



Our reference: RQ21/02259
Agency reference: FOI 21/22-0051

Shirley

Sent by email: foi+request-7596-075b36e9@righttoknow.org.au

Extension of time under s 15AB

Dear Shirley

On 16 August 2021, the National Disability Insurance Agency (the NDIA) applied for further time to make a decision on your FOI request of 16 July 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 FOI request because it is complex and voluminous.

Contact with you

On 18 August 2021, I wrote to you to seek your view on the NDIA's application.

On 23 August 2021, you responded to my consultation email. In that email you have asked whether requesting an extension from the OAIC, as opposed to the applicant, is a new process.

Under s 15AA of the FOI Act, an applicant may agree to an extension of the statutory timeframe in writing with the agency. This agreement to an extension of time can only be for a total of up to 30 days.

In a separate process, under s 15AB of the FOI Act, an agency may apply to the OAIC for an extension of time to process an FOI request if the agency considers the request to be complex and/or voluminous. An extension of time under s 15AB of the FOI Act, can be for a period of 30 days, or other such period as considered appropriate by the decision maker. In this instance, the NDIA has advised the OAIC that it did not have sufficient time to consult with you in relation to a possible s 15AA agreement to an extension of time.

If you have specific questions regarding the NDIA's processing of this request, you may wish to contact the NDIA directly.



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 have decided to grant the NDIA an extension of time under s 15AB(2) of the FOI Act **to 15 September 2021**. I am satisfied that the NDIA's application for an extension of time is justified, because the request is complex. My reasons and considerations follow:

- The NDIA has advised that:
 - the request is broadly scoped and covers both current and historical documents
 - the request seeks access to documents of a highly sensitive and complex nature from multiple business areas
 - searches for historic material have been complex as ICT infrastructure has changed over time and other Commonwealth agencies hold the archived material, and
 - the NDIA is engaged in a significant amount of consultation with multiple stakeholders to ensure it has appropriately identified documents within scope and determine whether it needs to further engage with you, and
 - the NDIA is committed to issuing a decision as soon as possible.

Contact

If you have any questions about this letter, please contact me on (02) 9284 9783 or via email at rochelle.dunlop@oaic.gov.au. In all correspondence, please include the OAIC reference number at the top of this letter.

Yours sincerely



Rochelle Dunlop

Review and Investigation Advisor
Freedom of Information

23 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/>.