



19 December 2022

Alex Sullivan
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nbn ref: FOI2223024.003

Dear Alex

Request for Information

I am writing in relation to your correspondence to **nbn's** FOI Officer email address on 5 December 2022 seeking:

"any relevant documents relating to the current progress of the NBN's ongoing expansion of Fibre to the Premises (FTTP) technology, as of 5 December 2022. This includes progress reports, the number of premises connected, and number of homes eligible for the upgrade."

The *Freedom of Information Act 1982* (Cth) (**FOI Act**) provides that members of the public have a general right of access to specific documents, subject to certain exemptions. Under [section 15\(2\)](#) of the FOI Act, a valid FOI request must state that the request is an application for the purposes of the FOI Act and provide such information concerning the requested documents as is reasonably necessary to enable **nbn** to identify them, among other things.

nbn's Commercial Activities Carve-out

I refer you to **nbn's** commercial activities carve-out (**CAC**) or carve-out from the application of the FOI Act and refer you to [section 7\(3A\)](#) and [Part II of Schedule 2](#) of the FOI Act. Please be aware that documents that are in relation to **nbn's** "commercial activities" are not subject to the operation of the FOI Act and would be exempt from release. The following link summarises and provides [general background information](#) concerning **nbn's** commercial activities carve-out. That background document references two reviews by the Australian Information Commissioner that considered **nbn's** CAC: the [Internode Decision](#) (in January 2012) and the [Battersby Decision](#) (in July 2013).

While I am not making a formal decision and have not reviewed any documents, I note that there is a distinct possibility that documents falling within the terms of this request may be subject to the CAC, among other exemptions from release.

Scope of Request

Your request seeks "any relevant documents relating to ..." **nbn's** relevant network "expansion". Although you have indicated that this includes "reports", it is still not clear what documents your request covers and what it does not cover. By "any relevant" documents, are you intending to capture all documents in the category of interest, or only a single document? This issue may have a bearing on what "relating to" the subject matter means in this context. That is, "relating to" could mean documents directly related to the subject matter, or



alternatively it could mean documents that have any relationship to the subject matter. Alternatively, strictly interpreted, this wording could potentially encompass a very broad range of documents.

Your request refers to **nbn**'s "*ongoing expansion of Fibre to the Premises (FTTP) technology*". Is this a reference to the use of FTTP technology more broadly, or is it a reference to **nbn**'s upgrade of FTTN technology to FTTP technology only?

Your request makes reference to "*the number of premises connected, and number of homes eligible for the upgrade*". Are these the only data types that you are seeking as at the relevant date?

In relation to the relevant date of 5 December 2022. Does this refer to data as at a date on or around 5 December if data for that precise date is not readily available?

As currently drafted, the terms of your request are not sufficiently clear and the particular documents that fall within the parameters of the request are therefore not reasonably identifiable. Accordingly, your FOI request, in its current form, is invalid. Until you clarify those terms, **nbn** will not formally acknowledge your request, and the statutory period for completing this request will not commence. In that regard, please inform me if there is a specific document, or set of documents, which you are seeking – at least to the extent that you can identify them.

In light of the time likely to be required to process this request in its current form, I am also of the opinion that it would most likely be an unreasonable diversion of **nbn**'s resources, per [sections 24 and 24AA of the FOI Act](#). This is because there are various types of documents that may fit within the scope of your request. Moreover, a request for "all documents" would require **nbn** staff to undertake searches through all of its hard copy, digital and email records of more 5000 staff members and a significant number of consultants working with **nbn**.

As a starting point, it may be helpful to specify a given work area at **nbn**. Otherwise, I would be happy to discuss how to best clarify the scope of the request – and feel free to call me on the number below.

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. You will be advised of any charges in relation to your request.

For your reference, 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 hyperlink 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 and 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