

**Public Access Agency Reference Group Meeting**

**Date:** Monday, 25 November 2019

**Time:** 2:00 – 4:00pm

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

Minutes

# Participants

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

Ianina Belski, Assistant Commissioner Public Access Reviews, OVIC

Greg Burnie, Acting Assistant Commissioner Public Access Resolution, OVIC

Simone Martin, Senior Manager Communications & Education, OVIC

Matthew Fiford, Acting Manager – Investigations and Assurance, OVIC

Teagan Morton, Senior Investigations Officer, OVIC

Cameron Montgomery, City of Ballarat (by phone)

Jude Hunter, Victorian WorkCover Authority

Lisa Scholes, Department of Health and Human Services

Melinda Robinson, Department of Justice and Community Safety

Monica Barnes, Country Fire Authority Richard Long, Monash University Robin Davey, Victoria Police

Sally-Anne McKinney, Eastern Health Serena Hildenbrand, VicRoads

Sarah Crossman, Secretariat, OVIC

# Meeting minutes

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| **1.** | **Welcome**   * Meeting start: 2:07pm. The Public Access Deputy Commissioner welcomed everyone.   **Apologies**   * Jane Feeney, Department of Education and Training * Diana Battaglia, Alfred Health * Samantha Oliver, City of Melbourne * Lauren Reader, Macedon Ranges Shire Council   **Previous meeting minutes**   * All attendees confirmed the minutes of 26 August 2019. * The Public Access Deputy Commissioner noted an action item from the 26 August 2019 meeting has been actioned. The item was a request for OVIC case managers to provide direct phone numbers in correspondence to agencies. |
| **2.** | **OVIC update**   * Membership of International Conference of Information Commissioners   o The Public Access Deputy Commissioner noted that in September 2019 OVIC became an accredited [member](https://www.informationcommissioners.org/office-of-the-victorian-ic) of the International Conference of Information Commissioners (**ICIC**). |

Unclassified

The ICIC connects Information Commissioners, Ombudspersons and other bodies charged with overseeing the implementation of access to public information legislation.

* Hosting of Association of Information Access Commissioners meeting
  + The Public Access Deputy Commissioner noted OVIC is will host the next Association of Information Access Commissioners meeting early next year. The AIAC is comprised of all Australian and New Zealand Information Commissioners and Ombudspersons, and meets biannually to discuss a range of FOI and Right to Know issues in each jurisdiction.
* Proactive disclosure discussion paper
  + The Public Access Deputy Commissioner noted OVIC will develop a discussion paper on proactive release of information following the publication of Associate Professor Johan Lidberg’s report on ‘The culture of administering access to government information and freedom of information in Victoria’. A key finding from that report highlighted the importance of proactive release of information and that it needs to be better supported.
  + In 2019, OVIC commissioned Associate Professor Johan Lidberg of Monash University to facilitate a pilot study and produce independent research on the culture of the administering the FOI Act and the Victorian information access system overall. The study was conducted from May to August 2019, following which Associate Professor Lidberg produced the report.
  + The Public Access Deputy Commissioner noted the discussion paper will likely be published early next year, and OVIC welcomes all submissions in response.
* Operational update
  + The Acting Assistant Commissioner – Public Access Resolution provided an OVIC operational report on review and complaint figures, noting:
    - The Public Access Team achieved its target of having fewer than 225 open review matters by 30 September 2019, getting down to 220 reviews and the team reduced complaints down to 78 open complaints. The number of complaints has since increased, due to the number of complaints OVIC has recently received.
    - As at the morning of 25 November 2019, OVIC has 84 open complaints and 214 open reviews.
* Electronic document project
  + The Acting Assistant Commissioner – Public Access Resolution provided an update on the electronic documents project, noting OVIC is working towards receiving all review documents in electronic format. OVIC currently receives around 50% of documents in electronic form already, the majority of which are provided by email, then by USB and CD. In exploring options, OVIC is focused on ensuring the electronic provision of documents is done in a secure manner.
* Publication of Notices of Decision
  + The Assistant Commissioner – Public Access Reviews noted that on 3 October OVIC celebrated a milestone in that 100 decisions have been published since 1 July this year. As at this morning, there are 134 decisions published. The decisions are first published on OVIC’s website, then on AustLII a few days later.
  + OVIC would welcome feedback from agencies about published decisions. If agencies have any concerns about the publication of sensitive information in a decision, contact the Assistant Commissioner – Public Access Reviews directly within five business days of

receiving the decision. Decisions are published after five business days from the date the decision is provided to the agency and the applicant.

