



Mr Ace Chapman

By email: foi+request-10361-d519cc66@righttoknow.org.au

Dear Mr Chapman,

Freedom of Information Request No. (48) 22/23 - 4
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 (**Commission**) on 3 June 2023, in which you requested access under the *Freedom of Information Act 1982* (Cth) (**FOI Act**). On 5 June 2023, you provided a refined scope which sought:

- “1. Official correspondence, including but not limited to emails and letters, between the Senior Executive Service (SES) Officers: Tracey Mackey [sic], Sian Leatham, Catherine Meyer [sic], Lisa Pulko, and Comcare, in relation to the aftermath of the issuance of the Provisional Improvement Notice from April 23, 2023, to present. This excludes the PIN itself and the appeal document sent to Comcare, which is publicly accessible.*
- 2. Internal communications among the aforementioned SES Officers about the Provisional Improvement Notice, its implications, and its communication within the Commission within the same date range.*
- 3. Reports or assessments conducted by the Commission in response to the Provisional Improvement Notice within the specified date range, with direct involvement or oversight from the listed SES Officers. The appeal document sent to Comcare is not included in this request.*
- 4. Clarification on the exact date the Commission received the original Provisional Improvement Notice sent c/o the Department of Social Services (DSS).”*

You agreed to remove drafts, duplicates, specific documents, Commission staff names, and other documents from the scope of the request.

On 21 June 2023, the Commission advised you of the requirement to consult third parties under section 27 and 27A of the FOI Act. This extended the deadline for decision to 2 August 2023.

Decision

The Commission has identified **48** documents, as well as **10** additional attachments and **1** image (134 pages), falling within the scope of your freedom of information (**FOI**) request.

The documents are set out in **Attachment A**.

The documents contain material relevant to your FOI request, including material and documents exempt under sections 42, 47C, 47E(c), 47E(d), and 47F of the FOI Act.

In accordance with section 22 of the FOI Act, where reasonably practicable, redactions have been made to exempt irrelevant or exempt material.

I have decided to grant **access** to the edited documents.

I have decided to **refuse access** to four documents and three attachments.

Reasons for decision

The reasons for my decision on access are set out in the Statement of Reasons at **Attachment B**.

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 details of the redacted documents disclosed to you as part of your FOI request should be published on the Commission's FOI disclosure log. For further information about the Commission's FOI disclosure log please refer to our website:

<https://www.ndiscommission.gov.au/about/freedom-information/foi-disclosure-log>

Review rights and complaints

If you are unhappy with my decision, you can find information about your rights of review, and how you can make a complaint about the handling of your request at **Attachment C**.

Contact

If you wish to discuss my decision, please contact the FOI team via email at

FOI@ndiscommission.gov.au

Yours sincerely



Linda Blue

Director, Major Initiatives.

2 August 2023



ATTACHMENT A

FOI Request No. (48) 22/23 - 4

**FOI Decision
SCHEDULE OF DOCUMENTS**

Pages	Date	Description	Decision / Exemption	Point of Scope
1 - 3	Email chain ending 9 May 2023	Document 1	Section 22	Point 2
4 - 6	Email chain ending 1 May 2023	Document 2	Section 22	Point 2 Point 3
7 - 9	Email chain ending 1 May 2023	Document 3	Section 22 Section 47F	Point 2 Point 3
10 – 11	Email chain ending 12 May 2023	Document 4	Section 22	Point 2
12 - 16	12 May 2023	Attachment 1	Section 22	Point 2
17 - 19	Email chain ending 5 May 2023	Document 5	Section 22 Section 47F – submissions	Point 2
20 - 22	Email chain ending 5 May 2023	Document 6	Section 22 Section 47F – submissions	Point 2
23	Email chain ending 16 May 2023	Document 7	Section 22 Section 47F	Point 2
24	17 May 2023	Document 8	Section 22	Point 2
25 - 26	5 May 2023	Document 9	Section 22 Section 47F	Point 2

