

31 January 2025

Ivy

By email: foi+request-12126-08e203a2@righttoknow.org.au

Dear Ivy

Freedom of Information request — Notice of Decision

Thank you for your correspondence of 2 October 2024, seeking access under the *Freedom of Information Act 1982 (FOI Act)* to documents held by the National Disability Insurance Agency (NDIA).

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:

“..any documents that assist in the public understanding the following;

- 1. Definition of food*
- 2. Definition of meal*
- 3. Definition of food vs meal preparation and delivery*
- 4. Definition of Allied Health*
- 5. Definition of Complimentary Therapy*
- 6. Definition of Alternative Therapy*

Could you please release any information regarding that the NDIS have based their "in and out" support lists that would assist and provide clarity to the public.

Also, additional information on the NDIS' viewpoint on value for money and evidence for good practise regarding nail care and hair hygiene support and who they believe should be responsible for taking care of these aspects of hygiene. Eg Support Workers, podiatrists, pedicure salons, or hairdressers....”

Extension of time

On 10 October 2024, we emailed you seeking your agreement to a 30-day extension of time under 15AA of the FOI Act. To date we have not received a response to this request, therefore the date to provide you with a decision on access remains 1 November 2024.

Expiration of time

As we were not able to complete your application by the legislated due date of 1 November 2024, your application is regarded as a deemed refusal under section 15AC of the FOI Act.

Despite this, I have continued to process your application. I apologise for the delay and confirm that you retain your right to seek external review of this decision. Details are set out in **Attachment C** to this letter.

Searches conducted

The NDIA's Service Guidance Division and Policy, Evidence & Practice Leadership Division conducted searches and located three documents relevant to the scope of your request.

Decision

I am the authorised officer pursuant to section 23(1) of the FOI Act to make a decision on this FOI request.

I have decided to:

- Grant access in full to 2 documents
- Refuse access to 1 document on the grounds that the document is fully exempt under 47C – **Public interest conditional exemption – deliberative process** of the FOI Act; and

In addition, I can advise no documents were located during searches relevant to:

"1. Definition of food

4. Definition of Allied Health

5. Definition of Complimentary Therapy

6. Definition of Alternative Therapy

Could you please release any information regarding that the NDIS have based their "in and out" support lists that would assist and provide clarity to the public."

Therefore, I have also decided to refuse access to information relevant to the above scope pursuant to 24A of the FOI act on the basis that documents cannot be located or do not exist.

The decision in relation to each document is detailed in the schedule of documents at **Attachment A**.

A statement of reasons for this decision are set out in **Attachment B**.

Rights of review

Your rights to seek a review of my decision, or lodge a complaint, are set out at **Attachment C**.

Should you have any enquiries concerning this matter, please do not hesitate to contact me by email at foi@ndis.gov.au.

Yours sincerely



Patrick (PHO293)

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

Schedule of Documents for FOI 24/25-0441

| Document number | Page number | Description | Access Decision |
|-----------------|-------------|--|---|
| 1 | 1-5 | Guide to Reasonable and Necessary (R&N) Decisions v2 Date: 1 July 2022 | FULL ACCESS |
| 2 | 6-13 | Response to Blind Citizens Australia Undated | FULL ACCESS |
| 3 | | Refused Document | REFUSED ACCESS Exemption claimed: s47c – deliberative processes |

**Statement of Reasons
FOI 24/25-0441**

REFUSAL UNDER 47CDeliberative processes (section 47C)

Section 47C(1) of the FOI Act states:

*A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:*

- (a) An agency; or*
- (b) A Minister; or*
- (c) The Government of the Commonwealth*

The FOI Guidelines, at paragraph 6.54, describe the deliberative process as:

A deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

After reviewing document 3 and consulting with the Policy Division, I am satisfied that their contents contain deliberative matter. Specifically in relation to your request, it contains a number of proposed definitions for consideration.

Policy have advised us that they are continuing to work on these matters and hope to have a final policy position later in the year, potentially July.

As such, I am satisfied that document 3 contains information that meets the definition of 'deliberative matter'. I am also satisfied that the content is not purely factual, while parts of the document do contain factual material, they are irrelevant to the scope of your request.

Therefore, I find that the information relevant to the scope of your request in document 3 does not contain purely factual material, and is conditionally exempt under section 47C of the FOI Act.

I note that this information has been captured at a point in time when the position is still being deliberated, and a final position is still yet to be reached. You may wish to request this information in the future when a the policy position has been finalised.

PUBLIC INTEREST FACTORS

Public interest considerations – Section 47C

Section 11A(5) of the FOI Act states:

The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Irrelevant factors

I have examined the irrelevant factors in section 11B(4) of the FOI Act and I am satisfied I have not taken into account any irrelevant factors in reaching my decision.

Factors favouring disclosure

I have considered the factors favouring disclosure as set out in section 11B(3) of the FOI Act. The relevant factors being whether access to the document would:

- (a) promote the objects of this Act (including all the matters set out in section 3 and 3A);*
- (b) inform debate on a matter of public importance;*
- (c) promote effective oversight of public expenditure*

In favour of disclosure, I have considered these factors, and have determined that disclosure of the information in the documents would promote the objects of the FOI Act (including all matters set out in sections 3 and 3A). This is because it would enhance scrutiny of Government decision making.

I have therefore decided to afford significant weight to this factor in favouring disclosure of the document to you.

Factors weighing against disclosure

The FOI Act does not list any factors weighing against disclosure. These factors will depend on the circumstances. However, the inclusion of the exemptions and conditional exemptions in the FOI Act recognises that harm may result from the disclosure of some types of documents in certain circumstances.

The factors I find relevant to this request are that release of this information could reasonably be expected to:

- hinder the Agency's thinking processes and 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.

I have afforded significant weight to this factor against disclosure of the information contained in the document.

While I accept that there is a public interest in the scrutiny of the agency's decision-making process, there is also the public interest in allowing the agency to make free, frank and informed decisions. These decisions also need to be free of financial burden, and public resources addressing concerns about preliminary content that may change poses a financial risk to the agency and the sustainability of the NDIS.

On balance

I am satisfied, based on the above, the public interest factors against disclosure outweigh the factors for disclosure, and that, on balance, it is against the public interest to release the information to you. Accordingly, I find that the information is exempt under sections 47C

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 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, 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