

13 October 2023

D.Davidson

**By email:** [foi+request-10568-d3fdde2c@righttoknow.org.au](mailto:foi+request-10568-d3fdde2c@righttoknow.org.au)

Dear D.Davidson

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

Thank you for your correspondence of 15 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**

You have requested access to the following documents:

*Please provide all documents which are related to the costs charged to the National Disability Insurance Scheme and or any other Government Department (including costs borne by the department in relation to the Commonwealth, defending the matter 2023/3262 Davidson vs National Disability Insurance Agency in the Administrative Appeals Tribunal (AAT), as well as in-house.*

*This includes any documents;*

*a. Hours worked and have not been charged to another government department; b. All invoices issued by Makinson d'Apice Lawyers; c. Fees and invoices issued by AGS (Australian Government Solicitor); d. Any other document which falls within the scope of this request that the department holds.*

*This is from period January 2022 - current.*

#### **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 fall 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 1 document in part.

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.

## **Reasons for decision**

### Business Information (section 47G)

Some documents falling within scope of your request contain information that is conditionally exempt from release under section 47G of the FOI Act.

Section 47G of the FOI Act conditionally exempts a document if its disclosure would disclose information concerning a person in respect of their business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in which the disclosure of the information:

- would or could reasonably be expected to, unreasonably affect that person adversely in respect of their lawful business or professional affairs of that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
- could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

The information that is conditionally exempt includes sensitive business details of a third party that were provided to the Agency in confidence with an expectation that they would not be disclosed further. The third party has contended that the disclosure of this information would unreasonably affect their business affairs, in that it would infringe on confidentiality agreements and could unfairly affect the lawful operations of their business.

I am satisfied that the disclosure of this information could unreasonably and adversely affect the business affairs of a third party and affect any potential or current business relationship with the Agency.

### Public interest considerations – section 47G

Section 11A(5) of the FOI Act provides that access to a document covered by a conditional exemption must be provided unless disclosure would be contrary to the public interest.

I have not considered any of the irrelevant factors as set out under section 11B(4) of the FOI Act in making this decision.

In favour of disclosure, I have considered the factors outlined in section 11B(3) of the FOI Act, and I have determined that disclosure of the relevant information in Document 1 would promote the objects of the FOI Act by providing access to documents held by the government and providing access to information relating to the matter 2023/3262.

Against disclosure, I consider that disclosure of the relevant information in Document 1:

- would not contribute to the publication of information of sufficient public interest to justify the likely harm caused by release
- would not enhance Australia's representative democracy in the ways described in section 11B(3) of the FOI Act

- would not inform any debate on a matter of public importance, or promote oversight of public expenditure.

While there is limited public interest in the disclosure of information conditionally exempt under section 47G of the FOI Act, the harm that would result from disclosure is that it could reasonably be expected to:

- compromise the business or professional affairs of a third party and interfere with their ability to undertake their lawful business.

In summary, I am satisfied that the factors against disclosure of the information outweigh the factors in favour of disclosure and that, on balance, it would be contrary to the public interest to release this information to you. Accordingly, I have decided that the relevant information in Document 1 is exempt under section 47G of the FOI Act.

### **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)



### **Ankit**

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

## Schedule of Documents for FOI 23/24-0161

Document number	Page number	Description	Access Decision
1	1-3	<b>Makinson d'Apice Invoice 235308</b> Date: 28 August 2023	<b>PARTIAL ACCESS</b> Exemption claimed: s47G – business information

## **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