



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

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|-------------------------|--|
| Agency | Department of the Prime Minister and Cabinet |
| Applicant | Tyler |
| Date of decision | 4 December 2024 |
| OAIC reference number | RQ24/05215 |
| Agency reference number | FOI/2024/313 |

Decision

1. On 27 November 2024, the Department of the Prime Minister and Cabinet (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 43 days to 6 December 2024 to process Tyler's (the Applicant) request of 10 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 24 October 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. 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 an 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 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. The application notes periods of time where the FOI request appears to not have been progressed. As such, it appears the Agency did not utilise the initial processing period, including the additional time as provided by the Applicant, effectively and I cannot find that an extension is justified.
9. In declining this extension I have also considered the time taken to lodge the application, noting that it was lodged more than 4 weeks after the request was due.
10. The effect of this decision is that the Agency remains deemed to have made an access refusal decision on the Applicant's request on **24 October 2024**.
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 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.
12. It is open to the Applicant to seek Information Commissioner review (IC review) of the Agency's deemed access refusal decision of **24 October 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.
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, quoting reference number RQ24/05215.

Yours sincerely

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Andriana De Ieso
Review Adviser
Office of the Australian Information Commissioner

4 December 2024

Background to processing period

| Background | Processing period | Due date |
|--|--------------------------|-----------------|
| FOI request made on 10 September 2024 | 30 days | 10 October 2024 |
| Applicant's agreement to extend the processing period under s 15AA | Extended by 14 days | 24 October 2024 |

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

Please provide a timeline setting out the work already completed in order to process this request. Where an extension of time has previously been granted, describe the work that was undertaken during that extended period. *

10 September 2024 - applicant submitted request to DFAT 17 September 2024 - DFAT seeks PM&C's agreement to accept s16 transfer of request 20 September 2024 to 24 September - Department identifies relevant line area and Decision maker. Searches commence for relevant documents 24 September 2024 - Department accepts transfer of FOI request from DFAT 26 September 2024 - request acknowledged 26 September 2024 to 8 October 2024 - delays from line area in responding to search request due to the only subject matter expert able to respond to the FOI matter was on leave. 8 October 2024 - follow up sent to line area regarding search request for FOI matter 8 October 2024 - s15AA EoT request sent to applicant 8 October 2024 - Applicant agrees to 15AA extension until 24 October 9 October 2024 - Line area identifies relevant documents 9 October 2024 - 28 October 2024 - delays from line area in responding to search request due document being hard copy and is required to be accessed through specific room (available only to limited number of people with appropriate access) and to be manually scanned 25 October 2024 - follow up sent to line area regarding search request for FOI matter 29 October 2024 - line area finalised searches 31 October 2024 - consulted with two government departments 12 November 2024 - follow up sent to two government departments 14 November 2024 - decision drafted 19 November 2024 to 26 November - ongoing discussion with Decision Maker regarding relevant sensitivities and consultations 26 November 2024 - follow up sent to Decision maker seeking instruction 27 November 2024 - Line area responded 27 November 2024 - decision letter sent for internal clearances 27 November 2024 - section 15AC application submitted

What work is required to finalise the request? *

The FOI team has reviewed the search results, a decision has been drafted as is process of receiving relevant clearances. We anticipate to be in a position to issue the applicant a decision shortly.

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 request was originally transferred from DFAT resulting in a two-week processing delay. The applicant requested access to a copy of documents recording the Governor-General's approval of the Articles of Agreement for the Asian Infrastructure Investment Bank and copy of accompanying documents submitted to the Governor-General in seeking the Governor-General's approval of the Articles. The document located dates back to 2015 and is no longer stored on Department systems. The line area was required to manually search through hard copy records systems to locate the appropriate documents. The line area was unable to direct uninterrupted recourses to manage searches due to other urgent and competing priorities. This resulted in significant delays and searches had to be carried on over a period of time. The line area was then required to manually scan through each page individually of the documents once located as they were bound and could not be separated.

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

Yes

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 FOI Team will continue to work closely with the relevant departmental line areas to finalise the decision as soon as practicable. We will also continue to keep the Applicant informed on the processing of the request. The request is being prioritised and a dedicated case officer appointed to manage the request.



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> .