

5 November 2021

Shirley Humphris

By email: [foi+request-7877-b9638ca5@righttoknow.org.au](mailto:foi+request-7877-b9638ca5@righttoknow.org.au)

Dear Shirley Humphris

### Freedom of Information request — Notification of Decision

Thank you for your correspondence of 19 September 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:

*“Please provide the percentage of internal review (s100) decisions that have confirmed the plan decision (i.e. no change to the plan), for decisions returned from 1st July 2021 to August 31st 2021.*

*Please provide the percentage of internal review (s100) decisions that have confirmed the plan decision (i.e. no change to the plan), for decisions returned from 1st July 2020 to August 31st 2020.”*

On 11 October 2021, the NDIA sought your agreement to an extension of time to process your request for information under section 15AA of the FOI Act, however you did not provide a response within the requested timeframe.

As a result, on 28 October 2021, the Office of the Australian Information Commissioner granted the NDIA with an additional 17 days to process your request under section 15AB of the FOI Act. Therefore, making 5 November 2021 the new due date to provide you a decision on access.

#### 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 decided to refuse your request for access under section 24A of the FOI Act on the basis that all reasonable steps have been taken to locate the documents you have requested and I am satisfied that they do not exist.

In reaching my decision, I took into account:

- your correspondence outlining the particulars of your request
- the FOI Act
- the FOI Guidelines

- relevant case law and decisions concerning the operation of the FOI Act
- consultation with relevant officers of the NDIA

### **Reasons for decisions**

#### Refuse a request for access (section 24A)

Section 24A of the FOI Act provides that an agency may refuse a request for access to a document if all reasonable steps were taken to find the document and the agency is satisfied that the document cannot be found or does not exist.

I have conducted searches of the NDIA's documents management systems and made enquiries with NDIA staff who could be expected to identify the documents requested. These enquiries revealed that the NDIA is not in possession of documents matching the scope of your request. This is because the NDIA does not have the structured data to answer your request due to the complexities of section 100 reviews, in accordance with the NDIS Act.

This is because the data requested is excessively complex in nature. For example, direct comparisons in the time periods you have specified are not easily made, as there are an increasing number of overall participants in the Scheme; the time in which an internal review can be in progress also affects the accuracy of comparing data for these time periods.

I am satisfied that all reasonable steps were taken to locate the documents you have requested and that the documents do not exist. I have therefore decided to refuse access to your request in accordance with section 24A(1)(b)(ii) of the FOI Act.

In accordance with section 17 of the FOI Act, I have also considered whether it would be possible for a new document to be created using the NDIA's computer systems. Having considered the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines), and previous decisions concerning section 17(1) of the FOI Act, I am satisfied the obligation to create a document under section 17(1) does not apply to your request. This is because the NDIA does not hold the structured data necessary to create a document that would contain the information you are seeking. That is to say, the NDIA's systems cannot be interrogated in such a way that would show the percentage of internal reviews that resulted in no change to a plan in the time periods you have specified, without this resulting in an unreasonable diversion of agency resources.

#### **Rights of review**

Your rights to seek a review of my decision, or lodge a complaint, are set out at **Attachment A**.

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



#### **Rafaela**

A/g Assistant Director FOI  
Parliamentary, Ministerial & FOI Branch  
Government Division

## **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 Division.