

12 December 2024

Bob Buckley

By email: foi+request-12044-91a69063@righttoknow.org.au

Dear Bob Buckley

Freedom of Information request — Notification of Decision – Request 1

Thank you for your correspondence of 11 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:

“...all information held by the NDIA relating to the National Autism Strategy including, but not limited to:

1. communication with and information provided to the National Autism Strategy Oversight/Committee/Council and/or its working groups, 2. communication with and information provided to staff or officials in the Department of Social Security, 3. information given to politicians or parliamentary officials, 4. information and records held within the NDIA, and 5. relevant information received by the NDIA...”

Extension of time

On 27 September 2024, you agreed to a 30-day extension of time under section 15AA of the FOI Act, making 11 November 2024 the new date to provide you with a decision on access.

On 20 November 2024, the Office of the Australia Information Commissioner (OAIC) granted us a 30-day extension of time under section 15AB of the FOI Act, making 10 December 2024 the new date to provide you with a decision on access.

I sincerely apologise for the delay in releasing this decision to you. We have been experiencing processing delays and were not able to provide you with our decision by the due date. Consequently, we are deemed to have refused your application under section 15AC of the FOI Act. Therefore, internal review of this decision is not an option. However, your right to apply for an external review with the Office of the Australian Information Commissioner remains protected. Please see **Attachment B** for more information about your rights of review.

Addressing your request

On 2 November 2024, you agreed to us processing your request in two parts.

The first part (Request 1) addresses your request for:

“...all information held by the NDIA relating to the National Autism Strategy including, but not limited to: ...

- 4. information and records held within the NDIA, and*
- 5. relevant information received by the NDIA...”*

Second part (Request 2) will address your request for:

“...all information held by the NDIA relating to the National Autism Strategy including, but not limited to:...

- 1. communication with and information provided to the National Autism Strategy Oversight/Committee/Council and/or its working groups,*
- 2. communication with and information provided to staff or officials in the Department of Social Security,*
- 3. information given to politicians or parliamentary officials, ...”*

Decision on access to documents

This decision relates to Request 1.

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.

Some of the information you have requested is publicly available on NDIS website and can be accessed from the link [Autism Advisory Group April 2024 communique | NDIS](#)

I have identified 17 documents, which fall within the scope of your request.

The documents were identified by consulting with relevant NDIA staff from Co-design and Engagement Division who could be expected to be able to identify documents within the scope of Request 1.

I have decided to:

- grant access to 13 documents in full and
- grant access to 4 documents in part.

Please note, I have been advised by the Co-design and Engagement Division that Document 1 (Hearing Brief on the Senate Selection Committee on Autism) is a Draft which is only a skeleton of the brief. Further, they have advised us that the work in relation to this draft was either not progressed, or progressed by agencies outside of the NDIA's visibility.

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 and
- the NDIA's operating environment and functions.

Access to edited copies with exempt or irrelevant material deleted (section 22)

I have decided that Documents 1, 3, 8 and 14 contain material that is exempt from disclosure under the FOI Act.

In accordance with section 22 of the FOI Act, I have considered whether it is possible to delete the exempt material from these documents and have concluded that it is reasonably practicable to do so. Accordingly, I have prepared an edited copy of these documents with the exempt material removed.

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.

Document 1 contains information relating to certain operations of the NDIA, specifically in relation to the quantum of supports to include within a participant's plan in determining the level of supports a participant may require.

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 relevant information in Document 1 is conditionally exempt under section 47E(d) of the FOI Act.

I conclude that disclosure of this information would or could reasonably be expected to have a substantial adverse effect on the operations of the Agency and is therefore conditionally exempt under section 47E(d) of the FOI Act.

Personal privacy (section 47F)

Section 47F of the FOI Act states that a document is conditionally exempt if its disclosure under the Act would involve the unreasonable disclosure of personal information about any person.

The term "personal information" is defined as information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether or not the information or opinion is true and whether or not it is recorded in a material form.

I have identified material in Documents 3 and 8 which contain personal information of a third party.

The conditionally exempt material in Documents 8 and 14 also contains the names and contact details of NDIS staff that have not previously been disclosed to you. I consider these contact details to be the personal information of those staff members.

