

1 October 2024

Bob Buckley

By email: [foi+request-11825-a646dae6@righttoknow.org.au](mailto:foi+request-11825-a646dae6@righttoknow.org.au)

Dear Bob Buckley

### Freedom of Information request — Request consultation process

Thank you for your correspondence of 2 August 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).

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.

### Scope of your request

You have requested access to the following documents:

*The NDIA, as Respondent in numerous requests for decision reviews made to the Administrative Appeals Tribunal (AAT), has claimed in its statements that some support, therapy or early intervention types for young autistic NDIS participants (in the age range 0 to 14 years) either may cause harm or trauma, or be harmful. For example, the NDIA made such claims in the Respondent's*

*\* Statements of Facts, Issues and Contentions at paragraph 52 in DRXK v N DIA (2023/0077) wrote "the Respondent is concerned that high level intervention may be harmful for this Applicant" in relation to the Applicant's request for funding for EIBI/ABA.*

*\* Closing Submissions in QLYQ v NDIA (2021/9898).*

*The NDIS has shown reluctance at least to fund some support, therapy, and/or early intervention types that clinicians and experts advice are "evidence-based" and "reasonable and necessary". Some NDIA staff claim there is risk of trauma or harm associated with those supports.*

*Please provide all information:*

*1. in statements to the AAT, in either an ADR or hearing process, that a support, therapy, or early intervention type requested by the Applicant may either cause harm or trauma, or should be considered harmful for an autistic child or children, and*

*2. held by the NDIA that relates to whether or not any support, therapy, or early intervention type may either cause harm or trauma, or should be considered harmful for an autistic child or children generally,*

*Note: in relation to 1. above, a list of the claims that the NDIA made to the Tribunal or in*

*its ADR process is required with a case identifier. The request is not for information that identifies any Applicants.”*

### **Internal consultation**

A preliminary search of the Agency's LEX database (containing all AAT matters) has been conducted by the NDIA's Administrative Appeals Branch (AAB) using the key word "autism". This search has returned more than 6,000 hits. This is in a context where AAB have been storing records on LEX for a period of less than three years. I have been advised by AAB that, in order to respond to your request in its current form, 10 years of data and documentation would need to be retrieved and reviewed. This would likely take several Agency officers several months to action and would likely represent a substantial and unreasonable diversion of AAB's resources.

Additionally, in respect of item 2 of your request, AAB have identified that locating documentation '*held by the NDIA*' would necessitate searches across multiple agency business areas, including but not limited to Internal reviews, Planning, Service Delivery and Technical Advisory Branch. It is reasonable to expect that a very large volume of responsive documentation would be located using the search terms of "autism" AND 'child'. Each of these documents would then need to be scrutinised to enable decisions as to whether they were in scope of your request. Again, my view is that the work involved in carrying out searches across multiple business areas and reviewing each document would represent a substantial and unreasonable diversion of the Agency's resources.

### **Practical refusal**

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

In view of the above, I am writing to advise that 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. This is called a "practical refusal reason" under section 24AA of the FOI Act.

### **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 an FOI applicant to provide such information concerning the document/s they are seeking access to, to enable the Agency to be able to identify it or them

In reaching this view, I have taken account of:

- the internal advice from AAB, who are the subject matter experts within the NDIA
- the lack of a specified date range in your request  
the breadth of your request.

### **Request consultation process**

In circumstances where an Agency is considering a practical refusal, it is required to undertake a request consultation process under section 24AB of the FOI Act. The purpose of this letter is to initiate that process. You now 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 the request (in which case your original scope remains).

If you do not do one of the three things listed above during the consultation period, your request will be processed on the basis of the current scope, and it is likely to be refused on the basis that processing it would represent a substantial and unreasonable diversion of the Agency's resources.

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 calculating the timeframe for processing your request.

If you wish to discuss this process, please contact me by email at [foi@ndis.gov.au](mailto:foi@ndis.gov.au).

**Alternative access:**

To assist with the management of your application, I have consulted with AAB for suggestions on how to make your request more manageable.

In response, AAB have suggested that this request may be better managed outside the FOI process, via a new, general request addressed to the: [AABCOMPLAINTS@ndis.gov.au](mailto:AABCOMPLAINTS@ndis.gov.au) inbox with a narrowed time frame from **3 August 2019 to 2 August 2024**, with specific search terms such as:

- "autism" AND "therapy" AND "child" AND "harm"
- "autism" AND "therapy" AND "child" AND "trauma"
- "autism" AND "support" AND "child" AND "harm"
- "autism" AND "support" AND "child" AND "trauma"
- "autism" AND "early intervention" AND "child" AND "harm"
- "autism" AND "early intervention" AND "child" AND "trauma".
- "Applied Behaviour Analysis" OR "ABA" AND "child".

This would allow the NDIA to conduct a search of relevant decisions published by the Administrative Appeals Tribunal, noting the Agency takes the view that this will not be by way of legal advice on the issues you have raised.

If this alternative method of accessing the information you seek appeals to you; or you wish to make a revised request, then please let us know by **15 October 2024**.

If I do not hear from you by this date, I will proceed to process your request in its current form.

Please do not hesitate to contact me if you have any questions.

Yours sincerely



**Wendy (WNN633)**

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