



Proactive and Informal Release Behaviour Change

Final report – practical recommendations to increase proactive and informal release

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1 Project aims

Individuals' right to access government information facilitates fairness, openness and accountability and is fundamental to democratic society. In Victoria, this right is enshrined in the Freedom of Information Act 1982 (the Act) which is designed to "extend as far as possible the right of the community to access documents in the possession of the Government of Victoria".

Achieving this critical purpose requires a well-functioning system embodying best practice to ensure timely and appropriate access to information. This project focuses on enabling two forms of best practice information release: proactive and informal release. Proactive release¹ involves making information available in the absence of a request (e.g. an agency proactively publishing reports or records to its website). Informal (or administrative) release² involves provision of information in response to a request – either in full or in part – outside the formal process of the Act. Both of these practices can:

- increase the transparency of – and informed public participation in – agencies' decision making and service delivery
- enable greater public access to information
- provide information to public more quickly and simply
- reduce the burden of responding to formal requests, increasing efficiency and relieving administrative burden on agencies³
- afford agencies greater flexibility regarding when and how information is released, including the opportunity to properly contextualise it and maximise readers' understanding.⁴

OVIC is committed to helping the public and agencies realise these benefits and has engaged Decision Design to:

1. undertake extensive sector consultation to identify barriers and enablers of proactive and informal release, including current examples of good practice
2. develop a suite of practical actions OVIC can take – independently of legislative change – to support greater proactive and informal release among Victorian public sector agencies.⁵

This final report addresses both aims. In the sections that follow, we:

- provide the background and context for this work (Section 2)
- describe the stakeholder engagement protocol and key lines of enquiry (Section 3).

Then, our findings are organised into three sections:

- first, we establish the conditions required to maximise proactive and informal release behaviour (Section 4)
- second, we define the practice agencies can adopt – or in some cases have already adopted – to establish the conditions for proactive and informal release (Section 5)

¹ OVIC practice note on proactive release <<https://ovic.vic.gov.au/resource/proactive-release-of-information/>>

² OVIC practice note on information release <<https://ovic.vic.gov.au/resource/informal-release-of-information/>>

³ Proactive release – NZ Ombudsman Guide: Good practices for proactive release of official information. (2020). <<https://www.ombudsman.parliament.nz/resources/proactive-release-good-practices-proactive-release-official-information>>

⁴ Ibid

⁵ This project builds upon several pieces of work: (1) Lidberg, J. & Bradshaw, E. (2021). The Culture of Administering Access to Government Information and Freedom of Information in Victoria Part II. Interim Report. (2) Lidberg, J. (2019). The Culture of Administering Access to Government Information and Freedom of Information in Victoria. <<https://ovic.vic.gov.au/wp-content/uploads/2019/09/Monash-report-FOI-and-Information-Access-Culture-in-Victoria-pilot-study-2019.pdf>> (3) OVIC (2020). Proactive and informal release of information in the Victorian Public Sector Discussion Paper. <<https://ovic.vic.gov.au/proactive-and-informal-release-of-information-in-the-victorian-public-sector-discussion-paper/>>

- finally, we share an implementation strategy identifying prioritised practical actions OVIC can take to instil good practice among agencies, including guidance regarding timelines and required resources (Section 6).

Detailed identification of the specific barriers to proactive and informal release reported by stakeholders, including those operating within specific sectors is available in Appendix A.

2 Background and context

Two factors are driving greater focus on proactive and informal release:

1. modern ideals that cast government agencies as custodians – rather than owners – of information
2. an ongoing increase in the number and complexity of freedom of information requests coinciding with a reduction in staff to process them.

Casting government agencies as information custodians prioritises proactive and informal release and positions formal requests as a ‘last resort’ means of accessing information

Many states and territories⁶ have enacted ‘second-generation’ freedom of information (FOI) legislation that – reflecting the view of government agencies as information custodians – emphasises a *push* model of information access (i.e. where agencies proactively enable quick and simple access to the information they hold). This is in contrast to ‘first-generation’ legislation which embodies a *pull* model (i.e. where members of the public request or ‘pull’ information from agencies). Under this second-generation paradigm, formal FOI requests are positioned as a last resort, ideally only used when other less formal means are unsuitable.

A sustained increase in the number and complexity of FOI requests combined with a reduction in staff available to process them is increasing the burden on Victorian agencies

Two factors are increasing the strain on FOI processing within Victorian agencies, likely contributing to a reduction in timeliness.⁷ First, the volume and complexity of freedom of information (FOI) requests is increasing.⁸ In the previous six years (spanning FY2014-15 to FY2019-20), the number of formal FOI applications received has increased by 23 per cent (from 33,209 to 40,951). At the same time, the number of FOI decision makers has reduced from a high of 667 in 2015-16 down to 596 in 2018-19.

Increasing proactive and administrative release enables the objectives of the Act

Proactive and informal release enables public access to government information both directly and indirectly by:

- embracing best practice, making it quicker and simpler for the public to access information and allowing agencies greater opportunity to properly contextualise that information (e.g. via proactive release of information alongside commentary and explanation to aid interpretation)
- relieving the processing burden on agencies – in many cases, releasing information outside of the Act requires less formal processing and is therefore more efficient for both agency and applicant.

⁶ The Commonwealth, NSW, QLD, ACT, TAS.

⁷ OVIC. (2020). The State of FOI in Victoria Report: Five Years in Review 2014-2019. <<https://ovic.vic.gov.au/state-of-freedom-of-information-in-victoria/information-commissioners-foreword/>>

⁸ OVIC. (2020). The State of FOI in Victoria Report: Five Years in Review 2014-2019. <<https://ovic.vic.gov.au/state-of-freedom-of-information-in-victoria/information-commissioners-foreword/>>

The Act provides for both proactive and informal release⁹ and – as established from previous consultation¹⁰ – many agencies we consulted are either already engaging in this practice or are open to doing so. Nonetheless, several practical barriers exist and must be addressed. In the sections that follow we report the findings from our comprehensive stakeholder engagement that establish the barriers to proactive and informal release, identify the practice agencies can use (or already have used) to address them and outline practical actions OVIC can take to effect change.

3 Approach

Our findings and recommendations derive from three sources of information:

1. comprehensive desktop research spanning FOI policy reviews, legislation, discussion papers and submissions (for a full list of documents reviewed, see Appendix B)
2. extensive stakeholder engagement to identify both the barriers to proactive and informal release and existing good practice that addresses them (described in detail below)
3. workshop with an internal OVIC expert team to validate feasibility of practical recommendations.

3.1 Stakeholder engagement protocol

Our engagement comprised 26 one-hour interviews with stakeholders who fell into one of two groups (the interview guide is available in Table 1):

- FOI and governance team members within Victorian agencies (agencies were selected to be broadly representative of the public sector and comprised health services, local government and government departments and agencies)
- cross jurisdictional leaders and subject matter experts.

Throughout the report – when we refer to ‘agencies’, we are referring specifically to these 26 agencies we consulted with. While we tried to be as representative as possible, our findings do not necessarily apply to all agencies generally.

Table 1 | High-level stakeholder interview guide

Section	Questions
Current state / FOI reality	Confirm FOI team structure, nature and type of requests, current challenges
Current proactive and informal release practice	<p>Does your agency already proactively and/or informally release information? If so:</p> <ul style="list-style-type: none"> • How did these initiatives come about? • Who is responsible for their ongoing implementation? • What contributes to (or undermines) the success of these initiatives? • Are there existing sources of support or communities of practice you draw on to inform your approach? • Is proactive and informal release recorded or monitored in some way? Is this feasible? Why / why not?

⁹ OVIC. (2020). Proactive and Informal Release of Information in the Victorian Public Sector Discussion Paper.

<<https://ovic.vic.gov.au/proactive-and-informal-release-of-information-in-the-victorian-public-sector-discussion-paper/>>

¹⁰ Lidberg, J. & Bradshaw, E. (2021). The Culture of Administering Access to Government Information and Freedom of Information in Victoria Part II. Interim Report

Opportunity for (further) proactive and informal release	<p>Thinking first in ideal terms (i.e. assume we are free from constraints), is there (further) opportunity to reduce FOI burden in your agency via proactive and/or informal release?</p> <p>In practical terms, are there factors that either prevent or enable your agency taking a stronger proactive or informal approach to releasing information? What are they? How do they manifest? For example, spanning:</p> <ul style="list-style-type: none"> • Leadership attitudes and prioritisation • Staff capability, knowledge and/or attitudes • Policy and procedure • Resources to drive change • Staffing models • Information governance (including both security and ease of ‘knowing what’s there’) • Concern about risk • Accountability (internal and external) • Other
Useful supports	<p>What supports would enable your team/agency to enable greater cultural shift towards informal release of information?</p> <p>What role do you think OVIC has in assisting agencies to implement informal release practices?</p>

Note: for cross jurisdictional stakeholders, questions were adapted to be framed at the sector level (i.e. across agencies within their jurisdiction) rather than at agency level.

4 Conditions required to maximise proactive and informal release

Insights from stakeholder consultations identify a number of conditions that – when in place – maximise proactive and informal release behaviour (see Table 2). These conditions effectively represent the high-level drivers OVIC can target – in collaboration with sector stakeholders – to enable greater release of information outside of the Act within the current legislative environment. Practically, these drivers are distributed across four stakeholder groups, all of whom play a critical role in the FOI system:

- Applicants
- FOI officers
- Agency leadership
- Other agency staff.

