



9 April 2020

MG

foi+request-6255-e28e1db6@righttoknow.org.au

Our Ref: FOI1920/70.02

Dear MG

Request for Information

I am writing in relation to your correspondence to **nbn**'s FOI Officer email address on 27 March 2020 seeking:

"Any correspondence sent to (or from) members of NBNco Government Relations Team discussing:

*Downstream Power Back Off (DPBO);
NBN-ADSL co-existence;
interference with (or to) ADSL services.*

Please limit this search between the following dates 1 December 2019 to 28 February 2020." [sic]

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 "*Any correspondence ...*" to or from **nbn**'s Government Relations team "*discussing*" the topics listed in your email.

The term "*any correspondence*" is imprecise as it could refer to a single piece of correspondence or all correspondence that meets other criteria given. If it is a reference to "all correspondence" this could be a very large volume of materials.

The term "*discussing*" is also imprecise as it does not specify the degree of connection between the subject matter and the content of the correspondence. This could include correspondence that merely makes a passing reference to the subject matter, or in which the subject matter is the sole topic of the content. In addition, "*discussing*" could mean only a back-and-forth between two or more individuals, and could exclude correspondence which in which information is sent "one way" with no element of discussion.

It is possible that a piece of correspondence could "*discuss*" the relevant subject matters without using the precise terms used in your request, and you have not limited the relevant correspondence to email correspondence. It would therefore not be possible to conduct keyword searches electronically, and **nbn** staff



would have to undertake manual searches through all of the relevant team's hard copy, digital and email records for the relevant period and assess whether each piece of correspondence deals with a relevant subject matter.

Furthermore, "*interference with (or to) ADSL services*" does not indicate what sort of interference is referenced. Is this intended to reference interference from a specific source, such as interference from fixed line telecommunications services, interference from devices (and whether such devices are on ADSL services external to ADSL networks or not), some other form of interference, or interference in general. Could you please specify this.

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, your FOI request, in its current form, is invalid. Until you clarify those terms, **nbn** will not formally acknowledge your request, and the statutory period for completing this request will not commence.

Thank you for specifying that personal information is to be removed. As you have requested correspondence, all relevant documents are likely to have personal information which will have to be removed, and this will add to the processing time.

In light of the time likely to be required to process this request in its current form, I am also of the opinion that it would most likely be an unreasonable diversion of **nbn**'s resources, per [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 a starting point, it may be helpful to specify only electronic correspondence meeting containing specific search terms that you provide.

nbn's Commercial Activities Carve-out

I refer you to **nbn**'s commercial activities carve-out (**the CAC**) or carve-out 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. 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.

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 in [Fact Sheet 7](#) on the Office of the Australian Information Commissioner's (**OAIC**) 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 via email 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