



**NDIS Quality  
and Safeguards  
Commission**

LEX 4132  
25 February 2025

Mr Bob Buckley

**By email:** [foi-request-12786-9a9d8a7d@righttoknow.org.au](mailto:foi-request-12786-9a9d8a7d@righttoknow.org.au)

Dear Mr Buckley,

**Freedom of Information Request No. (98) - 24/25 - (3)  
Notice of Decision on Access under the *Freedom of Information Act 1982 (Cth)***

I refer to your email received by the NDIS Quality and Safeguards Commission (**NDIS Commission**) on 31 January 2025, in which you requested access to documents under the *Freedom of Information Act 1982 (Cth)* (**FOI Act**).

Specifically, your request sought access to:

*“Copies of all policies, policy guidance, practice guides, tools, templates and grant funded materials (i.e. information) produced since September 2022 for the purpose of lifting the capability of Behaviour Support Providers and improving the quality of NDIS plans that include a behaviour support component, along with copies of relevant project and communication plans for each product (where they exist), plus copies of reports showing relevant outcome measures achieved as a result.”*

**Administration of your request**

On 31 January 2025, the NDIS Commission’s FOI team acknowledged your request by email.

On the same date, you confirmed that you do not seek personal info of staff below SES level and consent to the removal of duplicate documents.

I am an officer authorised under section 23 of the FOI Act to make decisions regarding access to documents and this letter sets out my reasons for decision on access to documents in scope of your request.

**Decision**

The NDIS Commission has located **42** documents, comprising of **641** pages, that fall within the scope of your freedom of information (**FOI**) request.

I have decided to grant **full access** to thirty-four (34) documents and **partial access** to seven (7) documents with redactions under section 22 of the FOI Act, and **refused access** to one (1) document under section 47E(d) of the FOI Act.

Twenty-seven (27) documents consisting of 513 pages were identified as publicly available on the NDIS Commission website which can be accessed via [Search Site | NDIS Quality and Safeguards Commission](#). These are included in the document pack and listed in the schedule of documents at the end of this document.

I have also decided to refuse your request for the portion of scope *“improving the quality of NDIS plans that include a behaviour support component”* in accordance with section 24A(1)(b)(ii) as the documents do not exist, despite reasonable searches being undertaken.

The table at **Attachment A** summarises my decision as it applies to the documents covered by your request.

In assessing your request, I have considered documents created up to the date on which your request was received. Any documents created after this date falls outside the scope of your request and have not been included in this decision.

### **Reasons for Decision**

In reaching my decision I have relied on the following material:

- the terms of your FOI request
- the FOI Act (in particular, sections 22, 24A and s47E(d))
- the results of searches undertaken by relevant NDIS Commission staff
- the types of information and documents that are in the NDIS Commission’s possession;
- the content of the documents that fall within the scope of your request; and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines).

### **Section 24A – Requests may be refused if documents cannot be located, do not exist or have not been received.**

Under s 24A(1) of the FOI Act, an agency or minister may refuse a request if it has taken 'all reasonable steps' to find the document requested, and is satisfied that the document cannot be found or does not exist. I am satisfied that both elements apply to your request.

Searches by the NDIS Commission’s Practice Quality branch did not locate any documents that match the terms of your request *“improving the quality of NDIS plans that include a behaviour support component”*. I am refusing access to the requested documents pertaining to this specific part of your request as the NDIS Commission does not hold the documents you have requested. I am satisfied that all reasonable steps have been taken to locate the requested documents and that they do not exist.

### **Section 47E(d) – Documents affecting certain operations of agencies**

Section 47E conditionally exempts documents where disclosure would, or could reasonably be expected to, prejudice or have a substantial adverse effect on certain identified agency operations. In order to apply the exemption at s47E(d), I must be satisfied that disclosure of the documents would have a “substantial adverse effect” on the efficiency of the operations of the NDIS Commission.

Document 42 contains information that is conditionally exempt under section 47E(d) of the FOI Act.

In the decision of the IC in ‘YU’ and Bureau of Meteorology (Freedom of Information) [2021] AICmr 75 (29 November 2021) (YU), the IC refers to case law that highlights the importance of agencies being able to undertake confidential investigative processes and the practical need for confidentiality to extend beyond an investigation in circumstances where disclosure would likely undermine participation in future investigative processes by agency staff and/or members of the public. I consider the findings of the IC relevant to my decision in respect of your request.

The requested document contains guidance and process material for the NDIS commission staff

concerning the behaviour support quality and management of a process administered by the NDIS Commission, and therefore is relevant to the conduct of the Commission's operations. I consider that providing this 'internal use by the Commission staff only' material to you, which is not publicly available, would negatively affect the conduct of the Commission's operations because it may allow individuals to circumvent elements of the Commission's processes for their own advantage (i.e. complaints about their wrongdoings will not be investigated or escalated through knowing the details of risk assessment thresholds and escalation points) and provide insight to malicious users, such as unsatisfied NDIS participants, provider staff members and providers who engage in unlawful behaviours about navigating the Commission's internal systems and assessment methods. While I have no reason to believe you would misuse the exempt material in this way, the FOI Act does not control or restrict use or dissemination of the information once released, so I must consider actions any member of the public might take if the information is in the public domain.

