



**5 September 2013**

Mr Joel Dickins

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Our Ref: FOI1314/13.10  
FOI1314/14.10

Dear Mr Dickins,

#### FOI Application

I am writing in relation to your requests made under the *Freedom of Information Act 1982 (the FOI Act)*. In particular, you sought NBN Co's rollout and activation figures for the periods ending 31 May 2013 (FOI1314/13) and 30 June 2013 (FOI1314/14).

The Statement of Reasons (**Attached**) outlines the specific terms of these FOI requests, the decision-maker's findings and the access decisions. For your reference, these decisions are 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 via email on [davidmesman@nbnco.com.au](mailto:davidmesman@nbnco.com.au).

Sincerely,

David Mesman  
FOI Officer

## FREEDOM OF INFORMATION REQUEST – 1314A/13, 1314A/14

### JOEL DICKINS – RIGHT TO KNOW

#### ACCESS DECISION STATEMENT OF REASONS

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##### Background

1. NBN Co Limited (**NBN Co**) is a government business entity (**GBE**), which has the mandate of realising the Australian Government's vision to develop 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 1 August 2013, NBN Co received two FOI requests from Mr Joel Dickins from the "Right-To-Know" website (**the Applicant**), which sought "*NBN rollout statistics as at 31 May 2013 and 30 June 2013*":
  1. *Brownfields Fibre Rollout*
    - *Number of premises under construction;*
    - *Number of premises passed (able to order a service);*
    - *Number of premises with an active Brownfield Fibre NBN service.*
  2. *Fixed Wireless Rollout*
    - *Number of premises covered by an 'actively under construction' tower site;*
    - *Number of premises covered by active tower site (able to order a service);*
    - *Number of premises with an active Fixed Wireless NBN Service.*
  3. *Interim Satellite coverage – Number of premises with an active Interim Satellite NBN Service.*
8. On 2 August 2013, NBN Co acknowledged receipt of the Applicant's FOI requests, as required by section 15(5) of the FOI Act.

9. On 5 September 2013, I made my access decision, as outlined below. On the same date, I forwarded a copy of this decision to the Applicant.

### **Findings of Material Fact**

10. Following receipt of the Applicant's requests, NBN Co staff undertook searches through the company's hard copy, electronic and other files, so as to locate the relevant information.
11. Under section 3(1)(b) of the FOI Act, the public has a right to seek access to "documents", rather than discrete bits of information. Notwithstanding this point, 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 and where the information is "ordinarily available to the agency for retrieving or collating stored information". In that regard, I subsequently received advice from NBN Co staff that it would be possible to create appropriate documents, which would contain the relevant information requested by the Applicant, subject to the points made below.
12. On 8 August 2013, I confirmed with the relevant NBN Co business unit that the company's reporting cycles do not always correspond to the end of a given month. For reference, NBN Co only held information for the end of June 2013, but not for 30 May 2013. As such, NBN Co did not create, nor possess all of the data originally requested.
13. Under section 24A (1) of the FOI Act, an agency is required to take all reasonable steps to find a document. As per section 24(b)(ii), I am satisfied that no such documents exist for the end of May 2013. However, I have endeavoured to provide the Applicant with the most relevant data – and to the closest proximate date requested, being 2 June 2013 – for the May 2013 data.

### **Access Decision**

14. 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.*
15. As an FOI decision maker, it is open to me to consider whether the information requested by the Applicant falls within the terms of section 7(3A) of the FOI Act – NBN Co's commercial activities exemption, outlined above – and is, therefore, not subject to the operation of the Act. It would also be open to me to consider other exemptions, such as section 47 (Commercially valuable information), among other exemptions.
16. 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
17. In light of the above points, and as per sections 11 and 11A of the FOI Act, I have determined to release – in full – the 2<sup>nd</sup> June and 30<sup>th</sup> June data contained in Attachments 1 and 2 respectively. However, it should be noted that NBN Co had previously released certain information. In those instances – outlined in Attachments 1 & 2, NBN Co has provided hyperlinks to the relevant data.
18. 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.

## Freedom Of Information Request – 1314A/13 – Attachment 1

### Rollout Data to 2 June 2013<sup>(1)</sup>

<b>Brownfields</b>	
Number of premises under construction <sup>(2)</sup>	931,900
Number of premises passed (able to order a service)	94,700 (66,300) <sup>(3)</sup>
Number of premises with an active Brownfield Fibre NBN service	17,500
<b>Fixed Wireless</b>	
Number of premises covered by an 'actively under construction' tower site <sup>(4)</sup>	32,700
Number of premises covered by active tower site (able to order a service)	17,300
Number of premises with an active Fixed Wireless NBN Service	1,800
<b>Interim Satellite</b>	
Number of premises with an active Interim Satellite NBN Service	32,600

<sup>(1)</sup> Figures are rounded to the nearest '00.

<sup>(2)</sup> NBN Co does not report this metric, but is calculated as "Construction commenced or completed less premises passed".

<sup>(3)</sup> At the requested date there were 94,700 premises passed, all of which will be able to order a service. 66,300 were able to order a service via an RSP at the requested date. The majority of the remaining premises are MDUs (multiple dwelling units) which will be able to be connected in accordance with NBN Co's MDU processes.

<sup>(4)</sup> NBN Co does not report this metric, but is calculated as "Construction commenced or completed less premises covered".

## Freedom Of Information Request – 1314A/14 – Attachment 2

### Rollout Data to 30 June 2013<sup>(1)</sup>

<b>Brownfields</b>	
Number of premises under construction <sup>(2)</sup>	951,400
Number of premises passed <sup>(3)</sup> and able to order a service <sup>(4)</sup>	Previously released
Number of premises with an active Brownfield Fibre NBN service <sup>(3)</sup>	Previously released
<b>Fixed Wireless</b>	
Number of premises covered by an 'actively under construction' tower site <sup>(5)</sup> <sup>(6)</sup>	27,400
Number of premises covered by active tower site (able to order a service) <sup>(3)</sup>	Previously released
Number of premises with an active Fixed Wireless NBN Service <sup>(3)</sup>	Previously released
<b>Interim Satellite</b>	
Number of premises with an active Interim Satellite NBN Service <sup>(3)</sup>	Previously released

<sup>(1)</sup> Figures are rounded to the nearest '00.

<sup>(2)</sup> NBN Co does not report this metric, but is calculated as "Construction commenced or completed less premises passed".

<sup>(3)</sup> NBN Co released these figures on 4 July 2013 at the following link: <http://nbnco.com.au/content/dam/nbnco/media-releases/2013/nbn-co-meets-revised-targets.pdf>.

<sup>(4)</sup> NBN Co released the "able to order a service" figures on 12 August 2013 at the following link: <http://nbnco.com.au/content/dam/nbnco/documents/foi-no-1314-03-nbnco-released-12-august-2013.pdf>.

<sup>(5)</sup> NBN Co does not report this metric, but is calculated as "Construction commenced or completed less premises covered".

<sup>(6)</sup> The difference between the 2 June 2013 and 30 June 2013 figures reflects the move of 5,300 premises from the "under construction tower site" row to "active tower (able to order a service)" row.