



Administrative Appeals Tribunal

FOI ref: 2017/18 88

26 July 2018

Mr Keith Owen

Email: foi+request-4668-1e97e135@righttoknow.org.au

Dear Mr Owen,

Notice of Decision for Freedom of Information Request no. 2017/18 88

The purpose of this letter is to give you a decision about access to documents that you have requested under the *Freedom of Information Act 1982 (FOI Act)*.

Summary

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

You lodged an FOI request on 26 June 2018 for access to documents concerning participants in hearings before the Administrative Appeals Tribunal (**AAT**) with disabilities.

On 3 July 2018, you confirmed with me via email the scope of the FOI Request to be:

- 1) Documents relating to AAT's internal procedures, instructions, guides or written policies in:
 - a) assisting participants with disabilities* who:
 - i) are attending a hearing;
 - ii) are participating in a hearing when they are self-represented;
 - iii) have stated that they have difficulty providing evidence;
 - iv) have stated that their disability may impact on their psychological health; and
 - v) have indicated with the Tribunal that they have trouble responding to questions or providing oral evidence in the hearing.

*disabilities may include conditions such as: brain damage, brain tumours, psychiatric conditions; heart conditions; psychological conditions.

- 2) AAT documents demonstrating:
 - a) its compliance with provisions of the *Disability Discrimination Act 1992* (Cth);
 - b) its obligations to apply legislation that does not disadvantage people who have a disability.
- 3) AAT documents demonstrating the steps taken to ensure that it does not discriminate against people who have a disability, including but not limited to the conditions mentioned above.

Search of documents

As this is an application under the FOI Act, I have undertaken a search of documents or edited versions of documents that the agency holds that relate to certain matters or search terms. In undertaking this task, I cannot select documents on the basis of whether or not they 'demonstrate' a particular outcome. I can only select documents that are about particular matters.

In order to identify documents relevant to the scope of your request, I searched the AAT policies and procedures management system using keywords, including 'disabilities'; 'impair'; 'difficulty'; 'health' and 'psychological'. I have also consulted internally with the AAT Strategies, Communication and Governance team and the Registry Managers across the three divisions of the AAT: General and Other Divisions, Migration and Refugee Division and the Social Security and Child Support Division.

As a result, I have identified 17 documents which fall within the scope of your request.

Decision

Full access documents

I have decided to give you full access to the following documents with the exception of irrelevant information that I have deleted or removed under section 22 of the FOI Act.

- General and Other Divisions – New Registry Procedural Manual – Chapter 1: General administration: *1.3 How to assist parties in dealing with the AAT*;
- General and Other Divisions – New Registry Procedural Manual – Chapter 2: Receiving, registering and checking an application: *2.2 Identifying an application for review*;
- General and Other Divisions – New Registry Procedural Manual – Chapter 8: Hearing related procedures – *8.4 The day of the hearing*;
- NDIS Disability Types for TRACS (a tribunal case management system);
- AAT Guidelines for the Conduct of Hearings in the NDIS Division;
- AAT Practice Direction – Review of National Disability Insurance Scheme Decisions;

- AAT Accessibility Strategic Statement 2017-2020 enclosing AAT Strategic Plan 2015-2020;
- AAT Website – ‘Accessibility’;
- AAT Intranet – ‘Corporate – Accessibility’
- AAT Service Charter;
- Migration and Refugee Division: Guidelines on Vulnerable Persons;
- Pre-hearing checklist for contact with unrepresented parties;
- NDIS Principles.

Partial access documents

I have decided to give you partial access to the following.

- General and Other Divisions – New Registry Procedural Manual – Chapter 3: Acknowledging receipt, listing T documents and outreach - *3.1 In this chapter; 3.2 Acknowledge receipt;*
- General and Other Divisions – New Registry Procedural Manual – Chapter 11: Managing applications in the National Disability Insurance Scheme Division.

