

Public Access Agency Reference Group Meeting

Date: Monday, 22 February 2021

Time: 2:00 – 3:00pm (Microsoft Teams)

Participants

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

Ianina Belski, Assistant Commissioner – Public Access Reviews and Regulation, OVIC

Shantelle Ryan, Assistant Commissioner – Public Access Operations and Compliance, OVIC

Anita Mugo, Senior Policy Officer, OVIC

Cliff Bertram, Assistant Commissioner – Policy

Cameron Montgomery, City of Ballarat

Chelvi Arunagiri, City of Melbourne

Diana Battaglia, Alfred Health

Felicity Wright, Transport Accident Commission

Jane Feeney, Department of Education and Training

Lisa Scholes, Department of Families, Fairness and Housing

Melinda Robinson, Department of Justice and Community Safety

Michael Ghobrial, Department of Transport

Monica Barnes, Country Fire Authority

Robin Davey, Victoria Police

Sarah Crossman, Secretariat, OVIC

Agenda Items

1. Welcome

- Meeting start: 2:03pm
- The Public Access Deputy Commissioner welcomed everyone to the meeting.

Apologies

- Jude Hunter, Victorian WorkCover Authority
- Richard Long, Monash University
- Susannah Whitty, Eastern Health

Previous meeting minutes and action items

- Attendees confirmed the meeting minutes of 23 November 2020. There were no action items arising from that meeting.

2. Results of the Reference Group review

- The Public Access Deputy Commissioner spoke to the 2020 Reference Group review and noted the administrative arrangements for meetings will stay largely the same with some scope to investigate the possibility of a face-to-face meeting depending on member preferences, health advice, and government directions.
- The Public Access Deputy Commissioner also welcomed a new member from the Transport Accident Commission to the Reference Group and noted a change in OVIC Secretariat.

3. Agency updates

- Reference Group members provided updates on their agency and FOI work, including:

- **Applicant representatives:** where an applicant makes a request to an agency and then subsequently uses a representative to manage the request. Members discussed the importance of obtaining authority from the applicant for the representative to act on their behalf and to receive information about the request, including personal information about the applicant that may be present in the requested document.
- **Increase in FOI requests received:** some members discussed increases in the number of FOI requests that their agency receives.
- **Remote working arrangements:** some members noted they and their FOI units continue to work remotely.
- **Machinery of government changes:** some members discussed challenges with machinery of government changes and how that affects administrative arrangements such as FOI. For example, searching for documents can be challenging where it is not clear which agency possesses the relevant documents.
- **Process improvements:** one member noted a program of work underway to improve efficiency in work processes.

4. New guidance on Part II, internal consultation, access charges

- The Assistant Commissioner – Policy spoke to new OVIC practice notes regarding:
 - **Access charges certificates:** the aim of the practice note is to outline factors OVIC considers when determining whether to issue an access charges certificate, to assist applicants and agencies to respond to OVIC.
 - **Internal and Ministerial consultation:** the aim of the practice notes is to clarify and reinforce the legislative timeframes for processing requests where a request goes to a Minister for noting and to provide general guidance regarding internal consultation on requests.
 - **Part II:** the aim of the practice note is to outline a more flexible and modern approach to preparing Part II statements.

5. OVIC update

- To ensure the meeting finished on time, the Assistant Commissioners – Public Access provided brief verbal updates with written updates to be included in the meeting minutes for information.

Survey of the use of the OVIC website for published decisions

- The Assistant Commissioner – Public Access Reviews and Regulation thanked members who completed the survey on the use of the OVIC website for published decisions and provided a summary of the feedback received including:
 - the most used functions included: ‘browse decision by year’, ‘sections in the FOI Act’ and ‘Select an agency’;
 - the most common response to whether the ‘Headnote’ search function had been used or not was ‘I have never used the function’;
 - Overall satisfaction with useability of the ‘Advanced Decision Search’ website functionality was ‘I am really satisfied with the functionality’;
 - the published decisions are a valuable addition to OVIC’s website and a quick way of understanding OVIC’s older decisions on routine document types; and
 - concerns about potential privacy breaches resulting from publication of de-identified decisions have not materialised.

- The Assistant Commissioner noted OVIC will endeavour to continue to improve the functionality and useability of the published decisions webpage to ensure it remains a valuable resources for agencies and members of the public.

Upcoming events

- The Assistant Commissioner – Public Access Reviews and Regulation noted upcoming events including:
 - 24 February 2021 – Information Access Series seminar on FOI in 2020: the year in review.
 - 3 March 2021 – VPS Executive Briefing session where the Victorian Information Commissioner, Public Access Deputy Commissioner and the Privacy and Data Protection Deputy Commissioner will be speaking to attendees on FOI, privacy and information security matters.
 - For more information on OVIC’s events, please visit OVIC’s [website](#).

Agency Information Service

- The Assistant Commissioner – Public Access Operations and Compliance noted planning for the Agency Information Service is underway with 31 March 2021 set as the anticipated launch date.
- This service will provide agencies, and in particular FOI practitioners, with tailored information and guidance to assist them in administering the FOI Act.
- The service will be rolled out in two phases. The first will be an online service where agencies can email OVIC with their enquiry. The second phase will involve a telephone service where agencies can call a specific number and be put directly through to an OVIC staff member.
- OVIC is putting together guidelines for agencies, which OVIC intends to provide to Reference Group members for feedback.

