



Our reference: RQ20/04150  
Agency reference: FOI 39042

**Julie**

Sent by email: [foi+request-6870-ed406c6f@righttoknow.org.au](mailto:foi+request-6870-ed406c6f@righttoknow.org.au)

## Extension of time under s 15AB

Dear Julie

On 10 December 2020, the Department of Veterans' Affairs (the Department) applied for further time to make a decision on your FOI request of 5 November 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 Department attempted to obtain an agreement under s 15AA of the FOI Act for an extension of time from you. The Department did not receive a response from you.

## Contact with you

On 14 December 2020, you wrote to the OAIC objecting to the extension of time and providing comments which I have taken into consideration, including that:

- The Department misled and made false statements to the Information Commissioner in its submission for section 15AB extension in RQ20/02874 (for FOI 36929), claiming over 200 pages of complex material was in scope to review, when it only reviewed and considered 3 single summary powerpoint slides in its decision for FOI 36929;
- The Department has already flagged that it intends to refuse access so there is no purpose in giving the Department additional time; and
- The Department has already received the benefit of additional time due to its misuse of the request consultation process, claimed only a few days before the original processing period was to expire.

## 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 10 January 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 and considerations follow:

- The Department advised that they have undertaken a request consultation process with you and explained the challenges in processing the request. Whilst you did not agree to revising the scope of the request, you have agreed to a staged release.
- The Department have advised that a manual search of records and consultation with all Divisions is required to ensure that all briefs in scope are captured. These searches will be very time consuming and pose a resource burden to all areas of the Department.
- The Department have advised that briefs are not necessarily signed by the Secretary in the same month that they are received meaning that each record will need to be individually reviewed to determine whether it was in fact signed in October 2020. This will also mean that briefs received by the Secretary's Office prior to October will need to be reviewed to determine when they were signed and if they fall in scope.
- Due to the sensitive nature of the request, consultations will need to be carried out prior to providing you with an outcome.
- The Department advises that it will endeavour to release documents as early as practicable in a staged format as they are finalised for release.

## Contact

If you have any questions about this email, please contact me on 02 9284 9625 or via email [avanithah.selvarajah@oaic.gov.au](mailto:avanithah.selvarajah@oaic.gov.au). In all correspondence please include OAIC reference number at the top of this letter.

Yours sincerely



**Avanithah Selvarajah**  
Review and Investigations Adviser  
Freedom of Information

15 December 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/>.