



30 June 2013

Jxeeno
Sent via email: foi+request-223-333f2ff7@righttoknow.org.au

Our Ref: FOI1213/36.07

Dear Jxeeno,

FOI Application

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

On 18 June 2013, you made the following FOI request, seeking:

All the Initial Release Rollout Region DCD Plans released thus far. This includes, but is not limited to the file that was located under the following link:

<http://www.nbnco.com.au/assets/documents/rollout-info-irrr-dcd-04-June-2013.pdf>

I request for a collection of all IRRR plans in the original spreadsheet format where available and in an alternate format such as a PDF file where you are unable to locate the original file.

The Statement of Reasons (**attached**) outlines the specific terms of this FOI request, the decision-maker's findings and the access decision. For your reference, this decision is subject to review under sections 53A and 54 of the FOI Act. The Office of the Australian Information Commissioner's *FOI Fact Sheet 12 (Your Review Rights)* is attached for your information and may be found at the following [link](#).

If you have any questions, need to discuss your FOI application or require any other information relating to this matter, please feel free to contact the writer on Tel. (02) 8918 8596 or at davidmesman@nbnco.com.au.

Sincerely,

David Mesman
FOI Officer

FREEDOM OF INFORMATION REQUEST – 1213/36

JXEENO – Right-To-Know

ACCESS DECISION STATEMENT OF REASONS

Background

1. NBN Co Limited (**NBN Co**) is a government business entity (**GBE**), which has the mandate of realising the Australian Government's vision for the development of a national broadband network that is truly national in character.
2. NBN Co recognises that information is a vital and an invaluable resource, both for the company and for the broader Australian community. That is why NBN Co fosters and promotes a pro-disclosure culture, with the goal of creating an organisation that is open, transparent and accountable. In that light, members of the public will be able to find a large amount of information freely available on our [website](#).
3. In addition, NBN Co manages its information assets within the terms and spirit of the *Freedom of Information Act 1982 (the FOI Act or the Act)*. We also endeavour to release information proactively, while taking into account our commercial and other legal obligations.
4. Subject to relevant exemptions, the FOI Act gives the Australian community the right to access documents held by Commonwealth Government agencies, as well as "prescribed authorities", such as NBN Co.
5. Under subsection 23(1) of the FOI Act, NBN Co's Chief Executive Officer has authorised me, David Mesman, to make decisions about access to documents under the FOI Act.
6. Under section 26 of the FOI Act, I am required to provide a Statement of Reasons for my decisions in relation to FOI access applications. I am also required to set out my findings on any material questions of fact, referring to the material upon which those findings were based.

Application Chronology and Terms of Request

7. On 18 June 2013, NBN Co received an FOI request from "JXeeno" from the Right-To-Know website (**the Applicant**), which sought the following:

All the Initial Release Rollout Region DCD Plans released thus far. This includes, but is not limited to the file that was located under the following link:

<http://www.nbnco.com.au/assets/documents/rollout-info-irrr-dcd-04-June-2013.pdf>

I request for a collection of all IRRR plans in the original spreadsheet format where available and in an alternate format such as a PDF file where you are unable to locate the original file.

8. On 20 June 2013, NBN Co acknowledged receipt of the Applicant's FOI request, as required by section 15(5) of the FOI Act.

9. On 30 June 2013, I made my access decision, as outlined below, which took approximately 1.5 hours to draft and finalise. For reference, no fees are levied for the first 5 hours of decision-making time. In addition, other NBN Co staff spent approximately 2.5 hours in searching for documents, providing advice and undertaking administrative tasks related to this FOI request.
10. As per Regulation 3 of the *Freedom of Information (Charges) Regulations 1982 (the Charges Regulation)*, a decision-maker has the discretion to impose or not impose a charge, or impose a reduced charge for the processing of an FOI request. Drawing from the Charges Regulation and the objects of the FOI Act, I have determined to exercise my discretion to waive the fees associated with this FOI application.

Findings of Material Fact

11. Following receipt of the Applicant's request, NBN Co staff undertook searches through the company's hard copy, electronic and other files, so as to locate the relevant information.
12. NBN Co staff members located 17 Initial Release Rollout Region Disconnection Commencement Date (DCD) Plans (**the DCD Documents**), as falling within the scope of this FOI request.

Access Decision

13. As outlined above, NBN Co is a "prescribed authority" and is subject to the FOI Act. However, Part II of Schedule 2 of the FOI Act exempts NBN Co from the operation of the Act in respect of documents relating to its commercial activities. Section 7(3A) of the FOI Act defines "commercial activities" as:

(a) activities carried on by NBN Co on a commercial basis; or

(b) activities, carried on by NBN Co, that may reasonably be expected in the foreseeable future to be carried on by NBN Co on a commercial basis.

14. As an FOI decision maker, it is open to me to consider whether the DCD Documents fall within the terms of section 7(3A) of the FOI Act and whether these documents would, potentially, not be subject to the operation of the Act. In addition, it would also be open to me to consider other exemptions. However, in making my FOI decision, I endeavoured to be guided by both the spirit and terms of the FOI Act. In particular, I made reference to the objects of the Act, which provide for agencies to exercise their functions and powers, as far as possible, to facilitate and promote public access to information. As such, I have determined to grant access to the relevant documents under sections 11 and 11A of the FOI Act.
15. If you are dissatisfied with this decision, you have certain rights of review. Details regarding your rights of review and appeal are outlined in the covering letter, provided with this Statement of Reasons.

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