



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

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| Agency | Department of Home Affairs |
| Applicant | Cyber Sceptic |
| Date of decision | 25 September 2024 |
| OAIC reference number | RQ24/03916 |
| Agency reference number | FA 24/07/01802 |

Decision

1. On 18 September 2024, the Department of Home Affairs (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 26 September 2024 to process Cyber Sceptic's (the Applicant) request of 28 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. I am 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. On the basis of the information before me, I have decided to decline the Agency's request for further time to deal with the request. A decision on the Applicant's request therefore was due by 27 August 2024. The Agency is encouraged, in the interest of administrative efficiency, to continue to process the request and release documents administratively if the Applicant has not yet applied for IC review of the deemed decision. 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 an 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 not satisfied that the application for further time is justified, for the following reasons:
 - The application provides limited evidence of appropriate work being undertaken by the Agency to process the FOI request to date. A timeline setting out the steps taken to process the FOI request and work already completed was not provided. As such, it appears the Agency did not utilise the initial processing period effectively and I cannot find that an extension is justified.
8. The effect of this decision is that the Agency remains deemed to have made an access refusal decision on the Applicant's request on **27 August 2024**.
9. 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 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 extension under s 15AC of the FOI Act means that charges cannot be imposed and therefore any deposit the applicant has paid should be refunded.
10. It is open to the Applicant to seek Information Commissioner review (IC review) of the Agency's deemed access refusal decision of **27 August 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.
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 RQ24/03916.

Regards

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Andriana De Ieso
Review Adviser
Office of the Australian Information Commissioner

25 September 2024

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

We have had to contact multiple areas of the department to locate the documents and some of the documents required assistance from our IT support team as the documents were locked due to the sensitivity of the materials.

What work is required to finalise the request? *

Further consultation with the relevant business areas on redactions and possibly third-party consultations. 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 *

The applicant is requesting for 'I would like all available documents relating to the procurement detailed below. This includes justification as to why this was a limited tender, the decision maker who signed off on the procurement and the outcomes of the procurement (results delivered). - Ransomware targeting framework.' We have identified 111 folios, and it is related to the contact between the department and a third party, the materials need to be assessed carefully so that no information relevant to the business is released and any future process is not compromised.

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

yes, the third party the department has a contact with.



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> .