



**10 November 2014**

Mr Ben Fairless

Sent via email: [foi+request-758-23f6927e@righttoknow.org.au](mailto:foi+request-758-23f6927e@righttoknow.org.au)

Our Ref: FOI1415/19.06

Dear Mr Fairless,

**FOI Application – Emails to the Right to Know Website - Decision**

I am writing in relation to your request made under the *Freedom of Information Act, 1982 (the FOI Act)*, seeking access to an email and attachments, inadvertently sent to the Right to Know website.

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 [here](#).

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) 89185670 or via email on [yvette.deerness@nbnco.com.au](mailto:yvette.deerness@nbnco.com.au).

Kind regards

**Yvette Deerness**

Acting GM Legal Counsel

FOI, Privacy and Knowledge Management

cc. Justin Forsell, Chief Legal Counsel, NBN Co

PHONE (02) 9926 1900 FAX (02) 9926 1901  
EMAIL [info@nbnco.com.au](mailto:info@nbnco.com.au) WEB [www.nbnco.com.au](http://www.nbnco.com.au)

LEVEL 11, 100 ARTHUR STREET, NORTH SYDNEY NSW 2060

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**FREEDOM OF INFORMATION REQUEST – 1415/19**

**Mr Ben Fairless**

**ACCESS DECISION  
STATEMENT OF REASONS**

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**Background**

1. NBN Co Limited (**NBN Co**) is a government business entity (**GBE**), which has the mandate of realising the Australian Government's vision to develop a national broadband network that is truly national in character.
2. NBN Co recognises that information is a vital and an invaluable resource, both for the company and for the broader Australian community. That is why NBN Co fosters and promotes a pro-disclosure culture, with the goal of creating an organisation that is open, transparent and accountable. In that light, members of the public will be able to find a large amount of information freely available on our [website](#).
3. In addition, NBN Co manages its information assets within the terms and spirit of the *Freedom of Information Act 1982* (**the FOI Act** or **the Act**). We also endeavour to release information proactively, while taking into account our commercial and other legal obligations.
4. Subject to relevant exemptions, the FOI Act gives the Australian community the right to access documents held by Commonwealth Government agencies, as well as "prescribed authorities", such as NBN Co.
5. Under subsection 23(1) of the FOI Act, NBN Co's Chief Executive Officer has authorised me, Yvette Deerness, to make decisions about access to documents under the FOI Act.
6. Under section 26 of the FOI Act, I am required to provide a Statement of Reasons for my decisions in relation to FOI access applications. I am also required to set out my findings on any material questions of fact, referring to the material upon which those findings were based.

**Application Chronology and Terms of Request**

7. On 3 September 2014 NBN Co received an email from Mr Ben Fairless of the "Right to Know" website (**Applicant**), in which he made an application under the *Freedom of Information Act, 1982* (**FOI Act** or **Act**) for the following:

*Recently, the NBNCo accidentally sent an email which ended up on a Right to Know request ([https://www.righttoknow.org.au/request/belgian\\_gardensrowes\\_baypallaren](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, and any attachments to those emails.*

*I also request any documents created in relation to this unintended disclosure, except for emails between NBNCo and the OpenAustralia Foundation/Right to Know*

8. On 8 September 2014 I wrote to the Applicant seeking clarity on an aspect of the Applicant's request.

9. On 8 September 2014 the Applicant re-scoped his request under the FOI Act for the following:

*Recently, the NBNCo accidentally sent an email which ended up on a Right to Know request ([https://www.righttoknow.org.au/request/belgian\\_gardensrowes\\_baypallaren](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.*

10. On 10 September NBN Co staff acknowledged receipt of the Applicant's application as required by section 15 of the Act and informed the Applicant that a determination would be due on 10 November 2014, due to the fact that it was necessary to consult with third parties in connection with the documents.

11. In the intervening period between September and the date of this decision, I consulted with the relevant stakeholders within NBN Co and with an external third party.

12. On 10 November 2014, I forwarded this decision to the Applicant.

#### **Findings of Material Fact**

13. Following receipt of the Applicant's request, NBN Co staff undertook searches through the company's electronic files. As a result of the searches, 3 documents were identified as falling within the scope of this FOI request (**Documents**).

#### **Access Decision**

14. I find that certain parts of the Documents are exempt from disclosure pursuant to section 47F – *Public interest conditional exemptions – personal privacy*, for the reasons outlined below. Section 47F(1) of the FOI Act states that:

*(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*

15. Section 47F(2) of the FOI Act goes on to state that in determining whether disclosure of the document would involve the unreasonable disclosure of personal information, an agency must have regard to:

*any other matters which the agency or Minister considers relevant.*

16. In addition, under section 11A, access must be given to a conditionally exempt document unless it would be contrary to public interest.

