

16 June 2021

Bob Buckley
Convener
Autism Aspergers Advocacy Australia (A4)

By email: convenor@a4.org.au

Dear Bob Buckley

Freedom of Information request — Notification of Decision

Thank you for your correspondence of 15 April 2021 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:

“...In its Mar 2021 [Consultation paper: Interventions for children on the autism spectrum](#), the NDIA cites advice from the NDIA Independent Advisory Council’s (IAC) to the NDIA Board, a document called [Promoting best practice in Early Childhood Intervention in the NDIS](#).

- 1. On or around the 14/10/2020, various members of NDIA Board and NDIA staff received [a document](#) describing concerns about the IAC’s advice (above) relating to early intervention for autistic children. Please provide all the information the NDIA has about how the NDIA processed (or not) the document and the concerns raised in the document about the IAC’s advice/document.*
- 2. Please provide copies of documents and information that the NDIA received showing concerns from others about the IAC’s advice (above)?*
- 3. Please provide all information the NDIA has about discussions, considerations or actions resulting from, related or relevant to the concerns raised about the IAC’s advice (above).”*

On 14 May 2021, we contacted you regarding the scope of your request. Due to the large amount of material falling within scope and the subjective nature of the scope’s criteria, we were unable to identify the documents you were requesting and processing would likely be a substantial and unreasonable diversion of resources. We recommended the following scope:

“...A copy of the email sent by A4 on 15 October 2020 with the subject line ‘misinformation and untruths’ and subsequent internal NDIA correspondence within the email chain”

On 17 April 2021, you provided the following response:

"In relation to points 2 and 3 in our request ...

On point 2, you claim "It is not possible to determine if a submission is 'showing concerns' without manually reviewing all individual submissions and applying a subjective opinion on what constitutes concerns". Since you feel "it is not possible" to process the information you found as requested, we remove the "showing concern" aspect of point 2: please include electronic copies of all the "hundreds of emails [that] have been sent to the NDIA" about the IAC's [Promoting best practice in Early Childhood Intervention in the NDIS](#) advice that you found in your search. I expect we can identify all the ones "showing concern" for ourselves. And we may well find other elements of these communications of interest.

Similarly with point 3: please remove the words "the concerns raised about" from our request.

We think it is unlikely that privacy concerns would protect information in this context.

We expect that the normal privacy protection processes for FoI would be applied.

We most certainly do not want to limit the scope to material related to our email of the 15/10/2020. But we are interested in the internal handling of the email you found especially since, until your email below, we have not seen even an acknowledgement of anyone in the associated with the NDIA having received that email."

On 10 June 2021, the FOI team initiated a 24AB consultation process with you to further revise the scope of your request, as to process your request would have been an unreasonable diversion of resources.

On 10 June 2020, in response to the request consultation process, you advised and revised the scope of your request:

"Part 1 of the request relates to how the NDIA processed A4's Commentary on the IAC's advice on early intervention (link provided to a published version in the request). Our FoI request is not a request about processing of the IAC advice document. I will be absolutely astounded if there really are 350 documents in response to our A4's Commentary, especially since none of those documents was sent to A4 to acknowledge receipt of our Commentary.

Part 2 of the request ask only for commentary from other external organisations. It does not ask for how that commentary was processed.

At this stage, we are prepared to drop Part 3 of the FoI request."

Practical Refusal

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.

Having undertaken a request consultation process, as required by section 24 of the FOI Act, I am satisfied that your revised scope will still result in a substantial and unreasonable diversion of resources. As foreshadowed in my correspondence of 10 June 2021, I am refusing your request under section 24 on the basis that a practical refusal reason exists in relation to the request.

Reasons for decisions

We have conducted searches of the NDIA's systems, using all reasonable search terms that could return documents relevant to the revised scope of your request. In addition, we have consulted with relevant NDIA staff who could be expected to be able to identify documents within the scope of the request, including staff who are knowledgeable about how to conduct searches of the NDIA's systems.

Those searches indicate that the NDIA is in possession of a large number of documents that may be relevant to your request.

As a result, I am of the view that the work involved in the processing of this request would substantially and unreasonably divert the resources of the NDIA from its other operations.

Rights of review

Your rights to seek a review of my decision, or lodge a complaint, are set out at **Attachment A**.

Should you have any enquiries concerning this matter, please do not hesitate to contact me by email at foi@ndis.gov.au.

Yours sincerely

**Ausilia Woodhead**

Assistant Director

Parliamentary, Ministerial & FOI Branch

Government Division

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 & ILC Programs 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.