

19 August 2021

Shirley

By email: foi+request-7408-62d940c5@righttoknow.org.au

Dear Shirley

Freedom of Information request — Notification of Decision

Thank you for your correspondence of 9 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:

“...a copy of the NDIA's current Investigations Policy/ies [sic] and Procedure along with all prior versions. That is, all NDIA Investigations Policies and Procedures since 2013 until Jun 2021...”

On 12 July 2021, we wrote to you regarding your request as set out under section 24AB of the FOI Act.

On 15 July 2021, you revised your request to:

“The current, NDIS-wide, Investigations Policy and Procedure. For clarity, that is the overarching, single, superior NDIS investigation policy and the supporting procedure.”

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.

We have conducted searches of the NDIA's documents management systems and made enquiries with NDIA staff. I note there is no singular overarching policy or procedure document that applies to all investigations undertaken by the NDIA. Policy and procedure documents differ based on the nature of the matter being investigated. This is standard practice across government agencies. A nuanced approach is necessary to ensure that NDIA's procedures are robust and comply with relevant Commonwealth legislation and guidance for different types of investigations and matters.

Noting the above, we have reasonably interpreted your request to relate to the key investigations policy and procedure document used for investigations relating to fraud and non-compliance.

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 identify documents within the scope of the request.

I have decided to refuse access to one document 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;
- 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.

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

I have decided that documents falling within the scope of your request contain material that is exempt from disclosure under the FOI Act.

In accordance with section 22 of the FOI Act, I have considered whether it is possible to delete the exempt material from the documents and have concluded that it is not reasonably practicable to do so.

Reasons for decisions

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 guidance and processes related to investigations into fraud and non-compliance. The information relates to procedures and methods that may be used in the course of investigations, and circumstances where investigations may be undertaken.

The disclosure of this information would reveal operational information about how investigations are conducted within the NDIA, and the internal systems and controls used during investigations.

I am satisfied that the release of this information would potentially result in the public disclosure of internal methodologies that, through improper use, would, or could, circumvent or compromise investigations. This would have had a significant adverse effect on the NDIA to conduct appropriate and substantially and adversely affect the integrity of the NDIS and its financial sustainability.

Public interest considerations – section 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 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 47E(d) the harm that would result from disclosure is that it could reasonably be expected to prejudice the ability of the Agency to undertake relevant investigations to protect the integrity of the NDIA and the National Disability Insurance Scheme.

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 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

Schedule of Documents for FOI 20/21-0853

Document number	Page number	Description	Access Decision	Comments
1	-	NDIA Investigations Handbook Date: January 2021	REFUSED ACCESS Exemption claimed: 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