

## Public Access Agency Reference Group Meeting

**Date:** Monday, 30 March 2020

**Time:** 2:00 – 3:00pm (Teleconference)

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### Participants

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

Ianina Belski, Assistant Commissioner Public Access Reviews, OVIC

Shantelle Ryan, Assistant Commissioner Public Access Resolutions, OVIC

Andrew Weston, Department of Transport

Bridie Andriske, Monash University

Diana Battaglia, Alfred Health

Gaven Sturma, Department of Education and Training

Jude Hunter, Victorian WorkCover Authority

Lisa Scholes, Department of Health and Human Services

Monica Barnes, Country Fire Authority

Robin Davey, Victoria Police

Sarah Crossman, Secretariat, OVIC

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### Minutes

#### 1. Welcome

- Meeting start: 2:05pm. The Public Access Deputy Commissioner welcomed everyone and thanked members for accommodating a teleconference in lieu of a face-to-face meeting due to the COVID-19 pandemic.

#### Apologies

- Samantha Oliver, City of Melbourne
- Melinda Robinson, Department of Justice and Community Safety
- Lauren Reader, Macedon Ranges Shire Council
- Cameron Montgomery, City of Ballarat
- Susannah Whitty, Eastern Health

#### Previous meeting minutes

- All attendees confirmed the meeting minutes of 25 November 2019. There were no action items arising from that meeting.

#### Items for information only

- The Public Access Deputy Commissioner noted the items for information (outlined at the end of these minutes), which were taken as read.

#### 2. Business continuity and COVID-19 pandemic

- The Public Access Deputy Commissioner spoke to OVIC's new working arrangements in light of the COVID-19 pandemic. She noted that on 13 March 2020, OVIC activated its Business Continuity Plan. Staff are working remotely, and OVIC asks agencies and the public to contact us via email where possible. During this time, OVIC's Registry team will continue to receive new FOI review and complaint applications and will actively progress review and complaint matters on hand, including attempts to informally resolve matters.

- Members discussed their current working arrangements due to the pandemic, noting their experiences in making the transition to working remotely. Common themes amongst member agencies included:
  - conducting document searches – members noted some documents their agencies hold are available in hard copy only (for example, historical records) or on document management systems that cannot be accessed remotely. Further, some agency staff have been or will be diverted from their usual role, which may impact the FOI unit’s ability to get that staff member to locate and provide documents relevant to a request.
  - redacting documents electronically – members discussed how to ensure the security of redacted documents when redacting electronically.
  - communication with applicants – members noted the importance of maintaining frequent, transparent and early communication with applicants to ensure they are kept up to date on the agency’s working arrangements, so they are aware of potential delays or limits with their request. Some members noted they have published notices on their agency’s website to alert members of the public to the agency’s current working arrangements and what to expect when making an FOI request.
  - flexibility – members noted the importance of flexibility in the current working environment, focusing on what is reasonable and practicable for agencies to do presently.
- The Public Access Deputy Commissioner noted OVIC is developing frequently asked questions (**FAQs**) for agencies and applicants to refer to with respect to changed working arrangements due to COVID-19. OVIC will consult with members on draft FAQs.

<p><b>Action:</b> OVIC to consult with Reference Group members on draft FAQs.</p>
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- The Assistant Commissioner Public Access Resolutions confirmed that OVIC had made contact with members of the PAARG to offer support and suggest strategies for managing expectations and continuing to operate during this difficult time. She spoke about the ways OVIC is adapting to the changing circumstances, including giving consideration to using powers under section 61B of the FOI Act not to accept complaints, particularly where the complaint relates to circumstances surrounding the COVID-19 situation. OVIC will encourage applicants and complainants to be patient with agencies and advise that some delays are to be expected as agencies adapt to changes in their operating environment. OVIC will request extensions of time or seek agreement to withdraw matters, where appropriate. OVIC will continue to focus on informal resolution for reviews and complaints and encourages agencies to continue to engage with us and give consideration to any resolution options put forward by OVIC staff.
- The Assistant Commissioner Public Access Reviews spoke to changes in operations regarding document inspections for documents claimed to be exempt under section 28(1) or section 31(1) of the FOI Act (which are normally inspected by OVIC staff at the agency’s premises). She noted due to the health and operational challenges presented by COVID-19, it is envisaged OVIC document inspections will not be possible for an extended period. Therefore, the Public Access Deputy Commissioner has requested agencies’ assistance in providing a password protected electronic copy of documents exempted by the agency under section 28(1) or 31(1), based on the following temporary access arrangements:
  - The password for OVIC accessing the documents will be provided by the agency in a separate email or by telephone call to the relevant OVIC case manager.
  - The documents will be retained for seven business days, after which they will be destroyed.
  - The documents will not be printed, copied, disseminated or saved to OVIC’s document management system.

- The agency will be notified upon destruction of the documents.
- Agencies which hold documents subject to inspection on a current open review have been or are shortly going to receive a letter outlining these new arrangements.

**Note:** Following this Reference Group meeting, OVIC determined it will no longer be asking agencies to provide copies of the documents subject to a document inspection.

- In light of the current changing working environment, members agreed it would be beneficial to meet more regularly to discuss issues and how best to approach them. It was agreed that the Reference Group would meet again in two weeks, on Wednesday 15 April 2020.

**Action:** OVIC to organise a special Reference Group meeting for Wednesday 15 April 2020.

### 3. Proactive and informal release discussion paper

- The Public Access Deputy Commissioner spoke to OVIC’s proactive and informal release discussion paper, which was published on 16 March 2020. OVIC has extended the consultation deadline in light of the COVID-19 pandemic. The new deadline is Friday 1 May 2020.
- OVIC is very interested in hearing agencies’ experiences with proactive and informal release. OVIC encourages agency officers to consult with other areas in the agency (for example, those areas with information or records management functions) to paint a bigger picture of how proactive and informal release works in the agency.

