

Our reference: FOI 19/20-0412



GPO Box 700
Canberra ACT 2601
1800 800 110

ndis.gov.au

18 November 2019

Mr Phillip Sweeney

By email: foi+request-5703-e0427fe7@righttoknow.org.au

Dear Mr Sweeney

Your Freedom of Information request — Notification of decision

Thank you for your correspondence of 11 October 2019, in which you requested access under the *Freedom of Information Act 1982* (FOI Act) to documents held by the National Disability Insurance Agency (NDIA).

You have request access to documents which detail timeframes for reviewing (changing) a participant's NDIS plan. Specifically, you requested access to the following documents:

“... any similar legislated or operational guidelines for NDIA when dealing with clients seeking a change of plan or other information from NDIA.”

Following consultation with us, you provided further information about the documents you are seeking access to:

“this request is for any document(s) that stipulate timeframes to resolve both simple and more complex requests whether legislated (such as in the case for FOI requests as an example) or in administrative policy manuals.”

The purpose of this letter is to provide you with a decision on your request.

Decision on access to documents

I am authorised to make decisions under the FOI Act. My decision on your request and the reasons for my decision are set out below.

I have decided to refuse your request for access under section 24A of the FOI Act on the basis that all reasonable steps have been taken to locate the documents you have requested and I am satisfied that they cannot be located or do not exist.

In reaching my decision, I took into account:

- your correspondence outlining the particulars of your request;
- searches undertaken by the NDIA for documents within the scope of your request;
- advice from NDIA staff about the existence of documents within the scope of your request;
- the FOI Act; and
- the FOI Guidelines.

Delivered by the

National Disability
Insurance Agency

Reasons for decisions

Refuse a request for access (section 24A)

Section 24A of the FOI Act provides that an agency may refuse a request for access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that the document cannot be found or does not exist.

In processing your request, I have conducted searches of the relevant systems and made enquiries with all relevant NDIA staff. These enquiries have revealed that the NDIA is not in possession of any documents matching the scope of your request.

As outlined in our [Operational Guideline](#), a participant's plan cannot be varied (changed) after it comes into effect. However, a participant's plan can be replaced with a new plan (see section 37(2) of the *National Disability Insurance Scheme Act 2013* (NDIS Act)). A participant may request that we review their plan at any time, and we must decide whether or not to review a participant's plan within 14-days after received a request (see section 48 of the NDIS Act). These reviews must be conducted as soon as 'reasonably practicable'.

I am satisfied that all reasonable steps have been taken to locate the documents relevant to your request and that the documents cannot be found or do not exist.

I have therefore decided to refuse access to your request in accordance with section 24A(1)(b)(ii) of the FOI Act.

Rights of review

Your rights to seek a review of my decision, or lodge a complaint, are set out at **Attachment A**.

Should you have any enquiries concerning this matter, please do not hesitate to contact me by email at foi@ndis.gov.au.

Yours sincerely



Matthew Curtis

Director

Freedom of Information & Privacy Section

Legal Services Branch

Governance, Legal & Compensation Division

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:

Freedom of Information & Privacy Section
Legal Services Branch
Governance, Legal & Compensation
National Disability Insurance Agency
GPO Box 700
Canberra ACT 2601

External Review by the Office of the Australian Information Commissioner

Section 54L of the FOI Act gives you the right to apply directly 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. To assist the OAIC, 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 OAIC 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 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 Agency in relation to your request. The Ombudsman will consult with the OAIC before investigating a complaint about the handling of an FOI request.

Your enquiries to the OAIC can be directed to the contact details identified above.

Your enquiries to the Ombudsman can be directed to:

Phone: 1300 362 072 (local call charge)
Email: ombudsman@ombudsman.gov.au

No particular form is required to make a complaint to the Ombudsman or the OAIC. The request 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 and identify the NDIA as the relevant agency.