

10 September 2021

Shirley
By email: foi+request-7463-8ba608d0@righttoknow.org.au

Dear Shirley

Freedom of Information request – Preliminary assessment of charges

Thank you for your correspondence of 12 June 2021, in which you requested access under the *Freedom of Information Act 1982* (FOI Act) to documents held by National Disability Insurance Agency (NDIA).

Scope of your request

You have requested access to documents about the National Disability Insurance Scheme. Specifically, you requested access to:

1. *The NDIA's Mobile Application Request for Tender (RFT)*
2. *The NDIA's tender evaluation of DB Result's submission*
3. *The NDIA's procurement risk assessment of DB Results' submission*
4. *The NDIA's conflict of interest register specific to DB Results*
5. *The NDIA's vendor/third-party provider risk assessment*
6. *Contract amendments, design variance, or changed requirements (mobile application)*
7. *Cybersecurity risk assessment (mobile application)*

I am an authorised decision maker in relation to your request.

Preliminary Assessment of the Charge

I am advised that the NDIA has in its possession approximately **14 documents** containing an estimated **250 pages** relevant to your request.

In accordance with section 29 of the FOI Act, I have decided that you are liable to pay a charge for the processing of your request. According to my preliminary assessment, the charge payable by you amounts to **\$440.00**, calculated as follows:

Search and retrieval time: 4 hours, at \$15.00 per hour:	\$60.00
Decision-making time: 19 hours (not including the first 5 hours*), at \$20.00 per hour:	\$380.00
TOTAL	\$440.00

* Please note that the FOI Act provides that the first 5 hours of decision-making time are free of charge and this is reflected in the calculation.

Delivered by the

National Disability
Insurance Agency

Required Action

Within 30 days of receiving this notice, you are required to notify the Agency in writing that you:

- A. agree to pay the charge; or
- B. wish to contend that the charge:
 - has been wrongly assessed; or
 - should be reduced or not imposed; or
 - both; or
- C. withdraw your freedom of information request.

If you do not provide a written response in accordance with one of Options A, B or C above within 30 days of receiving this notice, your request will be taken to have been withdrawn under subsection 29(2) of the FOI Act.

Alternatively, you may wish to further revise the scope of your request, which is likely to reduce the amount of charges payable in order to process the request. If you would like to discuss this, please contact me for assistance.

Further information on options A, B and C is set out below.

Option A – pay the charge

As the charge exceeds \$100, you are required to pay a deposit of **\$110.00** which is 25% of the total amount, within 30 days of receiving this notice. Alternatively, you may elect to pay the charge in full at this point.

If you wish to pay the charge please notify me as soon as possible, so I can raise an invoice to facilitate your payment by cheque or electronic funds transfer.

Option B – seek reduction or non-imposition of the charge

It is open to you to contend that the charge has been wrongly assessed, or should be reduced or not imposed.

Section 29(5) of the FOI Act provides that, in deciding whether to reduce or not to impose a charge, the decision-maker must take into account any relevant reasons. Such reasons include whether payment of the charge, or part of it, would cause you financial hardship, and whether the giving of access to the documents is in the general public interest or in the interest of a substantial section of the public.

If you wish to contend that the charge has been wrongly assessed or should be reduced or not imposed, please set out your reasons and the evidence in support of your reasons as clearly as possible. If you believe that payment of the charge would cause you financial hardship, please provide sufficient details of your financial circumstances to enable the decision-maker to make a well-informed decision in this regard.

Option C – withdraw your request

If you wish to withdraw your request, you may do so in writing. No charges will be payable if your request is withdrawn at this stage.

Time limits for processing your request

Section 31 of the FOI Act provides that where a notice is sent to an applicant regarding the payment of a charge in respect of a request, the time limit for processing the request is suspended from the date the notice is received until either:

- the day following payment of the charge (in full or the required deposit); or

- if applicable, the day following the notification to the applicant of a decision not to impose the charge.

Address for correspondence

Please send all correspondence regarding your request by email to me at foi@ndis.gov.au or by post to:

Freedom of Information Section
Parliamentary, Ministerial & FOI Branch
Government Division
National Disability Insurance Agency
GPO Box 700
CANBERRA ACT 2601

Attachment A to this letter contains excerpts of the relevant provisions of the FOI Act.

