

10 November 2017

By Email [foi+request-4197-69b5d325@righttoknow.org.au](mailto:foi+request-4197-69b5d325@righttoknow.org.au)

Our Ref: 1718/49.02

Dear Ms Karen L

### FOI Request

I am writing in relation to your request dated 7 November 2017.

#### **Request to Clarify**

Under the *Freedom of Information Act 1982* (Cth) (**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 state that the request is an application for the purposes of the FOI Act and also provide such information concerning the requested document as is reasonably necessary to enable **nbn** to identify it, among other things.

You have stated that the request for information is an application for the purposes of the FOI Act. However, unfortunately, the terms of your request are unclear, such that I am uncertain as to which document(s) are being requested.

In the circumstances of it being unclear which specific document(s) you are seeking, **nbn** will not formally acknowledge, nor commence the processing of this request, until you have sufficiently clarified the terms of the application. Until those terms are clarified, the statutory time frame for completing this request will not commence. In that regard, please inform me if there is a specific document, or set of documents you are seeking.

While it may be possible that **nbn** holds information that relates to your request broadly, this would need to be confirmed with our business units. **nbn** has more than five thousand full, part time and temporary staff members and your request in its current form would require **nbn** to undertake searches with a significant number of those individual staff members. In light of the time likely to be required to process this request in its current form, I am of the opinion that it would be an unreasonable diversion of **nbn's** resources. In that regard, I refer you to [sections 24 and 24AA of the FOI Act](#).

I would be glad to discuss how to best limit the scope of the request and can be contacted directly on the number below.

#### **nbn's Commercial Activities Exemption**

I refer you to **nbn's** commercial activities exemption (**the CAE**), per [section 7\(3A\)](#) and [Part II of Schedule 2](#) of the FOI Act. Please be aware that documents that are in relation to **nbn's** "commercial activities" are not subject to the operation of the FOI Act and would 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 reviews by the Australian Information Commissioner 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 and have not reviewed any documents, I note that there is a distinct 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. In particular, third party consultations would likely increase the processing period to 60 days. 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 your 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. Recommendation 24 suggests a 40-hour ceiling for all FOI processing charges.

**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) 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.

Please note, the hard copy of this correspondence includes blue underlined text for your reference, indicating links to relevant legislation, decisions, documents and information which are available in the soft copy version of this correspondence. If you need to discuss your application, please feel free to contact the writer on (02) 9031 3471.

Yours faithfully,

**Paul Kosterman**

Senior Legal Counsel

FOI Privacy & Knowledge Management