

27 February 2015

Sam

Sent via email: foi+request-948-77dccb4f@righttoknow.org.au

Our Ref: 1415/37

Dear Sam,

FOI Application – NBN Rollout Terrigal and Narara

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:

...all documents regarding the NBN Rollout for the suburb of Terrigal 2260 and Narara 2250 and its approximated completion date.

Acknowledgment of Application

NBN Co received your request on 19 February 2015 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. However, in this case we will be undertaking a request consultation process with you as aspects of your FOI request are unclear and other aspects of your request, in our view, amount to an unreasonable diversion of NBN Co resources for the reasons set out below. This will impact the period for processing your FOI request.

Scope of FOI Application

As set out above, your FOI application indicates that you are seeking access to all documents regarding the NBN rollout in Terrigal and Narara and their approximated completion dates. As you have not identified the specific documents that you are seeking, your request would require extensive searches across all NBN Co business units which may fall within the terms of your request. It will require NBN Co to undertake a review of the email accounts of a significant number of employees. NBN Co's IT Group would be required to create a set of data cubes which would need to be searched, culled for relevance and organised. Relevant executives and senior managers of NBN Co would also need to be involved in consideration of the documentation, which would be a significant interference with the performance of their usual responsibilities.

Please also be aware that processing charges may be imposed in relation to your FOI application. In that regard, I would refer you to NBN Co's FOI processing charges policy, which is outlined at the following hyperlink: [Submission to the OAIC Charges Review](#). In particular, NBN Co supports – and will generally apply – Recommendation 24 in the [Hawke Review into FOI Legislation](#), (the **Hawke Review**), which suggests a 40-hour ceiling for all FOI processing charges.

In light of the volume of documents, I am of the opinion that it would be an unreasonable diversion of NBN Co's resources to commence the processing of this FOI application in its current form. In that regard, I am relying upon [sections 24](#) and [24AA of the FOI Act](#).

Request Consultation Process

Section 24 of the FOI Act requires NBN Co 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 Government authorities to provide applicants with written notice stating their intention to refuse access and to initiate a request consultation process. In that context, I request that you review the scope of your FOI request and notify the writer by **13 March 2015** as to whether you wish to:

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EMAIL info@nbnco.com.au WEB www.nbnco.com.au

LEVEL 11, 100 ARTHUR STREET, NORTH SYDNEY NSW 2060

- withdraw the request; or
- make revised request; or
- not revise the request.

If you have not notified the writer by the above-mentioned date, NBN Co will consider that this application has been withdrawn as per section 24AB(6) 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. In addition, I would invite you to telephone the writer on the number below to discuss or clarify the terms of this FOI application.

NBN Co's Commercial Activities

In addition to the section 24 issues, there is a strong possibility that many of the documents within the scope of this request would relate to NBN Co's commercial activities and would not be subject to the operation of the Act. In that regard, I refer you to [section 7\(3A\)](#) and [Part II of Schedule 2](#) of the FOI Act, which outlines the scope of NBN Co's commercial activities exemption (**the CAE**). 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 CAE. While I am not making a formal decision nor have I begun a review of relevant documents, there is a possibility that documents falling within the terms of this FOI request may be subject to the CAE and other exemptions from release under the FOI Act.

I also wanted to draw your attention to a recent decision NBN Co issued which related to a similar request for "instructions to commence detailed design and inspection work" found at <https://www.righttoknow.org.au/request/664/response/2484/attach/3/19A.Final%20Access%20Decision.pdf>. While I am not making a determination nor have I examined the relevant documents in connection to your request, I thought it might be helpful for you to understand the reasons given for not releasing those documents in that instance.

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 redactions as per section 11C of the FOI Act. For further information, visit our [Disclosure Log](#) on NBN Co's website.

If you have any questions or need to discuss your FOI application, please feel free to contact the writer on Tel. 8918 5655 or via email on anvo1@nbnco.com.au.

Sincerely,

An Vo

Associate Legal Counsel FOI, Privacy & Knowledge Mgmt