I am therefore satisfied that it is appropriate to exempt this material under section 47E(d) of the FOI Act. As section 47E is a conditional exemption, I have also considered the application of the public interest test below.

### **Public interest test –47E(d)**

Section 11A(5) of the FOI Act provides:

*The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.*

In applying the public interest test, I am required to have regard to the FOI guidelines and the following factors listed in section 11B(3) of the FOI Act, which relate to whether the granting of access would:

- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);*
- (b) inform debate on a matter of public importance;*
- (c) promote effective oversight of public expenditure;*
- (d) allow a person to access his or her own personal information.*

The objects of the FOI Act include providing for a right of access to information in the possession of Commonwealth government agencies and promoting accountability and transparency in government decision making. In this case, the release of the documents supports the objects of the FOI Act by making available information which concerns government agency decision making.

Given the nature of the document, I do consider that access to these documents would overall inform debate on a matter of public importance and promote effective oversight of public expenditure. The Australian Information Commissioner's FOI Guidelines also set out a non-exhaustive list of factors weighing against disclosure. These factors relate to harm that may result from the disclosure of the documents in certain circumstances. In reaching my decision, I consider that the factors weighing against disclosure are that disclosure could be reasonably expected to:

In this case, disclosure of document 42 would release sensitive information of recommendations that have not been fully implemented, which could result in a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Disclosure of this document are conditionally exempt under section 47E(d) of the FOI Act could reasonably be expected to prejudice the internal processing functions of the agency and their associated safeguarding practices and, as a result, the operations of the NDIS Commission. I consider there to be a strong public interest in ensuring that the ability of the Commission to conduct its safeguarding functions is not

compromised or prejudiced in any way. Disclosure of internal assessment information could reasonably be expected to inhibit the conduct of future safeguarding work by the Commission and/or the organisations.

Based on these factors, I have decided that the public interest is weighted more heavily against disclosure and that giving access to the conditionally exempt material would, on balance, be contrary to the public interest.

### **Deletion of exempt material or irrelevant material from documents and provide access to edited copies**

Section 22 of the FOI Act requires an agency to provide access to an edited version of a document where it is reasonably practicable to edit the document to remove exempt material or material that is irrelevant to the scope of a request.

On this basis, I have prepared the documents for release by removing the exempt material in accordance with section 22 of the FOI Act. I can confirm that the material redacted under this section is confined to the name of the staff members found within the documents. The material that has been edited for release is marked within the documents as well as on the attached **Schedule of Documents**.

### **FOI Disclosure Log**

In accordance with the requirements of section 11C of the FOI Act, the Commission is required to publish details of information released under the FOI Act, subject to certain exemptions.

I am satisfied that none of the exceptions at section 11C apply and that details of the documents disclosed to you as part of your FOI request will be published on the Commission's FOI disclosure log. For further information about the Commission's FOI disclosure log please refer to our website.

### **YOUR REVIEW RIGHTS**

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

#### **Internal review**

Under section 54 of the FOI Act, you may apply in writing to NDIS Commission for an internal review of my decision by another NDIS Commission officer. The internal review application must be made within 30 days of the date of this letter. The request should be addressed to [FOI@ndiscommission.gov.au](mailto:FOI@ndiscommission.gov.au). Where possible please attach reasons why you believe review of the decision is necessary.

#### **Information Commissioner review**

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

**Online:** Using the [OAIC smartform](#)

**Email:** [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

**Post:** GPO Box 5288 Sydney NSW 2001

More information about Information Commissioner review is available on the website of the [Office of the Australian Information Commissioner](#).

#### **FOI Complaints**

If you are unhappy with the way we have handled your FOI request, please let us know what we could have done better. We may be able to rectify the problem. If you are not satisfied with our response, you can make a complaint to the Australian Information Commissioner. A complaint to the Information Commissioner must be made in writing. Complaints can be lodged in one of the following ways:

**Online:** Using the [OAIC smartform](#)

**Email:** [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

**Post:** GPO Box 5288 Sydney 2001

More information about complaints is available on the [Office of the Australian Information Commissioner website](#).

If you are not sure whether to lodge an Information Commissioner review or an Information Commissioner complaint, the website of the [Office of the Australian Information Commissioner](#) has more information.

**Contact**

If you wish to discuss my decision, please contact the FOI Team on email at [FOI@ndiscommission.gov.au](mailto:FOI@ndiscommission.gov.au)

Yours sincerely,

A handwritten signature in black ink that reads "Deepika M". The signature is written in a cursive, slightly slanted style.