### 4. Part II of the FOI Act

- The Public Access Deputy Commissioner noted OVIC is commencing work on developing informed guidance on how agencies can implement Part II of the FOI Act in a practical and achievable manner, and that provides value and utility to members of the public. OVIC intends for this guidance to take a modern approach to giving effect to the intent of Part II, including the necessity, structure, and location of “Part II Statements” as currently displayed by many agencies.

### 5. Training

- OVIC is looking at webinar software for its education and training activities, such as the Information Access Series seminars. OVIC will provide more information on this when it is available.

**Action:** OVIC to advise Reference Group members whether webinars will be recorded and available to view after the event takes place.

### 6. Close

- **Meeting close:** 3:10pm
- **Next teleconference:** 15 April 2020, 2:00 – 3:00pm

## Items for information – taken as read

### 1. OVIC update

#### Review of the Reference Group in 2019

At the end of 2019, OVIC reviewed the Reference Group based on the feedback members provided at the November 2019 meeting. Some of this feedback included an interest in hearing about OVIC's national and international work, quarterly meetings work well, interest in hearing more from agencies, and sending colleagues if members are unable to attend a meeting.

#### Hosting of the Association of Information Access Commissioners meeting

Sven Bluemmel and Joanne Kummrow hosted the bi-annual meeting of the Association of Information Access Commissioners (AIAC) on Friday 20 March 2020. The meeting proceeded as a teleconference to accommodate the current circumstances. The agenda was compressed but the Commissioners and Ombudsmen from other jurisdictions had valuable discussions.

#### Information Access Series Seminars

Seminars since the last Reference Group meeting:

- On 20 February, Sven Bluemmel delivered a presentation on the State of FOI in Victoria report.
- OVIC had scheduled a panel discussion for 18 March 2020 to coincide with the AIAC meeting in Melbourne, however, due to current circumstances the event was cancelled to ensure the health and welfare of attendees.

Upcoming seminars:

- The next Information Access Series seminar is scheduled for 30 April, and we hope to cover the application of sections 25A(1) and 25A(5) of the FOI Act, and making fresh decisions under section 49M of the FOI Act.
- On Thursday 21 May 2020, OVIC arranged a guest speaker from the High Conflict Institute to cover dealing with high conflict individuals.
- In late June, OVIC is intending to host another guest speaker who will provide a session on vicarious trauma.

OVIC is currently determining how to proceed with our training and education program for 2020 in light of the COVID-19 pandemic. Please keep an eye on OVIC's website and Twitter page for updates.

#### Executive FOI Breakfast event

OVIC intends to host a breakfast event for Departmental and Victoria Police Executive officers overseeing FOI functions on 18 June 2020. More details to come.

#### Operational update

The Public Access Team reduced open cases to 204 open reviews and 93 complaints as at 31 December 2019. Since the beginning of this year, OVIC received a higher number of review and complaint applications and as at 27 March 2020, we have 113 open complaints and 207 reviews.

#### Publication of Notices of Decision

On 31 January, OVIC celebrated a milestone in that we published over 200 decisions. As at 26 March 2020, we have published 247 decisions.

OVIC welcomes feedback from agencies and reminds agencies to contact the Assistant Commissioner Public Access Reviews directly within 5 business days of receiving a decision if there are any concerns about publication of sensitive information. Decisions will be published after 5 business days from the date the decision is provided to the agency and the applicant.

OVIC believes the published decisions are providing a valuable educative function to the public and to agencies. The Victorian Information Commissioner AustLII page has been accessed over 9800 times since it was launched in July.

## 2. Professional Standards project

The Investigations & Assurance (I&A) team completed site visits with 6 agencies in January. The I&A team spoke with agencies about the FOI units' level of compliance with each of the Professional Standards, changes in their practices to comply with the standards, as well as any innovative approaches to administering the FOI Act in light of the standards. The I&A team are in the process of using the insight gained from the interviews and policy/procedure/template documents shared with us to build a self-assessment tool.

The I&A team found overall, the agencies that took part in this project are demonstrating compliance with most of the standards. There were some challenges identified by agencies that the team aims to assist with through this project. Areas where agencies are experiencing obstacles include:

- Releasing information outside of the FOI Act where it can be properly provided
- Including, and updating, the required information in Part II statements

The I&A team also discussed some FOI units' observations about where other agencies appear to be struggling to satisfy their obligations and workload. For example, some of the FOI Units interviewed had observed inconsistent approaches to carrying out consultation by other agencies in their sector.

Some helpful ideas were raised during the site visits as well, that the team considers useful to share more widely to improve practice. Including:

- Changing processes for searching for documents to involve:
  - asking senior staff in wider business areas to certify that searches have been carried out thoroughly and diligently
  - improving technology to provide FOI decision makers with greater access to areas where documents are held to allow them to conduct searches directly.
- Updating pro forma application forms for making an FOI request to provide more information to applicants about how to make a request in a manner that complies with section 17

The I&A team plans to present their key findings in more detail at the next PAARG meeting.

## 3. State of FOI in Victoria Report

In February OVIC published a [report](#) looking at the state of FOI in Victoria from 2014 to 2019. This report looked at agency FOI data over the five year period to identify FOI trends and assess where FOI in Victoria is heading. This is the first report of this kind that OVIC has done. While OVIC publishes the Annual Report, which looks at similar data, OVIC identified the opportunity to look at FOI data across a longer period of time and look at some different data. In preparing the report, OVIC looked at six broad categories of data, including requests received, decision making, reviews, complaints, costs, and challenges.