17. The Office of the Australian Information Commissioner's (**OAIC**) Guidelines indicate that conditional exemptions relating to personal privacy are generally not available to public servants who are named in documents sought under the FOI Act. In particular, [paragraph 6.139 of the OAIC Guidelines](#) reads as follows:

*Where public servants' personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose unless special circumstances existed. This is because the information would reveal only that the public servant was performing their public duties.*

18. However, in the context of this particular matter, I consider that special circumstances exist which would make it unreasonable to disclose personal information pertaining to certain public servants referenced in the Documents. Such circumstances include, in my view, the fact that either certain of the public servants' security duties, require a degree of anonymity. Furthermore, the seniority of the positions of certain of the public servants is not such to warrant a disclosure of their personal information in the context of this particular application.
19. Having formed the view that the Documents are conditionally exempt, in part, under section 47F of the FOI Act, I am required to consider whether disclosure of the Documents would be contrary to the public interest.
20. In accordance with section 11B(3) of the FOI Act, I have considered the following factors favouring disclosure of the document:
  - a) Disclosure of the Documents would promote the objects of the FOI Act – I accept that release of the Documents would provide the Australian community with access to information held by the Commonwealth that would not otherwise be readily accessible;
  - b) Release of the Documents would inform debate on a matter of public importance – I have considered the general interest of the general public about matters relating to NBN Co and matters of national security.
21. I have also considered the following factors against disclosure of the Documents:
  - a) Disclosure could reasonably be expected to prejudice an agency's ability to obtain similar information in the future – disclosure of the Documents could hinder NBN Co's ability to seek and obtain similar information in the future as individuals may be unwilling to provide information if they are concerned that their personal information may be released in the context of matters relating to national security;
  - b) Disclosure could reasonably be expected to harm the interests of an individual or group of individuals – while it would be impossible to provide a firm assessment of the risks or likelihood of targeted attacks on public servants whose personal information was associated with matters of national security – the risk remains that such individuals may become the target for individuals or groups seeking to compromise NBN Co's or other agencies' security, protocols and infrastructure.
22. I have not considered the irrelevant factors, set out in section 11B(4) of the FOI Act.
23. Section 22 of the FOI Act allows for the deletion of exempt or irrelevant matter from a document that may allow for an edited form of the document to be released. I have decided that an edited copy of the document can be released to you under this category. Accordingly, I have decided to provide you with access to the Documents with exempt and irrelevant information redacted (see Annexure A).
24. In it would also be open to me to consider other exemptions, such as s47 *commercially valuable information*; and s47C – *deliberative processes*. However, in my opinion it is unnecessary to consider such exemptions as I have formed the view that certain information in the Documents is already exempt pursuant to section 47F of the Act.

## **Processing Charges**

25. NBN Co staff spent approximately half an hour in sourcing the relevant information. In addition, I spent approximately eight 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 and third parties.
26. It is NBN Co's general policy 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. However, the Applicant has in this instance sought to clarify the terms of their request and it is my decision to waive the fees associated with processing this FOI application. This fee waiver 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.

## **Right of Review**

27. 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.

## Annexure A

### **Annexure A – NBN Co FOI Matter 1415/19 – Emails to the Right to Know Website (Partial Release)**

Section 22 of the *Freedom of Information Act, 1982* (**the FOI Act or the Act**) enables Government authorities to delete exempt or irrelevant matter from a document that may allow for an edited form of the document to be released.

legaltemp2

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**From:** Yvette Deerness  
**Sent:** Tuesday, August 26, 2014 6:32 PM  
**To:** foi+request-679-47fe14bb@righttoknow.org.au  
**Subject:** Attention: [REDACTED] - Consultation on FOI requests [DLM=For-Official-Use-Only:Security]  
**Attachments:** NBNC Co consult email 2 30 July 2014.pdf; NBNC Co consult email 30 July 2014.pdf  
**Importance:** High

**FOUO: Security**

Dear [REDACTED]

I am in a position to respond to your request, and am just waiting on a final fact check which I hope to be in receipt of tonight and at latest, tomorrow am.

I am hoping these timeframes are acceptable to you but please do let me know if there is an issue.

I look forward to hearing from and feel free to call me on the numbers below – I will be contactable tonight.

