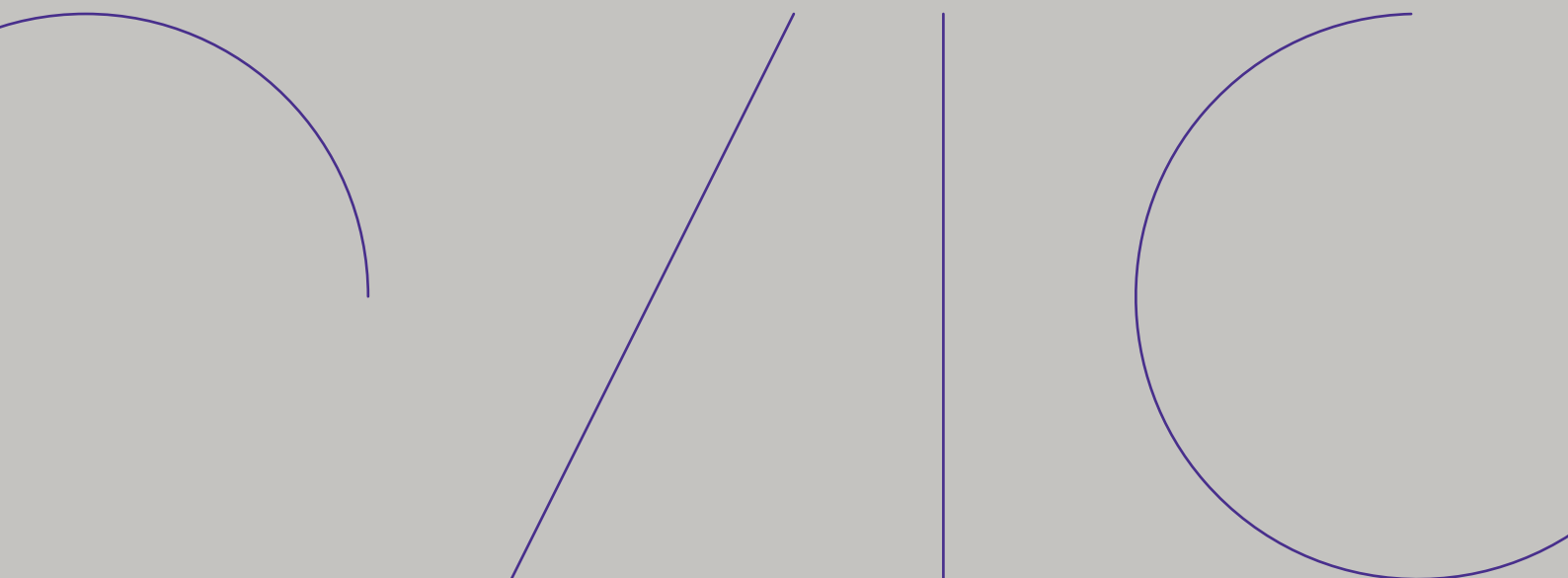


Impediments to timely FOI and information release: twelve months on

Review of agencies' implementation of the Information Commissioner's recommendations



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Commissioner's Foreword

On 1 September 2021, my report *Impediments to timely FOI and information release: own-motion investigation under section 61O of the Freedom of Information Act 1982 (Vic) (FOI Act)* was tabled in the Victorian Parliament.¹

My investigation examined delayed FOI decision making at five Victorian public sector agencies. This report outlines the progress of those agencies in implementing the recommendations from that investigation.

Of the five agencies subject to the investigation, two have showed a marked improvement in timeliness over the 12 months since the report was tabled. The remaining three agencies have continued to experience significant delays.

When members of the community seek information through the FOI system, their need for information is often time critical. They may need information to help them make an important choice, to use in a legal matter or criminal defence, or to support advocacy to government before it makes a decision.

In all these cases, a delay of access is effectively a denial of access. When applicants are experiencing average delays of more than six months we must ask: *what has gone wrong?*

When my report was tabled in 2021, FOI applicants who had made requests to Victoria Police were generally receiving responses to their requests around 14 weeks later than they should. I concluded that the only way Victoria Police could address this issue would be to apply considerable new resources to its FOI backlog.

However, Victoria Police only approved the creation of new positions in its FOI team in March 2022. Most of those positions were for a fixed period of 12-months and have been difficult to fill. The Victoria Police FOI backlog has grown.

The FOI Act mandates FOI decisions be made within 30 days, or 45 days where third-party consultation is needed. The typical FOI decision made by Victoria Police in August 2022 related to a request made some 200 days (29 weeks) earlier, in January 2022. In the intervening period, Victoria Police's backlog grew from 2,328 to 2,637 overdue FOI requests. It seems likely that an FOI request lodged today would take even longer to complete. This is an unacceptable situation which deprives people who need information from Victoria Police of an important right.

