



**Australian Government**  
**Department of Social Services**

**Our reference:** FOI LEX 44841

**Decision date:** 15 July 2022

**Applicant name:** SH.

**By email:** [foi+request-8993-08d52e43@righttoknow.org.au](mailto:foi+request-8993-08d52e43@righttoknow.org.au)

Dear SH,

**Freedom of Information request FOI LEX 44841**

1. I refer to your correspondence received by the Department of Social Services (**the Department**) on 7 June 2022, in which you requested access to documents held by the Department as follows:

*..data from the NDIS Appeals Advocacy Program on:*

1. *the number of NDIS participants assisted with internal plan reviews over the past financial year;*
2. *the number of NDIS participants assisted with external appeals over the past financial year;*
3. *the number of NDIS applicants assisted with internal access reviews over the past financial year;*
4. *the number of NDIS applicants assisted with external access appeals over the past financial year*

2. You made the request under the *Freedom of Information Act 1982 (FOI Act)*.

**Decision**

3. The Department has undertaken a reasonable search of its records and, in accordance with section 17 of the FOI Act.
4. I have made a decision to create and grant access in full to one (1) document that f within the scope of your request.
5. The document that I have chosen to grant access to is listed at **Appendix 1**.



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**Authority to make decision**

6. I am an officer authorised by the Secretary of the Department to make decisions about access to documents in the possession of the Department in accordance with section 23(1) of the FOI Act.

**Background**

7. On 7 June 2022, you made a request for access to documents in the possession of the Department.
8. On 15 February 2022, the Department acknowledged your request.
9. A decision on your request is due by 7 July 2022.
10. The request was for specific data that the Department holds. However, the data requested was not available in a document of the Department.
11. Following receipt of your request, the Department produced a written document containing the information requested in accordance with section 17 of the FOI Act.

**Material taken into account**

12. When making my decision I considered the following:
  - the terms of your request;
  - the types of information and documents that are in the Department's possession;
  - the content of the documents that fall within the scope of your request;
  - consultation with relevant business areas on the documents falling within scope of your request;
13. A list of FOI Act provisions used in making my decision can be found at **Appendix 2**.

**Additional information**

14. The Department does not collect data that distinguishes whether a client is an NDIS participant or an NDIS applicant so we have not been able to provide a breakdown as outlined in your request.



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**Access to documents**

15. The document released to you in accordance with the FOI Act is enclosed.

**Information Publication Scheme**

16. The FOI Act outlines at Section 11C that agencies must publish information to members of the public, except in specified circumstances.

17. I am of the view that the documents released to you should be made available on the Department's FOI Disclosure Log. As such, details of your request will be published on the Department's FOI Disclosure Log within 10 days of release. The Department's FOI Disclosure Log can be accessed at <https://www.dss.gov.au/about-the-department/freedom-of-information/disclosure-log>.

**Your rights of review**

18. Information about your rights to seek a review of this decision are at **Attachment A**.

19. Should you have any enquiries concerning this matter please do not hesitate to contact the FOI team by email at [FOI@dss.gov.au](mailto:FOI@dss.gov.au).

Yours sincerely,

A handwritten signature in cursive script that reads 'Paul Beaton'.

**P Beaton**

A/g Director

Freedom of Information section

Legal Services Branch

15 July 2022



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**Appendix 1**

**Schedule of documents**

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Document reference	Date of document	Document description	Pages	Decision	Applicable Exemptions
1	23 June 2022	Data on clients receiving support under the NDIS Advocacy Program for 2020-21	1	Full Access	N/A



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**Appendix 2**

**Schedule of relevant provisions used in making this decision**

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Excerpts from the *Freedom of Information Act 1982 (Cth)*

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**3 Objects—general**

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
  - (a) requiring agencies to publish the information; and
  - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
  - (a) increasing public participation in Government processes, with a view to promoting better informed decision-making;
  - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

**11 Right of access**

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
  - (a) a document of an agency, other than an exempt document; or
  - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
  - (a) any reasons the person gives for seeking access; or
  - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

**11A Access to documents on request**

*Scope*

- (1) This section applies if:
  - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
    - (i) a document of the agency; or
    - (ii) an official document of the Minister; and



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- (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

#### *Mandatory access—general rule*

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

#### *Exemptions and conditional exemptions*

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
  - (a) a conditionally exempt document; and
  - (b) an exempt document:
    - (i) under Division 2 of Part IV (exemptions); or
    - (ii) within the meaning of paragraph (b) or (c) of the definition of exempt document in subsection 4(1).

## **11B Public interest exemptions — factors**

### *Scope*

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

### *Factors favouring access*

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:





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- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
- (b) Inform debate on a matter of public importance;
- (c) promote effective oversight of public expenditure;
- (d) allow a person to access his or her own personal information.

#### *Irrelevant factors*

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
  - (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
  - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
  - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
  - (d) access to the document could result in confusion or unnecessary debate.

#### *Guidelines*

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

## **15 Requests for access (as related to the requirements for requests)**

#### *Persons may request access*

- (1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

#### *Requirements for request*

- (2) The request must:
  - (a) be in writing; and
  - (aa) state that the request is an application for the purposes of this Act; and
  - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and
  - (c) give details of how notices under this Act may be sent to the applicant (for example, by providing an electronic address to which notices may be sent by electronic communication).
- (2A) The request must be sent to the agency or Minister. The request may be sent in any of the following ways:
  - (a) delivery to an officer of the agency, or a member of the staff of the Minister, at the address of any central or regional office of the agency or Minister specified in a current telephone directory;
  - (b) postage by pre-paid post to an address mentioned in paragraph (a);
  - (c) sending by electronic communication to an electronic address specified by the agency or Minister.



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#### 17 Requests involving use of computers etc

- (1) Where:
  - (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;
  - (b) It appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
  - (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
  - (c) the agency could produce a written document containing the information in discrete form by:
    - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
    - (ii) the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

#### 23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.