



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

<b>Agency</b>	Australian Prudential Regulation Authority
<b>FOI applicant</b>	ELCAP
<b>Date of Decision</b>	30 May 2024
<b>OAIC reference number</b>	RQ24/01935
<b>Agency reference number</b>	FOI 24-43

### Decision

1. I refer to the application made by Australian Prudential Regulation Authority (the Agency) under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of time to process ELCAP's (the FOI applicant) request of 30 April 2024 (the FOI request).
2. As a delegate of the Information Commissioner, I am authorised to make decisions on extensions of time applications made under s 15AB(2) of the FOI Act.
3. On the information before the Information Commissioner, I have decided to decline the Agency's request to extend the processing period. A decision on the FOI applicant's request therefore remains due by 30 May 2024. My reasons are outlined below.

### Background

4. On 30 April 2024, the FOI applicant made an FOI request to the Agency. The FOI decision is due to be provided to the FOI applicant on 30 May 2024.
5. On 22 May 2024, the Agency applied to the Information Commissioner for further time to process the FOI applicant's request under s 15AB(1) of the FOI Act, 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 Agency'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 declining to extend the processing period 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 Agency’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 Agency
  - the work already undertaken, and still required, to finalise the request.
8. On the information before the OAIC, I am not satisfied that the application to extend the processing period is justified, for the following reasons:
  - On the basis of the very limited information provided by the Agency in the extension application, the FOI applicant’s request does not appear particularly complex or voluminous. There is also limited evidence of any technical or practical challenges involved in the processing of the request.
9. In declining this extension, I have also considered the limited available evidence of work undertaken by the Agency to process the FOI request to date and limited explanation as to the steps involved, and processing time required, to finalise the request.
10. The Agency must provide the FOI applicant with a decision by 30 May 2024.
11. If the Agency does not provide the FOI applicant a decision by 30 May 2024, the FOI applicant may seek review by the Information Commissioner of the Agency’s deemed access refusal decision of 30 May 2024. Further information on [applying for IC review](#) is available on the OAIC [website](#). Any application for IC review should be made within 60 days of the Agency’s decision or deemed decision. It also remains open to the Agency 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 wish to discuss this matter, please contact us by email at [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au) quoting reference number RQ24/01935.

Yours sincerely

*S Forrester*

**Sarah Forrester**

Assistant Director

Freedom of Information Branch

Office of the Australian Information Commissioner

30 May 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. \*

We have commenced internal consultations regarding the FOI request.

What work is required to finalise the request? \*

APRA will need to continue internal consultations in order to locate all of the relevant documents, review those documents and prepare the decision.

Why is the request considered complex or voluminous? \*

The FOI request relates to claims made by a whistleblower and fraudulent activities conducted by a fund. If APRA has any documents subject to the FOI request, these documents will be sensitive and will require careful consideration in order to comply with APRA's obligations under the Freedom of Information Act. Furthermore, additional internal consultations may need to occur as a result of the sensitive nature of the material requested.

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 \*

APRA will continue process the FOI request as expeditiously as possible.

## 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/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> .