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Section 37 – Documents affecting law enforcement and public safety

Section 37 is part of the *Freedom of Information Act 1982* provides justification for decision makers to exempt material if it meets the definition “documents affecting law enforcement and public safety. Section 37 is an absolute exemption, which means the decision maker does not consider the public interest before applying this exemption.

This exemption is **rarely** used in the National Disability Insurance Agency (NDIA). In the first ten years of the Agency’s operation, s 37 has been used about 10 times. This document gives an overview of this exemption, how it has been used in OAIC reviews, and how it has been used by the NDIA.

1. FOI Act

Section 37 of the FOI Act:

Link to the [FOI Act](#).

37 Documents affecting enforcement of law and protection of public safety

(1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

- (a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;
- (b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or
- (c) endanger the life or physical safety of any person.

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(2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

- (a) prejudice the fair trial of a person or the impartial adjudication of a particular case;
- (b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
- (c) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.

(2A) For the purposes of paragraph (1)(b), a person is taken to be a confidential source of information in relation to the enforcement or administration of the law if the person is receiving, or has received, protection under a program conducted under the auspices of the Australian Federal Police, or the police force of a State or Territory, for the protection of:

- (a) witnesses; or
 - (b) people who, because of their relationship to, or association with, a witness need, or may need, such protection; or
 - (c) any other people who, for any other reason, need or may need, such protection.
- (3) In this section, **law** means law of the Commonwealth or of a State or Territory.

2. FOI Guidelines

Link to the [exemptions part of the FOI guidelines](#).

Excerpt from the FOI guidelines about 37:

5.81 Section 37 concerns the investigative or compliance activities of an agency and the enforcement or administration of the law, including the protection of public safety. It is not concerned with an agency's own obligations to comply with the law. The exemption applies, therefore, where an agency has a function connected with investigating breaches of the law, its enforcement or administration.



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5.82 To be exempt under ss 37(1)(a) or 37(1)(b), the document in question should have a connection with the criminal law or the processes of upholding or enforcing civil law or administering a law.^[58] This is not confined to court action or court processes, but extends to the work of agencies in administering legislative schemes and requirements, monitoring compliance, and investigating breaches. The exemption does not depend on the nature of the document or the purpose for which it was brought into existence. A document will be exempt if its disclosure would or could reasonably be expected to have one or more of the consequences set out in the categories listed above at [5.79].

5.83 In applying this exemption, a decision maker should examine the circumstances surrounding the creation of the document and the possible consequences of its release. The adverse consequences need not result only from disclosure of a particular document. The decision maker may also consider whether disclosure, in combination with information already available to the applicant, would result in any of the specified consequences.

3. OAIC reviews about section 37

This is a list of selected decisions. See the [Office of the Australian Information Commission review decision](#) website for more.

- ['DP' and Department of Immigration and Border Protection \[2014\] AICmr 125](#)
- [Mark Diamond and Australian Federal Police \(Freedom of information\) \[2018\] AICmr 33](#)
- [Mentink and Australian Federal Police \[2014\] AICmr 64](#)
- [The Sun-Herald Newspaper and Australian Federal Police \[2014\] AICmr 52](#)
- ['X' and Australian Federal Police \[2013\] AICmr 40](#)
- ['MM' and Department of Human Services \(Freedom of information\) \[2017\] AICmr 92](#)
- [Oliver Banovec and Australian Federal Police \[2014\] AICmr 110](#)
- ['W' and the Australian Federal Police \[2013\] AICmr 39m](#)
- ['I' and Australian National University \[2012\] AICmr 12](#)
- ['PO' and Australian Federal Police \(Freedom of information\) \[2018\] AICmr 72](#)

4. NDIA FOI decisions

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This list includes the reference number of the request, a link to the SharePoint folder and the decision maker's name.

- [\[redacted\] s47F - personal privacy](#) – Jade [\[redacted\] s47F - personal privacy](#)
- [\[redacted\] s47F - personal privacy](#) – Jade [\[redacted\] s47F - personal privacy](#)
- [\[redacted\] s47F - personal privacy](#) – Jacqueline [\[redacted\] s47F - personal privacy](#)
- [\[redacted\] s47F - personal privacy](#) – Carolyn [\[redacted\] s47F - personal privacy](#)
- [\[redacted\] s47F - personal privacy](#) – Carolyn [\[redacted\] s47F - personal privacy](#)
- [\[redacted\] s47F - personal privacy](#) – Kylie [\[redacted\] s47F - personal privacy](#)
- [\[redacted\] s47F - personal privacy](#) – Andrew [\[redacted\] s47F - personal privacy](#)
- [\[redacted\] s47F - personal privacy](#) – Duncan [\[redacted\] s47F - personal privacy](#)
- [\[redacted\] s47F - personal privacy](#) – Erin [\[redacted\] s47F - personal privacy](#)
- [\[redacted\] s47F - personal privacy](#) – Duncan [\[redacted\] s47F - personal privacy](#)

5. Version control

Version	Amended by	Brief Description of Change	Status	Date
0.1	[redacted] s47F - personal privacy	Initial Version	DRAFT	2024-01-30



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Section 42 – Documents subject to legal professional privilege

Section 42 is part of the *Freedom of Information Act 1982* provides justification for decision makers to exempt material if it meets the definition “documents subject to legal professional privilege”. Section 42 is an absolute exemption, which means the decision maker does not consider the public interest before applying this exemption.

This exemption is **occasionally** used in the National Disability Insurance Agency (NDIA). In the first ten years of the Agency’s operation, s 42 has been less than 100 times. This document gives an overview of this exemption, how it has been used in OAIC reviews, and how it has been used by the NDIA.

1. FOI Act

Section 42 of the FOI Act:

Link to the [FOI Act](#).

42 Documents subject to legal professional privilege

(1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

(2) A document is not an exempt document because of subsection (1) if the person entitled to claim legal professional privilege in relation to the production of the document in legal proceedings waives that claim.

(3) A document is not an exempt document under subsection (1) by reason only that:

(a) the document contains information that would (apart from this subsection) cause the document to be exempt under subsection (1); and

(b) the information is operational information of an agency.

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2. FOI Guidelines

Link to the [exemptions part of the FOI guidelines](#).

Excerpt from the FOI guidelines about 42:

3. Whether a document attracts legal professional privilege

5.128 LPP applies to some but not all communications between legal advisers and clients. The underlying policy basis for LPP is to promote the full and frank disclosure between a lawyer and client to the benefit of the effective administration of justice. It is the purpose of the communication that is determinative.^[105] The information in a document is relevant and may assist in determining the purpose of the communication, but the information in itself is not determinative.

5.129 At common law, determining whether a communication is privileged requires a consideration of:

- whether there is a legal adviser-client relationship
- whether the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation
- whether the advice given is independent
- whether the advice given is confidential.^[106]

4. OAIC reviews about section 42

This is a list of selected decisions. See the [Office of the Australian Information Commission review decision](#) website for more.

- ['DT' and Department of Human Services \[2014\] AICmr 127](#)
- ['BD' and Australian Federal Police \[2014\] AICmr 13](#)
- [John Hilvert and Australian Bureau of Statistics \(Freedom of information\) \[2017\] AICmr 43](#)
- ['OB' and Australian Building and Construction Commission \(Freedom of information\) \[2018\] AICmr 25](#)
- ['OA' and Department of Home Affairs \(Freedom of information\) \[2018\] AICmr 22](#)
- ['CC' and Australian Federal Police \[2014\] AICmr 65](#)
- [Krivoshev and Department of Human Services \[2014\] AICmr 48](#)
- ['BX' and Commonwealth Ombudsman \[2014\] AICmr 47](#)

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- [Australian Gulf War Veterans Association and Repatriation Medical Authority \[2014\] AICMr 19](#)
- [Paul Farrell and Department of Home Affairs \(Freedom of information\) \[2019\] AICMr 5](#)

5. NDIA FOI decisions

This list includes the reference number of the request, a link to the SharePoint folder and the decision maker's name.

The below matters have been selected randomly to provide a wide range of potential approaches to using this exemption.

- [§47F - personal privacy](#) – Ankit [§47F - personal privacy](#)
- [§47F - personal privacy](#) – Jennifer [§47F - personal privacy](#)
- [§47F - personal privacy](#) – Jade [§47F - personal privacy](#)
- [§47F - personal privacy](#) – Kylie [§47F - personal privacy](#)
- [§47F - personal privacy](#) – Kylie [§47F - personal privacy](#)
- [§47F - personal privacy](#) – Carolyn [§47F - personal privacy](#)
- [§47F - personal privacy](#) – Carolyn [§47F - personal privacy](#)
- [§47F - personal privacy](#) – Duncan [§47F - personal privacy](#)
- [§47F - personal privacy](#) – Duncan [§47F - personal privacy](#)
- [§47F - personal privacy](#) – Andrew [§47F - personal privacy](#)

6. Version control

Version	Amended by	Brief Description of Change	Status	Date
0.1	§47F - personal privacy	Initial Version	DRAFT	2024-01-31



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Section 45 – Documents containing material obtained in confidence

Section 45 is part of the *Freedom of Information Act 1982* provides justification for decision makers to exempt material if it meets the definition “documents containing material obtained in confidence”. Section 45 is an absolute exemption, which means the decision maker does not consider the public interest before applying this exemption.

This exemption is **rarely** used in the National Disability Insurance Agency (NDIA). In the first ten years of the Agency’s operation, s 45 has been used about 20 times. This document gives an overview of this exemption, how it has been used in OAIC reviews, and how it has been used by the NDIA.

1. FOI Act

Section 45 of the FOI Act:

Link to the [FOI Act](#).

45 Documents containing material obtained in confidence

(1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency or the Commonwealth), for breach of confidence.

(2) Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:

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- (a) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or
- (b) an agency or the Commonwealth.

2. FOI Guidelines

Link to the [conditional exemptions part of the FOI guidelines](#).

Excerpt from the FOI guidelines about section 45:

3. Breach of confidence

5.158 A breach of confidence is the failure of a recipient to keep confidential, information which has been communicated in circumstances giving rise to an obligation of confidence.^[132] The FOI Act expressly preserves confidentiality where that confidentiality would be actionable at common law or in equity.^[133]

5.159 To found an action for breach of confidence (which means s 45 would apply), the following five criteria must be satisfied in relation to the information:

- it must be specifically identified
- it must have the necessary quality of confidentiality
- it must have been communicated and received on the basis of a mutual understanding of confidence
- it must have been disclosed or threatened to be disclosed, without authority
- unauthorised disclosure of the information has or will cause detriment.^[134]

5.160 A breach of confidence will not arise, and the exemption will not apply, if the information to be disclosed is an 'iniquity' in the sense of a crime, civil wrong, or serious misdeed of public importance which ought to be disclosed to a third party with a real and direct interest in redressing such crime, wrong, or misdeed.^[135]

4. OAIC reviews about section 45



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This is a list of selected decisions. See the [Office of the Australian Information Commission review decision](#) website for more.

- [Oliver Banovec and Australian Federal Police \[2014\] AICmr 110](#)
- ['CX' and Department of Human Services \[2014\] AICmr 102](#)
- [Jeffrey Knapp and Australian Accounting Standards Board \[2014\] AICmr 81](#)
- [Brighton-Stangstins and Australian Securities and Investments Commission \[2014\] AICmr 56](#)
- ['BX' and Commonwealth Ombudsman \[2014\] AICmr 47](#)
- ['AG' and Department of Immigration and Citizenship \[2013\] AICmr 55](#)
- ['AF' and Department of Immigration and Citizenship \[2013\] AICmr 54](#)
- ['HH' and Department of the Treasury \[2015\] AICmr 68](#)
- [Peter Demmery and Australian Hearing \[2015\] AICmr 43](#)
- ['FT' and Civil Aviation Safety Authority \[2015\] AICmr 37](#)

5. NDIA FOI decisions

This list includes the reference number of the request, a link to the SharePoint folder and the decision maker's name.

- [s47F - personal privacy](#) – Cooper [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Cooper [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Cooper [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Cooper [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Cooper [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Cooper [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Kylie [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Emma [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Miriam [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Cooper [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Jasper [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Mia [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Peter [s47F - personal privacy](#)

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- [s47F - personal privacy](#) – Marguerite (Meg) [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Tayla [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Helen [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Ben [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Andrew [s47F - personal privacy](#)

6. Version control

Version	Amended by	Brief Description of Change	Status	Date
0.1	s47F - personal privacy	Initial Version	DRAFT	2024-01-30



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Section 47 – Documents disclosing trade secrets or commercially valuable information

Section 47 is part of the *Freedom of Information Act 1982* provides justification for decision makers to exempt material if it meets the definition “documents disclosing trade secrets or commercially valuable information”. Section 47 is an absolute exemption, which means the decision maker does not consider the public interest before applying this exemption.

This exemption is **rarely** used in the National Disability Insurance Agency (NDIA). In the first ten years of the Agency’s operation, s 47 has been used about 10 times. This document gives an overview of this exemption, how it has been used in OAIC reviews, and how it has been used by the NDIA.

1. FOI Act

Section 47 of the FOI Act:

Link to the [FOI Act](#).

47 Documents disclosing trade secrets or commercially valuable information

(1) A document is an exempt document if its disclosure under this Act would disclose:

- (a) trade secrets; or
- (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

(2) Subsection (1) does not have effect in relation to a request by a person for access to a document:

- (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or

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(b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or

(c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.

(3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by:

- (a) the Commonwealth or a State; or
- (b) an authority of the Commonwealth or of a State; or
- (c) a Norfolk Island authority; or
- (d) a local government authority.

2. FOI Guidelines

Link to the [exemptions part of the FOI guidelines](#).

Excerpt from the FOI guidelines about 47:

3. Trade secrets

5.199 The term 'trade secret' is not defined in the FOI Act. The Federal Court has interpreted a trade secret as information possessed by one trader which gives that trader an advantage over its competitors while the information remains generally unknown. [\[155\]](#)

5.200 The Federal Court referred to the following test in considering whether information amounts to a trade secret:

- the information is used in a trade or business
- the owner of the information must limit its dissemination or at least not encourage or permit its widespread publication
- if disclosed to a competitor, the information would be liable to cause real or significant harm to the owner of the information. [\[156\]](#)



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5.201 Factors that a decision maker might regard as useful guidance but not an exhaustive list of matters to be considered include:

- the extent to which the information is known outside the business of the owner of that information
- the extent to which the information is known by persons engaged in the owner's business
- measures taken by the owner to guard the secrecy of the information ^[157]
- the value of the information to the owner and to his or her competitors
- the effort and money spent by the owner in developing the information
- the ease or difficulty with which others might acquire or duplicate the secret. ^[158]

5.202 Where the information is 'observable', such as the design features of a fishing net, the Information Commissioner has found that the information is not a trade secret. ^[159]

5.203 Information of a non-technical character may also amount to a trade secret. To be a trade secret, information must be capable of being put to advantageous use by someone involved in an identifiable trade. ^[160]

4. OAIC reviews about section 47

This is a list of selected decisions. See the [Office of the Australian Information Commission review decision](#) website for more.

- [Australian Broadcasting Corporation and Australian Fisheries Management Authority \[2016\] AICmr 43](#)
- ['HN' and Department of the Environment \[2015\] AICmr 76](#)
- ['DW' and Department of Industry \[2014\] AICmr 130](#)
- [The Age and Airservices Australia \[2014\] AICmr 89](#)
- [Stanistreet and Therapeutic Goods Administration \[2014\] AICmr 21](#)
- [Animals Australia Inc and Department of Agriculture \[2015\] AICmr 14](#)
- [Wellard Rural Exports Pty Ltd and Department of Agriculture \[2014\] AICmr 131](#)
- [Australian Marine Conservation Society and Australian Fisheries Management Authority \[2016\] AICmr 92](#)
- [Wushu Council Australia Limited and Australian Sports Commission \(Freedom of information\) \[2017\] AICmr 26](#)
- [McKinnon and Department of Immigration and Citizenship \[2012\] AICmr 34](#)

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5. NDIA FOI decisions

This list includes the reference number of the request, a link to the SharePoint folder and the decision maker's name.

- [\[Folder\] s47F - personal privacy](#) – Erin [\[Redacted\]](#)
- [\[Folder\] s47F - personal privacy](#) – Carolyn [\[Redacted\]](#)
- [\[Folder\] s47F - personal privacy](#) – Carolyn [\[Redacted\]](#)
- [\[Folder\] s47F - personal privacy](#) – Carolyn [\[Redacted\]](#)
- [\[Folder\] s47F - personal privacy](#) – Ausilia [\[Redacted\]](#)
- [\[Folder\] s47F - personal privacy](#) - [Government Advisory Group](#) – Andrew [\[Redacted\]](#)
- [\[Folder\] s47F - personal privacy](#) – Andrew [\[Redacted\]](#)
- [\[Folder\] s47F - personal privacy](#) – Andrew [\[Redacted\]](#)
- [\[PDF\] s47F - personal privacy](#) ([Applicant](#)).PDF – Jennifer [\[Redacted\]](#)
- [\[Folder\] s47F - personal privacy](#) .PDF - Jennifer [\[Redacted\]](#)

6. Version control

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Section 47B – Documents affecting Commonwealth-state relations

Section 47B is part of the *Freedom of Information Act 1982* provides justification for decision makers to exempt material if it meets the definition “documents affecting Commonwealth-state relations.” Section 47B is a conditional exemption, which means the decision maker must decide if releasing the information is contrary to the public interest before applying this exemption.

This exemption is **rarely** used in the National Disability Insurance Agency (NDIA). In the first ten years of the Agency’s operation, s 47B has been used about a dozen times. This document gives an overview of this exemption, how it has been used in OAIC reviews, and how it has been used by the NDIA.

1. FOI Act

Section 47B of the FOI Act:

Link to the [FOI Act](#).

47B Public interest conditional exemptions—Commonwealth-State relations etc.

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; or

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(d) would divulge information or matter communicated in confidence by or on behalf of a Norfolk Island authority, 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 an authority of the Commonwealth; or

(f) 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 a Norfolk Island authority or to a person receiving the communication on behalf of a Norfolk Island authority.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

2. FOI Guidelines

Link to the [conditional exemptions part of the FOI guidelines](#).

Excerpt from the FOI guidelines about 47B:

3. Cause damage to Commonwealth-State relations

6.32 A decision maker may consider that disclosure would, or could reasonably be expected to damage the working relations of the Commonwealth and one or more States (s 47B(a)).

'Working relations' encompass all interactions of the Commonwealth and the States,^[23] from formal Commonwealth-State consultation processes such as the Council of Australian Governments through to any working arrangements between agencies undertaken as part of their day to day functions.

6.33 Disclosure of the document may cause damage by, for example:

- interrupting or creating difficulty in negotiations or discussions that are underway, including in the development of joint or parallel policy^[24]
- adversely affecting the administration of a continuing Commonwealth-State project
- substantially impairing (but not merely modifying) Commonwealth-State programs^[25]
- adversely affecting the continued level of trust or co-operation in existing inter-office relationships^[26]
- impairing or prejudicing the flow of information to and from the Commonwealth.^[27]

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6.34 Decision makers may also need to consider future working relationships where disclosure may, for example:

- impair or prejudice the future flow of information
- adversely affect Commonwealth-State police operations or investigations
- adversely affect the development of future Commonwealth-State projects.

4. OAIC reviews about 47B

This is a list of selected decisions. See the [Office of the Australian Information Commission review decision](#) website for more.

- [Crowe and Department of Prime Minister and Cabinet \[2014\] AICmr 72 \(30 July 2014\)](#) -
- [Diamond and Australian Curriculum, Assessment and Reporting Authority \[2013\] AICmr 57](#) -
- ['PX' and Australian Federal Police \(Freedom of Information\) \[2019\] AICmr 8](#)
- [Outside the Square Solutions and Australian Skills Quality Authority \(Freedom of information\) \[2019\] AICmr 33](#)
- [Community and Public Sector Union and Attorney-General's Department \(Freedom of information\) \[2019\] AICmr 75 g](#)
- [Dan Conifer and National Disability Insurance Agency \(Freedom of information\) \[2020\] AICmr 33](#)
- [Rex Patrick and Department of Agriculture, Water and the Environment \(Freedom of information\) \[2021\] AICmr 57](#)
- ['LJ' and Department of Immigration and Border Protection \(Freedom of information\) \[2017\] AICmr 46](#)
- [The Australian and Prime Minister of Australia \[2016\] AICmr 84](#)
- [Humane Society International Inc. and Department of the Environment \[2016\] AICmr 57](#)

5. NDIA FOI decisions

This list includes the reference number of the request, a link to the SharePoint folder and the decision maker's name.

- [\[redacted\] s47F - personal privacy](#) – Carolyn [\[redacted\] s47F - personal privacy](#)
- [\[redacted\] s47F - personal privacy](#) – Carolyn [\[redacted\] s47F - personal privacy](#)

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- [\[redacted\] §47F - personal privacy](#) – Kylie [\[redacted\] §47F - personal privacy](#)
- [\[redacted\] §47F - personal privacy](#) – Matt [\[redacted\] §47F - personal privacy](#)
- [\[redacted\] §47F - personal privacy](#) ([Anonymous 7](#)) – Duncan [\[redacted\] §47F - personal privacy](#)
- [\[redacted\] §47F - personal privacy](#) – Duncan [\[redacted\] §47F - personal privacy](#)
- [\[redacted\] §47F - personal privacy](#) – Duncan [\[redacted\] §47F - personal privacy](#)
- [\[redacted\] §47F - personal privacy](#) – Duncan [\[redacted\] §47F - personal privacy](#)
- [\[redacted\] §47F - personal privacy](#) – Duncan [\[redacted\] §47F - personal privacy](#)
- [\[redacted\] §47F - personal privacy](#) – Duncan [\[redacted\] §47F - personal privacy](#)
- [\[redacted\] §47F - personal privacy](#) – Andrew [\[redacted\] §47F - personal privacy](#)

6. Version control

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Section 47C – Documents subject to deliberative processes

Section 47C is part of the *Freedom of Information Act 1982* provides justification for decision makers to exempt material if it meets the definition of “documents subject to deliberative process”. Section 47C is a conditional exemption, which means the decision maker must decide if releasing the information is contrary to the public interest before applying this exemption.

This exemption is **commonly used** in the National Disability Insurance Agency (NDIA). In the first ten years of the Agency’s operation, s 47G has been used about 1000 times across 8000 requests. This document gives an overview of this exemption, how it has been used in OAIC reviews, and how it has been used by the NDIA.

1. FOI Act

Section 47C of the FOI Act:

Link to the [FOI Act](#).

47C Public interest conditional exemptions—deliberative processes

General rule

- (1) 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.

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- (2) Deliberative matter does not include either of the following:
- (a) operational information (see section 8A);
 - (b) purely factual material.

Note: An agency must publish its operational information (see section 8).

- (3) This section does not apply to any of the following:
- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
 - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
 - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

2. FOI Guidelines

Link to the [conditional exemptions part of the FOI guidelines](#).

Excerpt from the FOI guidelines about 47C:

Deliberative process

6.58 A deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action. ^[39]

6.59 Deliberative process' generally refers to the process of weighing up or evaluating competing arguments or considerations or to thinking processes – the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action. ^[40]

6.60 The deliberative process must relate to the functions of an agency, minister or the government of the Commonwealth. The functions of an agency are usually found in the Administrative Arrangements Orders or the instrument or Act that established the agency. For the purposes of the FOI Act, the functions include both policy making and the processes



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undertaken in administering or implementing a policy. The functions also extend to the development of policies in respect of matters that arise in the course of administering a program. The non-policy decision making processes required when carrying out agency, ministerial or governmental functions, such as code of conduct investigations, may also be deliberative processes.^[41]

6.61 A deliberative process may include the recording or exchange of:

- opinions
- advice
- recommendations
- a collection of facts or opinions, including the pattern of facts or opinions considered^[42]
- interim decisions or deliberations.

