

Public Access Agency Reference Group Meeting

Date: Monday, 24 May 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

Sarah Crossman, Principal Policy Officer, OVIC

Cameron Montgomery, City of Ballarat

Felicity Wright, Transport Accident Commission

Jane Feeney, Department of Education and Training

Jude Hunter, Victorian WorkCover Authority

Lisa Scholes, Department of Families, Fairness and Housing

Melinda Robinson, Department of Justice and Community Safety

Robin Davey, Victoria Police

Samantha Oliver, City of Melbourne

Anita Mugo, Secretariat, OVIC

Agenda Items

1. Welcome

- Meeting start: 2:04pm
- The Public Access Deputy Commissioner welcomed everyone to the meeting.

Apologies

- Richard Long, Monash University
- Andrew Weston, Department of Transport
- Monica Barnes, Country Fire Authority
- Susannah Whitty, Eastern Health

Previous meeting minutes and action items

- Attendees confirmed the meeting minutes of 22 February 2021. There was one action item arising from that meeting:
 - The Assistant Commissioner Public Access Operations and Compliance noted she would respond to a query from a member about whether the Health Sector forum was open to non-health sector agencies. This action is complete.

2. Agency updates

- Reference Group members provided updates on their agency and FOI work, including:
 - **Increase in FOI requests received** – Some members discussed marked increases in the number of FOI requests their agency has been receiving.
 - **Recruitment** – some members mentioned they would be recruiting staff to manage the increasing workloads. Some members also discussed the challenges with recruiting FOI practitioners noting that resourcing is a common issue across agencies. Some members suggested discussing recruitment at future meetings as it's a general concern among

several agencies.

- One member sought clarification on Practice Note 21 regarding secrecy provisions and the appeal rights of businesses

Action item: OVIC to contact the member to provide further guidance on the Practice Note.

3. FOI Guidelines project & Proactive and informal release project

- The Principal Policy Officer provided updates on two projects:
 - **FOI Guidelines project** – the objective of this project is to provide the public, agencies and other stakeholders with a free, authoritative guide to the FOI Act. The Guidelines will consolidate all OVIC’s FOI-related resources into a central, accessible, plain English resource. OVIC is currently drafting content which will be published for public consultation. Once the Guidelines are complete, they will be populated onto a new, accessible, user-friendly digital template for OVIC’s website.
 - **Proactive and informal release project** - Building on insights gained from the discussion paper last year, OVIC has engaged an external consultant to gather further insights from stakeholders and prepare a roadmap of work for OVIC to deliver over the short, medium, and long term. Over the last 2 weeks, OVIC and the consultant conducted stakeholder engagement to gain insights into the everyday experiences of FOI practitioners with proactive and informal release. OVIC and the consultant engaged with 33 staff across the VPS and have spoken to other regulators across Australia. The roadmap will be informed by the insights and will provide an engagement strategy for increasing proactive and informal release in agencies. The roadmap is expected to be provided to OVIC by 30 June 2021.

4. Australian Research Council (ARC) application for multijurisdictional FOI research & Monash University research (Part II)

- The Public Access Deputy Commissioner provided updates on two projects:
 - **ARC application:** Together with the Western Australian Office of the Information Commissioner and the South Australian Ombudsman, OVIC participated in Monash University’s grant application to the ARC to expand on research conducted in Victoria into the culture of administering FOI. This application has been successful and OVIC will provide further updates on this project as the research progresses.
 - **Monash University research (Part II):** On behalf of OVIC, Monash University has been conducting research into the information access culture in Victoria. Monash has gathered insights from approximately 30 agencies and the insights will enable OVIC to develop education and awareness programs that will help agencies enhance their administration of the FOI Act. The research will also contribute to the future direction of Victoria’s information access system. OVIC expects to receive the final report on this research by 30 June 2021.

5. Public Access Education Program 2021-22

- The Assistant Commissioner Public Access Reviews and Regulation noted OVIC is developing its education program for 2021/22 and invited members to provide suggestions for topics, themes and guest speakers for future presentation.

6. OVIC update

- The Assistant Commissioners – Public Access provided brief verbal updates with written updates to be included in the meeting minutes for information.

Operational update – Reviews

- The Assistant Commissioner Public Access Reviews and Regulation noted as of 24 May 2020 OVIC has 196 open reviews compared to 192 open reviews at the same time last year.
- OVIC has received 509 review applications (which is down from 558 reviews for the same period in the preceding financial year) and closed 495 reviews (compared to 592 reviews which were closed for the same period in the preceding financial year).

Publication of Notices of Decision

- The Assistant Commissioner Public Access Reviews and Regulation noted as of 24 May 2021, OVIC has published 435 de-identified notices of decision. The Assistant Commissioner Public Access Reviews and Regulation noted OVIC welcomes feedback from agencies and reminded members they can 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.
- The Assistant Commissioner Public Access Reviews and Regulation noted OVIC's AustLII page has been accessed nearly 44,000 times over the past 12 months.

