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9 December 2024

Clementine Saber

By email: foi+request-12133-e9a6569c@righttoknow.org.au

Dear Clementine Saber

Freedom of Information request

Thank you for your correspondence of 2 October 2024, in which you requested 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

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

“... (1). All internal guidance and policy documents related to 'replacement supports'. Please provide a copy of each version of these documents, including both final and draft versions.

(2). All emails between NDIA staff, involved in the development or endorsement of the 'Replacement list (DOCX 288KB)' document, where the document is discussed. Please include a copy of any documents attached or linked in the emails.

(3). All meeting briefs/papers that involve the development or endorsement of the 'Replacement list (DOCX 288KB)' document.

(4). All meeting briefs/papers that involve the development or endorsement of the documents identified for section (1) of this request.

Please include all identified documents in full. I consider all parts of a document to be relevant, even if they are addressing topics other than 'replacement supports'...”

On 31 October 2024, I wrote to you advising that based on searches conducted, a practical refusal reason existed, and we were initiating a request consultation process required under section 24AB of the FOI Act. I suggested that you:

- consider narrowing the scope of part 1 of your request to current documents, rather than each version of any such document
- consider providing a date range for parts 3 and 4 of your request
- consider providing additional key words that might be searched for in order to identify documents falling within scope of part 2 of your request

On 13 November 2024 you responded to this consultation with the following scope revision:

“(1 Revised Version). All internal guidance and policy documents related to 'replacement supports'. Please provide the most current version of each document, whether this is a final or draft version.

(2 Revised Version). Emails to or from an acting or permanent: Deputy CEO, General Manager, or the Chief Legal Counsel at the NDIA regarding the development or endorsement of the 'Replacement list (DOCX 288KB)' document, where the document is discussed. Please include a copy of any documents attached or linked in the emails.

(3). All meeting briefs/papers that involve the development or endorsement of the 'Replacement list (DOCX 288KB)' document.

And exclude point (4) from my request...”

On 15 November 2024, I advised you that the practical refusal reason still existed. This followed consultation with the NDIA's Cyber Security and Resilience Branch, who advised they were unable to perform searches of emails by reference to the position of the person who sent or received them.

I also pointed out that there are currently approximately 25 Deputy CEOs and General Managers employed by the NDIA and that other persons will have acted in those positions over the years. I therefore suggested withdrawing part 2 of your request, and submitting it as a new Freedom of Information request made with reference to the NDIA's external [Organisational structure | NDIS](#).

You responded to this email on 15 November 2024 providing a further revision of the scope of your request. I consider the current scope of your application to be:

"(1) All internal guidance and policy documents related to 'replacement supports'. Please provide the most current version of each document, whether this is a final or draft version.

(2) Emails sent between January 1st 2024 and October 2nd 2024, to or from acting or permanent NDIA staff who held the following positions at that time, regarding the development or endorsement of the 'Replacement list (DOCX 288KB)' document, where the document is discussed:

- Deputy CEO, First Nations*
- Deputy CEO, Integrity Transformation and Fraud Fusion Taskforce*
- Deputy CEO, Partners, Providers and Home and Living*
- Deputy CEO, Service Delivery*
- Deputy CEO, Service Design and Improvement*
- Deputy CEO, Governance, Risk and Legal*
- General Manager, Integrity Transformation (Integrity Transformation and Fraud Fusion Taskforce)*
- General Manager, Fraud Fusion Taskforce and Integrity Capability (Integrity Transformation and Fraud Fusion Taskforce)*
- General Manager, Partners (Partners, Providers and Home and Living)*
- General Manager, Home and Living (Partners, Providers and Home and Living)*
- General Manager, Providers and Market Coordination (Partners, Providers and Home and Living)*

