

26 April 2016

Mr Toby Brain  
Sent via email: [foi+request-1816-9e74c8c9@righttoknow.org.au](mailto:foi+request-1816-9e74c8c9@righttoknow.org.au)

Our Ref: 1516/56.02

Dear Mr Brain,

### FOI Application – Mount Panorama, NSW

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 any information reporting construction progress, and the current estimated activation date for the fixed wireless service being constructed on Mount Panorama, NSW, 2795 (2BTH-51-08-MPRP)."*

#### **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. **Please review the following before reverting to me on this matter.**

You have not outlined the specific types of documents that you are seeking in this request, other than "any information reporting construction progress". It is unclear what documents you are seeking. As a starting point, I note that **nbn** invests considerable time and resources into providing a publicly available rollout map on our website that might assist you. To view this map, please visit: <http://www.nbnco.com.au/connect-home-or-business/check-your-address.html>. It might assist you to review **nbn**'s website first, as it may provide you with the information you are seeking.

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. Until those terms are clarified, the statutory time frame for completing this request will not commence.

For your reference, it is generally recommended that FOI requests exclude documents that are legally privileged, commercially sensitive, confidential or in draft. I would also refer you to [section 31A](#) of the FOI Act and the following information outlining relevant exemptions to release of documents by **nbn** under the FOI Act.

#### **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 feel free to contact 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 this letter, please feel free to contact me on (02) 9927 4118 or at [katefriedrich@nbnco.com.au](mailto:katefriedrich@nbnco.com.au).

Yours faithfully,

**Kate Friedrich**

Legal Counsel – FOI, Privacy & Knowledge Management