



Australian Government
Department of Social Services

3 November 2014

A. Gardiner

General Secretary

NSW Public Service Association

ATTN: Mr Anthony D'Adam

By email: gipa@psa.asn.au

Dear Ms Gardiner

Freedom of Information (FOI) Request No. 14/15-028

1. I refer to your email to the National Disability Insurance Agency on Tuesday 2 September 2014. On Thursday 4 September 2014, the National Disability Insurance Agency transferred your request to the Department of Social Services (the Department). In your email you have requested access under the *Freedom of Information Act 1982* (FOI Act) to:
 - *"All documents in relation to the establishment of a transitional Taskforce to examine workforce issues under clause 36 of the Heads of Agreement between the Commonwealth and NSW Governments on the National Disability Insurance Scheme between the Commonwealth and NSW state.*
 - *All documents in relation to the development of the national workforce strategy under Annex A clause 10 Principle 4(d) of the Intergovernmental Agreement for the National Disability Insurance Scheme (NDIS) Launch."*
2. On Thursday 18 September 2014, the Department wrote to you notifying you of the requirement for third party consultation with an affected State Government under section 26A of the FOI Act.
3. On Wednesday 1 October 2014, I wrote to you informally to inform you that the first part of your request was manageable, however the second part of your request for "all documents" in relation to the development of the national workforce strategy may be too large to process. I asked if you could provide some specific guidance on how you would like to potentially narrow the scope of your request.

PO Box 7576 Canberra Business Centre ACT 2610

Email: foi@dss.gov.au • Facsimile: (02) 6204 9445 • Telephone 1300 653 227

National Relay Service: TTY – 133 677, Speak and listen – 1300 555 727, Internet relay – www.relayservice.com.au
www.dss.gov.au

4. On Thursday 2 October 2014, you wrote back stating you were happy to exclude emails from the scope of the second part of the request. You noted that the intent behind your request was to try and establish at what stage of progression the implementation of this element of the NDIS agreement was at and what strategies are currently under consideration.
5. On Wednesday 8 October 2014, I emailed you to provide the following information which the line area of the Department thought could help with understanding at what stage the implementation of this element of the NDIS agreement was at and the strategies under consideration:
 - a. *"On 20 February 2014, the Assistant Minister for Social Services announced the commencement of the National Disability Workforce Strategy Report. This work is being undertaken by a consortium led by National Disability Services (NDS). As at 2 September 2014, when your request was made, draft components of this report had been received by the Department. Since the time that you made your request, much of this draft report has been updated and additional components have been provided. This would not fall within the scope of your request as they have been added to the draft report since you made the request. Once a draft report has been finalised and provided to the Assistant Minister, a final report may be released publically.*
 - b. *The documents captured in the second part of your request as it currently stands mainly relate to the management of this contract to create the report, and include working documents and internal communications for this purpose.*
 - c. *In order to narrow your request in a way that focuses on the information you are seeking regarding the progression of this element of the NDIS agreement and the strategies under consideration, you may wish to consider narrowing the second part of your request to the draft report available at the time of your request on 2 September 2014.*
 - d. *If you would like to narrow the scope of your request in this way or if you would like to narrow your request in another way, for example, that excludes documents related to the management of the contract or other types of documents, it would be greatly appreciated if you could confirm this in a reply email."*
6. On Thursday 9 October 2014, we spoke on the phone regarding narrowing your request, and you then sent through an email on this date, confirming that you would like to narrow the second part of your request to:
 - *"All meeting minutes, reports, draft reports or letters between state and Commonwealth jurisdictions in relation to the development of the national workforce strategy under Annex A clause 10 Principle 4(d) of the Intergovernmental Agreement for the National Disability Insurance Scheme (NDIS) Launch; and all documents detailing the parameters or specifications for contracts with third parties to deliver services in relation to the development of the national workforce strategy specified above."*

