



17 November 2017

Mr Rick Torre

Sent via email: [foi+request-4201-a0d1712f@righttoknow.org.au](mailto:foi+request-4201-a0d1712f@righttoknow.org.au)

Our Ref: 1718/52.02

Dear Mr Torre,

### Information Request

I am writing in relation to your request, sent to **nbn**'s FOI email address on 12 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.

Although you have stated that the request for information is an application for the purposes of the FOI Act, the terms of your request are unclear as to which particular document(s) are being requested.

We understand, generally, that your request relates to matters including the:

*"...location of the NBN node that 10 Targhee Street Doreen VIC 3754 is connected to?  
I would also like the cable length run between the 2 locations?  
Given the distance of the requested address and the NBN node what would be the optimum plan offered by a RSP?"*

Unfortunately, the particular document(s) which fall within the parameters of the request, as it is currently drafted, are not reasonably identifiable, as required under the FOI Act. The terms of the request, as currently drafted, pose questions in relation to several matters. Therefore, in order to respond to your request as currently drafted, **nbn** would be required to conduct searches for disparate information. Accordingly, **nbn**'s position is that it has not been provided with sufficient information concerning the document(s) as is reasonably necessary to identify those responding to the request, as is required for a valid FOI request.

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 almost 6,500 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.



### **Proof of Identity**

Further, **nbn** must ensure that it does not inadvertently release information and documents that could be the subject of objections from third parties, based upon their personal, professional or business affairs. Your request seeks information that may include personal, professional or business information, relating to an identifiable individual or business.

Accordingly, assuming that you would like to proceed with a formal FOI request and meet the requirements as outlined above, **nbn** would need to confirm your identity and relationship with the subject property. Please note that **nbn** cannot begin processing an FOI request, until the relationship of the person making the request, as either resident or owner of the subject property, is established.

You will be able to confirm your identity by providing to us a certified copy of your driver's license (or some other form of relevant identification) which includes your full name and address (per above), together with a certified copy of a local council rates notice or utility bill (ie. your service provider's invoice for the **nbn**).

You may forward certified, hard copy documents to "nbn FOI Officer, c/- Level 10/100 Arthur Street, North Sydney, NSW, 2060".

Until the above details are provided, my view is that it would be an unreasonable diversion of **nbn**'s resources to process this request for information. **nbn** will not formally acknowledge, nor commence the processing of this request, until you have sufficiently clarified the terms of the application and your identity - until such time, the statutory time frame for completing this request cannot commence, in any event.

### **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. In that regard, I note that you have requested network data which possibly relates to **nbn**'s commercial activities and therefore will likely fall within the subject exemption.

### **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 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**

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.



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