

26 February 2021

ST  
foi+request-7074-3c69db15@righttoknow.org.au

Our Ref: FOI 2021/54.02

Dear ST

### Request for Information

I am writing in relation to your correspondence to **nbn's** FOI Officer email address on 12 February 2021 in the following terms:

*"I refer to the following two media releases:*

- <https://www.nbnco.com.au/corporate-information/media-centre/media-statements/nbn-extends-fibre-to-additional-100k-premises>*
- <https://www.nbnco.com.au/corporate-information/media-centre/media-statements/nbn-co-announces-next-100k-premises-in-fttn-to-ftp-upgrade>*

*As the media statements appear to not provide any reasoning as to why these areas are selected, I am requesting the following information under the FOI act:*

- 1. Any statement, documentation, or internal correspondence that that would show the following:
  - 1.1: Explanations, reasons or rational as to why the areas mentioned in the media releases have been selected as locations where the fibre network is to be extended.*
  - 1.2: Any areas that were considered but ruled out, and the rational behind this.**
- 2. The split in technology types within the areas for both 1.1 and 1.2*
- 3. If any parties external to NBN have been consulted on the areas selected in both 1.1 and 1.2"*

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.

#### **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.

### **Scope of Request**

Your request seeks “*Any statement, documentation, or internal correspondence that that would show ...*” It is uncertain whether by this wording you are seeking all documents that show the information requested, a single document, or documents from each or a number of different category types. Alternatively, are you seeking the information or data referenced only, rather than documentation as such.

In addition, the subject timeframe in respect of which these documents may have been generated is not defined.

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.

### **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