



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

Agency	Services Australia
FOI applicant	Frank N Fearless
Date of decision	25 November 2024
OAIC reference number	RQ24/04988
Agency reference number	LEX 81846

Decision

1. On 15 November 2024, Services Australia (the Department) applied to the Information Commissioner under s 15AC(4) of the *Freedom of Information Act 1982* (Cth) (FOI Act) for an extension of 26 days to 26 November 2024 to process Frank N Fearless' (the FOI applicant) request of 3 October 2024 (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 Department's request for further time to deal with the request. A decision on the FOI applicant's request therefore was due by 2 November 2024. My reasons are outlined below.

Background

4. On 3 October 2024, the FOI applicant made an FOI request to the Department. The FOI decision was due to be provided to the FOI applicant on 2 November 2024.
5. On 15 November 2024, the Department applied to the Information Commissioner for further time to process the FOI applicant's request under s 15AC(4) on the basis that the processing period is insufficient to adequately deal with the FOI request. A copy of the Department's reasons is included at Attachment A.

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 declining this application for further time under s 15AC(5), I have considered the following factors:
 - Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act, to which I must have regard, in particular [3.164] – [3.167]

- the scope and complexity of the FOI request
 - the reasons for delay in making an initial decision
 - the period of time sought, and the total estimated processing time
 - whether discussions with the applicant about the delay and extension of time application have occurred
 - the desirability of the decision being decided by the agency or minister rather than by IC review
8. On the information before the OAIC, I am not satisfied that the application for further time is justified, for the following reasons:
- The FOI applicant's request does not appear to involve sufficient complexity so as to warrant extra processing time, based on the number of documents captured by the request and the limited evidence of any technical or practical challenges involved in the search and retrieval or processing of documents.
 - The views expressed by the FOI applicant to the Department views in not agreeing to a s 15AA extension of time request.
 - The Department's statement that: '*The decision has been prepared and is ready to notify.*'
 - While I acknowledge the Department's submissions regarding the decision maker being on unplanned leave until 25 November 2024, there do not appear to be other extenuating circumstances to demonstrate that the FOI applicant's request is otherwise challenging for the Department to deal with so as to justify an application for further time under s 15AC(5).
9. The effect of this decision is that the agency remains deemed to have made an access refusal decision on the applicant's request on 2 November 2024.
10. 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.
11. It is open to the applicant to seek Information Commissioner review (IC review) of the agency's deemed access refusal decision of 15 November 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.
12. This extension of time matter is now closed. Your review rights are set out below.
13. If you would like to discuss this matter, please contact our office on 1300 363 992 or by email at xxxxx@xxxx.xxx.xx, quoting reference number RQ24/04988.

Yours sincerely,



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

25 November 2024



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

Please also explain the reasons for the request and why an extension would be justified. Requests for longer extensions of time (more than 30 days) will require greater justification.

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. *

Extension details • On 03 October 2024, the agency received the applicant's FOI request. • On 4 November 2024, the statutory time period for processing ended. • Requested length of extension: 22 days • New decision due date if extension is granted: 26 November 2024 • On 29 October 2024, the agency approached the applicant an extension of time under s 15AA of the FOI Act (Attachment B). • On 30 October 2024, the applicant refused the request for extension of time under section 15AA of the FOI Act (Attachment B). In their response, the applicant stated it was unfortunate release of the documents would slip past Senate Estimates. • The processing period was not extended as a result of other statutory provisions, nor is the agency considering to do so. Work completed to date • 3 October 2024 - the agency received the applicant's FOI request. • 9 October 2024 – acknowledgement letter sent to the applicant. • 9 October 2024 - search minute sent to the relevant business area with retrieved documents due on 17 October 2024. • 21 October 2024 - the FOI team followed up with the relevant business area. • 21 October 2024 – search minute returned from the relevant business area. • 23 October 2024 – documents sent to Department of Social Services (DSS) for courtesy consultation. • 28 October 2024 – courtesy consultation received from DSS. • 29 October 2024 – sensitivities raised by DSS provided to the relevant internal business area for advice. The business area provided advice on the same day. • 29 October 2024 – the agency contacted the applicant seeking agreement to a 14-day extension of time under section 15AA of the FOI Act. • 30 October 2024 - applicant refusing request for an extension of time under section 15AA of the FOI Act. • 12 November 2024 - decision maker attempted to make an EOT under s15AC - webform barred. • 12 November 2024 - decision maker wrote to OIAC seeking an EOT under s15AC - via email, applicant cc'd. • 14 November 2024 - decision maker on unplanned leave until 22 November 2024 • 14 November 2024 - decision was converted to statement of reasons to be sent on 15 November 2024. • 15 November 2024 - OIAC responded stating email must be made on webform EOT • 15 November 2024 -

Webform WEB-EOT-24-02211

decision made to make an EOT under s15AC to bring the decision back into time to reinstate review rights. Statement of reasons will not be sent to applicant

What work is required to finalise the request? *

finalising and sending

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 *

Scope and complexity of the request • The request sought documents relating to debts 'indirectly' affected by income apportionment. • Two documents (totalling 14 pages) was retrieved. • The subject matter of the request is sensitive in nature and appropriate stakeholders needed to be consulted to ensure all sensitivities were identified.

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

Other agencies/parties with an interest in the request • The Department of Social Security was consulted about the documents.

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 decision has been prepared and is ready to notify • The decision-maker is now on unplanned leave and due to return on 25 November 2024.

Review rights

Review by the Administrative Appeals Tribunal

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 and Family Court of Australia 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 FOI 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 is available on our website:

<https://www.oaic.gov.au/freedom-of-information/reviews-and-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>.