



Australian Government

Office of the Australian Information Commissioner

Our reference: RQ23/01998

Agency reference: 55801

Mr Alan Ashmore

By email: foi+request-9849-240a7825@righttoknow.org.au

Cc: INFORMATION.ACCESS@dva.gov.au

Extension of time under s 15AB

Dear Mr Ashmore

On 26 April 2023, the Department of Veterans' Affairs (Department) applied to the Office of the Australian Information Commissioner (OAIC) for further time to make a decision on your FOI request of 26 January 2023, 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.

The Department advised that the statutory timeframe has already been extended to allow for consultation in accordance with s 15(6) of the FOI Act.

The Department attempted to obtain your agreement under s 15AA of the FOI Act for an extension of time. The Department advised that you refused the request for a 30-day extension.

The OAIC has previously granted the Department an extension of time under s 15AB(2) of the FOI Act [OAIC reference: RQ23/00796]. This extended the decision period to 27 March 2023.

Contact with you

On 4 May 2023, I wrote to you to seek your view on the Department's application. You responded to my inquiries and advised that:

I note that today my FOI request was lodged 103 days ago.

As a war veteran with an Infantry Battalion I am aware of 'battle tactics.' Like other veteran advocates we are aware, because of the experiences we have received from DVA of their 'battle tactics.' It is to delay or try and avoid disclosing information that is detrimental to them. We call it their 'exhaustion process,' where DVA are effectively a law under themselves

and this delay is just another example of delaying information that journalists can pick up on righttoknow or in this case Senate Estimates due in 2 days time.

I guess I cannot do much about DVA's MO but I needed to bring the above to your attention. DVA are there to serve our veteran as opposed to protecting their misdeeds and incompetence.

I hope DVA release the requested documents on righttoknow and not, as they have done in the past, sent me their response to my private email address to hide it from journalists and our elected representatives.

Please excuse me for sounding off but DVA have a happy knack of increasing our blood pressure and in all too many cases treating our service with contempt.

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 grant the Department an extension of time under s 15AB(2) of the FOI Act **to 26 May 2023**. I am satisfied that the Department's application for an extension of time is justified, because the request is complex and voluminous. My reasons and considerations follow:

- Page 55 of the Revised Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2010 (Cth) provides that a complex request may include a request requiring extensive consultation for the purposes of s 15AB of the FOI Act. I am satisfied that the request is complex, as the Department has advised that 'this request contain[s] [a] high number of additional external agencies and third parties to consult', including the Department of Finance, Department of Defence, Attorney-General's Department, Department of the Prime Minister and Cabinet, and the Australian National Audit Office.
- Further, the Department advised that 'some pages within the bundles contain at least 3/4 or even more business line areas', which require 'clearance responses from 'all' business line areas involved' before finalising those pages. I am therefore satisfied that the request requires extensive internal consultations.
- In addition, the documents in scope are 'internal sensitive documents' that include 'legal sensitive and commercial sensitive information, which are not publicly available'.
- I am also satisfied that the request is voluminous, as there have been 'over 1400 pages' to screen, including a 'further 120 pages' to screen.

- I have considered your point that your FOI request ‘was lodged 103 days ago’ at the time of your response. While I note that delays are unfortunate, I consider that in this instance the timeframe notwithstanding this extension of time has been insufficient to deal adequately with the request.

While I acknowledge it is your view that the actions of the Department are intended to ‘delay or try and avoid disclosing information that is detrimental to them’, I am unable to take it into consideration when assessing the Department’s extension of time application under s 15AB, as it is primarily based on the complexity or volume of the request at hand.

Based on the information currently before the OAIC, I am satisfied that an extension until **26 May 2023** is appropriate in this instance, and I consider the additional days represent a reasonable amount of time in the circumstances.

If the Department does not make a decision by 26 May 2023, or you disagree with the decision you receive, 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 Department’s decision or deemed decision.

Other matters

You asserted that DVA had in the past ‘sent [you] their response to [your] private email address to hide it from journalists and our elected representatives’. I note that agencies are expected to give notices to an applicant under the FOI Act by sending them to the applicant’s nominated postal or electronic address (s 15(2)(c) of the FOI Act). If you are not happy with the way the Department has handled this FOI request or any previous FOI requests, you may make an FOI complaint [here](#). Further information about FOI complaints can be found on the OAIC [website](#).

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: RQ23/01998.

Yours sincerely



Noah Harris
Assistant Review Adviser
FOI Regulatory Group

10 May 2023

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/>.