



Australian Government

Office of the Australian Information Commissioner

Our reference: RQ20/03331

Agency reference: LEX2400

Mr John Smith

By email: foi+request-6469-5588a5b4@righttoknow.org.au

Extension of time under s 54D

Dear Mr Smith

On 14 September 2020, the Department of Foreign Affairs and Trade (the Department) advised this office that it had not made a decision on your internal review request of 7 August 2020 within the statutory period provided by the *Freedom of Information Act 1982* (Cth) (the FOI Act). Consequently, the FOI Act deems that the Department has refused your internal review request and affirmed its original decision.

However, s 54D of the FOI Act allows the Information Commissioner to extend the processing time for an internal review 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 make a decision on your internal review request.

Decision

As a delegate of the Information Commissioner, I am authorised to make decisions on applications for extensions of time under s 54D of the FOI Act.

I have considered the Department's application and have decided to decline an extension.

Based on the information currently before the OAIC, I am not satisfied that the Department has established that this internal review request requires further time. As such, I do not consider it appropriate to grant an extension under s 54D of the FOI Act in this circumstance.

The effect of this decision is that the Department is deemed to have affirmed the original decision. 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](#).

Contact

If you have any questions about this email, please contact my colleague Jasmin Clarke on (02) 9284 9847 or via email jasmin.clarke@oaic.gov.au. In all correspondence please include reference number RQ20/03331.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Shelley Napper'.

Shelley Napper

Assistant Director

Freedom of Information

22 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/>.