



MONASH
University

School of Media,
Film and
Journalism,
Faculty of Arts

THE CULTURE OF ADMINISTERING ACCESS TO GOVERNMENT INFORMATION AND FREEDOM OF INFORMATION IN VICTORIA PART II

FINAL REPORT

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Introduction

This report is the second and final part of a study commissioned by the Office of the Victorian Information Commissioner (OVIC) as an independent piece of research. The study aimed to capture the culture of administering the *Freedom of Information Act 1982* (Vic) ('the FOI Act') and the Victorian information access system overall.

In September 2018, the School of Media, Film and Journalism at Monash University co-hosted a research roundtable with OVIC with participants from Victoria, Western Australia, Queensland, New South Wales (NSW), the Australian Commonwealth and a representative from the international access to information body, the Open Government Partnership.

The research roundtable identified what research was needed to aid the participating information commissioners and ombudsmen in their quest to improve the practical functionality of freedom of information (FOI) and right to information (RTI) systems. Functionality in this case is defined as how well the laws and systems deliver access to government-held information from a FOI/RTI user's point of view.

A pilot study was commissioned by OVIC to determine if the culture of implementing access to information could be captured. The study was executed by A/Professor Lidberg in 2019 and the conclusion was that the culture could be captured.

This study expands on the pilot study and widens the data capture to 30 Victorian agencies. The sample is now of a size that will make the findings in the final report generalisable across the Victorian public service sector. This final report describes and analyses the findings from the two surveys distributed to the 30 agencies, as well as thematic outcomes from focus groups and interviews conducted from February to June 2021.

Finally, a note of thanks to the OVIC for its leadership in FOI and access to information development in Australia. Thanks also to the Victorian FOI practitioners and principal officers of government agencies who openly and frankly shared their views and interpretations of FOI in this study and how a facilitation-based access to information culture is built and maintained.

Melbourne, June 24, 2021.

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Executive Summary

Sample of quotes from the online surveys, focus groups and interviews

FOI practitioner replies to the question: is there anything else you would like to add regarding improvements to the Victorian access to information system?:

In my experience, and despite popular opinion, FOI practitioners tend to fall more on the 'pro-release' side of the FOI argument. Often though, these practitioners are having to grapple with pushback from within their agencies, which is often driven either by a poor understanding of public servants' obligations under the FOI Act or by a lack of respect/recognition of these obligations. An improved FOI scheme should have as its primary purpose the provision of as much information as possible to the public, with exceptions only coming into play for information that absolutely should not be disclosed. While this is technically the case with the current FOI scheme, it is not explicit enough and too often agencies (especially non-FOI practitioners) are starting from the perspective of what can we withhold, rather than what can we release.

In reality, what my role has been for the past 18 months is pretty much begging for resources, pretty much trying to justify as to why we need more people and putting together endless amounts of stats around that in different ways ... So I haven't really done any intellectual leadership of the [FOI] team... I don't even have much time to do things like look at our website for all the good practise notes and things that they're putting out there, because I don't have the time or space to implement them into our processes. So basically, I see my role as leading a team that's in siege mode. (Interview V)

That's part of the dividend for the department and part of the kind of internal motivation and business case, if you like ... we're talking about it [the proactive information release policy] to people in the [agency] ... there is actually a reduction in the reactive work if we're proactive. (Interview 20)

Oh, we can't even copy our files properly. I mean, the basic process of copying a file from our [agency] system into PDF doesn't work. And I've been in the team 11 years. It has never worked ... So you're starting off with a file that you can't use, you've got to then try to figure out what's missing, which in files that can be thousands and thousands of pages it's near impossible. And then if you figure out what's missing, you have to individually pull those documents from the [agency] system. (Focus group QRS on record keeping)

I think ordinarily that sometimes this sort of function [FOI] is seen as a hygiene factor for many organisations, part of 'keep the lights on' ... I don't want to make it sound the wrong way, but, you know, in every big city, they've got pipes and infrastructure. I don't see it, but it all works. And if you increase the number of people, but you don't increase the pipes and the water and the electricity, it comes to a grinding halt. So, I sort of see this function [FOI] as well as privacy and other sort of core functions as a bit of that infrastructure that you don't see, but as critical to coping with your growth and the work. (Interview X)

Key study facts

Number of invited agencies: 57

Total number of participating agencies: 30

Number of online survey replies: 70 FOI officers and managers (FOI practitioners), 46 principal officers (POs) (department secretaries, chief executive officers [CEOs] of hospitals and local governments, chairs of boards at statutory agencies)

Response rate percentage: 81% officers and managers; 76% POs and executives

Number of focus groups and individual interviews conducted: 63

Total number of participants interviewed as part of study: 83

The data collected strengthen the initial findings from the pilot study, which led to the conclusion that:

the overall impression is that the vast majority of the FOI practitioners that participated are sincere, passionate and committed to a well-functioning access to information regime in the state. But the data also indicates that significant obstacles still exist to realising this ideal and delivering on the objectives and aims of the Victorian FOI Act (Lidberg, 2019).

One of the principal findings from the pilot study was the crucial importance of the agency executive level (POs) in building and maintaining an information access culture that facilitates access to information. In this second comprehensive study, the executive level was added as a data collection point.

The interest and engagement from agency POs were very encouraging. Some were deeply engaged in driving a change towards proactive release of information based on agency bespoke information release policies, other POs less so.

A total of 30 agencies took part in this study. They ranged from large, medium, and small and included both Victorian government departments, local councils, statutory agencies and hospitals. They will not be named in the interests of keeping the participants anonymous (see *Methodology and research design* below for further justification for this research design).

There follows a summary of some major findings, themes, and recommendations.

The research team's primary interest was in detecting any discrepancies between how FOI practitioners (FOI officers and managers) view information access culture, and the attitudes of agency POs (department secretaries, CEOs and board chairs). In some participating agencies, differences between various levels were detected, but in the majority, executives and FOI practitioners seemed to be pulling in a similar direction. The differences that were detected usually amounted to some agency executives having little or no interest in FOI and facilitating access to information in general. **This is serious in itself as such disinterest may lead to executives not requesting and allocating adequate staff resources to meet requirements under the FOI Act, let alone building a proactive information release culture.** The study detected one example (see *Agency resourcing* below in *Findings*) where this clearly appeared to be the case.

The principal finding extends the major pilot study finding in relation to the crucial importance of agency POs. The pilot study identified this level as important, and the current comprehensive study clearly identifies this level as crucial for building and maintaining an information access facilitation culture in government agencies. It is worth noting that the importance of POs and executive

committees was identified both by FOI practitioners and POs. When asked how much autonomy POs have from the political level/leadership in terms of building a proactive access to information culture, the POs were close to unanimous in the assessment that they had a great deal of autonomy. This finding has clear implications for the policy direction of OVIC in the next few years as reflected in the recommendations below.

Legal issues that directly or indirectly influence the culture of administering FOI in Victoria include the following:

- The need for a comprehensive review of the FOI Act and to bring it up to date with the digital information environment. A significant number of participants in the study identified the two following specific sections of the act that are in need of attention:
 - Vexatious applications: section 24a in the current FOI Act should explicitly mention vexatious applications and specify what defines vexatious requests and how a vexatious request should be assessed. Among the participants, 42% mentioned vexatious applicants in interviews and focus groups.
 - The need to strengthen proactive release section 16 of the FOI Act to explicitly nominate proactive release of information as the default and FOI requests as the last option was mentioned by 34% of the participants.

Recommendations

The following potential amendments to the FOI Act are recommended to directly or indirectly influence the culture of administering FOI in Victoria and build an access to information facilitation culture:

1. Review and update the FOI Act to reflect the current digital information environment and bring it up to date with the 21st century.
2. Review the proactive disclosure sections in reformed FOI/RTI acts in other Australian jurisdictions (such as Queensland, NSW, Tasmania and the Commonwealth) and consider including an explicit proactive disclosure section in the Victorian FOI Act. This should also include a review of the 'FOI/RTI disclosure logs' that are used in several Australian jurisdictions.

Regarding FOI administration culture:

3. As part of the review in recommendation 2 above, assess the functionality of the use of 'electronic reading rooms' in relevant United States (US) legislation. Can this concept be adapted to creating 'digital reading rooms' (DRRs) in Australia? Decision made to make information available in DRRs when a document/information is created.
4. Make FOI orientation part of the induction package for new agency staff. Some agencies have discontinued this part of the induction process.
5. OVIC to focus its advocacy/education towards executive-level agency decision makers.
6. OVIC to develop tools facilitating the creation of proactive information disclosure policies in government agencies. These tools could include examples of existing policies in other agencies.

7. The proactive information disclosure policy process may include detailed analysis of historical FOI requests to identify future information that can be proactively released (see *Case study: Cameras Save Lives* below).
8. OVIC to hold workshops and seminars on how proactive information disclosure policies can be created.
9. OVIC to undertake an inventory of the record-keeping systems in agencies and further assess their impact on FOI implementation.
10. As part of 9 above, OVIC to assess if artificial intelligence (AI) can be used in the information location and retrieval process and to enhance record keeping.
11. OVIC to encourage its staff to attain specific knowledge and understanding of sector-specific FOI needs including the following sectors:
 - health
 - statutory agencies
 - local government
 - government departments.
12. OVIC to consider offering more sector-specific (for sectors in 11 above) FOI and access to information professional development seminars.

Background and aims

At the core of FOI and access to information sits the notion of accountability. A well-functioning FOI regime allows for independent access to government-held information, enabling members of the public, the political opposition, and journalists to hold governments to account for their actions. This is a cornerstone of mature liberal democracies: that those that wield power in society should be held to account for how that power is used.

The concept of accountability has been around for a long time—much longer than liberal democracies. Indeed, some scholars trace it as far back as the Chinese Tang Dynasty (618–690) (Lamble, 2002). At its core, accountability can be defined as:

the relationship between an actor and a forum, in which the actor has an obligation to explain and justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences (Bovens, 2008).

In organisational and corporate applications of the theory it is commonly divided into (1) accountability as a virtue where it is seen as a desirable trait that a person or organisation in power commits to act responsibly and to account for their actions; and (2) accountability as a mechanism where an individual or an entity accepts the obligation to explain and justify their actions to someone that has the power to assess and pass judgment on these actions (Vance, Lowry and Eggett, 2013). Passing and fairly administering FOI laws is a way for governments and public administrations to accept accountability.

The two tiers of information access via FOI are (1) individual/personal information, often referred to as first-party information; and (2), requestors that seek access to non-personal information also labelled third-party information. Similar to most mature FOI systems, the first-party level functions well in Victoria. Third-party access is, however, more complex.

There are two underlying principal purposes of a well-functioning and far-reaching FOI system: (1) it limits and hinders corruption and maladministration among the actors in the political and administration system as they know that the likelihood of being exposed is high; and (2) if the public feels entrusted with independent access to information, they are more able to participate in the political process in a meaningful way. This can potentially create a win-win situation where transparency and openness, manifested as FOI, function as a trust building tool between the political sphere and the public, creating a healthier democratic environment.

Internationally we can distinguish four distinct moments/periods in the evolution of FOI. The first is in 1766 in one of the earliest Swedish parliaments. The political opposition gained power for the first time in 1766 and took the opportunity to pass the first documented press freedom and information access-related laws in the world (Lidberg, 2016). Another handful of FOI laws were passed between 1766 and the end of World War II.

Part of the soul searching in the United Nations after 1945 regarding the causes of World War II was the role of secrecy. It was concluded that excessive secrecy within Nazi Germany and between countries was a strong contributory factor leading to World War II. This acknowledgment saw a number of FOI laws passed between 1945 and 1990, marking the second significant international FOI period. Australia was part of this second wave of FOI laws with the Commonwealth of Australia and Victoria passing their FOI laws in 1982.

The fall of the Soviet Union and its Eastern European satellite states marks the third evolutionary moment of international FOI. In their quest to be seen as fully fledged democracies, a significant number of these countries passed FOI laws that were seen as democratic rites of passage. It is worth noting that in 1990 there were only 13 functioning FOI laws in the world (Banisar, 2006).

The final stage of FOI is ongoing, and its beginnings coincided to a certain extent with the third stage. The digital revolution, starting in the early 1990s, saw information sharing and speed of access hyper charged. We evolved from paper copies to sharing and accessing information with enormous speed and ease. At the time of writing in 2021, there were 139 FOI laws globally (RTI, 2021).

FOI/RTI laws are now enacted in all Australian jurisdictions.

Aims of the project

Research aim: Capturing and analysing the culture of administering FOI in government agencies in Victoria to inform behavioural change in the Victorian public sector, policy making, education and awareness programs; and information access advocacy to increase the functionality of access to information.

Research questions:

1. What is the understanding among FOI officers/administrators (at both senior and other levels) of the purpose and functionality of access to information in Victoria?
2. How do FOI officers/administrators (at both senior and other levels) view/describe their roles within the access to information system?
3. Do they think FOI/RTI functions well in terms of delivering what the law promises? If so, why? If not, what is needed to improve functionality?

Based on one of the main findings from the pilot study (outlined above), two research questions were added to the comprehensive part II study:

4. What is the understanding of the purpose and functionality of FOI and the access to information system among senior government executives/managers?
 - How do they view their role regarding FOI access to information?
 - What is their understanding of the information access culture in their agency?
5. What is the understanding of alternative mechanisms (such as proactive release of information) to FOI among senior government executives/managers?

Previous studies

Previous research (Breit, 2011; Lidberg, 2013; Roberts, 2006) points squarely to the importance of the culture among FOI administrators when implementing information access systems. However, what has been missing to date is comprehensive research that captures FOI culture and the factors that shape it. This is where this study will make a substantial contribution. Four previous Australian studies (Commissioner, 2010; Lidberg, 2009, 2019; Ombudsman SA, 2014) examining the culture of implementing FOI have limitations in that they are either too small or not sufficiently in depth to support stronger conclusions about information access culture; however, they do provide useful insights into the issue of culture and the need for more comprehensive research. These studies highlight the need and crucial importance of gaining a clearer picture of how FOI officers understand the purpose and functionality of access to information systems. They also suggest that it is important to further research the attitudes of senior government agency management towards FOI and the role of information disclosure policies within agencies in shaping their information access and disclosure cultures.

Key users of FOI are members of the public, journalists and academic researchers. The most common way to access information is for a user to submit an FOI request with the agency who holds the information sought. A common user experience is that the attitude of many government agencies towards FOI is that they own the information, rather than hold it on behalf of the public. Other attitudes at times displayed by agencies towards public information access is that facilitating access has a low priority and that if a FOI requester wants access, they should pay for it. Some of these attitudes were captured in a nationwide assessment comparing reformed and unreformed FOI systems in 2015 and 2016 in Australia (Lidberg, 2016). In combination, these attitudes are the cornerstones of what has been described as ‘Australian FOI implementation culture’, summarised as a culture of secrecy rather than one of openness (Lidberg, 2009).

Previous studies and ongoing projects clearly show that research must go beyond the letter of the law and FOI quantitative metrics to obtain a fuller picture of how FOI/RTI operates in practice. A good example of this is the Global Right to Information Rating, which is a vital resource in terms of gaining an initial snapshot of how FOI/RTI laws compare on a number of key points (RTI, 2021). However, the rating based on the laws only in many cases rate the newer laws at the top of the index. A case in point is that Afghanistan is currently ranked highest in the RTI rating. If a practical functionality test were added to the rating along with a qualitative assessment of the information access culture, it is highly doubtful that Afghanistan would retain the top ranking. This illustrates the importance of capturing the culture that sits at the core of implementing FOI/RTI.

The literature reflects the added importance to FOI and information access systems of the rapid growth and importance of the digital economy.

This is well illustrated by the 2003 European Union (EU) *Public Sector Information* (PSI) directive, which aimed to streamline and simplify access to information and data generated with public money for use and re-use in EU member countries (Barbero et.al. 2018). One concrete example of this is the data applications sector, which cannot operate effectively without open data access. Weather apps, for instance, are dependent on having constant and open access to forecasting produced by national weather bureaus. By 2015, close to half of the EU member countries had implemented the directive in national law, supporting the rapidly growing digital and data economy in Europe. The impact of the 2003 PSI directive (and its continuation the Digital Single Market) was assessed in a 2018 report (ibid). According to this report, the digital economy sector had grown to 285 billion Euro by 2015, representing 1.94% of the EU’s GDP. In 2016, the figure was 300 billion Euro, and was projected to grow to 739 billion Euro in 2020—more than doubling in four years. The report concluded that this growth would not have been possible without the PSI system (ibid). Compared with the EU, Australia has a long way to go in terms of open data access. An independent 2018 report assessing Australia’s commitments under the international Open Government Partnership found that Australia had made limited progress on its commitment to ‘continue to make more public data openly available and support its use to launch commercial and non-profit ventures, conduct research, make data-driven decisions, and solve complex problems’ (Stewart, 2018).

If Victoria and Australia are to be a serious part of the rapidly growing global digital and data economy, there is a need to reform our access to information and open data systems. To do this well, we need to understand the role played by the culture of implementing these systems.

