



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

<b>Agency</b>	Department of Foreign Affairs and Trade
<b>Applicant</b>	Mr John Smith
<b>Date of decision</b>	28 August 2024
<b>OAIC reference number</b>	RQ24/03540
<b>Agency reference number</b>	LEX11155

### Decision

1. On 28 August 2024, the Department of Foreign Affairs and Trade (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 8 days to 30 August 2024 to process Mr John Smith's (the Applicant) request of 23 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 **30 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 **30 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 challenges involved in the search and retrieval of any relevant documents.
  - The further time sought by the Agency does not appear to be excessive in the circumstances.
  - 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 **30 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 **30 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 **30 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 by email at [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au), quoting reference number RQ24/03540.

Regards

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Andriana De Ieso  
Review Adviser  
Office of the Australian Information Commissioner

28 August 2024

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

23 June - Request received 24 June - Request to line area to search for documents 16 July - Request for section 15AA extension of time 17 July - Applicant agrees to section 15AB extension of time 17 July - After a number of follow-up requests for documents, line area advised there should be five documents within scope, which they have searched for but they haven't been able to locate. 22 July - Further request for documents - line area advised they have requested documents from original source. 6 August - Request for Cyber Operations to search for documents 7 August - Cyber located 6000 documents and revised Cyber search request 8 August - Cyber operations provided approximately 10 documents consisting of 300 pages 22 August - Line area received documents which had been requested to be resent from original source 26 August - IC refused request for section 15AB extension of time 28 August - Completed processing of request and decision-maker made decision. Will notify decision today in the event that we receive a section 15AC extension of time, we could release the decision on Friday 30 August.



## 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> .