

10 September 2014

Mr Ben Fairless

Sent via email: foi+request-758-23f6927e@righttoknow.org.au

Our Ref: FOI1415/19.03

Dear Mr Fairless

FOI Application – Emails to Right to Know

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 information regarding emails inadvertently sent to the Right to Know website.

On 8 September 2014, I emailed and indicated that I could not commence the processing of your request, as the terms of the application were unclear. On the same date, you replied and confirmed that you were seeking:

“the email which ended up on a Right to Know request (https://www.righttoknow.org.au/request/belgian_gardensrowes_baypallaren). These emails have now been hidden by Right to Know.

This request is for a copy of the emails which are now hidden on the Right to Know website, and any attachments to those emails.”

Acknowledgment & Processing Periods

As required by section 15 of the FOI Act, I am formally acknowledging this FOI application. The period for processing your request commenced as of yesterday, 9 September 2014, being the date after the day you clarified your application. 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. In that regard, please note that processing time may be suspended pending the payment of processing charges. The FOI Act permits the extension of the decision-making period by 30 days, if third party consultations are required. Furthermore, those third parties would have the opportunity to object to the potential release of documents affecting their business or personal affairs. In that regard, I can advise you that we will need to consult with third parties with respect to your request. Subject to any such additional processing time, NBN Co must make a determination in relation to this matter by 8 November 2014 but as this is a Saturday, the due date for the determination is 10 November 2014. However, NBN Co will endeavour to expedite your request and make a determination earlier, where operationally possible.

Processing Charges

As outlined above, applicants may be required to pay FOI processing charges. Applicants will be advised of any charges. 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.

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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 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) 891 85670 or via email on yvettedeerness@nbnco.com.au.

Sincerely,

Yvette Deerness

Acting GM Legal – FOI, Privacy and Knowledge Management