

3 February 2020

Mr Tim McBride  
[foi+request-6085-616e735e@righttoknow.org.au](mailto:foi+request-6085-616e735e@righttoknow.org.au)

Our Ref: FOI1920/60.02

Dear Mr McBride

### Request for Information

I am writing in relation to your correspondence to **nbn's** FOI Officer email address on 20 January 2020 seeking:

*“GeoGSON or CSV/TSV data of the status (planned, construction or available) and technology type (described above) on a per site / premises level, nationally.”*

The *Freedom of Information Act 1982* (Cth) (**FOI Act**) provides that members of the public have a general right of access to specific documents, subject to certain exemptions. Under [section 15\(2\)](#) of the FOI Act, a valid FOI request must state that the request is an application for the purposes of the FOI Act and provide such information concerning the requested documents as is reasonably necessary to enable **nbn** to identify them, among other things.

### **Notice and Scope of Request**

Your request seeks certain data on a per site/premises level, nationally, however, the subject timeframe in respect of which the data relates is not defined. In addition, your request does not indicate the data required to identify the “site/premises”, i.e. it is unclear if you are referring to a street address (alone) or a latitude and longitudinal reference, or both. Further, your request relates to “GeoGSON”, but I assume this should be “GeoJSON” – please confirm.

As currently drafted, the terms of your request are not sufficiently clear and the particular documents that fall within the parameters of the request are therefore not reasonably identifiable. Accordingly, **nbn** cannot process your FOI request in its current form. Until you clarify those terms, **nbn** will not formally acknowledge your request, and the statutory period for completing this request will not commence.

### **nbn's Commercial Activities Carve-out**

I refer you to the commercial activities carve-out (**the CAC**) from the application of the FOI Act and refer you to [section 7\(3A\)](#) and [Part II of Schedule 2](#) of the FOI Act. Please be aware that documents that are in relation to **nbn's** “commercial activities” are not subject to the operation of the FOI Act and would be exempt from release or consideration under the FOI Act. The following link summarises and provides [general background information](#) concerning **nbn's** commercial activities carve-out. That background document references two reviews by the Australian Information Commissioner that considered **nbn's** CAC: the [Internode Decision](#) (in January 2012) and the [Battersby Decision](#) (in July 2013). While I am not making a formal decision and have not reviewed any documents, I note that there is a distinct possibility that documents falling within the terms of this request may be subject to the CAC, among other exemptions from release.



For your reference, **nbn** has previously made findings that its mapping data, which would be included in the subject of this request, related to its commercial activities. **nbn** has not made a formal decision regarding the release of map details. However, **nbn**'s FOI Team provided submissions to the Office of the Australian Information Commissioner (**OAIC**) in a Fee Charges Review that rollout map details related to **nbn**'s commercial activities. Among other reasons, **nbn** obtained the data pursuant to commercial arrangements with third party suppliers and the information had inherent value to **nbn** and other commercial parties.

Further, **nbn** is a wholesale supplier of broadband services, which are sold to individual end-users through various retail service providers (**RSPs**), such as Telstra, Optus, iiNet, TPG, etc. **nbn** provides the relevant mapping data to RSPs on a secure portal and on a confidential basis. **nbn** shares certain mapping data with RSPs to assist them to plan their marketing campaigns. For that and other reasons, **nbn** considered that certain mapping and rollout data related to **nbn**'s commercial activities.

In addition, it is important to note that **nbn** has, in the past, received request for prospective rollout information. Per **nbn**'s [FOI decision 1415/01.13](#), published on the Right-to-Know website, **nbn** refused access to such information on the basis of the commercial activities carve-out.

#### **FOI Processing Period and Charges**

The statutory period for processing an FOI application is 30 days, subject to any suspension of the processing period or extension of the time for deciding the application. Please also note that **nbn** may impose processing charges in relation to FOI requests. You will be advised 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 following hyperlink outlines **nbn**'s approach to processing charges: Submission to the Office of the Australian Information Commissioner [Charges Review](#). In particular, **nbn** supports – and will generally apply – Recommendation 24 in the [Hawke Review into FOI Legislation](#), (**the Hawke Review**) as a benchmark in reviewing FOI applications. For your reference, Recommendation 24 suggests a 40-hour ceiling for all FOI processing charges. More information about charges under the FOI Act is available on the OAIC's website and in part 4 of the OAIC [FOI Guidelines](#).

#### **Disclosure Log**

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

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

Yours sincerely

**Rohan Singh**

Senior Legal Counsel

FOI Privacy & Knowledge Management