6.62 An opinion or recommendation does not need to be prepared for the sole purpose of a deliberative process. However, it is not sufficient that an agency merely has a document in its possession that contains information referring to matters for which the agency has responsibility.^[43]

3. OAIC reviews about 47C

This is a list of selected decisions. See the [Office of the Australian Information Commission review decision](#) website for more.

- ['DX' and National Offshore Petroleum Safety and Environmental Management Authority \[2014\] AICmr 132](#)
- [Mentink and Australian Federal Police \[2014\] AICmr 67](#)
- [Sanderson and Department of Infrastructure and Regional Development \[2014\] AICmr 66](#)
- [Philip Morris Ltd and Department of Finance \[2014\] AICmr 27](#)
- [Dreamsafe Recycling Pty Ltd and Department of Education, Employment and Workplace Relations \[2013\] AICmr 34](#)
- ['RK' and Department of Defence \(Freedom of Information\) \[2019\] AICmr 73](#)
- [Paul Farrell and Department of Home Affairs \(No.3\) \(Freedom of information\) \[2019\] AICmr 38](#)
- ['RV' and Services Australia \(Freedom of information\) \[2020\] AICmr 11](#)



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- [Jackson Gothe-Snape and Services Australia \(Freedom of information\) \[2020\] AICmr 19](#)
- [Dan Conifer and National Disability Insurance Agency \(Freedom of information\) \[2020\] AICmr 33](#)

4. NDIA FOI decisions

This list includes the reference number of the request, a link to the SharePoint folder and the decision maker's name.

The below matters have been selected randomly to provide a wide range of potential approaches to using this exemption.

- [s47F - personal privacy](#) – Kylie [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Jade [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Stephanie [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Peter [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Kylie [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Natalie [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Angus [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Duncan [s47F - personal privacy](#)
- [s47F - personal privacy](#) - Duncan [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Duncan [s47F - personal privacy](#)

5. Version control

Version	Amended by	Brief Description of Change	Status	Date
0.1	s47F - personal privacy	Initial Version	DRAFT	2024-02-21



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Section 47E – Certain Operations of Agencies

Section 47E is part of the *Freedom of Information Act 1982* provides justification for decision makers to exempt material if it meets the definition of “certain operations of agencies”. Section 47E is a conditional exemption, which means the decision maker must decide if releasing the information is contrary to the public interest before applying this exemption.

This exemption is **the most commonly used** in the National Disability Insurance Agency (NDIA). In the first ten years of the Agency’s operation, s 47E has been used about a 2000 times across 8000 requests. This document gives an overview of this exemption, how it has been used in OAIC reviews, and how it has been used by the NDIA.

1. FOI Act

Section 47E of the FOI Act:

Link to the [FOI Act](#).

47E Public interest conditional exemptions—certain operations of agencies

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

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2. FOI Guidelines

Link to the [conditional exemptions part of the FOI guidelines](#).

Excerpt from the FOI guidelines about 47E:

Prejudice

6.99 Sections 47E(a) and (b) require a decision maker to assess whether the conduct or objects of tests, examinations or audits would be prejudiced in a particular instance. The term 'prejudice' is explained in Part 5.

6.100 In the context of this exemption, a prejudicial effect could be regarded as one which would cause a bias or change to the expected results leading to detrimental or disadvantageous outcomes. The expected change does not need to have an impact that is 'substantial and adverse', which is a stricter test.^[75]

Reasonably be expected

6.101 For the grounds in ss 47E(a)–(d) to apply, the predicted effect needs to be reasonably expected to occur. The term 'could reasonably be expected' is explained in greater detail in Part 5. There must be more than merely an assumption or allegation that damage may occur if the document were to be released.

6.102 Where the documents relate more closely to investigations relating to compliance with a taxation law or the enforcement or proper administration of the law, due to the involvement of a police service or the Director of Public Prosecutions, or by the agency's internal investigators, the agency may need to consider the law enforcement exemption under s 37 (see Part 5).

Reasons behind predicted effect

6.103 An agency cannot merely assert that an effect would occur following disclosure. The particulars of the predicted effect should be identified during the decision making process, including whether the effect could reasonably be expected to occur. Where the conditional exemption is relied upon, the relevant particulars and reasons should form part of the decision maker's statement of reasons, if they can be included without disclosing exempt material (s 26, see Part 3).



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3. OAIC reviews about 47E

This is a list of selected decisions. See the [Office of the Australian Information Commission review decision](#) website for more.

- ['CQ' and Department of Immigration and Border Protection \[2014\] AICmr 91](#)
- ['CA' and Australian Customs and Border Protection Service \[2014\] AICmr 62](#)
- ['BH' and Australian Taxation Office \[2014\] AICmr 17](#)
- ['BC' and Australian Taxation Office \[2014\] AICmr 12n](#)
- [Hunt and Australian Federal Police \[2013\] AICmr 66](#)
- [Brighton-Stangstins and Australian Securities and Investments Commission \[2014\] AICmr 56](#)
- ['L' and Australian Human Rights Commission \[2012\] AICmr 21](#)
- [Besser and Department of Infrastructure and Transport \[2013\] AICmr 19](#)
- ['R' and Department of Veteran's Affairs \[2013\] AICmr 30](#)
- ['W' and the Australian Federal Police \[2013\] AICmr 39](#)

NDIA FOI decisions

This list includes the reference number of the request, a link to the SharePoint folder and the decision maker's name.

The below matters have been selected randomly to provide a wide range of potential approaches to using this exemption. However, only non-personal matters have been included below to avoid selecting matters that used s 47E (d) for the streaming factors only.

- [s47F - personal privacy](#) – Peter [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Saira [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Jennifer [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Jade [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Carolyn [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Kylie [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Meg [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Matt [s47F - personal privacy](#)

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-  [s47F - personal privacy](#) – Ben [s47F - personal privacy](#)
- [s47F - personal privacy](#) – Andrew [s47F - personal privacy](#)

4. Version control

Version	Amended by	Brief Description of Change	Status	Date
0.1	s47F - personal privacy	Initial Version	DRAFT	2024-02-21



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Section 47F – Personal privacy

Section 47F is part of the *Freedom of Information Act 1982* provides justification for decision makers to exempt material if it meets the definition of “personal privacy”. Section 47F is a conditional exemption, which means the decision maker must decide if releasing the information is contrary to the public interest before applying this exemption.

This exemption is **commonly used** in the National Disability Insurance Agency (NDIA). In the first ten years of the Agency’s operation, s 47F has been used about a 1000 times across 8000 requests. This document gives an overview of this exemption, how it has been used in OAIC reviews, and how it has been used by the NDIA.

1. FOI Act

Section 47F of the FOI Act:

Link to the [FOI Act](#).

47F Public interest conditional exemptions—personal privacy

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (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;
 - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

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(4) Subsection (5) applies if:

- (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
- (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.

(5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:

- (a) carries on the same occupation, of a kind mentioned in the definition of **qualified person** in subsection (7), as the first-mentioned qualified person; and
- (b) is to be nominated by the applicant.

(6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.

(7) In this section:

qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

- (a) a medical practitioner;
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

2. FOI Guidelines

Link to the [conditional exemptions part of the FOI guidelines](#).

Excerpt from the FOI guidelines about 47F:

Unreasonable disclosure

6.138 The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy.^[112] The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals. The test does not, however, amount to the public interest test of s 11A(5), which follows later in the decision making process. It is possible that the decision maker may need to



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consider one or more factors twice, once to determine if a projected effect is unreasonable and again when assessing the public interest balance.

6.139 In considering what is unreasonable, the AAT in *Re Chandra and Minister for Immigration and Ethnic Affairs* stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...^[113]

6.140 An agency or minister must have regard to the following matters in determining whether disclosure of the document would involve an unreasonable disclosure of personal information:

- 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^[114]
- d. any other matters that the agency or minister considers relevant (s 47F(2)).^[115]

6.141 These are the same matters that must be taken into account for the purposes of consulting an affected third party under s 27A(2).

6.142 Key factors for determining whether disclosure is unreasonable include:

- a. the author of the document is identifiable^[116]
- b. the documents contain third party personal information
- c. release of the documents would cause stress on the third party
- d. no public purpose would be achieved through release.^[117]

6.143 As discussed in the leading s 47F IC review decision of 'FG' and National Archives of Australia [2015] AICmr 26, other factors considered to be relevant include:

- the nature, age and current relevance of the information
- any detriment that disclosure may cause to the person to whom the information relates
- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information

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- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act
- any submission an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information, and
- whether disclosure of the information might advance the public interest in government transparency and integrity.^[118]

3. OAIC reviews about 47F

This is a list of selected decisions. See the [Office of the Australian Information Commission review decision](#) website for more.

- ['DP' and Department of Immigration and Border Protection \[2014\] AICmr 125](#)
- [Nine Network Australia Pty Ltd and Fair Work Commission \[2014\] AICmr 43](#)
- ['J' and Department of Health and Ageing \[2013\] AICmr 21](#)
- ['AO' and Department of Veterans' Affairs \[2013\] AICmr 77n](#)
- [Besser and Department of Families, Housing, Community Services and Indigenous Affairs \[2013\] AICmr 65](#)
- [Seven Network Operations Limited and Australian Human Rights Commission \[2021\] AICmr 66](#)
- ['HQ' and Department of Defence \[2015\] AICmr 79](#)
- ['Q' and Department of Human Services \[2012\] AICmr 30](#)
- [Autism Aspergers Advocacy Australia and Department of Families, Housing, Community Services and Indigenous Affairs \[2012\] AICmr 28](#)
- [Wulf von der Decken and Services Australia \[2020\] AICmr 55](#)

4. NDIA FOI decisions

This list includes the reference number of the request, a link to the SharePoint folder and the decision maker's name.

The below matters have been selected randomly to provide a wide range of potential approaches to using this exemption.

- [\[redacted\] s47F - personal privacy](#) – Helen [s47F - personal privacy](#)
- [\[redacted\] s47F - personal privacy](#) – Kylie [s47F - personal privacy](#)

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- [§47F - personal privacy](#) – Jennifer [§47F - personal privacy](#)
- [§47F - personal privacy](#) – Jade [§47F - personal privacy](#)
- [§47F - personal privacy](#) – Meg [§47F - personal privacy](#)
- [§47F - personal privacy](#) - Carolyn [§47F - personal privacy](#)
- [§47F - personal privacy](#) – Duncan [§47F - personal privacy](#)
- [§47F - personal privacy](#) – Duncan [§47F - personal privacy](#)
- [§47F - personal privacy](#) – Duncan [§47F - personal privacy](#)
- [§47F - personal privacy](#) – Ben [§47F - personal privacy](#)

5. Version control

Version	Amended by	Brief Description of Change	Status	Date
0.1	§47F - personal privacy	Initial Version	DRAFT	2024-02-21

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Section 47G – Documents disclosing business information

Section 47G is part of the *Freedom of Information Act 1982* provides justification for decision makers to exempt material if it meets the definition of “documents disclosing business information”. Section 47G is a conditional exemption, which means the decision maker must decide if releasing the information is contrary to the public interest before applying this exemption.

This exemption is **occasionally** used in the National Disability Insurance Agency (NDIA). In the first ten years of the Agency’s operation, s 47G has been used about a 100 times. This document gives an overview of this exemption, how it has been used in OAIC reviews, and how it has been used by the NDIA.

1. FOI Act

Section 47G of the FOI Act:

Link to the [FOI Act](#).

47G Public interest conditional exemptions—business

(1) 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

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(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

(2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.

(3) Subsection (1) does not have effect in relation to a request by a person for access to a document:

(a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or

(b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or

(c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.

(4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by:

(a) the Commonwealth or a State; or

(b) an authority of the Commonwealth or of a State; or

(c) a Norfolk Island authority; or

(d) a local government authority.

(5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

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2. FOI Guidelines

Link to the [conditional exemptions part of the FOI guidelines](#).

Excerpt from the FOI guidelines about 47G:

Exemption does not apply in certain circumstances

6.182 The conditional exemption does not apply if the document contains only business information about the applicant (s 47G(3)). Where the business information concerns both the applicant and another business, the provision may operate to exempt the information of the applicant, but only if the applicant's business information cannot be separated from the information of the other business or undertaking.

6.183 This conditional exemption does not apply to trade secrets or other information to which s 47 applies (s 47G(2)). In other words, a decision maker should seek an exemption under s 47 for documents containing such information if the circumstances call for it. This is a limited exception to the normal rule that more than one exemption can apply to the same information (see s 32).

Elements of the exemption

6.184 The operation of the business information exemption depends on the effect of disclosure rather than the precise nature of the information itself. Nevertheless, the information in question must have some relevance to a person in respect of his or her business or professional affairs or to the business, commercial or financial affairs of an organisation or undertaking (s 47G(1)(a)).

6.185 For the purposes of this conditional exemption, an undertaking includes an undertaking carried on by, or by an authority of, the Commonwealth, Norfolk Island or a state or territory government (s 47G(4)). However, it has been held that the business affairs exemption is not available to a person within a government agency or undertaking, nor to the agency or undertaking itself.[140] In other words, it is intended to protect the interests of third parties dealing with the government. Therefore, decision makers should be aware that the application of this conditional exemption to an agency's own business information is uncertain and should avoid relying on it, even if the agency is engaged in competitive business activities.[141] As an

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alternative, one of the specific exemptions for agencies in respect of particular documents in Part II of Schedule 2 may be available.

Could reasonably be expected

6.186 This term is explained in Part 5. As in other applications, it refers to an expectation that is based on reason. Mere assertion or speculative possibility is not enough.[142]

3. OAIC reviews about 47G

This is a list of selected decisions. See the [Office of the Australian Information Commission review decision](#) website for more.

- ['CV' and National Gallery of Australia \[2014\] AICmr 98](#)
- [Nigel Rooney and Australian Competition and Consumer Commission \[2014\] AICmr 97](#)
- [Dreamsafe Recycling Pty Ltd and Department of Education, Employment and Workplace Relations \[2013\] AICmr 34](#)
- [The Age and Airservices Australia \[2014\] AICmr 89](#)
- [Australian Broadcasting Corporation and Australian Transaction Reports and Analysis Centre \[2014\] AICmr 80](#)
- ['K' and Australian Securities and Investments Commission \[2013\] AICmr 22](#)
- [McKinnon and Department of Immigration and Citizenship \[2012\] AICmr 34](#)
- ['E' and National Offshore Petroleum Safety and Environmental Management Authority \[2012\] AICmr 3](#)
- [Australian Society for Kangaroos and Rural Industries Research and Development Corporation trading as AgriFutures Australia \(Freedom of information\) \[2019\] AICmr 31](#)
- [Macquarie Group Limited and Australian Securities and Investments Commission \(Freedom of information\) \[2019\] AICmr 39](#)

4. NDIA FOI decisions

This list includes the reference number of the request, a link to the SharePoint folder and the decision maker's name.

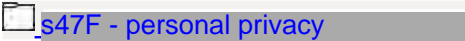

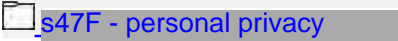

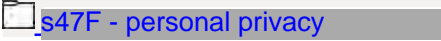



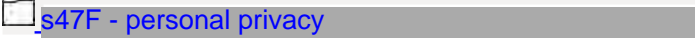










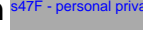
The below matters have been selected randomly to provide a wide range of potential approaches to using this exemption.

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-  – Peter 
-  – Kylie 
-  – Saira 
-  – Jade 
-  – Carolyn 
-  – Carolyn 
-  – Matt 
-  – Angus 
-  – Duncan 
-  – Duncan 

5. Version control

Version	Amended by	Brief Description of Change	Status	Date
0.1		Initial Version	DRAFT	2024-02-05

This document was released under the Freedom of Information Act 1982 by the National Disability Insurance Agency

FOI TRAINING FEB 2024

INTRODUCTION

This training session is designed to give the participants an understanding of the processes and procedural aspects of managing requests made under the *Freedom of Information Act 1982* (FOI Act). Alongside examining the FOI Act, we will look at the following:

- Scope and settling the request
- Timeframes and extensions
- Documents, including section 17 documents
- Charges
- Consultation
- Exemptions

THE FOI ACT

The FOI Act is designed to be pro disclosure. Material must be released unless an exemption applies.

The philosophy underlying the FOI Act may be summarised as follows:

- when government is more open to public scrutiny it becomes more accountable
- if people are adequately informed and have access to government-held information, there is likely to be more public participation in the policy-making process and in government itself
- groups and individuals who are affected by government decisions should know the criteria applied in making those decisions
- every individual has a right:
 - to know what information is held in government records about her or him personally, subject to certain exemptions to protect essential public interests
 - to inspect files held about or relating to her or him
 - to have inaccurate material concerning themselves held on file or in computerised databases corrected.

VALIDITY OF A REQUEST

SECTION 15(2)

- Section 15(2) of the FOI Act provides that a valid request for access to a document of an agency or an official document of a Minister must:
 - be in writing
 - state that the request is an application for the purposes of the FOI Act
 - provide sufficient information to enable the agency or Minister to identify the requested documents
 - give details of how notices under the Act may be sent to the applicant (including an email or other electronic address)

SECTION 15(5)

- On receiving a valid FOI request under s15, an agency must take reasonable steps to acknowledge its receipt:
- As soon as practicable
- But not later than 14 days after the day on which the request is received (s 15(5)(a)).
- An agency is also required to take all reasonable steps to enable the applicant to be notified of a decision on a request that is valid under s15(2) as soon as practicable, but in any event not later than 30 days after the day on which the request is received by the agency or Minister (see paragraph 15(5)(b)). The 30 days are calendar days computed from the day after the request is received (Acts Interpretation Act 1901, s 36(1)).

DOCUMENTS

DOCUMENTS

- The word 'document' is defined in subsection 4(1) of the FOI Act to include:
 - any of, or any part of:
 - any paper or other material on which there is writing
 - a map, plan, drawing or photograph
 - any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them
 - any article or material from which sounds, images or writing are capable of being reproduced with or without the aid of any other article or device
 - any article on which information has been stored or recorded, either mechanically or electronically
 - any other record of information
 - any copy, reproduction or duplicate of such a thing
 - any part of such a copy, reproduction or duplicate.

DOCUMENTS CONT.

- 'Document' includes sound and audio-visual recordings, however stored. It also includes computer storage devices, such as thumb drives, disks and CD-ROMs. The definition of 'document' also includes 'any part of' a thing included within the definition of a document, enabling applicants to ask for specific parts of larger documents, for example a particular appendix to a report, in such a way that it is not necessary for the agency to examine the larger document for exemptions
- The inclusion in the definition of 'document' of the words 'any other record of information' also seems to cover any other form in which information is recorded which is not covered in the specifically identified forms referred to in the preceding paragraphs of the definition, for example a painting (such as a portrait) that constitutes a record of information, holograms and computer enhanced images. It would even extend to three-dimensional objects which record information, such as a land-use planning model.

DOCUMENTS CONT.

- The FOI Act gives an applicant a right of access only to documents in existence at the time a request is lodged with an agency. An applicant cannot insist that the request covers documents created after the request is received.

SECTION 17 DOCUMENT

- An exception to the general rule that FOI does not require preparation of new documents is found in s 17 of the FOI Act. The section, amended in 1991, applies only where it appears from a request:
- that the applicant desires information that is not available in discrete form in the written documents of the agency, and
- that the applicant doesn't want to be provided with a computer tape or computer disk on which the information is recorded (or, presumably, a sound recording where appropriate).
- In that case, if the agency can produce a written document (transcript, hard copy, computer printout, etc.) containing the information in discrete form by:
 - use of a computer or other equipment ordinarily available to it for retrieving or collating stored information; or
 - making a transcript from a sound recording held in the agency.
- the agency is required to treat the request as if it were a request for such a written document containing the requested information in discrete form, and to produce that document (subject to exemption claims).

PUBLICLY AVAILABLE DOCUMENTS

- Some classes of documents are excluded from the right of access under the FOI Act because they are otherwise available to members of the public.
- Documents that are freely available on an agency's website are not excluded from the right of access under the FOI Act. However, it would ordinarily be more convenient for all concerned for the agency to inform the applicant if a document sought under FOI was available on the internet, rather than deal with the request under the FOI Act.

PERSONNEL RECORDS

- Section 15A of the FOI Act provides that an employee or former employee of an agency may not request access under the FOI Act to her or his personnel records (defined as documents containing personal information kept for personnel management purposes) unless the employee or former employee first makes a request under any internal procedures for staff access to records and is either:
 - not satisfied with the outcome of the request; or
 - has not been notified of the outcome within 30 days of the date the request was made.
- Where an employee or former employee makes an FOI request for records without seeking access under relevant internal agency procedures, the applicant should be informed that the request will be dealt with as a request under those procedures. At the same time the applicant should be informed of her or his right to seek access under FOI if dissatisfied with the access given or if a decision is not made within 30 days (s 15A(2)(d)).

SECTION 16

- Section 16 sets out the procedural requirements for the transfer of a request from one agency to another. Section 16 was amended in 1991 to provide specifically that an agency may transfer a request to another agency in relation to some, rather than all, of the documents covered by the request (s 16(3A)).
- Section 16(1) provides as follows:
 - (1) Where a request is made to an agency for access to a document and:
 - (a) the document is not in the possession of that agency but is, to the knowledge of that agency, in the possession of another agency; or
 - (b) the subject-matter of the document is more closely connected with the functions of another agency than with those of the agency to which the request is made;
 - (c) the agency to which the request is made may, with the agreement of the other agency, transfer the request to the other agency.

SECTION 24A

- Section 24A provides that an agency or Minister may refuse a request for access to a document if all reasonable steps have been taken to find the document, and the agency or Minister is satisfied that the document either:
 - is in the agency's or Minister's possession but cannot be found
 - does not exist (meaning that the document does not exist in the agency's possession – if the agency is aware of the document's existence in the possession of another agency, it should seek to transfer the request (s 16(1)(a)) or to direct the applicant to the appropriate agency (s 15(4)).

TIME PERIODS

TIME PERIODS

- The starting point for FOI decision-makers is s 15(5)(b), which provides that a decision on a request must be made and notified to the applicant within 30 days of receipt of a (valid) request.
- An extra 30 days is available where the agency decides it is necessary to consult with:
 - an individual in respect of his or her personal information
 - a business in relation to its business affairs
 - a State or Territory government in respect of information concerning them

EXTENSION OF TIME

- Section 15AA: Agencies are able to negotiate extensions of up to 30 days with the applicant. The agency must give the Information Commissioner written notice of the extension.
- Section 15AB: Where an agency considers a request is complex or voluminous and that 30 (or, where relevant, 60) days is insufficient time to process and make a decision in response to the request, the agency may ask the Information Commissioner to grant an extension of time (s 15AB).
- Section 15AC: An agency is able to ask the Information Commissioner to grant extra time to make a decision after the statutory period expires. Once the statutory period expires the principal officer of the agency is deemed to have made a decision refusing the application or affirming the original decision (as the case may be), but the agency may apply in writing to the Commissioner for further time to deal with the application.

SUSPENSION OF TIME

- The statutory period (30 or 60 days or otherwise) ceases to run where the applicant is notified of a preliminary assessment of an amount of a charge (section 29(1)). It does not recommence until payment of the charge or a deposit or determination of waiver of the whole of the charge takes place (s 31).
- The time spent by an agency, in consulting an applicant in respect of a 'practical refusal reason', is not to be taken into account in calculating the 30 day period (s 24AB(8)). A practical refusal reason involves either a determination that there is insufficient information to identify the documents sought, or the request amounts to a substantial and unreasonable diversion of resources (s 24AA(1)).

