

6 December 2024

David Wright

**By email:** [foi+request-12164-cdd2dadf@righttoknow.org.au](mailto:foi+request-12164-cdd2dadf@righttoknow.org.au)

Dear David Wright

### **Freedom of Information request - Notification of Decision**

Thank you for your correspondence of 13 October 2024, requesting 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 requested access to the following documents:

*“FOI 23/24-1400, Document 4, page 35 makes refers to an 'advice' reviewed by the TAT, described as 'HPRM – NED19/100608 - Adv 2018 / 7867 regarding ABA therapy for a 6 year old includes substantial research and several external links and resources.”*

### **Extension of time**

On 28 October 2024, you agreed to a 30-day extension of time under section 15AA of the FOI Act, making 12 December 2024 the new date to provide you with a decision on access.

### **Search efforts**

The NDIA's Technical Advisory Branch team conducted a search and identified 1 document within the scope of your request.

### **Decision on access to documents**

After examining the documents, I have decided to grant access to 1 document in part.

I made this decision as an authorised FOI decision maker under section 23(1) of the FOI Act.

### **Reasons for decision**

I have decided that some information will not be released as it comprises Information that is conditionally exempt under 47F and 47E(d) of the FOI Act, information where disclosure would be contrary to the public interest.

A detailed statement of the reasons for my decision is **Attachment A**.

**Release of documents**

The document for release, as referred to in the Schedule of Documents at **Attachment B**, is enclosed.

**Rights of review**

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

If you have any enquiries about this matter, please contact me by email at [foi@ndis.gov.au](mailto:foi@ndis.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'K. M. J.', written in a cursive style.

**Kate (KIM627)**

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

**Statement of Reasons  
FOI 24/25-0593**

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Relevant Law

Under the FOI Act, a person has a legally enforceable right to obtain access to a document of an agency,<sup>1</sup> however a decision maker must decide whether access to a conditionally exempt document would, on balance, be contrary to the public interest.<sup>2</sup>

Certain operations of agencies (section 47E(d))

Section 47E(d) of the FOI Act conditionally exempts a document if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The NDIA's Advice Support Tools (the tools) are an internal resource that have been developed for the exclusive use of Technical Advisors, allied Health Professionals engaged by the NDIA to ensure consistency in the provision of advice to delegates of the NDIA. The tools outline specific detail on how to determine if supports are reasonable and necessary against a specific criterion, and the quantum / intensity / volume of the supports that a participant should receive based on evidence provided – such as reports from therapists or providers.

The disclosure of this information would reveal methodologies the NDIA uses to assist in determining levels of support provided to NDIS participants, which is to better ensure that participants receive supports that are reasonable and necessary. Any disclosure resulting in the prejudice of the effectiveness of the Agency's operational methods and procedures would, or could reasonably be expected to, result in the need for the Agency to change those methods and procedures to ensure the future effectiveness and sustainability of the Agency and the Scheme.

I am satisfied that the release of this information would potentially result in the public disclosure of internal methodologies that, through improper use, would, or could, lead to a distortion of funding levels that would substantially and adversely affect the integrity of the NDIS and its financial sustainability. Accordingly, I have decided that the information in the 1 document is conditionally exempt under section 47E(d) of the FOI Act.

Public interest considerations – section 47E(d)

Section 11A(5) of the FOI Act provides that access to a document covered by a conditional exemption must be provided unless disclosure would be contrary to the public interest.

I have not considered any of the irrelevant factors as set out under section 11B(4) of the FOI Act in making this decision.

Against disclosure, I consider that disclosure of the relevant information in the 1 document

- would not contribute to the publication of information of sufficient public interest to justify the likely harm caused by release
- would not inform any debate on a matter of public importance or promote oversight of public expenditure.

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<sup>1</sup> Section 11(1)(a) of the FOI Act.

<sup>2</sup> Section 11B(1)-(5) of the FOI Act.