Table 2 | Conditions required to maximise proactive and informal release behaviour

Stakeholder	Conditions
Applicants	<ul style="list-style-type: none"> • <u>Informed</u> <i>First and foremost, to pursue access to information outside of the formal process, applicants must be aware of the alternative proactive or informal release mechanisms. In some cases, agencies present information about informal processes separately to instructions regarding formal requests and do not explicitly position them as a starting point (and the FOI request as the ‘last resort’ option). Second, in cases where applicants are uncertain regarding exactly which</i>

Stakeholder	Conditions
	<p>documents or information they want, they can default to broader requests which feel safer (e.g. 'I want to see everything to make sure'). Educating these applicants about the documents and information the agency holds within the process can help them better shape their requests and, in turn, increase the likelihood these requests can be actioned outside the Act.</p> <ul style="list-style-type: none"> <u>Trusting of the process</u> Applicants' trust in an agency's information release processes enables proactive and informal release in three ways: <ul style="list-style-type: none"> applicants are less likely to default to the formal process; that is, increased trust means applicants see less need for an enforced timeline and right of review, leaving them free to select the process that gives quickest and easiest access to what they are seeking applicants are more willing to provide context about their request, enabling negotiation on scope and increasing the likelihood of release outside of the Act (or at least more efficient formal release via reduced assessment) it can reduce the 'sensationalism' associated with information release; for example, an organisation that builds a reputation of transparency and credibility with media stakeholders will likely have greater opportunity to offer credible context and commentary to the information they release, which in turn can increase leaders' confidence enabling greater proactive release. <u>Effectively served by proactive and/or informal release</u> In addition to being both aware of and confident in proactive and informal release mechanisms, applicants must be well served by these alternatives. For example, some applicants will revert to formal requests in the cases where: <ul style="list-style-type: none"> information can be released informally but after a timeline longer than the 30-day requirement for formal FOI applications information is available via proactive release but is hard to access (e.g. requires complicated account setup or login).
FOI officers	<ul style="list-style-type: none"> <u>Inspired</u> Among FOI staff consulted, there is strong endorsement of the objective of the Act and strong consensus that proactive and informal release further enables its purpose (and can reduce the burden on them). This likely means – for the vast majority of FOI staff stakeholders – the job is <u>not</u> to convince them of the value of proactive and informal release but instead, to inspire them with best practice examples from within their sector. That is, while FOI team members are experts in their domain, they cannot be experts in all aspects of their agency, in all areas of enabling technology, and so forth. Therefore, connecting FOI team members with examples of good practice, relevant to their specific circumstances, can inspire them regarding novel opportunities to drive proactive and informal release and empower them with existing solutions to realise them. <u>Enabled</u> Most FOI staff experience significant day-to-day workload and, in many cases, occupy multiple roles beyond FOI. This means that practically, a focus on the day-to-day can get in the way of broader strategic thinking and planning. Given this, it is critical to minimise the actual and perceived hassle associated with driving increased proactive and informal release. For example, via sharing readily adaptable policy documents, web templates, or request forms; sharing or supporting with enabling technology; encouraging and enabling a regular (annual) review process to keep opportunities for change top of mind.

Stakeholder	Conditions
	<ul style="list-style-type: none"> <u>Empowered</u> FOI staff can be empowered to both personally action – and to advocate internally for – increased proactive and informal release in two ways: <ul style="list-style-type: none"> Via an agency culture that promotes confidence among FOI officers to exercise their judgment to release information informally (e.g. FOI officers acting in good faith do not perceive themselves to be at risk when releasing information informally). This confidence reduces the likelihood of staff unnecessarily defaulting to a formal process, that is, a process that may be more burdensome but that provides a sense of security (e.g. by requiring multiple people to review or sign off a decision). Through external guidance and information: research conducted by OVIC and Monash¹¹ emphasises the critical role of agency leadership in enabling the culture and resources that support proactive and informal release. As passionate subject matter experts, the FOI team can play an internal advocacy role and will be most effective when empowered to do so. For example, a number of FOI team stakeholders indicated they leverage OVIC authority to drive change (e.g. using official OVIC guidance/communications to shift internal conversations away from ‘should we do this?’ to ‘OVIC is telling us this is a priority, how do we best address it?’). Additionally, FOI team members’ advocacy for resourcing is aided when they have access to sector-specific resource and performance benchmarks. <u>Customer service mindset</u> A customer service mindset – where FOI team members professionally and empathically work to build rapport with applicants – is an important means of informing applicants and building trust. Several experienced FOI staff spoke to the value of ‘getting the applicant on the phone’ and keeping them updated during the process. This dialogue helps to understand applicants’ requests, positively negotiate reductions in scope where appropriate, and build applicants’ confidence in the process (even in the case of an unfavourable outcome). Although it can take more time initially, this is ‘paid back’ via more manageable scope and reduced reviews/complaints.
Agency leadership	<ul style="list-style-type: none"> <u>Value proactive and informal release</u> Clearly the willingness of agency leadership to prioritise, promote and resource proactive and informal release is driven by its perceived value. This is achieved not just by emphasising benefits but by clarifying common misunderstandings. For example, by clarifying: <ul style="list-style-type: none"> That the question of proactive or informal release is not one about whether an agency should release or not; instead, knowing that certain information must be released under FOI regardless, the question is: ‘why not get out ahead of a formal request and proactively share the information on your terms, with full context?’. There are exemptions to release that can apply both to formal release and release outside the Act. <u>Confidence to ‘take a leap of faith’</u> Multiple stakeholders, both Victorian and cross jurisdictional, identified the need to instil confidence in senior stakeholders that the benefits of proactive and informal

¹¹ Lidberg and Bradshaw. (2021). The Culture of Administering Access to Government Information and Freedom of Information in Victoria Part II. Interim Report.

Stakeholder	Conditions
	<i>are not just 'in principle' but are actually realisable, especially in the case where – for example – proactive release leads to a short-term increase in scrutiny.</i>
Other agency staff	<ul style="list-style-type: none"> <u>Knowledge and day-to-day awareness of freedom of information</u> <i>Proactive and informal release are best enabled when staff are both knowledgeable and mindful of FOI in their daily practice. For example, a document written with FOI in mind is more likely to be suitable for proactive or informal release (e.g. if any personal information is siloed within an appendix rather than integrated into the main body of the document). Therefore, although freedom of information is (near) universally covered in staff training and orientation¹², it is important that this is supplemented with process and procedure (e.g. smart defaults and templates that drive awareness and adherence to best practice) to ensure freedom of information is a common consideration among agency staff.</i> <u>Confident</u> <i>Agency staff must feel confident in using available mechanisms for proactive and informal release. If they fear making a mistake (and/or being chastised for doing so), they may default to directing applicants towards a formal process when other measures are available, losing the opportunity for faster access to information and increasing the burden on the FOI team.</i> <u>Customer service mindset</u> <i>In many cases, the FOI team member is not the 'first port of call' for those requesting information, especially in the case where that request may be processed outside the Act. This means that for those frontline staff, a customer service mindset – just as it is for FOI team members – is a critical enabler of constructive dialogue to both educate the applicant and build trust.</i>

Note: a detailed table covering all the specific barriers to, and enablers of, proactive and informal release is available in Appendix A.

5 Good practice to drive proactive and informal release

Our stakeholder consultations revealed many examples of good practice already in place and effectively driving proactive and informal release (Table 3). These examples were shared by both:

- regulators from the many states and territories working to increase proactive and informal release and
- from the many Victorian agencies already releasing information to the public outside the formal process of the Act.

Table 3 (overleaf) summarises both these instances of existing good practice and additional practical solutions for establishing the conditions required for proactive and informal release. Practical actions OVIC can take to drive broader uptake of this practice are detailed in Section 6.

¹² within agencies consulted as part of this project

Table 3 | Good practice aligned to drivers of proactive and informal release

Stakeholder	Practice examples
Applicants	<p>Informed</p> <ul style="list-style-type: none"> • Applicant-centric presentation of guidance regarding how to access information, including: <ul style="list-style-type: none"> ○ Consolidated presentation of <u>all</u> options for accessing information (e.g. on the agency's website) with clear guidance for which option is most appropriate given the applicant's circumstance. Presenting guidance in this way focuses applicants on their primary concern – obtaining their information – rather than on navigating various information sources to learn about an agency's internal governance and processes for information release. For example, many applicants will not understand the technical differences between formal and informal release – and are unlikely to review options for release across disparate agency webpages. Instead, they are best served when information on options for release is consolidated and presented in terms of their need (rather than in terms of the agency's administrative processes). ○ Similarly, application templates can enable informed choice by driving awareness of alternative options for release (e.g. providing advice such as 'the information you're seeking may be available via informal release, this can be a faster way to get what you want...'). We recommend using a 'decision aid' approach to presenting information in a way that increases applicants' knowledge and reduces decisional conflict – further information to guide decision aid design is available on the Australian Commission on safety and quality in healthcare website¹³. • Up-to-date Part II statements (or equivalent) available on the agency website, making it easier for applicants to understand what information an agency holds and in what form (e.g. typical documents, reports, etc.). • Informal conversations with agency staff handling a request: in many cases, agencies reported these conversations were an effective means to inform applicants regarding availability and value of alternative means of release. <p>Trusting of the process</p> <ul style="list-style-type: none"> • Several FOI officers emphasised the value of building trust and rapport with applicants – this can help narrow the scope (increasing the likelihood of informal release). Practically, they implemented this via regular contact with applicants, for example, to: <ul style="list-style-type: none"> ○ acknowledge an application and seek further context (which in some cases enabled ad-hoc informal release) ○ proactively address issues with a request (e.g. highlighting incorrect date ranges) ○ explain agency processes (both formal and informal) including any exemptions that may apply, reducing likelihood of subsequent unnecessary formal requests and complaints. • Specifically, applicants are most likely to evaluate the agency's information release process as fair when: <ul style="list-style-type: none"> ○ decision making follows from an established protocol that takes due account of relevant circumstances (e.g. balances their needs as well as others, ensures their case is treated in the same way as others') ○ they are treated with respect ○ their outcome is explained to them.

