

7 November 2024

Julie Keys

By email: foi+request-12017-53a92cd1@righttoknow.org.au

Dear Julie Keys

Freedom of Information request — Notification of Decision

Thank you for your correspondence of 6 September 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:

“...I have read the TAB reference document for ME/CFS found at.

https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.righttoknow.org.au%2Frequest%2Ftechnical_advisory_branch_tab_re%23incoming-34622&data=05%7C02%7Cfoi%40ndis.gov.au%7Cbc8dc6ef633440ba9d4408dcce058479%7Ccd778b65752d454a87cfb9990fe58993%7C0%7C0%7C638611770315420127%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLjCjBTRi6lk1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=sG%2Fh4CXI2%2BfqU4%2BI1e9U%2FYIWprlIEGBIsw5azHCrWio%3D&reserved=0

I request the information held by the TAB and/or other NDIA departments that lists the drugs that a person with ME/CFS is expected to take in order to be considered "fully treated" by the NDIA.

The TAB document refers to a number of drugs that are mentioned in international guidelines e.g. the 2021 UK-NICE Guidelines, USA Centre for Disease Control and The Mayo Clinic websites...”

Extension of time

On 8 October 2024, you agreed to a 30-day extension of time under section 15AA of the FOI Act, making 28 October 2024 the new date to provide you with a decision on access. I apologise for our failure to meet this deadline. As a result, we are deemed to have refused your request. However, I have continued to process it and you retain your right to review of my decision by the Australian Information Commissioner.

Search efforts

I have made enquiries with NDIA staff in the Technical Advisory and Practice Improvement Branch (TAPIB), which sits within the Service Delivery Division. They have conducted searches and advised us that no documents relating to your scope were identified.

Decision on access to documents

I am authorised to make decisions under section 23(1) of the FOI Act. Pursuant to section 24A of the FOI Act, I have decided to refuse access to the information you have requested on the basis that documents do not exist or cannot be located.

In reaching my decision, I took the following into account:

- your correspondence outlining the scope of your request
- the FOI Act
- the FOI Guidelines published under section 93A of the FOI Act
- consultation with relevant officers of the NDIA and
- the NDIA's operating environment and functions.

The reasons for my decision are set out in **Attachment A** of this decision letter.

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.

Yours sincerely



Ramya (RMO 260)

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

**Statement of Reasons
FOI Application 24/25-0320**

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 Technical Advice and Practice Improvement Branch (TAPIB) for documents relevant to the scope of your request.

I note that, in your request, you referred to the TAB document 'Research paper – Myalgic encephalomyelitis / Chronic fatigue syndrome'. Further, I note that this document, along with other relevant TAPIB research documents, were previously released to you under FOI decision notice dated 24 July 2024 relating to your FOI requests 23/24-1127, 1128 and 1134. I would direct you to part of this document that provides information about management and recovery, and symptom management strategies in relation to Myalgic encephalomyelitis / chronic fatigue syndrome.

I can confirm that the Agency does not hold any additional information specifically relating to lists of drugs used in the treatment of ME/CFS.

Based on TAPIB's advice, I am satisfied that all reasonable steps have been taken to locate the documents you have requested and that the documents cannot be found or do not exist. I have, therefore, decided to refuse access to your request in accordance with section 24A(1)(b)(ii) of the FOI Act.

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) 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.