



**NDIS Quality
and Safeguards
Commission**

REF: LEX 3971

Nosey Rosey

By email: foi+request-12614-38370fed@righttoknow.org.au

Dear Nosey Rosey,

**Freedom of Information Request No. (73) - 24/25 - (2)
Notice of Decision on Access under the *Freedom of Information Act 1982* (Cth)**

I refer to your email received by the NDIS Quality and Safeguards Commission (**NDIS Commission**) on 19 December 2024, in which you requested access to documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**).

Specifically, your request sought access to:

- *Any documents within your agency that concern the sharing of personal information originating from the Department of Veterans' Affairs (DVA)*
- *Any material that your agency may hold, including any records of direct data transfers from or to the DVA, memoranda of understanding involving DVA client information, or any policies and procedures governing such exchanges.*
- *Copies of any ethics committee approvals, privacy impact assessments, internal review board decisions, or other documents that reflect deliberations or authorizations for obtaining DVA client information. This includes records that show the agency considered the ethical, legal, or privacy implications of receiving or using DVA client data.*
- *Documents that outline the intended uses or practical applications of the DVA client data, such as project proposals, business cases, internal strategy papers, or briefings that explain why NDIS Commission sought access to this information, how it was intended to be integrated into the agency's operations, and any expected outcomes or benefits.*
- *A representative sample (in a suitably de-identified or redacted form) of the data or data fields received, so long as providing this sample does not breach any exemption under the FOI Act.*

The purpose is to understand the nature and granularity of the information shared, without disclosing identifiable personal details

Administration of your request

On 14 December 2024, the NDIS Commission's FOI team received your initial email requesting access to information under the FOI Act.

On 16 December 2024, we responded to your email seeking clarification on your request. Specifically, we noted that you had not identified the name of the agency that could potentially hold the requested information. We asked you to respond with an amended scope to identify the relevant agency so we could consider your request accordingly.

On the same date, you clarified by email that you were "indeed making this request to the NDIS Quality and Safeguards Commission".

On 17 December 2024, we acknowledged your request by email. In the same email we sought your

confirmation on the following points:

- that we had understood the scope of your request correctly;
- agreement to the extension of time and confirm whether you consent to be identified as the FOI applicant for the purposes of any third-party consultation that may be required; and
- confirm that you do not seek the personal information of staff below SES level and consent to the removal of duplicate documents and the provision of the final email in any email chains.

To date, we have not received a response to the acknowledgement email sent on 17 December 2024.

As no extension of time is applied in this request, the decision in relation to your request was due on 13 January 2025. Your request has been deemed to be refused by the NDIS Commission under s 15AC of the FOI Act. However, the NDIS Commission has continued to process your request. The NDIS Commission apologises for the delay of processing this request. The NDIS Commission has now made a decision in relation to your request.

I am an officer authorised under section 23 of the FOI Act to make decisions regarding access to documents and this letter sets out my reasons for decision on access to documents in scope of your request.

Decision

The NDIS Commission has located two documents, comprising of 37 pages, that falls within the scope of your freedom of information (FOI) request. These documents were identified by searches undertaken in NDIS Commission systems. The documents are set out in the schedule attached to this notice.

I have decided to refuse access in full to both documents under sections 37(2), 47C and 47E of the FOI Act.

Additionally, access is refused to point 3, 4 and 5 of the scope of your request under section 24A of the FOI Act on the basis that the NDIS Commission does not hold the document that you seek in a discrete form, and that the NDIS Commission cannot produce a document containing the requested information in a discrete form by the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information.

The table at **Attachment A** summarises my decision as it applies to the documents covered by your request.

In reaching my decision I have relied on the following material:

- the terms of your FOI request;
- the FOI Act (in particular, sections 24A, 37(2), 47C and 47E);
- submissions made during a courtesy consultation process with relevant government agencies;
- the results of searches undertaken by relevant NDIS Commission staff; and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines).

Reasons for decision

Section 24A – Requests may be refused if documents cannot be located, do not exist or have not been received.

