



8 September 2014

Mr Russell Hancock

Sent via email: foi-request-728-df0ccc51@righttoknow.org.au

Our Ref: FOI1415/09.03

Dear Mr Hancock,

FOI Application – 5EZB Elizabeth Build Commencement

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 will outline the build commencement date for FSAM 5EZB”

The Statement of Reasons (**Attached**) outlines the specific terms of the FOI request, the decision-maker’s findings and the access decision. For your reference, the FOI decision is subject to review under sections 53A and 54 of the FOI Act. The Office of the Australian Information Commissioner’s *FOI Fact Sheet 12 – Your review rights* is attached for your information and may be found at the following [link](#).

If you have any questions, need to discuss your FOI application or require any other information relating to this matter, please feel free to contact the writer on Tel. (02) 891 85670 or via email on yvettedeerness@nbnco.com.au.

Sincerely,

Yvette Deerness
Acting GM FOI, Privacy and Knowledge Management

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**FREEDOM OF INFORMATION REQUEST –1415/09
Mr Russell Hancock**

**ACCESS DECISION
STATEMENT OF REASONS**

Application Chronology and Terms of Request

1. On 1 August 2014, NBN Co received an email from Mr Russell Hancock of the 'Right-To-Know' website (**the Applicant**), in which he made an application under the *Freedom of Information Act, 1982* (**the FOI Act or the Act**) requesting:

"...information regarding to the Build Commencement date for 5EZB Elizabeth.

This FSAM initially had a rollout commencing in: "May 2013 in phases with last construction scheduled to commence in Jun 2014. It is estimated that the average time from construction beginning to NBN services being available is 12 months"

This FSAM has now been removed from the rollout map, even though it was due to commence before the federal election.

Can you please advise the expected Build Commencement data for this FSAM."

2. On 7 August 2014 the NBN Co staff wrote to the Applicant requesting further clarification on the scope of the Applicant's request and on the same day, the Applicant emailed NBN Co and clarified that they were seeking access to a document which would outline:

"the build commencement date for FSAM 5EZB"

3. On 8 August 2014 the NBN Co FOI Group acknowledged the Applicant's FOI Act application.
4. On 8 September 2014, I completed my FOI decision and subsequently forwarded a copy of this decision to the Applicant.

Access Decision

5. Following receipt of the Applicant's request, NBN Co staff undertook searches through the company's relevant hard copy, electronic and other files, so as to locate the documents falling within the scope of the Applicant's request.
6. Under section 3(1)(b) of the FOI Act, the public has a right to seek access to "documents", rather than discrete bits of information. Notwithstanding this point, section 17 of the FOI Act enables Government authorities to provide applicants with information, where such information is not available in a discrete written form and where the information is "ordinarily available to the agency for retrieving or collating stored information". In that regard, I received advice from NBN Co staff that it would not be possible to create an appropriate document, which would contain the relevant information requested by the Applicant.
7. As per section 24A(1) of the FOI Act, all reasonable steps have been taken to find relevant documents within the scope of this request and I am satisfied that such documents do not exist.

8. NBN Co staff spent approximately one hour in sourcing the relevant information. In addition, I spent approximately one and a half hours in drafting and finalising this FOI decision, as well as completing relevant correspondence and undertaking discussions with experts in our business regarding the information and dataset, their commerciality, etc. For reference, no fees are levied for the first five hours of FOI decision-making time. As such, the only fees payable would be \$15 – for the hour of search and retrieval time.
9. NBN Co's general policy is to charge applicants for FOI processing time. In its [Submission to the Oaic Charges Review](#), NBN Co outlined its support of fees and charges and their importance to the FOI scheme, including the following points:

- Government agencies and authorities should be able to recoup some of their costs associated with processing FOI requests, while providing a key public service. This is in line with user-pays principles and that users should share in the cost of service provision;
- The ability to charge for FOI processing time reflects the Commonwealth Parliament's and the community's recognition that public servants' time is a valuable resource and that such resources should only be spent in appropriate public undertakings. Similar reasoning animates section 24AA of the FOI Act, which enables decision-makers to refuse requests that would substantially and unreasonably divert the resources of an agency or Government Business Entities (**GBEs**) from its operations;
- The above argument may be applied with even greater force to GBEs, which are expected to operate as any other player in the commercial marketplace;
- The ability to charge for the processing of FOI applications also ensures that applicants have a serious interest in the subject matter and are likely to see the application to a final determination;
- Processing fee payments and advanced deposits tend to limit the scope of preliminary and other work "written off" by Government entities in the event that an applicant withdraws a request. This dovetails with the public interest in not wasting government and – taxpayer funded – public resources; and
- At page 5 of the Office of the Australian Information Commissioner's (**the Oaic**) [Review of Charges under the FOI Act 1983](#), the Oaic reinforced the importance of fees and charges, outlining that:

Fees and charges play an important role in the FOI scheme. It is appropriate that applicants can be required in some instances to contribute to the substantial cost to government of meeting individual document requests. Charges also play a role in balancing demand, by focusing attention on the scope of requests and regulating those that are complex or voluminous and burdensome to process.

10. In making my decision in relation to FOI processing charges, I noted that the Applicant clarified the scope of his application and the directed request for information, assisted in limiting the required decision-making time. I also took into account the relatively small amount of processing charges.
11. In light of the above points, I have determined to waive all outstanding processing fees in relation to this FOI application. This is permitted by Regulation 3 of the *Freedom of Information (Charges) Regulations 1982*, which provides decision-makers with a general discretion to impose or not impose a charge, or impose a reduced charge for the processing of an FOI request. If you are dissatisfied with this decision, you have certain rights of review. Details regarding your rights of review and appeal are outlined in the covering letter, provided with this Statement of Reasons.