Timeframes and extensions of time when processing an access request

This practice note provides an overview of the timeframe for deciding access requests, and the circumstances where an agency may extend timeframes. All legislative references are to the *Freedom of Information Act 1982* (Vic) unless otherwise stated.

Default timeframe

Under section 21(1)(a) applicants must be notified of a decision as soon as practicable, but no later than 30 days after receiving a valid request.[[1]](#footnote-2)

The 30 day timeframe begins the day after a valid request is received. It includes all calendar days. This means weekends, public holidays, and any closedown periods – not just business or weekdays.

If the due date for a decision falls on a weekend or public holiday, it moves to the next business day.[[2]](#footnote-3)

Extending the timeframe

The 30 day timeframe may be extended where third party consultation is required or if the applicant agrees to an extension.

Section 21(4) requires applicants to be notified in writing of extensions to a timeframe. When providing written notification, *Professional Standard 3.2* requires agencies to detail the particular reasons for an extension and advise the applicant by how many days the due date is being extended.

Examples of the particular reason for extending a timeframe might include: to undertake third party consultation, to allow further searches to be conducted, or to provide additional time to assess documents. Agencies should be transparent in explaining the reason for extending a timeframe.

Under section 21(5), the timeframe for making a decision cannot be extended if it has already expired. It is important to plan ahead and ensure an applicant is either notified of the extension, or their agreement is obtained prior to the expiry of the timeframe for deciding the request.

Extension for third party consultation

Section 21(2)(a) allows an agency to extend the initial 30 day timeframe by up to 15 days if third party consultation is required under sections 29, 29A, 31, 31A, 33, 34 or 35.

Under *Professional Standard 3.1*, an agency may only extend the 30 day timeframe where third party consultation is being undertaken or will be undertaken. That is, an agency is not entitled to an extension where consultation is considered, but subsequently not undertaken.

A decision to extend the timeframe for third party consultation should only be made after an agency has enough information before them to make an informed decision about whether or not consultation is required, and whether or not it will be undertaken.

Practically speaking, this may mean waiting until:

* some or all of the documents containing third party information have been identified; and
* it is determined third party consultation is practicable in the circumstances.[[3]](#footnote-4)

An extension under section 21(2)(a) can only be used to extend the 30 day timeframe once. For example, where consultation is undertaken in accordance with the requirements of sections 33, 34 and 35, an agency is entitled to one extension of up to 15 days, not three separate extensions.

Extension with an applicant’s agreement

Section 21(2)(b) allows the 30 day timeframe to be extended by up to 30 days at a time with the applicant’s agreement. Under section 21(3), an agency may seek agreement from an applicant for an extension any number of times.

Multiple extensions of time

Multiple extensions of time can only be sought in the following manner:

1. a single extension of up to 15 days for consultation in the first instance under section 21(2)(a); followed by any number of additional extensions of up to 30 days with an applicant’s agreement under sections 21(2)(b) and 21(3); or
2. an extension of up to 30 days with the applicant’s agreement in the first instance, under section 21(2)(b); followed by any number of additional extensions of up to 30 days with the applicant’s agreement under sections 21(2)(b) and 21(3).

If an agency extends the timeframe with the applicant’s agreement in the first instance, it should not, at a later stage, further extend the timeframe in order to undertake third party consultation. This is contrary to the object and intent of these extension of time provisions.

Other changes to the timeframe

The 30 day timeframe can also be paused, reset or waived in certain circumstances.

Suspending the timeframe – section 25A(1)

The timeframe for making a decision *pauses* on the day a notice is given to an applicant under section 25A(6) - where an agency intends to refuse to process a request as it would substantially and unreasonably divert the resources of the agency and inviting the applicant to consult.

The timeframe for making a decision *resumes* the day after the applicant confirms a revised or altered request (section 25A(7)).

Resetting the timeframe – section 22(5)

Where an agency requires payment of an access charges deposit in accordance with sections 22(3) and 22(4):

* the timeframe for making a decision *stops* when the applicant is notified about payment of a deposit for access charges; and
* the timeframe for making a decision *resets* to ‘day one’ of the 30 day timeframe, the day after the applicant pays the deposit (section 22(5)).

Waiving the timeframe – section 22(6)

Section 22(6) allows an agency and applicant to discuss practicable alternatives for altering the request, including reducing an access charge in exchange for the applicant waiving, conditionally or unconditionally, compliance with the 30 day timeframe to process the request.

Any agreement under section 22(6) should be recorded and confirmed in writing.

Failure to meet the deadline

If an applicant has not been notified of a decision within the 30 day timeframe (or as extended), the applicant has the right to:

* apply to the Victorian Civil and Administrative Tribunal on the basis of a deemed decision of the agency to refuse the request (sections 50(1)(ea) and 53(1)); and/or
* make a complaint to the Information Commissioner (section 61A(1)(a)).

Until an applicant does either of those things, an agency must continue to process the request and make a decision as soon as possible.

**Disclaimer:** The information in this document is general in nature and does not constitute legal advice.

**Version:** 1.0, September 2019

1. For further information on valid requests see Practice Note 3. [↑](#footnote-ref-2)
2. See section 44(3) of the *Interpretation of Legislation Act 1984* (Vic). [↑](#footnote-ref-3)
3. For further information on practicability see Practice Note 12. [↑](#footnote-ref-4)