Agency Resource 13

Freedom of Information

July 2014

Extension of time for processing requests

The *Freedom of Information Act 1982* (FOI Act) requires agencies and ministers to comply with timeframes for processing FOI requests. In some limited circumstances, the timeframe may be extended; for example, with the agreement of the applicant or with the approval of the Information Commissioner.

This agency resource gives an overview of the extension of time (EOT) provisions in the FOI Act and explains how to apply to the Office of the Australian Information Commissioner (OAIC) for an e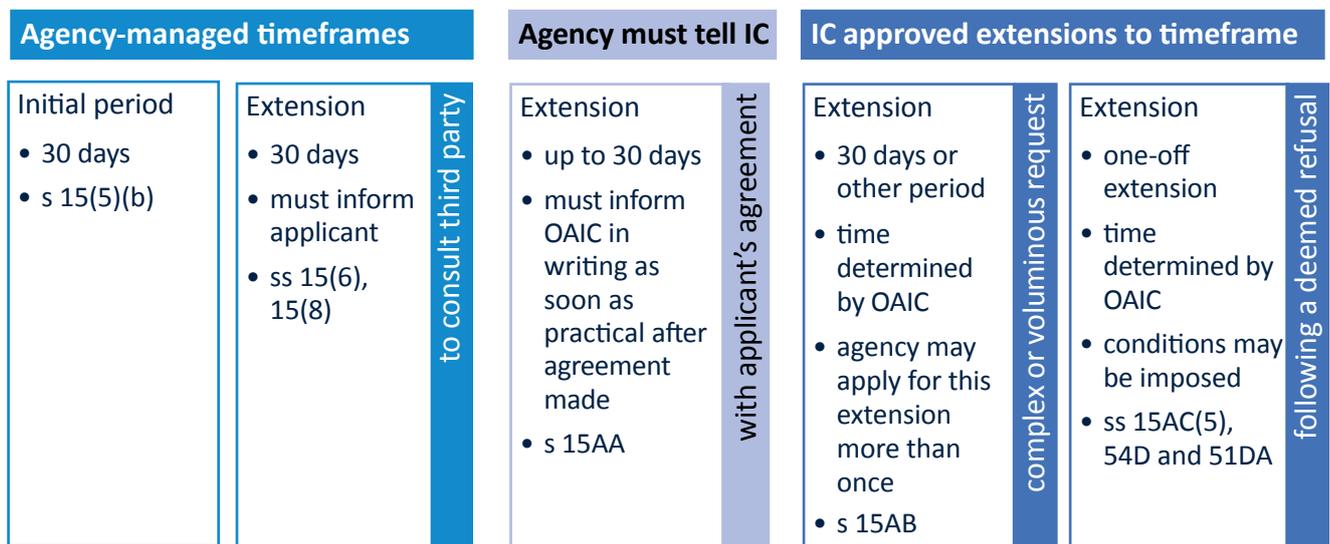xtension. It also outlines best practice for EOTs, and common mistakes that may result in an extension being declined. You should refer to the FOI Guidelines for full details: Part 8 (*Decisions on FOI requests*).

In this resource a reference to an agency includes a reference to a minister.

Extension of time provisions under the FOI Act

Figure 1 provides a broad overview of the extension of time provisions in the FOI Act. Each extension type is explained further below.

Figure 1 — Extension of time provisions

Agency-managed timeframes			Agency must tell IC		IC approved extensions to timeframe			
Initial period • 30 days • s 15(5)(b)	Extension • 30 days • must inform applicant • ss 15(6), 15(8)	to consult third party	Extension • up to 30 days • must inform OAIC in writing as soon as practical after agreement made • s 15AA	with applicant's agreement	Extension • 30 days or other period • time determined by OAIC • agency may apply for this extension more than once • s 15AB	complex or voluminous request	Extension • one-off extension • time determined by OAIC • conditions may be imposed • ss 15AC(5), 54D and 51DA	following a deemed refusal

Generally the EOT provisions apply sequentially with the extensions under ss 15AC, 54D and 51DA only applying after the initial processing period has finished.

