

19 September 2024

Bob Buckley

**By email:** [foi+request-11735-edc931e3@righttoknow.org.au](mailto:foi+request-11735-edc931e3@righttoknow.org.au)

Dear Bob Buckley

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

Thank you for your correspondence of 22 July 2024 (**your correspondence**), seeking access under the *Freedom of Information Act 1982 (FOI Act)* to documents held by the National Disability Insurance Agency (**NDIA**).

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 information (since 4/1/2023), in accordance with the Freedom of Information Act, relating to any and all reviews or the disposition of the aforementioned Guide and any revised versions or replacement guides.*

*Please include (but not limited to):*

- 1. information, advice, recommendations, etc. that are outcomes of from reviews conducted.*
- 2. information relating to the scheduling, conduct, and to inform the review process for the guide.*
- 3. changes to the disposition of the guide.*
- 4. community concerns about the guide and the NDIA's considerations of those concerns."*

### **Expiration of time**

As we were not able to complete your application by the legislated due date of 21 August 2024, your application is regarded as a deemed refusal under section 15AC of the FOI Act. I have continued processing your request and advise that although you no longer have internal review rights regarding my decision, you still retain your right to seek external review. Details are set out in **Attachment B** to this letter.

### **Decision Structure**

For ease of reading, I have framed my decision in two parts below.

## ITEM 1 OF YOUR SCOPE

### Scope:

*...any and all reviews or the disposition of the aforementioned Guide and any revised versions or replacement guides.*

*Please include (but not limited to):*

*1. information, advice, recommendations, etc. that are outcomes of from reviews conducted.*

### Search efforts

The Legal Practice and Capability Branch searched for documents and located one (1) document relevant to the scope of your request.

### Decision

I have decided to grant access to one (1) document in full.

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.

In reaching my decision, I considered:

- your correspondence outlining the scope of your request
- the nature and content of the documents falling within the scope of your request
- provisions of the FOI Act
- the FOI Guidelines published under section 93A of the FOI Act
- the results of consultation with relevant NDIA staff
- the NDIA's operating environment and functions.

For context when viewing this document, I have included information below about the process the NDIA used to review the guide.

This document and responsibility for its review sat with the Quality, Reporting Strategy and Training Team (QRST) under the AAT Case Management Branch (AAT CM). Following a restructure, responsibility for this document, and its review, now sits with the Agency's Legal Practice and Capability Branch.

In line with the information released to you as part of FOI 23/24-0201, the NDIA's AAT Case Management Guide for Applied Behaviour Analysis (ABA) was scheduled to be reviewed 'initially 6 monthly'. The AAT CM confirmed it commenced a review of this document at the end of August 2023.

On 5 September 2023, the guide was sent to the Director for Communication and Engagement who made notes (Document 1) as part of the initial review. The Director for QRST decided that as no substantial changes were required, and no changes were known or anticipated to the Agency's policy approach to ABA, the document did not need to be amended or revised. This decision concluded the review.

The Legal Practice and Capability Branch confirmed that this guide is due to be reviewed 12 months from September 2023.

Please be aware that the document we have provided was an attachment to an email. We reviewed this email and concluded it was out of scope of your request, which is why it has not also been provided.

## **ITEMS 2, 3 AND 4 OF YOUR SCOPE**

### **Scope:**

- 2. information relating to the scheduling, conduct, and to inform the review process for the guide.*
- 3. changes to the disposition of the guide.*
- 4. community concerns about the guide and the NDIA's considerations of those concerns.*

### **Search efforts**

The Legal Practice and Capability Branch searched for but did not locate any documents relevant to the scope of your request.

### **Decision**

I have decided to refuse access to the information in items 2, 3 and 4 of your request pursuant to 24A of the FOI Act.

### **Reasons for decision**

The Legal Practice and Capability Branch conducted searches for these items and advised that no documents were located relevant to the scope of your request.

For this reason, I consider there are grounds to be satisfied that the Legal Practice and Capability Branch conducted sufficient searches, that the NDIA has taken all reasonable steps to locate the information and that the documents do not exist.

I therefore refuse access to the information under 24A 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**.

If you have any questions about this matter, please contact me by email at [foi@ndis.gov.au](mailto:foi@ndis.gov.au).

Yours sincerely



### **Patrick (PHO293)**

Senior Freedom of Information Officer  
Complaints Management & FOI Branch  
General Counsel Division

## Schedule of Documents for FOI 24/25-0080

Document number	Page number	Description	Access Decision
1	1-4	AAT CM Guide - Applied Behavioural Analysis (with comments) Date: 6 September 2023	FULL ACCESS

## **Your review rights**

As this matter was a deemed refusal, internal review of this decision is not an option. However, if you have concern with any aspect of this decision, please contact the NDIA FOI team by email [foi@ndis.gov.au](mailto:foi@ndis.gov.au) or by post:

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 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.