



Our reference: RQ19/03020
Agency reference: LEX 393

Mr Edward Kerrigan

Sent by email: foi+request-5587-2c630c60@righttoknow.org.au

Extension of time under s 15AB

Dear Mr Kerrigan

On 18 November 2019, the Department of Foreign Affairs and Trade (Department) applied to the Office of the Australian Information Commissioner (the OAIC) for further time to make a decision on your FOI request of 20 August 2019 under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

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

On 16 September 2019, the Department obtained your agreement under s 15AA of the FOI Act for a 27 day extension of time to 16 October 2019.

The Department advised that the statutory timeframe had been suspended under s 31 of the FOI Act.

On 21 October 2019, the Department also advised that the statutory timeframe had already been extended to allow for consultation in accordance with s 15(6) of the FOI Act. This extended the decision period to 20 November 2019.

Contact with you

On 22 November 2019, I wrote to you to seek your view on the Department's application. You responded to my inquiries and provided comments which I have taken into consideration, including:

I am opposed to granting DFAT a further extension of time.

Most of the enquiries that DFAT appears to have been conducting consecutively could in fact have been undertaken in parallel. The fact that an overseas post is involved is irrelevant. DFAT posts are well connected to Canberra and equipped to undertake searches and enquires in much the same way as they may be conducted in Canberra. The fact that responses have not been received from third parties may simply signify that those third parties are not interested or have no concerns with my FOI request. That is particularly so

given that the documents I seek are simple rent/ lease agreements from some years ago. It is difficult to understand how disclosure of these documents could be considered in any way sensitive, even if the relevant third parties did object - which they apparently do not. It is unclear what further (unspecified) processing and clearances DFAT could possibly need to undertake at this stage of the process, that could not have been at least partially in train before now.

Whilst I do not wish to be unfair, it feels very much like DFAT is looking for ways to refuse this application rather than looking for a way to assist with my request, consistent with the objectives of the FOI legislation. I've been happy to be reasonable in granting an extension earlier in the process, but am of the view that DFAT has now had more than ample time to deal with what is a relatively straight-forward request.

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 for 30 days under s 15AB(2) of the FOI Act **to 20 December 2019**. I am satisfied that the Department's application for an extension of time is justified, because your request is complex. My reasons follow:

- the Department has advised that considerable time was spent on the search and retrieval of documents relevant to the scope of your request in the relevant line area, including an overseas mission
- the Department has experienced delays with receiving responses to consultations with third parties
- on 7 November 2019, the Department conducted third party consultations with the response due date as 13 November 2019
- on 18 November 2019, the Department followed up with the third party consultations with the response due date as 21 November 2019
- to date, the Department is yet to receive the third party consultation responses. The Department has proceeded with processing the request despite not receiving the third party responses, and
- further time is required for the Department to process the request and obtain clearances on the decision and relevant documents from the line areas, Posts and the appropriate SES level officer.

I have also considered your comments provided to this office on 22 November 2019, including your views regarding the time taken to undertake internal and external consultations. Although I am of the view that internal consultations is a standard part of processing FOI requests, I am satisfied that the need to conduct consultations with overseas

missions makes the request complex and justifies that further time is required to process the request.

I acknowledge that the statutory timeframe to process your request has already been extended under other statutory provisions. I am satisfied with the Department's submission that the request for documents between 2013 to 2016 from a range of overseas line areas is complex and involves a range of sensitivities involving third parties. The Department advised that third party consultations were necessary to inform its decision in relation to the majority of the material within the scope of the request. As the Department has not received any response from third parties to date, the Department provided the update that it has proceeded with processing the request and further time is required for the Department to make a decision on the request without the third party advice. For the reasons outlined above, I am satisfied that the Department's application for this extension of time is justified.

I further note that in line with the objects of the FOI Act, by granting this extension of time, your internal review rights will be retained.

Contact

If you have any questions about this email, please contact me on (02) 9284 9686 or by email foidr@oaic.gov.au. In all correspondence please include OAIC reference RQ19/03020.

Yours sincerely

A handwritten signature in black ink that reads "Adie Chang". The signature is written in a cursive, flowing style.

Adie Chang

Review and Investigation Adviser (Legal)
Freedom of Information

26 November 2019

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:

[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/reviews-and-complaints/make-an-foi-complaint/>.