

17 May 2021

Ginger Meany

By email: foi+request-7255-8a433546@righttoknow.org.au

Dear Ginger Meany

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:

“...the costs incurred by the NDIA for legal representation at the Administrative Appeals Tribunal, including conciliation meetings and preliminary arbitration”

On 13 May 2021, we wrote to you regarding your request to ensure we had correctly interpreted the scope and information you are seeking. We did not receive a response.

I have made a decision based on my reasonable interpretation of the scope. Specifically, I have interpreted your request to be that you are seeking “the total costs incurred by the NDIA for legal representation at the Administrative Appeals Tribunal (AAT)”.

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.

The information you requested was not available in a separate written document at the time of your request. However, we have been able to produce a document containing the information you have requested. I have therefore treated your request as if it were a request for access to this document in accordance with section 17 of the FOI Act.

I have identified one documents which falls within the scope of your request.

Since your request did not provide a date range, I have taken the scope of your request to be from the commencement of the NDIS. I note that a breakdown of costs to the level of detail provided in the created document was not required prior to 2018-19.

I note that spending on AAT matters for 2019-20 was previously provided in a response to a Senate Estimates Question Taken on Notice ([SQ20-000296](#)) which is publicly available.

In accordance with section 17, I have therefore provided data from 2018-19 onwards where possible.

The documents 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 NDIA staff who could be expected to be able to identify documents within the scope of the request.

I have decided to grant access to one document in part.

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.

Figures for the 2020-21 financial year are yet to be formally validated, therefore I have excluded them from the created document. As provided the FOI Guidelines, the deliberative processes involved in the functions of an agency are its thinking processes.

Where the documents contain factual material, I have, to the extent possible, released all of the purely factual material in the document in accordance with the FOI Act.

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

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



Ausilia Woodhead

Assistant Director
Parliamentary, Ministerial & FOI Branch
Government Division

Attachment A**Schedule of Documents for FOI 20/21-0661**

Document number	Page number	Description	Access Decision	Comments
1	1	Total costs incurred by the NDIA for legal representation at the Administrative Appeals Tribunal (AAT) since 2018-19	PARTIAL ACCESS Exemption claimed: s47C – deliberative processes	Document created under section 17 of the FOI Act.

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