

17 April 2020

Mr Andy Johnson
Right to Know

By email: foi+request-6171-15265f21@righttoknow.org.au

Dear Mr Johnson

Your Freedom of Information request FOI19/20-1043 — Decision

Thank you for your correspondence of 18 February 2020, in which you requested access under the *Freedom of Information Act 1982* (FOI Act) to documents held by the National Disability Insurance Agency (NDIA).

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

Summary

I am authorised under section 23 of the FOI Act to make decisions on FOI requests.

You requested access to documents relating to work done by a consulting firm for the NDIA. Your initial email asked for

“all reports / documents delivered by consulting firm McKinsey & Company to the NDIA in the last 3 financial years”.

Following correspondence about your request, on 4 March 2020 you clarified that you were seeking access to:

“a copy of all reports delivered by the firm, not just the pricing review”.

I have therefore taken your request to be for copies of all final reports delivered by McKinsey & Company to the NDIA in the period 1 July 2017 to 18 February 2020.

On 3 April 2020 the Office of the Australian Information Commissioner granted an extension of time for processing your request, in accordance with section 15AC of the FOI Act, making a decision due by 20 April 2020.

I identified two documents that fall within the scope of your request. I did this by arranging searches of the NDIA record management systems and consultation with NDIA staff who may have been able to assist in identifying relevant documents.

The attached schedule provides a description of each document identified and the access decision for each document.

Decision and reasons for decision

I have decided:

- to grant access in full to Document 2; and
- to refuse access to Document 1 under section 47C of the FOI Act (public interest conditional exemptions – deliberative processes)

Material taken into account

In reaching my decision I took into account the following materials:

- the nature and content of the documents falling within the scope of your request;
- the FOI Act (in particular sections 22 and 47C);
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines).

Reasons for decisions

The attached schedule indicates each document to which access is refused. My reasons for refusing access to that document are given below.

Public interest conditional exemption - deliberative processes (section 47C)

Document 1

Section 47C of the FOI Act provides a conditional exemption for documents containing ***deliberative matter***. Deliberative matter is material in a document that is, or relates 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 of an agency.

The FOI Guidelines explain that a deliberative process involves the exercise of judgement in developing and making a selection from different options. Sometimes it is referred to as an agency's 'thinking process'.

Document 1 is a version of the final McKinsey & Company Independent Pricing Review Report that was prepared for consideration by the NDIA Board as part of their deliberative processes undertaken in carrying out the functions of the NDIA. After deliberation by the NDIA Board some revisions were made to produce Document 2, which is the published McKinsey & Company Independent Pricing Review Report.

I am satisfied that Document 1 is conditionally exempt under the conditional exemption for deliberative processes (section 47C).

Public interest considerations

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

Section 11B of the FOI Act sets out four factors favouring access, which must be considered if relevant. Of those factors I consider the following are relevant to this request:

- disclosure would promote the objects of the FOI Act by increasing scrutiny, discussion, comment and review of government activities;
- disclosure would promote effective oversight of public expenditure.

The FOI Act does not list any factors against disclosure. I have identified following factors against disclosure that are relevant to the circumstances of this request:

- disclosure of deliberative matter that has been commissioned for the purpose of confidential consultations and deliberations, would discourage the NDIA and other agencies from seeking expert advice to support robust deliberations and confidential consultation designed to produce high quality, sustainable policy initiatives.

Document 1 is a final report prepared by McKinsey & Company for confidential consideration by the NDIA Board. In the circumstances that document 1 is an earlier version of the final McKinsey & Company Independent Pricing Review Report currently available on the agency website, together with detailed information about actions taken to implement recommendations in the report, I consider that disclosure of Document 1 would contribute very little to increasing scrutiny, discussion, comment and review of government activities or to effective oversight of public expenditure.

After weighing the factors for and against disclosure, I consider that the factors against disclosure outweigh the factors in favour of disclosure because the very small benefit in disclosing an earlier version of a report that has already been in the public domain for two years is outweighed by the detriment likely to be suffered by the NDIA being inhibited in seeking expert advice in the process of confidential deliberations on difficult policy issues before providing advice to government.

As a result, I am satisfied that Document 1 is exempt under section 47C and that disclosure would be contrary to the public interest.

I have considered whether it would be possible to provide you with a copy of document 1 edited in accordance with section 22. As document 1 is an earlier version of a published document, I consider that it is entirely deliberative in nature and that it would not be practicable to prepare an edited copy.

Release of documents

The document to which I have decided to give you access, as identified in the schedule at **Attachment A**, is attached.

Rights of review

Information about your right to seek a review of my decision or to 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 black ink, appearing to be 'Ruth Fenwick', with a stylized flourish at the end.

Ruth Fenwick
A/g Branch Manager
Parliamentary, Ministerial & FOI
Communications & Engagement Division

Schedule of Documents for FOI 19/20-1043

Document number	Date	Size	Description	Access Decision	Exemptions
1	December 2017	102 pages	McKinsey&Company Independent Pricing Review National Disability Insurance Agency Final Report/December 2017	Access refused	s47C – public interest conditional exemptions – deliberative processes
2	February 2018	104 pages	McKinsey&Company Independent Pricing Review National Disability Insurance Agency Final Report/February 2018	Access in full	

Your review rights

Internal Review

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
Parliamentary, Ministerial and FOI
Communication and Engagement Division
National Disability Insurance Agency
GPO Box 700
Canberra ACT 2601

Review by the Office of the Australian Information Commissioner

The FOI Act also gives you the right to apply 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.

Applications for review 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 NDIA in relation to your request. The Ombudsman will consult with the OAIC before investigating a complaint about the handling of an FOI request.

Your complaint to the OAIC can be directed to the contact details identified above. Your complaint to the Ombudsman can be directed to:

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

Your complaint 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.