

20 May 2016

Mr Josh Stewart

Sent via email: foi+request-1730-a3c11a99@righttoknow.org.au

Our Ref: 1516/50.11

Dear Mr Stewart,

FOI Application – Installation Data

I am writing in relation to your request, made under the *Freedom of Information Act, 1982* (**the FOI Act**), requesting information concerning **nbn** installation data. I have made my final FOI determination in relation to this matter on today's date.

Final Payment Request

As outlined in our correspondence of 23 March 2016, (Reference 1516/50.05A), **nbn** made a preliminary FOI fee assessment of \$462.50 and requested that you pay an advance deposit fee in the sum of \$115.63. On 26 April 2016, **nbn** received your advance deposit payment.

In accordance with subsection 29(1) of the FOI Act, I have determined that you are liable to pay a final charge in respect of the processing of this FOI request. For reference, the search and retrieval time remained the same as outlined in our advance deposit request. However, the decision-making time was in excess of the estimated 19.5 hours. Those fees have not been passed on to you, as they are in excess of the original estimate.

| | | |
|---|-------------------------------|-----------------|
| Search and Retrieval Time(*) | 11.5 hours @ \$15.00 per hour | \$172.50 |
| Decision Making Time | 19.5 hours @ \$20.00 per hour | \$390 |
| Copies of documents | 10 cents per page (Waived) | \$-- |
| | | \$ |
| Sub-total | | \$562.50 |
| Less first 5 hours decision making time(**) | | -\$100.00 |
| Less monies paid to date | | -\$115.63 |
| TOTAL | | \$346.87 |

(*) The data extraction took specialised IT expertise so as to produce the requested information.

(**) Per the *Freedom of Information (Fees and Charges) Regulations*, you have not been charged for the first 5 hours of decision making time.

Please be advised that the outstanding amount, being **\$346.87**, is due and payable within 30 days of today's date. **It is important to note that an FOI processing fee payment does not guarantee access to documents or information.** For your reference, processing fees are paid to cover the FOI processing time incurred by an agency and as per the rates set under *Freedom of Information (Charges) Regulations 1982*. I would refer you to the section below, providing details regarding **nbn's** commercial activities and other exemptions under the FOI Act.

In addition, **nbn** could have charged market rates for the time expended to create the data set requested by you, noting that the data are not normally generated by **nbn**. However, Regulation 3 of the *Freedom of Information (Charges) Regulations 1982* 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. In the interests of transparency and the objects of the FOI Act, **nbn** chose not to charge market rates in relation to this FOI request.

If you would like to contend that the estimated charge has been wrongly assessed, or should be reduced or not imposed, you must notify **nbn** of your contentions, providing reasons, and evidence where relevant, to support your submission. In deciding whether to reduce or not to impose a



charge, the FOI decision-maker will consider all relevant factors, including whether payment of the charge, or a part of it, would cause you financial hardship – and whether the giving of access is in the general public interest. More information about charges under the FOI Act is available in [Fact Sheet 7](#) on the Office of the Australian Information Commissioner's (**OAIC**) website and in part 4 of the OAIC [FOI Guidelines](#). You will be advised of your review rights under the FOI Act following consideration of any contentions that you may make.

If you agree to pay the charges set out above, you should make arrangements to pay **nbn** through the following electronic banking account:

| | |
|-------------|------------------------|
| Bank name: | CBA |
| Name: | nbn co limited FOI |
| BSB: | 062-438 |
| Account no: | 10240782 |
| Reference: | FOI-AYCA-33NWWL |

When making a payment, please ensure you include reference FOI-AYCA-33NWWL. Please also note that this is a final decision in relation to access. As a result, the balance of the actual charge is a debt due to the Commonwealth, which **nbn** is obliged to pursue, unless other arrangements are made – or **nbn** agrees to waive the fees.

nbn's Commercial Activities Carve-out & Other Exemptions

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 Notification

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

Sincerely,

David Mesman

General Counsel

FOI, Privacy & Knowledge Management