

Our reference: FOI 20/21-0879



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28 September 2021

Shirley

By email: [foi+request-7476-b4700ccd@righttoknow.org.au](mailto:foi+request-7476-b4700ccd@righttoknow.org.au)

Dear Shirley

### Freedom of Information request — Notification of Decision

Thank you for your correspondence of 13 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

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 6 requests into one request.

The scope of your combined request was:

*“...a copy of the NDIA’s “project management framework” cited in the NDIA Annual Report 2014-15...*

*... a copy of both the risk governance structure and the risk management strategy for the financial year 2014-15, cited in the NDIA 2014-15 Annual Report...*

*... copies of the document/s confirming or informing the NDIA’s “project-level risk management maturity”, cited in the NDIA 2014-15 Annual Report...*

*... a copy of the “formal fraud-risk assessment” conducted in March of 2015, cited in the NDIA Annual Report 2014-15...*

*... copies of all submissions, assessments, inputs and ratings that contributed to or formed the basis of the NDIA’s “risk maturity level 4” (integrated) as rated by Comcover’s Risk Management Benchmarking Survey in March 2015, cited in the NDIA Annual Report 2014-15...*

*...copies of all the NDIA “risk champion” fraud and risk training sessions conducted during the financial year of 2014-15, as cited in the NDIA Annual Report 2014-15...”*

#### 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 identified 15 documents, including attachments, 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:

- grant access to 10 documents in full; and
- grant access to 5 documents 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.

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

I have identified that documents falling within the scope of your request contain material that is irrelevant to your request. The irrelevant material relates to names and contact details of NDIA staff.

In accordance with section 22 of the FOI Act, I have considered whether it is possible to delete the irrelevant material from the documents and have concluded that it is not reasonably practicable to do so. Accordingly, I have prepared an edited copy of the documents with the irrelevant material removed.

#### **Reasons for decision**

##### 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.

Documents 4, 5 and 10 contain deliberative matter in the form of opinion, advice and recommendations recorded during the course of the risk management benchmark survey process, and internal emails about risk champion training.

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

Where the documents contain factual material, I have, to the extent possible, released all of the purely factual material in the document in accordance with the FOI Act.

I am satisfied that the relevant information within documents 4, 5 and 10 is deliberative material. Accordingly, I have decided that this information is conditionally exempt under section 47C of the FOI Act. My considerations of the public interest test are set out below.

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.

Document 5.1 contains information relating to certain operations of the NDIA, specifically, internal review processes 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).

The disclosure of this information would reveal internal review processes the NDIA uses to assist in its operational risk management in relation to specific NDIS programs, as well as the NDIA as an agency.

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

I have decided that the relevant information in document 5.1 is conditionally exempt under section 47E(d) of the FOI Act. My considerations of the public interest test are set out below.

Business Information (section 47G)

Section 47G of the FOI Act conditionally exempts a document if its disclosure would disclose information concerning a person in respect of their business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in which the disclosure of the information:

- would or could reasonably be expected to, unreasonably affect that person adversely in respect of their lawful business or professional affairs of that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
- could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

Document 3 contains sensitive business details from Comcover that was provided to the Agency in confidence with an expectation that they would not be disclosed further. The disclosure of this information would unreasonably affect their business affairs, in that it would infringe on confidentiality agreements and could unfairly affect the lawful operations of their business.

I am satisfied that the disclosure of this information could unreasonably and adversely affect the business affairs of Comcover and affect any potential or current business relationship with the Agency. I have, therefore, decided that the relevant information in document 3 is conditionally exempt under section 47G of the FOI Act. My considerations of the public interest test are set out below.

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

I have found information in documents 3, 4, 5, 5.1 and 10 to be conditionally exempt under sections 47C, 47E(d) and 47G of the FOI Act. Section 11A(5) of the FOI Act, provides that if a document is conditionally exempt, it must be disclosed, unless, in the circumstances, access to the document would, on balance, be contrary to the public interest.

In favour of disclosure, 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 held by the government, thereby promoting the objectives of the FOI Act.

Against disclosure, 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 the potential for limited public interest in the disclosure of the information that is conditionally exempt under section 47C, 47E(d), 47G, 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;
- 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;
- prejudice the ability of the Agency to provide guidance and complete reviews 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; and
- compromise the business or professional affairs of Comcare and interfere with their ability to undertake their lawful business.

I am satisfied that the factors against disclosure of the relevant 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](mailto:foi@ndis.gov.au).

Yours sincerely



#### **Carolyn**

Assistant Director FOI  
Parliamentary, Ministerial & FOI Branch  
Government Division

## Schedule of Documents for FOI 20/21-0879

Document number	Page number	Description	Access Decision	Comments
1	1-54	Risk Management Framework 2014	<b>FULL ACCESS</b>	
2	55-57	Board Meeting 14/2014 of 19 November 2014	<b>FULL ACCESS</b>	Irrelevant material removed under section 22 of the FOI Act.
3	58-59	Email Subject: Comcover Update – January 2015 Date: 8/01/2015	<b>PARTIAL ACCESS</b>  Exemption claimed: s47G – business information	
4	60	Email Subject: Feedback in relation to the 2015 Comcover Risk Management Survey Date: 6/03/2015	<b>PARTIAL ACCESS</b>  Exemption claimed: s47C – deliberative processes	Irrelevant material removed under section 22 of the FOI Act.
5	61	Email Subject: FOR ACTION: Comcover risk management benchmarking survey 2015 Date: 6/03/2015	<b>PARTIAL ACCESS</b>  Exemption claimed: s47C – deliberative processes	Irrelevant material removed under section 22 of the FOI Act.

Document number	Page number	Description	Access Decision	Comments
5.1	62-115	Comcover Risk Management Benchmarking Survey 2015	<b>PARTIAL ACCESS</b>  Exemption claimed: s47E(d) – certain operations of agencies	
6	116-121	Audit, Risk & Finance Committee Charter	<b>FULL ACCESS</b>	
7	122-159	Fraud and Risk Management	<b>FULL ACCESS</b>	Irrelevant material removed under section 22 of the FOI Act.
8	160-197	Fraud and Risk Management	<b>FULL ACCESS</b>	Irrelevant material removed under section 22 of the FOI Act.
9	198-235	Fraud and Risk Management	<b>FULL ACCESS</b>	Irrelevant material removed under section 22 of the FOI Act.
10	236-237	Email Subject: RE: For response: risk champion training – proposed training date Date: 17/02/2015	<b>PARTIAL ACCESS</b>  Exemption claimed: s47C – deliberative processes	Irrelevant material removed under section 22 of the FOI Act.
11	238-252	Fraud and Risk Management	<b>FULL ACCESS</b>	Irrelevant material removed under section 22 of the FOI Act.

<b>Document number</b>	<b>Page number</b>	<b>Description</b>	<b>Access Decision</b>	<b>Comments</b>
12	253	Risk training waitlist sessions	<b>FULL ACCESS</b>	Irrelevant material removed under section 22 of the FOI Act.
13	254	Risk training waitlist sessions	<b>FULL ACCESS</b>	Irrelevant material removed under section 22 of the FOI Act.
14	255-292	Fraud and Risk Management	<b>FULL ACCESS</b>	Irrelevant material removed under section 22 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