Methodology and research design

To allow for inclusion in the full dataset of the agencies in the pilot study that preceded this comprehensive study, the same methodology and research design as in the pilot study were utilised in this second phase. The primary methodological consideration revolved around how to build a sample representative of the more than 1,000 agencies in Victoria that make up the state's government sector and that are subject to the FOI Act. After considerable discussion and consultation, three parameters were chosen as relevant to building the sample: the **number of FOI requests** received annually by an agency; the **different sectors of government** in which the agency operates; and if it is based in **metropolitan or regional Victoria**.

According to the 2019/2020 annual report from OVIC, ~350 of the 1,000 government sector agencies received FOI requests. Thirty of the 350 agencies received 85% of all requests, with the top agency receiving 3,991 requests and agency placed 30th receiving 175 requests. Based on this, it was concluded that a sample of 30 agencies in total would generate data that could be generalisable across the full government sector in Victoria when it comes to the attitudes and culture of implementing FOI.

When the composition of the 30 top agencies was analysed, it was clear that they fell into three sectors: **health (hospitals), government departments and statutory agencies**. To this was added a fourth sector with lower numbers of requests: **local government**. This sector was added to the sample as it generates a type of FOI request that differs from the remaining sectors, albeit in lower numbers. Using this sectorised sampling approach a wide variety of government agencies receiving a wide variety of requests was captured.

The geographical base for agencies was considered important as this had an impact on both the type and number of FOI requests received, which in turn may have influenced how FOI was implemented; hence the inclusion of the geographical parameter. Figure 1 summarises the sample numbers from the different sectors and the number of regional- and metropolitan-based agencies.

Figure 1 Participating Victorian Agencies

Sector	Number $n = 30$	Metropolitan $n = 18$	Regional $n = 12$
Health	7	4	3
Government department	8	8	0
Local government	10	3	7
Statutory agencies	5	3	2
Percentage of metropolitan and regional agencies		60%	40%

One of the features contributing to the success of the pilot study was the completely confidential approach to recruiting participants. The guarantee that no replies to online surveys or interviews could be traced back to any of the participants generated high-quality data that greatly informed both the OVIC in future policy directions and the design of this comprehensive study. Given this, it was decided that the confidential design would be followed, allowing participants to speak completely freely. This is why none of the participating agencies are named in this report and why great care was taken that none of the interview/focus group replies included in this report can be traced back to any specific agency or individual.

As mentioned above, one of the most important findings in the pilot study was the importance of the executive level at agencies. They were not included in the pilot study but were deemed crucial participants in this second comprehensive study. This meant that there were two distinct cohorts in the project: FOI practitioners (FOI officers and managers) and FOI POs (the executive leaders in the participating agencies). We were of course very keen to capture any differences and similarities between responses from the two cohorts.

To address the research questions, a mixed methods approach was employed. Neuman (2013) describes this approach as most effective when a project attempts to capture issues of culture based on predominantly qualitative data. An online anonymous survey regarding attitudes towards FOI and information access in general was the baseline for the study and was distributed to the individuals in the participating agencies.

Building on the survey results, semi-structured interview templates were created. The aim of these was to further capture attitudes towards FOI and information access among the two cohorts, and the participants' views of how a facilitative information access culture can be built and maintained.

Interviews were conducted in both focus group settings and as individual interviews. Great care was taken to ensure that the focus groups involved only participants at the same hierarchical level from each agency. In some cases, FOI coordinators and managers were interviewed individually. All POs were interviewed individually.

Focus group interviewing is found to be particularly useful when interpretations of complex instructions, such as legislation, are sought. The method is also useful when the researcher aims to gauge the perceptions of a person's position in a system and the attitudes they hold towards the tasks they perform (Neuman, 2013).

The term 'FOI/information access culture' in this project should be understood as attitudes towards facilitating access to information held by Victorian FOI practitioners and interpretations of the FOI Act (e.g., release as much information as possible based on the act, or release as little as possible) by FOI practitioners. These key parameters feed into the implementation of the FOI/information access system, which in this study is seen as synonymous with FOI/information access culture.

Participants were coded according to a schedule and are referred to in this report using only letters or numerals (e.g., interviewee A, B, C or 1, 2, 3) in accordance with the research design described above.

As the focus groups and interviews were conducted at the tail end of the 2020 COVID-19 period of restrictions on workplaces in Victoria, the vast majority of interviews and focus groups were conducted online using either Zoom or Teams video conferencing software. The research team conducted some background research regarding the impact of conducting focus groups online. Scant literature was found (Stewart and Williams, 2005). Some concern was flagged regarding the quality of the data obtained using online focus groups in terms of participants reacting to each other's replies, which sits at the core of, and is the main advantage, of focus groups. However, when A/Professor Lidberg (who conducted the pilot study in 2019) compared the real-life focus groups with the online ones, little or no difference was detected in how the participants performed, or in the quality of the data. If anything, the participants, both in focus groups and individual interviews, appeared more relaxed and forthcoming when the interviews were conducted online.

The NVivo qualitative data management and analysis software was used to interrogate and analyse the interview data to ensure that all patterns and themes occurring in the dataset were identified and analysed. The TRINT AI transcription software was used to transcribe the focus group and interview recordings.

The Monash University Human Research Ethics Committee (MUHREC) guarantees ethical practice in research conducted by Monash-based research teams. Approval for the research design was sought from the MUHREC and was obtained prior to the study being implemented.

Findings

Online survey

The survey was distributed using the Monash University customised version of the Qualtrics online survey platform. To guarantee anonymity for respondents, a survey link that did not collect metadata was used. The participation rate for the surveys was a healthy 116 total valid responses out of the approximate full survey population of 150: 81% of officers and managers responded to the survey, while 70% of the POs and executives responded. This makes the statistical reliability of the survey high (Neuman, 2013).

The four sections of the FOI practitioner questionnaire sought to capture different aspects of FOI interpretation and implementation. Section one covered the respondents' views on the aims of public access to government information in Victoria, including the 1982 FOI Act. The second section aimed to capture the respondents' views on their current role in the Victorian FOI system. Section three asked questions regarding the current functionality of the information access regime in Victoria, and the final part of the survey sought to canvas the respondents' views on how FOI in Victoria could be improved and the culture of information access in Victoria. The full questionnaire is available as Appendix A.

The PO survey was divided into the same four sections. The survey also asked questions pertaining to their staff's administering of the FOI Act, the training and development of staff, as well as how and where they saw their place within the culture of administering FOI. The full questionnaire is available as Appendix B.

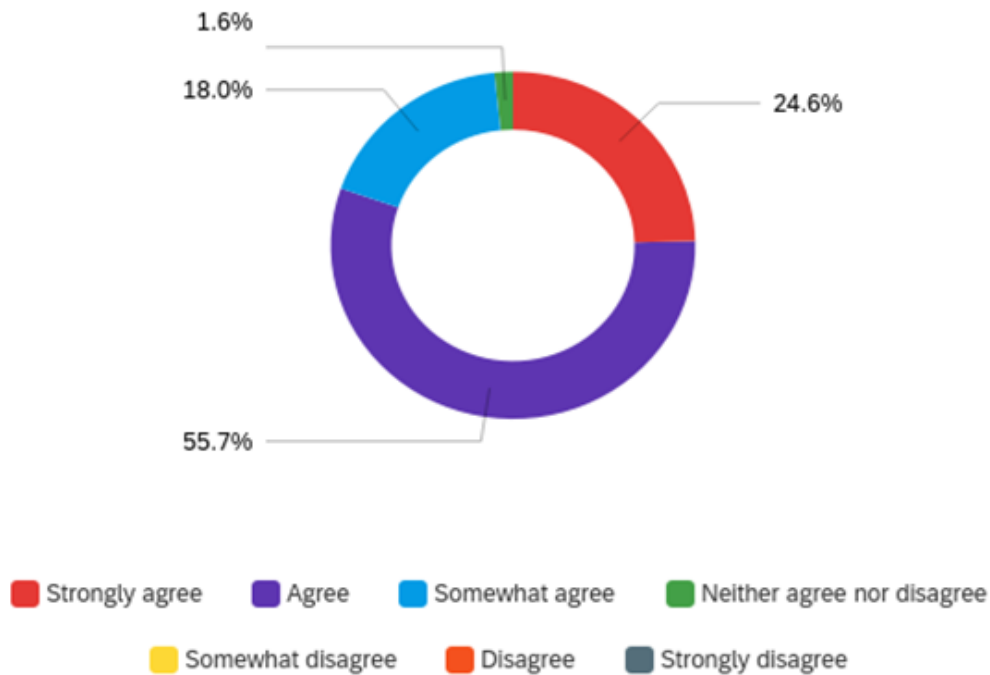
At the end of each section, the respondents were given the option via free-text format to add anything they thought important. The free-text questions at the end of each section are visualised below by a word cloud illustrating the most frequently used words in the reply boxes.

Because some of the replies to these questions included the name of the agency, the full survey data cannot be included as an appendix to this report. All data in this study will be kept and archived by A/Professor Lidberg in accordance with Monash University's privacy policy and in line with the *Australian Code for the Responsible Conduct of Research*.

The survey responses were quite similar between the FOI practitioners and the POs (this is a finding in itself, as discussed in the final sections of the report). Below is a detailed summary of responses to the majority of questions asked in the surveys. These results fall into two categories: FOI practitioners and managers; and POs/executives.

Freedom of information practitioner and manager survey

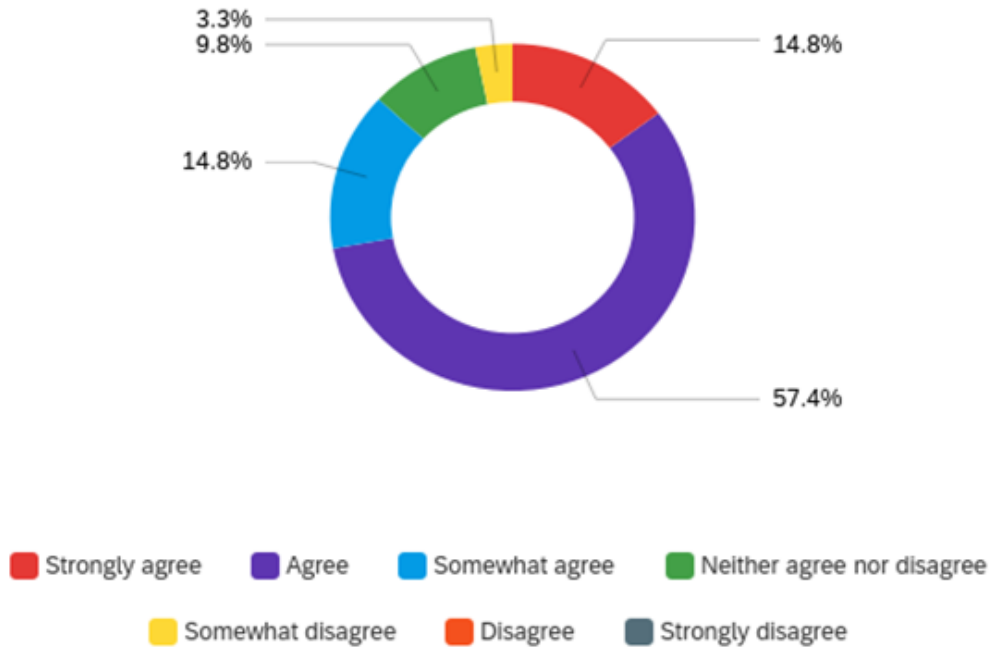
Figure 2 The overarching purpose of the FOI Act is to provide an efficient and low-cost means through which the public can access government information.



Positive sentiment: 98.3% Negative sentiment: 1.6%

This was a confident finding: practitioners and managers overwhelmingly agreed as to the purpose of the FOI Act. This sentiment was also reflected in the focus groups and interviews.

Figure 3 The Victorian information access system also involves the proactive and informal release of documents and information outside the FOI Act.



Positive sentiment: 87%

Negative sentiment: 3.3%

There was a modicum of disagreement expressed, but the overwhelming majority of respondents agreed that FOI in Victoria includes the informal and proactive release of documents.

Figure 4 Free-text replies to Question 7: Is there anything else you would like to add regarding the Victorian information access system or the objects of the FOI Act?



There were 11 responses to this free-text question. A selection of answers is presented here, including:

Wide range of interpretation of the FOI Act particularly amongst health care agencies.

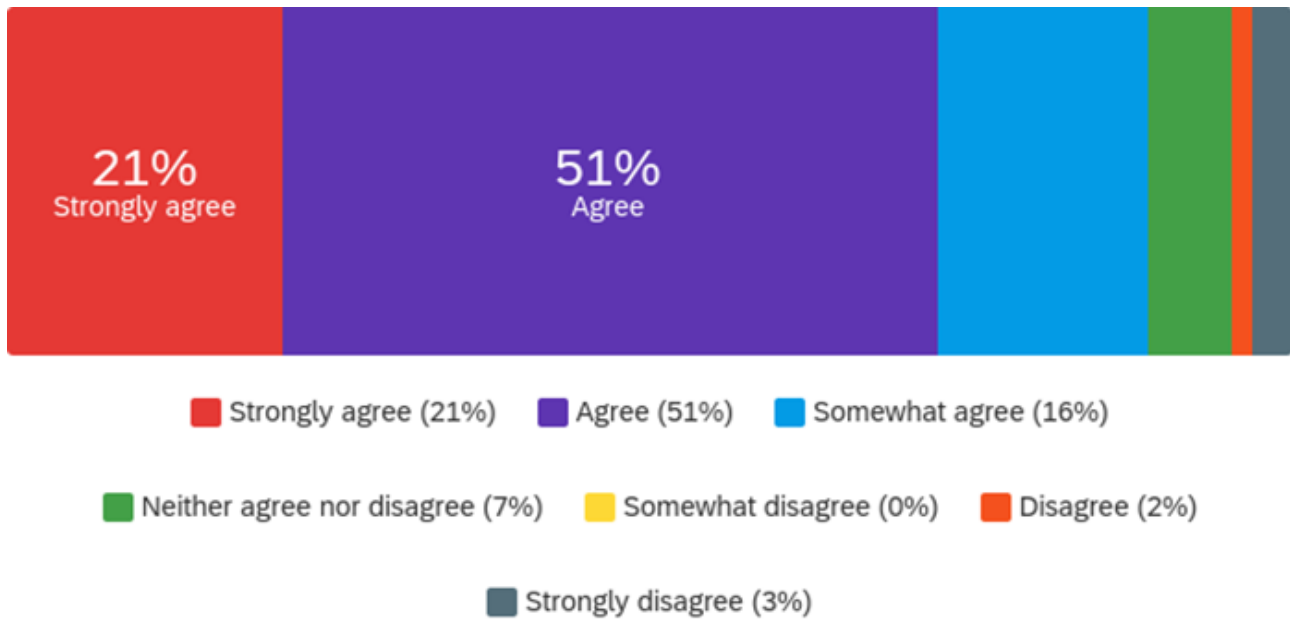
This sentiment was also found during the interviewing process, and is discussed further in the interview section of this report, as well as the discussion:

Embarrassingly dated legislation, poorly resourced by agencies, inconsistent and poorly constructed overview by the regulator.

That the FOI Act is dated and not aligned with how government operates from a technology perspective or the volume of information created and captured.

This feeling among FOI managers and practitioners was also reflected in responses to the other free-text sections of the survey, and was a common theme throughout focus groups and interviews.

Figure 5 I am provided with sufficient training and professional development to perform my duties effectively under the FOI Act.

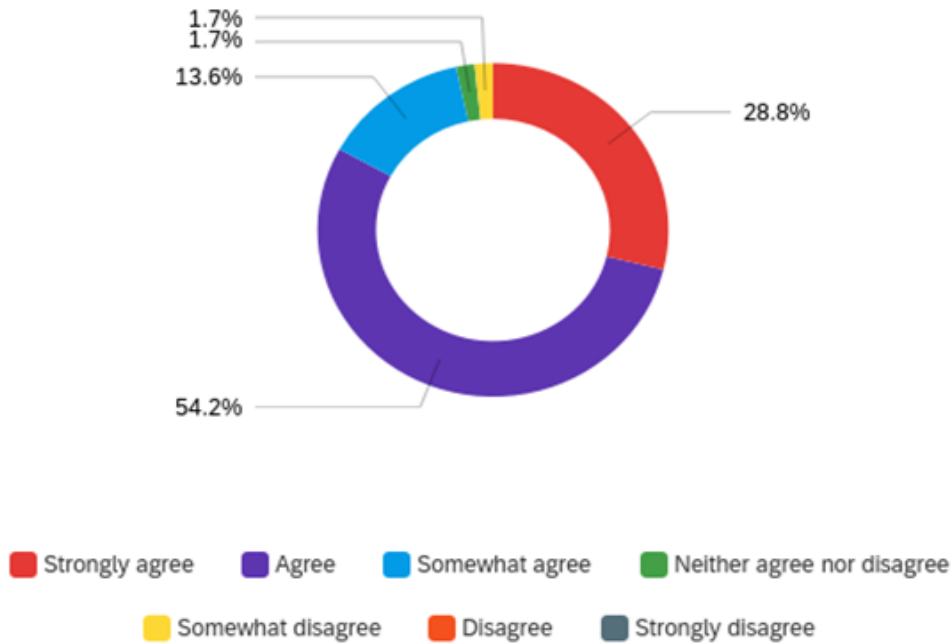


Positive sentiment: 88%

Negative sentiment: 5%

While the majority of respondents agreed they had sufficient training and resources to perform their roles, a number of respondents disagreed. Issues surrounding training and resourcing of agencies were also mentioned in the focus groups and interviews conducted.

