

## Notice of request consultation process under section 24AB(2) Freedom of Information Act

Dear Mr LeMay

### ***Freedom of information request – 15-05***

1. I refer to the first bullet point of your request under the *Freedom of Information Act 1982* (FOI Act) for access to the following documents:

“-Any reference material held by Infrastructure Australia that contributed to Infrastructure Australia's view that the NBN company should be privatised”

(First Paragraph of your Request).

### ***First Paragraph of your Request – invalid request***

2. As previously advised in the email from Infrastructure Australia (IA) to you dated 14 March 2016, the First Paragraph of your Request is not a valid request under the FOI Act because:
  - a. section 11 FOI Act entitles an applicant to have access to documents of an agency, as defined;
  - b. the definition of “document” in the FOI Act specifically excludes “material maintained for reference purposes that is otherwise publicly available”;
  - c. the FOI Act does not give an applicant a right of access to documents that fall within that exclusion;
  - d. section 15 FOI Act allows an applicant to make a request for a document of an agency;
  - e. an application cannot be made for documents that fall within the exclusion.
3. If the First Paragraph of your Request is limited to apply to reference material that is **not** publicly available, then the following paragraphs 4 to 13 of this notice apply.

### ***First Paragraph of your Request – practical refusal reasons***

4. Under s 24AA(1)(a)(i) FOI Act, a practical refusal reason exists if the work involved in processing the First Paragraph of your Request would substantially and unreasonably divert the resources of IA from its other operations.
5. Under s 24AA(1)(b) FOI Act, a practical refusal reason exists if the First Paragraph of your Request does not satisfy the requirements of s 15(2)(b) FOI Act, in that the First Paragraph of your Request does not provide such information concerning the documents as is reasonably necessary to enable IA to identify them.
6. In order to identify the documents in the First Paragraph of your Request that are not publicly available, IA would need to identify the relevant reference material and determine whether or not it is publicly available.
7. The First Paragraph of your Request is expressed in very broad terms and could potentially cover a wide range of documents. Further, the First Paragraph of your Request refers to IA’s

“view” that “the NBN company should be privatised”. In fact IA made a series of recommendations, and there was no stand alone recommendation that NBN be privatised. For these reasons, to the extent that the First Paragraph of your Request requests reference material that is not publicly available, it does not provide such information concerning the reference material as is reasonably necessary to enable IA to identify the reference material.

8. To the extent that the First Paragraph of your Request requests reference material that is not publicly available, IA has considered the time required to perform appropriate searches to identify, locate and collate the documents referred to in the First Paragraph of your Request.
9. IA does not have a dedicated FOI team, and utilises officers from the Corporate team to process FOI requests. The processing of the First Paragraph of your Request in relation to documents that are not publicly available will require those IA officers to substantially and unreasonably delay or defer work on other core tasks and divert IA’s resources.
10. For these reason, IA is satisfied that to the extent that the First Paragraph of your Request requests reference material that is not publicly available, practical refusal reasons exist under s 24AA(1)(a)(i) and (b) FOI Act to refuse access to those documents in the First Paragraph of your Request.
11. To the extent that the First Paragraph of your Request requests reference material that is not publicly available, in accordance with s 24AB(2) FOI Act, IA gives you notice that:
  - a. IA intends to refuse access to the documents in the First Paragraph of your Request;
  - b. The reasons for IA’s intention to refuse access are that:
    - i. the work involved in processing the First Paragraph of your Request would substantially and unreasonably divert the resources of IA from its other operations; and
    - ii. the First Paragraph of your Request does not satisfy the requirements of s 15(2)(b) FOI Act, in that the First Paragraph of your Request does not provide such information concerning the documents as is reasonably necessary to enable IA to identify them;
  - c. You may consult by email with the IA FOI officer about the First Paragraph of your Request;
  - d. The contact details of the IA FOI officer are [iafoi@infrastructure.gov.au](mailto:iafoi@infrastructure.gov.au); and
  - e. The consultation period during which you may consult with the contact person is 14 days after the day you are given this notice.
12. If you contact IA during the consultation period referred to above, IA will take reasonable steps to assist you to revise the First Paragraph of your Request so that the practical refusal reason no longer exists.
13. The request consultation process period will be disregarded in calculating the period for processing your FOI application.

## *Second Paragraph of your Request – practical refusal reasons*

14. I refer to the **second** bullet point of your request under the FOI Act for access to the following documents:

“Any email communication since the 2013 Federal Election between Infrastructure Australia and any other organisation or individual that discusses the topic of privatising the NBN company”


(Second Paragraph of your Request).

15. Under s 24AA(1)(a)(i) FOI Act, a practical refusal reason exists if the work involved in processing the Second Paragraph of your Request would substantially and unreasonably divert the resources of Infrastructure Australia (IA) from its other operations.
16. Under s 24AA(1)(b) FOI Act, a practical refusal reason exists if the Second Paragraph of your Request does not satisfy the requirements of s 15(2)(b) FOI Act, in that the Second Paragraph of your Request does not provide such information concerning the documents as is reasonably necessary to enable IA to identify them.
17. The identifying factors in the Second Paragraph of your Request are the 2 ½ year time period, and the words “NBN” and “privatisation”. There is no identification of the senders or recipients of the communication or any other criteria such as subject heading. Any search conducted by IA would:
- a. cover a period of 2 ½ years;
  - b. include emails of all staff employed by IA in that period as the Second Paragraph of your Request is not limited to particular senders;
  - c. include emails to any organisation or individual, as the search cannot be limited to particular recipients; and
  - d. use the search terms “NBN” and “privatisation” in any part of the email or any of its attachments which will return a substantial number of emails that do not relate to privatisation of NBN, but contain those words in any part of the email or any attachments, as the search cannot be limited to a particular email title or subject matter.
18. IA has considered the time required to perform appropriate searches to identify, locate and collate the documents referred to in the Second Paragraph of your Request.
19. IA does not have a dedicated FOI team, and utilises officers from the Corporate team to process FOI requests. The processing of the Second Paragraph of your Request will require those IA officers to substantially and unreasonably delay or defer work on other core tasks and divert IA’s resources.
20. For these reason, IA is satisfied that practical refusal reasons exist under s 24AA(1)(a)(i) and (b) FOI Act to refuse access to documents in the Second Paragraph of your Request.
21. In accordance with s 24AB(2) FOI Act, IA gives you notice that:

- a. IA intends to refuse access to the documents in the Second Paragraph of your Request;
  - b. The reasons for IA's intention to refuse access are that:
    - i. the work involved in processing the Second Paragraph of your Request would substantially and unreasonably divert the resources of IA from its other operations; and
    - ii. the Second Paragraph of your Request does not satisfy the requirements of s 15(2)(b) FOI Act, in that the Second Paragraph of your Request does not provide such information concerning the documents as is reasonably necessary to enable IA to identify them.
  - c. You may consult by email with the IA FOI officer about the Second Paragraph of your Request;
  - d. The contact details of the IA FOI officer are [iafoi@infrastructure.gov.au](mailto:iafoi@infrastructure.gov.au); and
  - e. The consultation period during which you may consult with the contact person is 14 days after the day you are given this notice.
22. If you contact IA during the consultation period referred to above, IA will take reasonable steps to assist you to revise the Second Paragraph of your Request so that the practical refusal reason no longer exists.
23. The request consultation process period will be disregarded in calculating the period for processing your FOI request.

Date:

Yours faithfully,

  
18/3/16

Infrastructure Australia

[www.infrastructureaustralia.gov.au](http://www.infrastructureaustralia.gov.au)

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**Australian Government**  
**Infrastructure Australia**