



Our reference: RQ20/03175  
Agency reference: LEX2125

**Mr Peter Timmins**

Sent by email: [foi+request-6413-96a89396@righttoknow.org.au](mailto:foi+request-6413-96a89396@righttoknow.org.au)

**Extension of time under s 15AB**

Dear Mr Timmins

On 31 August 2020, the Department of Foreign Affairs and Trade (the Department) applied for further time to make a decision on your FOI request of 18 June 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.

The Department advised that the statutory timeframe had already been extended to allow for consultation in accordance with s 15(6) of the FOI Act.

The Department also attempted to obtain your agreement under s 15AA of the FOI Act for an extension of time. The Department advised that you refused the request for an extension.

**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 considered the Department's application and have decided to decline an extension as I am not satisfied an extension of time is appropriate in this circumstance.

The effect of this decision is that the Department is deemed to have refused your FOI request. You may wish to seek Information Commissioner review of the Department's deemed refusal of your request [here](#). Further information on [applying for IC review](#) is available on the OAIC [website](#).

Despite having been deemed to have refused your request the Department continues to have an obligation to provide a statement of reasons on the FOI request.

I note that the *Freedom of Information (Charges) Regulations 2019* 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 7(2), (3)). Any deposit you have paid should be refunded.

## 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](mailto: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', is placed over a light blue rectangular background.

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

18 September 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/>.