

18 September 2023

Karen and Rob Stewart

By email: foi+request-10546-2e6ead6d@righttoknow.org.au

Dear Karen and Rob Stewart

Freedom of Information request — Notification of Decision

Thank you for your correspondence of 10 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).

The purpose of this letter is to provide you with a decision on your request.

Scope of your request

In your original application, you requested access to the following documents:

- *“I request a copy of all documents, file notes, emails, correspondence and reports of the Tasmanian PACE evaluation/trial, including the methodology used, participant responses and full questionnaires.”*

Request Consultation Process

On 28 August 2023, I sent you an email with attached correspondence initiating a consultation process under section 24AB of the FOI Act. I advised that the work involved in processing your request in its current form would substantially and unreasonably divert the resources of the NDIA from its other operations due to its size, complexity, and broad scope.

I explained the reasons for this and provided you with a link to a significant volume of publicly available information for your review and consideration, and provided you with options on how to proceed.

I confirm on 1 September 2023, you responded to my request consultation and narrowed the scope of your request as follows:

- *The text of the full questionnaire and methodology used to carry out the evaluation of the Tasmanian PACE trial;*
- *The number of respondents who participated in the evaluation;*
- *The number of NDIS participants who were involved in responding to the evaluation;*
- *Any final report or correspondence to the NDIA/Minister about the evaluation and the decision to proceed with the PACE rollout across Australia.*

On 8 September 2023, I responded to your revised scope advising that with reference to points 2 and 3 above, as these are questions requiring answers rather than a request for access to documents, that I would ask the questions of the business unit and provide the responses to you administratively, outside to the FOI process unless I hear from you to the

contrary. I also advised that I consider the practical refusal reason removed and I will continue to process your request based on the following scope:

- *The text of the full questionnaire and methodology used to carry out the evaluation of the Tasmanian PACE trial; and*
- *Any final report or correspondence to the NDIA/Minister about the evaluation and the decision to proceed with the PACE rollout across Australia.*

I also advised that the new due date for a decision on your matter is 16 September 2023 in accordance with section 24AB(8) of the FOI Act. As I have had no further correspondence from you, I have proceeded based on the revised scope and my correspondence of 8 September 2023.

Deadline for Decision

I note that 16 September 2023 fell on a Saturday. Section 36(2) of the *Acts Interpretation Act 1901* sets out that if an Act requires a thing to be done by a deadline that falls on a public holiday or weekend, it can legitimately be done the next working day. As such, I confirm the new due date to be 18 September 2023.

Decision on access to documents

I made this decision as an authorised FOI decision maker under section 23(1) of the FOI Act.

For ease of reading, I have addressed and processed your scope in 2 parts.

Part 1 – Full Access

A search for documents has been conducted by Service Design and Improvement, and I have been provided with copies of 6 documents which fall within the scope of your request.

After examining the documents, I have decided to grant access in full to all 6 documents. These documents relate to full questionnaires and methodology used to carry out the evaluation of the Tasmanian PACE trial.

Release of documents

The documents for release, being documents 1 – 6 on pages 1 – 74 are enclosed.

Part 2 – Refusal of Access

In summary, regarding part 2 of your scope for any final report or correspondence to the NDIA/Minister about the evaluation and the decision to proceed with the PACE rollout across Australia, I have decided to refuse access to the information you have requested on the basis that the documents are non-existent pursuant to section 24A of the FOI Act.

A detailed statement of reasons explaining my decision is **Attachment A** to this decision notice.

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
FOI23/24-0145

Refused information

I have refused access to the information you have requested on the basis that the documents do not exist under section 24A of the FOI Act.

Relevant law

Under the FOI Act, a person has a right to be given access to documents of an agency. However, the right of access is subject to limitations, including grounds for refusal of access. Section 24A of the FOI Act states that an agency may refuse a request for access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that the document cannot be found or does not exist.

After reviewing the scope of your FOI application, I determined that NDIA needed to undertake searches to assess whether the documents you requested existed.

Following these searches, it was determined that currently no **final** report or correspondence to the NDIA/Minister about the evaluation and the decision to proceed with the PACE rollout across Australia exists at this time.

I have reviewed the searches undertaken by the NDIA and I am satisfied that if the information existed, the searches performed would have located it. I consider that NDIA has taken all reasonable steps to locate the documents and that the documents in their final form do not exist.

Conclusion

For these reasons, I consider there are reasonable grounds to be satisfied that the documents do not exist and that the NDIA has taken all reasonable steps to locate the information. On the basis, I refuse access to the information under section 24A 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.