

25 October 2022

Me

By email: [foi+request-9121-e935d1e4@righttoknow.org.au](mailto:foi+request-9121-e935d1e4@righttoknow.org.au)

Dear Me

## Freedom of Information request — Notification of Decision

Thank you for your correspondence of 12 July 2022, 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.

### Scope of your request

You have requested access the following documents:

*I request all personnel records regarding Ken Skelton ([ken.skelton@ndis.gov.au](mailto:ken.skelton@ndis.gov.au)).*

*This includes but is not limited to:*

- code of conduct issues (broadly defined)*
- HR issues (broadly defined)*
- performance agreements where behaviour (as against competence) is at issue*

*It excludes:*

- leave and other payroll records*

*I have reason to believe Ken Skelton is involved in a criminal enterprise. I would like more information to assist me in deciding whether to make an APS complaint and/or police complaint.*

*I am open to suggestion as to ameliorating privacy concerns, such as, a disclosure that is not required to be published on the disclosure log.*

I am not satisfied that you have the authority to receive the requested information on behalf of Ken Skelton.

### 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 have decided to refuse access to your request under section 47F of the FOI Act. The reasons for my decision are set out below.

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
- the NDIA's operating environment and functions.

### **Reasons for decision**

#### 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 am satisfied that documents that fall within the scope of your request, were they to exist, would meet the definition of 'personal information'.

Section 47F(2) of the FOI Act provides that 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.

With reference to this assessment, and without any evidence before me that you are authorised to obtain documents on behalf of Ken Skelton, I have decided that it would be unreasonable to publicly disclose any personal information to you, were it to exist. I have also consulted with Ken Skelton in regards to the potential release of his personal information. Ken Skelton has objected to the release of his personal information on the grounds of personal privacy.

Accordingly, I have decided that any information, if it were to exist, would be conditionally exempt under section 47F of the FOI Act. My considerations of the public interest test 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.

After considering the public interest factors outlined in section 11B(3) of the FOI Act, I have determined that if the information were to exist:

- a. disclosure would not contribute to the publication of information of sufficient public interest value to justify impinging on personal privacy rights
- b. disclosure would not enhance Australia's representative democracy in the ways described in section 11B(3) of the FOI Act
- c. disclosure would not inform any debate on a matter of public importance or promote oversight of public expenditure

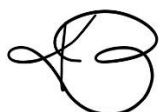
In view of the fact that there is limited public interest in the disclosure of personal information, the factors against disclosure of the information, were it to exist, outweigh the factors in favour of disclosure. The harm that may result from the disclosure of any such exempt information is that it may unreasonably affect an individual's right to privacy by having their personal information in the public domain. On balance, I am satisfied that if the information were to exist, it would be contrary to the public interest to release this information to you, and would be exempt under section 47F of the FOI Act.

**Rights of review**

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

Please contact us at [foi@ndis.gov.au](mailto:foi@ndis.gov.au) if you have any questions or require help.

Yours sincerely



**Kylie**

Senior Freedom of Information Officer  
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  
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.