SECTIONS 24AA & 24AB

PRACTICAL REFUSAL

- Section 24AA(1)(a) provides that a request may be refused on the ground that compliance 'would substantially and unreasonably divert the resources of the agency from its other operations'.
- 'Resources' include the resources available to an agency at any particular time for dealing with FOI requests.
- Section 24AA(2) provides that an agency is to have regard to the resources necessary for processing a request, including:
 - 'identifying, locating or collating the documents within the filing system of the agency ...'
 - 'in deciding whether to grant, refuse or defer access to documents ...'
 - 'in examining the documents ...'
 - 'in consulting with any person or body'
 - 'in making a copy or an edited copy'
 - 'in notifying any interim or final decision ...'.

REQUEST CONSULTATION

- Section 24AB describes the 'request consultation process' which must be followed before refusing a request.
- Key elements of the process are:
 - The agency or minister must write to the applicant notifying of the intention to refuse the request on resource grounds
 - The applicant has 14 days, or longer if agreed, to respond
 - The agency or minister must take reasonable steps to assist the applicant to revise the request
 - The applicant must, within the consultation period, either withdraw the request, make a revised request or indicate that they will not revise it, and default by the applicant means the request is taken to have been withdrawn
 - s 24(9) specifies that the agency or minister is only required to undertake the consultation period once for any particular request

REQUEST CONSULTATION CONT.

- The processing clock pauses during the consultation period.
- Where the applicant responds to the notice, but the agency is not satisfied that the practical refusal reason is cured, the agency may make a decision refusing to process the request. Such a decision constitutes an access refusal decision, and is appealable in the same way as other access refusals (optional internal review plus Information Commissioner).

CONSULTATION



OTHER AGENCIES

- Consultation should take place with all relevant agencies not only where the decision-making agency is inclined to release a document, but also where that agency is not initially inclined to disclose a document, since another interested agency may have good reason to favour disclosure of the document.
- Agencies are not granted additional time to consult with other government agencies, this needs to be completed within the statutory timeframe.

THIRD PARTY CONSULTATION

- An agency's obligation to consult depends on whether the document in question contains personal or business affairs information, and on whether it is 'reasonably practicable' to consult (ss 27 and 27A).
- Sections 27 and 27A make provision for Governments, commercial organisations and private individuals to be consulted where their interests may be affected by the release of documents. Agencies are not obliged to consult before making a decision to exempt. They must consult before release in circumstances where the affected third party 'might reasonably wish to make a contention' that the information is exempt under the relevant exemption. In circumstances where the agency is satisfied that the entity could not reasonably wish to contend for exemption (for example, in relation to material already freely publicly available), then the agency is at liberty to disclose it without consultation.

CHARGES

CHARGES BASICS

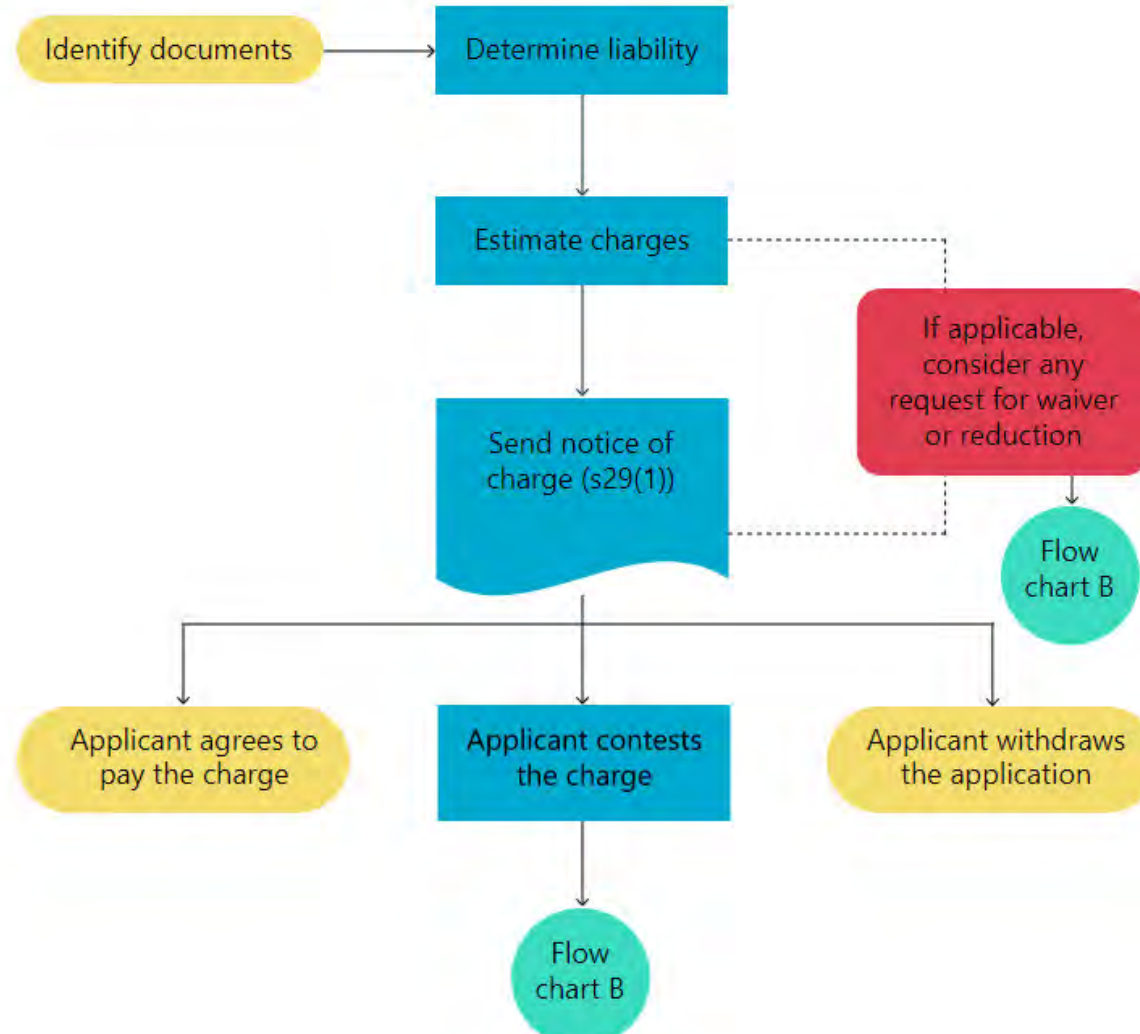
- In its decision to impose the current fees and charges in November 1986, the Government considered that applicants should contribute to the cost of the processing of FOI requests.
- It is the responsibility of the individual agency to determine whether the applicant is liable to pay a charge in each case.
- There is no charge for a request for, or for the provision of, access to a document that contains information that is the personal information of the applicant.
- Agencies are no longer entitled to charge if they fail to comply with the statutory time period for processing the access request, including such periods which have been extended.

CHARGES AMOUNTS

- Search and retrieval: \$15 per hour
- Decision making: \$20 per hour (first 5 hours are free)
- Photocopying: \$0.10 per page
- Delivery: cost of postage
- Section 17 document creation: actual
actual an amount not exceeding the cost incurred

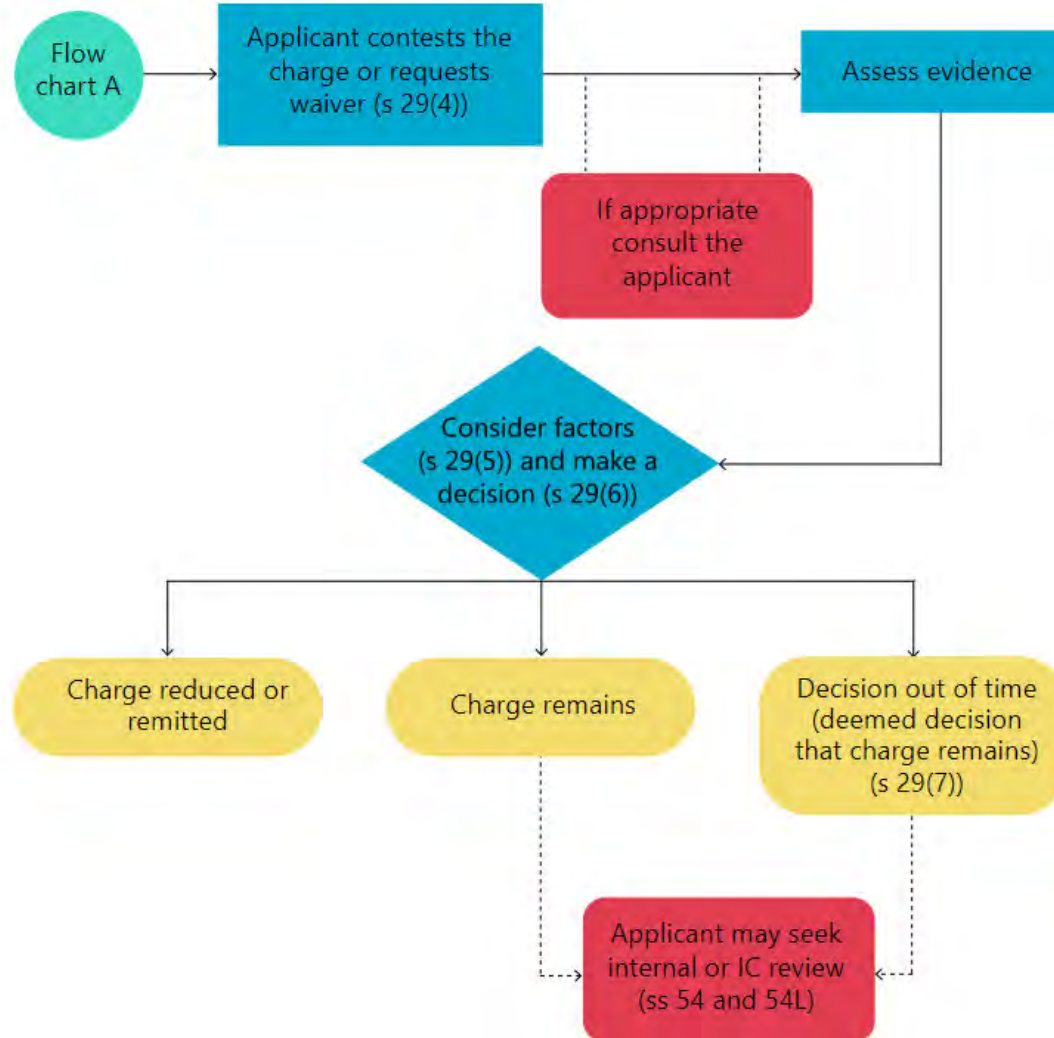
FLOW CHART A

Flow chart A



FLOW CHART B

Flow chart B



EXEMPTIONS

EXEMPTIONS

- Where an FOI request for a document has been made and any required charges have been paid, an agency must give access to the document unless the document, at that time, is an exempt document (s 11A). An exempt document is:
 - (a) a document of an agency which is exempt from the operation of the FOI Act in whole or in part
 - (b) an official document of a minister that contains some matter not relating to the affairs of an agency or a Department of State
 - (c) exempt for the purposes of Part IV of the FOI Act — that is, it meets the criteria for an exemption provision (s 4(1)).
- An agency or minister can withhold access to a document under Part IV only if the document is exempt at the time the access request is determined. A document that was exempt at one point in time may not necessarily be exempt at a later time because circumstances have changed.

CONDITIONAL EXEMPTIONS

- s47B – Commonwealth-State Relations
- s47C – deliberative processes
- s47D – financial or property interests of the Commonwealth
- s47E – operations of an agency
- s47F – personal information
- s47G – business affairs
- s47H – research
- s47J – national economy

ABSOLUTE EXEMPTIONS

- s33 – security, defence or international relations
- s34 – Cabinet documents
- s37 – law enforcement
- s38 – secrecy
- s42 – legal professional privilege
- s45 – confidential material
- s47 – trade secrets or commercially valuable information

SECTION 47C

- Section 47C provides that a document is conditionally exempt if its disclosure would disclose 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.
- Many documents are potentially covered by this exemption
- s47C does not extend to purely factual material

SECTION 47E

- Section 47E provides that a document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:
 - (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency
 - (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency
 - (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency
 - (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency

SECTION 47F

- Section 47F provides that a document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- Two parts to 47F:
 - information about an individual
 - disclosure would be unreasonable

SECTION 42

- Section 42 provides that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege (LPP).
- The document must:
 - have a lawyer-client relationship
 - be a communication for the dominant purpose of
 - giving or receiving legal advice OR
 - used in actual or anticipated litigation
 - have no waiver

EXEMPTIONS CONT.

- s47B – Commonwealth-State Relations
- s47G – business affairs
- s45 – confidential material
- s47 – trade secrets or commercially valuable information

PUBLIC INTEREST TEST

- Section 11A(5) provides that the agency must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.
- 6 steps to the public interest test:
 1. Is the document conditionally exempt?
 2. Identify harm threshold
 3. Identify factors favouring disclosure
 4. Identify any factors against disclosure
 5. Ensure no irrelevant factor is considered
 6. Weigh relevant factors to determine where public interest lies

PUBLIC INTEREST CONT.

- Factors favouring disclosure (s11B(3)):
 - Promote the objects of the FOI Act
 - Inform debate on matter of public importance
 - Promote effective oversight of public expenditure
 - Allow person access to their own personal information

PUBLIC INTEREST CONT.

- Factors against disclosure
 - FOI Act does not list any factors
- FOI Guidelines lists factors such as:
 - protection of right to privacy
 - administration of justice
 - security, law enforcement, public health/safety
 - future ability to obtain information
 - agency management function

PUBLIC INTEREST CONT.

- Irrelevant factors (s11B(4))
 - Access could result in embarrassment to, or loss of confidence in the Government
 - Access could result in any person misinterpreting or misunderstanding the document
 - High seniority of the document author in the agency
 - Access to the document could result in confusion or unnecessary debate

Training: Accessibility

Introduction to accessibility at the NDIA

June 2024

Information Access team





Training: Accessibility

Agenda

1. What does accessibility mean?
2. Why is accessibility important?
3. Accessibility principles
4. Accessibility in practice
 - Text formatting
 - Document formatting
 - Images and colours
 - Plain English
5. Accessibility tools
6. Accessibility training
7. Where do I go for more information?
8. Questions



What does accessibility mean?

Accessibility means everyone can join in and get information. It's not just something we do or say for people with disability. It helps everyone.

Accessibility allows everyone to read, interpret and interact with information by removing barriers that can often lock people out and make them feel excluded.

Accessibility means making sure everything you produce – from a document to an email to a meeting – is clear and easy to understand.

It also means thinking about the different ways people experience the world and making sure your documents, meetings and events allow everyone to be included.



Why is accessibility important?

Access to digital content is a basic human right. This is why accessibility is everyone's responsibility at the Agency.

Creating accessible documents and environments means everyone can get involved and find information. This aligns with the Agency's values of diversity and inclusion, and our obligations under the *Disability Discrimination Act 1992 (Cth)*.



Principles of accessibility

- **Principle: content is perceivable:** Any user can perceive the content.
- **Principle: content is operable:** Any user can operate the navigation and interface.
- **Principle: content is understandable:** Any user can understand the information and the interface.
- **Principle: content is robust:** Assistive technologies can interpret the content.



Accessibility in practice: text formatting

Blank lines: Make sure there are no extra spaces or blank lines used between paragraphs. This can be problematic for people using screen readers.

Bold: Only use bold to highlight specific information. Too much bold will lose its impact.

Italics: Use italics sparingly. Italics can be difficult to read for people with low vision.

Underline: Only use underlined text to represent a hyperlink.

All capitals: All capitals (also referred to as 'uppercase') should only be used for acronyms and initialisms. People with [low vision](#) and [cognitive disabilities](#) rely on the shape of each word when reading. When text is written in all capitals, the shape presents as rectangles and it can be hard to read. Some screen readers may not read or pronounce words written in all capitals correctly.



Document formatting

Text alignment: Format text so that it is left-aligned. Left-aligned text is the easiest to read because each line starts in the same place.

Headings: Use descriptive headings. Format headings using styles. Headings help everyone to scan through and understand the purpose of sections within a document. If headings are formatted correctly, a screen reader user will use their software to read out a list of all headings so that they can jump to the section they're after.

Links: Link text should be descriptive and meaningful. Avoid using terms like, "click here"

Bulleted and numbered lists: Use formatted lists to organise content. This helps people to read and scan information quickly. If a list is formatted correctly, they help screen reader users to navigate using shortcut keys.

Tables: Tables are used to organise content and help make information easier to scan. Tables can be problematic for accessibility if not formatted correctly. Always consider if you can present your data in a manner that doesn't use a table.



Images and colours

Images: All non-text content such as images, icons and charts requires an alternative medium. This can include captions and alternative text (alt text).

Colour: Colour alone should not be used to convey information. About 15% world population have colour blindness and find it hard to tell the difference between certain colours. Some people can't see any colour.

Colour palette: To maintain consistency of colours used across the Agency, only use colours only from the [NDIS branding style guide \(PDF 11.2MB\)](#).

Colour contrast: Good colour contrast is essential for text and non-text elements. Strong contrast between the colour of text and its background is essential for people to easily read and understand information.



Plain English

Plain English is a style of writing that helps people understand information quickly. It focuses on communicating instructions and ideas in short, clear sentences.

Australian Government agencies are legally required to provide information and services in an accessible way. Using plain English is part of the Agency's commitment to accessibility and impacts our authority and standing as a leader in accessibility standards.

- Get to the point quickly
- Use short words
- Keep sentences short
- Avoid jargon
- Explain what acronyms mean
- Use active voice



Accessibility tools

- **Microsoft Accessibility Checker** - Microsoft has an Accessibility Checker that works in a similar fashion to their Spelling and Grammar Checker. This tool can be found in Microsoft applications like Word, Outlook, Excel and PowerPoint.
- Microsoft Word has an inbuilt tool that rates the readability of documents. It can be found in the **Review** menu by clicking **Editor** and then **Insights**.
- [NDIS Actuarial Toolbar](#) – Automatically loads Agency colours and heading styles in Word, Excel and PowerPoint.



Accessibility training courses

- LEAP eLearning module: [Improve your Plain English Business Writing](#)
- LEAP eLearning module: [Creating accessible content](#)
- Workshop: [Introduction to accessibility](#)
- Workshop: [Accessible emails](#)
- Workshop: [Accessible meetings](#)
- Workshop: [Accessible Word documents](#)
- Workshop: [Accessible Excel workbooks](#)



Where do I go for more information?

- NDIA intranet - [Accessibility Hub](#).
- NDIA intranet - [NDIA plain English standards](#).
- Australian Government Style Manual - [Accessible and inclusive content](#).
- If you need advice on a specific case and can't find the answer on the Accessibility Hub, please [email the Accessibility Team](#).

Questions?

Training: Staff accesses

How to add, remove and check staff accesses on all systems

June 2024
Information Access team

The logo for the National Disability Insurance Agency (NDIS), consisting of the lowercase letters 'ndis' in a white, sans-serif font. A small green dot is positioned above the letter 'i'.



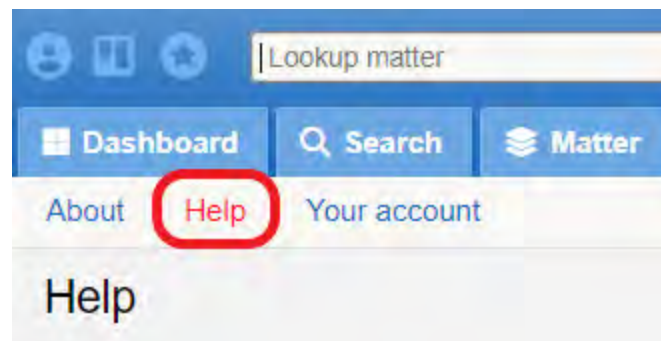
Training: Staff accesses

Agenda

1. SharePoint site
2. Shared mailboxes
 - Information Access
 - FOI
3. LEX profile
4. CRM roles
5. Email distribution list
6. Leave calendar and staff contact list
7. Microsoft Teams meetings and chats
8. Troubleshooting
9. Questions

Key resources

- Internal team guide - [SOP - FOI - FOI staff system access requests.docx](#)
- Internal Office of the Chief Information Officer (OCIO) help guides - [ICT How to guides - OCIO Help Centre](#)
- Microsoft help guide for SharePoint, Outlook & Teams - [Microsoft Support \(external\)](#)
- Search the NDIA intranet for other team standard operating procedures (SOPs) - [Home \(ndia.gov.au\)](#)
- [LEX help guide \(external\)](#)



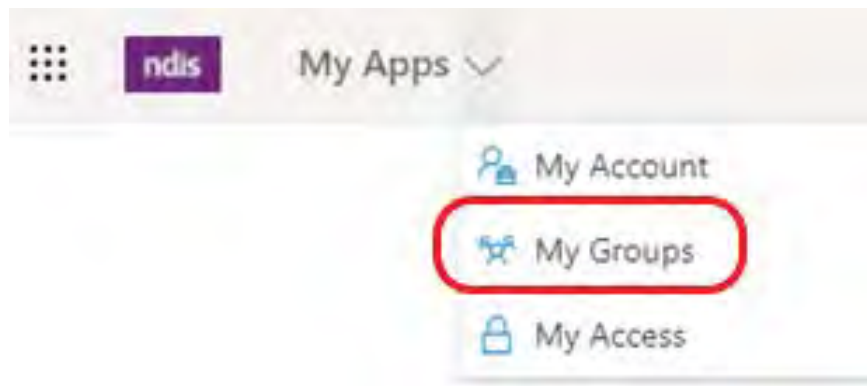


Preliminary steps

- Confirm the staff member's correct name via recruitment confirmation email.
- Find out the staff member's login ID: [Employee Search - SAS® Visual Analytics](#)
- Find out the staff member's work email address from their line manager or via Outlook autocomplete

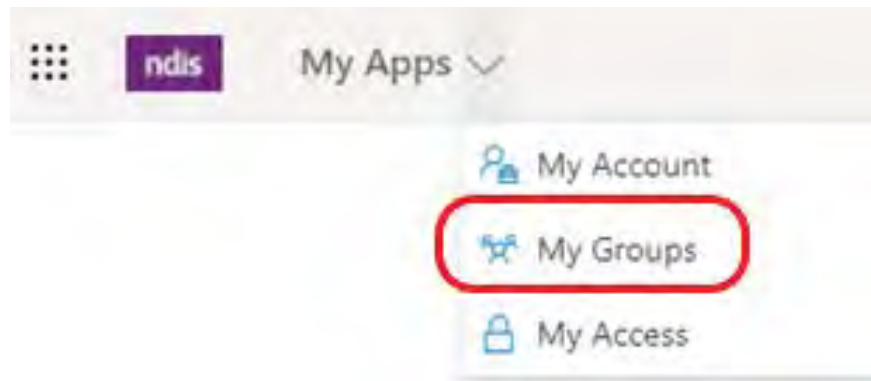
Access to the SharePoint site

- Staff are added via the My Groups function on [Microsoft My Apps](#)



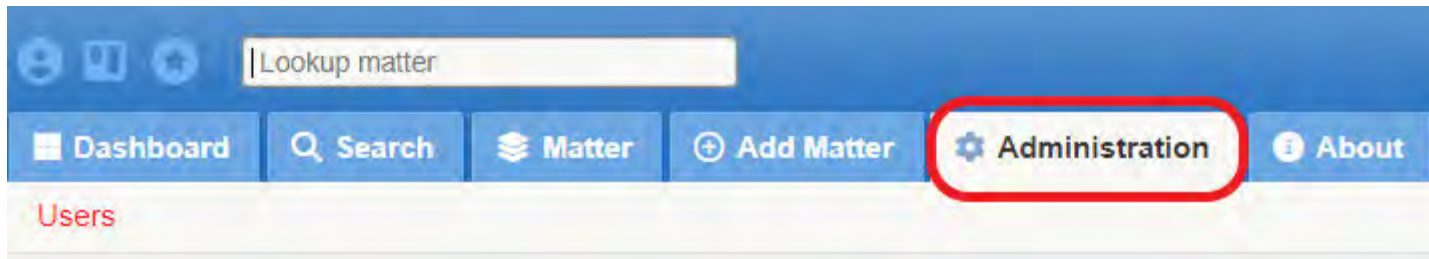
Access to the shared mailboxes

- Staff are added via the My Groups function on [Microsoft My Apps](#)



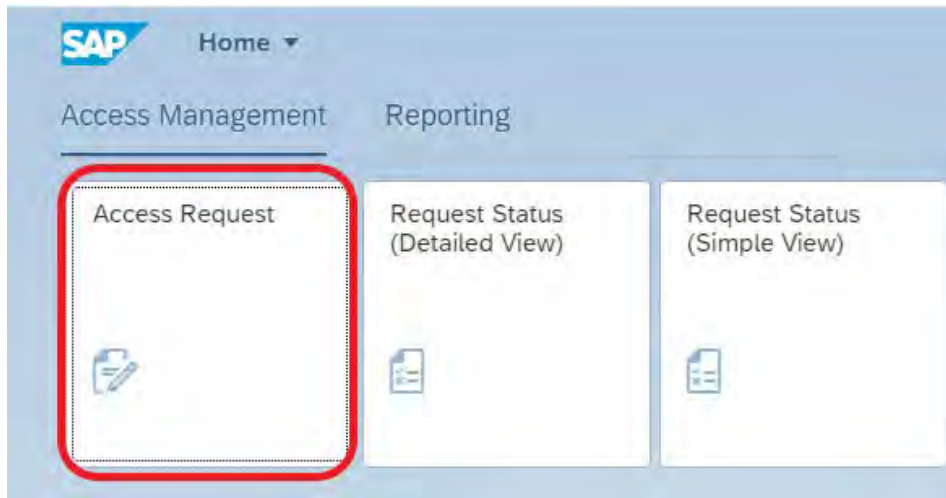
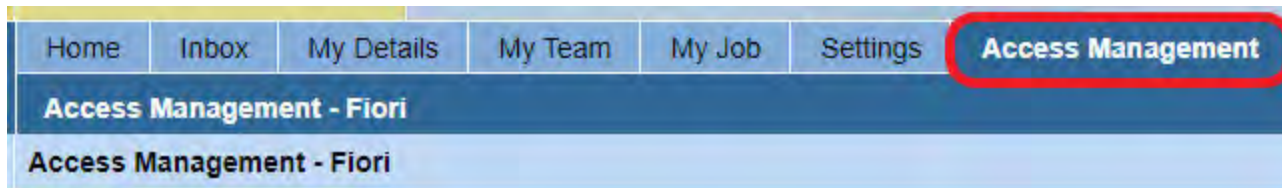
Access to LEX

- Staff are added via the administration tab on [LEX](#).



