

18 December 2019

Ms Janet Baker

By email: foi+request-5832-91410716@righttoknow.org.au

Dear Ms Baker

Your Freedom of Information request — Notification of decision

Thank you for your correspondence of 3 November 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 requested access to documents relating to the costs associated with an AAT matter. Specifically, you requested access to:

“Please provide all documents that related to the costs charged to the National Disability Insurance Scheme and or any other Government Department (including costs worn by the department in relation to the commonwealth defending the case 2018/5420 Morrison-Francis and National Disability Insurance Agency within the Administration Appeals Tribunal.

This includes any documents that relate to the hours worked and have not been charged to another government department as of the date of this request.”

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 identified seven documents which fall within the scope of your request.

The documents were identified by consulting with the relevant area within the NDIA.

I have decided to grant access to seven documents in part.

In reaching my decision, I took into account:

- your correspondence outlining the particulars of the request;
- the content of the documents falling within the scope of the request;
- the FOI Act;
- the FOI Guidelines;
- relevant case law concerning the operation of the FOI Act;
- consultation with relevant areas of the NDIA and other Commonwealth agencies;

- factors relevant to my assessment of whether or not disclosure would be in the public interest;
- the nature of the documents; and
- the NDIA's operating environment and functions.

Reasons for decisions

Access to edited copies with exempt or irrelevant material deleted (section 22)

I have decided that the documents falling within the scope of your request contain material that is exempt from disclosure under the FOI Act.

I have also identified that the documents falling within the scope of your request contain material that is irrelevant to your request. The material which is irrelevant to your request relates to the names of NDIA staff.

In accordance with section 22 of the FOI Act, I have considered whether it is possible to delete the exempt and irrelevant material from the documents and have concluded that it is reasonably practicable to do so. Accordingly, I have prepared an edited copy of the documents, with the exempt and irrelevant material removed.

Documents subject to legal professional privilege (section 42)

Section 42 of the FOI Act exempts a document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

The documents within the scope of your request contain material that is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege and that this privilege has not been waived.

The documents contain detailed narration that discloses, either directly or indirectly, communications regarding matters that are protected by legal professional privilege such as instructions given to the NDIA's legal adviser.

In deciding whether this material is exempt under section 42 of the FOI Act, I have considered whether:

- a. there was a legal adviser-client relationship;
- b. the communication was for the purpose of giving or receiving legal advice or for use or in connection with actual or anticipated litigation;
- c. the advice given was independent; and
- d. the advice given was confidential.

Against these criteria, I have formed the view that there was a legal adviser-client relationship, the communication was in connection with actual litigation, and that the advice was confidential and independent. I am therefore satisfied that the documents are exempt under section 42 of the FOI Act.

Personal privacy (section 47F)

Section 47F of the FOI Act conditionally exempts a document if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

Personal information includes information or an opinion, whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained.

I have identified material in the documents falling within scope of your request which contains personal information of third parties.

Under section 47F(2) of the FOI Act, in determining whether the disclosure of documents would involve unreasonable disclosure of personal information, regard must be had to:

- a. the extent to which the information is well known;
- b. whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- c. the availability of the information from publicly accessible sources; and
- d. any other matters that the agency considers relevant.

Against these criteria, I take the view that:

- a. it is apparent from the information that multiple individuals are identifiable;
and
- b. the information referred to above is not readily available from publicly accessible sources.

With reference to the assessment above, I consider that it would be unreasonable to disclose publicly this personal information and that the documents are therefore conditionally exempt under section 47F(1) of the FOI Act.

Public interest considerations – section 47F

Under the FOI Act, access to a document covered by a conditional exemption must be provided unless disclosure would be contrary to the public interest.

After considering the public interest factors outlined in section 11B(3) of the FOI Act, I have determined that disclosure of the material identified as subject to conditional exemptions would provide access to information relating to your request. However, I have considered that:

- disclosure of the information would not contribute to the publication of information of sufficient public interest to justify the likely harm caused by release;
- disclosure of the information would not enhance Australia's representative democracy in the ways described in section 11B(3) of the FOI Act; and
- disclosure of the information would not inform any debate on a matter of public importance or promote oversight of public expenditure.

While there is limited public interest in the disclosure of information conditionally exempt under section 47F, the harm that would result from disclosure is that it could reasonably be expected to affect an individual's right to privacy by having their personal information in the public domain.

In summary, I am satisfied that the factors against disclosure of the information outweigh the factors in favour of disclosure and that, on balance, it would be contrary to the public interest to release this information to you.

Release of documents

The documents for release, as referred to in the Schedule of Documents at **Attachment A**, are enclosed.

Rights of review

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

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

Yours sincerely

A handwritten signature in blue ink, appearing to read 'MC', is positioned above the printed name.

Matthew Curtis

Director

Freedom of Information and Privacy Section

Legal Services Branch

Schedule of Documents for FOI 19/20-0514

Document number	Page number	Description	Access Decision	Comments
1	1	Invoice <i>Dated: 14.12.2018</i>	PARTIAL ACCESS Exemptions Claimed: s42 – Legal professional privilege; and s47F – personal privacy	Irrelevant material removed under section 22.
2	5	Invoice <i>Dated: 14.01.2019</i>	PARTIAL ACCESS Exemptions Claimed: s42 – Legal professional privilege; and s47F – personal privacy	Irrelevant material removed under section 22.
3	8	Invoice <i>Dated: 14.02.2019</i>	PARTIAL ACCESS Exemptions Claimed: s42 – Legal professional privilege; and s47F – personal privacy	Irrelevant material removed under section 22.
4	13	Invoice <i>Dated: 14.03.2019</i>	PARTIAL ACCESS Exemptions Claimed: s42 – Legal professional privilege; and s47F – personal privacy	Irrelevant material removed under section 22.
5	17	Invoice <i>Dated: 15.05.2019</i>	PARTIAL ACCESS Exemptions Claimed: s42 – Legal professional privilege; and s47F – personal privacy	Irrelevant material removed under section 22.
6	20	Invoice <i>Dated: 06.09.2019</i>	PARTIAL ACCESS Exemptions Claimed: s42 – Legal professional privilege; and s47F – personal privacy	Irrelevant material removed under section 22.
7	25	Invoice <i>Dated: 02.10.2019</i>	PARTIAL ACCESS Exemptions Claimed: s42 – Legal professional privilege; and s47F – personal privacy	Irrelevant material removed under section 22.

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.