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THE CULTURE OF ADMINISTERING ACCESS TO GOVERNMENT INFORMATION AND FREEDOM OF INFORMATION IN VICTORIA

PILOT STUDY MAY-AUGUST 2019

Author: Associate Professor Johan Lidberg

INTRODUCTION

This pilot study was commissioned by the Office of the Victorian Information Commissioner (OVIC) as an independent piece of research. The study aimed to capture the culture of administering the Victorian *Freedom of Information Act* 1982 (Vic) (“the FOI Act”) and the Victorian information access system overall.

The background to the study is a public forum on the evolution of Freedom of Information (FOI) in Victoria co-hosted by the School of Media, Film and Journalism, Monash university and OVIC in September 2018. The public forum was followed by a research roundtable on access to information hosted by Monash university. The roundtable had participation by representatives for information commissioners from Victoria, Western Australia, Queensland, New South Wales, the Australian Commonwealth and a representative from the international access to information body, the Open Government Partnership.

The aim of the research roundtable was to identify what research was needed to aid the information commissioners and ombudsmen in their quest to improve the practical functionality of FOI and Right to Information (RTI) systems. Functionality in this case is defined as how well the laws and systems deliver access to government held information from a FOI/RTI user’s point of view.

To determine if the culture of implementing access to information could be captured, a pilot study covering a number of government agencies was proposed. The study was executed and this report written by Associate Professor Johan Lidberg, in the School of Media, Film and Journalism at Monash University. A/Professor Lidberg has conducted comparative research on FOI/RTI functionality in Australia and internationally since 2001.

This report describes the findings of the study, analyses the outcomes and makes a number of recommendations on how the findings can be useful for the Office of the Victorian Information Commissioner. The short answer to the overarching research question of whether FOI/RTI implementation culture can be captured is that: it can, as evidenced by the findings in this report.

The word cloud on the cover page of the report is a visualisation of the replies to one of the free text questions in the online survey: *Is there anything else you would like to add regarding the functioning of the current information access system in Victoria?* The full report of the findings can be found in Part II. The report starts with an executive summary including recommendations. This is followed by the background and aims in Part I. After the findings section, you will find the Discussion of the results followed by the Conclusion.

Finally, a note of thanks to the Office of the Victorian Information Commissioner for its leadership in information access development in Australia. Thanks also to the Victorian FOI practitioners who openly and frankly shared their views and interpretations of information access in this study.

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

Select excerpts from focus groups and interviews.

“...stuff like this [FOI] is so fundamental to democracy. We’ve got to keep in mind that this [FOI] allows people to engage in democracy and it has real life impact.” Interview with Victorian FOI practitioner.

“I think there is hypocrisy in the legislation. It’s about giving access to information, but only to those that have \$21.70 in their hand...I don’t understand why we have to have an application fee.” Interview with Victorian FOI practitioner.

“Pro-active release [of information] is not part of FOI. OVIC has responsibility for information policy [such as proactive release of information], I have responsibility for release of information under the FOI Act...my job isn’t to release as much information as you can to the public, my job is to respond to FOI requests.” Interview with Victorian FOI practitioner.

“There is a culture of pro-disclosure in my agency. I don’t know where it comes from, but it’s there. I see it in senior management being OK with potentially embarrassing information being released. Perhaps it’s a state of Victoria thing, with the state being progressive on these matters.” Interview with Victorian FOI practitioner.

“When I did OVIC training the message was – ‘how can the act be interpreted to release information’, but in my agency, it seems the opposite applies – what exemption can we apply to not release information.” Interview with Victorian FOI practitioner.

“It would be good to get other targets than just having processed all the FOI files at the end of the month.” Interview with Victorian FOI practitioner.

Key facts pilot study:

Number of participating agencies: 6

Number of online survey replies: 38

Response rate to survey: 68% (38/56)

Number of focus group interviews and individual interviews: 16

Total number of FOI practitioners interviewed: 27 (focus groups comprised of 2-4 participants)

Based on the survey and interview data collected for this pilot study, the overall impression is that the vast majority of the 38 Victorian FOI practitioners that participated are sincere, passionate and committed to a well-functioning access to information regime in the state. But the data also indicate that significant obstacles still exist to realising this ideal and delivering on the objectives and aims of the Victorian FOI Act.

Six agencies were in the sample for this study. They ranged from large, medium and small and included both Victorian government departments and local councils. They will not be named in the interest of keeping the participants anonymous (please see methodology section below for further justification for this research design).

A number of themes soon emerged and were repeated by most participants in the study. These themes are reflected in the recommendations below.

Two themes, with several sub-themes, stood out and deserve special mention:

Legal issues that directly or in-directly influences the culture of administering FOI in Victoria:

- The need to do a comprehensive review of the Victorian FOI Act, bringing it up to date with digital information management;
- Reviewing the 2017 amendment to the Act regarding third-party consultation. Close to all interviewees pointed to this being the main reason for delays in processing requests;
- The need for the Victorian FOI Act to explicitly mention proactive/administrative release of information as being the default and preferred option for the public to access information, rather than via formal FOI requests.

Culture issues

- The crucial role of senior agency management – all interviewees were unanimous that the public service agency leadership is more important for a positive FOI culture than the political leadership of the agency. This is the most important finding in the study;
- The creation of agency-wide, proactive information release policies. The interviewees pointed out this can only be done with the support of senior agency management;
- Staff recruitment. FOI coordinators and managers spoke at length about the importance of recruiting staff that have a passion for FOI, are independent and integrity strong, and have a will to facilitate information access;
- Educating the different agency sections in how FOI functions and explain and advocate for proactive release of information outside formal FOI requests;
- Ongoing training and professional development for FOI staff, both via OVIC and external trainers.

Recommendations

The Victorian FOI Act 1982

1. Review the third-party consultation section, alternatively – OVIC to issue more detailed guidelines on third-party consultation;
2. Review and update the Act to reflect the current digital information environment;
3. Review the proactive disclosure sections in reformed FOI/RTI acts in other Australian jurisdictions (such as Queensland, NSW and the Commonwealth) and consider including a proactive disclosure section in the Victorian Act. This should also include a review of the 'FOI/RTI disclosure logs' that are used in several Australian jurisdictions.

FOI administration culture

4. Based on data in the pilot study – the senior management level (such as the Secretary in government departments and the CEOs in local councils) is crucial in creating a user friendly and information access facilitation culture in agencies. OVIC should therefore focus its FOI education and information advocacy efforts on this level. Without the support from the senior agency level, all participants were unanimous in pointing out that little would change. The senior management level at agencies were deemed more important than the ministerial level by the participants in the pilot study regarding the development a culture of information access that puts information access facilitation at the core;
5. OVIC to create tools useful for creating proactive information disclosure policies in government agencies. These tools could include examples of existing policies in other agencies;
6. OVIC to hold workshops and seminars on how proactive information disclosure policies can be created;
7. Recruitment of FOI officers and managers were seen as crucial in building a culture of openness and information access facilitation. OVIC to draw up guidelines in collaboration with FOI managers and agency executives on recruiting FOI officers and managers;
8. The pilot study indicates that there are significant differences between Victorian agencies in how FOI/information access is viewed and implemented. It is therefore strongly recommended that the current study (after some amendments based on the finding in the pilot study) be implemented comprehensively in Victoria. This would supply OVIC with a complete picture of how FOI is implemented across the state and assist OVIC in designing the support needed to improve FOI functionality in Victoria. Based on the findings in the pilot study, the senior management team of agencies should be included in the comprehensive study. Following on from that conclusion is that the comprehensive study should also seek to capture the understanding of and attitudes toward FOI/RTI at the political ministerial level.

Funding for such a large study could be sought from the Australian Research Council via the linkage project scheme. If this avenue is pursued, the project could involve several other Australian jurisdictions. This would

offer points of comparisons, which would be particularly useful if reformed FOI/RTI jurisdictions such as Queensland, NSW and the Commonwealth were to partner in the study. But the participation of non-reformed states such as WA would also be highly useful. The principal advantage of this multi-jurisdictional approach is that each state/territory have pursued slightly different solutions to information access and such as study would allow jurisdictions to compare approaches and learn from each other.

PART I – BACKGROUND AND AIMS

Background - access to information and freedom of information

The principal justification for governments passing and implementing laws that allow the public a means of independently accessing government information is accountability. One of the cornerstones in mature liberal democratic systems of governance is that those who wield power in society must also be held to account for how this power is executed.

Accountability as a tool to guarantee good governance has been around for a long time, indeed some scholars trace it as far back as the Chinese Tang dynasty (618-690), (Lamble, 2002). Regardless of where you chose to put the starting date for the concept of political and administrative accountability, the foundation for it to function well is that external actors (such as the public, the political opposition, journalists, etc) have independent access to government held information. Independent in this case means that the information should be in its most original format.

There are two tiers of information access via Freedom of Information (FOI): first, individual/personal information, often referred to as first-party information and second, requestors that seek access to non-personal, third-party information. In most mature FOI systems, the first-party level functions well and Victoria is no exception to this rule. However, third-party access is more complex.

A well-functioning third-party access to information system fulfils two principal purposes: 1) it hinders corruption and maladministration as the actors in the political system know that there is a high risk of being found out thanks to transparency and openness, 2) it increases the public's participation in the political system by providing easy access to information which they need to participate. The latter is a potential win-win situation as it is a trust building mechanism between the governors and the governed. By facilitating access to information, the elected representatives show that they are open to scrutiny and the public feels trusted to execute this scrutiny based on the independent access to information.

The first documented access to information system can be traced back to one of the earliest parliaments in Sweden in 1766. This was the first time the opposition had gained power and they used it to pass both a press freedom law and the world's first FOI related law (Lidberg, 2016). There were only a handful of FOI laws passed until the Second World War, which became the first watershed moment for access to information laws. Part of the soul searching regarding the reasons for World War II was that there was too much secrecy within and between countries. This saw the passing of a number of FOI laws between 1945 and 1989. Australia's first FOI laws were part of this second wave with Victoria and the Australian Commonwealth both passing its FOI laws in 1982.

