

18 May 2020

GPON

[foi+request-6328-ff605b54@righttoknow.org.au](mailto:foi+request-6328-ff605b54@righttoknow.org.au)

Our Ref: FOI-1920/76.02

Dear GPON

### Request for Information

I am writing in relation to your correspondence to **nbn**'s FOI Officer email address on 3 May 2020 in the following terms:

*"Seeking documentation contained within any electronic or physical storage that reports on failure rate of customer premises equipment (CPE) by technology type.*

*FttP (NTD)*

*HFC (NTD)*

*FttC (NTC)*

*FW (NTD)*

*SAT (NTDj)*

*In particular*

*Disclosing the mean time to failure (MTF) or life expectancies for customer premises equipment Vs actually recorded failures on equipment since 2013.*

*To be CLEAR.*

*Reports on number of CPE that has failed since 2013.*

*Reports on any manufacturing MTF data on all CPE types."*

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 information related to *"customer premises equipment (CPE) by technology type"*. Your reference to *"customer premises equipment (CPE)"* is uncertain in the context of fixed wireless and satellite technology types. Do you refer to the **nbn** supplied network termination device box installed inside the end customer's home, or to the externally installed dish or antenna, or to both? If you wish to proceed with your request, please clarify this.

In relation to technology type, do you mean all technology types used on the **nbn**<sup>TM</sup> network, or only to those listed in your request.



Your request refers to “*failure rate*” of equipment. It is unclear whether this refers to failures due to malfunction within the equipment itself, or failure of the equipment as a result of external factors, or both. Please clarify this if you wish to continue with your request.

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.

#### **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 on (02) 9031 3022 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