

27 July 2021

Brian Cooper

By email: [foi+request-7350-166d7eef@righttoknow.org.au](mailto:foi+request-7350-166d7eef@righttoknow.org.au)

Dear Brian Cooper

### Freedom of Information request — Notification of Decision

Thank you for your correspondence of 28 May 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:

*“What are all the languages used by the NDIA used to determine the CaLD status of participants in the NDIS for MMM6&7 (Modified Monash Method) Northern Territory, Western Australia, South Australia and Queensland? I require a list of Languages and counts for those languages.”*

On 22 June 2021, you agreed to grant the NDIA an additional 30 days to process your request for information, making the new due date for your request 28 July 2021.

#### 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 part of 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 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 NDIA staff who could be expected to be able to create a document under section 17 of the FOI Act, which would satisfy the scope of your request.

I have decided to grant access to this 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;
- relevant case law concerning the operation of the FOI Act;
- 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**

#### Personal privacy (section 47F)

Section 47F of the FOI Act conditionally exempts a document if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

When creating a document under section 17 of the FOI Act containing the information you requested, I had regard to the potentially identifying information that would be released if the counts for languages identified were to be provided to you.

As a result, I have decided to refuse access to this information, in accordance with section 47F of the Act. This is because the release of this information could potentially result in third parties being identified.

Under section 47F(2) of the FOI Act, in determining whether the disclosure of documents would involve unreasonable disclosure of personal information, regard must be had to:

- a. the extent to which the information is well known;
- b. whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- c. the availability of the information from publicly accessible sources; and
- d. any other matters that the agency considers relevant.

Against these criteria, I take the view that:

- a. it is apparent that the release of this information could result in individuals being identifiable; and
- b. the information referred to above is not readily available from publicly accessible sources.

With reference to the assessment above, it would be unreasonable to disclose publicly this personal information and is therefore conditionally exempt under section 47F(1) of the FOI Act.

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

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 provide access to information relating to the applicant. However, I have considered that:

- disclosure of the information would not contribute to the publication of information of sufficient public interest to justify the likely harm caused by release;
- disclosure of the information would not enhance Australia's representative democracy in the ways described in section 11B(3) of the FOI Act; and
- disclosure of the information would not inform any debate on a matter of public importance or promote oversight of public expenditure.

While there is limited public interest in the disclosure of information conditionally exempt under section 47F, the harm that would result from disclosure is that it could reasonably be expected to affect an individual's right to privacy by having their personal information in the public domain.

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 for release, as referred to in the Schedule of Documents at **Attachment A**, is 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](mailto:foi@ndis.gov.au).

Yours sincerely



**Ausilia Woodhead**

Assistant Director  
Parliamentary, Ministerial & FOI Branch  
Government Division

## Schedule of Documents for FOI 20/21-0798

Document number	Page number	Description	Access Decision
1*	1-4	Response to FOI 20/21-0798 – List of languages for active participants for MMM6&7 (Modified Monash Method) Northern Territory, Western Australia, South Australia and Queensland as at July 2021	<b>PARTIAL ACCESS</b>  Exemption claimed: s47F – personal privacy

\* 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](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