27	9 May 2023	Document 10	Section 22 Section 47F	Point 2
28 – 30	Email chain ending 9 May 2023	Document 11	Section 22	Point 2
31 - 34	Email chain ending 5 June 2023	Document 12	Section 22 Section 47F	Point 2
35 - 38	Email chain ending 25 May 2023	Document 13	Section 22 Section 47F	Point 2
39 – 40	Email chain ending 24 May 2023	Document 14	Section 22	Point 1 Point 2
41 - 42	24 May 2023	Attachment 2	Section 22 - submissions	Point 1
43 - 49	24 May 2023	Attachment 3	Section 22 - submissions	Point 1
50 - 51	27 April 2023	Document 15	Section 22 Section 22 - submissions	Point 1
52 - 54	24 May 2023	Document 16	Section 22 Section 47F	Point 2
55 - 56	Email chain ending 25 May 2023	Document 17	Section 22	Point 2
57	25 May 2023	Attachment 4	Full release	Point 2 Point 4
58		Image 1	Full release	Point 1
59 - 61	Email chain ending 8 May 2023	Document 18	Section 22	Point 2
62 - 63	Email chain ending 9 May 2023	Document 19	Section 22	Point 2
64	21 May 2023	Document 20	Section 22 Section 47F	Point 2

65 - 66	21 May 2023	Attachment 5	Full release	Point 2
67	17 May 2023	Document 21	Section 22 Section 47F	Point 2
68 - 76	17 May 2023	Attachment 6	Section 22	Point 2
77 - 78	21 May 2023	Document 22	Section 22 Section 47F	Point 2
79	Email chain ending 17 May 2023	Document 23	Section 22	Point 2
80 - 81	Email chain ending 25 May 2023	Document 24	Section 22 Section 47E(c) Section 47F	Point 2
82 - 84	Email chain ending 4 June 2023	Document 25	Section 22	Point 2
85 - 87	Email chain ending 4 June 2023	Document 26	Section 22	Point 2
88 - 90	Email chain ending 16 May 2023	Document 27	Section 22	Point 2
91 - 92	Email chain ending 25 May 2023	Document 28	Section 22 Section 47E(c) Section 47F	Point 2
93 - 94	Email chain ending 25 May 2023	Document 29	Section 22 Section 47E(c) Section 47F	Point 2
95 - 97	Email chain ending 4 June 2023	Document 30	Section 22 Section 47E(c) Section 47F	Point 2
98 - 101	Email chain ending 4 June 2023	Document 31	Section 22 Section 47F	Point 2

102 - 104	Email chain ending 12 May 2023	Document 32	Section 22 Section 22 - submissions	Point 1
105 - 106	12 May 2023	Attachment 7	Section 22 Section 22 - submissions	Point 1
107 - 108	Email chain ending 20 May 2023	Document 33	Section 22 Section 47C Section 47F	Point 2
109	Email chain ending 11 May 2023	Document 34	Section 22 Section 22 – submissions Section 47E(c)	Point 1
110 - 111	Email chain ending 22 May 2023	Document 35	Section 22 Section 47F	Point 2
112	21 May 2023	Document 36	Section 22 Section 47F	Point 2
113 - 117	Email chain ending 28 April 2023	Document 37	Section 22 Section 47C Section 22 - submissions Section 47E(d) Section 47F	Point 1
118	Email chain ending 8 May 2023	Document 38	Section 22	Point 2
119 - 123	Email chain ending 8 May 2023	Document 39	Section 22 Section 22 - submissions Section 47E(d) Section 47F	Point 1 Point 2 Point 4
124 - 125	Email chain ending 27 April 2023	Document 40	Section 22 Section 22 - submissions	Point 1
126 - 127	Email chain ending 25 May 2023	Document 41	Section 22	Point 2

128 - 130	Email chain ending 31 May 2023	Document 42	Section 22 Section 42	Point 2
131 - 132	All staff email – 5 May	Document 43	Section 22	Point 2
133 - 134	All staff email – 17 May	Document 44	Full release	Point 2
<i>Refused</i>				
--	--	Attachment 8	Refused – section 47E(c)	--
--	--	Document 45	Refused – section 47E(c), section 47E(d)	--
--	--	Attachment 9	Refused - section 47E(c), section 47E(d)	--
--	--	Attachment 10	Refused - section 47E(c), section 47E(d)	--
--	--	Document 46	Refused - section 47E(c), section 47E(d)	--
--	--	Document 47	Refused - section 47E(c), section 47E(d)	--
--	--	Document 48	Refused - section 47E(c), section 47E(d)	--



ATTACHMENT B

FOI Request No. (48) 22/23 - 4

**FOI Decision
STATEMENT OF REASONS**

YOUR FOI REQUEST

1. On 3 June 2023, you made a request for information under the *Freedom of Information Act 1982* (Cth) (FOI Act).
2. On 5 June 2023, you refined the request to the following terms:

“1. Official correspondence, including but not limited to emails and letters, between the Senior Executive Service (SES) Officers: Tracey Mackey [sic], Sian Leatham, Catherine Meyer [sic], Lisa Pulko, and Comcare, in relation to the aftermath of the issuance of the Provisional Improvement Notice from April 23, 2023, to present. This excludes the PIN itself and the appeal document sent to Comcare, which is publicly accessible.

