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ndis.gov.au

29 November 2024

Bob Buckley

By email: 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 provide you with a decision on your request.

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 NDIA (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.”

Request Consultation

On 1 October 2024, I initiated a request consultation process under section 24AB of the FOI Act. In my letter, I advised you that I intended to refuse access to your request on the grounds that processing it would create a substantial and unreasonable diversion of the Agency’s resources. I set out the reasons for this and advised you how to make your request manageable, specifically asking you to consider being provided with certain information by way of administrative access.

On 2 October 2024, you responded advising that you were willing to narrow the scope of request to the following period:

...the period since (not including) 2019.

You also advised that you did not wish to pursue the option of an administrative release of information.

Processing timeframe

Extension of time – 15AA

On 31 August 2024, you agreed to a 20-day extension of time under section 15AA of the FOI Act, making 22 September 2024 the new date to provide you with a decision on access.

I then sought your agreement to a further 10-day extension of time, which you agreed to on 21 September 2024. This moved the date to provide you with a decision on access to 2 October 2024.

Extension of Consultation Period

Generally, 14 days is allowed for the completion of a section 24AB request consultation period. However, section 24AB(5) of the FOI Act allows an agency to extend this period with the agreement of an applicant.

I was required to undertake further inquiries with NDIA business areas in connection with your response to my consultation letter, and therefore sought your agreement to a 7-day extension of time under section 24AB(5) of the FOI Act. I confirm you agreed to this request on 15 October 2024.

On 22 October 2024, I sought your agreement to extend the consultation process for a further 7-days under section 24AB(5) of the FOI Act, making the last day of the consultation period 29 October 2024. I confirm you agreed to this request on 23 October 2024.

On 29 October 2024, I provided you with an update on my communications the NDIA business area and advised that I required more time to finalise these inquiries and sought your agreement to a further 7-day extension. However, you did not respond by the designated time frame.

Extension of time – 15AB

As part of the section 24AB request consultation process, I advise that the time taken to undertake this consultation process is not taken into account for the purposes of calculating the due date for a decision on your request.

Considering section 15AA and section 24AB(5) of the FOI Act, I confirm that the final date to provide you with a decision on access was 30 October 2024. As a decision on access had not been finalised, I sought a 30-day extension of time from the Office of the Australian Information Commissioner (OAIC) under section 15AB of the FOI Act. If it is granted, the due date for this decision will become 29 November 2024.

I advise that I have yet to receive a response from OAIC regarding my application however, in the interests of providing you with a decision without any further delays, I have decided to continue processing your application.

Decision on access to documents

I have decided to refuse your request on the grounds that your agreement to revise the scope of your request to limit it to documents created since 1 January 2020 was not sufficient to render your request significantly more manageable. It did not therefore remove the reasons for the practical refusal.

I make this decision as a delegated decision maker under section 23(1) of the FOI Act.

Reasons for decision

A detailed statement of reasons for my decision can be found at **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.

Yours sincerely



Wendy (WNN633)

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

**Statement of Reasons
FOI 24/25-0144**

Practical refusal reason

Relevant law

A practical refusal reason exists in relation to a request for documents if the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations¹.

In determining whether processing the request would substantially and unreasonably divert the agency's resources, I am required to have regard to the resources that would have to be used for the following:

- identifying, locating or collating the documents of the Agency
- deciding whether to grant, refuse or defer access to a document including resources used for examining the document and consulting with any person or body in relation to the request
- making a copy or an edited copy of the document
- notifying the decision on the request.

Upon receipt of your Freedom of Information request, I noted that that it would be necessary to consult with Agency business areas. I then initiated the consultations with the Administrative Appeals Branch (AAB) for documents relevant to your request.

At the conclusion of the consultations, AAB advised that their preliminary search of the LEX database, using the key word 'autism' had returned more than 6000 responsive documents, not including any attachments. AAB also advised they were willing to make an administrative release to provide you with certain documents. The purpose of this offer was twofold. It would allow AAB to search for documents on a more easily searchable database, and it would not necessitate consideration being given to whether any material in the documents was exempt under the FOI Act.

On 1 October 2024, I initiated a section 24AB request consultation process. I formally advised you that processing your request, in its current form would result in a substantial and unreasonable diversion of the Agency's resources. I provided you with information about the number of documents identified to date and the impact processing your request would have on the Agency.

On 2 October 2024, you responded to my request for consultation and advised that you were willing to narrow your request to '*...the period since (not including) 2019.*', and that you did not wish to seek an administrative release of documents.

¹ 24AA(1)(a) of the FOI Act.

After a series of communications with AAB regarding this revised scope, they have advised that the request remains unmanageable and would still involve a substantial and unreasonable diversion of the Agency's resources.

As the reason for the practical refusal has not been lifted, I am satisfied that a practical refusal reason still exists and that the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations.

I therefore refuse your request on the basis of section 24AA of the FOI Act.

Your review rights

Internal Review

In this instance, your right to an internal review of this decision is dependent on whether OAIC grant my request for an extension of time under section 15AB of the FOI Act. If you wish to seek an internal review, please contact me at foi@ndis.gov.au and I will advise whether the extension of time has been granted.

If it has and 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 or sent by post to:

Freedom of Information Section
Complaints Management and 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, 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
Post: GPO Box 5218, Sydney NSW 2001
Email: 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

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.