

8 November 2024

Emily Lacey

**By email:** [foi+request-12020-cbba008c@righttoknow.org.au](mailto:foi+request-12020-cbba008c@righttoknow.org.au)

Dear Emily

### **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:

*“A copy of all “Advice Support Tool” documents held by the NDIA.  
I agree for the surnames and contact details of any staff to be redacted, but please otherwise provide the documents in their entirety.”*

#### **Extension of time**

On 26 September 2024, you agreed to a 15-day extension of time under section 15AA of the FOI Act to provide you with a decision on access. On 30 September 2024, the Office of the Australia Information Commissioner (OAIC) granted us a 15-day extension of time under section 15AB of the FOI Act, making 21 October 2024 the new date to provide you with a decision on access.

#### **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.

In consultation with staff from the Technical Advice and Practice Improvement branch of the NDIA I have identified 67 documents that fall within the scope of your request.

I have decided to refuse access to all 67 documents 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 NDIA's Advice Support Tools (the tools) are an internal resource that have been developed for the exclusive use of Technical Advisors, allied Health Professionals engaged by the NDIA to ensure consistency in the provision of advice to delegates of the NDIA. The tools outline specific detail on how to determine if supports are reasonable and necessary against a specific criterion, and the quantum / intensity / volume of the supports that a participant should receive based on evidence provided – such as reports from therapists or providers.

The disclosure of this information would reveal methodologies the NDIA uses to assist in determining levels of support provided to NDIS participants, which is to better ensure that participants receive supports that are reasonable and necessary. Any disclosure resulting in the prejudice of the effectiveness of the Agency's operational methods and procedures would, or could reasonably be expected to, result in the need for the Agency to change those methods and procedures to ensure the future effectiveness and sustainability of the Agency and the Scheme.

I am satisfied that the release of this information would potentially result in the public disclosure of internal methodologies that, through improper use, would, or could, lead to a distortion of funding levels that would substantially and adversely affect the integrity of the NDIS and its financial sustainability. Accordingly, I have decided that the information in all 67 documents 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.

Against disclosure, I consider that disclosure of the relevant information in the 67 documents

- would not contribute to the publication of information of sufficient public interest to justify the likely harm caused by release
- would not inform any debate on a matter of public importance, or promote oversight of public expenditure.

While there is limited public interest in the disclosure of information conditionally exempt under section 47E(d) of the FOI Act, the harm that would result from disclosure is that it could reasonably be expected to:

- provide the world at large the criteria and threshold for decisions on access levels of supports, which could be used to manipulate justifications / recommendations for prescribed supports for participants
- risk the integrity of the decision-making framework used by Technical Advisors in the provision of recommendations for participants to receive supports that are reasonable and necessary
- hinder the ability of Agency decision-makers to comply with their obligations and make informed decisions, which, in turn, helps to ensure the financial stability and integrity of the National Disability Insurance Scheme

In summary, I am satisfied that the factors against disclosure of the information outweigh the factors in favour of disclosure and that, on balance, it would be contrary to the public interest to release this information to you. Accordingly, I have decided that the relevant information in the 67 documents is exempt under sections 47E(d) 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 A**.

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

A handwritten signature in black ink, appearing to read 'K. M. J.' with a large flourish at the end.

**Kate (KIM627)**

Senior Freedom of Information Officer  
Complaints Management and 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](mailto: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](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.