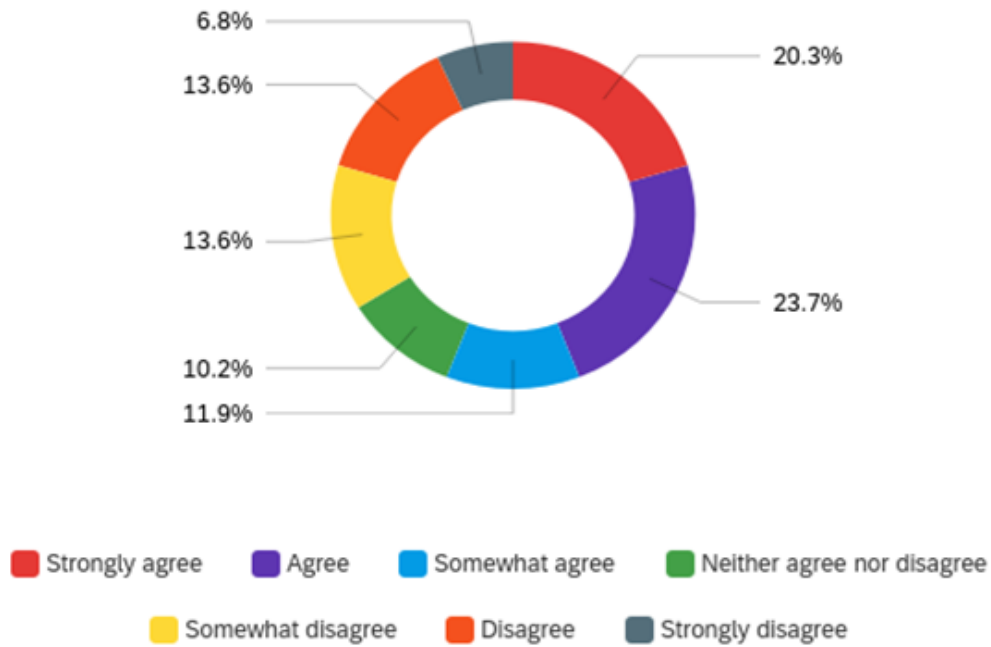
Figure 6 My most important duty under the FOI Act is to facilitate access to information.



Positive sentiment: 96.6% Negative sentiment: 3.4%

There was strong agreement from practitioners that they saw it as their role to facilitate access to information. The interviews and focus groups discussed later in this section delved more deeply into this sentiment and show a spread of opinions regarding this question.

Figure 7 My most important duty under the FOI Act is to ensure sensitive information is NOT released.



Positive sentiment: 55.9% Negative sentiment: 34%

This question showed substantial variety in the answers compared with Q12. While both Q12 and Q13 provided a binary 'facilitator or assessor?' decision, the focus groups and interviews revealed that many practitioners saw themselves as 'both'.

Figure 8 Free-text replies to Question 16: Is there anything else you would like to add regarding how you view your role in the information access system?



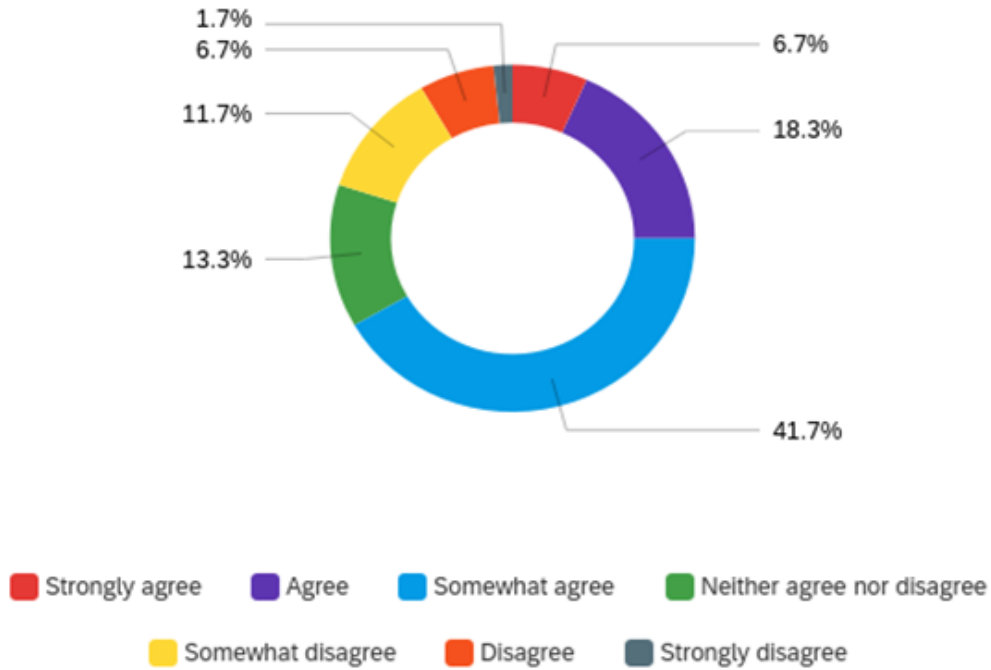
The following quotes from replies to Q6 indicate that some FOI practitioners had thought deeply about their roles and reflected on where in the information access system they resided:

Thinking about this a bit more I see my role as twofold: 1) assisting and helping an applicant through the FOI application process e.g. making sure I understand their request and the information they wish to access and they understand the process and 2) making sure that I make a decision on access that is in accordance with the legislation and releases information balancing the views of third parties (and protecting their privacy—I'm not worried about embarrassment to government) and the public interest in promoting release of information.

However, there is evidence that practitioners had a clear perception about what their role entailed, while their agency expected them to work contrary to this:

While I don't believe that my role is ensuring that damaging information is not released—in practice, that is what is expected of me by my agency.

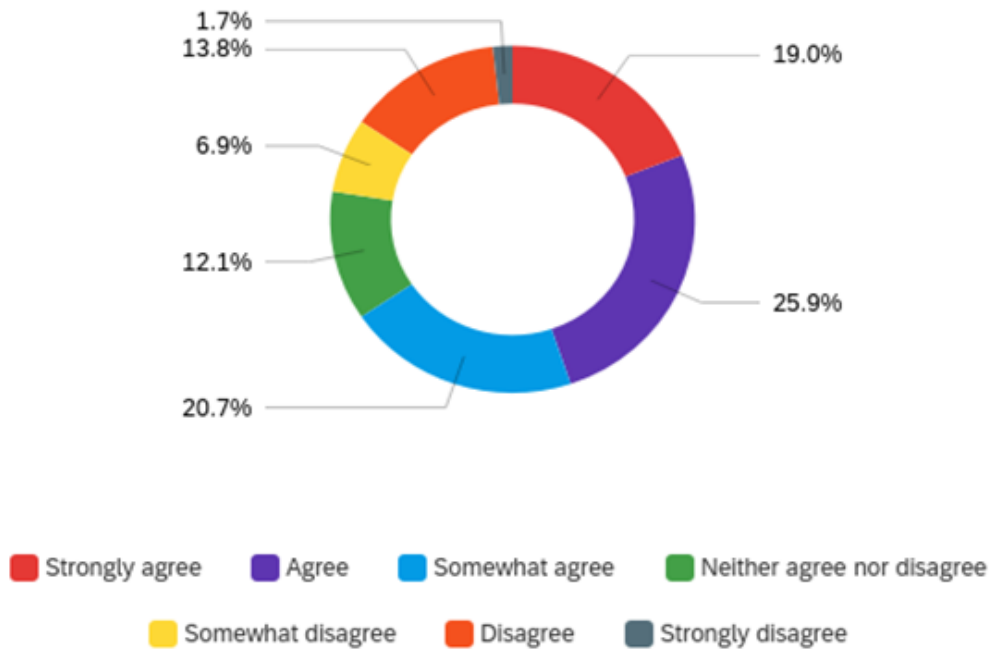
Figure 9 In my view, the current information access system in Victoria functions well.



Positive sentiment: 66.7% Negative sentiment: 18.4%

Forty-one per cent of the respondents 'somewhat' agreed with this question, and the feedback from the focus groups and interviews also aligned with this. Specific improvements to FOI and agency culture were also identified and are outlined later in this section.

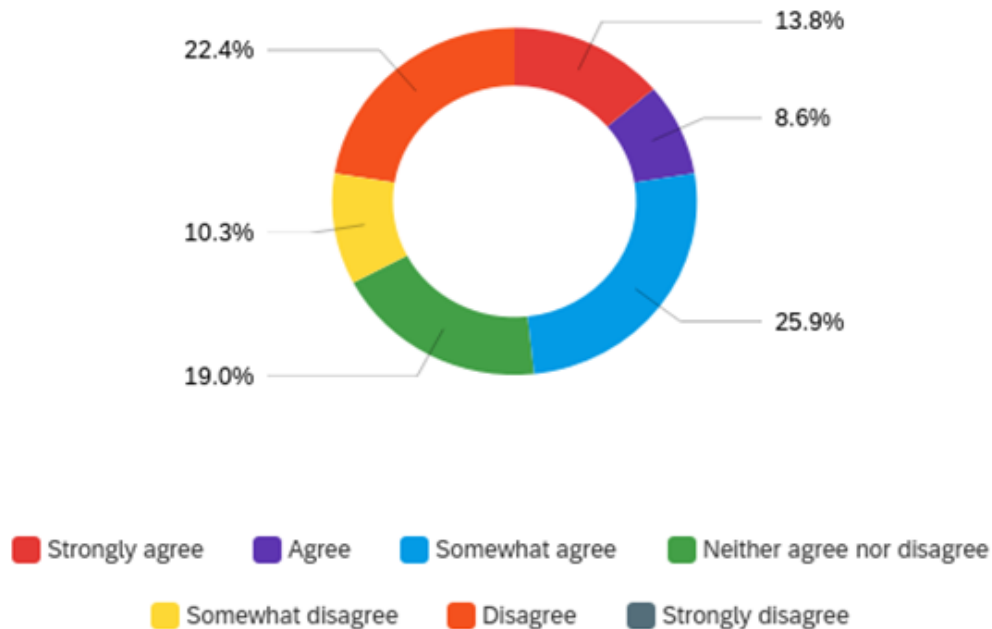
Figure 10 In my view, the lack of resources to administer the FOI Act in my agency is a significant impediment to a better functioning information access system in Victoria.



Positive sentiment: 65.6% Negative sentiment: 22.4%

While the results are similar to those for Q18, there is a larger contingency of those who agreed that a lack of proper resourcing was impeding their functionality. Resourcing was a recurrent theme throughout the focus groups and interviews and is examined later in this section.

Figure 11 In my view, the lack of understanding about the requirements of the FOI Act from senior personnel in my agency is a significant impediment to a better functioning information access system in Victoria.



Positive sentiment: 48.3% Negative sentiment: 32.7%

While a third of respondents disagreed with this statement, 48% displayed agreement. Interviews and focus groups revealed a similar array of sentiments regarding agency leadership and their understandings and focus towards FOI and its implementation.

Figure 12 Free-text replies to Question 25: Is there anything else you would like to add regarding the functioning of the current information access system in Victoria?



Responses in the free-text section once again illustrated that Victorian FOI officers and managers had a passion and deep understanding of their role and the role of FOI, and had an 'at the coalface' understanding of how the FOI Act is practically implemented:

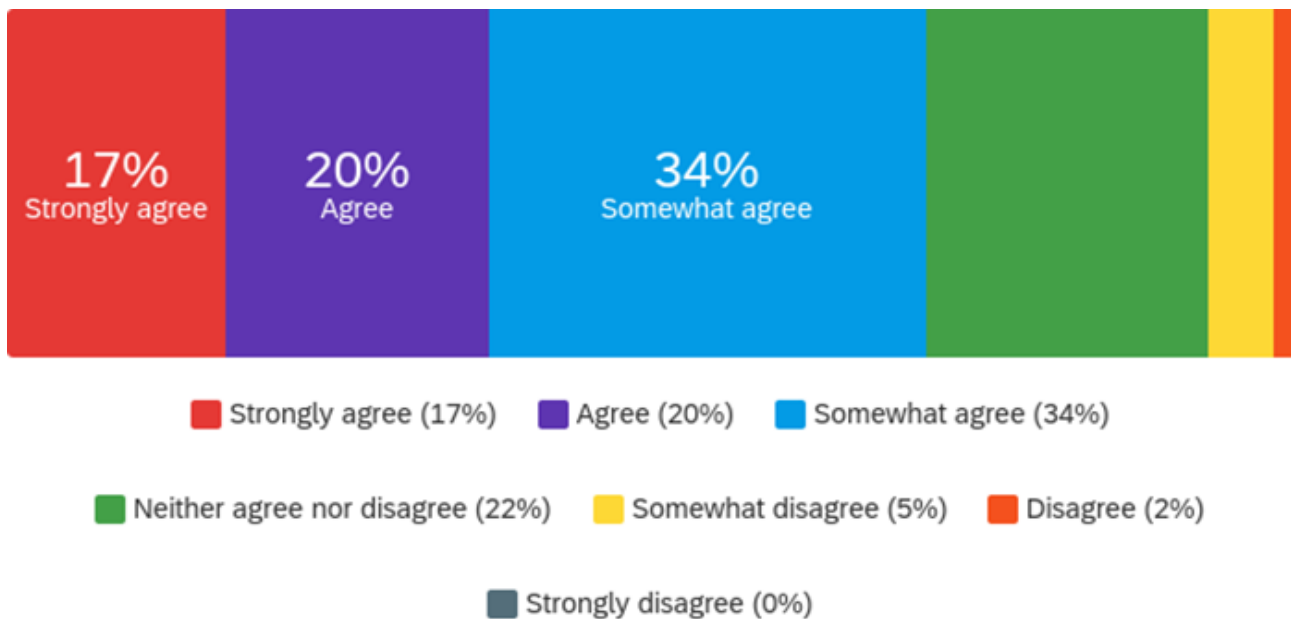
The current information access system in Victoria is in need of a significant review and overhaul as it is not fit for purpose in the current day. Recent amendments to FOI legislation have only served to 'tinker at the edges' and have not addressed some of the root issues with the FOI scheme in Victoria.

The 5-day noting period rule for ministers' offices needs to be reviewed. Ministers' offices seem to have a significant influence on what information is being released.

The delays with the noting process allowed for ministers as previously described, delays progressing the briefing within the agency, huge volume of requests, delays getting requested documents from business areas to even start on processing requests.

FOI officers need to be more strongly supported by OVIC if it is truly intended that potentially damaging information is released under FOI.

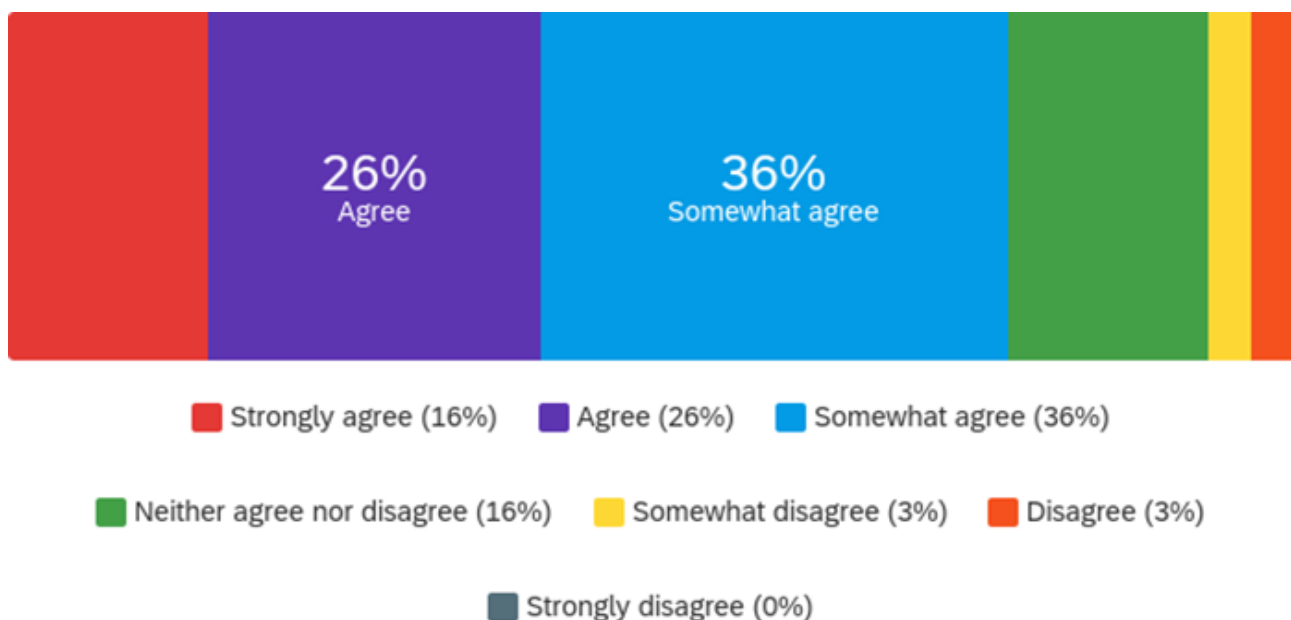
Figure 13 The most effective way to improve the information access system in Victoria is by changing legislation.