Kind regards

Yvette Deerness

Acting GM Legal Counsel – FOI, Privacy & Knowledge Management  
P +61 2 8918 5670 | M +61 408 547 325 | E [yvettedeerness@nbnco.com.au](mailto:yvettedeerness@nbnco.com.au)  
Level 11, 100 Arthur Street, North Sydney NSW 2060  
Level 40, 360 Elizabeth Street, Melbourne VIC 3000

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**From:** FOI Requests [<mailto:foi@ag.gov.au>]  
**Sent:** Monday, August 18, 2014 3:15 PM  
**To:** FOIOfficer  
**Cc:** FOI Requests  
**Subject:** Consultation on FOI requests [DLM=For-Official-Use-Only]

**For Official Use Only**

Dear NBN Co

**Freedom of information request FOI14/159**

On 7 August 2014, the Attorney-General's Department received a freedom of information (FOI) request from Mr Ben Fairless (Right to Know Australia) for documents concerning the processing of his earlier FOI request (which sought access to IPv4 and IPv6 addresses). Specifically, the applicant has requested access to:

*all documents held by the department that relate to:*

- *The FOI/Administrative Access requests made via Right to Know for information relating to IP addresses used to access the internet*
- *Requests from other Government departments to the Attorney-General's Department seeking advice in relation to the release of IP address information under FOI.*

- *Advice provided by technical experts within the Department to inform any advice provided by the Department to other agencies.*

I have attached **two** documents which come within the scope of the applicant's request. As these documents originated in, or concern your agency, I seek your agency's views on the release of these materials under the *Freedom of Information Act 1982*.

This Department has examined the documents and has made preliminary decisions on what material appears to be exempt from disclosure. That material has been redacted for your convenience. The rest of the material does not appear, at this stage, to be exempt. Nevertheless, your views on whether any harm or damage is likely to be caused by release of these documents will inform us and guide our final decision.

Please note - it is the usual practice of the Department to not release the names and contact details of junior officers of the Department and other government agencies, where that personal information is contained in documents within scope of a request, unless the applicant advises us that they would like us to consider releasing that information as part of the documents requested. The names and contact details of senior officers will generally be released.

I would be grateful if you could examine the documents and advise as to whether or not you object to their release, by **COB 26 August 2014**. If you do object, please provide us with your reasons for doing so, including the precise harm or damage release is likely to cause.

If you would like to discuss this request, please contact me by email at [foi@ag.gov.au](mailto:foi@ag.gov.au).

Regards



**FOI Contact Officer**

Freedom of Information and Privacy Section | Office of Corporate Counsel  
Attorney-General's Department | 3 - 5 National Circuit, Barton ACT 2600

\*: [foi@ag.gov.au](mailto:foi@ag.gov.au)

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**Privacy Collection Notice**

When you make a request for documents or an inquiry about privacy matters, the Attorney-General's Department will only collect your personal information where it is reasonably necessary for, or directly related to, our functions under the Freedom of Information Act 1982 or the Privacy Act 1988. We may collect your name, email address and telephone number so that we can contact you about your request under the Freedom of Information Act for access to documents or access to, or correction of, personal information; or a complaint you have made or your request for access to, or correction of, personal information under the Privacy Act. If your request concerns your personal information, we will collect the minimum amount of evidence necessary to verify your identity. The handling of your personal information is protected by the Privacy Act 1988 and our privacy policy is available at <http://www.ag.gov.au/Pages/Privacystatement.aspx>. If you have an enquiry or complaint about your privacy, please contact the Privacy Contact Officer on 02 6141 2660 or via e-mail [privacy@ag.gov.au](mailto:privacy@ag.gov.au).

**From:** [REDACTED]  
**To:** [REDACTED]  
**Subject:** FW: NBNC Co FOI request... [SEC=UNCLASSIFIED]  
**Date:** Wednesday, 30 July 2014 11:08:22 AM

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**UNCLASSIFIED**

Hi [REDACTED]

This email chain is relevant to FOI14/139. Can you please note the discussion between NBN Co and CERT and also file it in the TRIM folder?

Thanks

[REDACTED]

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**From:** Patteson, Carolyn  
**Sent:** Wednesday, 30 July 2014 10:21 AM  
**To:** [REDACTED]  
**Subject:** FW: NBNC Co FOI request... [SEC=UNCLASSIFIED]

**UNCLASSIFIED**

[REDACTED]  
NBNC Co request.

*Carolyn Patteson*  
Assistant Secretary  
Cyber Security Operations & Infrastructure Modelling Branch  
National Security Resilience Policy Division  
Attorney-General's Department

*Phone:* +61 2 6141 2961 | *Mobile:* [REDACTED]  
*Email:* [carolyn.patteson@ag.gov.au](mailto:carolyn.patteson@ag.gov.au)

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**From:** Patteson, Carolyn  
**Sent:** Wednesday, 30 July 2014 9:44 AM  
**To:** [REDACTED] Rothery, Michael  
**Cc:** [REDACTED]  
**Subject:** RE: NBNC Co FOI request... [SEC=UNCLASSIFIED]

**UNCLASSIFIED**

Hi [REDACTED]

Thanks for getting in touch. We've become aware of the requests of a number of government departments and will be happy to provide some advice. We're working through it now and will get back to you as soon as we can. In general though I agree with your assessment that publishing will be counter productive. I would also note that a couple of agencies have already provided the information.

