



5 September 2013

Mr Joel Dickins
Sent via email: foi+request-332-3d7cc73e@righttoknow.org.au

Our Ref FOI1314/15.08

Dear Mr Dickins,

FOI Application

I am writing in relation to your request made under the *Freedom of Information Act 1982 (the FOI Act)*. In particular, you sought NBN Co's rollout and activation figures for the period 31 July 2013.

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 via email on davidmesman@nbnco.com.au.

Sincerely,

David Mesman
FOI Officer

FREEDOM OF INFORMATION REQUEST – 1314A/15

JOEL DICKINS – 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 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

On 1 August 2013, NBN Co received an FOI request from Mr Joel Dickins from the "Right-To-Know" website (**the Applicant**), which sought "*NBN rollout statistics as at 31 July 2013 for:*

1. *Brownfields Fibre Rollout --*
 - *Number of premises under construction;*
 - *Number of premises passed (able to order a service); and*
 - *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.*
7. On 2 August 2013, NBN Co acknowledged receipt of the Applicant's FOI request, as required by section 15(5) of the FOI Act.
 8. 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

9. 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.
10. 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 an appropriate document, which would contain preliminary or draft figures in line with the Applicant's request, subject to the points below.
11. At the time of making this decision, NBN Co staff also informed me that subject matter experts were still in the process of reviewing the relevant draft or preliminary figures. As a result, it would not be possible to release the requested statistics until they had been confirmed for accuracy and completeness. In that regard, I refer to my points below concerning deferral of access to the relevant information.

Access Decision

12. 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.*
13. 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.
14. However, I have not formally considered the above exemptions on the basis that NBN Co plans to publish the relevant information, once reviewed for accuracy and completeness by NBN Co's executive and Board.
15. As permitted by section 21(1)(b) of the FOI Act, I have determined to defer access to the requested information. That section enables Commonwealth entities to defer access to a document:
 - (b) *if the document concerned has been prepared for presentation to Parliament or for the purpose of being made available to a particular person or body or with the intention that it should be so made available -- until the expiration of a reasonable period after its preparation for it to be so presented or made available.*
16. In addition, section 21(2) of the FOI Act requires Commonwealth authorities to inform applicants of the reasons for their decision and, as far as practicable, the period for which the deferral will operate. In that regard, NBN Co's Executive informed me that the company plans to publish the information on NBN Co's website within approximately 60 days.
17. 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.