

1 August 2023

Me

By email: foi+request-10202-64167bd2@righttoknow.org.au

Dear Me

Freedom of Information request — Notification of Decision

Thank you for your correspondence of 28 April 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:

- 1. All 'operational guidelines', however so named, made pursuant to legislation (including delegated etc.). For example, including but not limited to, an operational guideline under NDIS (Becoming a Participant) Rules 2016 Part 7.2*
- 2. Any/all internal guidelines, however so named, not covered by (1) above, that must and/or can be considered and/or used, when assessing an application under the NDIS Act s 24. This includes internal guidelines that relate to any part of the s 24 assessment and decision-making process, even if the guideline is only relevant to that part of the assessment and decision-making process, rather than s 24 itself.*

Expiration of time

We have been experiencing processing delays and were not able to provide our decision to you by the due date of 28 May 2023. Consequently, your application was regarded as a deemed refusal under section 15AC of the FOI Act.

We have continued to process your application and this access decision is being released to you after the due date. I sincerely apologise for the delay in processing and advise that 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.

Decision on access to documents

I am authorised to make decisions under section 23(1) of the FOI Act.

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

- relevant case law concerning the operation 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.

Part 1- Operational Guidelines

In regard to Part 1 of your request, the NDIA Operational Guidelines can be found at the publicly available website [National Disability Insurance Scheme Operational Guidelines](#)

Part 2: Internal Guidelines (section 24)

Regarding Part 2 of your request, I have decided to refuse your request for access under section 24A of the FOI Act. The reasons for my decision are set out below.

Reasons for decision - Refuse a request for access (section 24A)

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 am satisfied that the document does not exist.

I have conducted searches of the NDIA's documents management systems and made enquiries with NDIA staff. These enquiries have revealed that the NDIA is not in possession of documents matching the scope of your request.

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

The relevant line areas have advised that there is no additional internal guidelines, policies or procedures for consideration when assessing and application under section 24 of the NDIS Act. These guidelines can be found at the following website: [Applying to the NDIS | Disability Requirements.](#)

I am satisfied that all reasonable steps have been taken to locate the documents you have requested and that the documents do not exist. I have, therefore, decided to refuse access to your request in accordance with section 24A(1)(b)(ii) 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 A**.

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

Yours sincerely



Jade

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

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 xxx@xxxx.xxv.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