

20 August 2023

AS

**By email:** [foi+request-9775-53ab6174@righttoknow.org.au](mailto:foi+request-9775-53ab6174@righttoknow.org.au).

Dear AS

## Freedom of Information request — Notification of Decision

Thank you for your correspondence of 4 January 2023 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 to the following documents:

1. *Standard operating procedure & any other policy or guidelines for reassessment of NDIS access eligibility for participants over 7 years old.*
2. *Any forms or checklists used to determine referral for reassessment.*
3. *Any documents relating to NDIS eligibility reassessment for people with Chronic Fatigue Syndrome (CFS), Myalgic Encephalitis (ME), ME/CFS or chronic fatigue.*

### Extension of time

On 11 January 2023, you agreed to a 30-day extension of time under section 15AA of the FOI Act, making 5 March 2023 the new date to provide you with a decision on access.

On 6 March 2023, the Office of the Australia Information Commissioner (OAIC) granted us a 30-day extension of time under section 15AB of the FOI Act, making 17 March 2023 the new legislated deadline for provide you with a decision.

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. However, your rights to an Internal Review (IR) of this decision, or Information Commissioner (IC) review remain and are included in **Attachment B**.

### Search efforts

Searches for documents were conducted by relevant business areas including the National Access and Reassessment Branch and Service Guidance and Practice Branch using reasonable search terms that could return documents relevant to your request. Documents have been identified which fall within Part 1 and 2 of 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 12 documents, which falls within the scope of Part 1 of your request.

I have identified 1 document that falls within the scope of Part 2 of your request.

In regard to Part 3 of your request, I have been advised by the relevant line area that no documents exist relating to NDIS eligibility reassessment specifically for people with chronic fatigue syndrome/myalgic encephalitis or any other disability or diagnosis in particular.

I have excluded from this release any publicly available documents, such as legislation and operational guidelines. I have included links below to specific guidelines identified as being relevant to your request:

- [National Disability Insurance Scheme Act 2013](#)
- [NDIS Becoming a Participant Rules 2016](#)
- [Applying to the NDIS | NDIS](#)
- [Leaving the Scheme | NDIS.](#)
- [What happens if we check your NDIS eligibility? | NDIS](#)

The documents were identified by conducting searches of NDIA's systems, and making enquiries with relevant staff, 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 12 documents in full relating to Part 1 of your request
- grant access to 1 document in part in relation to part 2 of your request
- refuse access to part 3 of your request, on the basis that no documents exist.

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
- relevant case law concerning the operation 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**

### Part 2: Certain operations of agencies (section 47E(d))

Section 47E(d) of the FOI Act conditionally exempts a document if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The disclosure of this information would reveal methodologies the NDIA uses to better ensure that participants on the scheme continue to meet access and receive supports that are reasonable and necessary. Any disclosure resulting in the prejudice of the effectiveness of the Agency's operational methods and procedures would, or could reasonably be expected to, result in the need for the Agency to change those methods and procedures to ensure the future sustainability of the Agency and the Scheme.

Accordingly, I find that disclosure of this information would or could reasonably be expected to have a substantial adverse effect on the operations of the Agency and is therefore conditionally exempt under section 47E(d) of the FOI Act.

Public interest considerations – section 47E(d)

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 Document 13 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 Document 13:

- 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 47E(d) of the FOI Act, the harm that would result from disclosure is that it could reasonably be expected to:

- hinder the Agency's 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
- prejudice the ability of the Agency to provide guidance to staff and to decision makers in order to comply with their obligations and make informed decisions in relation to the continued eligibility of participants who access the scheme which, in turn, helps to ensure the financial stability and integrity of the NDIS
- prejudice the ability of the Agency to protect the security and integrity of information held in the Agency

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 Document 13 is exempt under section 37E(d) of the FOI Act.

Part 3: Refused 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.

I have conducted searches of the NDIA's documents management systems and made enquiries with NDIA staff. These enquiries have revealed that the NDIA is not in possession of documents with respect to a number of points in the scope.

I am satisfied that all reasonable steps have been taken to locate the above documents and that these documents do not exist. I have, therefore, decided to refuse access to these parts of the scope of your request in accordance with section 24A(1)(b)(ii) of the FOI Act.

**Release of documents**

The document for release, as referred to in the Schedule of Documents at **Attachment A**, is 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](mailto:foi@ndis.gov.au).

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 22/23-1636

Document number	Page number	Description	Access Decision
1	1-38	<b>Practice Guide – Eligibility Reassessment Process</b> Date: 15 February 2019	<b>FULL ACCESS</b>
2	39-85	<b>Practice Guide- Access and ER Decision Tree</b> Date: 31 October 2022	<b>FULL ACCESS</b>
3	86-89	<b>SOP - Action Call back Request for Eligibility</b> Date: 1 August 2022	<b>FULL ACCESS</b>
4	90-105	<b>SOP- Action evidence extension request for an Eligibility Reassessment</b> Date: 3 March 2022	<b>FULL ACCESS</b>
5	106-109	<b>SOP- Check for procedural fairness in an Eligibility Reassessment</b> Undated	<b>FULL ACCESS</b>
6	110-149	<b>SOP- Consider commencement of Eligibility Reassessment or Access Status Change</b> Date: 29 November 2022	<b>FULL ACCESS</b>
7	150-186	<b>SOP- Consider Eligibility Reassessment outcome following 1st chance to respond</b> Date: 29 November 2022	<b>FULL ACCESS</b>
8	187-226	<b>SOP- Make Eligibility Reassessment decision</b> Date: 29 November 2022	<b>FULL ACCESS</b>

<b>Document number</b>	<b>Page number</b>	<b>Description</b>	<b>Access Decision</b>
9	227-230	<b>SOP- Refer an Eligibility Reassessment (ER) call back or evidence extension request to NARB</b>  Date: 10 November 2021	<b>FULL ACCESS</b>
10	231-237	<b>SOP- Request technical advice to progress an Eligibility Reassessment</b>  Date: 1 August 2022	<b>FULL ACCESS</b>
11	238-243	<b>SOP- Request technical advice to progress an Eligibility Reassessment</b>  Date: 1 August 2022	<b>FULL ACCESS</b>
12	244-250	<b>SOP- Support the former participant to leave the NDIS after a revocation decision</b>  Date: 30 March 2022	<b>FULL ACCESS</b>
13	251-260	<b>Eligibility Reassessment Checklist Age: 7 years or above</b>  Date: 4 April 2020	<b>PARTIAL ACCESS</b> Exemption claimed: s47E(d) – certain operations of agencies

## **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 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](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