



17 June 2020

Timothy Nothdurft
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Our Ref: FOI-1920/80.02

Dear Mr Nothdurft

Request for Information

I am writing in relation to your correspondence to **nbn**'s FOI Officer email address on 7 June 2020 seeking:

“the number of website applications for TCP for FttC to FttP.

Jan 2020 - April 2020

May 2020 - to present

Also please release the average verbal/estimated cost quoted to applicants within these two time periods.”

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

Certain matters in your request require clarification:

1. Your request seeks certain information from *“May 2020 to present”*. Please confirm that by *“present”* you mean to the date of your email, being 7 June 2020. Or do you mean a different specific date?
2. Your request requests the *“average verbal/estimated cost quoted”* in the time periods specified. It is unclear whether you are specifically requesting verbal estimates only, or all estimates (verbal or otherwise) meeting the other criteria specified. Could you please clarify this?
3. In addition, your reference to *“cost quoted”* requires clarification.
 - a. Do you mean to refer to the indicative cost estimates (some of which are given verbally) in response to the relevant website applications, or the more formal cost quotes given after applicants have paid an application fee?
 - b. If you mean indicative cost estimates, please specify whether your request relates to all indicative estimates given, or only those where applicants chose to proceed to the formal cost quote stage?



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. In that regard, please inform me if there is a specific document, or set of documents, which you are seeking – at least to the extent that you are able to identify them.

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 by 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