



Our reference: RQ18/03633
Agency reference: FOI Request No. 219/18/19

Mr Josh Morrison

Sent by email: foi+request-5142-9e0c6d6b@righttoknow.org.au

Extension of time under s 15AB

Dear Mr Morrison

On 13 December 2018, the Department of Defence (the Department) applied to the Office of the Australian Information Commissioner (the OAIC) for further time to make a decision on your FOI request of 4 December 2018.

This application for an additional 30 days was made on the basis that the period for processing your FOI request is insufficient to deal adequately with your request because it is complex or voluminous.

The Department advised that it sought your agreement to an extension of time for a period of 30 days under s 15AA of the FOI Act, such that the period for processing your request would end on 2 February 2019 and that you opposed the Department's request.

The effect of the Department's request to the OAIC is that the time for the Department to make a decision on your FOI request would be extended to 2 February 2019.

Decision

As a delegate of the Information Commissioner, I am authorised to make decisions on applications for extensions of time under s 15AB of the FOI Act. I have decided to grant the Department an extension of time under s 15AB(2) of the FOI Act to **18 January 2019** (and not 2 February 2019 as sought).

By granting an extension of time it is anticipated that the Department will provide a well-reasoned and better managed decision.

In making my decision, I have had regard to the reasons provided by the Department, including that:

- the Department is subject to a stand-down period between 22 December 2018 and 1 January 2019

- there is a period of compulsory leave (subject to operational requirements) during the statutory processing period of your FOI request which will impact on the availability of subject matter experts and authorised decision-makers within the Department, and
- the military posting cycle occurs during the processing period

and that these factors will impact on the Department's ability to make a decision within the statutory period.

I note that the Guidelines issued by the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982* provides at paragraph [3.149] that:

Staff absences due to public holidays or agency shutdown periods may be relevant to whether an extension should be granted, if the particular staff members have skills or knowledge that may be required to process the request in the normal statutory timeframe.

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:

[FOI fact sheet 16: Freedom of information — Extensions of time](#)

[FOI agency resource 13: Extension of time for processing requests.](#)

Contact

If you have any questions about this correspondence, please contact me on 02 9284 9643 or via email foidr@oaic.gov.au. In all correspondence please include OAIC reference number RQ18/03633.

Yours sincerely



Allan Teves
Acting Director
Freedom of Information

20 December 2018

Review rights

Judicial review

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 application under the *Freedom of Information Act 1982* (the FOI Act) 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/>.

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>.