

Public Access Agency Reference Group Meeting

Date: Thursday 29 November 2018

Time: 1–2:30pm

Location: Training Rooms 1 and 2, Level 34, 121 Exhibition Street, Melbourne

Participants

Joanne Kummrow, Acting Public Access Deputy Commissioner, OVIC (**Chair**)

Ianina Belski, Assistant Commissioner, Public Access Reviews, OVIC

Chelvi Arunagiri, City of Melbourne

Chris O'Donnell, VicRoads

Lisa Scholes, Department of Health and Human Services

Monica Barnes, Country Fire Authority

Rhiannon Bourke, Victorian WorkCover Authority

Robin Davey, Victoria Police

Sarah Crossman, Secretariat, OVIC

Adriana Nugent, Assistant Commissioner Policy, OVIC

Cliff Bertram, Principal Policy Officer, OVIC

1. Apologies

- Sven Bluemmel, Shantelle Ryan, Tony Calder, Cameron Montgomery, Nicolas Thomas

2. Welcome and Introduction

- The Acting Public Access Deputy Commissioner welcomed the reference group members, introduced Adriana Nugent and Cliff Bertram, and thanked members for their time and participation in the meetings.

3. Previous Meeting Minutes

- All attendees confirmed the minutes of 16 August 2018.

4. Location update

- The Acting Public Access Deputy Commissioner noted OVIC is now located on level 34, which includes training rooms and consultation rooms.

5. OVIC restructure

- The Acting Public Access Deputy Commissioner noted the OVIC restructure introduced some new roles and teams, which include:
 - Assistant Commissioner Public Access Resolution to oversee Registry and Case Support, and Early Resolution and Complaints;
 - Assistant Commissioner Public Access Reviews to oversee formal reviews;
 - Two new roles within the policy team, which have a public access focus; and
 - Investigation and audit team to administer OVIC's investigation powers under the FOI Act and the *Privacy and Data Protection Act 2014* (Vic).
- The Public Access Deputy Commissioner noted OVIC is currently recruiting, so agencies can expect to receive contact from new OVIC staff in the future.

Action: OVIC to provide members with a copy of our new organisational structure.

6. Annual report

- The Acting Public Access Deputy Commissioner thanked agencies for contributing to the annual report, and noted some highlights from the report:
 - The number of FOI requests increased by 7.9% from the previous year. There is a steady increase in the number of FOI requests, with 2017-18 showing the highest reported number of FOI requests made in a single year (39,040).
 - Members noted they noticed increases in FOI requests received by their agencies.
 - Members discussed data around agency costs for FOI, which is collected by agencies but not currently published in the Annual Report.

Action: OVIC to look into this dataset.

- A five year trend analysis for access decisions shows:
 - requests being granted in full continue to **trend downwards** (from its highest in 2013-14 at 72% to 65.76% in 2017-18);
 - requests being granted in part continue to **trend upwards** (from its lowest in 2013-14 at 24.9% to 30.35% in 2017-18);
 - requests denied in full are starting to **trend upwards** (to 3.89% in 2017-18, compared to its lowest with 2.3% in 2014-15);
 - in line with the highest number of requests received, the total number of FOI decisions made was the **highest ever** in Victoria.
- The most commonly applied exemptions remain: ss 33, 38, 30, 35 and 31. These account for over 90% of exemptions claimed, which is a slight decrease from 92% in 2016-17. There was also an approximate 67% increase in the use of the refusal power in s 25A(1), from 158 in 2015-16 to 265 in 2017-18.
- Steady increase in reviews received by OVIC. From 2014-15 to 2017-18 there has been a 52.5% increase in the number of reviews received. There is also a steady increase in the number of reviews OVIC finalises. In 2017-18 OVIC finalised 606 reviews, compared with 456 finalised in 2016-17. OVIC aims to continue this level of output and to become more efficient and timely in the conduct of its reviews.
- There was a slight decrease in complaints received in 2017-18 (475 received in 2017-18 compared with 515 in 2016-17). Around 70% of complaints in 2017-18 were resolved informally or withdrawn.
- OVIC continues to see an increase in members of the public making FOI requests. In 2017-18, 89% of applicants were members of the public, compared with 83% in 2016-17 and 80.5% in 2015-16.
- There is a downward trend in the number of Members of Parliament making FOI requests. In 2017-18, 3% of applicants were Members of Parliament, compared with 6% in 2016-17 and 17% in 2015-16. The number of applicants representing media and organisations applicants has fluctuated slightly from 2015-16 to 2017-18.
- OVIC's Early Resolution Team had an increase in informally resolved and withdrawn matters (231 in 2017-18 compared with 144 in 2016-17). The Acting Public Access Deputy Commissioner noted early resolution will have an increased focus for OVIC in the coming year, regarding both agencies' and applicants' willingness to resolve matters without the need for a formal decision.