7. On Tuesday 14 October 2014, the Department agreed to proceed with your narrowed request being:
- *All documents in relation to the establishment of a transitional Taskforce to examine workforce issues under clause 36 of the Heads of Agreement between the Commonwealth and NSW Governments on the National Disability Insurance Scheme between the Commonwealth and NSW state.*
 - *All meeting minutes, reports, draft reports or letters (excluding emails) between state and Commonwealth jurisdictions in relation to the development of the national workforce strategy under Annex A clause 10 Principle 4(d) of the Intergovernmental Agreement for the National Disability Insurance Scheme (NDIS) Launch; and all documents detailing the parameters or specifications for contracts with third parties to deliver services in relation to the development of the national workforce strategy specified above.*
8. The due date for a decision is Monday 3 November 2014.
9. The purpose of this letter is to notify you of my decision regarding your request.
10. I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.

DECISION AND REASONS FOR DECISION

11. The Department identified six documents which fell within the scope of your request. This was done by conducting searches of relevant electronic and hardcopy files to retrieve the documents.
12. I have decided to release, in full, one document.
13. I have decided to release, in part, three documents.
14. I have decided to refuse access, in full, to two documents.
15. Please see a document schedule at the bottom of this decision letter, which provides details of the documents captured in your request and the exemptions that apply to these documents. More information, including reasons for my decision, is set out below.

Material taken into account

16. I have taken the following material into account in making my decision:
- (a) searches undertaken for any documents within the scope of your request;
 - (b) the content of the documents that fell within the scope of your request;
 - (c) views of the relevant line areas in the Department;
 - (d) relevant provisions of the FOI Act (in particular sections 47B, 47C, s47F and section 47G);
 - (e) the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (FOI Guidelines); and
 - (f) third party consultations and submissions.

Section 22 – exempt or irrelevant material deleted

17. The FOI Act at s22 (1) requires an agency to consider whether 'it is reasonably practicable' to prepare an edited copy of a document such that no exemption claim could be made and the agency would be required by the FOI Act to give access to the edited copy, but in doing so to have regard to the nature and extent of the modification and the resources available to modify the document.
18. I have decided that it is not reasonably practicable to prepare edited copies of documents 3 and 6 that contain only material such as part of the contents list and small points of factual material. As the Australian Information Commissioner outlined in his decision *Parnell and Dreyfus and Attorney General's Department* [2014] AICmr 71 at paragraph 43, "the requirement to prepare an edited copy of a document if it is 'reasonably practicable' to do so, should be applied in a common sense fashion that advances the open government objectives of the FOI Act by providing access to something of substance rather than a skeleton of words, phrases and page numbers."
19. The objects of the FOI Act stated in section 3 are also relevant to the editing process. Among the objects of the FOI Act are: to increase participation, scrutiny, discussion, comment and review of government activities; and to facilitate access promptly and at the lowest reasonable cost. Those objects are not served if extensive editing is required that leaves merely a skeleton of the former document that contains little of its content or substance.
20. This consideration is relevant to documents 3 and 6 in scope of your request. Most of the non - exempt material comprises only publically available information and parts of content pages or page numbers. It is only small segments of these documents, and it is not reasonably practicable, taking account of the objects of the FOI Act, to prepare an edited copy of the document that contains only that material. The intermingling of the information contained within the documents warrants protection against disclosure.
21. In document 6, the large majority of the document contains information within it that is outside the scope of your request and would be considered irrelevant. The small amount of remaining information is considered to be exempt under the exemptions below.
22. In document 5, the material that is exempt under section 22 is not in the scope of your request and is considered irrelevant. The information is surrounding other issues of discussion in the National Disability Insurance Scheme and not related to the national workforce strategy or workforce issues.
23. I have outlined my reasons for exemption claims over the material in the documents below.

Section 47C – deliberative process material

24. Subsection 47C(1) of the FOI Act provides that:

A document is conditionally exempt if its disclosure under this Act would disclose matter (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:

- (a) an agency; or*
- (b) a Minister; or*
- (c) the Government of the Commonwealth; or*
- (d) the Government of Norfolk Island.*

25. Documents 1, 3 and 6 are comprised of opinions, advice and recommendations between the Department, government and other interested parties such as contractors or states and territories. These documents were obtained and/or prepared for the purposes of the deliberative processes involved in the functions of the Department surrounding the policy development of the National Disability Insurance Scheme and operational matters within it. This includes high level advice on issues that require decisions by the Department, Minister and the government, as well as state and territory governments.

