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Canberra, ACT, 2601
1800 800 110

ndis.gov.au

27 May 2016

Mr R Williams

By email: foi+request-1923-2419447b@righttoknow.org.au

Dear Mr Williams

Notice of intention to refuse your FOI request – FOI 15/16-022

I refer to your correspondence received by the National Disability Insurance Agency (the Agency) on 7 May 2016, in which you requested access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

1. *“Documentation outlining how many complaints the agency has received in the past 2 years related to the recruitment activities of the NDIA;*
2. *Documentation summarising the nature of these complaints;*
3. *Documentation that indicates how these complaints were resolved;*
4. *Documentation that advises how many recruitment activities have resulted in the outcome being appealed; and*
5. *Documentation that indicates the results of these appeals.*

In addition I would like documentation that -

1. *Advises how many staff currently work in Recruitment in the NDIA; and*
2. *Advises the experience of these staff - i.e. any qualifications held, experience in recruitment, the substantive and acting classifications of these staff.”*

I am an authorised decision maker under section 23 of the FOI Act.

I am now writing to notify you of my intention to refuse your request under section 24 of the FOI Act because I am satisfied that a practical refusal reason exists under subparagraph 24AA(1)(a)(i) in that processing your request would amount to a substantial and unreasonable diversion of the Agency's resources.

Accordingly, I am initiating a request consultation process under section 24AB of the FOI Act and I encourage you to contact me within 14 days of receiving this notice to further discuss your request (more information is provided below).

Delivered by the

National Disability
Insurance Agency

Substantial and unreasonable diversion of resources

I have consulted with officers in the Agency regarding the number and nature of documents held by the Agency, which are likely to be relevant to your request and the work involved in processing your request. I am advised that:

1. The information you have requested is not contained within a written document that is in the Agency's possession and control. Rather, the information is contained in a non-discrete form (e.g. a series of email mailboxes).
2. The Agency has identified that it may be possible to produce several documents containing the information in discrete form (likely to be in a tabular format in either Microsoft Word or Microsoft Excel). However, to do so would require a significant amount of time and resources for the Agency to collate all the information requested and review each document.

In light of the work required to identify, locate and collate the information described above and review those documents, I consider that on a conservative estimate, it would take at least 515 working hours to process this request. As noted above, the information you have requested is not currently available in a discrete form. To process your request the Agency will need to produce several written documents that contain the requested information in a discrete form. The above estimate includes the time required to search for an unknown number of complaints resulting from the Agency's recruitment activities. I note the Agency is not required to maintain a central repository of complaints regarding recruitment activities and complaints. Accordingly, the Agency will be required to search through all past and present recruitment staff email mailboxes and shared email mailboxes, in addition to Agency recruitment files, to extract the required information to process your request. The time taken to review this information will vary according to the complexity of each complaint. Further, the Agency will need to ensure all information is de-identified prior to release.

Accordingly, I consider that the work required to process your request would substantially and unreasonably divert the resources of the Agency from its other operations.

Request consultation process

On the basis of the time we estimate will need to be taken to process each element of your above mentioned request, we believe that the following elements of your request do not represent a substantial and unreasonable diversion of Agency resources and suggest you revise the scope of your request to only include:

"I would like documentation that -

- 1. Advises how many staff currently work in Recruitment in the NDIA; and*
- 2. Advises the experience of these staff - i.e. any qualifications held, experience in recruitment, the substantive and acting classifications of these staff."*

As required by section 24AB of the FOI Act, I am now writing to provide you with an opportunity to make a written submission in support of your request as currently worded, or to revise the scope of your request so that the practical refusal reason no longer exists.

You have **14 days** from the day you receive this letter to contact me and do one of the following:

- (a) withdraw your request;
- (b) make a revised request; or
- (c) indicate that you do not wish to revise the request.

You can contact me by writing to the following address:

Legal Branch
National Disability Insurance Agency
GPO Box 9820
Canberra ACT 2601

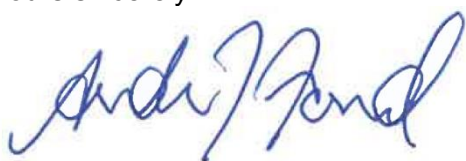
Alternatively, you can send an email to foi@ndis.gov.au.

