



Our reference: RQ21/01280
Agency reference: FOI 20/21-0657

Mr Ben Fairless

Sent by email: foi+request-7251-321ce5b7@righttoknow.org.au

Extension of time under s 15AC

Dear Mr Fairless

On 18 May 2021, the National Disability Insurance Agency (the NDIA) advised this office that it had not made a decision on your FOI request of 15 April 2021 within the statutory period provided by the *Freedom of Information Act 1982* (Cth) (the FOI Act). Consequently, the FOI Act deems that the NDIA has refused your request received 15 April 2021.

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 NDIA has applied for further time to finalise your request.

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

The NDIA attempted to obtain an agreement under s 15AA of the FOI Act for an extension of time from you. The NDIA did not receive a response from you.

Contact with you

On 19 May 2021, I wrote to you to seek your view on the NDIA’s application. I invited you to provide any comments by 21 May 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 NDIA further time to **16 June 2021** to process your request.

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

- On 15 April 2021, the NDIA received your FOI request.

- The NDIA has advised that recently a large number of FOI requests were received within a short period of time.
- The NDIA further advised that during consultation with you under s 24AB of the FOI Act, you declined to revise the scope of your request.
- The NDIA conducted initial consultations with relevant business areas. When conducting an email server search, the NDIA's data team experienced functionality problems with the tool required to complete searches. The NDIA's line areas also showed difficulty in determining the scope of your request in completing searches.
- The NDIA has also advised that the line area manager expected to identify documents falling within the scope of your request will also be on leave shortly which will cause a further delay in processing your request.
- The NDIA has advised that it is in the process of conducting consultations with several business areas to determine whether third party consultations will be required.
- The NDIA further advises that it is still in the process of liaising with business areas and managers to ensure careful consideration of documents captured and identifying potential sensitivities, with documents only received recently from those business areas.
- The NDIA considers your request to be sensitive and complex in nature as you are requesting documents from multiple business areas in relation to business information and information regarding the NDIA's functions.
- The NDIA has advised that due to staff engagement involving additional senate estimates and multiple Committee hearings, this impacted the NDIA's ability to conduct FOI consultations and searches.
- A further complexity involved the major structural changes with key staff to address and resolve the staffing shortage due to the significantly increased workload.
- In order to make an informed and proper decision, the NDIA requires additional time to determine if third party consultations are required, conduct further consultations with line areas and finalise the decision.

This extension of time under s 15AC of the FOI Act means that the deemed refusal is taken never to have applied if the NDIA makes a decision on your request by **16 June 2021**.

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

If you do not receive a decision by **16 June 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 OAI [website](#).

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.

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

A handwritten signature in black ink, appearing to read 'J. Clarke', with a stylized flourish at the end.

Jasmin Clarke

Assistant Review and Investigation Advisor
Freedom of Information

24 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/>.