

Attachment A – FOI2627010 – Document(s) Released in Full



17 April 2026

[REDACTED]
[REDACTED]

nbn ref: FOI2526033

Dear [REDACTED]

Freedom of Information – Access Decision

I am writing in relation to your application made under the *Freedom of Information Act, 1982* (**FOI Act**) seeking access to documents.

The Statement of Reasons (**attached**) outlines the specific terms of the FOI request, the decision-maker's findings and the access decision.

An FOI decision may be reviewed, subject to sections 53A and 54 of the FOI Act. Please refer to the Office of the Australian Information Commissioner's website at the following [link](#), which provides details about your rights of review and other avenues of redress under the FOI Act.

Please feel free to contact me at FOIOfficer@nbnco.com.au if you have any questions, or if you would like to discuss your FOI application.

Yours sincerely

Sandra Agobian

nbn Freedom of Information Team

FREEDOM OF INFORMATION REQUEST – FOI2526033

ACCESS DECISION

STATEMENT OF REASONS – 17/04/2026

Summary of Access Decision

1. I find that **documents identified within the scope of Point 1 and the single inspection document identified under Point 3** of the request are not subject to the *Freedom of Information Act 1982* (the FOI Act) because they relate to nbn's commercial activities within the meaning of section 7(3A) of the FOI Act. Accordingly, I refuse access to those documents.
2. I further find that, in respect of **Points 2 and 4** of the requests, all reasonable steps have been taken to locate documents and that no documents exist within the scope of those parts of the request. Accordingly, access is refused under section 24A of the FOI Act in relation to those parts.

Background – nbn and the FOI Act

3. **nbn** is a government business enterprise (**GBE**), which has the mandate of realising the Australian Government's vision for the development and operation of Australia's broadband infrastructure.
4. **nbn** recognises that information is a vital and an invaluable resource, both for the company and for the broader Australian community. That is why **nbn** fosters and promotes a pro-disclosure culture, with the goal of creating an organisation that is open, transparent, and accountable. To that end, **nbn** makes a large amount of information freely available to the public on our website: <https://nbnco.com.au/>.
5. **nbn** also manages its information assets within the terms and spirit of the FOI Act. We endeavour to release information proactively, while considering our commercial and other legal obligations.
6. 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**.
7. Under subsection 23(1) of the FOI Act, **nbn**'s Chief Executive Officer authorises me, to make decisions about access to documents and related matters under the FOI Act.
8. Under subsection 26(1) of the FOI Act, I am required to provide a Statement of Reasons for my decisions in relation to FOI 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. Those findings are outlined below.

Application Chronology and Scope of Request

9. On **17 March 2026**, nbn received an FOI request from [REDACTED]

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██████████ (the Applicant) seeking the following documents for the period **2 September 2019 to 2 September 2022**:

- Point 1 - Any contracts, works requisition, authorisation, permit, correspondence, internal notes or contractor documents generated or received by NBN Co with respect to any repairs, maintenance and rectification works undertaken by or on behalf of NBN Co with respect the pit lid between 2 September 2019 – 2 September 2022 (“the period”).
- Point 2 - Copies of incident or injury reports or complaints, with reference to call logs, email correspondence and internal safety records, as raised by customers and contractors in relation to the pit lid at the location during the period, with a focus on prior to the client’s incident.
- Point 3 - Copies of inspection reports, risk identifications and formal reports of inspection activity, safety assessments, maintenance checks and incident related inspection regarding the condition of the pit lid during the period.
- Point 4 - Any correspondence with reference to internal emails, field communications and contractor discussions between NBN Co employees regarding (a) works or maintenance to be undertaken at the pit lid, (b) any complaints or reports of injury in relation to the pit lid, and (c) the findings of any inspections undertaken of the pit lid during the period, with the focus being in maintenance activity, inspection and incident related communication.

On 17 March 2026, I made my access decision, as outlined below.

10. On the date set out above, I made my access decision, as outlined below.

Findings on material questions of fact

11. nbn staff conducted searches to locate documents within scope of the Applicant’s Request.
12. As a result of those searches, staff located documents within scope of Point 1 of the request, and one document within scope of Point 3 of the request. The documents located under Point 1 comprise records relating to the installation and delivery of an Enterprise Ethernet service ██████████ including works authorisation and construction records, design and as-built documentation, land access and constraints documentation, and quality assurance photographs.
13. The single document located under Point 3 is an inspection report.
14. In respect of Points 2 and 4 of the request, I am satisfied that all reasonable steps have been taken to locate documents and that no documents exist within the scope of those parts of the request.

Access Decision

15. In undertaking my review of the Relevant Documents, it is my view, having regard to the nature and subject matter of the request and the relevant provisions of the FOI Act, that one or more exemptions to release are applicable, as outlined below.

16. In making my decision, I took into account relevant parts of the FOI Act and related legislation, the Office of the Australian Information Commissioner (**OAIC**) [FOI Guidelines](#), relevant case law and other sources, including the [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 Commercial Activities Carve-out (**CAC**): the [Internode Decision](#) (in January 2012), [Battersby Decision](#) (in July 2013) and [Bogle Decision](#) (in February 2025).

nbn's commercial activities carve-out

17. Application of the CAC is a threshold issue, and I must consider it first before considering any other grounds for refusal of access.
18. Section 7(3A) of the FOI Act excludes documents that are related to **nbn**'s "commercial activities" from the operation of the FOI Act. Part II of Schedule 2 to the FOI Act specifies that certain agencies are exempt from the operation of the FOI Act in respect of particular documents. **nbn** is exempt from the operation of the FOI Act "in relation to documents in respect of its commercial activities".
19. Per section 7(3A) of the FOI Act, "commercial activities" means:
(a) activities carried on by NBN Co on a commercial basis; or
(b) activities, carried on by NBN Co, that may reasonably be expected in the foreseeable future to be carried on by NBN Co on a commercial basis.
20. As per section 7(4) of the FOI Act, in "subsection (2AA) and Part II of Schedule 2, a reference to documents in respect of particular activities shall be read as a reference to documents received or brought into existence in the course of, or for the purposes of, the carrying on of those activities."
21. Relevantly, **nbn**:
 - a. is a public company limited by shares incorporated under the *Corporations Act 2001* (Cth) (**Corporations Act**);
 - b. is wholly owned by the Commonwealth and a prescribed GBE;
 - c. is subject to the same obligations as other public companies incorporated under the *Corporations Act*;
 - d. generates sales and profit; and
 - e. operates for a commercial purpose, with a mandate or objective to earn at least a commercial rate of return.
22. Accordingly, **nbn** operates as a commercial entity and, having regard to the foregoing, is bound to do so.
23. In the Internode Decision, the then Freedom of Information Commissioner, Dr James Popple, considered the meaning of "commercial activities" in relation to **nbn**'s CAC. Relevantly, he noted as follows:

- a. in *Bell v Commonwealth Scientific and Industrial Research Organisation*, the Full Court of the Federal Court considered the meaning of "commercial activities" with reference to analogous provisions to sections 7(2) and 7(3A) of the FOI Act. In that case, the Court said that "*activities are conducted on a commercial basis if they are related to, engaged in or used for commerce*" and referred to "*the importance of the whole of the circumstances including the commercial goal (profit making or the generation of income or return) in determining whether particular activities are sufficiently related to commerce to be characterised as commercial activities*" [*Bell v Commonwealth Scientific and Industrial Research Organisation* [2008] FCAFC 40 as referred to in *Internode Pty Ltd and NBN Co Ltd* [2012] AICmr4 at paragraph 12.]; and
 - b. in *Johnston and Australian Postal Corporation*, the Administrative Appeals Tribunal concluded that commercial activity "*can be regarded as a business venture with a profit-making objective and, strictly speaking, will involve activity to generate trade and sales with a view to profit. This is particularly so when the volume of activity is on a large scale*". [*Johnston and Australian Postal Corporation* [2006] AATA 144 as referred to in *Internode Pty Ltd and NBN Co Ltd* [2012] AICmr4 at paragraph 13.]
24. The subsequent Battersby Decision reinforced the aforementioned considerations and further noted:

"... there is no doubt that the definition of 'commercial activities' is broader for NBN Co than it is for other government business enterprises listed in Part II of Schedule 2." [*Battersby and NBN Co Ltd* [2013] AICmr 61 at paragraph 16.]
25. Recent authority from the Bogle Decision further affirms the broad approach to the CAC established in *Internode* and *Battersby*. The Tribunal confirmed that the carve-out is not limited to documents that are overtly commercial or financial in nature, nor is there any requirement for a document to have commercial value or significance. The Bogle Decision makes clear that documents which are ancillary to, or administrative in support of, nbn's commercial activities also fall within the CAC if created in the course of those activities. The Tribunal emphasised that activities which support or are incidental to nbn's commercial objectives, including internal processes, resource management, and administrative functions, are nonetheless integral to its commercial operations in which case they would be covered by the carve-out. The CAC is therefore not confined to network build or infrastructure projects but extends to a wide range of activities essential to nbn's commercial objectives, including administrative and support functions. [*NBN Co Ltd and Bogle* [2025] ARTA 67]
26. As outlined above, there are various factors that may weigh in favour of an activity being categorised as commercial for the purposes of the FOI Act, such as (among other factors), if those activities:
 - a. have a commercial goal or purpose;
 - b. are related to, engaged in, or used for commerce; and/or
 - c. are related to a profit-making motive, generating income or revenue, among other matters.
27. Furthermore, for the CAC to apply, the document under consideration need not meet a commercial value threshold or be a commercially significant document. All that is required is that the document

is received by **nbn** or brought into existence in the course of, or for the purposes of, the carrying on of **nbn**'s commercial activities.

Application to the Relevant Documents

28. The Relevant Documents identified under Points 1 and 3 of the request relate to nbn's commercial activities because they were received or brought into existence in the course of, and for the purposes of, the delivery and assurance by nbn of a commercial Enterprise Ethernet service at [REDACTED] [REDACTED]. In particular, the documents comprise records relating to the planning, authorisation, design, construction, quality assurance and inspection activities associated with the installation of nbn's network infrastructure undertaken to provide that service to an end user. These activities were carried out by nbn and its delivery partners on a commercial basis, with the objective of generating revenue and earning a commercial rate of return.
29. I am therefore of the opinion that the Relevant Documents identified under Points 1 and 3 of the request relate to nbn's commercial activities. Accordingly, the FOI Act does not apply to those documents, and I refuse access to them under section 7(3A) of the FOI Act.
30. In respect of Points 2 and 4 of the request, no documents were identified following reasonable searches, and access is refused under section 24A of the FOI Act.

Decision-making Time and Fees

31. **nbn** staff spent time searching for and reviewing the Relevant Documents to respond to the request. Additionally, I have spent time in drafting and finalising this FOI decision, in addition to completing relevant correspondence in respect of the request. However, I have on this occasion exercised my discretion to waive all relevant fees.
32. 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.

29 April 2026

[REDACTED]

nbn ref: FOI2526034

Dear [REDACTED]

FOI Act – Access Decision

I am writing in relation to your application made under the *Freedom of Information Act, 1982* (**FOI Act**) seeking access to documents.

The Statement of Reasons (**attached**) outlines the specific terms of the FOI request, the decision-maker's findings and the access decision.

An FOI decision may be reviewed, subject to sections 53A and 54 of the FOI Act. Please refer to the Office of the Australian Information Commissioner's website at the following [link](#), which provides details about your rights of review and other avenues of redress under the FOI Act.

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

Yours sincerely

Portia Conyers-East

nbn Freedom of Information Team



FREEDOM OF INFORMATION REQUEST – FOI2526034

29 APRIL 2026

ACCESS DECISION

STATEMENT OF REASONS

Summary of Access Decision

1. In the Applicant's request for the Relevant Documents (as defined below) which is comprised of the Category A, Category B and Category C documents (each defined below), Category A is not subject to the *Freedom of Information Act* 1982 (the **FOI Act**) because it relates to nbn's commercial activities. Accordingly, I refuse access to the Category A documents.
2. While I have found that the Category B documents are not subject to the FOI Act as they relate to nbn's commercial activities, these documents (or similar versions or redacted versions) of these documents can be found in the public domain, so I have included links to these documents for the Applicant's benefit.
3. I confirm all reasonable steps have been taken and confirm Category C documents do not exist.

Background – nbn and the FOI Act

4. **nbn** is a government business enterprise (**GBE**), which has the mandate of realising the Australian Government's vision for the development and operation of Australia's broadband infrastructure.
5. **nbn** recognises that information is a vital and an invaluable resource, both for the company and for the broader Australian community. That is why **nbn** fosters and promotes a pro-disclosure culture, with the goal of creating an organisation that is open, transparent, and accountable. To that end, **nbn** makes a large amount of information freely available to the public on our website: <http://nbnco.com.au/>.
6. **nbn** also manages its information assets within the terms and spirit of the *Freedom of Information Act* 1982 (the **FOI Act**). We endeavour to release information proactively, while considering our commercial and other legal obligations.
7. 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**.
8. Under subsection 23(1) of the FOI Act, **nbn**'s Chief Executive Officer authorises me, to make decisions about access to documents and related matters under the FOI Act.
9. Under subsection 26(1) of the FOI Act, I am required to provide a Statement of Reasons for my decisions in relation to FOI 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. Those findings are outlined below.

Application Chronology and Scope of Request

10. On 23 March 2026 nbn co received an email from [REDACTED] (the **Applicant**) to the FOI Officer email address (FOIOfficer@nbnco.com.au). The email was considered an invalid FOI Request as it did not meet the requirements under section 15 of the FOI Act.
11. On 30 March 2026, I wrote to the Applicant informing them that the request received on 23 March 2026 was an invalid FOI, why it was invalid, and some options to proceed.
12. On 31 March 2026, nbn co received a valid FOI Request from the **Applicant** seeking:

"....the latest version of these documents. If this is not possible, I request versions that are 3 years old.

Documents referenced in section 7.5 of <https://www.accc.gov.au/system/files/nbn-rma-chapter-7-expenditure-governance.pdf?ref=0&download=y>

1. *Integrated Operating Plan*
2. *Product Roadmap*
3. *Network Roadmap*
4. *Network Asset Management Guidelines*
5. *Asset Criticality Framework*
6. *Asset hierarchy*
7. *Procurement Policy*

In addition, I request the following documents that NBN Co may have if they exist, or similar versions exist:

8. *Asset Management Policy*
9. *Asset Management Strategy*
10. *Strategic Asset Management Plan*
11. *Asset Management Plan and/or Asset Class Management Plans or Strategies*
12. *Asset Information Strategy*
13. *Asset Information Operating Model*
14. *Asset Information Standard*
15. *Data quality framework*
16. *Network Resilience Strategy*

17. *Asset risk management framework*

18. *Asset Lifecycle & Maintenance Framework*

19. *Asset Health Framework*

20. *Condition assessment methodology*

21. *Network Performance Reporting Framework...*”

13. I confirmed receipt of the Applicant’s email on 23 April 2026 and informed them we were processing the request and would have a decision to them by the due date, being 30 April 2026.
14. On the date set out above, I made my access decision, as outlined below.

