



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

Agency	Attorney-General's Department
Applicant	Tom Dang
Date of decision	12 December 2024
OAIC reference number	RQ24/05436
Agency reference number	FOI24/446

Decision

1. On 5 December 2024, the Attorney-General's Department (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 45 days to 19 December 2024 to process Tom Dang's (the applicant) request of 5 September 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 4 November 2024. The agency is encouraged, in the interests 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 agency has not provided sufficient detail as to the number of consultations undertaken or a sufficient timeline inclusive of dates demonstrating the work being undertaken by the agency to process the FOI request to date. As such, it appears the agency did not utilise the initial processing period effectively and I cannot find that an extension is justified.
 - In light of the above, there does not appear to be other circumstances to demonstrate that the Applicant's request is otherwise complex or voluminous for the agency to deal with so as to justify an extension under s 15AC(5).
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 **4 November 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 18 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.
10. For further information, the OAIC website provides a resource containing information on [applying for an extensions of time to process freedom of information requests](#).
11. This extension of time matter is now closed. Your review rights are set out below.
12. If you would like to discuss this matter, please contact our office on 1300 363 992 or by email at FOIDR@oaic.gov.au, quoting reference number **RQ24/05436**.

Kind regards,



Hannah Hunter
Assistant Review Advisor
Office of the Australian Information Commissioner

12 December 2024

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

- FOI transfer request received from PM&C - department accepted transfer - PM&C confirmed transfer and sent original FOI - wrote to applicant confirming transfer of FOI request, scope revision and sought extension of time under s 15AA - applicant responded with agreement to revise scope - wrote to applicant to follow up on the extension request - applicant responded with their agreement to extend by 30 days - notified the OAIC of the extension - allocated new request to decision maker and requested a contact officer and documents from relevant line area - contact officer assigned - request discussed internally within FOI team - discussed request with decision maker, provided suggestion for processing request - wrote to applicant providing links to past FOI requests which provide access to the information he is seeking - followed up with applicant seeking a response - discussed request with decision maker regarding next steps as applicant did not respond - wrote to applicant again with a further scope revision suggestion - discussed request with line area regarding next steps as the applicant did not respond - further discussions on scope and interpretation with line area - confirmed line area's interpretation of scope - line area conducted searches and reviewed past FOI requests - line area advised they required more time to return searches and documents - line area provided documents for request - consultation sent for request - applying for a s 15AC extension from the OAIC

What work is required to finalise the request? *

- receive response from consultation - prepare decision package - consult with AGO - obtain final clearance and signature from decision maker - send decision to applicant

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 *

There was a delay in processing this request as we attempted to engage with the applicant several times to further revise scope (as we understood the information they were seeking was released in a previous FOI). As we did not receive a response, the department proceeded to commence searches as per the

Webform WEB-EOT-24-02644

interpreted scope. There are 4 documents identified within the scope of the request and require consultation. The final package will also require consultation with AGO. The time requested is to account for the remaining steps required (factoring in AGO consultation).

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

No.

Please describe the measures that would be taken to ensure a decision is made within the period of the requested extension and to keep the applicant informed of the progress of the request *

The department is working with the line area to prioritise this request. We will continue to contact the applicant when required.

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> .