

25 August 2023

Me

By email: foi+request-9439-909410d0@righttoknow.org.au

Dear Me

Freedom of Information request — Notification of Decision

Thank you for your correspondence of 5 October 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). I apologise for the delay in processing your request. The purpose of this letter is to provide you with a decision on your request.

Scope of your request

You have requested access to the following documents:

I would like the following documents for the period 1 July 2020 through 30 September 2022:

- current versions of any internal or otherwise non-public policies or guidance with regards to deciding if ADHD can or should be approved in a plan.*
- current versions of any internal or otherwise non-public policies or guidance with regards to deciding how much funding should be allocated for ADHD in a plan once ADHD has been approved to be in that plan.*
- any correspondence (incl email, mincorro, carrier pigeon, etc.), including attachments if applicable, sent to an SES3 or higher that discuss whether and/or how ADHD fits into the NDIS.*
- any correspondence (incl email, mincorro, carrier pigeon, etc.), including attachments if applicable, sent from an SES3 or higher that discuss whether and/or how ADHD fits into the NDIS.*

You have revised the scope of your request in regard to points 3 and 4 to be for the following documents:

- *Limit it to correspondence discussing whether and/or how ADHD fits into the NDIS to and from the Agency's current Chief Executive Officer and Deputy Chief Executive Officers; and*
- *Seek access to more precisely defined correspondence e.g. correspondence discussing whether persons diagnosed with ADHD are or should be eligible to become NDIS participants.*

Extension of time

On 28 October 2022, you agreed to a 30-day extension of time under section 15AA of the FOI Act, making 4 December 2022 the new date that this requested was deemed.

I note this access decision is being released to you after the due date and apologise for the long delay. In the interests of providing you with our access decision without any further delays, I have decided not to apply for an extension to the processing period from the Office of the Australian Information Commissioner under section 15AC of the FOI Act.

Search efforts

Searches for documents were by conducted by relevant NDIA staff who could be expected to be able to identify documents within the scope of the request. I have been provided with 27 documents, (including attachments), which fall within the scope of your request.

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 identified 27 documents, including attachments, 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 11 documents in full, and 16 documents in part.

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.

Reasons for decision

Deliberative processes (section 47C)

'Deliberative matter' is a shorthand term for 'opinion, advice and recommendation' and 'consultation and deliberation' that is recorded or reflected in a document. Section 47C of the FOI Act conditionally exempts a document if its release 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.

Paragraph 6.59 of the FOI Guidelines further provides that deliberative process generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

Section 47C conditionally exempts documents containing deliberative matter. Deliberative matter is content that is in the nature of, or relating to either:

- an opinion, advice or recommendation that has been obtained, prepared or recorded, or
- a consultation or deliberation that has taken place, in the course of, or for the purposes of, a deliberative process of the government, an agency or minister (s 47C(1))

Document 9 contains deliberative matter in the form of opinion, advice and recommendations recorded in the course of NDIA staff performing their duties. I consider that disclosure of this information would have a substantial adverse effect on the management of NDIA personnel, in that staff may be reluctant to engage in discussions about sensitive material if they were aware that the subject matter of those discussions would be disclosed and made public.

I am satisfied that information within document 9 contains information that is deliberative in nature and therefore, is conditionally exempt under section 47C of the FOI Act. I have considered whether it is possible to delete the exempt and deliberative 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 material removed.

Personal privacy (section 47F)

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

I have identified material in the documents falling within scope of your request which contains personal information of a third party / third parties.

With reference to the assessment above, it would be unreasonable to disclose publicly this personal information and is therefore conditionally exempt under section 47F(1) of the FOI Act.

Public interest considerations – section 47C and 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 9 to 14, 16 and 17 to 23 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 9 to 14, 16, and 17 to 23:

- would not contribute to the publication of information of sufficient public interest to justify the likely harm caused by release
- would not enhance Australia's representative democracy in the ways described in section 11B(3) of the FOI Act
- would not inform any debate on a matter of public importance, or promote oversight of public expenditure.

While there is limited public interest in the disclosure of information conditionally exempt under section 47C and 47F of the FOI Act, the harm that would result from disclosure is that it could reasonably be expected to:

- hinder the Agency's thinking processes and the ability of Agency decision-makers to comply with their obligations and make informed decisions, which, in turn, helps to ensure the financial stability and integrity of the National Disability Insurance Scheme.
- 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 9 to 14, 16, and 17 to 23 are exempt under sections 47C and 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 fox@xxxx.xxx.xx

Yours sincerely

A handwritten signature in black ink that reads "Jade". The signature is written in a cursive, flowing style.