¹³ <https://www.safetyandquality.gov.au/our-work/partnering-consumers/shared-decision-making/decision-support-tools-consumers>

Stakeholder	Practice examples
	<p>Effectively served by proactive and/or informal release</p> <ul style="list-style-type: none"> • A number of agencies have implemented easy-to-use self-service platforms that can automatically informally release an applicant's documents, getting an applicant documents quickly and saving time and resources. In some cases, this was further enabled by technology. • A number of agencies – either directly via FOI officers or indirectly where FOI officers developed policy or otherwise advise frontline staff – sought opportunities for ad-hoc informal release. In one agency, frontline staff would regularly check-in with the FOI team before guiding applicants towards a formal FOI request; for example, the FOI officer could facilitate a quick conversation with the applicant: 'if you don't want the mobile number, I can remove it and email you the document right now'. • Collaboration of FOI teams – or other staff releasing information – with web designers to ensure proactively released information is easily available (and – in some cases – appropriately contextualised).
FOI officers	<p>Inspired</p> <ul style="list-style-type: none"> • Many stakeholders we consulted with acknowledged the usefulness of OVIC-provided training. They also recognised the value of interactive, 'community of practice'-based forums for sharing tips and tricks to optimise current processes (including identifying opportunities and means for increasing proactive and informal release). For example, through these networks, FOI teams shared tips for optimising application forms, policy and procedure for enabling proactive and informal release). <p>Enabled</p> <ul style="list-style-type: none"> • FOI officers reported many examples of enablers that made it easier for them and other staff within their organisation to proactively and/or informally release information: <ul style="list-style-type: none"> ○ Clear alignment between teams involved in the release of information. For example, in some agencies, a team separate from the FOI team handles informal release. This setup worked best when the FOI team had visibility of, and input into, informal release protocols, ensuring efficient breakdown of tasks. ○ Experienced team members with accumulated 'institutional knowledge' are able to exercise judgement when triaging requests (e.g. they are able to quickly and efficiently anticipate opportunities for ad-hoc informal release). In recognition of this value, some organisations actively work to retain this knowledge; for example, by formally recording decision processes, or by pairing experienced staff members as mentors of newer starters). ○ Self-audit tools, combined with a requirement for regular review, make it easier to plan and identify opportunities for greater proactive and informal release – or, simply keep proactive and informal release 'on the agenda' for busy FOI teams. ○ Access to web designers and/or web templates supports applicant-friendly interfaces, including for online application forms, hosting of proactively released information. ○ In some agencies, new technology platforms are providing novel opportunities for proactive and informal release. For example, by enabling agency staff to proactively flag documents that are suitable for proactive and/or informal release; or, by making it easier to maintain and review records of common requests (candidates for future proactive release).

Stakeholder	Practice examples
	<p>Empowered</p> <ul style="list-style-type: none"> • Several FOI officers reported drawing upon formal directions and guidance issued by OVIC to advocate practice change to agency leaders. Leveraging OVIC's authority helped them build a mandate to drive change. • In many cases, FOI team members are best able to drive good information release practice when their initiatives were reinforced by leadership (e.g. endorsing good practice, ensuring information release is a key part of staff training and is embedded into organisational processes). • Agency leadership and culture can support FOI officers to confidently exercise judgment as to how best to release information rather than defaulting to a formal process (i.e. which may include greater review and a sense of security in the case where FOI officers acting in good faith are concerned about having correct decisions to release information perceived negatively by their agency). In at least one jurisdiction (NSW), this is further reinforced via statutory protection for staff who release information in good faith. Although holistic review of Victoria's FOI Act is beyond the scope of this project, we recommend OVIC advocate Victoria adopt similar protections. <p>Customer service mindset</p> <ul style="list-style-type: none"> • Many agencies recognised the value of FOI officers having a customer service mindset. It is something considered during hiring and emphasised in training. For example, in one particular agency, new starters spend time with non-FOI frontline staff directly interacting with clients. This is designed to build understanding and empathy for agency clients (the individuals who make the bulk of requests) and to ensure client needs and experiences remain top of mind for FOI staff as they action requests. • Several agencies enabled continuous improvement through regular reviews of policy and process, for example, to identify regular document requests and then work with divisions to proactively release in the future.
Agency leadership	<p>Value proactive and informal release</p> <ul style="list-style-type: none"> • Cross jurisdictional regulators used several approaches to successfully achieve buy-in: <ul style="list-style-type: none"> ○ One regulator met with every new agency leader to reinforce the value of freedom of information and ensure it is top of mind. ○ Emphasise the benefits of greater proactive and informal release for the organisation (e.g. reduced strain on FOI team, increased public trust, ability to properly contextualise information as it is released) <i>while also</i> addressing common misconceptions (e.g. 'proactive release doesn't mean you have to release everything, there are exemptions'). ○ To maximise the impact of these conversations, it is useful to 'piggyback' the benefits on to related issues that are already prioritised within an agency (e.g. framing the benefits of improved information governance as not just enabling proactive and informal release, but also as critical to address cyber security concerns). ○ Many regulators emphasised the importance of partnering with agencies to help drive practice improvement but then leveraging regulatory authority in the case where an agency is not sufficiently actioning change. In other jurisdictions outside Victoria, these conversations can be informed by disclosure logs which serve several useful functions including to inform the public and regulators about common information requests, the overall number of requests addressed by an agency – including those where information was released and those where it was withheld – and timeliness of processing.

Stakeholder	Practice examples
	<p>Further, disclosure logs can inform agencies' internal review processes (e.g. highlighting opportunities for greater proactive and informal release).</p> <p>Confidence to 'take a leap of faith'</p> <ul style="list-style-type: none"> • Even when agency leaders understand the in-principle benefits of proactive and informal release (and that there are exemptions to protect against release of sensitive information), a lack of certainty that they will actually realise those benefits can prevent practice change. To overcome this, several regulators report working strategically by prioritising leading agencies who were most open to change. Then, once the agency has successfully implemented change, their case can be leveraged as an aspirational example to build confidence in other agencies' leadership. • Two regulators shared examples where agencies' proactive release of information led to increased media attention and scrutiny, which risks undermining the perceived value for leaders who may feel pressure when released information is taken out of context by the public. In both these cases, the initial increase in attention quickly reduced as the public and media better understood the information resulting in benefits for both the public and the agency. Nonetheless, given the possibility of short-term challenges, leaders are most likely to support proactive and informal release when they have confidence that they can both: (i) navigate implementation challenges (e.g. ensuring due context for information released) and (ii) ultimately realise benefit.
Other agency staff	<p>Knowledge and day-to-day awareness of freedom of information</p> <ul style="list-style-type: none"> • FOI officers and managers reported several examples of good practice they use to drive staff knowledge of FOI and awareness during day-to-day activity: <ul style="list-style-type: none"> ○ Some FOI teams – time and resource permitting – regularly review practice among specific divisions within their agency; for example, by monitoring opportunities for proactive and informal release, or staff attitudes towards freedom of information. Then, the FOI team work to build positive relationships allowing them to exert informal influence (even in the case where they lack formal authority to force practice change) to drive practice change. ○ FOI officers play an important role in staff orientation where they can – often through the use of case studies – reinforcing the importance of FOI and the need to remain mindful of the potential for information to be released. In addition, some officers reported ongoing reinforcement training and communications with agency staff which can be usefully timed around external events (e.g. privacy awareness week). ○ Developing guides to aid the process for discovery of information, for example creating a search checklist, can make sure non-FOI staff systematically exhaust their search options (i.e. do not incorrectly conclude the agency does not hold the requested information). ○ Installing 'smart defaults' and templates to drive good practice. For example, creating briefing templates that steer authors to create documents that: <ul style="list-style-type: none"> ○ wherever possible, do not require redactions to be released ○ silo exempt material, which means main points are suitable for release ○ in cases where material must be withheld, include a sanitised description of the information and an explanation for why it is withheld. <p>A further example of smart defaults, in one hospital, the patient records system enables medical professionals to flag whether certain records can be released to the patient (avoiding the need for subsequent review, enabling efficient informal release).</p>

Stakeholder	Practice examples
	<p>Confident</p> <ul style="list-style-type: none"> Some FOI officers reported making themselves available to serve as advisors to frontline staff (or others involved in information release). This enabled quick check-ins where they could build confidence in frontline staff decision making regarding ad-hoc informal release. In other cases, this confidence was instilled by policy and procedure which provided clear guidance on circumstances where proactive or informal release is appropriate. A number of agencies have developed very mature policies which are supported by regular review and refinement. In some organisations, the information storage systems allow the tagging of documents that contain personal or otherwise sensitive information (i.e. documents unsuitable for release without assessment). This makes it easier for staff to navigate records and confidently decide what can be informally released versus what needs formal assessment. In some jurisdictions, officers who release information incorrectly but who do so in good faith are protected. <p>Customer service mindset</p> <ul style="list-style-type: none"> While the FOI officers we interviewed highlighted the importance of team leaders and managers in instilling a customer-centric approach within agency staff, none had the authority or scope to directly influence this.