2. Internal communications among the aforementioned SES Officers about the Provisional Improvement Notice, its implications, and its communication within the Commission within the same date range.

3. Reports or assessments conducted by the Commission in response to the Provisional Improvement Notice within the specified date range, with direct involvement or oversight from the listed SES Officers. The appeal document sent to Comcare is not included in this request.

4. Clarification on the exact date the Commission received the original Provisional Improvement Notice sent c/o the Department of Social Services (DSS).”

3. You agreed to remove drafts, duplicates, specific documents, Commission staff names, and other documents from the scope of the request.
4. On 21 June 2023, the Commission advised you of the requirement to consult third parties under section 27 and 27A of the FOI Act. This extended the deadline for decision to 2 August 2023.

DECISION

5. I am an officer authorised under section 23 of the FOI Act to make decisions regarding access to documents.
6. I have decided to **grant access** to 44 documents, as well as 7 attachments and 1 image, subject to various exemptions.
7. I have decided to **refuse access** to four documents and three attachments under section 47E(c) and 47E(d) of the FOI Act.

8. I have found that parts of the documents contain:
- material that is irrelevant to your FOI request, in that it does not come within the scope of your revised request; and
 - material that is exempt under sections 42, 47C, 47E(c), 47E(d), and 47F of the FOI Act.
9. The table at **Attachment A** summarises my decision as it applies to the documents covered by your request.

DELETION OF IRRELEVANT MATERIAL

10. Section 22 of the FOI Act provides that if an agency decides that granting access to a document would disclose information that would be exempt or irrelevant to the request, then, where it is reasonably practicable to do so, a copy of the document with deletions/redactions to exempt or irrelevant information should be provided.
11. As indicated above and for the reasons discussed below, I have found that some of the documents contain irrelevant material. Accordingly, the documents have been edited to remove irrelevant material in accordance with section 22 of the FOI Act.

MATERIAL ON WHICH MY FINDINGS ARE BASED

12. In reaching my decision, I have relied on the following material:
- your FOI request;
 - the FOI Act;
 - Submissions received during the consultation process;
 - FOI case law, including:
 - *Joshua Badge and Department of Health and Aged Care (Freedom of Information)* [2023] AICmr 46;
 - *Australian Competition and Consumer Commission v NSW Ports Operations Hold Co Pty Ltd* [2020] FCA 1232;
 - *Justin Warren and Services Australia (Freedom of Information)* [2023] AICmr 13;
 - *Christis Tombazos and Australian Research Council*; and
 - *'FG' and National Archives of Australia* [2015] AICmr 26.
 - the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

CONSULTATIONS

13. The Commission conducted a consultation process with relevant third parties in accordance with sections 27 and 27A of the FOI Act.

REASONS FOR DECISION

Section 42 – Full exemption – Documents subject to Legal Professional Privilege (LPP)

14. Section 42 of the FOI Act relevantly provides that:

- (1) *A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.*
- (2) *A document is not an exempt document because of subsection (1) if the person entitled to claim legal professional privilege in relation to the production of the document in legal proceedings waives that claim.*
- (3) *A document is not an exempt document under subsection (1) by reason only that:*
 - (a) *the document contains information that would (apart from this subsection) cause the document to be exempt under subsection (1); and*
 - (b) *the information is operational information of an agency.*

15. According to the FOI guidelines at 5.128, the determinative test for determining LPP is the purpose of the communication.

16. The principles of LPP have been determined at common law, and require the consideration of:

- Whether there is a legal adviser-client relationship;
- Whether the communication was for the purpose of giving or receiving legal advice;
- Whether the advice given is independent; and
- Where the advice given is confidential.

17. The recent FOI case of *Joshua Badge* sets out the principles in applying LPP to a FOI decision.

18. In determining an adviser-client relationship, the case of *Joshua Badge* discusses that such a relationship “may not be as readily established when advice is received from a lawyer who works within a particular agency”. This is due to the nature of the relationship of the lawyer and the client, as the lawyer is also an employee of the agency.

