



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

Agency	Office of the Special Investigator
Applicant	Mr James Smith
Date of decision	11 September 2024
OAIC reference number	RQ24/03770
Agency reference number	FOI24/13

Decision

1. On 10 September 2024, the Office of the Special Investigator (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 13 days to 19 September 2024 to process Mr James Smith's (the Applicant) request of 8 July 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 **19 September 2024**. My reasons are outlined below.

Background

4. The background to this application is summarised in **Attachment A**.
5. A copy of the Agency's reasons for seeking an extension are included at **Attachment B**.

Reasons for decision

6. 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.
7. 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].
8. On the information before the OAIC, I am satisfied that the application for further time until **19 September 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 absence of key decision-making personnel and the requirement to finalise consultation with other Commonwealth agencies.
- 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.

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

- The work already undertaken by the Agency to finalise the request.
- Steps taken by the Agency to first request a s 15AA agreement from the Applicant.
- Steps taken by the Agency to utilise relevant extension of time provisions available under the FOI Act to allow for third party consultation.

10. The new due date for the Agency's decision on the FOI request is now **19 September 2024**.

11. 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 **19 September 2024**. Such an extension can only be granted once and cannot be extended by a variation.

12. 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.

13. If the Agency does not provide the Applicant a decision by **19 September 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.

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

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

16. If you would like to discuss this matter, please contact our office by email at FOIDR@oaic.gov.au, quoting reference number RQ24/03770.

Regards

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Andriana De Ieso
Review Adviser
Office of the Australian Information Commissioner

11 September 2024

Background to processing period

Background	Processing period	Due date
FOI request made on 8 July 2024	30 days	7 August 2024
Third party consultation undertaken under ss 26A, 27 or 27A	Extended by 30 days, under s 15(6)	6 September 2024

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

Following receipt of the request on 8 July 2024: - Document searches were completed within 1 week. - 10-11 July 2024, initial consultation with Commonwealth agencies commenced - 16 July 2024, the request was acknowledged by email and, as part of the correspondence, the applicant was also informed of the extension under s 15(6), s 27. - 16 July 2024, consultation under s 27 of the FOI Act commenced. - 20 July 2024, initial consultation with Commonwealth agencies finalised. - 21-22 August 2024, secondary consultation with Commonwealth agencies commenced to clarify and confirm responses initially received and to make enquiries regarding a s 34 claim - the OSI is still awaiting a response to the latter enquiry from a Commonwealth agency. - 30 August 2024, consultation under s 27 of the FOI Act finalised. - late August 2024, draft decision on access prepared and preliminary assessment complete. - 3 September 2024, internal clearance processes commenced. - 5 September 2024, internal clearance processes identified there was material in one document which the OSI had not consulted a Commonwealth agency about. - 6 September 2024. third round of consultation commenced in relation to information identified the previous day as needing consultation. The OSI is still awaiting a response from the agency concerned. Please note that between 24 July to 18 August 2022, inclusive, the OSI's one staffing resource dedicated to processing FOI requests was unavailable to do this work, impacting the OSI's available resources for processing FOI requests.

What work is required to finalise the request? *

The request has nearly been finalised with all work completed, other than 2 consultations and final decision to be made by an authorised officer on the request. During final internal/clearance processes it was identified that information in one of the documents concerned a Commonwealth agency which had not been consulted on potential disclosure of that information. Additionally, during processing, one other agency claimed information was exempt under s 34 and the OSI is making further enquiries in this regard to ensure the exemption, if needed, is appropriately applied. The OSI still needs to receive and consider the views on potential disclosure of the remaining information and enquiries.



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> .