



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

<b>Agency</b>	Department of Defence
<b>Applicant</b>	James Smith
<b>Date of decision</b>	24 July 2024
<b>OAIC reference number</b>	RQ24/02930
<b>Agency reference number</b>	FOI 1003/23/24

### Decision

1. On 22 July 2024, Department of Defence (the Agency) 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 18 August 2024 to process James Smith's (the Applicant) request of 19 June 2024 (the FOI request). This application was made on the basis that the processing period is insufficient to adequately deal with 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 Agency further time to deal with the request to **18 August 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 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.
6. In making my decision under s 15AC(5), 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 the application for further time until **18 August 2024** is justified, for the following reasons:
  - Based on the Agency's submissions, I am satisfied that the request involves some challenges for the Agency, based on the sensitive nature of the documents

requested and the requirement to obtain subject matter expertise from numerous relevant business line areas in relation to any sensitivities involved.

- Granting this further time will also reinstate the Applicant's right to seek an internal review of the Agency's decision, and to extend the timeframe for the Applicant to apply for an IC review of the Agency's decision.

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 new due date for the Agency's decision on the FOI request is now **18 August 2024**.

10. This further time granted under s 15AC of the FOI Act means that the deemed refusal is taken never to have applied if the Agency makes a decision on the request by **18 August 2024**. Such an extension can only be granted once and cannot be extended by a variation.

11. 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.

12. If the Agency does not provide the Applicant a decision by **18 August 2024**, or the Applicant disagrees with a decision from the Agency, 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 Agency's decision or deemed decision.

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

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

15. 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 RQ24/02930.

Regards

*A De Ieso*

Andriana De Ieso  
Review Adviser  
Office of the Australian Information Commissioner

24 July 2024

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

1. On 19 June 2024, the applicant made a formal request to the Department of Defence (Defence) under the FOI Act. 2. The lead line area within Defence was promptly contacted on 20 June 24 and advised that a significant amount of documents, totalling over 360 pages had been identified as falling within scope and required extensive consultation with more than 18 line areas across the department. 3. The internal consultations with the 18 internal line areas were prepared and sent. This process was timely as a significant amount of coordination was required in order to undertake and receive all required responses. 4. On 12 July 2024, Defence contacted the applicant to request a 14-day extension on time under section 15AA. The applicant did not respond to this request. 5. On 17 July 2024, it was identified that a courtesy consultation with an external agency will need to occur in relation to the documents identified. Consultation with the external agency was initiated and is ongoing. 6. The decision maker has continued their extensive review of the documents in scope, in order to formulate a well-considered and robust decision on access. Thank you for considering our request.

What work is required to finalise the request? \*

In order to finalise the request, the Defence decision maker must continue to consider and mark for redaction all sensitive material identified as falling within the scope of the request. Further engagement with internal line areas will be undertaken. The decision maker will then apply any required redactions, draft a statement of reasons and document schedule in accordance with their decision, ensuring an informed and robust decision on access is made.

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 \*

This request is considered to be both voluminous and complex. The request is considered voluminous as documents have been identified to be in scope of the request, totalling 360 pages. Furthermore, extensive consultation has been undertaken of 18 line areas across Defence, with all possessing significant equity in the requested material. As such, the decision maker is required to carefully review and mark up each page within the documents, ensuring they take into consideration the interests and advice provided from each Defence Group and Service. The request is considered complex due to the nature of the request. The request seeks access to "Department's Senate Estimates issues briefs" Due to the subject matter, prior to releasing any documents careful consideration will need to be given to the effect of disclosure may have on Australia's relationship with its International counterparts, security of the commonwealth and impact on industry suppliers.

## 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> .