



Our reference: RQ21/02296
Agency reference: 1-Q4FX2EC

Mr Trent Morrison-Francis

Sent by email: foi+request-7563-3a972a2d@righttoknow.org.au

Extension of time under s 15AC

Dear Mr Morrison-Francis

On 18 August 2021, the Australian Taxation Office (the ATO) advised this office that it had not made a decision on your FOI request of 17 July 2021 within the statutory period provided by the *Freedom of Information Act 1982* (Cth) (the FOI Act). Consequently, the FOI Act deems that the ATO has refused your request.

However, section 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 ATO has applied for further time to finalise your request.

The ATO advised that it attempted to obtain an agreement under s 15AA of the FOI Act for an extension of time from you. The ATO advised that you refused the request for a 30-day extension.

Contact with you

On 19 August 2021, I wrote to you to seek your view on the ATO's application.

On 22 August 2021, you responded to my inquiries and provided comments that I have taken into consideration, including:

... this matter is an ongoing fight between veterans and CSC and the ATO.

I refer you to the several requests on right to know from CSC that have just been ignored and never processed.

As the ATO now has all the information it needs I would approve an extension of 7 days from today. Anything over that would not be in the public interest and will result in further processing delays of veterans Tax and other benefits.

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 ATO further time to **7 September 2021** to process your request. My reasons and considerations follow:

- the ATO has advised that the scope of the FOI request includes 6 parts relating to communications between the ATO and another government agency
- the ATO further advised that identification of the relevant documents was delayed by the COVID related lockdown that required a key ATO officer to work from home, and as such was unable to search hardcopy documents which were kept in the ATO Office. The relevant officer has since been permitted to return the ATO Office and has conducted the relevant searches, and
- the ATO is conducting a consultation with another government agency, and as such, the has advised that further time is required to finalise its decision.

I note your objections to this extension of time and your agreement to a 7-day extension of time from the date of your response to the OAIC's consultation. However, based on the information currently before the OAIC, I am satisfied that this extension of time is appropriate in this circumstance, particularly in consideration of the lockdown situations and that the ATO experienced a delay in accessing hard copy documents due to lockdown.

This extension of time under s 15AC of the FOI Act means that the deemed refusal is taken never to have applied if the ATO makes a decision on your request by 7 September 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* 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.

If you do not receive a decision by 7 September 2021, you may wish to seek Information Commissioner review of the ATO'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 about this letter, please contact me on (02) 9284 9721 or via email shelley.napper@oaic.gov.au. In all correspondence please include OAIC reference number at the top of this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Shelley Napper', written in a cursive style.

Shelley Napper
Assistant Director
FOI Regulatory Group

24 August 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/>.