

14 November 2024

Bob Buckley

By email: [foi+request-11973-75cacd13@righttoknow.org.au](mailto:foi+request-11973-75cacd13@righttoknow.org.au)

Dear Bob Buckley

### Freedom of Information request — Notification of Decision

Thank you for your correspondence of 16 October 2024, in which you requested an internal review of the original decision for FOI 24/25-0279, made 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 for internal review.

### Your FOI request

On 31 August 2024, you requested access to the following documents:

- “1. how providers are included in the providers listed on the NDIS Provider Finder in the Behaviour Support registration group (including requirement for or recognition of clinical or professional registration for individual clinicians and information about service quality required);*
- 2. how the NDIS ensures quality or standard of service that each listed/promoted provider on its list delivers to NDIS participants is initially assessed and ensured on an ongoing basis; and*
- 3. records of Behaviour Support providers who have been found to not maintain a sufficient standard or quality of service delivery and what the NDIS did about it in each case...”*

As advised, searches were performed by the NDIA's Media, Marketing and Digital Communication Team as well as the Analytics, Data and Actuarial Division.

The result of these consults led the NDIA to make a decision to refuse access to documents pursuant to 24A of the FOI Act, on the basis that they were non-existent or could not be found.

On 10 October 2024 you were notified of this decision. In addition to the decision, you were also advised that your request would be better placed with the NDIS Quality and Safeguards Commission (NDIS Commission), as they are responsible for the management of NDIS providers.

### Reasons for review

On 16 October 2024, you requested an internal review stating:

*“I am writing to request an internal review of National Disability Insurance Agency's handling of my FOI request 'NDIS behaviour support provider registration group'.*

*Yours response states*

*>Regarding item 1 of your scope, ADA confirmed that the list of providers on the NDIS Provider Finder in the Behaviour Support registration group on the NDIA website is sourced from the NDIS Commission. ADA further informed me that the*

*NDIS Commission is responsible for the management of these providers, including any requirements for or recognition of clinical or professional registration for individual clinicians and information about service quality.*

*I do not believe that the process described for putting "providers on the NDIS Provider Finder in the Behaviour Support registration group" is completely undocumented; that the FoI branch was able to obtain this information without there being any information about it on record.*

*I do not believe that there is no agreement between the NDIA and the NDIS Quality and Safeguards Commission relating to "responsible for the management of these providers".*

*I believe such information exists and lies within the scope of my request, but the NDIA refused to provide it ... or to justify why it should not be provided."*

I have treated your application as seeking a review of the handling of the original FOI request, including adequacy of searches and reasons given for refusal of access.

#### **Decision on internal review**

I am authorised to make decisions under the FOI Act, including internal review decisions under section 54C of that Act. As an internal review officer, I am not bound in any way by the original decision and am required to make a fresh decision.

I have decided to **affirm** the original decision to refuse access to the information pursuant to 24A of the FOI Act on the basis that the documents you seek are non-existent or cannot be found.

I have provided a statement of reasons for my decision in **Attachment A** to this decision notice.

#### **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 and FOI Branch  
General Counsel Division

**Statement of Reasons  
FOI Internal Review 24/25-013**

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**Independent Review of Original FOI Request (24/25-0275)**

In arriving at the conclusion to affirm the original decision to refuse access to information pursuant to 24A of the FOI Act, I independently reviewed all steps taken to reach the original decision. After reviewing the results of the consults with the Media, Marketing and Digital Communication Team and Analytics, Data and Actuarial Division, I found it appropriate to consult with one additional line area, this being the Providers Division (Providers).

At the end of the consult, Providers advised that they do not hold documents and affirmed that any request for documents relating to the Provider Finder tool should be directed to the NDIS Commission.

Based on the final result of consults, I am satisfied that sufficient searches were performed.

**Interpretation of Original FOI Request (24/25-0275)**

To clarify, the NDIA has interpreted point 1 of your original request as a matter of criteria not technicality. That is, I've interpreted it as the criteria needed to be included on the provider list and not how the NDIA imports data from the NDIS Commission's Provider Register and exports it to the NDIA's Provider Finder tool.

**NDIS Provider Register**

Section 73ZS(1) of the NDIS Act states:

*(1) The Commissioner must establish and maintain a register for the purposes of this Act, to be known as the NDIS Provider Register.*

Section 73ZS further clarifies criteria required to be included on the NDIS Provider Register.

As advised, the establishment and maintenance of the NDIS Provider Register is the responsibility of the NDIS Quality and Safeguards Commission, and any requests for information in relation to this should be directed accordingly.

**Response to Internal Review Claims**

*"I do not believe that the process described for putting "providers on the NDIS Provider Finder in the Behaviour Support registration group" is completely undocumented; that the FOI branch was able to obtain this information without there being any information about it on record."*

As explained above, your request was interpreted as the criteria needed to be included on the NDIA's Provider tool, and as per 73ZS on the NDIS Act, the responsibility lies with the NDIS Quality and Safeguards Commission to establish and maintain this list.

*"I do not believe that there is no agreement between the NDIA and the NDIS Quality and Safeguards Commission relating to "responsible for the management of these providers"."*

I note that an agreement between the NDIA and NDIS Commission was not part of your original request, therefore I have not engaged with the relevant line areas as part of this review for searches of such agreement. However, it is likely that no agreement would be in

place given that it is a legislative requirement for the NDIS Quality and Safeguards Commission to maintain the Provider Register.

**Conclusion**

Based on the responses to my additional consultation, and review of the responses to the original FOI request consultation, I am satisfied that sufficient searches were performed, and no documents were located relevant to the scope of your original request. I therefore affirm the decision to refuse access pursuant to 24A of the FOI Act on the basis that the information you are seeking does not exist or cannot be located.

**Your rights of review**

**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](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.