



8 January 2020

Mr Timothy Nothdurft

Sent via email: foi+request-5998-b86bd10c@righttoknow.org.au

Our Ref: FOI1920/53.05

Dear Mr Nothdurft

FOI Application

I refer to your request under the *Freedom of Information Act 1982* (Cth) (**the FOI Act**) sent via the Right-to-Know (RTK) website. On 24 December 2019 and following **nbn**'s request to clarify the terms of this request, you revised your application, indicating that you were seeking the number of:

"...brownfield FDA (Fibre distribution areas) that were RFS AFTER 2016 that have used 1 or more aerial multipoint or aerial lead-ins. (or what are commonly known as NAPs or Network Access Points)."

Background information

Following discussions with **nbn** subject matter experts (**SMEs**), I was informed of the following:

- The term FDA or "Fibre Distribution Area" relates to **nbn**'s (previous) Fibre-to-the-Premises (**FTTP**) network rollout coding nomenclature and its related technology. For reference, **nbn** no longer uses this term in the current multi-technology mix (**MTM**) network rollout.
- **nbn**'s SMEs informed me that that they assume that your request is referring to Access Distribution Areas (**ADAs**), which are roughly equivalent to FDAs within the MTM network build.
- Your request also refers to NAPs, which is a term used by **nbn** to describe an aerial piece of network equipment that **nbn** deploys only with FTTP and FTTC connections.
- As you may be aware, there are a variety of different technologies deployed with the MTM rollout, including FTTP, Fibre-to-the-node (**FTTN**), Fibre-to-the-curb (**FTTC**), Fibre-to-the-basement (**FTTB**), Fixed wireless (**FW**) and satellite.
- In addition, it is important to note that:
 - **nbn** connections via FTTB, Fixed wireless and satellite technology would not generally involve an aerial fibre deployment.
 - With the remaining technologies, i.e. FTTN and HFC connections, **nbn** would generally acquire existing networks, which may include existing aerial connections. These connections would not be referred to as NAPs (since "NAP" is fibre specific term), but rather specific equipment related to copper and coaxial delivery mechanisms.
- Assuming that you are only seeking data on the number of NAPs, any data set produced would only include data concerning FTTP and FTTC ready-for-service (**RFS**) connections since 1 January 2017.



- Based upon those parameters, **nbn**'s SMEs informed me that it would take more than 16 hours (16.25 hours) to obtain the relevant data. For reference, **nbn**'s SMEs would be required to undertake the following steps in relation to this request:
 - Identify the appropriate systems and tools to perform the data extract;
 - Build the relevant query tools, by identifying specific network elements within data sets and models that match the relevant parameters;
 - Identify and filter for relevant NAPs and relevant network architecture within the data sets and models;
 - Filter for premises that were RFS since 1 January 2017;
 - Combine the data sources and run extracts, then validate and check results for accuracy; and
 - Package the data outputs and prepare a draft extract summary for review by **nbn**'s FOI Team and other relevant **nbn** staff.

Based on those points and parameters (i.e. NAPs with FTTC and FTTP connections), I have prepared an advance deposit request, outlined below. As the decision-making time is likely to be below five hours, that charge would be waived and the only applicable FOI processing fees would be for search and retrieval.

Advance deposit information

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, among other issues.

As outlined above, **nbn** SMEs were able to a) confirm that the terms of this FOI request were sufficiently clear; b) identify relevant information from **nbn**'s IT systems; and c) confirm that producing the information would not unreasonably divert **nbn**'s resources. As such, **nbn**'s FOI Team could proceed with the processing of this FOI application.

Payment Request

Per section 29(1) of the FOI Act, I have determined that a charge is payable in respect of the processing of this FOI request. The applicable charges are as follows:

Search and Retrieval Time	16.25 hours @ \$15 per hour	\$243.75
Decision-Making Time	4 hours @ \$20 per hour	\$80.00
Sub-total		\$323.75
Less first 5 (or less) hours decision-making time (*)		(\$80.00)
TOTAL		\$243.75

(*) Per the *Freedom of Information (Charges) Regulations*, **nbn** has not charged you for the first 5 hours of decision-making time. Please note that this waiver of fees only applies to decision-making time, but not to other FOI processing charges, such as search & retrieval.

As the processing charges exceed \$100, a deposit is required of \$60.94, being 25% of the original estimate. It is important to note that a final payment is required prior to **nbn** issuing its FOI decision.



Next steps

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

- agree to pay the charge and make payment; or
- contend that the charge has been wrongly assessed, or should be reduced or not imposed (you should provide full reasons for your contention); or
- withdraw your request.

If within 30 days of this notice, you fail to notify **nbn** in a manner mentioned above, then 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. 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 applicants wish to make general public interest contentions in support of a fee reduction, it is recommended that they provide **nbn** with media, Parliamentary or other relevant commentary referring to the specific subject matter of the FOI request. It is further recommended that applicants refer to paragraph 4.70 and following of the Australian Information Commissioner's (OAIC) [FOI Guidelines](#) when making such contentions.

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 and **nbn** issuing a Charges Decision.

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.**

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-0005**

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.

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, 14 days have passed, and the processing time limit will resume:

- On the day upon which **nbn** receives your payment; or
- Alternatively, 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 the Office of the 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