



9 May 2014

JXeen0

Sent via email: [foi+request-589-63239922@righttoknow.org.au](mailto:foi+request-589-63239922@righttoknow.org.au)

Our Ref: FOI1314/47.14

Dear JXeen0

#### FOI Application – Premises Count Information

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

The Statement of Reasons (**Attached**) outlines the specific terms of this FOI request, the decision-maker's findings and the access decision. For your reference, this decision is subject to review under sections 53A and 54 of the FOI Act. The Office of the Australian Information Commissioner's *FOI Fact Sheet 12 (Your Review Rights)* is attached for your information and may be found at the following [link](#).

If you have any questions or require any other information relating to this FOI application, please feel free to contact the writer on Tel. (02) 8918 8596 or via [davidmesman@nbnco.com.au](mailto:davidmesman@nbnco.com.au).

Sincerely,

David Mesman  
FOI Officer

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FREEDOM OF INFORMATION REQUEST – 1314A/47

Jxeeno – Right to Know

ACCESS DECISION  
STATEMENT OF REASONS

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**Application Chronology and Terms of Request**

1. On 12 April 2014, NBN Co received an application under the *Freedom of Information Act, 1982* (the FOI Act or the Act) from "Jxeeno" (the Applicant). In particular, the Applicant sought access to the following:

*"I wish to obtain a document containing the number of FSAMs and an approximate premises count for the included FSAMs for each state where:*

*a) a contract instruction to commence "detailed design and field inspection work" has been issued to NBN Co's delivery partners \*\**

*b) a contract instruction to commence "build work... consistent with the completed Detailed Design Document" has been issued to NBN Co's delivery partners \*\**

*between 1st September 2013 up till 31st March 2014 for the purposes of the NBN Co Brownfields Fibre build.*

*\*\* as defined in Monthly Ready for Service plans".*

2. On 16 April 2014, NBN Co staff wrote to the Applicant, formally acknowledging this application as required by section 15 of the FOI Act.
3. On 17 April 2014, NBN Co staff wrote to the Applicant and requested an advance deposit payment of \$30. This was based on a total fee estimate of \$120. NBN Co's processing fee estimate included four hours of search and retrieval time, as well as eight hours for decision-making. At the time of the advance deposit request, four days had passed in the processing time limit. The Applicant was informed that the processing period would recommence, pending the payment of the deposit, or a charges review decision, or the withdrawal of this application.

4. On 28 April 2014, the Applicant emailed NBN Co and sought to revise the scope of his request to:

*"A document containing the number of FSAMs in each state where: a) a contract instruction to commence "detailed design and field inspection work" has been issued to NBN Co's delivery partners (as defined in the August 2013 Monthly Ready for Service plans) and between 1st September 2013 up till 31st March 2014 for the purposes of the NBN Co Brownfields Fibre build".*

5. On 28 April 2014, I emailed the Applicant and indicated that NBN Co staff would liaise with relevant business units regarding the revised FOI application. I also indicated that I would investigate whether the Applicant's revised request terms would reduce the FOI search and decision-making time, as well as the processing fees.

6. At the end of April and early May 2014, I undertook consultations with relevant business units in the company to ascertain whether they could accommodate the request. I also sought guidance as to whether the information may be of a commercial nature or if there were any other relevant objections to the potential release of the information. In that regard, there were no objections to the release of the information, outlined in the revised FOI application.
7. On 9 May 2014, I finalised my access decision, as outlined below, and emailed the same to the Applicant.

