

**Our reference:** FOI 24/25-0080  
**OAIC reference:** MR24/01605



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15 November 2024

Bob Buckley

**By email:** [foi+request-11735-edc931e3@righttoknow.org.au](mailto:foi+request-11735-edc931e3@righttoknow.org.au)

Dear Bob Buckley

**Your Freedom of Information request — Notice of revised decision under section 55G of the *Freedom of Information Act 1982***

On 22 July 2024 you requested access to documents held by the National Disability Insurance Agency (NDIA), under the *Freedom of Information Act 1982* (FOI Act). Specifically, your requested access to:

*“Previously, FOI 23/24-0029 revealed the existence of the NDIA's AAT Case Management Guide for Applied Behaviour Analysis (ABA) 4/1/2023. Subsequently, FOI 23/24-201 showed the guide was meant to be reviewed 6-monthly.*

*Please provide all information (since 4/1/2023), in accordance with the Freedom of Information Act, relating to any and all reviews or the disposition of the aforementioned Guide and any revised versions or replacement guides.*

*Please include (but not limited to):*

- 1. information, advice, recommendations, etc. that are outcomes of from reviews conducted.*
- 2. information relating to the scheduling, conduct, and to inform the review process for the guide.*
- 3. changes to the disposition of the guide.*
- 4. community concerns about the guide and the NDIA's considerations of those concerns.”*

**Processing period**

The original due date for our access decision on your FOI request was 21 August 2024. As we were unable to provide you with a decision by the due date, your request was regarded as a deemed refusal under section 15AC of the FOI Act. We confirm the NDIA subsequently provided you with a decision on your request on 19 September 2024.

On 5 November 2024 the NDIA received notice from the Office of the Australian Information Commissioner (OAIC) that you had sought review from the Information Commissioner (IC). OAIC confirmed that as the decision of 19 September 2024 was made outside legislated timeframes, the decision under review is the Agency's deemed access refusal decision of 21 August 2024.

### **Revised decision under section 55G**

Section 55G(1)(a) of the FOI Act provides that at any time during an IC review, an Agency may vary an access refusal decision in favour of the applicant by giving access to documents in accordance with the request (revised decision).

Section 55G(2) provides that an Agency must notify the IC of the revised decision, and that decision becomes the decision under review.

The purpose of this letter is to provide you with access to our decision made 19 September 2024 as a revised decision under s55G.

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

I am authorised to make decisions under section 23(1) of the FOI Act, including revised decisions under s55G of that Act. My revised decision on your request and the reasons for my decision are set out below.

### **PART 1 OF YOUR SCOPE**

#### **Scope:**

*...any and all reviews or the disposition of the aforementioned Guide and any revised versions or replacement guides.*

*Please include (but not limited to):*

*1. information, advice, recommendations, etc. that are outcomes of from reviews conducted.*

I have identified 1 document which falls within Part 1 of the scope of your request.

The document was identified by consulting with relevant staff in our Legal Practice and Capability Branch who could be expected to be able to identify documents within the scope of your request.

I have decided to grant access to this document in full.

In reaching my decision, I considered:

- your correspondence outlining the scope of your request
- the nature and content of the documents falling within the scope of your request
- provisions of the FOI Act
- the FOI Guidelines published under section 93A of the FOI Act
- the results of consultation with relevant NDIA staff
- the NDIA's operating environment and functions.

For context when viewing this document, I have included information below about the process the NDIA used to review the guide.

This document and responsibility for its review sat with the Quality, Reporting Strategy and Training Team (QRST) under the AAT Case Management Branch (AAT CM). Following a restructure, responsibility for this document, and its review, now sits with the Agency's Legal Practice and Capability Branch.

In line with the information released to you as part of FOI 23/24-0201, the NDIA's AAT Case Management Guide for Applied Behaviour Analysis (ABA) was scheduled to be reviewed

'initially 6 monthly'. The AAT CM confirmed it commenced a review of this document at the end of August 2023.

On 5 September 2023, the guide was sent to the Director for Communication and Engagement who made notes (Document 1) as part of the initial review. The Director for QRST decided that as no substantial changes were required, and no changes were known or anticipated to the Agency's policy approach to ABA, the document did not need to be amended or revised. This decision concluded the review.

The Legal Practice and Capability Branch confirmed that this guide is due to be reviewed 12 months from September 2023.

Please be aware that the document we have provided was an attachment to an email. We reviewed this email and concluded it was out of scope of your request, which is why it has not also been provided.

## **PARTS 2, 3 AND 4 OF YOUR SCOPE**

### **Scope:**

- 2. information relating to the scheduling, conduct, and to inform the review process for the guide.*
- 3. changes to the disposition of the guide.*
- 4. community concerns about the guide and the NDIA's considerations of those concerns.*

I have decided to refuse access to the information in parts 2, 3 and 4 of your request pursuant to 24A of the FOI Act.

Section 24A of the FOI Act provides 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.

I have conducted consultations with staff in our Legal Practice and Capability Branch who searched for documents relevant to parts 2, 3 and 4 of your request. These enquiries have revealed that the NDIA is not in possession of documents matching the scope of your request. This is because no changes were made to the AAT Case Management Guide at that time of review.

I am satisfied that the Legal Practice and Capability Branch conducted sufficient searches, that all reasonable steps have been taken to locate the documents you have requested, and that the documents do not exist. I have therefore, decided to refuse access to parts 2, 3 and 4 of your request in accordance with section 24A of the FOI Act.

### **Release of documents**

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

In accordance with section 55G(2) of the FOI Act, I will be providing the IC with a copy of this revised decision.

If you determine that you are satisfied with this revised decision and do not require this decision to be reviewed further by the IC, please let the Agency and the OAIC know.

If you would like clarification on any aspect of my decision, 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, consisting of a stylized 'K' followed by a cursive 'C'.

**Karla (KHC190)**

Assistant Director – Information Access  
Complaints Management & FOI Branch  
General Counsel Division

## Schedule of Documents for FOI 24/25-0080 | MR24/01605

Document number	Page number	Description	Access Decision
1	1-4	AAT CM Guide - Applied Behavioural Analysis (with comments)  Date: 6 September 2023	FULL ACCESS