

9 August 2014

Mr Ben Fairless

Sent via email: [foi+request-666-6882393f@righttoknow.org.au](mailto:foi+request-666-6882393f@righttoknow.org.au)

Our Ref: FOI1415/5.12

Dear Mr Fairless,

### FOI Application – Estimated Completion Dates – Darwin – Advance Deposit Request

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 which details most recent estimated completion dates for all areas which are currently "Build Commenced" in the Darwin Metropolitan area (Darwin, Palmerston and the "Northern Suburbs").*

For your reference, I have determined that there are potential commercial issues that may arise if this information were released and, in particular, the potential release of prospective information regarding the NBN rollout. For that reason, I will need to undertake an analysis of those issues as well as consult with third parties. As per section 15(6) of the FOI Act, please be advised that I am permitted to extend the processing period, so as to comply with the consultation requirements of sections 27 and 27A of the FOI Act. To paraphrase those sections, decision-makers are required to consult with individuals, businesses or similar organisations that may be affected by the potential release of documents under the FOI Act. In addition, decision-makers are required to provide those individuals, businesses and other organisations with a reasonable opportunity to make submissions in support of a contention that documents may be exempt under section 47, 47F or 47G of the FOI Act. As a result, the decision-making period will be **60 days**, rather than 30.

### Advance Deposit Request

In accordance with subsection 29(1) of the FOI Act, I have determined that you are liable to pay a charge in respect of the processing of this FOI request. NBN Co staff completed a preliminary assessment of the work involved in processing your FOI request and our company estimates the applicable charges as follows:

Search and Retrieval Time	0.5 hours @ \$15.00 per hour	\$7.50
Decision Making Time	11 hours @ \$20.00 per hour	\$220.00
Copies of documents	10 cents per page (Waived)	\$ --
<b>Sub-total</b>		<b>\$227.50</b>
Less first 5 hours decision making time(*)		(\$100.00)
<b>TOTAL</b>		<b>\$127.50</b>

(\*) In accordance with the *Freedom of Information (Fees and Charges) Regulations*, you have not been charged for the first 5 hours of decision making time.

Please be advised that the estimate of processing time – and relevant fees – may increase or decrease, depending on the nature of the work required. However, you will be advised if the fees increase beyond the estimate outlined above. As the charge exceeds \$100, a deposit of 25% (**\$31.88**) is required. Within 30 days of this notice, you are required to:

- agree to pay the charge and forward the deposit; or
- contend that the charge has been wrongly assessed, or should be reduced or not imposed (you should provide full reasons for your contention); or
- narrow the scope of your request (which may reduce the charge payable); or
- withdraw your request.

PHONE (02) 9926 1900 FAX (02) 9926 1901  
EMAIL [info@nbnco.com.au](mailto:info@nbnco.com.au) WEB [www.nbnco.com.au](http://www.nbnco.com.au)

LEVEL 11, 100 ARTHUR STREET, NORTH SYDNEY NSW 2060

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If you fail to notify NBN Co in a manner mentioned above within 30 days of this notice, your request will be taken to have been withdrawn. In addition, if you contend that the estimated charge has been wrongly assessed, or should be reduced or not imposed, you must notify NBN Co of your contention, providing reasons, and evidence where relevant, to support your submission. In deciding whether to reduce or not to impose a charge, the FOI decision-maker will consider all relevant factors, including:

- whether payment of the charge, or a part of it, would cause you financial hardship; and
- whether the giving of access is in the general public interest.

**If you choose to contend that the charge has been wrongly assessed or should be reduced or not imposed, this will not constitute a request for internal review.** You will be advised of your review rights under sections 53A and 54 of the FOI Act following consideration of your contentions.

Once NBN Co has completed the processing of your request, the assessment of the charge payable will be revised based on the actual amount of work involved in processing your request. If you are refused access to any of the documents that are relevant to your request, NBN Co may not impose an actual charge that is higher than the estimated charge. This means that, if you are refused access to any document, the actual charge that will be payable will be lower than or equal to, but not more than, the final estimate of charges. It is only if you are granted access to all the documents that are relevant to your request that the actual charge imposed may be higher than the estimated charge. It is important to note that the payment of FOI processing fees does not guarantee access to documents or information.

If you agree to pay the estimated charge set out above, or the deposit for that charge, you should make arrangements to pay NBN Co, using the following electronic banking details:

Bank name:	CBA
Name:	NBN Co Limited FOI
BSB:	062-438
Account no:	10240782
Reference:	FOI-AYCA-1IXUT6

**When making a payment, please ensure you include the reference (FOI-AYCA-1IXUT6) noted above.**

Please note that if you provide a deposit and the processing of your request progresses to a point where a decision on access is made, a determination about the imposition of the actual charge will be made at that time. As a result, the balance of the actual charge will become a debt due to the Commonwealth, which NBN Co would be obliged to pursue, unless other arrangements are made – or if NBN Co agrees to waive the fees.

As per section 31 of the FOI Act, the time limit for processing your request is suspended from the day you receive this notice, being today's date. Please be advised that the charge notice day is not counted in calculating the processing time limit. For your reference, **29 of 60 days** have passed and the processing time limit will resume:

- On the day upon which NBN Co receives your deposit.
- Alternatively, if you decide to contest the charge, the processing time limit will resume on the day upon which NBN Co notifies you of its decision not to impose a charge – if NBN Co so makes a decision.
- In the event that NBN Co decides to reduce the charge and deposit is required, the processing time limit will recommence on the day upon which you pay the reduced deposit.

More information about charges under the FOI Act is available in Fact Sheet 7 on the Office of the Australian Information Commissioner's website: [www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets](http://www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets) and in part 4 of the Australian Information Commissioner's FOI guidelines: [www.oaic.gov.au/publications/guidelines.html#foi\\_guidelines](http://www.oaic.gov.au/publications/guidelines.html#foi_guidelines).

PHONE	(02) 9926 1900	FAX	(02) 9926 1901
EMAIL	<a href="mailto:info@nbnco.com.au">info@nbnco.com.au</a>	WEB	<a href="http://www.nbnco.com.au">www.nbnco.com.au</a>

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### **NBN Co's Commercial Activities Exemption**

In addition, I refer you to NBN Co's commercial activities exemption (**the CAE**), as per [section 7\(3A\)](#) and [Part II of Schedule 2](#) of the FOI Act. As you may be aware, documents that are in relation to NBN Co's "commercial activities" are not subject to the operation of the FOI Act. For your reference, the Office of the Australian Information Commissioner (**the OAIC**) completed a review decision in January 2012 (**the Internode Decision**), which provides background and guidance as to the application of the CAE to NBN Co. The Internode Decision may be found by clicking on the following [link](#). The OAIC completed an additional review at the end of July 2013 – [the Battersby Decision](#), which further clarified the scope of NBN Co's CAE or commercial activities exemption. While I am not making a formal decision, nor have I commenced a formal search for any relevant documents, there is a possibility that documents falling within the terms of this FOI request may be subject to the CAE, among other exemptions from release.

### **Disclosure Log Notification**

In accordance with the FOI Act, NBN Co 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 exceptions as per section 11C of the FOI Act. For further information, visit our [Disclosure Log](#) on NBN Co's website at [www.nbnco.com.au/about-us/media/freedom-of-information/disclosure-log.html](http://www.nbnco.com.au/about-us/media/freedom-of-information/disclosure-log.html).

If you have any questions or need to discuss your FOI application, 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 J Mesman**

GM Legal – FOI and Knowledge Management