

23 August 2024

Emily Lacey

By email: foi+request-11771-078de72a@righttoknow.org.au

Dear Emily Lacey

Freedom of Information request — Notification of Decision

Thank you for your correspondence of 26 July 2024, 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:

The internal documents:

1. *Practice Guide – Review of Decisions*

<https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fintranet.ndiastaff.ndia.gov.au%2Fservice-delivery%2FPages%2FPractice-Guidance.aspx&data=05%7C02%7Cfoi%40ndis.gov.au%7C2ff38296ede447dc832908dcad655db6%7Ccd778b65752d454a87cfb9990fe58993%7C0%7C0%7C638575898232942430%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCI6Mn0%3D%7C60000%7C%7C%7C&sdata=IWk65YUsktp2P1%2BZA2EtmzbqVw%2Fp1JU6mpGORpn22%2BM%3D&reserved=0>

2. *Standard Operating Procedure – Complete a Verbal Access Request (VAR)*

https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fintranet.ndiastaff.ndia.gov.au%2Fservice-delivery%2FPathwayResources%2FSOP_Access_CompleteVAR.docx&data=05%7C02%7Cfoi%40ndis.gov.au%7C2ff38296ede447dc832908dcad655db6%7Ccd778b65752d454a87cfb9990fe58993%7C0%7C0%7C638575898232950776%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCI6Mn0%3D%7C60000%7C%7C%7C&sdata=IWk65YUsktp2P1%2BZA2EtmzbqVw%2Fp1JU6mpGORpn22%2BM%3D&reserved=0

3D%7C60000%7C%7C%7C&sdata=nkPM1PeqhGKyFfK7n%2FWHvoGCblYTosQZ3sxmfUXxKSY%3D&reserved=0)

3. Standard Operating Procedure – Attach evidence – Validate access request
([4. Article “Review the escalation and prioritisation matrix”
\(\[5. Article “Create a participant plan change request where the legislative type isn't specified”
\\(\\[### **Search efforts**\\]\\(https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fndia.my.salesforce.com%2Farticles%2Fknowledge%2F390927971&data=05%7C02%7Cfoi%40ndis.gov.au%7C2ff38296ede447dc832908dcad655db6%7Ccd778b65752d454a87cfb9990fe58993%7C0%7C0%7C638575898232959998%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikl1haWwiLCJXVCI6Mn0%3D%7C60000%7C%7C%7C&sdata=b4Ymh15XuYG8WZL0f09UOyTgrfdx8LO6goJ9B8ndPn4%3D&reserved=0 \\)\\)</p></div><div data-bbox=\\)\]\(https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fndia.my.salesforce.com%2Farticles%2Fknowledge%2F202260459&data=05%7C02%7Cfoi%40ndis.gov.au%7C2ff38296ede447dc832908dcad655db6%7Ccd778b65752d454a87cfb9990fe58993%7C0%7C0%7C638575898232956481%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikl1haWwiLCJXVCI6Mn0%3D%7C60000%7C%7C%7C&sdata=PTvqzTgBfWJOroNcOnWFZd%2B8fXJGqq953Yulxcoocyk%3D&reserved=0 \)\)</p></div><div data-bbox=\)](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fintranet.ndiastaff.ndia.gov.au%2Fservice-delivery%2FPathwayResources%2FSOP_Access_AttachEvidence_ValAccessRequest.docx&data=05%7C02%7Cfoi%40ndis.gov.au%7C2ff38296ede447dc832908dcad655db6%7Ccd778b65752d454a87cfb9990fe58993%7C0%7C0%7C638575898232953641%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikl1haWwiLCJXVCI6Mn0%3D%7C60000%7C%7C%7C&sdata=hHLdQehRW1KejRyT8wN9dB AOrcalQEQujufOEEGyZvnl%3D&reserved=0))</p></div><div data-bbox=)

A search for documents has been conducted by the NDIA's Service Guidance and Practice (SG&P) branch, and I have been provided with 5 copies of documents relevant to the scope of your request.

Decision on access to documents

After examining the document, I have decided to grant access to 3 documents in full and 2 documents in part.

