



26 July 2024

GS Lakes

By email: foi+request-11593-7ea94ad6@righttoknow.org.au

Dear GS Lakes

Freedom of Information request - Request consultation process

Thank you for your correspondence of 1 July 2024, in which you requested access under the *Freedom of Information Act 1982* (FOI Act) to documents held by the National Disability Insurance Agency (NDIA).

Unless you advise otherwise, we will take it that you agree to the middle and surnames and contact details of NDIA staff being excluded from the scope of your request (that is, the information will be treated as irrelevant).

Processing timeframes

A 30-day statutory period for processing your request commenced from 2 July 2024, in accordance with section 15(5)(b) of the FOI Act. Therefore, the due date for a decision on access is **31 July 2024**.

This period may be extended if we need to consult with third parties or for other reasons. We will advise you if this happens.

The purpose of this letter is to invite you to engage in a request consultation process on the scope of your request, in order to avoid a section 24AA practical refusal. The Agency submits that this consultation is required as the scope of your request is currently too large and unclear for us to process.

Scope of your request

You have requested access to the following documents held by the NDIA:

Please provide, under the FOI Act, any documents or updates that relate to the number of NDIS participants who have died.

- 1. Like previous FOIs 21/22-0295 and 21/22-0803, I request a monthly summation of this mortality data, but for the full operating duration of the Scheme, 2013 to present. Including the number of 'mortality exits', total active participants at the time, and the percentage of active participants this represents.*
- 2. I request a further and separate category breakdown of this monthly mortality data by whether the participant's plan funding decisions had previously been appealed (whether for internal or external review or otherwise), and whether their appeal was successful or not. (An increase in funding or additional support categories/types granted indicating 'success', whether or not the matter was resolved internally, at*

AAT/other courts, via independent assessment/expert review, via settlement/mediation, or via other means.)

3. *I also request another further and separate category breakdown of this monthly mortality data by whether the deceased participant had a psychosocial disability or diagnosis or impairment noted on their file at all. Whether or not said disability or diagnosis or impairment was deemed to have met 'access' or any other NDIS-related eligibility criteria, whether or not it was recorded as a 'primary' or a 'secondary' disability, or just observed/noted/recorded as part of medical evidence or other materials seen by the NDIA.*
4. *(Of particular interest for further category breakdown of this mortality data are whether depression and/or cPTSD/trauma and/or self-harm/suicidality potential were noted this way. Or, if possible, by particular type of psychosocial disability/diagnosis/impairment noted on the file, including but not limited to: anxiety, autism, ADHD, bipolar disorder, borderline personality disorder, cPTSD/trauma, depression, dissociative disorder, mood disorder, OCD, paranoia, phobia, psychosis, schizophrenia/schizoaffective disorders, and so on.)*

Internal consultation

I have consulted with the NDIA Analytics, Data and Actuarial Division (ADA) regarding the documents potentially in scope of your request. As some of the information requested in relation to the number of participants who have died has already been released as per FOI's 21/22-0295 and 21/22-0803, this information is no longer information for the purposes of an FOI request. Therefore, with regards to the number of participants mortality data, I requested the following date ranges:

1 January 2013 – 31 December 2017 and 1 January 2022 – 20 June 2024.

I had also included items 1-4 of the scope in my request for internal consultation.

On 16 July 2024, I received a response from ADA who advised that in terms of the same data provided in the previous FOI requests, but now with different date ranges as mentioned above, would take several months to action as it covers a six (6) year period of data.

For point 2 of the requested information, ADA have asked for more information regarding your request for 'a breakdown of mortality data by whether the participant's plan has been appealed....'. Specifically, what you mean by "appealed."

Regarding point 3 of your request, 'provided as a separate category breakdown of this monthly mortality date by psychosocial disability or diagnosis or impairment noted on their file,', ADA advised that to check the primary disability group of deceased participants for the period requested would also take the agency an extensive time to locate.

I refer to your question around deceased participants meeting access, I have been advised all participants who died would have met access otherwise they would not have been able to enter the scheme.

With regard to point 4 of your request, you have requested a breakdown of mortality by 'whether depression and/or cPTSD/trauma and/or self-harm/suicidality potential were noted this way....', I note that I have been advised the time period is again unreasonable and the list of disabilities is extensive would be an unreasonable diversion on the agency's resources.

Power to refuse request

Section 24 of the FOI Act provides that if the Agency is satisfied that a practical refusal reason exists in relation to a request, the Agency must undertake a consultation process with you, and if, after that consultation process, the Agency remains satisfied that the practical refusal reason still exists, the Agency may refuse to give you access to the documents subject to the request.

Practical refusal

A practical refusal reason exists if either (or both) of the following applies:

- (a) the work involved in the processing of the request would substantially and unreasonably divert the resources of the Agency from its other operations; and/or
- (b) the request does not satisfy the requirement in section 15(2)(b) of the FOI Act, which requires you to provide such information concerning the document you are seeking access to, to enable the Agency to be able to identify it.

I am satisfied that

- your request does not meet the requirements of section 15(2)(b) of the FOI Act in that it does not provide such information as is reasonably necessary to enable a responsible officer of the agency to identify the documents potentially in scope of your request; and
- the work involved in processing your request in its current form would substantially and unreasonably divert the resources of the NDIA from its other operations.¹

In coming to my conclusion, I note and give weight to:

- the fact that part of your request is not clear as you have not specified the type of review you are referring to
- the extensive period of time you have specified in your request;
- the internal advice from the subject matter experts within the NDIA.

On this basis, I intend to refuse your request. However, before I make a final decision, I am writing to provide you with an opportunity to revise your request.² This is called a '*request consultation process*'. You have 14 days to respond to this notice in one of the ways set out below.

Request consultation process

Under section 24AB of the FOI Act, you have 14 days to do one of the following:

- withdraw your request;
- make a revised request; or
- indicate that you do not wish to revise your request.

If you do not do one of the three things listed above during the consultation period (14 days), your request will be processed on the basis of the current scope.

Please note that the time taken to consult with you regarding the scope of your request is not taken into account for the purposes of the timeframe for processing your request.

You can contact me by email at foi@ndis.gov.au.

¹ Section 24AB of the FOI Act.

² Section 24AB of the FOI Act

To assist you with revising your scope, I suggest the following for your consideration:

Time period: 1 January 2022 – 31 March 2024 – by month

- *Total number of mortality exits, Total number of active participants, and number of mortality exits with PTSD noted.*

Please note to work out percentages, divide the number of mortality exits by the total number of participants or the number of mortality exits with PTSD with total number of mortality exits and multiply by 100. We are happy to provide you with the raw figures to assist you in calculating percentages.

Contact

Should you wish to revise your request or have any questions in relation to this process, please do not hesitate to contact me by email at foi@ndis.gov.au

If you do not contact me within this period, that is by 9 August 2024, your FOI request will be taken to have been withdrawn under subsection 24AB(7) and will not be dealt with any further.

Yours sincerely

A handwritten signature in black ink, appearing to read "Jennifer". The signature is written in a cursive, flowing style with a large loop at the end.

Jennifer (JFD472)

Freedom of Information Officer
Government, Risk & Legal – Complaints Management and FOI
General Counsel Division