

Enhancing Victoria's FOI Culture to be Open by Design

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EXECUTIVE SUMMARY

Since 2019, the Office of the Victorian Information Commissioner (**OVIC**) has undertaken several research projects to better understand freedom of information (**FOI**) culture in Victoria. The aim of these projects has been to develop strategies to effect cultural change, increase transparency, and enhance the public's right to seek access to information.

This work highlights FOI in Victoria functions well, but it should be better.

Agencies (FOI practitioners and Principal Officers) understand that the purpose and intent of the *Freedom of Information Act 1982* (**the Act**) is to facilitate access to information promptly and inexpensively. They also understand that proactive and informal release forms part of the FOI system in Victoria.

However, agencies face challenges such as limited and stretched staff resources, increasing workloads, and complex legislation. The COVID-19 pandemic has also added a significant further burden on several large FOI agencies. These challenges can lead to delays in processing requests and an increase in the number of FOI reviews and complaints OVIC receives and also matters that proceed to the Victorian Civil and Administrative Tribunal. This in turn increases the FOI workload of agencies and creates barriers to the public receiving timely access to information.

Despite these challenges, agencies have a strong will to make FOI in Victoria work better.

To assist agencies, OVIC is focused on influencing Victoria's reliance on FOI to instead embrace a culture of proactive and informal release – in effect – making FOI a last resort.

Proactive and informal release fulfils the object of the Act and embraces best practice by making it easier for the public to access information and more efficient for agencies to facilitate access to information.

To target the different conditions necessary to enable greater proactive and informal release, OVIC will build on its existing education and training activities, drive greater stakeholder engagement, and continue to promote proactive and informal release. These activities will be undertaken in two phases – over the next 12-18 months and beyond.

INTRODUCTION

Recognising the role of access to information in facilitating government transparency and accountability, OVIC has been exploring the culture of FOI in Victoria and how to change agency behaviour to be open by design through proactive and informal release of information.

Information is one of the most important resources and tools that any government has. Governments collect, create, and use a large and growing amount of information which is used to deliver services and make decisions affecting the public. In a democratic society, the government acts on behalf of the people.

Public access to government information is therefore fundamental to open and accountable government. The right to access government information enables the public to hold government to account, participate meaningfully in society and support better government decision making. As custodians of information, the government has a responsibility to ensure the public's right to access government-held information is upheld.

As the Victorian Government continues to digitalise processes, generate more information, and make significant decisions affecting the public, it must be Open by Design so that transparency remains front of mind and second nature.

PURPOSE

This paper outlines and discusses the culture of FOI in Victoria and how OVIC intends to influence behavioural change in agencies to better support proactive and informal release of information. The overall aim of this work is to support agencies to be Open by Design and improve and expand access to information.

BACKGROUND

The Information Commissioner and Public Access Deputy Commissioner's FOI functions include promoting the understanding and acceptance by agencies and the public of the Act and its object. As part of this function, OVIC has progressed five key research projects including:

- **Pilot study: Report on the Culture of Administering Access to Government Information and Freedom of Information in Victoria (September 2019)** – Monash University, in collaboration with OVIC, conducted a pilot study examining FOI culture in six Victorian agencies subject to the Act.¹
- **Report on the State of FOI in Victoria: Five years in Review 2014 to 2019 (February 2020)** – OVIC analysed five years of FOI data to better understand FOI trends.²
- **Proactive and Informal Release Discussion Paper and Consultation (March 2020)** – OVIC published a discussion paper on proactive and informal release of information in the Victorian public sector to better understand the challenges and opportunities.
- **Part II Study: Report on the Culture of Administering Access to Government Information and Freedom of Information in Victoria (June 2021)** – Monash University, in collaboration with OVIC, conducted a follow up study aimed at capturing the culture of administering the Act and the

¹ Associate Professor Johan Lidberg, Monash University, *The Culture of Administering Access to Government Information and Freedom of Information in Victoria Pilot Study May – August 2019* (Final report, September 2019).

