



5 January 2016

Mr Cameron Watt

Sent via email: foi+request-1193-ff3ed9e4@righttoknow.org.au

Our Ref: 1516/14.16

Dear Mr Watt,

FOI Application – UNI-DSL Specification

I am writing in relation to your request made under the *Freedom of Information Act, 1982* (**the FOI Act**), seeking access to certain information concerning **nbn** UNI VDSL2 equipment specifications.

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, the FOI 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 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 via davidmesman@nbnco.com.au.

Yours faithfully,

David Mesman

General Counsel

FOI, Privacy & Knowledge Management



FREEDOM OF INFORMATION REQUEST –1516/14

Mr Cameron Watt

ACCESS DECISION – STATEMENT OF REASONS

Application Chronology and Terms of Request

1. On 31 August 2015, **nbn** received a request from Mr Cameron Watt (the **Applicant**) under the *Freedom of Information Act, 1982* (the **FOI Act**), seeking access to certain information concerning **nbn** UNI VDSL2 equipment specifications.
2. On 4 September 2015, the **nbn** FOI team wrote to the Applicant requesting that he clarify his request.
3. On 24 September 2015, the Applicant sought to clarify and restate his request in the following terms:

*"I am writing to provide clarification to my original application as requested and in light of the recent updates and/or changes to the WBA2 documents referenced. For simplicity's sake, I refer you to the "WBA Product Catalogue - Product Technical Specification – **nbn** Ethernet Bitstream Service - FTTB/FTTN" document that is available from the following webpage at the time of writing. I would like to amend my request for copies of or answers to the following:*

1a) The number of current "VDSL2 Equipment" registrations as it relates to section "7.1 VDSL2 Registration";

1b) The list of registered "VDSL2 Equipment" and their registration information, including VDSL2 Equipment Vendor ID, System ID, Version Number and clear-text name as it relates to section "7.1 VDSL2 Registration";

2) The current "UNI-DSL specification" maintained by nbn and referred to in section "7.2 UNI Specification".

4. On 2 October 2015, the **nbn** FOI team wrote to the Applicant further requesting that he further clarify this request as part of it remained unclear.
5. On 2 October 2015, the Applicant sought to further clarify this request as follows:

"I have reviewed the document you linked regarding the "specification of the UNI-DSL interface" as mentioned in Section 7.2 on page 43 of linked document. The document unambiguously states that the "specification" consists of three parts which are listed in Section 7.2 as:

** a DSLAM chipset and firmware list;*

** a list of mandatory DSL and OAM Features that the VDSL2 Equipment must support; and*

** a minimum rate-reach performance specification that the VDSL2 Equipment must achieve.*

*The document does not list DSLAM chipset or firmware, as such I do not see how it could be considered the complete "specification" in its entirety. For further clarification, I am seeking the complete definitive specification as would be needed should I want to make available "VDSL2 Equipment" subject to registration for use with **nbn** UNI-DSL services. I trust part 1(a) and 1(b) required no further clarification and will be considered in addition to the above."*



6. On 16 October 2015, **nbn** acknowledged receipt of the Applicant's request as required by section 15(5) of the FOI Act.
7. Following receipt of the Applicant's email of 2 October 2015, the **nbn** FOI team undertook discussions with relevant **nbn** business units and sought to identify and locate any documents or information within the scope of the Applicant's request. In addition, the **nbn** FOI team sought to obtain a general understanding of any commercial sensitivities associated with the potential release of information within the scope of this FOI application. The FOI team also considered any potential decision-making time, required third party consultations and other relevant issues and potential grounds for exemption under the FOI Act.
8. On 16 October 2015, the **nbn** FOI team emailed the Applicant a processing fee deposit request in the sum of \$92.50. As part of that correspondence, **nbn** extended the FOI processing period, so as to comply with the consultation requirements of sections [27](#) and [27A of the FOI Act](#).
9. On 9 November 2015, the Applicant emailed the **nbn** FOI team and requested that the FOI processing fees be reduced or waived in relation to his request. In support of his request, the Applicant raised various public interest factors.
10. On 3 December 2015, I made my processing charge decision and provided that decision to the Applicant. In that decision, I made a finding that a reduction in the FOI processing fee was not warranted.
11. On 8 December 2015, **nbn** received the \$92.50 fee deposit from the Applicant.
12. On 5 January 2016, I completed my FOI decision and subsequently forwarded it to the Applicant. As part of my decision, I determined to waive the remaining fees in connection with this FOI request (\$277.50), for the reasons set out under the heading, "FOI Charges & Publication of Documents".

