

21 February 2025

Angelique

**By email:** [foi+request-11907-520687a2@righttoknow.org.au](mailto:foi+request-11907-520687a2@righttoknow.org.au)

Dear Angelique

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

Thank you for your correspondence of 16 August 2024, requesting 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 notify you of my decision on your application.

### **Scope of your request**

You have requested access to the following documents:

*“... the following information from FOI23/24- 1189 -*

*Please provide any and all documents that relate to NDIS use of time base of funding (both capacity and support work) and any policy, justification or memos surrounding NDIS using :*

*40 weeks as basis for funding*

*46 weeks as basis for funding*

*48 weeks as basis for funding*

*52 weeks as basis for funding...”*

### **Timeframe**

On 6 September 2024, we wrote to you requesting a 30-day extension of time under section 15AA of the FOI Act. However, as we as we did not receive a response from you regarding this request for an extension of time, the original due date of 16 September 2024 remained.

I acknowledge that this time has lapsed and as a result we are deemed to have refused your request under section 15AC of the FOI Act. The effect of this is that you do not have a right seek an internal review of my decision. However, I confirm that you retain your right to seek external review by the Office of the Australian Information Commissioner (OAIC).

I note that despite this, I have continued processing your request and I extend my apologies for the delay in providing you with a decision on access.

## **Request Consultation**

On 13 September 2024, I initiated a formal request consultation process under section 24AB of the FOI Act and provided you with a letter for your consideration and action. In the letter I explained that the scope of your request does not provide enough information about the documents you are seeking, as is reasonably necessary to allow me to identify them.<sup>1</sup>

On this basis, I advised you that I intended to refuse your request. However, before I made a final decision, I provided you with an opportunity to revise your request.<sup>2</sup>

On 3 October 2024, you revised the scope of your request to the following:

- 1. All guidance documents for delegates that address determining the number of weeks /per year that can/should be funded for capacity building and core supports. (Please provide these documents in full).*
- 2. All internal policy documents that address the number of weeks /per year funded for capacity building and core supports.*
- 3. All research, reports, briefs, and policy design documents created during the process of determining the number of weeks /per year that can/should be funded for capacity building and core supports, where the determinations were then used in guidance documents, policy documents, and the typical support calculator (TSP) system. (Please provide these documents in full).*

On 5 November 2024, I wrote to you regarding your revised scope and summarised it to the following:

*All internal policy documents and guidance documents for delegates that address determining the number of weeks /per year that can/should be funded for capacity building and core supports*

You responded to my email on 11 November 2024 and advised that the description of your revised scope was to remain as the one provided on 3 October 2024.

## **Search efforts**

Staff in the NDIA's Service Guidance branch and Analytics, Data and Actuarial (ADA) branch, conducted searches for documents and from the searches, three (3) responsive documents were identified.

## **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 decided to grant access to 2 documents in full and 1 document in part.

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<sup>1</sup> Section 24AA of the FOI Act.

<sup>2</sup> Section 24AB of the FOI Act.

**Reasons for decision**

I have decided that some parts of documents should not be disclosed as they contain conditionally exempt information where disclosure would be contrary to the public interest. The information is therefore exempt, under section 47E(d) of the FOI Act – Certain operations of agencies.

Additionally, I have decided to refuse access to some information you have requested on the basis that the documents are non-existent or unlocatable pursuant to section s24A of the FOI Act.

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

**Release of documents**

The documents for release, as referred to in the Schedule of Documents at **Attachment B**, are attached.

**Rights of review**

Your rights to seek a review of my decision, or lodge a complaint, are set out at **Attachment C**.

If you have any enquiries about this matter, please contact me by email at [foi@ndis.gov.au](mailto:foi@ndis.gov.au).

Yours sincerely

A handwritten signature in cursive script that reads "Wendy".**Wendy (WNN633)**

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

**Statement of Reasons  
FOI Application FOI 24/25-0209**

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For ease of reading, I have set out my statement of reasons in two parts.

**Part 1: Section 47E(d) – Certain operations of agencies**

Relevant Law

Under the FOI Act, a person has a legally enforceable right to obtain access to a document of an agency,<sup>3</sup> however a decision maker must decide whether access to a conditionally exempt document would, on balance, be contrary to the public interest.<sup>4</sup>

Certain operations of agencies (section 47E(d))

Section 47E(d) of the FOI Act conditionally exempts a document if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Document 3 is a guidance material for NDIS staff and partners to understand and use the plan conversation support tool (PCST) to develop budgets. The guidance refers to NDIS systems processes which details calculation methodologies used to assist in determining levels of support for NDIS participants, which is to better ensure that participants receive supports that are reasonable and necessary. It is not intended for external distribution.

