

1 September 2021

Bob Buckley
Convenor
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 26 July 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).

On 24 August 2021, we sought an extension of time due to the impact of COVID-19 lockdowns on NDIA staff and operations.

On 25 August 2021, you agreed to the extension of time.

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:

“.....a copy of NDIA internal correspondence, the email chain(s), arising from any email(s) received from A4 on 15 October 2020 with a subject line containing the phrase ‘misinformation and untruths’.”

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 38 documents, including attachments, 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 28 documents in full and 10 documents 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;
- 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 contain material that is exempt from disclosure under the FOI Act.

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

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

Deliberative processes (section 47C)

Section 47C of the FOI Act conditionally exempts a document if its 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 purposes of, the deliberative processes involved in the functions of an agency.

Documents within the scope of your request contain deliberative matter in the form of opinion, advice and recommendations recorded in the course of assisting NDIA decision-makers to reach a decision regarding a possible response to a Parliamentary committee.

As provided the FOI Guidelines, the deliberative processes involved in the functions of an agency are its thinking processes.

Where the documents contain factual material, I have, to the extent possible, released all of the purely factual material in the document in accordance with the FOI Act.

I am satisfied that the information redacted is conditionally exempt under section 47C of the FOI Act.

Personal privacy (section 47F)

Section 47F of the FOI Act conditionally exempts a document(s) if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

I have identified material in the document falling within scope of your request which contains personal information of third parties.

Under section 47F(2) of the FOI Act, in determining whether the disclosure of documents would involve unreasonable disclosure of personal information, regard must be had to:

- a. the extent to which the information is well known;
- b. whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- c. the availability of the information from publicly accessible sources; and
- d. any other matters that the agency considers relevant.

Against these criteria, I take the view that:

- a. it is apparent from the information that an individual is identifiable; and
- b. the information referred to above is not readily available from publicly accessible sources.

With reference to the assessment above, it would be unreasonable to disclose publicly this personal information and is therefore conditionally exempt under section 47F(1) of the FOI Act.

Public interest considerations – section 47C and 47F

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 sections 47C and 47F, the harm that would result from disclosure is that it could reasonably be expected to:

- hinder the Agency's thinking 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; and
- affect an individual's right to privacy by having their personal information in the public domain.

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

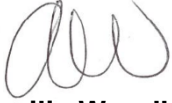
The documents for release, as referred to in the Schedule of Documents at **Attachment A**, are enclosed.

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

A handwritten signature in black ink, consisting of a stylized 'A' followed by 'W' and a flourish.

Ausilia Woodhead

Assistant Director

Parliamentary, Ministerial and FOI Branch

Government Division

Schedule of Documents for FOI 21/22-0100

Document number	Page number	Description	Access Decision	Comments
1	1	Email Subject: Accepted: Misinformation and Untruths Date: 22.10.2020	FULL ACCESS	Irrelevant material removed under section 22 of the FOI Act.
2	2	Email Subject: Accepted: Misinformation and Untruths Date: 22.10.2020	FULL ACCESS	Irrelevant material removed under section 22 of the FOI Act.
3	3	Email Subject: Misinformation and Untruths Date: 23.10.2020	FULL ACCESS	Irrelevant material removed under section 22 of the FOI Act.
3.1	4-7	Attachment to Document 3 Email Subject: RE: misinformation and untruths Date: 22.10.2020	FULL ACCESS	Irrelevant material removed under section 22 of the FOI Act.
4	8-9	Email Subject: FW: misinformation and untruths Date: 16.10.2020	PARTIAL ACCESS Exemption claimed: s47F – personal privacy	
4.1	10-25	Attachment to Document 4 Commentary on IAC advice - final2.pdf	FULL ACCESS	
4.2	26-30	Attachment to Document 4 HoffmanResponse.pdf	FULL ACCESS	
5	31-33	Email Subject: FW: misinformation and untruths Date: 15.10.2020	FULL ACCESS	Irrelevant material removed under section 22 of the FOI Act.