Access Decision

13. As set out above, the Applicant has requested three different types of documents or information, which I have considered separately:
 - 1a) The number of current "VDSL2 Equipment" registrations as it relates to section "7.1 VDSL2 Registration" (**Part 1a**);
 - 1b) The list of registered "VDSL2 Equipment" and their registration information, including VDSL2 Equipment Vendor ID, System ID, Version Number and clear-text name as it relates to section "7.1 VDSL2 Registration" (**Part 1b**);
 - 2) The current "UNI-DSL specification" maintained by **nbn** and referred to in section "7.2 UNI Specification" (**Part 2**).

Part 1a – Full Disclosure

14. Following receipt of the Applicant's request, **nbn** staff undertook searches through the company's electronic and other files, so as to locate any relevant documents or information within the scope of the Applicant's request.
15. Under section 3(1)(b) of the FOI Act, the public has a right to seek access to "documents", rather than to discrete bits of information. Notwithstanding this point, section 17 of the FOI Act enables Government authorities to provide applicants with information, where such information is not available in a discrete written form and where it is *"ordinarily available to the agency for retrieving or collating stored information"*. In that regard, I received advice from **nbn** staff that it would be possible to create a document containing the information within the scope of Part 1a.



16. Following discussions with relevant business units within **nbn**, I was satisfied that there were no commercial sensitivities related to the potential release of Part 1a. In that context, I have determined to grant access in full to Part 1a under sections 11 and 11A of the FOI Act. I have included Part 1a in Attachment A to this FOI decision.

Part 1b – Document containing material obtained in confidence

17. In processing this FOI request, I received advice from **nbn** staff that it would be possible to create a document containing information within the scope of Part 1b (**Document 1**).
18. As an FOI decision-maker, it is open to me to consider whether Document 1 falls within the terms of section 7(3A) of the FOI Act – **nbn's** commercial activities exemption or whether Document 1 is otherwise exempt for the purposes of the FOI Act.
19. Relevantly, section 45 of the FOI Act exempts documents from release if they contain material obtained in confidence and their disclosure would found an action for breach of confidence. The relevant section of the FOI Act provides:

Material Obtained in Confidence

45(1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.

20. It is my understanding that to found an action for breach of confidence, the following criteria must be satisfied:
- a. *The confidential information must be specifically identified* – Document 1 contains information provided to **nbn** for the purposes of the VDSL2 equipment registration process contemplated under paragraph 7.1 of the PTS and governed by the Wholesale Broadband Agreement Head Terms (**WBA Head Terms**). For reference, the WBA Head Terms are publicly available and can be found [here](#).
 - b. *The information must have the quality of confidentiality, meaning that it must be secret or only known to a limited group of people* – **nbn** does not disclose the contents of Document 1 externally and limits internal **nbn** access to that information on a need-to-know basis.
 - c. *There must be a mutual understanding of confidence, meaning that **nbn** must have understood and accepted an obligation of confidence* – **nbn** is bound by strict obligations of confidentiality concerning the information contained within Document 1, per Module D of the WBA Head Terms. In addition, I also draw your attention to Module E of the WBA Head Terms which establishes an indemnity regime, to which **nbn** is subject.
 - d. *There must be an unauthorised disclosure or the threat of unauthorised disclosure* – If this FOI application were successful, Document 1 would be released both to the Applicant and to the world-at-large through **nbn's** FOI Disclosure Log. This is required under section 11C of the FOI Act. This potential disclosure would most likely be contrary to the above-mentioned confidentiality regime.
 - e. *The unauthorised disclosure has or will cause detriment to the person who provided the confidential Information* – The disclosure of the contents contained in Document 1 is regulated by the confidentiality regime, which – if breached – would give rise to a cause of action. This would most likely cause detriment. In addition, I make the following points:
 - i. Document 1 contains the business know-how, technology choices and intellectual property of **nbn** customers (the **Registrants**), provided to **nbn** for the purposes of the VDSL2 equipment registration process. This information was and is provided to **nbn** on the understanding that it would remain confidential, per the WBA Head Terms. If Document 1



