



What if the agency delays making a decision?

An agency is required to deal with a valid access application within the timeframes outlined in the FOI Act, including providing a notice of decision within those timeframes.

Initial decision

An agency should give an access applicant written notice of its decision in respect of a valid access application as soon as is practicable and, in any event, within the **'permitted period'**, which is:

- 45 days after the access application is received; or
- such other period as is agreed between the agency and the access applicant; or
- such other period as is allowed by the Information Commissioner.

See [section 13\(3\)](#) of the FOI Act.

If an access applicant does not receive the agency's decision within the 'permitted period', the agency is taken to have refused access to the requested documents and the applicant is taken to have received written notice of that refusal on the day the period ended – the agency is **deemed to have refused access** ([section 13\(2\)](#)).

An access applicant has the right to seek internal review of an agency's deemed refusal decision, in the same manner had the agency given the applicant a notice of decision and advised the applicant of the right of internal review.

Internal review decision

An agency should give an access applicant (or a third party seeking internal review) written notice of its internal review decision within 15 days of receiving a valid internal review application or such longer period as is agreed between the agency and the access applicant ([section 43\(2\)](#)).

If a notice of decision is not provided within the time allowed under the FOI Act, the agency is taken to have confirmed the agency's initial decision - the agency is **deemed to have confirmed** the decision under review.

An access applicant (or a third party seeking internal review) may seek external review by the Information Commissioner of an agency's deemed decision to confirm the initial decision, in the same manner had the agency given a notice of decision and advised the applicant or third party of the right to seek external review by the Information Commissioner.

More information about review rights is available in our publication, *Review of agency decisions*, available on our website at <https://www.oic.wa.gov.au/en-au/FTP014>.

Tip 1: An access applicant can agree to extend the period in which the agency is allowed to provide an initial notice of decision or an internal review decision. In some cases it may be in the applicant's interests to agree to extend the time for dealing with an access application. When an agency is in the process of dealing with an application and has explained why there have been delays in dealing with an application, this office generally suggests that the access applicant consider giving the agency reasonable additional time to deal with the application.

Tip 2: A third party and the agency cannot extend the time for dealing with an access application or an internal review without the agreement of the access applicant.

Note: This Information Sheet is intended as a general guide only and should not be viewed as legal advice. The Information Commissioner considers each complaint on its merits and according to the relevant circumstances.

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