Refused access documents

I have decided to refuse access to the following documents:

- AAT Accessibility Initiatives Report (as at 19 June 2018);
- AAT Stakeholder Engagement Plan NDIS (last updated on 26 May 2017).

The Schedule of Documents below provides a summary of my decision in relation to each document. Please refer to the reasons for my decision below the table for more detail about how the exemptions have been applied.

Where documents refer to another document via internal hyperlinks, I have removed the hyperlinks and provided you with access to those documents in scope, subject to any exemptions under the FOI Act that may apply.

| Doc no. | Description | Decision on access | Exemption(s) |
|---------|--|--------------------|--|
| 1. | <i>1.3 How to assist parties in dealing with the AAT</i> General and Other Division – New Registry Procedural Manual – Chapter 1: General administration (Undated) | Full | Section 22 (irrelevant material – 19 pgs removed) |
| 2. | <i>2.2 Identifying an application for review</i> General and Other Division – New Registry Procedural Manual – Chapter 2: Receiving, registering and checking an application (Undated) | Full | Section 22 (irrelevant material – 43 pgs removed) |
| 3. | <i>3.1 In this chapter</i> <i>3.2 Acknowledge receipt</i> General and Other Division – New Registry Procedural Manual – Chapter 3: Acknowledging receipt, listing T documents and outreach (Undated) | Partial | Section 22 (irrelevant material – 34 pgs removed) Section 47E(d) (certain operations) |
| 4. | <i>8.5 The day of the hearing</i> General and Other Division – New Registry Procedural Manual – Chapter 8: Hearing related procedures (Undated) | Full | Section 22 (irrelevant material – 26 pgs removed) |
| 5. | General and Other Division – New Registry Procedural Manual – Chapter 11: Managing applications in the National Disability Insurance Scheme Division (Nov 2016) | Partial | Section 22 (irrelevant material – 15 pgs removed) Section 47E(d) (certain operations) |
| 6. | NDIS Disability Types for TRACS (27 Jun 2014) | Full | N/A |
| 7. | Guidelines for the Conduct of Hearings in the NDIS Division (23 May 2014) | Full | N/A |
| 8. | AAT Practice Direction – Review of National Disability Insurance Scheme Decisions (30 Jun 2015) | Full | N/A |

| Doc no. | Description | Decision on access | Exemption(s) |
|---------|--|--------------------|-----------------------------------|
| 9. | AAT Accessibility Strategic Statement 2017-2020 enclosing AAT Strategic Plan 2015-2020 (Undated) | Full | N/A |
| 10. | AAT Website – 'Accessibility' (05 Jul 2018) | Full | N/A |
| 11. | AAT Intranet – 'Corporate – Accessibility' (26 Jul 2018) | Full | Section 22 (irrelevant material) |
| 12. | AAT Service Charter (Jul 2015) | Full | N/A |
| 13. | Migration and Refugee Division – Guidelines on Vulnerable Persons (Jul 2015) | Full | N/A |
| 14. | Pre-hearing checklist for contact with unrepresented parties (Undated) | Full | N/A |
| 15. | NDIS Principles (Undated) | Full | N/A |
| 16. | AAT Accessibility Initiatives Report (as at 19 Jun 2018) | Refused | Section 47C (deliberative matter) |
| 17. | AAT Stakeholder Engagement Plan NDIS (last updated on 26 May 2017) | Refused | Section 47C (deliberative matter) |

Reason for decision

In making my decision, I have taken the following into account:

- your email dated 26 June 2018;
- my correspondence to you on 3 July 2018 clarifying the scope of your request;
- the content of the documents that fall within the scope of your request;
- the FOI Act, specifically sections 11(5), 22, 47C and 47E; and
- the guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (**FOI Guidelines**).

Section 47E(d) – Public interest conditional exemptions – certain operations of agencies

Section 47E(d) provides that a document is conditionally exempted if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

I have given you partial access to Documents 3 and 5 because they contain AAT's technical instruction on how data should be entered into the AAT's computing system. This information informs and instructs registry staff on what information to record and how to record it.

