

8 September 2021

Shirley

By email: foi+request-7405-249bd8e5@righttoknow.org.au

Dear Shirley

Freedom of Information request — Notification of Decision

Thank you for your 2 requests of 9 June 2021, under the *Freedom of Information Act 1982* (FOI Act) for copies of documents held by the National Disability Insurance Agency (NDIA).

Scope of your request

As per previous correspondence, under section 24(2) of the FOI Act an agency may treat 2 or more requests as a single request if the subject matter is substantially the same; therefore, as previously advised, we have combined your 2 requests into one request.

The scope of this combined request is:

“...a copy of the NDIA's COVID-19 pandemic/epidemic risk, hazard and threat assessment specific to the State of Victoria. That is, the structured, documented assessment informing the NDIS' classification and prioritisation of participants, providers, processes, staff, physical sites and business activities rated as 'high', 'medium' or 'low' risk. This applies for both 'COVID normal' and 'lockdown' periods. In sum, the NDIS work product informing the NDIA's business continuity and/or resilience action...”

...a copy of the NDIA's COVID-19 pandemic/epidemic risk, hazard and threat assessment specific to the State of New South Wales. That is, the structured, documented assessment informing the NDIS' classification and prioritisation of participants, providers, processes, staff, physical sites and business activities rated as 'high', 'medium' or 'low' risk. This applies for both 'COVID normal' and 'lockdown' periods...”

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 note that the NDIA's response to the pandemic has been holistic and considered the impacts of the COVID-19 across Australia. During searches a number of documents were located that related to NDIA's response to the COVID-19 pandemic and business continuity planning. While these documents are not specific only to New South Wales or Victoria, they are applicable to those regions and are relied upon. I have therefore reasonably interpreted them to be in scope.

I have identified 3 documents which fall within the scope of your request.

The documents were 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 refuse access to 3 documents 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 matter in the form of opinion, advice and recommendations, recorded in the course of providing a prospective estimation of COVID-19 risks and potential responses or mitigation strategies.

As provided in the FOI Guidelines, the deliberative processes involved in the functions of an agency are its thinking processes.

Deliberative matter does not include purely factual material, however, where material was gathered as a basis for intended deliberations, it may be deliberative matter (see FOI Guidelines [6.67]). The FOI Guidelines [6.73] also explain that:

'Purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.

I am satisfied that the information contained within the document falling within the scope of this request is conditionally exempt under section 47C of the FOI Act.

Certain operations of agencies (section 47E(d))

Section 47E(d) of the FOI Act conditionally exempts a document if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The document within the scope of your request contains information relating to certain operations of the NDIA, specifically, internal operations related to risk management processes that affect the functions of the NDIA, its operational decision making, and the delivery of services through the National Disability Insurance Scheme (NDIS) during the COVID-19 pandemic.

The disclosure of this information would reveal methodologies the NDIA uses to assist in its operational risk determination in relation to specific NDIS programs, as well as the NDIA as

an agency. That is, the methodology used by the NDIA to determine appropriate risk management strategies to respond to the pandemic.

I am satisfied that the release of this information would potentially result in the public disclosure of internal methodologies and information that, through improper use, would, or could, compromise internal decision making or affect business continuity planning that would substantially and adversely affect the integrity of the NDIS.

Public interest considerations – section 47C and 47E(d)

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 not provide access to information relating to the applicant. 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 47C and 47E(d), the harm that would result from disclosure is that it could reasonably be expected to:

- hinder the Agency's thinking processes and the ability of Agency decision-makers to comply with their obligations and make informed decisions, which, in turn, helps to ensure the financial stability and integrity of the National Disability Insurance Scheme; and
- prejudice the ability of the Agency to provide guidance on program risks, plan appropriate risk mitigation, and inform the executive in improving decision making, which in turn, helps to ensure the financial stability and integrity of the NDIS.

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.

Access to edited copies with exempt or irrelevant material deleted (section 22)

In accordance with section 22 of the FOI Act I have given consideration to whether it would be practicable to prepare and provide to you an edited copy of any of the documents with exempt material deleted.

The document contains deliberative matter that is exempt from disclosure under section 47C of the FOI Act. I have considered whether it would be practicable to edit the document to delete the deliberative matter and produce copies that would not disclose exempt material.

As the FOI Guidelines explain [6.73], factual material may be so embedded in deliberative matter that it becomes part of the deliberative matter and cannot be separated. The FOI Guidelines also explain [3.98] that a common sense approach should be taken in considering whether the number and extent of deletions would result in the remaining document being of little or no value to the applicant or would leave only a skeleton of the former document that conveys little of its content or substance.

To the extent that the document listed in the attached schedule contains factual material, it is so embedded in the deliberative matter that it is not possible to separate it.

I consider that it would not be practicable to produce edited version of the document.

Release of documents

The document considered as part of this decision has been references 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.

Yours sincerely

A handwritten signature in black ink, consisting of a series of loops and curves, likely representing the name 'Ausilia'.

Ausilia

Assistant Director
Freedom of Information Officer
Parliamentary, Ministerial & FOI Branch
Government Division

Schedule of Documents for FOI 20/21-0851

Document number	Page number	Description	Access Decision
1	-	COVIDSafe Workplace Risk Assessment and Action Plan Dated: 24.07.2020	REFUSED ACCESS Exemptions claimed: s47C – deliberative processes
2	-	Participant Experience Delivery Critical services & BCP actions Dated: 19.04.2020	REFUSED ACCESS Exemptions claimed: s47C – deliberative processes s47E(d) – certain operations of agencies
3	-	COVID-19 Risk Register	REFUSED ACCESS Exemptions claimed: s47C – deliberative processes s47E(d) – certain operations of agencies

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