



24 January 2020

"BIFMA", a pseudonym

Sent via email: foi+request-5894-dd2c7dac@righttoknow.org.au

Our Ref: FOI1920/61.02

To whom this may concern:

FOI Application – Satellite Services

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 your FOI request, the decision-maker's findings and the access decision.

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.

If you have any questions or need to discuss your FOI application, please contact me via email on davidmesman@nbnco.com.au.

Yours faithfully,

David J Mesman
General Counsel
FOI, Privacy & Knowledge Management



FREEDOM OF INFORMATION REQUEST – 1920/61

ACCESS DECISION – STATEMENT OF REASONS

Application Chronology and Terms of Request

1. On 12 November 2019, “BIFMA” (a pseudonym, and **the Applicant**) made a request (**Original Request**) under the *Freedom of Information Act, 1982* (**the FOI Act**) seeking the following:

“Can you please advise how many premises are mapped for a Skymuster connection (as at 12/11/2019) within a 25km radius of the GPO in each Capital City for each State? (NT & ACT are excluded from this request). Please breakdown the number of premises by each City. Eg; Sydney: ###, Melbourne: ###, Brisbane: ###, Perth: ###, Adelaide: ###, Hobart: ###.”

2. On 22 November 2019, I acknowledged the Original Request per section 15(5) of the FOI Act.
3. On 5 December 2019, **nbn**’s FOI Team informed the Applicant of the estimated final processing charges payable in relation to the Original Request. In that same email, **nbn**’s FOI Team requested that the Applicant make payment and provided details in that regard, among other matters.
4. On 7 December 2019, **nbn**’s FOI Team confirmed that **nbn**’s Finance Group had received the final processing payment in relation to the Original Request. On the same date, the Applicant emailed **nbn** and made a series of contentions, requesting that **nbn** waive processing fees in relation to the Original Request. As outlined in those contentions, the Applicant paid the fees to expedite the processing of the Original Request.
5. On 17 December 2019, I completed the FOI decision in the Original Request and subsequently forwarded it to the Applicant.
6. On 3 January 2020, I completed the Charges Decision in relation to the Original Request and refused the Applicant’s request for a fee waiver – **nbn** FOI reference 1920/41.06.
7. On 17 January 2020, the Applicant emailed **nbn**’s FOI Team and, among matters, requested:
 - a) *An assurance the information released in the FOI is for all premises mapped for Skymuster, and not just active connections; and*
 - b) *If the information released only provides for active connections, an update to the FOI providing information on all premises (sic) mapped to receive Skymuster (whether the connection is active or not).*
8. On 22 January 2020, I reverted to the Applicant and indicated the following:

*“I confirm that that data provided was in relation to active Sky Muster™ connections. For reference, **nbn** does not use the term “mapped” to describe unconnected or inactive premises. **nbn** will consider your request for unconnected or inactive premises designated as Sky Muster™ connections in current **nbn**™ network deployment planning.*



nbn will not charge you for the processing of this request for additional information, noting the confusion regarding the original terms. We will revert to you as soon as possible. Please note that nbn's FOI Team will need to consider whether the additional data relates to nbn's commercial activities and/or whether the data may be exempt from release."

9. On 24 January 2020 – and after reviewing this revised request (**nbn** reference FOI1920/61) and receiving input from **nbn** subject matter experts (**SMEs**), I completed this FOI decision.

Background Information

10. In completing this FOI decision, I took into account relevant parts of the FOI Act and related legislation, the Office of the Australian Information Commissioner (**OAIC**) [FOI Guidelines](#), relevant case law and other applicable sources.
11. **nbn** is treated differently from other agencies and Commonwealth entities that are subject to the FOI Act. Per [section 7\(3A\)](#) and [Part II of Schedule 2](#) of the FOI Act, documents relating to **nbn's** commercial activities are carved-out from the application of the FOI Act.
12. **nbn** has summarised the OAIC's and the Administrative Appeals Tribunal's decisions concerning **nbn's** and similar entities' commercial activities carve-out (**CAC**) in a General Background Information Document (**GBI Document**) found at the following [link](#).

