



Our reference: RQ21/00216
Agency reference: LEX 67636

Ms Ellie Abrat

Sent by email: foi+request-6939-0c647c00@righttoknow.org.au

Extension of time under s 15AC

Dear Ms Abrat

On 25 January 2021, the Department of Industry, Science, Energy and Resources (the Department) advised this office that it had not made a decision on your FOI request of 1 December 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 request.

However, s 15AC of the FOI Act allows the Information Commissioner to extend the processing time for an FOI request 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 finalise your request.

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

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 27 January 2021, I wrote to you to seek your view on the Department's application. I invited you to provide any comments by 29 January 2021.

On 29 January 2021, you responded to my inquiries and requested further time to provide submissions. On the same date, I responded to your request, inviting you to provide any comments by 3 February 2021.

On 1 February 2021, you responded to my email stating:

Thank you for allowing me the opportunity to adequately respond to the application.

I've since had a change in circumstances and I am unfortunately unable to address the application by mid-week.

In the interests of everyone involved, please feel free to make a decision without my input.

Decision

As a delegate of the Information Commissioner, I am authorised to make decisions on applications for extensions of time under s 15AC(5) of the FOI Act.

I have decided to grant the Department further time to **24 February 2021** to process your request. My reasons follow:

- On 1 December 2020, the Department received your FOI request.
- Between 4 and 14 December 2020, the Department commenced searches for documents within the scope of your request. The Department has advised that the initial searches indicated that the work involved in processing the request would substantially and unreasonably divert the resources of the Department. The Department undertook the request consultation process (s 24AB of the FOI Act).
- On 23 December 2020, you provided the Department with a revised scope, however the response was received by the Department after the Department's Christmas/New Year shutdown had commenced.
- The Department has advised that it has now undertaken further searches in relation to your revised scope.
- Delays have been encountered in processing your FOI request as the Department has received multiple FOI requests relating to the same subject matter. Due to the large volume of these requests, the Department advises it has faced unavoidable delays in processing this request.
- The Department was impacted by limited staff availability over the Christmas/New Year shutdown period.
- The Department have advised significant progress has been made and it is confident a decision is made within the requested extension.

This extension of time under s 15AC of the FOI Act means that the deemed refusal is taken never to have applied if the Department makes a decision on your request by 24 February 2021.

Such an extension can only be granted once and cannot be extended by a variation.

If you don't receive a decision by (date), 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](#).

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)). This extension under s 15AC of the FOI Act does not mean that charges can be reimposed and any deposit you have paid should be refunded.

Contact

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

Yours sincerely

A handwritten signature in blue ink, appearing to be 'AS', located below the 'Yours sincerely' text.

Avanithah Selvarajah
Review and Investigations Adviser
Freedom of Information

1 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/>.