19. However, establishing that the lawyer is acting independently from their employer is not the test. According to the case of *Australian Competition and Consumer Commission v NSW Ports Operations Hold Co Pty Ltd*, the “better view” is that, when the lawyer is a member of an in-house counsel, the lawyer should be “acting in his or her professional capacity as his or her’s employer’s lawyer” and the “dominant purpose test”.

20. Finding the “dominant purpose” requires an assessment of the reasons behind the communication. ‘Advice’ is defined in the FOI Guidelines at 5.135 as “what a party should prudently or sensibly do in the relevant legal context”.

21. In these circumstances, the relevant document provides legal advice by stepping out options in a legal context. I note it has been categorised as “Legal Privilege”.

22. I note privilege over these communications has not been waived under section 42(2) of the FOI Act.

23. Therefore, I find access to Document 42 can be refused under section 42 of the FOI Act.

24. However, I note the FOI Guidelines at section 5.141 suggest that, where possible and where disclosure would not waive privilege, a decision-maker should seek to provide an applicant with access to non-substantive material that is not privileged. This may be done under section 22 of the FOI Act.

25. Therefore, I have provided access to parts of Document 42 while removing relevant sections under section 22 of the FOI Act.

Conditional exemptions

Section 47C – Public interest conditional exemptions – deliberative process

26. Section 47C of the FOI Act relevantly provides that:

- (1) *A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:*
 - (a) *An agency; or*
 - (b) *A Minister; or*
 - (c) *The Government of the Commonwealth.*

27. Specifically, ‘deliberative matter’; does not include:

- (1) *Operational information;*
- (2) *Purely factual material*

Section 47E – Public interest conditional exemptions – operations of an agency

28. Section 47E of the FOI Act relevantly provides that:

- A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:*
- (a) *prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*
 - (b) *prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;*
 - (c) *have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;*
 - (d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

Section 47F – Public interest conditional exemptions – personal privacy

29. Section 47F of the FOI Act relevantly provides that:

- (1) *A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*
- (2) *In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:*
 - (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 or Minister considers relevant.*

30. Section 6 of the *Privacy Act 1988* (Cth) defines ‘personal information’ as:

- (1) *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; and*
 - (b) *whether the information or opinion is recorded in a material form or not.*

31. Relevantly, the majority of the documents within the scope of your request contain some form of personal information.

Deliberative Process

32. The FOI Guidelines provide that what constitutes deliberative matter should not be restricted to the “ordinary meanings” given to the words listed in the section. Types of deliberative matter include:

- Opinion
- Advice
- Recommendation – although, not if the recommendation relates to an action already implemented
- Consultation or deliberation

33. The deliberative process must relate to the function of the Agency claiming to rely upon it. The recent case of *Justin Warren* demonstrates the need for an Agency to connect the documents to a deliberative process that is, of itself, connected to the functions of that Agency.

34. In light of the above, I find that some of the documents captured in the scope of this request do hold deliberative matter. This includes communication between SES relating to deliberation and internal discussions.

35. As mentioned in the cases, this content must be “in the course of, or for the purposes of, the deliberative processes in the functions of...the agency”. These documents contain information that relates to management of personnel within the Commission, and the process underlying strategic decision making. These processes correlate to the employment and corporate functions internally to the Commission.

36. As such, I find that Documents 33 and 37 contain information conditionally exempt under section 47C, subject to the public interest test.

Operations of the agency

37. I consider that some of the captured documents are conditionally exempt under s47E of the FOI Act, which prescribes that:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

[...]

- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency; and*
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

38. In considering section 47E(c) of the FOI Act, I have considered the OAIC guidelines, which provide guidance in respect of “management” of personnel.

39. Relevantly, the guidelines outline “management” includes the broader human resources policies, recruitment, promotion, occupational health and safety, etc. Additionally, the “assessment” of personnel includes considerations of training requirements, appraisals, feedback, etc.

40. In deciding whether the section applies, I must consider whether the disclosure of this information would have an effect, and that effect is both “substantial and adverse”. Some of the documents relate to internal complaints and human resources matters which, if released, would undermine the likelihood of Commission being forthcoming in future.

