



**11 March 2016**

Mr Josh Stewart

Sent via email: [foi+request-1730-a3c11a99@righttoknow.org.au](mailto:foi+request-1730-a3c11a99@righttoknow.org.au)

Our Ref: 1516/50.02

Dear Mr Stewart,

### **FOI Application – Information Concerning nbn Technicians**

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

*"I am seeking any records you have that show instances where NBN technicians have not attended installations or service call outs when scheduled to do so. This includes missed bookings with reasons such as (But not limited to) "Technician Shortfall" etc... Ideally I would like to see records for this over a recent 12 month period (Rolling 12 month or 2015 calendar year). I do not need any record details that would include any personal information, just a date and a reason for not attending the booking. If other details such as installation type (FTTP, FTTB, FTTN etc) can be included, that would also be of assistance."*

#### **Request to Clarify FOI Application**

The FOI Act provides members of the public with a general right of access to specific documents, subject to certain exemptions. I note that you have not outlined any specific documents that you are seeking, other than "any records" in relation to instances where "NBN technicians have not attended installations or service call outs when scheduled to do so". Your application also does not make it clear that you definitively seeking a specific time frame for the request, beyond a (roughly) 12 month period, nor the type of document requested, such as a report, brief, etc.

Under section 15(2) of the FOI Act, a valid FOI request must provide such information concerning the requested document as is reasonably necessary for **nbn** to identify it, among other things. 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. Until those terms are clarified, the statutory time frame for completing this request will not commence.

In addition, the breadth of your request – in its current form – would also require extensive searches across many **nbn** business units. In order to find "any" documents relating to the non-attendance at installations or service calls, etc., **nbn** would be required to undertake a review of all the email accounts of **nbn's** employees, temporary staff and others, which currently number more than five thousand. Your request would also require reviews of hard copy and electronic record systems across different parts of the business. It follows that **nbn's** IT Group would be required to create exceptionally large sets of data cubes, which would then need to be searched, culled for relevance and organised. Relevant executives and senior managers of **nbn** would also need to be involved in consideration of the documentation, which would be a significant interference with the performance of their usual responsibilities. In that context, I am of the opinion that it is likely that this FOI application – in its current form, would unreasonably divert **nbn's** resources. In that regard, I would refer you to [section 24](#) and following of the FOI Act in relation to Commonwealth entities' obligations related to FOI matters.



More generally, it would be of assistance if you were to limit your request to specific types of documents, such as a report or briefing – and one in final form, as draft documents are more likely to be considered exempt from release, as would documents that are legally privileged, commercially sensitive and so forth. I would refer you to [section 31A](#) of the FOI Act and following, which outlines relevant exemptions to release of documents under the legislation. Our team would be happy to assist you in refining the scope of your request.

### **nbn's Commercial Activities Exemption**

For your reference, 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** commercial activities exemption (**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. 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 [davidmesman@nbnco.com.au](mailto:davidmesman@nbnco.com.au).

Yours faithfully,

**David Mesman**

General Counsel – FOI, Privacy & Knowledge Management