Positive sentiment: 71%

Negative sentiment: 7%

Figure 14 The most effective way to improve the information access system in Victoria is by changing culture and practice.



Positive sentiment: 78%

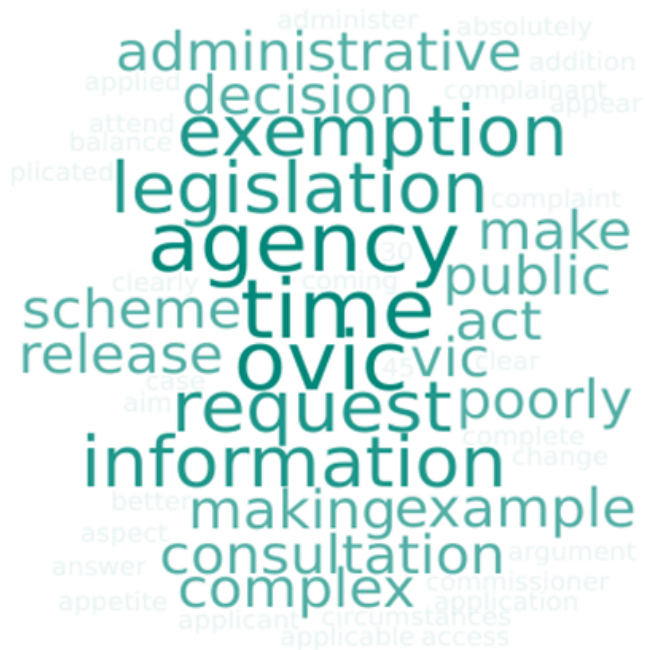
Negative sentiment: 6%

These questions are grouped together to reflect the similarities in the answers provided by survey respondents. These results highlight that changes to both legislative changes and agency culture were seen as legitimate solutions to improve the functionality of FOI administration. Again, this sentiment was also picked up during focus groups and interviews.

Figure 15 Free-text replies to Question 33- Is there anything else you would like to add regarding improvements to the information access system in Victoria?



Figure 16 Free-text replies to Question 34- Is there anything else you would like to add regarding the information access system in Victoria?



The sheer number of replies to the final open-ended questions was a finding in and of itself, indicating that the FOI staff in the sample in this study were highly engaged. A total of 26 participants responded to the free-text boxes of Q33 and Q34:

In my experience, and despite popular opinion, FOI practitioners tend to fall more on the 'pro-release' side of the FOI argument. Often though, these practitioners are having to grapple with pushback from within their agencies, which is often driven either by a poor understanding of public servants' obligations under the FOI Act or by a lack of respect/recognition of these obligations. An improved FOI scheme should have as its primary purpose the provision of as much information as possible to the public, with exceptions and exemptions only coming into play for information that absolutely should not be disclosed. While this is technically the case with the current FOI scheme, it is not explicit enough and too often agencies (especially non-FOI practitioners) are starting from the perspective of what can we withhold, rather than what can we release.

There were strong voices for changes/amendments to the Victorian FOI legislation:

The legislation was written in 1981 when hard copy documents were just about the only medium for conveying information. Apart from tinkering around the edges, the FOI Act in Victoria has not had a wholesale review since that time. It needs a complete overhaul to take into account the incredible changes in technology and where and how members of the public can access information on government.

The act itself can be very complex and hard to understand. Steps should be made to make the legislation easier to understand for agencies.

Glaring holes in Vic legislation, for which there appears little appetite to attend to. Clearly the scheme is working as parliament intends, that is, poorly.

as well as to OVIC's role in FOI legislation and culture:

If FOI culture is to change in Vic, it must be led by OVIC first.

Greater support from OVIC for agencies would be welcomed. Clear guidance on the applicability of exemptions would result in better decision making by agencies and less administrative time spent on review processes.

Some respondents pointed to the changes made to the Commonwealth's FOI laws in 2010, as well as those in other Australian states and territories:

Similar amendments to the 'public interest' test that were done in the Commonwealth FOI act in 2010 would contribute to an easier application of exemptions that have a public interest element. Consideration of abolition of application fee would improve public access—an increase in request numbers happened after the 2010 Commonwealth FOI reforms. Also the publication of some decisions in a disclosure log should be done in the way the Commonwealth adopted this in the 2010 reforms. I was the FOI person in an APS [Australian Public Service] agency who worked with the rest of the agency ahead of the reforms to explain the changes and helped business areas prepare for the Information Publication Scheme that commenced in 2011.

Others maintained that the timeframes were making them hamstrung:

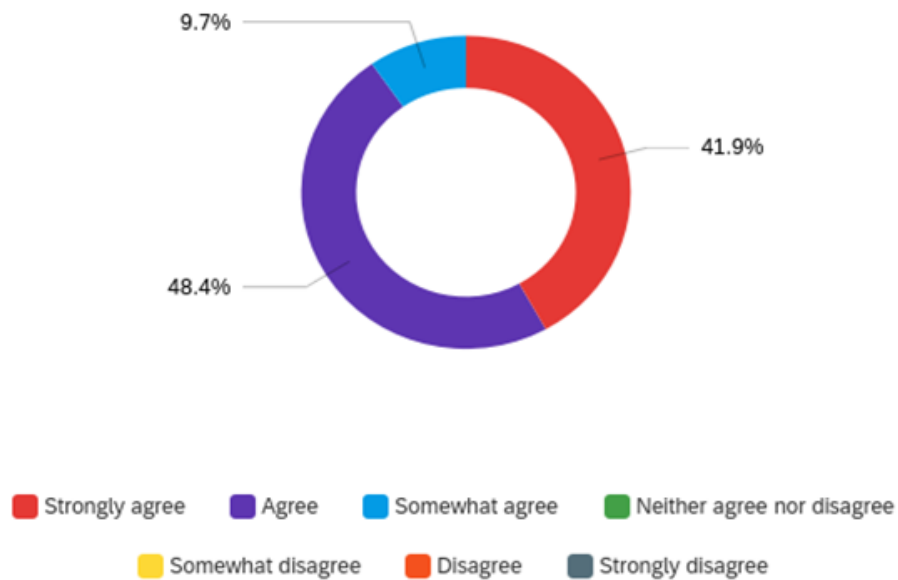
The consultation process has been a very tiresome and difficult part of processing FOIs. Not only does it make the administrative part of FOI much more difficult and a long drawn-out process, I think it could very easily be handled in a different way.

Providing 60 days for people to apply to VCAT following is excessive (e.g. s33). I think the VCAT rights should be provided to people who actively object to their personal affairs information being released, and even then it should be a shorter appeal period.

Information access is difficult to arrange in the 30-day timeframe; we are inundated with requests. I feel that we should be approved of more staff [sic] to accommodate the increased workload in the FOI space in the last 12 months.

Principal officer survey

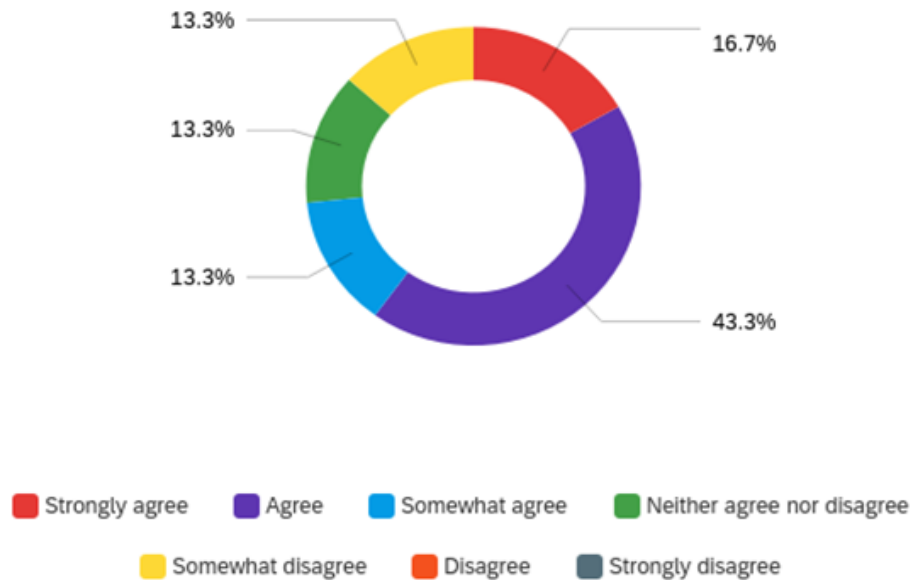
Figure 17 The overarching purpose of the FOI Act is to provide an efficient and low cost means through which the public can access government information.



Positive sentiment: 100% Negative sentiment: 0%

Nearly identical to FOI managers and practitioners, POs and executives agreed as to the purpose of FOI and the FOI Act.

Figure 18 The Victorian information access system also involves the proactive and informal release of documents and information outside the FOI Act.



Positive sentiment: 73.3% Negative sentiment: 13.3%

There was overwhelming agreement on matters regarding proactive release of information. This is further focussed on in the interview section. It does indicate an understanding of the wider application of FOI as an information access system extending beyond FOI only.

Figure 19 Free-text replies to Question 7—Is there anything else you would like to add regarding the Victorian information access system or the objects of the FOI Act?



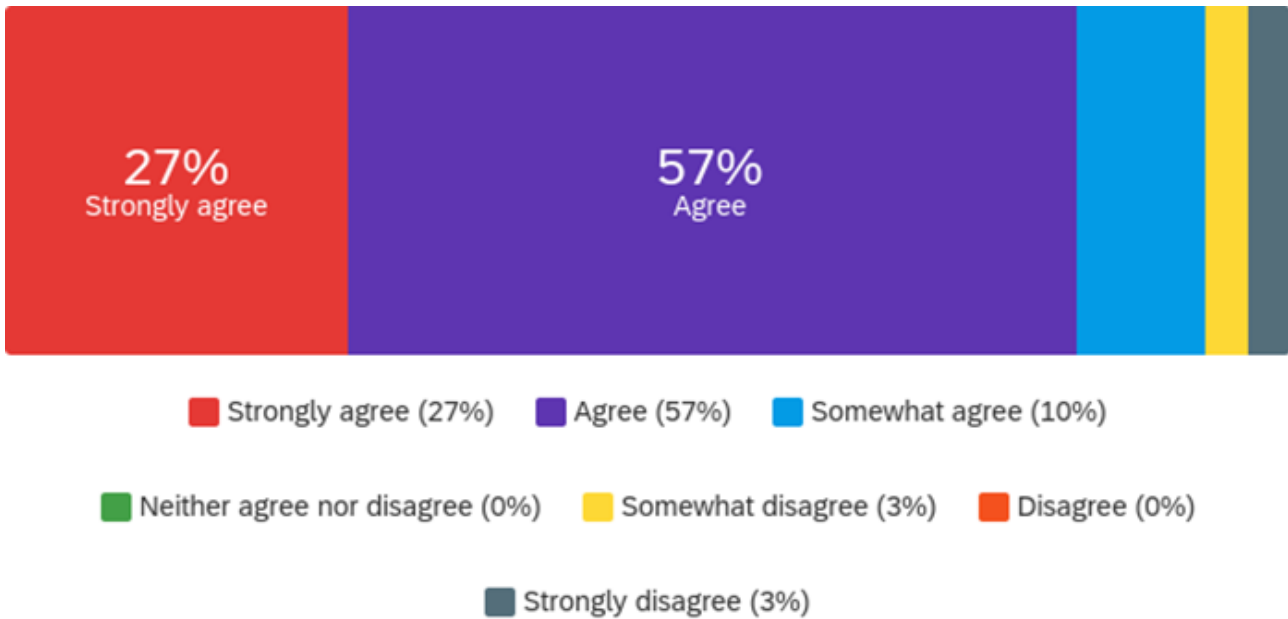
There were six responses to this free-text question. Below is a sample of answers:

Education is important so that individuals and organisations understand the FOI process.

Over time the FOI Act gets more complex to administer rather than less, which hardly facilitates efficiency or access.

It would be helpful for Victorian legislation to have a 'vexatious applicant' provision (as in NSW), rather than just a vexatious litigant process.

Figure 20 Part of my role involves facilitating or promoting proactive release of information.

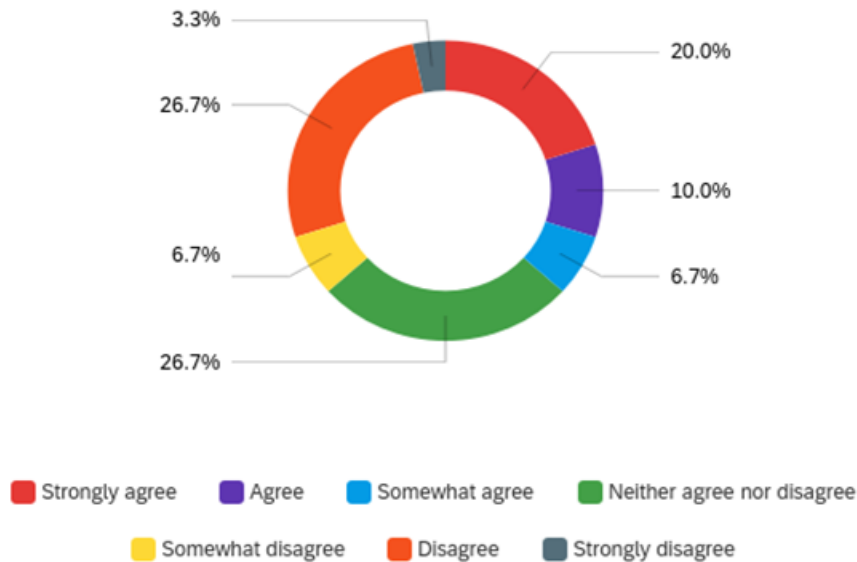


Positive sentiment: 94%

Negative sentiment: 6%

The positive attitudes towards proactive release were again evident in the replies to this question. This is a decisive number of positive responses and indicates that the executive level at agencies will back efforts driven and supported by OVIC to achieve this change in information access culture.

Figure 21 My most important duty under the FOI Act is to ensure sensitive information is NOT released.



Positive sentiment: 36.7% Negative sentiment: 36.7

Executives were more 'on the fence' in regard to this question than were FOI practitioners, which may be a reflection of the difference in their roles within the agency rather than a reflection of opinions regarding releasing information.

Executives and POs were also asked this question during interviewing, and a more nuanced response was gleaned from participants, as presented later in this section.

Figure 22 Free-text replies to Question 16 — Is there anything else you would like to add regarding how you view your role in the information access system?



There were seven responses to this free-text question. Below is a sample of answers:

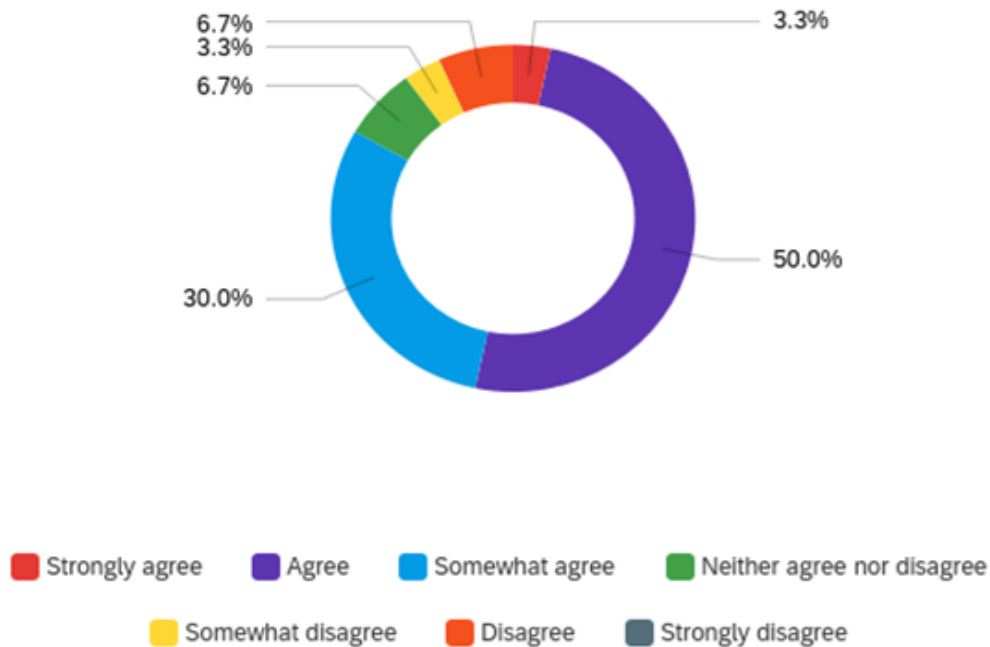
It is important to assess the release of requested information that is sensitive within the bounds of the FOI Act—that is wherever appropriate public interest/access considerations are paramount, but not at the expense of impinging on an individual's right to privacy or safety.