- General Manager, Pricing and Market Stewardship (Partners, Providers and Home and Living)
- General Manager, QLD State Manager (Service Delivery)
- General Manager, NSW State Manager (Service Delivery)
- General Manager, VIC State Manager (Service Delivery)
- General Manager, Specialised Service Delivery (Service Delivery)
- General Manager, SA, WA, NT and Remote Services (Service Delivery)
- General Manager, Operations, Performance & Capability (Service Delivery)
- General Manager, Service Design (Service Design and Improvement)
- General Manager, Co-Design and Engagement (Service Design and Improvement)
- General Manager, Policy, Evidence and Practice Leadership (Service Design and Improvement)
- General Manager, Strategic Communications (Service Design and Improvement)
- Chief Legal Counsel (Governance, Risk and Legal)
- General Manager, Government (Governance, Risk and Legal)
- General Counsel (Governance, Risk and Legal)
- General Manager for Chief Counsel (Governance, Risk and Legal)
- General Manager, Risk, Audit and Resilience (Chief Risk Officer) (Governance, Risk and Legal)
- General Manager Analytics Data and Actuarial and Chief Data Officer (Enabling Services / Chief Operating Office)

Please include a copy of any documents attached or linked in the identified emails.

(3). All meeting briefs/papers that involve the development or endorsement of the 'Replacement list (DOCX 288KB)' document."

Request for Extension of time

On 9 October 2024, the FOI team wrote to you requesting your agreement to a 30-day extension of time under section 15AA of the FOI Act. On 14 October 2024, you declined the request to extend the processing time of this FOI request.

On 13 November 2024, I applied to OAIC for a 30-day extension of time under section 15AB of the FOI Act. On 19 November 2024, OAIC declined the application to extend time.

Expiration of time

A 30-day statutory period for processing your request commenced from 2 October 2024, in accordance with section 15(5)(b) of the FOI Act. The due date for a decision on access was 14 November 2024 due to the section 24AB request consultation period undertaken between 31 October 2024 until 13 November 2024, when you responded to the notice.

I note this time has lapsed and as a result we are deemed to have refused your request under section 15AC of the FOI Act.

Despite this, I have continued to process your application. I apologise for the delay and confirm that you retain your right to seek external review of this decision.

Decision on access to documents

Taking into consideration your response to the consultation process, I have decided to refuse your request pursuant to section 24(1)(b) of the FOI Act on the grounds that your revised scope does not remove the reasons for a practical refusal.

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

Reasons for decision

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

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



Patrick (PHO293)

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

**Statement of Reasons
FOI 24/25-0432**

Practical refusal reason*Relevant law – s24AA*

A practical refusal reason exists in relation to a request for documents if the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations¹.

In determining whether processing the request would substantially and unreasonably divert the agency's resources, I am required to consider the resources that would have to be used for the following components:

- identifying, locating or collating the documents within the Agency
- deciding whether to grant, refuse or defer access to a document, including resources used for examining the document and consulting with any person or body in relation to the request
- making a copy or an edited copy of the document
- notifying the decision on the request

Internal Consultation

On the basis of the initial scope of your request, I initiated searches for documents by the NDIA's Cyber Security and Resilience, Service Guidance, Policy and Parliamentary and Ministerial branches. The Data Team in Cyber Security and Resilience Branch advised me:

- A key-word search was performed on the NDIA's email server, and 588 items were located responsive to the keywords and criteria used, namely:
 - Emails between NDIA staff
 - Keywords: 'Replacement supports list'
 - Date range: up to 2 October 2024.

The 588 items located may not be relevant to the scope of your request; to determine this would require scrutiny of the documents by an FOI Officer to assess whether the documents identified by the search relate to the development or endorsement of the Replacement Supports List. At a conservative estimate of spending two minutes assessing each item, it would take an FOI Officer over 19 hours to simply review and collate the documents relevant to your scope.

As a result of my enquiries, I was satisfied that the work involved in processing the request in its then form would have substantially and unreasonably diverted the resources of the Agency from its other operations.²

Request consultation process

On 31 October 2024, I wrote to you advising that, based on the search results, a practical refusal reason existed for this FOI application. In circumstances where an Agency is considering a practical refusal, it is required to undertake a request consultation process under section 24AB of the FOI Act. I invited you to do one of following things within the 14 days consultation period.

¹ 24AA(1)(a) of the FOI Act.