In determining whether the disclosure of that information would be unreasonable, the FOI Act requires that I take account of all the relevant factors, including:

- a. the extent to which the information is well known;
- b. whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- c. the availability of the information from publicly accessible sources; and
- d. any other matters that the agency considers relevant.

Against these criteria, I take the view that:

- a. it is apparent from the information that an individual is identifiable; and
- b. the information referred to above is not well known or readily available from publicly accessible sources.

I therefore conclude that it would be unreasonable to disclose publicly this personal information and it is therefore conditionally exempt under section 47F(1) of the FOI Act.

Public interest considerations – sections 47E(d) and 47F

Under the FOI Act, I can only refuse to disclose information which is conditionally exempt if I conclude that it would be contrary to the public interest to do so. Section 11B of the Act sets out what I need to consider and what I must not consider when reaching my conclusion.

In favour of disclosure, I have considered the factors outlined in section 11B(3) of the FOI Act, and I have determined that disclosure of the relevant information in Documents 1, 3, 8 and 14 would promote the object of the FOI Act by providing access to documents held by the government.

I do not consider that disclosure of the personal information in the documents would promote the other objects of the FOI Act, such as informing debate on a matter of public importance or promoting oversight of public expenditure. Although disclosure of the information would provide you with access to government-held information, it would also impinge on the third

parties' right to keep their personal information private. This is an important right recognised by the *Privacy Act 1988* and, given the limited public interest in disclosing the information, I believe it ought to be given the most weight.

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

- prejudice the ability of the Agency to provide guidance to staff and to decision makers in classifying applicants based on support needs in order to comply with their obligations and make informed decisions in relation to the quantum of funding to add to each reasonable and necessary support, which, in turn, helps to ensure the financial stability and integrity of the NDIS; and
- affect an individuals' right to privacy by placing their personal information in the public domain.

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 Documents 1, 3, 8 and 14 is exempt under sections 47E(d) and 47F of the FOI Act.

Release of documents

The documents for release, as referred to in the Schedule of Documents at **Attachment A**, are enclosed.

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 (FOI) Officer

Parliamentary, Ministerial & FOI Branch

Government Division

Schedule of Documents for FOI 24/25-0332 (Request 1)

Document number	Page number	Description	Access Decision
1	1-10	Senate Select Committee on Autism – Inquiry into: the services, support and life outcomes for autistic people in Australia and the associated need for a National Autism Strategy – Draft document	PARTIAL ACCESS Exemption claimed: s47E(d) – certain operations of agencies
2	11-28	National Autism Strategy – Engagement Update Date: 20 September 2023	FULL ACCESS
3	29-35	National Autism Strategy Oversight Council - Meeting Agenda Date: 16 August 2023	PARTIAL ACCESS Exemption claimed: s47F – personal privacy
4	36-40	NDIS Sector Update Date: May 2024	FULL ACCESS
5	41-99	Transcript - NDIA – DRCO Forum Date: 28 November 2023	FULL ACCESS
6	100-116	DRCO Forum MS Teams Chat	FULL ACCESS
7	117-152	230818 – DRCO Forum MS Teams	FULL ACCESS
8	153-179	NDIA – Co-design Advisory Group Meeting Date: 10 October 2023	PARTIAL ACCESS Exemption claimed: s47F – personal privacy

Document number	Page number	Description	Access Decision
9	180-186	Post Budget Forum Summary Date: 2 June 2023	FULL ACCESS
10	187-216	NDIA – DRCO-IAC Joint Meeting Date: 5 June 2023	FULL ACCESS
11	217-233	Reform for outcomes program Feedback and Working Group preferences Date: 23 June 2023	FULL ACCESS
12	234-250	Post – Budget Forum – Meeting 2 - MS Team Chat Date: 23 June 2023	FULL ACCESS
13	251-297	Transcript – NDIA – DRCO Forum Date: 1 March 2023	FULL ACCESS
14	298-314	Chief Executive meeting Brief – NDIA Disability Representative and Carer Organisation (DRCO) Forum Date: 24 February 2023	PARTIAL ACCESS Exemption claimed: s47F – personal privacy
15	315-332	MS teams Chat from DRCO Forum Date: 26 August 2022	FULL ACCESS
16	333-377	Transcript – NDIA – DRCO Forum Date: 1 July 2022	FULL ACCESS
17	378-390	Transcript – Future of DRCO Forum	FULL ACCESS

Your review rights

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, 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.