



23 February 2017

Mr Mark Diamond

Sent via email: foi+request-3113-6d2e7964@righttoknow.org.au

Our Ref: 1617/44.02

Dear Mr Diamond,

nbn™ network FTTN Cabinet Locations

I am writing in relation to your request, under the *Freedom of Information Act 1982* (the **FOI Act**) sent to **nbn**'s FOI email address on 17 February 2017, seeking the following:

An electronic document (e.g., database extract or spreadsheet) showing the location of all existing FTTN cabinets. I assume that this information will be easily extractable from NBN Co Ltd's existing electronic records. If it is possible to provide the requested document under administrative arrangements, please do so. Otherwise, please treat this as a formal application under the Freedom of Information Act, 1982.

Background

Under section 3(1)(b) of the FOI Act, the public has a right to seek access to "documents", rather than discrete pieces of information. I confirm that **nbn** does not hold the information that you requested in one digital or hard copy archive. As such, it would be open to **nbn** to refuse your application under section 24A of the FOI Act, on the basis that no such documents exist.

However, section 17 of the FOI Act enables Government authorities to provide applicants with information, where such information is not available in a discrete written form, but is "*ordinarily available to the agency for retrieving or collating stored information*". In that regard, I received advice from **nbn** staff that it would be possible to create a document containing the information within the scope of the current request. Please note that the time required to retrieve and collate these data are extensive, running to approximately 15 hours. In that regard, please refer to the "Advance Deposit Request", below.

I also can confirm that **nbn** will not release that sort of information via administrative arrangements, as I am informed that our company may have security and commercial concerns about the release of the data. Please note that I have not made a determination in that regard, nor have I begun to look at any data, and would need to test any potential objections and, only thereafter, make a formal FOI decision. In that regard, I would refer you to the details, below, regarding **nbn**'s 'carve out' from the application of the FOI Act and other relevant exemptions.

nbn's Commercial Activities Exemption

I refer you to **nbn**'s commercial activities exemption (the **CAE**), as per [section 7\(3A\)](#) and [Part II of Schedule 2](#) of the FOI Act. Please be aware that documents that relate to **nbn**'s "commercial activities" are not subject to the operation of the FOI Act and would likely be exempt from release. The following link summarises and provides [general background information](#) concerning **nbn**'s commercial activities carve-out. That background document references two Australian Information Commissioner reviews that considered **nbn**'s CAE: the [Internode Decision](#) (in January 2012) and the [Battersby Decision](#) (in July 2013). While I am not making a formal decision, nor have I reviewed any documents, there is a possibility that documents falling within the terms of this request may be subject to the CAE, among other exemptions from release.



FOI Processing Period and 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. Please also 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.

Advance Deposit Request

Per section 29(1) of the FOI Act, I have determined that processing charges are payable in relation to this FOI request. **nbn** staff completed a preliminary assessment of the work involved in processing your FOI request and estimated the applicable charges as follows:

Search and retrieval time	15 hours @ \$15 per hour	\$225
Review & decision making time	13.5 hours @ \$20 per hour	\$270
Sub-total		\$495
Less first 5 hours decision making time(*)		(-\$100)
TOTAL		\$395

(*) In accordance with the *Freedom of Information (Fees and Charges) Regulations*, you are not charged for the first 5 hours of decision making time.

Please note that the estimated processing time – and relevant fees – may increase or decrease, depending on the nature of the work required. However, you will be advised if the fees increase beyond the estimate outlined above. As the total estimated processing charges exceed \$100, a deposit of 25% (**\$98.75**) is required.

Within 30 days of this notice, you are required to:

- agree to pay the charge and forward the deposit; or
- contend that the charge has been wrongly assessed, or should be reduced or not imposed (you should provide full reasons for your contention); or
- narrow the scope of your request (which may reduce the charge payable); or
- withdraw your request.

If you fail to notify **nbn** in a manner mentioned above within 30 days of this notice, your request will be taken to have been withdrawn. In addition, if you contend that the estimated charge has been wrongly assessed, or should be reduced or not imposed, you must notify **nbn** of your contention, 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.

If you choose to contend that the charge has been wrongly assessed or should be reduced or not imposed, this will not constitute a request for internal review. You will be advised of your review rights under sections 53A and 54 of the FOI Act following consideration of your contentions.

Once **nbn** has completed the processing of your request, the assessment of the charge payable will be revised based on the actual amount of work involved in processing your request. If you are refused access to any of the documents that are relevant to your request, **nbn** may not impose an actual charge that is higher than the final estimated charge. This means that, if you are refused access to any document, the actual charge that will be payable will be lower than or



equal to, but not more than, the final estimate of charges. It is only if you are granted access to all the documents that are relevant to your request that the actual charge imposed may be higher than the estimated charge. It is important to note that the payment of FOI processing fees does not guarantee access to documents or information.

If you agree to pay the estimated charge set out above, or the deposit for that charge, you should make arrangements to pay **nbn** using the following electronic banking details:

Bank name:	CBA
Name:	nbn co limited FOI
BSB:	062-438
Account no:	10240782
Reference:	FOI-AYCA-4812T9

When making a payment, please ensure you include the reference (FOI-AYCA-4812T9) noted above. If you provide a deposit and the processing of your request progresses to a point where a decision on access is made, a determination about the imposition of the actual charge will be made at that time. The balance of the actual charge will become a debt due to the Commonwealth, which **nbn** would be obliged to pursue, unless other arrangements are made or if **nbn** agrees to waive the fees.

Per section 31 of the FOI Act, the time limit for processing your request is suspended from the day you receive this notice, being today's date. Please also be advised that the charge notice day is not counted in calculating the processing time limit. For reference, 5 processing days have passed as of the writing of this letter. In addition, the processing time limit will resume:

- On the day upon which **nbn** receives your deposit.
- Alternatively, if you decide to contest the charge, the processing time limit will resume on the day upon which **nbn** notifies you of its decision not to impose a charge – if **nbn** so makes a decision.
- In the event that **nbn** decides to reduce the charge and deposit is required, the processing time limit will recommence on the day upon which you pay the reduced deposit.

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](#).

Disclosure Log

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 redactions as per section 11C of the FOI Act. For further information and other details, please visit our [Disclosure Log](#) on **nbn's** website.

If you need to discuss your application, please feel free to contact the writer on (02) 8918 8596.

Yours faithfully,

David Mesman

General Counsel

FOI Privacy & Knowledge Management