



16 October 2018

Mario

Via email: [foi+request-4860-80f7eceb@righttoknow.org.au](mailto:foi+request-4860-80f7eceb@righttoknow.org.au)

Our Ref: 1819/31.02

Dear Mario

### Request for Information

I am writing in relation to your email to **nbn**'s FOI Officer via RightToKnow (RTK) on 4 October 2018 seeking:

*"documents that show nbnCo's previously published 'ready-for-service' dates, 'cease-sale' dates and 'planned delivery technology' roll-outs for brownfield premises covering ... Turrella (postcode 2205)."*

The *Freedom of Information Act 1982* (Cth) (**FOI Act**) provides that 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 provide such information concerning the requested documents as is reasonably necessary to enable **nbn** to identify them, among other things.

### Scope of Request and Notice

Your request seeks the documents described above, within various date ranges, for the whole suburb of Turrella. You have asked, in the event it is difficult to find the documents for the whole suburb, that your request be limited to Walker Street. However, this geographical area could still encompass a very broad range of documents.

As currently drafted, the terms of your request are not sufficiently clear and the particular documents that fall within the parameters of the request are not reasonably identifiable. Accordingly, your FOI request in its current form is invalid.

Until you clarify the terms of your request, **nbn** will not formally acknowledge your request, and the statutory period for completing this request will not commence. In that regard, please let me know if there is a specific document, or set of documents, which you are seeking. It may be useful to consider whether you might be willing to limit your request to one particular address.

In light of the time likely to be required to process this request in its current form, I am also of the opinion that it may be an unreasonable diversion of **nbn**'s resources, under [sections 24](#) and [24AA of the FOI Act](#).

### nbn's Commercial Activities Carve-out

I also refer you to **nbn**'s commercial activities carve-out (**CAC**) from the application of the FOI Act, and 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 CAC. That background



document references two reviews by the Australian Information Commissioner that considered **nbn**'s CAC: 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 possibility that documents falling within the terms of your request may be subject to the CAC, among other exemptions from release.

### FOI Processing Period and Charges

The statutory period for processing an FOI application is 30 days, subject to any suspension of the processing period or extension of the time for deciding the application. Please also note that **nbn** may impose processing charges in relation to FOI requests. You will be advised of any charges in relation to your request.

For your reference, processing charges for FOI applications are set by regulation and may be found at **nbn**'s website, in particular, its [FOI page](#). The following hyperlink outlines **nbn**'s approach to processing charges: 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. More information about charges under the FOI Act is available in [Fact Sheet 7](#) on the Office of the Australian Information Commissioner's (**OAIC**) website and in part 4 of the OAIC [FOI Guidelines](#).

### 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 to you) 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 feel free to contact me if you have any questions, or if you would like to discuss your request.

Yours sincerely

**Kate Friedrich**

Senior Legal Counsel

FOI Privacy & Knowledge Management