

16 June 2021

GPO Box 700
Canberra ACT 2601
1800 800 110
ndis.gov.au

Karen Reynolds

By email: foi+request-7257-106e0f47@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 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:

“Sex aids

From Jan 2018 - Jan 2021, how many NDIS participants have had sex aids funded (including positioning aids, vibrators, dildos, anal toys, sleeves, penis rings, vacuum pumps, Kegel balls and harnesses) by the NDIS?

How much did these aids cost in total?

How many participants had sex aids modified or purpose built for the purposes of upholding their reproductive rights or access to usual sex or masturbation?

From Jan 2018 - Jan 2021, how many NDIS participants have had other types of aids and equipment (including wheelchairs, hoists, seating systems) funded by the NDIS?

How much did these aids and equipment cost?”

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 decided to refuse your request for access under section 24A of the FOI Act on the basis that all reasonable steps have been taken to locate the documents you have requested and I am satisfied that they cannot be found or do not exist.

In reaching my decision, I took into account:

- your correspondence outing the particulars of your request;
- the FOI Act;
- the FOI Guidelines;
- relevant case law and decisions concerning the operation of the FOI Act; and
- consultation with relevant officers of the NDIA.

Delivered by the

National Disability
Insurance Agency

Reasons for decisions

Refuse a request for access (section 24A)

Section 24A of the FOI Act provides that an agency may refuse a request for access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that the document does not exist.

We have conducted searches of the NDIA's documents management systems and made enquiries with the NDIA staff who could be expected to identify the documents falling within the scope of your request. These enquires have revealed that the NDIA is not in possession of documents matching the scope of your request. This is because the NDIA's reporting systems do not have data at the level of granularity required to answer your request for information, as NDIS plan are funded by items within particular in categories; such as 'Assistive Technology'. The term 'sex aid' does not fall in scope of the categories reported on by the NDIA and thus, no document exists that would satisfy your request.

I have considered whether it would be possible for a new document to be created under section 17 of the FOI Act which contains the information you are seeking. Having considered the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines), and previous decisions concerning section 17(1) of the FOI Act, I am satisfied the obligation to create a document under section 17(1) does not apply to your request. This is because the work involved in producing a document containing the information would result in an unreasonable diversion of NDIA resources.

I am satisfied that all reasonable steps have been taken to locate the documents you have requested and that the documents do not exist or cannot be found. I have therefore decided to refuse access to your request in accordance with section 24A(1)(b)(ii) of the FOI Act.

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



Ausilia Woodhead

Assistant 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.