



Australian Government

Office of the Australian Information Commissioner

Our reference: RQ22/03854
Agency reference: FOI22/233

Mr John Smith

Sent by email: foi+request-9388-717112ee@righttoknow.org.au

CC: FOI@ag.gov.au

Extension of time under s 15AC

Dear Mr Smith

On 21 October 2022, the Attorney-general's Department (AGD) advised the Office of the Australian Information Commissioner (OAIC) that it had not made a decision on your FOI request of 20 September 2022 within the statutory period provided by the *Freedom of Information Act 1982* (Cth) (the FOI Act). Consequently, the FOI Act deems that the AGD has refused your request.

However, s 15AC of the FOI Act allows the Information Commissioner to extend the processing time for an FOI request where the initial decision period has ended and the agency or Minister has not provided the applicant with notice of a decision. AGD has applied for further time to finalise your request.

The AGD attempted to obtain an agreement under s 15AA of the FOI Act for an extension of time from you, however they did not receive a response from you.

Contact with you

On 27 October 2022, I wrote to you to seek your view on the AGD's application for an extension of time. You responded to my inquiries advising you had no objections to the extension.

Decision

As a delegate of the Information Commissioner, I am authorised to make decisions on applications for extensions of time under s 15AC(5) of the FOI Act.

I have decided to grant the AGD further time to **4 November 2022** to process your request. My reasons and considerations follow:

I have decided to grant the AGD an extension of time under s 15AB(2) of the FOI Act to **4 November 2022**. I am satisfied that the AGD's application for an extension of time is justified, because the request is complex and voluminous. My reasons and considerations follow:

- The request covers one document prepared by the Department that has sensitivities related to the Cabinet processes. These sensitivities were identified as part of the consultation process.

- The Department is consulting with relevant agencies to identify the appropriate decision on access for the identified document
- The Australian Commission for Law Enforcement Integrity (ACLEI) and the Department of the Prime Minister and Cabinet (PMC) have an interest in the request which requires they be consulted
- The Department wrote to you on 21 October 2022 to advise an application will be made to the OAIC for an extension of time to finalise the request and to expect a decision by 4 November 2022
- The Department has commenced additional consultation with a response date of 27 October 2022. After consideration of the consultation comments the Department will commence final preparation of the decision and consideration by the decision-maker.

Based on the information currently before the OAIC, I am satisfied that an extension of time until 21 November 2022 is appropriate in the circumstances, particularly in consideration of the complexity of the request, the consultation required with other Commonwealth Agencies and taking into account the reasons above as provided by the AGD.

This extension of time under s 15AC of the FOI Act means that the deemed refusal is taken never to have applied if the AGD makes a decision on your request by 4 November 2022. Such an extension can only be granted once and cannot be extended by a variation.

I note that the *Freedom of Information (Charges) Regulations 2019* provides if an applicant is not notified of a decision on a request within the statutory time limit (including any extension of time), the agency or minister cannot impose a charge for providing access, even if the applicant was earlier notified that a charge was payable (regs 7(2), (3)). This extension under s 15AC of the FOI Act does not mean that charges can be reimposed and any deposit you may have paid should be refunded.

If you do not received a decision by 4 November 2022 or you disagree with the AGD's decision, you may wish to seek Information Commissioner review [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 FOIDR@oaic.gov.au . In all correspondence please include OAIC reference: RQ22/03854.

Yours sincerely



Karen Tulloch
Assistant Director
Investigations & Compliance

3 November 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/>.