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Sent via email: [foi+request-6079-566b38a1@righttoknow.org.au](mailto:foi+request-6079-566b38a1@righttoknow.org.au)

Our Ref: FOI1920/57.02

To whom this may concern:

### FOI Application

Thank you for your request under the *Freedom of Information Act 1982* (Cth) (**the FOI Act**) sent via the Right-to-Know (**RTK**) website and which sought:

*“Please release internal standard operating procedures (SOPs), processes, guidelines that are published on NBN Intranet that relates to classification of documentation, release of information to the public, social media policy and use, security clearance and training.*

*By published*

*HTML pages*

*PDF Documents*

*Word or Excel Documents*

*By Intranet - any internal pages accessed with a web browser and accessible to a staff.”*

### **Scope of request**

Under the FOI Act, members of the public have a general right of access to specific documents, subject to certain exemptions. Per [section 15\(2\) 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, this application is not sufficiently clear to enable **nbn** to commence processing it. This is because it is difficult to identify all relevant documents, which you are seeking, noting that you have requested “SOPs, processes and guidelines.” It is not clear what is specifically meant by SOPs and processes.

However, it would appear that you are seeking (what is, in effect) **nbn**’s internal policies or guidelines governing **nbn** staff member’s conduct and in relation the following categories:

1. Classification of documentation;
2. Release of information to the public;
3. Social media policy and use; and
4. Security clearance and training.

In addition, your request appears to be seeking virtually any document that is accessible to **nbn** staff via its intranet, noting that you referred to HTML pages as well as PDF, Word or Excel documents (**PWE Documents**). While it would be relatively straightforward to identify PWE Documents, it would not possible



to identify with certainty all relevant HTML documents, particularly noting that your request is seeking (in effect) all documents that “relate to” the four categories noted above.

In circumstances where the scope of an FOI application is unclear, **nbn** will neither formally acknowledge, nor commence the processing of that request. Until you clarify the terms of this request, the statutory time period for **nbn** to complete this FOI application will not commence.

In addition, **nbn** would likely require significant time and resources to process this request in its current form. Unless you clarify your request, I would also consider it to be an unreasonable division of **nbn**'s resources to process your request at the current time (refer to [sections 24](#) and [24AA](#) of the FOI Act). This is because there are various types of documents that may fit within the scope of your request, as flagged above.

I would ask that please clarify what specific document or set of documents, you require, e.g. a formal (internal policy) document. It would also assist if you would exclude documents that are likely to be exempt under the FOI Act. In that regard, please refer to my comments, below, concerning **nbn**'s commercial activities carve-out (**CAC**). I also refer you to **nbn**'s approach to FOI processing charges, below, when reconsidering the scope of this request.

#### **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.

#### **Previous FOI requests for internal nbn policies, procedures, guidelines and training**

It is important to note that **nbn** reviews every FOI application on its individual merits. While I have not yet identified any relevant documents, nor have I begun to assess documents in relation to this FOI request, it is important to note that **nbn** has made findings that its internal policies, guidelines and standards relate to **nbn**'s commercial activities and are not subject to the FOI Act. Please note the following points:

- **nbn design standards** – I refer you to **nbn**'s decision and other correspondence published on the RTK website regarding [nbn MTM design standards \(FOI1819/116\)](#). Among other reasons, **nbn** refused access to its design standards and related documentation on the basis of the CAC, noting that these documents are not published externally; are confidential; relate to internal **nbn** business processes and constitute **nbn**'s intellectual property, among other commercial factors.
- **Social media protocols** - In relation to an FOI request for [social media protocols \(FOI1920/29\)](#), **nbn** did not complete a formal decision. However, **nbn**'s FOI Team flagged the following:



*“In relation to scripts and social media protocols, I note that such documents are a core part of **nbn**’s – and any company’s – outward or client facing communications efforts. These types of corporate communication efforts involve a significant number of staff members and a large investment by **nbn**. In that regard, **nbn** has refused access to similar documents, noting that they are part of an iterative communications strategy that assists in building **nbn**’s brand and corporate image. In previous FOI decisions, **nbn** also noted that non-government businesses closely guard corporate communications strategies, so as to protect their corporate messaging and strategic protocols from competitors, while promoting their brand and advancing strategic corporate objectives.*

*Disclosure **nbn**’s social media strategy would almost certainly put **nbn** at a strategic disadvantage to other parties in the market and particularly those which are not subject to the FOI Act. Accordingly, disclosure could potentially undermine **nbn**’s ability to function as any other commercial player in the marketplace, thereby potentially subverting Parliament’s intention in providing **nbn** with the CAC.”*

- Human resources (HR) policies, guidelines and training materials – **nbn** has previously received FOI requests for a variety of (internal) human resources policies, guidelines and training materials. In relation to those matters, **nbn** made findings that these documents constituted **nbn**’s intellectual property; were confidential documents; were not to be published externally; and related to **nbn**’s commercial activities. More generally, HR policies, protocols, guidelines and training may be considered as relating to the effective management of **nbn** staff. In that regard, **nbn**’s FOI Team has made findings that the successful management of staff is also closely linked to **nbn**’s efforts in meeting its corporate objectives as a Government Business Entity (**GBE**), as well as the company’s ability to make a commercial rate of return for our Shareholder Ministers. As such, there is a strong possibility that documents which you are seeking may fall within the meaning of **nbn**’s CAC – and not be subject to the FOI Act.

### **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 an 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 Office of the Australian Information Commissioner (**OAIC**) [Charges Review](#). More information about charges under the FOI Act is set out in part 4 of the OAIC [FOI Guidelines](#).

### **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