



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

Agency	National Health and Medical Research Council
Applicant	Zac Elwood
Decision date	5 February 2025
OAIC reference number	RQ25/00524
Agency reference number	FOI 2024/006

### Decision

1. On 30 January 2025, the National Health and Medical Research Council (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 7 March 2025 to process Zac Elwood's (the Applicant) request of 7 December 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 is due by 5 February 2025. 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 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.

7. 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].
8. 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. It appears that document searches commenced several weeks after the FOI request was received. As such, it appears the Agency has not utilised the initial processing period, including the additional time provided by the Applicant, effectively and I cannot find that the processing period was insufficient on the basis of complexity or volume.
9. If the Agency does not provide the Applicant a decision by **5 February 2025**, the Applicant may seek review by the Information Commissioner of the Agency's deemed access refusal decision of **5 February 2025**. 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.
10. For further information, the OAIC website provides a resource containing information on [applying for an extensions of time to process freedom of information requests](#).
11. This extension of time matter is now closed. Your review rights are set out below.
12. If you wish to discuss this matter, please contact us by email at [FOIDR@oaic.gov.au](mailto:FOIDR@oaic.gov.au) quoting reference number RQ25/00524.

Yours sincerely

*A De Ieso*

Andriana De Ieso  
Office of the Australian Information Commissioner  
5 February 2025

Background to processing period

Background	Processing period	Due date
FOI request made on 7 December 2024	30 days	6 January 2025
Applicant's agreement to extend the processing period under s 15AA	Extended by 30 days	5 February 2025



## 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. \*

- 07 December 2024: FOI request submitted by the applicant to NHMRC's FOI Unit via email. - 07–11 December 2024: Internal discussions about the scope of request and which area/s of NHMRC would be involved in processing. - 11 December 2024: Acknowledgement email sent to applicant confirming receipt of request and providing general information about processing FOI requests (i.e., timeframe, charges, consultation with third parties and the disclosure log). Email also requests a 30-day extension to process the request (under s15AA of the FOI Act). - 13–16 December 2024: FOI Unit follows up with applicant via email about whether they agree to the 30-day extension. - 16 December 2024: Applicant responds and agrees to the extension of time, confirming that the new due date is 5 February 2025. - 16–19 December 2024: Internal discussions about the request and searching NHMRC's records in line with the scope. - 24 December 2024: The IC Request Form - Agency extension of time for processing an FOI request form is submitted and an acknowledgement is received from OAIC. Also, FOI Unit responds to the applicant and confirms new due date. - 25 December 2024 to 1 January 2025 (inclusive): NHMRC office is closed for the Christmas and New Year period (i.e., stand down) and the staff who process FOI requests were not working during and just after this period. - 7–17 January 2025: Internal consideration about processing the FOI request. - 16 January 2025: Applicant emails FOI Unit and asks if there has been any progress towards providing the requested information. - 20 January 2025: Search of NHMRC records conducted in line with the scope using an electronic discovery tool and relevant key search terms. The search identifies a total of 779 documents. The FOI Unit also advises the applicant that it is working on the request and will be in touch as soon as possible. - 20–29 January 2025: NHMRC reviews the search results and tries to refine the search by excluding documents that are more easily identified as not falling within the scope of the request. NHMRC also determines that it will be difficult to process the request within the remaining statutory timeframe (i.e., by 5 February 2025), due to the large number of documents identified.

What work is required to finalise the request? \*

NHMRC is still reviewing the 779 documents found in the search and excluding documents that are more easily identified as not meeting the scope of the request. Before NHMRC determines whether a practical refusal reason exists (i.e., that the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations, under s24AA(1)(a) of the FOI Act), we will continue reviewing the documents and consider whether the request can proceed as it is. If NHMRC subsequently determines that a practical refusal reason exists, we will assist the applicant (formally through a request consultation process or informally) to revise their request in a way that adequately addresses the practical refusal reason. This is so NHMRC can recommence processing it. This approach is consistent with paragraph 3.50 of the FOI Guidelines – Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (i.e., where a practical refusal reason exists and the applicant responds to a notice under s 24AB(2), the agency must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists (s24AB(3)). This approach is also in line with the guidance provided by OAIC at the 'IC Review Practice Update Webinar', delivered on 26 August 2024 (in terms of engagement and the insights for practical refusals). In line with s24AA(2) of the FOI Act, the work required to finalise this request is for NHMRC to: - if a practical refusal reason exists – assist the applicant to adequately reduce the scope so that it can proceed, and then identify, locate and collate the relevant documents - examine the documents - decide whether to grant, refuse or defer access - determine if consultation with third parties is required - make copies of documents - redact exempt material from the documents if required - notify an interim or final decision to the applicant.

Why is the request considered complex or voluminous? \*

In terms of the request being voluminous, the initial search conducted by NHMRC found 779 documents which potentially fall within the scope of the request. Before determining whether a practical refusal reason exists, NHMRC is trying to refine the search by excluding documents that are more easily identified as not meeting the scope of the request. The complexity of this request is due to its broad nature (e.g., information regarding 'structured rehabilitation', and with no date range provided), the large number of search results (as detailed above), and that NHMRC is trying to determine whether these documents are within the scope. This is taking further time to process. In addition, NHMRC is a small agency of around 220 staff, of which only a small team of officers have specialist knowledge on the relevant subject matter.

## 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> .