

4 August 2023

Robert Stokes
Right to Know

By email: foi+request-10377-8d371129@righttoknow.org.au

Dear Robert Stokes

Your Freedom of Information request - Internal Review Decision

Thank you for your correspondence of 25 June 2023, in which you requested an internal review of the **Original Decision** in relation to your request for information.

On 11 June 2023, you emailed the agency's FOI email address from the Right to Know website. I understand you are seeking the answer to the following question rather than a request for a document or documents:

"Are Scott Britton and Jason Ryman still employed by the agency?"

The original decision maker accepted and processed your question as a request under the *Freedom of Information Act 1982* (FOI Act). A Notice of Decision was provided to you on 21 June 2022 refusing your request in full pursuant to s47F of the FOI Act citing the unreasonable disclosure of personal information as the reason for non-disclosure.

You have now lodged an Internal Review of this decision based on the following grounds:

"As the individuals in question have historically appeared in publicly available organisational charts, Section 47F is irrelevant in this instance."

Please be advised that I am authorised to make decisions under s23(1) of the FOI Act, as well as internal review decisions under s54C of that Act. As an internal review officer, I am not bound in any way by the original decision and am required to make a fresh decision.

I have now conducted the internal review of original decision FOI 22/23-1672 and have decided to **affirm** the original decision of 21 June 2023. My reasons for decision are below.

Reasons for Decision

You seek to know if Scott Britton and Jason Ryman are still employed by the agency. That is, you are seeking the current status of employment of two identified and named individuals with the NDIA.

Whilst I acknowledge and appreciate your view that the two individuals have historically appeared in publicly available organisational charts. I do not agree that an individual's status of employment is publicly available in the same way as a publicly available organisational chart. It needs to be acknowledged that if a person who previously held a position that meant their name was included in a publicly available organisational chart it does not mean that their current employment status is thereafter always accessible and available to the public and/or in the public domain.

The FOI Act shares the same definition of personal information as the *Privacy Act 1988* which is:

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

The Office of the Australian Information Commissioner (OAIC) Guidelines provide further clarity around this definition for the purposes of FOI at paragraphs 6.129 and 6.130 stating:

6.129 In other words, 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.*

6.130 Personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

Given the above definition of personal information and taking into account the additional contextual information provided by OAIC; I consider, in this circumstance, the employment status of two identified and named individuals the personal information of that individual for the purposes of the FOI Act. That is, the information requested combined with the positive identification of the individuals reveals information of a personal nature about them such as their category of employment under the *Public Service Act 1999*.

Prior to determining if the requested information should be exempted from disclosure under s.47F, I have cast my mind to and considered the following matters as set out in s.47F(2)(a) to (d):

- (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.*

I find that the requested information is personal information in an employment context; it is neither well-known nor publicly available; and that the identified and named individuals have not consented to its disclosure which may cause distress to them.

I have also reviewed the factors and considerations set out in original decision and concur with the findings.

I am satisfied that the information requested is conditionally exempt information and its disclosure would be an unreasonable disclosure of the personal information of any person pursuant to section 47F of the FOI Act.

Rights of Review

I have set out your rights to seek a review of my decision at **Attachment A**.

If you would like to clarify any aspects of my decision, please do not hesitate to contact me via email at foi@ndis.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to be the name 'Misty'.

Misty
Assistant Director FOI
Parliamentary, Ministerial & FOI Branch
Government Division

Your rights of review

External Review by the Australian Information Commissioner

Section 54L of the FOI Act gives you the right to apply directly to the Australian Information Commissioner (AIC) to seek a review of this decision.

If you wish to have the decision reviewed by the OAIC you must apply for the review, in writing or by using the online merits review form available on the AIC's website at www.oaic.gov.au, within 60 days of receipt of this letter.

To assist the OAIC your application should include a copy of this decision and your contact details. You should also clearly set out why you are objecting to the decision.

You can also complain to the OAIC about how an agency handled an FOI request, or other actions the agency took under the FOI Act.

Applications for review or complaints can be lodged with the OAIC in the following ways:

Online: www.oaic.gov.au
Post: GPO Box 5218, Sydney NSW 2001
Fax: +61 2 9284 9666
Email: enquiries@oaic.gov.au

The OAIC can also be contacted on **1300 363 992**.

The Commonwealth Ombudsman

You can complain to the Commonwealth Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act.

A complaint to the Commonwealth Ombudsman may be made orally or in writing. The Ombudsman may be contacted for the cost of a local call from anywhere in Australia on telephone **1300 362 072**.