Under s 24A(1) of the FOI Act, an agency or minister may refuse a request if it has taken 'all reasonable steps' to find the document requested, and is satisfied that the document cannot be found or does not exist. I am satisfied that both elements apply to your request.

Point 3: Copies of any ethics committee approvals, privacy impact assessments, internal review board decisions, or other documents that reflect deliberations or authorizations for obtaining DVA client information. This includes records that show the agency considered the ethical, legal, or privacy implications of receiving or using DVA client data do not exist. This is because NDIS Commission does not routinely share information with or obtain data from DVA. When information from DVA is required, it is requested on an ad hoc basis, similar to how we approach request for information with other external parties, including government agencies. There are no formal arrangements in place other than the Memorandum of Understanding (Document 1).

Point 4: Documents that outline the intended uses or practical applications of the DVA client data, such as project proposals, business cases, internal strategy papers, or briefings that explain why NDIS Commission sought access to this information, how it was intended to be integrated into the agency's operations, and any expected outcomes or benefits are also not held by the NDIS Commission. As we do not routinely obtain or hold DVA client data, there are no records reflecting any intended uses.

Point 5: A representative sample (in a suitably de-identified or redacted form) of the data or data fields received, so long as providing this sample does not breach any exemption under the FOI Act in your request is unavailable. Since the NDIS Commission does not routinely obtain or hold DVA's client data, there are no records to provide sample as described.

In addition to the above, a search conducted by the NDIS Commission's Data and Insight team confirmed that there are no regular data transfers (incoming or outgoing) between NDIS Commission and DVA operated by the Data and Insight team. This further supports the conclusion that documents corresponding to points 3, 4 and 5 do not exist.

Based on the information before me, I am satisfied that documents in this subject area could not be produced by ordinary use of a computer and the obligation in section 17(1) of the FOI Act does not apply in this instance (see discussion below). Accordingly, I am satisfied that no documents exist or can be produced, and I refuse your request for access to the documents under s 24A of the FOI Act.

Accordingly, I am satisfied that all reasonable steps have been taken to locate the documents and that the NDIS Commission does not hold the requested documents. As the documents do not exist, access to those documents is refused.

Section 37- Documents affecting enforcement of law and protection of public safety

Document 1 contain information that I consider exempt under section 37(2)(b) of the FOI act.

Relevantly, section 37(2)(b) provides that:

(2) a document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

(...)

(b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures

In order to utilise the exemption, the NDIS Commission must demonstrate two factors (FOI Guidelines, 5.111). Firstly, there must be a 'reasonable expectation' that a document will disclose a "method or procedure". Secondly, there must be a "reasonable expectation or a real risk of prejudice" that disclosing the document would jeopardise the effectiveness of those methods.

The Guidelines provides an example of a situation where the exemption has been applied previously. In the case of *Re Murphy and Australian Electoral Commission*, the AAT found the exemption applied in relation to examples of acceptable reasons for refusing to vote, which were kept in the AEC's internal manual. Specifically, the AAT found that the disclosure of these reasons would allow people who failed to vote to circumvent the relevant procedures, by tailoring their reasons to match the examples.

In relation to point 2 of your FOI request, we have identified Document 1, which is a Memorandum of Understanding (MOU) between NDIS Commission and DVA. However, access to this document is refused in full under section 37(2)(b) of the FOI Act.

The purpose of the MOU is to formalise, a collaborative, productive and colligate working relationship between the NDIS Commission, DVA and other government agencies, to effectively address the impact of fraud on the NDIS and other government support programs and payments (including related risks to participants, intended providers and other stakeholders) and to reduce the impact of fraud on the sustainability of these programs through reduction of government outlays, particularly with respect to losses from serious and organised crime.

The FOI Guidelines refer to a case where the AAT found that "authoritative knowledge of the particular law enforcement method used" could assist applicants to evade them. The content of the MOU includes findings and information from the NDIS Commission's Fraud Fusion Taskforce team, detailing methods and processes used to investigate and address fraudulent activity. In turn, this MOU could be relied on by NDIS providers to evade the NDIS Commission's regulatory and investigative processes. This would have an adverse impact on the NDIS Commission's ability to detect, prevent and treat fraud in the NDIS and other government programs and payments.

