

Our reference: FOI 20/21-0883



GPO Box 700  
Canberra ACT 2601  
1800 800 110

[ndis.gov.au](http://ndis.gov.au)

13 September 2021

Shirley

By email: [foi+request-7491-128b0c94@righttoknow.org.au](mailto:foi+request-7491-128b0c94@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 Risk Committee Minutes of Meeting for the financial year 2017-18, cited in the NDIA 2017-18 Annual Report [1]....*

*Please provide a copy of the NDIA’s ‘risk management strategy’ for the financial year 2017-18, cited in the NDIA’s Annual Report 2017-18 [1]....*

*Please provide a copy of the NDIA’s business continuity management framework and strategy established in the financial year of 2017-18 as cited in the NDIA’s Annual Report 2017-18 [1]....*”

### 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 6 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:

- grant access to 2 document in full; and
- refuse access to 4 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;
- 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 4 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 4 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.

**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 20/21-0883

Document number	Page number	Description	Access Decision
1	-	Meeting minutes August 2017	<b>REFUSED ACCESS</b> Exemption claimed: s47C – deliberative processes
2	-	Meeting minutes November 2017	<b>REFUSED ACCESS</b> Exemption claimed: s47C – deliberative processes
3	-	Meeting minutes February 2018	<b>REFUSED ACCESS</b> Exemption claimed: s47C – deliberative processes
4	-	Meeting minutes May 2018	<b>REFUSED ACCESS</b> Exemption claimed: s47C – deliberative processes
5	1-11	Risk Management Strategy	<b>FULL ACCESS</b>
6	12-21	Business Continuity Management Policy	<b>FULL ACCESS</b>

## **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