² Section 24AA of the FOI Act.

- withdraw your request;
- make a revised request; or
- indicate that you do not wish to revise the request (in which case the current scope of your request will stand).

To assist you with revising your scope, I suggested that you consider:

- Narrowing Part 1 of your request so as to limit it to current internal guidance and policy documents related to 'replacement supports' and not every version of these documents.
- Provide a date range for parts 3 and 4 of your request, noting that the Data team had advised that the majority of their search results related to documents created in September and October 2024, and that scoping of part 2 of your request was not possible by only providing a date range.
- Provide additional keywords to be used in searches that would help locate emails relevant to your request.

Revision of scope

On 13 November 2024, you responded to the section 24AB notice to revise your scope.

On 15 November 2024, I replied to you, advising that I had re-consulted with the Data Team who advised that they are unable to perform searches using organisational position names and would only be able to perform the searches you have requested if provided with the names of Deputy CEOs, General Managers or Chief Legal Counsel.

Given this, it remained the position that there would be 588 search results to scrutinise whether they fell within the scope of your request, and the practical refusal reason still stood.

In my email, I suggested withdrawing Part 2 of your request and submitting it as a new Freedom of Information request using the NDIS's external [Organisational structure | NDIS](#). If you were to name specific roles in your new request, this would have narrowed down the search parameters considerably, given that the NDIA currently employs approximately 25 Deputy CEOs and General Managers with further people having acted in these positions over the years.

On 15 November 2024 you replied to my email with a further revision of scope, adding a date range and providing all 28 positions from the NDIS's external organisational structure.

I note your email also made assertions I wish to address. Firstly, you have asked if I was not able to crosscheck the names of the "acting or permanent Deputy CEO's, General Managers or the Chief Legal Counsels" using the NDIA's internal record of the organisational structure, and then make the search using the names I identify.

Your scope at the time specified:

*Emails to or from an acting or permanent: Deputy CEO, General Manager, or the Chief Legal Counsel at the NDIA regarding the development or endorsement of the 'Replacement list (DOCX 288KB)' document, where the document is discussed.
Please include a copy of any documents attached or linked in the emails.*

To satisfy the scope of your request, it would not be enough to perform a single search using the internal record of the organisational structure, as this would only provide a snapshot of current staff members and would not capture names of staff who have previously held or acted in these roles. This would require more in-depth searches than a simple crosscheck.

Second, you have stated:

“To me it would seem denying the request based on the absence of given names when I have provided position level/title would go against the OAIC FOI Guidelines for assisting the applicant in their request and because “agencies and ministers should undertake a reasonable search on a flexible and common sense interpretation of the terms of the request.” As the applicant and a member of the general public, I can’t know something that I don’t know in order to help you identify the correct documents.”

In my correspondence previous to this I explained the limitations the Data Team had on performing searches, specifically, they were unable to use organisation positions and are only able to perform searches using names. Therefore, the practical refusal reason still stood because it would require the scrutiny of 588 items located by the Data Team.

I suggested removing point 2 and submitting it as a new FOI request to remove the practical refusal reason. It was also suggested that your new request could name a specific role within the organisation using the external NDIS Organisational structure.

As such I believe I have been clear that the issue with your request isn’t that you have not provided names of staff members, but that your request requires the searches of potentially hundreds of staff members names to provide as parameters for the Data Team’s search.

I note you have now provided a timeframe in the current scope of your request, however, in order to process this, it would still require me to locate the names of the 28 staff members associated with the positions provided, including additional searches for staff members who had previously held or acted in these positions. I anticipate that current staff members would have taken leave 1-2 times within the 9-month period in your scope, adding a potential 28-56 additional names.

As such a simple crosscheck would still not be enough to capture all names needed to conduct a comprehensive search by the Data Team that would satisfy the scope of your request.

Given the above, the practical refusal reason still exists.

I note that no more than one request consultation process is required.³

Given the practical refusal reason still exists, I am refusing your request pursuant to section 24(1)(b) of the FOI Act.

³ 24AB of the FOI Act

Your review rights

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, 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.