Findings of Fact & Access Decision

13. Under the FOI Act, applicants have a right to seek documents, rather than information or datasets. However, section 17 of the FOI Act permits FOI agencies to draw information from computers or other equipment and to collate that information into a document, which had previously not existed. This requirement is subject to a caveat, i.e. that an FOI agency is not required to collate the information if it would substantially and unreasonably divert the agency's resources.
14. Noting the above points, **nbn** SMEs were able to identify relevant information within **nbn's** IT systems and collate the same into a new document (**the Requested Document** – found at **Attachment A**) – and without unreasonably and substantially diverting **nbn's** resources.
15. Drawing from discussions with **nbn** SMEs, I made the following findings of fact:
 - a. As flagged in Original Request Decision (FOI1920/41.05), the distance from a capital city's GPO is not necessarily an indicative measure of whether a given premises can expect to be connected to the **nbn™** network via satellite vs. fixed line or fixed wireless services. It is **nbn's** practice to deploy Sky Muster™ satellite services where providing fixed line or fixed wireless connections to that area would be unworkable.
 - b. **nbn** does not generally provide data regarding the **nbn™** network rollout unless it is accurate. Among other reasons, this helps to ensure that **nbn™** network end-users, our retail service providers and the general community can make accurate and reliable assessments about the **nbn™** network services. This has implications for **nbn's** brand and its perception in the broader community and commercial markets, which can impact upon the speed at which end-users migrate to and purchase **nbn™**



network services from retail service providers (**RSPs**), i.e. **nbn**'s wholesale broadband customers. This can have a corresponding effect upon **nbn**'s revenue streams, the company's ability to meet long and short-term corporate targets and overall profitability.

- c. In relation to the Original Request, **nbn**'s FOI Team provided the Applicant with data concerning active Sky Muster™ connections. For reference, **nbn** does not use the term "mapped" to describe unconnected premises. In that regard, it is important to note the following points:
- i. **nbn** tentatively assigns premises an **nbn**™ network technology based on **nbn**'s current deployment plans (**Potential Connection Data or PCD**), which are subject to change. This is made clear at **nbn**'s "[Check your address](#)" website, which outlines the following:

*"This... technology is based on **nbn**'s current deployment plans and is subject to change. Network rollout information is accurate as at (date of search) and is updated weekly. Rollout areas and boundaries are subject to change as construction planning is finalised."*
 - ii. **nbn** regularly revises its network deployment plans so as expedite the speed of the rollout, minimise costs and enable, where possible, that upgrade paths are available to end-users. This is made clear in **nbn**'s [Shareholders' Statement of Expectations](#), which indicates that **nbn** should operate its business on a commercial basis and that:

*"**nbn** should roll out a multi-technology mix network and build the network in a cost effective way using the technology best matched to each area of Australia. **nbn** will ensure upgrade paths are available as required."*
 - iii. In relation to **nbn** Sky Muster™ network connections, **nbn**'s deployment plans regularly change and the PCD:
 - Is reflective of a given point in time and may change due to alterations in **nbn**'s network deployment plans;
 - Includes RSP trial sites that will not be connected to end-users' premises;
 - Includes monitoring sites which **nbn** uses to check the "health" of the **nbn**™ network, which will not be connected to end-users' premises;
 - Contains sites that may never be connected to the **nbn**™ network, e.g. an isolated building in a rural, remote or inaccessible location, where retail end-users may not wish to obtain an **nbn**™ network connection; and
 - Unlike the case with **nbn**™ network connections within the fixed line footprint, there is no requirement to disconnect a legacy (copper line) connection. As such, premises that are categorised as a potential satellite connection may continue with their legacy service or a combination of Sky Muster™ connection and legacy services.