The second significant FOI moment was the fall of the Soviet Union in 1990. A number of former Soviet-dominated states in eastern Europe saw FOI as an important part of the path to democracy and enacted FOI laws. It is worth noting that in 1990, there were only 13 functioning FOI laws globally (Banisar, 2006).

The third watershed moment in the evolution of information access is ongoing – the digital revolution. The speed and ease of sharing vast amounts of information enabled by this ongoing change has seen the number of FOI laws in the world grow to 124 and counting (RTI, 2019).

All Australian jurisdictions now have either a FOI or Right to Information (RTI) Act.

Aims of the project

Research aim:

Capturing and mapping the culture of administering FOI in a sample of government agencies in Victoria to inform training/awareness programs and campaigns in order to increase the functionality of information access systems in Victoria.

Research questions

- What is the understanding among FOI officers/administrators (on both senior and other levels) of the purpose and functionality of the access to information system in Victoria?
- How do FOI officers/administrators (on both senior and other levels) view/describe their roles within in the information access system?
- Do they think FOI/RTI functions well in terms of delivering what the law promise? If so why? If not, what is needed to improve functionality?

Previous studies

When reviewing the literature on previous studies on how FOI/RTI are implemented in practice and in what information access culture the implementation takes place, the one standout is the lack of such studies. Projects assessing and comparing FOI/RTI acts and testing how they function by submitting FOI requests are plentiful (Davies, 2000; Lidberg, 2009; Paterson, 2015; RTI, 2019). This could be attributed to how complex and time consuming capturing administrative culture is, while comparing laws and quantitative measures of functionality is quicker and cheaper. The only two studies in an Australian context that have partly attempted to capture the culture of implementing FOI is one comparing the Australian federal FOI system to a number of international information access cultures (Lidberg, 2006) and the comprehensive review of the West Australian FOI system (OIC, 2010).

Previous studies and ongoing projects clearly show that research must go beyond the letters of the law and FOI quantitative metrics to get a fuller picture of how FOI/RTI operates in practice. A good example of this is the Global Right to Information Rating, which is a great resource in terms of getting an initial snapshot of how FOI/RTI laws compare on a number of key points (RTI, 2019). However, the rating based on the laws only in many cases rate the newer laws at the top of the index. A case in point is that Afghanistan currently occupies the number one spot in the RTI rating. If you added a practical functionality test to the rating and a qualitative assessment of the information access culture, it is highly doubtful that Afghanistan would keep this top rating. This illustrates the importance of capturing the culture that sits at the core of implementing FOI/RTI.

Methodology

Based on the project being a pilot study, six government agencies, ranging from large to small, were selected. The sample was carefully considered representing the diversity of government agencies. To guarantee the anonymity of the participants in the project, the agencies will not be named.

An online survey addressing the research questions was distributed to the FOI officers and managers in the selected agencies.

Focus group interviews consisting of FOI officers and managers were then conducted in order to complement the survey and drill down further into the complexities of mapping and building FOI administration cultures. Great care was taken to make sure that the focus groups only had participants at the same hierarchical level in each agency. In some cases, FOI coordinators and managers were interviewed individually.

Focus group interviewing is found to be particularly useful when interpretations of complex instructions, such as legislation, are sought. The method is also useful when the researcher aims to gauge the perceptions of a person's position in a system and the attitudes they hold toward the tasks they perform (Neuman, 2013).

The term FOI/information access culture in this project should be understood as the attitudes towards facilitating information access held by Victorian FOI practitioners and the interpretation of the Victorian FOI Act (eg. release as much information as possible based on the act, or release as little as possible) by FOI practitioners. These key parameters feed into the implementation of the FOI/information access system, which in this study is seen as synonymous with FOI/information access culture.

Participants were coded according to a schedule and will only be referred to as interviewee A, B, C , etc in this report. At an early stage of the research design process, complete anonymity for the participants was identified as a key property of the methodology. This was decided to allow the interviewees to speak openly and frankly generating quality data addressing the research questions. The quality of the data generated by the study vindicated this research design.

Approval for the research design was sought from the Monash University Human Research Ethics Committee and was obtained prior to the pilot study being implemented.

PART II – FINDINGS

Online survey

The Monash University customised version of the Qualtrics online survey platform was used to distribute the questionnaire. Distribution was done via a survey link that did not collect metadata from the respondents in order to ensure respondents could not be identified. The participation rate for the survey was a healthy 38 valid responses out of the full survey population of 56 – 68% of the total survey population responded to the questionnaire. This makes the statistical reliability of the survey high (Neuman, 2013).

The survey was divided into four sections. Section one sought the respondents' views of on the aims of public access to government information in Victoria, including the Freedom of Information Act 1982 (Vic) (FOI Act). The second section aimed to capture the respondents' views on their current role in the Victorian FOI system. Section three asked questions regarding the current functionality of the information access regime in Victoria and the final part of the survey sought to canvass the respondents' views on how the FOI in Victoria could be improved. The full questionnaire is available as appendix A.

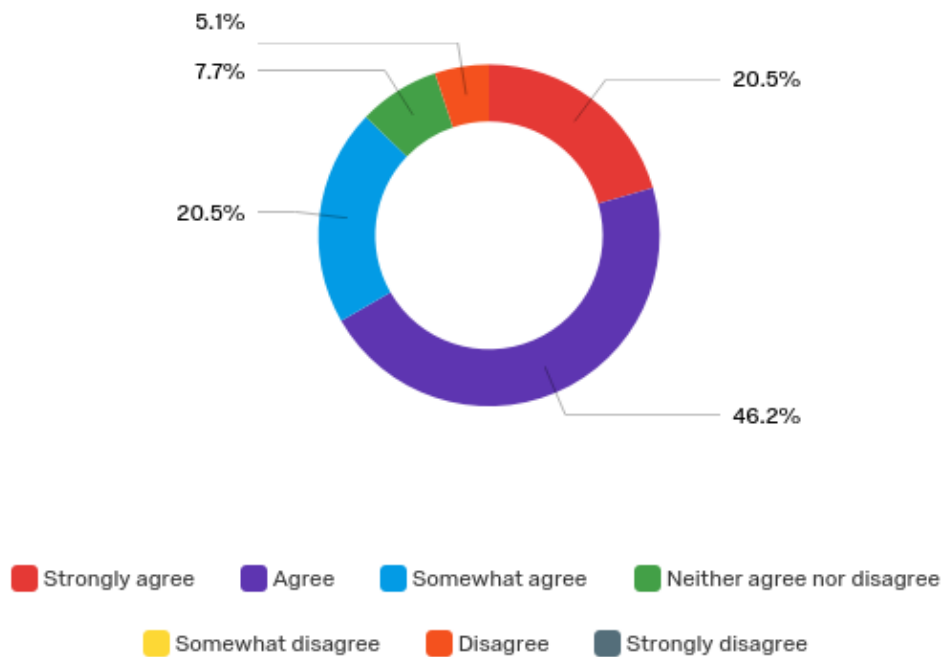
At the end of each section, the respondents were given the option via free text format to add anything they thought important. Because some of the replies to these questions included the name of the agency, the full survey data cannot be included as an appendix to this report. All data in this study will be kept and archived by Associate Professor Lidberg in accordance with Monash universities privacy policy and in line with the Australian Code for the Responsible Conduct of Research.

A selection of the survey responses is presented below.

Survey section one:

Figure 1

Question 3: *The Victorian information access system also involves the proactive and informal release of documents and information outside the FOI Act.*



Although 67% agreed or strongly agreed with this statement, it is worth noting that two respondents, 5.1% disagreed. A low number, but this is worth keeping in mind when reading the findings from the focus groups and interviews below when the recruitment of FOI staff is discussed.

The free text questions at the end of each section will be visualised by a word cloud illustrating the most frequently used words in the reply boxes.

Figure 2

Question 7: Is there anything else you would like to add regarding the Victorian information access system or the objects of the FOI Act?



As we can see in the word cloud, a number of respondents raised the issue of the FOI Act not giving them enough scope to deal with vexatious FOI requests. Here are a few of the replies:

“The ability to waiver fees for request (for example pensioner) is abused on occasion, allowing a vexatious number of requests to be made with no financial consequence to the requester.”

"It [the Victorian FOI Act] doesn't cater for vexatious applicants who waste our time."

There were also a number of replies regarding proactive release of information outside the act well illustrated by this response:

“The act does allow for the release of information informally and outside the act, however internal policies and procedures within an organisation can mean that this becomes an extra burden on the FOI division to process the requests, or involve ongoing 'back and forth' between applicants explaining that they can get documents without lodging an FOI request. Also explaining this to frontline staff members and them actually performing the task is another matter as they usually refer people straight to FOI, and it is then up to us to explain that 'no - you can give the person that document directly'. This is an internal issue for our department however, as the communication and knowledge of frontline staff needs to be increased to avoid this.”

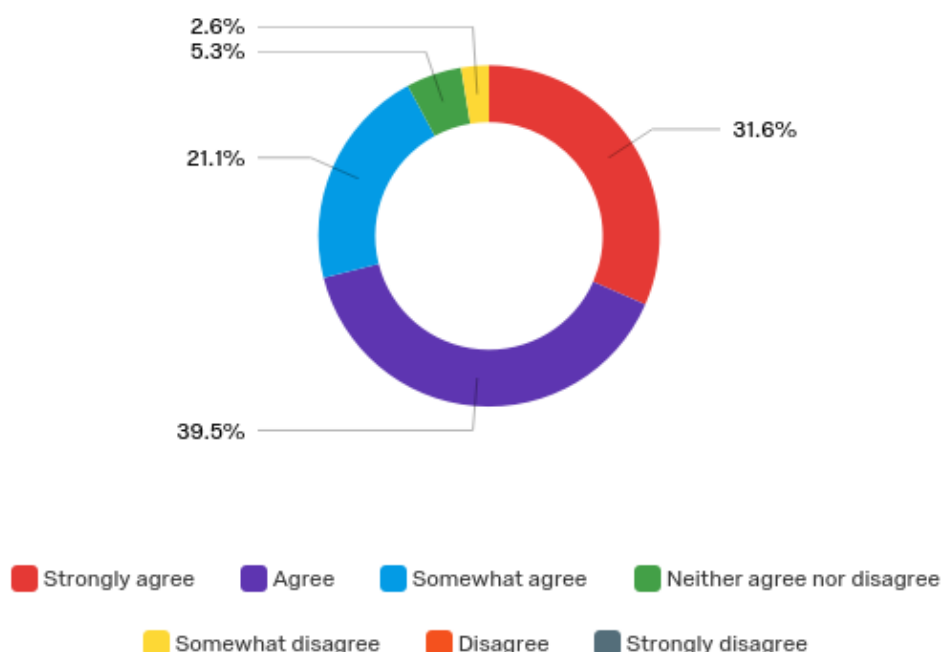
This points to the ongoing importance of the educational task of FOI units/teams in the agency they operate in. More on that in the discussion below.

