



**NDIS Quality
and Safeguards
Commission**

30 September 2024

Ref: LEX 3564

Mr Bob Buckley

By email: foi+request-11974-2bdfc5b4@righttoknow.org.au

Dear Mr Buckley,

Freedom of Information Request No. (33) 24/25-1

Notice of Decision on Access under the *Freedom of Information Act 1982* (Cth)

I refer to your request dated 31 August 2024 which sought access to documents held by the NDIS Quality and Safeguard Commission (the NDIS Commission), under the *Freedom of Information Act 1982* (Cth) (FOI Act).

Specifically, your request sought access to:

“Documents in relation to information on NDIS Commission website (<https://www.ndiscommission.gov.au/portal/apply-registration>): “All ‘provisionally’ suitable NDIS behaviour support practitioners are required to complete an assessment against the Positive Behaviour Support Capability Framework.

- 1. how and why these assessment only addresses Positive Behaviour Support and why other aspects of clinical practice in behaviour science are not addressed;*
- 2. the development of the assessment process referred to above including (but not limited to) disability sector engagement, consultation, and co-design;*
- 3. outcomes from this assessment process including (but not limited to) the numbers (by year or quarter) of applications, successful and unsuccessful (separately) assessments, and reasons for unsuccessful applications; and*
- 4. processes for ensuring standards and quality of behaviour support services are maintained including (but not limited to) the number (by year or quarter) of and reasons for deregistration of behaviour support providers.”*

Administration of your FOI request

On 2 September 2024, the NDIS Commission acknowledged your request by email.

On 3 September 2024, you consented to be identified as the FOI applicant for the purposes of any third-party consultation that may be required and confirm that you do not seek the personal information of staff below SES level and consent to the removal of duplicate documents and the provision of the final email in any email chains.

I am an authorised decision maker for the purposes of section 23 of the FOI Act and this letter gives notice of my decision.

Decision

The NDIS Commission has located **thirty-eight documents**, comprising of 703 pages, that fall within the scope of your freedom of information (FOI) request. The documents were identified by searches undertaken in NDIS Commission systems. These documents are set out in the schedule attached to this notice, including document access via the provided hyperlinks.

I have decided to grant access in full to **thirty-eight documents**. I have also decided to grant access in full to **one document** prepared by the NDIS Commission's Data and Insights team in accordance with section 17 of the FOI Act and in response to point 4 of your FOI request.

For documents 1 to 37, a copy of these documents are not attached for release as they are publicly available on the NDIS Commission website. The hyperlink of each document can be found within the **Schedule of Documents**.

The documents that I have chosen to grant access in full are set out in **Schedule of Documents**.

In reaching my decision, I have taken into consideration:

- the terms of your request on 31 August 2024;
- the FOI Act (in particular s17);
- the types of information and documents that are in the NDIS Commission's possession;
- the correspondence between you and the Commission on 3 September 2024;
- the content of the document that fall within the scope of you request;
- the results of searches undertaken by relevant NDIS Commission staff; and
- Guidelines issued by the Office of the Australian Information Commissioner (OAIC) under s93A of the FOI Act (**FOI Guidelines**).

Reasons for decision

Section 17 - Requests involving use of computers etc.

Section 17 of the FOI Act relevantly provides the following:

(1) Where:

(a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of [subsection 15\(2\)](#) to an agency;

(b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and

(ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and

(c) the agency could produce a written document containing the information in discrete form by:

(i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or

(ii) the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

(2) An agency is not required to comply with [subsection \(1\)](#) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

The right of access under the FOI Act is to existing documents, rather than to information. The FOI Act does not require the NDIS Commission to create a new document in response to a request for access, except in limited circumstances where the applicant seeks access in a different format or where the information is stored in an agency computer system rather than in discrete form.

Section 17 of the FOI Act obliges the NDIS Commission to produce a written document of information that is stored electronically and not in a discrete written form, if:

- The NDIS Commission can produce a written document containing the requested information by using a 'computer or other equipment that is ordinarily available' to the NDIS Commission for retrieving or collating stored information: s17(1)(c)(i); and
- Producing the written document would not substantially and unreasonably divert the resources of the agency from its other operations: s17(2) (see paragraph 3.212 of the FOI Guidelines).

Creation of a document in response to your FOI request (section 17)

After consultation with the relevant NDIS Commission teams, it was determined that information in response to point 4 of your FOI request - '*... the number (by year or quarter) of and reasons for deregistration of behaviour support providers...*' was not held by the NDIS Commission in the discrete document form.

