

## Public Access Agency Reference Group Meeting

**Date:** Monday, 25 March 2019

**Time:** 2:00 – 4:30pm

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

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### Participants

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

Lisa Scholes, Department of Health and Human Services

Shantelle Ryan, Assistant Commissioner Public Access Resolutions

Lucy Roysmith, VicRoads

Ianina Belski, Assistant Commissioner Public Access Reviews

Monica Barnes, Country Fire Authority

Bryan Wee, Acting General Counsel, OVIC

Robin Davey, Victoria Police

Chelvi Arunagiri, City of Melbourne

Susannah Whitty, Eastern Health

Penny Eastman, OVIC, Observer

Sarah Crossman, Secretariat, OVIC

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### 1. Welcome

- The Acting Public Access Deputy Commissioner welcomed everyone and introduced new members and OVIC staff.
- The Acting Public Access Deputy Commissioner thanked Tony Calder, Monash University, Rhiannon Bourke, Victorian WorkCover Authority and Chris O'Donnell, VicRoads, who are no longer members, for their contribution to the Reference Group.

### Apologies

- Melinda Robinson, Nicolas Thomas, Cameron Montgomery, Lauren Reader, Richard Long, Jane Feeney, Jude Hunter

### Previous meeting minutes

- All attendees confirmed the minutes of 29 November 2018.
- The Acting Public Access Deputy Commissioner confirmed the action items from 29 November 2018.

### 2. OVIC's Regulatory Action Policy

- OVIC's Acting General Counsel spoke to OVIC's Regulatory Action Plan, which was provided to the Reference Group for consultation. Any feedback, comments or questions can be provided to him.

### 3. Professional standards update

- The Acting Public Access Deputy Commissioner noted the draft professional standards have been published on the OVIC website and also on Engage Victoria.
- The Acting Public Access Deputy Commissioner thanked members for their feedback on the draft standards, noting their feedback assisted OVIC in reviewing the draft standards.
- The Acting Public Access Deputy Commissioner noted public consultation on the draft standards is open from 25 March to 3 May 2019. Submissions must be provided to OVIC by COB **3 May 2019**. OVIC has developed a submission form, which agencies may use and is available online.

#### 4. OVIC update

- Review of the Reference Group
  - At the end of 2018, OVIC reviewed the Reference Group using the feedback that Reference Group members provided at the 29 November 2018 meeting, and after. Some of the changes include: expanding the time the Reference Group meets and introducing four new members.
  - The Acting Public Access Deputy Commissioner spoke to the role of the Reference Group members, noting OVIC encourages consultation amongst other agencies regarding the Reference Group – this may include discussing potential agenda items and providing information discussed at meetings to other agencies.
- Recent Information Access Series seminar on secrecy provisions
  - The Acting Public Access Deputy Commissioner noted the most recent seminar, which was on secrecy provisions. More information about the seminar, including slides and a recording of the presentation, is available on the OVIC website.
  - The next Information Access Series seminar is Thursday, 28 March 2019. OVIC FOI training dates are available on the OVIC website.
- Recruitment update
  - The Acting Public Access Deputy Commissioner noted OVIC welcomed several new staff in the Public Access team, which largely replace departures and staff on extended leave.
- Association of Information Access Commissioners meeting
  - The Acting Public Access Deputy Commissioner spoke to the most recent AIAC meeting, which was held in New Zealand. The AIAC meets biannually to discuss a range of FOI/Right to Know issues across the jurisdictions (which include all the Australian jurisdictions and New Zealand).
  - At the meeting, OVIC reported on the office's work over the past six months to reduce aged matters by one third, improvements to processes and procedures to increase efficiency and effectiveness, development of the professional standards and the publication of notices of decisions project.
- OVIC operational report
  - The Assistant Commissioner – Public Access Reviews noted:
    - since 1 Jan 2019, OVIC closed 131 review matters and there are 288 that remain open;
    - OVIC currently has 135 open complaints files;
    - OVIC is averaging about 13 new reviews per week; and
    - OVIC is averaging about 6 new complaints per week.

#### 5. Notice of decision publication update

- The Assistant Commissioner – Public Access Reviews noted:
  - OVIC will be publishing de-identified copies of notices of decision review applications received by OVIC on or after 1 January 2019. Publication will be on the OVIC website and AustLII website and will start from 1 July 2019.
  - All notices of decision will be published in de-identified form, this means that any personal information will be removed before publication.
  - Details of the FOI decision maker will not be published.
  - Documents associated with decisions will not be published by OVIC.

- Most decisions will refer to the documents subject to review in order to provide clear reasons for the decision.
- OVIC will start providing copies of de-identified decisions to agencies before the formal start date of 1 July 2019. This will show how the decisions will be de-identified and will provide an opportunity for agencies to provide feedback on the de-identified decision. OVIC encourages agencies to speak with their colleagues because those who will receive a de-identified decision will depend on the decisions currently under review at OVIC.
- There is a dedicated OVIC webpage for more information (including FAQs which will be published shortly). Further, OVIC updated its review application form and has started notifying applicants and agencies when a review is accepted to let them know about the project.
- Members discussed the scenario of where the Information Commissioner or Public Access Deputy Commissioner's decision is overturned by VCAT. OVIC noted it will not provide a link to a VCAT decision on the same matter, as to do so may re-identify OVIC's decision. OVIC took on notice a suggestion about taking down OVIC decisions that are overturned by VCAT.

**Note:** following the meeting, OVIC confirms it will not take down its decisions if overturned, following the usual procedures of courts and tribunals.