Findings on material questions of fact

15. nbn staff undertook enquiries and searches within the company’s records for information falling within the scope of the request (**Relevant Documents**).
16. The Relevant Documents are comprised of three distinct categories, these can be described as:
- a. Documents that are not subject to the FOI Act because they relate to nbn’s commercial activities (**Category A**);
 - b. Documents that are not subject to the FOI Act for the same reason as Category A documents, but for the Applicant’s reference these documents (or similar versions or redacted versions) can be found in the public domain (**Category B**); and
 - c. Documents that could not be located after reasonable searches were undertaken and are therefore taken not to exist as described, or which are otherwise substantially similar to other documents within the scope of this request (**Category C**).
17. I have aligned these categories of documents with the Applicant’s FOI Request below:

Category A

- *Integrated Operating Plan*
- *Network Roadmap*
- *Network Asset Management Guidelines*
- *Asset Criticality Framework*
- *Asset Hierarchy*
- *Data Quality Framework*
- *Network Resilience Strategy*

- *Asset Management Policy*

Category B

- *Product Roadmap*
- *Procurement Policy*
- *Strategic Asset Management Plan*

Category C

- *Condition Assessment methodology*
- *Asset Management Plan and/or Asset Class Management Plans or Strategies*
- *Asset Information Strategy*
- *Asset Information Operating Model*
- *Asset Management Strategy*
- *Asset risk management framework*
- *Asset Lifecycle & Maintenance Framework*
- *Asset Health Framework*
- *Network Performance Reporting Framework*
- *Asset Information Standard*

Access Decision

18. In undertaking my review of the Relevant Information, it is my view, having regard to the nature and subject matter of the request and the relevant provisions of the FOI Act, that one or more exemptions to release are applicable to the Category A and Category B documents, as outlined below.
19. Regarding Category C documents, per section 24A(1) of the FOI Act, all reasonable steps have been taken to find relevant documents within the scope of this request and I am satisfied that such documents either do not exist, or are otherwise considered similar to other documents within the scope of the Request.
20. In making my decision, I took into account relevant parts of the FOI Act and related legislation, the Office of the Australian Information Commissioner (**OAIC**) [FOI Guidelines](#), relevant case law and other sources, including the [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 Commercial Activities Carve-out (**CAC**): the [Internode Decision](#) (in January 2012) and the [Battersby Decision](#) (in July 2013).

nbn's commercial activities carve-out

21. Application of the CAC is a threshold issue, and I must consider it first before considering any other grounds for refusal of access.
22. Section 7(3A) of the FOI Act excludes documents that are related to **nbn**'s "commercial activities" from the operation of the FOI Act. Part II of Schedule 2 to the FOI Act specifies that certain agencies are exempt from the operation of the FOI Act in respect of particular documents. **nbn** is exempt from the operation of the FOI Act "in relation to documents in respect of its commercial activities".
23. Per section 7(3A) of the FOI Act, "commercial activities" means:
 - (a) *activities carried on by NBN Co on a commercial basis; or*
 - (b) *activities, carried on by NBN Co, that may reasonably be expected in the foreseeable future to be carried on by NBN Co on a commercial basis.*
24. As per section 7(4) of the FOI Act, in "*subsection (2AA) and Part II of Schedule 2, a reference to documents in respect of particular activities shall be read as a reference to documents received or brought into existence in the course of, or for the purposes of, the carrying on of those activities.*"
25. Relevantly, **nbn**:
 - a. is a public company limited by shares incorporated under the *Corporations Act 2001* (Cth) (**Corporations Act**);
 - b. is wholly owned by the Commonwealth and a prescribed GBE;
 - c. is subject to the same obligations as other public companies incorporated under the *Corporations Act*;
 - d. generates sales and profit; and
 - e. operates for a commercial purpose, with a mandate or objective to earn at least a commercial rate of return.
26. Accordingly, **nbn** operates as a commercial entity and, having regard to the foregoing, is bound to do so.
27. In the Internode Decision, the then Freedom of Information Commissioner, Dr James Popple, considered the meaning of "commercial activities" in relation to **nbn**'s CAC. Relevantly, he noted as follows:
 - a. in *Bell v Commonwealth Scientific and Industrial Research Organisation*, the Full Court of the Federal Court considered the meaning of "commercial activities" with reference to analogous provisions to sections 7(2) and 7(3A) of the FOI Act. In that case, the Court said that "*activities are conducted on a commercial basis if they are related to, engaged in or used for commerce*" and referred to "*the importance of the whole of the circumstances including the commercial goal (profit making or the generation of income or return) in determining*

*whether particular activities are sufficiently related to commerce to be characterised as commercial activities"*¹; and

- b. in *Johnston and Australian Postal Corporation*, the Administrative Appeals Tribunal concluded that commercial activity "*can be regarded as a business venture with a profit-making objective and, strictly speaking, will involve activity to generate trade and sales with a view to profit. This is particularly so when the volume of activity is on a large scale*".²

28. The subsequent Battersby Decision reinforced the aforementioned considerations and further noted:

*"... there is no doubt that the definition of 'commercial activities' is broader for NBN Co than it is for other government business enterprises listed in Part II of Schedule 2."*³

29. Recent authority from the Bogle Decision further affirms the broad approach to the CAC established in Internode and Battersby. The Tribunal confirmed that the carve-out is not limited to documents that are overtly commercial or financial in nature, nor is there any requirement for a document to have commercial value or significance. The Bogle Decision makes clear that documents which are ancillary to, or administrative in support of, nbn's commercial activities also fall within the CAC if created in the course of those activities. The Tribunal emphasised that activities which support or are incidental to nbn's commercial objectives, including internal processes, resource management, and administrative functions, are nonetheless integral to its commercial operations in which case they would be covered by the carve-out. The CAC is therefore not confined to network build or infrastructure projects but extends to a wide range of activities essential to nbn's commercial objectives, including administrative and support functions. [*NBN Co Ltd and Bogle* [2025] ARTA 67]
30. As outlined above, there are various factors that may weigh in favour of an activity being categorised as commercial for the purposes of the FOI Act, such as (among other factors), if those activities:
- a. have a commercial goal or purpose;
 - b. are related to, engaged in, or used for commerce; and/or
 - c. are related to a profit-making motive, generating income or revenue, among other matters.
31. Furthermore, for the CAC to apply, the document under consideration need not meet a commercial value threshold or be a commercially significant document. All that is required is that the document is received by **nbn** or brought into existence in the course of, or for the purposes of, the carrying on of **nbn**'s commercial activities.

Category A

¹ *Bell v Commonwealth Scientific and Industrial Research Organisation* [2008] FCAFC 40 as referred to in *Internode Pty Ltd and NBN Co Ltd* [2012] AICmr4 at paragraph 12.

² *Johnston and Australian Postal Corporation* [2006] AATA 144 as referred to in *Internode Pty Ltd and NBN Co Ltd* [2012] AICmr4 at paragraph 13.

³ *Battersby and NBN Co Ltd* [2013] AICmr 61 at paragraph 16.

32. In looking at the whole of the circumstances, I conclude that the Category A documents are in respect of **nbn**'s commercial activities and have provided reasons for each document that forms part of Category A below.
- a. *Integrated Operating Plan*: **nbn**'s Integrated Operation Plan (**IOP**) (as referenced in the Applicant's FOI Request) is a comprehensive internal, forward-looking commercial planning process. The IOP planning process involves the development of integrated strategic, operational and financial plans across the organisation. It integrates multiple streams of sensitive planning material, including revenue and demand forecasts, cost and capital allocation assumptions, network and product roadmaps, competitive and market positioning inputs. It is generally used to make commercial investment decisions, allocate resources and manage financial and operational performance. Importantly, the IOP is not a single static document. It is a coordinated body of documents, including planning materials, iterations developed, reviewed and refined as part of **nbn**'s ongoing planning process. Under section 3(1)(b) of the FOI Act, the public has a right to seek access to "documents" rather than to discrete bits of information. However, section 17 of the FOI Act enables **nbn** to provide applicants with information where such information is not available in a discrete written form, but it is "ordinarily available to the agency for retrieving or collating stored information". While there are certain documents and/or information that consolidate some elements of the IOP, regardless of this, these documents that would form **nbn**'s IOP are exempt from the FOI Act as they were brought into existence in the course of **nbn** carrying out part of its commercial activities, being planning and conducting **nbn**'s wholesale telecommunications business, which reflects how **nbn** competes, positions itself in the market and allocates resources as a commercial wholesaler.
 - b. *Network Roadmap*: The Network Roadmap is a forward-looking, integrated commercial and technical planning artefact that sets out a high-level view of significant upgrades to network infrastructure to support lifecycle events, product demand, network capability and security. It coordinates planning across access technology types and future product capabilities, capacity demand forecasts, supply-chain planning and cost optimization. Accordingly, the Network Roadmap directly relates to **nbn**'s commercial activities as it exists to support commercial planning and delivery, informs competitive pricing and product strategy, capex trigger points, and how and why commercial decisions will be made. For those reasons, I am of the opinion that the Network Roadmap relates to **nbn**'s commercial activities.
 - c. *Network Asset Management Guidelines*: This document set out how **nbn** acquires, operates, maintains and disposes of its network assets, including how **nbn** balances cost, risk and performance and makes forward-looking lifecycle and investment decisions. The document governs internal commercial decision-making about asset utilisation, lifecycle management, capital optimisation and service delivery and is integral to the operation of **nbn**'s wholesale telecommunications business. It is therefore a document in respect of **nbn**'s commercial activities, and therefore the FOI Act does not apply to this document.
 - d. *Asset Criticality Framework*: The Asset Criticality Framework (**ACF**) is an internal commercial framework used by **nbn** to assess the consequences of asset failure and to prioritise investment, resilience, lifecycle and risk-management decisions across assets used to supply wholesale telecommunication services. It links asset criticality to capital allocation, cost optimisation, risk acceptance authority and regulatory obligations and informs how **nbn** manages its network business and allocates resources. As a document that is used to

support commercial decision making, the ACF is a document in respect of nbn's commercial activities and consequently the FOI Act does not apply to it.

- e. *Asset Hierarchy*: While there is no specific document that is considered an Asset Hierarchy document at nbn, section 17 of the FOI Act enables **nbn** to provide applicants with information where such information is not available in a discrete written form, but it is "ordinarily available to the agency for retrieving or collating stored information". Consequently, while we were able to locate information that fits within the FOI Request, this information ('Asset Hierarchy') sets out how nbn's network and IT assets are structured, grouped and governed for the purpose of allocating ownership, funding responsibility, lifecycle management and risk accountability across assets used to supply wholesale carriage services. It forms a foundational internal framework for commercial decision-making, including capital allocation, maintenance strategies and resilience investment. While the hierarchy supports compliance (e.g. SOCI Act obligations), it does so by translating regulatory requirements into internal operational and investment accountability, identifying what assets are business-critical and who must fund and manage them. The Asset Hierarchy is therefore a document in respect of nbn's commercial activities, the FOI Act does not apply to this document.
- f. *Data Quality Framework*: While we could not locate a document or information called 'Data Quality Framework', the Applicant's FOI Request was framed to include '..or similar versions if exist'. In light of this, we were able to locate a 'nbn Data Operating Model' which includes information about nbn's Data Quality standards. nbn's Data Operating Model set out these standards to assess and control the quality of data used to support its wholesale telecommunications business, including data used for pricing, forecasting, billing, management of critical infrastructure and revenue-generating use cases. These Data Quality standards inform commercial prioritisation, investment, tooling and resource allocation decisions to deliver business value. It is therefore a document in respect of nbn's commercial activities, and disclosure would provide insight into nbn's internal risk appetite, and may expose how key data controls and dependences support core operational services. Therefore, the Data Quality standards and Data Operating Model relate to nbn's commercial activities, and the FOI Act does not apply to this document.
- g. *Network Resilience Strategy*: While we could not locate a specific 'Network Resilience Strategy', the Applicant's FOI Request was framed to include '..or similar versions if exist'. In light of this, we were able to locate a 'nbn Resilience Strategy' which includes information about network resilience. The Resilience Strategy sets out how nbn protects the continuity, availability and recoverability of the network, systems, assets and suppliers that support its wholesale telecommunications business. It directs investment prioritisation, risk-based uplift activities and assurance across critical assets and services, and informs enterprise planning, governance and operational decision-making. Disclosure would provide insight into how operates its commercial activities, including protection of assets, resilience of strategic sites, and enables continuity of service across operations, security and customer-critical investments, nbn's threat landscape. These are core commercial functions about how nbn manages operational and commercial risks. Accordingly, the Resilience Strategy relates to nbn's commercial activities.
- h. *Asset Management Policy*: While we were unable to locate a specific 'Asset Management Policy', the Applicant's FOI Request was framed to include '..or similar versions if exist'. In light of this, we were able to locate a 'Resilience Policy' which includes information about

asset management at nbn. The Resilience Policy, and the material relating to asset management therein, includes operational rules that directly governs how nbn manages its telecommunication network as a wholesale business. The policy is clear that asset-related resilience risks must inform investment prioritisation and be integrated into strategic and operational planning, which is a core commercial function as it determines how nbn allocates capital and resources to maintain and manage the network and support a revenue-generating wholesale service. For these reasons, the Resilience Policy relates to nbn's commercial activities and is exempt from the operation of the FOI Act.

33. For those reasons set out above, I am of the opinion that there is a strong nexus between the Category A documents and nbn's commercial activities. As such, the Category A documents relate to nbn's commercial activities and are therefore exempt from the application of the FOI Act.

Category B

34. In my view, the commercial-activities-carve out applies to the Category B documents, meaning the FOI Act does not apply to the documents at all. I have outlined my reasoning for this decision as against each specific document below.

35. Regardless of my finding on material question of fact, some of the documents (or similar versions of those documents) requested by the Applicant can be found in the public domain. For the Applicant's benefit, I have provided links to these documents where available.

a. Product Roadmap:

- **CAC:** the Product Roadmap that forms part of the Applicant's FOI Request is an internal forward-looking commercial strategy document that includes nbn's planned product offerings, pricing and technology strategies. Disclosure would reveal nbn's commercial operations, with direct consideration for revenue-generating products, pricing structures and market behavior, which could impact nbn's ability to effectively compete in the wholesale market. Therefore, it relates to nbn's commercial activities and is excluded from the operation of the FOI Act under s 7(3A).
- While I am of the view the document that forms part of the Applicant's FOI request is not subject to the FOI Act for the reasons set out above, nbn publishes a version of its Product Roadmap to its public website annually in July. The latest version published July 2025 can be found at the following link: <https://www.nbnco.com.au/rsps/products-services-pricing/product-roadmap>

b. Procurement Policy:

- **CAC:** nbn's Procurement Policy governs how nbn engages suppliers and enters into commercial arrangements necessary to operate its wholesale telecommunications business. To the extent the policy sets out internal commercial rules for procurement, cost controls, contracting and supplier engagement, it relates to nbn's commercial activities and is excluded from the operation of the FOI Act under s 7(3A). While a redacted version of the policy is publicly available, non-redacted internal versions are documents brought into existence for the purpose of carrying on nbn's commercial activities and are not subject to the FOI Act.

- A redacted version of nbn's Procurement Policy was published by the ACCC on 4 September 2025, and can be found at the following link:
https://www.accc.gov.au/system/files/nbn-procurement-policy_0.pdf?ref=0&download=y

c. Strategic Asset Management Plan:

- **CAC:** nbn's Strategic Asset Management Plan governs how nbn plans, prioritises, funds and manages its telecommunications assets over their lifecycle. It is a long-term commercial planning document for operating and maintaining the nbn network, and its function goes directly to how nbn generates revenue, controls costs and manages operational risks as a wholesale carrier. This document exists because nbn must manage its assets to run a commercial telecommunications network, and decisions governed by the document determine long-term commercial viability, ability to meet wholesale demand, and service reliability and availability. While a strategic version of the plan is publicly available, the document remains a document in respect of nbn's commercial activities. As nbn is a prescribed authority for the purposes of s 7(3A) of the FOI Act, the Act does not apply to this document.
- A version of nbn's Strategic Telecom Asset Management Plan was published by the ACCC on 4 September 2025, and can be found at the following link:
<https://www.accc.gov.au/system/files/nbn-strategic-telecom-asset-management-c>

Category C

36. Per section 24A(1) of the FOI Act, all reasonable steps have been taken to find the Relevant Documents within the scope of this request, and I am satisfied that the Category C documents do not exist as defined, or are similar to other documents within scope of this Request. I have provided further information on this decision for each document below:

- a. Condition Assessment Methodology: Regarding the 'Condition Assessment Methodology' I have interpreted this document request to mean a singular methodology for assessing the condition of nbn technology. Based on this interpretation, I can confirm that there is no one singular process or methodology and therefore am satisfied this does not exist as defined. The Applicant may wish to consider submitting a more specific request, for example by identifying particular technology types or business functions of interest, which may assist nbn in determining whether the relevant documents exist.
- b. Asset Management Strategy: While we were unable to locate a document explicitly called this, see 'Strategic Asset Management Plan' in Category B above which nbn considers to be the same or similar to the 'Asset Management Strategy'.
- c. Asset Management Plan and/or Asset Class Management Plans or Strategies: I have interpreted this document request to mean a singular plan outlining how nbn manages its assets individually, or classes of assets. Based on this interpretation, I can confirm that there is no one singular plan for how nbn manages its assets or classes of assets. Therefore,

I am satisfied this does not exist as defined. The Applicant may wish to consider submitting a more specific request, for example by identifying particular class of asset or technology type, which may assist nbn in determining whether the relevant documents exist.

- d. Asset Information Strategy: We were unable to locate information or documentation that corresponds directly to an Asset Information Strategy as currently described. The Applicant may wish to consider submitting a more specific request, for example by identifying particular asset types or information domains, which may assist nbn in determining whether relevant documents exist.
- e. Asset Information Operating Model: We were unable to locate information or documentation that corresponds directly to an Asset Information Operating Model as currently described. The Applicant may consider submitting a more specific request, which may assist nbn in determining whether relevant documents exist.
- f. Asset risk management framework: While we were unable to locate information or documentation explicitly called this, we consider that a portion of the expected content covered by this type of document is covered in the Strategic Asset Management Plan document in Category B above.
- g. Asset Lifecycle & Maintenance Framework: While we were unable to locate information or documentation explicitly called this, we consider that a portion of the expected content covered by this type of document is covered in the Strategic Asset Management Plan document in Category B above.
- h. Asset Health Framework: While we were unable to locate information or documentation explicitly called this, we consider that a portion of the expected content covered by this type of document is covered in the Strategic Asset Management Plan document in Category B above.
- i. Network Performance Reporting Framework: While nbn does not maintain any documentation on 'Performance Reporting Frameworks', and therefore I am satisfied this document does not exist as described, nbn provides quarterly reports on service quality and network performance under the Record Keeping Rules (RKR) to the ACCC, who makes them available for publication. The December 2025 report can be found at the following link: <https://www.accc.gov.au/by-industry/telecommunications-and-internet/service-quality-and-network-performance-record-keeping-rule-for-superfast-broadband-networks/december-quarter-2025-data>
- j. Asset Information Standard: We were unable to locate information or documentation that corresponds directly to an Asset Information Standard as currently described.

