Our reference: RQ21/00263
Agency reference: LEX2731

Mr Elias Ross

Sent by email: foi+request-6782-40ee8825@righttoknow.org.au

Extension of time under s 15AB

Dear Mr Ross

On 1 February 2021, the Department of Foreign Affairs and Trade (the Department) applied for further time to make a decision on your FOI request of 6 October 2020 under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

This application was made 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 advised that the statutory timeframe had been suspended under s 31 of the FOI Act.

The Department previously obtained your agreement under s 15AA of the FOI Act for a 30-day extension of time to 1 February 2021.

Contact with you

On 2 February 2021, I wrote to you to seek your view on the Department's application. You responded to my inquiries and provided comments that I have taken into consideration.

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 of 29 days under s 15AB(2) of the FOI Act **to 2 March 2021**. I am satisfied that the Department's application for an extension of time is justified, because the request is complex and voluminous. My reasons and considerations follow:

- on 6 October 2020, the Department received your request

- on 7 October 2020, the Department acknowledged your request, search taskings were sent to relevant line areas
- on 9 October 2020, the Department obtained the volume of search results from the line areas
- on 14 October 2020, search results were provided to the FOI and Privacy section with the Department concluding after assessment the processing of your request would be a significant and unreasonable diversion of resources
- on 15 October 2020, the Department issued its request consultation notice under s 24AB of the FOI Act,
- on 18 October 2020, you revised the scope of your request
- on 19 October 2020, the Department determined the volume of documents within the revised scope
- between 20 to 22 October 2020, the Department finalised conversion of files to accessible format and commenced examination of documents
- on 28 October 2020, the Department issued its preliminary assessment of charges
- on 23 November 2020, the Department advised that you contended the charges
- on 2 December 2020, the Department requested supporting documentation from you to assist with its consideration as to whether it would reduce or waive the charge
- on 14 December 2020, you supplied the supporting documentation and the Department's decision maker reduced the charge
- on 21 December 2020, you paid the charges
- during January 2021, the Department advised that the documents were assessed
- the Department considers your request to be voluminous as it consists of several hundred pages of cables from the Department's overseas network which require extensive application of exemptions which will take a significant amount of time to process each individual page
- the Department also considers your request to be complex as the cables within scope relate to a range of sensitive matters requiring extensive internal consultation and consideration by relevant line areas
- additional time is required to allow the Department to conduct an extensive consideration of any document identified within the scope of the request and finalise the decision and any relevant documents, and
- when consulted by the OAIC, you agreed to the extension.

Contact

If you have any questions, please contact me on (02) 9284 9847 or via email jasmin.clarke@oaic.gov.au. Please quote OAIC reference number at the top of this email in all correspondence.

Yours sincerely

Jasmin Clarke
Assistant Review and Investigation Advisor
Freedom of Information

8 February 2021

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/ .