



10 April 2017

Mr Robert Hudson  
President, ITPA  
Sent via email: [foi+request-3351-061140c8@righttoknow.org.au](mailto:foi+request-3351-061140c8@righttoknow.org.au)

Our Ref: 1617/57.02

Dear Mr Hudson,

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

*The number of workers holding 457 visas hired by NBN over the last 18 months. The details we are seeking are:*

- *Descriptions of the roles that were filled;*
- *The salary/wage brackets that were / are being paid to 457 visa holders in these roles;*
- *The market testing that was done to prove that local workers were not available to fill the roles filled by workers holding 457 visas.*

#### **Request to Clarify**

Under the FOI Act, members of the public have a general right of access to specific documents, subject to certain exemptions. Under section 15(2) of the FOI Act, a valid FOI request must provide such information concerning the requested document/s as is reasonably necessary to enable nbn to identify it, among other things. Drawing from the current request terms, it is unclear what specific document/s you are seeking. **nbn** will not commence the processing of this request until you have sufficiently clarified the terms of the application. In addition, the statutory time frame for completing this request will not begin to run until that time. Please refer to my points below regarding the points that I consider unclear.

- **Role descriptions** – The first dot point refers to “descriptions of the roles” and it is unclear as to what sort of document you are seeking – a formal job description, a specific job title or other information?
- **Salary/wage brackets** – The second dot point appears to be seeking different things, i.e. a specific salary versus a wage bracket, which I presume may be a salary band? However, this is unclear. Please also note that **nbn** has, in the past, refused access to information concerning specific salaries and salary bands as relating to **nbn**’s commercial activities. This was in the context of executive salaries. In that regard, I refer you to the paragraph, below, concerning **nbn**’s commercial activities. Again, I have not yet begun to examine any relevant documents, nor am I making a formal decision in that regard, it is likely that I would make similar findings regarding the potential release of salaries and bands.

#### **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**

As outlined above, 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.

**Disclosure Log**

**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