37. As discussed above, I am of the opinion that the Category A documents relate to nbn's commercial activities. Accordingly, the FOI Act does not apply to the Category A documents and I refuse access to them. I am of the view that the documents that fall within Category B relate to nbn's commercial activities. Therefore the FOI Act does not apply to them and I refuse access to them under the FOI Act. This refusal applies even though some of these documents or versions of these documents are available in the public domain. However, I have directed the Applicant to where those documents and/or



information can be found. All reasonable steps have been taken to locate the Relevant Category C Documents, and I am of the opinion that Category C documents do not exist.

38. It is unnecessary to consider any further exemptions considering my determination that the Category A and B documents fall within the meaning of the commercial activities carve-out. Without limiting the above, there are other grounds upon which access to the Category A and B documents could potentially be refused. In my opinion, the Category A and B documents may also be exempt from release on the basis of one or more of the following sections of the FOI Act:
- d. s33 (Documents affecting national security);
 - e. s37 (documents affecting enforcement of law and protection of public safety);
 - f. s47 (documents disclosing commercially valuable information);
 - e. s47D (substantive adverse effect on the financial or property interests of the Commonwealth);
 - f. s47E (substantial adverse effect on the proper and efficient conduct of the operations of an agency); and
 - g. s47G (business, commercial, or financial affairs).
39. However, I have determined not to provide reasons in relation to those general and conditional exemptions.

Decision-making Time and Fees

40. **nbn** staff spent time searching for the Relevant Information to respond to the request. Additionally, I have spent time in drafting and finalising this FOI decision, in addition to completing relevant correspondence in respect of the Request. While no fees are levied for the first five hours of FOI decision-making time, I have exercised my discretion to waive all relevant fees in this instance.
41. 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.

30 April 2026

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

nbn ref: FOI2526036

Dear [REDACTED]

Freedom of Information – Access Decision

I am writing in relation to your application made under the *Freedom of Information Act, 1982 (FOI Act)* seeking access to documents.

The Statement of Reasons (**attached**) outlines the specific terms of the FOI request, the decision-maker's findings and the access decision.

An FOI decision may be reviewed, subject to sections 53A and 54 of the FOI Act. Please refer to the Office of the Australian Information Commissioner's website at the following [link](#), which provides details about your rights of review and other avenues of redress under the FOI Act.

Please feel free to contact me at FOIOfficer@nbnco.com.au if you have any questions, or if you would like to discuss your FOI application.

Yours sincerely

Nivedita Gajjar

nbn Freedom of Information Team

nbn-COMMERCIAL

FREEDOM OF INFORMATION REQUEST – FOI 2526036

ACCESS DECISION

STATEMENT OF REASONS – 30 April 2026

Summary of Access Decision

1. I find that the Relevant Documents (as defined below) are not subject to the *Freedom of Information Act* 1982 (the **FOI Act**) because they relate to nbn’s commercial activities. Accordingly, I refuse access to the Relevant Documents.

Background – nbn and the FOI Act

2. nbn is a government business enterprise (**GBE**), which has the mandate of realising the Australian Government’s vision for the development and operation of Australia’s broadband infrastructure.
3. nbn recognises that information is a vital and an invaluable resource, both for the company and for the broader Australian community. That is why nbn fosters and promotes a pro-disclosure culture, with the goal of creating an organisation that is open, transparent, and accountable. To that end, nbn makes a large amount of information freely available to the public on our website: <http://nbnco.com.au/>.
4. nbn also manages its information assets within the terms and spirit of the FOI Act. We endeavour to release information proactively, while considering our commercial and other legal obligations.
5. 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.
6. Under subsection 23(1) of the FOI Act, nbn’s Chief Executive Officer authorises me, to make decisions about access to documents and related matters under the FOI Act.
7. Under subsection 26(1) of the FOI Act, I am required to provide a Statement of Reasons for my decisions in relation to FOI 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. Those findings are outlined below.

Application Chronology and Scope of Request

8. On 25 March 2026, nbn co received an FOI Request from [REDACTED] (**Applicant**) seeking access to:

“documents relating to Full-Fibre (FTTP) Rollout Delays, Avalon Beach NSW 2107 including access to the following categories of documents held by NBN Co, to the extent they fall outside the commercial activities exemption and can be released in

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nbn-COMMERCIAL

full or in part:

A. Rollout Planning and Schedule Documents (Non-Commercial)

1. Any internal planning documents, project schedules, or Gantt-style rollout timelines specifically concerning the FTTP upgrade in the Avalon Beach area (postcode 2107 or relevant Fibre Serving Area Module / SAM identifiers) that were created, revised, or reviewed between 1 January 2022 and the date of this request.
2. Any documents recording the original estimated completion date for the Avalon Beach 2107 FTTP upgrade, subsequent revisions to that date, and the reasons recorded internally for each revision — including engineering, resourcing, or logistical assessments.
3. Minutes or records of any internal meetings, working groups, or executive briefings at which the Avalon Beach FTTP rollout schedule, delay, or reprioritisation was discussed.

B. Ministerial and Shareholder Reporting

4. Any reports, briefs, or correspondence provided to NBN Co's shareholder ministers (the Minister for Communications and the Minister for Finance), or to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, that reference the FTTP rollout progress or delays in the Northern Beaches / Avalon Beach area.
5. Any sections of NBN Co's Corporate Plan, Statement of Corporate Intent, or Integrated Operating Plan (or their equivalent) that identify Avalon Beach / postcode 2107 / the relevant SAM as a delayed or deferred FTTP upgrade area, including any risk ratings or escalation status assigned to that area.

C. Regulatory and ACCC-Related Documents

6. Any documents submitted to, or received from, the Australian Competition and Consumer Commission (ACCC) or the Australian Communications and Media Authority (ACMA) that specifically reference delays to the FTTP upgrade in Avalon Beach or the Northern Beaches region.
7. Any consumer complaint records, escalations, or aggregate complaint data received by NBN Co from residents or retail service providers (RSPs) regarding undelivered or deferred FTTP services in postcode 2107 — in deidentified or aggregated form if required to protect personal information under section 47F of the FOI Act.

D. Risk and Governance Records

8. Any risk register entries, board papers, or audit committee documents that identify Avalon Beach or the Northern Beaches FTTP upgrade as a delayed, at-risk, or re-sequenced project item.
9. Any documents that record the criteria or methodology NBN Co uses to sequence or re-sequence FTTP upgrade areas, to the extent such documents reflect policy or governance frameworks rather than specific commercial pricing or contract strategy.
10. Any post-incident or lessons-learned reviews related to rollout delays in Avalon Beach or comparable coastal/peninsula topology areas that could explain the repeated deferral of the estimated completion date for postcode 2107."

9. On 2 April 2026, I acknowledged the receipt of the Applicant's request and initiated the Request Consultation Process under the FOI Act.
10. Following the Consultation process, the Applicant submitted a revised FOI request on 14 April 2026 seeking access to documents relating to:

"Category A — Rollout Planning and Schedule

A1. The most recent FTTP rollout schedule or service qualification record held by NBN Co that specifically covers Avalon Beach / postcode 2107 or the

relevant Fibre Serving Area Module (SAM) identifier(s) for that area, as at the date of this revised request. Where a single document does not exist in that form, I request the most recent record — in whatever form it is held — that sets out an estimated completion or Ready for Service (RFS) date for the FTTTP upgrade to postcode 2107.

A2. The most recent internal document — for example a briefing note, project status report, or exception report — that records the reason(s) for any revision to the previously published estimated completion date for the Avalon Beach 2107 FTTTP upgrade, where Avalon Beach or postcode 2107 is the primary subject of that document. If no such standalone document exists, I request the relevant section or entry from the most recent document that specifically addresses the revised timeline for postcode 2107.

A3. The most recent set of minutes or action items from any internal meeting, working group, or executive briefing at which the Avalon Beach / postcode 2107 FTTTP rollout schedule was the primary subject — limited to documents created on or after 1 January 2024.

Category B — Ministerial and Shareholder Reporting

B4. The most recent quarterly or annual progress report, board update, or ministerial brief provided to NBN Co's shareholder ministers or to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, that contains a section or entry specifically and primarily addressing the FTTTP rollout status in Avalon Beach or postcode 2107 — limited to documents created on or after 1 January 2024. I do not seek the entirety of any such report; I request only the section(s) in which Avalon Beach, postcode 2107, or the relevant SAM is expressly and substantively referenced.

Category C — Regulatory and Complaints Data

C6. The most recent single document submitted to, or received from, the ACCC or ACMA that specifically and primarily addresses the FTTTP rollout delay in Avalon Beach or postcode 2107. If no such document exists in which postcode 2107 is the primary subject, I request written confirmation of that fact in NBN Co's formal decision.

C7. The most recent aggregate or summary complaints report held by NBN Co's complaints management function that covers FTTTP-related complaints or service enquiries for postcode 2107, for the 12-month period ending 31 March 2026. I request this in aggregate or de-identified form only, consistent with section 47F of the FOI Act.

Category D — Risk and Governance Records

D8. The most recent risk register entry or board paper extract that directly and specifically identifies Avalon Beach or postcode 2107 as a delayed, at-risk, or re-sequenced FTTTP upgrade area. If no standalone entry exists, I request the relevant entry or row from the most recent risk register in which postcode 2107 or the relevant SAM appears as the primary subject.

D9. The most recent version of NBN Co's documented methodology or policy framework for sequencing and re-sequencing FTTTP upgrade areas, to the extent that document is a policy or governance framework instrument rather than a commercial pricing or contracting document. This is sought as a standing policy document of the kind a well-governed GBE would maintain and be able to retrieve without extensive search effort.

D10. Withdrawn in response to your feedback that this item was insufficiently specific and extended beyond Avalon Beach."

11. On the date set out above, I completed my FOI decision and subsequently forwarded this decision to the Applicant.

Findings on material questions of fact

12. Reasonable searches were conducted by nbn staff in business areas for FTTP rollout, planning, risk management, governance and complaints team to locate documents within scope of the Applicant's Request. Searches focused on identifying the most recent documents created in the date range where specified in the revised Request categories.
13. Staff located documents in scope of and responsive to part of the Request being nbn documents relating to the Fibre to the Premises (FTTP) rollout in Avalon Beach / postcode 2107 (**Relevant Documents**), but did not locate documents for parts B4, C7 and D9 of the request.
14. The Relevant Documents for Categories A to D comprise materials used by nbn in connection with the planning, sequencing, delivery, management, reporting and oversight of the FTTP rollout. This includes rollout schedules, delivery and scope, build constraints, complaints, reporting and records associated with FTTP deployment. Each category of document is generated in the ordinary course of managing and delivering network infrastructure upgrades and reflects nbn's assessment of FTTP delivery progress, risks, constraints and prioritisation decisions associated with the commercial rollout of its network.
15. In considering the application of the commercial activities carve-out, I have had regard to the nature, purpose and use of the documents rather than their form or audience. While some documents take the form of reporting material, such as those that maybe provided to the ACCC, ACMA, Board, shareholder ministers or departments, their dominant character is to support the effective delivery, oversight and management of nbn's commercial operations.
16. The Relevant Documents relating to FTTP rollout planning, sequencing, risk assessment, complaints management and reporting on deployment performance are related to and ancillary in carrying on of nbn's business on a commercial basis. The fact that the request is limited to specific sections or extracts that pertain to Avalon Beach/post code 2107 does not alter the character of the Relevant Documents where those sections themselves relate to network delivery and commercial activities.

Access Decision

17. In undertaking my review of the Relevant Documents, it is my view, having regard to the nature and subject matter of the request and the relevant provisions of the FOI Act, that one or more exemptions to release are applicable, as outlined below.
18. In making my decision, I took into account relevant parts of the FOI Act and related legislation, the Office of the Australian Information Commissioner (**OAIC**) [FOI Guidelines](#), relevant case law and other sources, including the [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 Commercial Activities Carve-out (**CAC**): the [Internode Decision](#)

(in January 2012), [Battersby Decision](#) (in July 2013) and [Bogle Decision](#) (in February 2025).

nbn's commercial activities carve-out

19. Application of the CAC is a threshold issue, and I must consider it first before considering any other grounds for refusal of access.
20. Section 7(3A) of the FOI Act excludes documents that are related to nbn's "commercial activities" from the operation of the FOI Act. Part II of Schedule 2 to the FOI Act specifies that certain agencies are exempt from the operation of the FOI Act in respect of particular documents. nbn is exempt from the operation of the FOI Act "in relation to documents in respect of its commercial activities".
21. Per section 7(3A) of the FOI Act, "commercial activities" means:
 - (a) *activities carried on by NBN Co on a commercial basis; or*
 - (b) *activities, carried on by NBN Co, that may reasonably be expected in the foreseeable future to be carried on by NBN Co on a commercial basis.*
22. As per section 7(4) of the FOI Act, in "*subsection (2AA) and Part II of Schedule 2, a reference to documents in respect of particular activities shall be read as a reference to documents received or brought into existence in the course of, or for the purposes of, the carrying on of those activities.*"
23. Relevantly, nbn:
 - a. is a public company limited by shares incorporated under the *Corporations Act 2001* (Cth) (**Corporations Act**);
 - b. is wholly owned by the Commonwealth and a prescribed GBE;
 - c. is subject to the same obligations as other public companies incorporated under the Corporations Act;
 - d. generates sales and profit; and
 - e. operates for a commercial purpose, with a mandate or objective to earn at least a commercial rate of return.
24. Accordingly, nbn operates as a commercial entity and, having regard to the foregoing, is bound to do so.
25. In the Internode Decision, the then Freedom of Information Commissioner, Dr James Popple, considered the meaning of "commercial activities" in relation to nbn's CAC. Relevantly, he noted as follows:
 - a. in *Bell v Commonwealth Scientific and Industrial Research Organisation*, the Full Court of the Federal Court considered the meaning of "commercial activities" with reference to analogous provisions to sections 7(2) and 7(3A) of the FOI Act. In that case, the Court said that "*activities are conducted on a commercial basis if they are related to, engaged in or used for commerce*" and referred to "*the importance of the whole of the circumstances including the commercial goal (profit making or the generation of income or return) in determining whether particular activities*

are sufficiently related to commerce to be characterised as commercial activities" [Bell v Commonwealth Scientific and Industrial Research Organisation [2008] FCAFC 40 as referred to in Internode Pty Ltd and NBN Co Ltd [2012] AICmr4 at paragraph 12.]; and

- b. in *Johnston and Australian Postal Corporation*, the Administrative Appeals Tribunal concluded that commercial activity "*can be regarded as a business venture with a profit-making objective and, strictly speaking, will involve activity to generate trade and sales with a view to profit. This is particularly so when the volume of activity is on a large scale*". [Johnston and Australian Postal Corporation [2006] AATA 144 as referred to in Internode Pty Ltd and NBN Co Ltd [2012] AICmr4 at paragraph 13.]

- 26. The subsequent Battersby Decision reinforced the aforementioned considerations and further noted:

"... there is no doubt that the definition of 'commercial activities' is broader for NBN Co than it is for other government business enterprises listed in Part II of Schedule 2." [Battersby and NBN Co Ltd [2013] AICmr 61 at paragraph 16.]

- 27. Recent authority from the Bogle Decision further affirms the broad approach to the CAC established in Internode and Battersby. The Tribunal confirmed that the carve-out is not limited to documents that are overtly commercial or financial in nature, nor is there any requirement for a document to have commercial value or significance. The Bogle Decision makes clear that documents which are ancillary to, or administrative in support of, nbn's commercial activities also fall within the CAC if created in the course of those activities. The Tribunal emphasised that activities which support or are incidental to nbn's commercial objectives, including internal processes, resource management, and administrative functions, are nonetheless integral to its commercial operations in which case they would be covered by the carve-out. The CAC is therefore not confined to network build or infrastructure projects but extends to a wide range of activities essential to nbn's commercial objectives, including administrative and support functions. [NBN Co Ltd and Bogle [2025] ARTA 67]
- 28. As outlined above, there are various factors that may weigh in favour of an activity being categorised as commercial for the purposes of the FOI Act, such as (among other factors), if those activities:
 - a. have a commercial goal or purpose;
 - b. are related to, engaged in, or used for commerce; and/or
 - c. are related to a profit-making motive, generating income or revenue, among other matters.
- 29. Furthermore, for the CAC to apply, the document under consideration need not meet a commercial value threshold or be a commercially significant document. All that is required is that the document is received by nbn or brought into existence in the course of, or for the purposes of, the carrying on of nbn's commercial activities.