Adding CRM roles for new staff

- Roles are added via the access management link on [ESSentials](#).





Adding staff to the email distribution list (DL)

- Staff are added via [Distribution groups - Outlook Web App \(office.com\)](#)

Distribution groups I own

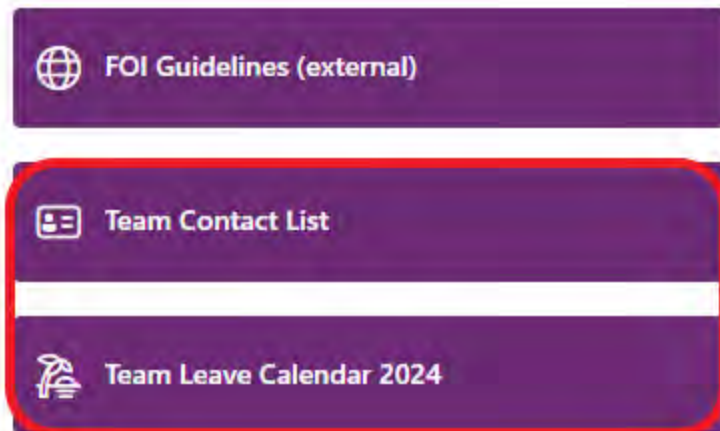
A screenshot of the Outlook Web App interface. At the top, there are icons for edit and refresh. Below them is a search bar with the placeholder text "Type the name of the list you're looking for". Underneath the search bar is a table with two columns: "Display name" and "Email address". The first row of the table has "s47E(d) - certain operations of agencies" in both columns. A red circle is drawn around the "Display name" cell of this row.

Display name	Email address
s47E(d) - certain operations of agencies	s47E(d) - certain operations of agencies

Leave calendar and staff contact list

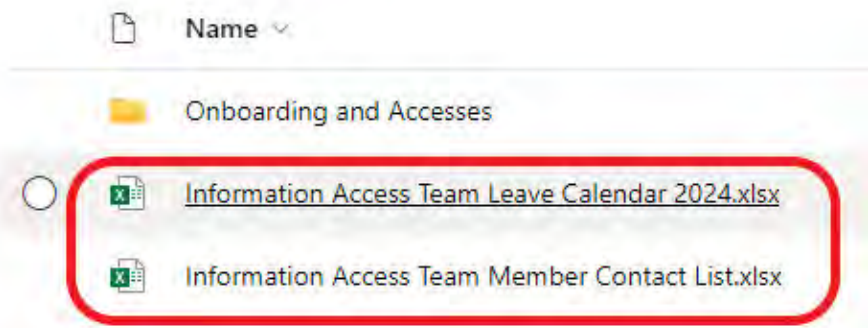
- Staff are added to the Excel spreadsheets stored on [SharePoint](#).

Team Quick links



A screenshot of the 'Team Quick links' section in SharePoint. It features three purple buttons with white text and icons. The top button is 'FOI Guidelines (external)' with a globe icon. The middle button is 'Team Contact List' with a list icon, and the bottom button is 'Team Leave Calendar 2024' with a calendar icon. A red rounded rectangle highlights the 'Team Contact List' and 'Team Leave Calendar 2024' buttons.

Administration



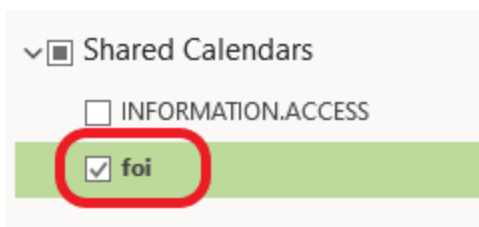
A screenshot of the 'Administration' section in SharePoint. It shows a list of files and folders. The top item is a folder named 'Onboarding and Accesses'. Below it are two Excel files: 'Information Access Team Leave Calendar 2024.xlsx' and 'Information Access Team Member Contact List.xlsx'. A red rounded rectangle highlights these two Excel files.

Microsoft Teams meetings and chats

- Staff can be added to chat groups in Microsoft Teams.



- Staff can be added to recurring meetings by forwarding the invite on Outlook.
- If a meeting is visible on the shared FOI calendar, staff can be added by opening the meeting and adding their email address.





Troubleshooting access problems

- Staff may assume they have lost access and ask you to resubmit it for them. Always check their current access status before proceeding.
- If basic trouble-shooting steps doesn't resolve the problem, direct the staff member to submit a ticket at the [ICT service desk](#). **It is not your responsibility to troubleshoot complex problems.**
- If multiple staff are experiencing the same issue, you may submit an ICT ticket on behalf of the whole team and act as the liaison with ICT.

Questions?



Information Access Team

Leadership meeting

ndis.gov.au | 11 April 2024

Acknowledgement of Country

Before we begin, I would like to acknowledge the Traditional Owners and Custodians of the Country on which we meet today, and their continuing connection to land, sea, and community. I pay my respects to their Elders, past present and emerging.

I would like to extend that acknowledgement and respect to any Aboriginal and Torres Strait Islander peoples here today.

Welcome

Our agenda today is focused on building our identity as the senior leadership team for Information Access:

- Our team vision
- Our agreed behaviours
- Our capabilities for leading change



Core behaviours of a leader

- ❖ Effective leadership and management inspires a sense of purpose and drives high performance.
- ❖ Leadership is demonstrated by action at all levels and enables others to achieve goals.
- ❖ APS leaders focus and continuously develop their skills in response to evolving challenges and complexity.
- ❖ Management is the use of formal authority and processes to 'get things done' in the right way.
- ❖ Effective management is critical to promoting high performance in the APS.

APS expectations of Leaders

In the APS, effective leaders must:

- Demonstrate ethical leadership, leading for wellbeing and valuing diversity and inclusion
- Navigate complexity within a strategic and political context to achieve positive outcomes
- **Scan the horizon for emerging trends, identifying opportunities and challenges and inspiring a collective purpose**
- Skilfully influence stakeholders to ensure complex relationships are productive
- Provide frank and fearless advice in order to create integrity and impact in services

APS Leadership Behaviours

- Shapes Strategic thinking
- Achieves Results
- Cultivates productive working relationships
- Exemplifies personal drive and integrity
- Communicates with influence

[INTEGRATED LEADERSHIP STRATEGY: OUTLINE \(apsc.gov.au\)](https://www.apsc.gov.au/integrated-leadership-strategy-outline)

Some Leadership thoughts



Good leaders have a good attitude. They can hold their emotions in check, especially in tough situations. It's important for leaders to guide a team through challenging times, encouraging them and remaining positive along the way. Team morale is heavily contingent upon a leader's attitude.



Leaders set the right example. Set an example in the way we act each day. Establish goals, innovate, motivate and trust, focus on solutions and positivity instead of finding faults and blame.



Leaders can't stand alone. A great leader stands on the shoulders not of 'managerial Muppets' who obediently do as they are directed, but of other leadership giants who have different and complementary leadership skills.



Our Leadership team vision

Who are we?



What do we do?

How will we do it?

Activity: brainstorm poll

How will we as leaders reflect the Agency values?

What will our staff:



We value people



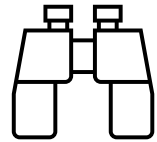
We grow together



We aim higher



We take care



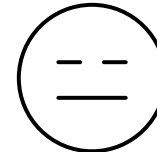
See?



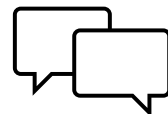
Hear?



Think?



Feel?



Say?

when we demonstrate these 4 values?

Leader Led Change

Leaders draw on 6 core competencies when leading change:

1. Translate the vision
2. Manage resistance
3. Influence others
4. Create mental clarity
5. Change ready teams
6. Strategic relationships

Our Role as Change Leaders

Leading successful change can be challenging, and the way you act and lead by example during the transition is as important as what you say. To deliver a seamless transition experience for your teams, we want you to:

			
<p>BE A ROLE MODEL</p>	<p>SUPPORT YOUR TEAM</p>	<p>COMMUNICATE CLEARLY & OPENLY</p>	<p>FOCUS ON WHAT YOU CAN CONTROL</p>
<ul style="list-style-type: none"> ✓ SET THE TONE ✓ CHAMPION A CHANGE-READY TEAM ✓ FOSTER RESILIENCE ✓ SHOWCASE TRUST AND OPENESS ✓ PRIORITISE OUTCOMES AND TRANSITION ACTIVITIES ✓ ACTIVELY DEMONSTRATE YOUR COMMITMENT 	<ul style="list-style-type: none"> ✓ MANAGE RESISTANCE ✓ FOLLOW-UP ✓ FOSTER PSYCHOLOGICAL SAFETY ✓ TAILOR SUPPORT TO TEAM MEMBERS NEEDS ✓ DEMONSTRATE EMPATHY AND UNDERSTANDING 	<ul style="list-style-type: none"> ✓ COMMUNICATE FREQUENTLY AND CONSISTENTLY ✓ TRANSLATE MESSAGES ✓ PROMOTE THE VISION ✓ TAILOR YOUR MESSAGES ✓ CAPTURE AND SHARE YOUR TEAM'S FEEDBACK ✓ PROACTIVELY ASK 	<ul style="list-style-type: none"> ✓ KEEP PERSPECTIVE ✓ LOOK INWARD ✓ FOCUS YOUR ENERGY ✓ ESTABLISH THE CORE VALUES ✓ MAINTAIN MENTAL CLARITY ✓ REACH OUT

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Then, **focus on one or two competencies** that are most impactful for the leader and the transformation.

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Change leadership competencies are the knowledge, skills and mindset required for leaders to successfully lead themselves and others through complex business changes



Translate the vision

The ability to communicate a compelling future, personally committing to that future as well as executing with energy and inspiration.



Manage resistance

Effectively addressing and mitigating conflict or resistance to change by using strategies such as: education, involvement, encouragement or negotiation.



Influence others

Influence others while being respectful of their behaviours, decisions, outlook, as well as the ability to modify your strategy based on the anticipated reaction of the listener.



Create mental clarity

Developing and practicing the skills to cope with the pressures associated with change and to recognise and reduce stress levels for optimal functioning.



Change ready teams

Using a flexible interpersonal style to help build a cohesive team, setting high-performance goals and being actively involved to move the team toward completion of goals.



Strategic relationships

Identifying opportunities and taking action to build strategic relationships between you and other teams, departments, units or organisations to help achieve business goals.



Takes their teams on the journey. Sharing the past, the current focus and inspiring them with what the future holds



Demonstrates their own positive and constructive behaviours to help diminish resistance



Regularly shares information in a collaborative manner, which builds trust and respect



Is mindful, present and actively engaged with their teams



Recognises team members who role model the expected behaviours or complete change related activities




Builds relationships with key change advocates (within or outside their team), who will back up their messages to others

Are you an effective leader?

Three questions to consider for yourself:



1. What are you doing to empower people? 
2. How well are you serving your staff needs?
3. What is your end goal and how do you get there?



Source: Effective Leadership. Inspiring your team toward accomplishments


Questions



National Disability Insurance Agency

 1800 800 110

 ndis.gov.au

 enquiries@ndis.gov.au (change to specific NDIS email if required)

 Find us on Facebook/NDISAus

 Follow us on Twitter @NDIS

For people with hearing or speech loss

 TTY: 1800 555 677

 Voice Relay: 1800 555 727

For people who need help with English

 TIS: 131 450



Complaints Management and FOI Branch

Leadership meeting

ndis.gov.au | 11 April 2024

Acknowledgement of Country

Before we begin, I would like to acknowledge the Traditional Owners and Custodians of the Country on which we meet today, and their continuing connection to land, sea, and community. I pay my respects to their Elders, past present and emerging.

I would like to extend that acknowledgement and respect to any Aboriginal and Torres Strait Islander peoples here today.

Welcome

Our agenda today is focused on building our identity as the senior leadership team for the CM & FOI Branch:

- Our team vision
- Our agreed behaviours
- Our capabilities for leading change

Core behaviours of a leader

- ❖ Effective leadership and management inspires a sense of purpose and drives high performance.
- ❖ Leadership is demonstrated by action at all levels and enables others to achieve goals.
- ❖ APS leaders focus and continuously develop their skills in response to evolving challenges and complexity.
- ❖ Management is the use of formal authority and processes to 'get things done' in the right way.
- ❖ Effective management is critical to promoting high performance in the APS.

APS expectations of Leaders

In the APS, effective leaders must:

- Demonstrate ethical leadership, leading for wellbeing and valuing diversity and inclusion
- Navigate complexity within a strategic and political context to achieve positive outcomes
- **Scan the horizon for emerging trends, identifying opportunities and challenges and inspiring a collective purpose**
- Skilfully influence stakeholders to ensure complex relationships are productive
- Provide frank and fearless advice in order to create integrity and impact in services

APS Leadership Behaviours

- Shapes Strategic thinking
- Achieves Results
- Cultivates productive working relationships
- Exemplifies personal drive and integrity
- Communicates with influence

[INTEGRATED LEADERSHIP STRATEGY: OUTLINE \(apsc.gov.au\)](https://www.apsc.gov.au/integrated-leadership-strategy-outline)

Some Leadership thoughts



Good leaders have a good attitude. They can hold their emotions in check, especially in tough situations. It's important for leaders to guide a team through challenging times, encouraging them and remaining positive along the way. Team morale is heavily contingent upon a leader's attitude.



Leaders set the right example. Set an example in the way we act each day. Establish goals, innovate, motivate and trust, focus on solutions and positivity instead of finding faults and blame.



Leaders can't stand alone. A great leader stands on the shoulders not of 'managerial Muppets' who obediently do as they are directed, but of other leadership giants who have different and complementary leadership skills.



Our Leadership team vision

Who are we?



What do we do?

How will we do it?

Activity: brainstorm poll

How will we as leaders reflect the Agency values?

What will our staff:



We value people



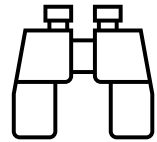
We grow together



We aim higher



We take care



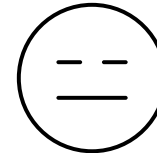
See?



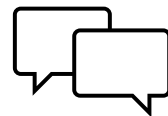
Hear?



Think?



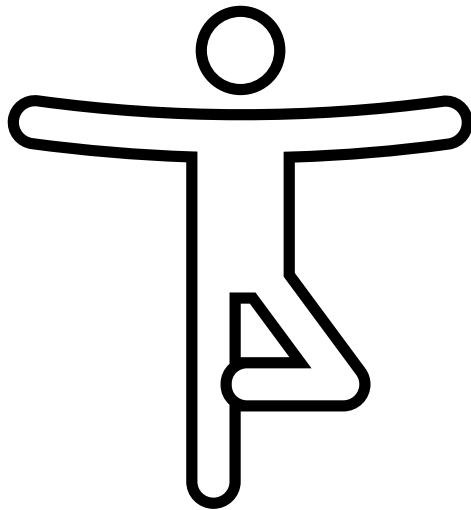
Feel?



Say?

when we demonstrate these 4 values?

Words into Action



Time to get active:

Small group activity to identify the behaviours we agree to against each value.

Leader Led Change

Leaders draw on 6 core competencies when leading change:

1. Translate the vision
2. Manage resistance
3. Influence others
4. Create mental clarity
5. Change ready teams
6. Strategic relationships

Our Role as Change Leaders

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Source: Effective Leadership. Inspiring your team toward accomplishments



Questions




National Disability Insurance Agency

-  1800 800 110
-  ndis.gov.au
-  enquiries@ndis.gov.au (change to specific NDIS email if required)
-  Find us on Facebook/NDISAus
-  Follow us on Twitter @NDIS

For people with hearing or speech loss

-  TTY: 1800 555 677
-  Voice Relay: 1800 555 727

For people who need help with English

-  TIS: 131 450

LEX Turnaround Clock

Using the turnaround clock

January 2024
Information Access team





LEX Turnaround Clock

Agenda

1. What is the LEX turnaround clock?
2. How to use the turnaround clock
 - When to use it
 - Turning it on, extending it, turning it off
 - Common mistakes and how to fix them
3. How to use the turnaround clock
 - Searching for matters by turnaround clock status
 - Visualising matters by turnaround clock status



Key resources

- [SOP – LEX turnaround clock](#)
 - Turning it on
 - Extending it
 - Turning it off

Extensions of time s 15AC

Where a matter is deemed and would benefit from the decision being made within “further time” a request can be made to the OAIC. The request must address the circumstance of the FOI request – having regard to the FOI guidelines that outline the relevant considerations, see Attachment A.

The form requires that we provide the following information:

1. What is the timeline for the handling of the request.

We should address:

- When the request was received, acknowledged and allocated.
- Extensions of time sort, agreed to or applied for,
- internal and external consultations (particularly where this demonstrates complexity)

2. What work is required to finalise the request?

15AC extensions should be sort when completion of the decision is certain. This should mean that we are the final stages of QA in the decision writing and the decision will be within a small number of business days.

3. Please describe the complexity of the request?

Separate to point one, this answer should describe the volume and nature of the request. Include efforts to minimise the scope or reason for seeking to assist the applicant with a larger request – whether we have or haven’t considered practical refusal.

Noting that we are dealing with larger volume personal information request, note that charges are not a relevant consideration.

Include comment if the matter includes material that is sensitive legal/business/third party personal information.

4. Do other agencies or parties have an interest in the request?
Sensitive legal/business/third party personal information
5. Describe the measures that would be taken to ensure the a is made with the period request and keep the applicant informed?

We should be seeking **further time** at a point where we are more certain about the decision completion. This point is an opportunity to demonstrate the communication and relationship with the applicant.

Information Commissioner's power to grant an extension of time following a deemed decision

- 3.162 Where there has been a deemed decision, the decision maker may apply to the Information Commissioner in writing for further time to deal with the request (ss 15AC(4), 51DA(3), 54D(3)). The Information Commissioner may allow further time for the decision maker to deal with the request (ss 15AC(5), 51DA(4), 54D(4)). If the Information Commissioner allows further time to deal with the request under s 15AC(5), it would not be open to the agency to extend the processing time further under s 15(6). Any application under s 15AC(4) should include the time required to undertake any consultations with affected third parties.
- 3.163 In considering what further time may be appropriate, the Information Commissioner will take into account the details in the agency's application, which should address the scope and complexity of the request, the reasons for delay in making an initial decision, the extension sought, the estimated total processing time, and whether discussions with the applicant about the delay and extension application have occurred. The Commissioner will also consider the total elapsed processing time and the desirability of the decision being decided by the agency or minister rather than by IC review.
- 3.164 There is no obligation upon the Information Commissioner to seek the views of an applicant about a request for an extension of time under s 15AC following a deemed decision. [\[81\]](#) However, the Information Commissioner is not precluded from seeking the views of an applicant where it is a relevant consideration in deciding whether to grant the request for an extension of time.
- 3.165 A3.165 In allowing further time the Information Commissioner may impose conditions (ss 15AC(6), 51DA(5) and 54D(5)). For example, the Commissioner may require the decision maker to:
- notify the applicant of the further time allowed
 - provide regular progress reports to the Information Commissioner and the applicant
 - provide a copy of the notice of decision when made to the Information Commissioner.

Time and Extensions under the FOI Act

This presentation was all about Freedom of Information (FOI) processing timeframes: starting, stopping and extending time.

Want more information?

- OAIC has an online guide on [how to apply for an extension of time to process a freedom of information request](#).
- All the references to sections refer to the [Freedom of Information Act 1982](#).
- To help interpret the act, always check the [FOI Guidelines \(external\)](#) on the Office of the Australian Information Commissioner (OAIC) webpage
- [The FOI Essentials](#) guide on the OAIC webpage is a plain English guide designed to help new FOI decision makers

Starting the clock

When do we start time? When we received a valid FOI request.

How long do we have to process requests? We have 30 days. However, the *Freedom of Information Act 1982* (the FOI Act) directs us to release information **as soon as practicable**. The FOI Act is pro disclosure. To show our commitment to openness, we are not expected to wait around for the 30 days to elapse before releasing information.

- Section 15(5)(b) requires that a decision is to be made as soon as practicable but, in any case not later than 30 days after the day on which received.

Extending time

We can extend the processing time in a few ways.

Section 15AA allows us to extend the processing time up to 30 days – if the applicant agrees in writing. We don't need to ask for the full 30 days at first. We can ask for extensions of less than 30 days under 15AA. This means we can ask for multiple extensions: as many as we want, provided that the total time does not exceed 30 days.

- s 15AA – By agreement with the applicant, must be in writing, works in addition to extension that occur under s 15(6) extension (and 15(8))

Section 15AB allows us to extend the processing time for any length of time – if the request is complex or voluminous. We submit applications for extensions under s 15AB to the Office of the Australian Information Commissioner (OAIC) and they assess whether our justification is sound.

for 15AB if the matter is still within timeframe – once the matter passes its deadline, we can't apply for 15AB.

