

11 August 2014

Michael

Sent via email: foi+request-729-d29baf1b@righttoknow.org.au

Our Ref: FOI1415/10.02

Dear Michael,

FOI Application – Campbelltown Rollout

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 various documents and information relating to the NBN rollout in Campbelltown.

As per [section 15\(2\)\(b\)](#) of the FOI Act, applicants are required to provide sufficient detail so as to enable an FOI officer to locate relevant documents for potential disclosure. In that regard, I am uncertain as to what precisely you are seeking. As such, the legislative time frames for completing this FOI request will not commence until such time as those details are clarified. In particular, your request seems to be seeking – among other things - access to contracts, detailed design and inspection documents, maps, as well as internal projections as future contracts of works. While I am not making a determination – nor have I examined any relevant documents, I would refer you to the section below, regarding NBN Co's commercial activities exemption from the FOI Act. I would also refer to the points below, relating to processing fees, which would be applicable if NBN Co were required to review specific documents.

In addition, your request seems to be seeking details regarding percentages of coverage (by technology) to Campbelltown. At present, our company is in the process of reviewing its rollout schedule, construction and planning efforts. In that context, NBN Co publishes the most up-to-date and relevant rollout information on its website, found at <http://nbnco.com.au/connect-home-or-business/check-your-address.html>. Beyond those details, the company will make announcements as it determines the most efficient and cost effective manner of rolling out the network. To assist in clarifying this request, it may be useful to examine NBN Co's [Disclosure Log](#) and refer to the terms in FOI applications where information or documents were released. I would also invite you to ring me on the numbers below to discuss and clarify the specific terms of this application.

Processing Period & Charges

In addition, please note that processing charges may be imposed and that consultation with third parties may be required for any FOI request. If it is necessary to consult with third parties, additional processing time is provided under the FOI Act. Applicants will be advised of any charges as well as any need to consult third parties in relation to an FOI request. Furthermore, those parties would have the opportunity to object to the potential release of documents affecting their business affairs.

For reference, NBN Co's approach to processing charges is outlined at the following hyperlink: [Submission to the Office of the Australian Information Commissioner Charges Review](#). In particular, I refer you to NBN Co's support of a roughly 40-hour cap for all FOI processing charges. I would also refer you to NBN Co's [FOI web-page](#), which outlines charges associated with FOI applications. Applicants generally will be charged for processing time, including search and retrieval, consultations and decision-making time, regardless of the outcome of the access request. In other words, applicants may be refused access to documents or information and still be required to pay FOI processing fees.

NBN Co's Commercial Activities Exemption

I also 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

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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 commercial activities exemption. While I am not making an FOI decision, nor have I formally reviewed 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.

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.

Sincerely,

David J Mesman

GM Legal – FOI and Knowledge Management