Application to the Relevant Documents

30. Category A — Rollout Planning and Schedule

The documents identified within Category A comprise internal FTTN rollout planning material, including delivery timing and sequencing records and changes affecting Avalon Beach / postcode 2107. These documents were created and used by nbn in the ordinary course of planning, managing and delivering network infrastructure upgrades, including the coordination of design, build activities, resourcing, and response to delivery constraints. These documents are integral to nbn's business as a wholesale telecommunications provider operating on a commercial basis and have a direct and sufficient connection to nbn's commercial activities, as they support the deployment and optimisation of network infrastructure, management of delivery risk, and timing of service readiness. I am satisfied that the Category A documents are documents in respect of nbn's commercial activities for the purposes of section 7(3A) and Part II of Schedule 2 of the FOI Act.

A.1 – FTTN rollout schedule or service qualification record

The documents falling within item A.1 comprise the most recent FTTN rollout schedule or service qualification record covering Avalon Beach / postcode 2107. These records are maintained to manage the timing, sequencing and coordination of network deployment activities and to inform internal decision-making about rollout progress and service readiness.

Such documents are created and used for the purpose of delivering nbn's network infrastructure on a commercial basis and directly relate to the planning and execution of nbn's commercial services.

A.2 – Internal documents explaining revisions to rollout timing

The documents identified within item A.2 comprise internal records explaining reasons for changes to published or forecast rollout timelines, including issues arising from delivery constraints, scope changes or external dependencies. These documents are used by nbn to assess, manage and respond to impacts on network deployment schedules.

Documents explaining revisions to rollout timing are directly connected to the management of commercial delivery, risk assessment and accordingly progress the network infrastructure projects and form part of network rollout and prioritisation decisions affecting commercial outcomes.

A.3 – Internal meeting minutes or action records

Documents falling within item A.3 comprise minutes or action records from internal meetings at which the Avalon Beach FTTN rollout schedule was the primary subject. These records capture internal deliberations and decisions regarding delivery progress, sequencing and resolution of fibre infrastructure related build issues. Internal meetings addressing rollout scheduling form part of nbn's operational governance of commercial network deployment. The resulting records are incidental to nbn's commercial activities and support effective delivery of its services. Accordingly, item A.3 documents fall within the commercial activities carve-out.

31. Category B — Ministerial and Shareholder Reporting

The documents within Category B comprise sections of board updates, shareholder reports or ministerial briefs that specifically address FFTP rollout status for Avalon Beach / postcode 2107. While such documents may be provided to shareholder ministers or commonwealth departments, the relevant sections report on internal network delivery performance, rollout progress, delays or risks are derived from nbn's network planning, delivery and operations. The nature of documents, even specific to the sections requested is determined by their purpose and subject matter rather than their audience. Reporting on rollout status, delivery risks and sequencing issues enables oversight of nbn's commercial network deployment and supports decision-making relating to capital investment, delivery prioritisation and any associated risk management. Accordingly, the relevant sections of Category B documents are sufficiently connected to the carrying on of nbn's commercial activities and fall within the commercial activities carve-out.

B.4 – Progress reports, board updates or ministerial briefs

Searches did not identify any quarterly or annual progress report, board update or ministerial brief created on or after 1 January 2024 that contains a section or entry specifically and primarily addressing the FFTP rollout status in Avalon Beach / postcode 2107.

To the extent the request seeks the creation of a new extract or standalone record focused on Avalon Beach / postcode 2107 (rather than an existing section in an existing report), the FOI Act provides a right of access to documents that nbn holds and is not a mechanism to require nbn to create a new document for the purposes of responding to a request.

I am therefore satisfied that, in relation to item B4, documents of the kind described do not exist (section 24A of the FOI Act). In any event, reporting of this kind is produced from and for nbn's network delivery and operational systems in connection with the planning, delivery and oversight of network deployment on a commercial basis, and would be a document received or brought into existence in the course of, or for the purposes of, carrying on nbn's commercial activities (sections 7(3A) and 7(4) of the FOI Act).

32. Category C — Regulatory and Complaints Data

Category C documents relate to regulatory engagement and complaints information associated with FFTP rollout outcomes in Avalon Beach / postcode 2107. In my view, where such documents exist, they are used to manage network performance, compliance and risk arising from nbn's commercial network deployment, including complaint trend monitoring and responses to regulatory oversight. Although some material may appear administrative, its dominant purpose is to support the effective delivery, performance and reputation of nbn's wholesale telecommunications services carried on a commercial basis. Accordingly, where Category C documents exist, they are documents in respect of nbn's commercial activities for the purposes of section 7(3A) and Part II of Schedule 2 of the FOI Act (read with section 7(4)).

Although complaints and regulatory material may appear administrative in nature, in this context they form part of the mechanisms by which nbn manages the performance, reliability and reputation of its network services. These documents support the effective conduct of nbn's network performance and

operations and are sufficiently connected with the delivery of services on a commercial basis. I am therefore satisfied that the Category C documents are documents in respect of nbn's commercial activities.

C.6 – Regulatory documents

Documents falling within item C.6 comprise communications or submissions to or from regulators concerning FTTN rollout outcomes in Avalon Beach / postcode 2107. Engagement with regulators in relation to network rollout supports compliance and risk management and are connected or at least arise directly from the performance of commercial activities. I am satisfied that item C.6 documents are documents in respect of nbn's commercial activities.

C.7 – Aggregate complaints reports

Searches did not identify any single existing aggregate or summary complaints report held by nbn's complaints management function that covers FTTN-related complaints or service enquiries for postcode 2107 for the 12-month period ending 31 March 2026. I am therefore satisfied that documents of the kind described in item C7 do not exist (section 24A of the FOI Act).

In any event, any complaints trend reporting generated from nbn's operational systems for the purposes of managing network performance and delivery is likely to have been received or brought into existence in the course of, or for the purposes of, carrying on nbn's commercial activities.

33. Category D — Risk and Governance Records

Category D documents include risk registers, governance records and sequencing or re-sequencing methodology material relevant to FTTN rollout activities. These documents identify, assess and manage risks associated with network delivery, including delays, construction constraints and prioritisation decisions affecting specific rollout areas such as Avalon Beach.

Risk identification, mitigation and sequencing decisions are core aspects of managing nation-wide the infrastructure deployments. The Category D documents directly support nbn's ability to plan, prioritise and deliver network upgrades efficiently and to manage commercial, operational and reputational risk. I am satisfied that these documents have a direct and sufficient connection to nbn's commercial activities and are therefore excluded from the operation of the FOI Act under the commercial activities carve-out.

D.8 – Risk register entries

Documents within item D.8 comprise entries identifying Avalon Beach / postcode 2107 as delayed, at risk, or subject to re-sequencing. These entries are used to inform mitigation strategies and delivery prioritisation decisions. Risk registers directly support commercial activities as they are ancillary to the delivery and risk management relating to network rollout. I am satisfied that documents within item D.8 are documents in respect of nbn's commercial activities.

D.9 – Sequencing or re-sequencing methodology or policy

Searches did not identify any single existing documented methodology or policy framework that sets

out sequencing and re-sequencing criteria for FTTN upgrade areas in the form described in item D9. I am therefore satisfied that documents of the kind described in item D9 do not exist (section 24A of the FOI Act). For completeness, any internal methodology or framework used to determine sequencing and re-sequencing of FTTN rollout areas would underpin decisions about capital allocation, resourcing and delivery timing for the deployment of nbn's wholesale telecommunications network on a commercial basis, and would be received or brought into existence in the course of, or for the purposes of, carrying on nbn's commercial activities.

34. I am therefore of the opinion that the Relevant Documents relate to nbn's commercial activities. Accordingly, the FOI Act does not apply to the Relevant Documents, and I refuse access to them.
35. It is unnecessary to consider any further exemptions considering my determination that the Relevant Documents fall within the meaning of the commercial activities carve-out. Without limiting the above, there are other grounds upon which access to that information could potentially be refused. In my opinion, the Relevant Documents may also be exempt from release on the basis of the following sections of the FOI Act:
- a. s47 (documents disclosing commercially valuable information) of the FOI Act;
 - b. s47D (substantive adverse effect on the financial or property interests of the Commonwealth); and
 - c. s47G (business, commercial or financial affairs).
36. However, I have determined not to provide reasons in relation to those general and conditional exemptions.

Decision-making Time and Fees

37. nbn staff spent time searching for and reviewing the Relevant Documents to respond to the request. Additionally, I have spent time in drafting and finalising this FOI decision, in addition to completing relevant correspondence in respect of the request. However, I have on this occasion exercised my discretion to waive all relevant fees.
38. 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.

14 May 2026

[REDACTED]
[REDACTED]

nbn ref: FOI2526037

Dear [REDACTED]

Freedom of Information – Access Decision

I am writing in relation to your application made under the *Freedom of Information Act, 1982 (FOI Act)* seeking access to documents.

The Statement of Reasons (**attached**) outlines the specific terms of the FOI request, the decision-maker's findings and the access decision.

An FOI decision may be reviewed, subject to sections 53A and 54 of the FOI Act. Please refer to the Office of the Australian Information Commissioner's website at the following [link](#), which provides details about your rights of review and other avenues of redress under the FOI Act.

Please feel free to contact me at FOIOfficer@nbnco.com.au if you have any questions, or if you would like to discuss your FOI application.

Yours sincerely

Sandra Agobian

nbn Freedom of Information Team

FREEDOM OF INFORMATION REQUEST – FOI2526037

ACCESS DECISION

STATEMENT OF REASONS – 14 May 2026

Summary of Access Decision

1. I find that the documents identified within the scope of part of the request are not subject to the *Freedom of Information Act 1982 (the FOI Act)* because they relate to nbn's commercial activities. Accordingly, I refuse access to those documents.
2. I also find that, following reasonable searches, nbn does not hold documents falling within part of the scope of the request. Accordingly, access is refused on the basis that those documents do not exist or are not held.

Background – nbn and the FOI Act

3. **nbn** is a government business enterprise (**GBE**), which has the mandate of realising the Australian Government's vision for the development and operation of Australia's broadband infrastructure.
4. **nbn** recognises that information is a vital and an invaluable resource, both for the company and for the broader Australian community. That is why **nbn** fosters and promotes a pro-disclosure culture, with the goal of creating an organisation that is open, transparent, and accountable. To that end, **nbn** makes a large amount of information freely available to the public on our website: <https://nbnco.com.au/>.
5. **nbn** also manages its information assets within the terms and spirit of the FOI Act. We endeavour to release information proactively, while considering our commercial and other legal obligations.
6. 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**.
7. Under subsection 23(1) of the FOI Act, **nbn**'s Chief Executive Officer authorises me, to make decisions about access to documents and related matters under the FOI Act.
8. Under subsection 26(1) of the FOI Act, I am required to provide a Statement of Reasons for my decisions in relation to FOI 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. Those findings are outlined below.

Application Chronology and Scope of Request

9. On 15 April 2026, nbn co received an FOI Request from [REDACTED] (the **Applicant**) seeking:

2

- Request 1: The complete **Technician Installation Log** and **Port Allocation Record** for the NBN installation at [REDACTED] from **September, 2018** and [REDACTED] from October 2025 to present.
- Request 2: All **MAC Address binding history** for the Service ID associated with my account from September 2018 to present.
- Request 3: All notes regarding the provisioning of the "**Managed State**" and any **Device Policy Controller (DPC)** associations linked to my hardware."

On the date set out above, I made my access decision, as outlined below.

Findings on material questions of fact

10. nbn staff conducted searches to locate documents within scope of the Applicant's Request, including consultation with relevant operational teams and Security.
11. As a result of those searches, staff located documents within the scope of Request 1 of the request.
12. The documents located under Request 1 comprise work order records relating to the installation, activation, and maintenance of telecommunications services at [REDACTED] including technician activity records, work order notes, and associated materials such as attachments and photographs.
13. These documents were obtained through searches of operational systems and consultation with the relevant business areas.
14. In respect of Requests 2 and 3 of the requests, I am satisfied that all reasonable steps have been taken to locate documents and that no documents exist within the scope of those parts of the request.

Access Decision

15. In undertaking my review of the Relevant Documents, it is my view, having regard to the nature and subject matter of the request and the relevant provisions of the FOI Act, that one or more exemptions to release are applicable, as outlined below.
16. In making my decision, I took into account relevant parts of the FOI Act and related legislation, the Office of the Australian Information Commissioner (**OAIC**) [FOI Guidelines](#), relevant case law and other sources, including the [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 Commercial Activities Carve-out (**CAC**): the [Internode Decision](#) (in January 2012), [Battersby Decision](#) (in July 2013) and [Bogle Decision](#) (in February 2025).

nbn's commercial activities carve-out

17. Application of the CAC is a threshold issue, and I must consider it first before considering any other grounds for refusal of access.
18. Section 7(3A) of the FOI Act excludes documents that are related to nbn's "commercial activities" from the operation of the FOI Act. Part II of Schedule 2 to the FOI Act specifies that certain agencies are exempt from the operation of the FOI Act in respect of particular documents. nbn is exempt from the operation of the FOI Act "in relation to documents in respect of its commercial activities".
19. Per section 7(3A) of the FOI Act, "commercial activities" means:
 - (a) *activities carried on by NBN Co on a commercial basis; or*
 - (b) *activities, carried on by NBN Co, that may reasonably be expected in the foreseeable future to be carried on by NBN Co on a commercial basis.*
20. As per section 7(4) of the FOI Act, in "*subsection (2AA) and Part II of Schedule 2, a reference to documents in respect of particular activities shall be read as a reference to documents received or brought into existence in the course of, or for the purposes of, the carrying on of those activities.*"
21. Relevantly, **nbn**:
 - a. is a public company limited by shares incorporated under the *Corporations Act 2001* (Cth) (**Corporations Act**);
 - b. is wholly owned by the Commonwealth and a prescribed GBE;
 - c. is subject to the same obligations as other public companies incorporated under the *Corporations Act*;
 - d. generates sales and profit; and
 - e. operates for a commercial purpose, with a mandate or objective to earn at least a commercial rate of return.
22. Accordingly, **nbn** operates as a commercial entity and, having regard to the foregoing, is bound to do so.
23. In the Internode Decision, the then Freedom of Information Commissioner, Dr James Popple, considered the meaning of "commercial activities" in relation to **nbn**'s CAC. Relevantly, he noted as follows:
 - a. in *Bell v Commonwealth Scientific and Industrial Research Organisation*, the Full Court of the Federal Court considered the meaning of "commercial activities" with reference to analogous provisions to sections 7(2) and 7(3A) of the FOI Act. In that case, the Court said that "*activities are conducted on a commercial basis if they are related to, engaged in or used for commerce*" and referred to "*the importance of the whole of the circumstances including the commercial goal (profit making or the generation of income or return) in determining whether particular activities are sufficiently related to commerce to be characterised as commercial activities*" [*Bell v Commonwealth Scientific and Industrial Research Organisation* [2008] FCAFC 40 as referred to in *Internode Pty Ltd and NBN Co Ltd* [2012] AICmr4 at paragraph 12.]; and

- b. in *Johnston and Australian Postal Corporation*, the Administrative Appeals Tribunal concluded that commercial activity "can be regarded as a business venture with a profit-making objective and, strictly speaking, will involve activity to generate trade and sales with a view to profit. This is particularly so when the volume of activity is on a large scale". [*Johnston and Australian Postal Corporation* [2006] AATA 144 as referred to in *Internode Pty Ltd and NBN Co Ltd* [2012] AICmr4 at paragraph 13.]
24. The subsequent Battersby Decision reinforced the aforementioned considerations and further noted:

"... there is no doubt that the definition of 'commercial activities' is broader for NBN Co than it is for other government business enterprises listed in Part II of Schedule 2." [Battersby and NBN Co Ltd [2013] AICmr 61 at paragraph 16.]
25. Recent authority from the Bogle Decision further affirms the broad approach to the CAC established in Internode and Battersby. The Tribunal confirmed that the carve-out is not limited to documents that are overtly commercial or financial in nature, nor is there any requirement for a document to have commercial value or significance. The Bogle Decision makes clear that documents which are ancillary to, or administrative in support of, nbn's commercial activities also fall within the CAC if created in the course of those activities. The Tribunal emphasised that activities which support or are incidental to nbn's commercial objectives, including internal processes, resource management, and administrative functions, are nonetheless integral to its commercial operations in which case they would be covered by the carve-out. The CAC is therefore not confined to network build or infrastructure projects but extends to a wide range of activities essential to nbn's commercial objectives, including administrative and support functions. [*NBN Co Ltd and Bogle* [2025] ARTA 67]
26. As outlined above, there are various factors that may weigh in favour of an activity being categorised as commercial for the purposes of the FOI Act, such as (among other factors), if those activities:
 - a. have a commercial goal or purpose;
 - b. are related to, engaged in, or used for commerce; and/or
 - c. are related to a profit-making motive, generating income or revenue, among other matters.
27. Furthermore, for the CAC to apply, the document under consideration need not meet a commercial value threshold or be a commercially significant document. All that is required is that the document is received by **nbn** or brought into existence in the course of, or for the purposes of, the carrying on of **nbn**'s commercial activities.