26. Further, document 3 is a draft, which has not been finalised. It is currently in the process of being prepared to assist the Department and the Minister in making future decisions regarding the workforce strategy and the National Disability Insurance Scheme and to inform future discussions with states and territories. No final decision on the material contained within this document has been made yet. It is a preliminary version of a draft report and is incomplete in nature. It is a working document which has not been finalised, and contains opinions, advice, recommendations obtained, or prepared for the deliberative processes of the Department over which a final decision that has not been made.

27. I am therefore satisfied that documents 1, 3 and 6 contain information which is deliberative matter, being opinions, advice and recommendations obtained, or prepared, for the deliberative processes of the Department.

28. To the extent that documents 3 and 6 contain purely factual information I am satisfied it would not be possible to edit the document in such a way, to exclude the deliberative material, as to leave the document with any substantial meaning. Any factual material is integral to the deliberative content and the purpose of it: the draft analysis and views in the document would be robbed of their essential meaning without incorporation of the factual material. Accordingly, I am of the view that it is not reasonable and is impracticable for the Department to attempt to separate it from the deliberative material, as the two are intertwined. I am of the view that it is not reasonable to edit the documents to provide you with an edited version that excludes the deliberative material.

29. I am satisfied this information is conditionally exempt under section 47C. Under the FOI Act, access to a document covered by a conditional exemption must be given unless it would be contrary to the public interest. My weighing of the public interest factors is set out below.

Public Interest

30. I have considered public interest factors in accordance with subsection 11B(3) of the FOI Act. In balancing the public interest, I have considered the following factors for and against disclosure.

31. I have considered the following factors in favour of disclosure:

- informing debate on a matter of public importance;
- promoting effective oversight of public expenditure; and
- informing the community of the government's operations.

32. I have considered the following factors against disclosure:

- parts of the documents form part of a process in the development of a policy which has not been finalised;
- there is a public interest in appropriately maintaining a confidential relationship between agencies, Ministers, states and territories and contracted parties so as to allow agencies, Ministers, states and territories and contracted parties to fully explore and develop policy issues over time with frankness and candour; and
- the possibility that release could result in future draft reports being prepared with FOI in mind and, as a result, will not be comprehensive or allow for discussion between all parties to occur.

33. I acknowledge there is a public interest in promoting the objects of the FOI Act, informing debate on matters of public importance and in promoting oversight of government expenditure and operations.

34. Despite this, I am of the view that there is an inherent public interest in preserving the relationship between Departments, Ministers, states and territories and contracted parties, and ensuring that these documents allow for discussions between the parties involved to be comprehensive and ensure options are fully explored, and sensitive policy is able to be developed without damaging the effective operations of the Department and the government more broadly. I consider that the factors weighing against disclosure outweigh those in favour and therefore that release would be contrary to the public interest.

35. Accordingly, I am satisfied that document 1 is exempt in part under section 47C of the FOI Act.

36. I am also satisfied that documents 3 and 6 are exempt under section 47C of the FOI Act.

Section 47G - business

37. Section 47G (1) of the FOI Act provides that:

A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

(a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or ...

Business or professional affairs

38. I consider the information in document two to be information concerning the business affairs of a contracted party (the organisation) being information concerning how they conduct their research and business.

Unreasonable adverse effect

39. I have considered whether disclosure of this information would, or could reasonably be expected to unreasonably affect the organisation in respect of their lawful business, commercial or financial affairs.

40. In my view, the full release of this contract would expose the organisation to risk of misuse of that information. Such misuse could reasonably be expected to have a substantial adverse effect on the business and financial affairs of the organisation.

41. The information contained in the contract contains bank details and other such business information which would be detrimental to the organisation's business and commercial position.

