

1 August 2023

AS

**By email:** [foi+request-10356-25e53bd0@righttoknow.org.au](mailto:foi+request-10356-25e53bd0@righttoknow.org.au)

Dear AS

### **Freedom of Information request — Notification of Decision**

Thank you for your correspondence of 1 June 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. Any Technical Advisory Branch (or any internal Technical advice department) referral policy.*
- 2. A list of all diagnoses that require mandatory referral to TAB for advice before NDIS access can be granted for a person with that diagnosis.*
- 3. A list of diagnoses NDIA consider to be “health conditions” or “chronic health conditions”. Any policy document that determines which diagnoses are considered to be “health conditions” or “chronic health conditions”*

#### **Extension of time**

On 30 June 2023, you agreed to a 30-day extension of time under section 15AA of the FOI Act, making 1 August 2023 the new date to provide you with a decision on access.

#### **Search efforts**

Searches for documents were conducted by relevant business areas using reasonable search terms that could return documents relevant to your request and 2 documents have been identified which fall within Part 1 of the scope of your request.

In regard to Part 2, I have been advised by the line area that there are no diagnoses that require a mandatory TAB referral. This is because under the NDIS Act, access to the NDIS is not based on the types of disability or the presence of an underlying condition, illness, or injury, rather it is based on the permanency of a person’s impairment and a substantial reduction in their functional capacity to engage in activities of daily living.

This means that having a particular diagnosis does not impact on access to the scheme, or the amount of funding allocated to an individual plan. The annualised committed support amounts in each plan are based around each participant’s individual support needs and

unique circumstances, rather than their recorded primary or secondary diagnosis. There are however, certain Assistive Technology (AT) requests that require mandatory TAB Advice.

In regard to part 3 of your request, the publicly available [National Disability Insurance Scheme Guidelines](#) is the resource available to staff to determine between what is a disability and what is a health condition.

The NDIA do not rely on the definition of a health condition specifically, every application is assessed to ensure it meets the disability requirements. [Do you meet the disability requirements? | NDIS](#)

More information, including the link to the Health Department definition of a 'chronic health condition' can be found at: [Who is responsible for the supports you need: Health | NDIS](#)

Further information around this can be found at: Disability related health conditions is available at: [Disability-related health supports | NDIS](#)

### **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 1 document, which falls within the scope of your request.

The document was 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 grant access to this 1 document 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
- 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.

### **Release of documents**

The document for release, as referred to in the Schedule of Documents at **Attachment A**, is 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 [fox@xxxx.xxx.xx](mailto:fox@xxxx.xxx.xx).

Yours sincerely

A handwritten signature in black ink that reads "Jade". The script is cursive and elegant, with the 'J' being particularly large and stylized.

**Jade**

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

## Schedule of Documents for FOI 22/23-1636

Document number	Page number	Description	Access Decision
1	1-2	<b>TAB requesting advice</b> Undated	<b>FULL ACCESS</b>

## **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](mailto: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](http://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](http://www.oaic.gov.au)  
Post: GPO Box 5218, Sydney NSW 2001  
Email: [enquiries@oaic.gov.au](mailto: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](mailto: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