7. Publication of OVIC Notices of Decision update

- OVIC confirmed it is working towards publishing its notices of decision in a de-identified form as part of OVIC's educative function. Applicants and agencies may be referred to a decision as a precedent and to add weight to the likely outcome on a particular review.
- The names of agencies will remain within published decisions. If an applicant is an individual, this information will be de-identified. If an applicant is an organisation, the name will remain in the decision (except where an individual can be identified from the name of the organisation).
- In January 2019, OVIC will launch an information awareness strategy to provide advice on when publication will commence and to provide more information about the project.
- Members discussed the value in publishing decisions to provide to stakeholders and also to inform themselves on OVIC's position on the application of exemptions and exceptions.
- Members discussed deidentification and dealing with decisions that have been, or are currently being, appealed to VCAT.
- OVIC noted documents subject to review will not be published.

8. Preliminary views by OVIC and early resolution

- Members discussed seeking agency views during the review process. OVIC noted it is moving towards providing written preliminary views from the Commissioners to agencies, which will give agencies early notice regarding further information OVIC requires or questions it has.
- Members discussed the utility in receiving the preliminary views, and whether OVIC could produce guidance on what it is looking for/how to respond to a preliminary view letter and in providing a written submission.

Action: OVIC to note this with the Assistant Commissioner – Resolution

9. Information sessions with agencies

- The Acting Public Access Deputy Commissioner noted information sessions OVIC had with Victoria Police, Corrections Victoria and the Department of Health and Human Services. The sessions have generally consisted of the agency outlining its key functions, the documents it has and the FOI requests it receives.

10. OVIC's focus for public access reviews

- The Acting Public Access Deputy Commissioner noted that as at 28 November 2018, OVIC had 323 open reviews and 142 open complaints, and 22 OVIC decisions were appealed to VCAT since 1 July 2018. For the VCAT appeals, seven appeals were initiated by agencies, six by applicants, eight on a deemed refusal and one by a third party.
- The Acting Public Access Deputy Commissioner noted OVIC's priority for reviews is finalising matters received before March 2018. A result of this is that agencies may receive enquiries from case managers or Notices of Decisions on files prior to this date.

11. Provision of documents to OVIC

- The Acting Public Access Deputy Commissioner noted OVIC is upgrading its case management system so it can accept electronic copies of documents subject to review. Once implemented, agencies will need to provide electronic copies of documents. We will begin communications on this new requirement in the new year.

- OVIC noted some agencies have provided OVIC with redacted copies of documents and reminded all agencies to provide OVIC with copies of unredacted documents for the purposes of conducting a review.

Action: OVIC to remind agencies to provide unredacted copies of documents in its bulletin.

12. Part II statements

- The Acting Public Access Deputy Commissioner noted a priority project for the new policy team members will be to update OVIC's Part II statement in accordance with the FOI Act. OVIC also intends to develop guidance to assist agencies in creating or amending their own statements.

13. Information Access Series

- The Acting Public Access Deputy Commissioner noted OVIC has hosted three Information Access Series sessions so far, including: Refusal of requests for documents – interpreting and using ss 25A(1) and 25A(5), Preparing decision letters in freedom of information matters and most recently, Working with OVIC – demystifying our processes and procedures.

14. The professional standards

- OVIC spoke to the professional standards, which is another priority project for the new public access team members. OVIC is currently planning the development of the professional standards, which will involve research, consultation, review, amendment, notification and publication.
- OVIC noted it will provide further information on this project as it progresses.

15. Public Access consumer videos

- The Acting Public Access Deputy Commissioner noted we are developing short and accessible videos to assist and inform the public about FOI. Potential topics include how to make an FOI request, how to apply for a review and how to make a complaint to OVIC.

16. The reference group next year

- One member noted it would be good to revisit the length or regularity of meetings to ensure maximum value to members and OVIC.
- Members discussed meeting times and agreed to extend meetings to two hours with a half hour break in the middle. Meetings will therefore be 2.5 hours in total.

Action: OVIC to email members with agenda items not covered in the meeting and to seek feedback where applicable.

17. Close at 2:45pm

18. Next meeting: TBC but likely to be February or March next year