



12 September 2022

Steven Roddis  
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Our Ref: FOI2223013.003

Dear Steven

### **Request for Information**

I am writing in relation to your request, sent to **nbn**'s FOI Officer email address on 1 September 2022.

#### **Notice and Scope of Request**

It is my view that the request is too broad and so does not provide such information as to reasonably enable identification of the documents you are seeking. The request would necessitate searches across a number of systems, and the examination of numerous records in order to ascertain those which may fit within its broad terms. **nbn** staff have estimated that this would require more than 75 hours of staff time.

Considering the time likely to be required to process the requests, I am of the opinion that it would be an unreasonable diversion of **nbn**'s resources to commence the processing of this FOI application, in its current form. In that regard, I am relying on [sections 24](#) and [24AA of the FOI Act](#).

#### **Request Consultation Process**

Section 24 of the FOI Act requires **nbn** to undertake a request consultation process, before issuing a notice to refuse access. Before issuing a refusal notice, [section 24AB](#) of the FOI Act requires **nbn** to provide applicants with written notice stating their intention to refuse access and to initiate a request consultation process. Accordingly, I request that you review the scope of your FOI request and notify me within 14 days after the date of this notice, that is by 26 September 2022, as to whether you wish to:

- withdraw the request,
- make a revised request, or
- not revise the request.

I would be happy to assist you in refining the scope of your request, and please feel free to call me to discuss.

If you have not notified me by the abovementioned date, **nbn** will consider that this application has been withdrawn, per section 24AB(7) of the FOI Act. In accordance with section 24AB(8) of the FOI Act, the time taken to consult with you regarding the scope of a request is not taken into account when calculating the 30-day statutory time limit for processing FOI applications.

#### **nbn's Commercial Activities Carve-out (CAC)**

As a Commonwealth Government Business Entity or GBE, **nbn** is carved-out or exempt from the application of the FOI Act in relation to its commercial activities. That means that documents relating to **nbn**'s commercial activities



are not subject to the FOI Act. This is beyond the standard exemptions that other Government agencies may rely upon.

Accordingly, **nbn** generally requests that applicants exclude certain matters that are likely to fall within the CAC, along with other standard exemptions, e.g. legal privilege, confidential materials, commercially sensitive information, deliberative materials, etc. This assists **nbn** in ensuring that its resources are not unduly diverted from its core activities, particularly where the outcome of an FOI decision may likely result in a refusal. The following link summarises and provides [general background information](#) concerning **nbn**'s CAC. That document references two reviews by the Australian Information Commissioner that considered **nbn**'s carve-out, being the [Internode Decision](#) and the [Battersby Decision](#).

I have not reviewed the documents falling within the scope of your request, and am not making a decision in relation to them now, however, there is a distinct possibility that the CAC would apply to such documents.

### **FOI Processing Period and Charges**

The statutory period for processing an FOI application is 30 days, subject to any suspension of the processing period or extension of the time for deciding the application. Please also note that **nbn** may impose processing charges in relation to FOI requests. I will inform you of any charges in relation to your request.

Processing charges for FOI applications are set by regulation and may be found at **nbn**'s website – and, in particular, its [FOI page](#). The following link outlines **nbn**'s approach to processing charges: Submission to the Office of the Australian Information Commissioner [Charges Review](#).

In particular, **nbn** supports – and will generally apply – Recommendation 24 in the [Hawke Review into FOI Legislation](#), (**the Hawke Review**) as a benchmark in reviewing FOI applications. For your reference, Recommendation 24 suggests a 40-hour ceiling for all FOI processing charges. More information about charges under the FOI Act is available on the Office of the Australian Information Commissioner's (**OAIC**) website including in part 4 of the OAIC [FOI Guidelines](#).

### **Disclosure Log**

In accordance with the FOI Act, **nbn** 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 redactions as per section 11C of the FOI Act. For further information and other details, please visit our [Disclosure Log](#) on **nbn**'s website.

Please feel free to contact me on (02) 9031 3022 if you have any questions, or if you would like to discuss your request.

Yours sincerely

**Rohan Singh**

Freedom of Information Officer