² Victorian Information Commissioner, *The State of FOI in Victoria: Five Years in Review 2014 – 2019 (State of FOI in Victoria Report)*, <https://ovic.vic.gov.au/state-of-freedom-of-information-in-victoria/information-commissioners-foreword/>.

Victorian information access system overall based on 57 agencies subject to the Act (this report is referred to as the **Culture of FOI in Victoria Part II Study Report**).³

- **Proactive and Informal Release Behavioural Change Report (June 2021)** – OVIC engaged a consultant to explore and advise how OVIC can influence behavioural change to enable more efficient FOI administration through proactive and informal release.⁴

The purpose of this work is to better understand how agencies approach and administer FOI, and to identify how OVIC can support agencies to enhance the public's right to access information. Together with this paper, these projects provide insights from a representative sample of agencies that contextualise the FOI culture and context, challenges Victorian agencies face, and opportunities for change. OVIC appreciates the views and experiences discussed may not reflect all agencies' experiences.

THE CULTURE OF FOI IN VICTORIA

Agencies generally understand the purpose and function of FOI, and the system is working relatively well despite some challenges. However, there is room to enhance public access to information and make FOI work better.

The FOI Act

Parliament enacted the Act to promote openness, accountability, and transparency in the Victorian public sector by giving the public the right to seek access to government documents and by requiring publication of certain information.⁵

The Act enshrines a legally enforceable right to request access to government documents,⁶ founded on a 'pull' model. While the Act facilitates and promotes proactive and informal release, the central mechanism to access government information is by making a formal FOI request to an agency subject to the Act.⁷

The Act was the first FOI legislation in any Australian State or Territory, marking an important step towards greater government transparency in Australia.⁸ The Act has had some amendment since it was introduced, but it has not had a comprehensive review like other Australian jurisdictions. For example, New South Wales and Queensland enacted 'push' models of access legislation, which place a greater emphasis on, and require, proactive and informal release.⁹ A 'push' model aims to make formal access requests a last resort and elevates the importance of proactive and informal release to provide greater access to information.

³ Associate Professor Johan Lidberg and Dr Erin Bradshaw, Monash University, *The Culture of Administering Access to Government Information and Freedom of Information in Victoria Part II* (Final report, June 2021) (**Culture of FOI in Victoria Part II Study Report**).

⁴ Decision Design, *Proactive and Informal Release Behaviour Change Final Report – Practical recommendations to increase proactive and informal release* (June 2021) (**Proactive and Informal Release Behavioural Change Final Report**).

⁵ The right of access is in section 13 of the Act, and the requirement to publish certain information is in Part II of the Act.

⁶ *Freedom of Information Act 1982* (Vic) section 13.

⁷ Section 17 of the Act outlines the requirements for making a valid FOI request.

⁸ The Commonwealth *Freedom of Information Act 1982* (Cth) received Royal Assent on 9 March 1982.

⁹ See, for example, *Government Information (Public Access) Act 2009* (NSW) and *Right to Information Act 2009* (Qld).

Agencies understand the purpose and aim of FOI in Victoria

Agencies generally understand the purpose and aim of the Act is to provide access to information promptly and inexpensively. For example, 98.3% of FOI practitioners and 100% of Principal Officers interviewed for the Culture of FOI in Victoria Part II Study agreed the purpose of the Act is to provide an efficient and low cost means through which the public can access government information.¹⁰

Agencies also agree that the FOI system includes proactive and informal release. In the same report, 87% of FOI practitioners and 73.3% of Principal Officers agreed that FOI in Victoria includes proactive and informal release.¹¹

In terms of how FOI practitioners and Principal Officers see their role in the FOI system:

- FOI practitioners are engaged and want to do the right thing.¹² They see their role as both assessing and facilitating access to information, in accordance with the Act.¹³
- Principal Officers see their role as:
 - ensuring information is appropriately collected and stored;
 - ensuring their agency has the appropriate systems, staff, processes, policies, training and resources in place to support the FOI function;
 - taking accountability for ensuring the system is delivered appropriately;
 - developing a culture that embraces transparency;¹⁴ and
 - facilitating and promoting proactive and informal release.¹⁵

Principal Officers acknowledge they have the political autonomy to drive behavioural change and FOI culture in their agency.¹⁶

Challenges with administering FOI in Victoria

While agencies understand the purpose and aim of FOI, there are challenges in its administration, including strained resources, growing FOI demand, and complex legislation.

