

Our reference: FOI 21/22-0868



GPO Box 700
Canberra ACT 2601
1800 800 110

ndis.gov.au

20 July 2022

Angel

By email: foi+request-8141-ee5b3b3e@righttoknow.org.au

Dear Angel

Freedom of Information request — Notification of Decision

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

The purpose of this letter is to provide you with a decision on your request. I sincerely apologise for the delay in providing you with this decision.

Scope of your request

You have requested access to the following documents:

Send the documents you found thanks.

Again, it relates to these specific documents:

"...a copy of the "Risk Management Framework" cited in the NDIA Annual Report 2013- 2014

... a copy of the Charter and/or Terms of Reference for the "Audit and Risk Committee (ARC) cited in the NDIA Annual Report 2013-2014

... a copy of the "Risk Management Strategy" cited in the NDIA Annual Report 2013-2014

... details and copies of "Risk Management" consultancies cited in the NDIA Annual Report 2013-2014

... a copy of the NDIA's "Risk Management Declaration" for end of financial year 2013- 2014, as required by Part 5 of the legislative instrument: National Disability Insurance Scheme—Risk Management Rules 2013.

...copies of all Audit and Risk Committee (ARC) Minutes of Meeting for the financial year 2013-14, cited in the NDIA 2013-14 Annual Report [1]. This includes all attendees, agenda, topics and resolutions/outcomes.."

Decision on access to documents

I am authorised to make decisions under section 23(1) of the FOI Act. My decision on your request and the reasons for my decision are set out below.

I note that in FOI 20/21-0843, there were estimated to be approximately 30 documents in scope. After considering the documents and conducting fresh document searches and consultations, I have identified 8 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 your request.

I have decided to grant access to 5 documents in full, and 3 documents in part.

I have decided to refuse access to parts 1, 3 and 5 of your request under section 24A of the FOI Act.

Whilst it doesn't fall within the scope of your request, I did locate 1 document that was a cover letter for the document you are seeking access to for part 5 of your request. I have decided to release this document to you in full.

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

- 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 published under section 93A 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
- the NDIA's operating environment and functions.

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

I have decided that Documents 2, 3 and 4 contain material that is exempt from disclosure under the FOI Act and that Documents 1 to 4 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 exempt and irrelevant material from the documents and have concluded that it is reasonably practicable to do so. Accordingly, I have prepared an edited copy of the documents with the exempt and irrelevant material removed.

Reasons for decision

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 have been taken to find the document and the agency is satisfied that the document cannot be found or does not exist.

The relevant line areas have conducted searches of the NDIA's document management systems and made enquiries with NDIA staff who could be expected to locate documents that fall within the scope of your request. These enquiries have revealed that the NDIA is not in possession of documents matching the scope of parts 1, 3 and 5 of your request. This is because the documents date back to 2013, and they have not been able to be located within the systems and search functions that we have available to use.

I am satisfied that all reasonable steps have been taken to locate the documents you have requested and that the documents cannot be found. I have, therefore, decided to refuse

access to parts 1, 3 and 5 of your request, in accordance with section 24A(1)(b)(ii) of the FOI Act.

Trade Secrets or Commercially Valuable Information (section 47)

Section 47(1) of the FOI Act exempts a document if its release would disclose:

- trade secrets
- any other information having commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

For a document to be exempt under section 47(1)(b) of the FOI Act, paragraph 5.204 of the FOI Guidelines provides that the document must satisfy two criteria:

- the document must contain information that has a commercial value either to an agency or to another person or body
- the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed.

In determining whether Documents 2 and 4 contain information that is commercially valuable, I have had regard to the following factors:

- whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
- whether the information confers a competitive advantage on the agency or person to whom it relates — for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine 'arm's-length' buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date
- whether disclosing the information would reduce the value of a business operation or commercial activity.

I am satisfied that the relevant information in Documents 2 and 4 is known only to the Agency and Ernst and Young, and that if the information were disclosed, it would confer a competitive advantage to other companies over Ernst and Young. I accept that the release of the relevant information would reduce the commercial activity of Ernst and Young in negotiating and accepting contracts in the future, as well as prejudicing the NDIA's ability to obtain such services in the future for fear that an organisation's financial information may be disclosed under the FOI Act. I have not been able to locate any publicly available information in relation to the financial information within the contracts that would indicate that the information can be publicly released.

Additionally, I am satisfied that the relevant information in Documents 2 and 4 has a commercial value to Ernst and Young, and that the commercial value would, or could reasonably be expected to, be destroyed or diminished if this information was disclosed, as other providers may be able to gain a competitive advantage over Ernst and Young by having access to this information. Accordingly, I have decided that the relevant information in Documents 2 and 4 is exempt under section 47(1)(b) of the FOI Act.

