



Our reference: RQ21/01132

Agency reference: FOI/2021/028

Mr Trav S

Sent by email: foi+request-7122-e3950e9e@righttoknow.org.au

Extension of time under s 15AB

Dear Mr S

On 30 April 2021, the Department of the Prime Minister and Cabinet (the Department) applied for further time to make a decision on your FOI request of 2 March 2021 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.

The Department has advised that the statutory timeframe had already been extended by a period of 30 days to allow for third party consultation in accordance with s 15(6) of the FOI Act.

The Department advised that it attempted to obtain an agreement under s 15AA of the FOI Act for an extension of time from you, but that it did not receive a response from you.

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 am satisfied that the Department's application is justified and have decided to grant the Department an extension of time under s 15AB(2) of the FOI Act **to 17 May 2021**.

In coming to this decision, I have considered the following factors:

- The Department received your FOI request on 2 March 2021.
- The Department notified you on 26 March 2021, that the statutory timeframe for processing your FOI request was extended by a period of 30 days to allow for third party consultation pursuant to s 15(6) of the FOI Act.

- The Department has attempted to contact you to request an extension of time under s 15AA of the FOI Act, but it has not received a response from you and is unable to contact you by phone.
- Accordingly, the due date for a decision on your FOI request was 3 May 2021.
- To date, the Department has undertaken search and retrieval of documents and undertaken third party consultation, however following receipt of the third party's response, the Department has determined that a courtesy consultation with another agency would be appropriate in the circumstances. This courtesy consultation has commenced and the Department expects to receive a response by 7 May 2021.
- An extension of 14 days to 17 May 2021 would enable the Department to complete this consultation and finalise a decision on your request. This additional time would also take into account the currently limited staff resources and extended staff leave.

By granting an extension of time it is anticipated that the Department will provide a well-reasoned and better managed decision.

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 15AB 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, 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 page in all correspondence.

Yours sincerely



Jasmin Clarke

Assistant Review and Investigation Advisor
Freedom of Information

6 May 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/>.