



Our reference: FOIREQ24/00469

Dan Collins

By email: foi+request-12062-039d0d69@righttoknow.org.au

Dear Dan Collins

Freedom of Information Request – FOIREQ24/00469

I refer to your request for access to documents made under the *Freedom of Information Act 1982* (Cth) (the FOI Act). Your Freedom of Information request (FOI request) was received by the Office of the Australian Commissioner (OAIC) on 18 September 2024.

I am writing to inform you of my decision.

I have identified 15 documents within the scope of your request. I have made a decision to grant access in part to 15 documents.

In accordance with section 26(1)(a) of the FOI Act, the reasons for my decision and findings on material questions of fact are provided below.

Background

Scope of your request

Your FOI request sought access to the following information:

A copy of the National Disability Insurance Agency's Quarterly and Annual FOI statistical return forms submitted to the OAIC. Please include:

- *the NDIA's 2021-2022 annual, Q1, Q2, Q3, and Q4 forms.*
- *the NDIA's 2022-2023 annual, Q1, Q2, Q3, and Q4 forms.*
- *the NDIA's 2023-2024 annual, Q1, Q2, Q3, and Q4 forms.*
- *the NDIA's 2024-2025 Q1 form (if available)*

Following consultation with you on the scope of your request, on 19 September 2024, the scope of your request was revised to:

A copy of the National Disability Insurance Agency's Quarterly and Annual FOI statistical return forms submitted to the OAIC. Please include:

- *the NDIA's 2021-2022 annual, Q1, Q2, Q3, and Q4 forms.*
- *the NDIA's 2022-2023 annual, Q1, Q2, Q3, and Q4 forms.*
- *the NDIA's 2023-2024 annual, Q1, Q2, Q3, and Q4 forms.*

Request timeframe

A decision on your request is due by 18 October 2024.

Decision

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests on behalf of the OAIC.

Subject to the following provisions of the FOI Act, I have made a decision to grant access in part 15 documents.

Reasons for decision

Material taken into account

In making my decision, I have had regard to the following:

- your FOI request dated 18 September 2024 and subsequent revised scope dated 19 September 2024.
- the FOI Act, in particular 3, 11, 11A, 15, 17, 22 and 26 of the FOI Act
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act to which regard must be had in performing a function or exercising a power under the FOI Act (FOI Guidelines)

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

Pursuant to section 17 of the FOI Act, I have made a decision to create 15 documents in response to your request. I have made a decision to refuse access that document.

Under section 17 of the FOI Act, if an FOI request is made for a document that could be produced by using a computer ordinarily available to the agency for retrieving or collating stored information, an agency is required to deal with the request as if it was a request for written documents to which the FOI Act applies.

The FOI Guidelines [at 3.204] explain that section 17 may require an agency to produce a written document of information that is stored electronically and not in a

discrete written form, if it does not appear from the request that the applicant wishes to be provided with a computer tape or disk on which the information is recorded. The obligation to produce a written document arises if:

- the agency could produce a written document containing the information by using a computer or other equipment that is ordinarily available' to the agency for retrieving or collating stored information (section 17(1)(c)(i)), or making a transcript from a sound recording (section 17(1)(c)(ii)); and
- producing a written document would not substantially and unreasonably divert the resources of the agency from its other operations (section 17(2)).

If those conditions are met, the FOI Act applies as if the applicant had requested access to the written document and it was already in the agency's possession.

Your request sought access to all statistics submitted to the OAIC by the NDIA between 2021 and 2024. The Freedom of Information branch advised me that the material sought is not available in a discrete form but instead is able to be produced in a written document through the use of a computer.

In light of this, a document has been created under section 17 in response to your request and is included in the schedule of documents attached.

Access to edited copies with irrelevant and exempt matter deleted (section 22)

In accordance with section 22 of the FOI Act, an agency must consider whether it would be reasonably practicable to prepare an edited copy of documents subject to an FOI request where material has been identified as exempt or irrelevant to the request.

I have identified the following material within the documents to be irrelevant or out of scope of your request:

- back-end system information pertaining to the OAIC's administration of the FOI Statistics Portal.

Accordingly, I have made an edited copy of the documents which removes this irrelevant material and otherwise grants you **access in part** to the material in scope of your request.

Searches undertaken

The FOI Act requires that all reasonable steps have been taken to locate documents within scope of an FOI request.

In response to your request, the following line areas of the OAIC conducted reasonable searches for documents relevant to your request:

- Freedom of Information Branch

Searches were conducted across the OAIC's various document storage systems including:

- general computer files

Having consulted with the relevant line areas and undertaken a review of the records of the various search and retrieval efforts, I am satisfied that a reasonable search has been undertaken in response to your request and that all relevant documents have been found.

Disclosure log decision

Section 11C of the FOI Act requires the OAIC to publish documents released under the FOI Act on the OAIC's disclosure log within 10 days of release, except if they contain personal or business information that would be unreasonable to publish.

I have made a decision to publish the documents subject to your request on the OAIC's disclosure log.

Release of documents

The documents are enclosed for release.

The documents are identified in the **attached** schedule of documents.

Please see the following page for information about your review rights.

Yours sincerely,

Tahlia Pelaccia
Lawyer

18 October 2024

If you disagree with my decision

Internal review

You have the right to apply for an internal review of my decision under Part VI of the FOI Act. An internal review will be conducted, to the extent possible, by an officer of the OAIC who was not involved in or consulted in the making of my decision. If you wish to apply for an internal review, you must do so in writing within 30 days. There is no application fee for internal review.

If you wish to apply for an internal review, please mark your application for the attention of the FOI Coordinator and state the grounds on which you consider that my decision should be reviewed.

Applications for internal reviews can be submitted to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Alternatively, you can submit your application by email to foi@oaic.gov.au, or by fax on 02 9284 9666.

Further review

You have the right to seek review of this decision by the Information Commissioner and the Administrative Review Tribunal (ART).

You may apply to the Information Commissioner for a review of my decision (IC review). If you wish to apply for IC review, you must do so in writing within 60 days. Your application must provide an address (which can be an email address or fax number) that we can send notices to, and include a copy of this letter. A request for IC review can be made in relation to my decision, or an internal review decision.

It is the Information Commissioner's view that it will usually not be in the interests of the administration of the FOI Act to conduct an IC review of a decision, or an internal review decision, made by the agency that the Information Commissioner heads: the OAIC. For this reason, if you make an application for IC review of my decision, and the Information Commissioner is satisfied that in the interests of administration of the Act it is desirable that my decision be considered by the ART, the Information Commissioner may decide not to undertake an IC review.

Section 57A of the FOI Act provides that, before you can apply to the ART for review of an FOI decision, you must first have applied for IC review.

Applications for IC review can be submitted online at:

https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

Alternatively, you can submit your application to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Or by email to foidr@oaic.gov.au, or by fax on 02 9284 9666.

Accessing your information

If you would like access to the information that we hold about you, please contact foi@oaic.gov.au. More information is available on the Access our information page on our website.