



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

Agency	Department of Defence
FOI applicant	Julie Anderson
Date of decision	14 June 2024
OAIC reference number	RQ24/02168
Agency reference number	FOI 734/23/24

Decision

1. On 5 June 2024, Department of Defence (the Department) applied to the Information Commissioner under s 15AC(4) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of 48 days to 21 June 2024 to process Julie Anderson's (the FOI applicant) request of 5 March 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 4 May 2024. My reasons are outlined below.

Background

4. On 5 March 2024, the FOI applicant made an FOI request to the Department. The FOI decision was due to be provided to the FOI applicant on 4 May 2024.
5. On 5 June 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 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:
- I acknowledge the Department's submissions that consultation with multiple third parties was required but I note that time for this has been allowed by operation of s 15(6) of the FOI Act.
 - The further time sought by the Department appears excessive. Its requested extension of a further period of 48 days, if granted, would yield a total processing period of 108 days, which would be over 3 times the processing period referred to in s 15(5)(b) of the FOI Act.
9. The effect of this decision is that the Department remains deemed to have made an access refusal decision on the applicant's request on 4 May 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)). This extension under s 15AC of the FOI Act means that charges cannot be imposed and therefore any deposit the applicant has paid should be refunded.
11. It is open to the applicant to seek Information Commissioner review (IC review) of the agency's deemed access refusal decision of 4 May 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 RQ24/02168.

Yours sincerely,



Sarah Forrester
Assistant Director
Freedom of Information Branch
Office of the Australian Information Commissioner

14 June 2024

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. *

On 5 March 2024, the request was received by Defence, and advice was promptly tasked to the relevant line area on 7 March 2024.

The relevant line area undertook searches in order to locate documents relevant to the scope of the request and a decision maker was located and appointed.

On 13 March 2024, Defence acknowledged the applicants request.

The relevant line area advised the the Decision Maker had determined that the request includes documents which contain information about the business, commercial or financial affairs of an organisation, or a person's business or professional affairs. As such, consultation would be required to occur in accordance with section 27 of the FOI Act.

On 26 March 2024, the applicant was notified that in accordance with section 27 of the FOI Act, Defence was to consult with the person or organisation concerned before making a decision on the release of the documents. The applicant was also advised that in accordance with section 15(6) of the FOI Act, the statutory due date was extended by 30-days.

Following this notification, separate consultations were prepared and initiated with 8 separate third parties.

Various extensions in length were sought by the third parties in order to provide sufficient submissions to their consultations for an array of reasons. Further, a number of consultations and negotiations have occurred in relation to the third party content. Consultation responses were provided to the Decision Maker as they were received during the 30 day extension period.

At the end of the 30-day s15(6) extension period, one consultation remained ongoing.

Since the expiry of the statutory due date, consultation with the final third party has remained ongoing. The delay has been caused by considerations regarding significant concerns of unreasonable information disclosure.

The line area has undertaken extensive review of the material in scope and the decision maker has sought advice from subject matter experts within Defence.

We are seeking an extension of time under s15AC of the FOI Act so that we may retract the deemed refusal and so that the applicant may regain their internal review rights for this FOI request.

Thank you for considering our request.

What work is required to finalise the request? *

The Decision maker is currently in the process of reviewing third party advice in relation to their proposed decision, so that they may formulate a robust decision on access. This includes advice from multiple involved third parties and a Commonwealth Agency regarding an array of sensitive issues and material. Consultation with one final party is currently being finalised. Once concluded, the finalisation of the decision will be expedited.

Following receipt of this advice, the decision maker will be required to consider the advice provided by internal subject matter experts, before applying any required redactions over exempt information contained within the material. Next, the decision maker will finalise their statement of reasons that reflects their decision on access.

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 *

This request is considered to be complex due to the nature of the request. The request seeks access to "I request a copy of the February 5th DDVA HREC minutes."

Due to the subject matter, consideration must be given to Australia's relationships with it's counterparts and the release of material relating to internal processes and functions of Defence and the Commonwealth by extension. The documents concern details regarding Commonwealth related deliberations and details of ongoing third party research projects, which without proper internal consideration, disclosure has the potential to damage the Commonwealth's ability to undertake its usual processes. Due to the content contained within the document and third party concerns of unreasonable disclosure of information, the process to review, carefully consider, and make a decision on access has been timely.

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

The matter is of interest to the Australian public and as such, interested parties include but are not limited to, relevant Parliamentarians, the media, and counterparts both within Australia and internationally.

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 *

To ensure this FOI request is completed within the requested period, relevant personnel within Defence will work together to ensure resources are dedicated to make an informed and robust decision.

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>.