## 6. Document sampling initiative

- The Assistant Commissioner – Public Access Reviews noted:
  - OVIC is trialling a new initiative whereby OVIC may ask agencies to provide a proposed schedule of sample documents for reviews involving a large volume of documents (e.g. 1,300 – 7,500 pages of documents). VCAT uses a similar process.
  - If a matter cannot proceed by way of a schedule of sample documents, the Information Commissioner may determine to dismiss the review application on the grounds the review would be more appropriately dealt with by VCAT.
  - This initiative will allow the Information Commissioner to undertake reviews with as little formality and technicality as possible.
  - There will be only a small number of matters where this would be appropriate, noting there is no 'trigger' number to initiate document sampling.
  - Members discussed the impact on agency resources to undertake sampling.

## 7. Feedback on OVIC directions in Notices of Decision

- The Country Fire Authority member spoke to OVIC's directions in its notices of decision. The member provided some background – outlining historically, but not as common now, OVIC's directions had some inconsistencies. The member sought advice on how agencies should address these inconsistencies.
- The Acting Public Access Deputy Commissioner thanked the member for raising the item and noted that OVIC recommends contacting the case manager that handled the particular matter and communicating the issue or concern to that case manager. Depending on the nature of the error, OVIC may re-issue a decision or otherwise notify both parties of the error and seek to rectify it.

## 8. Update to OVIC's case management system

- The Assistant Commissioner – Public Access Resolutions noted:
  - OVIC is in the process of upgrading its case management system (Resolve) and has engaged an external consultant.
  - The upgrade includes updating OVIC's FOI workflows to reflect current improved business practices and to provide additional functionality.
  - The aim of the update is to reflect our improved case management practices and ensure OVIC's business practices are efficient.
  - OVIC will also be able to better capture quality data for reporting purposes.

## 9. Electronic documents

- The Assistant Commissioner – Public Access Resolutions noted:
  - Another initiative OVIC is introducing, which is linked to the Resolve upgrade, is the provision of electronic agency documents. OVIC's aim is to have agencies provide documents subject to review by electronic means. Most agencies are already doing this and therefore the change won't affect them. OVIC will be updating its Document Transfer Form to support this.
  - This initiative is the start of a wider whole of office digitisation project, which will hopefully mean OVIC staff can work more efficiently.
  - OVIC is still investigating how documents may be provided electronically.
  - OVIC is also looking at redaction and editing software so that, in some circumstances, it may undertake redactions to a document electronically. The marked-up documents may be provided to an agency with a preliminary view or provided with a notice of decision as instructions to an agency to give effect to the Commissioner's decision. This would assist with any inconsistencies in the Notice of Decision.
  - OVIC is also looking into video editing software, which will allow OVIC to make redactions to CCTV footage.

## 10. Preliminary views

- The Assistant Commissioner – Public Access Resolutions noted:
  - The Early Resolution Team are piloting a formal preliminary view process with the aim of reducing the number of formal decisions made by the Information Commissioner and Public Access Deputy Commissioner. This is to better manage applicant expectations and to allow agencies the opportunity to make a fresh decision or provide a further written submission.
  - The general process involves the following steps:
    - A case manager seeks the view of the Information Commissioner and/or Public Access Deputy Commissioner.
    - The case manager communicates that view, either by phone or letter to the applicant or agency. The preliminary view will also include a recommendation for the applicant or agency to consider and invite a response.
    - An applicant may be encouraged to withdraw their review or narrow its scope.
    - An agency may be asked to consider a number of options such as making a fresh decision, releasing more information without making a fresh decision or releasing information outside the Act.

- If an applicant or agency does not agree with the preliminary view and recommendation, the matter will proceed to a formal decision, prior to which the applicant or agency will be invited to provide a further written submission.
- Unless the Commissioner is persuaded by a further written submission, it is likely the formal decision will be in-line with the preliminary view.
- From 1 July 2019, a preliminary view may be supported by a published de-identified notice of decision.
- The data from this pilot will inform OVIC’s early informal resolution results, guide the efficient allocation of resources and identify opportunities for process improvements.

## 11. Collection of data relating to costs of FOI

- The Assistant Commissioner – Public Access Resolutions noted:
  - This item relates to an action item from the 29 November 2018 Reference Group meeting.
  - In June 2006 the Victorian Ombudsman conducted a review of the FOI Act. Following that review the Ombudsman made a number of recommendations, one of which was for agencies “to collect and record the level of officers involved in FOI activities and the time spent responding to FOI requests”.
  - To give effect to that recommendation a question was introduced in the FOI Annual Survey asking agencies to provide details of the salary range of FOI staff involved in making FOI decisions and the percentage of their time on FOI activities.
  - This data is currently not published in OVIC’s Annual Report, however OVIC’s view is that the data remains relevant and beneficial. OVIC plans to re-visit the information collected in its Annual Survey, noting that any changes to the data OVIC asks agencies to provide will be communicated well in advance.
  - Members discussed it would be interesting to see how much money is spent on FOI, noting that that data would not show the whole picture (for example, agency staff who locate documents that are captured by an FOI request, but who are not an FOI practitioner).

## 12. Other business

- Members discussed instances where OVIC makes a decision and sends a third party notice to the agency so that the agency can forward the notification to that third party. There may be times when the agency cannot contact them (for example, they no longer work there and they do not have any forwarding contact details).
- Similarly, there are times where an agency has not consulted with that third party because it was not practicable to do so (for example, consultation would cause undue distress).
- OVIC noted agencies should advise OVIC, in advance, whether or not it has consulted with a third party and whether there are concerns about contacting that third party. That way, OVIC can take any relevant considerations into account when determining whether to notify them.

## 13. Close – 4:30pm

- The next meeting will be held on Monday, 27 May 2019 from 2 – 4:30pm at 121 Exhibition Street, Melbourne.