6 Implementation strategy

Sections 4 and 5 identify the conditions and practice needed to increase proactive and informal release of information (i.e. they identify *what* is needed). This section details the practical actions OVIC (and others) can take to effect practice change and instil these conditions (i.e. the *how*). The implementation strategy establishes:

- intervention targets and channels of influence
- an intervention suite to drive comprehensive practice change
- prioritisation, timelines and resourcing
- success measures to enable ongoing monitoring and evaluation.

6.1 Intervention targets and channels of influence

The conditions needed to maximise proactive and informal release are distributed across four stakeholder groups: applicants, FOI officers, agency leadership and other agency staff (see Table 2 in Section 4). It is most feasible for OVIC to provide direct support to further establish these conditions for two of these groups: FOI officers and agency leadership. We propose that change among the other groups – applicants and other agency staff – is best addressed indirectly; that is, via support interventions delivered to the primary intervention targets of FOI officers and agency leaders (with two possible exceptions, fully detailed in Appendix C).

OVIC engages extensively with key stakeholder groups via several established forums and communication channels:

- Education and training engagements (e.g. comprising webinar series, roadshows)¹⁴
- Monthly newsletter

¹⁴<https://ovic.vic.gov.au/events-and-training/#events>

- eLearning service
- Agency information service (i.e. OVIC respond to agency enquiries via phone and email)
- Website and online resources (i.e. practice notes, professional standards, agency FOI self-assessment tool)
- Public Access Agency Reference Group
- Regular stakeholder engagements led by the Public Access Team
- Executive stakeholder engagements led by the Information Commissioner and Public Access Deputy Commissioner
- Dispute resolution processes (e.g. handling of reviews and complaints)
- Social media

These 'channels of influence' represent the viable opportunities for OVIC to drive proactive and supportive release.

A suite of specific support interventions OVIC can undertake for FOI officers and agency leadership – aligned to established communication channels – is provided below.

6.2 Intervention suite to drive practice change

Table 4 (overleaf) details the suite of practice actions OVIC can undertake to increase proactive and informal release. Recommended actions are organised by target stakeholder group and channels of influence.

Table 4 | Intervention suite to drive practice change aligned to intervention targets and channels of influence

Intervention target	Recommended actions (by channel)
FOI officers	<p>Education and training <i>Including live session webinars and online asynchronous resources</i> OVIC delivers comprehensive education and training to agencies covering both FOI and privacy.¹⁵ These roadshows and webinars are well established and positively regarded by the agencies we interviewed and therefore represent a key opportunity to engage with FOI teams to increase proactive and informal release. We propose OVIC develop further sessions – that complement the existing program – to broadly enable the conditions and practice required to drive proactive and informal release. Recommendations for specific sessions and accompanying resources are fully detailed below.</p> <p><u>Recommended session topics</u> These four topics are an initial list designed to address and instil the core practice required to enable informal and proactive release (as outlined in Section 5, Table 3). We recommend expanding and refining this list based on agency feedback over time. The four topics proposed are:</p> <ol style="list-style-type: none"> 1. Realising the benefits of proactive and informal release: best practice examples and ready resources 2. Optimising the FOI application process for applicants and agencies <i>including how to:</i>

¹⁵ <https://ovic.vic.gov.au/events-and-training/#events>

Intervention target	Recommended actions (by channel)
	<ul style="list-style-type: none"> ○ <i>Streamline your request lodgement process to help applicants make informed decisions (reducing overly broad requests) and effectively position FOI as a last resort</i> ○ <i>Efficiently maintain up-to-date Part II statements</i> <ol style="list-style-type: none"> 3. Practical strategies agencies are using to increase efficient processing of FOI requests, <i>including how to integrate informal communications into your process to maximise opportunity for release outside the Act, manage application scope and reduce complaints</i> 4. How to design and implement smart defaults within your organisation to drive FOI awareness and good practice among staff. <p>See Appendix D for detailed session plans and a session design guide.</p> <p><u>Session design</u></p> <p>For each topic, we propose 60-minute webinar-based sessions (+/- face-to-face where beneficial) – similar to the Information Access Series – designed to fulfil three core objectives:</p> <ol style="list-style-type: none"> 1. Educate: provide attendees with the essential understanding required for practice change addressed within the specific topic. For example, for Topic 1 '<i>Realising the benefits of proactive and informal release: best practice examples and ready resources</i>', session content must clearly explain proactive and informal release mechanisms and their position in the Act. 2. Inspire: through the sharing of leading practice – ideally presented by agency peers – session content must help attendees identify novel opportunities and new possibilities they can adapt into their practice to increase proactive and informal release. For example, health sector providers may be inspired by others' application of novel technology platforms that enable proactive release. Even simple tips can usefully inform practice, for example, during our engagement one agency representative shared how they took advice to adjust their application process to explicitly ask applicants whether they were seeking personal information as part of their request. This resulted in most applicants selecting 'no', meaning they could quickly redact personal information and release the documents more quickly. 3. Enable: sessions should provide attendees with sector-specific practical supporting resources that – as much as possible – agencies can 'pick up and use'. Practically, these resources will take a variety of forms including exemplars and (e.g. of Part II statements, policy documents, briefing note templates, staff training materials), templates (e.g. FOI request application forms, web page information release content). <p>We recommend each session:</p> <ul style="list-style-type: none"> • Involves a small pre-work task (no more than 2-5 mins) designed to maximise attendees' benefit, engagement, and perceived value. Pre-work tasks should be simple and, in many cases, will draw upon existing resources. For example, OVIC's Freedom of Information self-assessment tool¹⁶ is a useful resource to guide practice. Specific sections – with only minor modification – could be extracted from the tool to be used as pre-work to help agencies identify their needs which are then resolved by the session and enabling resources. This design practice can maximise the value of agencies' self-assessment, going beyond the (useful) call for

¹⁶ <https://ovic.vic.gov.au/freedom-of-information/professional-standards-self-assessment-tool/>

Intervention target	Recommended actions (by channel)
	<p>reflective practice, currently included in the tool, by linking agencies with tangible solutions to address their identified needs.</p> <ul style="list-style-type: none"> Is 'standalone' (although it may reference other sessions) — many FOI officers are time poor due to their increasing workload and/or because they balance their freedom of information responsibility alongside a variety of other roles. Therefore, they are likely to attend sessions in an ad-hoc fashion which means that each individual session must deliver value to enable change regardless of attendance at previous or subsequent sessions. <p>Direct engagements</p> <p><i>Including regular collaborative engagement with stakeholders, interaction via the Agency Information Service¹⁷ and dispute resolution</i></p> <p>OVIC routinely engages with agencies. We recommend OVIC 'piggybacks' support to drive proactive and informal release practice change on to existing engagements via these channels. For example, OVIC regularly engages with agencies receiving a large number of requests to address reviews and complaints. While addressing the matter at hand, there may be opportunity to trigger a conversation about broader support (e.g. that can help agencies more broadly address circumstances leading to disputes via greater proactive and informal release). Practically, we recommend a 'next best step' approach where OVIC collaboratively identifies an opportunity for practice change and enables this by supporting the agency through a sequence of practical actions to achieve it. For example, an illustrative sequence could be:</p> <ul style="list-style-type: none"> Work with agency to identify opportunities for proactive and/or informal release <i>and</i> to establish perceived value in achieving them (e.g. drawing on relevant resources such as the FOI self-assessment tool, agency top of mind issues or current 'pain points' which may arise during dispute resolution). Select a single opportunity to prioritise (e.g. considering feasibility and benefit). Identify solution (see Section 5, Table 3 for a comprehensive list of leading practice OVIC can recommend to agencies to seize opportunities for proactive and informal release). Identify barriers (see Table A1 in Appendix A for an exhaustive list of barriers identified via stakeholder consultation). Develop a sequence of actions to address barriers, for example: <ul style="list-style-type: none"> <u>Empower</u> the FOI team to advocate to leadership for change, for example, by: (a) providing normalising or benchmarking data such as that relevant to timeliness, typical resourcing in similar agencies, positive outcomes achieved by similar others (e.g. gathered via the OVIC annual agency survey or through OVIC team experience), (b) referring to OVIC guidance (i.e. enabling FOI team to externalise need for change to leadership). <u>Educate, inspire, enable</u> – draw upon existing training materials and enabling resources to make it as easy as possible for FOI team to enact change. <p>To help OVIC staff confidently work with agencies to identify opportunities for proactive and informal release, we recommend 1 to 2 focused training sessions that build:</p> <ul style="list-style-type: none"> Familiarity with the conditions needed to enable proactive and informal release (see Tables 2 and 3).