Section two:

There was strong agreement regarding question nine: *I play an important role in the Victorian information access system in facilitating or promoting access to information*, with no disagree replies. However, there was a greater spread in the answers to the next question.

Figure 3

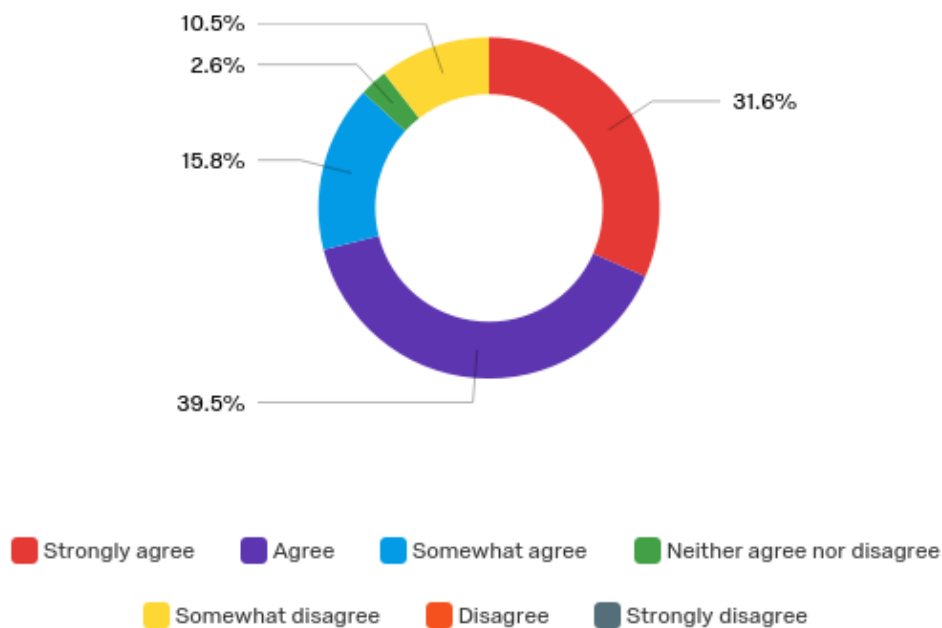
Question 10: *Part of my role involves facilitating or promoting proactive release of information.*



Here it is worth noting the amount of “somewhat agree”, 21.3%, and the “somewhat disagree” reply. This indicates that the attitude to facilitating access to information is divided and we see one of the outliers that emerged in section one again reasserting itself.

Figure 4

In question/statement 11: *I am provided with sufficient training and professional development to perform my duties effectively under the FOI Act*, we see a significant spread in the replies.

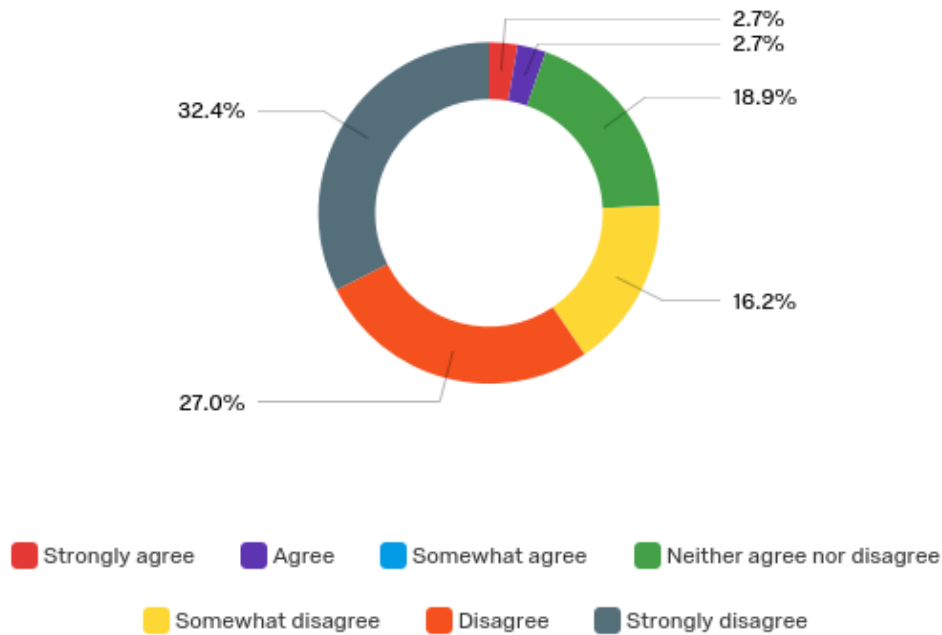


Even though the majority agree with the statement, close to a third are hesitant or disagree. This indicates that the management of some agencies, as well as OVIC, need to consider how to offer the support needed for FOI staff to do their job properly.

Questions 14 and 15: *Part of my role in administering the FOI Act is to make sure information potentially embarrassing to my agency or Minister is NOT released* and *Part of my role in administering the FOI Act is to make sure information potentially embarrassing to the government is NOT released*, displayed a similar reply profile.

Figure 5

Question 14 - *Part of my role in administering the FOI Act is to make sure information potentially embarrassing to my agency or Minister is NOT released.*



Again, we see the two outliers “agree” and “strongly agree” with this statement. If you combine these two with “somewhat disagree” and “neither agree or disagree”, you get close to 40% of hesitant answers to this crucial attitudinal statement that goes directly to the culture of administering FOI.

Figure 6

Below is the word cloud illustrating the responses to question 16: *Is there anything else you would like to add regarding how you view your role in the information access system?*



The following quotes from some of the replies to question 16 indicate that some FOI practitioners have thought deeply about their roles and also reflected on where in the information access system they reside:

“There is no exemption in the Act that applies just because information is embarrassing.”

“Part of my job is not just to ensure access to information, but to assist in the wellbeing of applicants.”

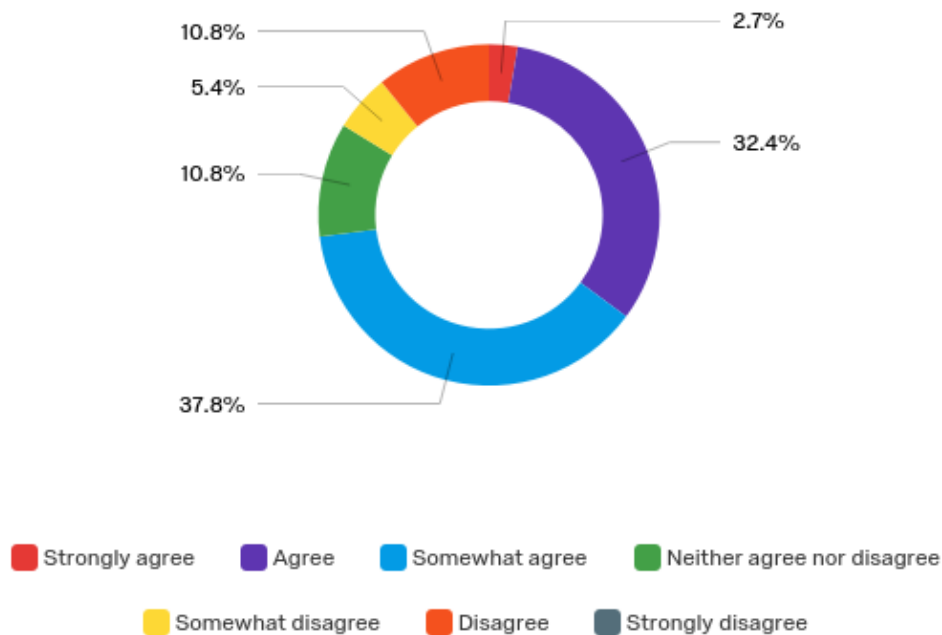
“My role and expertise in administering the FOI Act is constantly caught between the competing claims of facilitating access to information and protecting departmental or Ministerial imperatives, despite knowledge that resistance under the FOI framework is only tokenistic, as it is known and clear that such decisions will be overturned by review bodies. Nobody wants to be the one to say no to these powers even if it is correct to do so.”

“FOI units operate in ‘silos’ to the rest of the organisation. FOI units would benefit if an increase in informal releases occurred. It is difficult for a FOI unit to promote change in this space. As a result, docs that could be released informally are assessed for release under FOI.”