Third Party Consultation

As your request includes documents which contain information about the business, commercial or financial affairs of an organisation, or a person's business or professional affairs, we are required to consult with the person or organisation concerned before making a decision on the release of the documents.

For this reason, the timeframe for processing your request has been extended by 30-days, to allow us time to consult with that person or organisation.

If you have any questions about this matter, please do not hesitate to contact me at foi@ndis.gov.au

Yours sincerely



Carolyn
Assistant Director FOI
Parliamentary, Ministerial & FOI Branch
Government Division

Attachment A — Relevant provisions of FOI Act and

Regulations FOI Act

Section 11C - Publication of information in accessed documents

Scope

- (1) *This section applies to information if an agency or Minister gives a person access to a document under section 11A containing the information, except in the case of any of the following:*
 - (a) *personal information about any person, if it would be unreasonable to publish the information;*
 - (b) *information about the business, commercial, financial or professional affairs of any person, if it would be unreasonable to publish the information;*
 - (c) *other information of a kind determined by the Information Commissioner under subsection (2), if it would be unreasonable to publish the information;*
 - (d) *any information, if it is not reasonably practicable to publish the information under this section because of the extent of any modifications to a document (or documents) necessary to delete information mentioned in paragraphs (a) to (c).*
- (2) *The Information Commissioner may, by legislative instrument, make a determination for the purposes of paragraph (1)(c).*

Publication

- (3) *The agency, or the Minister, must publish the information to members of the public generally on a website by:*
 - (a) *making the information available for downloading from the website; or*
 - (b) *publishing on the website a link to another website, from which the information can be downloaded; or*
 - (c) *publishing on the website other details of how the information may be obtained.*
- (4) *The agency may impose a charge on a person for accessing the information only if:*
 - (a) *the person does not directly access the information by downloading it from the website (or another website); and*
 - (b) *the charge is to reimburse the agency for a specific reproduction cost, or other specific incidental costs, incurred in giving the person access to that particular information.*
- (5) *If there is a charge for accessing the information, the agency or Minister must publish details of the charge in the same way as the information is published under this section.*

Time limit for publication

- (6) *The agency or Minister must comply with this section within 10 working days after the day the person is given access to the document.*
- (7) *In this section:*
working day means a day that is not:
 - (a) a Saturday; or
 - (b) a Sunday; or
 - (c) a public holiday in the place where the function of publishing the information under this section is to be performed.

Section 29 Charges

- (1) *Where, under the regulations, an agency or Minister decides that an applicant is liable to pay a charge in respect of a request for access to a document, or the provision of access to a document, the agency or Minister must give to the applicant a written notice stating:*
 - (a) *that the applicant is liable to pay a charge; and*
 - (b) *the agency's or Minister's preliminary assessment of the amount of the charge, and the basis on which the assessment is made; and*