Extension to allow consultation with a third party (s 15(6))

A decision maker in an agency may extend the processing period by 30 days if they need to consult an affected third party. The decision maker must determine in writing that a consultation mechanism under s 15(8), 26A, 26AA, 27 or 27A makes it appropriate to extend the processing period. Agencies do not need OAIC approval for this type of extension but do need to inform the applicant.

Extension with the applicant's agreement (s 15AA)

An agency may extend the processing period by up to 30 days if the applicant agrees in writing. The agency can also ask applicants for further extensions under s 15AA as long as the combined length of all agreed extensions does not exceed 30 days. The agency must give written notice of an extension to the OAIC as soon as practicable after the agreement is made. If the agency does not tell the OAIC, the extension is invalid.

A s 15AA agreement cannot be made once an FOI request has become a deemed refusal under s 15AC.

Extension for complex or voluminous requests (s 15AB)

An agency may apply to the OAIC for an extension if the FOI request is complex or voluminous. The agency must justify why an extension is necessary. The OAIC may extend the processing period by 30 days or another longer or shorter period, as appropriate. An agency may apply to further extend the timeframe if an earlier extension granted by the OAIC is insufficient. However, the agency must explain what has changed since their initial application for extension and provide new reasoning for why a further extension is justified.

A s 15AB extension cannot be requested following a deemed refusal under s 15AC. However, if the extension is requested before this occurs, then it is valid even if the OAIC approves it after this date.

Extension following a deemed refusal decision (ss 15AC, 54D, 51DA)

An agency may apply to the OAIC for further time after a decision has become deemed (either under s 15AC or under s 54D after an application for internal review). The application may only be made after the processing period has finished. An extension in these circumstances can only be granted once and, once granted, cannot be extended further.

The agency must justify why an extension is appropriate. The OAIC may extend the processing period by an amount of time suitable to the circumstances and may impose conditions on the extension.

Similar provisions apply to a deemed refusal to amend or annotate personal information under s 51DA.

Imposing an FOI access charge

An agency may impose a charge if a decision is made to grant access during an extension period agreed to by the applicant, granted by the OAIC for a complex or voluminous request, or arranged by the agency for third party consultation. An FOI charge cannot be imposed after a deemed refusal decision, even if an extension is granted by the OAIC under ss 15AC, 54D or 51DA.

Best practice when applying for an extension of time

1. **Give early consideration to the need for an extension of time**

    This creates options. You have time to consult the applicant on reducing the scope of their request, to negotiate an extension with the applicant, or to apply to the OAIC for an extension.

2. **Ensure that the EOT application is right the first time**
Make the best possible EOT application the first time. The OAIC may decline an EOT application that is missing supporting material or does not sufficiently make the case for the granting of the extension.

3. **Keep the applicant in the loop**
It is good practice to keep an FOI applicant informed of developments with their application, including requests to the OAIC for an extension. You may choose to send the applicant a copy of your EOT application. This streamlines the process and can speed up OAIC response time, especially if the OAIC needs to consult the applicant about the extension. The OAIC will regard the applicant's agreement to the extension favourably in making its decision.

4. **Explain how you will use the extra time**
This is particularly important for a request for a significant extension. You should consider providing a breakdown of what actions still need to occur and the dates they will be completed.

5. **Assess options for a staged release of documents**
Releasing documents in stages means that a request is not held up by a few complex documents. An applicant may be more inclined to agree to an extension where parts of their request have already been fulfilled.

6. **Have an experienced FOI officer oversee EOT applications**
Having one central point of contact within the agency to check EOT applications before they are sent to OAIC helps to ensure that applications consistently meet the requisite standards and are not needlessly declined.

Common mistakes when applying to the OAIC for an extension of time

An error or gap in your EOT application may mean that your request for an extension is needlessly declined. Here are some common mistakes and how to avoid them.

Common mistakes	Result
Agency does not provide adequate explanatory information to support request for an extension	EOT application may be declined. Agencies must make a case for why the Information Commissioner should use the discretion under the FOI Act to extend the timeframe. Be as specific as possible. General considerations must be clearly linked to the actual FOI request in question. Requests for longer extensions of time will require greater justification. See below for more information about what your EOT application should include.
Agency fails to inform the OAIC of a s 15AA extension (extension with applicant approval)	The s 15AA extension is invalid. Later, if you apply to the OAIC for a further extension you may find that you are out of time without realising it. This can affect your ability to seek extensions or to impose a charge. Take care to inform the OAIC of any extension agreed upon with the applicant. The EOT smart form offers a fast and straightforward way of doing this.