We'll be in touch soon.

*Carolyn Patteson*

Assistant Secretary  
Cyber Security Operations & Infrastructure Modelling Branch  
National Security Resilience Policy Division  
Attorney-General's Department

**Phone:** +61 2 6141 2961 | **Mobile:** [REDACTED]  
**Email:** [carolyn.patteson@ag.gov.au](mailto:carolyn.patteson@ag.gov.au)

**From:** [REDACTED]  
**Sent:** Wednesday, 30 July 2014 9:31 AM  
**To:** Rothery, Michael; Patteson, Carolyn  
**Cc:** [REDACTED]  
**Subject:** NBNC's FOI request...

Hi Mike, Carolyn,

We have been presented a request to release our External IP addresses... The requester is from a public web site owner.. And whilst IP addresses are not especially sensitive, having them all posted on a web site is counter productive and would potentially disable possible cyber security mitigations we could put in place in the event of DDOS.

This web page owner professes to have this information through FOI from other departments and agencies and I would like your assistance in seeking a general view to the response to these requests across government.

Clearly NBNC's operation relies on these IP interfaces to maintain our business, but perhaps some agencies who have or will respond may not, and feel there is no damage to their business that could come from exposing their external interfaces to publication...

<https://www.righttoknow.org.au/request/710/>

Cheers,

[REDACTED]

# DOCUMENT 3

**From:** [REDACTED]  
**To:** FOI Requests  
**Cc:** [REDACTED]  
**Subject:** RE: FOI request concerning IPv4 and IPv6 addresses [DLM=Sensitive:Legal]  
**Date:** Wednesday, 30 July 2014 3:56:35 PM  
**Attachments:** [image012.png](#)  
[image013.png](#)

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## Sensitive: Legal

For your reference, NBN Co received the same request.

Our security team [REDACTED] in particular – cc'd above) has already starting liaising with the AG's.

If you need to discuss further, please don't hesitate to ring me on the numbers below.

Best regards [REDACTED]

[REDACTED]

**NBNCo**



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PLEASE CONSIDER OUR ENVIRONMENT BEFORE PRINTING

**From:** FOI Requests [mailto:foi@ag.gov.au]  
**Sent:** Wednesday, July 30, 2014 12:23 PM  
**To:** foi@immi.gov.au; FOIOfficer; foi@dfat.gov.au; foi@environment.gov.au; info@aec.gov.au; foi@pmc.gov.au; FOI@treasury.gov.au; foi@dss.gov.au; foi@dva.gov.au; foi@industry.gov.au; foi@infrastructure.gov.au; FOI.Legal.Team@humanservices.gov.au; freedomofinformation@humanservices.gov.au; foi@finance.gov.au; foi@health.gov.au; foi@employment.gov.au; FOI@Defence.gov.au; foi@agriculture.gov.au; foi@afp.gov.au; FOI@education.gov.au; foi@communications.gov.au

**Cc:** FOI Requests

**Subject:** FOI request concerning IPv4 and IPv6 addresses [DLM=For-Official-Use-Only]

### **For Official Use Only**

Good afternoon FOI Contact Officers

AGD is aware that a number of agencies have received an FOI request from Right to Know Australia (Mr Ben Fairless and others) seeking access to records detailing the IPv4 and IPv6 addresses used to access the public internet from within an agency's network.

In light of Right to Know Australia's request, AGD would like to take this opportunity to remind agencies of correspondence from Roger Wilkins AO, Secretary, AGD on 7 June 2013 about the receipt of FOI requests concerning cyber security incidents or possible data breaches. In his correspondence, Mr Wilkins requested that agencies consult with AGD if any FOI requests of this nature are received in order for AGD to advise on any policy sensitivities and national security concerns that may arise from the release of the information.

AGD is currently considering possible Commonwealth cyber security issues raised by Mr Fairless' request with a view to providing further advice to agencies on this matter shortly.

In the meantime, if you have received a request for information from Right to Know Australia similar to that described above, we would be grateful if you could contact the FOI area in AGD by email at [FOI@ag.gov.au](mailto:FOI@ag.gov.au)

Regards

#### **FOI Contact Officer**

Freedom of Information and Privacy Section | Office of Corporate Counsel  
Attorney-General's Department | 3 - 5 National Circuit, Barton ACT 2600

\*: [foi@ag.gov.au](mailto:foi@ag.gov.au)

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identity. The handling of your personal information is protected by the Privacy Act 1988 and our privacy policy is available at <http://www.ag.gov.au/Pages/Privacystatement.aspx>. If you have an enquiry or complaint about your privacy, please contact the Privacy Contact Officer on 02 6141 2660 or via e-mail [privacy@ag.gov.au](mailto:privacy@ag.gov.au).

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