Protecting one's information is just as important as releasing it.

Information may be embarrassing; however that does not make it exempt.

My role is reviewing the FOI requests and the documents which fall into the scope. Only the FOI exemptions that may be applied would be—there is no other consideration that would change my views on the release or non-release of the documents.

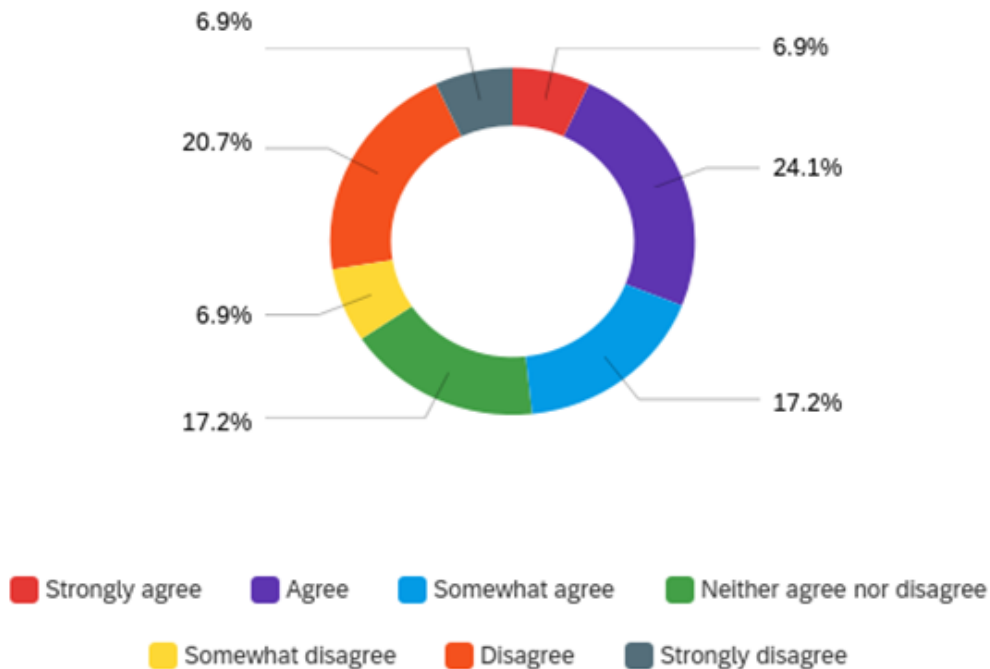
Figure 23 In my view, the current information access system in Victoria functions well.



Positive sentiment: 83.3% Negative sentiment: 10%

There was widespread agreement among executives and POs that the information access system in its current state functions well. However, this was not necessarily the view of FOI users and practitioners in Victoria, highlighting a discrepancy between the views of those at the 'coalface' versus those further up the agency.

Figure 24 In my view, the lack of resources to administer the FOI Act in my agency is a significant impediment to a better functioning information access system in Victoria.

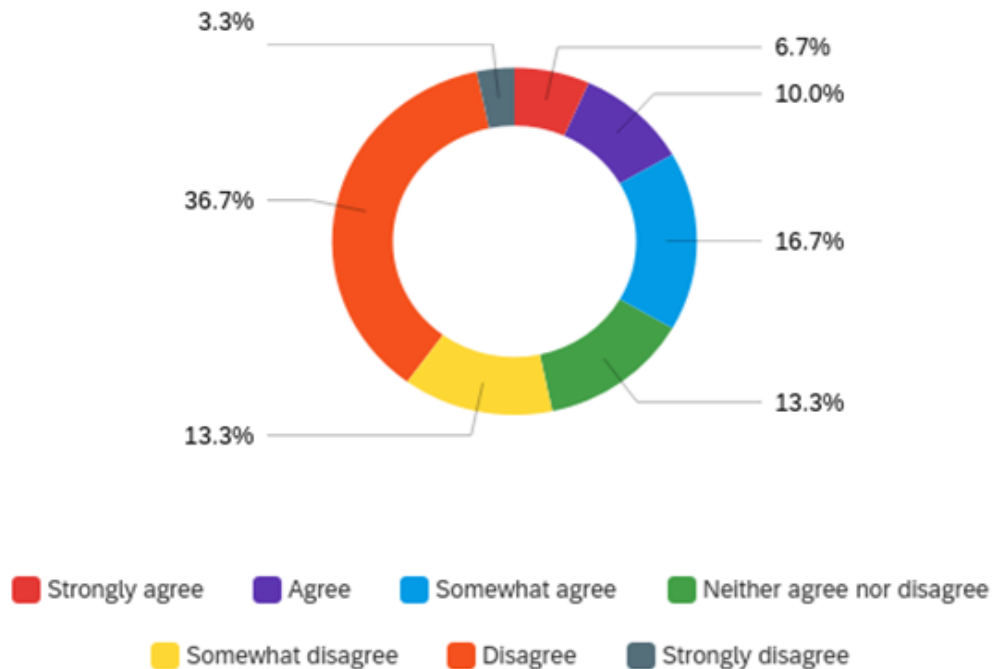


Positive sentiment: 48.2% Negative sentiment: 51%

POs and executives provided a variety of sentiments in response to this question, and the strongest percentages (24% agree and 20% disagree) showed that some agencies felt on top of their FOI resourcing, while others did not.

These sentiments were also at odds with the responses from practitioner, who provided a strong indication that resourcing was an issue. Again, this shows a discrepancy between those working with FOI day to day within agencies compared with those in higher positions across agencies.

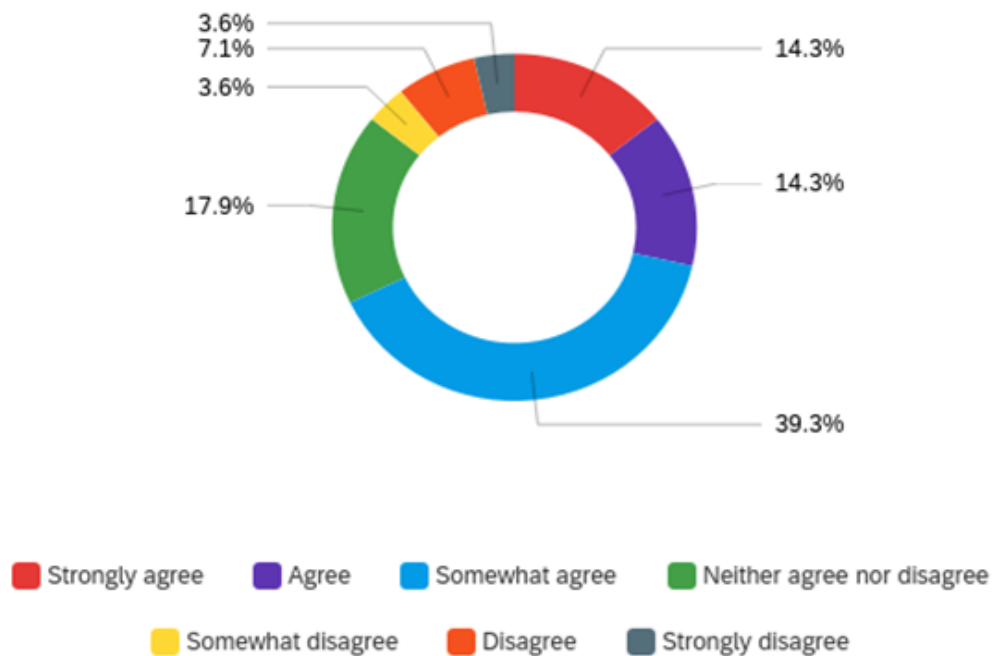
Figure 25 In my view, the lack of understanding about the requirements of the FOI Act from senior personnel in my agency is a significant impediment to a better functioning information access system in Victoria.



Positive sentiment: 33.4% Negative sentiment: 53.3%

Overwhelmingly, executives disagreed with this statement. There were some differences compared with how agency practitioners responded to the same statement. Fourteen % of practitioners strongly agreed, and 26% somewhat agreed that lack of understanding at senior levels impeded information access functionality.

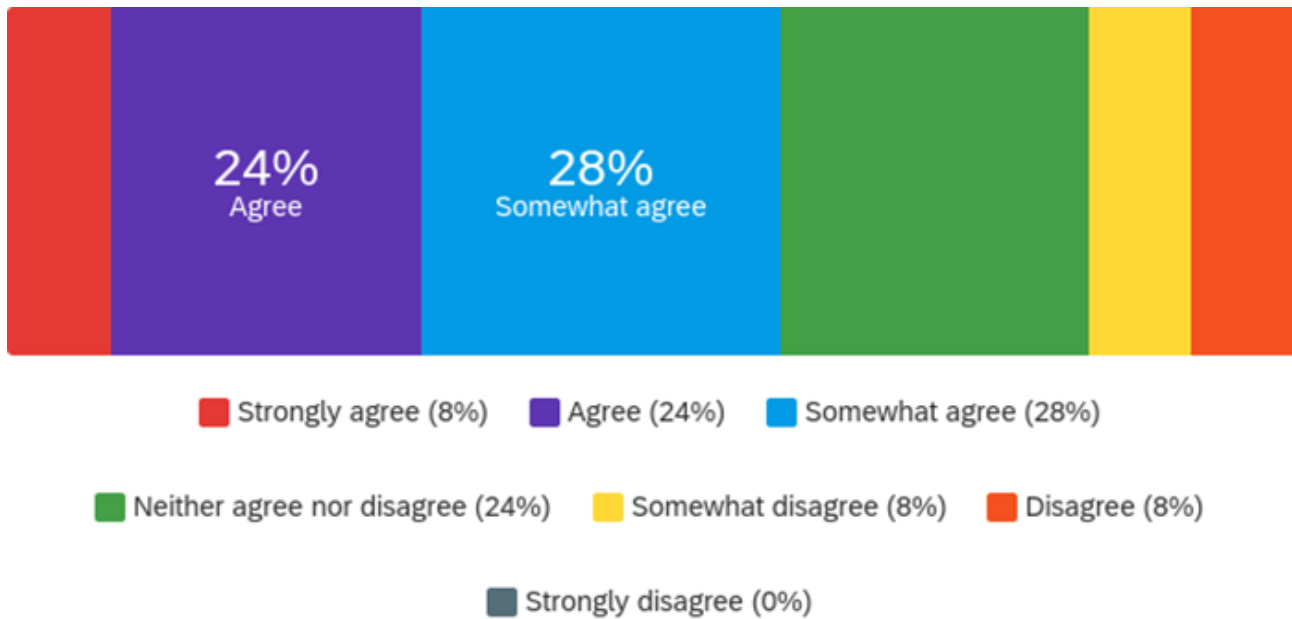
Figure 26 The information access system in Victoria needs to be improved.



Positive sentiment: 67.9% Negative sentiment 14.3%

The question here of course is what needs to be improved and how. Again, this is explored in the interviews.

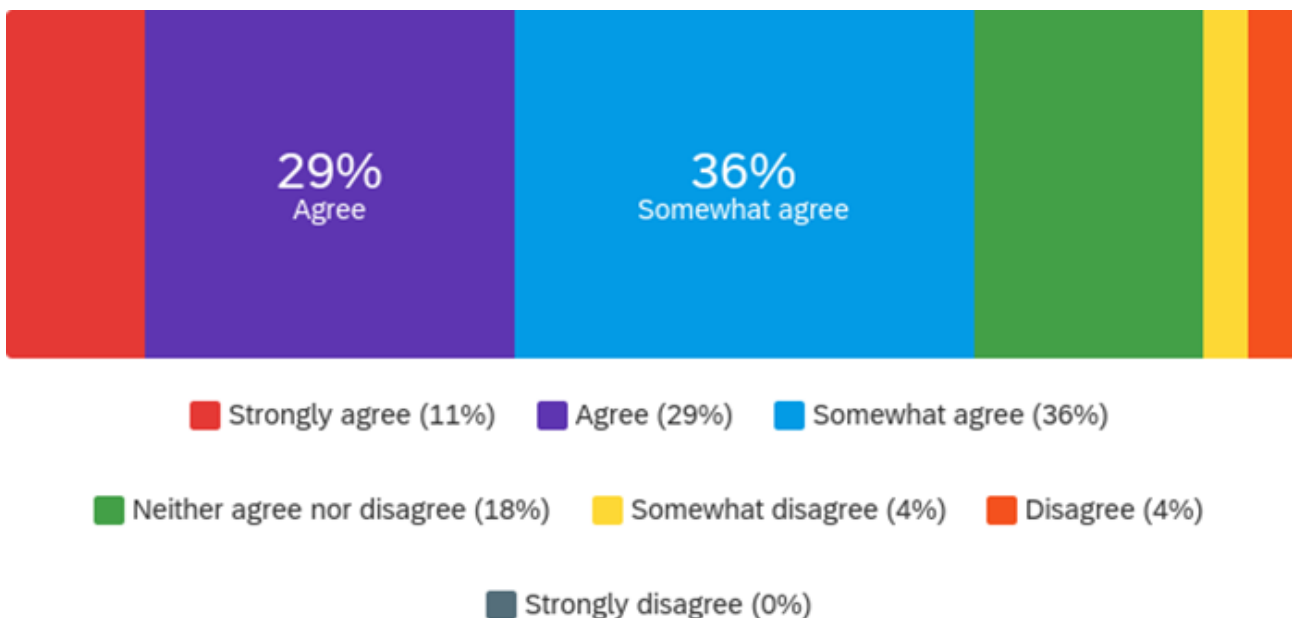
Figure 27 Free-text replies to Question 28—The most effective way to improve the information access system in Victoria is by changing legislation.



Positive sentiment: 60%

Negative sentiment: 16%

Figure 28 Free-text replies to Question 29—The most effective way to improve the information access system in Victoria is by changing culture and practice.



Positive sentiment: 76%

Negative sentiment: 8%

Results from the POs were very similar to those from the practitioners and managers, providing a strong indication that a combination of specific agency culture and attitude change towards information access—as well as state FOI legislation change—are key to improving the functionality of FOI in Victoria.

Figure 29 Free-text replies to Question 33—Is there anything else you would like to add regarding improvements to the information access system in Victoria?



Figure 30 Free-text replies to Question 34—Is there anything else you would like to add?



Below is a sample of replies to these questions:

The focus should be on educating clinical staff to enhance direct access to information decreasing requests via FOI.

As stated earlier perhaps if the Health Records Act and the Privacy Principles were more well-known and communicated that many requests may meet the definitions within the HPP's. Again sensitive/confidential information would need to be considered to not cause harm (Domestic Violence/FV/Child Protection etc.).

Over time the act has got ever more complex and ever more difficult to comply with—hardly conducive to efficiency or access.

Legislation is the most effective because it creates a standard metric/rule book for agencies to follow. Of course, there are style/subjective differences but the benefit is a standard approach that can be monitored by regulatory bodies.

Legislation first, then culture.

I believe the act is adequate, and that the improvement to accessing information rests on the individual agency level as opposed to the broad exemptions or act level.

The majority of my frustrations lie in the administration of the FOI Act at an organisational level. Too often it is relied upon that 'that's the way we do it' as opposed to looking at the request on its own merits. Due to an overload of work, sloppy decisions are made (such as fully denying documents) when realistically we could be releasing documents in part as opposed to denying in full.

Having worked in FOI over many years I can't believe the requirements get ever more onerous and that so often OVIC has us chasing stupid queries which only serve to make us slower and less responsive to the poor applicants without adding anything to the value or quality of what is released.

Overall, the replies to the survey questions aligned well between the two cohorts of FOI practitioners and POs. However, the responses to some questions clearly diverged, as illustrated in Figure 31.

Figure 31 Comparison of responses from FOI officers and executives

Question	FOI practitioners	Executives and POs
In my view, the lack of resources to administer the FOI Act in my agency is a significant impediment to a better functioning information access system in Victoria	Positive sentiment: 65.6% Negative sentiment: 22.4%	Positive sentiment: 48.2% Negative sentiment: 51.0%
In my view, the current information access system in Victoria functions well	Positive sentiment: 66.7% Negative sentiment: 18.4%	Positive sentiment: 83.3% Negative sentiment: 10.0%

Responses to these two questions showed the most discrepancy between agency practitioners and executives, which is logical given the nature of their respective roles within the information access system. Officers and practitioners undertake FOI duties on a daily basis and will thus have a deeper, more nuanced knowledge of their agency's information access systems. If there is an agency-level lack of resources, training and staff to undertake FOI duties, practitioners would be the proverbial 'canary in the coal mine' within the agency. Moreover, their knowledge of practical FOI applications across their agency and sector would inform their opinions regarding how well—or not well—they believed the current information access system across Victoria is functioning.