Agency fails to include the OAIC's reference number	This can cause confusion both for the agency FOI officer and OAIC staff. There is a risk the EOT application will be delayed due to confusion over which FOI request is being referred to.
	Agencies will not always have a reference number from the OAIC. However, where one has been allocated (for example, if the agency has previously notified the OAIC of a s 15AA extension or has previously applied for a 15AB extension) an agency must include it in their application.
	If there is more than one request on hand from the applicant or the applicant's name changes during the process (for example, the applicant chooses to be represented), failure to include the reference number may lead to confusion. Not only does this slow the processing of the EOT request, it may result in the EOT being declined.
EOT application is made under the wrong extension provision	EOT application declined.
	In the FOI Act there are extension provisions under ss 15AA, 15AB, 15AC, 54D and 51DA (these are explained above). Take care to make your application under the correct one as the requirements for each are different. For example, an extension under s 15AA only requires notifying the Information Commissioner, whereas an extension under s 15AB will require supporting evidence and explanation.
	Take care when using the EOT smart form. Ticking the wrong extension provision will mean that many of the fields you need to fill out change or disappear.
Agency does not provide adequate explanatory information to support a request for a *further* extension under s 15AB	Request for a further EOT declined.
	Agencies must make the case for an extension *every time*. Provide new reasoning. Explain what has changed since the previous EOT application and why a further extension is necessary. It is inadequate to resubmit the reasoning supplied previously.

What happens if you do not meet the statutory timeframe

Agencies should continue to process an FOI request even where the statutory timeframe has expired and an extension of time has been refused or not sought. The expiry of the timeframe gives the applicant the right to apply for review of a deemed decision — it does not remove the agency's obligation to process the request. The agency's obligation ceases only when the Information Commissioner commences a review of a deemed decision (that is, the date the OAIC notifies the parties that it is commencing a review, not the date an application for IC review is lodged). At that point, the Information Commissioner has assumed jurisdiction over the matter and the provisions of the FOI Act relating to IC review apply (including an agency's power to vary an access refusal decision under s 55G).

How to apply for an extension of time

You may apply for an EOT or notify the OAIC of an extension with the applicant's agreement by completing the EOT smartform or by email.

Applying for an EOT using the smartform

The EOT smartform can be downloaded from https://forms.business.gov.au/aba/oaic/foi-agency-extension-of-time-/ (it requires Adobe Reader 9.3 or later). The smart form can be used to apply for an extension or to notify the OAIC of a s 15AA EOT (an extension with the agreement of the applicant).

Take care when filling out this form to select the correct EOT provision as ticking the wrong provision will mean that many of the fields you need to fill out change or disappear.

When applying to the OAIC for an extension of time, make sure you explain your reasons for seeking an extension of time. Use of the smartform does not remove an agency's obligation to justify their request and provide supporting evidence and explanation. The form provides a text box for this and offers directions on what to include. At a minimum, agencies should explain:

- the reason for needing an extension (it is not sufficient to say that the request is voluminous — explain how many documents are covered by the request; the number of duplicates (if known); the nature of the documents (their size, format or classification may be relevant); any factors slowing their processing; whether the agency has consulted with the applicant to try to reduce the scope of the request; whether a schedule of documents has been developed; whether the schedule has enabled the agency to identify documents appropriate for earlier staged release)

- work already undertaken in processing the request
- work required to finalise the request
- work undertaken on the request following any earlier extension granted
- any consultation with the applicant concerning length of time
- whether other agencies or parties have an interest in the request
- measures that would be taken to ensure a decision is made within the period of extension and to keep the applicant informed about progress.

The OAIC does not take decisions to extend timeframes lightly and agencies should use the text box to provide formal, structured and complete reasoning.

If the form does not give sufficient space, consider attaching further supporting information (the form allows this in the section following the text box).

