



26 March 2019

Mr Timothy Nothdurft
Sent via email: tim@myscs.com.au

Our Ref: 1819/84.03

Dear Mr Nothdurft

FOI Application

I am writing in relation to your request made under the *Freedom of Information Act 1982 (the FOI Act)* in which you sought eight **nbn** design and power standards.

Decision-Making Period & Consultation

The processing period for this FOI request commenced on 15 March 2019, being the day after receipt of a revised request, which re-enlivened your previous FOI request to **nbn** – our reference 1819/52. The statutory period for processing an FOI request is generally 30 days (subject to any extension that may be permitted under the FOI Act).

Advance Deposit Request

Per section 29(1) of the FOI Act, I have determined that a charge is payable in respect of the processing of this FOI request. **nbn** staff have undertaken a search for the requested documents, and the search and retrieval time is detailed below. In addition, **nbn**'s FOI Team completed a preliminary assessment of the work involved in processing your FOI request and estimated the applicable charges as follows:

| | | |
|--------------------------------------------|-------------------------------|-----------------|
| Search and Retrieval Time | 1.25 hours @ \$15.00 per hour | \$18.75 |
| Decision Making Time | 28 hours @ \$20.00 per hour | \$560 |
| Sub-total | | \$578.75 |
| Less first 5 hours decision making time(*) | | (\$100.00) |
| TOTAL | | \$478.75 |

(*) In accordance with the *Freedom of Information (Fees and Charges) Regulations*, **nbn** has not charged you for the first 5 hours of decision-making time.

Please note that the estimated processing time and relevant fees may increase (or decrease), depending on the nature of the work required. However, I will inform you if the fees increase beyond the estimate outlined above. As the total estimated processing charges exceed \$100, a deposit of 25% (\$119.69) is required.

Next steps

Within 30 days of this notice, you are required to:

- agree to pay the charge and forward the deposit; or
- contend that the charge has been wrongly assessed, or should be reduced or not imposed (you should provide full reasons for your contention); or
- narrow the scope of your request (which may reduce the charge payable); or
- withdraw your request.



If you fail to notify **nbn** within 30 days of this notice, and in a manner mentioned above, your request will be taken to have been withdrawn. In addition, if you contend that the estimated charge has been wrongly assessed, or should be reduced or not imposed, you must notify **nbn** of your contention, providing reasons, and evidence where relevant, to support your submission. In deciding whether to reduce or not to impose a charge, the FOI decision-maker will consider all relevant factors, including:

- whether payment of the charge, or a part of it, would cause you financial hardship; and
- whether the giving of access is in the general public interest.

If you choose to contend that the charge has been wrongly assessed or should be reduced or not imposed, this will not constitute a request for internal review. You will be advised of your review rights under sections 53A and 54 of the FOI Act following consideration of your contentions.

Once **nbn** has completed the processing of your request, the assessment of the charge payable will be revised based on the actual amount of work involved in processing your request. If you are refused access to any of the documents that are relevant to your request, **nbn** may not impose an actual charge that is higher than the final estimated charge. This means that, if you are refused access to any document, the actual charge that will be payable will be lower than or equal to, but not more than, the final estimate of charges. It is only if you are granted access to all the documents that are relevant to your request that the actual charge imposed may be higher than the estimated charge. **It is important to note that the payment of FOI processing fees does not guarantee access to documents or information.**

To pay the estimated deposit, set out above, please use the following electronic banking details:

Bank name: CBA
Name: nbn co limited FOI
BSB: 062-438
Account no: 10240782
Reference: **FOI-AYCA-65O47H**

When making a payment, please ensure you include the reference, highlighted, above.

Please note that if you provide a deposit and the processing of your request progresses to a point where a decision on access is made, a determination about the imposition of the actual charge will be made at that time. The balance of the actual charge will become a debt due to the Commonwealth, which **nbn** would be obliged to pursue, unless other arrangements are made – or if **nbn** agrees to waive the fees.

Per section 31 of the FOI Act, the time limit for processing your request is suspended from the day you receive this notice, being today's date. Please also be advised that the charge notice day is not counted in calculating the processing time limit. For your reference, 11 days have passed and the processing time limit will resume:

- on the day upon which **nbn** receives your deposit;
- alternatively, if you decide to contest the charge, the processing time limit will resume on the day upon which **nbn** notifies you of its decision not to impose a charge – if **nbn** so makes a decision; or
- in the event that **nbn** decides to reduce the charge and deposit is required, the processing time limit will recommence on the day upon which you pay the reduced deposit.



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](#).

nbn's Commercial Activities Exemption

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](#) and the [Battersby Decision](#). While I am not making a formal decision, nor have I fully reviewed the relevant 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.

Disclosure Log Notification

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.

Please feel free to contact me via email if you have any questions.

Yours sincerely

David Mesman
General Counsel
FOI, Privacy & Knowledge Management