Section three:

Figure 7

Question 18: *In my view, the current information access system in Victoria functions well.*



The main takeaway from this question is that there was only one “strongly agree” reply. This indicates that there is more work to be done regarding FOI functionality in Victoria

Questions 19: *In my view, the lack of training and professional development for FOI practitioners is a significant impediment to a better functioning information access system in Victoria;*

20: *In my view, the lack of resources to administer the FOI Act in my agency is a significant impediment to a better functioning information access system in Victoria and;*

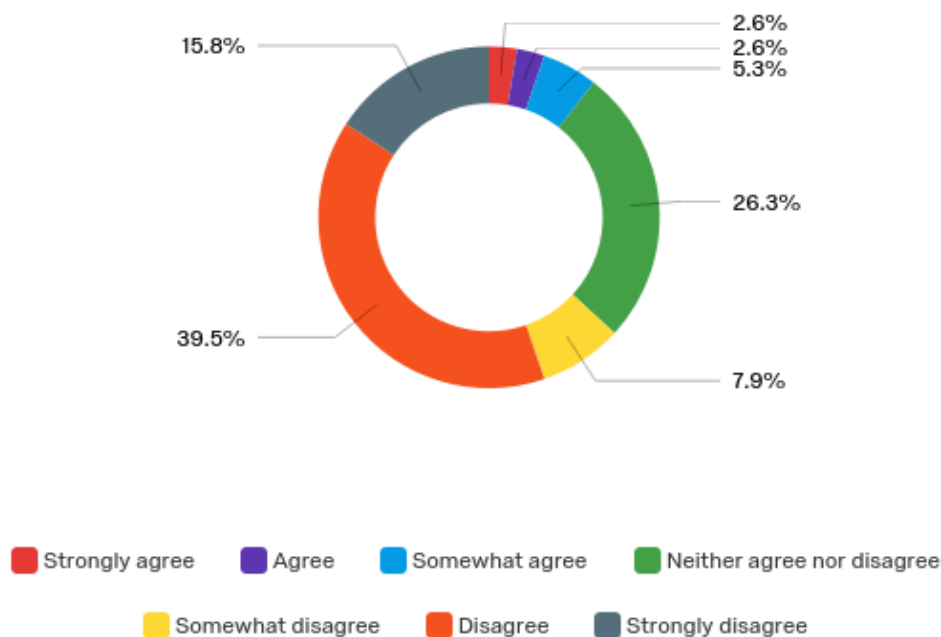
21: *In my view, the lack of understanding about the requirements of the FOI Act from senior personnel in my agency is a significant impediment to a better functioning information access system in Victoria, all display close to equal distribution between the “agree” and “disagree” replies. This indicates that the culture in which FOI staff operate differs significantly between the agencies in the sample.*

The replies to question 22: *In my view, pressure from management level personnel in my agency NOT to release sensitive information under the FOI Act is a significant impediment to a better functioning information access system in Victoria* – show that FOI management does not exert pressure on FOI officers regarding withholding information.

This picture changes somewhat when we examine the answers to question 23: *In my view, pressure from executive level personnel in my agency NOT to release sensitive information under the FOI Act is a significant impediment to a better functioning information access system in Victoria.*

Figure 8

Question 23:



As we can see, 26% of the replies are neutral, which indicates that some level of pressure from the senior agency executive level may exist. The answers in questions 24: *In my view, pressure from the office of the Minister responsible for my agency NOT to release sensitive information under the FOI Act is a significant impediment to a better functioning information access system in Victoria,* also have a very similar spread.

Figure 9

The replies to questions 25: *Is there anything else you would like to add regarding the functioning of the current information access system in Victoria?* Are crucial and points to the main finding of this pilot study. This is illustrated by the world cloud below.



As you can see, management sits squarely in the centre of the cloud and here are the quotes to illustrate why:

“I find that the closer management personnel are to the ground, the more capable of understanding the substantive issues in FOI they are. The further detached from the ground-level processing work, the more risk-averse management and executive personnel are.”

"I believe that my agency has a number of processes that could be changed internally which would see a large number of requests being dealt with in different ways, or would allow people to lodge requests with more information, correctly and more efficiently. I also believe that changes made to the online request portal [centrally managed for a number of agencies] would assist in requests being lodged correctly and us not having follow up missing information, documents or clarifying a person's request."

“I don’t believe that there is any undue pressure from any part of our organisation to NOT release information. We always work on the provision that if a section of the act applies, then we apply it. This is relevant to all levels (senior management, executive level and minister).”

“I also believe that OVIC, whilst intentions are good, do not fully understand the range of documents and the information that is held by agencies, as well as the processes that are reasonable for agencies to complete, given the huge variation in numbers of requests that an agency has to complete.”

Many of the replies in this section of the questionnaire point to the importance of the role senior executive management appears to play in building and maintaining the culture of administering FOI within each agency. The role of senior agency management was explored further in the focus groups and interviews presented below after the last section of the online survey.

There was close to unanimous agreement to question 27: *The information access system in Victoria needs to be improved*. When it came to how to most effectively improve FOI in Victoria, it became clear that more respondents thought that changing the culture of administering FOI is more effective than changing the law, although as figures 10 and 11 below illustrate, there was strong support for both courses of action.

Figure 10

Question 28: *The most effective way to improve the information access system in Victoria is by changing legislation*

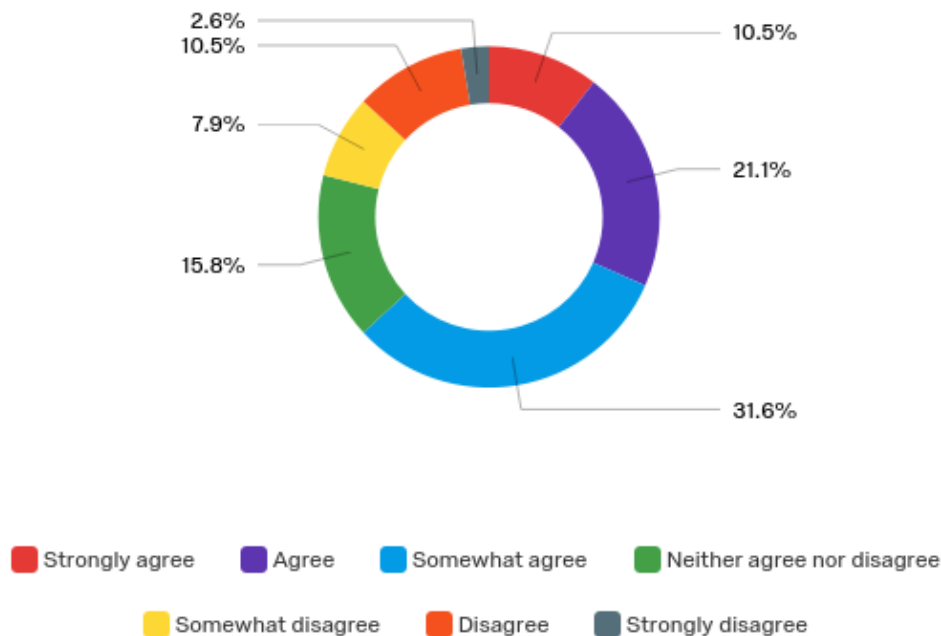
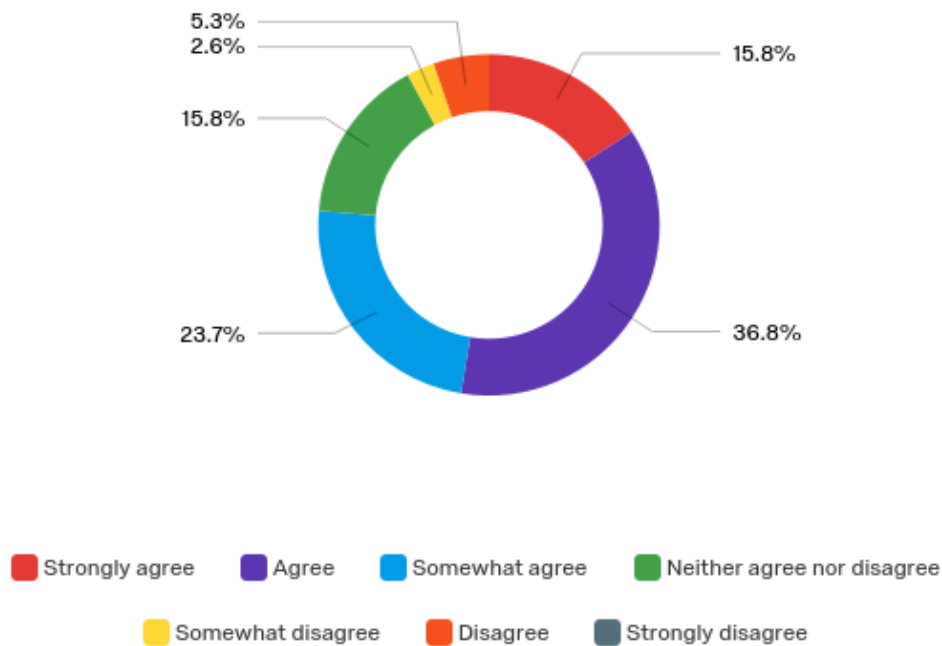


Figure 11

Question 29: *The most effective way to improve the information access system in Victoria is by changing culture and practice*



There was strong support for both questions 30: *The focus of improvements should be on proactive disclosure and informal release of government information* and 31: *The focus of improvements should be on streamlining the administrative requirements under the FOI Act.*

Figure 12

Question 30: *The focus of improvements should be on proactive disclosure and informal release of government information*

