

10 February 2020

Bob Buckley
Convenor
Autism Asperger's Advocacy Australia (A4)

By email: advocacy4asd@gmail.com

Dear Mr Buckley

Your Freedom of Information request — Decision

Thank you for your correspondence of 18 December 2019, in which you requested access under the *Freedom of Information Act 1982* (FOI Act) to documents held by the National Disability Insurance Agency (NDIA).

The purpose of this letter is to provide you with a decision on your request.

Scope of your request

You have requested access to documents about the National Disability Insurance Scheme (NDIS). Specifically, you requested access to:

“...documents, records, information and communication that relate to A4's letter to the Ministers on the 4/12/2017. We request documents showing:

1. the Agency received this email from the Minister's office and/or from the Hon. J. Prentice MP's office;
2. any associated documents or instructions received from the Minister's office and/or from the Hon. J. Prentice MP's office; and
3. consideration of whether or not to respond, and/or how to proceed in processing the correspondence; and
4. any subsequent communication with the Department of Social Security or with either Ministers' offices relating to the issues raise in the email.”

On 17 January 2020 the Agency was granted an extension of time to facilitate to the processing of this matter under section 15AB of the FOI Act.

Decision on access to documents

I am authorised to make decisions under the FOI Act. My decision on your request and the reasons for my decision are set out below.

I have identified 11 documents which fall within the scope of your request. The documents were identified by conducting a search of NDIA's email server and consulting with relevant NDIA staff.

I have decided to:

- grant access to ten documents in full; and
- grant access to one document in part.

In reaching my decision, I took into account the following materials:

- 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;
- 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; and
- the NDIA's operating environment and functions.

Access to edited copies with exempt or irrelevant material deleted (section 22)

I have decided that documents falling within the scope of your request contains material that is exempt from disclosure under the FOI Act.

I have also identified that the documents falling within the scope of your request contain material that is irrelevant to your request. The irrelevant material relates to internal contact details of staff members.

In accordance with section 22 of the FOI Act, I have considered whether it is possible to delete the exempt and irrelevant 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 and irrelevant material removed.

Reasons for decisions

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.

Documents within the scope of your request contain information relating to certain operations of the Minister for Social Services and Disability Services, specifically their instructions regarding drafting responses to various correspondence received from different sources, for use only by their staff in their work.

Disclosing these instructions may jeopardise the established procedure and policies as to how to convey information between the staff members and members of the public. Furthermore disclosure of this information could reasonably be expected to damage the operational relationship between the Agency and the relevant Minister's Office should such material be released into the public domain by the Agency.

I am satisfied that there is a reasonable likelihood of aggrieved members of the public seeking to gain advantage over others by using information and would reasonably be expected to have an adverse effect on the proper and efficient conduct of the operations of the Minister, namely the Minister's ability to conduct their operations in a timely and efficient way.

Public interest considerations – section 47E(d)

Under the FOI Act, access to a document covered by a conditional exemption must be provided unless disclosure would be contrary to the public interest.

After considering the public interest factors outlined in section 11B(3) of the FOI Act, I have determined that disclosure of the material identified as subject to conditional exemptions would provide access to information relating to the applicant. However, I have considered that:

- disclosure of the information would not contribute to the publication of information of sufficient public interest to justify the likely harm caused by release;
- disclosure of the information would not enhance Australia's representative democracy in the ways described in section 11B(3) of the FOI Act; and
- disclosure of the information 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), the harm that would result from disclosure is that it could reasonably be expected to prejudice the ability of an Agency to protect established procedures for responding to members of the public and compromise established points of contact.

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.

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 foi@ndis.gov.au.

Yours sincerely



Angus Judd
Assistant Director
Freedom of Information & Privacy Section
Legal Services Branch
Governance, Legal & Compensation Division

Schedule of Documents for FOI 19/20-0763

Document number	Page number	Description	Access Decision	Comments
1	1 - 3	Email Subject: FW: the NDIS and early intervention for autistic children [SEC=UNCLASSIFIED] Date: Tuesday, 5 December 2017 11:37 AM	PARTIAL ACCESS Exemption claimed: s47E(d) – certain operations of agencies	
2	4	Ministerial Correspondence MC17-001397 5 December 2017	FULL ACCESS	Irrelevant material removed under section 22 of the FOI Act, contact details of staff members Cover letter for Document 3
3	5	Draft Letter to Mr Bob Buckley MC17-001397 Not sent - undated	PARTIAL ACCESS Exemption claimed: s47E(d) – certain operations of agencies	This is a draft response that was discontinued and merged with the response provided in Document 5.
4	7	Draft Letter to Mr Bob Buckley MC17-001434 20 December 2017	FULL ACCESS	
5	8	Final Letter to Mr Bob Buckley MC17-001434 20 December 2017	FULL ACCESS	
6	9 - 13	Email Subject: FW: letter from Assistant Minister - MC17-001051 [SEC=UNCLASSIFIED] 13979.pdf	FULL ACCESS	Irrelevant material removed under section 22 of the FOI Act, contact details of staff members

Document number	Page number	Description	Access Decision	Comments
		Date: Monday, 11 December 2017 12:44 PM		
10	14 - 23	Evidence for Effectiveness of ABA as a Treatment for Autism – Paul Terdal Dated 5 February 2013	FULL ACCESS	Publicly available here
11	24 - 26	Email Subject: FW: the NDIS and early intervention for autistic children [SEC=UNCLASSIFIED] Tuesday, 5 December 2017 11:37 AM	PARTIAL ACCESS 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 or sent by post to:

Freedom of Information & Privacy Section
Legal Services Branch
Governance, Legal & Compensation 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.