¹⁰ *Culture of FOI in Victoria Part II Study Report*, 16 and 31; *The Proactive and Informal Release Behavioural Change Final Report* notes that among FOI staff consulted, there is a strong endorsement of the objective of the Act and strong consensus that proactive and informal release further enables the Act's purpose and can reduce burden on FOI teams, 6.

¹¹ *Culture of FOI in Victoria Part II Study Report*, 17 and 32; Further, the *Proactive and Informal Release Behavioural Change Final Report* notes there is a strong consensus among FOI staff that proactive and informal release further enables the Act's purpose, 6.

¹² *Culture of FOI in Victoria Part II Study Report*, 29.

¹³ *Ibid*, 20 and 45.

¹⁴ *Ibid*, 53.

¹⁵ *Ibid*, 34.

¹⁶ *Ibid*, 7.

Limited FOI resources

Despite being a central function, FOI is not always appropriately resourced to meet growing demands for greater access to information. This means FOI practitioners often only address day-to-day operational matters rather than exploring longer term, strategic, projects to build FOI culture in their agency or to improve efficiency in processing FOI requests. Resourcing can also impact how quickly an agency can respond to an FOI request.¹⁷

Agencies with small FOI teams, or with a single FOI practitioner, who perform multiple functions (for example, privacy and governance in addition to FOI) may experience this challenge more, given their limited resources must be directed at multiple and varied functions.

FOI practitioners place a greater emphasis on the resource challenge than by agency leadership. For example, 65.6% of FOI practitioners compared with 48.2% of Principal Officers agreed that the lack of resources to administer the Act is a significant impediment to a better functioning information access system in Victoria.¹⁸ However, some Principal Officers note FOI resourcing must be balanced against demand, which can fluctuate.¹⁹

In addition to a lack of resources, changes in resources such as staff turnover can create a lack of continuity, knowledge and resource gaps, and generally decrease FOI efficiency.²⁰

Growing FOI demand

Exacerbating already strained resources is a growing FOI demand, both in terms of volume and complexity. This demand can add to the impacts on resourcing noted above such as trying to keep up with operational demand and taking longer to respond to requests.

The number of FOI requests agencies received between 2014 and 2019 increased by around 14.5% and is likely to increase based on current trends.²¹ Despite a growing number of requests, there was a 5.2% decrease in FOI decision makers from 2014 to 2019.²²

Further, complex requests can take up a significant amount of an FOI practitioner's time.²³ Examples of complex requests may include those with a large volume of documents, requests covering long periods of time, requests involving documents with information relating to third-parties, or requests involving documents that require specific or technical expertise to review.

¹⁷ For example, OVIC's Own Motion Investigation into FOI timeliness found resourcing and efficiency issues to be factors contributing to the delay of information release in Victoria; Victorian Information Commissioner, *Impediments to Timely FOI and Information Release: Own-motion investigation under section 61O of the Freedom of Information Act 1982 (Vic)* (1 September 2021), 5 (the report is available here: <https://ovic.vic.gov.au/wp-content/uploads/2021/09/Own-Motion-Investigation-Report-Impediments-to-timely-FOI-and-information-release.pdf>).

¹⁸ *Culture of FOI in Victoria Part II Study Report*, 24 and 38.

¹⁹ *Ibid*, 54.

²⁰ *Proactive and Informal Release Behavioural Change Final Report*, 24.

²¹ Victorian Information Commissioner, *State of FOI in Victoria Report, FOI requests received*, <https://ovic.vic.gov.au/state-of-freedom-of-information-in-victoria/requests-received/>.

²² Agencies are also making more FOI decisions each year: for example, there was a 14.77% increase in the number of decisions agencies made from 2014 to 2019; State of FOI in Victoria Report, *Decision Making*, <https://ovic.vic.gov.au/state-of-freedom-of-information-in-victoria/decision-making/>.