Application to the Relevant Documents

28. The documents identified within the scope of Request 1 comprise work order records relating to the installation, activation, and maintenance of telecommunications services at [REDACTED] including technician activity records, work order notes, and associated materials such as attachments and photographs.

29. These documents were created in the course of nbn's operational activities relating to the delivery, provisioning, and maintenance of telecommunications services. These activities are carried out by nbn as part of its role as a wholesale provider of broadband network services to Retail Service Providers.
30. The creation and use of these records are integral to nbn's commercial operations, as they support the installation, activation, and ongoing maintenance of services supplied on a commercial basis. The documents form part of the systems and processes used by nbn to deliver those services.
31. Having regard to the nature of the documents and the activities to which they relate, I am satisfied that the documents were brought into existence in the course of, and for the purposes of, nbn carrying on its commercial activities.
32. I am therefore of the opinion that these documents relate to nbn's commercial activities within the meaning of section 7(3A) of the FOI Act. Accordingly, the FOI Act does not apply to these documents, and I refuse access to them.
33. It is unnecessary to consider any further exemptions, given my determination that the documents fall within the commercial activities carve-out.

Decision-making Time and Fees

34. **nbn** staff spent time searching for and reviewing the Relevant Documents to respond to the request. Additionally, I have spent time in drafting and finalising this FOI decision, in addition to completing relevant correspondence in respect of the request. However, I have on this occasion exercised my discretion to waive all relevant fees.
35. 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.

9 June 2026

[REDACTED]
[REDACTED]

nbn ref: FOI2526041

Dear [REDACTED]

Freedom of Information – Access Decision

I am writing in relation to your application made under the *Freedom of Information Act, 1982 (FOI Act)* seeking access to documents.

The Statement of Reasons (**attached**) outlines the specific terms of the FOI request, the decision-maker's findings and the access decision.

An FOI decision may be reviewed, subject to sections 53A and 54 of the FOI Act. Please refer to the Office of the Australian Information Commissioner's website at the following [link](#), which provides details about your rights of review and other avenues of redress under the FOI Act.

Please feel free to contact me at FOIOfficer@nbngo.com.au if you have any questions, or if you would like to discuss your FOI application.

Yours sincerely

Natalie Antoon

nbn Freedom of Information Team

FREEDOM OF INFORMATION REQUEST – FOI2526041

ACCESS DECISION

STATEMENT OF REASONS – 09/06/2026

Summary of Access Decision

1. I find that the Relevant Documents (as defined below) are not subject to the *Freedom of Information Act 1982* (the **FOI Act**) because they were brought into existence or obtained in the course of, or for the purposes of, nbn's commercial activities. Accordingly, I refuse access to the Relevant Documents.
2. I am also satisfied that no further documents exist within the scope of item 4 of your request. Access is therefore refused under section 24A of the FOI Act.

Background – nbn and the FOI Act

3. **nbn** is a government business enterprise (**GBE**), which has the mandate of realising the Australian Government's vision for the development and operation of Australia's broadband infrastructure.
4. **nbn** recognises that information is a vital and an invaluable resource, both for the company and for the broader Australian community. That is why **nbn** fosters and promotes a pro-disclosure culture, with the goal of creating an organisation that is open, transparent, and accountable. To that end, **nbn** makes a large amount of information freely available to the public on our website: <https://nbnco.com.au/>.
5. **nbn** also manages its information assets within the terms and spirit of the FOI Act. We endeavour to release information proactively, while considering our commercial and other legal obligations.
6. 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**.
7. Under subsection 23(1) of the FOI Act, **nbn**'s Chief Executive Officer authorises me, to make decisions about access to documents and related matters under the FOI Act.
8. Under subsection 26(1) of the FOI Act, I am required to provide a Statement of Reasons for my decisions in relation to FOI 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. Those findings are outlined below.

Application Chronology and Scope of Request

9. On 20 April 2026, nbn co received an FOI Request from [REDACTED] seeking:

2

"I request access to the following documents, created or held by NBN Co, its predecessors, servants or agents, relating to the telecommunications infrastructure (cable, conduit, pole, or pit) at the entry to [REDACTED] (near the pole visible in attached photos):

- 1. All maintenance, inspection, or repair records for the cable/conduit/pole/pit from 17 November 2015 to 17 November 2025, including fault reports, service disruption logs, or work orders.*
 - 2. Any internal or external complaints, notifications, or reports of damage, faults, or hazards involving this infrastructure in the same period (e.g., from residents, contractors, or VicRoads/Council).*
 - 3. Risk assessments, safety audits, or condition reports for this location from 17 November 2015 to 17 November 2025.*
 - 4. Notes, memoranda, incident reports or investigations related to the severed NBN cable (labelled "PL-NBN" and "PPC-EX6") reported on or around 17 November 2025, including photos, assessments, or contractor notes.*
 - 5. Correspondence with contractors, VicRoads, Manningham City Council, or other parties about this asset's condition or the incident."*
10. On 7 May 2026, nbn co sent a Request Consultation Process letter to [REDACTED], requesting clarification on the address subject of [REDACTED] request, and the narrowing of the scope of her request.
11. On 18 May 2026, nbn co received a response from [REDACTED] clarifying the location of what was described as 'the entry to [REDACTED]', as follows:

[REDACTED]

12.

13. On 26 May 2026, nbn co replied to [REDACTED] requesting a response on the narrowing of the scope of her request.
14. On 26 May 2026, nbn co received a response from [REDACTED] narrowing the time period to five years for items 1-3 and 5 of her request.
15. For the purposes of the request, the Period is from 17 November 2020 and 17 November 2025.
16. On the date of this letter, I made my access decision, as outlined below.

Findings on material questions of fact

17. nbn staff undertook searches for documents falling within the scope of the request for the Period and located documents. Those documents fall into the service portal records category set out below (**Relevant Documents**).
18. *Service portal records* - nbn's service portal is an essential tool used by nbn staff and some third parties, including retail service providers (RSPs), for managing work orders for nbn[®] network services and related incidents. It allows nbn to record and track new orders, service restoration requests, and infrastructure restoration requests, ensuring that all necessary information is captured. The portal provides a centralized platform for submitting, monitoring, and updating order and request statuses. This helps to enhance coordination and communication between nbn and RSPs. The service portal documents and their content were created or received in the course of nbn operating the nbn[®] network and the restoration of connections to that network in response to a request from an RSP.
19. nbn staff also undertook searches for documents falling within item 4 of the request, which related to a specific date (not the Period which applied to items 1-3 and 5 of the request). No documents within the scope of item 4 of the request were identified.

Access Decision

20. In undertaking my review of the Relevant Documents, it is my view, having regard to the nature and subject matter of the request and the relevant provisions of the FOI Act, that one or more exemptions to release are applicable, as outlined below.
21. In making my decision, I took into account relevant parts of the FOI Act and related legislation, the Office of the Australian Information Commissioner (**OAIC**) [FOI Guidelines](#), relevant case law and other sources, including the [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 Commercial Activities Carve-out (**CAC**): the [Internode Decision](#) (in January 2012), [Battersby Decision](#) (in July 2013) and [Bogle Decision](#) (in February 2025).

nbn's commercial activities carve-out

22. Application of the CAC is a threshold issue, and I must consider it first before considering any other grounds for refusal of access.

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23. Section 7(3A) of the FOI Act excludes documents that are related to nbn's "commercial activities" from the operation of the FOI Act. Part II of Schedule 2 to the FOI Act specifies that certain agencies are exempt from the operation of the FOI Act in respect of particular documents. nbn is exempt from the operation of the FOI Act "in relation to documents in respect of its commercial activities".
24. Per section 7(3A) of the FOI Act, "commercial activities" means:
 - (a) *activities carried on by NBN Co on a commercial basis; or*
 - (b) *activities, carried on by NBN Co, that may reasonably be expected in the foreseeable future to be carried on by NBN Co on a commercial basis.*
25. As per section 7(4) of the FOI Act, in "subsection (2AA) and Part II of Schedule 2, a reference to documents in respect of particular activities shall be read as a reference to documents received or brought into existence in the course of, or for the purposes of, the carrying on of those activities."
26. Relevantly, **nbn**:
 - a. is a public company limited by shares incorporated under the *Corporations Act 2001* (Cth) (**Corporations Act**);
 - b. is wholly owned by the Commonwealth and a prescribed GBE;
 - c. is subject to the same obligations as other public companies incorporated under the *Corporations Act*;
 - d. generates sales and profit; and
 - e. operates for a commercial purpose, with a mandate or objective to earn at least a commercial rate of return.
27. Accordingly, **nbn** operates as a commercial entity and, having regard to the foregoing, is bound to do so.
28. In the Internode Decision, the then Freedom of Information Commissioner, Dr James Popple, considered the meaning of "commercial activities" in relation to **nbn**'s CAC. Relevantly, he noted as follows:
 - a. in *Bell v Commonwealth Scientific and Industrial Research Organisation*, the Full Court of the Federal Court considered the meaning of "commercial activities" with reference to analogous provisions to sections 7(2) and 7(3A) of the FOI Act. In that case, the Court said that "*activities are conducted on a commercial basis if they are related to, engaged in or used for commerce*" and referred to "*the importance of the whole of the circumstances including the commercial goal (profit making or the generation of income or return) in determining whether particular activities are sufficiently related to commerce to be characterised as commercial activities*" [*Bell v Commonwealth Scientific and Industrial Research Organisation* [2008] FCAFC 40 as referred to in *Internode Pty Ltd and NBN Co Ltd* [2012] AICmr4 at paragraph 12.]; and
 - b. in *Johnston and Australian Postal Corporation*, the Administrative Appeals Tribunal concluded that commercial activity "*can be regarded as a business venture with a profit-making objective and, strictly speaking, will involve activity to generate trade and sales with a view to profit. This is*

particularly so when the volume of activity is on a large scale". [Johnston and Australian Postal Corporation [2006] AATA 144 as referred to in Internode Pty Ltd and NBN Co Ltd [2012] AICmr4 at paragraph 13.]

29. The subsequent Battersby Decision reinforced the aforementioned considerations and further noted:

"... there is no doubt that the definition of 'commercial activities' is broader for NBN Co than it is for other government business enterprises listed in Part II of Schedule 2." [Battersby and NBN Co Ltd [2013] AICmr 61 at paragraph 16.]

30. Recent authority from the Bogle Decision further affirms the broad approach to the CAC established in Internode and Battersby. The Tribunal confirmed that the carve-out is not limited to documents that are overtly commercial or financial in nature, nor is there any requirement for a document to have commercial value or significance. The Bogle Decision makes clear that documents which are ancillary to, or administrative in support of, nbn's commercial activities also fall within the CAC if created in the course of those activities. The Tribunal emphasised that activities which support or are incidental to nbn's commercial objectives, including internal processes, resource management, and administrative functions, are nonetheless integral to its commercial operations in which case they would be covered by the carve-out. The CAC is therefore not confined to network build or infrastructure projects but extends to a wide range of activities essential to nbn's commercial objectives, including administrative and support functions. [NBN Co Ltd and Bogle [2025] ARTA 67]
31. As outlined above, there are various factors that may weigh in favour of an activity being categorised as commercial for the purposes of the FOI Act, such as (among other factors), if those activities:
- a. have a commercial goal or purpose;
 - b. are related to, engaged in, or used for commerce; and/or
 - c. are related to a profit-making motive, generating income or revenue, among other matters.
32. Furthermore, for the CAC to apply, the document under consideration need not meet a commercial value threshold or be a commercially significant document. All that is required is that the document is received by **nbn** or brought into existence in the course of, or for the purposes of, the carrying on of **nbn**'s commercial activities.

Application to the Relevant Documents

33. I conclude that the Relevant Documents relate to nbn's commercial activities, because they were brought into existence and used by nbn in the course of supplying wholesale telecommunications services to retail service providers (RSPs) in a competitive market on commercial terms, including the repair and maintenance of network telecommunication services and infrastructure.
34. The Relevant Documents record and facilitate service ordering, service and fault restoration and infrastructure repair and maintenance activities, which are integral to nbn's commercial operations and revenue-generating functions. The documents directly relate to the operation, repair and

maintenance of the nbn® network, which is nbn's primary commercial function. These activities are undertaken by nbn and its commercial partners to maintain the integrity of the network and ensure the continued provision of telecommunications services.

35. In addition, the release of these documents could reveal sensitive information about nbn's network equipment, repair and remediation processes, as well as its business processes, which are critical to its commercial operations.
36. I am therefore of the opinion that the Relevant Documents directly and substantially relate to nbn's commercial activities. Accordingly, the FOI Act does not apply to the Relevant Documents, and I refuse access to them under section 7(3A) of the FOI Act.
37. In respect of item 4 of the request, no documents were identified following reasonable searches, and therefore access is refused under section 24A of the FOI Act.

Decision-making Time and Fees

38. **nbn** staff spent time searching for and reviewing the Relevant Documents to respond to the request. Additionally, I have spent time in drafting and finalising this FOI decision, in addition to completing relevant correspondence in respect of the request. However, I have on this occasion exercised my discretion to waive all relevant fees.
39. 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.

1 June 2026

[REDACTED]
[REDACTED]

nbn ref: FOI2526042

Dear [REDACTED]

Freedom of Information – Access Decision

I am writing in relation to your application made under the *Freedom of Information Act, 1982* (**FOI Act**) seeking access to documents.

The Statement of Reasons (**attached**) outlines the specific terms of the FOI request, the decision-maker's findings and the access decision.

An FOI decision may be reviewed, subject to sections 53A and 54 of the FOI Act. Please refer to the Office of the Australian Information Commissioner's website at the following [link](#), which provides details about your rights of review and other avenues of redress under the FOI Act.

Please feel free to contact me at FOIOfficer@nbngo.com.au if you have any questions, or if you would like to discuss your FOI application.

Yours sincerely

Sandra Agobian

nbn Freedom of Information Team

FREEDOM OF INFORMATION REQUEST – FOI2526042

ACCESS DECISION

STATEMENT OF REASONS – 01/06/2026

Summary of Access Decision

1. I find that the Relevant Documents (as defined below) are not subject to the *Freedom of Information Act 1982* (the **FOI Act**) because they were brought into existence or obtained in the course of, or for the purposes of, nbn's commercial activities. Accordingly, I refuse access to the Relevant Documents.
2. I am also satisfied that no further documents exist within the scope of your request. Access to any additional documents is therefore refused under section 24A of the FOI Act.

Background – nbn and the FOI Act

3. **nbn** is a government business enterprise (**GBE**), which has the mandate of realising the Australian Government's vision for the development and operation of Australia's broadband infrastructure.
4. **nbn** recognises that information is a vital and an invaluable resource, both for the company and for the broader Australian community. That is why **nbn** fosters and promotes a pro-disclosure culture, with the goal of creating an organisation that is open, transparent, and accountable. To that end, **nbn** makes a large amount of information freely available to the public on our website: <https://nbnco.com.au/>.
5. **nbn** also manages its information assets within the terms and spirit of the FOI Act. We endeavour to release information proactively, while considering our commercial and other legal obligations.
6. 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**.
7. Under subsection 23(1) of the FOI Act, **nbn**'s Chief Executive Officer authorises me, to make decisions about access to documents and related matters under the FOI Act.
8. Under subsection 26(1) of the FOI Act, I am required to provide a Statement of Reasons for my decisions in relation to FOI 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. Those findings are outlined below.

Application Chronology and Scope of Request

9. On 1 May 2026, nbn co received an FOI Request from [REDACTED]
[REDACTED], on behalf of [REDACTED] (the Applicant), seeking:

2

“The Applicant states that on or about 22 November 2025, [REDACTED] was weeding his nature strip. As he stepped backwards, he stood on the NBN pit lid located approximate to [REDACTED] [REDACTED] which collapsed, causing him to fall to the ground heavily (the ‘incident’).

Accordingly, they request any documents described below:

- a) Documents relating to the Incident;
- b) Documents in relation to inspection, condition and maintenance of the Area for the Period;
- c) Documents in relation to complaints of the Area for the Period; and
- d) Any internal correspondence pertaining to the Area;
- e) Documents in relation to the events following the incident; and
- f) Documents in relation to other like accidents in the Area for the Period.”

For the purposes of the request, the Period is from 22 November 2022 to the date of the request.