Conversely, executive roles (CEO, board members, etc.) do not deal with the practicals of day-to-day FOI and information access within their agencies and may view it as a component of their overall role within the agency. This may mean they are not witness to any information access snags and hurdles unless these messages are passed up through the leadership chain or presented to executive committee meetings and correspondence. To put it simply, their responses may reflect an interpretation of 'no news is good news' regarding FOI.

Focus groups and interviews

The online survey provided an overview of the main issues at hand addressing the research questions. The purpose of the focus groups and interviews was to gain a deeper understanding of how the FOI administration culture is built and maintained. The interview templates, like the surveys, were divided into sections:

1. What, in your view, are the most important objectives of the Victorian FOI Act/information access system?
2. How do you see your role within that system?
3. What can be done to improve the system and what role does the culture of administering FOI play in these improvements?

The interview templates varied slightly depending on if the focus group/interviews were with FOI practitioners or POs. Both templates are available as appendix B and appendix C. A total of 83 participants across 30 agencies were interviewed either as participants in specific agency focus groups or in individual semi-structured interviews. Data from the interviews and focus groups will be grouped according to the research questions, as well as any other major themes and subjects that were raised in the interviews.

Freedom of information practitioners

Purpose and functionality of the information access system in Victoria

Practitioners in Victoria demonstrated an advanced level of knowledge and understanding of the purpose and aims of FOI:

So essentially, the concept is that you can see some documents, which, of course, is information about how well how the government makes decisions and what it's doing and all of those things. And it's just a fundamental principle of democracy and transparency in that information and the control of it, ... So it's a really important piece of legislation. (Interview D)

Essentially the FOI Act allows for the members of the public to gain access to information or documents held by government agencies. And so obviously the objective of the act is transparency as much as possible. And in general, the act encourages informal release when possible. And in addition, there's also the Privacy and Data Protection Act, which regulates the collection and use and disclosure of some of the information that's collected by government agencies. (Focus group 15)

I think that the aim of it is for transparency, similar to the open courts principle, that people have to be able to see justice working. They have to be able to see the government working as well. (Interview V)

How freedom of information practitioners view their role

There was a variety of interpretations by practitioners in terms of how they described their role within the information access system. Some noticed a disparity between what their role was 'supposed' to be, versus what their role was in reality because of severe time and resource constraints:

I would say what my role is supposed to be is, I guess, educating FOI staff on things like recent FOI decisions, keeping them up to date about matters happening in the FOI space, re-examining our work practises, making sure that we're compliant, making sure that we're making the right decisions on particular sorts of documents that we are always releasing as a part of the FOI process and providing

a lot of providing intellectual leadership as well as all the supports that you would usually associate with being a manager. (Interview V)

In reality, what my role has been for the past 18 months is pretty much begging for resources ... trying to justify as to why we need more people and putting together endless amounts of stats around that in different ways ... So I haven't really done any intellectual leadership of the team in the past 18 months ... I don't even have much time to do things like look at our website for all the good practise notes and things that they're putting out there, because I don't have the time or space to implement them into our processes. So basically, I see my role as leading a team that's in siege mode. (Interview V)

Describing themselves as assessor of requests or facilitator of access to information

When asked if they considered themselves a facilitator of information access or an assessor of information allowed to be released, some saw themselves primarily as facilitators:

We've always looked at it as our role to facilitate that access as easily as possible, [to] not be a barrier that we're not protecting the information. We're just releasing it as much as possible in a way that accords with that sort of scheme. So I think facilitating is the word we would use because we don't see ourselves as a barrier to people getting access. (Focus group 2, 3)

The majority, however, saw themselves as both. Practitioners would facilitate access where possible, while also assessing information to be released based on the act:

It's a bit of both. Obviously, we want to facilitate the release of [information] to them or their solicitors [where] we possibly can. But we also have to assess every file on a case by case basis, depending on the information that might be in the file. A lot of client files hold extremely sensitive information. So we have to be aware enough to assess what the impact of releasing some of that information could be. (Focus group T, U)

Proactive release

Section 16 of the current Victorian FOI Act 1982: Access to documents apart from the Act, stipulates that:

1. Ministers and agencies shall administer this Act with a view to making the maximum amount of government information promptly and inexpensively available to the public.
2. Nothing in this Act is intended to prevent or discourage ministers and agencies from publishing or giving access to documents (including exempt documents), otherwise than as required by this Act, where they can properly do so or are required by law to do so.

This does not provide much guidance as to how information released outside the act should be defined or how it works in practice. Presumably the section is kept general to allow agencies to design their own policies.

In a 2020 discussion paper, OVIC provides the following definition of proactive release:

Proactive release involves an agency making information publicly available, on its own accord, without an individual making an FOI or other request. This may involve an agency publishing certain information, reports, submissions or other documents on its website (OVIC, 2020).

The paper further points out that proactive release is in line with the aims of the act, and offers the following justification for proactive release policies (PARPs):

In addition to promoting open and accountable government, proactive release of information can reduce the need for formal FOI requests if the information sought is already available publicly. Proactive release can also enhance the public's trust in government by providing more information about agencies, what they do, and how they operate (ibid).

An earlier version, and in a way a precursor, of proactive release regimes is informal information release, defined as follows in the OVIC discussion paper:

Informal release involves an agency receiving a request for information or a document and providing access to the relevant information outside of the FOI Act. Information can be informally released in response to a once off request for information, or under more structured information release schemes or policies. Informal release is also commonly referred to as administrative release, and is a typically reactive form of providing access to information (ibid).

Because of its reactive nature, informal release has less of a long-term impact on information access culture in an agency than do PARPs. However, it can still be very useful in creating information access environments that are positive for both requesters and agencies. The following case study provides an example of an informal release situation instigated by a high volume of FOI requests.

Case study: Cameras Save Lives

One of the best examples of the advantages of informal information release is the Cameras Save Lives website¹. The site contains the locations of traffic cameras, explanations of how the system works and a mechanism for the public to access photos of their traffic infringements. Before the website all the information it contains had to be accessed via FOI requests to the administering agency. After the camera website went live, the number of FOI requests to the agency dropped by circa 10%. This example is the basis for a recommendation in this report in relation to analysing the nature of FOI requests, which identifies themes where proactive release is possible:

So, when I started just about 12 years ago, we got a lot of requests for infringements and fines. So speeding fines and that sort of thing. And we'd get heaps through freedom of information. And then the business unit that dealt with all the other information actually started to publish a lot of stuff online ... and I remember when the website was being developed and our FOI request really dropped off after that [about] 10% ... it was a noticeable difference. And then even when people call ... we can refer them to that website. (Focus group 28–32)

Some agencies have already produced their own quite far-reaching PARPs (see *Analysis of Proactive Release Policies* below). The interviews clearly showed that such policies can create a win-win situation: information is available instantaneously to the public and the number of FOI requests decreases, allowing FOI practitioners to spend more time on complex requests. It was also clear in the focus groups and interviews that PARPs help build an information access facilitation culture in the agency:

That's part of the dividend for the department and part of the kind of internal motivation and business case, if you like ... we're talking about it [the proactive information release policy] to people in the department ... there is actually a reduction in the reactive work if we're proactive. (Interview 20)

¹ <https://www.camerassavelives.vic.gov.au/>

Health agencies, statutory agencies and proactive release of records

Interviewer: Clearly the personal request is about personal health information and very rarely is there something that you actually can't release. So why don't you make all of it available in the system based on a policy that you've drawn up for the agency? Is that being discussed?

If you could make the world stop for four weeks? ... yes, it [could work]. It would need time. It would need time to look at historically all of our requests that we have received and sort of where that would fit into which level of documents or could we identify the documents or the class of documents that we believe we could release under this protocol and then how we would go about putting it out there to the world. (Interview 22)

Interviewer: Would it be helpful if there was within [OVIC] someone that has experience from the health sector then?

Hundred percent. A hundred percent ... because at the end of the day, less appeals by [the agency], less work for OVIC. (Interview 22)

However, some agencies by their very nature of practice and information gathering and storing found it hard to make further efforts to release information proactively without breaching the confidentiality of their clients/staff/those who worked or volunteered for them:

We've had a couple of examples where inadvertently two documents were released, and they had [sensitive information]. Now, you would think that would be innocuous, but that one mobile unit only has one clinician working in it. And when the applicant got that information, they knew exactly who was providing that information. And that was detrimental to the relationship between that clinician and the client that they had built for a couple of years through trying to build a trust and the trust broke down. (Interview 24)

[Proactive release] certainly has a place, but there is also from an organisation like ours ... there's a lot of personal information. I think the concept of proactive release has its place; however I don't see that as something that should therefore be across the board. (Interview H)

From the above replies, it is clear that record keeping was an issue with a major impact on proactive information release policies. Of some concern is the fact that the focus groups and interviews with health sector FOI practitioners revealed that they had received different legal advice regarding the possibility of using proactive release. One agency had been advised that this was not possible, whereas other health agencies were actively pursuing proactive and informal release options. This divergence between health agencies is something for OVIC to consider and possibly address.

Interviewer: Is there a way to proactively release this information instead of using FOI?

This has been up for quite a lengthy discussion at our organisation about whether we can release some of the health records ... [there were] conflicting opinions from an executive point of view, including our group secretary. So our lawyers sought advice about whether we can release under the Health Records Act instead of FOI. From my understanding about how that played out, we thought the information that we were given is that a lot of these have to come under the FOI Act. (Interview 4)

Analysis of proactive release policies

During the course of this study agencies were asked if they had created and used PARPs. A number said they had—most markedly in the local government sector. This is to be expected as the new *Local Government Act 2020* (Vic) requires local councils to produce and make publicly available a transparency policy. In total, 10 PARPs were analysed as part of this study. More were sent by agencies to the research team, but a few could not be classified as PARPs—being FOI Part II statements as required by the FOI Act, listing what type of documents/information were held by the agency. This indicated a lack of understanding of what constitutes a PARP among some agency FOI staff and management.

Having said this, three of the PARPs analysed were very advanced indeed and could serve as examples of how such policies can be drawn up and implemented. The 10 agencies that submitted PARPs for analysis cannot be named here, to maintain agency confidentiality as described in the *Methodology and research design* section. What the advanced policies had in common was that they focussed on what could be released, rather than what could not, which made them easy to understand and user friendly. One particular policy stood out in this respect. It was two pages long and included a clear list of points to be considered. If the information/document in question did not include any of the following, it could most likely be released:

- privacy issues
- commercial information
- provisions in other acts
- legal professional privilege
- information obtained in confidence
- law enforcement
- cabinet documents
- draft documents
- information obtained from other areas of the department or other agencies.

The policy did include more detail for each point, but this cannot be included here for the reasons of confidentiality outlined above. Some agencies produce and hold very complex information, but this should not hinder at least an attempt to create a clear PARP like that mentioned above.

One policy that can be mentioned is the *DataVic Access Policy*.² DataVic is administered by the Victorian Department of Premier and Cabinet and is a first attempt at providing open data for research and commercial use in Victoria and beyond. Its PARP policy is commendably straightforward and is based on five principles.

Principle 1

Government data will be made available unless access is restricted for reasons of privacy, public safety, security and law enforcement, public health and compliance with the law.

Principle 2

Government data will be made available under flexible licences.

² <https://www.data.vic.gov.au/datavic-access-policy>

Principle 3

With limited exceptions, government data will be made available at no or minimal cost.

Principle 4

Government data will be easy to find (discoverable) and accessible in formats that promote its re-use.

Principle 5

Government will follow standards and guidelines relating to release of data and agency accountability for that release.

The *DataVic Access Policy* could serve as a starting point for other agencies discussing and creating their own PARPs. There are also parallels between DataVic and the EU PSI directive/initiative mentioned in the *Background and aims* section. DataVic is less far reaching than is the PSI in Europe, but is certainly an important step in the right direction when it comes to proactive release of government created information and data. It is difficult to see why the DataVic initiative could not be expanded further in Victoria.

As mentioned, the local government sector is required by the *Local Government Act 2020* to produce a transparency policy for each council. This is an example of what can be achieved when a piece of legislation explicitly mentions transparency and proactive release of information. This speaks in favour of updating section 16 of the Victorian FOI Act to more explicitly oblige government agencies to create a PARP tailored to their specific role. It was clear from the reviewed local government transparency policies that the process of creating each policy was beneficial in making clear the value of transparency in both decision making and governance and how the different acts regulating the sector intersected and interacted.

Here it should be noted that OVIC has flagged the legal intersection between section 125 of the *Local Government Act 2020* and section 38 of the FOI Act. Both sections deal with secrecy based on 'confidential information'. In a procedural practice notice, OVIC prefers a narrow interpretation of 'confidential information' in the interests of transparency (OVIC, 2020).

The conclusion is that PARPs are useful as practical guides in terms of proactive information release, and also as a tool to build a culture of information access facilitation and proactive information release in agencies.

Freedom of information/right to information disclosure logs and digital reading rooms

The FOI/RTI acts in Queensland, NSW, Tasmania, and the Commonwealth include provisions for FOI disclosure logs. The purpose of such logs is to be a first port of call for anyone seeking information held by government agencies in these jurisdictions. Agencies are required to publish information in the logs released to a requester within 48 hours, or 10 days, depending on the jurisdiction. The thinking is that if documents/information have already been assessed and released to a member of the public, why not then publish them in a wider way, possibly saving time and effort in processing multiple requests for the same information. The intentions and justifications for logs are sound and represent a logical step in the evolution of information access. They are, however, still reactive based on FOI requests. Previous studies show that the implementation of logs and the publication of information differs greatly between agencies within and between jurisdictions and that discoverability of information is at times poor (Lidberg, 2016).

A possible extension of disclosure logs can be found in the long-standing practice of electronic reading rooms as part of federal FOI law in the US. Electronic reading rooms are based on amendments to the federal US FOI law passed in 1994. Overall, they display great depth in the information published (although, just like in

Australia, the reading rooms differ between agencies). The decision on what information to publish is based both on identifying common themes in FOI requests and proactive decisions about uploading information to the rooms that the agency anticipates will be of strong public interest and likely to generate FOI requests.

One example of such an [in-depth reading room](#) is that run by the US Department of Health and Human Services.³ As evident on this website, the depth and breadth is far beyond what is available via Australian FOI/RTI disclosure logs. Worth noting is that the reading room is certified, meaning that it has been reviewed for compliance with the FOI legislation and other legal requirements. In this respect, it can be said that US electronic reading rooms are a combination of informal and proactive release of information.

A further major difference between the US and Australian federal FOI regimes is that even the Central Intelligence Agency (CIA) has an extensive electronic reading room. This is not possible in Australia as all its intelligence and security agencies are exempt from federal FOI legislation.

Based on the above, this report recommends amending the Victorian FOI Act to require agencies to create and maintain DRRs modelled on the US electronic reading rooms, combining informal and proactive release evolving beyond the reactive information release practiced in the current FOI/RTI disclosure logs in some Australian jurisdictions.

Opinions on the functionality of freedom of information in Victoria

Opinions were varied on how Victoria's information access system was functioning.

Interviewer: Thinking about what we thought the overall objectives of the FOI Act in Victoria were, do you think the system is delivering on those particular facets?