**Deepika**

**Position No: 50091780**

**Assistant Director – Freedom of Information**

**NDIS Quality and Safeguards Commission**

**25 February 2025**

**FOI Request No. (98) - 24/25 - (3)**  
**FOI Decision**  
**SCHEDULE OF DOCUMENTS**

Doc No.	Pages	Description	Decision / Exemption
1.	1-19	Document 1	Full Release
2.	20-29	Document 2	Partial Access - Sections 22
3.	30-59	Document 3	Partial Access - Sections 22
4.	60-69	Document 4	Partial Access - Sections 22
5.	69-72	Document 5	Partial Access - Sections 22
6.	73-78	Document 6	Full Release
7.	79-82	Document 7	Partial Access - Sections 22
8.	83	Document 8	Full Release
9.	84-85	Document 9	Partial Access - Sections 22
10.	86	Document 10	Full Release
11.	87-88	Document 11	Full Release
12.	89	Document 12	Full Release
13.	90	Document 13	Full Release
14.	91-113	Document 14	Partial Access - Sections 22
15.	114-122	Document 15 <a href="#">NDIS Commission Policy</a>	Full Release
16.	123-129	Document 16 <a href="#">Comprehensive Behaviour Support Plan Checklist</a>	Full Release
17.	130-144	Document 17 <a href="https://www.ndiscommission.gov.au/rules-and-standards/behaviour-support-and-restrictive-practices/how-develop-behaviour-support-plans#paragraph-id-9385">https://www.ndiscommission.gov.au/rules-and-standards/behaviour-support-and-restrictive-practices/how-develop-behaviour-support-plans#paragraph-id-9385</a>	Full Release
18.	145-160	Document 18 <a href="#">What is positive behaviour support? An Easy Read fact sheet.</a>	Full Release
19.	161-175	Document 19 <a href="#">Understanding your rights. An Easy Read fact sheet.</a>	Full Release
20.	176-190	Document 20 <a href="#">How to choose a specialist behaviour support provider. An Easy Read fact sheet.</a>	Full Release
21.	191-211	Document 21 <a href="#">What to expect from your specialist behaviour support provider. An Easy Read fact sheet.</a>	Full Release

22.	212-223	Document 22 <a href="#">What to do if there is a problem with your specialist behaviour support provider. An Easy Read fact sheet.</a>	Full Release
23.	224-242	Document 23 <a href="#">What are high-risk practices?</a>	Full Release
24.	243-256	Document 24 <a href="#">Evidence Informed Practice Guide</a>	Full Release
25.	257-262	Document 25 <a href="#">Interim Behaviour Support Plan Checklist</a>	Full Release
26.	263-275	Document 26 <a href="#">How to develop behaviour support plans   NDIS Quality and Safeguards Commission</a>	Full Release
27.	276-459	Document 27 <a href="https://ndiscommission.gov.au/sites/default/files/2024-10/20241018_AR_accessible.pdf">ndiscommission.gov.au/sites/default/files/2024-10/20241018_AR_accessible.pdf</a>	Full Release
28.	460-462	Document 28 <a href="#">Participant fact sheet 1: What is positive behaviour support</a>	Full Release
29.	463-465	Document 29 <a href="#">Participant fact sheet 2 - Understanding your rights</a>	Full Release
30.	466-468	Document 30 <a href="#">Participant fact sheet 3 - Choosing a specialist behaviour support provider</a>	Full Release
31.	469-472	Document 31 <a href="#">Participant fact sheet 4 - What to expect from your specialist behaviour support provider</a>	Full Release
32.	473-474	Document 32 <a href="#">Participant Fact sheet 5 - What to do if you are not happy with your specialist behaviour support provider</a>	Full Release
33.	475-476	Document 33 <a href="#">Document template - portrait layout</a>	Full Release
34.	477-478	Document 34 <a href="#">Document template - portrait layout</a>	Full Release
35.	479-481	Document 35 <a href="#">Document template - portrait layout</a>	Full Release
36.	482-492	Document 36 <a href="#">Position Statement –Practices that present high risk of harm to NDIS participants – Updated July 2023</a>	Full Release
37.	493-540	Document 37 <a href="#">Positive Behaviour Support Capability Framework</a>	Full Release
38.	541-564	Document 38	Full Release

		<a href="#">Quality support for children in the NDIS</a>	
<b>39.</b>	565-568	Document 39 <a href="https://www.ndiscommission.gov.au/rules-and-standards/behaviour-support-and-restrictive-practices/behaviour-support-resources#paragraph-id-8599">https://www.ndiscommission.gov.au/rules-and-standards/behaviour-support-and-restrictive-practices/behaviour-support-resources#paragraph-id-8599</a>	<b>Full Release</b>
<b>40.</b>	569-590	Document 40 <a href="#">Regulated Restrictive Practices - Safe Transportation Guide</a>	<b>Full Release</b>
<b>41.</b>	591-626	Document 41 <a href="#">Report template</a>	<b>Full Release</b>
<b>42.</b>	15	Document 42 – BSP – QE11 Recommendations Communications Plan	<b>Full Refusal – Section 47E(d)</b>