



28 October 2019

'Wham'

Sent via email: foi+request-5732-d0148dd8@righttoknow.org.au

Our Ref: 1920/32.02

To whom this may concern:

nbn FOI request

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

Background

On 21 October 2019, **nbn**'s FOI Team received a request from you ('Wham') via the "Right to Know" website. In that request you sought:

"...the address of nbn co in WA? And what is the relationship between nbn co and service stream in 192 Pilbara road Welshpool WA."

Request for clarification

For your reference, **nbn** does not have a national office in Western Australia. Our two national offices are in Melbourne and Sydney. Our Sydney office details are found in the footer, below, and our Melbourne offices are located at Tower 5, Level 14/727 Collins Street, Docklands VIC 3008. If you need to post information to **nbn**, you may do so via either of **nbn**'s national offices. You can also reach **nbn** via <https://www.nbnco.com.au/corporate-information/contact-us-form> or by telephoning 1800 687 626 and speak to our Contact Centre staff.

In relation to the 2nd half of your application, i.e. the request for information regarding **nbn**'s "relationship" with Service Stream and a specific address in Welshpool, Western Australia, I am unclear as to what you are seeking. In particular, I am unclear as to whether you are seeking the details of **nbn**'s contractual relationship with Service Stream – or other delivery partners in (potentially) connecting a given address, how **nbn** connections are allocated in terms of the timing of connections, remediation works or how Service Stream allocates its own work to its staff and others – among other possibilities. To provide you with some context, Service Stream is one of **nbn**'s delivery partners in the rollout of the **nbn**[™] broadband access network across Australia. There are various media announcements outlining Service Stream's business dealings with **nbn** on **nbn**'s website - <https://www.nbnco.com.au/>, as well as via other publicly available resources.

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 document/s as is reasonably necessary to enable **nbn** to identify them, among other things. As currently drafted, the terms of your request are not sufficiently clear to enable **nbn** to commence the processing of your application. In circumstances where the scope of an FOI application is unclear, **nbn** will neither formally acknowledge, nor commence the processing of such requests. Until you clarify the terms of this request, the statutory time period for **nbn** to complete this FOI request will not commence.



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 document \(GB Document\)](#) concerning **nbn's** commercial activities carve-out (**CAC**). The GB 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 yet identified any relevant documents, nor am I making formal findings of facts regarding this FOI application, I would flag that **nbn** has previously refused FOI requests for information concerning **nbn's** contractual relations with its business and delivery partners. I would ask that you refer to the GB Document before reverting regarding the terms of your (clarified) request. In addition, I would be happy to assist in refining the terms of your FOI application.

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