

10 September 2014

Mr David Cooper  
Sent via email: [foi+request-744-57c34885@righttoknow.org.au](mailto:foi+request-744-57c34885@righttoknow.org.au)

Our Ref: FOI1415/16

Dear Mr Cooper,

### FOI Application – Instructions for detailed design and construction – 2CYS FSA

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 outlining the current date that NBNCo expects to instruct (or has instructed, if that is the case) those Delivery Partners to:*

- 1. commence detailed design and field inspection work; and*
- 2. commence construction work,*

*in relation to the Brownfields Fibre build in the 2CYS Fibre Serving Area.*

### **Acknowledgment of Application**

You clarified the terms of your request on 9 September 2014 and the period for processing your request commenced from the day after that date. For your reference, the statutory period for processing an FOI request is 30 days, subject to any suspension of the processing period or an extension of the time for deciding the application. Subject to any such additional processing time, NBN Co must make a determination in relation to this application by 10 October 2014. You will be advised of any charges as well as any need to consult third parties in relation to your request.

### **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](http://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 5670 or via email on [yvettedeerness@nbnco.com.au](mailto:yvettedeerness@nbnco.com.au).

Sincerely,

**Yvette Deerness**

Acting GM Legal – FOI, Privacy & Knowledge Management