

**21 October 2013**

Mr. B. Fairless

Sent via email: [foi+request-443-44601bcd@righttoknow.org.au](mailto:foi+request-443-44601bcd@righttoknow.org.au)

Our Ref: FOI1314/24.06

Dear Mr Fairless,

### **FOI Application – Ready for Service Document and Delays in Darwin**

I am writing in relation to your request made under the *Freedom of Information Act, 1982* (**the FOI Act or the Act**). In particular, you were seeking access to:

1. A copy of the most recent draft publication of the "Monthly Ready for service" Rollout Plan, specifically of the most recent draft version AFTER the 14th of August 2013 release on the NBN website; and
2. A copy of any documents within the last 3 months that relate to completion times and potential delays in for the FTTP rollout in the Darwin area (specifically FSAM 8CSU-04).

#### **Scope of FOI Application**

Your FOI application indicates that you are seeking "any documents" that relate to completion times and potential delays for the fibre rollout in Darwin. As you have not framed your request in terms of specific documents, it follows that you are seeking access to all manner of documents, including emails to and from NBN Co staff. For your reference, the required search and review process would involve a very significant amount of time and effort from NBN Co's FOI Officer and staff from across the company.

The terms of your request would require NBN Co to undertake a review of the email accounts of a significant number of employees, so as to determine whether they fall within the scope of this FOI request. Among other sources of documents, NBN Co's IT Group would be required to create a set of data cubes which would need to be searched, culled for relevance and organised. That process alone would involve very significant effort and cost. Relevant executives and senior managers of NBN Co would also need to be involved in consideration of the documentation, which would be a significant interference with the performance of their usual responsibilities. Moreover, these search-related tasks would not include the more difficult and time-consuming task of making a formal FOI decision and applying exemptions to the various documents and factual scenarios. In addition, NBN Co could be required to consult with numerous construction partners in relation to any documents concerning their business or personal affairs. Given that NBN Co has taken over the build of the network in the Northern Territories, the number of these construction partners would be significant.

Please also be aware that processing charges may be imposed in relation to your FOI application. In that regard, I would refer you to NBN Co's FOI processing charges policy, which is outlined at the following hyperlink: [Submission to the Office of the Australian Information Commissioner Charges Review](#). In particular, NBN Co supports – and will generally apply – Recommendation 24 in the [Hawke Review into FOI Legislation](#), (**the Hawke Review**), which suggests a 40-hour ceiling for all FOI processing charges.

In light of the volume of documents and the need to consult with multiple third parties, I am of the opinion that it would be an unreasonable diversion of NBN Co's resources to commence the processing of this FOI application in its current form. In that regard, I am relying upon [sections 24](#) and [24AA of the FOI Act](#).

PHONE (02) 9926 1900 FAX (02) 9926 1901  
EMAIL [info@nbnco.com.au](mailto:info@nbnco.com.au) WEB [www.nbnco.com.au](http://www.nbnco.com.au)

LEVEL 11, 100 ARTHUR STREET, NORTH SYDNEY NSW 2060

### **Request Consultation Process**

Section 24 of the FOI Act requires NBN Co to undertake a request consultation process before issuing a notice to refuse access. Before issuing a refusal notice, [section 24AB of the FOI Act](#) requires Government authorities to provide applicants with written notice stating their intention to refuse access and to initiate a request consultation process. In that context, I request that you review the scope of your FOI request and notify the writer by **4 November 2013** as to whether you wish to:

- withdraw the request; or
- make revised request; or
- not revise the request.

If you have not notified the writer by the above-mentioned date, NBN Co will consider that this application has been withdrawn as per section 24AB(6) of the FOI Act. In accordance with section 24AB(8) of the FOI Act, the time taken to consult with you regarding the scope of a request is not taken into account when calculating the 30-day statutory time limit for processing FOI applications. In addition, I would invite you to telephone the writer on the number below to discuss or clarify the terms of this FOI application.

### **NBN Co's Commercial Activities**

In addition to the section 24 issues, there is a strong possibility that many of the documents within the scope of this request would relate to NBN Co's commercial activities and would not be subject to the operation of the Act. In that regard, I refer you to [section 7\(3A\)](#) and [Part II of Schedule 2](#) of the FOI Act, which outline the scope of NBN Co's commercial activities exemption (**the CAE**). For your reference, the Office of the Australian Information Commissioner (**the OAIC**) completed a review decision in January 2012 (**the Internode Decision**), which provides background and guidance as to the application of the CAE to NBN Co. The Internode Decision may be found by clicking on the following [link](#). The OAIC completed an additional review at the end of July 2013 – [the Battersby Decision](#), which further clarified the scope of NBN Co's CAE. While I am not making a formal decision nor have I begun a review of relevant documents, there is a possibility that documents falling within the terms of this FOI request may be subject to the CAE and other exemptions from release under the FOI Act.

### **Disclosure Log Notification**

In accordance with the FOI Act, NBN Co 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 redactions as per section 11C of the FOI Act. For further information, visit our [Disclosure Log](#) on NBN Co's website at [www.nbnco.com.au/about-us/media/freedom-of-information/disclosure-log.html](http://www.nbnco.com.au/about-us/media/freedom-of-information/disclosure-log.html).

If you have any questions or need to discuss your FOI application, please feel free to contact the writer on Tel. (02) 8918 8596 or via email on [davidmesman@nbnco.com.au](mailto:davidmesman@nbnco.com.au).

Sincerely,

**David J Mesman**

GM Legal - FOI and Knowledge Management