were released, the information could be used by others in the marketplace to gain a competitive advantage over the Registrants. In particular, an informed reader might be able to determine who the Registrant is and what their future business plans might be depending on the type of equipment registered. This understanding could potentially be used by others in the marketplace to register similar equipment to beat the Registrant to market.

- ii. The release of Document 1 could also have a significant and detrimental effect on **nbn's** future business activities. In particular, commercial entities and other potential business partners could limit the scope of confidential information provided to **nbn** if it became known that **nbn** may disclose confidential information in response to an FOI request. Alternatively, businesses and other parties may decide only to share such information with our company at an increased cost to **nbn**.
- iii. It would then follow that **nbn's** ability to engage high quality and competitive business partners would be undermined. As a consequence, **nbn's** ability to rollout the **nbn™** network at the lowest reasonable cost could be compromised, along with its capacity to generate shareholder value. In the extreme, it could mean that **nbn** may be unable to proceed with its mandate to roll out the national broadband network, which could have a negative impact on the Australian public and on taxpayers' return on investment.

21. For these reasons, the potential release of Document 1 may found an action for breach of confidence. Therefore, it is my opinion that Document 1 is exempt from release under section 45 of the FOI Act and access is denied. It is also my opinion that the information contained within Document 1 would be subject to **nbn's** commercial activities exemption (**CAE**). For reference, Part II of Schedule 2 of the FOI Act exempts **nbn** from the operation of the FOI Act in respect of documents relating to its commercial activities. General background information regarding **nbn's** CAE and the principles underpinning **nbn's** CAE may be found at the following [link](#).

22. Other potential exemptions could apply to Document 1 either in whole or in part. In my opinion, it is unnecessary to consider these exemptions as Document 1 was already exempt under the FOI Act as per section 45 of the Act. In particular, it is likely that the following exemptions would also apply to the disclosure of Document 1 for similar reasons to those set out at paragraph 22:

- a. *Commercially Valuable Information (General Exemption)* – Section 47 of the FOI Act exempts documents from release if the release of those documents would disclose trade secrets or commercially valuable information;
- b. *Business Affairs (Conditional Exemption)* – Relevantly, section 47G of the FOI Act conditionally exempts a document from disclosure if:
 - i. its release under the FOI Act would disclose business information concerning the business, commercial or financial affairs of an organisation; and
 - ii. that disclosure would, or could reasonably be expected to unreasonably affect that organisation in respect of its lawful business, commercial or financial affairs.

Part 2 – Document relating to nbn's Commercial Activities

23. As part of my discussions with the relevant **nbn** business units, I was informed that the current "UNI-DSL specification" maintained by **nbn** and referred to in section "7.2 UNI Specification" is publicly accessible, except for the DSLAM chipset and firmware list. As set out above, on 2 October 2015, the Applicant specifically requested access to the DSLAM chipset and firmware list. In that regard, I received advice from **nbn** staff that it would be possible to create a document containing the DSLAM chipset and firmware list, per the Applicant's request (**Document 2**).