- s 15AB – Request that are complex or voluminous, for time deemed appropriate by the OAIC. Agreement from the applicant is not required but can be of assistance.

Section 15 Third Party Consultation

If we identify that the requested documents contain third party information (another person's information, a business's information or a state/territory's information), we are required to consult with that party to find out if they have a view on whether the documents should be released to the applicant or not. This is called a **Third Party Consultation**. It automatically extends the processing time by 30 days. We don't need the applicant's consent to do this.

A common example is when a parent requests the personal information of their child – but the documents also contain the information about an ex-spouse. Another common example is when applicants request information about the law firms employed by the NDIA in an AAT case – the law firms are the third party. State and Territory consultation occurs rarely, however, many Agency policies do involve state/territory.

- s 15(6) – Consultation required with an individual (s 27A), State/Territory or business adds a further 30 days.

Stopping the clock

The FOI Act lets us “pause” the timeframe when we need the applicant to take an action before proceeding. This is called stopping the clock. When the applicant takes the required action, we then restart the clock.

There are two situations where this can happen. The first is a **request consultation process** to avoid a practical refusal. This is when we determine that a request is so large that processing it is impractical – we argue that processing the request will involve an unreasonable diversion of Agency resource. As such, we notify the applicant that we intend to refuse the request on **practical refusal** grounds. But we also give the applicant up to 14 days to revise the scope of their request to something practical. This is section 24AB of the FOI Act.

When we send the request consultation process letter to the applicant, the clock stops. The clock restarts the day after the applicant revises their request, replies that they don't want to revise their request, or if they don't respond within the 14 days.

However, we can also extend the request consultation process timeframe beyond 14 days with the applicant's agreement. In complex cases, the consultation process can become prolonged.

- s 24AB(8) – the period starting from when notice is given and ending on the day that the applicant does one of the three things required.
- Consultation under s 24AB can be extended.

The second situation when the clock stops is if we issue a charges notice. Under the FOI Act, we can charge applicants for access to non-personal documents based on how many hours work it took to process those documents. If we sent a charges notice, the clock stops. The clock restarts again the day after the applicant pays a deposit or if the Agency agrees to waive the fee. (The Agency may agree to waive a fee if the applicant advises us they are experiencing financial hardship).

- When issuing charges (see section 29), the processing period is calculated by disregarding the charge notice day until the earliest occurring day following the payment of a charge/deposit, or a decision to waive.

Running out of time

What happens when we run out of time, but we haven't released our decision yet? Under the FOI Act, if a decision has not been made within the legislated timeframe, an Agency is deemed to have refused that request. In our team, we refer to overdue matters as "deemed matters."

Technically, deemed refusal decisions mean that the CEO has personally made a decision to refuse access to all documents requested. An applicant has the option to seek Information Commissioner (IC) review when this happens. However, the applicant can't seek an internal review of the CEO's decision.

A deemed refusal doesn't mean the agency stops processing the request. Instead, an Agency should continue to process the request. Technically, once a deemed refusal decision has been made, the FOI decision maker becomes *functus officio*. This term means their power as a decision maker has ended. However, in practical terms there is no effect on how the matter is processed. The Agency continues to process a request because this is in the best interests of the applicant. However, once processing difference is that we ought not send out decision letters telling the applicant they have internal review rights when a deemed refusal has occurred.

What happens if the applicant applies for IC review at this stage? At this point, section 55G of the FOI Act comes into effect. This means the Agency is no longer making a primary decision in a matter; instead, we're making a revised decision. The applicant doesn't have internal review rights because they are already in the IC review process. During this period, we can choose to make another revised decision or provide commentary to help them understand the decision, but it's not the same as a formal internal review process.

Receiving further time

Once a matter has become deemed, we do have an option to wipe out the effect of the CEO's deemed refusal decision using **Section 15AC**. Section 15AC is an extension which

adds further time to the original processing period. 15AC extensions can only be granted once. Section 15AC extensions can **only** be applied for is a matter is deemed.

We must apply to OAIC to get their approval for a 15AC – this means we must present a persuasive case as to why think it's justified. This includes providing reasons about why we didn't apply for other extensions first, as well as other challenges that prevented us from processing the matter within timeframe. There is no maximum amount of length for a 15AC extension – however, it is at OAIC's discretion to reject a 15AC application if they think it's too long or if the Agency's justifications for seeking further time are inadequate.

In our team, s 15AC extensions are used when an overdue matter is ready for release – the decision maker applies for an extension which extends to the day they intend to release the decision to the applicant (the projected release day will be in the next 5 days, as the matter is ready for release and no further processing is required). If a decision maker needs significant further time to process a deemed request, it is advisable to delay seeking a 15AC until all that work is done and the decision is ready for release.

Section 15AC doesn't bring you back in time, but it wipes out the effect of a deemed refusal. This can be important for applicants, because if a matter is a deemed refusal, the applicant doesn't have the right to seek an internal review of the decision. The effect of 15AC is to restore their review rights.

Should we apply for 15AC extensions? This depends on the circumstances. Is the applicant likely to need their internal review rights? If you are refusing access to documents or redacting information, then, it is probable that the applicant may seek internal review. In these cases, it can benefit the applicant if you seek a 15AC before releasing the decision.

However, if you are releasing all the requested information in full, it is unlikely the applicant will seek an internal review. If the applicant is unlikely to use their internal review rights, what is the purpose of the 15AC extension? Is the goal to make it appear that the matter was released within timeframe, so the Agency's annual FOI statistics look good? If that's the case, the effect of the 15AC is ultimately to waste more time, delay the release of documents to the applicant further, and create an administrative burden for OAIC.

Consider the individual circumstances of your matter, the documents, and the applicant.

Whatever you choose to do, it's important to always keep the applicant up to date about how their deemed matter is progressing. Because once they apply for IC review, we can't do an internal review.

However, remember that if we're doing a good job of managing time at the start of the processing period, we won't need to rely on 15AC extensions.

Internal review

After a decision is released to an applicant, they have 30 days to seek an internal review. This time can be extended by agency. The internal review decision is required within 30 days – see s 54D which states that if an Agency doesn't release and IR decision within 30 days, they are deemed to have affirmed the original decision. However, OAIC may allow us further time to process an internal review, if they agree it is necessary.

Version control

Version	Amended by	Brief Description of Change	Status	Date
1.0	[redacted]	Created document using a combination of [redacted] and [redacted] notes.	DRAFT	2024-01-25

LEX Email Features

Manually generating emails containing the matter summary

January 2024
Information Access team





Manually generating LEX emails

1. Go to the summary page on LEX.
2. Add staff names to each field.
3. Click the **reports** button.
4. Click okay.
5. Select all the text. Select copy.
6. Click **new email** button.
7. Add staff email addresses in the **to** field.
8. In the body of the email, paste the text you copied.

In your original application, you requested access to:

- “.....”

and you provided a NDIA consent signed by XXXX on XX Month XXXX and the **Statement of Claim** filed in the **Supreme Court of NSW**. I note however that the consent form does not indicate why XXXX has given his/her/their consent. Further, it is not apparent that XXXX is aware of the breadth of your request.

Consent

The NDIA consent form is designed for participants to allow their representative to gain access to information held on NDIA records so they may take identified actions on the participant's behalf – see page 8 of the consent provided.

Information about NDIS participants is protected Agency information under the *National Disability Insurance Scheme Act 2013*. As you are not acting on behalf of participant in this matter, I consider that your request for a full copy of the participant's NDIS file would be an unreasonable disclosure of protected information under the NDIS Act for the following reason.

The matter you are managing which relates to an **alleged breach and/or negligence regarding an alleged misdiagnosis of a medical condition** is separate to the participant's engagement and plan with the NDIA. Whereas the matter you are managing will be determined on its merits in a court of law, NDIA funding is determined on the permanency of the disability and supports deemed as reasonable and necessary.

Acknowledging that you have a matter before the **Supreme Court of NSW**, I agree that relevant documentation held by the NDIA is likely to assist in the administration of justice.

To progress this for you, can I suggest the following revised scope as follows:

- *Any medical documents relating to XXXX*

It would be greatly appreciated if you would kindly respond at your earliest convenience, or before **XX Month XXXX** and confirm how you would like to proceed.

Sincerely

Third party law firm / insurance applications – examples

FOI ref + link	Name	Law Firm/Insurance Agency	Matter type	Outcome	Provisions applied
s47F - personal privacy	s47F - personal privacy	s47G - business information	Motor vehicle accident	Full refusal	47F based on revised scope
s47F - personal privacy	s47F - personal privacy	s47G - business information	Personal Injury	No responsive documents	24A – based on agreed revised scope
s47F - personal privacy	s47F - personal privacy	s47G - business information	Personal injury	No responsive documents	24A – based on revised scope
s47F - personal privacy	s47F - personal privacy	s47G - business information	Medical Negligence	No responsive docs	24A – based on revised scope
s47F - personal privacy	s47F - personal privacy	s47G - business information	Personal injury	Partial	47F
s47F - personal privacy	s47F - personal privacy	s47G - business information	Personal injury	Full refusal	47F (notice of claim detailing alleged injuries was not provided)
s47F - personal privacy	s47F - personal privacy	s47G - business information	Personal Injury	Medical docs located in scope	47F – personal information

FOI Requests from law firms

This presentation was all about Freedom of Information (FOI) requests for NDIS participant information submitted by law firms. In particular, it focused on law firms who are **not** representing the participant in a legal dispute about medical negligence or personal injury. In these cases, the law firm who submits the FOI request about the participant is most likely representing an insurer.

Want more information?

- Always refer back to the [Freedom of Information Act 1982 \(FOI Act\)](#).
- To help interpret the act, always check the [FOI Guidelines \(external\)](#) on the Office of the Australian Information Commissioner (OAIC) webpage

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Scope.....	3
Understanding what a matter is about	3
Revising the scope	3
Extensions of time.....	5
Processing medical documents.....	5
Writing the decision letter.....	6
Further resources.....	6

Introduction to law firm requests

The NDIA gets lots of requests for participant information from law firms. This is because a lot of NDIA participants have personal injury and medical claims being processing separately from their NDIS applications.

When a person makes a claim about an injury or medical negligence, they get legal representation. The other side also gets legal representation. For example, other side may be an insurer representing the hospital where the alleged medical negligence occurred. Both sides may submit FOI requests to the NDIA seeking personal information about the participant. It is important that these type of FOI matters are managed and resolved. The FOI decision will impact the progression of a court case or insurance claim. Therefore, the public interest factors in favour of resolution are the administration of justice generally, and the administration of justice for a person.

The NDIS participant wants their matter managed because they may be due a payout from the insurer. Additionally, it may be beneficial to the NDIA as a compensation payout to a participant may be assessed by the Compensation Branch and under certain circumstances it may result in an adjustment to the funding of future plans and/or a repayment of funds from the compensation payment that have been previously covered by the NDIS plan.

This process is separate to the FOI process and is not something we can advise on.

- Read more about the [Compensation Branch](#) on the NDIA's intranet page.
- Read more about [Compensation from an NDIS participant's perspective](#) on the NDIA's external website.

How does consent impact these requests?

It is important to remember that the FOI Act is silent about consent. "Silent" means that the FOI Act does not specify one way or the other whether applicants require a person's consent to receive information about them. Nor does the FOI Act specify what criteria makes a consent form valid.

In this team, we have traditionally had a practice where we seek the consent of NDIS participants in order to process FOI requests about them. This practice has involved seeking a signed consent form that is no more than 12 months old. In addition, the practice may have involved sending law firm applicants a copy of the [standard NDIS consent form](#).

However, these practices don't take into account this particular context. For example, insurance is generally managed under state-based legislation which uses its own consent form. In addition, claims may take 3 or 4 years to be fully processed. Therefore, a participant may have signed a consent form early on with the intention that it would remain valid

throughout the whole process, until the claim is finalised. Additionally, the standard NDIS consent form has been specifically designed to help people representing NDIS participants to get information to support them. As such, the wording on it doesn't capture the role that third-party law firms play.

Scope

Understanding what a matter is about

Law firms will **always** submit a broad request that seeks all documents held by the NDIA about a person. Therefore, we have to start discussions with the law firm about the scope of the FOI request early in the process. We need to understand specifically what the personal injury or medical negligence matter is about and compare that with the documents we hold, and the documents that the law firm has requested.

There are many documents that will describe the nature of the claim. For example, a Notice of Claim (NOC) in a personal injuries matter, an Injured Party form and a Compulsory Third Party (CTP) form – in the case of a motor vehicle accident. In the absence of this documentation, a request for a list of injuries allegedly claimed is important for our consideration. This is so we can properly assess what the matter is about and determine what injuries the person sustained. This helps us to determine what documents the NDIA holds that are relevant to the claim.

If we haven't been provided with that information, then we should go back to the law firm and request that they provide us with a NOC and/or a list of injuries, noting that with the passage of time, this document will be provided as a standard once our applicants know our requirements. You can request this document at the same time as acknowledging the request given this is a legislative requirement.

Revising the scope

It may also be a good opportunity to negotiate the scope generally to *“all medical documents relevant to the injuries allegedly sustained on [insert date of injury].”* However, some operators prefer to receive the insurance documents first to better streamline their scope negotiation. With approach if fine. Mostly law firms agree with the revised scope and provide the NOC, as they expect government agencies to take this approach.

However, in some instances, you will get a kick back. Often the email response will provide you reasons for their kick back and this is an opportunity to consider their submission and reengage with them should you not concur.

Where a law firm states we need to know what the NDIA has already funded to assist us in determining compensation, you have the opportunity to respond maintaining your ground and explaining we have a compensation branch that may become involved with regards to payments which is separate to the FOI process. As part of your reply back, it may be useful to include the following:

Compensation

You state you require the documents listed above to ascertain the payments and support already being funded by the NDIS, separate from the personal injury claim.

With regards to this, I advise again, that a personal injuries matter is separate to a participant's engagement and plan with the NDIA and that a personal injuries matter is determined on its merits, whereas a participant's NDIA funding is determined on the permanency of the disability and supports deemed as reasonable and necessary.

I also advise that the at the conclusion of a claim for compensation, if a compensation payment is awarded and includes funding for supports of a type that the NDIS may provide, then a funding to a participant's plan may be adjusted. Please see link for more clarity around this process which is separate to the FOI process.

<https://www.ndis.gov.au/participants/compensation-and-your-plan/recovery-compensation-reduction-amounts-and-special-circumstances>

Can you please respond to my email by **12pm Date 2024** and advise how you would like to proceed.

If we do not hear from you by this date, we will proceed to process your request with the information that you have provided, and this may include not being able to release information to you.

***Remember to customise your response to your matter.**

The NDIA has a [Compensation Branch](#) which works with insurers after compensation payouts to assess participant supports. This process prevents “double-dipping,” that is, situations where a person received funding for the same supports from two different agencies.

Often, as a result of the revised scope, the FOI outcome will be a no documents decision. This is a legitimate outcome and is better than refusing the FOI request because the law firm didn't provide sufficient consent.

Alternatively, the NDIA may hold documents that fall into the scope of the revised request. When this occurs, the existence of a consent form will assist the decision maker to decide whether the exemption 47F personal privacy applies. In the unusual circumstances that the law firm/insurance agency will not provide the NOC or list of injuries and/or will not agree to a revised scope relevant to the claim, you will then have to make your decision with the information you have at hand, and this may be a refusal under section 47F. This is a last resort and every effort to engage with the law firm/insurance agency should be exhausted first – even if it means a telephone conversation.

Note: Further training about third party consultation and consent is scheduled for 28/02/2024. I will drop the link into this document later.

Extensions of time

In general, insurance claims take years to be completed. Law firms may have already been working on a claim for years by the time they submit an FOI request. Therefore, law firms are highly likely to agree to extensions of time under section 15AA of the FOI Act. As such, please seek an extension of time under 15AA if you are running close to the due date to ensure the applicant retains both their internal and external review rights

For more information about extensions and time, see these training resources about [Time and Extensions under the FOI Act](#).

Processing medical documents

In this team, we have traditionally taken the view that medical documents provided by the participant are released back to them in full. However, when processing third-party law firm request, it is important to review the documents carefully and use exemptions where appropriate. This is because documents released through FOI are released without any

restriction on how they can be used. While a law firm may state they only want to use medical documents for the purpose of processing an insurance claim, the NDIA can't control that.

It is important to remember that medical documents don't always contain **only** medical information. Instead, they often contain personal sensitive information of other parties. For example, medical documents will also often contain the full contact details of our participant including mobile phone number, street address and email address. Medical documents may include family history or other personal sensitive information of other family members. Without evidence that this information is known to the requestor, this information should be considered as conditionally exempt information under section 47F personal privacy. This protects the personal privacy of the participant and their family members.

Writing the decision letter

When writing the decision letter, it is important to tell the complete story of the matter. This includes starting with the original request, covering all communication between the NDIA and the law firm, and arriving at the revised scope. This context is important to anyone reading the decision letter at a later date to help them understand how the outcome was reached.

Remember: it's not just the applicant who reads the decision letter. If the matter is subject of Office of the Information Commissioner (OAIC) review, the OAIC delegate will read it too!

In the decision letter, we generally include a standard statement about whether the applicant has consent. This section can be modified to refer to the specific type of consent provided, for example, "you have provided the notice of claim and I agree you have the authority to receive information about **XXXX**."

Further resources

- [List of recent matters](#) involving third party law firms – use this list to research similar matters. By exploring the documents saved into each SharePoint folder, you can follow the progress of the matter through all the above stages.
- [Example email](#) to send to law firms seeking a revision of scope.
- [Video of this training session](#).

Version control

Version	Amended by	Brief Description of Change	Status	Date
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Training Session Notes
Facilitator: Jennifer [REDACTED]
Date: 21 February 2024

1.0	[REDACTED]	Created document using [REDACTED]'s notes of [REDACTED]'s presentation	DRAFT	2024-02-21
1.1	[REDACTED]	Clarification and expansion on key points.	APPROVED	2024-02-22

FOI Training Video - FOI requests from law firms - 2024.02.21

0:02

Camera they can if they don't want to be seen on the recording.

0:09

So what I wanted to explain is that what's really important in a personal injuries or an insurance matter is that the matter is managed and resolve because the public interest factors, if we're doing this under FOI is the administration of justice and the administration of justice for a person.

0:30

So there's two factors in favour of us managing this request.

0:36

The other thing that we need to be really aware of is that consent is silent in the FOI Act.

0:43

And so although we have always had a ruling that can't, we must have consent of the participant and it must be no lot, no more than 12 months in age when we're talking about an insurance matter, they generally speaking, the insurance claim is being managed under a most likely a state legislative mechanism that has its own requirements and consent forms.

1:09

When a matter, an insurance matter is being managed, it takes years to manage.

1:16

And so the insurance, the law firm and representing the insurance company or the insurance company themselves at the beginning of the claim process and get the consent form completed.

1:27

This might be 3 or 4 years prior to our getting our FOI.

1:32

It doesn't mean that that consent is out of date because that consent is specific for the insurance matter that's being managed.

1:42

So we, we, we and we should also be looking at the consent generally also is in relation to information that's relevant to the claim.

1:53

Now sometimes our solicitors, the solicitors will send in the NDIA consent form and which in a way they've kind of been trained by us to do that.

2:06

The NDIA consent form is actually a consent form designed for a participant to get their representatives to get their information in order to support them.

2:18

So obviously the NDIA consent form isn't actually the really the correct form that we should be asking solicitors, not representing the participant.

2:27

And I believe it's on page 8.

2:30

And I had to do have some notes, but because I haven't been following them and just add ad-libbing not quite sure what it is.

2:36

But I think it's page 8 of the consent form that actually talks about the way where they sign that actually says this consent is for you know, for you representing me.

2:47

So the fact that sometimes we get that form or we don't get that form is really not always a part of the process.

2:58

The other thing about law firms in these circumstances is they will always ask for da, da, da, da, da, da, da, da and all other documents held by the NDIA.

3:10

So in essence, they will always ask for an all file, all file, all documents, regardless of all the other stuff they put in beforehand.

3:17

We're never going to untrain them to not ask for all documents because they, I've been managing these for 12 years in different agencies and they will always try because they never, there's always those occasions where people might give them too much.

3:32

So what's really important is that we open the conversation very early in the process and we go back to the solicitor.

3:39

We have a look at the application and we have a look at what's actually what is the matter and what are they asking for.

3:49

So if they're clearly saying let me pick someone, Billy Joe had a car accident On this date and we're managing and she has put in a personal injuries claim and we're managing that claim.

4:05

There will be most likely.

4:07

Well, actually there's two kinds of types of documents that exist in the under that claim banner.

4:13

So if it's a personal injuries claim, there will be a notice of claim or a knock NOC and the notice of claim will have all of the details about what happened etcetera and what the injuries were.

4:27

Often in a motor vehicle accident, it will be under an MAI or whatever the state equivalent legislation is and there'll be an injured person form.

4:37

And the injured person form usually will have the consent of this of the injured party and may have the injuries.

4:46

Or alternatively, it may be that the injuries are listed on the CTP medical insurance which has also been completed at the time of the injury.

4:56

So again, could be quite a few years old.

4:58

But these are the, these are the really important documents that we need because we need to know what is the claimant, our participant actually claiming.

5:08

So therefore, what documents do we hold relevant to that claim?

5:13

So what I will generally do if we haven't been provided that information by the requesting firm or insurance company is go back with an e-mail.

5:24

Now we have to acknowledge because we have to acknowledge because it's part of the ACT.

5:28

So I would generally start off with my little acknowledgement because we're opening the dialogue with them anyway and then saying and then I would put in an explanation.

5:37

And for those of you that need, I have got some text, but it really needs to be customized to each person's application explaining the sensitivities of the documents that we hold that you'll manage.

5:52

You're not representing the the participant.

5:55

Can you please provide us a notice, the notice of claim or, and, or a list of injuries?

6:01

And the reason why I say and, or is there isn't always a notice of claim.

6:06

So it could be like I said, the CTP medical insurance and the injured party person's form that you get, they always look the same.

6:13

So once you've seen them a few times, you'll know exactly what you're looking for.

6:17

And that's where the that's where the vital information is.

6:21

And then you want to ask them to agree to a revised scope of the medical documents around the alleged injuries sustained on this particular date.

6:34

If you which will however much information you've already got, that's what you want to go back to them with.

6:41

Now, it's unusual that you'll get kickback.

6:46

Mostly I haven't.

6:48

And the reason you won't get kickback is they're probably expecting it because that's how every other a agency manages it.

6:56

So they realise that, you know, if they get that kind of response, they go, OK, well, we have to just do that's, that's what we do and they'll like they'll accept it.

7:06

There's a few occasions when I have had a kickback.

7:10

The kickback comes when the the insurance company is wanting to minimize the payout to the applicant.

7:20

So what they're wanting is all of the funds and all of the money that we have spent on the applicant and they've come back and they've said, but we need that because we need to factor that in, in our assessment of the payout or of the claim.

7:35

In actual fact they don't because we have a compensations branch.

7:39

So the personal entries matter and whatever compensation is awarded should be done on the merits of of that particular in that particular process.

7:50

Our compensations branch then becomes involved at the latest stage, nothing to do with us.

7:57

And they will look at that claim and they will look at that compensation amount and they might all negotiate with the insurance agency and they may say, well, we've just spent \$10,000 on a specialist wheelchair as that this that the participant needed as a result.

8:15

And it may be that they negotiate that that money, the claim amount is still the same, but that amount of money that they were going to pay direct to the participant or the claimant might get paid out to the NDIA.

