



24 December 2019

Mr Timothy Nothdurft

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Our Ref: 1920/53.02

nbn FOI request

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

Background & Request for clarification

On 25 November 2019, **nbn**'s FOI Team received a request from you, seeking:

"... documents/information on how many brownfield FSAs (Fibre Distribution Areas) used aerial fibre deployment methods or were installed on aerial assets (eg power utilities) after 2016."

Under the FOI Act, members of the public have a general right of access to specific documents, subject to certain exemptions. 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.

It is unclear if you are seeking a specific dataset, noting that you indicated that you are requesting "documents/information." It is also unclear if you are seeking a total number of brownfield FSAs (as a denominator) and a numerator of those FSAs in which aerial assets were deployed. Further, it is unclear if you are seeking a dataset, as described above, with aerial assets at any point within the FSA or whether **nbn** used aerial assets to connect a premises directly, etc. Please note that **nbn**'s aerial assets would include poles and strands between poles used as supporting structures for associated cabling and equipment. If you could please revert with respect to those details and **nbn**'s FOI Team will be to liaise with relevant subject matter experts within **nbn** to confirm what data can (potentially) be extracted. In addition, please refer to my comments, below, concerning the preliminary time estimates.

Per section 15 of the FOI Act, a valid FOI request must provide such information concerning the requested documents as is reasonably necessary to enable **nbn** to identify them, among other things. As currently drafted, the terms of your request are not sufficiently clear to enable **nbn** to commence the processing of your application. In circumstances where the scope of an FOI application is unclear, **nbn** will neither formally acknowledge, nor commence the processing of such requests. Until you clarify the terms of this request, the statutory time period for **nbn** to complete this FOI request will not commence.

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 document \(GB Document\)](#) concerning **nbn**'s commercial activities carve-out (CAC). The GB 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.

FOI Processing Period and Charges

The statutory period for processing an FOI request is 30 days, subject to any suspension of the processing period or extension of the time period for deciding the application. Please also note that **nbn** may impose processing charges in relation to FOI requests. I will inform you of any charges in relation to your request. For your reference, processing charges for FOI applications are set by regulation and may be found at **nbn**'s website – and, in particular, its [FOI page](#). The hyperlink below outlines **nbn**'s approach to processing charges: Submission to the OAIC [Charges Review](#). More information about charges under the FOI Act is set out in part 4 of the OAIC [FOI Guidelines](#).

Please also note that **nbn**'s subject matter experts have estimated that they will require roughly 14 hours search and retrieval time, being six hours to build the relevant queries within **nbn**'s systems, then another eight hours to validate and extract the response. This would not include FOI decision-making time. It is also important to note that processing fees payments do not guarantee the release of information or documents. Rather, processing fees are charged for the processing time of an FOI application, regardless of the outcome, but subject to any fee waivers, etc. In that context, FOI applicants should consider the possibility that information or documents requested may be subject to **nbn**'s CAC or commercial activities' carve-out, as well as other exemptions from release.

Disclosure Log

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

Please contact me if you have any questions in relation to the above or would like assistance to re-draft your request.

Yours sincerely

David Mesman

General Counsel

FOI, Privacy & Knowledge Management