

## Delay in responding to request for certain briefings

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<b>Legislation</b>	Official Information Act 1982, ss 15(1), 15A, 28(4)(b).
<b>Agency</b>	Minister for Courts
<b>Ombudsman</b>	Peter Boshier
<b>Case number(s)</b>	549341
<b>Date</b>	May 2021

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*Failure by the Minister for Courts to make and communicate his decision on a request for official information within extended time limit— contrary to law*

### Background

On 8 January 2021, the Minister for Courts received an Official information Act (OIA) request for documents referred to in his replies to certain Written Parliamentary Questions.

On 5 February 2021 the Minister notified an extension, in accordance with section 15A of the OIA, from 15 February 2021 to 8 March 2021.

On 5 March 2021, the Minister purported to extend the timeframe for a second time, to 31 March 2021. On 31 March 2021, the Minister again referenced section 15A of the OIA and advised a response could be expected by 30 April 2021.

When the requester had still not received a response by 4 April 2021, they complained to the Ombudsman.

### Investigation

On receipt of the complaint, the Chief Ombudsman made preliminary inquiries with the Minister. The Minister was asked whether he accepted that there had been a delay in making and communicating a decision, and when a decision was expected to be made. The Minister was also advised that under section 15A(3) of the OIA, extensions can only be made within the original 20 working day time period after receiving a request.

No response to these inquiries was received within the requested five working day timeframe. The Minister eventually responded on the eleventh working day, accepting there had been a delay. The Minister also indicated he had again purported to extend the timeframe for making and communicating a decision to the requester.

Under section 15(1) of the OIA, a Minister must make and communicate a decision on a request for official information as soon as reasonably practicable and no later than 20 working days after it was received, unless that time limit is validly extended in accordance with section 15A.

Only the correspondence to the requester of 5 February 2021 was within the initial 20 working days following receipt of the request, and therefore constituted a valid extension. The other three communications to the requester advising of new deadlines for a response were outside this timeframe, and accordingly did not meet the obligations in section 15A.

A decision was therefore required to be made and communicated to the requester by the initial extended deadline of 8 March 2021 at the latest. A decision on the request was not made and communicated to the requester until 3 May 2021.

On 6 May 2021 the Chief Ombudsman formed the provisional opinion that the Minister had failed to comply with sections 15(1) and 15A of the OIA. This appeared to be ‘contrary to law’, which is one of the conclusions that an Ombudsman may reach after an investigation.<sup>1</sup>

The Chief Ombudsman also noted with concern that responses to his inquiries were not provided in a timely manner. Further, the responses received, and the decision letter ultimately communicated to the requester, did not demonstrate an understanding of the statutory timeframes in the OIA, nor include an apology or explanation for the delays.

On 18 May 2021, the Minister responded to the provisional opinion. He accepted that there had been a failure to meet the obligations imposed by the OIA, and that extensions to that timeframe may only be communicated within 20 working days of receipt of a request. He also provided an assurance that his office’s processes had been reviewed in order to improve compliance with the OIA and the standard of future communications.

## Outcome

The Chief Ombudsman confirmed as final his opinion that there had been a failure to meet the statutory obligations imposed by the OIA. As a decision had, by then, been made and communicated to the requester he deemed it unnecessary to make any recommendations.

The Chief Ombudsman acknowledged the Minister’s acceptance of his failure to meet the statutory requirements of the OIA, and his assurance to review processes within his office relating to OIA requests and related communications.

*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman’s view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*

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<sup>1</sup> See s 30(1)(b) OIA and s 22(1)(a) Ombudsmen Act 1975.