



12 April 2021

ST

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

Our Ref: FOI 2021/54.07

Dear ST

FOI Application

I am writing in relation to your request, made under the *Freedom of Information Act 1982 (the FOI Act)*.

Acknowledgment

As required by section 15(5) of the FOI Act, I acknowledge receipt of your request and note you are seeking access to:

“a list of the criteria that nbn uses to take into account which has made them select all of these areas that ultimately ended up selected”.

The wording “*these areas*” means the two tranches of areas selected for fibre upgrade as referenced in **nbn**’s media statements dated 27 October 2020 and 10 February 2021, which are referenced in your email sent 12 February 2021, being:

Tranche 1:

- *Belmont North, Charlestown, Toronto, Carramar, Castle Hill, Holsworthy, Liverpool, and Wetherill Park in New South Wales;*
- *Lyndhurst and Narre Warren in Victoria;*
- *Acacia Ridge, Browns Plains, Eight Mile Plains and Oxenford in Queensland;*
- *Osborne in South Australia, and*
- *Cannington and Double View in Western Australia.*

Tranche 2:

- *Campbelltown, Elderslie, Narellan, Maitland, Singleton, Tarro, New Lambton, Bathurst and Orange in New South Wales;*
- *Deer Park, Sydenham, Berwick South, Cranbourne and additional areas of Narre Warren in Victoria;*
- *Albany Creek, Ashgrove, Bald Hills, Ferny Hills, Robina, Burleigh Heads and Townsville in Queensland;*
- *Elizabeth, Gepps Cross, Salisbury and Golden Grove in South Australia, and*
- *Girrawheen, Kingsley, Wanneroo, Canning Vale and Jandakot South in Western Australia.*



Decision-Making Period & Consultation

The processing period for this FOI request commences on 24 March 2021, being the day after receipt of your FOI application. The statutory period for processing an FOI request is generally 30 days.

Advance Deposit Request

In accordance with subsection 29(1) of the FOI Act, I have determined that a charge is payable, in respect of the processing of this FOI request.

nbn staff have undertaken a search for the requested documents, and the search and retrieval time is detailed below.

nbn 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	1 hours @ \$15.00 per hour	\$15.00
Decision Making Time	14 hours @ \$20.00 per hour	\$280.00
Sub-total		\$295.00
Less first 5 hours decision making time(*)		(\$100.00)
TOTAL		\$195.00

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

Please note that the estimated processing time – and relevant fees – may increase (or decrease), depending on the nature of the work required. However, I will inform you if the fees increase beyond the estimate outlined above. As the total estimated processing charges exceeds \$100, a deposit of 25% (\$48.75) is required.

Next steps

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.

If you fail to notify **nbn** 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** 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. An FOI decision may be reviewed, subject to sections 53A and 54 of the FOI Act. Please refer to the Office of the Australian Information Commissioner's website at



the following [link](#), which provides details about your rights of review and other avenues of redress under the FOI Act.

Once **nbn** 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** may not impose an actual charge that is higher than the final 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 arrange to pay **nbn**, using the following electronic banking details:

Bank name:	CBA
Name:	nbn co limited FOI
BSB:	062-438
Account no:	10240782
Reference:	FOI-0031

When making a payment, please ensure you include the reference 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. The balance of the actual charge will become a debt due to the Commonwealth, which **nbn** would be obliged to pursue, unless other arrangements are made – or if **nbn** agrees to waive the fees.

As set out above, 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 also be advised that the charge notice day is not counted in calculating the processing time limit. For your reference, 19 days have passed, and the processing time limit will resume:

- on the day upon which **nbn** receives your deposit;
- alternatively, if you decide to contest the charge, the processing time limit will resume on the day upon which **nbn** notifies you of its decision not to impose a charge – if **nbn** so makes a decision; or
- in the event that **nbn** decides to reduce the charge and deposit 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 on the Office of the Australian Information Commissioner's (**OAIC**) website and in part 4 of the OAIC [FOI Guidelines](#).

nbn's Commercial Activities Carve-out

I refer you to **nbn's** commercial activities carve-out (**the CAC**), per [section 7\(3A\)](#) and [Part II of Schedule 2](#) of the FOI Act. Please be aware that documents that relate to **nbn's** "commercial activities" are not subject to the operation of the FOI Act and would likely 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 OAI reviews that considered **nbn**'s CAC: the [Internode](#) Decision (in January 2012) and the [Battersby](#) Decision (in July 2013).

Disclosure Log Notification

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 exceptions as per section 11C of the FOI Act. For further information, 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