



8 October 2019

Mr Ben Fairless

Sent via email: foi+request-5652-64f7b1e8@righttoknow.org.au

Our Ref: 1920/29.02

Dear Mr Fairless

nbn FOI request

I am writing in relation to your request under the *Freedom of Information Act 1982* (Cth) (**FOI Act**), seeking:

- “1. The most recent document which details the current call flow for inbound calls to the NBNCo's Customer Facing Number - 1800 687 626. This document will generally show all available options and what happens when those options are pressed, and will detail how the call queue works outside of business hours.*
- 2. A copy of any customer service guidelines provided to NBNCo staff and contractors, including those in the Social Media Team.*
- 3. Any scripts, favourites, suggested wording or other comments that are used by the NBN Social Media team to answer queries.*
- 4. All processes related specifically to the handling of matters on Social Media.*

Happy to receive this information under Administrative Access, otherwise please consider it as a formal request under the Freedom of Information Act.”

Scope of request

Under the FOI Act, members of the public have a general right of access to specific documents, subject to certain exemptions. Per [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.

As currently drafted, this application is not sufficiently clear so as to enable **nbn** to commence processing it. This is because it is difficult to identify which specific documents you may require, noting the request terms refer to “any scripts” (Per point 3) and “all processes...” (Per point 4). In relation to the latter point, it is also unclear as to what you are seeking in terms of “processes.” In addition, I am uncertain as to whether this application seeks all social media documents across nbn, or if it only applies to **nbn**’s Contact Centre. In circumstances where the scope of an FOI application is unclear, **nbn** will neither formally acknowledge, nor commence the processing of that request. Until you clarify the terms of this request, the statutory time period for **nbn** to complete this FOI application will not commence.

Noting that the terms of your FOI request are broad, **nbn** will likely require significant time and resources to process this request in its current form. Unless you clarify your request, I would also consider it to be an unreasonable division of **nbn**’s resources to process your request at the current time (refer to [sections 24](#) and



[24AA](#) of the FOI Act). This is because there are various types of documents that may fit within the scope of your request. A request for “any” documents or “all processes” would require **nbn**’s personnel to undertake searches through all its hard copy and electronic records of its more than 6000 staff members and a significant number of consultants working with **nbn**.

In that regard, I would ask that please clarify what specific document or set of documents, you require. As a starting point, it may be helpful to specify the time period to which your request relates and the specific **nbn** work areas to include, e.g. current documents held by our Contact Centre. It would also assist if you would exclude documents that are likely to be exempt under the FOI Act. In that regard, please refer to my specific comments, below, concerning **nbn**’s CAC.

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 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.

While I have not begun to undertake a formal review of any relevant documents, it is important to note that **nbn** has previously refused access to Contact Centre recordings, transcripts and files on the basis of the CAC. Similarly, **nbn** has refused access to Contact Centre files containing **nbn**’s quality assurance information, network infrastructure records, technical and test data as well as **nbn**’s interactions with its delivery partners and/or retail service provider (**RSP**) customers.

In relation to scripts and social media protocols, I note that such documents are a core part of **nbn**’s – and any company’s – outward or client facing communications efforts. These types of corporate communication efforts involve a significant number of staff members and a large investment by **nbn**. In that regard, **nbn** has refused access to similar documents, noting that they are part of an iterative communications strategy that assists in building **nbn**’s brand and corporate image. In previous FOI decisions, **nbn** also noted that non-government businesses closely guard corporate communications strategies, so as to protect their corporate messaging and strategic protocols from competitors, while promoting their brand and advancing strategic corporate objectives.

Disclosure **nbn**’s social media strategy would almost certainly put **nbn** at a strategic disadvantage to other parties in the market and particularly those which are not subject to the FOI Act. Accordingly, disclosure could potentially undermine **nbn**’s ability to function as any other commercial player in the marketplace, thereby potentially subverting Parliament’s intention in providing **nbn** with the CAC.



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 an 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 Office of the Australian Information Commissioner (**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 in a manner consistent with the FOI Act.

Yours sincerely

David Mesman

General Counsel

FOI, Privacy & Knowledge Management