



Our reference: RQ19/01300
Agency reference: 1-HKFA1RB

Deux NonPareil

Sent by email: foi+request-5354-be0a6603@righttoknow.org.au

Extension of time under s 15AB

Dear Deux,

On 3 May 2019, the Australian Taxation Office (the agency) applied for further time to make a decision on your FOI request of 6 April 2019 under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

This application is on the basis that the processing period is insufficient to deal adequately with your request, because it is complex.

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 agency an extension of time of 14 days under s 15AB(2) of the FOI Act to **20 May 2019**. In coming to this decision I have considered factors and advice, including the following:

- The sensitives of the documents identified as falling within the scope of your request, which includes a mix of personal and professional information related to an ongoing internal dispute
- The complexity in undertaking searches for documents, including the unavailability of staff and office closures over the Easter and Anzac Day period
- Extensive consultation with internal stakeholders is required prior to the release of any documents
- the *Guidelines issued by the Information Commissioner under s 93A of the FOI Act* at [3.149] which states:

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.

On the other hand, lack of staff because of inadequate allocation of resources to FOI processing or failure to assign additional temporary resources to FOI processing at peak times will not normally justify an extension in the absence of other extenuating circumstances.

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 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 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:

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

[FOI agency resource 13: 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/foi-complaints>

Contact

If you have any questions, please contact me on (02) 9284 9711 or via email
foidr@oaic.gov.au. In all correspondence please include reference number RQ19/01300.

Yours sincerely



Hannah Kreiselmaier
Assistant Review and Investigation Adviser
14 May 2019