



Our reference: RQ20/01653
Agency reference: 189/2020

Chris F

Sent by email: foi+request-6338-5d5cdf12@righttoknow.org.au

Extension of time under s 15AB

Dear Chris F

On 15 May 2020, the Digital Transformation Agency (the DTA) applied for further time to make a decision on your FOI request of 13 May 2020 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.

Contact with you

On 21 May 2020, I wrote to you to seek your view on the DTA's application. You responded to my inquiries and provided comments that I have taken into consideration. In summary, you said:

- There is a public interest in release of information about the COVIDsafe APP.
- Some of the reasons provided by DTA are not relevant as to whether an extension of time should be granted under s 15AB.
- The request is not complex, or complexity claimed by the DTA is merely hypothetical.

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 DTA an extension of time under s 15AB(2) of the FOI Act **to 12 July 2020**. I am satisfied that the DTA's application for an extension of time is justified, because the request is complex. My reasons follow:

- The request is complex as it may involve consultation with other government agencies, in particular the Department of Health as the publisher of the COVIDSafe App.
- The line area responsible for the information is already processing three other applications on various subjects related to the COVIDSafe App development.
- The DTA has to consider its allocation of FOI requests to relevant officers without affecting its core and urgent work.
- The DTA usually receives less than 20 FOI requests per year. Consequently the DTA's FOI officer is a part time role. However, the DTA currently has six active FOI request, three of which are related to the COVIDSafe app.

In your submissions, you contend that the DTA's advice that it has insufficient resources to process the request within the initial decision period is a factor that is ordinarily an irrelevant consideration in relation to a decision to grant an extension of time under s 15AB of the FOI Act.

The FOI Guidelines state at [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. 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*. [emphasis added]

I am satisfied that extenuating circumstances exist due to the COVID-19 pandemic, and this has had a direct affect on DTA and its ability to process this FOI request. Accordingly, I am satisfied that a 30 day extension of time is appropriate in this circumstance.

Contact

If you would like to discuss this matter you may contact me on 02 9284 9745 or via email Carl.English@oaic.gov.au. In all correspondence please include the reference number at the top of this letter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'C. English', enclosed in a light blue rectangular border.

Carl English
Review Adviser (Legal)
Freedom of Information Dispute Resolution

22 May 2020

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/>.