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31 October 2024

Clementine Saber

By email: foi+request-12133-e9a6569c@righttoknow.org.au

Dear Clementine Saber

Freedom of Information request — Request consultation process

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

Scope of your request

You have requested access to the following documents:

“... (1). All internal guidance and policy documents related to 'replacement supports'. Please provide a copy of each version of these documents, including both final and draft versions.

(2). All emails between NDIA staff, involved in the development or endorsement of the 'Replacement list (DOCX 288KB)' document, where the document is discussed. Please include a copy of any documents attached or linked in the emails.

(3). All meeting briefs/papers that involve the development or endorsement of the 'Replacement list (DOCX 288KB)' document.

(4). All meeting briefs/papers that involve the development or endorsement of the documents identified for section (1) of this request.

Please include all identified documents in full. I consider all parts of a document to be relevant, even if they are addressing topics other than 'replacement supports'...”

Internal Consultation

On the basis of the scope, I initiated searches for documents by the NDIA’s Cyber Security and Resilience, Service Guidance, Policy and Parliamentary and Ministerial branches. The Data Team in Cyber Security and Resilience Branch advised me:

- A key-word search was performed on the NDIA’s email server, and 588 items were located responsive to the keywords and criteria used, this was:
 - Emails between NDIA staff

- Keyword: 'Replacement supports list'
- Date range: up to 2 October 2024

Service Guidance have also provided documentation they believe to be relevant to your scope, and I am awaiting further responses from both Policy and the Parliamentary and Ministerial Branches.

The 588 items located may not be relevant to the scope of your request, to determine this would require scrutiny of the documents by an FOI Officer to assess whether they are in relation to the development or endorsement of the Replacement Supports List. At a conservative estimate of spending two minutes assessing each item, it would take an FOI Officer over 19 hours to simply review and collate the documents relevant to your scope.

I note that the documents that are assessed as being within scope of the request would then need to be reviewed for any sensitivities and possible exemption under the FOI Act. I would also need to consider whether any further consultations were required and carry these out. A decision about disclosure would need to be made on each document, and a decision letter prepared. These steps would significantly increase the hours that it would take for an FOI officer to process your request.

Practical refusal reason

As a result of my enquiries, I am satisfied that the work involved in processing the request in its current form would substantially and unreasonably divert the resources of the Agency from its other operations.¹

I therefore intend to refuse your request on the basis of a 'practical refusal reason' under section 24AA of the FOI Act. A practical refusal reason exists if either (or both) of the following applies:

- a) the work involved in the processing of the request would substantially and unreasonably divert the resources of the Agency from its other operations; and/or
- b) the request does not satisfy the requirement in section 15(2)(b) of the FOI Act, which requires an FOI applicant to provide such information concerning the document/s they are seeking access to, to enable the Agency to be able to identify it or them

In reaching this view, I have taken account:

- the internal searches carried out by the NDIA's Data Team in the Cyber Security and Resilience Branch.
- Consultation with the Service Guidance Branch

However, before I make a final decision, I am writing to provide you with an opportunity to revise your request.² This is called a 'request consultation process' as set out under section 24AB of the FOI Act.

¹ Section 24AA of the FOI Act.

² Section 24AB of the FOI Act.

Request consultation process

In circumstances where an Agency is considering a practical refusal, it is required to undertake a request consultation process under section 24AB of the FOI Act. The purpose of this letter is to initiate that process. You now have 14 days to do one of the following:

- withdraw your request;
- make a revised request; or
- indicate that you do not wish to revise the request (in which case the current scope of your request will stand).

If you do not do one of the three things listed above during the consultation period, your request will be processed on the basis of the current scope, and it is likely to be refused on the basis that processing it would represent a substantial and unreasonable diversion of the Agency's resources.

During this period, you are welcome to seek assistance to revise your request. If you revise your request in a way that adequately addresses the practical refusal reason outlined above, we will recommence processing it.

To assist you with revising your scope, I suggest:

- Point 1 of your scope only include current internal guidance and policy documents related to 'replacement supports' replacement supports, and not every version of these documents.
- Provide a date range for points 3 and 4 of your request, noting that the Data team have advised that the majority of emails located were within September and October 2024 and any scoping outside of this date range would still incur a practical refusal reason.
- Provide additional keyword searches that would help locate emails relevant to your request.

Please note that the time taken to consult with you regarding the scope of your request is not taken into account for the purposes of calculating the timeframe for processing your request.

If you wish to discuss this process, please contact me by email at foi@ndis.gov.au.

If you do not contact me within this period, that is by 13 November 2024, your FOI request will be taken to have been withdrawn under subsection 24AB(7) and will not be dealt with any further.

I also note you have refused a 15AA request for an extension of time, my intention is to apply to the Office of the Australian Information Commissioner for a 15AB extension given the broad nature of your scope.

Please do not hesitate to contact me if you have any questions.

Yours sincerely



Patrick (PHO293)

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