

24 July 2024

Julie Keys

**By email:** [foi+request-11334-6ec5e7fe@righttoknow.org.au](mailto:foi+request-11334-6ec5e7fe@righttoknow.org.au)

Dear Julie Keys

### **Freedom of Information request — Notification of Decision**

Thank you for your correspondence of 17 April 2024 and 23 April 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 requests.

Please note, as advised in my email to you dated 13 June 2024, I have combined the decision of FOI 23/24-1127, FOI 23/24-1128 and FOI 23/24-1134 in this instance, because there is a clear connection between the subject matter of the requested documents for these requests. This will enable us to address these requests for information and decision on access effectively.

### **Scope of your request**

#### **FOI 23/24-1127**

You have requested access to the following documents:

*“...the following information:*

*1/ The Technical Advisory Branch compiles research on particular diagnoses and have released some of these under previous FOI requests (namely FOI 23/24-0467 and FOI 21/22-1232). I am looking for these sort of documents regarding the following condition: Myalgic Encephalomyelitis/Chronic Fatigue Syndrome (ME/CFS).*

*2/ I am also requesting a copy of any/all documents/guidance/fact sheets relating to how the NDIA expects ME/CFS to be managed and/or treated.*

*I ask you to please interpret my request broadly and provide any document that fits the general descriptions above regardless of it's exact title...”*

## **FOI 23/24-1128**

You have requested access to the following documents:

*“...a copy of all documents relating to how the NDIA proposes to measure functional capacity in people with ME/CFS.”*

## **FOI 23/24-1134**

You have requested access to the following documents:

*“...a copy of all documents held or used by the NDIA to determine whether or not a person's myalgic encephalomyelitis (ME) is permanent.*

*The information requested includes but not be limited to: the drugs, treatments, management regimes that the persons medical professional is expected to provide before making the determination that the condition is permanent.”*

## **Processing period**

The original due dates for our access decision on your FOI requests above were 17 May 2024 and 23 May 2024. I sincerely apologise for the delay in releasing this combined decision to you. We have been experiencing processing delays and were not able to provide you with our decision by the due date. Consequently, we are deemed to have refused your application under section 15AC of the FOI Act.

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 B for more information about your rights of review.

## **Search Efforts**

The documents were identified by conducting searches for relevant documents that are publicly available on the NDIA's disclosure log, and by consulting with relevant NDIA staff from Service Delivery and Service Guidance branches who could be expected to be able to identify documents within the scope of the request.

## **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 identified 2 publicly available documents, which fall within the scope of your request.

These documents can be accessed through the following links:

- [Our Guidelines: Applying to the NDIS](#) – This document addresses the requirements an individual needs to meet to be eligible for the NDIS. One of these requirements is that they may be eligible under the disability requirements if they have one or more impairments that are likely to be permanent and this substantially impacts their ability to do daily life activities.

Myalgic Encephalomyelitis/Chronic Fatigue Syndrome (ME/CFS) is a condition that is not included on [List A: Conditions that are likely to meet the disability requirements](#) and [List B: Conditions that are likely to be permanent](#) for common conditions that meet the NDIS Access – disability requirements.

Furthermore, the NDIA relies on evidence of impairment provided by treating professionals to help us work out if an individual is eligible to access the scheme. Permanency and functional impairment are established through expert reports and evidence of impairment provided by treating professionals.

- [Our Guidelines: Reasonable and necessary supports](#) – contains information about what we can fund under the NDIS based on the National Disability Insurance Scheme Act 2013. All supports need to meet the NDIS funding criteria in these laws before we can fund them in a NDIS plan.

Section 4 of the FOI Act states that the definition of the 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. As such, I have provided you with the above links that allow you to access the documents from the NDIA's webpage. However, I have not granted you access to these documents under the FOI Act.

Please be advised that the documents, 'Research – Therapy Best Practice' and 'Research paper – Myalgic encephalomyelitis/Chronic fatigue syndrome', which fall within the scope of your FOI request, have been previously requested under FOI 21/22-0693 and FOI 23/24-1015 respectively. These documents are publicly available on the NDIA's disclosure log – please see the link to the NDIA Disclosure Log below. For your convenience, I have also attached a copy of these documents from the disclosure log.

