

4 December 2023

Brittany Smith

By email: foi+request-10524-59ee2693@righttoknow.org.au

Dear Brittany Smith

Freedom of Information request — Notification of Decision

Thank you for your correspondence of 4 August 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).

Scope of your request

You have requested access to the following documents:

“Please provide the names and titles of all current NDIA employees.”

I note that as the names and titles of Senior Executive Service (SES) employees is publicly available information, I have not considered them as part of the scope of your request and provide you the following [link](#) where you can access this information yourself.

Additionally, to further assist you, please see the following [link](#) to the Australian Government Directory, which is a guide to all organisations, structures and key people working for the Australian government.

Expiration of time

We have been experiencing processing delays and were not able to provide our decision to you by the due date of 3 September 2023. Consequently, your application was regarded as a deemed refusal under section 15AC of the FOI Act.

I note this access decision is being released to you after the due date and I apologise for the delay. 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 have decided to refuse your request for access to names and titles of agency staff that are not already publicly available under section 47E(c) of the FOI Act.

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

A detailed statement of reasons for my decision can be found at **Attachment A**.

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, appearing to read "Jennifer". The signature is written in a cursive style with a large, looping initial "J".

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

**Statement of Reasons
FOI23/24-0136**

Refused information*Conditionally exempt information contrary to the public interest*

I have refused access to the request for names and titles of NDIA staff below the SES level.

Relevant law

Under the FOI Act, a person has a legally enforceable right to obtain access to a document of an agency.¹ However, an agency can withhold access to a document if the information is conditionally exempt at a particular time, and access to the document at that time would, on balance, be contrary to the public interest.²

Certain operations of agencies (section 47E(c))

Section 47E(c) of the FOI Act conditionally exempts a document if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency.

You have requested access to the names and titles of all current NDIA employees. Due to the nature of work undertaken by staff employed by the NDIA, and in line with section 19 of the *Work Health and Safety Act 2011* which requires employers to ensure, as far as is reasonably practicable, the health, safety and wellbeing of their workers, full names and titles of agency staff at a level lower than SES are not routinely disclosed under FOI in circumstances where an applicant has had no previous contact or engagement with the staff member. This is in response to the evolution of the digital environment including its ubiquity, accessibility, and longevity giving rise to new risks for public servants, as well as for citizens. I note this does not apply to staff at an SES level and this information can be accessed via the agency's organisational chart (link provided for your convenience in the decision notice).

I am therefore satisfied that the disclosure of all current staff full names and titles would have an adverse effect on the management of the NDIA's personnel and is conditionally exempt information under section 47E(c) of the FOI Act. I will explain my reasoning below.

Factors in favour of disclosure

In favour of disclosure, I consider disclosure of the information could reasonably be expected to:

- *promote the objects of the FOI Act (including all matters set out in sections 3 and 3A)*

This is because the disclosure of public servant names and titles would contribute to the transparency and accountability of public servants performing their role in government.

For this reason, I afford significant weight to this factor in favour of disclosure.

Factors in favour of non-disclosure

The FOI Act does not list any factors weighing against disclosure. These factors will depend on the circumstances. However, the inclusion of the exemptions and conditional exemptions in the FOI Act recognises that harm may result from the disclosure of some types of documents in certain circumstances.

¹ Section 11(1)(a) of the FOI Act.

² Section 11A(5) of the FOI Act.

In favour of non-disclosure, I consider the disclosure of the requested information could reasonably be expected to have the following the impacts on agency staff:

- *the use of social media being used to identify and pursue staff outside of their place of work, and also their families;*
- *staff being approached and harassed; and*
- *staff being subject to online abuse.*

As noted above, the context in which public servants perform their work has changed. The FOI act was created in 1982 therefore, in more recent times, due to an increasingly digital world, documents released in response to FOI requests can be published without effort and quickly disseminated globally. Furthermore, documents can easily be accessed using standard search engines and effectively made permanently available to the world at large. Once the information is released, personal information is accessible indefinitely and there is no further protection for an agency, particularly where the information has become outdated because of staff movements and changes to staff names. I note the Australian Government has a legislated duty of care to, as far as is practicable, to ensure the health and safety of its workers.

For these reasons, I afford significant weight to these factors in favour of non-disclosure.

Balancing the relevant factors

In summary, I am satisfied that the factors against disclosure outweigh the factors in favour of disclosure and that, on balance, it would be contrary to the public interest to release the full names and titles of staff below the SES level. Accordingly, I have decided the information is exempt information under section 47E(c) of the FOI Act.

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.