



21 December 2017

Mr Ben Fairless

By email: foi+request-4232-6ca044a1@righttoknow.org.au

Our Ref: 1718/62.07

Dear Mr Fairless

FOI Request – nbn Online Masterclasses

I am writing in relation to your application to **nbn** of 5 December 2017, seeking information under the *Freedom of Information Act 1982* (Cth) (**the FOI Act** or **the Act**). In particular, you were seeking:

- “A copy of the final invite for every online Master Class”
- “A copy of any recordings created for every Online Master Class.”

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) 8918 8596 or via davidmesman@nbnco.com.au.

Yours faithfully,

David Mesman

General Counsel

FOI, Privacy & Knowledge Management



FREEDOM OF INFORMATION REQUEST –1718/62

Mr Ben Fairless

ACCESS DECISION – STATEMENT OF REASONS

Background

1. **nbn** is a government business enterprise (**GBE**), which has the mandate of realising the Australian Government’s vision for the development of Australia’s new broadband access network.
2. **nbn** recognises that information is a vital and an invaluable resource, both for the company and for the broader Australian community. That is why nbn fosters and promotes a pro-disclosure culture, with the goal of creating an organisation that is open, transparent and accountable. In that light, members of the public will be able to find a large amount of information freely available on our website, which may be found at the following link: <http://nbnco.com.au/>.
3. **nbn** manages all of its information assets within the terms and spirit of the *Freedom of Information Act 1982* (the **FOI Act**). **nbn** also endeavours to release information proactively, while taking into account our commercial and other legal obligations. Subject to relevant exemptions, the FOI Act gives the Australian community the right to access documents held by Commonwealth Government agencies, as well as “prescribed authorities”, such as **nbn**.
4. Under subsection 23(1) of the FOI Act, **nbn**’s Chief Executive Officer has authorised me, David Mesman, to make decisions about access to documents and related determinations.
5. Under section 29(8) of the FOI Act, I am required to provide a Statement of Reasons for my decisions in relation to FOI applications. I am also required to set out my findings on any material questions of fact, referring to the material upon which those findings were based. Those findings are outlined below.

Application Chronology and Terms of Request

6. On 5 December 2017, Mr Ben Fairless (the **Applicant**) made a request under the *Freedom of Information Act, 1982* (the **FOI Act**), seeking:
 - “A copy of the final invite for every online Master Class
 - A copy of any recordings created for every Online Master Class.”
7. On 8 December 2017, a member of the **nbn** FOI Team acknowledged receipt of the Applicant’s request as required by section 15(5) of the FOI Act.
8. On 10 December 2017, the Applicant confirmed his consent to enable **nbn**’s FOI Team redact teleconference dial-in numbers, together with other details such as conference PIN numbers and associated links, in addition to the personal contact details of **nbn** staff.
9. On 13 December 2017, a member of the **nbn** FOI Team requested that the Applicant confirm his consent to third party contact details being redacted from the subject documents.
10. On 17 December 2017, the Applicant also confirmed his consent to third party contact details being redacted from the subject documents.
11. On 20 December 2017, I completed my FOI decision and subsequently forwarded it to the Applicant.



Access Decision

12. Following receipt of the Applicant's request, **nbn** staff undertook searches through the company's electronic and other files, so as to locate any relevant documents falling within the scope of the Applicant's request. In that regard, I received confirmation that **nbn** staff had located certain documents containing some, but not all, of the information requested by the Applicant (the **Relevant Documents**). In addition, **nbn** staff confirmed that no recordings were made of the subject Master Classes. As per section 24A(1) of the FOI Act, I confirm that all reasonable steps were taken to locate the relevant recordings and I am satisfied that no such recordings exist.
13. As an FOI decision maker, I am obliged to consider whether the information requested by the Applicant falls within the terms of section 7(3A) of the FOI Act, being **nbn's** commercial activities exemption (**CAE**) and is, therefore, not subject to the FOI Act. The following link summarises and provides [general background information \(the Backgrounder\)](#) concerning **nbn's** CAE or carve-out from the FOI Act. The Backgrounder is included as a link in the soft copy of this Access Decision, on the grounds that it ought to be considered as forming an integral part of this document.
14. In making my access determination, I consulted with the relevant business units at **nbn** and was satisfied that there were no commercial sensitivities arising from the release of the Relevant Documents, despite the fact that some of the documents were marked as "commercial in confidence". As such, I came to the conclusion that the Relevant Documents would not be considered as relating to **nbn's** CAE.
15. While there may be other grounds upon which to (potentially) exempt access to the Relevant Documents, I sought to be guided by both the spirit and terms of the FOI Act. I also made reference to the objects of the FOI Act, which provide for agencies to exercise their functions and powers, as far as possible, to facilitate and promote public access to information. In that context, I have determined to grant access in full to the Relevant Documents under sections 11 and 11A of the FOI Act, which are attached to the emailed copy of this access decision.

FOI Charges & Publication of Documents

16. 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. However, in making my decision in relation to FOI processing charges, I took into account the Applicant's willing engagement with the **nbn** FOI team in respect of the request and the narrow, specific scope of the request, which made locating the subject documents relatively straightforward. I also considered **nbn's** commitment to the objects of the FOI Act and, in particular, section 3(4) of the FOI Act, which seeks to facilitate and promote public access to information, promptly and at the lowest reasonable cost.
17. In light of the above points, I have determined to waive all processing fees in relation to this FOI application. This is permitted by Regulation 3 of the *Freedom of Information (Charges) Regulations 1982*, which provides decision-makers with a general discretion to impose or not impose a charge, or impose a reduced charge for the processing of an FOI request. **However, for reference, nbn is likely to charge the Applicant for any subsequent FOI requests related to this matter, in line with the company's general policy, as set out above.**
18. 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](#) on **nbn's** website.
19. 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.