



**4 December 2017**

Mr Rick Torre

By Email [foi+request-4201-a0d1712f@righttoknow.org.au](mailto:foi+request-4201-a0d1712f@righttoknow.org.au)

Our Ref: 1718/52

Dear Mr Torre,

**FOI Application – Node Location**

I am writing in relation to your request made under the *Freedom of Information Act, 1982 (the FOI Act)*, in which you sought access to the location of the particular node that a certain address is connected to.

The Statement of Reasons (**Attached**) outlines the specific terms of the FOI request, the decision-maker's findings and the access decision. For your reference, the FOI 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 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) 9031 3471 or [paulkosterman@nbnco.com.au](mailto:paulkosterman@nbnco.com.au).

Yours faithfully,

**Paul Kosterman**

Senior Legal Counsel

FOI, Privacy & Knowledge Management



## FREEDOM OF INFORMATION REQUEST –1718/52

Mr Rick Torre

### ACCESS DECISION

### STATEMENT OF REASONS

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#### Application Chronology and Terms of Request

1. On 12 November 2017, **nbn** received an email from Mr Rick Torre (**the Applicant**), in which he made an application under the *Freedom of Information Act, 1982* (**the FOI Act or the Act**) requesting:

- *“Please provide 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?”*

2. On 17 November 2017, **nbn’s** FOI Group acknowledged the Applicant’s FOI Act application, as required by section 15 of the FOI Act.

3. On 21 November 2017, Mr Torre amended his request, so as to seek access to only:

*“... the location of the NBN node that 10 Targhee Street Doreen VIC 3754 is connected to?”*

4. On 4 December 2017, I completed my FOI decision and subsequently forwarded a copy of this decision to the Applicant.

#### Access Decision

5. Following receipt of the Applicant’s amended request, it is my view, having regard to the nature and subject matter of the request and the relevant provisions of the *Freedom of Information Act 1982* (Cth) (**the FOI Act**), that there are a number of exemptions available, outlined below.

6. The document requested by the Applicant relates to **nbn’s** commercial activities, being the installation, or potential installation of network infrastructure employed by **nbn** for the delivery of its services. Accordingly, **nbn’s** Commercial Activities Exemption (**CAE**), enlivened under section 7(3A) of the FOI Act, is applicable in respect of this request.

7. From the terms of the request, it is apparent that the Applicant seeks a document which identifies the location of a particular component part of **nbn’s** network infrastructure, being the node which a specific address is connected to. I find that the document sought by the Applicant is a document which has the potential to compromise the security of the **nbn** network and, therefore, the Commonwealth, if released.

8. There are legitimate security concerns and risks attendant to the release of document(s) depicting or identifying sites where **nbn** network equipment is, or may be, placed. For instance, the disclosure of such documents could potentially increase **nbn’s** vulnerability to physical and other attacks (whether from hackers, vandalism, criminal elements or



- terrorists), each of which would, or could reasonably be, expected to cause damage to the security of the Commonwealth.
9. Were such a document to be released, this precedent could obligate **nbn** to release the details of the location of network infrastructure, in future.
  10. Additionally, were similar information to be disclosed to that requested by the Applicant, **nbn** may be required to increase the level of security associated with or applied to the network, as well as providing for increased security costs in its budget and commercial planning. This could conceivably lead to cost and time overruns as well as delaying the **nbn** rollout generally, which could adversely impact **nbn**'s profitability and ultimately, these costs would be borne by Australian taxpayers. For this reason, I find that the requested document is subject to the CAE.
  11. Section 33 of the FOI Act provides that a document is exempt from disclosure, if disclosure of the document would, or could reasonably be expected to, cause damage to, among other things, the security of the Commonwealth.
  12. In circumstances of such release, I note that it is reasonably foreseeable that the security concerns outlined in respect of section 33 of the FOI Act, above, would be crystallised, if not exacerbated, in circumstances of release of the requested document to the Applicant.
  13. Accordingly, **nbn**'s position is that the Documents are exempt from disclosure, pursuant to section 33 of the FOI Act.
  14. Further, and in the alternative, I find that there is a commercial value to a document identifying the location of **nbn**'s network infrastructure. This value is derived either from the utility of knowledge regarding the specific location of a given node (or other component part of the network infrastructure), its location in respect of various addresses, or its location in respect of other components of the telecommunications network (whether **nbn**'s, or otherwise). This is valuable information, whether to individuals or the telecommunications industry in Australia, including because of the prospect of being able to commercialise the data. The data could be commercialised by way of sale as a discrete dataset, or used for related commercial purposes such as overbuilding particular areas, or determining where to otherwise build telecommunications infrastructure.
  15. Section 47 of the FOI Act provides that a document is exempt from disclosure if its disclosure would disclose information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
  16. If released, **nbn**'s ability to commercialise such data could be compromised. Therefore, the commercial value of the subject document(s) would, or could reasonably be expected to be, destroyed or diminished if it were made publically available, as would be the case if it were to be disclosed under the FOI Act.
  17. Accordingly, **nbn**'s position is that the Documents are exempt from disclosure, pursuant to section 47 of the FOI Act.

#### **Decision-making Time and Fees**

18. As noted above, **nbn** staff spent time searching for relevant information in order to respond to the request, being approximately 1 hour. Additionally, I have spent approximately 2.5 hours in drafting and finalising this FOI decision, in addition to completing relevant correspondence in respect of the request. No fees are levied for the first five hours of FOI decision-making time and accordingly no fees are payable in respect of the decision making time in this instance.
19. It is **nbn**'s general policy to charge applicants for FOI processing time. In its [Submission to the OAIC Charges Review](#), **nbn** outlined its support of fees and charges and their importance to the FOI scheme.



20. Among other points, **nbn** highlighted the following issues:

- Government agencies and authorities should be able to recoup some of their costs associated with processing FOI requests, while providing a key public service. This is in line with user-pays principles and that users should share in the cost of service provision;
- The ability to charge for FOI processing time reflects the Commonwealth Parliament's and the community's recognition that public servants' time is a valuable resource and that such resources should only be spent in appropriate public undertakings. Similar reasoning animates section 24AA of the FOI Act, which enables decision-makers to refuse requests that would substantially and unreasonably divert the resources of an agency or Government Business Entities (GBEs) from their operations;
- The above contention, along with the need to utilise resources efficiently, may be applied with even greater force to GBEs, which are expected to operate as any other player in the commercial marketplace;
- The ability to charge for the processing of FOI applications also ensures that applicants have a serious interest in the subject matter and are likely to see the application to a final determination. In that regard, processing fee payments and advanced deposits tend to limit the scope of preliminary and other similar work typically "written off" by Government entities in the event that an applicant withdraws a request. This dovetails with the public interest in not wasting government and – taxpayer funded – public resources; and
- At page 5 of the Office of the Australian Information Commissioner's (the OAIC) [Review of Charges under the FOI Act 1983](#), the OAIC reinforced the importance of fees and charges, outlining that:

*Fees and charges play an important role in the FOI scheme. It is appropriate that applicants can be required in some instances to contribute to the substantial cost to government of meeting individual document requests. Charges also play a role in balancing demand, by focusing attention on the scope of requests and regulating those that are complex or voluminous and burdensome to process.*

21. In light of the relatively small sum involved, together with **nbn**'s commitment to transparency, I have exercised my discretion to waive all relevant fees.
22. 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.

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