



Decision to decline an extension of time under s 15AC of the *Freedom of Information Act 1982*

Agency	Department of the Prime Minister and Cabinet
FOI applicant	Mr Rob Stewart
Date of decision	29 April 2024
OAIC reference number	RQ24/01485
Agency reference number	FOI/2024/059

Decision

1. On 23 April 2024, Department of the Prime Minister and Cabinet (the Department) applied to the Information Commissioner under s 15AC(4) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension to 29 April 2024 to process Mr Rob Stewart's (the FOI applicant) request of 11 February 2024 (the FOI request).
2. I am a delegate of the Information Commissioner. I am authorised to make decisions on applications for further time under s 15AC(5) of the FOI Act.
3. On the basis of the information before me, I have decided to decline the Department's request for further time to deal with the request. A decision on the FOI applicant's request therefore remains due by 12 March 2024. The Agency is encouraged, in the interested of administrative efficiency, to continue to process the request and release documents administratively if the applicant has not yet applied for IC review of the deemed decision. My reasons are outlined below.

Background

4. On 11 February 2024, the FOI applicant made an FOI request to the Department. The FOI decision was due to be provided to the FOI applicant on 12 March 2024.
5. On 23 April 2024, the Department applied to the Information Commissioner for further time to process the FOI applicant's request under s 15AC(4) on the basis that the processing period is insufficient to adequately deal with the FOI request. A copy of the Department's reasons are included at Attachment A.

Reasons for decision

6. Subsection 15AC(5) of the FOI Act provides that I may allow further time that I consider appropriate for an agency or Minister to deal with the request.
7. In declining this application for further time under s 15AC(5), I have considered the following factors:

- Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act, to which I must have regard, in particular [3.164] – [3.167]
 - the scope and complexity of the FOI request
 - the reasons for delay in making an initial decision
 - the period of time sought, and the total estimated processing time
 - whether discussions with the applicant about the delay and extension of time application have occurred
 - the desirability of the decision being decided by the agency or minister rather than by IC review.
8. On the information before the OAIC, I am not satisfied that the application for further time is justified, for the following reasons:
- The FOI applicant’s request does not appear to involve sufficient complexity so as to warrant extra processing time, based on the limited number of documents captured by the request.
 - The Department does not appear to have provided a fulsome timeline that sets out the work that was completed to respond to the request within the timeframe, but based on the information that has been provided it appears that the request was not processed appropriately in respect of the legislative timeframes.
 - While I acknowledge the Department’s submissions regarding unexpected staff absences, a lack of staff because of inadequate allocation of resources to FOI processing or failure to assign additional temporary resources to FOI processing at peak times will not normally justify an extension of time in the absence of other extenuating circumstances.
9. The effect of this decision is that the agency remains deemed to have made an access refusal decision on the applicant’s request on 12 March 2024.
10. 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 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)).
11. It is open to the applicant to seek Information Commissioner review (IC review) of the agency’s deemed access refusal decision of 23 April 2024. Further information on [applying for IC review](#) is available on the OAIC [website](#). Any application for IC review would need to be made within 60 days of the agency’s decision or deemed decision.
12. This extension of time matter is now closed. Your review rights are set out below.
13. If you would like to discuss this matter, please contact our office on 1300 363 992 or by email at FOIDR@oaic.gov.au, quoting reference number RQ24/01485.

Yours sincerely,



Hannah Holswilder
Director

Attachment A

Please provide a timeline setting out the work already completed in order to process this request. Where an extension of time has previously been granted, describe the work that was undertaken during that extended period. *

The Department has identified a decision maker on 16 February, and subsequently identified the relevant documents within the determined scope of the request. The Department encountered difficulties in assessing the documents due to unexpected staff leave during the March and April period. Assessment of the documents was finalised on 10 April, including a notification to an interested third party Commonwealth agency. The Department has since made significant progress in preparing a written decision on this request.

What work is required to finalise the request? *

The Department needs to engage in a final round of internal stakeholder engagement to finalise its written decision.

Please describe the scope and complexity of the request. Please provide the number of documents at issue and the number of folios, as well as any complexity in the nature of those document *

There are 10 relevant documents, amounting to 70 pages. The documents involve a reconsideration of legal privilege exemptions previously applied in a previous decision.

Do other agencies or parties have an interest in the request? *

Yes, there is another agency with interest.

Please describe the measures that would be taken to ensure a decision is made within the period of the requested extension and to keep the applicant informed of the progress of the request *

The Department will engage in final stakeholder engagement steps, to finalise the decision for release, with clear deadlines communicated.

Review rights

Review by the Administrative Appeals Tribunal

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 and Family Court of Australia 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 is available on our website:

<https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint/>.

Making a complaint to the Commonwealth Ombudsman

If you believe you have been treated unfairly by the OAIC, you can make a complaint to the Commonwealth Ombudsman (the Ombudsman). The Ombudsman's services are free. The Ombudsman can investigate complaints about the administrative actions of Australian Government agencies to see if you have been treated unfairly.

If the Ombudsman finds your complaint is justified, the Ombudsman can recommend that the OAIC reconsider or change its action or decision or take any other action that the Ombudsman considers is appropriate. You can contact the Ombudsman's office for more information on 1300 362 072 or visit the Commonwealth Ombudsman's website at <http://www.ombudsman.gov.au>.