

17 January 2025

Bob Buckley

By email: foi+request-1xxxxxxxxxxxxx@xxxxxxxxxxxx.xxx.xx

Dear Bob Buckley

Freedom of Information request - Notification of Decision

Thank you for your correspondence of 5 November 2024, seeking 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 notify you of my decision on your application.

Scope of your request

You requested access to the following documents:

“...The document at link

<https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.righttoknow.org.au%2Frequest%2F11735%2Fresponse%2F37101%2Fattach%2F6%2FFOI%252024.25%25200080%2520Decision%2520Notice%2520of%2520Decision.pdf&data=05%7C02%7Cfoi%40ndis.gov.au%7Cde54526920bd42ec34e408dcfd0dc160%7Ccd778b65752d454a87cfb9990fe58993%7C0%7C0%7C638663482908055288%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiilwLjAuMDAwMCIsIlAiOiJXaW4zMilslkFOljoitWFlpbCIsIlIdUljoyfQ%3D%3D%7C60000%7C%7C%7C&sdata=vLpHoGC7zBokPcLiR1oxJULRizLM70k59ZNSH3ON%2FXE%3D&reserved=0>

said "The Legal Practice and Capability Branch confirmed that this guide is due to be reviewed 12 months from September 2023." The "this guide" referred to is the NDIA's AAT Case Management Guide for Applied Behaviour Analysis (ABA) Previously, revealed in FOI 23/24-0029 -

see <https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Ffa4.org.au%2Fnode%2F2567&data=05%7C02%7Cfoi%40ndis.gov.au%7Cde54526920bd42ec34e408dcfd0dc160%7Ccd778b65752d454a87cfb9990fe58993%7C0%7C0%7C638663482908070978%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiilwLjAuMDAwMCIsIlAiOiJXaW4zMilslkFOljoitWFlpbCIsIlIdUljoyfQ%3D%3D%7C60000%7C%7C%7C&sdata=Vu7rABts2NVNw5lknkgCuNoJvpHKAQuYPd8hPS3SdB4%3D&reserved=0>

I here request, in accordance with the Freedom of Information Act, all information and records:

1. relating to the responsibility for any review of the document, specifically the NDIA's AAT Case Management Guide for Applied Behaviour Analysis (ABA), being transferred to or residing in the NDIA's Legal Practice and Capability Branch, and

2. *the conduct of or progress towards the scheduled review in "12 months from September 2023."*

The purpose of this letter is to notify you of my decision on your application.

Extension of time

On 16 November 2024, you agreed to a 15-day extension of time under section 15AA of the FOI Act, making 20 December 2024 the new date to provide you with a decision on access. I apologise that we did not meet this deadline. We have been experiencing processing delays and were not able to provide you with our decision by the due date.

Consequently, we are deemed to have refused your application under section 15AC of the FOI Act. Therefore, internal review of this decision is not an option. However, your right to apply for an external review with the Office of the Australian Information Commissioner remains protected. Please see **Attachment B** for more information about your rights of review.

Search efforts

I have made enquiries with relevant NDIA staff in Legal Practice and Capability Branch. They have conducted searches and advised they did not locate any documents relevant to the scope of your request.

Decision on access to documents

I am authorised to make decisions under section 23(1) of the FOI Act. Pursuant to section 24A of the FOI Act, I have decided to refuse access to the information you have requested on the basis that the documents do not exist or cannot be located.

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

- your correspondence outlining the scope of your request
- the FOI Act
- the FOI Guidelines published under section 93A of the FOI Act
- consultation with relevant officers of the NDIA and
- the NDIA's operating environment and functions.

The reasons for my decision are set out in **Attachment A** of this decision letter.

Rights of review

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

If you have any enquiries about this matter, please contact me by email at foi@ndis.gov.au.

Yours sincerely



Ramya (RMO 260)

Senior Freedom of Information Officer
Complaints Management & FOI Branch
General Counsel Division

**Statement of Reasons
FOI Application FOI 24/25-0731**

Refused information

I have refused access to the information you requested under section 24A of the FOI Act on the basis that documents containing such information are unlocatable or do not exist.

Relevant law

Under the FOI Act, a person has a right to be given access to documents of an agency. However, the right of access is subject to limitations, including grounds for refusal of access. Section 24A of the FOI Act states 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.

Searches for documents

After reviewing the scope of your FOI application, I identified the need to make enquiries with the NDIA's Legal Practice and Capability Branch for documents relevant to the scope of your request.

The NDIA's Chief Counsel Division is responsible for leading the review of the AAT Case Management Guide for Applied Behaviour Analysis (ABA).

Following the enactment of the *NDIS Amendment (Getting the NDIS Back on Track No 1) Act 2024*, the work program of the division will be focused on new guidance material and revisions to existing material.

It is expected that the review of the NDIA's AAT Case Management Guide for Applied Behaviour Analysis (ABA) will occur in 2025.

As such there are no documents pertaining to NDIA's AAT Case Management Guide for Applied Behaviour Analysis (ABA) and its review, that can be provided at this point.

Conclusion

Based on the information I have received from NDIA's Legal Practice and Capability Branch, I consider there are reasonable grounds to be satisfied that documents containing the information you seek do not exist. I have therefore decided to refuse access to the information under section 24A(1) of the FOI Act on the basis that the information does not exist.

Your review rights

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 review within 60 days of receiving this letter.

You can apply to the OAIC for review 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 the NDIA took in relation to your request. The Ombudsman will consult with the OAIC before investigating a complaint about the handling of an FOI request.

You can make a complaint to the OAIC using the contact details identified above, or to the Ombudsman by:

Phone: 1300 362 072 (local call charge)
Email: ombudsman@ombudsman.gov.au

Your complaint should set out the grounds on which you consider the OAIC or the Ombudsman should investigate the NDIA's handling of your FOI request.