



Australian Government

Office of the Australian Information Commissioner

Our reference: RQ23/01436

Agency reference: FOI-2023-036

### Not Rex Patrick

By email: [foi+request-9887-105d0e2c@righttoknow.org.au](mailto:foi+request-9887-105d0e2c@righttoknow.org.au)

Cc: [foi@pmc.gov.au](mailto:foi@pmc.gov.au)

## Extension of time under s 15AB

Dear Not Rex Patrick

On 31 March 2023, the Department of the Prime Minister and Cabinet (Department) applied to the Office of the Australian Information Commissioner (OAIC) for further time to make a decision on your FOI request of 2 March 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.

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.

### 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 6 April 2023**. 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:

- I am satisfied that the request is complex as the Department advised that the documents within the scope of the request included information from the Northern Territory Government. This necessitated consultation 'to ensure the advice is current'.
- All preliminary work has been completed and a draft decision has been prepared. The decision maker 'has requested clarification of consultation advice received from the [Territory] in order to finalise the decision'.
- The request is for a 5-day extension, which in this instance is not excessive.

- 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. Particularly, granting this extension of time is expected to provide you with a substantive decision by the Department on your request by 6 April 2023, which will be substantially sooner than a decision by Information Commissioner review (IC review). It is expected to reinstate your right to seek an internal review of a substantive decision by the Department and to extend the timeframe for you to apply for an IC review of the Department's anticipated decision.

Based on the information currently before the OAIC, I am satisfied that an extension until **6 April 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 6 April 2023, or you disagree with the decision you receive, you may wish to seek IC 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.

## Contact

If you have any questions about this letter, please contact me on 1300 363 992 or via email to [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au). In all correspondence please include OAIC reference: RQ23/01436.

Yours sincerely



**Noah Harris**  
**Assistant Review Adviser**  
FOI Regulatory Group

3 April 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/>.