



Our reference: RQ19/03062
Agency reference: Ministerial diary

The National Advocate

By email: foi+request-5672-a68adf0e@righttoknow.org.au

Extension of time under s 15AC

Dear National Advocate,

On 22 November 2019, the Department of Health (the Department) advised this office that it had not made a decision on your FOI request of 2 October 2019 within the statutory period provided by the *Freedom of Information Act 1982* (Cth) (the FOI Act).

However, s 15AC of the FOI Act allows the Information Commissioner to extend the processing time for an FOI request where the initial decision period has ended and the agency or Minister has not provided the applicant with notice of a decision. The Department has applied for further time to finalise your request.

Decision

As a delegate of the Information Commissioner, I am authorised to make decisions on applications for extensions of time under s 15AC of the FOI Act.

I have decided to grant the Department further time under s 15AC(5) of the FOI Act **to 13 December 2019**.

In coming to this decision I have considered the following factors:

- the Department is assisting Minister Hunt's office with the processing your request
- the Department's advice that it requires further time to engage in consultation with you regarding the scope of your request
- a notice under s 24AB of the FOI Act was sent to you on 11 November 2019
- at the time of submitting its extension of time request, the Department had not yet received a response from you to the consultation notice.

This extension of time under s 15AC of the FOI Act means that the deemed refusal is taken never to have applied if the Department makes a decision on your request by 13 December 2019. Such an extension can only be granted once and cannot be extended by a variation.

I note that the *Freedom of Information (Charges) Regulations 1982* 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 5(2), (3)). This extension under s 15AC of the FOI Act does not mean that charges can be reimposed and any deposit you have paid should be refunded.

Contact

If you have any questions about this email, please contact me on (02) 9284 9711 or via email foidr@oaic.gov.au. In all correspondence please include OAIC reference number at the top of this letter.

Yours sincerely



Hannah Kreiselmaier
Review Adviser (Legal)

3 December 2019

Review rights

If you disagree with the OAIC's 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>