

17 January 2025

David Wright
Right to Know

By email: foi+request-12165-0c92e182@righttoknow.org.au

Dear David Wright

Freedom of Information request — Notification of Decision

Thank you for your correspondence of 13 October 2024, in which you requested access to documents held by the National Disability Insurance Agency (NDIA), under the *Freedom of Information Act 1982* (FOI Act).

Scope of your request

You have requested access to the following documents:

"FOI 23/24-1400, Document 4, pages 39-40 states the following:

"TAT publishes a list of de-identified, general advices on the TAT Digest page NDIS Intranet. A recent tracking exercise has identified that the TAT Digest page is widely utilised across the agency as a key resource.

There are eight TAT Published Digest relating to ASD:

- 1) Request title: Funding of out of school hours care, 6 hours access to community on Saturday, 576 hours short term accommodation for a 10 year old.*
- 2) Request title: Review of high cost plans for twin brothers submitted for approval and determination of reasonable and necessary supports.*
- 3) Request title: Assistance Animal for a child with Autism and Epilepsy.*
- 4) Request title: Request for NDIS to fund Applied Behavioural Analysis (ABA) link. therapy and Music Therapy for 10 year old child with Autism Spectrum Disorder (ASD).*
- 5) Request title: AT - Freedom jogger pusher fitted with Pelvic strap, Rain canopy and Highback Kit.*
- 6) Request title: Weighted Blanket for participant with Autism.*
- 7) Request title: Swimming and flexible respite/recreation/holiday care for a 6 year old with Autism."*

I note that the document says there are eight TAT 'Published Digest' but there are only seven listed.

I seek a copy of these and other such de-identified, general advices relating to ASD held by the NDIA."

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.

I apologise for the delay in releasing this decision to you. We have been experiencing processing delays and were not able to provide you with our decision by the due date.

Consequently, we are deemed to have refused your application under section 15AC of the FOI Act. In the interests of not causing any further delays, I have decided not to apply for an extension to the processing period from the Office of the Australian Information Commissioner (OAIC) under section 15AC of the FOI Act to protect your internal review rights. However, your right to apply for an external review with the Office of the Australian Information Commissioner remains protected. Please see Attachment B for more information about your rights of review.

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 13 documents (including attachments), which fall within the scope of your request.

These documents were identified by conducting 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 refuse access to 13 documents in full.

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. Documents 1-13 contain 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 Documents 1-13 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.

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 Documents 1-13 would promote the objects of the FOI Act by providing access to documents held by the government.

Against disclosure, I consider that disclosure of the relevant information in Documents 1-13:

- 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.

Furthermore, should these articles be available as public documents, there is a risk that the circumstances described in these articles, that resulted in a positive determination for the requested funded supports, can be utilised as a threshold criterion to meet reasonable and necessary criteria.

This may enable providers to manipulate their justifications / recommendations for prescribed supports or levels of support for participants to indicate they are likely to be reasonable and necessary for the NDIS to fund. This may significantly compromise the integrity and financial sustainability of the scheme.

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 Documents 1-13 is exempt under section 47E(d) of the FOI Act.

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 foi@ndis.gov.au.

Yours sincerely

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

Kate
A/g Assistant Director
Freedom of Information
Complaints Management & FOI Branch
General Counsel Division

Schedule of Documents for FOI 24/25-0592

| Document number | Page number | Description | Access Decision | Comments |
|-----------------|-------------|--|---|----------|
| 1 | 1-13 | Funding of out of school hours care Date: Not Available | ACCESS REFUSED Exemption claimed: s47E(d) – certain operations of agencies | |
| 2 | 14-25 | Review of high cost plans for twin brothers Date: Not Available | ACCESS REFUSED Exemption claimed: s47E(d) – certain operations of agencies | |
| 3 | 26-34 | Asst Animal for a child - Autism and Epilepsy Date: Not Available | ACCESS REFUSED Exemption claimed: s47E(d) – certain operations of agencies | |
| 4 | 35-45 | Request - fund ABA and Music Therapy Date: Not Available | ACCESS REFUSED Exemption claimed: s47E(d) – certain operations of agencies | |
| 5 | 46-54 | Freedom jogger pusher Kit Date: Not Available | ACCESS REFUSED Exemption claimed: s47E(d) – certain operations of agencies | |

| Document number | Page number | Description | Access Decision | Comments |
|-----------------|-------------|---|---|----------|
| 6 | 55-58 | Weighted Blanket for Participant with Autism Date: Not Available | ACCESS REFUSED Exemption claimed: s47E(d) – certain operations of agencies | |
| 7 | 59-68 | Swim - flex respite-rec-hol care - 6yr Aut Date: Not Available | ACCESS REFUSED Exemption claimed: s47E(d) – certain operations of agencies | |
| 8 | 69-80 | ECEI AT Date: Not Available | ACCESS REFUSED Exemption claimed: s47E(d) – certain operations of agencies | |
| 8.1 | 81-88 | Attachment to Document 8 - AT Date: Not Available | ACCESS REFUSED Exemption claimed: s47E(d) – certain operations of agencies | |
| 8.2 | 89-99 | Attachment to Document 8 - AA Date: Not Available | ACCESS REFUSED Exemption claimed: s47E(d) – certain operations of agencies | |
| 8.3 | 100-109 | Attachment to Document 8 - AA Date: Not Available | ACCESS REFUSED Exemption claimed: s47E(d) – certain operations of agencies | |

| Document number | Page number | Description | Access Decision | Comments |
|-----------------|-------------|--|---|----------|
| 8.4 | 110-120 | Attachment to Document 8 - CB Date: Not Available | ACCESS REFUSED Exemption claimed: s47E(d) – certain operations of agencies | |
| 8.5 | 121-128 | Attachment to Document 8 - AT Date: Not Available | ACCESS REFUSED Exemption claimed: s47E(d) – certain operations of agencies | |

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.