



8 October 2019

Ms Monica Brown

Sent via email: foi+request-5649-abe86280@righttoknow.org.au

Our Ref: 1920/28.02

Dear Ms Brown

nbn FOI request – Request for information re distance to node/cabinet

I am writing in relation to your request to **nbn** under the *Freedom of Information Act 1982 (FOI Act)*.

Background

On 26 September 2019, **nbn**'s FOI Team received a request from you via the "Right to Know" website. In that request you sought information, concerning "...*the distance between the NBN node or FTTN cabinet to [your] address at 21 Silvereys Close East Cannington...*"

Under [section 15\(2\)\(aa\) of the FOI Act](#), an FOI request must state that the request is an application for the purposes of the FOI Act. As you have made the request via the "Right to Know" website, **nbn** considers that it is a request made under the FOI Act and I am therefore dealing with your request in accordance with that Act. I also acknowledge your request under the same section of the FOI Act.

nbn's Commercial Activities Carve-out

nbn's commercial activities are carved-out from the application of the FOI Act per [section 7\(3A\)](#) and [Part II of Schedule 2](#) of the Act. Documents that relate to **nbn**'s current or future commercial activities are not subject to the operation of the FOI Act and would be exempt from release. The following link provides [general background information \(GBI Document\)](#) concerning **nbn**'s commercial activities carve-out (CAC). The GBI Document refers to two Australian Information Commissioner Reviews that considered **nbn**'s commercial carve-out – [Internode Pty Ltd and NBN Co Ltd \[2012\] AICmr 4](#) and the [Battersby and NBN Co Ltd \[2013\] AICmr 61](#).

In practical terms, the CAC ensures that **nbn** is not exposed to disadvantage in the marketplace and similar commercial environments. The CAC also enables **nbn** to function as any other commercial player in Australia's highly competitive telecommunications industry. If **nbn** were required to release commercially-related information under the FOI regime, this would undermine **nbn**'s ability to protect the company's valuable intellectual property, negotiate competitive contracts, develop products and services, grow market share and manage its staff, among other adverse effects. Disclosure of commercially-related information would also undermine **nbn**'s capacity to generate revenues, while driving up rollout costs. Ultimately, Australian taxpayers would have to bear those cost increases and other potentially adverse consequences.



Location of nbn infrastructure and nbn's commercial activities carve-out

nbn has previously made FOI decisions refusing access to requests for documents which relate to the location of nodes and other **nbn** infrastructure. These FOI decisions were made on the basis of **nbn**'s CAC. While I am not making a formal decision and have not completed my review of your FOI request, based on the current scope of your request, **nbn** will most likely rely upon the CAC to refuse access to the information requested (among other possible exemption grounds under the FOI Act).

To provide you with some background, disclosure of information related to the distance of an **nbn** node, cabinet or other **nbn** infrastructure from a particular location could set a precedent whereby **nbn** was required to release the same or similar information in response to other FOI requests. This would expose **nbn** to commercial disadvantage as it would tend to reveal the company's business model for rolling out **nbn**[™] network infrastructure. There is also a risk that disclosure of this information could have the potential to compromise the security of the **nbn**[™] network, which comprises critical telecommunications infrastructure.

Documents and information revealing the location of telecommunications infrastructure could also increase **nbn**'s vulnerability to physical and other attacks from hackers, vandals, criminals, terrorists and others. Furthermore, if such information were made publicly available, **nbn** may be required to increase security costs in its budget and commercial planning processes. This could lead to cost and time overruns and delays in the **nbn** rollout.

Request Consultation Process

In light of **nbn**'s previous FOI decisions regarding **nbn** infrastructure placement, I consider that it would be an unreasonable diversion of **nbn**'s resources to revisit this decision. Section 24 of the FOI Act requires **nbn** 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 **nbn** to provide applicants with written notice stating their intention to refuse access and to initiate a request consultation process. Accordingly, I request that you review the scope of your FOI request and notify me by 23 October 2019 as to whether you wish to:

- withdraw the request, or
- make a revised request, or
- not revise the request.

If you have not notified me by the abovementioned date, **nbn** will consider that this application has been withdrawn, 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. For reference, 11 days have passed in the processing deadline.

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 period for deciding the application. Please also note that **nbn** may impose processing charges in relation to FOI requests. I will inform you 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 – and, in particular, its [FOI page](#). The hyperlink below outlines nbn's approach to processing charges: Submission to the OAIC [Charges Review](#). More information about charges under the FOI Act is set out in part 4 of the OAIC [FOI Guidelines](#).

Disclosure Log

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, please visit the [Disclosure Log](#) on nbn's website.

Please contact me if you have any questions in relation to the above or would like assistance to re-draft your request.

Yours sincerely

David Mesman
General Counsel
FOI, Privacy & Knowledge Management