



18 October 2018

Jenny Lawless  
Sent via email: [foi-request-4869-118909b3@righttoknow.org.au](mailto:foi-request-4869-118909b3@righttoknow.org.au)

Our Ref:

1819/36.02  
Dear Ms Lawless

### FOI Request

I am writing in relation to your request, sent to **nbn**'s FOI email address on 10 October 2018.

#### **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.

You have stated that the request for information is an application for the purposes of the FOI Act. However, you have sought general information, which I understand from your correspondence to be:

*"...can you please advise me of the distance between my house and the node I will be/am contacted to?"*

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 cannot commence.

I would be glad to discuss how to best limit the scope of the request and can be contacted directly as outlined below.

#### **Proof of Identity**

If you wish to proceed with a formal FOI application, it will be necessary to confirm your identity and links to the subject property of this request. In the interests of protecting your privacy, I suggest that we correspond directly on that issue so that further personal information relating to you is not published online.

**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 would most likely include personal, professional or business information relating to an identifiable individual or business.

Before commencing the processing of this application, further to the requirements outlined above, I am required to confirm your identity and links to the subject of this request, being the conversation referred to in your request.

You will be able to confirm your identity by providing to us an original certified copy of your driver's licence (or some other form of relevant identification) which includes your full name and address (per above), together with an original certified copy of a local council rates notice or utility bill (i.e. your service provider's invoice for your **nbn**<sup>TM</sup> network service). Hard copies are required.

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

Until you provide the above proof, my view is that it would be an unreasonable diversion of **nbn**'s resources to process this request for information. The statutory period for completing this request will not commence until you have sufficiently clarified the terms of the application and you have verified your identity.

#### **nbn's Commercial Activities Carve-out**

I refer you to **nbn**'s commercial activities carve-out (**the CAC**), 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 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 distinct possibility that documents falling within the terms of this request may be subject to the CAC, among other exemptions from release.

#### **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 [link](#). In particular, **nbn** supports – and will generally apply – Recommendation 24 in the [Hawke Review into FOI Legislation](#), 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 directly, either using the email this correspondence was sent from, or by contacting us at [FOIOfficer@nbnco.com.au](mailto:FOIOfficer@nbnco.com.au).

Yours faithfully

**Rohan Singh**

Senior Legal Counsel

FOI Privacy & Knowledge Management