²³ *Proactive and Informal Release Behavioural Change Final Report*, 24.

Legislative amendment to the Act in 2017 shortened the time to make an FOI decision from 45 days to 30 days and introduced mandatory third-party consultation requirements for certain exemptions. These amendments have made it harder for FOI practitioners to administer the Act by reducing timeframes despite increasing FOI workloads.

Legislation

The Act has not received a comprehensive review since it was introduced in the early 1980s. As recommended in OVIC's Own Motion Investigation Report, the Act requires a comprehensive review to modernise the information access scheme and ensure the Act is fulfilling its object of timely and cost effective provision of information.²⁴ Such a review should inquire into the operation of the access to information scheme and how the scheme and the Act can be modernised and harmonised with contemporary notions of government transparency and accountability, drawing on best practice in other Australian jurisdictions and internationally.

Some challenges with administering the current Act include:

- outdated language which makes it difficult to apply in an increasingly digital working environment;²⁵
- the 2017 amendments, which shortened the decision-making timeframes from 45 days to 30 days and introduced mandatory third-party notification in some instances;²⁶ and
- the need for a vexatious applicant provision to address repeated and persistent applicants that may occupy a disproportionate amount of agency resources, adding to increasing FOI workloads, volume of requests and time needed to process requests.²⁷

In addition to challenges with administering the Act, there are other legislative challenges with facilitating access to information. Agencies must be mindful of other legislation which interacts with the Act and can create confusion regarding what information can be released (for example, secrecy provisions in other Acts).²⁸

There is a strong will to make FOI in Victoria work better

Despite the challenges outlined, agencies generally agree the current information access system in Victoria functions well.²⁹ However, there is a strong will to make FOI work better in Victoria.³⁰

²⁴ Victorian Information Commissioner, *Impediments to Timely FOI and Information Release: Own-motion investigation under section 61O of the Freedom of Information Act 1982 (Vic)* (1 September 2021), 5 (the report is available here: <https://ovic.vic.gov.au/wp-content/uploads/2021/09/Own-Motion-Investigation-Report-Impediments-to-timely-FOI-and-information-release.pdf>).

²⁵ *Culture of FOI in Victoria Part II Study Report*, 51.

²⁶ *Ibid.*

²⁷ *Ibid.*; Currently, section 24A of the Act deals with multiple requests in a limited way. It allows an agency to refuse a request without processing it where the applicant made the same request to the agency for access to the same documents or information and the agency refused the request, and the Victorian Civil and Administrative Tribunal confirmed the decision to refuse the request on review, and there are not any reasonable grounds for making the request again.

²⁸ *Proactive and Informal Release Behavioural Change Final Report*, 25.

²⁹ However, there is a discrepancy between FOI practitioners' views and Principal Officers' views. For example, 66.7% of FOI practitioners responded positively that the current information access system in Victoria functions well compared to 83.3% of Principal Officers; *Culture of FOI in Victoria Part II Study Report*, 43.

³⁰ *Culture of FOI in Victoria Part II Study Report*, 58.

The Culture of FOI in Victoria Part II Study Report recommends two ways to improve the information access system in Victoria: legislative change and changing FOI culture.³¹

OVIC recommends a comprehensive review of the Act to modernise it, ensure it fulfils its object the way Parliament intended, and clarify provisions to make the Act more efficient for agencies to administer.

Agency culture regarding information access is also important for improving FOI functionality in Victoria. Therefore, in the absence of legislative change, OVIC is focused on enhancing FOI through culture and behaviour. Even if legislative change does occur, administering the Act in the way Parliament intended still requires a positive agency FOI culture. Further, while agencies believe legislative change is important for the efficient administration of the Act, agencies acknowledge a positive FOI culture is equally important.³²

Making FOI in Victoria work better through proactive and informal release

Proactive and informal release can play a pivotal role in FOI culture. Not only does it fulfil the object of the Act, but proactive and informal release also embraces best practice by making it easier for the public to access government-held information and more efficient for agencies to facilitate access to the information.

