



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

<b>Agency</b>	Office of the Special Investigator
<b>Applicant</b>	James Smith
<b>Date of decision</b>	6 November 2024
<b>OAIC reference number</b>	RQ24/04774
<b>Agency reference number</b>	FOI24/18

### Decision

1. On 1 November 2024, the Office of the Special Investigator (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 21 November 2024 to process James Smith's (the Applicant) request of 22 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. As 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. Under s 15AC(5) I have decided to grant the Agency further time to deal with the request to **21 November 2024**. 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 the 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 satisfied that the application for further time until **21 November 2024** is justified, for the following reasons:

- Based on the Agency's submissions, I am satisfied that the request involves some challenges for the Agency, based on the range of documents captured by the request.
  - Based on the Agency's submissions that the Applicant's request captures approximately 62 documents comprising 694 pages, I am satisfied the request is voluminous in nature.
  - The further time sought by the Agency does not appear to be excessive in the circumstances.
9. In granting this further time, I have also considered:
- The work already undertaken by the Agency to finalise the request
  - Measures taken by the Agency to ensure a decision is made within the extended time period
  - Steps taken by the Agency to first request a s 15AA agreement from the Applicant
10. The new due date for the Agency's decision on the FOI request is now **21 November 2024**.
11. This further time granted under s 15AC of the FOI Act means that the deemed refusal is taken never to have applied if the agency makes a decision on the request by **21 November 2024**. Such an extension can only be granted once and cannot be extended by a variation.
12. 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 (including any extension of time), 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 further time granted under s 15AC of the FOI Act means that charges cannot be reimposed and any deposit the applicant has paid should be refunded.
13. If the Agency does not provide the applicant a decision by **21 November 2024** 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 decision.
14. For further information, the OAIC website provides a resource containing information on [applying for an extensions of time to process freedom of information requests](#).
15. This extension of time matter is now closed. Your review rights are set out below.
16. If you would like to discuss this matter, please contact our office on 1300 363 992 or by email at [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au), quoting reference number RQ24/04774.

Yours sincerely

Sarah Forrester  
Assistant Director  
Freedom of Information Branch  
Office of the Australian Information Commissioner

6 November 2024

Background to processing period

Background	Processing period	Due date
FOI request made on 22 September 2024	30 days	22 October 2024



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

To date, the OSI has undertaken searches for the request. However, a large number of documents have been identified and the OSI is seeking to negotiate the scope with the applicant - the OSI undertook informal negotiation but did not receive a response from the applicant. A practical refusal request consultation process is now underway and a response is expected by 15 November 2024.

What work is required to finalise the request? \*

- The scope will need to be settled and relevant documents extracted and collated/scheduled - Relevant documents will need to be assessed for the application of exemptions - Consultation (if any) will need to be undertaken. It is anticipated, based on the current scope and documents identified so far, that consultation will be required with at least 2-3 Commonwealth agencies or departments and 1 individual. - Preparation of a decision letter and recommendation on access, which will need to be internally reviewed/cleared and subject to final decision-making.

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 \*

Currently, the request captures an estimated 62 documents comprising 694 pages. The request is broad and is not limited by a date range, nor by reference to a particular subject-matter or topic. In short, the applicant seeks copies of all correspondence between the OSI and the International Criminal Court (ICC), as well as all briefings for OSI visits to the Netherlands and London. The documents within scope at this time include material that will likely involve fine/complex decisions. This is because the kinds of documents caught by the request pertain to communications with the ICC. They also pertain to briefs prepared for OSI travel to meet with the ICC and and foreign counterparts to discuss matters relevant to

the OSI's remit which is, relevantly, to work with the Australian Federal Police (AFP) to investigate the commission of criminal offences under Australian law arising from or related to any breaches of the Laws of Armed Conflict by members of the Australian Defence Force in Afghanistan from 2005 to 2016 (see: <https://www.osi.gov.au/about/our-purpose>). As such, we anticipate that the documents may contain material that would, or could reasonably be expected to, affect Australia's international relations and prejudice the conduct of ongoing OSI-AFP Investigations, and that they will require careful assessment and consideration. There are also other contributing factors to consider, including: - The OSI has one member of staff dedicated to processing FOI requests on a day-to-day basis and FOI-related work is just one part of their role - All of the OSI's corporate and legal and policy functions necessary to support the running of a small APS agency are carried out by a small cohort of staff, not more than 20. - We anticipate that this request - in its current form - will require input from staff with expertise in Legal and Policy matters. - The applicant has submitted several (8) other requests to the OSI this year in addition to this one and the OSI has previously disclosed a number of documents in response to four of their requests. The applicant's requests have comprised 47% of the OSI's FOI caseload for 2024 to date.



## 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> .