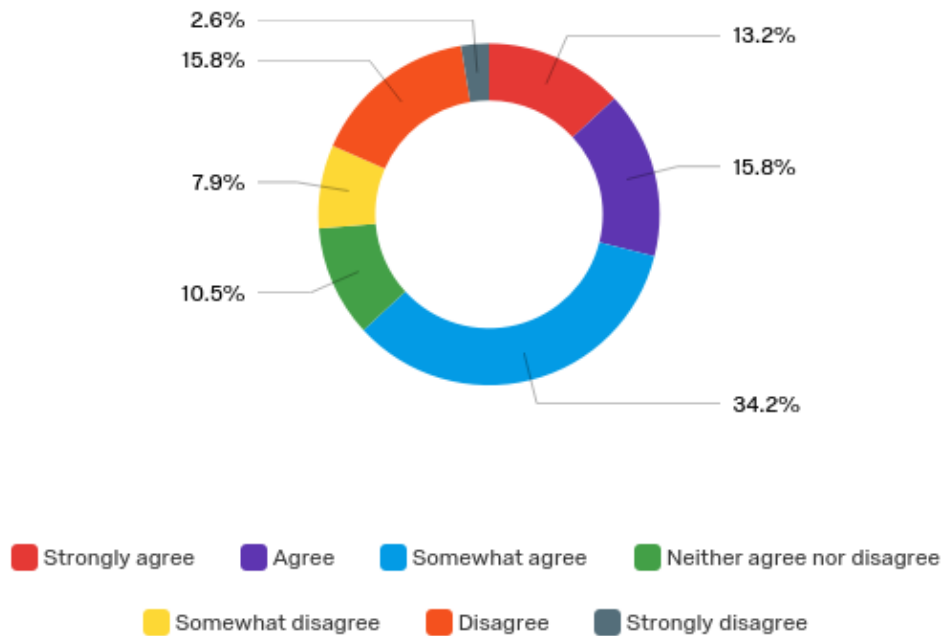
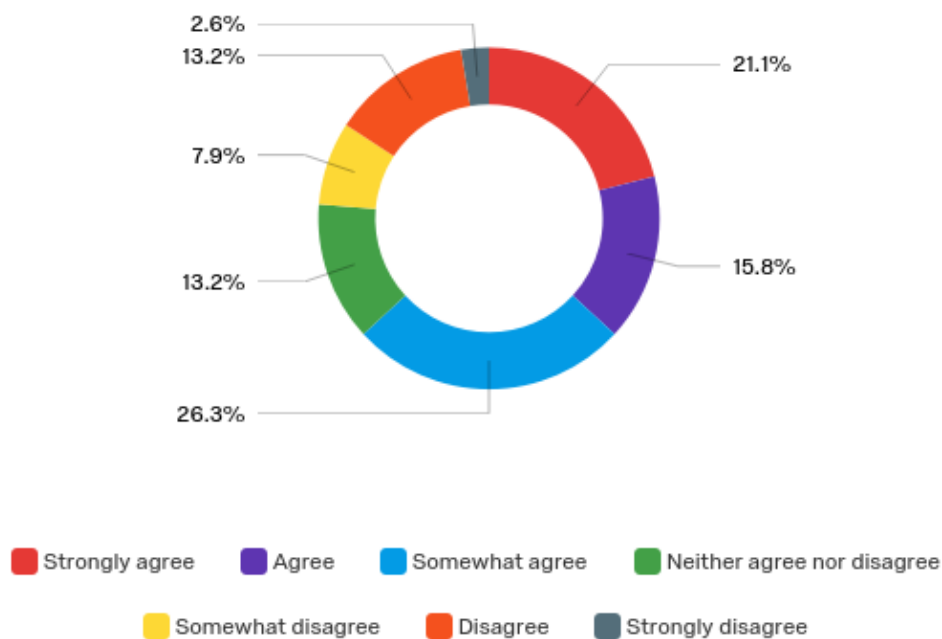


Figure 13

Question 31: *The focus of improvements should be on streamlining the administrative requirements under the FOI Act*



This indicates that there is a strong will to improve among FOI staff and to use culture change as one avenue to achieve these improvements. Contrary to the weak support for the strategy suggested in question 32: *The focus of improvements should be on reducing FOI exemptions.*

Many of the respondents took the opportunity to make final remarks in question 33: *Is there anything else you would like to add regarding improvements to the information access system in Victoria?*

Figure 14

Question 33 word cloud: *Is there anything else you would like to add regarding improvements to the information access system in Victoria?*



The number of replies to the final open-ended questions is a finding in itself, indicating that the FOI staff in the sample in this pilot study were highly engaged as illustrated by the following quotes:

“OVIC complaints and reviews should focus on the request or matter at hand. For example, complaint or review enquiries expecting agencies to investigate multiple avenues that they had no requirement to as part of the actual request wastes valuable resources. I believe the FOI Act currently has the balance about right in terms of protecting the rights of individuals to access information while limiting agencies needing to use excessive resources to administer the Act.”

“The process needs to be de-politicised and OVIC needs to be stronger on decisions that are made on political grounds, and on delayed decisions caused by Ministerial noting or interference.”

“I don’t think changing legislation will improve access – I believe that it is the internal processes of agencies that will allow for better access as well as improved practitioner standards which will assist in better decision making of assessors and organizations.”

“There should be changes made to reflect changing technology and the different types of documents now available and how they can be accessed and edited to remove exempt information.”

The principal purpose of the online survey study was to provide an overview of the understanding among FOI staff in Victoria of their roles in the information access system, what influenced the culture of administering FOI, and what could- or needed- to be improved in their view. There were a few noticeable findings in the survey data:

- The willingness to act as information access facilitators;
- The pivotal role of senior executive agency management in both building and maintaining a positive information access culture for FOI users;
- That improvements to the FOI system need a combination of legislative reform and culture change in how FOI is administered.

These three points were further explored in the focus group interviews and individual interviews. The findings from the interviews are presented below.

Focus groups and interviews

The online survey provided an overview of the main issues at hand addressing the research questions. The purpose of the focus groups and interviews was to gain a deeper understanding of how the FOI administration culture is built and maintained. The interview templates were divided into three sections:

1. What, in your view, are the most important objectives of the Victorian FOI Act/information access system?
2. How do you see your role within that system?
3. What can be done to improve the system and what role does the culture of administering FOI play in these improvements?

The interview templates varied slightly depending on if the focus group/interviews were with FOI officers or FOI coordinators/managers. Both templates are available as appendix B and appendix C.

In total, 27 FOI officers, coordinators and managers from the six agencies were interviewed either as participants in one of the eight focus groups or in individual semi-structured interviews. After the first few interviews were conducted, it became clear that sections two and three were where most of the relevant answers occurred. It was decided that the most effective way of communicating the interview findings in this report was to group them into a number of themes that occurred during the interviews. These themes are directly relevant to the aims of the project and the research questions.

Theme one: FOI staff role in the information access system

Correlating the replies in the online survey, there was broad agreement that facilitating access to information was a major part of the role of FOI practitioners. This is illustrated by the following quotes from the interviews and focus groups:

“The first part of the role is to try to navigate the applicant through what is really a quite complex legislation. The second role is to educate your colleagues in what FOI is and how it works.” – interviewee E.

“My role as the FOI manager is to make sure our FOI teams facilitate access to information as effectively as possible and often that means advising agency sections on what information can be released without an FOI request.” – interviewee F.

Question: *and what reactions do you get from agency sections when you suggest releasing information without a FOI request?*

“Generally positive. Often, it’s about stake holder management, educating them what FOI is and that according to our proactive disclosure policy, FOI is really the last resort in releasing information.” – interviewee F.

However, there are still pockets in some agencies where an older view of information access dominates, as interviewees G and H observed:

“There are still people [in agencies] who don’t believe in FOI at all, that basically it should be a closed shop. But I think they are very few and far between now. I think gradually the culture of more openness has developed.” – interviewees G and H.

Interviewee P observed that being a junior staff member can sometimes be a challenge when it comes to how the act is interpreted:

“For a while we had a more senior FOI practitioner as supervisor who wasn’t very knowledgeable of the FOI act, or willing to interpret it as generously and possible. The person often pushed back on requests and often said, refer them somewhere else. I didn’t

feel right about this at the time, but felt I couldn't raise this as a junior staff member...if I had had more training at that point, I would have been able to challenge this. I do challenge this particular manager now and mostly it works." – interviewee P.

In this theme the issue of processing fees and charges were discussed and the following question was posed to one FOI manager. It should be noted that this was the only time any of the interviewees referred to the government owing information.

Question: *there is an argument that goes; agencies hold the information on behalf of the public and they have already paid for this, so why should they pay processing fees?*

"Yes, we do hold the information on behalf of the public, but it's our information to own and to use." – interviewee B.

At the other end of the fees and charges continuum, we find interviewee E:

"I think there is hypocrisy in the legislation. It's about giving access to information, but only to those that have \$21.70 on their hand...I don't understand why we have to have an application fee...I have an overall issue with charging for government information."

Question: *so, we should scrap all fees?*

"Yes". – interviewee E.

Theme two: proactive disclosure policy

The most interesting observation in this theme was the extent to which the agencies in the sample had discussed (and in two cases) and developed advanced proactive disclosure policies sanctioned by senior agency management. The following quotes illustrate the discussion:

"Staff ring up and say I had someone request this information this morning and I can advise them on the spot that you can release that to them without a FOI request...If it's a lot of work [finding and collating the information], we'll ask them to put in a request, if not, if it's straight forward, we'll release the information without them having to put in a request." – interviewee A.

Question: *Do you have any advice to others that want to build a proactive information release culture?*

“Training sessions where the relationship with the community in terms of facilitating access to information is work shopped instead of always demanding that they put in FOI requests.” – interviewee A.

The focus groups and interviews also uncovered clear differences between agencies when it came to attitudes towards proactive release and the cost of processing requests:

“If you spend hours and days going through thousands of pages to decide what to release and what to redact, I think it’s fair to charge for this.” – interviewees C and D.

And on proactive release of information:

“All information should be reviewed before it’s released to the public. Our agency deals with a lot of personal information, so I’m not sure it would work for us.” – interviewees C and D.

This can be contrasted with another agency that has a well-developed proactive information release policy:

“In our team we have a proactive disclosure policy. We inform applicants that there are other ways than a FOI request to get the information they want...there is a culture of pro-disclosure in my agency. I don’t know where it comes from, but there is. I see it in senior agency management being OK with potentially embarrassing information [for the agency or the government] being released...on a case by case basis, so it’s based on experience. All I know is that when I propose full release decisions, they are going out to the public as full release decisions.” – interviewee E.

Interviewee E emphasises that having an explicit, written management endorsed proactive disclosure policy is very useful for a FOI practitioner in their role:

“Yes, the policy makes it much easier when I deal with different stake holders inside my agency. Whether you put it [proactive information release] in the act or not, an agency policy is still needed.” - interviewee E.

According to interviewee F, the policy was endorsed by the agency senior executive a few months before OVIC produced its updated guidelines for proactive disclosure.

This can be contrasted with what happens in an agency with no clear proactive disclosure policy:

“What can be released outside the act, I base on my experience. It would be very useful to have a policy document on proactive release to guide us.” – interviewee U.

This lack of a clear policy also makes it harder to educate the public about information access according to U:

“I think we’re very poor communicators to the public in how proactive release works and what options are available apart from FOI.” – interviewee U.

U also points to a culture in the agency that is rooted firmly in the past:

“I like to challenge the system when I write my recommendations to challenge what we have always done and released. At times I get the feedback that we should not change decision patterns, and I find that frustrating.” – interviewee U.

