



Australian Government

Office of the Australian Information Commissioner

Our reference: RQ22/03174

Agency reference: FOI 3902

BE

By email: foi+request-9245-a45b31b5@righttoknow.org.au

Extension of time under s 15AB

Dear BE

On 1 September 2022, the Department of Health and Aged Care (Department) applied for further time to make a decision on your FOI request of 8 August 2022 under s 15AB of 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 Department previously obtained your agreement under s 15AA of the FOI Act for a one day extension of time to 9 September 2022 [OAIC reference: RQ22/03170]. I note that in your response to the Department dated 1 September 2022 you included your objections to any further extension of time on the following grounds:

I am not comfortable agreeing to the extension requested. In particular, I note that the scope of the request has been substantially reduced so that the request is now for a total of 11 discrete documents. Accordingly, given the small number of documents involved I asked that the decision be made in accordance with the statutory time frames. In considering your request for an extension I have also taken into account the delay in receiving a response to my email of 18 August 2022 which has played a significant factor in contributing to the time frames that now apply. I am willing to grant a 1 day extension to 9 September 2022, noting that I took an extra business day to confirm the reduced scope. This will also provide the decision maker with an extra business day that is not a sitting day in which to make the decision.

There is a specific public interest in these documents being released in accordance with the required time frames and I ask that this request be completed in accordance with the requirements of the FOI Act. I am concerned that your request for an extension (given the small number of documents) and your delay in responding to emails is an attempt to delay the process until after the parliamentary setting period and undermines the very purpose of the FOI Act and the Government's stated commitment to transparency.

I have considered your objections in making a decision on the Department's request for an extension of time to 23 September 2022.

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 retrospectively grant the Department an extension of time under s 15AB(2) of the FOI Act **to 23 September 2022**. I am satisfied that the Department's application for an extension of time is justified, because the request is complex. My reasons and considerations follow:

- There are multiple business areas that are responsible for the Question Time Briefs (QTBs) you have requested, and each business area has been provided with an opportunity to provide their subject matter expertise to the decision maker, before a decision on access can be prepared. The Department advises that the input of these business areas is critical to the decision on access and the decision maker requires their advice in order to ensure the documents are assessed properly and a well-balanced decision is made.
- Once the consultation with the various business line areas is complete, the Department will endeavour to have the decision provided to you as soon as possible.

While I note you have objected to any extensions being granted based on the reduced scope of your request, which is now limited to 11 documents, I am satisfied that the extension requested is reasonable in the circumstances based on the factors outlined above. In particular, I note that multiple business areas need to be consulted by the decision maker, due to their varied areas of expertise in relation to the documents you have requested, to ensure the Department's FOI decision is properly considered.

This extension will also enable you to seek internal review of the Department's decision, provided it was made by 23 September 2022.

If the Department did not make a decision by 23 September 2022, 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 OAIC [website](#). An application for IC review would need to be made within 60 days of the Department's decision, or in the event that a decision was not issued by 23 September 2022, within 60 days of that date.

Contact

If you have any questions about this letter, please contact me via email at FOIDR@oaic.gov.au. In all correspondence please include OAIC reference: RQ22/03174.

Yours sincerely

N. Vulsta

Natalie Vuleta

Review Adviser (Legal)

Investigations and Compliance Team

FOI Regulatory Group

29 September 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/>.