

1 July 2021

Karen Reynolds

By email: foi+request-7219-741a89c4@righttoknow.org.au

Dear Karen Reynolds

Freedom of Information request — Notification of Decision

Thank you for your correspondence of 1 June 2021, in which you requested an internal review of the decision in FOI 20/21-0628 made under the *Freedom of Information Act 1982* (FOI Act) by the National Disability Insurance Agency (NDIA) on 25 May 2021.

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

Original Decision

On 14 April 2021, you requested access to documents about the National Disability Insurance Scheme (NDIS). Specifically, you requested access to:

“...I am requesting a list of all staff employed within the Agency's new Sustainability Action Taskforce, as well as any correspondence that relates to terms of reference or scope of the Taskforce.

I also request any documents, notes, emails, transcripts or other information which relates to the development of an algorithm in relation to scheme sustainability from 2017...”

On 29 April 2021, the FOI team initiated a section 24AB consultation process with you to revise the scope of your request, as to process your request would have been an unreasonable diversion of resources.

On 7 May 2021, in response to the request consultation process, you declined to revise the first part of your request and revised the scope of the second part of your request to:

“...a list [sic] of any contractors who have been outsourced in the development of an algorithm for the NDIS' and 'please also provide a copy of any reports that proposed using Salesforce/developing new algorithms in relation to scheme sustainability (including outsourced reports and business cases, as well as modelling [sic]), as well as details of the tender documentation and conditions of tender between the NDIA and the developers of the algorithm...”

On 25 May 2021, a practical refusal decision was issued as after further searches and sampling it was confirmed your revised request still constituted a substantial and unreasonable diversion of resources.

Grounds for review

On 1 June 2021, you requested an internal review of the original decision on the following grounds:

"I am writing to request an internal review of National Disability Insurance Agency's handling of my FOI request 'I am requesting a list of all staff employed within the Sustainability Action Taskforce, as well as any correspondence that relates to terms of reference or scope of the Taskforce.'"

"I do not consider this a large request. If it was too large I am prepared to just accept the list of staff as well as the actual terms of reference and correspondence directed to or from the CEO of the agency regarding setting up the Taskforce."

On 11 June 2021, the FOI team wrote to advise you that searches returned thousands of pieces of correspondence that referenced the Sustainability Action Taskforce and "terms of reference" and/or "scope". We further advised that the original decision is reconsidered as part of an internal review and applicants are unable to vary the scope of their request on review. We offered you an opportunity to make a new request in line with the scope outlined in your internal review, and requested a withdrawal of the internal review. You did not respond to this correspondence.

Decision on access to documents

I am authorised to make decisions under the FOI Act, including internal review decisions under section 54C of that Act. As an internal review officer, I am not bound in any way by the original decision and am required to make a fresh decision.

My decision is to **affirm** the original decision of 25 May 2021.

In making my decision, I have considered the following:

- your submissions about why you consider the decision to be incorrect;
- the FOI Act;
- the FOI Guidelines;
- the nature of the documents; and
- the NDIA's operating environment and functions.

Reasons for decisions

I have reviewed the searches and sampling undertaken in relation to the original decision, and I am satisfied that a practical refusal reason exists.

I note the scope of your original request was "*any correspondence that relates to terms of reference or scope of the Taskforce.*" As advised on 11 June 2021, thousands of pieces of correspondence were found to potentially fall within the scope of your request. I can advise that there were in excess of 3,000 emails that contained relevant search terms in relation to the Sustainability Action Taskforce, not including attachments.

I note that you also requested "*a list of all staff employed within the Agency's new Sustainability Action Taskforce*". The FOI Act requires decision makers to consider requests as a whole, therefore, this element of your request must be considered alongside your request for "*any correspondence*" and not in isolation.

Processing the request would require NDIA staff to manually review all documents and attachments returned in searches to determine whether documents fell within scope and whether any exemption applied to the material. I am satisfied a practical refusal was the correct decision given the volume of documents within scope.

Despite the above, in order to provide you with some assistance, please find attached a document, which sets of the organisational chart of the Sustainability Action Taskforce as at 22 March 2021. The document has previously been released under the FOI Act and so is available to the public on request. Please note that this release is not provided under the FOI Act and does not affect my internal review decision to affirm the practical refusal made on 25 May 2021.

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

A handwritten signature in blue ink, appearing to read 'Melanie Brocklehurst', with a long horizontal flourish extending to the right.

Melanie Brocklehurst
Director, FOI
Parliamentary, Ministerial & FOI Branch
Government Division

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 Section
Parliamentary, Ministerial & FOI Branch
Government 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