

13 July 2023

J.Finch
Right to Know

By email: foi+request-10021-5cb347f1@righttoknow.org.au

Dear J.Finch

Freedom of Information request — Notification of Decision

Thank you for your correspondence of 3 March 2023, in which you requested access to documents held by the National Disability Insurance Agency (NDIA), under the *Freedom of Information Act 1982* (FOI Act).

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:

- *Job description forms for the positions of Branch Manager Fraud Intelligence and Investigations AND Branch Manager Compliance Program, currently held by Scott Britton and Jason Ryman (former Robodebt architects)*
- *Job advertisements or vacancies advertised for the above roles:*
- *Any correspondence, emails, file notes or documentation proposing the secondment or employment of Mr Scott BRITTON and Mr Jason RYLAND from DHS to the NDIA, including rationale behind their appointments*

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.

In relation to point 1 of your request, I have interpreted your request as a request for the positions reference. I have decided to grant access to 2 documents in full.

I have decided to refuse access to point 2 and 3 of your request under section 24A and 47F of the FOI Act respectively. 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 that would fall within the scope of your request
- the FOI Act
- the FOI Guidelines published under section 93A of the FOI Act
- Decisions and guidance published by the Office of the Australian Information Commissioner which address personal information, and
- the NDIA's operating environment and functions.

Reasons for decision

Refuse a request for access (section 24A)

In relation to point 2 of your request, section 24A of the FOI Act provides that an agency may refuse a request for access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that the document cannot be found or does not exist.

In assessing your request I have made enquiries with NDIA staff that would have knowledge about the processes referred to in your request. These enquiries have revealed that the NDIA is not in possession of documents matching point 2 of the request.

I am satisfied that all reasonable steps have been taken to locate the documents you have requested and that the documents cannot be found. I have, therefore, decided to refuse access to point 2 of your request in accordance with section 24A(1)(b)(ii) of the FOI Act.

Personal privacy (section 47F)

In relation to point 3 of your request

section 47F of the FOI Act conditionally exempts a document if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

Paragraph 6.127 of the FOI Guidelines states that The FOI Act shares the same definition of 'personal information' as the Privacy Act, which regulates the handling of personal information about individuals (see s 4(1) of the FOI Act and s 6 of the Privacy Act). The cornerstone of the Privacy Act's privacy protection framework is the Australian Privacy Principles (APPs), a set of legally binding principles that apply to both Australian Government agencies and private sector organisations that are subject to the Act. Detailed guidance about the APPs is available in the Information Commissioner's [APP Guidelines](#).

Paragraphs 6.128 of the FOI Guidelines provides that personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a. whether the information or opinion is true or not
- b. whether the information or opinion is recorded in a material form or not.

Paragraph 6.129 of the FOI Guidelines provides that personal information is:

- information about an identified individual or an individual who is reasonably identifiable
- says something about a person
- may be opinion
- may be true or untrue
- may be recorded in material form or not.

I am satisfied that documents that fall within the scope of your request, were they to exist, would meet the definition of 'personal information'.

Section 47F(2) of the FOI Act provides that in determining whether the disclosure of documents would involve unreasonable disclosure of personal information, regard must be had to:

- a. the extent to which the information is well known
- b. whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- c. the availability of the information from publicly accessible sources
- d. any other matters that the agency considers relevant.

With reference to this assessment, and without any evidence before me that you are authorised to obtain any documents on behalf of or about either named individual, I have decided that it would be unreasonable to publicly disclose any personal information to you, were it to exist.

Accordingly, I have decided that any information, if it were to exist, would be conditionally exempt under section 47F of the FOI Act. My considerations of the public interest test are set out below.

Public interest considerations – section 47F

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.

Irrelevant factors

I have not considered any of the irrelevant factors as set out under section 11B(4) of the FOI Act in making this decision.

Factors favouring disclosure

In favour of disclosure, I have considered the factors outlined in section 11B(3) of the FOI Act, and have determined that disclosure of documents, were they to exist, would promote the objects of the FOI Act by providing access to documents held by the government.

Factors against disclosure

Against disclosure, I consider that disclosure of documents, were they to exist:

- Would not contribute to the publication of information of sufficient public interest value to justify impinging on personal privacy rights
- 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
- Would cause stress on the third party
- Would serve no public purpose through release.

Consideration of harm factors

While there is limited public interest in the disclosure of personal information, the harm that may result from the disclosure of any such exempt information is that it may unreasonably affect an individual's right to privacy by having their personal information in the public domain.

Weighing the relevant factors to determine where the public interest lies

In summary the factors against disclosure of the information, were it to exist, outweigh the factors in favour of disclosure. I am satisfied that if the information were to exist, it would be contrary to the public interest to release this information to you, and would be exempt under section 47F 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 foi@ndis.gov.au.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized 'C' followed by a series of loops and a long, sweeping diagonal stroke extending upwards and to the right.

Cooper
Senior Freedom of Information Officer
Parliamentary, Ministerial & FOI Branch
Government Division

Schedule of Documents for FOI 22/23-1311

Docum ent number	Page number	Description	Access Decision
1	1-4	BM Fraud and Compliance - Position Description Date: Not Dated	FULL ACCESS
2	5-10	Branch Manager Compliance Program PD Date: 15 October 2021	FULL ACCESS

Your review rights

Internal Review

The FOI Act gives you the right to apply for an internal review of this decision. The review will be conducted by a different person to the person who made the original decision.

If you wish to seek an internal review of the decision, you must apply for the review, in writing, within 30 days of receipt of this letter.

No particular form is required for an application for internal review, but to assist the review process, you should clearly outline your grounds for review (that is, the reasons why you disagree with the decision). Applications for internal review can be lodged by email to foi@ndis.gov.au or sent by post to:

Freedom of Information Section
Parliamentary, Ministerial & FOI Branch
Government Division
National Disability Insurance Agency
GPO Box 700
Canberra ACT 2601

Review by the Office of the Australian Information Commissioner

The FOI Act also 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 Division.