



Ms Karen Reynolds

Ref: ICM21/535

By email only: foi+request-7254-c60b3f03@righttoknow.org.au

Dear Ms Reynolds

Freedom of Information (FOI) Request No. (34)20/21-23

I refer to your correspondence to the NDIS Quality and Safeguards Commission (**NDIS Commission**) on 15 April 2021. In that correspondence you requested access under the *Freedom of Information Act 1982 (the FOI Act)* to the following –

“Dear NDIS Quality and Safeguards Commission,

I would like to know;

1 how many disability service providers who are NOT participants have been charged by the police for fraud or other finance related crime

2 how many disability service providers who are NOT participants have faced regulatory action from your agency for fraud or other finance related crime

3 how many disability service providers who are NOT participants have been charged by the police for other crimes which do not involve finance related crimes but abuse relating to violence, abuse or neglect or restrictive practices

4 how many disability service providers who are NOT participants have faced regulatory action for other crimes which do not involve finance related crimes but abuse relating to violence, abuse or neglect or restrictive practices

5 how many disability service providers who ARE participants have been charged by the police for fraud or other finance related crime

6 how many disability service providers who ARE participants have faced regulatory action from your agency for fraud or other finance related crime

7 how many disability service providers who ARE participants have been charged by the police for other crimes which do not involve finance related crimes but abuse relating to violence, abuse or neglect or restrictive practices

8 how many disability service providers who ARE participants have faced regulatory action for other crimes which do not involve finance related crimes but abuse relating to violence, abuse or neglect or restrictive practices

9 of the above, what proportion of persons were registered providers of services and what proportion were unregistered

10 how many participants have been charged by the police for fraud or other finance related crime

11 how many participants have faced regulatory action from your agency for fraud or other finance related crime

12 how many participants have been charged by the police for other crimes which do not involve finance related crimes but abuse relating to violence, abuse or neglect or restrictive practices

13 how many participants have faced regulatory action for other crimes which do not involve finance related crimes but abuse relating to violence, abuse or neglect or restrictive practices

14 of the above, how many were self managing their funding

15 how many complaints you have received about alleged wrongdoing by disability service providers

16 how many complaints you have received about alleged wrongdoing by participants “

(Please note that numbering 1-16 has been added to your request to assist with the discussion of each aspect of the request. In interpreting your request we assume that the term “disability service providers” do not include workers for providers, just the entity that is the provider).

I am authorised to make decisions under subsection 23(1) of the FOI Act and my decision regarding your request and the reasons for my decision are set out below.

Decision on access to documents – Section 17 of the FOI Act

The right of access under the FOI Act is to existing documents rather than to information. A search for documents did not locate a document that dealt with your request.

Para 2.33 and 3.204 of the “FOI Guidelines - Guidelines issued by the Australian Information Commissioner under s93A of the *Freedom of Information Act 1982*” (FOI Guidelines) provides that:

Para 2.33 “The right of access under the FOI Act is to existing documents, rather than to information. The FOI Act does not require an agency or Minister to create a new document in response to a request for access, except in limited circumstances where the applicant seeks access in a different format or where the information is stored in an agency computer system rather than in discrete form. A request may nevertheless be framed by reference to a document that contains particular information.”

Para 3.204 “Section 17 requires an agency to produce a written document of information that is stored electronically and not in a discrete written form, if it does not appear from the request that the applicant wishes to be provided with a computer tape or disk on which the information is recorded. Examples include a transcript of a sound recording, a written compilation of information held across various agency databases, or the production of a statistical report from an agency’s dataset. The obligation to produce a written document arises if:

- the agency could produce a written document containing the information by using a ‘computer or other equipment that is ordinarily available’ to the agency for retrieving or collating stored information (s 17(1)(c)(i)), or making a transcript from a sound recording (s 17(1)(c)(ii)), and
- producing a written document would not substantially and unreasonably divert the resources of the agency from its other operations (s 17(2)).

If those conditions are met, the FOI Act applies as if the applicant had requested access to the written document and it was already in the agency's possession."

Section 24

An agency or Minister may refuse a request for access to a document under section 24A(1)(a)(ii) of the FOI Act if the agency is satisfied that all reasonable steps have been taken to find the document and it does not exist.

Reasons for decision in respect of refusal

An agency or Minister may refuse a request for access to a document under section 24A(1) of the FOI Act if:

- (a) all reasonable steps have been taken to find the document; and
- (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Decision in respect of Item 15 – document created and access approved

A document has been created which deals with item 15 of your request.

Section 11A of the FOI Act – access to documents on request

An agency must give a person access to a document unless it is an exempt document or it is a conditionally exempt document and access to the document would, on balance, be contrary to the public interest.