Agency Self-Assessment Tool

- The Assistant Commissioner – Public Access Operations and Compliance noted the agency self-assessment tool has been downloaded between 88 and 104 times since it was published in December 2020.
- The Assistant Commissioner encouraged agencies to use the self-assessment tool and repeat assessments after six months to track progress and identify improvements in processes.

6. **Other business**

- The Public Access Deputy Commissioner noted an upcoming OVIC Health Sector Forum that will take place in April 2021. More information will become available on OVIC’s [website](#).
- One member asked whether non-health sector agencies may attend.

Action: Assistant Commissioner – Public Access Operations and Compliance to respond to the query.

7. **Meeting close:** 3:04pm

Next meeting: Monday 24 May 2021 from 2:00 – 3:00pm via Microsoft Teams.

OVIC update for information

Operational update – Reviews

As at 22 February 2021, OVIC has 113 open complaints and 199 reviews. On average, OVIC is receiving around 10 to 11 new reviews and around 10 new complaints per week.

Publication of Notices of Decision

As at 22 February 2021, OVIC has published 414 decisions.

As previously noted, OVIC welcomes feedback from agencies and reminds agencies to contact the Assistant Commissioner – Public Access Reviews and Regulation directly within 5 business days of receiving a decision if there are any concerns about publication of sensitive information.

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 almost 46,000 times over the past 12 months.

Operational update – Complaints

As at mid-February 2021, this financial year OVIC has received 392 complaints. This is a 20% increase in complaints, compared with this time last year.

The increase is a result of a higher volume of FOI requests made to agencies as well as COVID impacts and remote working arrangements.

The main kind of complaint being received is where an agency is unable to make decisions within statutory or agreed timeframes. However, OVIC is also seeing adequacy of search complaints or complaints concerning a decision that a document does not exist or cannot be located.

Submissions on some of these complaints describe circumstances where an agency is unable to complete searches due to limitations to physical areas or systems being updated or upgraded. OVIC encourages agencies to convey this information during the initial handling of the FOI request such as in a clarification letter or acknowledgement to avoid confusion and manage applicants' expectations.

Complaint case study

OVIC received a complaint about an agency's use of section 19 of the *Freedom of Information Act 1982 (Vic) (FOI Act)*, where the request sought access to a meeting agenda and minutes.

The Agency claimed that section 19 was required on the basis that the documents "are comprised of information stored electronically, which triggers section 19".

OVIC staff consulted with the Agency to:

- confirm if there was a need to create a document (as it looked like the document was already in the agency's possession and had to be retrieved by electronic searches); and
- understand that if section 19 was to apply, what types of documents would need to be created to satisfy the terms of the FOI request.

In response, the Agency agreed that in order to resolve the matter, they would remove any associated access charges and their reliance on section 19, if the applicant would allow for an extension of time of 60 days to provide the decision.

The proposal was put to the complainant with a suggestion that this was "suitable and reasonable" in the circumstances – an agreement was received and the complaint was resolved.

A reminder that section 19 cannot apply if the document already exists and is in possession of the agency in a way that would satisfy the terms of the FOI request.

Operational update – Informal resolution

As at mid-February 2021, there are 26 files in Informal Resolution. Statistics on Informal Resolution from 1 July 2020 – 16 February 2021 include:

- 353 total number of review matters finalised;
- 29.2% resolved informally, with:
 - 15 review matters closed with applicants' agreement following a fresh decision;
 - 9 review matters closed due to no response from the applicant following a fresh decision;
 - 2 review matters closed with the applicant's agreement (section 49G(2)); and
 - 77 review matters withdrawn.

Informal resolution case study

An applicant sought access to their deceased spouse's medical records. The Agency released the document in part with information regarding the spouse's family members exempt under section 33(1) of the FOI Act.

OVIC enquired if the Applicant could obtain the family members' consent for their information to be released to the Applicant. The family members consented to the spouse's information to be released to the Applicant; however, they did not consent to their own information to be released to the Applicant.

Following this OVIC:

- advised the Applicant that they had not obtained sufficient consent from the family members to release their own information to the Applicant; and
- reiterated that the deleted information related only to the family members and all information relating to the spouse had already been released to the Applicant.

The Applicant agreed to withdraw the review because:

- they were not able to obtain the correct consent from the family; and
- OVIC confirmed that all information relating to the spouse had already been released to the Applicant.

Professional Standards

Current trends are around timeliness – where OVIC is seeing engagements relating to:

- Standard 2.4 – relates to notification within 21 days as to why an FOI request is not valid and providing reasonable assistance to make the request valid – section 17(3).
- Standard 4.2 – notification within 21 days of estimated access charges – section 22(3).
- Standard 5.1 – notification within 21 days of notice of intention to refuse under section 25A(1) – section 25A(6).
- Standard 10.3 – Agency responding to a request from OVIC for documents or information within requested or agreed timeframes.

Other common engagements OVIC is seeing include:

- Standard 8.2 – Agency must explain its reasons for why an exemption or exception applies and address each limb of the relevant exemption or exception.
- Standard 10.4 – When providing documents subject to review, the documents must be marked up clearly and legibly to indicate exempt matter and the applicable exemption or exemptions.

OVIC reminds agencies of the interaction between communication plans and service restrictions – where OVIC has dealt with engagements relating to Standard 2.1 (where an agency must provide an applicant with an option to make a request by email) as a result of a restriction that blocked all communication, including the ability to make an FOI request.