I find that the disclosure of this information could have a substantial adverse effect on the proper and efficient conduct of AAT's operations as an agency because it would reveal information about the AAT's operational case management system that could undermine the integrity and security of the data held within that system. The AAT's case management system contains confidential information on applicants, related parties, respondents and their AAT hearings. This information is retained and captured in ways that ensure the AAT process is effective and meets the requirements of the *Privacy Act 1988* (Cth) and other data security policies.

In deciding whether a document is conditionally exempt, I have also considered whether access to the information would, on balance, be contrary to the public interest, having regards to the guidelines published by the Office of the Australian Information Commissioner. A relevant public interest factor I have considered which favours disclosure is the promotion of the objects of the FOI Act. A relevant factor against disclosure is that releasing the AAT's technical information could prejudice the security of information held by the AAT about other people.

On balance, I consider that the importance of maintaining security and promoting confidentiality and trust in the AAT's operational and technical processes must be given greater weight. The disclosure of this information is contrary to the public interest as it would affect a large number of AAT customers who apply for review at the AAT. For these reasons I find that the information is conditionally exempt under section 47E(d) of the FOI Act.

Section 47C – Public interest conditional exemptions – deliberative processes

Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose matter in the nature of, or relating to:

- an opinion, advice or recommendation obtained, prepared or recorded, or
- a consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency.

In assessing whether a document is deliberative in nature, I have had regard to the FOI guidelines at 6.61. A document is deliberative in nature if it contains:

- opinions
- advice
- recommendations
- a collection of facts or opinions, including the pattern of facts or opinions considered
- interim decisions or deliberations.

I have decided to refuse access to Documents 16 and 17 based on my reasons below:

Accessibility Initiatives Report

The document titled 'Accessibility Initiatives Report' contains a list of initiatives considered by the AAT's Accessibility Advisory Group on various accessibility issues as at 19 June 2018.

The purpose of this report is to provide a review of the AAT's accessibility initiatives, their status, timeframes for delivery and a mechanism to monitor or report on accessibility achievements. This document contains initiatives relating to participants with disabilities and is therefore within the scope of your FOI request. Some of these actions are completed, whereas some are still in progress, under consideration or yet to be commenced.

Despite the document being within the scope of your request, I refuse access on the basis that it contains preliminary deliberation matters that relate to the AAT's processes to improve its accessibility. The document is ongoing and contains staff recommendations and advice. This document is also subject to further review through surveys, consultations and discussions with internal and external stakeholders. The document is produced as part of work in progress for implementing procedures and developing policies concerning the AAT's accessibility to its customers and is therefore deliberative rather than a document in its final form.

AAT Stakeholder Engagement Plan NDIS

The document titled 'AAT Stakeholder Engagement Plan NDIS' was prepared by an AAT executive staff in May 2017. It is a national jurisdiction engagement plan for the NDIS Division of the AAT. The document contains a list of potential stakeholder engagement activities with a number of disabilities agencies and organisations.

Although this document contains information within the scope of your request, it was prepared for consultation and discussion with internal and external stakeholders to strengthen AAT review mechanisms and is part of a deliberative process. The document contains interim deliberations on how consultations should be conducted and with whom. It is developed for the purpose of driving consultations and engagements with stakeholders and is not intended to be a final document. For these reasons I refuse access under section 47C of the FOI Act.

Public interest consideration – section 11A(5) of the FOI Act

In determining whether the above mentioned documents are conditionally exempt, I have to consider whether access to the information would, on balance, be contrary to the public interest under section 11A(5) of the FOI Act, having regards to the guidelines published by the Office of the Australian Information Commissioner. The relevant public interest factors I have considered which favour disclosure is the promotion of the objects of the FOI Act, promotion of effective oversight of public expenditure and contribution to

the administration of procedural fairness. A relevant factor against disclosure is that releasing the AAT's deliberative documents could prejudice the AAT's operational function with agencies and stakeholders internally and externally to the AAT.