Interviewees I and J are FOI managers in another agency with a written and agency management endorsed proactive disclosure policy. When asked if the policy had led to fewer FOI requests, or withdrawn requests, they say that this is hard to estimate, as these numbers are not captured. They emphasise however, that the policy has become crucial to the practical operation of FOI and information access in their agency. They estimate that since the implementation of the policy, the FOI staff spend much more time facilitating access to information rather than assessing formal FOI requests. They estimate the split to be 70/30.

“It’s tricky to know because we have spent so much time educating and re-assuring sections in our agency about what can be proactively released that a lot of what is being released, we don’t know of.” – interviewees I and J.

The common denominator for agencies with a proactive release policy is its size. Two the agencies in this sample are large, with a significant number of FOI staff. However, smaller agencies that may not have a policy seek other avenues.

“We work with de-identified data and put this online to make information available to the public without using an FOI request.” – interviewee M.

Interviewee O, a FOI manager, can see a need for both a policy and a procedure:

“I think there is a need for both a policy, which is sets out the higher level aims and goals, and then a procedure that delivers on the details.” – interviewee O.

And points out that OVIC has a role to play in this.

“There is a need to provide agencies with examples of what best practice [proactive information disclosure] policies and procedures look like.” – interviewee O.

One of the agencies in the sample stood out when it came to how the management level viewed FOI compared to some of the coalface staff handling requests:

“When I did OVIC training the message was – ‘how can the act be interpreted to release as much information as possible’, but in my agency, it seems the opposite applies – what exemption can we apply to not release information.” – interview FOI practitioner.

The reason for this perception can possibly be traced to the attitude to pro-active release held by one of the senior FOI officers in this agency:

“Proactive release is not part of FOI. OVIC has responsibility for information policy [such as proactive release of information], I have responsibility for release of information under the FOI Act...my job isn’t to release as much information as you can to the public, my job is to respond to FOI requests.” – interview FOI practitioner.

The above replies illustrate a serious difference in how FOI management in this agency and how some of the FOI staff described their roles. This goes directly to forming the information access culture in this agency and indicates serious differences in how this culture is viewed and perceived.

Theme three: the role of agency executive management

The principal question explored in this theme is how a positive FOI culture is formed and maintained.

“I suppose we want to work with our community, our own internal culture is to assist, from executive management down.” – interviewee A.

Question: *so, the culture is formed from the top?*

“I think it is, because we’ve really worked on it. We’re about to have a change of executive management, it’ll be interesting to see if this culture stays or changes.” – interviewee A.

“FOI is seen as a good thing as a whole in our agency...this was not the case in the past” – interviewee B.

Question: *when did this change?*

“When agency management changed”...and...“having OVIC to consult, even if they can’t tell me what to decide, is a very important resource.” – interviewee B.

Question: *if you would rank what’s most important to culture change?*

“I’m going to have to say management.” – interviewee B.

According to interviewee F, their agency has made FOI performance a part of the monthly agency performance report and this has helped elevate the FOI profile and the proactive information release policy in the agency.

“You have to have the support from senior management to build a positive FOI culture...every email we send asking for information [from sections in the agency], has in red that we need to meet these timelines, because that’s what the executive has stipulated.” – interviewee F.

According to interviewees I and J executive management in their agency:

“...care enormously about FOI, a lot thanks to our current and previous senior management that have raised the profile of FOI over the years and now the different sections of the agency respond very quickly to FOI requests.” – interviewees I and J.

All 27 interviewees were unanimous in pointing out the importance of senior management/executive in building and maintaining a well-functioning information access and FOI culture in agencies. From a research point of view, it should be noted that having such unanimous responses on a topic as complex as administration/interpretation culture is very unusual, which further illustrates the strength and importance of this finding. This is further illustrated by the three quotes below:

Question: *so, should OVIC focus on the senior agency executive if they want to advocate for and affect culture change?*

“Without a shadow of a doubt.” – interviewee N.

“OVIC need to focus on changing the culture at the top – more important than training the coal face staff.” – interviewee R.

“With any change of culture, we need a champion at senior executive level.” – interviewee A1.

Theme four: third-party consultation and other changes/amendments to the Victorian FOI Act

The third-party consultation section of the Victorian FOI Act was amended in 2017 to further strengthen the consultation process in requests, where “practicable”. There was a strong consensus (close to all interviewees mentioned and agreed on this) that the term “practicable” was unclear, and many of the FOI practitioners saw it as similar to “mandatory”. According to the interviewees, this has significantly increased the processing times of requests.

“Third party consultation before decision is a hindrance and slows the process down significantly.” – interviewees G and H.

“Make it clearer in the act what ‘practicable’ means. Currently it’s stressful for staff and for the people being consulted and it’s so time consuming and delays requests.” – interviewees I and J.

Similar to the online survey, several interviewees raised the issue of the Victorian act not including a section defining vexatious requests. Several participants pointed out that some FOI requestors get stuck in a loop and have put in hundreds of similar requests, and have stopped listening to advice from FOI practitioners. They suggested the act should be amended to define what a vexatious request is and include an option where a request, after being classified as vexatious, does not have to be processed. The justification, according to the interviewees that raised this issue, was that processing vexatious requests take up time and resources from other, non-vexatious, requests.

When the issue of the use of FOI/RTI ‘disclosure logs’ (used in Queensland, NSW and the Commonwealth) was raised, overall knowledge of how they work was low. Interviewee E had this to say about disclosure logs:

“In a way, internally our agency already does that, if a decision has already been made in one case, it’ll be carried over if a similar request is made...but it could be useful to formalise this process [by amending the Victorian act to include disclosure logs]”. – interviewee E.

However:

“If you’re going to implement disclosure logs, they need to be uniform across the agencies. Look at the federal system and learn from how some agencies did not abide by the disclosure logs.” – interviewee E.

Question: would it be useful to amend the Victorian FOI Act so that it explicitly mentions proactive information disclosure as the default and first option for information access?

“Yes, very useful to have proactive release explicitly mentioned in the act. We could use that as a lever when it comes to sections [in the agency] that aren’t so interested in releasing information.” – interviewees I and J.

Close to 80% of the interviewees saw strong merit in amending the act to explicitly mention proactive information release. Some interviewees wanted a wholesale review of section two of the act:

“Pretty much the whole section two of the act that covers proactive release is outdated and needs to be updated. We’re already working beyond what the act stipulates in terms of proactive release because the current version of the act is so unclear on it.” – interviewee E.

Theme five: Hiring policy for FOI staff

This was a theme that evolved during the interview process and was not part of the initial question templates. However, it had become clear by the second focus group that this was a theme clearly relevant to the building of FOI and information access culture. Interestingly, it emerged that it was easier for smaller agencies to recruit FOI practitioners as they were not bound by recruiting from a large staffing pool, which is the case for some larger agencies. The quotes below from FOI managers illustrate some of the properties they find important when recruiting.

“Recruitment of the right staff is crucial. You need staff that take value and self-worth from the role. And this is partly enhanced by them being trusted to make decisions, which isn’t necessarily very common for public servants.” - interviewees I and J.

When recruiting, I and J look for:

“Someone who is curious, personable and has attention to detail...they have to be personable and have emotional intelligence because they need to manage and relate to stake holders: applicants, different sections in the agency, etc.”

N and O manage a small FOI team and emphasised several times that staffing plays a major role when building a maintaining a positive FOI culture.

“We look for someone who is good at customer service and a problem solver...is a lateral thinker, has high work ethics and strong understanding of FOI and privacy that will build trust with stake holders”. – interviewees N and O.

All FOI managers agreed that good communication skills and high EQ (emotional intelligence) were vital properties. At the same time, however:

“You can’t have a shrinking violet in a small FOI team. The person needs to have a personality that allows for effective dealings with other people.” – interviewees N and O.

DISCUSSION AND RECOMMENDATIONS

The aim for this project was to capture and map the culture of administering FOI in a sample of government agencies in Victoria to inform training/awareness programs and campaigns in order to increase the functionality of the information access system.

The research questions were as follows:

- What is the understanding among FOI officers/administrators (on both senior and other levels) of the purpose and functionality of the access to information system in Victoria?
- How do FOI officers/administrators (on both senior and other levels) view/describe their roles within in the information access system?
- Do they think FOI/RTI functions well in terms of delivering what the law promise? If so why? If not, what is needed to improve functionality?

In terms of the overall FOI culture among the agencies in the sample, based on the data, and in particular the interviews, it is fair to say that the intention of facilitating access to information is strong. The online survey indicated that of the 38 FOI staff completing the survey, only two provided replies that pointed to the opposite.

Not surprisingly, there was some difference between agencies, especially between the ones that had created a proactive/informal information release policy that aimed to release as much information as possible outside the act (meaning that FOI users did not have to lodge FOI requests), and the agencies that did not have such policies. These agency-level policies seemed to be the most potent way of building and maintaining a facilitative information access culture in the agencies.

In sum, it can be concluded that in the pilot study sample there was a strong will among most the agencies to keep building toward a culture of facilitating information access for FOI users, but that there were a number of obstacles addressed in the recommendations below.

Research question one:

- What is the understanding among FOI officers/administrators (on both senior and other levels) of the purpose and functionality of the access to information system in Victoria?

The data pointed to two categories of understanding and overall interpretations of the purpose and aims of the act:

1. A narrow legal understanding of the aims, eg. receiving and processing FOI applications.
2. A broader understanding including proactive release of information and to interpret the act as widely as possible enabling the agency to release as much information as possible.

The majority of the participants, close to 70%, were in the second category. However, it should be noted that some of the FOI managers interviewed subscribed to the first category. This indicates that there is still work to be done for OVIC regarding professional development if category two is to become the dominant interpretation of the Victorian FOI Act. It should also be noted that the agencies with a clear pro-active information release policy had staff that in greater numbers identified with category two, compared to agencies that did not have such a policy.

Research question two:

- How do FOI officers/administrators (on both senior and other levels) view/describe their roles within in the information access system?