42. On this basis, I am satisfied that document two is conditionally exempt under s47G(1)(a) (business) of the FOI Act.

Public Interest

43. Under the FOI Act, access to a document covered by a conditional exemption must be given unless it would be contrary to the public interest. In accordance with ss 11B(3) and (4) of the FOI Act and paragraphs 6.30 – 6.31 of the Information Commissioners Guidelines (made pursuant to s 93A of the FOI Act), I have not taken 'irrelevant factors' into account when making my decision. In balancing the public interest, I have considered the following factors for and against disclosure.

44. I have considered the following factors in favour of disclosure:

- informing debate on a matter of public importance;
- promoting effective oversight of public expenditure; and
- informing the community of the government's operations.

45. I have considered the following factors against disclosure.

46. I am of the view that there is a strong interest in protecting sensitive business information provided between parties involved to a commercial contract and how they manage certain matters. The contract is for work, and contains bank details and business information that as such, if released, could cause the business financial or reputational harm.
47. Although the information has a connection to government funded activities, it does not impact the proper oversight of public expenditure, nor would the disclosure of a draft report which has not had a final decision made on it provide opportunity for debate on matters of public importance.
48. Accordingly, I am satisfied the parts of document 2 in question are exempt under s47G(1) and that disclosure would be contrary to the public interest.

Section 47F – personal privacy

49. Subsection 47F(1) of the FOI Act provides that '*[a] document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person*'.

Personal information

50. Personal information under subsection 4(1) of the FOI Act has the same meaning as under subsection 6(1) of the *Privacy Act 1988* (Cth).

51. The *Privacy Act 1988* defines 'personal information' in subsection 6(1) as:

... information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and*
- (b) whether the information or opinion is recorded in a material form or not.*

52. Documents 1 and 2 fall within the scope of your request and contain personal information about individuals, being mobile numbers, signatures and other identifying information.
53. I am satisfied that this information constitutes personal information for the purposes of section 47F (personal privacy) of the FOI Act.

Unreasonable disclosure

54. Under subsection 47F(2) of the FOI Act, the Department must have regard to the following factors in determining whether the disclosure of the document would involve the unreasonable disclosure of personal information:

- the extent to which the information is well known;
- 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;
- the availability of the information from publicly accessible sources; and
- any other relevant matters.

55. In my view, the personal information contained in the documents is not available from publicly accessible sources or well known.

Public Interest

56. Under the FOI Act, access to a document covered by a conditional exemption must be given unless it would be contrary to the public interest. I have considered public interest factors in accordance with subsections 11B (3) and (4) of the FOI Act.
57. I acknowledge the FOI Act provides a mechanism for individuals to see what information about them is on government files or for individuals to access documents regarding the activities of government and that its objects include providing for a right of access to documents.
58. However, I am also of the view that there is a significant public interest in protecting the right to privacy of individuals and I believe it is reasonable for affected third parties to expect that their personal information will be protected in this case.
59. I do not believe that disclosure of the personal information that is conditionally exempt under section 47F is needed to aid understanding of the documents to the extent that the balance of public interest factors lies in favour of disclosure.
60. On balance, the private interest in the protection of personal information outweighs the public interest in disclosure on this occasion.
61. Accordingly, I am satisfied documents 1 and 2 are exempt in part under subsection 47F (1) of the FOI Act.

Section 47B – Commonwealth-state relations

62. Section 47B of the FOI Act provides:
A document is conditionally exempt if disclosure of the document under this Act:
 - a. would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State; or*
 - b. would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.*
63. Disclosure of the information redacted in documents one and six would cause damage to relations between the Commonwealth and the States and Territories and would, in relation to the information redacted in document one, cause damage to the Department's relationship with New South Wales.
64. The information in documents one and six would cause damage to negotiations between the Commonwealth and the States and Territories in relation to certain aspects of the National Disability Insurance Scheme.
65. I am therefore satisfied that the parts of documents one and six that have been redacted are conditionally exempt under section 47B.
66. I am satisfied that this information is conditionally exempt under section 47B. Under the FOI Act, access to a document covered by a conditional exemption must be given unless it would be contrary to the public interest. My weighing of the public interest factors is set out below.

