

Our reference: FOI 21/22-0882



GPO Box 700
Canberra ACT 2601
1800 800 110

ndis.gov.au

13 September 2021

Shirley

By email: foi+request-7488-407911d7@righttoknow.org.au

Dear Shirley

Freedom of Information request — Notification of Decision

Thank you for your 3 requests 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 3 requests into one request.

The scope of this combined request is:

“...Please provide copies of all Audit and Risk Committee (ARC) Minutes of Meeting (from July 2016-February 2017) and the newly established Risk Committee (February 2017-June 2017) Minutes of Meeting for the financial year 2016-17, cited in the NDIA 2016-17 Annual Report...”

Please provide a copy of the NDIA’s ‘enterprise risk management framework’, cited in the NDIA Annual Report 2016-17....

Please provide a copy of the NDIA’s ‘risk management strategy’, cited in the NDIA’s Annual Report 2016-17 [1]. That is, the risk management strategy approved by COAG’s DRC, as cited in the NDIA’s Corporate Plan 2017-2022...”

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 5 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 all 5 documents in full.

In reaching my decision, I took into account the following materials

- your correspondence outlining the scope of your request;

Delivered by the

National Disability
Insurance Agency

- 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

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 1 to 5 within the scope of your request contain deliberative matter in the form of opinion, advice and recommendations recorded in the form of minutes of discussions held by NDIA Board Members during Board meetings, which, if disclosed, would have a detrimental impact on the way that the Board carries out its statutory functions.

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

I have also considered whether the documents within the scope of your request contain factual material that could be provided to you as part of this decision. I have decided that, to the extent that the documents contain factual material, it is so embedded with the deliberative matter that the remaining material would be of little value.

I am satisfied that documents 1 to 5 are conditionally exempt under section 47C of the FOI Act.

Public interest considerations – section 47C

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 promote the objectives of the FOI Act.

However, I consider that, while there is limited public interest in the disclosure of information conditionally exempt under section 47C, the harm that would result from disclosure is that it could reasonably be expected to:

- interfere with the effectiveness of the NDIA Board's deliberative processes, which require members to have confidence in the confidentiality of their discussions to support an open dialogue;
- reduce the ability of the NDIA Board to obtain frank advice unaffected by the possibility of disclosure that might harm third party interests or the administration of the NDIS;
- have a significant adverse effect on the management of the NDIS through skewing, disengagement or other unintended effects arising from the early disclosure of

information that may be taken as indicating the future direction of the NDIS prior to any concluded position being reached; and

- significantly inhibit the ability of the NDIA Board to efficiently and effectively carry out its statutory functions as a result of reduced confidence that confidential deliberations will not be made public.

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.

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



Carolyn

Assistant Director FOI
Parliamentary, Ministerial & FOI Branch
Government Division

Schedule of Documents for FOI 20/21-0882

Document number	Page number	Description	Access Decision
1	-	Meeting minutes August 2016	REFUSED ACCESS Exemption claimed: s47C – deliberative processes
2	-	Meeting minutes September 2016	REFUSED ACCESS Exemption claimed: s47C – deliberative processes
3	-	Meeting minutes November 2016	REFUSED ACCESS Exemption claimed: s47C – deliberative processes
4	-	Meeting minutes April 2017	REFUSED ACCESS Exemption claimed: s47C – deliberative processes
5	-	Meeting minutes May 2017	REFUSED ACCESS Exemption claimed: s47C – deliberative processes

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