¹⁷ <https://ovic.vic.gov.au/freedom-of-information/public-access-agency-reference-group/>

Intervention target	Recommended actions (by channel)
	<ul style="list-style-type: none"> • Conversation techniques – exemplified by case studies – they can use to ‘piggyback’ offers of tailored support into their engagements. For example, as part of a review, an OVIC team member could assess agency practice against best practice and then offer support to address gaps.¹⁸ <p>These targeted sessions could be further bolstered by practice sharing among the team (e.g. via informal communication and/or in routine staff meetings: ~2 times per year, setting aside 15 minutes for a team member to share a successful support interaction and the techniques they used).</p> <p>We anticipate many agencies would benefit from this direct (i.e. one-to-one) tailored support to:</p> <ul style="list-style-type: none"> • identify opportunities for proactive and informal release • determine and implement the ‘next best step’ to realise the opportunities. <p>Given this, it is likely that OVIC will need to prioritise scarce resources to agencies where there is the largest need and/or potential for change. That is, especially during initial implementation of this support, OVIC can focus efforts on agencies:</p> <ul style="list-style-type: none"> • addressing a relatively large number of requests, a meaningful number of which could be completely or partially fulfilled outside the Act • where existing OVIC support resources (e.g. training sessions, online learning materials) do not provide sufficiently tailored guidance to enable to the agency to seize the opportunity (e.g. it might require development of new bespoke policy). <p>In practical terms, revealed in the OVIC 2019-20 Annual Report, the ‘top 30’ agencies received 86% of all FOI requests and therefore represent the logical starting point of agencies to consider for direct tailored support (i.e. to first identify the largest opportunities for proactive and informal release and then commence work to realise them).</p> <p>Website and self-assessment tool</p> <p>OVIC’s website hosts a comprehensive suite of resources – including formal standards and practice guidance, in addition to educational tools such as the freedom of information self-assessment tool and online learning materials¹⁹. We recommend:</p> <ul style="list-style-type: none"> • Developing further complementary resources specifically targeting good practice for proactive and informal release. These would be based on the webinar sessions (e.g. could comprise recordings and associated enabling resources). We recommend developing these with a ‘learning management system mindset’ meaning recordings are individually self-contained but link to other relevant resources (e.g. via instructions like ‘complete the freedom of information self-assessment tool to identify other resources to help with your current needs’). • Enhancing the freedom of information self-assessment tool to: <ul style="list-style-type: none"> ○ Include further items to prompt assessment of best practice to enable proactive and informal release (e.g. within the tool ‘Theme 2 – Receive a request’ assesses an agency’s application process practice – these items could be expanded to include further checks such as: ‘Your agency’s FOI information page provides information about options for release of information outside the Act (where they exist)’.

¹⁸ An illustrative conversational technique could be to provide a normalised, value framed offer of support such as: “I notice your team has been bogged down with a few of these burdensome, broad requests, a few of which have escalated to review. I imagine anything that helps your team deal with these ones more quickly and that reduces the chances of them escalating would be helpful. That’s why OVIC has resourced us to not only handle these reviews but also to provide you with additional practical support, for example, to share practice others like you have used to address this challenge and help tailor it to your context. Next best step you can take...”).

¹⁹ <https://ovic.vic.gov.au/training-and-events/online-learning/>

Intervention target	Recommended actions (by channel)
	<ul style="list-style-type: none"> ○ Link to specific supporting resources tailored to assessment results. For example, within the tool ‘Theme 2 – Receive a request’, assess an agency’s application process practice – in addition to inviting agency staff to reflect on their practice, it could link to enabling resources on OVIC’s website designed to address current areas of weakness (e.g. website and application form exemplars or templates, education and training videos on best practice for advising applicants). <p>Monthly newsletter, social media</p> <p>OVIC communicates with agencies via social media and a monthly newsletter. We recommend OVIC continue to promote events via these channels and wherever possible, publish content to share good practice and/or positive outcomes resulting from proactive and informal release to inspire other agencies regarding opportunities for change.</p> <p>We suggest several means for OVIC to identify examples of good practice:</p> <ul style="list-style-type: none"> • via direct engagements (including examples where OVIC has partnered with an agency to implement good practice and increase proactive and/or informal release) • via the Information Commissioners’ forum (commissioners/ombudsman sharing best practice examples from within their own jurisdictions) • via an explicit ask to agencies to share their good practice in the newsletter or via social media • via agency feedback obtained through the annual FOI survey (where items are adapted to assess good practice).
Agency leadership	<p>Senior/Executive stakeholder engagement</p> <p><i>Including direct engagements and via the Public Access Agency Reference Group</i></p> <p>Alongside supportive intervention for agency FOI teams – we recommend OVIC utilises/further develops its relationships with agency leadership. Our stakeholder engagements confirmed previous work²⁰ indicating the ‘buy in’ from leaders is critical to ensuring organisational culture supportive of proactive and informal release. Tangibly, this buy in reinforces the importance of information release among agency staff and helps FOI officers feel more confident releasing information outside the Act.</p> <p>To generate buy in, we recommend OVIC instigate targeted engagements with agency leadership. Practically, we recommend:</p> <ul style="list-style-type: none"> • Prioritising specific ‘top 30’ agencies where there is greatest opportunity to increase proactive and informal release; that is, agencies who both: <ul style="list-style-type: none"> ○ deal with many requests and/or hold substantial information of public interest that could be released outside the Act ○ are relatively open to changing their practice. <p>This prioritisation is designed to realise the greatest amount of change as soon as possible and develop case study examples that can be used to normalise best practice and tangibly demonstrates its value to other agency stakeholders less willing to change.</p> <ul style="list-style-type: none"> • Taking a ‘like for like’ approach to matching OVIC personnel with agency leadership stakeholders (e.g. OVIC executive team members attend engagements with agency executive). • Strongly establishing value of engagement by ‘piggybacking’ onto existing agency priorities (e.g. cyber security, information governance).

²⁰ Lidberg, J. & Bradshaw, E. (2021). The Culture of Administering Access to Government Information and Freedom of Information in Victoria Part II. Interim Report

Intervention target	Recommended actions (by channel)
	<ul style="list-style-type: none"> • Educating leaders regarding benefits of proactive and informal release and proactively addressing misbeliefs – ideally through tangible experience of other agencies (including those in other jurisdictions) to ‘prove out’ realisable versus hypothetical or in principle value. [Note: we recommend leading with benefits that apply to the organisation and then reinforcing the broader benefits, e.g. to the public]. • Taking a ‘next best step’ approach to simplify calls to change into a manageable sequence.

6.3 Prioritisation, timelines and resourcing

Broadly, we propose implementing the intervention suite outlined in Table 4 in two phases:

- Phase 1: Initiation and resource development (12-18 months)
- Phase 2: Continuing support and reinforcement (ongoing).

Phase 1 – Initiation and resource development

We propose a timeline of 12 to 18 months for OVIC to undertake Phase 1 implementation activities (noting timelines can be accelerated or decelerated as a function of available resourcing).

Phase 1 in-scope activities:

- Develop initial suite of 4x proactive and informal release webinars and associated resources for agency FOI staff (including enabling resources with focus on sectors experiencing a high volume of FOI requests). We anticipate each seminar will take between 20 and 40 hours to prepare given time taken to create and source templates/exemplars. This could be more efficient in the case where requests can be embedded into BAU practice (e.g. where OVIC team members can identify and curate leading practice exemplar materials during their regular agency engagement).
- Brief OVIC staff responsible for engaging with agencies across various channels (e.g. direct stakeholder engagement, the agency information service, newsletter, social media) to be aware of – and advise agencies regarding – OVIC supports enabling proactive and informal release. This awareness and direction to staff is most efficiently instilled via briefing in regular internal meetings (e.g. a 30-minute presentation to key managers followed by short periodic updates to staff as new resources and initiatives are deployed).
- Engage with senior/executive agency stakeholders in 2-3 priority agencies (as per recommendations in Table 4) to create leading examples of proactive and informal release to inspire other agencies in Phase 2.
- Consider updating OVIC’s annual FOI survey of agencies to accommodate: a) measurement of practice change lead indicators (see Section 6.4 below) and b) measurement of resourcing and processing time that can be collated and fed back to agencies to help them benchmark against similar organisations.

Phase 2 – Continuing support and reinforcement (ongoing)

Following initial implementation – as has been the experience in other jurisdictions – maximising proactive and informal release will be an ongoing priority. For example, as best practice continues to evolve, new opportunities for proactive and informal release will present; agency leadership and/or FOI staff will change over time creating a need for ongoing reinforcement. To ensure continuous improvement, we recommend OVIC continue to

dedicate resources to driving proactive and informal release practice change (just as it does for freedom of information practice more broadly).

Phase 2 in-scope activities:

- Monitor agency needs and progress (e.g. via agency feedback, updated agency survey).
- Update educational and enabling resources in response to agency needs (including further tailoring to smaller sectors with potential for change not specially addressed in Phase 1).
- Continue and expand engagements with agency leadership to encompass additional agencies, prioritising effort on those with greatest potential for change, leveraging case studies of leading practice (i.e. those agencies who have already successfully implemented change).

6.4 Success measures to enable ongoing monitoring and evaluation

Effective monitoring and evaluation of project impact is critical to informing continuous improvement of OVIC initiatives to increase proactive and informal release. Agency feedback through stakeholder consultation – both within Victoria and other jurisdictions – indicates that direct measurement of proactive and informal release is challenging. Specifically, OVIC does not currently request agencies report data on proactive and informal release of information. Also, while in some cases, agencies may have informal release schemes that enable tracking of release, in other cases release can be ad hoc and not readily trackable by FOI teams (meaning they cannot report to regulators).

