



Australian Government

Office of the Australian Information Commissioner

Our reference: RQ22/04053

Agency reference: FA 22/10/00496

BK

By email: foi+request-9454-0d1f249a@righttoknow.org.au

Cc: foi.reviews@homeaffairs.gov.au

Extension of time under s 15AB

Dear BK

On 7 November 2022, the Department of Home Affairs (Department) applied to the Office of the Australian Information Commissioner (OAIC) for further time to make a decision on your FOI request of 10 October 2022 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 Department attempted to obtain an agreement under s 15AA of the FOI Act for an extension of time from you. The Department advised that you refused the request for a 30-day extension.

Contact with you

On 5 December 2022, I wrote to you to seek your view on the Department's application. You responded to my inquiries advising that you 'neither support nor oppose' the extension.

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 24 November 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:

- The request is complex as review of the document for exemptions identified sensitive material, which requires further internal consultation with the relevant business area.

- Further time is required to complete consultations and to then finalise a decision.
- You did not provide any objections to the extension when I contacted you to seek your views.

I also understand that the Department did notify you of its decision on 24 November 2022. Based on the information currently before the OAIC, I am satisfied that a retrospective extension until **24 November 2022** is appropriate in the circumstances.

I have also considered that granting this extension of time assists in facilitating and promoting the objects of the FOI Act, as well as providing you with access to the full review mechanisms available under the FOI Act. These would otherwise not be available if I were to decline this extension, resulting in a deemed FOI decision.

If you are dissatisfied with the decision you received, you may wish to seek Information Commissioner review of the Department'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.

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: RQ22/04053.

Yours sincerely



Noah Harris
Assistant Reviews Adviser
FOI Regulatory Group

12 December 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/>.