- (c) that the applicant may contend that the charge has been wrongly assessed, or should be reduced or not imposed; and
 - (d) the matters that the agency or Minister must take into account under subsection (5) in deciding whether or not to reduce, or not impose, the charge; and
 - (e) the amount of any deposit that the agency or Minister has determined, under the regulations, that the applicant will be required to pay if the charge is imposed; and
 - (f) that the applicant must, within the period of 30 days, or such further period as the agency or Minister allows, after the notice was given, notify the agency or Minister in writing:
 - (i) of the applicant's agreement to pay the charge; or
 - (ii) if the applicant contends that the charge has been wrongly assessed, or should be reduced or not imposed, or both—that the applicant so contends, giving the applicant's reasons for so contending; or
 - (iii) that the applicant withdraws the request for access to the document concerned; and
 - (g) that if the applicant fails to give the agency or Minister such a notice within that period or further period, the request for access to the document will be taken to have been withdrawn.
- (2) If the applicant fails to notify the agency or Minister in a manner mentioned in paragraph (1)(f) within the period or further period mentioned in that paragraph, the applicant is to be taken to have withdrawn the request for access to the document concerned.
- (3) An agency or Minister must not impose a charge in respect of a request for access to a document, or the provision of access to a document, until:
- (a) the applicant has notified the agency or Minister in a manner mentioned in paragraph (1)(f); or
 - (b) the end of the period or further period mentioned in that paragraph.
- (4) Where the applicant has notified the agency or Minister, in a manner mentioned in subparagraph (1)(f)(ii), that the applicant contends that the charge should be reduced or not imposed, the agency or Minister may decide that the charge is to be reduced or not to be imposed.
- (5) Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not to impose the charge, the agency or Minister must take into account:
- (a) whether the payment of the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the application was made; and
 - (b) whether the giving of access to the document in question is in the general public interest or in the interest of a substantial section of the public.
- (6) If the applicant has notified the agency or Minister in the manner mentioned in subparagraph (1)(f)(ii), the agency or Minister must take all reasonable steps to enable the applicant to be notified of the decision on the amount of charge payable as soon as practicable but in any case no later than 30 days after the day on which the applicant so notified the agency or Minister.
- (7) If:
- (a) that period of 30 days has elapsed since the day on which the agency or Minister was so notified; and
 - (b) the applicant has not received notice of a decision on the amount of charge payable; the principal officer of the agency, or the Minister, as the case requires, is, for all purposes of this Act, taken to have made, on the last day of the period, a decision to the effect that the amount of charge payable is the amount equal to the agency's or Minister's preliminary assessment of the amount of the charge mentioned in paragraph (1)(b).
- (8) If:
- (a) the applicant makes a contention about a charge as mentioned in subsection (4); and

(b) the agency or Minister makes a decision to reject the contention, in whole or in part; the agency or Minister, as the case requires, must give the applicant written notice of the decision and of the reasons for the decision.

Note: Section 25D of the Acts Interpretation Act 1901 sets out rules about the contents of a statement of reasons.

(9) A notice under subsection (8) must also state the name and designation of the person making the decision and give the applicant appropriate information about:

(a) his or her rights with respect to review of the decision; and

(b) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and

(c) the procedure for the exercise of those rights;

including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.

(10) Section 13 of the Administrative Decisions (Judicial Review) Act 1977 does not apply to a decision referred to in subsection (8).

(11) A notice under subsection (8) is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

31 Decision to impose charge—extended period for processing request

Scope

(1) This section applies if:

(a) on a particular day (the **charge notice day**) an applicant in relation to a request receives a notice under subsection 29(1) or (6) to the effect that the applicant is liable to pay a charge in respect of the request; and

(b) the notice is received before the end of the period (the **processing period**) applicable under paragraph 15(5)(b) in relation to the request (or that period as extended).

Processing period to be calculated disregarding period when charge unpaid

(2) In working out the length of the processing period (or that period as extended) for the purposes of paragraph 15(5)(b), disregard the number of days in the period starting on the charge notice day and ending on the earliest occurring of the following days:

(a) the day the applicant pays the amount of the charge (or a deposit on account of the charge prescribed by the regulations), whether or not the decision to impose the charge has been considered under section 29, or is the subject of a review under this Act;

(b) if the amount of the charge is changed under section 29, or following a review under this Act—the day the applicant pays the amount of the charge (or a deposit on account of the charge prescribed by the regulations) as changed following the review;

(c) if, under section 29, or following a review under this Act, a decision is made with the effect that the charge is not imposed—the day the applicant is notified of the decision.

Note: A decision under section 29 relating to the imposition of a charge or the amount of a charge may be the subject of an internal review (see Part VI), an IC review (see Part VII) or review by the Tribunal (see Part VIIA).

Freedom of Information (Charges) Regulation 2019

Regulation 6 Charges

Subject to this Part, for the purposes of section 94 of the Act:

(a) the charges set out in Part 1 of Schedule 1 apply in respect of a request for access to a document of an agency or an official document of a Minister; and

(b) the charges set out in Part 2 of Schedule 1 apply in respect of the provision of access to a document of an agency or an official document of a Minister.

Note: Since the Act defines **request** as an application made under subsection 15(1) of the Act, paragraph (a) of this section does not apply to an application under section 54 or 54A of the Act (about internal review).