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

Reason for decision

I have decided that some information will not be released as it comprises information that is conditionally exempt under section 47F, where disclosure would be contrary to the public interest.

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

Release of documents

The documents for release, as referred to in the Schedule of Documents at **Attachment B**, are enclosed.

Rights of review

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

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 cursive script that reads "Wendy".**Wendy (WNN633)**

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

**Statement of Reasons
FOI 24/25-0113**

Access to edited copies with exempt or irrelevant material deleted (section 22)

I have decided that document 2 and 3 contains material that is exempt from disclosure under the FOI Act. This material can generally be described as the names of third-party organisations and the personal identifying information of NDIS participants and other individuals.

I have also identified that Document 3 contains material that is irrelevant to your request. The irrelevant material relates to names and contact details of NDIA staff. In accordance with section 22 of the FOI Act, I have considered whether it is possible to delete the exempt and irrelevant material from the documents and have concluded that it is reasonably practicable to do so. Accordingly, I have prepared an edited copy of the documents with the exempt and irrelevant material removed.

Relevant Law

Under the FOI Act, a person has a legally enforceable right to obtain access to a document of an agency,¹ however a decision maker must decide whether access to a conditionally exempt document would, on balance, be contrary to the public interest.²

Personal Information – section 47F

Section 47F of the FOI Act conditionally exempts a document if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a. whether the information or opinion is true or not
- b. whether the information or opinion is recorded in a material form or not.³

I have identified material in the documents falling within scope of your request which contains personal information of third parties. The information in issue can be described as

¹ Section 11(1)(a) of the FOI Act.

² Section 11B(1)-(5) of the FOI Act.

³ Paragraph 6.127 of the FOI Guidelines.

information about NDIS participants which has been used as an example for training purposes. I am satisfied this information meets the definition of personal information.

Public interest considerations

Irrelevant factors

I have examined the irrelevant factors in section 11B(4) of the FOI Act and I am satisfied I have not taken into account any irrelevant factors in reaching my decision.

Factors favouring disclosure

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 information would:

- promote the objects of the FOI Act (including all matters set out in sections 3 and 3A; and
- allow a person to access his or her personal information.

This is because providing access to documents held by the NDIA allows for increased scrutiny, discussion, comment, and review of government held information. For these reasons, I have afforded significant to the factors favouring disclosure.

Factors favouring nondisclosure

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

I note, in the circumstances of this matter, that the disclosure of the information in issue could reasonably be expected to:

- affect an individual's right to privacy by having their personal information in the public domain; and
- cause a public interest harm if disclosure would disclose personal information of a person (including a deceased person).

Parliament's intention to protect the privacy of individuals is evidenced by the terms of both the *Privacy Act 1988* (Cth) and the *National Disability Insurance Scheme Act 2013* (Cth). I am satisfied that by disclosing the names and personal opinions of the individuals whose

information I have redacted from the documents, could reasonably be expected to prejudice those individuals' right to privacy and cause harm to the public interest.

I have therefore decided to afford significant weight to these factors favouring nondisclosure of the information in issue.

Balancing the relevant factors

As the information in issue relates to the personal information of a number of third-parties, I am satisfied that disclosure of the information could reasonably be expected to impact the privacy of those individuals.

In summary, I am satisfied that the factors against the 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 to release the majority of the information to you, with contrary to the public interest information removed under section 47F of the FOI Act.

Schedule of Documents for FOI 24/25-0113

Document number	Page number	Description	Access Decision	Comments
1	1-11	Practice Guide – Review of Decisions Various dates	FULL ACCESS	
2	12-42	Standard Operating Procedure – Complete a Verbal Access Request Various dates	PARTIAL ACCESS Exemption claimed: s47F – personal privacy	
3	43-74	Standard Operating Procedure – Attach evidence – validate access request Various dates	PARTIAL ACCESS Exemption claimed: s47F – personal privacy	Irrelevant material removed under section 22 of the FOI Act
4	75-82	Knowledge Article – Review the escalation and prioritisation matrix Various dates	FULL ACCESS	
5	83-93	Knowledge Article – Create a participant plan change request where the legislative type isn't specified Various dates	FULL ACCESS	

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
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.