



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

<b>Agency</b>	Services Australia
<b>FOI applicant</b>	Frank N Fearless Right to Know
<b>Date of decision</b>	28 June 2024
<b>OAIC reference number</b>	RQ24/02518
<b>Agency reference number</b>	LEX 79938

### Decision

1. On 26 June 2024, Services Australia (the Agency) applied to the Information Commissioner under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of 40 days to 13 August 2024 to process Frank N Fearless Right to Know's (the FOI applicant) request of 4 June 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 30 days to 3 August 2024. My reasons are outlined below.

### Background

4. On 4 June 2024, the FOI applicant made an FOI request to the Agency. The FOI decision was due to be provided to the FOI applicant on 4 June 2024.
5. On 26 June 2024, the Agency 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 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 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 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 satisfied that an extension to the processing period until **3 August 2024** is justified, for the following reasons:
  - Based on the Agency’s submissions, I am satisfied that the request is complex, based on the sensitive nature of the documents requested and
  - Requiring extra time to consult with third parties
9. In granting this extension, I have also considered the work already undertaken by the Agency to finalise the request and steps taken by the Agency to first obtain a 15AA agreement from the FOI applicant.
10. I note the Agency has requested an extension of time to 13 August 2024, however, based on the information before the OAIC, I have decided to grant an extension to 3 August 2024. While the request appears to involve some complexity, I am not satisfied that a full 40-day extension of time is justified in the circumstances based on the information provided. The request for an extension with the applicant under s 15AA should have been requested earlier and third party consults should have been identified and commenced earlier.
11. The Agency must provide the FOI applicant with a decision by 3 August 2024.
12. If the Agency does not provide the FOI applicant a decision by 3 August 2024 the FOI applicant may seek review by the Information Commissioner of the Agency’s deemed access refusal decision of 3 August 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. It also remains open to the Agency to apply for a further extension of time from the Information Commissioner if considered appropriate.
13. This extension of time matter is now closed. Your review rights are set out below.

14. If you would like to discuss this matter, please contact our office by email at FOIDR@oaic.gov.au, quoting reference number RQ24/02518.

Yours sincerely,

*S. Jraijiri*

Sussan Jraijiri

Review Adviser  
Freedom of Information Branch  
Office of the Australian Information Commissioner

28 June 2024

**The agency's reasons for requesting an extension of time, as included in the extension of time request form.**

Please also explain the reasons for the request and why an extension would be justified. Requests for longer extensions of time (more than 30 days) will require greater justification.

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. \*

4 June 2024 - request received  
5 June 2024 - consultation with relevant business areas about where this request would sit  
5 June 2024 - request for document retrieval sent to the relevant business area  
12 June 2024 - acknowledgement of request sent to applicant  
14 and 21 June 2024 - request for follow up of documents sent to relevant business area  
21 June 2024 - business area provided response  
24 June 2024 - initial review of documents identified potential cabinet material.  
24 June 2024 - further information requested from business area in relation to cabinet material.

What work is required to finalise the request? \*

The business area requires sufficient time to gather and provide additional information, which is required before the agency can consult with the Dept Prime Minister & Cabinet to determine if s34 cabinet exemption applies.

The agency is then required to consult with PM&C to determine if a s34 exemption applies. PM&C require sufficient time to consider the documents and provide their response.

FOI then requires time to make the decision, draft the decision letter, prepare any documents for release and obtain relevant clearances.

Why is the request considered complex or voluminous? \*

The request is for protected documents concerning the agency's staffing requirements as discussed in senate estimates. The documents have been identified as potentially being cabinet material and therefore consultation with PM&C is required before the agency can make a decision on release.

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

Yes - PM&C consultation is required.  
The documents also capture information about a third party; however, it is not known at this stage if a third party consultation will be required.

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 agency will take all relevant steps to progress this matter as a priority and will endeavour to provide a decision to the applicant prior to the requested due date if we are in a position to do so.

The applicant refused the request under 15AA (email attached). The applicant did not raise concerns with timeframes specifically, only concerns with the request itself. The agency has since responded to the applicant providing more information about why an extension is required (also attached) however the applicant has not responded nor changed their response regarding the extension of time requested.

## 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> .