41. I find documents 24, 28, 29, 30, and 34 as being conditionally exempt under section 47E(c) of the FOI Act, subject to consideration of the public interest test.

42. I have also refused access to one document under this section, as the material relates to information concerning internal human resources (HR) matters within the Commission.

43. Additionally, I have refused access to a further 4 documents and 2 attachments under this section, as these documents concern HR investigations and management being undertaken by the NDIS Commission.

44. Section 47E(d) of the FOI Act provides that an exemption to disclosure exists where the release of a document would “have a substantial adverse effect on the proper and efficient conduct of the operations of an agency”.

45. Documents 37 and 39 concern SES officers’ strategic decision making processes. This relates primarily to the corporate function of the Commission, as well as its management and process around its staff.

46. In terms of a “substantial adverse effect” on the operations of the Commission, disclosure of this type of information would undermine the ability of SES to be forthcoming about considerations of HR processes outside of the Commission to inform its approach. This could undermine the ability of the Commission to manage potential issues in the future, and may restrict its approach.

47. Further, the Information Commissioner has accepted the application of this section of the FOI Act where agencies are engaging with another agency during an investigative process, and are

seeking advice or participating in the conduct of that investigation. In particular, the case of *DZ and the Commonwealth Ombudsman* found that a particular document in the circumstances of an investigation could reasonably impact upon an agency's participation in further investigation, notwithstanding any requirements under law.

48. I find that section 47E(d) of the FOI Act applies to Documents 37 and 39, subject to consideration of the public interest test.
49. I have also found that four documents and two attachments may be removed on this basis, as the contents relate to human resources investigative processes and integrity actions currently being undertaken by the NDIS Commission. Releasing these documents could undermine these actions, despite any public interest.

Personal Information

50. I am satisfied that the information included within these documents contains personal information, including names, contact details, employment status, and signatures.
51. In determining whether disclosure of this information would be unreasonable, I must have regard to the following factors:
- The extent to which the information is well known;
 - Whether the person to whom the information relates is known to be associated with the matters dealt with in the document;
 - The availability of the information from publicly accessible sources; and
 - Any other matters that the agency or minister considers relevant.
52. I note EL and APS staff names and contact details of the Commission have been redacted under section 22 of the FOI Act. This was due to the removal of this information from the scope of the FOI request.
53. I find that the disclosure of this information would be unreasonable for the following reasons:
- The submissions of third parties, which have sought some information to be redacted under this section;
 - Some of the contact details – such as phone numbers – are not publicly known; and
 - Some of the individuals are not publicly known to be connected to the documents or the information therein.
54. The final factor to consider is any other matter the agency considers relevant. Following this, I have had regard to the additional principles as outlined in the case of *'FG' and National Archives of Australia*, in particular;
- The potential detriments to the person to whom the information relates;
 - The likelihood that the third party would object to the disclosure;
 - Whether disclosure of the information might advance the public interest in government transparency and integrity.
55. I have also considered whether disclosure might advance the public interest in respect of government transparency and integrity. While it would be in the interest of transparency and integrity to disclose such information in relation to the PIN notice, this factor cannot be considered in isolation. It was noted in *Christis Tombazos and Australian Research Council* that

these principles “may be competing, so that a balancing process is required to decide if disclosure would be unreasonable”.

56. Therefore, I am satisfied that some of the information captured in the documents is exempt under section 47F of the FOI Act. This information can be redacted from these documents under section 22 of the FOI Act.

CONDITIONAL EXEMPTIONS – PUBLIC INTEREST TEST

57. Section 11A(5) of the FOI Act requires access to a conditionally exempt document to be granted unless (in the circumstances) access to the document at that particular time would, on balance, be contrary to the public interest.

58. For the reasons discussed above, I have found that the documents contain information that is conditionally exempt under sections 47C, 47E(c), 47E(d), and 47F of the FOI Act.

59. 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:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person to access his or her own personal information.

60. The following irrelevant factors (set out in subsection 11B (4)) must not be taken into account in deciding whether access would be contrary to the public interest:

- Access to the document could result in embarrassment to the Commonwealth Government or Norfolk Island, or cause a loss of confidence in the Commonwealth Government or Norfolk Island,
- access to the document could result in any person misinterpreting or misunderstanding the document,
- the author of the document was (or is) of high seniority in the agency to which the FOI request was made, and
- access to the document could result in confusion or unnecessary debate.

