

4 March 2016

Ms Sarah Skaf
Sent via email: foi+request-1703-4a2d5776@righttoknow.org.au

Our Ref: 1516/46.02

Dear Ms Skaf,

FOI Application – Information about the nbn rollout

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 request any and all information and data correspondence with regard to the National Broadband Network being rolled in all of Australia. Could this information please include the estimation time for it to be rolled out everywhere and statistical data concerning the speed."

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. Your request is very broad in nature and aspects of your request are unclear. For example, it is unclear to me what you meant by the phrase *"all information and data correspondence with regard to the National Broadband Network"*. As a Government Business Enterprise, **nbn** generates a vast amount of information and data concerning the **nbn**TM rollout. To help us process your request, could you please clarify what specific information and/or data you'd like to request? In addition, it is also unclear what you meant when asking for *"the estimation time for it to be rollout out everywhere and statistical data concerning the speed."* To the extent that you are seeking information about the **nbn** rollout, I would refer you to our [public website](#) which contains helpful information which might assist you. Further, I would also refer you to [nbn's corporate reports and plan](#) which also contain information which may assist. In addition, please refer to the points, below, under the heading: "Previous Related FOI Decision".

Under section 15(2) of the FOI Act, a valid FOI request must provide such information concerning the requested document as is reasonably necessary to enable **nbn** to identify it, among other things. 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 that 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. In that regard, I would ask that you contact the writer on the numbers 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.

Previous Related FOI Decision

For reference, **nbn** issued an FOI access decision that is similar to part of your FOI request regarding the **nbn** rollout (FOI1415/01.13), which you can view at the following [link](#). That decision concerned an application seeking rollout information (detailed design and field inspection work documentation), among other matters. In particular, the documents contained prospective rollout coverage information that had not then been finalised by **nbn**. As part of **nbn's** decision in FOI1415/01.13, my colleague determined that the relevant documents fell within **nbn's** commercial activities carve-out from the application of the FOI Act. While I am not making a formal decision with respect to your FOI request, nor have I formally reviewed any relevant documents, to the extent you are requesting prospective rollout coverage information, there is a possibility that the reasons provided by the decision maker in the previous FOI decision could apply equally to documents falling with the scope of your request.



nbn's Commercial Activities Exemption

I refer you to **nbn's** commercial activities exemption (**CAE**), as per [section 7\(3A\)](#) and [Part II of Schedule 2](#) of the FOI Act. Documents that are in relation to **nbn's** "commercial activities" are not subject to the operation of the FOI Act. For your reference, the Office of the Australian Information Commissioner (**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**. The Internode Decision may be found by clicking on the following [link](#). 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. The information you seek 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 anvo1@nbnco.com.au.

Yours faithfully,

An Vo

Associate Legal Counsel – FOI, Privacy & Knowledge Management