Public interest

67. I have considered public interest factors in accordance with subsection 11B(3) of the FOI Act. In balancing the public interest, I have considered the following factors for and against disclosure.
68. I have considered the following factors in favour of disclosure:
- informing debate on a matter of public importance;
 - promoting effective oversight of public expenditure; and
 - informing the community of the Government's operations.
69. I have considered the following factors against disclosure, which would:
- adversely impact on the Commonwealth's negotiations with the states and territories in relation to aspects of the National Disability Insurance Scheme that are still under consideration;
 - impair the working relationship between the Commonwealth and the states and territories on the National Disability Insurance Scheme; and
 - adversely impact on the ability of the Department to provide comprehensive and confidential reports between itself and states and territories in relation to operations of the National Disability Insurance Scheme going forward.
70. I acknowledge there is a public interest in promoting the objects of the FOI Act, informing debate on matters of public importance and in promoting oversight of government expenditure and operations.
71. Despite this, I am of the view that there is an inherent public interest in preserving the confidential nature of reports and emails in relation to sensitive negotiations or decisions that are needed to be made between the Commonwealth and the states and territories.
72. Publication of document six would also adversely impact on the working relationship between the Commonwealth and the states and territories in relation to the NDIS and its implementation. Publication of document one would adversely impact on the working relationship between the Commonwealth and New South Wales on key decisions still to be made.
73. Accordingly, I am satisfied the factors against disclosure outweigh the factors for disclosure and parts of document one and six are exempt under section 47B of the FOI Act.

REVIEW RIGHTS

74. If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. The Information Commissioner is of the view that it is usually better for a person to seek internal review of an agency decision before applying for an Information Commissioner review, as it may provide a more rapid resolution of your concerns.

Internal review

75. Under section 54 of the FOI Act, you may apply in writing to the Department for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

76. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

77. Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

Online: <http://www.oaic.gov.au/freedom-of-information/requesting-a-review>

Email: enquiries@oaic.gov.au

Post: GPO Box 2999, Canberra ACT 2601

In person: Level 3, 175 Pitt Street, Sydney NSW

78. More information about Information Commissioner review is available on the Office of Australian Information Commissioner website.

79. Go to: <http://www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights>

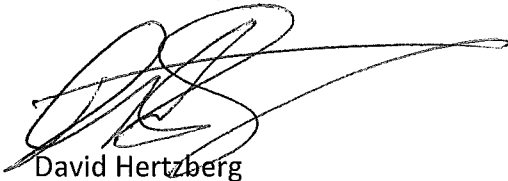
Publication of documents and other information

80. Please note that the Department is required by s11C of the FOI Act to publish a disclosure log on its website. The disclosure log lists information which has been released in response to an FOI access request.

81. If a decision is made to publish these documents on the disclosure log, I will contact you.

82. If you have any questions please do not hesitate to contact the DSS FOI team by email at foi@dss.gov.au or myself on 02 6146 3181.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Hertzberg', with a long horizontal flourish extending to the right.

David Hertzberg

Principal Legal Officer/FOI Coordinator

Public Law Branch



Australian Government
Department of Social Services

FOI request 14/15-028

Document no.	Description and date	Decision on access	Reason
1.	Email: Commonwealth/NSW Transition Agreement – Bilateral Meeting – July –September 2014.	Release in part.	S47F (personal privacy), s47C (deliberative processes), s47B (Commonwealth-State relations).
2.	AusTender contract – Commonwealth with National Disability Services January 2014.	Release in part.	s47G (business), s47F (personal privacy).
3.	Draft report – <i>Roadmap to a Sustainable Workforce</i> – 2 September 2014.	Exempt in full.	S22 (exempt or irrelevant material), S47C (deliberative processes).
4.	COAG Disability Reform Council TelePresence, 21 March 2014, Communiqué.	Release in full.	
5.	COAG Reform Council – 21 March 2014 – Outcomes Arising.	Release in part.	S22 (exempt or irrelevant material).
6.	Disability Reform Council – Report to the Council of Australian Governments (COAG) on the NDIS – 2014.	Exempt in full.	S22 (exempt or irrelevant material), s47C (deliberative processes), s47B (Commonwealth-State relations).