Jade

Senior Freedom of Information Officer
Parliamentary, Ministerial & FOI Branch
Government Division

Schedule of Documents for FOI 22/23-0607

Document number	Page number	Description	Access Decision
1	1-32	Creating Your Plan Guidelines Version 3 Date: 1 April 2021	FULL ACCESS
2	33-66	Creating Your Plan Guidelines Version 4 Date: 26 June 2022	FULL ACCESS
3	67-100	Determine Reasonable and Necessary Supports Practice Guide Version 21 Date: 1 July 2020	FULL ACCESS
4	101-134	Determine Reasonable and Necessary Supports Practice Guide Version 22 Date: 29 July 2020	FULL ACCESS
5	135-170	Determine Reasonable and Necessary Supports Practice Guide Version 24 Date: 23 December 2020	FULL ACCESS
6	171-206	Determine Reasonable and Necessary Supports Practice Guide Version 25 Date: 13 January 2021	FULL ACCESS
7	207-223	Referral Checklist: Eligibility Reassessment or Access Status Change - Early Intervention Version 3 Date: 21 July 2022	FULL ACCESS
8	224-263	Access Practice Guide - Psychosocial Disability Date: 15 August 2017	FULL ACCESS

Document number	Page number	Description	Access Decision
9	264-266	Email Subject: RE: Huddle - New Disability Codes Date: 17 July 2020	PARTIAL ACCESS Exemption claimed: s47C – deliberative processes s47F – personal privacy
10	267-272	Email Subject: FYI: BILL SHORTEN - TRANSCRIPT - RADIO INTERVIEW - ABC BREAKFAST NORTHERN TASMANIA WITH BELINDA KING - THURSDAY, 15 JULY 2021 Date: 15 July 2021	PARTIAL ACCESS Exemption claimed: s47F – personal privacy
11	273-275	Email Subject: RE: ACA request - 2PM QLD time deadline Date: 5 November 2021	PARTIAL ACCESS Exemption claimed: s47F – personal privacy
12	276-278	Email Subject: Re: For clearance by Friday COB: ABC request: ADHD and the NDIS Date: 19 May 2022	PARTIAL ACCESS Exemption claimed: s47F – personal privacy
13	279-281	Email Subject: RE: FOR REVIEW: Geelong Advertiser query Date: 31 August 2022	PARTIAL ACCESS Exemption claimed: s47F – personal privacy
14	282	Email Subject: FOR INFO - MB22-000090 - Support available and handling of ADHD under the NDIS and outside the scheme - Returned from MO Date: 7 September 2022	PARTIAL ACCESS Exemption claimed: s47F – personal privacy
14.1	283-285	Attachment to Document 14 Signed Ministerial Briefing MB22-00090 Date: 3 September 2022	FULL ACCESS

Document number	Page number	Description	Access Decision
15	286-293	Email Subject: MINISTER FOR THE NDIS - TRANSCRIPT - DOORSTOP - MONDAY 26 SEPTEMBER 2022 Date: 26 September 2022	FULL ACCESS
16	294	Email Subject: ADHD RESPONSE FOR MEDIA Date: 27 September 2022	PARTIAL ACCESS Exemption claimed: s47F – personal privacy
16.1	295-296	Attachment to Document 16 Media Response Date: 27 September 2022	FULL ACCESS
17	297-304	Email Subject: FYI: MINISTER FOR THE NDIS - TRANSCRIPT - DOORSTOP - MONDAY 26 SEPTEMBER 2022 Date: 27 September 2022	PARTIAL ACCESS Exemption claimed: s47F – personal privacy
17.1	305-307	Attachment to Document 17 Media Response Date: 26 September 2022	PARTIAL ACCESS Exemption claimed: s47F – personal privacy
18	308-310	Email Subject: RE: Daily Telegraph enquiry for Minister Shorten Date: 27 September 2022	PARTIAL ACCESS Exemption claimed: s47F – personal privacy
18.1	311-315	Attachment to Document 18 Question Time Brief QB22-000078 Date: 27 September 2022	PARTIAL ACCESS Exemption claimed: s47F – personal privacy
19	316-317	Ministerial Correspondence MC22-001616 Date: 12 August 2022	PARTIAL ACCESS Exemption claimed: s47F – personal privacy

Document number	Page number	Description	Access Decision
20	318-320	Ministerial Correspondence MC22-001638 Date: 12 August 2022	PARTIAL ACCESS Exemption claimed: s47F – personal privacy
21	321-323	Ministerial Correspondence MC22-001458 Date: 23 August 2022	PARTIAL ACCESS Exemption claimed: s47F – personal privacy
22	324-326	Ministerial Correspondence MC22-002093 Date: 2 September 2022	PARTIAL ACCESS Exemption claimed: s47F – personal privacy
23	327-328	Ministerial Correspondence MC22-002313 Date: 19 September 2022	PARTIAL ACCESS Exemption claimed: s47F – personal privacy

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 xxx@xxxx.xxv.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