Any disclosure resulting in the prejudice of the effectiveness of the Agency's operational methods and procedures would, or could reasonably be expected to, result in the need for the Agency to change those methods and procedures to ensure the future effectiveness and sustainability of the Agency and the Scheme.

I am satisfied that the release of this information would potentially result in the public disclosure of internal methodologies that, through improper use, would, or could, lead to a distortion of funding levels that would substantially and adversely affect the integrity of the NDIS and its financial sustainability. Accordingly, I have decided that some information in document 3 is conditionally exempt under section 47E(d) of the FOI Act.

**Public interest considerations – section 47E(d)**

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.

*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.

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<sup>3</sup> Section 11(1)(a) of the FOI Act.

<sup>4</sup> Section 11B(1)-(5) of the FOI Act.

### *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 relevant information 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 this factor favouring disclosure.

### *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.

Against disclosure, I consider that disclosure of the relevant information in Document 3:

- would not contribute to the publication of information of sufficient public interest to justify the likely harm caused by release
- would not enhance Australia's representative democracy in the ways described in section 11B(3) of the FOI Act
- would not inform any debate on a matter of public importance or promote oversight of public expenditure.

While there is limited public interest in the disclosure of information conditionally exempt under section 47E(d) of the FOI Act, the harm that would result from disclosure is that it could reasonably be expected to:

- prejudice the ability of the Agency to provide guidance to staff and to decision makers in classifying applicants based on support needs in order to comply with their obligations and make informed decisions in relation to the quantum of funding to add to each reasonable and necessary support, which, in turn, helps to ensure the financial stability and integrity of the NDIS

In summary, I am satisfied that the factors against disclosure of the information outweigh the factors in favour of disclosure and that, on balance, it would be contrary to the public interest to release this information to you. Accordingly, I have decided that the relevant information in Document 3 is exempt under sections 47E(d) of the FOI Act.

## **Part 2: Section 24A – Documents not found or are unlocatable**

### Refused information

I have refused access to the information you requested under section 24A of the FOI Act on the basis that documents containing such information are unlocatable or do not exist.

### *Relevant law*

Under the FOI Act, a person has a right to be given access to documents of an agency. However, the right of access is subject to limitations, including grounds for refusal of access. Section 24A of the FOI Act states that an agency may refuse a request for access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that the document cannot be found or does not exist.

### Searches for documents

After reviewing point 3 of your FOI applicant scope, I identified the need to make enquiries with the NDIA's Analytics, Data and Actuarial (ADA) branch for documents relevant to the scope of your request.

In response to my enquiries, the business area advised that there are no documents relevant to point 3 of your request because funding that is allocated on a weekly basis is based on the reasonable and necessary criteria and the individual participant's circumstances.

The criteria for reasonable and necessary supports can be found in the link below:

[Understanding reasonable and necessary supports when developing an NDIS plan | NDIS](#)

The business area has provided various public articles of various circumstances where number of weeks per year is determined for capacity building and core supports.

This material can be located through the following links for you to peruse your convenience:

[PB Supports in Employment provider handbook PDF.pdf](#)

[PB Keogh Bay Supported Employment Pricing Transition Project Report PDF.pdf](#)

[PB Keogh Bay Supported Employment Pricing Transition Project Report PDF.pdf](#)

In summary to these articles '48 weeks per year' is based on 52 weeks minus annual leave. '46 weeks per week' is based on 52 weeks minus annual leave and school holiday. '40 weeks per year' is based on what an organisation can provide.

### **Conclusion**

Based on the information I received from internal business areas; I consider there are reasonable grounds to be satisfied that documents containing the information you seek do not exist. I therefore refuse access to the information under section a 24A of the FOI Act on the basis that the information is does not exist.

## Schedule of Documents for FOI 24/25-0209

Document number	Page number	Description	Access Decision
1	1-44	Our Guideline – Reasonable and necessary supports Date: 20 December 2023	<b>FULL ACCESS</b>
2	45-82	Creating your plan Date: 20 December 2023	<b>FULL ACCESS</b>
3	83-95	Knowledge article - Understand and update the plan conversation support tool Date: 8 August 2024	<b>PARTIAL ACCESS</b>  Exemption claimed: s47E(d) – certain operations of agencies

## 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.