



COVID-19: Managing FOI timeframes and potential office closures

FOI process guide

COVID-19 is likely to adversely impact on the ability of agencies to meet the timeframes prescribed under *Freedom of Information Act 1992 (WA)* (**the FOI Act**) for making decisions. This may increase the number of deemed decisions to refuse access.

This guidance is intended to assist with the prevention of deemed refusals of access in the event of an agency's offices shut down or partial closure as part of COVID-19 prevention or containment or from reduced capacity of agency staff to deal with access applications due to COVID-19. One way to prepare for any potential closure, particularly if FOI staff do not have the ability to work on applications from home, is to ask an access applicant to agree to extend the period in which the agency is allowed to provide an initial notice of decision and/or an internal review decision.

If an agency does not give an applicant a decision within the timeframes allowed under the FOI Act, the applicant may be able to seek review of a 'deemed decision': For more information, see our publication – *What if an agency delays making a decision?* available on our website at <https://www.oic.wa.gov.au/en-au/For-the-Public/What-if-the-agency-delays-making-a-decision>.

Requesting extensions of time from access applicants

COVID-19 may result in an increase in agency staff working from home, being on leave or redirected to alternative duties to provide essential services and result in partial or full office closures. If an agency is due to make a decision on an access application within the coming weeks (either initial decision and/or internal review decision) and is not able to issue the decision within the statutory timeframe due to delays caused by COVID-19, the agency can ask the applicant for an extension of time to issue its decision.

When asking for an extension, an agency should explain why it is being requested including why there are delays in dealing with the application. Each agency will need to decide how best to phrase the request in their specific circumstances. In light of current events and the possibility of office closures, requesting extensions is a reasonable way for agencies to manage any potential disruption to application processing.

In the current circumstances, the Information Commissioner strongly encourages parties to act reasonably and in good faith so that intervention by the Information Commissioner is not required. As current events are also expected to adversely impact the ability of the OIC to perform its functions, including dealing with external reviews in a timely manner, the Commissioner considers that it is in the interests of access applicants to agree to reasonable requests from agencies to extend the time for an agency to deal with an access application.

Agencies might request an extension of time in acknowledgement letters or send correspondence specifically to request an extension. Correspondence that requires an action on the part of the applicant—for example, an estimate of charges notice—can include a request for an extension of time. This way if an agency's offices close and the applicant actions the correspondence during that time, the extension will kick in if the permitted period expires, preventing a deemed decision.

Requesting an extension of time from the Information Commissioner

If an agency is unable to issue a notice of decision within the permitted period, it may consider applying to the Information Commissioner to extend the period for an application to be dealt with ([section 13\(5\)](#)). However, the agency will need to first demonstrate that it has made a genuine attempt to reach an agreement with the applicant to extend the time for dealing with the access application.

In deciding whether to allow an agency an extension of time to deal with an application and deciding the appropriate amount of additional time, the Information Commissioner may consider factors including:

- The length of time the agency is unable to operate due to COVID-19.
- Whether agency staff numbers are affected by decisions to allow officers to work out of the office, staff leave or diversion of resources to essential services.

Current external reviews

If a party to a current external review is unable to meet a timeframe set by the OIC to provide submissions or further information in relation to the external review, they should contact the officer who is dealing with the matter, by email, before the due date to request an extension of time.

Note: This Information Sheet is intended as a general guide only and should not be viewed as legal advice.¹

For further or more detailed guidance, please contact the OIC's Advice and Awareness Service by email to advice_and_awareness@oic.wa.gov.au.

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¹ We acknowledge that this publication is partially based on material developed by the Queensland Office of the Information Commissioner. It has been modified to describe the requirements of the FOI Act (WA).