



22 January 2020

Mr Tim Nothdurft

Sent via email: foi+request-5966-68ddf285@righttoknow.org.au

Our Ref: FOI1920-48/IR84.02

Dear Mr Nothdurft

Freedom of Information (FOI) Application

I am writing concerning your request for an Internal Review under the *Freedom of Information Act 1982, (Cth)* of **nbn**'s decision in relation to the processing fee in the matter dated 6 December 2019 – FOI1920/48.05.

Please find attached a Statement of Reasons detailing my findings.

Would you please respond to this internal review decision within 30 days by:

- paying the deposit requested in **nbn**'s letters, sent to you dated 6 December 2019;
- withdrawing your revised Freedom of Information (FOI) request; or
- advising **nbn** if you intend to seek an Information Commissioner's review under Part VI 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 **nbn** does not receive your advice in relation to one of the three above options within the nominated timeframe, your revised FOI application will be taken to have been withdrawn.

If you have any questions or need to discuss your FOI application, you may contact me at MarkTrajcevski@nbnco.com.au.

Yours sincerely,

Mark Trajcevski
Chief Audit Executive



FREEDOM OF INFORMATION REQUEST – FOI1920/48

Mr Tim Nothdurft

INTERNAL REVIEW – STATEMENT OF REASONS

Decision-Making Authority

1. I am authorised for the purposes of section 23 of the *Freedom of Information Act 1982* (Cth) (the **FOI Act** or **Act**) to make an Internal Review decision in relation to the decision made by Mr David Mesman (FOI1920/48.05) on behalf of **nbn** co limited (**nbn**) of the processing fee in this matter.
2. In making this decision, I took into account relevant parts of the **FOI Act** and related legislation, the Office of the Australian Information Commissioner (**OAIC**) [FOI Guidelines](#) and other sources. Specifically, I have considered the Information Commissioner's FOI Guidelines which provide that 'an agency should be guided by the principles put forward by the Administrative Review Council in a Best Practice Guide on internal review, *Internal Review of Agency Decision Making*, Report No 44 (2000), Chapter 8.' Those principles can be adapted to the FOI context and are set out at paragraph 9.34 of the FOI Guidelines. In addition, I confirm I was not involved in nor consulted in the making of the processing fee decision under this review and sought to bring a fresh, independent and impartial perspective to this Internal Review.

Background

3. On 30 November 2019, **nbn**'s FOI Team received an FOI request from Mr Timothy Nothdurft (**the Applicant**), seeking the following:

"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."

4. On 6 December 2019, **nbn**'s FOI Team sent an advance deposit request of \$41.88 to the Applicant. This was based upon a processing fee estimate of \$167.50, reflecting 13 hours of decision-making time and one-half hour for search and retrieval.
5. On 7 December 2019, the Applicant responded to **nbn**:

"The cost around retrieval and decision making is unreasonable. I would like it to be reviewed.... This is a (sic) administrative lookup that requires very little effort or diversion of resources... It also does not compare reasonably to other FOI requests that have been carried out. It is also unreasonable to attempt to extract Money from a public that is trying to hold NBN to account... I would also like to request that you personally are no longer involved in any of the FOI requests and that it is diverted to another qualified individual within the organisation. If this cannot be actioned a suitable explanation will be required as to why?"

6. On 13 December 2019, Mr. Mesman emailed the Applicant:

*"I note your request for a review of my FOI processing charges estimate (**nbn**'s reference FOI1920/48). I will complete an FOI Charges Decision in due course. If my initial estimate matches the final charges determination, I will consider your email, below, as a request for an Internal Review of that decision. In the*



interim, could you please provide further particulars regarding your contentions – that would be of assistance. I would also request that you email those contentions directly to FOIOfficer@nbnco.com.au. If I have not received any further contentions by 23 December 2019, I will proceed to a Charges Decision by 3 January 2020. If you require more time to provide your contentions, please inform me before 2 January 2020.