INFLUENCING BEHAVIOUR TO ENHANCE PROACTIVE AND INFORMAL RELEASE

Proactive and informal release refers to providing access to government-held information outside of a formal FOI request:³³

- **Proactive release** involves an agency making information publicly available, on its own accord, without a person making an information access request.³⁴ This may involve an agency publishing certain information, reports, data, submissions or other documents on its website.
- **Informal release** involves an agency receiving a request for information or a document and providing access to the relevant information outside of the Act.³⁵ Information can be informally released in response to a once off request for information, or under more structured information release schemes or policies. Informal release is also commonly referred to as administrative release and is a typically reactive form of providing access to information.

³¹ Ibid, 57.

³² For example, 78% of FOI practitioners and 76% of Principal Officers agree the most effective way to improve FOI is by changing culture and 71% of FOI practitioners and 60% of Principal Officers believe the most effective way to improve is by changing the legislation; *Culture of FOI in Victoria Part II Study Report*, 27 and 41.

³³ Proactive and informal release furthers the object of the Act in section 3 to provide access to as much government information as possible, promptly and inexpensively. Section 16 supports proactive and informal release by providing agencies with a discretion to provide access to an exempt document provided they are otherwise not prohibited from doing so (for example, taking into account secrecy or other provisions that may prohibit release of the document). Part II of the Act requires agencies to publish certain information and documents. Professional Standards 1.1 and 1.2 require agencies to consider whether a document requested under the Act can be provided informally, outside of the Act, wherever possible.

³⁴ OVIC, Procedural Practice Note 2 – Proactive release of information, <https://ovic.vic.gov.au/resource/proactive-release-of-information/>.

³⁵ OVIC, Procedural Practice Note 6 – Informal release of information, <https://ovic.vic.gov.au/resource/informal-release-of-information/>.

Proactive and informal release enhances government integrity, accountability, transparency, and trust. It increases citizen participation in government processes and promotes better informed decision making through increased scrutiny, discussion, comment and review of government decisions.³⁶ To the greatest extent possible, information held by government should be made publicly available promptly and proactively, without the need for formal access requests.³⁷

Conditions required to enhance proactive and informal release behaviour

The Proactive and Informal Release Behavioural Change Final Report identified conditions that can maximise proactive and informal release behaviour. These conditions are outlined below in Table 1, according to four stakeholder groups who play a critical role in the FOI system (applicants, FOI practitioners, agency leadership, and other agency staff).³⁸

Table 1: Conditions required to maximise proactive and informal release according to four stakeholder groups

Conditions required to maximise proactive and informal release ³⁹	
Applicants must:	<ul style="list-style-type: none"> be aware of alternate information access pathways such as proactive and informal release trust the process so they feel comfortable selecting a less formal access mechanism (a mechanism which may not have statutory timeframes and review rights) be served by proactive and informal release (meaning they receive access to information through the process)
FOI practitioners must:	<ul style="list-style-type: none"> be inspired by good practice examples relevant to their circumstances to drive proactive and informal release and empower them with existing solutions be enabled through readily available resources (such as template documents) to keep opportunities to improve FOI front of mind despite high FOI workloads be empowered by a positive information access culture in their agency and by external guidance and training have a customer service mindset to build trust with applicants and members of the public
Agency leadership must:	<ul style="list-style-type: none"> value proactive and informal release to prioritise, promote and resource it have confidence in proactive and informal release and its benefits
Other (non-FOI staff) must:	<ul style="list-style-type: none"> know and understand FOI so they can be mindful of FOI in their day-to-day work; be confident in providing access to information proactively or informally; have a customer service mindset to build trust with applicants and members of the public.

³⁶ International Conference of Information Commissioners, Proactive Publication of Information Relating to the COVID-19 Pandemic Statement (24 June 2021), <https://cdn.website-editor.net/61ed7ac1402f428695fcc2386ad0577f/files/uploaded/ICIC-Statement-Proactive-publication-of-information-relating-to-the-COVID-19-pandemic-24062021.pdf>.