In order to provide you access to the specified information regarding point 4 of the FOI scope, it was requested that an extract of data listed in the NDIS Commission's wider database be used to create a document.

Document 38 is comprised of the following data information, for the last two calendar years:

- The types of enforcement action including banning orders, or registration related sanctions applied to the providers which are registered for Behaviour Support providers across each quarter of the years 2023 to 2024.

Document 38 listed in **Schedule of Documents** was created in accordance with section 17 of the FOI Act.

Further information in response to your FOI request

The Practice Quality Division have provided additional information in response to the entire scope of your FOI request. This information is set out below under the respective sections of your FOI request.

1. Introduction part of your scope:

*Documents in relation to information on NDIS Commission website
(<https://www.ndiscommission.gov.au/portal/apply-registration>): "All 'provisionally' suitable NDIS*

behaviour support practitioners are required to complete an assessment against the Positive Behaviour Support Capability Framework.

This section of the NDIS Commission website is no longer valid. The Communications team have updated the website on 10/09/24 to remove this wording. In 2023, the NDIS Commission website contained the following document 'FAQ – Revoking Provisional Suitability – July 2023'. However, this FAQ information has been deleted recently as it is over 12 months old.

2. Documents relating to scope point 1:

The [PBS Capability Framework](#) guides the NDIS Commission's work on behaviour support capability and is used to consider the suitability of behaviour support practitioners to deliver specialist behaviour support services. This is consistent with Part 2 section 5 of the [Federal Register of Legislation - National Disability Insurance Scheme \(NDIS Behaviour Support Practitioner Application\) Guidelines 2020](#). The PBS Capability Framework has been produced by the NDIS Commission using best practice positive behaviour support as its guidance.

3. Documents relating to scope point 2:

The development of the assessment process referred to above including (but not limited to) disability sector engagement, consultation, and co-design can be found on page 2 and 3 of document 1. The NDIS Commission engaged and consulted with four registered NDIS providers to determine the tools and processes that need to be developed in preparation for full-scale implementation of the PBS Capability Framework across jurisdictions.

4. Documents relating to scope point 3:

The activity reports published on the NDIS Commission website include information on the number of Suitable NDIS Behaviour Support Practitioners, the report can be found on documents 3 to 19. We are currently not reporting on the number of 'suitability applications' submitted, as a single individual may submit multiple applications, interfering with the data.

Following consideration of an application, under the Guidelines, the NDIS Commission can provide one of three suitability outcomes - *suitable*, *not suitable*, or *unable to make a decision*. The NDIS Commission is considering including *not suitable* and *unable to make a decision* data in future activity reports to be published on the NDIS Commission website.

5. Documents relating to scope point 4:

The following NDIS Commission webpage contains processes for ensuring standards and quality of behaviour support services are maintained:

- [Understanding what is involved in an audit | NDIS Quality and Safeguards Commission \(ndiscommission.gov.au\)](#)
- Working with universities and funding a number of grants to develop tools and resources on [supported decision making](#), collaboration, [positive behaviour support](#), [quality markers of behaviour support plans](#) and [Tele-PBS](#).
- Extending on the available [Practice Guides](#) and [Evidence Summaries](#).

FOI Disclosure Log

In accordance with the requirements of section 11C of the FOI Act, the Commission is required to publish details of information released under the FOI Act, subject to certain exemptions.

I am satisfied that none of the exceptions at section 11C apply and that details of the document disclosed to you as part of your FOI request will be published on the Commission's FOI disclosure log. For further information about the Commission's FOI disclosure log please refer to our [website](#).

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to NDIS Commission for an internal review of my decision by another NDIS Commission officer. The internal review application must be made within 30 days of the date of this letter. The request should be addressed to FOI@ndiscommission.gov.au. Where possible please attach reasons why you believe review of the decision is necessary.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

- online via the [OAIC review smartform](#)
- by email to: foidr@oaic.gov.au
- by post to: GPO Box 5288 Sydney NSW 2001

More information about [Information Commissioner review](#) is available on the Office of the Australian Information Commissioner website.

FOI Complaints

If you are unhappy with the way we have handled your FOI request, please let us know what we could have done better. We may be able to rectify the problem. If you are not satisfied with our response, you can make a complaint to the Australian Information Commissioner. A complaint to the Information Commissioner must be made in writing. Complaints can be lodged in one of the following ways:

- online via the [OAIC Complaint smartform](#)
- by email to: foidr@oaic.gov.au
- by post to: GPO Box 5288 Sydney 2001

More information about [FOI complaints](#) is available on the Office of the Australian Information Commissioner.