The second research question is connected to the two categories identified in the first research question. Those that identified with the second category saw information access facilitation as important and at times more important than processing and assessing FOI requests. Interestingly, a number of junior FOI officers in agencies lacking a clear proactive information release policy expressed frustration that the main performance indicator was to have completed all their FOI files by the end of the month. This indicates that there is a willingness to expand upon how the effectiveness of FOI administration is measured. Here it seems OVIC should consider developing qualitative data points complementing the current quantitative assessment system.

Research question three:

- Do they think FOI/RTI functions well in terms of delivering what the law promise? If so why? If not, what is needed to improve functionality?

The replies to this question were much more mixed compared to the other two questions. Most participants thought that overall the Victorian FOI Act worked reasonably well, but there was broad agreement that certain sections need updating/amending, namely:

- The act needs to be reviewed for relevance to the current digital information environment;
- The third-party consultation section needs to be clarified;
- A section defining vexatious FOI requests and a remedy for such requests.

There was a close to consensus view that changes and amendments to the act alone is not enough to achieve a well-functioning information access system from a user's point of view. Participants spoke at length about the importance of a positive information access culture. Much time in the interviews was spent on discussing how such a culture is best built and maintained. In these discussions there was a clear standout – the crucial role of agency senior management. All 27 interviewees agreed that without the support of senior management, a positive information access culture cannot be built.

When asked what is more important to changing and building culture – government or the senior agency executive, all participants picked senior executive. However, from a theory framework point of view, the political dimension of information access should not be dismissed. This is firmly backed up by a plethora of accountability literature (Dunn, 1993; Przeworski, 1999; Willems, 2012). This is because, in the longer term, parliament and government will set the agenda for those leading government agencies. It may be that the FOI practitioners in this study refer to the more immediate effect of senior executive on information access culture because they have never experienced or seen impact from the political sphere in their area of expertise.

A case in point to illustrate the importance of the political dimension of information access is the relatively recent major reforms to the Commonwealth access to information system.

After the 2007 federal election, FOI reform was initially led by the Prime Minister's office and subsequently implemented by a senior minister who had a deep understanding of the importance of a well-functioning public information access systems. This led to far-reaching reforms of the federal FOI Act and the establishment of a properly funded federal Information Commissioner. When the government changed in 2013, this commitment stalled and the Office of the Australian Information Commissioner was defunded and almost closed down (Lidberg, 2016). This example illustrates well the impact the political sphere has on FOI and information access.

The 2010 review of administering FOI in Western Australia showed that there was strong support among ministers for the aims of the FOI act. The question is how and if, in practice, this sentiment is translated to the agencies (OIC, 2010). This question could be explored in a comprehensive study in Victoria and, potentially, other Australian jurisdictions. This is further outlined below in the recommendations section.

Finally, on culture, the importance of proactive information disclosure policies stood out as a vital culture building block. FOI managers I and J have concrete advice to share based on the work they have done in their agency regarding working up a policy:

- “Consult stake holder groups on what they want and need in terms of information access.”
- “Give the FOI teams as much autonomy as possible and let them drive the change in working up the policy.”
- “If you are to create something meaningful like a proactive release policy – you’ve got to own it.”
- “It’s of course harder in a smaller agency, but that’s where OVIC can play a really important role to support especially the smaller agencies.”

Recommendations:

The Victorian FOI Act 1982

1. Review the third-party consultation section, alternatively – OVIC to issue more detailed guidelines on third-party consultation;
2. Review and update the act to reflect the current digital information environment;
3. Review the pro-active disclosure sections in reformed FOI/RTI acts in other Australian jurisdictions (such as Queensland, NSW and the Commonwealth) and consider including a proactive disclosure section in the Victorian Act. This should also include a review of the 'FOI/RTI disclosure logs' that are used in several Australian jurisdictions.

FOI administration culture

4. Based on data obtained in the pilot study – the senior management level (such as the Secretary in government departments and the CEOs in local councils) is crucial in creating a user friendly and information access facilitation culture in agencies. OVIC should therefore focus its FOI education and information advocacy efforts on this level. Without the support from the senior agency level, all participants were unanimous in pointing out that little would change. The senior management level at agencies were deemed more important than the ministerial level by the participants in the pilot study when it comes to building a culture of information access that puts facilitation at the core;
5. OVIC to create tools useful for creating proactive information disclosure policies in government agencies. These tools could include examples of existing policies in agencies;
6. OVIC to hold workshops and seminars in how proactive information disclosure policies can be created;
7. Recruitment of FOI officers and managers were seen as crucial in building a culture of openness and information access facilitation. OVIC to draw up guidelines in collaboration with FOI managers and agency executives on recruiting FOI officers and managers;
8. The pilot study indicates that there are significant differences between Victorian agencies in how FOI/information access is viewed and implemented. It is therefore strongly recommended that the current study (after some amendments based on the finding in the pilot study) be implemented comprehensively in Victoria. This would supply OVIC with a complete picture of how FOI is implemented across the state and assist OVIC in designing the support needed to improve FOI functionality in Victoria. Based on the findings in the pilot study, the senior management team of agencies should be included in the comprehensive study. Following on from that conclusion is that the comprehensive study should also seek to capture the understanding of and attitudes toward FOI/RTI at the political ministerial level.

Funding for such a large study could be sought from the Australian Research Council via the linkage project scheme. If this avenue is pursued, the project could involve several other Australian jurisdictions. This would offer points of comparisons, which would be particularly useful if reformed FOI/RTI jurisdictions such as Queensland, NSW and the Commonwealth were to partner in the study. But the participation of non-reformed

states such as WA would also be highly useful. The principal advantage of this multi-jurisdictional approach is that each state/territory have pursued slightly different solutions to information access. Such as study would allow jurisdictions to compare approaches and learn from each other.

CONCLUSION

Capturing the culture in an organisation is complex, but the use of an online survey, focus groups and interviews in this study has clearly generated a number of actionable findings as manifested in the recommendations above.

As mentioned in the background section, accountability is the framework that underpins FOI and information access systems. To answer the question if Victorian FOI delivers accountable government and public administration, this study needs to be implemented across the whole jurisdiction and complemented with quantitative elements such as metrics of FOI requests submitted and processed and possibly a qualitative assessment of the content of the requests and the replies they generate from agencies. As pointed out in the final part of the recommendations, this would be particularly useful if done as a multi-jurisdiction comparison. The starting point for such work already exists in the nationally comparative FOI statistics compiled by the Information and Privacy Commission New South Wales, for which the NSW commission should be commended. Here the Office of the Victorian Information Commissioner should also be commended for its leadership in the continuous development of information access in Australia by commissioning this study.

In the day to day grind of processing FOI/RTI requests and files, it is easy to forget that public information access is a global phenomenon (please see the background section). One of the international information access bodies, the Open Government Partnership (OGP), participated in a research round table co-organised by Monash university and the Office of the Victorian Information Commissioner in September 2018 in the lead up to this pilot study. The OGP showed great interest in the project and could be a participant in the next phase of this study providing a comparative international dimension. In the lead up to the potential next stage of this research, I could be useful to contemplate what former UN Secretary General and Nobel Peace Prize laureate, Kofi Annan, had to say about knowledge gained via access to and sharing of information:

...it is ignorance, not knowledge, that makes enemies of men. It is ignorance, not knowledge, that makes fighters of children. It is ignorance, not knowledge, that leads some to advocate tyranny over democracy. It is ignorance, not knowledge, that makes some think that human misery is inevitable. It is ignorance, not knowledge, that make others say that there are many worlds, when we know there is one. Ours. (Annan, 1997).

LIST OF REFERENCES

- Annan, K. (1997). Speech at Global Knowledge Conference 1997. Retrieved from <http://www.deepsky.com/~madmagic/kofi.html>
- Banisar, D. (2006). Freedom of Information and Access to Government Record Laws Around the World. Retrieved from <http://www.privacyinternational.org/>
- Davies, C. Splichal, S. (Eds.) (2000). *Freedom of Information in the Information Age*: Iowa State University Press.
- Dunn, D., Uhr, J. (1993, September 2-5). *Accountability and Responsibility in Modern Democratic Governments*. Paper presented at the Annual Meeting of the American Political Science Association, Washington DC.
- Lamble, S. (2002). Freedom of Information, a Finnish clergyman's gift to democracy. *Freedom of Information Review* (No 97), 2-8.
- Lidberg, J. (2006). 'Keeping the Bastards Honest' - The Promise and Practice of Freedom of Information Legislation. *PhD*, 573. Retrieved from <http://www.lib.murdoch.edu.au/adt/browse/view/adt-MU20070115.121829>
- Lidberg, J. (2009). The International Freedom of Information Index – a watchdog of transparency in practice. *Nordicom*, 20(1), 167-182. Retrieved from www.nordicom.gu.se/common/publ_pdf/279_lidberg.pdf
- Lidberg, J. (2016). Information access evolution: Assessing freedom of information reforms in Australia. *Australian Journalism Review*, 38(1), 73-82. Retrieved from <http://search.informit.com.au/documentSummary;dn=276586269582318;res=IELLCC>
- Neuman, L. (2013). *Social Research Methods - Qualitative and Quantitative Approaches*. Sydney: Allyn and Bacon.
- OIC, Office of the Information Commissioner, Western Australia. (2010). *The Administration of Freedom of Information in Western Australia Comprehensive Report*.
- Paterson, M. (2015). *Freedom of Information and Privacy in Australia Information Access 2.0*. Melbourne: LexisNexis.
- Przeworski, A., Stokes, Susan C, Manin, Bernard (Ed.) (1999). *Democracy, Accountability and Representation*. Cambridge: Cambridge University Press.
- RTI. (2019). Right to Information Rating. Retrieved from <https://www.rti-rating.org/>
- Willems, T. Van Doren, W. (2012). Coming to Terms with Accountability. *Public Management Review*, 1-26, volume 14, issue 27.

Appendix A – online survey

FOI Victoria Administration Culture Survey

Section one:

This section asks questions about your views on the object and effectiveness of public access to government information in Victoria, including the *Freedom of Information Act 1982* (Vic) (**FOI Act**).

