



4 February 2025

FOI ref: 2025/0011

Shirley Humphris

Right to Know Organisation

By email: foi+request-12704-1c040385@righttoknow.org.au

Dear Ms Humphries,

Notice of Decision for Freedom of Information Request no. 2024/0011

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 section 23(1) of the FOI Act to make decisions in relation to FOI requests.

You lodged an FOI request on 6 January 2025 for access to:

“Please provide the number of ART Member decisions regarding NDIS, that are unpublished, but excluding those unpublished for privacy of the participant.”

“Please provide documents regarding publication of NDIS matters, excluding those documents that are regarding the participant requesting non publication.”

On 9 January 2025 I emailed you to clarify the scope of your request.

On 13 January 2025 you varied the scope of your FOI request as follows:

“I am asking for the NUMBERS of ART decisions re NDIS that are not published, not counting those that the participant requested non publication. Please provide the numbers.”

As the ART was established on 14 October 2024, I have interpreted ‘ART decision’ and ‘ART Member decisions’ in your request as a **substantive decision** made by a Tribunal Member following a hearing, with outcomes such as:

- heard and affirmed;
- heard and set aside; or
- heard and remitted.

from the date of commencement of the ART, 14 October 2024 to the date of your request 6 January 2025.

The Tribunal does not hold this information as a discreet document. Instead, this information is contained within the electronic case management database. Section 17 of the FOI Act allows an agency to produce a document where it does not exist in discreet form, using computer equipment available to it in its ordinary operations as long as this work does not substantially and unreasonably divert resources of the agency from its other operations.

The Tribunal's Reporting section was able to produce the numbers and I have extracted this information into a document.

Decision

I have decided to grant full access to the document.

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; and
- the guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (**FOI Guidelines**).

Matters concerning the interpretation of information in the document

The numbers provided in the document in response to your FOI request for information about 'ART Member decisions' and then 'ART decisions' are decisions made by Tribunal Members. It does not include all finalisation of NDIS applications for the period 14 October 2025 to 6 January 2025 and excludes the following outcomes of a NDIS application:

- a) Withdrawn by applicant
- b) Consent between the parties
- c) No jurisdiction
- d) dismissed by Tribunal.

The Reporting team are unable to extract data relating to ART decisions not published because of a non-publication order. However, the Reporting team were able to extract the following data for the period 14 October 2025 to 6 January 2025:

- the number of ART decisions finalised by substantive decision following a hearing; and
- the number of ART substantive decision with confidentiality orders prohibiting the publication of decisions.

Accordingly, the number of ART decisions not published, not counting those where there was a request for non-publication is 21.

We note that:

1. the Tribunal's publication policy provides that substantive decisions relating to NDIS matters are generally published unless the Tribunal Member makes a direction to the effect that the decision, or part of the decision, not be published.
2. due to a system issue, the publication of ART decisions was delayed, however the issue has since been resolved.

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.

Yours sincerely,

Donna

Authorised FOI Officer

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 and you can contact the office on 1300 363 992 or by email at enquiries@oaic.gov.au.