

2 April 2015

Russell Hancock
Sent via email: foi+request-1034-5b5c505c@righttoknow.org.au

Our Ref: 1415/46.02

Dear Russell,

FOI Application – Documents relating to Elizabeth SA 5112

I am writing in relation to your request made under the *Freedom of Information Act, 1982* (**the FOI Act**).

Application Terms

On 31 March 2015, you made an FOI request to NBN Co Ltd (**NBN Co**) in the following terms:

I wish to obtain a time frame that the NBN will be operational for residents of Elizabeth SA 5112, Or at that failure, any information regarding roll out in Elizabeth SA 5112 and surrounding areas.

NBN Co's Commercial Activities

NBN Co is not subject to the FOI Act in relation to the company's commercial activities. In that regard, I refer you to [section 7\(3A\)](#) and [Part II of Schedule 2](#) of the FOI Act, which outlines the scope of NBN Co's commercial activities exemption (**the CAE**). For your reference, the Office of the Australian Information Commissioner (**the OAIC**) completed a review decision in January 2012 (**the Internode Decision**), which provides background and guidance as to the application of the CAE to NBN Co. The Internode Decision may be found by clicking on the following [link](#). The OAIC completed an additional review at the end of July 2013 – [the Battersby Decision](#), which further clarified the scope of NBN Co's CAE. While I am not making a formal decision nor have I begun a review of relevant documents, there is a possibility that documents falling within the terms of this FOI request may be subject to the CAE and other exemptions from release under the FOI Act.

Request Consultation Process

As an FOI decision maker, it is open to me to consider whether the documents requested may fall within the terms of section 7(3A) and Part II of Schedule 2 of the FOI Act, among other exemptions. In that regard, NBN Co recently issued an FOI access decision concerning a similar request (Our reference – FOI1415/01.13) which you can view at the following [link](#). As part of that decision, my colleague found that documents sought, and the estimates contained therein, fell within NBN Co's CAE. In summary, the access decision found that the documents' potential release could have adversely affected NBN Co's business partners - retail service providers of internet and telephone services – and, ultimately, the take-up of NBN Co's products. While I am not making a formal decision with respect to your request, there is a strong possibility that the reasons given by the decision maker in the previous FOI decision would apply equally to any documents falling with the scope of this request.

In addition, NBN Co invests significant time and resources in providing information about the NBN Co rollout, including information about when services are available in a particular area. You can view that information at <http://www.nbnco.com.au/connect-home-or-business/check-your-address.html>. Moreover, it is likely that the information you have sought will be proactively published on our website at a later date when NBN Co is able to release this information with greater certainty.

In light of these reasons, I am of the opinion that it would be an unreasonable diversion of NBN Co's resources to commence the processing of this FOI application in its current form. In that regard, I am relying upon [sections 24](#) and [24AA of the FOI Act](#).

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Section 24 of the FOI Act requires NBN Co to undertake a request consultation process before issuing a notice to refuse access. Before issuing a refusal notice, [section 24AB of the FOI Act](#) requires Government authorities to provide applicants with written notice stating their intention to refuse access and to initiate a request consultation process. In that context, I request that you review the scope of your FOI request and notify me by **16 April 2015** as to whether you wish to:

- withdraw the request; or
- make a revised request; or
- not revise the request.

If you have not notified me by the above-mentioned date, NBN Co will consider that this application has been withdrawn as per section 24AB(6) of the FOI Act. In addition, I would invite you to telephone me on the number below to discuss the terms of this FOI application.

Acknowledgment, FOI Processing Fees & Disclosure Log Information

As outlined above, NBN Co received your request on 31 March 2015 and the period for processing your request commenced from the day after that date. For your reference, the statutory period for processing an FOI request is 30 days. In accordance with section 24AB(8) of the FOI Act, the time taken to consult with you regarding the scope of a request is not taken into account when calculating the 30-day statutory time limit for processing FOI applications. For reference, **2 days** have passed in calculating the processing period for this FOI application.

Please also note that processing charges may be imposed in relation to your FOI application. In that regard, I would refer you to NBN Co's FOI processing charges policy, which is outlined at the following hyperlink: [Submission to the OAIC Charges Review](#). In particular, NBN Co supports – and will generally apply – Recommendation 24 in the [Hawke Review into FOI Legislation](#), (**the Hawke Review**), which suggests a 40-hour ceiling for all FOI processing charges.

In accordance with the FOI Act, NBN Co is required to publish documents provided to FOI applicants within 10 working days after release. The information you seek may be published in full (as released to you) or with some additional redactions as per section 11C of the FOI Act. For further information, visit our [Disclosure Log](#) on NBN Co's website.

If you have any questions or need to discuss your FOI application, please feel free to contact the writer on Tel. (02) 8918 5655 or via email on anvo1@nbnco.com.au.

Sincerely,

An Vo

Associate Legal Counsel
FOI, Privacy & Knowledge Management