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| Extension of time limit to consult Minister |
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| Legislation Official Information Act 1982, s 15A(1)(b)  Agency Department of Labour  Ombudsman John Robertson  Case number(s) W1929  Date Published April 1993 |

*Extension of time—not necessary for the department to consult with the Minister in order to make a decision on the request*

This complaint concerned the decision of the Department of Labour to extend by 20 working days the time for making a decision on a request for a copy of a departmental report to the Minister of Labour on shop trading hours.

The Chief Ombudsman’s investigation addressed the following issues:

1. whether there were grounds in terms of section 15A(1)(a) or (b) for the department to extend the time limit; and
2. whether the extension was for *‘a reasonable period of time having regard to the circumstances’* (section 15A(2)); and
3. whether the extension was effected correctly in terms of section 15A(3); and
4. whether the notice effecting the extension contained the information required in terms of section 15A(4).

The investigation focused on issues 1 and 2 because 3 and 4 were clearly met in the circumstances of the case.

In terms of 1, the Chief Ombudsman considered whether there were grounds in terms of section 15A(1)(b) (which seemed to be the apposite provision) for the department to extend the time limit. That section provides that a department may extend the time limit set out in section 15(1) if *‘consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original time limit’*.

The Chief Ombudsman considered the following:

* whether it was necessary for the department to consult (in this case with the Minister of Labour) in order to make a decision on the request; and, if so
* whether the consultations were such that a proper response could not be made within the original time limit.

The Chief Ombudsman formed the view that the department did not need to consult the Minister in order to decide to refuse the request: at most, a simple notification of its intent was all that was required. The wish to consult the Minister as to whether the report might be released in the future was commendable but not necessary in order to make a decision on the request in the circumstances as they then were. Rather than delaying making a decision, the Chief Ombudsman considered it would have be preferable to have refused the request promptly, advising the requester that the refusal would be reconsidered if the situation changed and/or if any decision on the matter were announced.

The Chief Ombudsman formed the view, therefore, that it was not necessary for the department to consult with the Minister in order to make a decision on the request, and that a proper response could have been made within the original time limit. Having reached that view, it was not strictly necessary for the Chief Ombudsman to consider the next element of section 15A(1)(b). However, in the event that he was wrong in his view that there were no grounds for the department to extend the time limit, the Chief Ombudsman considered whether the extension notified was for a reasonable period of time having regard to the circumstances.

The department cited several factors as relevant to its decision to extend the time limit, namely that:

* the Minister had previously refused an identical request from the same requester;
* the department believed that decisions on the Shop Trading Hours Act would be made by the Government shortly;
* the department considered that it ought to consult with the Minister before taking a decision on the release of the report;
* the Minister was overseas when the request was received;
* time pressure meant that the department had not had the opportunity to consult with the Minister before the original time limit expired.

The Chief Ombudsman was of the view that both the consultation with the Minister and the subsequent response to the requester could have been completed very much sooner than they were. He accepted that the department was under some pressure of work and that the issue was a sensitive one. However, the department could and should have made a quick decision in the circumstances then existing, recognising that if those circumstances changed it was open to the requester to make a fresh request, or to the department to reconsider its decision.

The Chief Ombudsman formed the view that even if there were grounds to notify an extension of the time limit, the extension notified was for a longer period of time than was reasonable in the circumstances.

In short, the Chief Ombudsman formed the view that the complaint in respect of the department’s decision to extend the time limit could be sustained. However, given the circumstances of the case, he did not believe that any recommendation on his part was necessary or appropriate.

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