³⁷ Ibid.

³⁸ *Proactive and Informal Release Behavioural Change Final Report*, barriers to proactive and informal release are in Appendix A (starting on page 23) and conditions required to maximise proactive and informal release are in Part 4 (starting on page 5).

³⁹ *Proactive and Informal Release Behavioural Change Final Report*, 5 to 8.

Agency leadership's role in enhancing proactive and informal release

Agency leadership plays an important role in developing FOI culture. Principal Officers and other senior leaders must lead their agency in building a culture of transparency.

A positive FOI culture that is embedded at the top of an agency trickles down to the rest of the agency. For example, an agency culture which clearly supports proactive and informal release (evident through consistent messaging from agency leaders and reflected in agency policies and procedures) can build confidence in FOI practitioners and other agency staff to provide access to information outside of the formal FOI process.⁴⁰

Further, Principal Officers have expressed feeling autonomy from political leadership, meaning Principal Officers do not feel politically constrained from developing a positive FOI culture in their agency.⁴¹

OVIC'S ROLE IN INFLUENCING BEHAVIOUR: RECOMMENDED ACTIONS

OVIC plays an important role in supporting agencies to develop their FOI culture. Both the *Culture of FOI in Victoria Part II Study Report* and the *Proactive and Informal Release Behavioural Change Final Report* outline recommendations regarding actions OVIC can take to influence agency culture and enable greater proactive and informal release.

A key objective of the Proactive and Informal Release Behavioural Change project was to consider and design how OVIC could enable greater proactive and informal release in agencies. The Final Report contains an implementation strategy with specific actions based on the conditions and practice required to increase proactive and informal release. The implementation strategy will guide OVIC in its work over the short, medium, and long term.

The recommendations in the Proactive and Informal Release Behavioural Change Final Report and the Culture of FOI in Victoria Part II Study Report fall into three broad categories:

- education and training;
- stakeholder engagement; and
- promotion.

The recommendations directly target FOI practitioners and agency leadership, and they indirectly target applicants and other agency staff. The recommendations build on existing OVIC priorities, processes, and structures aligned with OVIC's FOI function to promote understanding and acceptance by agencies and the public of the Act and its object.

OVIC action plan for proactive and informal release

The Proactive and Informal Release Behavioural Change Final Report outlines specific and detailed actions for OVIC to implement over the next 12 to 18 months and beyond, in two phases. Table 2 and Table 3 outline a high-level action plan of OVIC activities over Phase 1 and Phase 2 (from September 2021 to March 2023 onwards) regarding education and training, stakeholder engagement, and promotion. The aim of these activities is to support agencies to enhance FOI culture through proactive and informal release.

⁴⁰ Ibid, 7.

⁴¹ Ibid.

Table 2: Phase 1 – OVIC actions over the next 12 to 18 months (September 2021 to September 2022/March 2023)

Monitor agency needs and progress regarding proactive and informal release		
Education and training	Stakeholder engagement	Promotion
Develop new and update existing guidance materials. Develop new webinars on improving FOI efficiency and proactive and informal release.	Engage directly with agency leadership, FOI practitioners, other agency staff, and other stakeholders to promote and support proactive and informal release.	Promote proactive and informal release and share best practice examples via communications channels.

Table 3: Phase 2 – OVIC actions ongoing (September 2022/March 2023 onwards)

Monitor agency needs and progress regarding proactive and informal release		
Education and training	Stakeholder engagement	Promotion
Continue to provide guidance materials. Review education and training activities and update as necessary. Based on agency needs, develop new guidance materials and webinars on different subjects.	Continue and expand stakeholder engagements.	Continue to promote proactive and informal release and share best practice examples via communications channels.

Education and training

In Phase 1, OVIC will build on existing education and training activities and agency resources to create new guidance on, and update existing guidance to incorporate, proactive and informal release.

Examples include:

- explaining what proactive and informal release is;
- developing a proactive and informal release policy;
- exploring how to optimise proactive and informal release in agencies; and
- developing an FOI induction kit for new agency staff.

