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Office of the Victorian Information Commissioner
Freedom of Information

TIMEFRAME FOR DECIDING ACCESS REQUESTS AND EXTENSIONS OF TIME

What has changed?

The *Freedom of Information Act 1982* has been amended¹ to require agencies and Ministers to notify an applicant of their decision on an access request within 30 days, rather than 45 days.

However, there are now two circumstances in which the time for notifying a decision may be extended.

- > A single extension of up to 15 days is available if the agency or Minister determines that consultation is required under ss 29, 29A, 31, 31A, 33, 34 or 35.²
- > An applicant may grant one or more extensions of up to 30 days at a time.³

The new provisions commenced on 1 September 2017 and only apply to access requests made on or after that date.

Timeframe for notifying an access decision

Section 21 now provides a new 30 day timeframe for an agency to notify an applicant of an access decision.

Despite this change, decision makers are still required to take all reasonable steps to notify an applicant of their decision as soon as practicable prior to the expiry of the 30 day timeframe.

Agencies and Ministers should note that the 30 day timeframe does not include:

- > the time between an agency or Minister giving notice under s 25A(6) of an intention to refuse access, and the applicant confirming or altering the request following a reasonable opportunity to consult;⁴ and
- > the time between an applicant being notified that a deposit for a charge is payable and the applicant paying a deposit on account of the charge.⁵

Additionally, s 21(6) continues to allow agencies and Ministers to negotiate the reduction of anticipated access charges where an applicant is prepared to waive compliance with the 30 day timeframe.

Where a decision has not been made within the 30 day timeframe (or as extended), an agency is deemed, for the purposes of an applicant applying to VCAT, to have made a decision refusing access. Where the applicant exercises this right, the agency or Minister should continue to process the request.

Extending time for deciding an access request

New s 21(2) contains extension of time provisions that operate in the following way.

¹ Made by the *Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017*.

² Under s 21(2)(a) of the FOI Act.

³ Under s 21(2)(b) of the FOI Act.

⁴ s 25A(7) of the FOI Act.

⁵ s 22(5) of the FOI Act.

Extension type	Period	Determined by	Notification requirement
Third party consultation ⁶	Up to 15 days	Agency	In writing
Applicant's agreement ⁷	Up to 30 days	Applicant	In writing

For third party consultation

Additional time may be needed to process an access request where third party consultation is required. In such cases, agencies or Ministers may extend the period for deciding a request by up to 15 calendar days, provided they are satisfied at the time of invoking the extension that third party consultation is required.

Consultation is not required where an agency or Minister is satisfied that –

- > it is not practicable to consult⁸; or
- > under ss 33(1) and 35(1), consultation would be reasonably likely to –
 - (i) endanger the life or physical safety of the relevant third party;
 - (ii) cause the relevant third party undue distress; or
 - (iii) otherwise be unreasonable in the circumstances.⁹

A decision to extend the period for making an access decision due to third party consultation should, wherever possible, only be made after an agency or Minister has made an informed decision about whether consultation is, in fact, required. This may mean waiting until all (or at least some) of the documents containing third party information have been identified in order to be satisfied that consultation is required or cannot be completed within the 30 day timeframe.

⁶ s 21(2)(a) of the FOI Act.

⁷ s 21(2)(b) of the FOI Act.

⁸ Where the agency or Minister is considering whether one or more exemptions in ss 29, 29A, 31, 31A, 33, 34 or 35 applies.

⁹ Where an agency or Minister is considering whether one or more exemptions in ss 33 and 35 apply.

With applicant's agreement

In all cases, an agency or Minister may seek an applicant's agreement to extend the timeframe for a decision by up to 30 days at a time. They may do so any number of times.

Importantly, the period for deciding a formal request cannot be extended or further extended if the time for deciding the request has expired. This means that decision makers must ensure that an applicant's agreement for an extension or further extension is obtained prior to the expiry of the current timeframe for deciding the request.

Notifying an applicant about an extension

An agency or Minister must notify an applicant in writing if the time for deciding a request is extended, or further extended.¹⁰

An applicant is taken to have been notified in writing when –

- > an email or fax containing the notification is capable of being retrieved by them;¹¹
- > a letter containing the notification would be delivered in the ordinary course of post;¹² or
- > the notification is delivered to the applicant by hand.

Requests for amendment of personal records

There is no change to the timeframe for notifying an applicant of a decision on a request to correct or amend a personal record under s 39. A decision must still be made as soon as practicable, but no later than 30 days after receipt of a valid request.¹³

The extension of time provisions that apply to access requests do not apply to amendment requests under s 39. However, there is nothing to prevent an agency or Minister informally seeking an applicant's agreement to an extension of time.

¹⁰ s 21(4) of the FOI Act.

¹¹ *Electronic Transaction (Victoria) Act 2000*, s 13A(1)(a).

¹² *Interpretation of Legislation Act 1984*, s 49(1).

¹³ s 43 of the FOI Act.

Further Information

Visit our website, call or email us:

- > www.ovic.vic.gov.au
- > 1300 842 364 (1300 VIC FOI)
- > enquiries@foicommisioner.vic.gov.au

Other related fact sheets include:

- > Guide to Consultation and Notification
- > Consultation and Notification Flowchart
- > Overview of the Amendments

Disclaimer: This fact sheet does not constitute legal advice and should not be used as a substitute for applying the provisions of the Freedom of Information Act 1982, or any other legal requirement, to individual cases.