

28 November 2024

FOI ref: 2024/0276

David Wright

*By email:* [foi+request-12310-44eff971@righttoknow.org.au](mailto:foi+request-12310-44eff971@righttoknow.org.au)

Dear Mr Wright,

### **Notice of Decision for Freedom of Information Request no. 2024/0276**

The purpose of this letter is to give you a decision about access to documents that you have requested under the *Freedom of Information Act 1982* (FOI Act).

#### **Summary**

I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to FOI requests.

You lodged an FOI request on 8 November 2024 for access to:

*“I seek the following information for the 2023-2024 financial year, in relation to all matters where the National Disability Insurance Agency (NDIA) was listed as a Respondent in Tribunal matters:*

- 1. The number of case conferences, conciliation meetings, hearing dates or any other scheduled Tribunal appearances where the Respondent (but not the Applicant) requested that the scheduled Tribunal appearance be adjourned, rescheduled or vacated.*
- 2. The number of such requests by the Respondent in which the Tribunal ordered that the scheduled Tribunal appearance be adjourned, rescheduled or vacated.*
- 3. The number of case conferences, conciliation meetings, hearing dates or any other scheduled Tribunal appearances where the Applicant (but not the Respondent) requested that the scheduled appearance be adjourned, rescheduled or vacated.*
- 4. The number of such requests by the Applicant in which the Tribunal ordered that the scheduled Tribunal appearance be adjourned, rescheduled or vacated.*
- 5. The number of case conferences, conciliation meetings, hearing dates or any other scheduled Tribunal appearances where both the Respondent and the Applicant requested that the scheduled appearance be adjourned, rescheduled or vacated.*
- 6. The number of such requests by both the Respondent and Applicant in which the Tribunal ordered that the scheduled Tribunal appearance be adjourned, rescheduled or vacated.”*

In order to locate documents within scope of your request I have liaised with the Tribunal's Information and Data Management Section. As a result, no documents could be identified which fall within the scope of your request.

## **Decision**

I have decided to refuse access. In making my decision, I have taken the following into account:

- the content of the documents that fall within the scope of your request;
- the FOI Act, specifically sections 11, 17 and 24A; and
- the guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (**FOI Guidelines**).

### Sections 17 and 24A – Requests involving use of computers and documents that do not exist

I have decided to refuse access to your requested documents as the Tribunal does not have any existing reports that can be produced to answer these requests.

To determine whether the Tribunal could produce a document containing the information that you have requested, I have liaised with a Senior Performance & Insights Analyst in the Tribunal's Information and Data Management Section who has advised that no report is available that is able to present the requested or similar information you have requested, i.e. no report identifies who instigates the adjournment, rescheduling or vacating of a case event.

The obligation under section 17 of the FOI Act to produce a written document only arises if the Tribunal can produce the written document containing the information by using a 'computer or other equipment that is ordinarily available' for retrieving or collating stored information, or making a transcript from a sound recording, and producing a written document that would not substantially and unreasonably divert the resources of the Tribunal from its operations. I consider that these conditions are not met in relation to obtaining the information regarding your requests and find that the obligation under section 17(1) does not arise.

Section 24A of the FOI Act provides that, after all reasonable steps have been taken to find the documents, access to documents may be refused if the documents do not exist or cannot be found. As mentioned above, the Tribunal is not required to produce or create a document in relation to your request, as the obligation under section 17 of the FOI Act did not arise. As the Tribunal does not have an existing document or a report which contains information relating to your requests, I am satisfied that the documents do not exist. Therefore, I refuse access to the document under section 24A of the FOI Act.

## **Your review rights**

Information about how you can apply for a review of this decision or complain about how we have dealt with this matter is set out in the attached fact sheet, FOI 2.

If you have any questions about this decision, please contact me at [foi@art.gov.au](mailto:foi@art.gov.au).

Yours sincerely,

Jodie C

Authorised FOI Officer (APS6)

**Attachments**

FOI 2 – Information about reviews and complaints under the Freedom of Information Act

# Information about reviews and complaints under the Freedom of Information Act

## What should I do prior to applying for internal review or contacting the Office of the Australian Information Commissioner?

Before you apply for an internal review or contact the Office of the Australian Information Commissioner, we recommend that you telephone the officer who made the FOI decision. It is often possible to resolve concerns or answer your questions using this approach and, if not, the officer will be able to assist you in applying for review.

## How do I apply for internal review to the AAT?

You can apply to us for an internal review of the FOI decision. The application for internal review must be made within 30 days or such further period as we allow, after the day the decision is notified to you. To apply for an internal review you must do so in writing. You may also wish to explain why you are not satisfied with the decision. A different and more senior officer authorised under the *Freedom of Information Act 1982* (the FOI Act) will conduct the internal review and make a new decision within 30 days after receipt of your application.

If you have already applied for internal review and want to seek a further review of that decision, you will need to apply to the Australian Information Commissioner.

## How do I apply for review to the Australian Information Commissioner?

You may also apply directly to the Australian Information Commissioner for review of the FOI decision. The application for review must be made within 60 days after the day notice of the decision was given. An application for review must be in writing, include details of how notices in relation to the review are to be sent to you and include a copy of the decision. You may also wish to explain why you are not satisfied with the decision. An online application form is available on the Office of the Australian Information Commissioner's website found here: [Information Commissioner Review Application form](#).

## What if I want to make a complaint about the handling of a Freedom of Information request?

If you have a complaint about the way in which we have processed your request for access under the FOI Act you can ask the Australian Information Commissioner to investigate. An online complaint form is available on the Office of the Australian Information Commissioner's website, found here [FOI Complaint Form](#).

## Where can I find further information or contact details for the Office of the Australian Information Commissioner?

Further information is available on the Office of the Australian Information Commissioner's website at [www.oaic.gov.au](http://www.oaic.gov.au) and you can contact the office on 1300 363 992 or by email at [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au).