Regulation 8 Decision by agency or Minister that applicant liable to pay charge

If an applicant requests access to a document of an agency or an official document of a Minister, the relevant agency or relevant Minister may make either or both of the following decisions:

- (a) a decision that the applicant is liable to pay a charge in respect of the request for access to the document;
- (b) a decision that the applicant is liable to pay a charge in respect of the provision of access to the document.

Note 1: The relevant agency or relevant Minister must have regard to the objects of the Act in deciding whether to make either or both of the decisions under this section.

Note 2: If the relevant agency or relevant Minister makes a decision under this section, the relevant agency or relevant Minister must notify the applicant in writing, see section 29

Regulation 11 Charge to be paid before access to documents is given

- (1) For the purposes of paragraph 11A(1)(b) of the Act, any charge in respect of the request for access to a document or the provision of access to a document is required to be paid before access is given.
- (2) Subsection (1) does not apply to a charge of the kind referred to in item 1 or 2 of the table in clause 2 of Schedule 1 unless the charge is payable in an amount that was fixed under section 9 because of the circumstance referred to in paragraph 9(1)(c).

Regulation 12 Deposits

- (1) If:
 - (a) an agency or Minister decides that an applicant is liable to pay a charge in respect of:
 - (i) a request for access to a document; or
 - (ii) the provision of access to a document; and
 - (b) the agency's or Minister's preliminary assessment of the amount of the charge exceeds \$25;

the agency or Minister may determine that the applicant is required to pay a deposit on account of the charge and the amount of that deposit.

Note: The applicant must be notified of the amount of the deposit, see paragraph 29(1)(e) of the Act.

Amount of deposit

- (2) The amount of the deposit must not exceed:
 - (a) if the preliminary assessment of the amount of the charge exceeds \$25 but does not exceed \$100—\$20; or
 - (b) if the preliminary assessment of the amount of the charge exceeds \$100—25% of the amount of the charge.

Refund of deposit

- (3) The agency or Minister must refund any deposit paid by the applicant on account of the charge if:
 - (a) the agency or Minister decides under section 29 of the Act not to impose the charge; or
 - (b) section 7 applies in respect of the request for access to the document.

(4) If:

- (a) the applicant pays a deposit on account of the charge; and
 - (b) the amount of the deposit exceeds the amount of the charge;
- the agency or Minister must refund the excess.

Schedule 1—Charges

Part 1—Charges applicable in respect of a request for access to a document

1 Charges applicable in respect of a request for access to a document

The following table sets out charges that apply in respect of a request for access to a document of an agency or an official document of a Minister.

Charge applicable in respect of a request for access to a document		
Item	Charge	Amount or rate of charge
1	If the request relates to a document of an agency, or an official document of a Minister, other than a document in relation to which a charge under item 2 of this table applies—a charge in respect of the time spent by the relevant agency or the relevant Minister in searching for, or retrieving, the document	\$15.00 per hour
2	If the request to an agency is in respect of information that is not available in a discrete form in documents of the agency—a charge in respect of the production of a document containing the information in discrete form by the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information	an amount not exceeding the actual cost incurred by the relevant agency in producing the document
3	If: <ul style="list-style-type: none">(a) the request relates to a document of an agency, or an official document of a Minister, by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form; and(b) a written transcript of the words recorded or contained in the document is produced for the purposes of making a decision on the request; a charge in respect of the production of the written transcript	\$4.40 per page of transcript
4	A charge in respect of the time that is spent by the relevant agency or relevant Minister in deciding whether to grant, refuse or defer access to the document or to grant access to a copy of the document with deletions, including time spent: <ul style="list-style-type: none">(a) in examining the document; or(b) in consultation with any person or body; or(c) in making a copy with deletions; or(d) in notifying any interim or final decision on the request	\$20 for each hour after the first 5 hours

Part 2—Charges applicable in respect of the provision of access to a document

2 Charges applicable in respect of the provision of access to a document

The following table sets out charges that apply in respect of the provision of access to a document of an agency or an official document of a Minister.