8:29

So therefore, if you think about that, it's also very much in the public interest that that claim is managed because it may in fact be that there may be a refund owing to the NDIA.

8:39

Or alternatively, the NDIA may then look at the payment and get and adjust the plan amount in future because the participant has being awarded a large sum of money.

8:51

So it's another way for people to not be double dipping.

8:56

And so that's important that we distinguish that there are those other processes going on in the background and that we're managing an FOI and that we have to keep our participant as our primary focus.

9:10

And part of that is that their claim is managed, they want their claim managed.

9:15

And so therefore we need to make sure that we manage that claim.

9:19

Now often what I've found is I'm going to fast just stop me on. Often as a result of the renegotiated scope, it's a no docs decision because if Billie Jay broke her arm in a car accident and we don't have a single document about your broken arm because she's on the plan for a different reason, we don't have a document.

9:44

So we go back with a legitimate outcome and and a legitimate decision under provision in the ACT that says this has been done and dusted, this has been managed and under Section 24 we have no documents.

10:00

This is going to be a much better outcome than going back and saying we don't believe you have informed consent because as I said at the beginning of this, consent, consent is, is silent consent is helpful when we're deciding whether documents fall under 47-F or not.

10:19

So again, when you do have documents, Cooper.

10:26

So can we refuse if we don't receive informed consent or valid consent?

10:33

So we're not.

10:34

If not, why not?

10:36

We're not looking for that's not what well, what we're what we're looking for is the paperwork around the claim that will have the claimant's authorization on it.

10:47

So we're not looking for our NDIA consent form to be signed.

10:50

We're not, we're not looking at that.

10:52

We're looking at the claim form and, on the claim, form it will have the signature of the claimant and and it will the injured party form.

11:02

I don't have one in front of me, but they're basically authorizing at the beginning of their claim that the insurance company can get documents that are relevant to the claim.

11:15

And that might have been four years ago and it might have been six months ago, but they want that.

11:21

That's where the that's where the consent is, is comes in.

11:26

Can I just look, Jen, because Cooper's question reflects some of the practice that we've been doing, consent or the validity of consent in these kinds of matters is something that we ought to test with the law firm and or with the participant.

11:46

So we want to avoid refusing for the reasons that that consent is not there.

11:54

We want to try in the first instance to make sure we have an agreement with the law firm.

12:00

What is the scope of the matter?

12:02

What is the nature of the consent?

12:05

And if we need to, the ACT would require us to go back to the participant and say this is information being requested by this law firm.

12:14

In this circumstance, what are your views about the disclosure and, and that Section 20, sorry, Section 47-F exemption consideration kicks in and I'm just going to flag here because it seems appropriate.

12:30

Further training on the consultations with third parties has been flagged as a next week option as well as a standalone session on consent.

12:41

So more broadly, when, when are we looking at something with consent and what does consent mean?

12:47

What are the necessary values of consent?

12:52

Sorry to interrupt, Jen.

12:53

No, no, no, no, that's good, that's good.

12:56

So I guess once we sorry, I'm just throwing off there.

13:04

So, so we've we've now gone back to the law firm.

13:07

We've now got the notice of claim.

13:09

We've got the injury, the list of injuries, and we've got agreement to process on that new scope and we have the signature of the claimant.

13:20

Now, obviously there's always some curly ones, Hey, Cooper.

13:22

When actually they're under a guardianship.

13:25

But you know, there's always going to be, there's always going to be a curly one again.

13:33

That was, that was a cool one.

13:35

And I think, I'm not quite sure how that resolved itself, but nonetheless, the same principles always apply.

13:43

Whoever's given consent back in the original document, you know, needs to be authorized to have provided that consent.

13:51

So if it were the guardian in one in certain circumstance or the actual participant, they need to have that the capacity to have signed those insurance forms.

14:03

And I guess that that was one that just came up a little while ago that just added that little quirky bit to our standardized way of saying this is how we do it.

14:13

And that's going to happen all of the time.

14:15

So you're also going to have medical negligence claims.

14:17

Now with medical negligence claims, you're not going to have a notice of claim or CTP insurance certificates, etcetera, but you're probably going to have court documents, and the court documents are going to verify that.

14:30

The another reason for for getting the notice of claim is, is verifying that in fact, they are doing what they're doing.

14:37

Like I can say I'm managing a personal injuries matter, but where where's the evidence?

14:42

So it's just that hard piece of paper that's evidence.

14:45

And so sometimes if it's a medical negligence claim, again, they will provide the court document and again, that will have the information about what the claim is about.

14:56

So I had one medical negligence claim that was about an [s47F - personal privacy](#) that the participant said that the clinician that the surgeon made a mess of, that was the allegation that was the medical negligence claim.

15:11

I got the scope reduced from all documents in relation to this participant down to all documents about the [s47F - personal privacy](#).

15:20

It turned out that the applicant had the [s47F - personal privacy](#) operation to it two years prior to getting her NDIA plan.

15:30

She got her plan on the basis that [s47F - personal privacy](#)

15:43

She didn't get her NDIA plan because she had an [s47F - personal privacy](#) 2 years ago that had a dodgy surgery on it.

15:49

So it wasn't no documents.

15:53

I'm aware of another medical negligence claim just recently where there ended up being some documents.

15:58

So again you you can be quite lucky in that we don't have anything relevant or we do have documents.

16:07

When we do have documents, the markup is really important because as a rule, we generally go it's a medical document produced by another external agency provided to us by the participant.

16:22

We'll just give it back out in full.

16:25

What we need to remember is that what we're doing is we're giving that medical document to a third party insurance agency, and that third party only needs the medical information that's contained within the document, the medical document.

16:41

Doctors don't just put medical information in documents.

16:45

Doctors write all sorts of stuff.

16:47

So I've got one at the moment where the doctor has written all about her orthopaedic, which is all about the claim, which is all very relevant, plus all of her social history and stuff that happened when she was a child and the fact that she has an autistic child, not now and the etcetera, etcetera, and, and, but pretty much labelled it under social history.

17:07

So I have taken all of that social history out of the medical document under 47-F because and I have done a decision explaining why I've taken that out.

17:18

Now the insurance company don't want it anyway necessarily, although the course they'd take it if we were going to give it to them.

17:25

They want the stuff about the injury, but I need to protect her privacy about all of her other stuff as well as her family members personal medical information.

17:36

So that's one of the things that if there are documents, if there are medical documents that you do find that fall within the scope, make sure you review those really, really clearly in line with 47-F.

17:51

And it is likely that you will use even to the fact of the matter that in the in the beginning of a medical document, it might say Cooper b47F - personal privacy mobile phone number.

18:02

Now if I have no evidence that the insurance company have your mobile phone number, I'm going to take that out under 47 F because I don't want to provide that with them, giving them the opportunity to give you a call out of the blue and you don't know that they're about to call, etcetera.

18:18

I mean, whether or not that would happen.

18:19

But it's still important to note that when you're releasing these documents, you are pretty much releasing them.

18:24

Even though the insurance companies put a disclaimer on and they say we're only going to use it for the purposes of the claim.

18:32

That's does that it's not, doesn't mean that that document is not going to leak somewhere else because it's now left the agency.

18:39

We now have no control over it.

18:41

So that's just another important thing to remember when you are looking at documents, if you find that documents exist.

18:55

So that pretty much is it.

18:58

Then I guess the the final thing is really with the decision notice that you make sure you tell the full story so that you actually start off with the scope that was provided.

19:08

You talk about the communication that was had you, you give the revised scope where with the consent part I, I generally will say thank you for providing the notice of claim or the OR whichever document it was on such and such date.

19:27

I'm satisfied that you have the consent to receive this information.

19:30

So it's really like qualifying that that the reason that they have consent is because of this document.

19:36

I think that's it's not mandatory, but I just think it actually gives a more complete story.

19:44

And if the other thing I was going to say is when law firms are managing these types of applications and you see that your clock is coming really close to being due, this matter has already been happening for a couple of years.

19:59

They are so open to an extension.

20:01

Get your extensions as soon as you can so that your matter doesn't go deemed.

20:06

Because if your matter does go deemed, remember that is their internal review rights.

20:10

So you have to also treat them as a respectful applicant, even though they're not particularly managing our participant or they're not in favour of participant particularly.

20:20

But make sure that you get those extensions whenever you can and there usually won't be any issue because they're not going to read the document.

20:28

30 days is our legislative time frame, not theirs.

20:33

So just remember that it's our urgency, not their urgency.

20:36

So just make sure that you can tick all of those boxes and get all of those things sorted upfront and that you include that in your decision letter.

20:49

If you did need to get an extension under 15 AA, make sure you report that to OAC because it's mandatory.

20:56

And make sure you include that in your decision letter because if there's an external review, one of the first things OAC says is did you get a 15 AA?

21:06

If it's in the decision letter, they've already got the story.

21:08

So you're telling the story to the participant, but you're also telling the story for anybody else that needs to know the story.

21:15

It should be there in your decision notice.

21:19

I think that's really all I wanted to say about those types of applications.

21:27

Is there anyone that has any questions or clarity what I have done and I can get it out to the team somehow or other somebody can tell me how to do that?

21:41

As I've started a little document where I've put a list of applications that have been managed this way as a reference point.

21:51

So if that's a helpful document, then because that'll have, if you go to the SharePoint folder, it'll have all of the stages in the process.

22:00

So you'll see the text in that, that person's acknowledgement, you'll see the scope, you'll be able to read it right through.

22:08

And so it might be helpful in the first few times that you manage these types of applications.

22:14

Trust me, once you've done a few, you'll go, oh, another law firm, insurance company, easy peasy.

22:20

They're not scary.

22:21

They're pretty straight forward.

22:24

Yeah.

22:25

Sorry, Liz.

22:29

Thanks, Jen.

22:30

I was just wondering, have you had a situation and how did it play out in terms of how did you become aware of a claimant whose capacity had changed since they had signed their consent?

22:45

Well, I personally haven't that.

22:49

That's another, that's another situation that we would have to look at.

22:54

Obviously when they signed the consent, they had capacity presumably I did have a situation, I can't really remember the full thing about it, but they, they came back this, this was, this was actually a different kind of application.

23:12

They wanted documents to out of the file to know whether this participant was under a guardianship or not, because the solicitor acting on behalf of the participant wouldn't tell them.

23:26

And so they thought, well, their, their solicitor won't tell us.

23:29

We'll not get the NDIA to tell us.

23:32

So obviously that's not the sort of information that I so really what they were doing was challenging the integrity of the law firm.

23:40

It was an, it was an insurance company, it was b47G - business information

23:43

They were challenging the integrity of the law firm that was acting on behalf of the claimant and saying they're a dodge.

23:49

And I actually made a telephone call and I said they said, she more or less said to me they're a dodgy law firm.

23:56

It was b47G - business information who are very big here in Queensland.

24:00

I'm not sure if there's Australia wide, but they're very big here in Queensland.

24:04

They said they're a dodgy law firm and we need to know whether or not the participant is under a guardianship.

24:10

Participant actually wasn't under a guardianship, but I ended up saying, look, you're what you're doing is you're asking the you're, you're challenging the integrity of a of a law firm by through the FOI process.

24:23

It's not really a valid, you know, that's not something that I can manage.

24:28

And I ended up doing a full refusal, but I couldn't get them to withdraw.

24:32

So I did a refusal under 47 F.

24:36

If so, yeah, Liz, as always, yeah, each time they come up, we just kind of have to look at them.

24:42

Yeah, I've got one at the moment that Jen's been helping Billy and I with.

24:47

And it's actually a really hard one because she's suffering, suffering from alcoholism and she keeps going in and out of sobriety and has bouts of where it's all good and then gets on the rocks again.

25:01

So.

25:02

And she's had three different support coordinators and her current public guardian that signed or her previous one, no contact details, some CRM or anything.

25:13

So then I had to call 2 separate previous support coordinators to then confirm, yeah, she's still under a guardianship.

25:21

This is her new support coordinator.

25:23

So I got onto the third support coordinator, eventually said yes, currently she is under guardianship at the moment for the last six weeks.

25:31

And then I called the public guardian and said, hey, I'm pretty sure this person's under your care.

25:35

And she goes no.

25:38

And then like 3 minutes ago, the book goes, oh, actually she's right here.

25:42

I didn't even realize.

25:42

So sometimes you've got to do a bit of digging to get what you want.

25:48

But yeah, that one's a mess.

25:49

And it's still currently being handled.

25:50

Yeah, but yeah.

25:52

But at the same token though, we still have to manage the application.

26:00

And I think from memory that one, the guardian, the guardian and the participant signed the claim form at the same time originally when the claim first started.

26:10

So we still need to nut down the scope to information relevant to the claim.

26:15

And it's still very much in the public interest that that matter is finalized.

26:20

And if there are, if there are documents relevant to the claim that they are released under, under the public interest factor of the administration of justice.

26:30

So yeah, I'm, I'm not really sure where we're up to with that one, but it's, it's about it, it, it first and foremostly should be about the scope.

26:42

And obviously that consent is important.

26:45

That is relevant to the scope.

26:47

And, you know, sometimes people don't have capacity and medical records, some people don't have capacity at a point in time, but it doesn't mean that they've lost capacity.

26:58

People fall in and out of capacity all the time.

27:01

So we're not clinicians.

27:03

So we have to be very careful where we draw the line when we're making our determinations.

27:09

Just for everyone else, Jen, it what happens if you are going to do a law firm release, you've got someone acting against the participant and then a guardian or the public guardian or their nominee has said no to the release of documents.

27:24

Well, I think, I think that potentially in the situation that you're talking that the public guardian wasn't given enough information about who was The, Who the applicant was and what was the matter being managed.

27:41

So it's about going back and having that negotiation.

27:46

You can negotiate for as long as you like and as many times as you like and going back and saying, look, you've said no, don't give them anything.

27:54

Let's talk about that.

27:56

The let me explain the applicant, who the applicant is, what the purpose of the matter is and what type of information it is that we're looking at releasing, which is fairly non sensitive information or or not depending on what the matter is.

28:12

And even providing them with a copy of the of the new scope and the documents that fall within that new scope.

28:18

And so they're really well informed that and it is in the public guardians interest, it's in everyone's interest that the claim gets managed because they could be allowed some payouts and public guardian gets a percentage just, well, I don't exactly know how they work.

28:34

They were a bit dodgy here in Queensland and all got sacked.

28:38

But there is, there is some financial benefit in terms of everybody having the claim managed.

28:45

So, yeah, I, I would be going back to the public guardian and giving them everything, all the information that you have so that they can do make a really informed assessment and, and provide their consent, confirm their consent.

28:59

What if even if you have done that and explained it in detail, you know, it's a law firm, blah, blah, blah.

29:06

This is what they want.

29:07

This is why they want it.

29:09

And this is for any, if this is any guardian or anyone like this is not so much relevant in my case.

29:15

But what would you do then?

29:16

Can you just override them as on public interest and just say, you know, and release the documents even though they strongly object to it?

29:27

Well, we're sort of getting into third party consultation, which was the next session that I was gonna actually talk about because, but this is sort of borderline of that because in essence, they gave their consent at the beginning of the process.

29:42

What they, what technically they're doing is withdrawing their consent.

29:46

And, and that it's, it's that conversation that that needs to be had.

29:51

We had your consent initially or the the matter, the claim, the insurance matter had your consent initially.

29:59

Now you're saying you're withdrawing that consent.

30:02

However, you know, this is this is the, these are the documents, this is the revised scope.

30:08

And this is the matter that that is being managed.

30:11

And we feel that it is in the public interest and in the participants best interest that this claim is managed.

30:19

And hopefully you get somebody reasonable at the other end.

30:24

Beautiful.

30:24

Thanks, Jen.

30:24

Hey, who's else?

30:28

Who's got their hand out there?

30:30

He said they've asked in the Deacon office.

30:33

Oh, Deacon.

30:34

Just wanted to say thank you so much, Jen.

30:38

It was absolutely fantastic and it has sparked a lot of conversation.

30:42

Peter has just had to step out for another meeting, but he wanted to make sure I convey his thanks as well.

30:48

He really, really appreciated this.

30:50

Also wanted to so Jen, your idea about keeping the list of all the matters that applies to that, I'd love it if you could bring me that link.

31:00

What I'm going to do is I'm going to make sure I get the video of this session.

31:03

I've taken extensive notes.

31:05

I'm going to Polish those up and the list of all the matters and we're going to put them all together in the same folder as like a one stop shop for this kind of thing.

31:12

And then I'll circulate the link to everyone via e-mail so you can get all three things together.

31:18

And the other thing, I know there's lots of questions and people are getting into some really nitty gritty topics, but as Jen already pointed out, we're veering into some other territories that would be best covered in a stand alone session.

31:30

So Pete's going to be taking next week's training session and he is going to be following up on all these ideas and he's going to cover a bit about consent and a bit about third party consults.

31:42

So for the next week, please think about tricky cases you've got that involves some of those things and some of these hypothetical scenarios that people are coming up with because Pete is the person we want to grill about those things.

31:55

Thank you.

31:56

Hey, Helen.

31:58

Oh, hi, Jen.

32:00

I just wanted to say thank you for such a clear exposition of these principles, a process that's just going to be invaluable for us all going forward.

32:11

We've been struggling and wrestling with these issues for as long as I've been here, and your experience and the way you've thought it through is just invaluable.

32:21

I think it's great.

32:22

We'll have this really good, consistent, effective approach going forward.

32:27

Thank you.

32:27

I'm very grateful.

32:29

Thanks, Helen.

32:36

Anyone else?

32:42

I don't think we really have time to go into the next sort of subject that I was thinking of.

32:48

So yeah, there's nothing else.

32:51

We probably can just all go back to work.

32:55

Lovely.

32:55

Let's wrap it up.

32:56

Thank you so much again, Jen.

32:57

Everyone applause and if anybody has anything quirky, look, I'm, I'm always interested in those quirky ones.

33:07

They're always it's always good to have a bit of a challenge.

33:11

So don't ever hesitate to, to contact me because I'm really happy to help work it through and think it through.

33:20

Thanks, Jen.

33:21

No worries.

33:21

Thanks.

33:22

Thanks everyone.

33:22

Bye, bye.

33:23

Stop recording.

34:11

It's annoying that we had those technology issues because I'm not sure they've kind of like had it all far away.

FOI exemptions on LEX

How to use files notes to record FOI exemptions

March 2024
Information Access team

ndis



FOI exemptions on LEX

Agenda

1. How to record FOI exemptions on LEX
2. Tips to identify the predominant exemption
3. How to search for matters by predominant exemption on LEX



Where is the back tick symbol?





FOI Training

Sections 4, 12, 24AA and 24AB

March 2024

1

Section 4: What is a document?

Section 4 defines the terms used in the FOI Act.

‘Documents’ are defined in terms of the types of records that may be held by the Agency – includes (but not limited to) paper, maps, plans, drawings, sounds, images, and articles on which information has been stored or recorded.

Importantly, section 4 also defines what is not a document:

- (d) material maintained for reference purposes that is otherwise publicly available; or
- (e) Cabinet notebooks.

This means that if the document sought by an applicant is already publicly available, we **must** refuse the request under section 4 as we don’t have authority to release via FOI.

Section 4: Documents of the Agency

Section 4 also defines ‘documents of the Agency’.

A ‘document of the Agency’ is a document that

- Is in the possession of the agency, whether **created** in the agency or **received** in the agency; or
- In order to comply with section 6C, the agency has taken contractual measures to ensure it receives the document. [Emphasis added]

*Section 6C applies to contracted service providers and subcontractors. Documents must relate to the performance of the contract, rather than entry into the contract.

Section 4: Examples in NDIA context

Section 4 refusals are appropriate for:

- Information, policies, statistics and reports published on the Agency's website (i.e. Disability Reform Minister's Council Quarterly Reports)
- Information on Data.gov.au
- Information on Disclosure Logs (not just ours)
- Material on external websites.

Best practice is to provide a link to the section 4 material in your decision letter.

Section 4: Knowledge check

1. A student requests a copy of the 2022-23 Annual report. How would you approach this request?
2. A participant requests a copy of a medical report they submitted to the Agency for a plan review. Is this a document of the Agency?
3. A journalist requests data about the number of participants in the scheme. How would you approach this request?
4. A NDIA staff member requests a copy of a MS Teams chat between two colleagues about him. Is this a document of the Agency?

Section 12: Act does not apply to certain documents

Section 12 states a person is **not entitled** to access:

- 12(1)(a) – documents under the *Archive Act 1983* open access period (unless personal)
- 12(1)(b) – documents open to public access as part of a register or similar, whether for a fee or not. i.e. LEGEND.
- 12(1)(ba) – documents that are part of a land title register
- 12(1)(c) – documents that are available for purchase by the public.
- 12(2) – a series of documents relating to Norfolk Island.

If you have a request impacted by section 12, you should issue a formal refusal letter explaining why the applicant is not entitled to access the document.

Practical refusal

A practical refusal reason exists under section 24AA of the FOI Act if either of the following applies:

- *24AA(1)(a)(i) the work involved in the processing of the request would **substantially and unreasonably divert** the resources of the agency from its other operations*
- *24AA(1)(b) the request does not satisfy the requirement in section 15(2)(b) of the FOI Act, which requires you to **provide such information** concerning the document you are seeking access to, to enable the agency **to be able to identify it**.*

You can issue more than one type of practical refusal for each request, if required.

Terminology

Practical Refusal (PR) reason – the grounds for considering refusing the request (either 24AA(1)(a)(i) or 24 AA(1)(b)).

Practical Refusal Notice (PRN) - the mandatory first step of the process which notifies an applicant of your intention to refuse their request and invites the applicant to engage in *request consultation process* (s 24AB).

PR decision – the decision to refuse an access request based on a PR reason. This step can **only** be undertaken after a PRN has been issued and must be based on the same PR reason identified in the PRN.

PR reason – invalid request

*24AA(1)(B) the request does not satisfy the requirement in section 15(2)(b) of the FOI Act, which requires applicants to provide such information concerning the document they are seeking access to, **to enable the agency to be able to identify it.***

- Should be actioned at point of registration.
- Invites applicant to engage in request consultation process to lodge a valid request.
- Applicant has 14 days to respond. If no response: deemed withdrawn/refuse.

If applicant suggests a new scope, the Registration Officer needs to consider whether it is acceptable. May need to consult with an APS6 Decision Maker/Assistant Director.

PR reason – invalid request

FOI Guidelines [at 3.89] provide context as to what constitutes ‘reasonable searches’.

- Take a **flexible** and **common-sense** interpretation of the terms of request and consider **normal** business practices. (Emphasis added)

Consider:

- Subject matter of documents
- Current and past file management systems, including destruction/removal of documents
- Record and/or case management systems
- Individuals within Agency with knowledge of the subject of request/documents
- The age of the documents.

PR reason – invalid request

Things to consider when determining if you have sufficient information to identify documents in scope:

- Subject of the request - is it specific and searchable?
- Date range of the request – can we limit searches to a period of time?
- Type of document sought – “all documents” is usually too broad unless you have a very specific scope.
- Likely location of documents/records in scope of request – where might we need to search?

Best practice: if unsure about whether enough information to undertake reasonable searches, consult your DM, AD and/or seek advice from the responsible business area.

Example

The more than \$720 million investment in the NDIA's capability, capacity and systems, developed with the NDIA Board, in consultation with the NDIS Review Co-chairs, includes 10 key initiatives:"

Can you please provide :

- Documents provided by the NDIA Board and NDIA regarding the \$720 million investment and components thereof.
- Documents provided by the NDIS Review Co-chairs regarding the \$ 720 million investment and components thereof.
- Documents provided by any other party regarding the \$ 720 million investment and components thereof.

What might you consider when assessing this scope?



PR reason – invalid request

As per FOI Guidelines [at 3.90], you should be able to:

‘explain ...the steps that were taken to search for the document, including the dates as to when the searches were conducted’.

