



GPO Box 9820
Canberra, ACT, 2601
1800 800 110

ndis.gov.au

21 June 2016

Mr R Williams

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

Dear Mr Williams

Your freedom of information request — FOI 15/16-022

1. I refer to your correspondence dated 7 May 2016 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 (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.”*
2. On 27 May 2016 I sent you a notice of intention to refuse your FOI request under section 24 of the FOI Act because I was satisfied that a practical refusal reason existed under subparagraph 24AA(1)(a)(i) in that processing your request would amount to a substantial and unreasonable diversion of the Agency’s resources. As part of the process of assisting you to remove the practical refusal reason, I suggested the following revised scope of your FOI request:

"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."*

3. On 6 June 2016 you sought clarification on the methodology used by the Agency to calculate the estimate of 515 working hours to process your request, as quoted in my notice of intention to refuse your FOI request dated 27 May 2016.
4. On 10 June 2016 I provided you the Agency's methodology in calculating the number of working hours required to process your FOI request. I also extended the consultation period to 14 June 2016 to allow you to further consider the information I provided to you.
5. On 14 June 2016 you advised me that you accepted the revised scope. I also understood your response as acceptance to the extension of the consultation period to 14 June 2016, as required under section 24AB(3) of the FOI Act.

DECISION ON ACCESS TO DOCUMENTS

6. I am authorised to make decisions under the FOI Act and the reasons for my decision are set out below.
7. I am advised that in relation to your request, the information you requested was not available in a separate written document at the time of your request. However, the Agency has been able to produce one document containing the information you have requested. I have therefore treated your request as if it were a request for access to that document in accordance with section 17 of the FOI Act. I have identified the relevant information by consulting with the appropriate areas of the Agency.
8. I have decided to release the document in full.
9. The Schedule of Documents at **Attachment A** sets out the document to which I have decided to grant you access in full.
10. I have enclosed copies of the document released to you.

RIGHTS OF REVIEW

11. Your right to seek a review of my decision, or lodge a complaint, is set out at **Attachment B**.
12. Provisions of the FOI Act referred to in this letter are set out at **Attachment C**.
13. Should you have any enquiries concerning this matter, please do not hesitate to contact me on 03 5272 7900 or via email at foi@ndis.gov.au.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Andrew Ford', written in a cursive style.

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

Schedule of Documents for FOI 15/16-022

Document Number	Folio Page number	Date	Description	Decision on access
1	1	20/06/2016	Document created pursuant to section 17 of the FOI Act — Information about NDIA recruitment staff.	FULL ACCESS

Your review rights

Internal Review

Section 54 of 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:

Legal, Parliamentary and Risk Branch
National Disability Insurance Agency
GPO Box 700
Canberra ACT 2601

External Review by the Australian Information Commissioner

Section 54L of the FOI Act gives you the right to apply directly to the Australian Information Commissioner (AIC) to seek a review of this decision.

If you wish to have the decision reviewed by the AIC you may apply for the review, in writing or by using the online merits review form available on the AIC's website at www.oaic.gov.au, within 60 days of receipt of this letter. To assist the AIC, your application should include a copy of this decision and your contact details. You should also clearly set out why you are objecting to the decision.

You can also complain to the AIC about how the Agency handled your FOI request, or other actions the Agency took under the FOI Act.

Applications for review or complaints can be lodged with the AIC in the following ways:

Online: www.oaic.gov.au
Post: GPO Box 5218, Sydney NSW 2001
Fax: +61 2 9284 9666
Email: enquiries@oaic.gov.au

The Office of the AIC can also be contacted on 1300 363 992.

The Commonwealth Ombudsman

You can complain to the Commonwealth Ombudsman concerning action taken by the Agency in the exercise of powers or the performance of its functions under the FOI Act.

A complaint to the Commonwealth Ombudsman may be made orally or in writing. The Ombudsman may be contacted for the cost of a local call from anywhere in Australia.

Freedom of Information Act 1982—relevant provisions

11A Access to documents on request

Scope

- (1) This section applies if:
- (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) 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.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
 - (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of **exempt document** in subsection 4(1).

17 Requests involving use of computers etc.

- (1) *Where:*
 - (a) *a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;*
 - (b) *it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and*
 - (ba) *it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and*
 - (c) *the agency could produce a written document containing the information in discrete form by:*
 - (i) *the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or*
 - (ii) *the making of a transcript from a sound recording held in the agency;*

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.
- (2) *An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.*