Therefore, it is important to draw upon a range of alternative measures that can be more practically reported by agencies. Possibilities include:

- Change in the number and processing time of formal FOI requests. Anecdotally, stakeholders report that increasing proactive and informal release can (somewhat) reduce the number of formal requests and reduce the burden (e.g. via reducing unnecessarily broad requests). Despite this, relying on volume of requests as an indicator of success is challenging:
 - the number of requests tends to increase year on year²¹ (making annual changes hard to interpret)
 - comparison of data from NSW – which has a mature approach to proactive and informal release enshrined in legislation since 2009 – shows similar numbers of formal requests controlling for population and legislative scope (see Figure 1).

Taking these points into account, we do not anticipate large (i.e. > 10-15% below trend) changes in the number of formal requests. Nonetheless, as other jurisdictions have identified – good practice for proactive and informal release reduces the burden of responding to individual formal requests.²² For example,

- alerting applicants to proactively released or more easily available information can eliminate some requests and help to narrow the scope of others
- engaging in routine proactive release can build public trust and confidence, helping to manage expectations regarding when and what information will be available.

²¹ <https://ovic.vic.gov.au/blog/the-state-of-foi-in-victoria-report-2014-2019-where-to-from-here/>

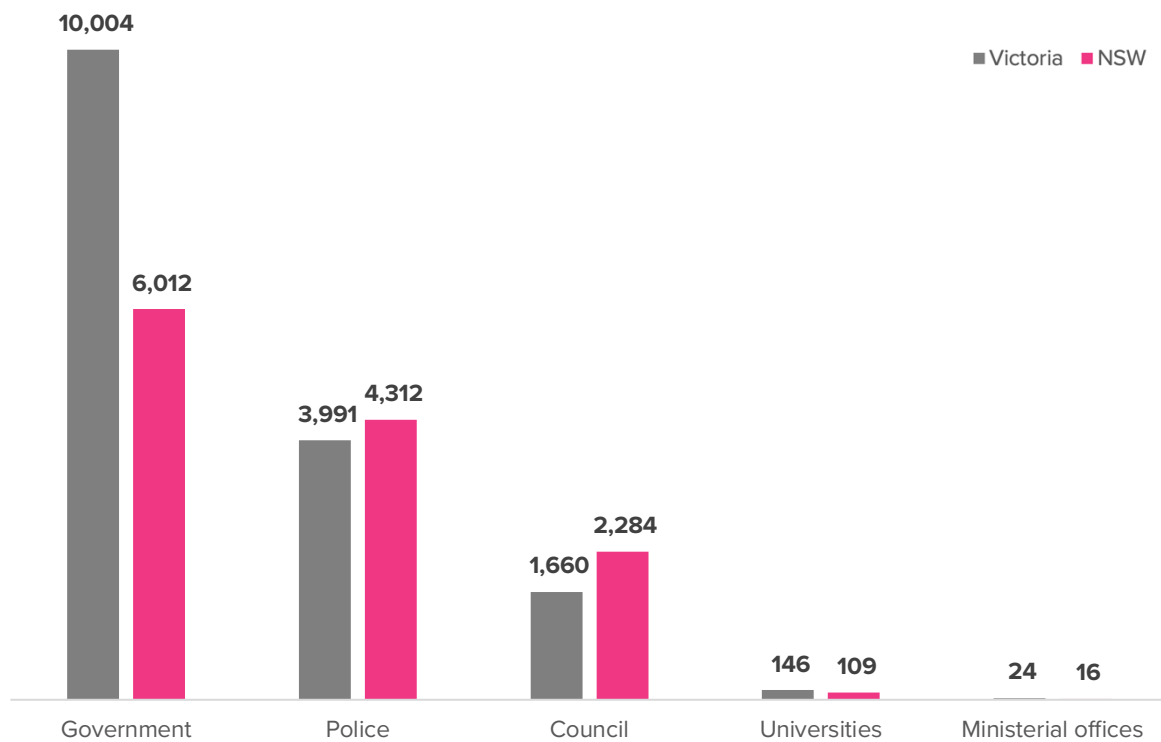
²² Proactive release – NZ Ombudsman Guide: Good practices for proactive release of official information. (2020). < <https://www.ombudsman.parliament.nz/resources/proactive-release-good-practices-proactive-release-official-information>>

More broadly, the good practice encouraged – including a customer service orientation, guidance to better inform and reduce decision conflict during application – can increase timeliness (e.g. by reducing unnecessarily broad requests) and reduce requests for review and complaints.

- Indicators of good practice: as reported in Sections 4 and 5 – a key outcome of this project is to identify the practice and conditions required to maximise proactive and informal release. This practice can be operationalised into specific indicators to be included in the annual FOI agency survey and/or other instruments (e.g. freedom of information self-assessment tool) to capture current practice (and then change over time in subsequent waves). For example, illustrative items could be:
 - Does the agency present information about alternative release mechanisms alongside information about FOI?
 - Members of the FOI team routinely communicate with applicants to explore opportunities for proactive and informal release?
 - Does the agency have an up-to-date Part II information statement (or equivalent) available on their website?
 - How supportive is your agency leadership of proactive and informal release?
 - Your agency maintains a disclosure log that lists information released in response to FOI requests?
 - Your agency regularly reviews (at least annually) FOI practice to identify opportunities for greater proactive and informal release?
 - Non-FOI staff in your organisation are confident to release information informally?

Further items can be developed to assess good practice aligning to the conditions required for proactive and informal release as outlined in Tables 2 and 3. We recommend developing a longlist of candidate items that comprehensively assess good practice as defined in Table 3 and then user testing to reduce the pool to a practical number of high-quality items.

Figure 1 | Number of formal FOI requests by sector in Victoria v NSW (controlling for population)



Notes

- Government category includes departments (e.g. Treasury and Finance) and agencies (e.g. Fire and Rescue NSW)
- NSW numbers normalised to match Victoria population size
- Health sector requests are processed through separate legislation in NSW, so they are excluded for both jurisdictions
- Numbers are indicative estimates only (given practicality of precise matching within sector categories)

Appendix A – Barriers to proactive and informal release

The stakeholders we consulted with are supportive of greater information release through proactive and informal mechanisms and many identified opportunities to improve practice within their agency. In practice, across all jurisdictions, FOI officers and regulators collectively identified a number of barriers that prevent proactive and informal release. The findings in Section 4 identify the drivers of proactive and informal release as distilled from the complete set of barriers reported by stakeholders fully detailed in Table A1 below.

These barriers operate collectively throughout Victorian agencies as well as those in other jurisdictions. These results should not be interpreted to mean these barriers affect all agencies. As detailed in Section 5, many agencies have implemented good practice to address these barriers.

Table A1 | Stakeholder reported barriers to proactive and informal release

Stakeholder	Barriers
Applicants	<ul style="list-style-type: none"> • A lack of knowledge of available options for requesting information can lead applicants to default to FOI requests. For example, <ul style="list-style-type: none"> ◦ many websites do not present consolidated information regarding options for release and do not present FOI as a 'last resort' mechanism ◦ many application templates do not alert applicants to informal release options. • A lack of knowledge about the nature and form of information an organisation holds can prevent proactive and informal release by increasing the likelihood of unintentionally broad requests (which are less likely to be suitable for informal release). For example, applicants who feel uncertain will default to broad requests (i.e. request everything 'to be safe'). Many applicants are not aware of Part II statements and do not refer to them. • A lack of knowledge of the process can lead to requests that include unwanted personal information (e.g. requests for medical records, planning documents, reports). In these cases, applicants are often not interested in obtaining others' personal information but can be unaware that this is something they can indicate upfront, which could increase the likelihood of informal release (or at least faster processing of a formal request). • A lack of confidence in an agency's processes can drive applicants' preference for formal release. Formal processes are accompanied by mandated timelines and right to review and will be preferred by applicants over informal mechanisms when they do not trust an agency to release all eligible information informally in a timely fashion. • A lack of perceived procedural fairness can increase the likelihood of applicants defaulting to formal requests (and ultimately requests for review). • Some media stakeholders prefer formal FOI requests, it may carry some benefits (e.g. requested documents remain exclusively with FOI applicant, they have full control over the story). • Intentionally broad requests are time consuming and must go through FOI. Stakeholders provided numerous examples of lawyers and politicians casting a wide net to dredge up anything that might further their agenda. • Excessive costs and fees can undermine informal release. For example, regulators highlighted examples of agencies requesting access fees for informal release much greater than those for FOI. Or imposing fees that seem unreasonable (e.g. charging a per page fee for electronic documents that do not need to be reviewed). One stakeholder expressed concern this could be used cynically by some agencies to reduce access to information.