This means that you **always** need to:

- Keep records of scope consultations and searches.
- Explain PR concerns in your PRN in a way the applicant can understand.

Best practice: Link back to FOI Guidelines [at 3.89] regarding reasonable searches.

PR reason – substantial and unreasonable diversion of resources

(1)(a)(i) the work involved in the processing of the request would substantially and unreasonably divert the resources of the Department from its other operations
[Emphasis added]

- Undertaken by the Action Officer/Decision Maker.
- Based on estimate of time required for search and retrieval, administrative tasks, consultation and decision making. May include advice from the responsible Business Area (BA).
- Invites applicants to engage in a request consultation process.
- Applicant has 14 days to respond. If no response: deemed withdrawn/refuse.

Calculating work effort

Things to consider: [see FOI Guidelines at 3.116 – 117]

1. Time already spent/required for search and retrieval (hours)
2. Time required to create a schedule of documents (minutes per document)
3. Time required to convert documents to editable format (minutes)
4. Number of documents in scope
5. Number of average pages per document
6. Time required to assess each page (minutes)
7. Time required to consult on each page (internal or external) (minutes).
8. Time required to write decision letter (hours).

Calculating work effort

Other things to consider:

1. Resourcing of the Agency and BA (i.e. 1 staff vs 50 staff)
2. Volume of other FOI/PIA requests on hand (i.e. competing priorities)
3. Location of the documents
4. Classification of the documents (who can retrieve and assess them?)
5. Forms of access (e.g. time required for on-site access).

Sampling to support PR

Guidelines at 3.121 recommend sampling 10 – 15% of documents to substantiate a PR reason. Include the sampling in your PRN to explain your position.

Document	Number of pages	Assessment time
Document 1	5	15 minutes
Document 2	2	6 minutes
Document 3	6	25 minutes
Document 4	20	40 minutes
Document 5	7	10 minutes
Total	40 pages	96 minutes
Average	8 pages per document	2.4 minutes per page

Use the averages to extrapolate an estimate of work effort required to process the request.



Example of calculating work effort

50 documents located – average length 5 pages

Task	Estimate	Time requirement
Search and retrieval	N/A	5 hours (300 minutes)
Scheduling	1 minute per document	50 minutes
Conversion to editable format	1 minute per document	50 minutes
Assessment time	50 x 5 pages x 3 minutes	750 minutes
Consultation time	50 x 5 pages x 2 minutes	500 minutes
Decision letter	2 hours	2 hours (120 minutes)
	TOTAL	1770 / 60 mins = 29.5 hours

Questions:

1. Is 29.5 hours a substantial and unreasonable diversion of work?
2. What information might you consider when making a decision?



Case law – substantial diversion of resources

Farrell; Chief Executive Officer, Services Australia and [2020] AATA 2390

- Request for 750 Australian Victims of Terrorism Overseas Payments.
- PR based on estimates **61.25 hours** processing.
- Tribunal agreed the request met the substantial test ... but found that the size of Services Australia staffing footprint meant it was **not unreasonable** to process it.
- **Learning:** provide specific evidence and explain what work will be have to be sacrificed by the Agency to undertake a request. This might be other FOI access requests or frontline services.

Case law – unreasonable diversion of resources

Tate and Director, Australian War Memorial [2015] AATA 107

- Estimate of 150 hours to process request of 1003 pages
- AAT considered it AWM is small agency with one FOI staff member. AAT accepted assigning staff to assist would unreasonably divert resources from other operations/projects.
- **Learning:**
 - [3.119] – Whether a PR reason exists will be a question of fact in the individual case....Agencies should not adopt a ‘ceiling’ in relation to processing times (i.e. 40 hours work effort).
- You can use the AGS Charges calculator to calculate work effort.



Practical refusal: grouping requests

FOI Guidelines [at 3.121] state:

In deciding whether a practical refusal reason exists, two or more requests may be treated as a single request if the agency or minister is satisfied that:

- *the requests relate to the same document or documents (s 24(2)(a))*
- *the subject matter is substantially the same for the requests (s 24(2)(b)).*

This means that we can **combine** requests from single applicant or multiple applicant's seeking access to the same documents for PR purposes. Examples might include:

- Applicant seeks pages 1-500, 501-900 of a report previously PR'd.
- 30 applicants seek access to same 500 page document.

Essential information in a PRN

A PRN must include the following information:

1. Advice of your intention to refuse the request
2. The grounds for the PR
3. Statement explaining the PR (including any calculations or work effort)
4. Invitation to engage in request consultation
5. Advice on what actions can be taken in response to the PRN
6. A date for response (14 days)
7. Information that failure to response will result in deemed withdrawal (unless outside of statutory timeframes, which will need a refusal).
8. Your first name and position number.

A PRN could include a suggested scope – but make sure its workable and/or seek Assistant Director approval first.

Stopping the clock

You can stop the '30-day' statutory timeframe for the time that the applicant is considering a PRN. For example:

Day 20 – 24AB issued: **clock stops**

Day 33 – Applicant responds after 13 days: **clock restarts**

New statutory timeframe is 30 days + 13 days = 43 days.

You must stop/start the clock **each time** the applicant comes back under section 24AB to negotiate on scope. Keep records, as this can have a big impact on statutory timeframes.

Request consultation

Request consultation must be a **genuine attempt** to resolve the PR concerns.

Request consultation should:

- Occur as soon as possible – preferably within statutory timeframes
- Consider the applicant's communication preferences and/or cultural needs
- Try to assist the applicant to make a valid request (per section 15(3)).
- Encourage the applicant to engage with the Agency.

PRN outcomes

- 1. The applicant submits a revised scope.**
 - Registration/Case Officer must re-scope the request and advise the applicant if the PR reason is resolved.
 - If PR reason is resolved, continue processing.
 - If PR reason is not resolved, double-check your assessment before moving to issue a PR refusal.
- 2. The applicant maintains the current scope** – check your assessment, then move to issue the PR decision.
- 3. The applicant withdraws the request** – finalise as ‘client withdrawn’.
- 4. The applicant does not respond.** If within statutory timeframes, finalise as ‘deemed withdrawn’. If outside statutory timeframes, issue a PR refusal.

Did you know?

The Agency is required to report data about its PR outcomes to the Office of the Australian Commission (OAIC) each quarter and financial year.

Specifically, we have to report:

1. How many PRNs issued (by personal or non-personal)
2. How many PR requests were subsequently processed.

It is **essential** that you accurately record all PR processing actions in SharePoint.

Please also record the number of FOI pages you release in LEX for every request, as this data informs Agency capacity to deal with PR requests.

Questions



Practical Refusal Quiz

1. How many types of PR exist?
2. True or False – the applicant has 30 days to respond to a PRN?
3. True or False – the threshold of unreasonable work effort for PR is 40 hours?
4. True or False – sampling must be done for all section 24AA(1)(b) PR?
5. Can you issue a PRN once a request is overdue?
6. An applicant doesn't respond to a PRN. Can you 'deem withdrawn' their request?
7. How many PRN did NDIA issue in FY2022-23?

Training video - Practical Refusals with Rebecca s47F - personal privacy 2024.03.27

0:06

Hey, everyone.

0:07

I've started the recording.

0:08

If you don't want to be in it, you're welcome to turn your cameras off.

0:16

Thank you very much, Laura.

0:18

All right, Well, we might get started.

0:21

So thank you everyone for attending today's FOI training session on sections 4/12/24, A, A and 24 AB.

0:30

We will be spending the most time on 24AA and 24 AB, which is practical refusals and practical refusal notices.

0:41

The reason I've included sections 4 and 12 in today's training is that together with 24AA, they actually really go material to scoping a request.

0:51

So I think it's it's really important to understand each component, right?

0:54

OK.

1:02

So Section 4 of the FOI Act defines the terms used in the Act.

1:08

And specifically for our purposes today, we're going to be looking at the definition of documents.

1:13

So documents are defined in terms of the types of records that may be held by the agency.

1:19

And this includes, but is not limited to, paper maps, plans, drawing, sounds, images and articles on which information has been stored or recorded.

1:28

Importantly, Section 4 also defines what is not a document, and this includes material maintained, maintained for reference purposes that is otherwise publicly available or cabinet notebooks.

1:41

This means that if the document sought by an applicant is already publicly available, we must refuse the request under Section 4 as we don't have authority to release via FOI.

1:56

Section 4 also relevantly defines documents of the agency.

2:01

So a document of the agency is a document that is in possession of the agency, whether created in the agency or received in the agency or in order to comply with Section 6C, the agency has taken contractual measures to ensure it receives the document.

2:16

So that would be a situation where the NDIA has contracted a third party to undertake a particular function and as part of that contract all of their documents are also subject to free to FOI law.

2:29

Now that only applies to documents that relate to the performance of the contract rather than entry into the contract.

2:37

So those initial sort of tender documents and things would not be included by them.

2:45

So if we look at Section 4 examples in an NDIA context, Section 4 refusals would be appropriate for information policies, statistics and reports published on the agency's website.

2:57

And that might be as part of the Disability Reform Minister Council's quarterly reports or scheme actuary reports, the Pulse, that sort of thing might be appropriate if it's published on the website.

3:09

Any information about the NDIS on data.gov dot AU?

3:15

Information on disclosure logs and not just ours?

3:19

If someone asks for a document which relates to our agency and another agency and we'd be worth checking their disclosure log to make sure that the other party hadn't already released something.

3:30

And any material on external websites.

3:32

So best practise is to always provide a link to the Section 4 material in your decision letter.

3:38

So you would say in your decision letter.

3:40

Unfortunately, due to Section 4, I'm not able to provide this document.

3:43

However, here's a link to it.

3:50

So just a quick knowledge check and I'll ask people to call out the answers because I can't see your names at the moment.

3:57

So a student requests a copy of the 22/23 annual report.

4:02

So how would you approach that type of request?

4:07

You'd refuse access to it and provide with the link to the report?

4:11

Yeah.

4:12

So you check to see first if it was published online, and if it was, you'd do exactly that, refuse access under Section 4 and provide the link.

4:19

So the second question is a participant requests a copy of a medical report that they submitted to the agency for a plan review.

4:27

Is this a document of the agency?

4:33

Yes, because it's received by the agency.

4:35

Yes, that's correct.

4:36

It's being received by the agency and therefore it is a document of the agency.

4:41

A journalist requests data about the number of participants in the scheme.

4:45

How would you approach this request?

4:48

I would say that it's non-compliant because they're not asking for information but they're asking for answers to a question and I would suggest that I could assist them and maybe rescoping to ask for a document that exists.

5:03

Otherwise I would say it's a non-compliant application.

5:07

Oh, that's an interesting answer, Jennifer.

5:10

And I've got a slightly different thought on that one.

5:13

So any information held in our systems is actually covered by Section 17 of the ACT, which talks about use of a computer to extract information or to create a document.

5:24

So I think in this situation this probably would be a reasonable scope except for a couple of things.

5:31

So first of all, I think we would need to clarify the date range of interest and at that point we try and point the person to an existing report.

5:40

If a report is published, we can refuse access under Section 4 and provide a link, but if the data is not available, we probably would need to process the request because obviously the agency would know the number of participants in the scheme and would have that recorded somewhere.

5:55

So in that situation, whilst the scope is not clear in the current form we've got here, a little bit of scoping work could enable us to make it a valid scope.

6:06

And the fourth question is a NDIA

6:09

NDIA staff member requests a copy of an MS Teams chat between two colleagues about him.

6:16

Is this a document of the agency?

6:18

Yes, yes it is.

6:20

And just a warning, I have seen this done and it is not pretty.

6:25

So please be always be very, very mindful that anything you write in the course of your work is a document of the agency and can be FOID.

6:37

Moving now to Section 12 and I have included Section 12 really just I guess for general knowledge at this point.

6:45

It doesn't seem to particularly apply to NDIA records for a couple of different reasons.

6:51

So first of all, Section 12 states that a person is not entitled to access documents in under the FOI Act if they fall under the Archive Act 1983 Open Access period.

7:05

Now as the agency is only 10 years old, you are unlikely to have any documents that fall under that because that Open Access.

7:12

Comes into play 20 years after the event.

7:17

121B documents open to public access as part of a register or similar, whether for a fee or not.

7:26

An external example of that is Legend, which is a database of government legislation and and policy and regulations held by other agencies.

7:38

The NDIA does not appear to subscribe to that, so that one would not be covered.

7:44

But generally if someone wanted access to say a regulations on such and such a topic, you could just say, well, it's available on Legend, off you go under section 12 and you would not have to deal with the matter.

7:57

Interestingly, that might not apply at the moment, but potentially if changes were made to PACE in future where people were able to download their own information, that might be something that we could sort of look at then.

8:11

Under 121B 121BA refers to documents the part of a land title register, unlikely to be involved here.

8:21

12/1.

8:21

121C is documents that are available for purchase by the public.

8:28

Examples I've worked with in the past is where people can pay a fee to get a copy of their citizenship application, citizen citizenship certificate, or they can pay a fee to purchase data held by the agency.

8:41

Those are both examples of my previous agency, so that one is actually quite handy.

8:46

Unfortunately, not here just yet, but something that might sort of happen in the future and 12/2 series of documents relating to Norfolk Island, which is quite an interesting little part of the FOI Act.

9:00

If you do have a request impacted by Section 12, you should issue a formal refusal letter explaining why the applicant is not entitled to access the document and refuse it.

9:11

It's just a flat out refusal.

9:13

Rebecca, could I just ask a question about that please?

9:17

Sure.

9:18

Under Section 12, would this kind of situation apply if somebody has requested access to a proprietary tool that the NDIA holds, such as for example the Vineland 3 adaptive Behaviour Scales test that is owned by Pearson Assessments and available for licencing from that company?

9:40

Yes, I would suggest that that is part of a registrar similar wonderful.

9:45

We would have to look into that and probably go to the FOI guidelines and have a really close reading of it.

9:51

But the on face value that would seem to be a register or similar I think and certainly you know, if there's a fee, yeah, I think 121B, we could probably try and make an argument for 121B depending what the guidelines say.

10:07

OK, wonderful.

10:08

Thank you.

10:09

No worries.

10:10

All right, moving on to practical refusals.

10:14

So a practical refusal reason exists under Section 24 AA of the FOI Act if either of the following applies.

10:23

So under 24AA1A1, the work involved in the processing of the request would substantially and unreasonably divert the resources of the agency from its other operations.

10:35

And under 24AA1B, the request does not satisfy the requirements of 152B of the FOI Act, which requires you to provide such information concerning the document you are seeking to access to enable the agency to be able to identify it.

10:51

So basically, it's not for 24AA1B, it's not valid because you haven't given us enough information to undertake reasonable searches.

11:01

Now, you can issue more than one type of a practical refusal for each request if required, but you must ensure that you deal with each of them separately, and so usually you would do the validity one first, and then you would do the unreasonable diversion of resources second.

11:19

This always confuses me because in my mind they should be around the other way in the act, but unfortunately this is how they're presented.

11:29

So the terminology I'm going to be using today.

11:32

So I'll be talking about practical refusal reasons and this is the grounds for considering refusal under the two the two parts of the ACT.

11:40

I'll be talking about PRNS, which is a practical refusal notice.

11:45

And this is the mandatory first step of the process which notifies an applicant of your intention to refuse their request and invites the applicant to engage in a request consultation process under Section 24 AB.

11:57

I'll also be talking about a PR decision or a practical refusal decision.

12:01

And that's the decision you eventually make to refuse an access request based on a PR reason.

12:06

Now, this step can only be undertaken after a PRN has been issued and must be based on the same practical refusal reason identified in the PRN.

12:17

So if you send APRN saying your request is not valid For these reasons, you cannot then refuse it on a PRN on the basis that it's an unreasonable diversion of resources.

12:28

It must be consistent.

12:29

You must do step one and then Step 2.

12:34

So first of all, we'll look at invalid requests.

12:38

So as I've mentioned, this comes back to 152B of the FOI Act, which requires applicants to provide information concerning the document so we can reasonably find it.

12:48

Now this should be actioned at point of registration.

12:52

So triage and registrations team, this one's for you.

12:56

We need to look at the scope and decide whether we have enough information to process it.

13:02

It.

13:02

A at this point we will invite the applicant to engage in a request consultation process in order to assist them to lodge a valid request, as we are required to do under Section 15.

13:13

The applicant has 14 days to respond to a practical refusal notice on this ground and if there is no response, we can deem it to be withdrawn or refuse it based on the outcome.

13:23

If the applicant suggests a new scope, the registration officer needs to consider whether it is acceptable and to do that they may need to consult with an APS decision maker, assistant director or even the business area with responsibility for the the subject of the documents.

13:41

So the FOI guidelines at 3.89 provide context as to what constitutes reasonable searches and I'd really encourage everyone to review this on a fairly regular basis because it's incredibly important.

13:55

It encourages us to take a flexible and common sense interpretation of the terms of the request and consider the normal business practises of the agency.

14:05

It also encourages us to consider the subject matter of the documents, current and past file management systems including destruction and removal of documents, record and or case management systems, Individuals with the within the agency with knowledge of the subject of the request or the documents and the age of the documents.

14:25

And we need to consider these things so that we can determine if we have sufficient information to identify the documents in scope.

14:32

So with relation to the subject of the request, we need to think is it specific and is it searchable of all the documents held by the NDIA?

14:41

Am I going to be able to find this document based on the scope that I have?

14:46

Does it give me enough information to understand what the person wants?

14:51

The other important thing I think is date ranges are incredibly important because it enables us to limit searches to a period of time.

14:59

So if you do not, if you receive a request that does not have a date range, for me that would be an immediate trigger to go back to the person and say what period of time are you looking at?

15:09

10 years is too long a period to be doing searches.

15:13

Ideally, we'd want to limit it to a 12 month or six month period of time.

15:19

I'd also really encourage you to discuss the types of documents sort or or to to be looking at a scope to identify the types of documents.

15:27

Sort, all documents is usually too broad unless you have a very specific scope.

15:34

So generally anything with an old documents, I'd be like no to that.

15:38

That could result in thousands of hits.

15:41

It's also really important to consider the likely location of documents or records in scope of the request.

15:47

So where might we actually need to search?

15:49

Who's going to have these documents?

15:50

Is it going to be in PACE?

15:53

Is it going to be in CRM?

15:54

Is it going to be in the CEOS office?

15:56

Like where will we actually need to look?

15:59

And if you don't know where you'd look, then that's going to an indication that it's too broad to do searches.

16:06

So best practise if unsure about whether enough information, you have enough information to undertake reasonable searches.

16:12

I suggest as a starting point you consult your decision maker, your assistant director or seek advice from the responsible business area.

16:21

Generally if you don't know what to do or you don't have enough information to decision, to make a decision, you need more information.

16:27

So you need to think strategically about, OK, got this request.

16:30

It's really broad.

16:31

I'm not sure what they want, not sure what they need.

16:33

How can I make a decision on this, IE get more information?

16:39

I'll give you an example and this is actually a live case, so I've sorry I didn't tell the case officer I was jumping on this one, but I've just included it so please excuse me.

16:50

The applicant has it's a non personal request and the applicant has referred to the more than 720

million investment in the NDIS capability, capacity and systems developed with the NDIA Board in consultation with the NDIS Review Co chairs, including ten initiatives.

17:05

And the person provided a media release with this for us to reference.

17:11

And the request itself was, can you please provide documents provided by the NDIA Board and NDIA regarding the 720 million investments and components thereof, documents provided by the NDIS Review Co chairs regarding this and documents provided by any other party regarding the investment and components thereof.

17:30

So what might you consider when assessing this scope?

17:33

And there's no date range.

17:40

No date range?

17:40

Yeah, there's no date range.

17:42

So, I mean, this announcement was made in April last year.

17:47

So we could infer a date range, but it would be pretty shaky and I don't know that it would be a great idea.

17:53

So I think date range is, is, is a good one for this one.

17:58

So yeah, jump in.

18:00

Oh, I was just going to say excessive amount of documents.

18:03

Possibly, yes.

18:05

We're not there yet though.

18:06

So it is very broad in what the person is seeking because it doesn't specify the documents, it doesn't define what documents they're after.

18:18

It could be anything.

18:19

It could be emails, correspondence, Skype messages or Teams messages, could be anything.

18:24

So I'd be trying to get the person to limit the scope to things like emails, plans, submissions, proposals, budget documents, like something that's we're able to search for.

18:37

And we would be able to identify where who would hold those documents within the agency and where we might search for them.

18:47

Any other anyone else?

18:50

Well, dot .3 is a little bit vague.

18:53

I mean, provided by any other party to who exactly?

18:58

You've nailed it there.

19:00

Provided to who?

19:02

Documents provided by the NDIA board and NDIA to who?

19:07

We don't know who it could be anyone.

19:09

So in this situation, the media release was issued by DSS and it also referenced cabinet.

19:16

So we could, if we wanted to infer that they meant DSS or Cabinet.

19:21

But in this situation, it would be a lot safer to check.

19:24

And in fact, that's what we are doing.

19:26

We're writing back to this person and checking is this specific or and searchable?

19:37

No, no.

19:40

It refers to 10 new key initiatives.

19:42

What are the initiatives?

19:45

It refers to the 720 million investment.

19:48

You know, that actually is actually 734 million and it's in the budget, but you know there's a lot of inferring required for this one at the moment.

19:59

So I think this is 1 where we would need to go back to the applicant and just confirm a few points.

20:04

Now there's two ways we can do it.

20:06

We can do it as far as part of a formal practical refusal notice, or in this situation we chose to do an informal consultation because the the issues can probably be sorted out fairly quickly by a phone call or an email.

20:23

Now the other thing is to who is likely to hold these documents.

20:28

Some of these documents would probably a new policy proposal, which is a document that would be prepared by DSS DSS.

20:36

So it is possible that we actually don't have any documents in relation to this matter.

20:41

So this is 1 where we'd need to seek advice from areas with knowledge of the subject.

20:46

Oh, sorry.

20:47

And given that they have referenced the NDIA board, you would probably reach out to Board Secretary or the CEOS office for information on this one.

20:58

OK, moving onwards, another thing with practical refusal reasons is that as per the FIO guidelines at 390, you should be able to explain the steps that were taken to search for the document, including the dates as to when the searches were conducted.

21:15

So this means when you're looking at scoping, you really always need to keep records of scope consultations and searches and explain any practical refusal concerns in your P in your practical refusal notice in a way that the applicant can understand.

21:29

And again, best practise is always to link back to the FOI guidelines, in this case at 3.89 regarding reasonable searches.

21:38

So you want to be providing evidence based decision records always, but also evidence based PRN so people can understand and refer to the source material.

21:52

OK.

21:52

So now we're going to move on to the sort of I think sometimes more complex practical refusal reason, which is substantial and unreasonable diversion of resources.

22:04

So this one is specifically about the work effort that's required to process a request and whether that work effort would substantially and unreasonably divert the resources of the department from its other operations.

22:18

Now, this PRN or PR should be undertaken by the action officer or decision maker.

22:25

It is based.

22:26

It must be based on an estimate of time required for search and retrieval, administrative tasks, consultation and decision making, and it may include advice from the responsible business area.

22:36

Again, it invites applicants to engage in a request consultation process and the applicant has 14 days to respond.

22:46

So things to consider when you're calculating work effort.

22:49

And this is covered by the FOI guidelines at 3116 to 3117.

22:56

So first of all, the time already spent or required for search and retrieval.

23:00

And you consider that in terms of hours and that might be an estimate provided by the business area or it might be the actual time that they did spend on search and retrieval.

23:09

You would consider the time required to create a schedule of documents, and generally that would be a minute per document.

23:16

You would consider the time required to convert documents into an editable format, for example, if you needed to convert emails to PDFs, and you would usually do that in minutes.

