



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

Agency	Department of Home Affairs
FOI applicant	Oliver Smith
Date of decision	7 June 2024
OAIC reference number	RQ24/02093
Agency reference number	FA24/04/00601

## Decision

1. On 28 May 2024, the Department of Home Affairs (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 30 days to 7 June 2024 to process Oliver Smith’s (the FOI applicant) request of 8 April 2024 (the FOI request).
2. As 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. Under s 15AC(5) I have decided to grant the Department further time to deal with the request to **7 June 2024**. My reasons are outlined below.

## Background

4. On 8 April 2024, the FOI applicant made an FOI request to the Department. The FOI decision was due to be provided to the FOI applicant on 8 May 2024.
5. On 28 May 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.
6. A copy of the Department’s reasons is included at **Attachment A**.

## Reasons for decision

7. Subsection 15AC(5) of the FOI Act provides that I may allow further time that I consider appropriate for the agency or Minister to deal with the request.
8. In granting 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
9. On the information before the OAIC, I am satisfied that the application for further time until **7 June 2024** is justified, for the following reasons:
- Based on the scope of the FOI applicant’s request and the Department’s submissions, I am satisfied that the request is complex, based on the range of documents captured by the request and the requirement to consult approximately 28 business line areas.
  - Based on the Department’s submissions that the FOI applicant’s request captures approximately 751 ministerial submissions, I am satisfied the request is also voluminous in nature.
  - The further time sought by the Department is reasonable and does not appear to be excessive in the circumstances.
  - Granting this further time will also reinstate the applicant’s right to seek an internal review of the Department’s decision, and to extend the timeframe for the applicant to apply for an IC review of the Department’s decision.
10. In granting this further time, I have also considered the measures taken by the Department to ensure a decision is made within the extended time period and the steps taken by the Department to first request a s 15AA agreement from the FOI applicant.
11. The new due date for the Department’s decision on the FOI request is now **7 June 2024**.
12. This further time granted under s 15AC of the FOI Act means that the deemed refusal is taken never to have applied if the Department makes a decision on the request by **7 June 2024**. Such an extension can only be granted once and cannot be extended by a variation.
13. 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 (including any extension of time), 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 further time granted under s 15AC of the FOI Act means that charges cannot be reimposed and any deposit the applicant has paid should be refunded.
14. If the Department does not provide the applicant a decision by **7 June 2024**, or the applicant disagrees with a decision from the Department, it will be open to the applicant to seek Information Commissioner review (IC review). 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 Department’s decision or deemed decision.
15. This extension of time matter is now closed. Your review rights are set out below.

16. If you would like to discuss this matter, please contact our office on 1300 363 992 or by email at [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au), quoting reference number RQ24/02093.

Yours sincerely,

*S Forrester*

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

7 June 2024

**The Department’s reasons for requesting an extension of time, as included in the extension of time request form**

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. \*

Send out initial consultation email to 27 business areas and PM&C regarding a list of 751 MIU submissions. Various correspondences to the business areas in relation to ownership of submissions.

What work is required to finalise the request? \*

Still in consultation with various business areas as multiple exemptions apply including s.34.

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 \*

Under the FOI Act, please provide a list of Ministerial Submissions sent by Home Affairs to the office of Andrew Giles in his capacity as the Minister for Immigration and Citizenship from the date of 22 June 2023 to present. Please include: the PDR number, subject of brief, and date sent to the office.  
A list of 751 MIU submissions across 28 business areas to consult and looking at multiple exceptions.

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

No

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 \*

Using a spreadsheet to track documents and responses. Regularly following up with the business areas to provide responses.

## 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>.