OVIC will also develop webinars on new topics to share best practice examples, explain how to optimise the FOI process for applicants and agencies, and discuss how to design and implement smart defaults to drive FOI awareness and good FOI practices.

In Phase 2, OVIC will continue to offer education and training activities, and OVIC will update and develop new guidance materials and webinars, as required.

Conditions targeted

Education and training for agencies and the public (such as guidance, template documents and training) from OVIC can enable proactive and informal release by:

- **informing** applicants regarding what proactive and informal release is, which can help to build trust;
- **inspiring, enabling, and empowering** FOI practitioners by providing good practice examples and minimising actual and perceived barriers to driving and implementing proactive and informal release; and
- **building confidence** in FOI practitioners and other agency staff to facilitate access to information through proactive and informal release rather than defaulting to the formal FOI process.

Related recommendations from the Culture of FOI in Victoria Part II Study Report

Recommendation 4: make FOI orientation part of the induction package for new agency staff.

Recommendation 6: develop tools facilitating the creation of proactive information disclosure policies in government agencies.

Recommendation 7: proactive and informal release policy may include detailed analysis of historical FOI requests to identify information that may be released in future.

Recommendation 8: hold workshops and seminars on how proactive and informal release policies can be created.

Recommendation 11: OVIC to encourage its staff to attain specific knowledge and understanding of sector-specific FOI needs including the following sectors: health, statutory agencies, local government, and government departments.

Recommendation 12: OVIC to consider offering more sector-specific FOI and access to information professional development seminars.

Stakeholder engagement

In Phase 1, OVIC will build on existing stakeholder engagement activities, and consider new opportunities, to discuss and promote proactive and informal release, such as:

- agency engagement with the Information Commissioner and Public Access Deputy Commissioner and agency leaders;
- regular agency engagements with OVIC's Public Access Branch and FOI practitioners;
- informal resolution, reviews, complaints, Agency FOI Information Service;
- Public Access Agency Reference Group; and
- regular engagements with other OVIC teams and non-FOI agency staff.

In Phase 2, OVIC will continue and expand stakeholder engagements.

Stakeholder engagement can assist OVIC to identify opportunities for proactive and informal release and

assist with realising the opportunity. Executive and senior level agency buy-in and leadership in FOI culture is critical to adopting and promoting proactive and informal release. This leadership can help to develop a positive FOI culture in an agency by reinforcing the importance of information release which can help to make FOI practitioners and other agency staff feel more confident in providing access to information outside of the Act.⁴²

Conditions targeted

Direct engagements with agencies can enable proactive and informal release by:

- **inspiring** FOI practitioners with best practice examples from within their sector (which may include adopting a **customer service** mindset);
- **building confidence** in FOI practitioners and other agency staff to proactively or informally provide access to information; and
- demonstrating the **value** of proactive and informal release to agency leadership and **building confidence** on how to achieve benefits which can help to build a 'push' culture and **empower** FOI practitioners and other agency staff.

Related recommendations from the Culture of FOI in Victoria Part II Study Report

Recommendation 5: OVIC to focus its advocacy and education towards executive-level agency decision makers.

Promotion

In Phase 1 and Phase 2, OVIC will promote proactive and informal release via OVIC's communications channels (for example, monthly newsletter, Twitter, LinkedIn). Promotion builds on OVIC's education, training, and stakeholder engagement activities by communicating to agencies and the public regarding new OVIC guidance and webinars and sharing best practice examples and positive outcomes from other agencies.

OVIC will look to partner with agencies engaged in and committed to providing greater proactive and informal access to information to role model and promote how those agencies have succeeded in changing their outlook and culture to public access to information.

Conditions targeted

Promotion can enable proactive and informal release by:

- **informing** applicants regarding what proactive and informal release is, which can help to build **trust**;
- **inspiring** FOI practitioners by providing good practice examples and minimising actual and perceived barriers to driving and implementing proactive and informal release;
- **building confidence** in FOI practitioners and other agency staff to facilitate access to information through proactive and informal release rather than defaulting to the formal FOI process; and

⁴² Ibid, 18.

