



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

Agency	Department of Defence
Applicant	James Smith
Decision date	29 October 2024
OAIC reference number	RQ24/04539
Agency reference number	FOI 222/24/25

Decision

1. On 21 October 2024, the Department of Defence (the Agency) applied under s 15AB(1) of the *Freedom of Information Act 1982* (Cth) (FOI Act) to the Information Commissioner for an extension of 30 days to 20 November 2024 to process James Smith's (the Applicant) request of 19 September 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 made under s 15AB(2) of the FOI Act.
3. On the information before the Information Commissioner, I have decided to decline the Agency's request to extend the processing period. A decision on the Applicant's request therefore was due by 21 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. A copy of the Agency's reasons for seeking an extension are included at **Attachment A**.

Reasons for decision

5. 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.

6. 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].
7. On the information before the OAIC, I am not satisfied that the application to extend the processing period 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 detailed timeline of work completed to date was not provided. As such, it appears the Agency has not utilised the initial processing period effectively and I cannot find that the processing period was insufficient on the basis of complexity or volume.
8. If the Agency did not provide the Applicant a decision by **21 October 2024**, the Applicant may seek review by the Information Commissioner of the Agency’s deemed access refusal decision of **21 October 2024**. Further information on [applying for IC review](#) is available on the OAIC [website](#). Any application for IC review should 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.
9. For further information, the OAIC website provides a resource containing information on [applying for an extensions of time to process freedom of information requests](#).
10. This extension of time matter is now closed. Your review rights are set out below.
11. If you wish to discuss this matter, please contact us by email at FOIDR@oaic.gov.au quoting reference number RQ24/04539.

Yours sincerely

A De Ieso

Andriana De Ieso
Review Adviser
Office of the Australian Information Commissioner
29 October 2024

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

On 19 September 2024, the applicants request was received by Defence, and was promptly tasked to a line area that could reasonably be expected to hold documents. It was soon advised that the scope was voluminous and broad, and therefore clarification would be required from the applicant. On 23 September 2024, Defence informally requested clarification from the applicant in relation to the scope of their request. As the applicant did not response to this correspondence, Defence sent a follow-up email on 27 September 2024. The applicant did not respond to this second correspondence. While awaiting clarification from the applicant, it was identified that further line areas held equity and could reasonably be expected to hold documents matching the applicants scope. As such, these line areas were also tasked with undertaking document searches. As the applicant had not responded to the Departments attempts to seek informal clarification of the request, a section 24AB notice was prepared. On 2 October 2024, Defence issued a formal consultation notice to the applicant in accordance with s24AB of the FOI Act. On 4 October 2024, the applicant provided a response, refusing to revise the scope of their request. The applicants refusal response was provided for the line area for consideration. In an attempt to assist the applicant as much as practicable, further searches and intense review has been undertaken by multiple line areas, who could reasonably be expected to hold documents relevant to the applicants request. For the reasons advised to the applicant in the formal consultation notice, this process has been extremely timely. Defence is continuing to undertake searches and review of its records in order to locate all relevant information in scope of the applicants request. Thank you for considering our request.

What work is required to finalise the request? *

To ensure that a robust decision is made, Defence has been required to conduct reasonable searches of a information holdings system that has been in use for over 10 years. These searches must be completed by the multiple line areas who could reasonably be expected to have equity in the request. Once all material is identified, the Decision maker will collate and consider the sensitivities within the material, and seek further advice in relation to their proposed decision, so that they may formulate a robust decision on access. Following receipt of this advice, the decision maker will be required to consider the advice provided by multiple internal subject matter experts, before applying any required redactions over exempt information contained within the material. Next, the decision maker will draft a statement of reasons that reflects their decision on access.

Why is the request considered complex or voluminous? *

This request is considered both complex and voluminous due to the nature of the request. The request is voluminous as it seeks access to all reports of safety incidents held within a Defence system for an undisclosed period of time. As noted in the practical refusal notice, the particular system has been in use for over a 10 year period, and therefore in order to locate the information the applicant is seeking access too, a significant amount of data must be reviewed in order to determine its relevance. Due to the sensitivity of the subject matter, the request is complex as significant consideration must be given to the effect disclosure may have on the operations of the agency, as well as the individuals involved.

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> .