10. On the date set out above, I made my access decision, as outlined below.

Findings on material questions of fact

- 11. The Applicant’s request is for documents relating to an incident involving a nbn pit located approximate to [REDACTED] including documents relating to the incident, inspection, condition and maintenance of the area, complaints, internal correspondence, events following the incident, and other similar incidents for the relevant period (being 22 November 2022 to the date of the request).
- 12. nbn staff undertook searches for documents falling within the scope of the request and located documents. Those documents fall into the category of operational and technical records relating to nbn infrastructure and the management of the incident (Relevant Documents).
- 13. The Relevant Documents include work orders, technician notes, site condition reports, asset records and photographic records relating to the inspection, condition, maintenance and remediation of nbn infrastructure at the relevant location. The Relevant Documents also include correspondence and materials provided in connection with the incident and subsequent claim.
- 14. The operational records were created by nbn staff and delivery partners in the course of inspecting, maintaining and remediating the nbn network. The photographic records show the condition of the infrastructure before and after remediation. The correspondence and supporting materials were provided to nbn in connection with the management of the incident and associated claim.
- 15. nbn staff also undertook searches for documents falling within the broader categories of the request, including documents relating to maintenance, complaints, internal correspondence and similar incidents over the relevant period. No further documents within the scope of the request

were identified.

Access Decision

16. In undertaking my review of the Relevant Documents, it is my view, having regard to the nature and subject matter of the request and the relevant provisions of the FOI Act, that one or more exemptions to release are applicable, as outlined below.
17. In making my decision, I took into account relevant parts of the FOI Act and related legislation, the Office of the Australian Information Commissioner (**OAIC**) [FOI Guidelines](#), relevant case law and other sources, including the [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 Commercial Activities Carve-out (**CAC**): the [Internode Decision](#) (in January 2012), [Battersby Decision](#) (in July 2013) and [Bogle Decision](#) (in February 2025).

nbn's commercial activities carve-out

18. Application of the CAC is a threshold issue, and I must consider it first before considering any other grounds for refusal of access.
19. Section 7(3A) of the FOI Act excludes documents that are related to nbn's "commercial activities" from the operation of the FOI Act. Part II of Schedule 2 to the FOI Act specifies that certain agencies are exempt from the operation of the FOI Act in respect of particular documents. nbn is exempt from the operation of the FOI Act "in relation to documents in respect of its commercial activities".
20. Per section 7(3A) of the FOI Act, "commercial activities" means:
 - (a) *activities carried on by NBN Co on a commercial basis; or*
 - (b) *activities, carried on by NBN Co, that may reasonably be expected in the foreseeable future to be carried on by NBN Co on a commercial basis.*
21. As per section 7(4) of the FOI Act, in "*subsection (2AA) and Part II of Schedule 2, a reference to documents in respect of particular activities shall be read as a reference to documents received or brought into existence in the course of, or for the purposes of, the carrying on of those activities.*"
22. Relevantly, **nbn**:
 - a. is a public company limited by shares incorporated under the *Corporations Act 2001* (Cth) (**Corporations Act**);
 - b. is wholly owned by the Commonwealth and a prescribed GBE;
 - c. is subject to the same obligations as other public companies incorporated under the *Corporations Act*;
 - d. generates sales and profit; and
 - e. operates for a commercial purpose, with a mandate or objective to earn at least a commercial

rate of return.

23. Accordingly, **nbn** operates as a commercial entity and, having regard to the foregoing, is bound to do so.
24. In the Internode Decision, the then Freedom of Information Commissioner, Dr James Popple, considered the meaning of "commercial activities" in relation to **nbn**'s CAC. Relevantly, he noted as follows:
 - a. in *Bell v Commonwealth Scientific and Industrial Research Organisation*, the Full Court of the Federal Court considered the meaning of "commercial activities" with reference to analogous provisions to sections 7(2) and 7(3A) of the FOI Act. In that case, the Court said that "*activities are conducted on a commercial basis if they are related to, engaged in or used for commerce*" and referred to "*the importance of the whole of the circumstances including the commercial goal (profit making or the generation of income or return) in determining whether particular activities are sufficiently related to commerce to be characterised as commercial activities*" [*Bell v Commonwealth Scientific and Industrial Research Organisation* [2008] FCAFC 40 as referred to in *Internode Pty Ltd and NBN Co Ltd* [2012] AICmr4 at paragraph 12.]; and
 - b. in *Johnston and Australian Postal Corporation*, the Administrative Appeals Tribunal concluded that commercial activity "*can be regarded as a business venture with a profit-making objective and, strictly speaking, will involve activity to generate trade and sales with a view to profit. This is particularly so when the volume of activity is on a large scale*". [*Johnston and Australian Postal Corporation* [2006] AATA 144 as referred to in *Internode Pty Ltd and NBN Co Ltd* [2012] AICmr4 at paragraph 13.]
25. The subsequent Battersby Decision reinforced the aforementioned considerations and further noted:

"... there is no doubt that the definition of 'commercial activities' is broader for NBN Co than it is for other government business enterprises listed in Part II of Schedule 2." [Battersby and NBN Co Ltd [2013] AICmr 61 at paragraph 16.]
26. Recent authority from the Bogle Decision further affirms the broad approach to the CAC established in Internode and Battersby. The Tribunal confirmed that the carve-out is not limited to documents that are overtly commercial or financial in nature, nor is there any requirement for a document to have commercial value or significance. The Bogle Decision makes clear that documents which are ancillary to, or administrative in support of, **nbn**'s commercial activities also fall within the CAC if created in the course of those activities. The Tribunal emphasised that activities which support or are incidental to **nbn**'s commercial objectives, including internal processes, resource management, and administrative functions, are nonetheless integral to its commercial operations in which case they would be covered by the carve-out. The CAC is therefore not confined to network build or infrastructure projects but extends to a wide range of activities essential to **nbn**'s commercial objectives, including administrative and support functions. [*NBN Co Ltd and Bogle* [2025] ARTA 67]
27. As outlined above, there are various factors that may weigh in favour of an activity being categorised as commercial for the purposes of the FOI Act, such as (among other factors), if those activities:

- a. have a commercial goal or purpose;
 - b. are related to, engaged in, or used for commerce; and/or
 - c. are related to a profit-making motive, generating income or revenue, among other matters.
28. Furthermore, for the CAC to apply, the document under consideration need not meet a commercial value threshold or be a commercially significant document. All that is required is that the document is received by **nbn** or brought into existence in the course of, or for the purposes of, the carrying on of **nbn**'s commercial activities.

Application to the Relevant Documents

29. The Relevant Documents identified above relate to nbn's commercial activities because they were received or brought into existence in the course of, and for the purposes of, the operation, maintenance and remediation of nbn's network infrastructure at [REDACTED]
30. In particular, the documents comprise records relating to the inspection, condition, repair and remediation of an nbn pit, including work orders, technician notes, site condition reports, asset records and photographic records. These activities were undertaken by nbn and its delivery partners in order to maintain the integrity of the network, manage safety risks and ensure the continued provision of telecommunications services.
31. The Relevant Documents also include correspondence and materials provided in connection with the incident and subsequent claim. These materials were obtained and used by nbn for the purposes of managing risk, assessing potential liability and addressing financial exposure arising from damage to its infrastructure. These activities were carried out by nbn on a commercial basis.
32. I am therefore of the opinion that the Relevant Documents relate to nbn's commercial activities. Accordingly, the FOI Act does not apply to the Relevant Documents, and I refuse access to them under section 7(3A) of the FOI Act.
33. In respect of the broader categories of the request, including documents relating to inspection, maintenance, complaints, internal correspondence and similar incidents over the relevant period, no documents were identified following reasonable searches, and access is refused under section 24A of the FOI Act.

Decision-making Time and Fees

34. **nbn** staff spent time searching for and reviewing the Relevant Documents to respond to the request. Additionally, I have spent time in drafting and finalising this FOI decision, in addition to completing relevant correspondence in respect of the request. However, I have on this occasion exercised my discretion to waive all relevant fees.
35. 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.

23 June 2026

[REDACTED]
[REDACTED]

nbn ref: FOI2526049

Dear [REDACTED],

Freedom of Information – Access Decision

I am writing in relation to your application made under the *Freedom of Information Act, 1982* (**FOI Act**) seeking access to documents.

The Statement of Reasons (**attached**) outlines the specific terms of the FOI request, the decision-maker's findings and the access decision.

An FOI decision may be reviewed, subject to sections 53A and 54 of the FOI Act. Please refer to the Office of the Australian Information Commissioner's website at the following [link](#), which provides details about your rights of review and other avenues of redress under the FOI Act.

Please feel free to contact me at FOIOfficer@nbnco.com.au if you have any questions, or if you would like to discuss your FOI application.

Yours sincerely

Sandra Agobian

nbn Freedom of Information Team

FREEDOM OF INFORMATION REQUEST – FOI2526049

ACCESS DECISION

STATEMENT OF REASONS – 23/06/2026

Summary of Access Decision

1. I find that the Relevant Documents (as defined below) are not subject to the *Freedom of Information Act 1982* (the **FOI Act**) because they were brought into existence or obtained in the course of, or for the purposes of, nbn's commercial activities. Accordingly, I refuse access to the Relevant Documents.

Background – nbn and the FOI Act

2. **nbn** is a government business enterprise (**GBE**), which has the mandate of realising the Australian Government's vision for the development and operation of Australia's broadband infrastructure.
3. **nbn** recognises that information is a vital and an invaluable resource, both for the company and for the broader Australian community. That is why **nbn** fosters and promotes a pro-disclosure culture, with the goal of creating an organisation that is open, transparent, and accountable. To that end, **nbn** makes a large amount of information freely available to the public on our website: <https://nbnco.com.au/>.
4. **nbn** also manages its information assets within the terms and spirit of the FOI Act. We endeavour to release information proactively, while considering our commercial and other legal obligations.
5. 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**.
6. Under subsection 23(1) of the FOI Act, **nbn**'s Chief Executive Officer authorises me, to make decisions about access to documents and related matters under the FOI Act.
7. Under subsection 26(1) of the FOI Act, I am required to provide a Statement of Reasons for my decisions in relation to FOI 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. Those findings are outlined below.

Application Chronology and Scope of Request

8. On 16 April 2026, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) received a request under the Freedom of Information Act 1982 (Cth) (FOI Act) from [REDACTED] (the Applicant).
9. The Applicant requested access to documents as follows:

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“I request all versions of the section 91 notice from NBN Co to Shareholder Ministers concerning a preferred LEO satellite provider, and all departmental briefs, submissions, talking points and emails about that notice, between 1 February 2025 and 31 March 2025.”

10. The Department identified documents within the scope of the request. Documents 3, 6, 20 and 39 were subsequently transferred to nbn for decision under section 16 of the FOI Act.
11. On the date set out above, I made my access decision in respect of the transferred documents, as outlined below.

Findings on material questions of fact

12. The Applicant’s request is for documents relating to all versions of a section 91 notice from nbn to Shareholder Ministers concerning a preferred Low Earth Orbit (LEO) satellite provider, and related departmental briefs, submissions, talking points and email correspondence between 1 February 2025 and 31 March 2025.
13. The Department identified documents within the scope of the request and transferred Documents 3, 6, 20 and 39 to nbn for decision under section 16(3) of the FOI Act.
14. Those documents comprise internal and external email correspondence, draft and final materials relating to a section 91 notification, briefing content, and associated communications with Government and third parties, and specifically emails between the Department of Infrastructure and nbn, and attachments to those emails on the subject of nbn’s preferred Low Earth Orbit (LEO) satellite provider (Relevant Documents).
15. The Relevant Documents were created in the course of, and for the purposes of, nbn’s consideration and development of its strategic initiatives and potential commercial arrangements.

Access Decision

16. In undertaking my review of the Relevant Documents, it is my view, having regard to the nature and subject matter of the request and the relevant provisions of the FOI Act, that one or more exemptions to release are applicable, as outlined below.
17. In making my decision, I took into account relevant parts of the FOI Act and related legislation, the Office of the Australian Information Commissioner (OAIC) [FOI Guidelines](#), relevant case law and other sources, including the [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 Commercial Activities Carve-out (CAC): the [Internode Decision](#) (in January 2012), [Battersby Decision](#) (in July 2013) and [Bogle Decision](#) (in February 2025).

nbn’s commercial activities carve-out

18. Application of the CAC is a threshold issue, and I must consider it first before considering any other

grounds for refusal of access.

19. Section 7(3A) of the FOI Act excludes documents that are related to nbn's "commercial activities" from the operation of the FOI Act. Part II of Schedule 2 to the FOI Act specifies that certain agencies are exempt from the operation of the FOI Act in respect of particular documents. nbn is exempt from the operation of the FOI Act "in relation to documents in respect of its commercial activities".
20. Per section 7(3A) of the FOI Act, "commercial activities" means:
 - (a) *activities carried on by NBN Co on a commercial basis; or*
 - (b) *activities, carried on by NBN Co, that may reasonably be expected in the foreseeable future to be carried on by NBN Co on a commercial basis.*
21. As per section 7(4) of the FOI Act, in "*subsection (2AA) and Part II of Schedule 2, a reference to documents in respect of particular activities shall be read as a reference to documents received or brought into existence in the course of, or for the purposes of, the carrying on of those activities.*"
22. Relevantly, **nbn**:
 - a. is a public company limited by shares incorporated under the *Corporations Act 2001* (Cth) (**Corporations Act**);
 - b. is wholly owned by the Commonwealth and a prescribed GBE;
 - c. is subject to the same obligations as other public companies incorporated under the *Corporations Act*;
 - d. generates sales and profit; and
 - e. operates for a commercial purpose, with a mandate or objective to earn at least a commercial rate of return.
23. Accordingly, **nbn** operates as a commercial entity and, having regard to the foregoing, is bound to do so.
24. In the Internode Decision, the then Freedom of Information Commissioner, Dr James Popple, considered the meaning of "commercial activities" in relation to **nbn**'s CAC. Relevantly, he noted as follows:
 - a. in *Bell v Commonwealth Scientific and Industrial Research Organisation*, the Full Court of the Federal Court considered the meaning of "commercial activities" with reference to analogous provisions to sections 7(2) and 7(3A) of the FOI Act. In that case, the Court said that "*activities are conducted on a commercial basis if they are related to, engaged in or used for commerce*" and referred to "*the importance of the whole of the circumstances including the commercial goal (profit making or the generation of income or return) in determining whether particular activities are sufficiently related to commerce to be characterised as commercial activities*" [*Bell v Commonwealth Scientific and Industrial Research Organisation* [2008] FCAFC 40 as referred to in *Internode Pty Ltd and NBN Co Ltd* [2012] AICmr4 at paragraph 12.]; and
 - b. in *Johnston and Australian Postal Corporation*, the Administrative Appeals Tribunal concluded

that commercial activity "can be regarded as a business venture with a profit-making objective and, strictly speaking, will involve activity to generate trade and sales with a view to profit. This is particularly so when the volume of activity is on a large scale". [Johnston and Australian Postal Corporation [2006] AATA 144 as referred to in *Internode Pty Ltd and NBN Co Ltd* [2012] AICmr4 at paragraph 13.]

25. The subsequent Battersby Decision reinforced the aforementioned considerations and further noted:

"... there is no doubt that the definition of 'commercial activities' is broader for NBN Co than it is for other government business enterprises listed in Part II of Schedule 2." [Battersby and NBN Co Ltd [2013] AICmr 61 at paragraph 16.]

26. Recent authority from the Bogle Decision further affirms the broad approach to the CAC established in *Internode* and *Battersby*. The Tribunal confirmed that the carve-out is not limited to documents that are overtly commercial or financial in nature, nor is there any requirement for a document to have commercial value or significance. The Bogle Decision makes clear that documents which are ancillary to, or administrative in support of, nbn's commercial activities also fall within the CAC if created in the course of those activities. The Tribunal emphasised that activities which support or are incidental to nbn's commercial objectives, including internal processes, resource management, and administrative functions, are nonetheless integral to its commercial operations in which case they would be covered by the carve-out. The CAC is therefore not confined to network build or infrastructure projects but extends to a wide range of activities essential to nbn's commercial objectives, including administrative and support functions. [NBN Co Ltd and Bogle [2025] ARTA 67]
27. As outlined above, there are various factors that may weigh in favour of an activity being categorised as commercial for the purposes of the FOI Act, such as (among other factors), if those activities:
- have a commercial goal or purpose;
 - are related to, engaged in, or used for commerce; and/or
 - are related to a profit-making motive, generating income or revenue, among other matters.
28. Furthermore, for the CAC to apply, the document under consideration need not meet a commercial value threshold or be a commercially significant document. All that is required is that the document is received by **nbn** or brought into existence in the course of, or for the purposes of, the carrying on of **nbn**'s commercial activities.

