



Australian Government

Office of the Australian Information Commissioner

Our reference: RQ20/02961

Agency reference: LEX2118

Mr Peter Timmins

Sent by email: foi+request-6414-0fd2e118@righttoknow.org.au

Extension of time under s 15AB

Dear Mr Timmins

On 7 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 and voluminous.

The statutory timeframe had been suspended under s 24AB of the FOI Act.

The Department also previously obtained your agreement under s 15AA of the FOI Act for a 10 day extension of time to 7 August 2020.

Contact with you

On 11 August 2020, 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 that:

So far its been one thing after another and we still haven't got far.

This is after DFAT (unsuccessfully) asked me to withdraw the application, (unsuccessfully) asked Health to accept a transfer, reassessed what's involved from initially the examination of 'thousands of pages' to now 400 (which still surprises), sending a request for consultation, and asking me to agree to an extension of 21 days. I said yes to 10 days the same day they asked, 24 July.

Two weeks passed before they sought the 21 day extension from you on 7 August.

DFAT notified me on 10 August they had made the application. I haven't seen their application, but note you indicate to agencies that sending the applicant a copy is best practice and can speed things up.

I'm surprised an application for documents that support comments by the Minister in an important speech about Australia's role in the WHO is proving 'complex or voluminous', given that someone in DFAT must be very familiar with the topic and no doubt researched it in assisting the Minister beforehand.

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 under s 15AB(2) of the FOI Act **to 7 September 2020**. I am satisfied that the Department's application for an extension of time is justified, because the request is complex and voluminous. My reasons follow:

- The Department will need to consider almost 400 pages.
- The Department considers that the request aligns more closely with the portfolio responsibilities of the Department of Health. The Department requested that the Department of Health accept the transfer of the request. However the Department of Health did not agree to the request.
- The Department will need to consult with the Department of Health in relation to the request.

Notwithstanding your comments, I am satisfied that an extension of time under s 15AB is justified in this instance.

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



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

14 August 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/>.