



28 October 2015

Megalfar

Sent via email: foi+request-1329-90005c08@righttoknow.org.au

Our Ref: 1516/27.02

FOI Application – Passing Difference Costs

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

"I would like to know, the PASSING difference cost between FTTN and FTTB and PASSING difference cost between FTTdp (G.Fast) and FTTP."

Request to Clarify FOI Application

Under the FOI Act, members of the public have a general right of access to specific documents, subject to certain exemptions. I note that you have not outlined any specific types of documents that you are seeking in this request, other than "passing difference costs". In addition, I am uncertain as to what you are seeking in relation to that phrase.

Under section 15(2) of the FOI Act, a valid FOI request must provide such information concerning the requested document/s as is reasonably necessary to enable **nbn** to identify them, among other matters. For the reasons set out above, I am of the opinion that you have not provided enough information to enable me to identify the specific documents you are seeking. As a result, **nbn** will not formally acknowledge, nor commence the processing of this request until you have sufficiently clarified the terms of this FOI application. Until those terms are clarified, the statutory time frame for completing this request will not commence. To the extent that you are seeking information about the **nbn** rollout, I would refer you to our [public website](#) and to [nbn's corporate reports and plan](#) which also contain information that might assist you.

In addition, I would ask that you contact the writer on the number below to discuss the terms of your application. For your reference, it is generally recommended that FOI requests exclude documents that are not legally privileged, commercially sensitive, confidential or in draft. I would also refer you to [section 31A](#) of the FOI Act and following, which outlines relevant exemptions to release of documents under the legislation. In addition, I would draw your attention to **nbn's** commercial activities exemption (**CAE**) or carve-out from the application of the FOI Act, details of which are outlined below.

nbn's Commercial Activities Exemption

As per [section 7\(3A\)](#) and [Part II of Schedule 2](#) of the FOI Act, documents that relate to **nbn's** "commercial activities" are not subject to the operation of the FOI Act. The following link summarises and provides [general background information](#) concerning **nbn's** **CAE**. That background document references two Office of the Australian Information Commissioner reviews that considered **nbn's** **CAE** in January 2012 (the [Internode Decision](#)) and again in July 2013 (the [Battersby Decision](#)). While I am not making a formal decision, there is a possibility that documents falling within the terms of this FOI request may be subject to the **CAE**, among other exemptions from release.

Disclosure Log

Please also be advised that **nbn** is required to publish documents on its website within 10 working days after the release of the documents to an FOI applicant. Presuming any documents are released, they may be published in full (as released to the applicant) or with some additional redactions, based upon exceptions under section 11C of the FOI Act. For further information please visit our website and click on the [Disclosure Log link](#).

Processing Period & Charges

The statutory period for processing an FOI request is 30 days, subject to any suspension of the processing period or extension of the time for deciding the application. For the reasons outlined above, **nbn** will not formally acknowledge, nor commence the processing of this request until the terms of this FOI application have been sufficiently clarified. Again, please do not hesitate to ring me to discuss the terms of this request.



Please note that processing charges may be imposed in relation to FOI requests. You will be advised of any charges in relation to your request. For reference, **nbn's** approach to processing charges is outlined at the following hyperlink: [Submission to the Office of the Australian Information Commissioner Charges Review](#). In particular, **nbn** supports – and will generally apply – Recommendation 24 in the [Hawke Review into FOI Legislation](#), (**the Hawke Review**) as a benchmark in reviewing FOI applications. For your reference, Recommendation 24 suggests a 40-hour ceiling for all FOI processing charges.

If you have any questions or need to discuss your application, please feel free to contact the writer on Tel. (02) 8918 8596 or via email on davidmesman@nbnco.com.au.

Yours faithfully,

David Mesman

General Counsel – FOI, Privacy & Knowledge Management