



Australian Government

Office of the Australian Information Commissioner

Our reference: RQ22/03618

Agency reference: FOI 22/23-0455

Oliver Lee

By email: foi+request-9346-4c50297b@righttoknow.org.au

Cc: foi@ndis.gov.au

Extension of time under s 15AB

Dear Oliver Lee

On 6 October 2022, the National Disability Insurance Agency (NDIA) applied to the Office of the Australian Information Commissioner (OAIC) for further time to make a decision on your FOI request of 6 September 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 and voluminous.

Contact with you

On 17 October 2022, I wrote to you to seek your view on the NDIA's application. I invited you to provide any comments by 20 October 2022. The OAIC does not appear to have received a response from you.

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 considered the NDIA's application and have decided to decline an extension. My reasons and considerations follow:

- While the NDIA has claimed the request is complex due to the broad scope and voluminous nature of the request, the NDIA does not appear to have made an attempt to consult you regarding the scope of your request until 25 November 2022, over two months after the request was first received.
- An agency or minister should only seek an extension of time under s 15AB after the agency or minister has first obtained, or attempted to obtain, the applicant's agreement to providing an extension of time under s 15AA, and the agency or

minister has fully utilised the 30 day period available under s 15AA (to the extent the applicant has agreed to this).¹ In this case, the NDIA did not first attempt to seek your agreement under s 15AA.

- While it is open to an agency to consult an applicant informally at any stage with respect to narrowing the scope of a request, it is not open to an agency to issue a request consultation notice outside the statutory processing period, and as at the date of issue of the s 24AB notice, we had not granted the NDIA any additional processing time. The request consultation process outlined in s 24AB of the FOI Act should be utilised at an early stage to avoid any unnecessary processing delays.
- Granting an extension of time in these circumstances would not facilitate access to documents, which conflicts with the objects of the FOI Act.

The consequence of this decision is that the NDIA is deemed to have refused your request on 6 October 2022, pursuant to s 15AC of the FOI Act.

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](#). IC review applications must generally be made within 60 days after the decision is deemed to have been made. Therefore, should you wish to apply for IC review, please [include a request for an extension of time under s 54T of the FOI Act](#).

Contact

If you have any questions about this letter, please contact me via email to FOIDR@oaic.gov.au. In all correspondence please include OAIC reference: RQ22/03618.

Yours sincerely



Noah Harris
Assistant Review Adviser
FOI Regulatory Group

19 December 2022

¹ The FOI Guidelines at [3.151]

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/>.