

17 October 2024

Julie Keys

**By email:** [foi+request-12014-d2263e4c@righttoknow.org.au](mailto:foi+request-12014-d2263e4c@righttoknow.org.au)

Dear Julie Keys

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

Thank you for your correspondence of 5 September 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 provide you with a decision on your request.

#### **Scope of your request**

You requested access to the following documents:

*“....I request a copy of all documents held or used by the NDIA to determine whether or not a person with the neurological condition Myalgic Encephalomyelitis (ME) is permanently disabled.”*

#### **Extension of time**

On 6 October 2024, you agreed to a 7-day extension of time under section 15AA of the FOI Act, making 15 October 2024 the new date to provide you with a decision on access. The Office of the Australia Information Commissioner (OAIC) was advised of this agreement on 8 October 2024.

#### **Expiration of Time**

On 14 October 2024, I emailed you and requested a further 3-day extension under section 15AA of the FOI Act. You did not respond and as a result we are deemed to have refused your request under section 15AC of the FOI Act.

Despite this, I have continued to process your application. I apologise for the delay and confirm that you retain your right to seek external review of this decision.

#### **Search efforts**

Staff from the NDIA's Service Guidance (SG), Technical Advice and Practice Improvement (TAPIB) and Scheme Eligibility branches conducted searches for documents and no documents relating to your scope were identified.

#### **Decision on access to documents**

I have decided to refuse access to the information you have requested on the basis that the documents are non-existent or cannot be located pursuant to section 24A of the FOI Act. The reasons for my decision are set out in **Attachment A** of this decision letter.

I made this decision as an authorised FOI decision maker under section 23(1) of the FOI Act.

**Rights of review**

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

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 black ink, appearing to read "Jennifer". The signature is written in a cursive style with a large, looping initial 'J'.

**Jennifer (JFD472)**

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

**Statement of Reasons  
FOI Application 24/25-0309**

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I have refused access to the information you requested under section 24A of the FOI Act on the basis that documents containing such information cannot be located 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 the scope of your FOI application, I identified the need to make enquiries with the NDIA's Service Guidance (SG), Technical Advice and Practice Improvement (TAPIB) and Scheme Eligibility branches for documents relevant to the scope of your request.

I was provided with the same TAPIB research documents that have been previously released to you under FOI decision notice dated 24 July 2024 relating to FOI matters 23/24-1127, 1128 and 1134, but no additional new information was provided. I have not considered these documents again as I am of the view they do not relate to your scope.

This is because you have requested access to the documents held or used by the NDIA to determine whether or not a person with the condition Myalgic Encephalomyelitis (ME) is permanently disabled.

I again direct you to the following links that list conditions that meet the NDIS Access disability requirements, noting that Myalgic Encephalomyelitis/Chronic Fatigue Syndrome (ME/CFS) is not included.

[List A: Conditions that are likely to meet the disability requirements | NDIS](#)

[List B: Conditions that are likely to result in a permanent impairment | NDIS](#)

As per the advice previously provided to you, permanency of disability and functional impairment are established through submission of current medical and allied health reports which details evidence of treatment undertaken for a condition and its subsequent outcomes on the condition itself. A detailed explanation about this is available by following the link provided below which is located on the NDIS website:

[Applying to the NDIS](#)

I refer you to the paragraph titled "Is there any medical treatment for your impairment?" which clearly states the steps involved when assessing permanency of disability.

Based on the search results from the relevant business areas, I am satisfied that the documents you request access to do not exist.

I therefore refuse access to the information under section a 24A of the FOI Act on the basis that the information cannot be found or does not exist.

## Your review rights

### 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) for a review of this decision.

If you wish to have the decision reviewed by the OAIC, you may apply for review within 60 days of receiving this letter.

You can apply to the OAIC for review 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 the NDIA took in relation to your request. The Ombudsman will consult with the OAIC before investigating a complaint about the handling of an FOI request.

You can make a complaint to the OAIC using the contact details identified above, or to the Ombudsman by:

Phone: 1300 362 072 (local call charge)  
Email: [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)

Your complaint should set out the grounds on which you consider the OAIC or the Ombudsman should investigate the NDIA's handling of your FOI request.