Charges applicable in respect of the provision of access to a document		
Item	Charge	Amount or rate of charge
1	If access to a document of an agency is given: (a) in the form of an opportunity for the applicant to inspect the document under the supervision of an officer; or (b) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced—in the form of arrangements for the applicant to hear or view those sounds or visual images under the supervision of an officer; a charge in respect of the period during which the officer supervises that access	The following: (a) if the period is 30 minutes or less—\$6.25; (b) if the period exceeds 30 minutes—\$6.25 for each 30 minutes and any additional period not exceeding 30 minutes included in the period
2	If access to an official document of a Minister is given: (a) in the form of an opportunity for the applicant to inspect the document under the supervision of an officer of an agency or of a person employed as a member of staff of the Minister under section 13 or 20 of the <i>Members of Parliament (Staff) Act 1984</i> ; or (b) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced—in the form of arrangements for the applicant to hear or view those sounds or visual images under the supervision of an officer of an agency or of a person employed as a member of staff of the Minister under section 13 or 20 of the <i>Members of Parliament (Staff) Act 1984</i> ; a charge in respect of the period during which the officer, or the person employed as a member of staff of the Minister, supervises that access	The following: (a) if the period is 30 minutes or less—\$6.25; (b) if the period exceeds 30 minutes—\$6.25 for each 30 minutes and any additional period not exceeding 30 minutes included in the period
3	If: (a) the request relates to a document other than a document that: (i) is produced for the purposes of the request by an agency by the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or (ii) is produced for the purposes of the request by an agency by the making of a transcript from a document held in the agency, being a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound	The following: (a) for a copy (other than a photocopy)—\$4.40 per page; (b) for a photocopy—10 cents per page

Charges applicable in respect of the provision of access to a document

Item	Charge	Amount or rate of charge
	<p>or in which words are contained in the form of shorthand writing or in codified form; or</p> <p>(iii) is an article or thing from which sounds or visual images are capable of being produced; and</p> <p>(b) access to the document is given in the form of the provision of a copy of the document;</p> <p>a charge in respect of the number of pages of the copy provided to the applicant</p>	
4	<p>If:</p> <p>(a) the request made to an agency is in respect of information that is available in discrete form in a document produced (whether for the purposes of the request or not) by the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; and</p> <p>(b) deletions are made from the document before access to it is given to the applicant; and</p> <p>(c) it is not reasonably practicable to make those deletions otherwise than by the use of a computer or other equipment referred to in paragraph (a);</p> <p>a charge in respect of the production by the computer or other equipment of a copy of the document with those deletions</p>	an amount not exceeding the actual costs incurred by the relevant agency in producing a copy of the document
5	A charge for the production by an agency of a copy of a document in the form of a computer tape or a computer disk	an amount not exceeding the actual costs incurred by the relevant agency in producing a copy of the document
6	<p>If:</p> <p>(a) the request relates to a document that is an article or thing from which sounds or visual images are capable of being produced; and</p> <p>(b) access to the document is given in the form of arrangements for the applicant to hear or view those sounds or visual images;</p> <p>a charge in respect of the arrangements made other than any arrangements in respect of which a charge is applicable under item 1 or 2 of this table</p>	an amount not exceeding the actual costs incurred by the relevant agency or relevant Minister in respect of the arrangements
7	<p>If:</p> <p>(a) the request relates to a document that is an article or thing from which sounds or visual images are capable of being produced; and</p> <p>(b) access is given in the form of the provision of a copy of the document;</p> <p>a charge in respect of the production of the copy</p>	an amount not exceeding the actual costs incurred by the relevant agency or relevant Minister in producing the copy
8	<p>If:</p> <p>(a) the request relates to a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form; and</p>	\$4.40 per page of transcript

Charges applicable in respect of the provision of access to a document

Item	Charge	Amount or rate of charge
	<p>(b) access is given in the form of the provision of a written transcript (with or without deletions) of the words recorded or contained in the document; and</p> <p>(c) the applicant has not paid, or is not liable to pay, as a charge in respect of the request for access to the document, a charge in respect of the production of such a written transcript;</p> <p>a charge in respect of the production of the written transcript</p>	
9	<p>If:</p> <p>(a) access to the document to which the request relates is to be given in the form of the provision of a copy of the document; and</p> <p>(b) the copy is, at the applicant's request, to be sent by post or delivered to the applicant;</p> <p>a charge in respect of the postage or delivery of the copy</p>	an amount not exceeding the actual costs incurred by the relevant agency or relevant Minister for the postage or delivery of the copy