24. As set out above, as an FOI decision-maker, it is open to me to consider whether Document 2 falls within the terms of section 7(3A) of the FOI Act – **nbn's** CAE and is, therefore, not subject to the operation of the FOI Act. Again, I refer you to a summary document outlining the principles underpinning **nbn's** CAE, which you can access using the following [link](#). For the reasons set out below, it is my finding that the information contained in Document 2 falls within the terms of **nbn's** CAE and is, therefore, not subject to the FOI Act.
25. The contents of Document 2 form part of the product technical specification of the **nbn**TM Ethernet Bitstream Service supplied by means of the **nbn**TM FTTB Network or the **nbn**TM FTTN Network, as offered by **nbn**. The supply of this service is carried on by **nbn** on a commercial basis and is intended to generate trade and sales with a view to profit for **nbn**. Following discussions with relevant business units within **nbn**, I also formed the view that the release of Document 2 could have a negative impact on **nbn's** commercial activities, for the following reasons:
- a. The information contained within Document 2 could be used by an informed reader, including those based overseas, to identify and exploit vulnerabilities that may exist in the DSLAM firmware code.
 - b. Attempts to exploit vulnerabilities within the DSLAM firmware code could lead to a disruption of **nbn**TM products and service through the affected DSLAM(s).
 - c. In order to address these security incidents, **nbn** might have to allocate additional company resources to conduct emergency patching to correct any identified vulnerabilities, directing company resources away from the company's core profit generating activities.
 - d. These security incidents could cause reputational impact to **nbn** through mistrust in the integrity of the **nbn**TM network within the broader telecommunications industry. This mistrust could negatively impact the uptake of **nbn**TM products and services and diminish the company's ability to generate trade and sales as well as the company's ability to generate a profit.
26. Other potential exemptions could apply to Document 2 either in whole or in part. In my opinion, it is unnecessary to consider these exemptions as Document 2 was already exempt from the operation of the FOI Act as per section 7(3A) the FOI Act. In particular, it is likely that Document 2 may be conditionally exempt (Business Affairs) under section 47G of the FOI Act for similar reasons to those set out at paragraph 25. In particular, the network security and other issues could also adversely impact the business affairs of **nbn's** customers, i.e. retail (telecommunication) services providers.

FOI Charges & Publication of Documents

27. It is **nbn's** general policy to charge applicants for FOI processing time. In its [Submission to the OAIC Charges Review](#), **nbn** outlined its support of fees and charges and their importance to the FOI scheme. In my letter dated 16 October 2015, I set out the time likely to be required to process the Applicant's FOI request. That estimate factored in considerable decision-making time, as the **nbn** FOI team would have been required to consult with a large number of third parties before disclosing any information in connection with this FOI request. However, after reviewing the terms of the WBA Head Terms, **nbn** formed the view that Document 1 was exempt from disclosure. This decreased the amount of decision-making time required to process this FOI request. Another issue that reduced the decision-making time was that **nbn's** commercial business units indicated that there were no commercial sensitivities to releasing Part 1a.
28. In the above context, I have determined not to charge the Applicant for the remaining fees in connection with this FOI request (**\$277.50**). This is permitted by Regulation 3 of the *Freedom of Information (Charges) Regulations 1982*, which provides decision-makers with a general discretion to impose or not impose a charge, or impose a reduced charge for the processing of an FOI request.
29. In accordance with the FOI Act, **nbn** 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 exceptions as per section 11C of the FOI Act. For further information, visit our [Disclosure Log](#) on **nbn's** website. 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.



Attachment A – nbn co FOI Matter 1516/14 – UNI-DSL Specification (Partial Release)

Section 17 of the Freedom of Information Act, 1982 (the **FOI Act**) enables Government authorities to provide applicants with information, where such information is not available in a discrete written form and where the information is "*ordinarily available to the agency for retrieving or collating stored information*". As per sections 11 and 11A of the FOI Act, the **nbn** FOI Officer determined that it was possible to release the following information:

In relation to section 7.1 VDSL2 Registration of the SFAA – WBA Product Technical Specification – NBN Co Ethernet Bitstream Service – FTTB/FTTN, the current certification list contains 8 registered DSL modem versions.