*For reference, the appointment of **nbn**'s FOI Officer, the choice of FOI decision-makers and the processing of FOI applications are matters for **nbn**'s management. As outlined previously, I am **nbn**'s FOI Officer and I will continue to manage **nbn**'s FOI requests, including this and other FOI matters. **nbn** has informed you on at least six occasions of your right to make a complaint to the Office of the Australian Information Commissioner (OAIC) if you consider any complaints to be valid. My understanding is that you have not made a complaint to the OAIC to date. For your reference, I have copied the OAIC's enquiries email address. I would suggest that you direct your concerns to the OAIC.*

*I again request that you refrain from posting any further personal commentary about **nbn** staff members and I will relay the same request to the moderators of this website."*

7. On 24 December 2019, Mr Mesman completed his FOI Charges Decision, which confirmed the original estimate of FOI processing charges.
8. On 7 January 2020, I emailed the Applicant, indicating that I would be undertaking an Internal Review of the above FOI Charges Decision.
9. On 23 January 2020, I completed and finalised this Internal Review decision and sent it to the Applicant.

Findings of material facts and reasons

10. In considering the reasonableness or otherwise of the processing fee decision, I have:
 - a. considered Mr Mesman's charging methodology and the steps taken to identify the information requested and the nature of that information.
 - b. taken into account the processing fees charged by **nbn** in a number of previous FOI matters, that I considered to be of a similar nature to your FOI request.
 - c. noted the internal **nbn** classification of the information you are seeking.
 - d. confirmed the steps Mr Mesman would have to complete to process this FOI application.
 - e. confirmed that the search time inputs for **nbn** staff were accurate to process this FOI application.
 - f. confirmed that the decision making time in relation to this matter would involve preliminary review of the information, discussions with SMEs regarding the commercial sensitivities of the information, as well as writing a detailed FOI decision that considered relevant FOI principles, case law and legislation.
 - g. compared my findings in relation to previous FOI charges and the current assessment.
11. Finally, I consider that Mr Mesman's processing fee assessment is reasonable in the circumstances.



12. Additionally, I note you have not formally requested a reduction or waiver of the processing fee in circumstances where it may be shown that the release of the requested documents would be in the general public interest or in the interest of a substantial section of the public. Given this, it is appropriate under the FOI Act and Guidelines for me to consider this element as part of my Internal Review.
13. FOI Guidelines state that it is not in the public interest for an individual with a special interest in a document/s to be granted access nor that the underlying premise of the FOI Act of transparency means granting access to a document/s is in the public interest. There are many factors that may be considered in making a determination regarding the release of relevant documents and if their disclosure is in the general public interest. Those factors include:
- *The document relates to a matter of **public debate**, or a **policy issue under discussion** within an agency, and disclosure of the document would assist public comment on or participation in the debate or discussion.*
 - *The document relates to an agency decision that has been a **topic of public interest or discussion**, and disclosure of the document would better inform the public as to why or how the decision was made, including highlighting any problems or flaws that occurred in the decision-making process.*
 - *The document is to be used by a **researcher** in research that is to be published widely or that complements research being undertaken in an agency or elsewhere in the research community.*
 - *The document is to be used by a **community or non-profit organisation** in preparing a submission to a parliamentary or government inquiry, for example, on a law reform, social justice, civil liberties, financial regulation or environmental or heritage protection issue.*
 - *The document is to be used by a **journalist in preparing a story** for publication that is likely to be of general public interest.*
14. As a finding of fact, I note that the current FOI request relates to a very specific geographic location and a small number of **nbn**[™] network connections. This indicates that there would not be a general public interest in the information requested. Subject to receiving any additional information supporting a reduction or waiver of the processing fees based on public interest grounds or financial hardship, I have decided not to grant a fee reduction.
15. In view of my decision and as outlined in my covering letter, please follow the link to OAIC's website for information regarding your rights of review and redress.
