

29 August 2023

Florence
Right to Know

By email: foi+request-9577-412a431e@righttoknow.org.au

Dear Florence

Freedom of Information request — Notification of Decision

Thank you for your correspondence of 14 November 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 sincerely apologise for the delay in finalising your request.

Scope of your request

In your original request, you requested access to the following documents:

1. Since the NDIS was created (2013) how many NDIA people, contractors or staff have applied for or requested police check waivers? This includes those made on their behalf, like senior (EL, SES, CEO, etc) positions. If any, how many were approved or granted?
2. Since the NDIS was created (2013) how many NDIA people, contractors or staff have applied for or requested security clearance waivers? This includes those made on their behalf, like senior (EL, SES, CEO, etc) positions. If any, how many were approved or granted?
3. What grounds, reasons or justifications were provided? Which were accepted, if any?

I confirm my email to you on 17 August 2023 where I sought clarification of your scope and refined the wording as follows to ensure it meets the terms of a valid request.¹

- *all documents that confirm a request for waiver of a police check or a security check;*
- *all documents that detail the reason for the request or waiver provided by the requestor; and*
- *all outcomes of requests for waiver.*

I also sought clarification of terms used in your scope. I advised that by NDIA people, I take it you are referring to all APS staff employed by the NDIA regardless of level, and by contractors, you are referring to those engaged by Labour Hire arrangements.

On 20 August 2023, you responded agreeing to above and requested I proceed on that basis.

The purpose of this letter is to notify you of my decision on your application.

¹ Section 15(2)(b) of the FOI Act.

Search efforts

Searches for documents were conducted by the Security Team located within the Chief Information Office (CIO) of the NDIA and no responsive documents were located.

Decision on access to documents

In summary, I have decided to refuse access to the information you have requested on the basis that the documents are non-existent pursuant to section 24A of the FOI Act.

I made this decision on 29 August 2023 as an authorised Freedom of Information decision maker under section 23(1) of the FOI Act.

A detailed statement of reasons explaining my decision is **Attachment A** to this decision notice.

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

A handwritten signature in black ink, appearing to read 'Jennifer', written in a cursive style.

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

Statement of Reasons
FOI Application 22/23-0871

Refused information

I have refused access to the information you have requested on the basis that the documents do not exist under section 24A of the FOI Act.

Relevant law

Under the FOI Act, a person has a right to be given access to documents of an agency. However, the right of access is subject to limitations, including grounds for refusal of access. Section 24A of the FOI Act states 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.

After reviewing the scope of your FOI application, I determined that NDIA needed to undertake searches to assess whether the documents you requested existed.

Following these searches, it was determined that the information you have requested access to did not exist. The advice provided via the CIO was that the NDIA Security Team only commenced processing and conducting Nationally Coordinated Criminal History Checks (NCCHC) for the National Disability Insurance Agency (NDIA) as of 27 September 2021.

The NDIA Security Team have zero waivers recorded in relation to APS staff or Labour Hire staff for police/security checks between 27 September 2021 – 14 November 2022.

As per the Shared Service Agreement with Services Australia, all NCCHS's (police/security checks) prior to 27 September 2021 were conducted by Services Australia.

I have reviewed the searches undertaken by the NDIA and I am satisfied that if the information existed, the searches performed would have located it. I consider that NDIA has taken all reasonable steps to locate the documents and accept the submissions from CIO as to the existence of the information.

Conclusion

For these reasons, I consider there are reasonable grounds to be satisfied that the documents do not exist, and that the NDIA has taken all reasonable steps to locate the information. I refuse access to the information under section 24A of the FOI Act on the basis that it does not exist.

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 Division.