16. Based upon the above points, the PCD is not an accurate reflection of the number of premises that can connect, nor those that will definitively connect to the **nbn**[™] network via a Sky Muster[™] connection. It follows that the disclosure of the PCD could be considered as relating to **nbn**'s commercial activities, noting the potential effects upon **nbn**'s brand, noted above.
17. The PCD may also be considered to relate to **nbn**'s commercial activities on the basis that it is reflective of **nbn**'s internal business planning regarding deployment of a specific technology solution at a given point in time. As outlined above, these figures may and will likely change based upon **nbn**'s internal business planning processes. I would generally consider such a dataset as relating to **nbn**'s commercial activities if the data were linked to specific premises, locations or suburbs. The reason is that such data would tend to reveal changes to **nbn**'s planning processes prior to **nbn** making such processes publicly available.
18. Noting the above points, **nbn** has consistently refused access to prospective rollout data, as well as refusing access to the location of **nbn** assets, mapping data and similar information. **nbn**'s FOI Team made these findings on the basis that the information and data are **nbn**'s intellectual property and/or have been gleaned pursuant to commercial contracts, under which **nbn** owes obligations of confidentiality. This is particularly the case in relation to **nbn** data that has been produced through licensing arrangements with its delivery partners. More generally, disclosure could reveal to competitors the specific premises, locations or suburbs on which to focus their marketing efforts. There would be acute commercial sensitivities and particularly where competing technologies may be promoted, such as 5G mobile or other networks. Such efforts could undermine **nbn**'s business modelling as well as the company's commercial and strategic goals.
19. Notwithstanding those points, the PCD is not tied to specific locations, but merely a broad geographic area, i.e. within 25 kms of capital cities' GPOs. As flagged in the Original Request and above, the distance from a capital city's GPO is not necessarily an indicative measure of whether a given premises can expect to be connected to the **nbn**[™] network via satellite vs. fixed line or fixed wireless services. In my opinion, disclosure of the PCD would not tend to reveal prospective rollout information or other data that may be used to undermine **nbn**'s commercial efforts. It is important to note that this reasoning would not necessarily apply to FOI requests for more specific locations.
20. After a review of relevant sections of the FOI Act, the OAIC Guidelines and other sources, I have determined to grant access in full to the Requested Document under sections 11 and 11A of the FOI Act.
21. 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 – FOI1920/61 – Document Released in Full

Under the *Freedom of Information Act, 1982 (the FOI Act)*, FOI applicants have a right to seek documents, rather than information or datasets. However, section 17 of the FOI Act permits FOI agencies to draw information from computers or other equipment and to collate that information into a document, which had previously not existed (**the Requested Document**). nbn's FOI Officer determined to release the Requested Document to the Applicant.

General Post Office (GPO) (*)	Active nbn satellite services within 25km of GPO at 12 Nov/2019	Potential, inactive nbn satellite services (**) within 25km of GPO at 12 Nov/2019
Adelaide GPO	462	1917
Brisbane GPO	103	545
Hobart GPO	264	777
Melbourne GPO	61	802
Perth GPO	115	492
Sydney GPO	28	111
Grand Total	1033	4644

(*) *It is important to note that distance from a capital city's GPO is not necessarily an indicative measure of whether a given premises can expect to be connected to the nbn™ network via satellite vs. fixed line or fixed wireless services. It is nbn's practice to deploy Sky Muster™ satellite services where providing fixed line or fixed wireless connections to that area would be unworkable.*

(**) *It is also important to note that potential, inactive connection numbers:*

- are reflective of a point in time and may change due to alterations in nbn's network deployment plans, such as with upgrades in access technologies;*
- would include sites designated for nbn's wholesale broadband clients, i.e. retail service provider or RSP trial locations and nbn's own monitoring sites for testing the health of the nbn™ network;*
- would also represent sites or locations where end-users may not wish to connect to the nbn™ network, e.g. at an isolated building in a rural, remote or inaccessible location;*
- would also include premises where end-users may have chosen not to connect to the nbn™ network and to retain legacy services; and*
- would also include premises where end-users may subsequently choose to connect to nbn™ network services at a future date, noting that end-users with Sky Muster™ connections can continue using their legacy (copper line) services and for which there is no mandatory disconnection requirement. This is not the case within the nbn™ network's fixed-line (copper) footprint, where end-users have roughly 18 months in which to migrate to the nbn™ network before they are disconnected from legacy services.*