* + The Assistant Commissioner noted the Victorian Information Commissioner AustLII page has been accessed over 7000 times since it was launched in July. The most accessed decisions have been:
    - *AG6 and Merit Protection Boards (Freedom of Information)* [2019] VICmr 60 (10 July 2019) – The Information Commissioner agreed with the Agency’s decision and confirmed that the Agency is not required to process the Applicant’s request under section 25A(1) as processing it would substantially and unreasonably divert the resources of the agency from its other operations.
    - *‘AA3’ and Northern Health (Freedom of Information)* [2019] VICmr 3 (7 March 2019)

– The decision of the A/PADC agreed with Agency’s decision to exempt information under sections 33(1) and 35(1)(b) in documents contained on the Applicant’s own medical file. The exempted information did not relate to the Applicant’s family

member nor to a family member’s medical treatment. Rather, the information

exempted was provided by a third party to the Agency.

* + - *‘AB6’ and St Vincent’s Hospital (Freedom of Information)* [2019] VICmr 15 (26 March 2019) – The decision of the A/PADC agreed with the Agency’s decision that the

Applicant’s own health records were exempt under section 35(1)(b) as the

information exempted was provided by a third party.

* Staff updates and recruitment
  + The Assistant Commissioner – Public Access Reviews noted some minor staff movements since the last Reference Group meeting on 26 August 2019.
* Stakeholder engagement, education and training
  + The Senior Manager Communications & Education provided the following updates on

OVIC’s stakeholder engagement activities and its education and training.

* + Right to Know Day 2019
    - To celebrate Right to Know Day 2019, OVIC:
      * hosted a public forum on 24 September;
      * participated in a Right to Know Day event with the City of Kingston;
      * published a media release on research coordinated by the Information and Privacy Commission NSW regarding community attitudes to FOI;
      * published a joint media statement with Monash University regarding the publication of Associate Professor Johan Lidberg’s report on cultural attitudes to FOI in Victoria. This was picked up by Jon Faine and Sven Bluemmel participated in an interview with Jon Faine on this topic.
      * published a blog post on this report, which draws out and summarises its key themes;
      * published a joint media statement with Information Commissioners and Ombudsman from Australian and New Zealand jurisdictions;
      * published a blog post with FOI tips for the public;
      * published a blog post with FOI tips for agencies; and
      * published a suite of digital collateral including a signature block, twitter block and posters.
  + Consumer videos
    - OVIC published the first of three FOI consumer videos on its website. The [short video](https://ovic.vic.gov.au/freedom-of-information/for-the-public/making-an-access-request/) explains how to make an FOI request to members of the public. It was created specifically for agency use and is one of the most popular items visited on the website since it was released. OVIC is happy to share the video if desired.
    - The next two videos in progress relate to applying for a review and making a complaint to OVIC. These videos will be in the same form as the FOI request video and will be available soon.
  + Training
    - OVIC continues to offer free, regular, FOI training to agencies. We have three days of training, including: administering the FOI Act, core exemptions in the FOI Act, and advanced exemptions in the FOI Act.
    - OVIC is in the process of updating its training content to reflect the Professional Standards, which will be reflected in training from December onwards.
    - OVIC also offers bespoke training sessions which can be individually tailored to suit agency needs. Please contact OVIC if you are interested in exploring this option.
  + Information Access Series Seminars
    - OVIC had two Information Access Series Seminars since the last meeting, including one on the Monash University FOI and Information Access Culture in Victoria Report and another on working with OVIC. OVIC receives a high number of live stream views on its Periscope (between 60 to 100 views per seminar).
    - Members discussed ideas for seminars in 2020, including:
      * recent OVIC decisions, particularly those which are frequently visited on

OVIC’s website;

