

28 June 2024

Michelle Robins

By email: foi+request-10871-9cdb81d9@righttoknow.org.au

Dear Michelle Robins

Freedom of Information request — Notification of Decision

Thank you for your correspondence of 15 November 2023, in which you requested access to documents held by the National Disability Insurance Agency (NDIA), under the *Freedom of Information Act 1982* (FOI Act). I apologise for the delay in processing your request.

The purpose of this letter is to provide you with a decision on your request.

Scope of your request

You have requested access to the following documents:

“...Please provide all documents regarding how the required assessment tools that participants must provide in relation to their disability, ie Vineland 3, WHODAS etc and how they correlate to the severity tool used by NDIS to determine the level of severity of disability.”

I have interpreted your request to be only for documents that explain **how** the NDIA interprets functional capacity assessment results to determine the level of severity of disability.

Timeframe

The due date for your request was 15 December 2023. We have been experiencing processing delays and were not able to provide our decision to you by the due date. Consequently, your application was regarded as a deemed refusal under section 15AC of the FOI Act.

I note this access decision is being released to you after the due date and I apologise for the significant delay. In the interests of not causing any further delays, I have decided not to apply for an extension to the processing period from the Office of the Australian Information

Commissioner (OAIC) under section 15AC of the FOI Act to protect your internal review rights. However, your right to apply for an external review with the OAIC remains protected. Please see **Attachment A** for more information about your rights of review.

Decision on access to documents

I am authorised to make decisions under section 23(1) of the FOI Act. My decision on your request and the reasons for my decision are set out below.

I have decided to refuse your request for access under sections 4 and 24A of the FOI Act. The reasons for my decision are set out below.

In reaching my decision, I took the following into account:

- your correspondence outlining the scope of your request
- the FOI Act
- the FOI Guidelines published under section 93A of the FOI Act
- consultation with relevant officers of the NDIA
- the NDIA's operating environment and functions.

Reasons for decision

Refuse a request for access (section 4)

The list of functional capacity assessments used by the NDIA is published on our website: [Types of disability evidence | NDIS](#). Each assessment tool can be accessed via its publisher's website. For example, the World Health Organisation publishes the [WHO Disability Assessment Schedule \(WHODAS 2.0\)](#), while Pearson publishes the [Vineland Adaptive Behavior Scales | Third Edition \(pearsonassessments.com\)](#).

Section 4 of the FOI Act states that the definition of a document does not include material maintained for reference purposes that is otherwise publicly available. Accordingly, I have decided that these publicly available documents do not meet the definition of a document available under the FOI Act. This means that although I have provided you with links, I have not formally released these documents to you under the FOI Act.

Refuse a request for access (section 24A)

Section 24A of the FOI Act provides that an agency may refuse a request for access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that the document cannot be found or does not exist.

I have made enquiries with NDIA staff within the Service Guidance division, the Service Delivery group, and Chief Information Officer division who conducted searches for documents falling into the scope of your request. These enquiries have revealed that the NDIA is not in possession of documents matching the scope of your request. This is because the NDIA does not determine the severity of a participant's disability. Rather, the NDIA uses functional capacity assessments to assess the [level of impact a participant's disability has on their everyday activities](#). This impact varies according to each individual's circumstances and goals because not everybody with the same disability needs the same support.

I am satisfied that all reasonable steps have been taken to locate the documents you have requested and that the documents do not exist. I have, therefore, decided to refuse access to your request in accordance with section 24A(1)(b)(ii) of the FOI Act.

Rights of review

Your rights to seek a review of my decision, or lodge a complaint, are set out at **Attachment A**.

Should you have any enquiries concerning this matter, please do not hesitate to contact me by email at foi@ndis.gov.au.

Yours sincerely

Laura

Laura (LDP633)
Assistant Director
Complaints Management & FOI Branch
General Counsel Division