

9 October 2014

Mr Timothy N

Sent via email: foi+request-734-5fafd1ac@righttoknow.org.au

Our Ref: FOI1415/11.IR05

Dear Timothy,

FOI Application – 4CHD Fibre Serving Area

I am writing concerning your request for an Internal Review under the *Freedom of Information Act 1982, (Cth)* (**the FOI Act**).

Please see the attached Statement of Reasons detailing my findings. This 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* contains information about your review rights and may be found at the following [link](#).

If you have any questions or need to discuss your FOI application, please contact me on (02) 8918 8590 or on jakegrant@nbnco.com.au.

Yours sincerely,

Jake Grant

Acting General Manager Legal - Comms & Commercial

cc. Justin Forsell, Chief Legal Counsel, NBN Co

FREEDOM OF INFORMATION REQUEST – FOI1415/11.IR05

Mr Timothy N

INTERNAL REVIEW – STATEMENT OF REASONS

Decision-Making Authority

1. I am authorised for the purposes of section 23 of the *Freedom of Information Act 1982* (Cth) (the **FOI Act**) to make an internal review decision on the decision of Ms Deerness on behalf of NBN Co.

Background

2. You applied for access to “a document outlining the expected approximate commencement of date for “detailed design and field inspection work” issued to NBN Co’s delivery partners (for the purposes of the NBN Co Brownfields Fibre build) for the 4CHD Fibre Serving Area”.
3. You were told by Ms Deerness by email on 8 September 2014 that:
 - a. it would not be possible to create an appropriate document, which would contain the relevant information requested by you; and
 - b. all reasonable steps have been taken to find relevant documents within the scope of this request and she was satisfied that such documents do not exist,among other things (**Access Refusal Decision**).
4. On 9 September 2014, you sought a review of the Access Refusal Decision made by Ms Deerness on behalf of NBN Co. In support of your request, you also stated, among other things, that, “*I am surprised that a document cannot be created? I am sure as part of the annual planning process a date can be found.*”
5. In light of your request for internal review, I must make a fresh decision on behalf of NBN Co in relation to your access request under section 54C(3) of the FOI Act.

Decision

6. I have decided that 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.

Findings of material facts and reasons

7. In making a fresh decision on behalf of NBN Co, I have considered the Information Commissioner’s FOI Guidelines which provide that “an agency should be guided by the principles put forward by the Administrative Review Council in a Best Practice Guide on internal review, *Internal Review of Agency Decision Making*, Report No 44 (2000), Chapter 8.” Those principles can be adapted to the FOI context and are set out at paragraph 9.33 of the FOI Guidelines. In particular, I note that:
 - a. I have endeavoured to bring a fresh, independent and impartial mind to the review and was not involved in or consulted in the making of the decision under review;
 - b. I have decided all issues raised in your original FOI request and in your request for internal review and have exercised all the powers available to the original decision maker;
 - c. All the materials available to the original decision maker were made available to me as part of this review; and

- d. Whilst I am entitled to rely on record searches undertaken by the original decision maker, I have repeated the record searches and have consulted with other agency staff in order to test the veracity of the search results which ultimately informed the original decision maker in making her decision.
8. Whilst you have indicated in your email seeking internal review on 9 September 2014 that “*you are surprised that a document cannot be created...*”, I am satisfied that having regard to the repeat searches I arranged to be undertaken and the consultations I had with NBN Co staff, that:
 - a. it would not be possible to create an appropriate document, which would contain the relevant information requested by you; and
 - b. 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, as per section 24A(1) of the FOI Act.
9. As outlined in the covering letter, please follow the link to The Office of the Australian Information Commissioner’s *FOI Fact Sheet 12 – Your review rights* for more information about your review rights concerning my decision.