



6 December 2019

Mr Joshua Michael

Sent via email: [foi+request-5952-38ec9cc9@righttoknow.org.au](mailto:foi+request-5952-38ec9cc9@righttoknow.org.au)

Our Ref: 1920/47.02

Dear Mr Michael

I am writing in relation to your application made under the *Freedom of Information Act 1982* (Cth) (**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 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](mailto:davidmesman@nbnco.com.au).

Yours sincerely

**David Mesman**

General Counsel

FOI Privacy & Knowledge Management



## FREEDOM OF INFORMATION REQUEST – 1920/47

### ACCESS DECISION – STATEMENT OF REASONS

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#### **Background Information**

1. In making this decision, I took into account relevant parts of the *Freedom of Information Act 1982* (Cth) (**FOI Act**) and related legislation, the Office of the Australian Information Commissioner's (**OAIC**) [FOI Guidelines](#), relevant case law and other applicable sources.
2. 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. The following [link](#) provides general background information concerning **nbn**'s Commercial Activities Carve-out (**CAC**) and should be considered as an integral part of this FOI determination.

#### **Terms of Request & Chronology**

3. On 26 November 2019, **nbn**'s FOI Team received an email from Mr Joshua Michael (**the Applicant**) via the Right-To-Know website, seeking:

*“... I hear from people socially that Opticomm fibre is a better internet connection than NBN fibre, however no one can provide any sort of data, quantification, or any particular network characteristics regarding this claim... Has NBN Co done any comparisons relating to this? Has Opticomm done any comparisons between itself and other fibre network installers from a network characteristics comparison standpoint? I would like those documents/presentations.”*

4. On 6 December 2019, I completed this FOI access decision and subsequently forwarded it to the Applicant.

#### **Findings on Material Questions of Fact & Access Decision**

5. Following receipt of your request, **nbn**'s FOI Team undertook relevant enquiries concerning this matter, including consultations with subject matter experts within **nbn**. I was informed that there are no documents that fall within the terms of this request.
6. Per [section 24A of the FOI Act](#), I make a finding that **nbn** staff have taken all reasonable steps to find the requested documents and I am satisfied that they do not exist.
7. While I have not reviewed any relevant documents (noting the above 'no documents' decision), it should also be noted that an analysis by **nbn** regarding the relative quality of a product or service provided by a telecommunications network builder would likely relate to **nbn**'s commercial activities. If **nbn** held documents similar to those requested by the Applicant in this instance, **nbn** would likely have been able to rely upon the CAC to refuse access per [section 7\(3A\)](#) and [Part II of Schedule 2](#) of the FOI Act (among other grounds).

#### **Processing Charges**

8. In this FOI application, **nbn** staff spent approximately 1.5 hours searching for relevant documents, which were subsequently found not to exist. In addition, **nbn**'s FOI Team spent 4.5 hours making enquiries from relevant **nbn** staff and drafting this decision. The latter processing time would not be 'chargeable' under the FOI Act, as the first five hours of decision-making time are free. However, the former processing time (search & retrieval) is chargeable and would equate to \$22.50.



9. In its [Submission to the OAIC Charges Review](#), **nbn** outlined its support of fees and charges and their importance to the Commonwealth FOI scheme. In particular, **nbn** indicated that the company levied charges in line with user-pays principles, the need to manage scarce public resources and to assist in regulating voluminous requests. This approach also reflects **nbn**'s mandate to operate as any other commercial entity and generate a commercial return on investment for our Shareholder Ministers.
  
10. Normally, **nbn** would charge applicants for processing fees incurred in relation to FOI requests. However, I also considered **nbn**'s commitment to the objects of the FOI Act and, in particular, section 3(4). That section outlines that entities subject to the FOI Act should seek to facilitate and promote public access to information, promptly and at the lowest reasonable cost. Noting that principle and that "no documents" were identified, **nbn** has determined not to impose any charges in relation to this FOI request per the *Freedom of Information (Charges) Regulations 2019* (Cth).

#### **Review Rights**

11. If you are dissatisfied with this decision, you have certain rights of review and other avenues of redress. These are outlined in the covering letter, provided with this Statement of Reasons.

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