



Decision to grant an extension of time under s 54D of the *Freedom of Information Act 1982*

Agency	Department of Health and Aged Care
Applicant	Health Anon
Date of decision	17 December 2024
OAIC reference number	RQ24/05633
Agency reference number	FOI 25-0019 IR

Decision

1. On 13 December 2024, the Department of Health and Aged Care (the Agency) applied to the Information Commissioner under s 54D(3) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of 30 days to 11 January 2025 to process Health Anon's (the Applicant) FOI internal review request of 12 November 2024 (the internal review request).
2. The Applicant's internal review request has been deemed as affirmed as a decision has not been made by the Agency by 12 December 2024.
3. As a delegate of the Information Commissioner, I am authorised to make decisions on applications for further time under s 54D(4) of the FOI Act.
4. Under s 54D(4) I have decided to grant the Agency further time to deal with the internal review request to **10 January 2025**. My reasons are outlined below.
5. By granting further time it is anticipated that the Agency will provide a well-reasoned and better managed decision.

Background

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

Reasons for decision

8. Subsection 54D(4) 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.

9. In making my decision under s 54D(4), 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].
10. On the information before the OAIC, I am satisfied that the application for further time until **10 January 2025** is justified, for the following reasons:
- Based on the Agency’s submissions, I am satisfied that the internal review request involves some challenges for the Agency, based on the requirement to consult with third parties.
 - Granting this extension may avoid the need for the Applicant to lodge an application for Information Commissioner review (IC review). As such, I consider that granting this extension of time assists in facilitating and promoting the objects of the FOI Act, as well as providing the Applicant with access to the full review mechanisms available under the FOI Act, which would otherwise not be available if the internal review decision remained a deemed affirmation of the original decision.¹
 - Granting this extension of time is expected to provide the internal review Applicant with an internal review decision by the Agency by 11 January 2025, which will be substantially sooner than a decision in an Information Commissioner review (IC review).
 - Granting this further time will also extend the timeframe for the Applicant to apply for an IC review of the Agency’s internal review decision.
11. In granting this further time, I have also considered:
- The work already undertaken by the Agency to finalise the request.
12. The new due date for the Agency’s internal review decision is now **10 January 2025**.
13. This further time granted under s 54D of the FOI Act means that the deemed affirmation is taken never to have applied if the Agency makes a decision on the internal review request by **10 January 2025**. Such an extension can only be granted once and cannot be extended by a variation.
14. If the Agency does not provide the Applicant a decision by **10 January 2025**, 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 affirmation.
15. For further information, the OAIC website provides a resource containing information on [applying for an extensions of time to process freedom of information requests](#).
16. This extension of time matter is now closed. Your review rights are set out below.
17. If you would like to discuss this matter, please contact our office by email at FOIDR@oaic.gov.au, quoting reference number RQ24/05633.

¹ According to the Revised Explanatory Memorandum to the Freedom of Information Amendment (Reform) Bill 2010 (Cth) [p. 28]

Background to processing period

Background	Processing period	Due date
FOI internal review request made on 12 November 2024	30 days	12 December 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. *

- 12 November 2024 – Request for review received - 12 November 2024 – Department advised decision maker of internal review - 12 November 2024 – Department acknowledged request for internal review - 19 November 2024 – FOI section met with decision maker to discuss the internal review - 20 November 2024 – FOI section sought the DM instructions on the release of a document that was captured in the scope of the original request - 25 to 29 November 2024 – FOI section liaising with decision maker to seek instructions - 2 December 2024 – Decision maker provided instructions and advised that parts of the document that were considered irrelevant as now relevant - 4-5 December 2024 – FOI advised decision maker that third party consultation was required on information that was previously considered as irrelevant - 5 December 2024 – Decision maker advised to proceed with consultation and line area provided contact information - 5 December 2024 – FOI notified that third party consultation was required, but confirmed that no extra time was afforded - 5 December 2024 – Department conducted consultation
What work is required to finalise the request? *

The department requires additional time to: Review and access third party submissions Prepare the document for release by marking it up and seeking DM instructions on new mark up Prepare a decision pack for the review and signature of the Decision Maker Issue the decision.

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

Yes - third parties are required to conduct consultation 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> .