

12 June 2013

Mr Daniel Myles
Sent via email: foi+request-111-1600658b@righttoknow.org.au

Our Ref: FOI1213/27.14

Dear Mr Myles,

FOI Application

I am writing in relation to your request made under the *Freedom of Information Act 1982* (**the FOI Act**). In particular, you were seeking access to:

The Monthly Ready For Service Rollout Plans (either in PDF or in another suitable format) for the months preceding April 2013.

I acknowledge that there was not one published for March 2013 however prior to the April 2013 being published on NBN Co's website, the previous months (Feb 2013, Jan 2013, Dec 2012 and Nov 2012 PDF's) were all available as separate documents to view. On the day the April 2013 document was published the others ceased to be made publicly available.

Ideally I would like the monthly plans for as far back as possible.

The Statement of Reasons (**attached**) outlines the specific terms of this FOI request, the decision-maker's findings and the access decision. For your reference, this decision is subject to review under sections 53A and 54 of the FOI Act. The Office of the Australian Information Commissioner's *FOI Fact Sheet 12 (Your Review Rights)* is attached for your information and may be found at the following [link](#).

If you have any questions, need to discuss your FOI application or require any other information relating to this matter, please feel free to contact the writer on Tel. (02) 8918 8596 or at davidmesman@nbnco.com.au.

Sincerely,



David Mesman
FOI Officer

FREEDOM OF INFORMATION REQUEST – 1213/27

Daniel Myles – Right-To-Know

ACCESS DECISION STATEMENT OF REASONS

Background

1. NBN Co Limited (**NBN Co**) is a government business entity (**GBE**), which has the mandate of realising the Australian Government's vision for the development of a national broadband network that is truly national in character.
2. NBN Co recognises that information is a vital and an invaluable resource, both for the company and for the broader Australian community. That is why NBN Co fosters and promotes a pro-disclosure culture, with the goal of creating an organisation that is open, transparent and accountable. In that light, members of the public will be able to find a large amount of information freely available on our [website](#).
3. In addition, NBN Co manages its information assets within the terms and spirit of the *Freedom of Information Act 1982 (the FOI Act or the Act)*. We also endeavour to release information proactively, while taking into account our commercial and other legal obligations.
4. Subject to relevant exemptions, the FOI Act gives the Australian community the right to access documents held by Commonwealth Government agencies, as well as "prescribed authorities", such as NBN Co.
5. Under subsection 23(1) of the FOI Act, NBN Co's Chief Executive Officer has authorised me, David Mesman, to make decisions about access to documents under the FOI Act.
6. Under section 26 of the FOI Act, I am required to provide a Statement of Reasons for my decisions in relation to FOI access applications. I am also required to set out my findings on any material questions of fact, referring to the material upon which those findings were based.

Application Chronology and Terms of Request

7. On 13 May 2013, NBN Co received an FOI request from Daniel Myles from the Right-To-Know website (**the Applicant**), which sought the following:

The Monthly Ready For Service Rollout Plans (either in PDF or in another suitable format) for the months preceding April 2013.

I acknowledge that there was not one published for March 2013 however prior to the April 2013 being published on NBN Co's website, the previous months (Feb 2013, Jan 2013, Dec 2012 and Nov 2012 PDF's) were all available as separate documents to view. On the day the April 2013 document was published the others ceased to be made publicly available.

Ideally I would like the monthly plans for as far back as possible.

8. On 21 May 2013, NBN Co acknowledged receipt of the Applicant's FOI request, as required by section 15(5) of the FOI Act.

9. On 12 June 2013, I made my access decision, as outlined below. In total, I spent 3.5 hours in reviewing documents as well as drafting and finalising this decision. For reference, no fees are levied for the first 5 hours of decision-making time. In addition, other NBN Co staff spent approximately 4.5 hours in searching for documents, providing advice and undertaking administrative tasks related to this FOI request.
10. As per Regulation 3 of the *Freedom of Information (Charges) Regulations 1982* (**the Charges Regulation**), a decision-maker has the discretion to impose or not impose a charge, or impose a reduced charge for the processing of an FOI request. Drawing from the Charges Regulation and the objects of the FOI Act, I have determined to exercise my discretion to waive the fees associated with this FOI application.

Findings of Material Fact

11. Following receipt of the Applicant's request, NBN Co staff undertook searches through the company's hard copy, electronic and other files, so as to locate the relevant information.
12. NBN Co staff members within the Business Operations group located Documents 1-18 (the **Monthly RFS Rollout Plans**), as falling within the scope of this FOI request. At the end of this Statement of Reasons, the "Schedule of Documents" provides a list of the documents within the scope of this request, along with identifying details, where appropriate. It is important to note that NBN Co did not create the Monthly RFS Rollout Plans document for the month of March 2013 due to a change in NBN Co's reporting processes.

Access Decision

13. As outlined above, NBN Co is a "prescribed authority" and is subject to the FOI Act. However, Part II of Schedule 2 of the FOI Act exempts NBN Co from the operation of the Act in respect of documents relating to its commercial activities. Section 7(3A) of the FOI Act defines "commercial activities" as:
 - (a) *activities carried on by NBN Co on a commercial basis; or*
 - (b) *activities, carried on by NBN Co, that may reasonably be expected in the foreseeable future to be carried on by NBN Co on a commercial basis.*
14. As an FOI decision maker, it is open to me to consider whether the Monthly RFS Rollout Plans fall within the terms of section 7(3A) of the FOI Act and whether these documents would, potentially, not be subject to the operation of the Act. In addition, it would also be open to me to consider other exemptions. However, in making my FOI decision, I endeavoured to be guided by both the spirit and terms of the FOI Act. In particular, I made reference to the objects of the Act, which provide for agencies to exercise their functions and powers, as far as possible, to facilitate and promote public access to information. As such, I have determined to grant access to the relevant documents under sections 11 and 11A of the FOI Act.
15. As outlined above, NBN Co did not create a March 2013 version of the Monthly RFS Rollout Plans. Under section 24A (1) of the FOI Act, an agency is required to take all reasonable steps to find a document. As per section 24(b)(ii), I am satisfied that no such document exists.
16. If you are dissatisfied with this decision, you have certain rights of review. Details regarding your rights of review and appeal are outlined in the covering letter, provided with this Statement of Reasons.

Schedule of Documents – NBN Co FOI Request FOI1213/27

Doc No.	Description of document	Decision
1.	October 2011 Monthly RFS Rollout Plan	Released in full
2.	November 2011 Monthly RFS Rollout Plan	Released in full
3.	December 2011 Monthly RFS Rollout Plan	Released in full
4.	January 2012 Monthly RFS Rollout Plan	Released in full
5.	February 2012 Monthly RFS Rollout Plan	Released in full
6.	March 2012 Monthly RFS Rollout Plan	Released in full
7.	April 2012 Monthly RFS Rollout Plan	Released in full
8.	May 2012 Monthly RFS Rollout Plan	Released in full
9.	June 2012 Monthly RFS Rollout Plan	Released in full
10.	July 2012 Monthly RFS Rollout Plan	Released in full
11.	August 2012 Monthly RFS Rollout Plan	Released in full
12.	September 2012 Monthly RFS Rollout Plan	Released in full
13.	October 2012 Monthly RFS Rollout Plan	Released in full
14.	November 2012 Monthly RFS Rollout Plan	Released in full
15.	December 2012 Monthly RFS Rollout Plan	Released in full
16.	January 2013 Monthly RFS Rollout Plan	Released in full
17.	February 2013 Monthly RFS Rollout Plan	Released in full
18.	April 2013 Monthly RFS Rollout Plan	Released in full