* + - * proactive disclosure;
      * CCTV, redaction software, pixilation;
      * soft skills such as negotiation, dealing with difficult people, dealing with sensitive files; and
      * obligations under the Professional Standards, particularly for Principal Officers.
    - OVIC welcomes further suggestions for seminar topics for 2020.
* Stakeholder engagement survey
  + OVIC’s Stakeholder Engagement Survey is now closed and OVIC collected over 300 survey responses. If you’re still interested in completing the survey, contact OVIC and we can provide a link. The survey only takes 5-8 minutes to complete.
* OVIC LinkedIn
  + OVIC recently launched a [LinkedIn profile.](https://au.linkedin.com/company/ovicgov) This will be different to OVIC’s Twitter account,

and we encourage everyone to visit the page.

* Other ways to stay informed on OVIC’s activities – follow OVIC on Twitter, subscribe to OVIC’s

Newsletter.

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| **3.** | **Overview of OVIC’s Annual Report – Freedom of Information**   * The Public Access Deputy Commissioner noted OVIC’s Annual Report has been published and is available on OVIC’s website. Thank you to everyone who provided data for the FOI survey. The Deputy Commissioner spoke to some statistics from the Annual Report including:   FOI in Victoria   * Victorian agencies received 38,873 FOI requests in 2018-19. This is a slight decrease from last year where Victorian agencies received 39,040. Victoria received 6 less FOI requests than the Commonwealth, meaning it received the second largest number of FOI requests in 2018-19. * Personal requests continue to comprise the most common type of request – with around 66% of requests being personal and 34% of requests being non-personal. However, the number of non- personal requests seems to be increasing slightly (in 2017-18, non-personal requests comprised around 27% of all requests, whereas in 2018-19 this increased to around 34%). * Agencies reported around 83% of requests were processed within the requirements of section 21, which is a slight increase from last financial year. There was also a small increase to the number of requests processed outside the requirements of section 21 from around 3% in 2017- 18 to around 5% in 2018-19. * Victorian agencies and Ministers made 34,564 FOI decisions in 2018-19, which is a record number of decisions. Of those decisions, around 65% were to release in full, 31% release in part, and 4% were denied in full. Section 33 continues to be the most commonly applied exemption, followed by section 38, section 35, section 30 and then section 31. * In terms of difficulties in administering the FOI Act, agencies reported:   + the third party consultation requirements increased their administrative workload significantly and has led to delays in finalising decisions due to the time needed to receive consultation responses;   + difficulties meeting legislative time frames due to limited dedicated staff;   + costs recovered do not reflect the time and costs associated with processing requests;   + inability to recruit suitably skilled and knowledgeable FOI officers;   + increasing FOI workload due to growing number of FOI requests received and requests becoming more voluminous impact agencies’ ability to administer the FOI Act; and   + reduced timeframe impact agencies’ ability to administer the FOI Act. * Around 19% of agencies reported efforts made to implement the spirit and intention of the FOI Act including:   + releasing information outside the FOI Act;   + making a wider range of information available on websites and social media;   + waiving application fees and access charges to facilitate the release of documents at the lowest reasonable cost;   + consulting with applicants to better understand requets and to assist them in making valid FOI requests;   + undertaking further education of agency staff involved in processing FOI requests to improve their ability to provide better and more timely decisions; and   + providing access to a class of documents for a fee. |

* + 50 agencies (compared with 38 agencies in 2017-18) reported their proactive efforts to release information led to a decrease in FOI requests received or having to be processed.

Reviews received by OVIC

* OVIC received 607 applications for review in 2018-19, compared with 636 in 2017-18 (around a 5% decrease).
* Members of the public continue to comprise the largest cohort of applicants in 2018-19, with 92% of applicants being members of the public, 4% being organisations, 2% being media, and less than 2% being Members of Parliament.
* For the requests that came to OVIC on review, the documents sought by applicants broadly included:
  + police records
  + medical records
  + child protection records
  + employment-related records
  + prison records
  + school records
  + investigation records
  + government decision making records
  + local government records
  + property and planning records
  + workplace accident records
  + motor vehicle accident records
* OVIC finalised 735 review applications in 2018-19, with:
  + 58% finalised through a formal decision made by a Commissioner;
  + 21% finalised through informal resolution facilitated with OVIC’s assistance;
  + 11% were dismissed;
  + 5% were not accepted as they fell outside of OVIC’s jurisdiction;
  + 4% went to VCAT on application by the applicant as a decision was not made by a Commissioner within time.