Document number	Page number	Description	Access Decision	Comments
6	34	Email Subject: FW: misinformation and untruths Date: undated	FULL ACCESS	
6.1	35-37	Attachment to Document 6 Email Subject: FW: misinformation and untruths Date: 15.10.2020	FULL ACCESS	Irrelevant material removed under section 22 of the FOI Act.
6.1.1	-	Attachment to Document 6.1 Commentary on IAC advice - final2.pdf	FULL ACCESS	This attachment to Document 6.1 is a duplicate of Document 4.1
6.1.2	-	Attachment to Document 6.1 HoffmanResponse.pdf	FULL ACCESS	This attachment to Document 6.1 is a duplicate of Document 4.2
7	38-39	Email Subject: RE: misinformation and untruths Date: 15.10.2020	FULL ACCESS	Irrelevant material removed under section 22 of the FOI Act.
8	40-41	Email Subject: FW: misinformation and untruths Date: 15.10.2020	FULL ACCESS	Irrelevant material removed under section 22 of the FOI Act.
8.1	-	Attachment to Document 8 Commentary on IAC advice - final2.pdf	FULL ACCESS	This attachment to Document 8 is a duplicate of Document 4.1
8.2	-	Attachment to Document 8 HoffmanResponse.pdf	FULL ACCESS	This attachment to Document 8 is a duplicate of Document 4.2
9	42-44	Email Subject: FW: misinformation and untruths Date: 15.10.2020	FULL ACCESS	Irrelevant material removed under section 22 of the FOI Act.

Document number	Page number	Description	Access Decision	Comments
9.1	-	Attachment to Document 9 Commentary on IAC advice - final2.pdf	FULL ACCESS	This attachment to Document 9 is a duplicate of Document 4.1
9.2	-	Attachment to Document 9 HoffmanResponse.pdf	FULL ACCESS	This attachment to Document 9 is a duplicate of Document 4.2
10	45-47	Email Subject: FW: misinformation and untruths Date: 15.10.2020	FULL ACCESS	Irrelevant material removed under section 22 of the FOI Act.
10.1	-	Attachment to Document 10 Commentary on IAC advice - final2.pdf	FULL ACCESS	This attachment to Document 10 is a duplicate of Document 4.1
10.2	-	Attachment to Document 10 HoffmanResponse.pdf	FULL ACCESS	This attachment to Document 10 is a duplicate of Document 4.2
11	48-49	Email Subject: Fwd: misinformation and untruths Date: 15.10.2020	FULL ACCESS	Irrelevant material removed under section 22 of the FOI Act.
11.1	-	Attachment to Document 11 Commentary on IAC advice - final2.pdf	FULL ACCESS	This attachment to Document 11 is a duplicate of Document 4.1
11.2	-	Attachment to Document 11 HoffmanResponse.pdf	FULL ACCESS	This attachment to Document 11 is a duplicate of Document 4.2
12	50-52	Email Subject: FW: misinformation and untruths Date: 15.10.2020	FULL ACCESS	Irrelevant material removed under section 22 of the FOI Act.
12.1	-	Attachment to Document 12 Commentary on IAC advice - final2.pdf	FULL ACCESS	This attachment to Document 12 is a duplicate of Document 4.1

Document number	Page number	Description	Access Decision	Comments
12.2	-	Attachment to Document 12 HoffmanResponse.pdf	FULL ACCESS	This attachment to Document 12 is a duplicate of Document 4.2
13	53-54	Email Subject: Fwd: misinformation and untruths Date: 15.10.2020	FULL ACCESS	Irrelevant material removed under section 22 of the FOI Act.
13.1	-	Attachment to Document 13 Commentary on IAC advice - final2.pdf	FULL ACCESS	This attachment to Document 13 is a duplicate of Document 4.1
13.2	-	Attachment to Document 13 HoffmanResponse.pdf	FULL ACCESS	This attachment to Document 13 is a duplicate of Document 4.2
14	55-56	Email Subject: misinformation and untruths Date: 15.10.2020	FULL ACCESS	
14.1	-	Attachment to Document 14 Commentary on IAC advice - final2.pdf	FULL ACCESS	This attachment to Document 14 is a duplicate of Document 4.1
14.2	-	Attachment to Document 14 HoffmanResponse.pdf	FULL ACCESS	This attachment to Document 14 is a duplicate of Document 4.2
15	57-58	Email Subject: RE: misinformation and untruths Date: 13.05.2021	FULL ACCESS	Irrelevant material removed under section 22 of the FOI Act.
16	59-60	Email Subject: FW: misinformation and untruths Date: 13.05.2021	FULL ACCESS	Irrelevant material removed under section 22 of the FOI Act.
16.1	-	Attachment to Document 16 Commentary on IAC advice - final2.pdf	FULL ACCESS	This attachment to Document 16 is a duplicate of Document 4.1

Document number	Page number	Description	Access Decision	Comments
16.2	-	Attachment to Document 16 HoffmanResponse.pdf	FULL ACCESS	This attachment to Document 16 is a duplicate of Document 4.2

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