



18 July 2013

Mr Mark Thomas

Sent via email: foi+request-309-8b4bb6cf@righttoknow.org.au

Our Ref: FOI1314/07.06

Dear Mr Thomas,

FOI Application – FSAM 8DRW-03

I am writing in relation to your request made under the *Freedom of Information Act, 1982 (the FOI Act)*. In particular, you had made an application relating to:

The reasons for the delays that have happened for the FSAM 8DRW-03. This node was started at around the same time as the other FSAM's in the area, but seems to be delayed to long past others that have started more recently.

Request to Contact NBN Co

Please note that NBN Co has, recently, not received certain emails from applications lodged via the Right-To-Know website. In future, I would request that you send any emails directly to the following email address – FOlofficer@nbnco.com.au, so as to ensure that email transmissions reach NBN Co.

In addition, it would appear from the terms of your request that you are not seeking documents per se, but rather information and an update in relation to the rollout of the national broadband network. In that regard, I have contacted members of our Construction Stakeholder Management Team and Communications Group, who have indicated that they would be pleased to meet with you and discuss NBN Co's rollout progress in the Northern Territory. If you would provide a contact number or email address, I will pass on your details to the relevant business units at NBN Co. You may wish to contact me directly via email or telephone to provide me with those details – and my contact information is found at the end of this letter.

Clarification of FOI Request

I note that you have not outlined specific types of documents, which you are seeking. As such, it would follow that you are requesting all manner of documents held by NBN Co, including all emails to and from NBN Co staff. For your reference, our company has approximately 2000 employees – and the terms of your request would require NBN Co to undertake a review of each of those employees' and others' email accounts, among other sources of documents. In addition, I note that you have not limited the terms of your FOI application to a specific period of time.

In light of the above points, it would – in my opinion – unreasonably divert NBN Co's resources to undertake a review of the entirety of our company's email logs, e-records and hard copy systems to undertake the type of review contemplated by the terms of your FOI request. In that regard, I would refer you to [section 24](#) and following of the FOI Act in relation to Commonwealth entities' obligations and efforts required to undertake FOI matters. If you have specific concerns about or wish to locate a known document, identifying these documents would be of great

assistance. In that regard, I would ask that you contact the writer on the number below to discuss the terms of your application – and clarify the same.

It is generally recommend that applicants limit their requests for documents relating to or held by specific officers within our company as well as specific types of documents, along with providing a specific time frame in which to search for relevant documents. I also recommend that applicants limit their applications to documents that are not legally privileged, nor are commercially sensitive, nor contain confidential materials, etc. I would refer you to [section 31A](#) of the FOI Act and following, which outlines relevant exemptions to release of documents under the legislation.

Processing Period & Charges

The statutory period for processing an FOI request is 30 days, subject to any suspension of the processing period or extension of the time for deciding the application. For the reasons outlined above, NBN Co will not formally acknowledge, nor commence the processing of this request until the terms of this FOI application have been sufficiently clarified.

In addition, please note that processing charges may be imposed and that consultation with third parties may be required. If it is necessary to consult with third parties, additional processing time is provided under the FOI Act. You will be advised of any charges as well as any need to consult third parties in relation to your request. Furthermore, those parties would have the opportunity to object to the potential release of documents affecting their business or personal affairs. For reference, 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.

NBN Co's Commercial Activities Exemption

I refer you to NBN Co's commercial activities exemption (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 (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](#). While I am not making a formal decision nor have I commenced a formal search for 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

Please also be advised that NBN Co is required to publish documents on its website within 10 working days after the release of the documents to an FOI applicant. The information you seek may be published in full (as released to you) or with some additional redactions, based upon exceptions under section 11C of the FOI Act. For further information please visit our website and click on the [Disclosure Log link](#).

If you have any questions or need to discuss your application, please feel free to contact the writer on Tel. (02) 8918 8596 or via email on davidmesman@nbnco.com.au.

Sincerely,

David J Mesman



GM Legal - FOI and Knowledge Management