

12 November 2024

TSCD

By email: foi+request-11970-516d8370@righttoknow.org.au

Dear TSCD

Freedom of Information request — Notification of Decision

Thank you for your correspondence of 30 August 2024, in which you requested access to documents held by the National Disability Insurance Agency (NDIA), under the *Freedom of Information Act 1982* (FOI Act).

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:

... a complete breakdown of the APS Census results only for the Complaints and Freedom of Information teams.

I request a complete breakdown of each these teams results inclusive of the satisfaction levels with immediate supervisors and SES managers. Well-being of staff, satisfaction with the support staff receive from above mentioned management and any results around unacceptable behaviours in the workplace.

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 1 document which falls within the scope of your request.

The document was 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 refuse access to this document in full.

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

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.

The document contains information relating to certain operations of the NDIA, specifically the responses to the annual APS Employee Census 2024 (Census) from the Complaints and FOI teams.

Whilst the NDIA's usual practice is to release the Census Highlights Report each year, which can be located at this link: [APS Census | NDIS](#), the document identified reflects the responses provided by the individual employees of the Complaints and FOI teams. Staff participate in the Census on the grounds of anonymity, where the agency collects feedback and confidential information in relation to issues in the workplace, staff engagement, wellbeing, innovation and change, communication and leadership.

The disclosure of this information would, or could reasonably be expected to jeopardise staff participation in the Census in the future, as staff members would feel that the Agency has not protected their rights to freely express themselves and provide feedback in an anonymous forum, for fear that this information may be released to the public through such a process as FOI. Additionally, staff may feel that their work will be impacted if members of the

public were to read the breakdown of individual team results of the Census and want to discuss this during routine contacts as part of their usual operations.

It is imperative that Agency staff feel that they can undertake the Census freely each year, as the information is invaluable in providing insight into our employee's views about their work, the Agency, and the APS as a whole. The Census results allow the NDIA to build operational improvement strategies and improve workforce capabilities, which lead to future efficiencies and processes to benefit both employees and the public.

Any disclosure resulting in the prejudice of the effectiveness of the Agency's operational methods through a process such as the Census would, or could reasonably be expected to, result in the need for the Agency to need to try and implement other processes to ensure future staff engagement to openly and willingly provide this important feedback, which, in my view, would have a substantial adverse effect on the proper and efficient conduct of the operations of the NDIA.

Accordingly, I have decided that the document 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.

I have not considered any of the irrelevant factors as set out under section 11B(4) of the FOI Act in making this decision.

I have considered the factors outlined in section 11B(3) of the FOI Act, and I have determined that, in favour of disclosure, the relevant information in the document would promote the objects of the FOI Act by providing access to documents held by the government, and inform debate on a matter of public importance.

Against disclosure, I have considered the factors outlined in paragraph 6.233 of the FOI Guidelines, and determined that disclosure of the information in the document:

- could reasonably be expected to prejudice an agency's ability to obtain confidential information
- could reasonably be expected to prejudice an agency's ability to obtain similar information in the future

- could reasonably be expected to harm the interests of an individual or group of individuals
- could reasonably be expected to prejudice the management function of an agency
- could reasonably be expected to prejudice the effectiveness of testing or auditing procedures.

Additionally, I find that the release of the document:

- 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.

It is in the public interest that the NDIA efficiently and productively undertakes its usual operations through processes such as the Census, to ensure the ongoing staff engagement allows the Agency to build operational improvement strategies and improve workforce capabilities.

I am satisfied, based on the above, that the factors against disclosure of the document outweigh the factors in favour of disclosure and that, on balance, it would be contrary to the public interest to release the document to you. Accordingly, I have decided that the document is exempt under section 47E(d) of the FOI Act.

Rights of review

The due date for a decision on access in relation to your request was 29 September 2024. As we did not provide you with a decision by the due date, we are deemed to have refused you access to the documents you have requested (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. I note, however, that you retain your external review rights.

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

Attachment A.

Should you have any enquiries concerning this matter, please do not hesitate to contact me by email at foi@ndis.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'KJB', written in a cursive style.

Kylie (KJB737)
Assistant Director FOI
Complaints Management & FOI Branch
General Counsel Division

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 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, 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.