

8 February 2024

By email: foi+request-10898-ac14d74a@righttoknow.org.au

Dear JE

Freedom of Information request — Notification of Decision

Thank you for your correspondence of 22 November 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:

“...Any documents, reports, templates, matrixs[sic], calculators, decisons[sic], communications (written and or recorded by electronic device) the Agency uses, accesses or has in posession[sic] that defines the term ""exhausted"" in Operational Guidelines[sic] 11.1 Does the NDIA fund family members to provide supports? This requested relates to the word ""exhausted"" as a definition within the National Disability Insurance Agency own operational guidlines[sic].”

Extension of time

I have submitted to the Office of the Australian Information Commissioner (OAIC) an application for further time under section 15AC of the FOI Act. While I have not received a response to this application, I am making the decision today rather than holding the decision until the application is considered. The outcome of their decision will have a technical effect on the available review rights. We would be happy to discuss this if you require clarification.

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 decided to refuse your request for access under section 24A of the FOI Act. The reasons for my decision are set out below.

In reaching my decision, I took the following into account:

Delivered by the

National Disability
Insurance Agency

- your correspondence outlining the scope of your request the FOI Act
- the FOI Guidelines published under section 93A of the FOI Act
- consultation with relevant officers of the NDIA
- the NDIA's operating environment and functions.

Reasons for decision - Refuse a request for access (section 24A)

Section 24A of the FOI Act provides 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.

I have conducted searches of the NDIA's documents management systems and made enquiries with NDIA staff. These enquiries have revealed that the NDIA is not in possession of documents matching the scope of your request. This is because the NDIA does not hold a document that defines what 'exhausted' means in the context of the Operational Guidelines. I have been advised that in the absence of a definition, the ordinary or dictionary meaning of the word applies.

I am satisfied that all reasonable steps have been taken to locate the documents you have requested and that the documents do not exist. I have, therefore, decided to refuse access to your request in accordance with section 24A(1)(b)(ii) of the FOI Act.

Rights of review

Your rights to seek a review of my decision, or lodge a complaint, are set out at **Attachment A**.

Should you have any enquiries concerning this matter, please do not hesitate to contact me by email at foi@ndis.gov.au.

Yours sincerely

Laura

Laura
Assistant Director
Complaints Management & FOI Branch
General Counsel Division

Your review rights

At the time of making this decision, the Office of the Australian Information Commissioner (OAIC) has not made its decision on our application for further time under s 15AC. As a consequence, Information Commissioner (IC) review may be the next formal review option available to you. If further time is granted, internal review will be an option available to you.

As noted above, we would be happy to discuss the review options and any assistance we can provide, if you are unclear about any aspects of this decision.

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
Complaints Management & FOI Branch
General Counsel 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.