Applying for an EOT by email

All EOT emails should be sent to FOIDR@oaic.gov.au. To ensure that your request is processed quickly, please include all the information outlined in the following sample EOT request emails. It is not mandatory to use the sample EOT emails. They are a guide for what an EOT request should include, and agencies may adapt them to their own purposes.

The sample request emails to the OAIC cover:
- s 15AA extension notice (with applicant agreement)
- s 15AB extension request (complex or voluminous request)
- s 15AC extension request (following a deemed refusal).

How the OAIC will respond to your request or notification

A decision on your request will usually be provided within five working days. In certain circumstances the OAIC may need to consult with the FOI applicant or other affected parties. If this is the case, the extension may take longer to process.

Generally the OAIC will consult the applicant where the extension sought is for a period longer than 30 days or where the agency is seeking to further extend an earlier extension granted by OAIC. During consultation, the OAIC will often send the applicant a copy of the EOT application, so please advise if it contains anything sensitive that should not be passed on.

The OAIC's processing of an EOT application may also take longer than five days if further information is required. It is important that agencies provide a complete application in the first instance. Incomplete EOT applications may result in an extension being denied.

The Information Commissioner may open an own motion investigation if there is a systemic issue in the type, nature or frequency of EOT requests from a particular agency.

Extensions and transfers

Where an agency has sought an EOT to process a request and later determines that all or part of the request should be transferred under s 16 of the Act, the extension of time continues to apply to that request. On negotiating to secure a transfer, the agency should inform the receiving agency of any applicable extension, provide details of any agreements and advise the OAIC that all or part of the request has been transferred. If the request is out of time, the transferring agency should leave it to the receiving agency to apply for an extension.

Once a request has been transferred, only the agency holding the request can seek an extension of time. If an agency agrees to accept the transfer of an FOI request that is out of time, they should approach the OAIC to negotiate an extension of time under s 15AC.

For further information
telephone: 1300 363 992
email: enquiries@oaic.gov.au
write: GPO Box 5218, Sydney NSW 2001
or visit our website at www.oaic.gov.au

Sample EOT notice

Notice to the OAIC of an extension with the applicant's agreement

To: FOIExtensions@oaic.gov.au

Subject: Section 15AA notification – *[agency name]* – *[agency reference number]*

Body text:

Dear

[Agency reference number – insert]

I am writing to notify you of a s 15AA extension, agreed to by FOI applicant *[insert name]* on *[insert date]*. *[Applicant name]* can be contacted at *[insert contact details]*. Attached is the applicant's agreement in writing to an extension of *[insert number]* days.

[Name of applicant] lodged *[his/her/their]* FOI access request (complying with s 15) with *[name of agency]* on *[insert date]*. Taking into account *[an]* extension*[s]* to the processing period to enable us *[to consult with a third party / to carry out a request consultation process / to apply a charge]*, *[name of agency]* was due to make a decision on the applicant's request by *[insert date]*.

With the *[insert number]* day extension, *[name of agency]* must now make a decision on the request by *[insert date]*.

Yours sincerely

[insert contact details]

Sample EOT request

Applying to the OAIC for an extension for a complex or voluminous request

To: FOIExtensions@oaic.gov.au

cc: [*applicant email address*]

Subject: Section 15AB request – [*agency name*] – [*agency reference number*]

Body text:

Dear

[[*insert name of agency]* **reference number –** *insert*]

[*If applicable:* **OAIC reference number –** *insert*]

I am writing to request a s 15AB extension for an FOI request made by applicant *[insert name]* contactable at *[insert contact details]*.

Details of the access request

[*Name of applicant*] lodged *[his/her/their]* FOI access request (complying with s 15) with *[name of agency]* on *[insert date]*. Taking into account *[an]* extension*[s]* to the processing period *[to allow us to consult a third party / to allow us to carry out a request consultation process / to allow us to apply a charge / agreed to by the applicant under s 15AA / granted by the OAIC under s 15AB]*, *[name of agency]* is due to make a decision on the applicant's request by *[insert date]*.