On balance, I consider that the benefits of ensuring AAT's deliberative processes are conducted fairly and efficiently should be given a greater weight. This is because the documents are in draft forms and record deliberative matters that are ongoing and subject to further consultation with stakeholders. The release of these working documents does not assist in informing the public as they are produced for the purpose of further reflection and actions. For these reasons I find that the information contained in Documents 16 and 17 is conditionally exempt under section 47C of the FOI Act.

Your review rights

Information about how you can apply for a review of this decision or complain about how we have dealt with this matter is set out in the attached fact sheet, FOI 2.

If you have any questions about this decision, please contact me at foi@aat.gov.au.

Yours sincerely,



Angela Leung

Authorised FOI Officer (APS 6)

Attachments

FOI 2 – Information about reviews and complaints under the Freedom of Information Act

Document 1: Chapter 1.3: *How to assist parties in dealing with the AAT*

Document 2: Chapter 2.2: *Identifying an application for review*

Document 3: Chapter 3.1: *In this chapter* and Chapter 3.2: *Acknowledge receipt*

Document 4: Chapter 8.5: *The day of the hearing*

Document 5: Chapter 11: Managing applications in the National Disability Insurance Scheme Division

Document 6: NDIS Disability Types for TRACS

Document 7: Guidelines for the Conduct of Hearings in the NDIS Division

Document 8: AAT Practice Direction – *Review of National Disability Insurance Scheme Decisions*

Document 9: AAT Accessibility Strategic Statement 2017-2020 enclosing AAT Strategic Plan 2015-2020

Document 10: AAT Website 'Accessibility'

Document 11: AAT Intranet – 'Corporate – Accessibility'

Document 12: AAT Service Charter

Document 13: Migration and Refugee Division – Guidelines on Vulnerable Persons

Document 14: Pre-hearing checklist for contact with unrepresented parties

Document 15: NDIS Principles

Information about reviews and complaints under the Freedom of Information Act

What should I do prior to applying for internal review or contacting the Office of the Australian Information Commissioner?

Before you apply for an internal review or contact the Office of the Australian Information Commissioner, we recommend that you telephone the officer who made the FOI decision. It is often possible to resolve concerns or answer your questions using this approach and, if not, the officer will be able to assist you in applying for review.

How do I apply for internal review to the AAT?

You can apply to us for an internal review of the FOI decision. The application for internal review must be made within 30 days or such further period as we allow, after the day the decision is notified to you. To apply for an internal review you must do so in writing. You may also wish to explain why you are not satisfied with the decision. A different and more senior officer authorised under the *Freedom of Information Act 1982* (the FOI Act) will conduct the internal review and make a new decision within 30 days after receipt of your application.

If you have already applied for internal review and want to seek a further review of that decision, you will need to apply to the Australian Information Commissioner.

How do I apply for review to the Australian Information Commissioner?

You may also apply directly to the Australian Information Commissioner for review of the FOI decision. The application for review must be made within 60 days after the day notice of the decision was given. An application for review must be in writing, include details of how notices in relation to the review are to be sent to you and include a copy of the decision. You may also wish to explain why you are not satisfied with the decision. An online application form is available on the Office of the Australian Information Commissioner's website, details of which are provided below.

What if I want to make a complaint about the handling of a Freedom of Information request?

If you have a complaint about the way in which we have processed your request for access under the FOI Act you can ask the Australian Information Commissioner to investigate. An online complaint form is available on the Office of the Australian Information Commissioner's website, details of which are provided below.

Where can I find further information or contact details for the Office of the Australian Information Commissioner?

Further information is available on the Office of the Australian Information Commissioner's website at www.oaic.gov.au and you can contact the office on 1300 363 992 or by email at enquiries@oaic.gov.au.