

Freedom of Information

Processing times for decision-makers

This factsheet explains the extension of time provisions in the *Freedom of Information Act 2016* (FOI Act).

The FOI Act provides timeframes for deciding access applications.

Processing timeframe

The FOI Act provides that agencies and Ministers must decide an access application within 20 working days.¹ The timeframe to process an application may be extended where third party consultation is required², by agreement with the applicant³ or as granted by the ACT Ombudsman⁴.

Extension of time provisions under the FOI Act

The following table provides an overview of the extension of time provisions in the FOI Act.

Agency/Minister-managed timeframes		Applicant's agreement	Ombudsman granted extensions
Standard period	If third party consultation required	Agreed extension	Large volume of information and/or complex and potentially conflicting public interest factors
* 20 working days	* Additional 15 working days	* Time period as agreed between parties * Agencies and Ministers may ask for additional time more than once	* Up to 15 working days (If granted by Ombudsman) * May only be granted once * Conditions may apply
Section 40(1)	Section 40(2)	Section 41	Section 42

¹ Section 40(1).

² Section 40(2).

³ Section 41.

⁴ Sections 42 and 78.

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Section 40(2) extension to allow consultation with a third party

The period for processing an application is extended by 15 working days if the agency or Minister consults with a relevant third party. An agency or Minister must take reasonable steps to consult with a relevant third party if they consider that some, or all, of the requested information may reasonably be expected to be of concern to that party.

Approval of the applicant or the Ombudsman is not required for this type of extension of time. Agencies and Ministers should, as a matter of good administrative practice, notify the applicant when they intend to rely on this statutory timeframe extension.

Section 41(1) extension with the applicant's agreement

The processing period can be extended with the applicant's agreement. An agency or Minister can seek the applicant's agreement at any time before the end of the statutory timeframe, and the agency or Minister may ask the applicant for additional time more than once. Agencies and Ministers should give the applicant sufficient time to consider and respond to a request for additional time.

Section 41(3) extension when the applicant has not refused

If the agency or Minister has asked the applicant for additional time and the applicant has not refused the request, the agency or Minister may decide the application before the end of the additional time sought. This provision does not apply, however, if the agency or Minister receives notice that the applicant has applied for an Ombudsman review. This provision will apply in circumstances where the applicant agrees to a request for additional time and also where the applicant does not reply to the agency or Minister.

Section 42 extension given by the Ombudsman

If the applicant has refused the agency or Minister's request for additional time and the statutory timeframe has not expired, the agency or Minister may apply to the Ombudsman for an extension of time.

The Ombudsman may grant an extension of time if the Ombudsman believes that it is not reasonably possible for the agency or Minister to deal with the application within the statutory timeframe because it involves dealing with:

- a large volume of information, or
- complex and potentially conflicting public interest factors.

There are no other grounds on which the Ombudsman may grant an extension of time. The Ombudsman may grant an extension for up to 15 working days, subject to conditions.⁵

Need more information?

See: *Factsheet and form: Applying for extensions of time*

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More information is available at ombudsman.act.gov.au.

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⁵ Section 42.