I think we're doing our best to facilitate the release of information. (Interview 1)

The act is incredibly outdated, dysfunctional ... it's not particularly user friendly, I think, because it doesn't reflect the contemporary approach to sharing information ... we'd expect to see with the availability of technology ... it [the act] doesn't cope with variations very well. I have to say that my perspective is maybe different from others because I came from a different jurisdiction ... I found that the model and the legislation in New South Wales was far more dynamic [and] user friendly. (Focus group A, B and C)

In terms of improving functionality, changing and modifying the FOI Act to bring it up to date was raised often across all focus groups and interviews. In addition, when asked how best to implement cultural change across agencies, practitioners strongly indicated that a 'top-down' approach led by executive leadership would be the most effective:

I think having the act is one thing, but not everyone's going to be aware of something that's stated in an act. I think it needs to be driven from senior managers, senior executives. So once they start embedding that culture to be proactive in their decisions it starts trickling down, I think that's the way that you'll find will work best. (Focus group 15, 16)

³ <https://www.hhs.gov/foia/electronic-reading-room/index.html#:~:text=FOIA%20amendments%20signed%20into%20law,in%20the%20adjudication%20of%20cases.>

Changes to the *Freedom of Information Act 1982*

Outdated freedom of information language

Most, indeed almost all participants, indicated that the FOI Act's wording is outdated and fails to include digital documentation/technology. As in the survey, participants wanted to see a rewrite to include 'modern' methods of data and information:

Since 1982 [when the FOI Act came into force], so much has changed, especially from a technology perspective. The act very much focuses on hard copy records. In this new technology world, I suppose there is much more information being collected and many more systems used. It's not like you can just go to a cupboard and pull out a file and all the information's in that file anymore. It's kept in a multitude of network drives and systems and records management systems. (Interview 24)

2017 amendments to timeframes and consultation

Agencies spoke of becoming time poor because of the 2017 amendments to timeframes. This includes the 30-calendar-day time limit on decision making, as well as third-party consultation and ministerial consultation:

The legislative change back in 2017 ... mandated consultation created all sorts of dramas for our organisation. I actually did an analysis on the additional work that is required by my agency, because what we do is divisive, as most of the documentation has lists of who attended [the event] or who's part of the [staff unit]. And so, based on the average type of FOI requests that we receive, it actually increased ... the administrative side of by over 300% overnight because of that legislative change. (Interview H)

Vexatious applicants

This theme was mentioned by many FOI practitioners. There was firm agreement that the current wording of the vexatious application section in the FOI Act is not clear enough:

The other one is multiple requests. That particular clause [of the FOI Act] starts off with great expectations and then there's an 'and' there that first says it has to go to the tribunal. If that could be amended to say it first has to go to OVIC, then at least we would have redress in terms of looking at that. (Focus group L and M)

Agency resourcing

This was a subject with varying feedback in the interviews. Some agencies felt comfortable with the amount of internal resourcing and training provided to them. Others, however, felt they were not properly resourced. Some also felt the lack of resources impacted heavily on their workloads.

Interview I remarked that in I's agency, there was only one full-time dedicated staff member and three total staff members at an agency that deals with thousands of requests. Interview I commented: '*I'm really under the pump*'.

As well as staffing, wider records management issues were in turn having an impact on the functionality of some FOI teams. In some agencies, the poor upkeep of their records management systems was severely impacting the FOI team in the agency. Focus group QRS participants remarked:

Oh, we can't even copy our files properly. I mean, the basic process of copying a file from our [agency] system into PDF doesn't work. And I've been in the team 11 years. It has never worked.

So you're starting off with a file that you can't use, you've got to then try to figure out what's missing, which in files that can be thousands and thousands of pages is near impossible. And then if you figure out what's missing, you have to individually pull those documents from the [agency's] system.

Some found their problems were only given 'band-aid' solutions, turning their problem into a cyclical, almost seasonal occurrence:

we're not equipped in so many ways for the volume that we get ... it's just constantly a cycle that business will give us resources—short-term resources—for a period of time to get things under control. Then we go full cycle. And once those resources drop off because we don't have ongoing funding, we go straight back to where we were before trying to dig ourselves out. (Focus group QRS)

Vexatious applicants were sometimes the reason for the workload:

There have been instances where [vexatious] applicants have just gone time and time and time again asking in different words for the same documents, and it ties up your resources and sucks energy having to deal with them. (Focus group L and M)

The lack of proper resourcing, combined with consistently high workload, can be demoralising for teams.

[C]oming into those red flags in your work manager every day and knowing that—it's a mental—it's a mental thing, too ... [y]ou try and get someone to work at a level of 100% capacity ... when they are constantly coming in to see red flags. They're tired, they're exhausted, they're wanting things to change, but nothing is happening ... it's long, it's hard, it's stressful, it's time consuming. (Focus group QRS)

Agency training

The agency where Interview K worked invited a speaker from a business specialising in FOI to train the wider agency on the nature of FOI and what to do when releasing information:

[They] terrified staff ... you don't release this, you don't release that. You make sure you've got a statement here and this and that and the other. And in the end, she actually made ... our lives twice as hard ... [They] frightened the bejesus out of 300 staff members.

Subsequently, Interview K went on to explain that the training the wider agency received made their job harder, as they bespoke re-trained those who came to them for advice. Internal education evaporated in this agency after the 2017 timeframe amendments:

[FOI education] used to be part of the induction for all staff. And then there were special sessions that were done for the executives of different business units ... But that's basically just dropped away ... when the act changed from 45 days to 30 [decision making time], we just didn't have the time to continue doing that. (Focus group, 35–38)

It appears one of the biggest hurdles some agencies had was acquiring appropriate funding and resources because the agency executive was not interested in and subsequently did not prioritise FOI or information access issues:

No-one jumps up and down about FOI. We're not getting reviewed. We're not having anyone complain if we're not within our frames. So to the business, we're not the highest priority. And I can completely understand that ... we just get told 'do your best'. And for us, that can mean things get really far behind ... It's a really stressful space. We know we're not complying with things at times. But yeah,

because there's no one kind of kicking up a fuss external to the business. Not much happens. (Focus group Q, R, S)

Executive and principal officer interviews

Agency executives and POs were posed similar questions regarding how they viewed their role within the information access system, as well as the functionality and purpose of FOI in Victoria.

Purpose and functionality of the information access system in Victoria

Agency executives and POs were well across the purposes of FOI:

I think it's important that particularly public authorities are open and transparent about the information, the decision making processes and how they go about their business and are publicly elected ... So from an agency perspective, we're very supportive of openness, of process. (Interview 1)

I think for me, as a career public servant, FOI is a critical part of government transparency and integrity and having trust in government. And I think for the most part, it works really well. I think it's one of the pillars of our democratically elected government with that focus on transparency. (Interview 13)

How principal officers and executives view their role

Some executives provided detailed and nuanced answers to how they viewed their role within information access, for example Interview 6:

There are multiple facets to the role. One is to ensure the appropriate capture of information, the appropriate storage of information, the maintenance of information ... That's, I think, part of the role. If you haven't got the information, you can't release it.

I think part of the executive role is to [also] ensure that we have the systems, the processes, the staff and so forth to do that, that we've got the appropriate education programmes in place ... So I think that's part of the executive role.

And specifically in relation then to FOI, clearly it's to have the systems, processes and policies, protocols, resources to support response to FOI requests. And given that in our instance, the chairman of the board of directors is the ultimate accountable person, then my role is to assume delegations from the board chair in relation to FOI requests. Then in responding specifically to FOI requests. It's also about ensuring that the appropriate protections of individuals and within information that's held is maintained to ensure compliance with other [acts].

Accountability was seen as a major part of the executive role:

I take overall accountability for making sure that the system is delivered appropriately ... [that] we've got the supporting frameworks in terms of training and development that are required for those officers to make decisions appropriately, but also an authorising framework where there is a not only a system, a commitment to the system across all staff of the department, but also a culture of embracing the value of a positive obligation in terms of the FOI framework, but then also proactive release as well, and a culture that's embracing of corrective policy and transparency. (Interview 20)

Executive and principal officer understanding of agency culture

Questions were asked of executives and POs regarding how they felt about the adequacy of funding and resourcing of their FOI departments, as well as how well they understood their agency's culture surrounding FOI and information access.

Interview X presented an apt analogy for how some agencies and executives think about FOI:

I think ordinarily that sometimes this sort of function [FOI] is seen as a hygiene factor for many organisations, part of 'keep the lights on' ... I don't want to make it sound the wrong way, but, you know, in every big city, they've got pipes and infrastructure. I don't see it, but it all works. And if you increase the number of people who live in your city, but you don't increase the pipes and the water and the electricity, it comes to a grinding halt. So I sort of see this function [FOI] as well as privacy and other sorts of core functions as a bit of that infrastructure that you don't see, but as critical to coping with your growth and the work.

Some executives saw there was a delicate balance to be found in FOI resourcing:

We're constantly trying to get the balance right between demand and resources, the number of requests versus the number of staff. And there's always going to be a lag. So, I reckon we're coming out of a period at the moment where we didn't have it quite right. But it's not chronically wrong. I've got 24 staff. Twenty-six would be ideal. (Interview 13)

The challenge is that it comes in spurts. It either rains or it pours, which makes it very difficult from a resource perspective. (Interview N)

Executive and principal officer understanding of alternative mechanisms to freedom of information

Questions were put to executives and POs regarding their knowledge of alternative avenues and mechanisms to FOI. A number of executives were aware of their agency's efforts in creating PARPs.

Interviewer: You mentioned that there are certain types of requests ... And you say that that's an example of where we can proactively release. Have you worked up an agency bespoke policy for proactive release?:

Yes, we have. But we have just hit a snag because we did a fair bit of work of understanding where all of our FOI requests came from and categorised them [to see] what we could do to speed them up ... The issue we actually do have, which we're trying to work through with the [agency] in regards to proactive ... release of [documents] ... is that the Health Records Act does put limitations on what we can release ... Our hope is in the next few months, we'll be able to start that process. (Interview 23)

Some executives were also well aware of the power of their position in dictating the wider agency culture:

Interviewer: So how do you view your role in terms of building that proactive release culture information that you were talking about?:

There's a few different dimensions to it. One is obviously demonstrating from the top that it's an area of priority for me as the chief executive of the agency ... That's kind of where I see my role, but also reinforcing within the leadership culture of the organisation the key principles that keep us in the right posture. (Interview 20)

Discussion

The aim of this project was to capture and map the culture of administering FOI in a comprehensive sample of government agencies in Victoria to inform training/awareness programs and campaigns to increase the functionality of the information access system in the state.

The research questions were as follows:

1. What is the understanding among FOI officers/administrators (on both senior and other levels) of the purpose and functionality of the access to information system in Victoria?
2. How do FOI officers/administrators (on both senior and other levels) view/describe their roles within the information access system?
3. Do they think FOI/RTI functions well in terms of delivering what the law promises? If so, why? If not, what is needed to improve functionality?
4. What is the understanding of the purpose and functionality of FOI and the information access system among senior government executives/managers?
 - How do they view their role in the information access system?
 - What is their understanding of the information access culture in their agency?
5. What is the understanding of alternative mechanisms (such as proactive release of information) to FOI among senior government executives/managers?

In addressing the research questions, based on the captured data we can conclude that overall both FOI practitioners and agency executives have a deep and engaged understanding of the purpose, function and challenges of FOI and the information access system in Victoria. The challenges identified by the participants in this project have been translated into the recommendations for OVIC below. However, before we list the recommendations, a brief discussion of the main findings is necessary to provide the context for the recommendations.

What the research team was most interested in was identifying any discrepancies between how FOI practitioners (FOI officers and managers) view information access culture, and the attitudes of agency POs (department secretaries, CEOs and board chairs). Within some agencies, differences between the different levels were detected, but in most participating agencies, executives and FOI practitioners seemed to be pulling in a similar direction. **The differences detected usually amounted to some agency executives having little or no interest in FOI and information access in general. This is serious in itself as this disinterest can lead to executives not requesting and allocating adequate staff resources to meet the requirements of the FOI Act let alone creating a proactive information access culture.** The study detected one stand-out example (see the *Agency resourcing* section above in *Findings*) where this clearly appeared to be the case.

Government departments were by far the most engaged agency sector. This is also where most of the agencies' proactive information release policies were found. Some department secretaries were deeply engaged in driving proactive release and the creation of agency policies. The focus groups and interviews made it abundantly clear that proactive information release policies are a very powerful driver of culture change, second only to a strongly engaged agency executive team. In these instances, the policy appears to become the principal culture change tool at the executive team's disposal.

Another area with great potential when it comes to proactive release is to conduct detailed analysis of historical FOI requests to identify information segments similar to the traffic camera example discovered by the DJCS. This report acknowledges what the health sector and some other large agencies with several thousand FOI requests per year are saying: that many requests are complex even though they are usually limited to personal information. However, it is hard to accept that among these thousands of requests, there would not be areas/types of requests—akin to the traffic camera example—that can be identified as suited for proactive release. Identifying these information areas would take quite some research effort and funding, but the potential outcome of creating the win-win of reducing the number of requests and granting greater and quicker access to personal information is certainly a very attractive prospect.

Following on from this point is the issue of discoverability/record keeping. Making information available proactively is futile if the released information cannot be found. This has been illustrated in previous studies (Lidberg, 2016). This is where the idea of DRRs comes in, building on both the FOI disclosure logs in the Queensland, NSW, Tasmanian and Commonwealth FOI/RTI acts, and the US FOI law 'electronic reading rooms'. This exploratory project should be connected to the historical FOI request analysis outlined above.

The sectorised sample method proved highly successful as it laid bare how different the FOI and information access needs and situations are in different sectors. The health sector seemed to have the most specific needs in terms of the complexity of FOI requests and the interactions with the *Health Records Act*. There seemed to be a great deal of fear in the health sector about releasing the wrong kind of information to the wrong people. Illustrating this point, one hospital executive (Interview 6) said he had not thought of proactive release before the interview, but that he was now really interested in pursuing it further. This is the basis for the recommendation for OVIC to encourage some sector specialisation among OVIC staff, recognising the greatly varying FOI needs between sectors.

The principal finding extends on the major finding in the pilot study: the crucial importance of agency POs. The pilot study identified this level as important and the current comprehensive study clearly identifies this level as pivotal for building and maintaining an information access facilitation culture in government agencies. It is worth noting that the importance of POs and executive committees was identified both by FOI practitioners and POs. When asked how much autonomy they had from the political level/leadership in terms of building an information access culture, the POs were close to unanimous in the assessment that they had a great deal of autonomy. This finding has clear implications for the policy direction of OVIC in the next few years as reflected in the recommendations below.

The political level (i.e. ministers) were not included in this study. It would be very interesting indeed to capture their attitudes towards FOI and their views of the autonomy of department secretaries. The political level is the final piece in the FOI culture puzzle. Fortunately, there is now an opportunity to acquire this final piece as described in the conclusion below.

All 12 recommendations below build directly on the findings from this project. Some are more complex than others. The recommendations are not ranked in terms of importance. It is the assessment of the authors of this report that they would contribute to the improvement of the functionality of FOI and access to information in Victoria and help build and maintain a culture of information access facilitation.

Legal issues that directly or indirectly influence the culture of administering FOI in Victoria include:

- The need for a comprehensive review of the Victorian FOI Act, bringing it up to date with the digital information environment. A significant number of the participants in the study identified two specific sections of the act in need of attention:

- Vexatious applications: section 24a in the current Victorian FOI Act should explicitly mention vexatious applications and specify what defines vexatious requests and how such requests should be processed. Forty-two % of participants mentioned vexatious applicants in the interviews and focus groups.
- The need to strengthen proactive release section 16 of the FOI Act explicitly nominating proactive release of information as the default, and FOI requests as the last option, was mentioned by 34% of the participants.

Recommendations

The following potential amendments to the FOI Act are recommended to directly or indirectly influence the culture of administering FOI in Victoria and build an access to information facilitation culture:

1. Review and update the FOI Act to reflect the current digital information environment and bring it up to date with the 21st century.
2. Review the proactive disclosure sections in reformed FOI/RTI acts in other Australian jurisdictions (such as Queensland, NSW, Tasmania and the Commonwealth) and consider including an explicit proactive disclosure section in the Victorian FOI Act. This should also include a review of the 'FOI/RTI disclosure logs' that are used in several Australian jurisdictions.

Regarding FOI administration culture:

3. As part of the review in 2 above, assess the functionality of the use of 'electronic reading rooms' in relevant United States (US) legislation. Can this concept be adapted to creating 'digital reading rooms' (DRRs) in Australia? Decision made to make information available in DRRs when a document/information is created.
4. Make FOI orientation part of the induction package for new agency staff. Some agencies have discontinued this part of the induction process.
5. OVIC to focus its advocacy/education towards executive-level agency decision makers.
6. OVIC to develop tools facilitating the creation of proactive information disclosure policies in government agencies. These tools could include examples of existing policies in other agencies.
7. The proactive information disclosure policy process may include detailed analysis of historical FOI requests to identify future information that can be proactively released (see *Case study: Cameras Save Lives* below).
8. OVIC to hold workshops and seminars on how proactive information disclosure policies can be created.
9. OVIC to undertake an inventory of the record-keeping systems in agencies and further assess their impact on FOI implementation.
10. As part of 9 above, OVIC to assess if artificial intelligence (AI) can be used in the information location and retrieval process and to enhance record keeping.

11. OVIC to encourage its staff to attain specific knowledge and understanding of sector-specific FOI needs including the following sectors:

- health
- statutory agencies
- local government
- government departments.

12. OVIC to consider offering more sector-specific (for sectors in 11 above) FOI and access to information professional development seminars.

Conclusion

Having analysed 116 survey responses and 63 interviews with 83 FOI practitioners and agency executives (the focus groups had more than one participant), we can conclude that there is a strong will among the Victorian government sector to make FOI work better. As pointed out in the methodology section, this is a generalisable conclusion across Victoria given the size and structure of the sample. This is the good news.