With respect to the question of prejudice, releasing this document could prejudice the effectiveness of the NDIS Commission's enforcement functions and role in investigating fraud. In addition, disclosure could prejudice the ability of the NDIS Commission to perform its role effectively, including gathering critical information during investigations. This could also affect the willingness of other government agencies to share information with the NDIS Commission, knowing that sensitive information might be disclosed.

The effectiveness of the NDIS Commission in conducting investigation with other government support programs would be undermined, reducing the department's ability to protect clients and programs from fraud if the NDIS Commission were forced to disclose the methods and procedures relied upon. I am satisfied that the disclosure of Document 1, would prejudice the lawful methods and procedures used by the NDIS Commission. Therefore, access to this document is refused under section 37(2)(b) of the FOI Act.

Section 47E(d) – Documents affecting certain operations of agencies

Section 47E conditionally exempts document where disclosure would, or could reasonably be expected to, prejudice or have a substantial adverse effect on certain identified agency operations. In order to apply the exemption at s47E(d), I must be satisfied that disclosure of the documents would have a "substantial adverse effect" on the efficiency of the operations of the NDIS Commission.

Document 1, MOU outlines administrative arrangements between the NDIS Commission and DVA, including processes for collaboration, data sharing and investigative efforts.

Releasing this document would provide insight into sensitive administrative practices, including the internal frameworks for managing and addressing fraud. Such disclosure could lead to:

- a reduction in willingness of DVA or other government agencies to engage in open and collaborative arrangements with the NDIS Commission;
- a negative impact on the ability of the NDIS Commission to maintain the confidentiality of operational arrangements; and

- revealing administrative details could provide NDIS providers with information to exploit the systems designed to detect and prevent fraud.
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Given that MOU is an administrative agreement, disclosure would set a precedent for revealing inter-agency agreements, potentially affecting the efficient functioning of other administrative collaborations.

Considering the above, I am satisfied that releasing this document would prejudice the effectiveness of NDIS Commission investigative methods under section 37(2)(b) and adversely affect the agency operations under section 47E(d). For these reasons access to Document 1 is refused in full.

Section 47C –Documents subject to deliberative processes

Section 47C(1) of the FOI Act states:

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes, of the deliberative process involved in the functions of:*
- (a) an agency; or*
 - (b) a Minister; or*
 - (c) the Government of the Commonwealth.*

Section 47C exempts documents that contain deliberative matters, which includes opinions, advice or recommendations prepared for the deliberative processes involved in the functions of an agency.

Document 2 includes the draft Care Economy Regulatory Alignment (CERA) Cross Agency Working Group Information Sharing Framework.

Deliberative matter

Paragraph 6.59 of the FOI Guidelines states that ‘*deliberative matter*’ is a shorthand term for ‘opinion, advice and recommendation’ and ‘consultation and deliberation’ that is recorded or reflected in a document. There is no reason generally to limit the ordinary meanings given to the words ‘opinion, advice or recommendation, consultation or deliberation’.

As noted above, the document is a draft document that was intended to be a framework for information sharing, a function that was intended to be exercised by government agencies. Currently, this draft framework has not been endorsed and no information has been shared under its provisions.

As such, the department contends that the document contains material that meets the criteria of deliberative matter, and that this material forms part of a deliberative process. The document can be characterised as the thinking process of the department or the process of reflection upon the wisdom and expediency of a particular proposal.

Applicant of the public interest test – sections 47C and 47E

Section 11A(5) of the FOI Act provides:

The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

In applying the public interest test, I am required to have regard to the FOI Guidelines and the following factors for release listed in section 11B(3) of the FOI Act. Those public interest factors are that release would:

- (a) promote the objects of the Act
- (b) inform debate on a matter of public importance
- (c) promote effective oversight of public expenditure
- (d) allow personal to access his or her personal information (s 11B(3))

The objects of the FOI Act include providing for a right of access to information in the possession of Commonwealth government agencies and promoting accountability and transparency in government decision making. In this case, the release of the documents supports the objects of the FOI Act by making available information which concerns government agency decision making.