	<ul style="list-style-type: none"> • In some agencies, the timeframes for informal release far exceeded that required for formal requests (e.g. specific timeframes identified for some informal release schemes were more than 60 days compared to the 30-day limit placed on FOI requests).
FOI officers	<ul style="list-style-type: none"> • A lack of resources means that many FOI officers spend (almost) all of their time 'keeping their head above water' (i.e. addressing day-to-day operational matters, processing of requests). This means that regular review and proactive planning to drive practice change is put off, that there is little time to proactively streamline processes, update practices in line with new legislation, or drive practice change. • A small number of complex requests can take up an inordinate amount of time. For example, a single request can take a team member weeks to process (e.g. those are voluminous, involve a great deal of personal information or that involve disgruntled applicants). FOI officers reported challenges in dealing with requests covering long time periods (e.g. accessing and reviewing 30-year-old medical records). • Lack of staff continuity – and therefore retention of critical informal institutional knowledge – can mean teams function less efficiently and are less able to confidently triage requests for informal release or identify opportunities for proactive release). More tenured FOI officers have greater opportunity to form positive relationships within an organisation, enabling them to play an advisory role even in the absence of formal authority over other staff. • Staff turnover can create resource gaps that lead to a backlog of requests which, in turn, reduces the capability of the FOI team to design and implement practice change to enable proactive and informal release. In some organisations this could be offset through internal secondment. This was further compounded during COVID which, for some agencies, increased the challenge of onboarding new staff and sharing expertise. • Lack of positive culture – led by agency leadership – to enable a 'pro release' mindset among agency staff. • Lack of alignment and/or FOI team oversight of other agency staff involved in information release. For example, in some cases, insufficient coordination between informal release scheme teams and FOI officers led to dual processing of requests or to unnecessary escalation of informal requests to a formal pathway. • Absence of regular review processes to drive consideration of further opportunities for proactive and informal release as well as other opportunities to enhance practice. • Absence of a customer service mindset or confidence to: <ul style="list-style-type: none"> ○ manage applications and – as much as possible – instil a sense of trust, confidence and procedural fairness in interactions with applicants ○ provide applicants with flexibility (e.g. in terms of highlighting opportunities for informal release). • Lack of ability to influence an organisation's culture and leadership, which can otherwise enable practice change and improved information release. For example, a lack of knowledge about other agencies' practice, and reductions in resource levels can make it harder for FOI teams to advocate for change within their organisation. • FOI officers are supportive of greater proactive and informal release but – given the breadth and demand of their roles – in many cases, they are not always aware of good practice used in organisations within their specific sector. For example, technology platforms to enable better information management, creating opportunities for informal release (e.g. patients accessing their records via patient portals). Or, existing templates or policies that can be readily adapted for their specific context. For example, some agencies have very mature policy and

	<p>procedures to guide proactive and informal release and are willing to share it with other agencies although in many cases this sharing is sporadic.</p> <ul style="list-style-type: none"> • Lack of proactive and informal release processes or policy can lead to already-busy FOI officers being inundated with frequent requests from agency staff (e.g. enquiries about whether something is suitable for release outside of the Act). In some agencies, FOI officers play this advisory role by design. In other agencies, it is perceived as a drain on time. In the case where informal release relies on the FOI team advising, it can undermine opportunities for ad-hoc informal release (e.g. frontline staff defaulting to the formal process if they cannot receive approval from the FOI team). • The way information is stored within organisations can make it hard to proactively release. For example, desperate or poorly updated records can motivate agency staff to hold information back (rather than implementing new processes to keep it up-to-date and suitable for proactive or efficient informal release). In many cases, the barriers are substantial (e.g. one smaller agency cited the example of navigating more than 20 different technology systems to search for documents, adding complexity to search and release processes). • A lack of record keeping and transparency (e.g. maintaining and publishing disclosure logs) reduces visibility of patterns of requests, reducing the ability of internal FOI team members and external regulator stakeholders to advocate for practice change. • Increasing numbers of complex requests and increased complaints – which in some cases remain unresolved for long periods of time – can consume FOI team member resources, reducing work effort towards practice change to promote proactive and informal release. Some agencies reported not feeling supported by OVIC when they choose to reject requests based on the volume of information involved. • Some FOI teams (e.g. in local government) must remain mindful of multiple pieces of legislation which, in some cases, may create confusion regarding officers' ability to disclose information. A lack of clear guidance from regulators about how best to address points of confusion can make it challenging for FOI teams to balance requirements (both in relation to proactive and informal release and more generally).
Agency leadership	<ul style="list-style-type: none"> • A lack of perceived value of information release and, in some cases, a view that government are information owners rather than custodians, means release of information is not prioritised. • Fear of public backlash and 'unhelpful' public discourse can lead to a reticence at executive and board levels to release information publicly on a proactive basis. For instance, in one case, information such as annual staff satisfaction data is not released proactively, even though it is released under FOI every year, for this reason. • Fear of the public misinterpreting or misusing technical information has led some agencies to defer the release of technical documents (e.g. only releasing them upon request, when they could be released proactively). • Negative outcomes of disclosure (e.g. negative press) can be highly mentally available and contribute to an exaggerated perception of risk. For example, some leadership stakeholders are unaware of exemptions to release which, in practice, can mitigate some concerns regarding risk. • Even when leaders perceive positive value of proactive and informal release, they can be reluctant to 'be the first' to change practice. Uncertainty that benefits are realisable can contribute to agencies hesitating to 'take a leap of faith'.

	<ul style="list-style-type: none"> • Presence of internal clearance processes that involve senior executives clearing documents for release can reduce efficiency and the effectiveness of information release and reduce opportunity for proactive and informal release.
Other agency staff	<ul style="list-style-type: none"> • A lack of awareness among agency staff involved in creating information (e.g. briefing notes, reports, etc.) contributes to a culture of writing documents that are less suited for proactive or informal release. Stakeholders shared examples of documents where sensitive information was embedded throughout. For example, cases where personal details were used consistently throughout an entire document as opposed to the better practice of referring to a person as 'Witness A' and then only including their personal details in an appendix. In other cases, even document titles included sensitive information. • In some agencies, frontline staff are concerned about incorrectly releasing information and do not feel confident in their judgment. In this case, they may default to recommending the formal FOI process to minimise their risk even in cases where information could be released informally. • Similarly, the absence of clear informal release policy and procedure can undermine confidence of agency staff, increasing the likelihood they will defer to recommending a formal FOI processes (i.e. to the established, defensible process), even if the information is suitable for informal or proactive release. • In some cases, de-centralised triage mean requests for information are sent to the wrong areas requiring additional resources and time investment (in some agencies, such as those comprising multiple service divisions, centralised triage will not be possible). In other agencies – where requests may have a more consistent theme, e.g. patients requesting access to their records – centralised triage contribute to consistent and efficient processing and clearer guidance regarding informal release. • Absence of a customer service mindset among frontline staff can undermine applicants' trust in an agency's process, decreasing the likelihood of positive applicant behaviour (e.g. willingness to narrow scope to enable informal release). • In some cases, agency restructures led to a de-skilling of frontline staff, reducing their capability to respond informally to information requests (e.g. incoming requests from solicitors), decreasing applicant confidence and increasing the likelihood of formal requests. • Power imbalances can undermine agency staff willingness to release (e.g. anti-release view among senior staff can undermine confidence of frontline staff to release information).

Appendix B – List of documents reviewed

Table B1 | List of documents reviewed

Category	Document
Legislation	<ul style="list-style-type: none"> • <i>Freedom of Information Act 1982</i> (Vic) • <i>Right to Information Act 2009</i> (Qld) • <i>Government Information (Public Access) Act 2009</i> (NSW) • <i>Health Records and Information Privacy Act 2002</i> (NSW) • <i>Freedom of Information Act 1982</i> (Commonwealth) • <i>Right to Information Act 2009</i> (Tas) • <i>Freedom of Information Act 1992</i> (WA) • <i>Freedom of Information Act 2016</i> (ACT) • <i>Freedom of Information Act 1991</i> (SA)
Reports, discussion papers, submissions	<ul style="list-style-type: none"> • 14x responses to OVIC's proactive and informal release discussion paper • Australian Institute of Health and Welfare. (2020). <i>The Five Safes Framework</i> • Easton, S. (2018). Push vs pull: National FOI stats paint a blurry picture of open government. <i>The Mandarin</i> • Lidberg, J. (2019). <i>The Culture of Administering Access to Government Information and Freedom of Information in Victoria: Part I Pilot Study</i> • Lidberg, J. & Bradshaw, E. (2021). <i>The Culture of Administering Access to Government Information and Freedom of Information in Victoria: Part II, Interim Report</i> • OAIC. (2010). <i>Towards an Australian Government Information Policy</i>, Issues Paper • OVIC. (2020). <i>Proactive and Informal Release of Information in the Victorian Public Sector</i>, Discussion Paper • OVIC. (2020). <i>The State of Freedom of Information in Victoria: Five Years in Review 2014-2019</i> • Productivity Commission. (2017). <i>Data Availability and Use Inquiry Report</i> • The Right to Information, Reviewing Queensland's Freedom of Information Act. (2008). <i>The Right to Information, Reviewing Queensland's Freedom of Information Act</i> • UK Cabinet Office. (1997). <i>Your right to know: The Government's proposals for a Freedom of Information Act</i>
Policies and practice guidance	<ul style="list-style-type: none"> • Australian Government Public Data Policy Statement (2015) • Department of the Prime Minister and Cabinet, New Zealand. (2018). <i>Cabinet Office Circular (18)4: Proactive Release of Cabinet Material</i> • Department of the Premier and Cabinet, South Australia. (2019). <i>Premier and Cabinet Circular PC 035: Proactive Disclosure of Regularly Requested Information</i> • Department of the Premier and Cabinet, South Australia. (2017). <i>Premier and Cabinet Circular PC 045: Disclosure Logs for Non-Personal Information Released Through Freedom of Information</i> • OAIC. (2011). <i>Principles on Open Public Sector Information</i> • Office of the Information Commissioner WA (2021). <i>Thinking outside the FOI box</i> • Office of the New Zealand Ombudsman. (2020). <i>Proactive Release: Good Practices for Proactive Release of Official Information</i> • OVIC. (2019). <i>Procedural Practice Note 1: Professional Standards</i> • OVIC. (2019). <i>Procedural Practice Note 2: Proactive release of information</i> • OVIC. (2019). <i>Procedural Practice Note 6: Informal release of information</i> • NSW Information and Privacy Commission (2020). <i>Fact Sheet: Open Access Information Under the GIPA Act—Agency Requirements</i> • NSW Information and Privacy Commission (2020). <i>Essential Guidance Toolkit on Information Access and Privacy Fundamentals</i>

