

20 February 2025

Emily Lacey

By email: foi+request-12534-782f9874@righttoknow.org.au

Dear Emily Lacey

Freedom of Information request — Notice of Decision

Thank you for your correspondence of 10 December 2024, seeking 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 have requested access to the following documents:

"I am requesting the "version control information" associated with the following documents:

FOI 24/25-0368

- Documents 1 to 26 (all)

FOI 24/25-0367

- Documents 1 to 24 (all)

FOI 24/25-0247

- Document 13

FOI 24/25-0174

- Document 3

- Document 4

FOI 24/25-0231

- Document 7

- Document 8

If it is too difficult to go back and correctly match up the information that would have been associated with each of those documents, I request that the latest version of each

document be provided instead, but this time ensuring the version control information is included.”

Timeframe

A 30-day statutory period for processing your request commenced from 11 December 2024 in accordance with section 15(5)(b) of the FOI Act. The due date for a decision on access was 9 January 2025. I note this time has lapsed and as a result we are deemed to have refused your request under section 15AC of the FOI Act.

Despite this, I have continued to process your application. I apologise for the delay and confirm that you retain your right to seek external review of this decision.

Decision on access to documents

I am authorised to make decisions under section 23(1) of the FOI Act. My decision on your request and the reasons for my decision are set out below.

I have identified 55 documents, which fall within the scope of your request.

The documents were identified by Service Design who conducted searches of NDIA's systems, using all reasonable search terms that could return documents relevant to your request, and consulting with relevant NDIA staff who could be expected to be able to identify documents within the scope of the request.

I have decided to grant access to 54 documents in full, and 1 document in part.

In reaching my decision, I took the following into account:

- your correspondence outlining the scope of your request
- the nature and content of the documents falling within the scope of your request
- the FOI Act
- the FOI Guidelines published under section 93A of the FOI Act
- consultation with relevant NDIA staff
- factors relevant to my assessment of whether or not disclosure would be in the public interest
- the NDIA's operating environment and functions.

Reasons for decision

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.

Document 4 contains information relating to certain operations of the NDIA, specifically:

internal guidance given to staff in relation to the quantum of supports to include within a participant's plan in determining the level of supports a participant may require.

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 relevant information in Document 4 is conditionally exempt under section 47E(d) of the FOI Act.

Accordingly, I find that disclosure of this information would or could reasonably be expected to have a substantial adverse effect on the operations of the Agency and is therefore 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.

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 relevant information in Document 4 would

promote the objects of the FOI Act by providing access to documents held by the government and providing access to information.

Against disclosure, I consider that disclosure of the relevant information in Documents XX:

- would not contribute to the publication of information of sufficient public interest to justify the likely harm caused by release
- would not enhance Australia's representative democracy in the ways described in section 11B(3) of the FOI Act
- would not inform any debate on a matter of public importance, or promote oversight of public expenditure.

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:

- prejudice the ability of the Agency to provide guidance to staff and to decision makers in classifying applicants based on support needs in order to comply with their obligations and make informed decisions in relation to the quantum of funding to add to each reasonable and necessary support, which, in turn, helps to ensure the financial stability and integrity of the NDIS.

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 Document 4 is exempt under section 47E(d) of the FOI Act.

Release of documents

The documents for release, as referred to in the Schedule of Documents at **Attachment A**, are enclosed.

Rights of review

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

Attachment B.

Should you have any enquiries concerning this matter, please do not hesitate to contact me by email at fox@xxxx.xxx.xx

Yours sincerely

A handwritten signature in black ink, appearing to read 'K. M. J.' with a stylized flourish at the end.

Kate (KIM627)
A/Assistant Director – Freedom of Information
Complaints Management & FOI Branch
General Counsel Division

Schedule of Documents for FOI 24/25-0999

| Document number | Page number | Description | Access Decision | Comments |
|-----------------|-------------|--|---|---|
| 1 | 1-12 | KA - Complete a streaming case (streaming and restreaming) v8 Date: 22 July 2024 | FULL ACCESS | In relation to FOI 24.25-0174 |
| 2 | 13-18 | KA - Approve or override a streaming case (Streaming and Restreaming) v3 Date: 24 April 2024 | FULL ACCESS | In relation to FOI 24.25-0174 |
| 3 | 19-28 | KA - Understand work and study supports v3 Date: 8 August 2024 | FULL ACCESS | In relation to FOI 24.25-0231 |
| 4 | 29-32 | KA - Understand transport supports v4 Date: 19 July 2024 | PARTIAL ACCESS Exemption claimed: s47E(d) – certain operations of agencies | In relation to FOI 24.25-0231 |
| 5 | 33-50 | KA - Make an access decision – Post-legislation Changes v7 Date: 7 October 2024 | FULL ACCESS | In relation to FOI 24.25-0247 |
| 6-29 | 51-196 | Documents in relation to FOI 24.25-0367 Various Dates | FULL ACCESS | Please note that documents 28 & 29 do not have version control, as they are Version 1 of those documents. |
| 30-55 | 197-326 | Documents in relation to FOI 24.25-0368 Various Dates | FULL ACCESS | |

Your review rights

As this matter was a deemed refusal, internal review of this decision is not an option. However, if you have concern with any aspect of this decision, please contact the NDIA FOI team by email foi@ndis.gov.au or by post:

Freedom of Information Section
Complaints Management & 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) to seek a review of this decision.

If you wish to have the decision reviewed by the OAIC, you may apply for the review, in writing, or by using the online merits review form available on the OAIC's website at www.oaic.gov.au, within 60 days of receipt of this letter.

Applications for review can be lodged with the OAIC in the following ways:

Online: www.oaic.gov.au
Post: GPO Box 5218, Sydney NSW 2001
Email: 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 taken by the NDIA in relation to your request. The Ombudsman will consult with the OAIC before investigating a complaint about the handling of an FOI request.

Your complaint to the OAIC can be directed to the contact details identified above. Your complaint to the Ombudsman can be directed to:

Phone: 1300 362 072 (local call charge)
Email: ombudsman@ombudsman.gov.au

Your complaint should be in writing and should set out the grounds on which it is considered that the actions taken in relation to the request should be investigated.