[***Insert if applicable: Period of s 15AA extension agreed to/Section 15AA extension refused***]

[*Choose one: As we advised the OAIC on [insert date], the applicant agreed to a [insert number] day extension under s 15AA and this is encompassed in the decision due date above. / On [insert date] [name of agency] sought [name of applicant]'s agreement to a [insert number] day extension under s 15AA which [he/she/they] refused. [Explain why the applicant refused the request for an extension and whether they raised any concerns about delays.]*]

[*Choose one:* ***Period of s 15AB extension sought / Variation of period of s 15AB extension sought***]

[Choose one: [Name of agency] requests a [insert number] day extension under s 15AB. This would make the new due date for a decision [insert date]. / On [insert date] the OAIC granted [name of agency] a [insert number] day extension under s 15AB. [Name of agency] requests a variation to increase the extension to [insert number] days. This would make the new due date for a decision [insert date].]

Reasons

[Insert:

- *Your reasons for requesting an extension (or variation of a previously granted extension), and your view as to why an extension (or variation) would be justified.*

- *An explanation as to why the request is considered complex or voluminous.*

- *Other relevant information including work already undertaken to process the request, the work required to finalise the request, work undertaken on the request following any earlier extension granted by the OAIC under s 15AB, any consultation undertaken with the applicant concerning the length of time for processing the request, other agencies or third parties that have an interest in the processing of the request.*

- *Measures you would take to ensure that a decision is made within the period of extension, and to keep the applicant informed of your progress towards making a decision.]*

Attached is a breakdown of how *[name of agency]* would use the extended period for processing the request. It sets out the actions still required on the request along with dates for when *[name of agency]* will complete those actions.

Yours sincerely

[insert contact details]

Sample EOT request

Applying for an extension following a deemed decision

To: FOIExtensions@oaic.gov.au

cc: *[applicant email address]*

Subject: [Section 15AC] request – *[agency's name]* – *[agency's reference number]*

Body text:

Dear

[*[Insert name of agency]* **reference number** – *insert*]

[*If applicable:* **OAIC reference number** – *insert*]

I am writing to request a s 15AC extension for an FOI request made by applicant *[insert name]* contactable at *[insert contact details]*.

Details of the access request

[Name of applicant] lodged *[his/her/their]* FOI access request (complying with s 15) with *[name of agency]* on *[insert date]*. Taking into account *[an]* extension*[s]* to the processing period *[to allow us to consult a third party / to allow us to carry out a request consultation process / to allow us to apply a charge / agreed to by the applicant under s 15AA / granted by the OAIC under s 15AB]*, *[name of agency]* was due to make a decision on the applicant's request by *[insert date]*.

The decision on the request is now deemed refused.

[*Insert if applicable:* ***Period of s 15AA extension agreed to / Section 15AA extension refused***]

[*Choose one: As we advised the OAIC on [insert date], the applicant agreed to a [insert number] day extension under s 15AA and this is encompassed in the decision due date above. / On [insert date] [name of agency] sought [name of applicant]'s agreement to a [insert number] day extension under s 15AA which [he/she/they] refused. [Explain why the applicant refused the request for an extension and whether they raised any concerns about delays.]*]

[*Insert if applicable: **Period of s 15AB extension granted by OAIC***

On [insert date] the OAIC granted [name of agency] a [insert number] day extension under s 15AB. This extension is encompassed in the decision due date above.]]

Period of s 15AC extension sought

[*Name of agency*] requests a [*insert number*] day extension under s 15AC. This would make the new due date for a decision [*insert date*].

Reasons

[*Insert:*

- *Your reason for requesting an extension, and your view as to why an extension would be justified.*

- *Any changes in circumstances with the processing of the request and how these have affected timeframes.*

- *Other relevant information including work already undertaken to process the request, the work required to finalise the request, work undertaken on the request following any earlier extension granted by the OAIC under s 15AB, any consultation undertaken with the applicant concerning the length of time for processing the request, other agencies or third parties that have an interest in the processing of the request.*

- *Measures you would take to ensure that a decision is made within the period of extension, and to keep the applicant informed of your progress towards making a decision.]*

Attached is a breakdown of how [*name of agency*] would use the extended period for processing the request. It sets out the actions still required on the request along with dates for when [*name of agency*] will complete those actions.

Yours sincerely

[*insert contact details*]