 **6 May 2024**. My reasons are outlined below.

Background

4. On 26 March 2024, the FOI applicant made an FOI request to the Agency. The FOI decision was due to be provided to the FOI applicant on 25 April 2024.
5. On 2 May 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 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.
8. On the information before the OAIC, I am satisfied that the application for further time until **6 May 2024** is justified, for the following reasons:
- Based on the Agency's submissions, I am satisfied that the involves some challenges for the Agency, based on the sensitive nature of the documents requested and difficulties incurred in consulting third parties.
 - The further time sought by the Agency does not appear to be excessive in the circumstances.
 - 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 and steps taken by the Agency to keep the FOI applicant informed of progress.
10. The new due date for the agency's decision on the FOI request is now **6 May 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 **6 May 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 **6 May 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.

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. *

26 March 2024 - Applicant made an FOI request to the Agency.
 28 March 2024 - search minute was sent to the relevant business area.
 4 April 2024 - acknowledgement letter sent to the Applicant.
 9 April 2024 - search minute returned from relevant business area.
 10 April 2024 - further documents were sought from the business area. Documents provided.
 11 April 2024 - advice sought on responsible business area to advise on sensitivities in further documents.
 12 April 2024 - documents sent to second business area for consultation on sensitivities.
 16 April 2024 - advice on sensitivities received from second business area.
 16 April 2024 - internal quality assurance processes started.
 17 April 2024 - documents sent to Department of Social Services (DSS) for courtesy consultation. Documents due 23 April 2024.
 24 April 2024 - courtesy consultation received from DSS.
 24 April 2024 - sensitivities raised by DSS provided to first business area for advice.
 1 May 2024 - advice received from first business area.

What work is required to finalise the request? *

Incorporate further comments having regard to comments from DSS and first business area.
 Finalise redactions.
 Undertake further quality assurance processes prior to notification of decision.

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 request sought documents relating to income apportionment and a sampling activity undertaken by the Agency. One document (totalling 68 pages) was retrieved. Consultation with DSS took longer than expected. The subject matter of the request is sensitive in nature and multiple stakeholders needed to be consulted to ensure all sensitivities were identified.

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

Yes. The Department of Social Security was consulted about the documents.

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 *

An email was sent to the Applicant on 1 May 2024 confirming the request deemed on 26 April 2024 (attached). On 2 May 2024, the Agency advised the Applicant an EOT was being sought under section 15AC (attached).

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>.