

27 August 2020

Bob Buckley
Convenor
Autism Aspergers Advocacy Australia (A4)

By email: convenor@a4.org.au

Dear Bob Buckley

Your Freedom of Information request — Notification of Decision

Thank you for your correspondence of 18 July 2020, 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) Independent Assessment Pilot (IAP). Specifically, you requested access to:

1. The final or outcomes report in full for the initial NDIA Independent Assessment Pilot (IAP) that ran from November 2018 to April 2019.
2. The instructions/guidance given to the independent assessors describing what assessments they should provide and the NDIA's purpose in seeking these assessments. Please provide instructions given generally to all assessors about their role in the IAP; we are not requesting any instructions relating to individual assessments. Do not provide this separately if it is already included in (1) above.
3. The information and document(s) that justifies and/or requests the continuance of the IAP after April 2019, that is the basis for the decision to continue the IAP for the period Nov 2019 to June 2020. Do not provide this separately if it is already included in (1) above.
4. The information provided to NDIA decision makers used to inform their decision on 19/3/2020 to discontinue the IAP"

On 17 August 2020, you agreed to a four-day extension of time in accordance with section 15AA 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 five documents 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 four documents in full; and
- refuse access to one document in full.

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;
- 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 Document 1 contains material that is exempt from disclosure under the FOI Act.

Section 22 of the FOI Act provides that, where access to a document would disclose information that is exempt or would reasonably be regarded as irrelevant to the request, and it is possible and reasonably practicable for the NDIA to prepare an edited copy of the document, modified by deletions to remove exempt and irrelevant material, it must do so.

I have considered whether it is reasonably practicable to delete the exempt material from the document, having regard to the extent of the modification that would be required, and have concluded that it is not practicable to do so.

My reason for deciding not to prepare an edited copy of the document is that the nature and extent of the redactions required are such that the edited version would convey so little information as to make it of little or no value to you.

Reasons for decisions

Deliberative processes (section 47C)

Section 47C of the FOI Act conditionally exempts a document if disclosure 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 purpose of, the deliberative processes involved in the functions of the NDIA.

The NDIA's functions include anything incidental or conducive to the delivery of the NDIS.

Document 1 is an evaluation report comprising deliberative matter in the form of opinions, advices and recommendations to senior leaders regarding the implementation and outcomes of the IAP.

Having considered the nature and content of the document as well as the FOI Guidelines and relevant case law, I am satisfied that the document substantially comprises deliberative matter. To the extent that the document contains material that is not deliberative matter, I am satisfied that the material is so closely entwined with deliberative matter that it cannot be separated.

Public interest considerations – sections 47C

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. The factors favouring access to a document, on public interest grounds, are outlined in section 11B(3) of the FOI Act.

After considering these factors, I have determined that disclosure of the conditionally exempt material would:

- promote the objects of the FOI Act by:
 - providing the community with access to information held by the government; and
 - increasing scrutiny, discussion, comment and review of the government's activities
- inform debate on the provision of assistance to people with disabilities, which is a matter of public importance; and
- promote effective oversight of the operation of the NDIS.

However, on balance, I consider that disclosure of the conditionally exempt material in the documents would:

- inhibit the NDIA in providing robust and candid opinions, advice and recommendations to senior leaders, resulting in NDIA decision-makers being unable to effectively make decisions regarding the functions of the NDIA; and
- inhibit the NDIA in developing and maintaining the strong working relationships with service providers and counterpart agencies that are essential to it successfully carrying out its functions.

In weighing the factors in favour of disclosure with the factors against disclosure, I have taken into consideration that disclosure of the information in the document is unlikely to add substantially to the information currently available about the IAP or promote additional public discussion in an area where there is already well-informed debate.

In summary, I am satisfied that the factors against disclosure outweigh the factors in favour of disclosure and that, on balance, it would be contrary to the public interest to disclose the conditionally exempt material in the document.

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

A handwritten signature in blue ink, appearing to read 'MC', is positioned below the text 'Yours sincerely'.

Matthew Curtis

Director, FOI

Parliamentary, Ministerial & FOI Branch
Communications & Engagement Division

Schedule of Documents for FOI 20/21-0042

Document number	Page number	Description	Access Decision	Comments
1	-	Independent Assessment Pilot Evaluation Report <i>Dated: May 2019</i>	ACCESS REFUSED Exemption claimed: s47C – Deliberative process	
2	1-2	Clinician Reference Sheet – Schedule & Complete Assessments of Functional Capacity <i>Undated</i>	FULL ACCESS	
3	3-9	Independent Assessment Pilot – Frequently asked questions <i>Undated</i>	FULL ACCESS	
4	10-51	Independent Assessment Pilot – What it means for Independent Assessors <i>Dated: December 2019</i>	FULL ACCESS	
5	52	Email Subject: Independent Assessment Pilot update [SEC=OFFICIAL] <i>Dated: 23.03.2020</i>	FULL ACCESS	

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
Communication & Engagement 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.