



12 November 2019

Mr M. Wilkinson (MG)

Sent via email: foi+request-5827-b4464d2c@righttoknow.org.au

Our Ref: 1920/38.02

Dear Mr Wilkinson

nbn FOI request

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

FOI Request Terms

On 2 November 2019, **nbn**'s FOI Team received a request from "MG" (**the Applicant**) via the "Right to Know" website. In that request, the Applicant sought:

A breakdown by each State/Territory for the following:

- 1. The total number of premises in Band 2 Exchange Service Areas (ESA) mapped to receive an NBN service (of any type).*
- 2. The number of premises in Band 2 ESA's mapped to receive an NBN Service via NBN's "Skymuster" satellites.*

Band 2 ESA's (listed by State and ESA) are defined in this list:

https://www.telstrawholesale.com.au/content/dam/tw/products/Facilities%20Access/Unconditioned%20Local%20Loop/ULL_Bands.pdf

EG:

NSW: Premises in Band 2 ESA's mapped to receive an NBN service = ### Premises in Band 2 ESA's mapped to receive a Skymuster service = ###

VIC: Premises in Band 2 ESA's mapped to receive an NBN service = ### Premises in Band 2 ESA's mapped to receive a Skymuster service = ### etc.

Background information and findings

Following receipt of the Applicant's request, I undertook discussions with relevant subject matter experts within **nbn** in relation to the terms of your FOI application. In that regard, I was informed that:

- The term "ESA" is employed by one of **nbn**'s wholesale customers, i.e. a retail service provider (**RSP**), for its own internal purposes.
- **nbn** does not employ the term (or concept) of ESAs as part of its network architecture or planning processes.
- As such, **nbn** does not hold extracts or data linked to ESAs.



No documents

nbn holds no documents within the terms of your request and I refer you to [section 24A](#) of the FOI Act.

nbn's FOI Team spent approximately three hours reviewing and considering relevant information, making enquiries of relevant **nbn** personnel and drafting this FOI decision. This is in addition to the time spent searching for documents, which were ultimately found not to exist. **nbn** has determined not to impose any charges in relation to this FOI request per the *Freedom of Information (Charges) Regulations 2019* (Cth).

An FOI decision may be reviewed, subject to sections 53A and 54 of the FOI Act. Please refer to the Office of the Australian Information Commissioner's (**OAIC**) website at the following [link](#), which provides details about your rights of review and other avenues of redress under the FOI Act.

nbn's Commercial Activities Carve-out

The FOI Act provides members of the public with 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. In circumstances where the scope of an FOI application is unclear, **nbn** will neither formally acknowledge, nor commence the processing of such requests. If you wish to make further FOI requests, I would ask that you review in detail the following paragraphs and links concerning **nbn**'s commercial activities carve-out (**the CAC**).

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 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.

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. 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. Information sought by FOI applicants may be published in full 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.

Yours sincerely

David Mesman

General Counsel

FOI, Privacy & Knowledge Management