If you do not contact the Agency within this period, your FOI request will be taken to have been withdrawn under subsection 24AB(7) and will not be dealt with any further.

For your information I have attached a copy of the provisions of the FOI Act referred to in this letter.

If you have any questions about this matter, please do not hesitate to contact me on 03 5272 7900.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Andrew Ford', is positioned above the printed name and title.

Andrew Ford
Corporate Counsel/Branch Manager
Legal Branch
National Disability Insurance Agency

FREEDOM OF INFORMATION ACT 1982***Section 24AA - When does a practical refusal reason exist?***

- (1) For the purposes of section 24, a practical refusal reason exists in relation to a request for a document if either (or both) of the following applies:*
 - (a) the work involved in processing the request:*
 - (i) in the case of an agency--would substantially and unreasonably divert the resources of the agency from its other operations; or*
 - (ii) in the case of a Minister--would substantially and unreasonably interfere with the performance of the Minister's functions;*
 - (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).*
- (2) Subject to subsection (3), but without limiting the matters to which the agency or Minister may have regard, in deciding whether a practical refusal reason exists, the agency or Minister must have regard to the resources that would have to be used for the following:*
 - (a) identifying, locating or collating the documents within the filing system of the agency, or the office of the Minister;*
 - (b) deciding whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document, including resources that would have to be used for:*
 - (i) examining the document; or*
 - (ii) consulting with any person or body in relation to the request;*
 - (c) making a copy, or an edited copy, of the document;*
 - (d) notifying any interim or final decision on the request.*
- (3) In deciding whether a practical refusal reason exists, an agency or Minister must not have regard to:*
 - (a) any reasons that the applicant gives for requesting access; or*
 - (b) the agency's or Minister's belief as to what the applicant's reasons are for requesting access; or*
 - (c) any maximum amount, specified in the regulations, payable as a charge for processing a request of that kind.*

Section 24AB - What is a request consultation process?

Scope

- (1) *This section sets out what is a request consultation process for the purposes of section 24.*

Requirement to notify

- (2) *The agency or Minister must give the applicant a written notice stating the following:*
- (a) *an intention to refuse access to a document in accordance with a request;*
 - (b) *the practical refusal reason;*
 - (c) *the name of an officer of the agency or member of staff of the Minister (the contact person) with whom the applicant may consult during a period;*
 - (d) *details of how the applicant may contact the contact person;*
 - (e) *that the period (the consultation period) during which the applicant may consult with the contact person is 14 days after the day the applicant is given the notice.*

Assistance to revise request

- (3) *If the applicant contacts the contact person during the consultation period in accordance with the notice, the agency or Minister must take reasonable steps to assist the applicant to revise the request so that the practical refusal reason no longer exists.*
- (4) *For the purposes of subsection (3), reasonable steps includes the following:*
- (a) *giving the applicant a reasonable opportunity to consult with the contact person;*
 - (b) *providing the applicant with any information that would assist the applicant to revise the request.*

Extension of consultation period

- (5) *The contact person may, with the applicant's agreement, extend the consultation period by written notice to the applicant.*

Outcome of request consultation process

- (6) *The applicant must, before the end of the consultation period, do one of the following, by written notice to the agency or Minister:*
- (a) *withdraw the request;*
 - (b) *make a revised request;*

- (c) *indicate that the applicant does not wish to revise the request.*
- (7) *The request is taken to have been withdrawn under subsection (6) at the end of the consultation period if:*
 - (a) *the applicant does not consult the contact person during the consultation period in accordance with the notice; or*
 - (b) *the applicant does not do one of the things mentioned in subsection (6) before the end of the consultation period.*

Consultation period to be disregarded in calculating processing period

- (8) *The period starting on the day an applicant is given a notice under subsection (2) and ending on the day the applicant does one of the things mentioned in paragraph (6)(b) or (c) is to be disregarded in working out the 30 day period mentioned in paragraph 15(5)(b).*

Note: Paragraph 15(5)(b) requires that an agency or Minister take all reasonable steps to notify an applicant of a decision on the applicant's request within 30 days after the request is made.

No more than one request consultation process required

- (9) *To avoid doubt, this section only obliges the agency or Minister to undertake a request consultation process once for any particular request.*