Upcoming events

- The Assistant Commissioner Public Access Reviews and Regulation noted upcoming events including:
 - 29 June – Information Access Series workshop delivered by Megan Hunter from the High Conflict Institute

Operational update – Registry

- The Assistant Commissioner Public Access Operations & Compliance noted OVIC's preparations for this year's Annual Report data collection is under way. Departments have received OVIC's request for updating/amending of all Agencies that departments support.
- The online survey will go live on 1 July 2021. It contains 3 new questions regarding OVIC's Professional Standards Self-Assessment Tool which are:
 - *Has your agency used the Professional Professional Standards Self-Assessment Tool to measure adherence to, and compliance with, the FOI Professional Standards?*
 - *Did completion of the self-assessment tool assist your agency in identifying opportunities to improve practices to satisfy obligations under the Professional Standards?*
 - *If relevant, please provide an example of an action or strategy undertaken by your agency to improve the practice identified following self-assessment*
- OVIC is requesting that Agencies complete the survey by Friday 23 July 2021.

Agency Information Service update

- The Assistant Commissioner Public Access Operations & Compliance noted OVIC is in the final stages of the Agency Information Service project and thanked agencies who have reviewed and

provided feedback on the service. The next step in in this project is to roll out a communications plan to promote the service.

- The Assistant Commissioner Public Access Operations & Compliance noted that OVIC has set up a new electronic mailbox title AskOVIC@ovic.vic.gov.au to receive agency inquiries to the service. OVIC will record all incoming inquiries and outgoing responses, and these will inform OVIC's future training and education topics, and written resources.

Informal resolution

- The Assistant Commissioner Public Access Operations & Compliance noted that OVIC's informal resolution efforts has resulted in approximately 29.4% of review matters being resolved informally. This includes:
 - 111 applications being withdrawn without the need for a formal decision;
 - 2 applications been closed with the Applicant's agreement; and
 - 35 review matters closed following a fresh decision by an agency;

Complaints

- The Assistant Commissioner Public Access Operations & Compliance noted OVIC currently has 180 open complaints, as compared to 93 for the same period last year. This is a 50% increase in complaints. Of the 180 complaints, 133 are complaints about delays.

Professional Standards

- The Assistant Commissioner Public Access Operations & Compliance noted current trends are in relation to:
 - **Standard 10.3** – Agency responding to a request from OVIC for documents or information with requested or agreed timeframes
 - **Standard 2.4** – notifying an applicant within 21 days of the relevant matters in relation to a request that is not valid
 - **Standard 5.1** – notification within 21 days of intention to refuse a request under section 25A(1)

New legislation

- The Assistant Commissioner Public Access Operations & Compliance noted that OVIC launched a new File Sharing Platform in May 2020 to receive confidential documents securely and electronically. This was in response to the *COVID-19 Omnibus (Emergency Measures) Regulations 2020*.
- The Assistant Commissioner Public Access Operations & Compliance noted the new *Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021* which came into effect on 23 March 2021. The Act replaces the *COVID-19 Omnibus (Emergency Measures) Regulations 2020*.
- Of particular note in the Act is section 147 which makes the arrangements for providing documents to OVIC electronically a permanent arrangement.

Redacted documents with NODs

- The Assistant Commissioner Public Access Operations & Compliance noted OVIC has completed testing of the Adobe program called 'Redax with the Time Stamp plug-in' and were impressed with its features and usability.
- OVIC has formed a working group to determine how it will implement redacted documents

with a Notice of Decision. OVIC will consult with this group once we have formulated a plan to seek members' feedback and comments.

7. **Other business**

- The Public Access Deputy Commissioner noted the next meeting is in August and suggested holding a special meeting in July to discuss issues members raised in relation to resourcing and recruitment.
- One member suggested OVIC also consider providing an update on the research projects in the special meeting.

Action: Public Access Deputy Commissioner and Assistant Commissioners Public Access to consider holding a special meeting in July and update members accordingly.

8. **Meeting close:** 2:55pm

Next meeting: Monday 23 August 2021 from 2:00 – 3:00pm via Microsoft Teams.

OVIC update for information

Operational update - Complaints

So far this financial year, we have received 573 complaints (up from 453 in the previous year).

We have closed, 460 complaints (nearly on par as last year with 456 complaints closed).

OVIC's average completion time for a complaint is 60 days.

We are also ensuring complainants are aware of their right to apply to VCAT in relation to a deemed refusal where an agency has not made a decision.

New legislation

Section 147 of the new *Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021* provides that documents claimed to be exempt under sections 28, 29A, 31 or 31A by an agency MUST be provided to the Information Commissioner for inspection by secure electronic means.

That section also provides that after the Information Commissioner has inspected the document, it must be destroyed OVIC must advise the agency or the Minister in writing that the document has been destroyed.

Prior to COVID – the FOI Act provided that the Information Commissioner had to physically attend an agency's office to inspect documents. – so that has been a very useful change that has come about due to COVID.

A reminder that agencies now have the option of providing all documents, and not just those subject to the new legislation, via the Platform.

Providing documents via the Platform is NOT mandatory, and agencies can continue to provide documents subject to a review via email, if they choose to do so.