



Australian Government

Office of the Australian Information Commissioner

Our reference: RQ22/00505

Agency reference: FOI 21/22-0740

## Lesley

By email: [foi+request-8219-ac6a2dae@righttoknow.org.au](mailto:foi+request-8219-ac6a2dae@righttoknow.org.au)

Notification to: [foi@ndis.gov.au](mailto:foi@ndis.gov.au)

## Extension of time under s 15AB

Dear Lesley

On 8 February 2022, the National Disability Insurance Agency (NDIA) applied for further time to make a decision on your FOI request of 21 December 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.

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.

The Office of the Australian Information Commissioner has previously granted the NDIA an extension of time under s 15AB(2) of the FOI Act for 14 days (OAIC reference: RQ22/00285). This extended the decision period to 9 February 2022.

## Contact with you

On 10 February 2022, the OAIC wrote to you to seek your view on the NDIA's application. The OAIC invited you to provide any comments by 14 February 2022. You have not responded to those inquiries.

## 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 25 February 2022**. 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:

- On 21 December 2021, the NDIA received your FOI request.
- After the latest extension of time application, the NDIA has advised that the processing of your request has been impacted by staffing resources due to COVID and the holiday period shutdown.
- An added complexity relates to the relevant officer having to obtain clearance to access a database which is only accessible within the office as it is sensitive in nature (as opposed to remotely). This was further impacted by the office having been subject to COVID issues.
- Additional time is required to determine if third party consultation is required and to finalise the decision.

Based on the information currently before the OAIC, I am satisfied that an extension until **25 February 2022** is appropriate at this time, particularly in consideration of the document retrieval difficulties faced by the NDIA and the NDIA in the final stages to finalise your request by **25 February 2022**. I have also given significant weight to the fact that when consulted by the OAIC, a response was not received.

If NDIA does not make a decision by **25 February 2022**, you may wish to seek Information Commissioner review of the NDIA's deemed refusal of 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 page in all correspondence.

Yours sincerely



**Jasmin Clarke**  
Assistant Review and Investigation Advisor  
FOI Regulatory Group

15 February 2022

## 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/>.