

17 May 2021

Maree Maxfield

By email: [foi+request-7244-74a907b6@righttoknow.org.au](mailto:foi+request-7244-74a907b6@righttoknow.org.au)

Dear Maree Maxfield

## Freedom of Information request — Notification of Decision

Thank you for your correspondence of 15 April 2021, 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.

### Scope of your request

You have requested access to documents about the National Disability Insurance Scheme (NDIS). Specifically, you requested access to:

*“...a list of changes to all assessment instruments used for independent assessment.*

*Could you please provide me with any changes that have been made for instruments to be used in independent assessments of people with disability. Please provide and indicate all changes no matter how minor. This includes a change of score or result parameters, words in the actual tests, instructions to people using the tests and any other changes related to delivery or analysis.”*

Your request for information sought access to changes made to all assessment instruments and associated documents, tools, and programs used for independent assessments.

I note that the independent assessment pilots are conducted using standardised tests, many of which are publicly available. Further information on the standardised tools considered and used in the pilots is available on the NDIS website:

- [The independent assessment toolkit](#)

I further note that newly appointed Minister for the NDIA, Senator the Hon Linda Reynolds CSC, has announced a pause in the roll out of independent assessments. Updates on independent assessments will be made available on the NDIS website.

### 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 one document, which falls within the scope of your request.

The document was identified by conducting searches of NDIA’s systems, using all reasonable search terms that could return documents relevant to your request, and consulting with relevant business areas and NDIA staff who could be expected to be able to identify documents within the scope of the request.

I have decided to refuse access to this document in full.

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

- your correspondence outlining the scope of your request;
- the nature and content of the documents falling within the scope of your request;
- the FOI Act;
- the FOI Guidelines;
- consultation with relevant NDIA staff;
- factors relevant to my assessment of whether or not disclosure would be in the public interest; and
- the NDIA's operating environment and functions.

### **Reasons for decisions**

#### Deliberative processes (section 47C)

Section 47C of the FOI Act conditionally exempts a document if its disclosure would disclose deliberative matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or 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.

The document within the scope of your request contains deliberative material relating to an opinion, advice or recommendation that has been obtained, prepared and recorded; and a consultation or deliberation that has taken place, in the course of, or for the purposes of, a deliberative process of the government, an agency or minister.

The deliberative processes involved in the functions of an agency are its thinking processes. The document sought was created with the sole purpose of informing a deliberative process of the NDIA. The document in question was prepared for the purpose of tracking and informing Executive Level Staff within NDIA about agency considerations regarding the functionality of instruments, administrative tools, instructional notes, and programs used during the independent assessments pilots.

Furthermore, as the roll out of independent assessments has been paused, the deliberations within the requested document, if made available to the public prematurely, could or would have a detrimental impact on how NDIA carry out statutory functions in relation to independent assessments in future.

Section 47C(2)(b) of the FOI Act states that a deliberative matter does not include 'purely factual material.' While the document contains some factual material I have determined that the 'factual material' is so intertwined with, and integral to, the deliberative content, that it would be impractical to produce or provide an edited document containing only this factual material.

I am satisfied that the information redacted is conditionally exempt under section 47C of the FOI Act.

#### *Public interest considerations – section 47C*

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 promote the objectives of the FOI Act.

However, I consider that, while there is limited public interest in the disclosure of information conditionally exempt under section 47C, the harm that would result from disclosure is that it could reasonably be expected to:

- interfere with the effectiveness of the NDIA future deliberative processes, which require decision makers to have confidence in the confidentiality of their discussions to support future Agency needs;
- reduce the ability of the NDIA decision-makers to deliberate Agency related matters unaffected by the possibility of disclosure that might harm third party interests or the administration of the NDIS; and
- have a significant adverse effect on the management of the NDIS through skewing, disengagement or other unintended effects arising from the early disclosure of information that may be taken as indicating the future direction of the NDIS prior to any concluded position being reached.

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 document considered, is referred to in the Schedule of Documents at **Attachment A**.

#### **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](mailto:foi@ndis.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'AW', written in a cursive style.

#### **Ausilia Woodhead**

Assistant Director FOI  
Parliamentary, Ministerial & FOI Branch  
Government Division

## Schedule of Documents for FOI 20/21-0650

Document number	Page number	Description	Access Decision
1	-	DCP Change Register	<b>REFUSED ACCESS</b>  Exemption claimed: s47C – deliberative processes

## **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](mailto: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](http://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](http://www.oaic.gov.au)  
Post: GPO Box 5218, Sydney NSW 2001  
Email: [enquiries@oaic.gov.au](mailto: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](mailto: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