



Mr Josh Stewart  
Sent via email: [foi+request-614-92bd9e96@righttoknow.org.au](mailto:foi+request-614-92bd9e96@righttoknow.org.au)

Our Ref: FOI1314/51.04

Dear Mr Stewart,

### FOI Application – Victorian FSAM Coverage

I am writing in relation to your request made under the *Freedom of Information Act, 1982 (the FOI Act)*. In particular, you were seeking access to:

*A document containing the expected approximate coverage areas of the 8 Victorian FSAMs where a contract instruction to commence "detailed design and field inspection work" was issued to NBN Co's delivery partners between 1st September 2013 up till 31st March 2014 (for the purposes of the NBN Co Brownfields Fibre build).*

The Statement of Reasons (**Attached**) outlines the specific terms of the FOI request, the decision-maker's findings and the access decision. For your reference, the FOI decision is subject to review under sections 53A and 54 of the FOI Act. The Office of the Australian Information Commissioner's *FOI Fact Sheet 12 – Your review rights* is attached for your information and may be found at the following [link](#).

If you have any questions, need to discuss your FOI application or require any other information relating to this matter, please feel free to contact the writer on Tel. (02) 8918 8596 or via email on [davidmesman@nbnco.com.au](mailto:davidmesman@nbnco.com.au).

Sincerely,

David Mesman  
**FOI Officer**

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FREEDOM OF INFORMATION REQUEST – 1314A/51

Josh Stewart

ACCESS DECISION  
STATEMENT OF REASONS

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**Application Chronology and Terms of Request**

1. On 15 May 2014, NBN Co received an email from Josh Stewart (**the Applicant**), in which he made an application under the *Freedom of Information Act, 1982* (**the FOI Act or the Act**) for the following:

*A document containing the expected approximate coverage areas of the 8 Victorian FSAMs where a contract instruction to commence "detailed design and field inspection work" was issued to NBN Co's delivery partners between 1st September 2013 up till 31st March 2014 (for the purposes of the NBN Co Brownfields Fibre build).*

2. Also on 15 May 2014, I wrote to the Applicant and acknowledged receipt of this application as required by section 15 of the FOI Act.
3. On 25 May 2014, I forwarded a copy of this decision to the Applicant.

**Access Decision**

4. Following receipt of the Applicant's request, NBN Co staff undertook searches through the company's hard copy, electronic and other files, so as to locate the relevant information.
5. Under section 3(1)(b) of the FOI Act, the public has a right to seek access to "documents", rather than discrete bits of information. Notwithstanding this point, section 17 of the FOI Act enables Government authorities to provide applicants with information, where such information is not available in a discrete written form and where the information is "ordinarily available to the agency for retrieving or collating stored information". In that regard, I received advice from NBN Co staff that it would be possible to create an appropriate document, which would contain the relevant information requested by the Applicant and found at **Attachment A**.
6. As an FOI decision maker, it is open to me to consider whether the information falls within the terms of section 7(3A) of the FOI Act – NBN Co's commercial activities exemption – and is, therefore, not subject to the operation of the Act. General background information regarding NBN Co's FOI processes and the principles animating NBN Co's commercial activities exemption may be found at the following [link](#). It would also be open to me to consider whether other exemptions may apply, such as section 47 (Commercially valuable information), among other exemptions. I also conferred with relevant subject matter experts in our business as to whether the data and information requested by the Applicant may fall within the above – or other relevant – exemptions. In that regard, no relevant contentions or objections to release were made.
7. In making my FOI decision, I endeavoured to be guided by both the spirit and terms of the FOI Act. I also made reference to the objects of the Act, which provide for agencies to exercise their functions and powers, as far as possible, to facilitate and promote public access to information. In that context, I have determined to grant access in full to Attachment A under sections 11 and 11A of the FOI Act.

8. NBN Co staff spent approximately one hour in sourcing the relevant information. In addition, I spent approximately two hours in drafting and finalising this FOI decision, as well as completing relevant correspondence and undertaking discussions with experts in our business regarding the information and dataset, their commerciality, etc. For reference, no fees are levied for the first five hours of FOI decision-making time. As such, the only fees payable would be \$15 – for the hour of search and retrieval time.
9. NBN Co's general policy is to charge applicants for FOI processing time. In its [Submission to the OAIC Charges Review](#), NBN Co outlined its support of fees and charges and their importance to the FOI scheme, including the following points:
- Government agencies and authorities should be able to recoup some of their costs associated with processing FOI requests, while providing a key public service. This is in line with user-pays principles and that users should share in the cost of service provision;
  - The ability to charge for FOI processing time reflects the Commonwealth Parliament's and the community's recognition that public servants' time is a valuable resource and that such resources should only be spent in appropriate public undertakings. Similar reasoning animates section 24AA of the FOI Act, which enables decision-makers to refuse requests that would substantially and unreasonably divert the resources of an agency or Government Business Entities (**GBEs**) from its operations;
  - The above argument may be applied with even greater force to GBEs, which are expected to operate as any other player in the commercial marketplace;
  - The ability to charge for the processing of FOI applications also ensures that applicants have a serious interest in the subject matter and are likely to see the application to a final determination;
  - Processing fee payments and advanced deposits tend to limit the scope of preliminary and other work "written off" by Government entities in the event that an applicant withdraws a request. This dovetails with the public interest in not wasting government and – taxpayer funded – public resources; and
  - At page 5 of the Office of the Australian Information Commissioner's (**the OAIC**) [Review of Charges under the FOI Act 1983](#), the OAIC reinforced the importance of fees and charges, outlining that:  
*Fees and charges play an important role in the FOI scheme. It is appropriate that applicants can be required in some instances to contribute to the substantial cost to government of meeting individual document requests. Charges also play a role in balancing demand, by focusing attention on the scope of requests and regulating those that are complex or voluminous and burdensome to process.*
10. In making my decision in relation to FOI processing charges, I noted that the Applicant had made a very directed request for information, which assisted in limiting the required decision-making time. I also took into account the relatively small amount of processing charges.
11. In light of the above points, I have determined to waive all outstanding processing fees in relation to this FOI application. This is permitted by Regulation 3 of the *Freedom of Information (Charges) Regulations 1982*, which provides decision-makers with a general discretion to impose or not impose a charge, or impose a reduced charge for the processing of an FOI request. If you are dissatisfied with this decision, you have certain rights of review. Details regarding your rights of review and appeal are outlined in the covering letter, provided with this Statement of Reasons.

## **Attachment A – NBN Co FOI Matter 1314/51 – Victorian FSAM Coverage (Released in Full)**

Section 17 of the *Freedom of Information Act, 1982 (the FOI Act or the Act)* enables Government authorities to provide applicants with information, where such information is not available in a discrete written form and where the information is “ordinarily available to the agency for retrieving or collating stored information”. As per sections 11 and 11A of the FOI Act, NBN Co FOI Officer determined that it was possible to release the following information in full:

*The expected approximate coverage of the 8 Victorian FSAMs where a contract instruction to commence "detailed design and field inspection work" was issued to NBN Co's delivery partners between 1st September 2013 up till 31st March 2014 (for the purposes of the NBN Co Brownfields Fibre build) is across the following suburbs:*

- *Mount Clear;*
- *Canadian;*
- *Mount Helen;*
- *Buninyong;*
- *Melton West;*
- *Grahamvale;*
- *Shepparton;*
- *Shepparton North;*
- *Congupna, Mooroopna;*
- *Shepparton East;*
- *Orrvale; and*
- *Epping.*