[All questions (bar the final comment question in each section) will use a Likert reply scale.]

Strongly agree Agree Neutral Disagree Strongly disagree

1. The overarching purpose of the FOI Act is to provide an efficient and low cost means through which the public can access government information.
2. Agencies in Victoria promote and fulfil the object of the FOI Act.
3. The Victorian information access system also involves the proactive and informal release of documents and information outside the FOI Act.
4. A well-functioning information access system ensures transparency and accountability in government decision making.
5. A well-functioning information access system is important to a healthy democracy.
6. Is there anything else you would like to add regarding the Victorian information access system or the objects of the FOI Act?

COMMENT BOX FOLLOWING Q6

Section two:

This section asks questions about your views on your current role in the Victorian information access system.

7. I play an important role in the Victorian information access system in facilitating or promoting access to information.
8. Part of my role involves facilitating or promoting proactive release of information.
9. Part of my role involves facilitating or promoting informal release of information upon request without requiring a person to make a formal FOI application.
10. I am provided with sufficient training and professional development to perform my duties effectively under the FOI Act.
11. My most important duty under the FOI Act is to facilitate access to information.
12. My most important duty under the FOI Act is to ensure sensitive information is NOT released.
13. Part of my role in administering the FOI Act is to make sure information potentially embarrassing to my agency or Minister is NOT released.

14. Part of my role in administering the FOI Act is to make sure information potentially embarrassing to the government is NOT released.
15. Is there anything else you would like to add regarding how you view your role in the information access system?

COMMENT BOX FOLLOWING Q15

Section three:

This section asks questions about your views on the functioning of the current information access system in Victoria, including the FOI Act.

16. In my view, the current information access system in Victoria functions well.
17. In my view, the lack of training and professional development for FOI practitioners is a significant impediment to a better functioning information access system in Victoria.
18. In my view, the lack of resources to administer the FOI Act in my agency is a significant impediment to a better functioning information access system in Victoria.
19. In my view, the lack of understanding about the requirements of the FOI Act from senior personnel in my agency is a significant impediment to a better functioning information access system in Victoria.
20. In my view, pressure from management level personnel in my agency NOT to release sensitive information under the FOI Act is a significant impediment to a better functioning information access system in Victoria.
21. In my view, pressure from executive level personnel in my agency NOT to release sensitive information under the FOI Act is a significant impediment to a better functioning information access system in Victoria.
22. In my view, pressure from the office of the Minister responsible for my agency NOT to release sensitive information under the FOI Act is a significant impediment to a better functioning information access system in Victoria.
23. Is there anything else you would like to add regarding the functioning of the current information access system in Victoria?

COMMENT BOX FOLLOWING Q23

Section four:

This section asks questions about your views on areas for potential improvements to the information access system in Victoria.

24. The information access system in Victoria needs to be improved.
25. The most effective way to improve the information access system in Victoria is by changing legislation.
26. The most effective way to improve the information access system in Victoria is by changing culture and practice.

- 27. The focus of improvements should be on proactive disclosure and informal release of government information.
- 28. The focus of improvements should be on streamlining the administrative requirements under the FOI Act.
- 29. The focus of improvements should be on reducing FOI exemptions.
- 30. Is there anything else you would like to add regarding improvements to the information access system in Victoria?

COMMENT BOX FOLLOWING Q30

- 31. Is there anything else you would like to add?

COMMENT BOX TO FOLLOW Q31

Appendix B – interview/focus group interview template FOI officers

FOI Victoria Administration Culture focus group question template

Section one: focus group administration

Date of focus group:

Have you all read and understood the explanatory statement for this project? Do you have any questions regarding this study?

The purpose of this focus group is to follow up on the online survey regarding the administration of FOI in Victoria that most of you have completed. Your replies today will deepen our understanding of how FOI in Victoria is administered and it's also an opportunity for you to reflect on your practice and help influence the direction in which FOI in Victoria will go in the next few years.

My role during the coming hour is to be a facilitator. In practice, this means that I ask questions to keep the discussion on track, but you should feel free to add any thoughts or opinions at any time. You don't all have to answer all questions. One of the properties of a focus group is that of a structured discussion, and like in all discussions, you'll have more to say on some topics, and less on others, and that's absolutely fine.

The structure will be similar to the one used in the online survey. There will be three sections:

1. The objectives and effectiveness of FOI in Victoria;
2. Your role in the Victorian information access system;
3. How you think the current system functions and what improvements are needed and how they are best made.

Section one:

How would you describe the overarching objective of the Victorian public information access system?

Anticipated follow up: if you would rank, one to three, the objectives we've discussed, what would that rank be?

In your view, what role does FOI play in a democracy?

How do you see the role of proactive/informal release of information in the information access system?

Anticipated follow up: can you describe how proactive release works in your agency?

Section two:

This section asks questions about your views on your current role in the Victorian information access system.

How would you describe your role in the Victorian information access system?

Anticipated follow up: Do you see your role as predominately information access facilitator for FOI users, or as an assessor of what information can be released?

Does your role include advice to FOI users on how to access information, eg. if you can't assist, should you refer the information seeker on to where you think the information will be available?

If you receive a request asking for what you understand is information sensitive or embarrassing to your department, what is then your course of action?

If you receive a request asking for what you understand is information sensitive or embarrassing to the Minister or to the government, what is then your course of action?

Do you see it as your role to protect the Minister or the government from embarrassing information being released?

Follow up: Why? or Why not?

Section three:

Current functionality and what can be improved

How well, or not well, do you think the current FOI system in Victoria functions?

Does the system deliver on the objectives of the Victorian FOI Act that we discussed before?

Anticipated follow up: What do you base your assessment on? Can you provide examples?

Do you have the resources (staffing, training, access to professional development) to implement FOI effectively?

Follow up: what are the principal constraints?

How would you describe the relationship between you and the senior FOI decision maker in your agency?

How would you describe the relationship between you and management in your agency?

How would you describe the relationship between you and the Minister/political leadership in your agency?

Do you think the information access system in Victoria needs to be improved?

Follow up: Why? or Why not?

What needs to be done?

What do you think would be the most effective way to improve the system?

Follow up: change/amend the FOI Act and/or a change of FOI administration culture?

Should the Victorian FOI Act be amended to explicitly mention pro-active release of information as the default part of the access to information system?

Follow up: Why or why not? how would such a change impact on your FOI practice?

Follow up: The commonwealth and Queensland have used FOI disclosure logs for a number of years now – do you think this should be implemented in Victoria too?

Follow up: why? Or why not?

How would you describe the current FOI administration culture?

What would be the best way to change FOI administration practice culture?

Follow up: professional development? Information campaigns? Agency management leadership? Political leadership?

Do you discuss in your teams or agency the role of FOI administration culture?

What role does proactive release of information play in affecting culture change?

IS THERE ANYTHING ELSE ANY OF YOU WOULD LIKE TO ADD?

Appendix C – interview template FOI managers

FOI Victoria Administration Culture individual interview template

Date of interview:

Have you read and understood the explanatory statement for this project? Do you have any questions regarding this study?

The purpose of this focus interview is to follow up on the online survey regarding the administration of FOI in Victoria that you have hopefully completed. Your replies today will deepen our understanding of how FOI in Victoria is administered and it's also an opportunity for you to reflect on your practice and help influence the direction in which FOI in Victoria will go in the next few years.

The structure will be similar to the one used in the online survey. There will be three sections:

1. The objectives and effectiveness of FOI in Victoria;
2. Your role in the Victorian information access system;
3. How you think the current system functions and what improvements are needed and how they are best made.

Section one:

How would you describe the overarching objective of the Victorian public information access system?

Anticipated follow up: if you would rank, one to three, the objectives we've discussed, what would that rank be?

In your view, what role does FOI play in a democracy?

How do you see the role of proactive/informal release of information in the information access system?

Anticipated follow up: can you describe how proactive release works in your agency?

Section two:

This section asks questions about your views on your current role in the Victorian information access system.

How would you describe your role in the Victorian information access system?

Anticipated follow up: Do you see your role as predominantly information access facilitator for FOI users, or as an assessor of what information can be released?

Does your role include advice to FOI users on how to access information, eg. if you can't assist, should you refer the information seeker on to where you think the information will be available?

Follow up: Do you encourage your staff to be information access facilitators?

In practice – how do you encourage them? (verbally? Instructions? Do you follow up on their practice?)

If you receive a request asking for what you understand is information sensitive or embarrassing to your department, what is then your course of action?

If you receive a request asking for what you understand is information sensitive or embarrassing to the Minister or to the government, what is then your course of action?

Do you see it as your role to protect the Minister or the government from embarrassing information being released?

Follow up: Why? or Why not?

Section three:

Current functionality and what can be improved

How well, or not well, do you think the current FOI system in Victoria functions?

Does the system deliver on the objectives of the Victorian FOI Act that we discussed before?

Anticipated follow up: What do you base your assessment on? Can you provide examples?

Do you have the resources (staffing, training, access to professional development) to implement FOI effectively?

Follow up: what are the principal constraints?

How would you describe the relationship between you and your FOI team/s?

How would you describe the relationship between you and management in your agency?

How would you describe the relationship between you and the Minister/political leadership in your agency?

Do you think the information access system in Victoria needs to be improved?

Follow up: Why? or Why not?

What needs to be done?

What do you think would be the most effective way to improve the system?

Follow up: change/amend the FOI Act and/or a change of FOI administration culture?

Should the Victorian FOI Act be amended to explicitly mention pro-active release of information as the default part of the access to information system?

Follow up: Why or why not? how would such a change impact on your FOI practice?

Follow up: The commonwealth and Queensland have used FOI disclosure logs for a number of years now – do you think this should be implemented in Victoria too?

Follow up: why? Or why not?

How would you describe the current FOI administration culture in your agency?

What would be the best way to change FOI administration practice culture?

Follow up: professional development? Information campaigns? Agency management leadership? Political leadership?

Do you discuss with your team/s or agency the role of FOI administration culture?

What role does proactive release of information play in affecting culture change?

IS THERE ANYTHING ELSE ANY OF YOU WOULD LIKE TO ADD?

Further information

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