The document requested is not an exempt or conditionally exempt document.

Having considered that document, I have decided to grant full access to it. The document dealing with item 15 is an attachment to this letter.

Decision in respect of all other items other than item 15

In respect of the other items of your request I find the following –

1 how many disability service providers who are NOT participants have been charged by the police for fraud or other finance related crime

Information will be held by the NDIS Commission when the police have advised the NDIS Commission of persons who have been charged by the police for fraud or other finance related crime or the NDIS Commission has otherwise been made aware of it. To obtain that information would require manually going through a large number of matters to determine if they related to fraud or other finance related crime. However, any information about disability service providers held by the NDIS Commission will not contain information about whether or not the provider is or is not a participant so in any case it would not be possible to provide that information.

2 how many disability service providers who are NOT participants have faced regulatory action from your agency for fraud or other finance related crime

In respect of fraud or other finance related crime not regulated by the National Disability Insurance Agency, some information will be held by the NDIS Commission. To obtain that information would require manually going through a large number of matters to determine if they dealt with regulatory action relating to fraud or other finance related crime. However, any information about disability service providers held by the NDIS Commission will not contain information about whether or not the provider is or is not a participant so in any case it would not be possible to provide that information.

3 how many disability service providers who are NOT participants have been charged by the police for other crimes which do not involve finance related crimes but abuse relating to violence, abuse or neglect or restrictive practices

This information will be held by the NDIS Commission when the police have advised the NDIS Commission of that or the NDIS Commission has otherwise been made aware of it. However, to access that information would require manually going through a large number of matters to determine if police charges relate to “abuse relating to violence, abuse or neglect or restrictive practices”. However, any information about disability service providers held by the NDIS Commission will not contain information about whether or not the provider is or is not a participant so in any case it would not be possible to provide that information.

4 how many disability service providers who are NOT participants have faced regulatory action for other crimes which do not involve finance related crimes but abuse relating to violence, abuse or neglect or restrictive practices

This information is held by the NDIS Commission but to access it and produce a document would require a manual review of 1,537 compliance and investigation matters to determine if they met the criteria of the request. For accuracy there would also need to be a review of all complaint and reportable incident data. However, any information about disability service providers held by the NDIS Commission will not contain information about whether or not the provider is or is not a participant so in any case it would not be possible to provide that information.

5 how many disability service providers who ARE participants have been charged by the police for fraud or other finance related crime

As for the response to (1) above, information will be held by the NDIS Commission when the police have advised the NDIS Commission of persons who have been charged by the police for fraud or other finance related crime or the NDIS Commission has otherwise been made aware of it. To obtain that information would require manually going through a large number of matters to determine if they related to fraud or other finance related crime. However, any information about disability service providers held by the NDIS Commission will not contain information about whether or not the provider is or is not a participant so in any case it would not be possible to provide that information.

6 how many disability service providers who ARE participants have faced regulatory action from your agency for fraud or other finance related crime

As for the response to (2) above, in respect of fraud or other finance related crime not regulated by the National Disability Insurance Agency, some information will be held by the NDIS Commission. To obtain that information would require manually going through a large number of matters to determine if they dealt with regulatory action relating to fraud or other finance related crime. However, any information about disability service providers held by the NDIS Commission will not

contain information about whether or not the provider is or is not a participant so in any case it would not be possible to provide that information.

7 how many disability service providers who ARE participants have been charged by the police for other crimes which do not involve finance related crimes but abuse relating to violence, abuse or neglect or restrictive practices

As for the response to (3) above, this information will be held by the NDIS Commission when the police have advised the NDIS Commission of that or the NDIS Commission has otherwise been made aware of it. However, to access that information would require manually going through a large number of matters to determine if police charges relate to “abuse relating to violence, abuse or neglect or restrictive practices”. However, any information about disability service providers held by the NDIS Commission will not contain information about whether or not the provider is or is not a participant so in any case it would not be possible to provide that information.

8 how many disability service providers who ARE participants have faced regulatory action for other crimes which do not involve finance related crimes but abuse relating to violence, abuse or neglect or restrictive practices

As for the response to (4) above, this information is held by the NDIS Commission but to access it and produce a document would require a manual review of 1,537 compliance and investigation matters to determine if they met the criteria of the request. For accuracy there would also need to be a review of all complaint and reportable incident data. However, any information about disability service providers held by the NDIS Commission will not contain information about whether or not the provider is or is not a participant so in any case it would not be possible to provide that information.

9 of the above, what proportion of persons were registered providers of services and what proportion were unregistered

This information would be held but would require manual review of a large number of matters to obtain it – see the preceding answers.