If you are not sure whether to lodge an Information Commissioner review or an Information Commissioner complaint, the website of the [Office of the Australian Information Commissioner](#) has more information.

Contact

If you wish to discuss this decision, please contact FOI@ndiscommission.gov.au

Yours sincerely,

Deepika M

Deepika Thimapuram

Assistant Director – Freedom of Information
NDIS Quality and Safeguards Commission

SCHEDULE OF DOCUMENTS

Document reference	Date	Description of document	Number of pages	Decision on access	Applicable exemptions
<i>Documents relating to point 1 and 2 of FOI request:</i>					
1	July 2019	Positive Behaviour Support Capability Framework	42	Full access	N/A
2	May 2021	Self-assessment resource guide	69	Full access	N/A
<i>Documents relating to point 3 of FOI request:</i>					
3	undated	Activity report: 1 April to 30 June 2022 (three month)	13	Full access	N/A
4	undated	Activity report: 1 January to 31 March 2022 (three month)	26	Full access	N/A
5	undated	Activity report: 1 January to 31 March 2023 (three month)	13	Full access	N/A
6	undated	Activity report: 1 October to 31 December 2022 (three month)	13	Full access	N/A
7	undated	Activity report: 1 July to 30 September 2022 (three month)	13	Full access	N/A
8	undated	Quarterly performance report: Q3 2023-2024	46	Full access	N/A

9	undated	Quarterly performance report: Q4 2022-2023	42	Full access	N/A
10	undated	Quarterly performance report: Q2 2023-2024	46	Full access	N/A
11	undated	Quarterly performance report: Q4 2023-2024	46	Full access	N/A
12	undated	Quarterly performance report: Q1 2023-2024	46	Full access	N/A
13	undated	6 monthly report: July to December 2018	1	Full access	N/A
14	undated	6 monthly report: July to December 2019	5	Full access	N/A
15	undated	6 monthly report: July to December 2021	26	Full access	N/A
16	undated	6 monthly report: July to December 2020	11	Full access	N/A
17	undated	12 months activity report 2018-2019	2	Full access	N/A
18	undated	12 months activity report 2020-2021	11	Full access	N/A
19	undated	12 months activity report 2019-2020	11	Full access	N/A

Documents relating to point 4 of FOI request:

20	undated	Implementing providers: Facilitating the development of behaviour support plans that include regulated restricted practices	3	Full access	N/A
21	undated	Policy Guidance: working within your knowledge skills and experience	3	Full access	N/A
22	undated	Policy Guidance: The safe reduction and elimination of regulated restrictive practices	2	Full access	N/A
23	undated	Comprehensive Behaviour Support Plan Checklist: requirements for Specialist Behaviour Support Providers	7	Full access	N/A
24	December 2023	Comprehensive Behaviour Support Plan template version 3	12	Full access	N/A
25	undated	Interim Behaviour Support Plan Checklist: requirements for Specialist Behaviour Support Providers	6	Full access	N/A
26	December 2023	Interim Behaviour Support Plan version 3	13	Full access	N/A

27	September 2024	Compliance and Enforcement Policy	13	Full access	N/A
28	July 2023	Position statement: policies that present high risk of harm to NDIS participants	11	Full access	N/A
29	undated	Participant fact sheet 1: What is positive behaviour support	3	Full access	N/A
30	undated	Participant fact sheet 2: Understanding your rights	3	Full access	N/A
31	undated	Participant fact sheet 3: Choosing a specialist behaviour support provider	3	Full access	N/A
32	undated	Participant fact sheet 4: What to expect from your specialist behaviour support provider	4	Full access	N/A
33	undated	Participant fact sheet 5: What to do if you are not happy with your specialist behaviour support provider	2	Full access	N/A
34	November 2021	New NDIS Practice Standards and Quality Indicators fact sheet	6	Full access	N/A
35	November 2021	NDIS Practice Standards and	45	Full access	N/A

		Quality Indicators version 4			
36	November 2022	NDIS Practice Standards: High Intensity support skills descriptors version 3	47	Full access	N/A
37	undated	The University of Queensland: Evidence Matters: developing quality behaviour support plans	36	Full access	N/A
38	20/09/2024	Compliance matter enforcement action applied to provider who are registered for BSP group from 2022 to 2024	2	Document created under s17 – full access	N/A