Application to the Relevant Documents

29. The Relevant Documents identified above relate to nbn's commercial activities because they were received or brought into existence in the course of, and for the purposes of, nbn's consideration and development of a commercial arrangement in connection with its telecommunications operations.
30. In particular, the Relevant Documents comprise internal and external communications, draft and final materials, briefing content and correspondence relating to nbn's strategic initiatives and

engagement with Government and third parties.

31. These activities were undertaken by nbn as part of its core business operations, including the development and delivery of telecommunications services, engagement with suppliers and stakeholders, and the progression of potential commercial arrangements.
32. The subject matter of these documents concerns nbn's consideration, assessment and potential progression of a commercial arrangement in connection with its telecommunications operations, including the evaluation of service delivery options and engagement with potential suppliers for LEO services.
33. These activities were carried out by nbn on a commercial basis. While the Relevant Documents include engagement with Shareholder Ministers and the Department, I consider that this engagement is undertaken in the course of, and for the purposes of, nbn's commercial activities. This includes communications that are ancillary to, or supportive of, the development and progression of potential commercial arrangements.
34. I am therefore of the opinion that the Relevant Documents relate to nbn's commercial activities. Accordingly, the FOI Act does not apply to the Relevant Documents, and I refuse access to them under section 7(3A) of the FOI Act.

Decision-making Time and Fees

35. **nbn** staff spent time searching for and reviewing the Relevant Documents to respond to the request. Additionally, I have spent time in drafting and finalising this FOI decision, in addition to completing relevant correspondence in respect of the request. However, I have on this occasion exercised my discretion to waive all relevant fees.
36. 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.

24 June 2026

[REDACTED]
[REDACTED]

nbn ref: FOI2526050

Dear [REDACTED]

Freedom of Information – Access Decision

I am writing in relation to your application made under the *Freedom of Information Act, 1982 (FOI Act)* seeking access to documents.

The Statement of Reasons (**attached**) outlines the specific terms of the FOI request, the decision-maker's findings and the access decision.

An FOI decision may be reviewed, subject to sections 53A and 54 of the FOI Act. Please refer to the Office of the Australian Information Commissioner's website at the following [link](#), which provides details about your rights of review and other avenues of redress under the FOI Act.

Please feel free to contact me at FOIOfficer@nbnc.com.au if you have any questions, or if you would like to discuss your FOI application.

Yours sincerely

Sandra Agobian

nbn Freedom of Information Team

FREEDOM OF INFORMATION REQUEST – FOI2526050

ACCESS DECISION

STATEMENT OF REASONS – 24/06/2026

Summary of Access Decision

1. I find that the Relevant Documents (as defined below) are not subject to the Freedom of Information Act 1982 (the FOI Act) because they were brought into existence or obtained in the course of, or for the purposes of, nbn's commercial activities. Accordingly, I refuse access to the Relevant Documents.

Background – nbn and the FOI Act

2. **nbn** is a government business enterprise (**GBE**), which has the mandate of realising the Australian Government's vision for the development and operation of Australia's broadband infrastructure.
3. **nbn** recognises that information is a vital and an invaluable resource, both for the company and for the broader Australian community. That is why **nbn** fosters and promotes a pro-disclosure culture, with the goal of creating an organisation that is open, transparent, and accountable. To that end, **nbn** makes a large amount of information freely available to the public on our website: <https://nbnco.com.au/>.
4. **nbn** also manages its information assets within the terms and spirit of the FOI Act. We endeavour to release information proactively, while considering our commercial and other legal obligations.
5. 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**.
6. Under subsection 23(1) of the FOI Act, **nbn**'s Chief Executive Officer authorises me, to make decisions about access to documents and related matters under the FOI Act.
7. Under subsection 26(1) of the FOI Act, I am required to provide a Statement of Reasons for my decisions in relation to FOI 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. Those findings are outlined below.

Application Chronology and Scope of Request

8. On 16 April 2026, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) received a request under the Freedom of Information Act 1982 (Cth) (FOI Act) from [REDACTED] (the Applicant).
9. The Applicant requested access to documents as follows: "I request all versions of the section 91

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notice from NBN Co to Shareholder Ministers concerning a preferred LEO satellite provider, and all departmental briefs, submissions, talking points and emails about that notice, between 1 February 2025 and 31 March 2025.”

10. The Department identified documents within the scope of the request. Documents 4, 5, 6, 8A, 9, 13, 22, 25, 26 and 30 were subsequently transferred to nbn for decision under section 16 of the FOI Act.
11. On the date set out above, I made my access decision in respect of the transferred documents, as outlined below.

Findings on material questions of fact

12. The Applicant’s request is for documents relating to all versions of a section 91 notice from nbn to Shareholder Ministers concerning a preferred Low Earth Orbit (LEO) satellite provider, and related departmental briefs, submissions, talking points and email correspondence between 1 February 2025 and 31 March 2025.
13. The Department identified documents within the scope of the request and transferred Documents 4, 5, 6, 8A, 9, 13, 22, 25, 26 and 30 to nbn for decision under section 16(3) of the FOI Act.
14. Those documents comprise email correspondence and associated attachments, including draft and final materials relating to a section 91 notification, briefing content, and associated communications with Government and third parties, and specifically emails between the Department of Infrastructure and nbn, and attachments to those emails on the subject of nbn’s preferred Low Earth Orbit (LEO) satellite provider (Relevant Documents).
15. The Relevant Documents were created in the course of, and for the purposes of, nbn’s consideration and development of its strategic initiatives and potential commercial arrangements.

Access Decision

16. In undertaking my review of the Relevant Documents, it is my view, having regard to the nature and subject matter of the request and the relevant provisions of the FOI Act, that one or more exemptions to release are applicable, as outlined below.
17. In making my decision, I took into account relevant parts of the FOI Act and related legislation, the Office of the Australian Information Commissioner (**OAIC**) [FOI Guidelines](#), relevant case law and other sources, including the [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 Commercial Activities Carve-out (**CAC**): the [Internode Decision](#) (in January 2012), [Battersby Decision](#) (in July 2013) and [Bogle Decision](#) (in February 2025).

nbn’s commercial activities carve-out

18. Application of the CAC is a threshold issue, and I must consider it first before considering any other grounds for refusal of access.

19. Section 7(3A) of the FOI Act excludes documents that are related to nbn's "commercial activities" from the operation of the FOI Act. Part II of Schedule 2 to the FOI Act specifies that certain agencies are exempt from the operation of the FOI Act in respect of particular documents. nbn is exempt from the operation of the FOI Act "in relation to documents in respect of its commercial activities".
20. Per section 7(3A) of the FOI Act, "commercial activities" means:
 - (a) *activities carried on by NBN Co on a commercial basis; or*
 - (b) *activities, carried on by NBN Co, that may reasonably be expected in the foreseeable future to be carried on by NBN Co on a commercial basis.*
21. As per section 7(4) of the FOI Act, in "subsection (2AA) and Part II of Schedule 2, a reference to documents in respect of particular activities shall be read as a reference to documents received or brought into existence in the course of, or for the purposes of, the carrying on of those activities."
22. Relevantly, **nbn**:
 - a. is a public company limited by shares incorporated under the *Corporations Act 2001* (Cth) (**Corporations Act**);
 - b. is wholly owned by the Commonwealth and a prescribed GBE;
 - c. is subject to the same obligations as other public companies incorporated under the *Corporations Act*;
 - d. generates sales and profit; and
 - e. operates for a commercial purpose, with a mandate or objective to earn at least a commercial rate of return.
23. Accordingly, **nbn** operates as a commercial entity and, having regard to the foregoing, is bound to do so.
24. In the Internode Decision, the then Freedom of Information Commissioner, Dr James Popple, considered the meaning of "commercial activities" in relation to **nbn**'s CAC. Relevantly, he noted as follows:
 - a. in *Bell v Commonwealth Scientific and Industrial Research Organisation*, the Full Court of the Federal Court considered the meaning of "commercial activities" with reference to analogous provisions to sections 7(2) and 7(3A) of the FOI Act. In that case, the Court said that "*activities are conducted on a commercial basis if they are related to, engaged in or used for commerce*" and referred to "*the importance of the whole of the circumstances including the commercial goal (profit making or the generation of income or return) in determining whether particular activities are sufficiently related to commerce to be characterised as commercial activities*" [*Bell v Commonwealth Scientific and Industrial Research Organisation* [2008] FCAFC 40 as referred to in *Internode Pty Ltd and NBN Co Ltd* [2012] AICmr4 at paragraph 12.]; and
 - b. in *Johnston and Australian Postal Corporation*, the Administrative Appeals Tribunal concluded that commercial activity "*can be regarded as a business venture with a profit-making objective and, strictly speaking, will involve activity to generate trade and sales with a view to profit. This is*

particularly so when the volume of activity is on a large scale". [Johnston and Australian Postal Corporation [2006] AATA 144 as referred to in Internode Pty Ltd and NBN Co Ltd [2012] AICmr4 at paragraph 13.]

25. The subsequent Battersby Decision reinforced the aforementioned considerations and further noted:

"... there is no doubt that the definition of 'commercial activities' is broader for NBN Co than it is for other government business enterprises listed in Part II of Schedule 2." [Battersby and NBN Co Ltd [2013] AICmr 61 at paragraph 16.]

26. Recent authority from the Bogle Decision further affirms the broad approach to the CAC established in Internode and Battersby. The Tribunal confirmed that the carve-out is not limited to documents that are overtly commercial or financial in nature, nor is there any requirement for a document to have commercial value or significance. The Bogle Decision makes clear that documents which are ancillary to, or administrative in support of, nbn's commercial activities also fall within the CAC if created in the course of those activities. The Tribunal emphasised that activities which support or are incidental to nbn's commercial objectives, including internal processes, resource management, and administrative functions, are nonetheless integral to its commercial operations in which case they would be covered by the carve-out. The CAC is therefore not confined to network build or infrastructure projects but extends to a wide range of activities essential to nbn's commercial objectives, including administrative and support functions. [NBN Co Ltd and Bogle [2025] ARTA 67]
27. As outlined above, there are various factors that may weigh in favour of an activity being categorised as commercial for the purposes of the FOI Act, such as (among other factors), if those activities:
 - a. have a commercial goal or purpose;
 - b. are related to, engaged in, or used for commerce; and/or
 - c. are related to a profit-making motive, generating income or revenue, among other matters.
28. Furthermore, for the CAC to apply, the document under consideration need not meet a commercial value threshold or be a commercially significant document. All that is required is that the document is received by **nbn** or brought into existence in the course of, or for the purposes of, the carrying on of **nbn**'s commercial activities.

Application to the Relevant Documents

29. The Relevant Documents identified above relate to nbn's commercial activities because they were received or brought into existence in the course of, and for the purposes of, nbn's consideration and development of a commercial arrangement in connection with its telecommunications operations.
30. In particular, the Relevant Documents comprise email correspondence and associated attachments, including draft and final materials, briefing content and correspondence relating to nbn's strategic initiatives and engagement with Government and third parties.
31. These activities were undertaken by nbn as part of its core business operations, including the

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development and delivery of telecommunications services, engagement with suppliers and stakeholders, and the progression of potential commercial arrangements.

32. The subject matter of these documents concerns nbn's consideration, assessment and potential progression of a commercial arrangement in connection with its telecommunications operations, including the evaluation of service delivery options and engagement with potential suppliers for LEO services, which were carried out on a confidential basis.
33. These activities were carried out by nbn on a commercial basis. While the Relevant Documents include engagement with Shareholder Ministers and the Department, I consider that this engagement is undertaken in the course of, and for the purposes of, nbn's commercial activities. This includes communications that are ancillary to, or supportive of, the development and progression of potential commercial arrangements.
34. I am therefore of the opinion that the Relevant Documents relate to nbn's commercial activities. Accordingly, the FOI Act does not apply to the Relevant Documents, and I refuse access to them under section 7(3A) of the FOI Act.

Decision-making Time and Fees

35. **nbn** staff spent time searching for and reviewing the Relevant Documents to respond to the request. Additionally, I have spent time in drafting and finalising this FOI decision, in addition to completing relevant correspondence in respect of the request. However, I have on this occasion exercised my discretion to waive all relevant fees.
36. 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.

7 July 2026

[REDACTED]
[REDACTED]

nbn ref: FOI2526048

Dear [REDACTED]

Freedom of Information – Access Decision

I am writing in relation to your application made under the *Freedom of Information Act, 1982 (FOI Act)* seeking access to documents.

The Statement of Reasons (**attached**) outlines the specific terms of the FOI request, the decision-maker's findings and the access decision.

An FOI decision may be reviewed, subject to sections 53A and 54 of the FOI Act. Please refer to the Office of the Australian Information Commissioner's website at the following [link](#), which provides details about your rights of review and other avenues of redress under the FOI Act.

Please feel free to contact me at FOIOfficer@nbngo.com.au if you have any questions, or if you would like to discuss your FOI application.

Yours sincerely

Jessica Norgard

nbn Freedom of Information Team

FREEDOM OF INFORMATION REQUEST – FOI2526048

ACCESS DECISION

STATEMENT OF REASONS – 07/07/2026

Summary of Access Decision

1. I find that the Relevant Documents (as defined below) are not subject to the *Freedom of Information Act 1982* (the **FOI Act**) because they were brought into existence or obtained in the course of, or for the purposes of, nbn's commercial activities. Accordingly, I refuse access to the Relevant Documents.

Background – nbn and the FOI Act

2. **nbn** is a government business enterprise (**GBE**), which has the mandate of realising the Australian Government's vision for the development and operation of Australia's broadband infrastructure.
3. **nbn** recognises that information is a vital and an invaluable resource, both for the company and for the broader Australian community. That is why **nbn** fosters and promotes a pro-disclosure culture, with the goal of creating an organisation that is open, transparent, and accountable. To that end, **nbn** makes a large amount of information freely available to the public on our website: <https://nbnco.com.au/>.
4. **nbn** also manages its information assets within the terms and spirit of the FOI Act. We endeavour to release information proactively, while considering our commercial and other legal obligations.
5. 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**.
6. Under subsection 23(1) of the FOI Act, **nbn's** Chief Executive Officer authorises me, to make decisions about access to documents and related matters under the FOI Act.
7. Under subsection 26(1) of the FOI Act, I am required to provide a Statement of Reasons for my decisions in relation to FOI 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. Those findings are outlined below.

Application Chronology and Scope of Request

8. On 10 June 2026, nbn co received an FOI Request from [REDACTED] as follows:

I request access to the following documents:

(a) All records held by NBN Co relating to a technician service call to the premises at [REDACTED]

[REDACTED] on or around 10 August 2021, including:

- The attending technician's job notes and service report
- Any fault diagnosis records
- Any internal communications about the fault or the outcome of that visit
- Any records of an anomaly noted or reported during or following that attendance

(b) All records of any NBN infrastructure access, monitoring, or testing events at the address [REDACTED] during the period 1 July 2021 to 11 August 2021 that were not initiated by the account holder.

9. On the date of this letter, I made my access decision, as outlined below.

Findings on material questions of fact

10. nbn staff undertook searches for documents falling within the scope of the request for the Period and located documents. Those documents fall into the service portal records category set out below (**Relevant Documents**).
11. *Service portal records* - nbn's service portal is an essential tool used by nbn staff and some third parties, including retail service providers (RSPs), for managing work orders for nbn[®] network services and related incidents. It allows nbn to record and track new orders, service restoration requests, and infrastructure restoration requests, ensuring that all necessary information is captured. The portal provides a centralized platform for submitting, monitoring, and updating order and request statuses. This helps to enhance coordination and communication between nbn and RSPs. The service portal documents and their content were created or received in the course of nbn operating the nbn[®] network and the restoration of connections to that network in response to a request from an RSP.

