



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

Agency	Department of Health and Aged Care
Applicant	Mr John Black
Decision date	10 July 2024
OAIC reference number	RQ24/02679
Agency reference number	FOI 5185

### Decision

1. On 5 July 2024, Department of Health and Aged Care (the Agency) applied under s 15AB(1) the *Freedom of Information Act 1982* (Cth) (FOI Act) to the Information Commissioner for an extension of 14 days to 22 July 2024 to process Mr John Black's (the Applicant) request of 8 June 2024 (the FOI request). This application was made on the basis that the processing period is insufficient to deal adequately with the FOI request because it is complex and/or voluminous.
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 July 2024**. My reasons are outlined below.

### Background

4. A copy of the Agency's reasons for seeking an extension are included at **Attachment A**.

### Reasons for decision

5. 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.
6. In making my decision under s 15AB(2), I have considered the information provided by the Agency and the FOI Guidelines issued by the Information Commissioner under s 93A of the FOI Act, in particular paragraphs [3.150] – [3.157].
7. On the information before the OAIC, I am satisfied that an extension to the processing period until 22 July 2024 is justified on the basis of complexity, for the following reasons:

- Based on the Agency’s submissions, I am satisfied that the request is complex, based on the range of documents captured by the request and challenges involved in the search and retrieval of any relevant documents.

8. In granting this further time, I have also considered:

- The work already undertaken by the Agency to finalise the request.
- Measures taken by the Agency to ensure a decision is made within the extended time period.
- Steps taken by the Agency to first request a s 15AA agreement from the Applicant.

9. The Agency must provide the Applicant with a decision by **22 July 2024**.

If the Agency does not provide the Applicant a decision by **22 July 2024** the Applicant may seek review by the Information Commissioner of the Agency’s deemed access refusal decision of **22 July 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.

10. For further information, the OAIC website provides a resource containing information on [applying for an extensions of time to process freedom of information requests](#).

11. This extension of time matter is now closed. Your review rights are set out below.

12. If you would like to discuss this matter, please contact our office by email at FOIDR@oaic.gov.au, quoting reference number RQ24/02679.

Regards

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Andriana De Ieso  
Review Adviser  
Office of the Australian Information Commissioner  
10 July 2024



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

8 June 2024 – FOI request received  
 12 June 2024 – Request allocated to business area. Decision maker identified  
 12 June 2024 – FOI team and business area schedule meeting to discuss request.  
 17 June 2024 – Meeting held with the business area in relation to multiple requests of same subject matter. Discussions around the significant amount of documents likely to be captured within scope, and possibility of rescoping requests with applicants or issuing practical refusal notices due to possible practical refusal reasons identified.  
 19 June 2024 – FOI team acknowledges receipt of applicants request and seeks applicants agreement to revise the scope of the request, which in its original form, the business area believes could be an unreasonable diversion of resources to process. FOI team proposes a revised scope of the FOI request for applicant to consider.  
 22 June 2024: Applicant does not respond to acknowledgement or scope of request.  
 24 June 2024: FOI team informs business area preliminary searches will need to be substantiated to assess whether PRN appropriate.  
 2 July 2024: FOI team and business area meet to discuss the multiple related requests and preliminary searches. FOI team considers PRN reasons may not exist and ask business area to make enquiries with relevant contacts in department to produce the documents within scope of request.  
 4 July 2024: FOI team emails applicant requesting agreement to extension under s 15AA.

What work is required to finalise the request? \*

The outstanding work to be undertaken by the department is for the business area to finalise search and retrieval and obtain all relevant documents within scope of the request for production to the FOI team. The business area is currently waiting on confirmation from the relevant area within the department as to the practicality of producing all the relevant documents in scope, which are stored in a system the business area is unable to access. Dependent on outcome of search and retrieval, once documents provided, FOI team to review and finalise the notice of decision. Facilitate clearance through the FOI team. For the decision maker to review the decision pack and sign the notice of decision.

Why is the request considered complex or voluminous? \*

Multiple requests of identical subject matter have been submitted to the department in a short period, and all sit with the same business area. This is causing a strain on the department's business area to process the requests while managing their business as usual. The business area has also had unexpected staff shortages during a busy period. There is an added layer of complexity to these requests as the business area cannot produce all the relevant documents themselves, and are reliant on other contacts within the department, as the documents are stored in a system which requires extraction by a separate team. The business area is waiting to hear from this team.

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

There may be third-party consultation with respect to some of the documents, but this is subject to review of the relevant documents once provided to the FOI team.

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 has continued to work with the applicant, contacting the applicant to ensure the scope of their request is processable by the department. The department would continue to be open and transparent with the applicant. The department will review the documents once the relevant business area has been able to obtain them and finalise the notice of decision and facilitate clearance through the FOI team. The decision maker will review the decision pack and sign the notice of decision, or practical refusal notice dependent on the outcome of the business area's search and retrieval and the ease or difficulty with which the documents in scope of the request can be produced.

## 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 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>.