

25 July 2013

Mr Daniel Megalfar

Sent via email: foi+request-308-36c29a27@righttoknow.org.au

Our Ref: FOI1314/06.02

Dear Mr Megalfar,

FOI Application – Current NBN Rollout Costs

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

Application Terms & Chronology

On 17 July 2013, you made an FOI request to NBN Co Ltd (**NBN Co**) in the following terms:

As per the title above [Current Rollout Figures, Costs, Cost Per premises (sic), and other related costs], would like to know the current costs in terms of:

1. *How much has NBN Co spent in terms of the rollout.*
2. *Per Premises cost on LOW-MID-HIGH figures.*
3. *Other related costs such as Fibre, POI, Labor Works, etc.*

On, 19 July 2013, you emailed the writer, seeking to clarify the scope of your request in the following terms:

I am specifically asking for information regarding the CURRENT costs that NBN Co has spent so far in rolling out the National Broadband Network.

1. *Money Spent – The money spent so far by NBN Co on rollout of the BN - the government has given you and how much you spent of that.*
2. *Cost Per Premises – Last senate estimates were around \$2500 is this the case still?*
3. *In regards to my other request, I would like to know the cost of Points of Interconnect, Fibre Serving Area's, Fibre Serving Area Modules.*
4. *I also like to know the status of the Transit Network status and current cost spent on that.*

Information Already in Public Domain

It is NBN Co's standard practice to consider information in the public domain as to be out of scope of an FOI request. However, we will endeavour to provide FOI applicants with links to documents that are already in the public domain.

- 1) **Money Spent** – The following [link](#) contains NBN Co's Annual Reports. These reports contain a large amount of information relating to costs of the NBN rollout. Please note that the latest Annual Report is still in draft format. Once finalised, I understand that it will be made available at the above link, following approval by NBN Co's auditors and presentation to the Board and Shareholder Ministers. For your reference, the "Financial Overview" and "Financial Statements" sections of the reports should provide you with much of the information, which you are seeking.

- 2) Cost Per Premises – Additional information relating to NBN Co rollout expenditures may be found at the following [link](#), which contains reports of the Joint Committee on the National Broadband Network. For your reference, paragraph 2.64 of the report of 17 June 2013 contains information on per-premises-costs.
- 3) POI, FSA and FSAM Costs – NBN Co is generally unable to provide information as to “current costs” outside of its normal reporting cycles. NBN Co does not regularly collect this information, nor report on it outside of Parliamentary committees or annual reporting – and after the data have been appropriately audited. As such, no documents were found as per [section 24](#) of the FOI Act, beyond the sources referenced above.
- 4) Transit Network – With regard to point 4 of your request, I would refer you to the following [link](#), which contains details of the NBN’s Transit Network status.

Operation of the FOI Act at NBN Co

I also refer you to NBN Co’s commercial activities exemption (**CAE**), as per [section 7\(3A\)](#) and [Part II of Schedule 2](#) of the FOI Act. As you may be aware, documents that are in relation to NBN Co’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 Co. The Internode Decision may be found by clicking on the following [link](#). While I am not making a formal decision, nor have I commenced a formal search for any relevant documents, there is a possibility that documents falling within the terms of any FOI request to NBN Co may be subject to the CAE, among other exemptions from release.

In relation to your FOI application, it is important to note that there may be commercial sensitivities associated with some of the data, which you have requested. Again, I have not examined any relevant documents, nor am I making a formal access decision under the FOI Act. However, information relating to the cost of Points-of-Interconnect, among other commercially sensitive details, could potentially impact upon our company’s efforts to go to market or renew contracts with our suppliers, which could – in turn – adversely affect NBN Co’s rollout and build costs.

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. NBN Co will not formally acknowledge, nor commence the processing of requests until an FOI application’s scope and terms have been sufficiently clarified.

In addition, please note that processing charges may be imposed and that consultation with third parties may be required for any FOI request. If it is necessary to consult with third parties, additional processing time is provided under the FOI Act. Applicants will be advised of any charges as well as any need to consult third parties in relation to an FOI request. Furthermore, those parties would have the opportunity to object to the potential release of documents affecting their business affairs.

For reference, NBN Co’s approach to processing charges is outlined at the following hyperlink: [Submission to the Office of the Australian Information Commissioner Charges Review](#). In particular, I refer you to NBN Co’s support of a roughly 40-hour cap for all FOI processing charges. I would also refer you to NBN Co’s [FOI web-page](#), which outlines charges associated with FOI applications. Applicants generally will be charged for processing time, including search and retrieval, consultations and decision-making time, regardless of the outcome of the access request. In other words, applicants may be refused access to documents or information and still be required to pay FOI processing fees.

Request Consultation Process

In my opinion, your request for rollout costs – and other data – would constitute an unreasonable diversion of NBN Co's resources. I base this finding upon the reasons outlined above and that it would require our company to collect, analyse and audit data outside NBN Co's normal reporting and auditing cycle. This would also require NBN Co to replicate work on an ad hoc basis, in this and other instances. This could have the effect of diverting scarce resources to activities outside the network's build, thereby hampering rollout efforts, corporate planning and NBN Co's ability to obtain a return on investment.

In light of the above points, it is my opinion that your FOI request – as it currently stands – would constitute an unreasonable diversion of our company's resources. In that scenario and as per [section 24](#) and [section 24AA\(1\)](#) of the FOI Act, NBN Co has the right to refuse to process an FOI application. However, section 24(1)(a) of the FOI Act requires NBN Co to undertake a request consultation process before issuing a notice to refuse access. Before issuing a refusal notice, [section 24AB of the FOI Act](#) requires Government authorities to provide applicants with written notice stating their intention to refuse access and to initiate a request consultation process. In that context, I request that you review the scope of your FOI request and notify the writer by **8 August 2013** as to whether you wish to withdraw, revise or not revise the application.

If you have not notified the writer by the above-mentioned date, NBN Co will consider that this application has been withdrawn as per section 24AB(6) of the FOI Act. In accordance with section 24AB(8) of the FOI Act, the time taken to consult with you regarding the scope of a request is not taken into account when calculating the 30-day statutory time limit for processing FOI applications.

Request to Contact NBN Co

I trust that you find the above information helpful. Should you require any further information, please feel free to contact me on the details below. In addition, NBN Co has, recently, not received certain emails from applications lodged via the Right-To-Know website. In future, I would request that you send any emails directly to the following email address – FOlofficer@nbnco.com.au, along with a return email address. This will ensure that email transmissions reach NBN Co.

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.

Sincerely,

David J Mesman
FOI Officer