



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

Agency	Department of Foreign Affairs and Trade
Applicant	Mr Alex Pentland
Decision date	11 September 2024
OAIC reference number	RQ24/03749
Agency reference number	LEX 11338

Decision

1. On 9 September 2024, the Department of Foreign Affairs and Trade (the Agency) applied under s 15AB(1) the *Freedom of Information Act 1982* (Cth) (FOI Act) to the Information Commissioner for an extension of 7 days to 21 September 2024 to process Mr Alex Pentland's (the Applicant) request of 16 July 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 6 days to **20 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 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 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].

8. On the information before the OAIC, I am satisfied that an extension to the processing period until 20 September 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 sensitive nature of the documents requested, challenges involved in the search and retrieval of any relevant documents and the requirement to obtain subject matter expertise from relevant business line areas in relation to any potential sensitivities involved.
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.
10. The Agency must provide the Applicant with a decision by **20 September 2024**.

If the Agency does not provide the Applicant a decision by **20 September 2024** the Applicant may seek review by the Information Commissioner of the Agency’s deemed access refusal decision of **20 September 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.
11. For further information, the OAIC website provides a resource containing information on [applying for an extensions of time to process freedom of information requests](#).
12. This extension of time matter is now closed. Your review rights are set out below.
13. If you would like to discuss this matter, please contact our office by email at FOIDR@oaic.gov.au, quoting reference number RQ24/03749.

Regards

A De Ieso

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 16 July 2024	30 days	15 August 2024
Applicant's agreement to extend the processing period under s 15AA	Extended by 30 days	14 September 2024



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

16/7/24 - Request Received 16/7/24 - Request to partial transfer to another agency 22/7/24 - Partial transfer request denied by other agency 22/7/24 - Search taskings sent out (including to overseas Posts) 22/7/24 - Request acknowledged 06/8/24 - s 15AA request for extension of time from applicant 06/8/24 - Applicant agrees to s 15AA extension of time 06/8/24 - Search results received, becomes apparent at this point that further searches are required as certain senior official(s) likely hold relevant documents. These senior official(s) were unavailable at this time. 15/8/24 - Search results received 28/8/24 - Search results received from senior officials 29/8/24 - Search results received from senior officials 05/09/24 - Internal consultations sent out to relevant subject matter experts

What work is required to finalise the request? *

Identification and discussion of sensitivities with subject matter experts, discussion with decision-maker, preparing documents for release, informing relevant stakeholders

Why is the request considered complex or voluminous? *

Documents are sensitive and goes to matters of international relations - as such they need to be carefully considered by subject matter experts. Additionally, some of the documents were held by specific senior executive officers who were unavailable for parts of this process. Additionally, due to the nature of the request, we were unable to commence searches until the question of the partial transfer was resolved.

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

No



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> .