Complaints received by OVIC

* OVIC received 506 complaints in 2018-19, compared with 475 complaints in 2017-18 (around a 6.5% increase).
* The most common complainants are members of the public (95%). Organisations comprise 2% of complainants, Members of Parliament comprise 2% and the media comprise 1%.
* Common complaints included:
  + a decision that a document does not exist or cannot be located;
  + inadequate document searches conducted; and
  + delays in processing FOI requests.
* OVIC finalised 551 complaints in 2018-19, compared with 492 in 2017-18. This represents a 12% increase and the largest number of complaints finalised in the last five years. In terms of complaint outcomes:
  + 66% of complaints were finalised through informal resolution with OVIC’s assistance;
  + 30% of complaints were finalised through a decision to dismiss or not accept a complaint; and
  + 4% of complaints were finalised through a decision that a complaint falls outside our jurisdiction.
* Members discussed the Annual Report. One member noted the lower number of decisions to release in full is good because it means the requests that are processed under FOI are ones that need to be processed under FOI. The member noted full release tends to suggest there might be another way to release the information depending on the circumstances.

# Professional Standards Project

* + OVIC’s Senior Investigations Officer provided an update on the Professional Standards Project, noting OVIC is developing a self-assessment tool for all agencies who process FOI request to use to assess compliance with the Professional Standards. She noted OVIC is working with six agencies to gather information on their current FOI administrative practices, how those agencies feel those practices would measure up to the Professional Standards, and any challenges they foresee. This information will be used to inform the development of the assessment tool.
  + The Senior Investigations Officer thanked the participating agencies and noted the aim is to publish the self-assessment tool in April 2020.

# International Day for Universal Access to Information

* + The Assistant Commissioner – Public Access Reviews noted that on 16 October 2019, the United Nations General Assembly adopted a resolution to proclaim 28 September the International Day for Universal Access to Information. She noted Dee-Maxwell Saah Kemayah, Sr. (Liberia), [introduced](https://www.un.org/press/en/2019/ga12201.doc.htm) the draft resolution to the General Assembly, noting access to information is essential for the democratic functioning of a society. By adopting the draft, the Assembly will create the biggest global platform for Governments, civil society organisations, citizens and development partners to reflect the importance of access to information.

# Agency items for discussion

* + The Public Access Deputy Commissioner noted that at the Reference Group meeting on 26 August 2019, members discussed recruitment and resourcing considerations.
  + Members discussed difficulties with sourcing suitably skilled FOI staff, particularly for agencies with smaller FOI units. Members also discussed the new Jobs and Skills Exchange and whether this may assist agencies in finding suitable skills for FOI officers.
  + Members also discussed whether there is a need or desire for FOI qualifications or micro- credentials, which may assist with developing and enhancing FOI skills in a more official way.

# Professional Standards, guidance materials and templates

* + The Public Access Deputy Commissioner provided a brief update on the Professional Standards, noting they were finalised in accordance with Part IB of the FOI Act in September, and will take effect from 2 December 2019. To support the Professional Standards, OVIC published 17 Practice Notes to assist agencies, which are available on OVIC’s [website](https://ovic.vic.gov.au/freedom-of-information/practice-notes/). OVIC welcomes any feedback on these Practice Notes.
  + OVIC is also preparing a suite of template documents to assist agencies, which will be uploaded to OVIC’s website soon. OVIC envisages these templates will be particularly useful for smaller agencies with fewer FOI resources.

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| **8.** | **Reference Group review**   * The Public Access Deputy Commissioner noted that given today’s meeting is the final meeting for 2019, OVIC is interested in receiving feedback on the Reference Group and whether members wish to remain involved. * Members discussed the desire to remain involved in the Reference Group next year, noting it has been a positive experience. * The Public Access Deputy Commissioner noted we will provide details of 2020 Reference Group meetings early next year. |
| **9.** | **Close**  Meeting finish: 4:16pm |