### Access Decision

8. Under section 3(1)(b) of the FOI Act, the public has a right to seek access to “documents”, rather than discrete bits of information. Notwithstanding this point, section 17 of the FOI Act enables Government authorities to provide applicants with information, where such information is not available in a discrete written form and where the information is “ordinarily available to the agency for retrieving or collating stored information”. In that regard, NBN Co staff indicated that it was possible to create such a document, which would contain the relevant information requested by the Applicant.
9. As an FOI decision maker, it is open to me to consider whether the requested information falls within the terms of section 7(3A) of the FOI Act – NBN Co’s commercial activities exemption – and is, therefore, not subject to the operation of the Act. General background information regarding NBN Co’s FOI processes and the principles animating NBN Co’s commercial activities exemption may be found at the following [link](#). It was also open to me to consider whether other exemptions may apply, such as section 47 of the FOI Act (Commercially valuable information), among other exemptions.
10. In making my FOI decision, I endeavoured to be guided by both the spirit and terms of the FOI Act. I also made reference to the objects of the Act, which provide for agencies to exercise their functions and powers, as far as possible, to facilitate and promote public access to information.
11. In light of the above points, I have determined to grant access in full to the relevant information under sections 11 and 11A of the FOI Act. This information may be found at Attachment A, appended to this Statement of Reasons.
12. NBN Co staff spent approximately one half of an hour in creating the dataset requested by the Applicant and undertaking administrative tasks related to this FOI request. In addition, I spent approximately three hours in drafting and finalising this FOI decision, as well as completing relevant correspondence and undertaking discussions with subject matter experts in our business regarding the dataset, its commerciality, etc. For reference, no fees are levied for the first five hours of FOI decision-making time. As such, the only fees payable would be \$7.50 – for the half hour of search time.
13. NBN Co’s general policy is to charge applicants for FOI processing time. In its [Submission to the OAIC Charges Review](#), NBN Co outlined its support of fees and charges and their importance to the FOI scheme, including the following points:
  - Government agencies and authorities should be able to recoup some of their costs associated with processing FOI requests, while providing a key public service. This is in line with user-pays principles and that users should share in the cost of service provision;
  - The ability to charge for FOI processing time reflects the Commonwealth Parliament’s and the community’s recognition that public servants’ time is a valuable resource and that such resources should only be spent in appropriate public undertakings. Similar reasoning animates section 24AA of the FOI Act, which enables decision-makers to refuse requests that would substantially and unreasonably divert the resources of an agency or GBE from its operations;
  - The above argument may be applied with even greater force to Government Business Entities (GBEs), which are expected to operate as any other player in the commercial marketplace;

- The ability to charge for the processing of FOI applications also ensures that applicants have a serious interest in the subject matter and are likely to see the application to a final determination;
- Processing fee payments and advanced deposits tend to limit the scope of preliminary and other work “written off” by Government entities in the event that an applicant withdraws a request. This dovetails with the public interest in not wasting government and – taxpayer funded – public resources; and
- At page 5 of the Office of the Australian Information Commissioner’s (the OAIC) [Review of Charges under the FOI Act 1983](#), the OAIC reinforced the importance of fees and charges, outlining that:

*Fees and charges play an important role in the FOI scheme. It is appropriate that applicants can be required in some instances to contribute to the substantial cost to government of meeting individual document requests. Charges also play a role in balancing demand, by focusing attention on the scope of requests and regulating those that are complex or voluminous and burdensome to process.*

14. In making my decision in relation to FOI processing charges, I noted that NBN Co does not normally produce the specific dataset requested by the Applicant. This required NBN Co staff to undertake work outside of their normal duties and would militate in favour of levying charges. In addition, I noted that the Applicant has made a series of requests to NBN Co regarding similar datasets and I have waived charges previously. These factors would also militate in favour of charging processing fees. However, I also noted that the Applicant clarified the terms of this request to exclude various matters, which assisted in limiting the required decision-making time. I also took into account the relatively small amount of processing charges.
15. In light of the above points, I have determined to waive all outstanding processing fees in relation to this FOI application. This is permitted by Regulation 3 of the *Freedom of Information (Charges) Regulations 1982*, which provides decision-makers with a general discretion to impose or not impose a charge, or impose a reduced charge for the processing of an FOI request.
16. If you are dissatisfied with this decision, you have certain rights of review. Details regarding your rights of review and appeal are outlined in the covering letter, provided with this Statement of Reasons.

Attachment A – Document Released Under Freedom of Information Act, 1982 – NBN Co FOI1314/47

*The FOI applicant sought the following information, being the number of FSAMs in each State where a contract instruction to commence "detailed design and field inspection work" had been issued to NBN Co's delivery partners (as defined in the August 2013 Monthly Ready for Service plans) between 1st September 2013 up till 31st March 2014 for the purposes of the NBN Co Brownfields Fibre Build.*

Between 1 September 2013 and 31 March 2014, there were 81 FSAMs released for design. Broken down by State, they are as follows –

- ACT 2
- NSW 12
- NT 4
- QLD 17
- SA 19
- VIC 8
- WA 19