10 how many participants have been charged by the police for fraud or other finance related crime

This request is refused as the information is not held by the NDIS Commission as the NDIS Commission does not regulate participants.

11 how many participants have faced regulatory action from your agency for fraud or other finance related crime

This request is refused as the information is not held by the NDIS Commission as the NDIS Commission does not regulate participants.

12 how many participants have been charged by the police for other crimes which do not involve finance related crimes but abuse relating to violence, abuse or neglect or restrictive practices

This request is refused as the information is not held by the NDIS Commission as the NDIS Commission does not regulate participants.

13 how many participants have faced regulatory action for other crimes which do not involve finance related crimes but abuse relating to violence, abuse or neglect or restrictive practices

This request is refused as the information is not held by the NDIS Commission as the NDIS Commission does not regulate participants.

14 of the above, how many were self managing their funding

This requested is refused as the information is not held by the NDIS Commission.

15 how many complaints you have received about alleged wrongdoing by disability service providers

Document created to deal with this request. Please refer to the attachment to the letter.

16 how many complaints you have received about alleged wrongdoing by participants

This request is refused as the information is not held by the NDIS Commission as the NDIS Commission does not regulate participants.

Decision in respect of items 1, 2, 3, 4, 5, 6, 7, 8 and 9

My decision is to refuse access under section 24A(1)(b)(ii) of the FOI Act as a search by the NDIS Commission did not identify any documents that fell within the request. I have decided to refuse your request for access on the basis that the documents you seek in respect of your FOI request do not exist. I am satisfied that all reasonable steps have been taken to determine whether the relevant documents exist. In reaching my decision I have considered –

- Your email dated 21 April 2021
- Searches undertaken by the Compliance, Investigations, Registration and Complaints and Reportable Incidents areas of the NDIS Commission and advice from those areas
- The FOI Act
- Guidelines issued by the Australian Information Commissioner

To create a document or documents meeting the terms of your request would require manually going through a large number of matters, reading a large number of documents to obtain the information, reproducing it, omitting any personal or business information and collating it into one document. If the NDIS Commission were to try to produce such a document or documents, it would require a significant search and analysis of each matter and significant time to record each matter. Each matter may have a very large number of related documents to review and distil. To undertake such a task would be “a substantial and unreasonable diversion” of NDIS Commission resources. However even if that task was able to be carried out it would not be possible to provide information on disability service providers who are or are not participants as the NDIS Commission does not hold information about whether or not a provider is or is not a participant.

Decision in respect of items 10, 11, 12, 13, 14 and 16 – no information held by the NDIS Commission as it does not regulate participants

My decision is to refuse access under section 24A(1)(b)(ii) of the FOI Act as a search by the NDIS Commission did not identify any documents that fell within the request. I have decided to refuse your request for access on the basis that the documents you seek in respect of your FOI request do not exist as the Commission does not regulate participants. I am satisfied that all reasonable steps have been taken to determine whether the relevant documents exist. In reaching my decision I have considered –

- Your email dated 21 April 2021
- Searches undertaken by the Compliance, Investigations, Registration and Complaints and Reportable Incidents areas of the NDIS Commission and advice from those areas
- The FOI Act
- Guidelines issued by the Australian Information Commissioner

Rights of review

I have set out your rights to seek a review of my decision about your FOI access request at **Attachment A**.

Should you have any enquiries concerning your FOI request, please do not hesitate to contact the FOI Co-ordinator at: foi@ndiscommission.gov.au

Yours sincerely



Melissa Clements
Deputy Registrar
NDIS Quality and Safeguards Commission

17 May 2021

Your rights of review

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 format is required but it will help the new decision-maker if you clearly state why you consider the decision should be reviewed. Please send your application by post or email as follows:

Post: Freedom of Information Co-ordinator
NDIS Quality and Safeguards Commission
PO Box 210
Penrith NSW 2750

Email: FOI@ndiscommission.gov.au

External Review by the Australian Information Commissioner

Section 54L of the FOI Act gives you the right to apply directly to the Australian Information Commissioner (AIC) to seek a review of this decision.

If you wish to have the decision reviewed by the AIC you must apply for the review in writing or by using the online merits review form available on the AIC's website at www.oaic.gov.au, within 60 days of receipt of this letter. To assist the AIC 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 AIC about how an agency handled an FOI request, or other actions the agency took under the FOI Act.

Applications for review or complaint can be lodged in one of the following ways:

Online: www.oaic.gov.au

Post: GPO Box 5218
SYDNEY NSW 2001

Phone: 1300 262 992 or +61 2 9284 9749 (international)

Email: enquiries@oaic.gov.au

In person: Level 3
175 Pitt Street
SYDNEY NSW 2000