The less good news is that to improve FOI in the state, a number of actions are needed, as mentioned in the list of recommendations above. Principal among these is the pivotal role of proactive information release policies. It cannot be overemphasised how important this tool is. **One of OVIC's principal challenges is to convince agency executives not yet convinced about the usefulness of these policies and to design and offer tools such as seminars and template policies to facilitate the creation of proactive information release policies in as many agencies as possible.**

The most important finding is close to unanimous agreement among both the FOI practitioners and the agency executive level that information access culture change needs to be led by POs and their teams. Interestingly, most interviewed executives expressed that they felt they had a great deal of autonomy from political leadership and their agency to drive culture change. This further strengthens the initial finding in the pilot study that OVIC should focus its advocacy efforts on the executive level.

The political level does of course have influence over how FOI and access to information operates, most directly via its legislative powers. The question is the extent of this influence and what attitudes our elected representatives hold towards the role of access to information now and in the future; do they, for instance, have an understanding of the importance to the digital economy of big data access?

The other major question to arise from this study is the role of records management. The focus groups and interviews, especially with FOI practitioners, described a severely outdated and fragmented records management system in many of the agencies in this study. This will have an impact on the creation of proactive information release policies—the question is to what extent? And what can and should be done to deal with the records management issues?

Fortunately, these questions, including the role of political leadership, can be addressed in a future study. Midway through this project, the Monash University team, OVIC, the Ombudsman SA and the Office of the Information Commissioner WA were awarded an Australian Research Council Linkage Project grant. The funding is for a three-year study (2021–24) capturing and comparing the FOI and access to information cultures in Victoria, South Australia and Western Australia. This comprehensive study will include the political leadership dimension and records management issues identified in this report. It will be very interesting indeed to compare the three jurisdictions in their approaches to facilitating independent access to information created and held by the government.

In 2022 the FOI Act turns 40. On its 30th anniversary, in 2012, the architect behind the act—Victoria's longest serving Labor Premier, John Cain—had this to say about its core purpose:

The act was aimed at saying the public has an entitlement to know. The public service has custody and access to documents, and they have an obligation to serve the public by releasing them ... But the trend for the last 20 years has been inexorably to diminish the capacity of FOI to do what was intended. (Tomazin, 2012)

There have been reforms to the FOI Act since 2012. Hopefully the next study will conclude that John Cain's original intentions regarding FOI in Victoria have been somewhat restored.

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Appendix 1: Freedom of Information Practitioner Survey

FOI Victoria administration culture survey—part II

Section one:

This section asks questions about your views on the object and effectiveness of public access to government information in Victoria, including the *Freedom of Information Act 1982* (Vic) (**FOI Act**).

[All questions (bar the final comment question in each section) will use a Likert reply scale.]

Strongly agree Agree Neutral Disagree Strongly disagree

1. The overarching purpose of the FOI Act is to provide an efficient and low cost means through which the public can access government information.
2. Agencies in Victoria promote and fulfil the object of the FOI Act.
3. The Victorian information access system also involves the proactive and informal release of documents and information outside the FOI Act.
4. A well-functioning information access system ensures transparency and accountability in government decision making.
5. A well-functioning information access system is important to a healthy democracy.
6. Is there anything else you would like to add regarding the Victorian information access system or the objects of the FOI Act?

COMMENT BOX FOLLOWING Q6

Section two:

This section asks questions about your views on your current role in the Victorian information access system.

7. I play an important role in the Victorian information access system in facilitating or promoting access to information.
8. Part of my role involves facilitating or promoting proactive release of information.
9. Part of my role involves facilitating or promoting informal release of information upon request without requiring a person to make a formal FOI application.
10. I am provided with sufficient training and professional development to perform my duties effectively under the FOI Act.
11. My most important duty under the FOI Act is to facilitate access to information.
12. My most important duty under the FOI Act is to ensure sensitive information is NOT released.
13. Part of my role in administering the FOI Act is to make sure information potentially embarrassing to my agency or minister is NOT released.

14. Part of my role in administering the FOI Act is to make sure information potentially embarrassing to the government is NOT released.

15. Is there anything else you would like to add regarding how you view your role in the information access system?

COMMENT BOX FOLLOWING Q15

Section three:

This section asks questions about your views on the functioning of the current information access system in Victoria, including the FOI Act.

16. In my view, the current information access system in Victoria functions well.

17. In my view, the lack of training and professional development for FOI practitioners is a significant impediment to a better functioning information access system in Victoria.

18. In my view, the lack of resources to administer the FOI Act in my agency is a significant impediment to a better functioning information access system in Victoria.

19. In my view, the lack of understanding about the requirements of the FOI Act from senior personnel in my agency is a significant impediment to a better functioning information access system in Victoria.

20. In my view, pressure from management level personnel in my agency NOT to release sensitive information under the FOI Act is a significant impediment to a better functioning information access system in Victoria.

21. In my view, pressure from executive-level personnel in my agency NOT to release sensitive information under the FOI Act is a significant impediment to a better functioning information access system in Victoria.

22. In my view, pressure from the office of the minister responsible for my agency NOT to release sensitive information under the FOI Act is a significant impediment to a better functioning information access system in Victoria.

23. Is there anything else you would like to add regarding the functioning of the current information access system in Victoria?

COMMENT BOX FOLLOWING Q23

Section four:

This section asks questions about your views on areas for potential improvements to the information access system in Victoria.

24. The information access system in Victoria needs to be improved.

25. The most effective way to improve the information access system in Victoria is by changing legislation.

26. The most effective way to improve the information access system in Victoria is by changing culture and practice.

27. The focus of improvements should be on proactive disclosure and informal release of government information.

28. The focus of improvements should be on streamlining the administrative requirements under the FOI Act.

29. The focus of improvements should be on reducing FOI exemptions.

30. Is there anything else you would like to add regarding improvements to the information access system in Victoria?

COMMENT BOX FOLLOWING Q30

31. Is there anything else you would like to add?

COMMENT BOX TO FOLLOW

Appendix 2: Executive/Principal Officer Survey

FOI Victoria administration culture survey—part II

Section one:

This section asks questions about your views on the object and effectiveness of public access to government information in Victoria, including the *Freedom of Information Act 1982* (Vic) (**FOI Act**).

[All questions (bar the final comment question in each section) will use a Likert reply scale.]

Strongly agree Agree Neutral Disagree Strongly disagree

1. The overarching purpose of the FOI Act is to provide an efficient and low cost means through which the public can access government information.
2. Agencies in Victoria promote and fulfil the object of the FOI Act.
3. The Victorian information access system also involves the proactive and informal release of documents and information outside the FOI Act.
4. A well-functioning information access system ensures transparency and accountability in government decision making.
5. A well-functioning information access system is important to a healthy democracy.
6. Is there anything else you would like to add regarding the Victorian information access system or the objects of the FOI Act?

COMMENT BOX FOLLOWING Q6

Section two:

This section asks questions about your views on your current role in the Victorian information access system.

7. I play an important role in the Victorian information access system in facilitating or promoting access to information.
8. Part of my role involves facilitating or promoting proactive release of information.
9. Part of my role involves facilitating or promoting informal release of information upon request without requiring a person to make a formal FOI application.
10. I am provided with sufficient training and professional development to perform my duties effectively under the FOI Act.
11. My staff are provided with sufficient training and professional development to perform their duties effectively under the FOI Act.
12. My most important duty under the FOI Act is to facilitate access to information.
13. The most important duty of my staff under the FOI Act is to facilitate access to information.
14. My most important duty under the FOI Act is to ensure sensitive information is NOT released.

15. The most important duty of my staff under the FOI Act is to ensure sensitive information is NOT released.
16. Part of my role in administering the FOI Act is to make sure information potentially embarrassing to my agency or minister is NOT released.
17. Part of the staff's role in administering the FOI Act is to make sure information potentially embarrassing to my agency or minister is NOT released.
18. Part of my role in administering the FOI Act is to make sure information potentially embarrassing to the government is NOT released.
19. Part of the staff's role in administering the FOI Act is to make sure information potentially embarrassing to the government is NOT released.
20. Is there anything else you would like to add regarding how you view your role in the information access system?

COMMENT BOX FOLLOWING Q15

Section three:

This section asks questions about your views on the functioning of the current information access system in Victoria, including the FOI Act.

21. In my view, the current information access system in Victoria functions well.
22. In my view, the lack of training and professional development for FOI practitioners is a significant impediment to a better functioning information access system in Victoria.
23. In my view, the lack of resources to administer the FOI Act in my agency is a significant impediment to a better functioning information access system in Victoria.
24. In my view, the lack of understanding about the requirements of the FOI Act from senior personnel in my agency is a significant impediment to a better functioning information access system in Victoria.
25. In my view, pressure from management level personnel in my agency NOT to release sensitive information under the FOI Act is a significant impediment to a better functioning information access system in Victoria.
26. In my view, pressure from executive-level personnel in my agency NOT to release sensitive information under the FOI Act is a significant impediment to a better functioning information access system in Victoria.
27. In my view, pressure from the office of the minister responsible for my agency NOT to release sensitive information under the FOI Act is a significant impediment to a better functioning information access system in Victoria.
28. Is there anything else you would like to add regarding the functioning of the current information access system in Victoria?

COMMENT BOX FOLLOWING Q23

Section four:

This section asks questions about your views on areas for potential improvements to the information access system in Victoria.

29. The information access system in Victoria needs to be improved.

30. The most effective way to improve the information access system in Victoria is by changing legislation.

31. The most effective way to improve the information access system in Victoria is by changing culture and practice.

32. The focus of improvements should be on proactive disclosure and informal release of government information.

33. The focus of improvements should be on streamlining the administrative requirements under the FOI Act.

34. The focus of improvements should be on reducing FOI exemptions.

35. Is there anything else you would like to add regarding improvements to the information access system in Victoria?

COMMENT BOX FOLLOWING Q30

36. Is there anything else you would like to add?

COMMENT BOX TO FOLLOW Q31

Appendix 3: Focus Group Interview Questions (Freedom of Information Officers)

FOI Victoria administration culture focus group question template—part II

Section one: focus group administration

Date of focus group:

Have you all read and understood the explanatory statement for this project? Do you have any questions regarding this study?

I want to remind you again that all you say here today is strictly confidential and nothing of what you say can be traced back to you as individuals or the agency you work for. It's very important that we are clear on that and that you're absolutely comfortable in this situation. Further OVIC will not know which person said what or what agency a quote is taken from—this is also crucial.

Introduction

The purpose of this focus group is to follow up on the online survey regarding the administration of FOI in Victoria that most of you have completed. Your replies today will deepen our understanding of how FOI in Victoria is administered and it's also an opportunity for you to reflect on your practice and help influence the direction in which FOI in Victoria will go in the next few years.

The structure will be similar to the one used in the online survey. There will be three sections:

1. The objectives and effectiveness of FOI in Victoria;
2. Your role in the Victorian information access system;
3. How you think the current system functions and what improvements are needed and how they are best made.

Section one:

How would you describe the overarching objective and goals of the Victorian public information access system?

Anticipated follow up: if you would rank, one to three, the objectives we've discussed, what would that rank be?

How do you see the role of proactive/informal release of information in the information access system?

Anticipated follow up: can you describe how proactive release works in your agency?

Section two:

This section asks questions about your views on your current role in the Victorian information access system.

How would you describe your role in the Victorian information access system?

Anticipated follow up: Do you see your role as predominantly information access facilitator for FOI users, or as an assessor of what information can be released?

Does your role include advice to FOI users on how to access information, e.g., if you can't assist, should you refer the information seeker on to where you think the information will be available?

If you receive a request asking for what you understand is information sensitive or embarrassing to your department, what is then your course of action?

If you receive a request asking for what you understand is information sensitive or embarrassing to the minister or to the government, what is then your course of action?

Do you see it as your role to protect the minister or the government from embarrassing information being released?

Follow up: Why? or Why not?

Section three:

Current functionality and what can be improved

How well, or not well, do you think the current FOI system in Victoria functions?

Does the system deliver on the objectives of the Victorian FOI Act that we discussed before?

Anticipated follow up: What do you base your assessment on? Can you provide examples?

Do you have the resources (staffing, training, access to professional development) to implement FOI effectively?

Follow up: what are the principal constraints?

How would you describe the relationship between you and the senior FOI decision maker in your agency?

How would you describe the relationship between you and management in your agency?

How would you describe the relationship between you and the Minister/political leadership in your agency?

Do you think the information access system in Victoria needs to be improved?

Follow up: Why? or Why not?

What needs to be done?

What do you think would be the most effective way to improve the system?

Follow up: change/amend the FOI Act and/or a change of FOI administration culture?

Should the Victorian FOI Act be amended to explicitly mention pro-active release of information as the default part of the access to information system?

Follow up: Why or why not? how would such a change impact on your FOI practice?

Follow up: The Commonwealth and Queensland have used FOI disclosure logs for a number of years now—do you think this should be implemented in Victoria too?

Follow up: why? Or why not?

How would you describe the current FOI administration culture in your agency?

Follow up: a culture of secrecy? Or Openness?

What would be the best way to change FOI administration practice culture?

Follow up: professional development? Information campaigns? Agency management leadership? Political leadership?

Do you discuss in your teams or agency the role of FOI administration culture?

What role does proactive release of information play in affecting culture change?

IS THERE ANYTHING ELSE ANY OF YOU WOULD LIKE TO ADD?

Appendix 4- Interview Questions (Managers, Executives and Principal Officers)

FOI Victoria administration culture individual interview template—part II

Date of interview:

Have you read and understood the explanatory statement for this project? Do you have any questions regarding this study?

I want to remind you again that all you say here today is strictly confidential and nothing of what you say can be traced back to you as individuals or the agency you work for. It's very important that we are clear on that and that you're absolutely comfortable in this situation. Further OVIC will not know which person said what or what agency a quote is taken from—this is also crucial.

Introduction

The purpose of this focus interview is to follow up on the online survey regarding the administration of FOI in Victoria that you have hopefully completed. Your replies today will deepen our understanding of how FOI in Victoria is administered and it's also an opportunity for you to reflect on your practice and help influence the direction in which FOI in Victoria will go in the next few years.

The structure will be similar to the one used in the online survey. There will be three sections:

1. The objectives and effectiveness of FOI in Victoria;
2. Your role in the Victorian information access system;
3. How you think the current system functions and what improvements are needed and how they are best made.

Section one:

(FOR BOTH FOI MANAGERS AND CEOs/POs)

How would you describe the overarching objective of the Victorian public information access system?

Anticipated follow up: if you would rank, one to three, the objectives we've discussed, what would that rank be?

How do you see the role of proactive/informal release of information in the information access system?

Anticipated follow up: can you describe how proactive release works in your agency?

Section two:

(FOR BOTH)

This section asks questions about your views on your current role in the Victorian information access system.

How would you describe your role in the Victorian information access system?

Anticipated follow up: Do you see your role as predominantly information access facilitator for FOI users, or as an assessor of what information can be released?

Does your role include advice to FOI users on how to access information, e.g., if you can't assist, should you refer the information seeker on to where you think the information will be available?

Follow up: Do you encourage your staff to be information access facilitators?

In practice – how do you encourage them? (verbally? Instructions? Do you follow up on their practice?)

If you receive a request asking for what you understand is information sensitive or embarrassing to your department, what is then your course of action?

If you receive a request asking for what you understand is information sensitive or embarrassing to the minister or to the government, what is then your course of action?

Do you see it as your role to protect the Minister or the government from embarrassing information being released?

Follow up: Why? or Why not?

Section three:

Current functionality and what can be improved

How well, or not well, do you think the current FOI system in Victoria functions?

Does the system deliver on the objectives of the Victorian FOI Act that we discussed before?

Anticipated follow up: What do you base your assessment on? Can you provide examples?

Do you have the resources (staffing, training, access to professional development) to implement FOI effectively?

(THIS FOLLOWING TWO QS FOR FOI MANAGERS ONLY) How would you describe the relationship between you and your FOI team/s?

How would you describe the relationship between you and management in your agency?

(FOR CEOs/POs but not for FOI managers): Is FOI and access to information reported and discussed regularly in the executive committee meetings in your agency?

Follow up: in what way is it reported? If not reported/discussed: why not? Do you think it should be a standing item on the exec meeting agenda?

Does your agency have an information access policy?

Follow up: if there is one: what does the policy contain? How is it used? Who took the initiative to work one up? Who designed it? If no policy: why not? Is there a need for a policy? How would you go about working up a policy?

(The rest for both FOI managers and CEOs)

How would you describe the relationship between you and the Minister/political leadership in your agency?

Do you think the information access system in Victoria needs to be improved?

Follow up: Why? or Why not?

What needs to be done?

What do you think would be the most effective way to improve the system?

Follow up: change/amend the FOI Act and/or a change of FOI administration culture?

Should the Victorian FOI Act be amended to explicitly mention pro-active release of information as the default part of the access to information system?

Follow up: Why or why not? how would such a change impact on your FOI practice?

How would you describe the current FOI administration culture in your agency?

What would be the best way to change FOI administration practice culture?

Follow up: professional development? Information campaigns? Agency management leadership? Political leadership?

Do you discuss with your team/s or agency the role of FOI administration culture?

What role does proactive release of information play in affecting culture change?

IS THERE ANYTHING ELSE ANY OF YOU WOULD LIKE TO ADD?

Further information

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