While there is limited public interest in the disclosure of information conditionally exempt under section 47E(d) of the FOI Act, the harm that would result from disclosure is that it could reasonably be expected to:

- provide the world at large the criteria and threshold for decisions on access levels of supports, which could be used to manipulate justifications / recommendations for prescribed supports for participants
- risk the integrity of the decision-making framework used by Technical Advisors in the provision of recommendations for participants to receive supports that are reasonable and necessary
- hinder 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

In summary, I am satisfied that the factors against disclosure of the information outweigh the factors in favour of disclosure and that, on balance, it would be contrary to the public interest to release this information to you. Accordingly, I have decided that the relevant information in the 1 document is exempt under sections 47E(d) of the FOI Act.

#### Personal privacy (section 47F)

Section 47F of the FOI Act conditionally exempts a document(s) if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

The FOI Act shares the same definition of 'personal information' as the Privacy Act.<sup>3</sup> Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a. whether the information or opinion is true or not
- b. whether the information or opinion is recorded in a material form or not.<sup>4</sup>

I have identified material in the documents falling within scope of your request which contains personal information of third parties. This is the information in issue and includes information that could be used to identify these third parties

I consider that disclosure of this information under the FOI Act would involve the unreasonable disclosure of third party information. In making this decision, I have had regard to all relevant factors, including:

- the extent to which the information is well known;
- whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- the availability of the information from publicly accessible sources; and
- any other matters that the agency considers relevant.<sup>5</sup>

#### Public interest considerations

##### *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.

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<sup>3</sup> Paragraph 6.127 of the FOI Guidelines.

<sup>4</sup> Paragraph 6.128 of the FOI Guidelines.

<sup>5</sup> Section 47F(2) of the FOI Act.

*Factors favouring disclosure*

In favour of disclosure, I have considered the factors outlined in section 11B(3) of the FOI Act, and I have determined that disclosure of the information in the documents would:

- (a) promote the objects of the FOI Act (including all matters set out in sections 3 and 3A.

This is because providing access to documents held by the NDIA allows for increased scrutiny, discussion, comment, and review of government held information.

I have therefore decided to afford significant weight to this factor favouring disclosure of the documents 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.

In favour of non-disclosure, I have determined disclosure of the information could reasonably be expected to:

- affect an individual's right to privacy by having their personal information in the public domain; and
- and cause a public interest harm.

This is because you have requested access to information which has personal information embedded within the document. Parliament's intention to protect the privacy of individuals is evidenced by the terms of both the *Privacy Act 1988* (Cth) and the *National Disability Insurance Scheme Act 2013* (Cth).

*On balance*

I am satisfied that disclosure of the information I have redacted from the document would be contrary to the public interest. I therefore conclude that it is exempt from disclosure.

Accordingly, I have decided to release some of the information with the contrary to the public interest information removed pursuant to section 47G and 47F of the FOI Act.

## Schedule of Documents for FOI 24/25-0593

Document number	Page number	Description	Access Decision
1	1-11	Advisory Team Advice (2018 7867)  Date: 7 June 2019	<b>PARTIAL ACCESS</b>  Exemption claimed: s47F – personal privacy

## Your review rights

### Internal Review

The FOI Act gives you the right to apply for an internal review of this decision. The review will be conducted by a different person to the person who made the original decision.

If you wish to seek an internal review of the decision, you must apply for the review, in writing, within 30 days of receipt of this letter.

No particular form is required for an application for internal review, but to assist the review process, you should clearly outline your grounds for review (that is, the reasons why you disagree with the decision). Applications for internal review can be lodged by email to [foi@ndis.gov.au](mailto:foi@ndis.gov.au) or sent by post to:

Freedom of Information Section  
Complaints Management and 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) for 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](http://www.oaic.gov.au)  
Post: GPO Box 5218, Sydney NSW 2001  
Email: [enquiries@oaic.gov.au](mailto: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](mailto: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.