

Our reference: FOI 23/24-1191



GPO Box 700  
Canberra ACT 2601  
1800 800 110

[ndis.gov.au](http://ndis.gov.au)

27 June 2024

Emily Lacey

Right to Know

By email: [foi+request-11386-bae6f346@righttoknow.org.au](mailto:foi+request-11386-bae6f346@righttoknow.org.au)

Dear Emily Lacey

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

Thank you for your correspondence of 4 May 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).

### **Scope of your request**

You have requested access to the following documents:

*“The Technical Advisory Branch compiles research on particular diagnoses. This type of document has been released previously as a part of FOI 23/24-1015, FOI 23/24-0467 and FOI 21/22-1232.*

*I am requesting the TAB's research document regarding "Fibromyalgia".*

### **Extension of time**

On 3 June 2024 you agreed to a 30-day extension of time under section 15AA of the FOI Act, making 3 July 2024 the new date to provide you with a decision on access.

### **Decision on access to documents**

I am authorised to make decisions under section 23(1) of the FOI Act.

I have conducted searches, using all reasonable search terms that could return documents relevant to your request, and consulting with relevant NDIA staff who could be expected to be able to identify documents within the scope of the request.

From these searches, I have identified 2 documents which fall into the scope of your request. I have decided to refuse access to 2 documents in full.

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 and FOI Guidelines published under section 93A of the FOI Act
- consultation with relevant NDIA staff
- factors relevant

**Reasons for decision**

My reasons for the decision are set out in **Attachment A**.

**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



**Cooper (CHH647)**  
Senior Freedom of Information Officer  
Complaints Management & FOI Branch  
General Counsel Division

**Reasons for Decision**

**Deliberative processes (section 47C)**

I have decided to refuse access to documents 1 and 2 under section 47C of the FOI Act.

Section 47C of the FOI Act conditionally exempts a document if its release would disclose deliberative matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency.

Documents 1 and 2 are internal working documents that were collated as part of a research program. The research program is in the early stages and the relevant documents include information that has been collated during the preliminary stage and do not reflect the agency's final judgment surrounding Fibromyalgia.

Section 47C(2) of the FOI Act provides that deliberative matter does not include purely factual material. The FOI Guidelines provide that 'purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.

I am satisfied that documents 1 and 2 contain information that meets the definition of 'deliberative material'. I am also satisfied that to the extent that the parts of the documents that contain factual material, the factual material is an integral part of the deliberative content, or is embedded or intertwined with the deliberative content such that it is impractical to excise.

Therefore, I find that documents 1 and 2 do not contain purely factual material, and are conditionally exempt under section 47C of the FOI Act.

**Public interest considerations – section 47C**

Section 11A(5) of the FOI Act provides that access to a document covered by a conditional exemption must be provided unless disclosure would be contrary to the public interest.

I have not considered any of the irrelevant factors as set out under section 11B(4) of the FOI Act in making this decision.

## **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](mailto: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](http://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](http://www.oaic.gov.au)  
Post: GPO Box 5218, Sydney NSW 2001  
Email: [enquiries@oaic.gov.au](mailto: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](mailto: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.