

28 May 2024

Scott Dwyer

By email: foi+request-11265-1e1bc303@righttoknow.org.au

Dear Scott Dwyer

Freedom of Information request — Notification of Decision

Thank you for your correspondence of 25 March 2024, in which you requested access to documents held by the National Disability Insurance Agency (NDIA), under the *Freedom of Information Act 1982* (FOI Act).

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 which are related to the costs charged to the National Disability Insurance Scheme and or any other Government Department (including costs borne by the department in relation to the Commonwealth, defending the matter 2022/3429 Dwyer vs National Disability Insurance Agency in the Administrative Appeals Tribunal (AAT), as well as in-house.

This includes any documents;

a. Hours worked and have not been charged to another government department; b. All invoices issued by External Law Contractors C. Any other document which falls within the scope of this request that the department holds.

This is from period April 2022 - current.”

On 3 May 2024 you revised the scope of your request to be for the following documents:

“All documents which are related to the costs charged to the National Disability Insurance Agency in relation to the Commonwealth defending the matter 2022/3429 Dwyer vs National Disability Insurance Agency in the Administrative Appeals Tribunal (AAT).

This includes any documents relating to:

1. The hours worked by both in-house NDIA lawyers and external lawyers in connection with this litigation; and

2. All invoices issued to the NDIA by external lawyers in connection with this litigation. (I only require the total dollar amount of such invoices and I do not require the personal information of any person who may be named in such invoices.)

This is from 1 April 2022 to 25 March 2024 (date of request)."

Extension of time

On 22 April 2024, you agreed to a 23-day extension of time under section 15AA of the FOI Act, making 20 May 2024 the new date to provide you with a decision on access.

On 20 May 2024 we notified you that, in accordance with section 27 of the FOI Act, we were required to consult with Sparke Helmore lawyers. Where an agency is required to consult with a third party, the period for providing a decision is extended by 30 days in accordance with section 15(6)(a) of the FOI Act. Therefore, the date to provide you with our access decision was extended to 19 June 2024.

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.

With respect to the first half of Part 1 of your request, relating to the hours worked by in-house NDIA lawyers, I have decided to refuse access under section 24A of the FOI Act on the basis that the documents do not exist. The reasons for my decision are set out below.

I have identified 4 documents, which fall within the remainder of the scope of your request.

The documents were identified by consulting with relevant NDIA staff in our Administrative Appeals Branch who could be expected to be able to identify documents within the scope of the request. I have decided to grant partial access to these 4 documents.

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

- your correspondence outlining the scope of your request
- the nature and content of the documents falling within the scope of your request
- the FOI Act
- the FOI Guidelines published under section 93A of the FOI Act
- consultation with relevant NDIA staff.

Access to edited copies with irrelevant material deleted (section 22)

I have identified that the Documents contain material that is irrelevant to your request. The irrelevant material relates to the names of NDIA staff and third parties involved in the Administrative Appeals Tribunal litigation and information that is not relevant to the subject matter of your request.

In accordance with section 22 of the FOI Act, I have considered whether it is possible to delete the irrelevant material from the documents and have concluded that it is reasonably

practicable to do so. Accordingly, I have prepared an edited copy of the documents with the irrelevant material removed.

Reasons for decision

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 staff in our Administrative Appeals Branch who have conducted searches of the NDIA's document management systems. These enquiries have revealed that the NDIA is not in possession of documents relating to the hours worked by in-house NDIA lawyers in connection with this litigation. This is because there are no records kept per matter for in-house time and costs.

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

Release of documents

The documents for release, as referred to in the Schedule of Documents at **Attachment A**, are enclosed.

Rights of review

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

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

Yours sincerely



Helen (HIL533)
Assistant Director
Complaints Management & FOI Branch
General Counsel Division

Schedule of Documents for FOI 23/24-1055

Document number	Page number	Description	Access Decision
1	1-7	Sparke Helmore Tax Invoice Date: 27 March 2023	PARTIAL ACCESS Irrelevant material removed under section 22 of the FOI Act
2	8-13	Sparke Helmore Tax Invoice Date: 23 June 2023	PARTIAL ACCESS Irrelevant material removed under section 22 of the FOI Act
3	14-18	Sparke Helmore Tax Invoice Date: 18 August 2023	PARTIAL ACCESS Irrelevant material removed under section 22 of the FOI Act
4	19-23	Sparke Helmore Tax Invoice Date: 24 August 2023	PARTIAL ACCESS Irrelevant material removed under section 22 of the FOI Act

Your review rights

Internal Review

The FOI Act gives you the right to apply for an internal review of this decision. The review will be conducted by a different person to the person who made the original decision.

If you wish to seek an internal review of the decision, you must apply for the review, in writing, within 30 days of receipt of this letter.

No particular form is required for an application for internal review, but to assist the review process, you should clearly outline your grounds for review (that is, the reasons why you disagree with the decision). Applications for internal review can be lodged by email to foi@ndis.gov.au or sent by post to:

Freedom of Information Section
Complaints Management & FOI Branch
General Counsel Division
National Disability Insurance Agency
GPO Box 700
CANBERRA ACT 2601

Review by the Office of the Australian Information Commissioner

The FOI Act also gives you the right to apply to the Office of the Australian Information Commissioner (OAIC) to seek a review of this decision.

If you wish to have the decision reviewed by the OAIC, you may apply for the review, in writing, or by using the online merits review form available on the OAIC's website at www.oaic.gov.au, within 60 days of receipt of this letter.

Applications for review can be lodged with the OAIC in the following ways:

Online: www.oaic.gov.au
Post: GPO Box 5218, Sydney NSW 2001
Email: enquiries@oaic.gov.au
Phone: 1300 363 992 (local call charge)

Complaints to the Office of the Australian Information Commissioner or the Commonwealth Ombudsman

You may complain to either the Commonwealth Ombudsman or the OAIC about actions taken by the NDIA in relation to your request. The Ombudsman will consult with the OAIC before investigating a complaint about the handling of an FOI request.

Your complaint to the OAIC can be directed to the contact details identified above. Your complaint to the Ombudsman can be directed to:

Phone: 1300 362 072 (local call charge)
Email: ombudsman@ombudsman.gov.au

Your complaint should be in writing and should set out the grounds on which it is considered that the actions taken in relation to the request should be investigated.