[FOI Disclosure log | NDIS](#)

I have also identified 2 further documents which fall within the scope of your request.

I have decided to grant access to these 2 documents in part.

Please note, Document 1 (Research Request – Central Sensitivity Syndromes and Functional Neurological Disorder) in the bundle is no longer in active use by Technical Branch Advisors.

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

I have decided that Documents 1 and 2, contain material that is exempt from disclosure under the FOI Act.

I have also identified that Document 1 contains material that is irrelevant to your request. The irrelevant material relates to information which 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 exempt and 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 exempt and irrelevant material removed.

**Reasons for decision**

Personal privacy (section 47F)

Section 47F of the FOI Act states that a document is conditionally exempt if its disclosure under the Act would involve the unreasonable disclosure of personal information about any person.

The term “personal information” is defined as information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether or not the information or opinion is true and whether or not it is recorded in a material form.

I have identified material in Documents 1 and 2, which contains the names of NDIS staff that have not previously been disclosed to you. I consider these names to be the personal information of those staff members. I will refer to this as the information in issue.

In determining whether the disclosure of that information would be unreasonable, the FOI Act requires that I take account of all the relevant factors, including:

- a. the extent to which the information is well known;
- b. whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- c. the availability of the information from publicly accessible sources; and
- d. any other matters that the agency considers relevant.

Against these criteria, I take the view that:

- a. it is apparent from the information that an individual is identifiable; and
- b. the information referred to above is not well known or readily available from publicly accessible sources.

I therefore conclude that it would be unreasonable to disclose publicly this personal information and it is therefore conditionally exempt under section 47F(1) of the FOI Act.

#### *Public interest considerations – section 47F*

Under the FOI Act, I can only refuse to disclose information which is conditionally exempt if I conclude that it would be contrary to the public interest to do so. Section 11B of the Act sets out what I need to consider and what I must not consider when reaching my conclusion.

#### *Factors in favour of disclosure*

In favour of disclosure, I have considered the factors outlined in section 11B(3) of the FOI Act, and I have determined that disclosure of the relevant information in Documents 1 and 2, would promote the object of the FOI Act by providing access to documents held by the government. In relation to the information in issue, I afford this factor moderate weight.

#### *Factors in favour of nondisclosure*

In favour of nondisclosure, I consider disclosure of the information could reasonably be expected to affect these individual's right to privacy by having their personal information in the public domain. This is an important right also recognised by the *Privacy Act 1988*. For this reason, I afford significant weight to this factor favouring nondisclosure.

### *Conclusion*

While there is limited public interest in the disclosure of information conditionally exempt under section 47F of the FOI Act, the harm that would result from disclosure is that it could reasonably be expected to affect an individuals' right to privacy by placing their personal information in the public domain.

I am satisfied that the factors against disclosure of the information outweigh the factors in favour of disclosure and that, on balance, it would be contrary to the public interest to release this information to you. Accordingly, I have decided to release the majority of the information with the contrary to public interest information removed pursuant to section 47F 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](mailto:foi@ndis.gov.au).

Yours sincerely



### **Ramya (RMO 260)**

Senior Freedom of Information Officer  
Complaints Management & FOI Branch  
General Counsel Division

## Schedule of Documents for FOI 23/24-1127, FOI 23/24-1128, FOI 23/24-1134

Document number	Page number	Description	Access Decision	Comments
1	1-12	Research Request – Central Sensitivity Syndromes and Functional Neurological Disorder  Date: 24 December 2019	<b>PARTIAL ACCESS</b> Exemption claimed: s47F – personal privacy  Irrelevant material removed under section 22 of the FOI Act	Removed the original pages 5-14, 21-31, 33-43 and 45 of this research document, as the content in these pages are irrelevant to the subject matter of your request.
2	13-26	Research Paper: Long COVID-19  Date: 15 July 2022	<b>PARTIAL ACCESS</b> Exemption claimed: s47F – personal privacy	