



Australian Government

Office of the Australian Information Commissioner

Our reference: RQ22/03475 & RQ22/03724

Agency reference: LEX 1526 ICM 22/740

Ace Chapman

By email: foi+request-9128-d281efc5@righttoknow.org.au

CC: NDIS Quality & Safeguards Commission

By email: FOI@ndiscommission.gov.au

Extension of time under s 15AB

Dear Mr Chapman

On 28 September 2022 the NDIS Quality and Safeguards Commission (the NDIS Commission) applied for further time to make a decision on your FOI request of 14 July 2022, under the *Freedom of Information Act 1982* (Cth) (the FOI Act). The NDIA sought an extension of time to 19 October 2022.

On 13 October 2022, the NDIA amended this request to further extend the statutory due date to 2 November 2022. We understand that the NDIA also notified you of this further request.

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.

The NDIS Commission also obtained your agreement under s 15AA of the FOI Act for a 21 day extension of time to 5 September 2022 [OAIC reference: RQ22/02942].

The NDIS Commission advised that the statutory timeframe had already been extended by a period of 20 days to allow for third party consultation in accordance with s 15(6) of the FOI Act.

Contact with you

On 6 October 2022, I wrote to you to seek your view on the NDIS Commission's application. You responded to my enquiries and provided comments which I have taken into consideration which include:

I have not many further comments to make apart from: I am concerned that if the agency finds this FOI regarding a publicly listed procurement to be voluminous or so complex that they're having to check a number of systems and are unable to gather information about

it due to staff movement that is worrisome for public confidence in accountability of public spending.

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 in the circumstances, and with the information before me, to grant the NDIS Commission an extension of time for a combined total of 28 days, under s 15AB(2) of the FOI Act **to 2 November 2022**. I am satisfied that the NDIS Commission's application for an extension of time is justified, because the request is complex and voluminous. In particular, I note the NDIS's advice that:

The request is both complex and voluminous due to:

- the high volume of records requiring retrieval and review and possible redaction
- the need to locate records across multiple system platforms
- the need to liaise with numerous internal staff due to records being held within overlapping operational areas
- challenges associated with significant staff changes
- the majority of records sought deemed to be of a highly sensitive nature requiring careful consideration and internal management
- the number of potential third parties that may require consultation.

If the NDIS Commission does not make a decision by 2 November 2022, or you are dissatisfied with its decision, you may wish to seek Information Commissioner review of the NDIS Commission's decision [here](#). Further information on [applying for IC review](#) is available on the OAIC [website](#). An application for IC review would need to be made within 60 days of the Agency's decision, or deemed decision.

Contact

If you have any questions about this letter, please contact me on 1300 363 992 or via email to Karen.Tulloch@oaic.gov.au . In all correspondence please include OAIC reference: RQ22/03475 and RQ22/03724.

Yours sincerely



Karen Tulloch
Assistant Director
Investigations & Compliance

25 October 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/>.