61. In light of this, I consider the following as favouring disclosure:

- Promoting the objects of the FOI Act, namely the right of individuals to access documents;
- Informing debate on a matter of public importance – namely, the improvement notice; and
- Revealing the reason for a government decision – namely, the internal discussions of the Commission when responding to the improvement notice.

62. Alternatively, I consider the following non-exhaustive factors as not favouring disclosure:

- Some of the material captured relates to Commission staff who have been excluded from the scope of the request, and who are not otherwise publicly known to be associated with this matter;
- Some of the material relates to the personal information of a government employee, disclosure of which could reveal information about their private disposition or personal life;
- The submissions of third parties;
- Some material could reasonably be expected to harm the interests of an individual or group of individuals, namely Commission staff;

- Some material could reasonably be expected to prejudice the management function of an agency, namely the Commission.

63. Additionally, I note the observations of the FOI guidelines around the application of section 47C of the FOI Act. The FOI Guidelines make clear that whilst there is an argument that applying this section is necessary to protect the ability of APS staff to provide “frankness and candour”, this should be approached with caution. The FOI Guidelines provide at 6.83 that “Agencies should start with the assumption that public servants are obliged by their position to provide robust and frank advice at all times”, and that this obligation will not be undermined by processes of transparency.

64. In light of the above, and consideration of the Guidelines and relevant case law, I have determined that some documents that may be exempt under section 47C of the FOI Act would, on balance, be in the public interest to be disclosed.

65. However, I am satisfied that the factors against disclosure outweigh the public interest with respect to sections 47C, 47E(c), 47E(d) and 47F of the FOI Act for some of the documents captured in this request.

66. Additionally, I find that in addition to the above factors weighing against disclosure, other factors relate to the documents refused. These further include:

- Some material could reasonably be expected to prejudice an agency’s ability to obtain similar information in the future; and
- Some material could reasonably be expected to impede the administration of justice generally, including procedural fairness, in that the documents relate to various HR related investigations being conducted by the NDIS Commission.

67. In light of these factors, as well as those listed at paragraph 62, I find that four documents and three attachments may be refused under sections 47E(c) and 47E(d) of the FOI Act.

Deletion of exempt or irrelevant material

68. 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

Contact

If you wish to discuss my decision, please contact the FOI team via email at FOI@ndiscommission.gov.au.

Kind regards,



Linda Blue
Director, Major Initiatives
2 August 2023



ATTACHMENT C

INFORMATION ON REVIEW RIGHTS

The *Freedom of Information Act 1982 (the FOI Act)* gives you the right to apply for a review of this decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of this decision by:

- (a) an internal review officer in the NDIS Quality and Safeguards Commission, or
- (b) the Australian Information Commissioner (**Information Commissioner**).

Internal Review

If you apply for internal review, it will be carried out by a different decision-maker who will make a fresh decision on your application. An application for review must be:

- (a) made in writing,
- (b) made within 30 days of receiving this letter, and
- (c) sent to FOI@ndiscommission.gov.au.

No particular form is required, but it is desirable to set out in the application the grounds upon which you consider the decision should be reviewed.

If the internal review officer decides not to grant you access to all of the documents to which you have requested access, you have the right to seek a review of that decision by the Information Commissioner. You will be further notified of your rights of review at the time you are notified of the internal review decision.

Please note that if you apply for an internal review and a decision is not made by an internal review officer within 30 days of receiving the application, you have the right to seek review by the Information Commissioner for a review of the original FOI decision on the basis of a 'deemed refusal' decision. An application for Information Commissioner review in this situation must be made within 60 days of the date when the internal review decision should have been made (provided an extension of time has not been granted or agreed).

Information Commissioner Review

If you want to seek direct review by the Information Commissioner (and not internal review), you must apply in writing within 60 days of the receipt of the decision letter and you can lodge your application in one of the following ways:

Online: www.oaic.gov.au Post: GPO Box 2999, Canberra ACT 2601 Fax: +61 2 9284 9666 Email: foidr@oaic.gov.au	In person: Level 10, 175 Pitt Street, Sydney NSW 2000
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An application form is available on the website at www.oaic.gov.au. Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Complaints to the Commonwealth Ombudsman and Information Commissioner

Commonwealth Ombudsman

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072

Website: www.ombudsman.gov.au

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.

Information Commissioner

You may also complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992

Website: www.oaic.gov.au