Given the nature of the documents, I do consider that access of these documents would overall inform debate on a matter of public importance and promote effect effective oversight of public expenditure. However, I also note that for factor 4, as the entire document bundle do not contain your personal information, therefore there is no consideration under this factor to release such information to you.

The Australian Information Commissioner's FOI Guidelines also set out a non-exhaustive list of factors weighing against disclosure. These factors relate to harm that may result from the disclosure of the documents in certain circumstances. In reaching my decision, I consider that the factors weighing against disclosure are that disclosure could be reasonably expected to:

- (a) Disclosure of the document that is conditionally exempt under section 47E(d) of the FOI Act could reasonably be expected to inhibit frankness and candour in the making of communications, within the NDIS Commission internally and between NDIS Commission and DVA.
- (b) Disclosure of the document that is conditionally exempt under section 47E(d) of the FOI Act would have a substantial adverse effect on the ability of the relevant operational areas within the NDIS Commission and DVA to conduct their business as usual.
- (c) Disclosure of conditionally exempt information under section 47C of the FOI Act could reasonably be expected to prejudice the deliberative processes of forming opinion, advice and/or recommendations by creating an environment in which there is a chilling effect on the open consideration of all options available to the department. Any impediment to the deliberative process could adversely impact the effectiveness of the department's decision-making, which is against the public interest.
- (d) Disclosure of conditionally exempt information under section 47C of the FOI Act could also reasonably be expected to establish a precedent of release of deliberative material, which could hinder the flow of suggestions, preliminary opinions, device and/or recommendations within the department. Any impediment to the deliberative process could reasonably be expected to adversely impact the department's ability to innovate, iterate and improve its policy and procedures, which is against the public interest.

Based on these factors, I have decided that the public interest is weighted more heavily against disclosure and that giving access to the conditionally exempt material would, on balance, be contrary to the public interest.

FOI Disclosure Log

As documents do not exist, I am not required to consider the requirement to publish details of information released in this instance.

For further information about the Commission's FOI disclosure log please refer to our website:

<https://www.ndiscommission.gov.au/about/freedom-information/foi-disclosure-log>

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

Online: Using the [OAIC smartform](#)

Email: foidr@oaic.gov.au

Post: GPO Box 5288 Sydney NSW 2001

More information about Information Commissioner review is available on the website of the [Office of the Australian Information Commissioner](#).

FOI Complaints

If you are unhappy with the way we have handled your FOI request, please let us know what we could have done better. We may be able to rectify the problem. If you are not satisfied with our response, you can make a complaint to the Australian Information Commissioner. A complaint to the Information Commissioner must be made in writing. Complaints can be lodged in one of the following ways:

Online: Using the [OAIC smartform](#)

Email: foidr@oaic.gov.au

Post: GPO Box 5288 Sydney 2001

More information about complaints is available on the [Office of the Australian Information Commissioner website](#).

If you are not sure whether to lodge an Information Commissioner review or an Information Commissioner complaint, the website of the [Office of the Australian Information Commissioner](#) has more information.

Contact

If you wish to discuss my decision, please contact the FOI Team on email at FOI@ndiscommission.gov.au

Yours sincerely,



Shandelle McNeill

A/g Director – Internal Integrity Unit, Administrative Review and Governance

Legal and Internal Integrity Division

NDIS Quality and Safeguards Commission

30 January 2025



**NDIS Quality
and Safeguards
Commission**

**FOI Request No. (73) - 24/25 - (2)
SCHEDULE OF DOCUMENTS**

Doc No.	Pages	Description	Decision / Exemption
1.	1-24	Memorandum of Understanding (MOU)	Refused in full under sections 37(2) and 47E of the FOI Act
2.	25-37	Care Economy Regulatory Alignment (CERA)	Refused in full under section 47C of the FOI Act