- demonstrating the **value** of proactive and informal release to agency leadership and **building confidence** regarding how to achieve benefits which can help to build a ‘push’ culture and **empower** FOI practitioners and other agency staff.

Monitor agency needs and progress

In Phase 1 and Phase 2, OVIC will monitor agency needs and progress to identify opportunities for new education and training activities, for expanding stakeholder engagement, and for understanding how agencies are progressing towards providing greater proactive and informal access to information.

Monitoring proactive and informal release is challenging. It can be difficult to collect data because FOI units often do not have visibility over the information that other areas in their agency proactively or informally release. However, monitoring data on information provided outside of the formal FOI process can provide a more holistic perspective of an agency’s FOI performance. For example, in OVIC’s first Own Motion Investigation, the Information Commissioner recommended that a local council should record information about access requests being responded to outside of the formal FOI process, because the lack of proactive and informal release data made the Council’s performance look worse when FOI figures were viewed in isolation.⁴³

OVIC is exploring how it may track agency progress regarding proactive and informal release. This may include a future audit of selected agencies’ or a sector’s compliance with Professional Standards 1.1 and 1.2, which require agencies to consider whether a document requested under the Act can be provided informally, outside of the Act, wherever possible.

Recommendations not considered in this paper

Some recommendations from the Culture of FOI in Victoria Part II Study Report fall outside the current scope of work outlined in this paper including:

- **Recommendation 1:** Review and update the Act to reflect the current digital information environment and bring it up to date with the 21st century.
- **Recommendation 2:** Review the proactive disclosure sections in reformed FOI/RTI Acts in other Australian jurisdictions (such as Queensland, New South Wales, Tasmania and the Commonwealth) and consider including an explicit proactive disclosure section in the Act. This should also include a review of the FOI/RTI disclosure logs that are used in several Australian jurisdictions.
- **Recommendation 3:** As part of the review in Recommendation 2, assess the functionality of the use of electronic reading rooms in relevant United States legislation. Can this concept be adapted to creating digital reading rooms in Australia? Decision made to make information available in digital reading rooms when a document/information is created.
- **Recommendation 9:** OVIC to undertake an inventory of the record-keeping systems in agencies and further assess their impact on FOI implementation.

⁴³ Victorian Information Commissioner, *Impediments to Timely FOI and Information Release: Own-motion investigation under section 610 of the Freedom of Information Act 1982 (Vic)* (1 September 2021), 8 (the report is available here: <https://ovic.vic.gov.au/wp-content/uploads/2021/09/Own-Motion-Investigation-Report-Impediments-to-timely-FOI-and-information-release.pdf>).

- **Recommendation 10:** As part of Recommendation 9, OVIC to assess if artificial intelligence can be used in the information location and retrieval process and to enhance record keeping.

Regarding Recommendations 1 to 3, OVIC recommends a comprehensive review of the Act.

Regarding Recommendations 9 and 10, during the Culture of FOI in Victoria Part II Study, Monash University, Ombudsman SA, the Office of the Information Commissioner WA, and OVIC were awarded an Australian Research Council Linkage Project grant. The grant is for a three-year study capturing and comparing the FOI and access to information cultures in Victoria, South Australia and Western Australia. This new study will address the questions raised in Recommendations 9 and 10.

CONCLUSION

FOI in Victoria can be improved through increased proactive and informal release to elevate FOI service delivery and increase transparency.

Agencies understand the purpose and intent of the Act, however FOI practitioners face challenges with administering FOI in Victoria including limited resources, increasing FOI workloads, and complex legislative obligations.

Agency culture and attitudes play an important role in a healthy information access system. Influencing this culture and changing behaviour requires action to target specific conditions to drive change. Agency leadership plays a critical role in changing behaviour.

OVIC is committed to enhancing transparency in the Victorian public sector and strongly encourages agencies to increase transparency through proactive and informal release. OVIC will help to support agencies with proactive and informal release through education and training, stakeholder engagement, and promotion.