

2 May 2017

Mr Robert Hudson
President, ITPA
Sent via email: pfoi+request-3351-061140c8@righttoknow.org.au

Our Ref: 1617/57.10

Dear Mr Hudson,

I am writing in relation to your request, made under the *Freedom of Information Act 1982 (the FOI Act)*, concerning – among other issues, 457 visas.

Advance Deposit Request

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

Search and retrieval time	7 hour @ \$15.00 per hour	\$105
Review & decision making time	12 hours @ \$20.00 per hour	\$240
Sub-total		\$345
Less first 5 hours decision making time(*)		-\$100
TOTAL		\$245

(*) 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 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% (**\$31.88**) 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to notify **nbn** in a manner mentioned above within 30 days of this notice, your request will be taken to have been withdrawn.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-4E60WG

When making a payment, please ensure you include the reference (FOI-AYCA-4E60WG) noted above. If you provide a deposit and processing 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 then. The balance of the actual charge will become a debt due to the Commonwealth, that **nbn** will 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. To date, 3 days of an estimated 30 in the processing time period have passed. Please refer to the points, below, regarding third party consultations. For your reference, 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](#).

Third Party Consultation Required

As per section 15(6) of the FOI Act, please be advised that I have determined to extend the FOI processing period to 60 days, so as to comply with the consultation requirements per section 27 and 27A of the FOI Act. FOI decision-makers are required to provide individuals – as well as businesses and other organisations, where required – with a reasonable opportunity to make submissions relating to documents that may potentially be exempt under the FOI Act.

nbn's Commercial Activities Exemption

Please note that documents, which relate to **nbn**'s "commercial activities," are not subject to the operation of the FOI Act. The following link summarises and provides [general background information](#) concerning **nbn**'s commercial activities exemption (CAE). That background document references two Office of the Australian Information Commissioner reviews that considered **nbn**'s CAE in January 2012 (the [Internode Decision](#)) and in July 2013 (the [Battersby Decision](#)). **While I am not making a formal decision, there is a possibility that documents falling within the terms of this FOI request may be subject to the CAE, among other exemptions from release.**



Disclosure Log Notification

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 exceptions as per section 11C of the FOI Act. For further information, visit our [Disclosure Log](#).

If you have any questions, please contact me on (02) 8918 8596 or via email at davidmesman@nbnco.com.au.

Sincerely,

David Mesman

General Counsel

FOI, Privacy & Knowledge Management