23:26

Number of documents in scope, the number of average pages per document, the time required to assess each page, again in minutes, the time required to consult on each page, internal or external, and in minutes, and the time required to write a decision letter.

23:45

Excuse me?

23:46

You'd also consider the resourcing of the agency and the business area to undertake the FOI task, and a big consideration would be about how many staff they had on hand to be able to assist.

23:58

For example, if a section only has one staff member, they're not going to be able to provide as much support as a section that has fifty staff members.

24:06

You'd also consider the volume of other FOI or or PIAs that we have on hand and our ability to complete them to statutory time frames and service standards.

24:18

You would consider the location of the documents.

24:20

Is it something that we can easily retrieve and process or is it something that we're going to have to lodge a request with a contractor and it's going to take three weeks to get the document classification of the documents.

24:32

So who can actually retrieve and assess them?

24:35

Are these documents that are held in SharePoint?

24:37

Are there documents that are in protected enclave or are there documents that are in TRIM?

24:43

So we need to know how sort of who can read them, but also who can get them for us.

24:49

And also we need to consider forms of access.

24:52

Now forms of access is covered by Section 21, I think or 20 or 21 of the FOI Act.

24:59

And that's where we need to consider the way that we provide in Note 20, the way that we provide information to people.

25:07

Now one of the options available is that someone can actually come on site to view a document.

25:11

So we would need to consider that in calculating our work effort as that person would obviously need to be escorted and supervised during that period of time.

25:22

So the guidelines at 3.121 recommend sampling of 10 to 15% of documents and potentially in scope of the request to substantiate a practical refusal reason.

25:33

And it's really important that you include the sampling in your practical refusal notice to explain your position.

25:40

Excuse me.

25:41

So I've done a little example here of what sampling might look like.

25:46

So I've got the documents in the left hand column, we've got the number of pages for each document in the middle column, and the time that it took a person to read and assess them summarised in the right hand column.

25:58

You can see that we've ended up with a total of 40 pages and there's an average of 8 pages per document and it took 2.4 minutes per page to assess.

26:07

Now we can use that information then to extrapolate an estimate of the work effort required to process the request.

26:16

So in this example, we've got 50 documents located and they're an average length of five pages.

26:23

We've included the other tasks that are required to process the request, for example, search and retrieval, scheduling, conversion to an editable format, assessment time, consultation time, and time to write the decision letter.

26:37

So in this case, we've done the estimate of time required for each of these things.

26:41

So with this one, we've done 50 documents at 5 pages per 3 minutes assessment time, and also 50 documents per 5 pages at 2 minutes for a consultation time because the person's reading over something we've already marked up, and two hours to route the decision letter.

26:59

So All in all, we end up with 1770 minutes divided by 60 minutes equals 29.5 hours processing time is our estimate for this one.

27:11

So question, is 29.5 hours a substantial and unreasonable diversion of resources?

27:20

What do we think?

27:22

Yes, it would depend.

27:27

Yes, Misty explain, keep going.

27:29

It would depend.

27:32

It would depend on the work unit, the resources.

27:38

It would depend on the 29.5 hours in that circumstance as to whether or not it would substantially and unreasonably divert the resources or the work.

27:56

It's on a case by case basis.

27:57

If you have a team of 100 people, for instance, then 29 1/2 hours is probably, no, not going to be a substantial and unreasonable interference.

28:12

But if you have a team of two, then it probably will.

28:17

Yeah.

28:18

And I think, yeah, sorry, I'm going to say that's actually a really good summary.

28:23

Yeah, that covers the main points.

28:25

So Part 2 is what information might you consider when making a decision?

28:32

I went to, sorry, I, I went to some training last year and they made the point that in considering whether or not it's a substantial and unreasonable diversion, you can also take into account the public interest in the material.

28:49

And if it's purely personal information that the AAT is unlikely is more likely to find that it's substantial and and unreasonable.

29:04

They sort of draw a distinction between substantial and unreasonable.

29:09

So it can be a substantial diversion of resources, but perhaps because there's huge public interest in it, it's not an unreasonable diversion.

29:19

So that's something you could take into account to the public interest in the material.

29:24

It's an interesting idea and one that I have stumbled across in sort of preparation for this training as well.

29:33

I've actually never seen anyone consider it in their practical refusal notice argument, but it's yeah, it's interesting that that sort of popped up in the last little bit, that that is also a relevant factor.

29:48

Yeah.

29:49

So I think we'll we'll sort of put a pin in that one for a minute, but we might come back to it later.

29:54

OK.

29:55

What I'd really like to talk about though is case law about substantial diversion of resources.

30:00

And there was a fairly recent case involving Mr Farrell, who many of you may know is a ABC journalist, and he put in a request for 750 Australian victims of terrorism overseas payments and a practical refusal notice was issued based on estimates that it would take 61.25 hours of processing.

30:23

So the tribunal agreed in the case law that the request met the substantial test.

30:27

They found that it would take a substantial diversion of resources but that the size of Services Australia's staffing footprint meant that it was not unreasonable to process it.

30:40

So the learning from this is that we need to provide specific evidence and explain what work will have to be sacrificed by the agency to undertake a request and this might be other FOI access requests or frontline services.

30:56

We also have other case law about unreasonable division of resources.

31:00

So in Tate and the Director of the Australian War Memorial 2015, slightly older case, an estimate of 150 hours to process a request of a 1003 pages was put in a practical refusal notice.

31:15

Now the AAT considered that the Australian War Memorial is a very small agency with one FOI staff member, so they accepted that assigning staff to assist would unreasonably divert resources from other operations or projects.

31:30

So again, the learning here is that whether a practical refusal reason exists will be a question of fact in the individual case and agencies should not adopt a ceiling in relation to processing times.

31:41

For example, 40 hours work effort, which is a number that you may hear sort of around the traps in different FOI agencies.

31:51

You can also use the AGS Charges calculator to calculate work effort, but I prefer myself to use just basically an Excel spreadsheet as I've presented earlier in the training, just with the documents, average pages, assessment time and just sort of do it that way.

32:07

I find a lot easier than the AGS Charges calculator in terms of our case volumes.

32:16

I've seen in my short time with FOI and NDIA that there are a number of requests that sort of 1000 pages plus.

32:24

And I'd really encourage you when looking at those to consider whether it is reasonable to process those requests and thinking about the number of cases that we have on hand, our competing priorities to OIAC reviews and complaints and things and just generally the other sort of priorities of the agency.

32:48

And, and to consider really is it reasonable to process those extremely large requests.

32:54

It may be a conversation that you can have with your decision maker or your manager.

33:00

It might be that that, you know is an opportunity to go back to the applicant and rescope the request.

33:07

It might be that the 1000 odd pages contains lots of duplicates which we could potentially get the applicant's agreement to exclude.

33:18

So I think I just want you to be aware of the range of options there are to refine scope.

33:25

PRN is certainly one of them.

33:27

But there's also informal mechanisms that can also result in substantial benefits to the agency by reducing the number of pages that we have to review.

33:37

So please sort of think strategically when you're getting these very, very large requests.

33:41

Just saying, is this workable?

33:44

What options do I have?

33:46

And if you need to reach out and consult, please do so.

33:51

So the other option available to us with practical refusal is that is actually grouping requests.

33:57

So the FOI guidelines at 3.121 state that in deciding whether a practical refusal reason exists, 2 or more requests may be treated as a single request if the agency or minister is satisfied that the requests relate to the same document or documents on the subject matter substantially the same for the requests.

34:18

This means that we can combine requests for a single from a single applicant or multiple applicants seeking access to the same documents for practical refusal purposes.

34:27

And examples might include say an applicant seeks pages 1 to 500 and then 501 to 900 of a report that was previously PRN or PR practically refused on the basis that it was too large to process.

34:42

So sometimes people try and split things up to try and get around a practical refusal.

34:47

In that case we just group them and still deal with them as a as a practical refusal.

34:51

Or if we get 30 applicants seeking access to the same 500 page document, and that can be an example of that might be when you have a particular media issue that's occurred and you get a flood of FOI access requests.

35:06

On the same topic I had one year or so ago when [s47F - personal privacy](#) and I think we got 30 or 40 FOI requests, all seeking pretty much the same documents within a very short window of time.

35:22

So we were able to group those requests and deal with them as one.

35:29

So essential information to include in a practical refusal notice.

35:33

A practical refusal notice must include the following information advice of your intention to refuse the request.

35:40

You must be quite open about what you're planning on doing.

35:43

You need to give the grounds for the practical refusal and that would be either that it is invalid or that is an unreasoned the substantial and unreasonable diversion of resources.

35:54

You must provide a statement explaining the practical refusal reason, including any calculations of work effort.

36:02

You need to invite the applicant to engage in a request consultation, which is the sole really.

36:06

The purpose of the practical refusal is to get them to engage with us.

36:11

You need to provide advice on what actions can be taken in response to the practical refusal notice.

36:16

So generally that would be that the person can refine the scope of their request, they can withdraw their request, or they can continue with the request in its current format.

36:26

You need to provide a date for the person to respond and that is 14 days.

36:31

And you must provide the information that failure to respond will result in either a deemed withdrawal.

36:36

In a deemed withdrawal, unless the request is outside of statutory timeframes, in which case you need to remove that text because we have to refuse the request.

36:47

Now, in turn, in order for the practical refusal notice to be valid, you must provide your first name and a position number.

36:55

You can't just put FOI officer, you have to have some way that it can be attributed to you as a delegate.

37:03

Now, a practical refusal notice could include a suggested scope as a way of assisting the applicant to make a valid request, but you need to make sure it's workable, and I'd always encourage you to seek assistant director approval of that first.

37:19

It's a very, very bad form to suggest something to an applicant and then turn around and say, Oh no, but we can't give that to you anyway, or that, well, that's too big to process anyway.

37:29

So please consider that.

37:30

It's also not entirely helpful to suggest a document to someone that you know is going to be exempt in full because that is a poor customer service outcome.

37:39

So we really need to try and make sure that we're thinking strategically, trying to where we can anticipate and meet the needs of our applicants.

37:51

So stopping the clock clock, one of the the benefits of practical refusals is that you do get to stop the processing clock for the duration of your consultations with the applicant.

38:04

So this is covered in the SOP, in the training manual SOP.

38:08

So it's pretty simple.

38:10

Basically when you issue the practical refusal notice, you stop the clock and then when the person responds, you start the clock.

38:18

Now if you need to go back to the person a couple of times each time you go back and forth, you need to stop and restart the clock.

38:24

So again, record keeping is going to be incredibly important here.

38:28

The new statutory time frame is calculated by the standard processing time frame, which is 30 days plus any time that the clock was stopped, and you just basically add it up and that gives you a new time frame.

38:41

So here we've got 30 days plus 13 days equals 43 days.

38:44

Very simple.

38:45

You do need, as I say, you do need records of that, especially if the person's writing back to you multiple times a day.

38:51

It can get a bit confusing.

38:57

Rebecca, sorry, I just have a quick question about that stop clocking for the process, does that, is that also applicable when the matter is deemed?

39:14

Good point, Misty.

39:15

Yeah, if a request is, if a request is already deemed refused, the horse is bolted and you can't, you don't actually have a clock to stop at that point, unfortunately.

39:23

So in that situation, no, you'd still want to keep records that the person who corresponded you to be on the topic.

39:29

But once it's deemed, you don't have a clock to stop.

39:34

Does that make sense to everyone?

39:37

Ideally, though, we should be doing our practical refusal notices during the statutory time frame.

39:43

These things are best done when you front and load them and get them done early.

39:48

You want to make sure that you get the additional time to process the request and that we're dealing with our applicants as early as possible.

39:58

OK, So I know that there's a few around at the moment where we're issuing practical refusal notices for requests that are, you know, a couple of months old.

40:07

It's really not helpful.

40:09

It's poor customer service and it doesn't actually help us to advance the request.

40:15

You really lose sort of a lot of goodwill with the applicant and a lot of options if you're doing practical refusal notices quite late in the process.

40:22

Sometimes it's not.

40:23

It's unavoidable.

40:24

But ideally we want to be doing these PRNs, we want to be doing the scoping certainly for

registration, for infallibility concerns, but the practical refusal notice on unreasonable diversion of resources, you want to be issuing that as soon as you know that the work effort is going to be too great.

40:45

So please consider I guess the timing of requests and try and front and load the work where you can.

40:56

So request consultation must be a genuine attempt to resolve the practical refusal reason concerns.

41:04

So request consultation should occur as soon as possible, preferably within the statutory timeframes.

41:10

It must consider the applicant, the applicant's communication preferences and cultural needs and it should always try to assist the applicant to make a valid request as per Section 15 three and encourage the applicant to engage with the agency.

41:27

There's 4 outcomes to potential outcomes to a practical refusal notice.

41:32

So the first outcome, as I mentioned before, is that the applicant submits a revised scope and that's really what we want.

41:39

At that point, the registrational case officer must rescope the request and advise the applicant if the practical refusal reason is resolved.

41:48

If it is resolved, great, continue processing it, hopefully within statutory timeframes.

41:53

If it's not resolved, you need to double check your assessment and then move to a practical refusal decision.

42:01

Now a practical refusal decision is pretty straightforward.

42:05

Basically I've got a sample that I'm happy to share with you, but basically you just state for the reasons outlined in the practical refusal notice, I find that this part of the ACT applies.

42:15

I therefore refuse your decision.

42:18

It's really straightforward.

42:19

It's a very, it's like a one or two pager decision letter.

42:22

Obviously, we need to provide review rights and we need to refer to Section 23 and all those sorts of normal things that we do.

42:29

But basically we're relying substantially on the practical refusal notice as the explanation of why we're making the decision.

42:39

The second PRN outcome is that the applicant maintains the current scope of the request.

42:45

Now in that case, again, I would check your assessment, just really make sure you're on solid ground.

42:51

But then I'd move to issue the practical refusal decision.

42:56

You've done your due diligence by going back to them once.

42:59

You do not need to go back to them again.

43:02

The third option is that the applicant withdraws the request.

43:05

Great, finalise it as client withdrawn.

43:07

And this might be a situation where the person has been able to obtain the information in some other format or just doesn't need it anymore.

43:15

And the fourth option is that the applicant does not respond.

43:19

Now if the, if the request is within statutory time frames, you can actually finalise it as a deemed withdrawing request, just close it down, move on.

43:30

If the request is outside the statutory time frame, so it is impacted by 15 AC which means we no longer have the ability to make a decision on it.

43:39

So you must issue a practical, a formal practical refusal decision.

43:46

And that's in line with the FOI guidelines, which require us to make a decision on deemed refuse requests.

43:54

Any questions about those 4 outcomes?

43:59

I've got a quick question.

44:00

Yeah, jump in, Megan.

44:02

So if the applicant doesn't respond, do we still need to issue the formal PR refusal letter regardless?

44:10

Yeah.

44:11

If they.

44:11

Oh, no, if they don't respond, you just close it down.

44:14

It's actually very simple.

44:16

Yeah, perfect.

44:17

The only time when you would issue the formal decision letter is if it was, it was it was deemed, it was deemed like 15.

44:28

I say deemed overdue like was overdue.

44:31

You'd have to do it then.

44:35

I'm sorry, I haven't probably haven't made that very clear.

44:38

If it's outside of statutory timeframes, you have to issue a decision.

44:44

Peter.

44:47

Thanks, Beck.

44:48

Can I just, I might be jumping to something you might address after this, but I just wanted to make the observation that requests can't be part refused under practical refusal.

44:59

It's a, it's sort of a sensible thinking that you might take part of an applicant's request and say this part is too large, unreasonable and we can't process it.

45:09

But if we can't get an agreement through the consultation process to manage the request in that way, by the the letter of the law, we should be refusing the request in full unless we're happy to provide documents administratively.

45:26

So there's case law on that, that the IC review decision decided that they weren't going to consider the claims of exemptions made on documents where an agency had issued a practical refusal notice purporting to apply to part of the request.

45:44

They viewed that the refusal had the effect of refusing the entire request and then the documents that were released were subsequently released administratively.

45:54

And so there's no review right for that information.

45:57

I think the unfortunate consequence then would be that the person needs to FOI those documents that they've received in part and then they have review rights for those exemption clauses.

46:09

So just to draw attention to that sort of nuance that we want to be as helpful as possible, but we need to be clear through the consultation process of what limitations exist because of the act and what we can achieve.

46:26

That's a really good point.

46:27

Thank you for that contribution, Peter.

46:29

I think I saw a couple of other hands up.

46:32

Did anyone else have a question?

46:38

Maggie, can you hear me?

46:43

Yes, I can.

46:43

So just doing the register.

46:47

I have a question about that is if I thinking about the sequence right, once we receive the email and it's very common to see.

46:57

I want all information right?

46:59

Yes.

47:00

Now we're talking about is in this sense is as a register officer will check with, if I can work it out in this before I register, I should be able to talk to the DM how long this is going to take or is that clear enough?

47:18

No, does that sound right?

47:20

No, it doesn't.

47:21

So just to explain.

47:22

So the registration officers will really be dealing with the validity part of this.

47:28

So is the request specific enough to enable us to do reasonable searches?

47:34

So that's what the registration officers will really be focusing on in that situation.

47:39

You need to look at the scope of the request.

47:42

You need to look for those terms like is it asking for all documents?

47:45

Does it have a date range?

47:47

You know, is it sort of the slides we had before about that we can revisit later?

47:54

That would be the registration officer in terms of the size and the work effort required to process the request.

48:00

That portion of the work would be done by decision makers and action officers.

48:07

So there's, as I said, there's two types of PRNs, one's about validity, great, that's done by registration staff.

48:13

The one about unreasonable diversion of resources, that will be done by decision makers and action officers.

48:19

Thank you.

48:20

Thanks.

48:22

All right, moving on, we're almost done in terms of did you know that the agency is actually required to report data about its practical refusal outcomes to the Office of the Australian Information Commissioner each quarter and financial year.

48:38

Specifically we have to report how many PRNs were issued by both personal and non personal caseloads and how many practical refusal requests were subsequently subsequently processed by each of those two categories as well.

48:52

And that data is actually reported in our OAICs annual reports and gets quite a bit of attention actually.

48:59

It is essential that you accurately record all practical refusal processing actions in SharePoint and please also record the number of FOI pages that you release in LEX for every request as that information informs our agency capacity to deal with practical refusal requests.

49:18

So if we're able to demonstrate that our average assessments pages is X amount, we can make an argument that we don't have enough resources or we don't have capacity to process requests that are sort of, you know, 2000 pages.

49:35

So we really need that data.

49:36

So please, as a habit, start recording the FOI pages that you release in the Lex.

49:43

OK, Now do we have any questions?

49:48

I have a couple of questions.

49:50

Rebecca, it's Helen.

49:52

I'll put my camera on so you can see me.

49:55

Thank you.

49:57

So with Section 6C, the third party contractors, yes, I was recently considering that in relation to requests for documents arising out of AAT litigation where we had instructed third party solicitors to act for us to represent us.

50:20

Yep.

50:20

And I thought I made a decision that that wouldn't be covered by Section 6C because we're not in instructing solicitors to represent us, we're not actually engaging with a third party contractor to deliver services at the agency.

50:38

Would that be your thinking as well?

50:42

Oh, it's super interesting.

50:44

And I would be seeking advice from legal section about that, about the type of arrangement that is in place with those legal firms.

50:53

I would suspect that they would have a contract with the agency, OK to represent us, but you would they that would be 1 where I would go to the responsible business area for advice.

51:04

OK, thank you.

51:06

And the second question I had about keeping records of how many minutes it took you to read a document or read the pages, can that be impacted by the complexity of the subject matter?

51:21

100% yes.

51:23

OK, thank you.

51:26

I mean, generally if it's a sort of fairly standard request, I would generally use an an average of 3 minutes per page.

51:36

But in my previous roles, I'm sorry.

51:41

s47F - personal privacy

51:59

So in those situations, we quite often had requests for really complex documents which needed to be reviewed by FOI case officer, but also an SES band 1 and potentially also by someone else.

52:14

So in those situations instead of 3 minutes per page, you might actually end up having 10 minutes per page when you consider the the sets of eyes who have looked at that document.

52:25

So yes, again, you will need to adjust to that figure based on the complexity.

52:31

There's two ways you can do it.

52:32

You can do a sort of an average of how long you think each person might take.

52:37

So 3 minutes plus 2 + 2 might be 7 minutes per page.

52:41

Or you can actually do an assessment of physical, you can time yourself as to physically how long it takes you to do it and then make adjustments for the other people who might not also need to look at that that document.

52:54

So yes.

52:54

And also things like cabinet documents, for example, would have a much higher threshold than someone seeking access to their own information.

53:06

Yeah, I was recently looking at what it was the, the, it was very technical subject matter and I actually had to Google terms to make sense of the document.

53:18

Yeah.

53:18

But also make sure to factor in the time of the business areas because obviously if there are technical terms, we are not subject matter experts in everything that the agency undertakes.

53:29

So where we have to consult with those business areas to get their advice, definitely include that in your assessment time.

53:36

Thank you.

53:39

Did anyone else have any questions?

53:44

All right, we will just move on.

53:46

I do have a little quiz to finish off.

53:50

So first of all, how many types of practical refusal exist?

53:58

Anyone jump in?

54:02

Thank you.

54:03

There's two I was hoping everyone would get that.

54:05

Two types, one on validity and one on substantial and unreasonable diversion of resources.

54:11

True or false?

54:12

The applicant has 30 days to respond to a practical refusal notice.

54:17

False.

54:17

False.

54:18

Yeah, it is 14 days.

54:21

The the Act does contain other provisions for 30 days, so charge notices are 30 days.

54:30

EOTS extensions of time, especially 15-A

54:35

EOTS, are 30 days.

54:36

There's a few other things that are 30 days, but this one is specifically 14.

54:42

True or false?

54:43

The threshold of unreasonable work effort for a practical refusal is 40 hours.

54:49

False.

54:50

That is false.

54:51

It must be a case by case assessment.

54:55

True or false sampling must be done for all Section 24AA1B practical refusals.

55:02

No False False because 24AA1B relates to validity and you cannot sample validity .five.

55:13

Can you issue a practical refusal notice once a request is overdue?

55:20

Yes, you can.

55:23

Yes, you can, but you cannot deem the request withdrawn if the applicant does not respond.

55:29

Sure.

55:31

Yeah.

55:33

Six

55:34

An applicant doesn't respond to a PRN.

55:37

Can you deem withdraw on their request?

55:39

Yes.

55:40

It depends if it's if it's not overdue.

55:45

Yeah, that's right.

55:46

OK.

55:47

And trick question, how many practical refusal notices did NDIA issue last financial year?

55:55

Not many.

55:59

Anyone have a guess?

56:02

200 and 54254.

56:05

That's very optimistic, Misty.

56:08

Anyone else?

56:10

Was 52, so pretty close.

56:14

So you issued 52 practical refusal notices and you subsequently processed 28 as a whole?

56:21

The Australian government FOI agencies issued 2881 practical refusal notices last year and subsequently processed 895 requests.

56:33

Now, the fact that they issued around 2000 PRNS and then didn't process them really indicates to me that they're using practical refusal notices to sort of resolve quite a few scoping issues at first point of contact.

56:53

So I would really consider this as a very, very viable way for engaging with applicants and resolving concerns.

57:01

OK.

57:02

Also, getting rid of scopes that are just not workable.

57:07

That is the end of the training session.

57:09

I'm very happy to discuss PRN issues with anyone who has any further questions or has particular cases that they're not sure about and they just sort of need a little bit of assistance with.

57:24

And yeah, just generally happy to support in any way that I can during my time here.

57:31

Peter, did you have any final statements or comments that you would like to make?

57:40

An email on the spot.

57:41

Yeah sorry, just struggling to find my mouse.