



Our reference: RQ21/00220  
Agency reference: LEX 67668

**Mr Allan Phu**

Sent by email: [foi+request-6952-9800d8c2@righttoknow.org.au](mailto:foi+request-6952-9800d8c2@righttoknow.org.au)

## Extension of time under s 15AC

Dear Mr Phu

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 6 December 2020 2021 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 also 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. You have not responded to my inquiries

## 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 and considerations follow:

- on 6 December 2020, the Department received your request

- on 7 December 2020, the Department commenced searches and identified the work involved in processing the request would substantially and unreasonably divert resources of the Department
- on 23 December 2020, you provided the Department a revised scope however it was received after 5pm when the Christmas/New Year shut down period commenced
- on 4 January 2021, the Department's FOI team sent a revised search minute to the relevant line area
- on 18 January 2021, the relevant line area completed its searches
- the Department advised that you have made two separate FOI requests relating to similar subject matter
- the Department has also received a large volume of requests in relation to similar subject matter since June 2020 and have devoted a significant amount of resources to processing these requests, and
- the Department advise due to the Christmas/New Year shutdown period, this caused a delay in processing your request, and additional time is required to finalise the request.

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.

I note that the *Freedom of Information (Charges) Regulations 2019* provide that 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.

If you do not receive a decision by **24 February 2021**, 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, please contact me on (02) 9284 9847 or via email [jasmin.clarke@oaic.gov.au](mailto: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

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/>.