

18 November 2024

Emily Lacey

**By email:** [foi+request-11804-17fe4ca7@righttoknow.org.au](mailto:foi+request-11804-17fe4ca7@righttoknow.org.au)

Dear Emily Lacey

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

Thank you for your correspondence of 31 July 2024 (**your correspondence**), seeking access under the *Freedom of Information Act 1982 (FOI Act)* to documents held by the National Disability Insurance Agency (**NDIA**).

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:

- 1. All of the "personal and environmental circumstances case" questions and response options in PACE used for "child applicants younger than 7".*
- 2. All of the "personal and environmental circumstances case" questions and response options in PACE used for "applicants 7 to 14 years".*
- 3. All of the "personal and environmental circumstances case" questions and response options in PACE used for "applicants over 15".*
- 4. Article "Early childhood - Overview - Personal Environmental Circumstances (PEC) including Capacity Building questions".*
- 5. Article "Early childhood - How to complete the Personal Environmental Circumstances (PEC) Capacity Building questions".*
- 6. Article "Record Housing information".*
- 7. Article "Record Daily Support information".*
- 8. Article "Record Carers information".*
- 9. Article "Record Capacity Building information".*
- 10. Article "Record Employment and Training information".*
- 11. Article "Understand Functional Capacity Supports".*

### **Extension of time**

On 26 August 2024, you agreed to a 30-day extension of time under section 15AA of the FOI Act, making 29 September 2024 the new date to provide you with a decision on access.

### **Expiration of time**

As we were not able to complete your application by the legislated due date of 29 September 2024, your application is regarded as a deemed refusal under section 15AC of the FOI Act.

Despite this, I have continued to process your application. I apologise for the delay and confirm that you retain your right to seek external review of this decision. Details are set out in **Attachment B** to this letter.

### **Search efforts**

Searches were conducted by the Service Guidance and Practice Division, and twelve documents that fall within the scope of your request were located.

### **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 12 documents, which fall within the scope of your request.

The documents were identified by conducting searches of NDIA's systems, 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.

I have decided to grant access to 10 documents in full, and 2 documents in part.

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
- factors relevant to my assessment of whether or not disclosure would be in the public interest
- the NDIA's operating environment and functions.

### **Reasons for decision**

#### **Personal privacy (section 47F)**

Section 47F of the FOI Act conditionally exempts a document(s) if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

The FOI Act shares the same definition of 'personal information' as the Privacy Act.<sup>1</sup> Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

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<sup>1</sup> Paragraph 6.127 of the FOI Guidelines.

- a. whether the information or opinion is true or not
- b. whether the information or opinion is recorded in a material form or not.<sup>2</sup>

I have identified material in the documents falling within scope of your request which contains personal information of a number of third parties. This information includes names and identifying information captured within document 5 and 6. I am satisfied this information meets the definition of personal information.

I consider that disclosure of this information under the FOI Act would involve the unreasonable disclosure of personal information. In making this decision, I have had regard to all relevant factors, including:

- the extent to which the information is well known;
- 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;
- the availability of the information from publicly accessible sources; and
- any other matters that the agency considers relevant.<sup>3</sup>

#### Public interest considerations

##### *Irrelevant factors*

I have examined the irrelevant factors in section 11B(4) of the FOI Act and I am satisfied I have not taken into account any irrelevant factors in reaching my decision.

##### *Factors favouring 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 information in the documents would:

- (a) promote the objects of the FOI Act (including all matters set out in sections 3 and 3A;

This is because providing access to documents held by the NDIA allows for increased scrutiny, discussion, comment, and review of government held information.

I have therefore decided to afford significant weight to these two (2) factors favouring disclosure of the documents to you.

##### *Factors weighing against disclosure*

The FOI Act does not list any factors weighing against disclosure. These factors will depend on the circumstances. However, the inclusion of the exemptions and conditional exemptions in the FOI Act recognises that harm may result from the disclosure of some types of documents in certain circumstances.

In favour of non-disclosure, I have determined disclosure of the information could reasonably be expected to:

- affect an individual's right to privacy by having their personal information in the public domain; and
- and cause a public interest harm.

Documents 5 and 6 contains 'Example wording for free text fields' where participant experiences are used as examples of wording and structure. The Service Guidance and Practice Division have advised that when examples are used in their guidance material, they may be based off de-identified participant experiences as opposed to examples that are completely fictitious.

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<sup>2</sup> Paragraph 6.128 of the FOI Guidelines.

<sup>3</sup> Section 47F(2) of the FOI Act.

The Service Guidance and Practice Division have been unable to confirm the nature of these examples. Given this, if they were based on de-identified participant experiences, I believe they would still reasonably identify a person.

The integrity of the information contained in these examples is not diminished by the removal of identifying information.

Given the definition of personal information as above and noting parliament's intention is to protect the privacy of individuals is evidenced by the terms of both the *Privacy Act 1988* (Cth) and the *National Disability Insurance Scheme Act 2013* (Cth), I am satisfied the disclosure of this information could reasonably be expected to affect an individual's right to privacy by having their personal information in the public domain, and cause a public interest harm. I have therefore decided to afford significant weight to these factors weighing against disclosure of the information in issue.

*On balance*

I am satisfied that disclosure of the information I have redacted from the document would be contrary to the public interest. I therefore conclude that it is exempt from disclosure.

Accordingly, I have decided that the relevant information in Documents 5 and 6 is exempt under sections 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



**Patrick (PHO293)**

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

## Schedule of Documents for FOI 24/25-0141

Document number	Page number	Description	Access Decision
1	1-21	<b>Personal and Environmental Circumstance (PEC) Questions and responses for all age groups</b> Date: 2 September 2024	<b>FULL ACCESS</b>
2	22-23	<b>PEC Questions and Guidance for children younger than 7 v3</b> Undated	<b>FULL ACCESS</b>
3	24-34	<b>Printable off-system PEC Children (7-14 years) v1</b> Undated	<b>FULL ACCESS</b>
4	35-38	<b>Early Childhood Overview PEC Questions – Archived</b> Date: 9 October 2023	<b>FULL ACCESS</b>
5	39-44	<b>Early Childhood - How to Complete the PEC Questions - Archived</b> Date: 9 October 2023	<b>PARTIAL ACCESS</b> Exemption claimed: s47F – personal privacy
6	45-50	<b>EC - PEC - Capacity Building - How to complete Early Childhood Supports Questions</b> Date: 9 October 2023	<b>PARTIAL ACCESS</b> Exemption claimed: s47F – personal privacy
7	51-52	<b>Record Housing Information v5</b> Date: 16 June 2023	<b>FULL ACCESS</b>
8	53-55	<b>Record Information - Daily Supports v4</b> Date: 21 June 2023	<b>FULL ACCESS</b>
9	56-58	<b>Record Carers Information v3</b> Date: 21 June 2023	<b>FULL ACCESS</b>

<b>Document number</b>	<b>Page number</b>	<b>Description</b>	<b>Access Decision</b>
10	59-61	<b>Record Information for Capacity Building v6</b> Date: 14 December 2023	<b>FULL ACCESS</b>
11	62-64	<b>Record Employment and Training Information v4</b> Date: 23 November 2023	<b>FULL ACCESS</b>
12	65-68	<b>Understand Functional Capacity Assessments v4</b> Date: 16 June 2023	<b>FULL ACCESS</b>

**Your review rights**

As this matter was a deemed refusal, internal review of this decision is not an option. However, if you have concern with any aspect of this decision, please contact the NDIA FOI team by email [foi@ndis.gov.au](mailto:foi@ndis.gov.au) or by post:

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 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.