



Cat

Via email: [foi+request-12136-1a2c8538@righttoknow.org.au](mailto:foi+request-12136-1a2c8538@righttoknow.org.au)

Dear Cat

### **Freedom of Information Request 51816 – Notice of intention to refuse**

I refer to the *Freedom of Information Act 1982 (FOI Act)* request made to the Department of Social Services (**the Department**) on 3 October 2024. The request seeks access to:

- *All drafting advice provided by DSS and/or on behalf of the NDIA for the purposes of the "National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024", "National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (Miscellaneous Provisions) Transitional Rules 2024" and associated explanatory statements*
- *Any draft versions of the above rules and explanatory statements with tracked changes*
- *The names of any external law firms involved in drafting or advising on the transitional rules, including where employees on secondment with DSS or the NDIA were consulted*
- *The source of legal advice relating to the treatment of finalised AAT decisions and AAT proceedings in progress at commencement*

I am authorised to make decisions in respect of FOI requests under subsection 23(1) of the FOI Act.

### **Practical refusal reason**

The request in part seeks all advice generated by the Department and the National Disability Insurance Agency (NDIA) that pertains to the drafting of the *"National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024", "National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (Miscellaneous Provisions) Transitional Rules 2024"* and explanatory statements.

The drafting and ultimate enactment of these items was a significant initiative for the Social Services Portfolio, and the Department holds hundreds of individual documents that contain the type of advice sought. The NDIS legislation commenced with an independent review commissioned in October 2022, and therefore there are several years of documents that are within the scope of your request. The Bill was also subject to over 100 amendments in the Parliament and more than 50 versions of the Bill were drafted, each of which would have resulted in advice to the Minister.

I consider that the Department has limited capacity to process a request of this size. For this reason, the work involved in processing the request would substantially and unreasonably divert the resources of the Department from its other operations.

In accordance with s 24(1) of the FOI Act, I consider that a practical refusal reason exists in relation to the request for access to documents.

## Request consultation process

Under section 24(1)(b) of the FOI Act, the Department is required to provide you with the opportunity to revise the scope of your request so that a 'practical refusal reason' no longer exists. One way you could achieve this is to refine the scope of your request, for example by limiting it to documents created in a very limited date range.

That said, the vast majority of documents subject to this request form legal advice, and would likely be exempt from disclosure under section 42 of the FOI Act (legal professional privilege). You may consider withdrawing the request and submitting a new one that does not seek advice of a legal nature.

Please note that refining the scope of the request may remove the practical refusal reason, but does not necessarily mean that any documents subject to the request will be released in part or in full.

## Next steps

Should you wish to revise the request, you must do so **within 14 days** after the day you are sent this notice. The 14 day deadline ends at **11:59pm on 18 October 2024** by which time you are required to take one of the below actions. If you are unable to meet this deadline and require an extension of time to discuss ways to revise the scope of your request, please contact the FOI Section by email at [foi@dss.gov.au](mailto:foi@dss.gov.au).

In accordance with subsection 24AB(6) of the FOI Act, you must, before the end of the 14-day consultation period, do one of the following by written notice to the department:

- a) withdraw the request;
- b) make a revised request; or
- c) indicate that you do not wish to revise the request.

Please note that under subsection 24AB(7), the request is taken to have been withdrawn at the end of the 14 day consultation period if:

- a) the applicant does not consult the contact person during the consultation period in accordance with this notice; or
- b) the applicant does not do one of the things mentioned in subsection(6) before the end of the consultation period.

In accordance with subsection 24AB(8) of the FOI Act, the 14-day consultation period is to be disregarded in calculating the processing period for the request.

Yours sincerely

Nicola Pearson  
Authorised FOI Decision Maker  
4 October 2024