



Cat

Via email to: foi+request-12137-3f177b48@righttoknow.org.au

Dear Cat,

Freedom of Information Request LEX 51820 – Decision on access

I refer to the *Freedom of Information Act 1982 (FOI Act)* request to the Department of Social Services (**Department**) on 3 October 2024. The request, which has been revised by agreement, seeks access to:

- *All advice or draft advice to the NDIS Minister relating to the transitional NDIS supports rules or associated consultations between 4th August 2024 and 2nd October 2024*
- *Any associated advice or draft advice to the NDIS Minister relating to the Miscellaneous Provisions transitional rules*
- *All prior advice or draft advice to the NDIS Minister relating to the development and/or policy objectives of the draft NDIS supports lists since October 2023*

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

Decision

I have decided to grant partial access to the documents sought by the request as they contain material that is:

- exempt under section 34 (cabinet documents) and 42 (legal professional privilege) of the FOI Act;
- conditionally exempt under section 47C (deliberative matter) of the FOI Act and access to that material would be contrary to the public interest; or
- irrelevant to the request and deleted under section 22 of the FOI Act.

The documents and my decision in relation to each are set out in the Schedule of Documents at **Attachment A (Schedule)**.

The reasons for my decision are set out in the Statement of Reasons at **Attachment B**.

Review rights and complaints

Information concerning how you may seek a review of this decision or make a complaint about the handling of this request is at **Attachment C**.

Publication

Section 11C of the FOI Act requires agencies to publish details on how to access documents released in response to FOI requests on their website within 10 days of release unless except where that publication would be unreasonable.

The documents released in response to this request do not contain any information that would be unreasonable to publish. As a result, details on how to access them will be published on the Department's disclosure log within 10 days of this decision.

Contact

If you would like to discuss any aspect of my decision, please contact me at foi@dss.gov.au.

Yours sincerely



Sarah B
Authorised FOI Decision Maker

4 November 2024

Attachments

- A – Schedule of Documents
- B – Statement of Reasons
- C – Review rights

SCHEDULE OF DOCUMENTS

Doc No	Description of document	Decision
1.	<i>Ministerial Brief</i> MB24-000611	<i>Release in part</i> Section 22 – material that does not relate to scope, phone numbers and signature of SES officers. Section 42 – legal advice.
1a.	<i>Attachments to Brief</i>	<i>Release in full</i>
2.	<i>Ministerial Brief</i> MS24-000776	<i>Release in part</i> Section 22 – material that does not relate to scope, phone numbers and signature of SES officers. Section 47C – recommendations to Minister.
3.	<i>Ministerial Brief</i> MS24-000778	<i>Exempt in full</i> Section 42 – legal advice
4.	<i>Ministerial Brief</i> MS24-000988	<i>Exempt in full</i> Section 42 – legal advice
4a.	<i>Attachment to brief</i>	<i>Exempt in full</i> Section 42 – legal advice
5.	<i>Ministerial Brief</i> MS24-001044	<i>Release in part</i> Section 22 – material that does not relate to scope, phone numbers and signature of SES officers. Section 42 – legal advice. Section 34(3) – Cabinet document

STATEMENT OF REASONS

Material on which the decision is based

1. I relied on the following material in coming to this decision:
 - the terms of the FOI request;
 - the documents subject to the FOI request;
 - advice from subject matter experts within the Department regarding the nature and sensitivity of the documents subject to the request;
 - the FOI Act;
 - responses from third parties consulted in the course of processing the request; and
 - the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

Section 22 – Irrelevant material

2. Under section 22 of the FOI Act, the Department may delete material from documents that it considers irrelevant to the scope of your request.
3. At the outset of this request, you agreed to exclude the following information from its scope, noting the exceptions listed in your email of 4 October 2024:
 - a) group email addresses used for internal departmental purposes;
 - b) all personal information of members of the public;
 - c) all personal information of non-Senior Executive Service (SES) government staff; and
 - d) all personal information of SES level government staff with the exception of the names of the Department's SES staff.
4. Where present in the documents, this information has been deleted under section 22 of the FOI Act.
5. Further, I have identified material within the documents that does not relate to the scope of the request. This material has also been deleted as irrelevant under section 22 of the FOI Act.

Section 34 – Cabinet documents

6. A document subject to the request (as identified in the Schedule) contains material the disclosure of which would reveal a Cabinet deliberation and decision which has not otherwise been officially disclosed. I am satisfied that this material is exempt from disclosure under section 34(3) of the FOI Act.

Section 42 – Legal Professional Privilege

7. Section 42 of the provides that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.
8. Certain documents subject to the request (as identified in the Schedule) contain or consist of legal advice. I am satisfied that privilege over this material has not been waived, and accordingly that it is exempt under section 42 of the FOI Act.

Section 47C – Deliberative Matter

9. Section 47C of the FOI Act provides in part that a document is conditionally exempt if its disclosure would reveal matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendations 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 an agency. Access to the conditionally exempt document may only be withheld where it is contrary to the public interest.
10. A document subject to the request (as identified in the Schedule) contains considerations relating to agreements with the states and territories. I am satisfied that this information meets the definition of deliberative matter as set out above and is therefore conditionally exempt under section 47C of the FOI Act.
11. When considering whether access to this deliberative matter is contrary to the public interest I acknowledge that access would inherently promote the objects of the FOI Act, demonstrating full transparency of government. However, providing access would impact the Department's ability to negotiate agreements and maintain productive working relationships with the states and territories. This adverse effect outweighs any benefit that could flow from disclosing that information.
12. As a result, I am satisfied that access to the deliberative matter would be contrary to the public interest and have decided to withhold access to it.

INFORMATION ON REVIEW RIGHTS

You may seek review of this decision via:

- (a) an internal review; or
- (b) the Australian Information Commissioner (**Information Commissioner**).

Internal review

If you apply for internal review, a fresh decision will be made by a different decision-maker within the Department. An application for internal review must be:

- (a) made in writing;
- (b) made within 30 days of receiving this letter; and
- (c) sent to foi@dss.gov.au.

The application should also include the reasons why you think this decision should be reviewed.

If the internal review decision results in you not being provided access to all of the documents to which you have requested access, you have the right to seek a further review by the Information Commissioner.

Information Commissioner review

You can apply for the Information Commissioner to review this decision either immediately or following an internal review decision. You must apply to the Information Commissioner within 60 days of the receipt of this decision letter.

Further details on this process can be found on the Information Commissioner's website at <https://www.oaic.gov.au/>.

COMPLAINTS TO THE INFORMATION COMMISSIONER

You may also make a complaint to the Information Commissioner concerning actions taken by the Department while exercising its powers or performing its functions under the FOI Act.

Further details on this process can be found on the Information Commissioner's website at <https://www.oaic.gov.au/>.