	<ul style="list-style-type: none"> • NSW Information and Privacy Commission (2020). <i>Summary of Public Consultation Feedback on the Metrics on Public Use of Freedom of Information Access Rights</i> • OVIC. (2020). <i>Freedom of Information Professional Standards Self-Assessment Tool</i>
Other	<ul style="list-style-type: none"> • NSW Information and Privacy Commission (2017). <i>Release of Inaugural Dashboard and Metrics on the Public's Use of FOI Laws</i> • Fletcher, C. (2021). <i>Freedom of Information – from the Age of Enlightenment to the Digital Age, and Beyond</i> • Cross jurisdictional information access regulators: <ul style="list-style-type: none"> ○ ACT and the Commonwealth (https://www.oaic.gov.au) ○ New South Wales (https://www.ipc.nsw.gov.au) ○ Northern Territory (https://infocomm.nt.gov.au) ○ Queensland (https://www.oic.qld.gov.au) ○ Tasmania (https://www.ombudsman.tas.gov.au/home) ○ Victoria (http://ovic.vic.gov.au) ○ Western Australia (https://www.oic.wa.gov.au/en-au) • Lee, B.X., et al. (2016). Transforming our world: implementing the 2030 agenda through sustainable development goal indicators. <i>Journal of public health policy</i>, 37(1), 13-31

Appendix C – Secondary intervention targets

Section 6 identifies FOI officers and agency leaders as the primary targets for supportive intervention to drive greater proactive and informal release. To ensure feasibility, enablement of the other stakeholder groups – applicants and other agency staff – is addressed indirectly, via the support interventions delivered to FOI officers and agency leaders. However, we propose two possible exceptions for OVIC consideration:

1. Although the public is generally aware of freedom of information, many applicants only become aware of specific details (e.g. specifically how to submit a request, informal release schemes) at the time of application. Therefore, the best opportunity to inform applicants regarding informal release mechanisms is via the agency holding the information being sought *at the time of application*. Nonetheless, there is additional opportunity to better inform some applicants (e.g. media organisations, interested members of the public) about release outside of the Act via communications on OVIC's website and/or public events (e.g. during Right to Know Day public forum).
2. Within the broader applicant stakeholder group, several specific applicant types are identifiable where there is specific opportunity to enable greater proactive and informal release (or at least enable more efficient release even through the formal process). For example, local government agencies report some of their most burdensome requests are from legal professionals seeking information to inform clients' litigation. These requests are typically broad in terms of information requested and the time period covered. This means that in practice they can take weeks of work to action. Pending sufficient resources, OVIC could initiate engagements with specific applicant groups (e.g. via professional associations) to increase knowledge of best practice and driving more focused requests more likely to be actionable via informal release (or at least addressed with greater efficiency).

Appendix D – Education and training session detailed topics and design guide

Detailed content plans for recommended session topics

1. Realising the benefits of proactive and informal release: best practice examples and ready resources
 - a. Utilise pre-work to help attendees to consider/identify opportunities for greater proactive and informal release within their agency
 - b. Define proactive and informal release (as per practice notes)
 - c. Establish value for agency and public and normalise these mechanisms using other jurisdictions and/or leading Victorian agencies similar to attendees' agencies
 - d. Quick energiser – ask attendees to share their opportunities to increase proactive and informal release verbally or in chat (time permitting given number of attendees)
 - e. Practice sharing of relevant examples, ideally from other agencies including: i) quick brief on the problem solved by the practice, ii) implementation barriers they encountered/addressed, iii) the practice itself [which can then be shared as exemplar and/or template post-session] and iv) benefits unintended effects realised
 - f. Discussion to: i) prompt attendee reflection on how the practice presented can help them address the opportunities for greater proactive and informal release they identified in their agency and ii) lock attendee commitment to act and clear barriers (e.g. as per design checklist below).
2. Optimising the FOI application process for applicants and agencies including how to: i) streamline your request lodgement process to help applicants make informed decisions (reducing overly broad requests) and ii) effectively position FOI as a last resort.
 - a. Utilise targeted pre-work questions to prompt attendees to review their agency's FOI website and application process
 - b. Establish value for agency and public arising from a streamlined application process (drawing on tangible examples, expert practice as much as possible)
 - c. Engage attendees with a short energiser – ask attendees to share their current practice
 - d. Practice sharing of relevant examples, ideally from other agencies including: i) best practice for application form (including decision aid content and design templates to promote release outside the Act²³), ii) FOI web page content including developing and maintaining up-to-date Part II statements and alternative release mechanisms and iii) benefits and unintended consequences realised

²³ Australian Commission on safety and quality in healthcare website

- e. Discussion to: i) prompt attendee reflection on how their agency's current practice aligns to best practice as presented and ii) lock attendee commitment to act and clear barriers.
3. Practical strategies agencies are using to increase efficient processing of FOI requests, *including how to integrate informal communications into your process to maximise opportunity for release outside the Act, manage application scope and reduce complaints*
- a. Set pre-work questions to prompt attendees to review their informal communication practice with applicants
 - b. Establish value for agency and public arising from a streamlined application process (drawing on tangible examples, expert practice including OVIC experience managing disputes)
 - c. Engage attendees with discussion of good practice, for example covering:
 - i) sharing an example where they've used informal communication to effectively manage a complex application (ideally to reduce unnecessarily broad scope, create opportunity for informal release, or similar) and ii) FOI and other staff training methods (including the importance of – and how to instil – a customer service mindset incorporating principles of perceived fairness: clear process, professional treatment and explanation of outcomes)
 - d. Summarising discussion/reflection: what is one thing attendees will do differently based on today's content?
4. How to design and implement smart defaults within your organisation to drive FOI awareness and good practice among staff.
- a. Utilise pre-work to prompt attendees' reflection on the extent to which non-FOI staff within their agency are mindful of information release opportunities – including proactive and informal release – when engaging with public, when writing documents (e.g. briefing notes)
 - b. Establish value for agency and public – highlighting relevant examples from leading agencies and jurisdictions
 - c. Quick energiser – ask attendees to share their experiences (including both positive and their 'war stories' e.g. staff members including personal information in documents titles)
 - d. Sharing of relevant practice/document templates that enable 'smart defaults' (e.g. siloing sensitive information into a document appendix and using pseudonyms in the main document).
 - e. Discussion to: prompt attendee reflection on how the practice presented can help them inform their staff training and/or agency practice *and* to lock attendee commitment to act and clear barriers.

Further recommendations: Phase 2 session topics

The four recommended sessions outlined above are designed to:

- comprehensively address the conditions/good practice identified as drivers of proactive and informal release (see Tables 2 and 3)
- be practically implementable within OVIC resourcing.

That is, the sessions are designed to balance sufficient depth of coverage of essential topics within a practical number of sessions for OVIC to deliver and busy FOI officers to attend.

Therefore, we believe these sessions are practically sufficient for Phase 1 (knowing that enabling resources that accompany each session will ideally be customised for key sectors). Nonetheless, within Phase 2, where time allows for development and delivery of further sessions, we recommend OVIC consider:

- Annually creating 2-3 new sessions offering deeper focus on areas covered only briefly (or not at all in) in the four foundational sessions. For example, sessions targeting:
 - Confident management of freedom of information alongside other legislative obligations in local government.
 - Setting up and maintaining disclosure logs to track and improve information release – practice sharing and ready resources.
 - Best practice for orientation and ongoing FOI training for non-FOI staff (*including specific suggestions for awareness raising activities FOI teams can run, e.g. during Right to Know Day*).
 - Best practice for proactive release of information to the media.
- Continued iteration and extension of the four recommended foundational sessions' content to cover additional examples of good practice.
 - For example, the Session 1 design brief calls for '*Practice sharing of relevant examples, ideally from other agencies including: i) quick brief on the problem solved by the practice, ii) implementation barriers they encountered/addressed, iii) the practice itself [which can then be shared as exemplar and/or template post-session] and iv) benefits unintended effects realised*'.
 - Practically, the 60-minute duration will accommodate 1 to 2 examples (e.g. establishing and implementing an informal release procedure, support activities to raise non-FOI staff confidence to informally release) meaning that future iterations of the session could share further good practice tailored to attendees' needs.

At a macro level, during Phase 2, we recommend OVIC review best practice identified in Tables 2-3 against current practice within priority sectors (as revealed through engagement, feedback in annual FOI surveys, emerging patterns observed in review processes) to determine opportunities for 2 to 3 new sessions each year. For these areas and then develop sessions to address those using the provided design guidance.

Session design checklist

Pre-session comms...



Normalise the need

You have told us that your key challenges right now include...



Value framed offer of support with *opt-in* mechanism

That's why OVIC has created simple supporting materials – designed for busy FOI staff who need to manage increasing volume and complexity of FOI applications – that make it quicker and easier to administer the FOI Act



Pre-session task

To ensure you get the most out of the session...

Session



Content

Value frame approach, share best practice + case studies (presented by peers where possible)



Lock commitment

Is there anything that can get in the way of you making these changes that OVIC can help you with?

Post-session



Follow-up

Send enabling support