



6 December 2019

Mr Timothy Nothdurft

Sent via email: [foi+request-5966-68ddf285@righttoknow.org.au](mailto:foi+request-5966-68ddf285@righttoknow.org.au)

Our Ref: 1920/48.02

Dear Mr Nothdurft,

### **nbn FOI Request**

I am writing in relation to your request under the *Freedom of Information Act 1982* (Cth) (**the FOI Act**). In particular, you were seeking the following information:

*“How many Technical Choice applications (TCP) or conversions from FttN to FttP have been undertaken (completed only) in Fibre Serving Area (FSA) 9SCU with SAM identifier 20 and the date the service was active.”*

### **Requests for information, not documents**

Under the FOI Act, applicants have a right to seek documents, rather than information or datasets.

However, section 17 of the FOI Act also 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.

For reference, subject matter experts within **nbn** were able to identify relevant information within **nbn**'s IT systems and collate the same into a new document (**the Requested Document**) – and without unreasonably and substantially diverting **nbn**'s resources.

### **Advance Deposit Request**

Per subsection 29(1) of the FOI Act, I have determined that a charge is payable in respect of processing this FOI request. In that regard, the search and retrieval time is detailed, below. **nbn** staff also completed a preliminary assessment of the work involved in completing a formal FOI decision. Our processing charges estimate is as follows:

Search and Retrieval Time	30 minutes @ \$15 per hour	\$7.50
Decision-Making Time	13 hours @ \$20 per hour	\$260
<b>Sub-total</b>		<b>\$267.50</b>
Less first 5 hours decision making time (*)		(\$100)
<b>TOTAL</b>		<b>\$167.50</b>

(\*) Per the *Freedom of Information (Fees and Charges) Regulations*, **nbn** has not charged you for the first 5 hours of decision-making time.

Please note that the estimated processing time and related fees may increase (or decrease), depending on the nature of the work required. However, I will inform you if the fees increase beyond the estimate above. As the total estimated processing charges exceeds \$100, a deposit of 25% (\$41.88) is required.



### **Next steps**

Within 30 days of this notice, you are required to:

- agree to pay the charge and forward the deposit; or
- contend that the charge has been wrongly assessed, or should be reduced or not imposed (you should provide full reasons for your contentions); or
- narrow the scope of your request (which may reduce the charge payable); or
- withdraw your request.

If you fail to notify **nbn** in a manner mentioned above, within 30 days of this notice, your request will be taken to have been withdrawn. In addition, if you contend that the estimated charge has been wrongly assessed, or should be reduced or not imposed, you must notify **nbn** of your contention, providing reasons, and evidence where relevant, to support your submission.

You may wish to refer to paragraph 4.70 of the Office of the Australian Information Commissioner's (**OAIC**) [FOI Guidelines](#) to assist in that regard. In deciding whether to reduce or not to impose a charge, the FOI decision-maker will consider all relevant factors, including:

- whether payment of the charge, or a part of it, would cause you financial hardship; and
- whether the giving of access is in the general public interest.

**If you choose to contend that the charge has been wrongly assessed or should be reduced or not imposed, this will not constitute a request for internal review.** You will be advised of your review rights under sections 53A and 54 of the FOI Act following consideration of your contentions.

Once **nbn** has completed the processing of your request, the assessment of the charge payable will be revised based on the actual amount of work involved in processing your request. If you are refused access to any of the documents that are relevant to your request, **nbn** may not impose an actual charge that is higher than the final estimated charge. This means that, if you are refused access to any document, the actual charge that will be payable will be lower than or equal to, but not more than, the final estimate of charges. It is only if you are granted access to all the documents that are relevant to your request that the actual charge imposed may be higher than the estimated charge. **It is important to note that the payment of FOI processing fees does not guarantee access to documents or information. Please also refer to nbn's guidance regarding FOI processing fees, found at the [following link](#) and the points, below, concerning nbn's commercial activities.**

If you agree to pay the estimated charge set out above, or the deposit for that charge, you should arrange to pay **nbn**, using the following electronic banking details:

Bank name:	CBA
Name:	nbn co limited FOI
BSB:	062-438
Account no:	10240782
Reference:	CRM # FOI-0004

**When making a payment, please ensure you include the reference noted above.**

Please note that if you provide a deposit and the processing of your request progresses to a point where a decision on access is made, a determination about the imposition of the actual charge will be made at that



time. The balance of the actual charge will become a debt due to the Commonwealth, which **nbn** would be obliged to pursue, unless other arrangements are made, or if **nbn** agrees to waive the fees.

As set out above and per section 31 of the FOI Act, the time limit for processing your request is suspended from the day you receive this notice, being today's date. Please also be advised that the charge notice day is not counted in calculating the processing time limit. For your reference, five days have passed in the processing period for this FOI application and the processing time limit will resume:

- On the day upon which **nbn** receives your deposit; or
- Alternatively and if you decide to contest the charge, the processing time limit will resume on the day upon which **nbn** notifies you of its decision not to impose a charge – if **nbn** so makes a decision; or
- In the event that **nbn** decides to reduce the charge and deposit is required, the processing time limit will recommence on the day upon which you pay the reduced deposit.

More information about charges under the FOI Act, rights of review and redress are available at OAIC website and in part 4 of the OAIC [FOI Guidelines](#).

#### **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 information](#) (GBI Document) concerning **nbn's** CAC. The GBI 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.

#### **Disclosure Log Notification**

In accordance with the FOI Act, **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 exceptions as per section 11C of the FOI Act. For further information, visit our [Disclosure Log](#) on **nbn's** website.

Please feel free to contact me by email if you have any questions or would like to discuss your request.

Yours sincerely

**David Mesman**  
General Counsel  
FOI, Privacy & Knowledge Management