



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

<b>Agency</b>	Department of Health and Aged Care
<b>FOI applicant</b>	Bev D
<b>Date of decision</b>	14 June 2024
<b>OAIC reference number</b>	RQ24/02173
<b>Agency reference number</b>	5068

### Decision

1. On 5 June 2024, the Department of Health and Aged Care (the Department) applied to the Information Commissioner under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of 14 days to 22 June 2024 to process Bev D's (the FOI applicant's) request of 9 April 2024 (the FOI request).
2. As a delegate of the Information Commissioner, I am authorised to make decisions on extension of time applications under s 15AB(2) of the FOI Act.
3. Under s 15AB(2) of the FOI Act, I have decided to extend the processing period by 14 days to 22 June 2024. My reasons are outlined below.

### Background

4. On 9 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 June 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 15AB(1) on the basis that the processing period is insufficient to adequately deal with the FOI request, because it is complex and/or voluminous. A copy of the Department's reasons is included at **Attachment A**.

## Reasons for decision

6. Subsection 15AB(2) of the FOI Act requires that I consider whether the application is justified on the basis that the processing period referred to in s 15(5)(b) is insufficient for dealing with the request, on the basis that the request is complex or voluminous.
7. In granting this extension of time under s 15AB(2), 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 [3.150] – [3.155]
  - the Department’s reasons for seeking an extension
  - whether an agreement to extend the processing period under s 15AA of the FOI Act has first been attempted or obtained by the Department
  - the work already undertaken, and still required, to finalise the request.
8. On the information before the OAIC, I am satisfied that an extension to the processing period until **22 June 2024** is justified, for the following reasons:
  - Based on the Department’s submissions, I am satisfied that the request is complex, based on the sensitive nature of the documents requested, difficulties incurred in obtaining timely responses from business areas or consulted third parties and the requirement to obtain subject matter expertise in relation to any potential sensitivities involved.
  - Based on the Department’s submissions that the FOI applicant’s request captures approximately 100 documents, I am satisfied the request is also voluminous in nature.
9. In granting this extension, I have also considered the work already undertaken by the Department to finalise the request and steps taken by the Department to first attempt to obtain a 15AA agreement from the FOI applicant.
10. The Department must provide the FOI applicant with a decision by **22 June 2024**.
11. If the Department does not provide the FOI applicant a decision by 22 June 2024 the FOI applicant may seek review by the Information Commissioner of the Department’s deemed access refusal decision of 22 June 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 Department’s decision or deemed decision. It also remains open to the Department to apply for a further extension of time from the Information Commissioner if considered appropriate.

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 by email at FOIDR@oaic.gov.au, quoting reference number RQ24/02173.

Yours sincerely,

*S Forrester*

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

14 June 2024

## Attachment A

### The agency'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. \*

- 16 April 2024 – the department acknowledged receipt of FOI 5068
- 16 April 2024 – Business area (BA) was contacted to search for documents
- 23 April 2023 – the applicant agreed to revise the scope as it was broad in its original form
- 30 April 2024 - BA advised there are large number of documents with few hundred of pages within scope and may require multiple third parties consultation
- 7 May 2024 – BA finalised search & retrieval, confirmed third parties required to be consulted
- 7 May 2024 – TP correspondence sent
- 7 May 2024 – the applicant notified of TP consultation
- 16 May 2024 – BA advised of third party comments and that some third parties did not provide a response to the consultation
- 3 June 2024 – short extension of time sought from the applicant to finalise assessment of documents and decision

What work is required to finalise the request? \*

- Decision maker to review documents sensitivities
- Decision maker to make a decision on access to the documents
- Notice of decision to be completed
- Decision maker to sign notice of decision
- Department executive to be notified on the decision on access
- Applicant to be issued the decision on access

Why is the request considered complex or voluminous? \*

- One hundred documents including attachments were captured within scope of the request, most of them contain sensitive information which may be exempted under section 38 of the FOI Act (secrecy provision)
- As some third parties did not respond to the consultation and we need to assess these documents more carefully to ensure no business or personal information is unreasonably disclosed.
- Additional process time will allow the decision maker adequate decision-making time to ensure all sensitivities within the documents are appropriately identified and a well-balanced decision is made

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 \*

- The department will prepare a notice of decision
- The decision maker will sign notice of decision
- The department will then prepare the decision and issue it to the applicant as soon as practicable
- The department will liaise with the applicant, providing regular updates

## 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 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 can be found published on our website: <https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-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> .