

24 December 2024

David Wright

By email: foi+request-12129-f904543c@righttoknow.org.au

Dear David Wright

Freedom of Information request — Notification of Decision

Thank you for your correspondence of 2 October 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).

Scope of your request

You have requested access to the following documents:

- “I seek all information held by the NDIA since 1 January 2023 containing reference to ABA step-down. I am particularly interested in any documentation that:
- 1) Describes the ABA step down model.
- 2) Explains under what circumstances this model is or should be included in NDIS participant plans, or offered to participants in AAT settlement offers, and why.
- 3) Any reasoning or rationale for why ABA supports in NDIS plans should be 'stepped down”.

On 8 November 2024, we advised that we were unable to locate the documents you were seeking and sought to revise your request to the following:

“All documents held by the Service Delivery Branch and the AAT Branch from 1 January 2023 to 2 October 2024 that:

- 1. Describe the ABA step down model*
- 2. Records the criteria used to permit inclusion of this model in a NDIS participant plan*
- 3. Records the criteria why an ABA support would be stepped down*
- 4. A record of the number of the NDIA Settlement Agreements heard at the AAT for matters offering the inclusion of an ABA step down”*

I confirm your email dated 8 November 2024 where you agreed to this revision. You also asked that point four of your request include ‘all settlement agreements offered by the NDIA during these matters (not just the agreements which were accepted by participants and finalised through a s42C agreement).’

Extension of time

On 10 October 2024, you agreed to a 30-day extension of time under section 15AA of the FOI Act, making 1 December 2024 the new date to provide you with a decision on access. I note this time has lapsed and as a result we are deemed to have refused your request 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.

Search efforts

Staff in the NDIA's Service Guidance Branch and the Legal Practice and Capability Branch conducted searches, and no documents relating to the scope of your request were identified. I have set out the reasons for this outcome in **Attachment A** to this letter.

Rights of review

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

If you have any enquiries about this matter, please contact me by email at foi@ndis.gov.au.



Lia (LML799)

Senior Freedom of Information Officer
Government, Risk & Legal – Complaints Management and FOI
General Counsel Division

**Statement of Reasons
FOI Application 24/25-0437**

Refused information

I have refused access to the information you requested under section 24A of the FOI Act on the basis that documents containing such information are unlocatable or do not exist.

Relevant law

Under the FOI Act, a person has a right to be given access to documents of an agency. However, the right of access is subject to limitations, including grounds for refusal of access. Section 24A of the FOI Act states 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.

Searches for documents

After reviewing the scope of your FOI application, I identified the need to make enquiries with the NDIA's Legal Practice and Capability Branch and the Service Design Division for documents relevant to the scope of your request.

Legal Practice and Capability Branch advised that they do not capture data relating to the ABA step down approach in Administrative Review Tribunal (ART as it is now known) matters. They only capture whether ABA is in dispute at the ART. Whilst Service Design Division advised that they do not give advice on ABA 'step down'. ABA is only considered by this branch in terms of behavioural support funding as recommended by specialist allied health professionals and their proposed therapeutic plan developed with the participant.

I am satisfied that all reasonable searches were conducted in accordance with section 24A of the FOI Act.

These enquiries have revealed that the NDIA does not hold any documents that meet the scope of your request.

Conclusion

Based on the information I received from the Service Guidance Branch and the Legal Practice and Capability Branch, I consider there are reasonable grounds to be satisfied that documents containing the information you seek do not exist. I therefore refuse access to the information under section 24A of the FOI Act on the basis that the information does not exist.

Your review rights

Internal Review

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 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 review within 60 days of receiving this letter.

You can apply to the OAIC for review 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 the NDIA took in relation to your request. The Ombudsman will consult with the OAIC before investigating a complaint about the handling of an FOI request.

You can make a complaint to the OAIC using the contact details identified above, or to the Ombudsman by:

Phone: 1300 362 072 (local call charge)
Email: ombudsman@ombudsman.gov.au

Your complaint should set out the grounds on which you consider the OAIC or the Ombudsman should investigate the NDIA's handling of your FOI request.