Personal privacy (section 47F)

Section 47F of the FOI Act conditionally exempts a document if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

Paragraph 6.127 of the FOI Guidelines states that the FOI Act shares the same definition of 'personal information' as the Privacy Act, which regulates the handling of personal information about individuals (see s 4(1) of the FOI Act and s 6 of the Privacy Act). The

cornerstone of the Privacy Act's privacy protection framework is the Australian Privacy Principles (APPs), a set of legally binding principles that apply to both Australian Government agencies and private sector organisations that are subject to the Act. Detailed guidance about the APPs is available in the Information Commissioner's [APP Guidelines](#).

Paragraphs 6.128 of the FOI Guidelines provides that personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a. whether the information or opinion is true or not
- b. whether the information or opinion is recorded in a material form or not.

Paragraph 6.129 of the FOI Guidelines provides that personal information is:

- information about an identified individual or an individual who is reasonably identifiable
- says something about a person
- may be opinion
- may be true or untrue
- may be recorded in material form or not.

I have identified that Documents 2, 3 and 4 contain material which meets the definition of 'personal information' of a third party.

Under section 47F(2) of the FOI Act, in determining whether the disclosure of documents would involve unreasonable disclosure of personal information, regard must be had to:

- a. the extent to which the information is well known
- b. whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- c. the availability of the information from publicly accessible sources
- d. any other matters that the agency considers relevant.

Against these criteria, I take the view that:

- a. it is apparent from the information that an individual is identifiable
- b. the information referred to above is not readily available from publicly accessible sources.

I have also had regard to the key factors for determining whether disclosure is unreasonable, in line with Paragraph 6.142 of the FOI Guidelines and I am of the view that:

- a. Documents 2, 3 and 4 contain third party personal information
- b. release of the relevant material in Documents 2, 3 and 4 would cause stress on the third party
- c. no public purpose would be achieved through release.

With reference to the assessment above, I have decided that it would be unreasonable to publicly disclose this personal information and it is, therefore, conditionally exempt under section 47F(1) of the FOI Act. My considerations of the public interest are set out below.

Public interest considerations – section 47F

Section 11A(5) of the FOI Act provides that access to a document covered by a conditional exemption must be provided unless disclosure would be contrary to the public interest.

I have not considered any of the irrelevant factors as set out under section 11B(4) of the FOI Act in making this decision.

In favour of disclosure, I have considered the factors outlined in section 11B(3) of the FOI Act, and I have determined that disclosure of the relevant information in Documents 2, 3 and

4 would promote the objects of the FOI Act by providing access to documents held by the government.

Against disclosure, I consider that disclosure of the relevant information in Documents 2, 3 and 4 would not:

- contribute to the publication of information of sufficient public interest to justify the likely harm caused by release
- enhance Australia's representative democracy in the ways described in section 11B(3) of the FOI Act
- inform any debate on a matter of public importance, or promote oversight of public expenditure.

I find that there is no public interest in the disclosure of information conditionally exempt under section 47F of the FOI Act. The harm that would result from disclosure is that it could reasonably be expected to:

- prejudice the ability of the Agency to protect the security and integrity of information held in the Agency
- affect an individual's right to privacy by having their personal information in the public domain.

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. Accordingly, I have decided that the relevant information in Documents 2, 3 and 4 is exempt under section 47F of the FOI Act.

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.

Yours sincerely



Carolyn

Assistant Director FOI
Parliamentary, Ministerial & FOI Branch
Government Division

Schedule of Documents for FOI 21/22-0868

Document number	Page number	Description	Access Decision	Comments
1	1-5	Procurement of Internal Audit Services Date: 11 September 2013	FULL ACCESS	Irrelevant material removed under section 22 of the FOI Act
2	6-10	Schedule 1 – Order Number CN0127 Date: 23 December 2013	PARTIAL ACCESS Exemptions claimed: s47 – trade secrets or commercially sensitive information s47F – personal privacy	Irrelevant material removed under section 22 of the FOI Act
3	11-13	Deed of Variation Date: 23 December 2013	PARTIAL ACCESS Exemption claimed: s47F – personal privacy	Irrelevant material removed under section 22 of the FOI Act
4	14-17	Deed of Variation Date: 4 January 2016	PARTIAL ACCESS Exemptions claimed: s47 – trade secrets or commercially sensitive information s47F – personal privacy	Irrelevant material removed under section 22 of the FOI Act
5	18-29	Audit and Risk Committee Meeting Minutes Date: 2 December 2013	FULL ACCESS	
6	30-36	Audit and Risk Committee Meeting Minutes Date: 12 February 2014	FULL ACCESS	
7	37-48	Audit and Risk Committee Meeting Minutes Date: 22 April 2014	FULL ACCESS	

Document number	Page number	Description	Access Decision	Comments
8	49-54	Audit, Risk & Finance Committee Charter Not Dated	FULL ACCESS	
9	55	Letter regarding the Risk Management Declaration Date: 30 September 2014	FULL ACCESS	

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.