Access Decision

12. In undertaking my review of the Relevant Documents, it is my view, having regard to the nature and subject matter of the request and the relevant provisions of the FOI Act, that one or more exemptions to release are applicable, as outlined below.
13. In making my decision, I took into account relevant parts of the FOI Act and related legislation, the Office of the Australian Information Commissioner (**OAIC**) [FOI Guidelines](#), relevant case law and other sources, including the [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 Commercial Activities Carve-out (**CAC**): the [Internode Decision](#) (in January 2012), [Battersby Decision](#) (in July 2013) and [Bogle Decision](#) (in February 2025).

nbn's commercial activities carve-out

14. Application of the CAC is a threshold issue, and I must consider it first before considering any other grounds for refusal of access.
15. Section 7(3A) of the FOI Act excludes documents that are related to nbn's "commercial activities" from the operation of the FOI Act. Part II of Schedule 2 to the FOI Act specifies that certain agencies are exempt from the operation of the FOI Act in respect of particular documents. nbn is exempt from the operation of the FOI Act "in relation to documents in respect of its commercial activities".
16. Per section 7(3A) of the FOI Act, "commercial activities" means:
 - (a) *activities carried on by NBN Co on a commercial basis; or*
 - (b) *activities, carried on by NBN Co, that may reasonably be expected in the foreseeable future to be carried on by NBN Co on a commercial basis.*
17. As per section 7(4) of the FOI Act, in "*subsection (2AA) and Part II of Schedule 2, a reference to documents in respect of particular activities shall be read as a reference to documents received or brought into existence in the course of, or for the purposes of, the carrying on of those activities.*"
18. Relevantly, **nbn**:
 - a. is a public company limited by shares incorporated under the *Corporations Act 2001* (Cth) (**Corporations Act**);
 - b. is wholly owned by the Commonwealth and a prescribed GBE;
 - c. is subject to the same obligations as other public companies incorporated under the *Corporations Act*;
 - d. generates sales and profit; and
 - e. operates for a commercial purpose, with a mandate or objective to earn at least a commercial rate of return.
19. Accordingly, **nbn** operates as a commercial entity and, having regard to the foregoing, is bound to do so.
20. In the Internode Decision, the then Freedom of Information Commissioner, Dr James Popple, considered the meaning of "commercial activities" in relation to **nbn**'s CAC. Relevantly, he noted as follows:
 - a. in *Bell v Commonwealth Scientific and Industrial Research Organisation*, the Full Court of the Federal Court considered the meaning of "commercial activities" with reference to analogous provisions to sections 7(2) and 7(3A) of the FOI Act. In that case, the Court said that "*activities are conducted on a commercial basis if they are related to, engaged in or used for commerce*" and referred to "*the importance of the whole of the circumstances including the commercial goal (profit making or the generation of income or return) in determining whether particular activities are sufficiently related to commerce to be characterised as commercial activities*" [*Bell v Commonwealth Scientific and Industrial Research Organisation* [2008] FCAFC 40 as referred to in *Internode Pty Ltd and NBN Co Ltd* [2012] AICmr4 at paragraph 12.]; and

- b. in *Johnston and Australian Postal Corporation*, the Administrative Appeals Tribunal concluded that commercial activity "can be regarded as a business venture with a profit-making objective and, strictly speaking, will involve activity to generate trade and sales with a view to profit. This is particularly so when the volume of activity is on a large scale". [*Johnston and Australian Postal Corporation* [2006] AATA 144 as referred to in *Internode Pty Ltd and NBN Co Ltd* [2012] AICmr4 at paragraph 13.]
21. The subsequent Battersby Decision reinforced the aforementioned considerations and further noted:

"... there is no doubt that the definition of 'commercial activities' is broader for NBN Co than it is for other government business enterprises listed in Part II of Schedule 2." [Battersby and NBN Co Ltd [2013] AICmr 61 at paragraph 16.]
22. Recent authority from the Bogle Decision further affirms the broad approach to the CAC established in Internode and Battersby. The Tribunal confirmed that the carve-out is not limited to documents that are overtly commercial or financial in nature, nor is there any requirement for a document to have commercial value or significance. The Bogle Decision makes clear that documents which are ancillary to, or administrative in support of, nbn's commercial activities also fall within the CAC if created in the course of those activities. The Tribunal emphasised that activities which support or are incidental to nbn's commercial objectives, including internal processes, resource management, and administrative functions, are nonetheless integral to its commercial operations in which case they would be covered by the carve-out. The CAC is therefore not confined to network build or infrastructure projects but extends to a wide range of activities essential to nbn's commercial objectives, including administrative and support functions. [*NBN Co Ltd and Bogle* [2025] ARTA 67]
23. As outlined above, there are various factors that may weigh in favour of an activity being categorised as commercial for the purposes of the FOI Act, such as (among other factors), if those activities:
 - a. have a commercial goal or purpose;
 - b. are related to, engaged in, or used for commerce; and/or
 - c. are related to a profit-making motive, generating income or revenue, among other matters.
24. Furthermore, for the CAC to apply, the document under consideration need not meet a commercial value threshold or be a commercially significant document. All that is required is that the document is received by **nbn** or brought into existence in the course of, or for the purposes of, the carrying on of **nbn**'s commercial activities.

Application to the Relevant Documents

25. I conclude that the Relevant Documents relate to nbn's commercial activities, because they were brought into existence and used by nbn in the course of supplying wholesale telecommunications services to retail service providers (RSPs) in a competitive market on commercial terms, including the repair and maintenance of network telecommunication services and infrastructure.
26. The Relevant Documents record and facilitate service and fault restoration and infrastructure repair

and maintenance activities, which are integral to nbn's commercial operations and revenue-generating functions. The documents directly relate to the operation, repair and maintenance of the nbn® network, which is nbn's primary commercial function. These activities are undertaken by nbn and its commercial partners to maintain the integrity of the network and ensure the continued provision of telecommunications services.

27. I am therefore of the opinion that the Relevant Documents directly and substantially relate to nbn's commercial activities. Accordingly, the FOI Act does not apply to the Relevant Documents, and I refuse access to them under section 7(3A) of the FOI Act.

Decision-making Time and Fees

28. **nbn** staff spent time searching for and reviewing the Relevant Documents to respond to the request. Additionally, I have spent time in drafting and finalising this FOI decision, in addition to completing relevant correspondence in respect of the request. However, I have on this occasion exercised my discretion to waive all relevant fees.
29. 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.

11 August 2026

[REDACTED]
[REDACTED]

nbn ref: FOI2627009

Dear [REDACTED]

Freedom of Information – Access Decision

I am writing in relation to your application made under the *Freedom of Information Act, 1982 (FOI Act)* seeking access to documents.

The Statement of Reasons (**attached**) outlines the specific terms of the FOI request, the decision-maker's findings and the access decision.

An FOI decision may be reviewed, subject to sections 53A and 54 of the FOI Act. Please refer to the Office of the Australian Information Commissioner's website at the following [link](#), which provides details about your rights of review and other avenues of redress under the FOI Act.

Please feel free to contact me at FOIOfficer@nbnc.com.au if you have any questions, or if you would like to discuss your FOI application.

Yours sincerely

Portia Conyers-East

nbn Freedom of Information Team

FREEDOM OF INFORMATION REQUEST – FOI2627009

ACCESS DECISION

STATEMENT OF REASONS – 11 August 2026

Summary of Access Decision

1. I find that the Relevant Documents (as defined below) are not subject to the *Freedom of Information Act* 1982 (the **FOI Act**) because they relate to **nbn**'s commercial activities. Accordingly, I refuse access to the Relevant Documents.

Background – nbn and the FOI Act

2. **nbn** is a government business enterprise (**GBE**), which has the mandate of realising the Australian Government's vision for the development and operation of Australia's broadband infrastructure.
3. **nbn** recognises that information is a vital and an invaluable resource, both for the company and for the broader Australian community. That is why **nbn** fosters and promotes a pro-disclosure culture, with the goal of creating an organisation that is open, transparent, and accountable. To that end, **nbn** makes a large amount of information freely available to the public on our website: <https://nbnco.com.au/>.
4. **nbn** also manages its information assets within the terms and spirit of the FOI Act. We endeavour to release information proactively, while considering our commercial and other legal obligations.
5. 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**.
6. Under subsection 23(1) of the FOI Act, **nbn**'s Chief Executive Officer authorises me, to make decisions about access to documents and related matters under the FOI Act.
7. Under subsection 26(1) of the FOI Act, I am required to provide a Statement of Reasons for my decisions in relation to FOI 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. Those findings are outlined below.

Application Chronology and Scope of Request

8. On 1 August 2026 nbn co received an email from [REDACTED] (the **Applicant**) seeking record and acknowledgement of their FOI Request made on 22 June 2026, and forwarded the FOI Request dated 22 June 2026, which sought:

“Your organisation has made a submission to the ACON Pride in Diversity Australian (PID) Workplace Equality Index (AWEI) scheme. As a result, your organisation received an award, presented in May 2026.

I seek the following information:

- *The most recent submission to the AWEI, including attachments*
- *The scorecard received as a result of the most recent AWEI submission*
- *All invoices paid to ACON or Pride in Diversity during 2025 and 2026*

Please note that I do not seek the identifying information for non-executive staff members. I do not seek contact or personal information for any staff member.

I request that my personal details not be shared in the processing of this request...”

9. On the 2 August 2026, Rohan Singh – nbn Freedom of Information Officer, responded to the Applicant stating:

“Dear [REDACTED]

Thank you for your email. We do not appear to have received your initial email.

We will process your request as soon as possible and come back to you. Please note however that the FOI Act does not apply to nbn in relation to its commercial activities, which may mean that the Act does not apply to what you have requested.

I will have a member of the team come back to you shortly...”

10. On the date set out above, I made my access decision, as outlined below.

Findings on material questions of fact

11. nbn staff conducted searches to locate documents within scope of the Applicant’s Request.

12. Staff located documents in scope of and responsive to the Request being:

- a. Australian Workplace Equality Index (AWEI) Submission and corresponding attachments (**AWEI Submission**);
- b. AWEI Scorecard (**AWEI Scorecard**); and
- c. Invoice (**Invoice**)

The documents categorised in 12(a)-(c) above are collectively referred to as the **Relevant Documents**.

Access Decision

13. In undertaking my review of the Relevant Documents, it is my view, having regard to the nature and subject matter of the request and the relevant provisions of the FOI Act, that one or more exemptions to release are applicable, as outlined below.
14. In making my decision, I took into account relevant parts of the FOI Act and related legislation, the Office of the Australian Information Commissioner (**OAIC**) [FOI Guidelines](#), relevant case law and other sources, including the [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 Commercial Activities Carve-out (**CAC**): the [Internode Decision](#) (in January 2012), [Battersby Decision](#) (in July 2013) and [Bogle Decision](#) (in February 2025).

nbn's commercial activities carve-out

15. Application of the CAC is a threshold issue, and I must consider it first before considering any other grounds for refusal of access.
16. Section 7(3A) of the FOI Act excludes documents that are related to **nbn**'s "commercial activities" from the operation of the FOI Act. Part II of Schedule 2 to the FOI Act specifies that certain agencies are exempt from the operation of the FOI Act in respect of particular documents. **nbn** is exempt from the operation of the FOI Act "in relation to documents in respect of its commercial activities".
17. Per section 7(3A) of the FOI Act, "commercial activities" means:
 - (a) *activities carried on by NBN Co on a commercial basis; or*
 - (b) *activities, carried on by NBN Co, that may reasonably be expected in the foreseeable future to be carried on by NBN Co on a commercial basis.*
18. As per section 7(4) of the FOI Act, in "*subsection (2AA) and Part II of Schedule 2, a reference to documents in respect of particular activities shall be read as a reference to documents received or brought into existence in the course of, or for the purposes of, the carrying on of those activities.*"
19. Relevantly, **nbn**:
 - a. is a public company limited by shares incorporated under the *Corporations Act 2001* (Cth) (**Corporations Act**);
 - b. is wholly owned by the Commonwealth and a prescribed GBE;
 - c. is subject to the same obligations as other public companies incorporated under the *Corporations Act*;
 - d. generates sales and profit; and
 - e. operates for a commercial purpose, with a mandate or objective to earn at least a commercial rate of return.

20. Accordingly, **nbn** operates as a commercial entity and, having regard to the foregoing, is bound to do so.
21. In the Internode Decision, the then Freedom of Information Commissioner, Dr James Popple, considered the meaning of "commercial activities" in relation to **nbn**'s CAC. Relevantly, he noted as follows:
 - a. in *Bell v Commonwealth Scientific and Industrial Research Organisation*, the Full Court of the Federal Court considered the meaning of "commercial activities" with reference to analogous provisions to sections 7(2) and 7(3A) of the FOI Act. In that case, the Court said that "*activities are conducted on a commercial basis if they are related to, engaged in or used for commerce*" and referred to "*the importance of the whole of the circumstances including the commercial goal (profit making or the generation of income or return) in determining whether particular activities are sufficiently related to commerce to be characterised as commercial activities*" [*Bell v Commonwealth Scientific and Industrial Research Organisation* [2008] FCAFC 40 as referred to in *Internode Pty Ltd and NBN Co Ltd* [2012] AICmr4 at paragraph 12.]; and
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"... there is no doubt that the definition of 'commercial activities' is broader for NBN Co than it is for other government business enterprises listed in Part II of Schedule 2." [*Battersby and NBN Co Ltd* [2013] AICmr 61 at paragraph 16.]
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24. As outlined above, there are various factors that may weigh in favour of an activity being categorised as commercial for the purposes of the FOI Act, such as (among other factors), if those activities:
 - a. have a commercial goal or purpose;

- b. are related to, engaged in, or used for commerce; and/or
 - c. are related to a profit-making motive, generating income or revenue, among other matters.
25. Furthermore, for the CAC to apply, the document under consideration need not meet a commercial value threshold or be a commercially significant document. All that is required is that the document is received by **nbn** or brought into existence in the course of, or for the purposes of, the carrying on of **nbn**'s commercial activities.

Application to the Relevant Documents

26. I am of the opinion the Relevant Documents relate to nbn's commercial activities because of the reasons set out below.
27. **AWEI Submission:** This document was prepared for an external benchmarking and accreditation process. Consequently, it contains detailed information and evidence regarding nbn's workforce strategy, recruitment initiatives, talent attraction and retention measures, employee engagement programs, leadership initiatives, external partnerships and employer-branding activities. Moreover, it demonstrates how these strategies, initiatives, metrics and workforce practices used by nbn align to the index requirements set out by Pride in Diversity's AWEI.
28. Collectively, this information outlines nbn's approach to diversity and inclusion, and consequently how it frames itself as a competitive employer, approaches to strengthen stakeholder confidence, and promote its brand and reputation as an employer, forming part of nbn's broader employer-branding and workforce attraction activities conducted in a competitive labour market. The ability to attract and retain a skilled workforce is integral to nbn's ability to operate its business, deliver services and pursue its commercial objectives.
29. I am therefore of the view that the AWEI Submission and associated attachments were brought into existence in the course of activities that support nbn's commercial operations, and relate to activities undertaken by nbn in the course of operating its business in a competitive environment. The document bears a sufficient relationship to activities undertaken by nbn on a commercial basis, in that release of the information contained in the AWEI Submission and associated attachments could undermine nbn's ability to secure and retain a skilled workforce, which is a necessary component of nbn's ability to conduct its business operations and compete effectively in relevant labour markets.
30. **AWEI Scorecard:** This document is an external benchmarking and assessment outcome arising from nbn's participation in the AWEI process and the AWEI Submission. The document reflects an external evaluation of nbn's performance against workplace inclusion benchmarks. It contains scoring, commentary and assessment outcomes across a range of categories associated with workforce attraction, retention, development, brand visibility, community engagement and leadership advocacy. The scorecard therefore provides an external assessment of activities undertaken by nbn to attract, develop and retain the skilled workforce necessary to conduct its operations and pursue its commercial objectives.
31. Release of this document could reveal nbn's strengths, potential gaps and/or future strategies

relating to nbn's workplace culture and diversity an inclusion practices. I am therefore of the view this information relates to nbn's commercial activities as it includes information about activities undertaken by nbn in the course of operating its business in a competitive environment, specifically in relation to activities undertaken to be able to compete and also retain skilled talent which is pertinent to nbn's commercial activities and operations.

32. **Invoices:** The document records an external commercial transaction between nbn and a third-party provider and relates to activities undertaken to support nbn's visibility, reputation and positioning as an employer. The Invoice evidences a commercial transaction between nbn and a third-party service provider and was brought into existence in the course of procuring external benchmarking, accreditation and membership services associated with nbn's participation in the Pride in Diversity and AWEI program.
33. Consistent with the approach described in the Bogle Decision, the document may be characterised as having a sufficient connection with activities undertaken by nbn on a commercial basis because it concerns expenditure incurred in connection with external sponsorship and employer-branding activities that support nbn's participation in competitive labour markets. The document therefore supports consideration of whether it relates to nbn's commercial activities within the meaning of the FOI Act.
34. I am therefore of the opinion that the Relevant Documents relate to **nbn's** commercial activities. Accordingly, the FOI Act does not apply to the Relevant Documents, and I refuse access to them.
35. It is unnecessary to consider any further exemptions considering my determination that the Relevant Documents fall within the meaning of the commercial activities carve-out. Without limiting the above, there are other grounds upon which access to that information could potentially be refused. In my opinion, the Relevant Documents may also be exempt from release on the basis of the following sections of the FOI Act:
 - a. s47 (documents disclosing commercially valuable information) of the FOI Act; and
 - b. s47G (business, commercial or financial affairs).

However, I have determined not to provide reasons in relation to those general and conditional exemptions.

Decision-making Time and Fees

36. **nbn** staff spent time searching for and reviewing the Relevant Documents to respond to the request. Additionally, I have spent time in drafting and finalising this FOI decision, in addition to completing relevant correspondence in respect of the request. However, I have on this occasion exercised my discretion to waive all relevant fees.
37. 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.