The community expects agencies like Victoria Police to provide essential services to a high standard. It can be tempting to think of compliance with integrity mechanisms such as FOI as an administrative

¹ Find a copy of the report at <https://ovic.vic.gov.au/wp-content/uploads/2021/09/Own-Motion-Investigation-Report-Impediments-to-timely-FOI-and-information-release.pdf>

distraction from focussing on those services. However, it is increasingly clear that transparency and accountability build community trust, which is essential for democratic governments to work effectively, efficiently, and with legitimacy.

In any event, compliance with the laws passed by the Victorian Parliament is not optional.

Across the sector, appropriate staff resources and efficient processes need to be applied to the FOI function. But this cannot be the whole solution. Victorian state and local public sector agencies receive more FOI requests than any other jurisdiction in Australia.

In 2021-22, Victorians made 43,978 FOI requests to Victorian government agencies and Ministers.² This is a record for FOI requests received in a single year.

I consider that much of the information sought in these requests could be released through more streamlined processes without even requiring a FOI application. However, unlike similar legislation in some other Australian jurisdictions, the FOI Act does not contain express mechanisms for proactive and informal release of information.

In the absence of such a clear legislative signal, some agencies are reluctant to provide greater information access outside the formal FOI process.

While Victoria was the first state in Australia to introduce FOI laws, the FOI Act has not been substantially reformed since 1982. This report highlights why now, more than ever, reform of the FOI Act is needed to once again make Victoria a leader in transparency.

Sven Bluemmel

Victorian Information Commissioner

October 2022

² See OVIC's Annual Report at <https://ovic.vic.gov.au/wp-content/uploads/2022/09/OVIC-Annual-Report-2021-22-Digital.pdf>

Executive summary

The number of FOI requests Victorian agencies receive continues to increase each year and is higher than in any other Australian FOI jurisdiction.³

On 1 September 2021, the Information Commissioner's report titled *Impediments to timely FOI and information release: Own-motion investigation under section 61O of the Freedom of Information Act 1982 (Vic) (FOI OMI report)* was tabled in the Victorian Parliament.

This report followed the Commissioner's own motion investigation into delayed FOI decision making at five agencies.⁴

The report made 16 recommendations to the five agencies subject to the investigation and one recommendation to the Victorian Government.⁵

The agencies subject to the investigation were:

- Alfred Health;
- The Department of Justice and Community Safety (**DJCS**);
- The Department of Transport (**DOT**);
- Frankston City Council (**Frankston Council**); and
- Victoria Police.

Of the five agencies subject to the investigation, Alfred Health and Frankston Council showed a marked improvement in the timeliness of their FOI decision making in the 12 months since the report was tabled. DOT substantially improved the average time taken to complete FOI decisions, although the proportion of FOI decisions it completed on time declined.

The proportion of FOI requests completed on time by DJCS and Victoria Police declined.

Victoria Police's FOI backlog has grown significantly, as has the average time Victoria Police takes to make FOI decisions.

In the case of Victoria Police, there has been a significant increase in the number of overdue requests and the overall timeliness of FOI decision making remains the lowest amongst the five agencies. This has

³ OVIC, The State of Freedom of Information in Victoria, p 12, 13.

⁴ Find a copy of the FOI OMI report at <https://ovic.vic.gov.au/wp-content/uploads/2021/09/Own-Motion-Investigation-Report-Impediments-to-timely-FOI-and-information-release.pdf>

⁵ See Appendix A for a full list of recommendations and their implementation status.

resulted in a record number of complaints made to the Information Commissioner concerning delays by Victoria Police.

In the case of DJCS, there has been a noticeable decline in timeliness despite a decrease in FOI requests received.

In the case of DOT, the average time taken to complete FOI requests has improved. However, complex FOI requests that are subject to ministerial and executive noting processes are still subject to significant delays.

While the rates of delays in FOI decision making in Victoria have remained stable in 2019-20, 2020-21 and 2021-22 at around 79%, the number of FOI request numbers across Victoria have increased year on year.

OVIC acknowledges that it takes time to address delay, particularly when the scale of the issues facing agencies are significant and Victorians' appetite for FOI continues to grow.

As agencies struggle to meet their FOI obligations and Victorians experience, in some cases, extensive delay in accessing information, the case for a wide-ranging review of the FOI Act becomes very apparent.

Background

The Information Commissioner commenced the investigation on 15 September 2020. The investigation was commenced in response to a number of complaints made to OVIC about delayed FOI decisions and the observation that timeliness had declined across Victoria in recent years. Following the investigation, the FOI OMI report was tabled in Victorian Parliament on 1 September 2021.

This follow-up report has been undertaken to provide the Victorian Parliament and the public with an update on how agencies have addressed issues contributing to delays in making FOI decisions since the FOI OMI report and draws attention to continued and escalating delays in the case of two agencies.

Timeliness of FOI in Victoria

The number of FOI requests received by agencies continues to rise each year. In 2021-22, Victorians made 43,978 FOI requests to Victorian government agencies and Ministers, which is the highest number received.

Rates of delay in Victoria have remained stable over the last three financial years at around 79%, however this is the lowest rate of timeliness in Victoria over the last eight years.

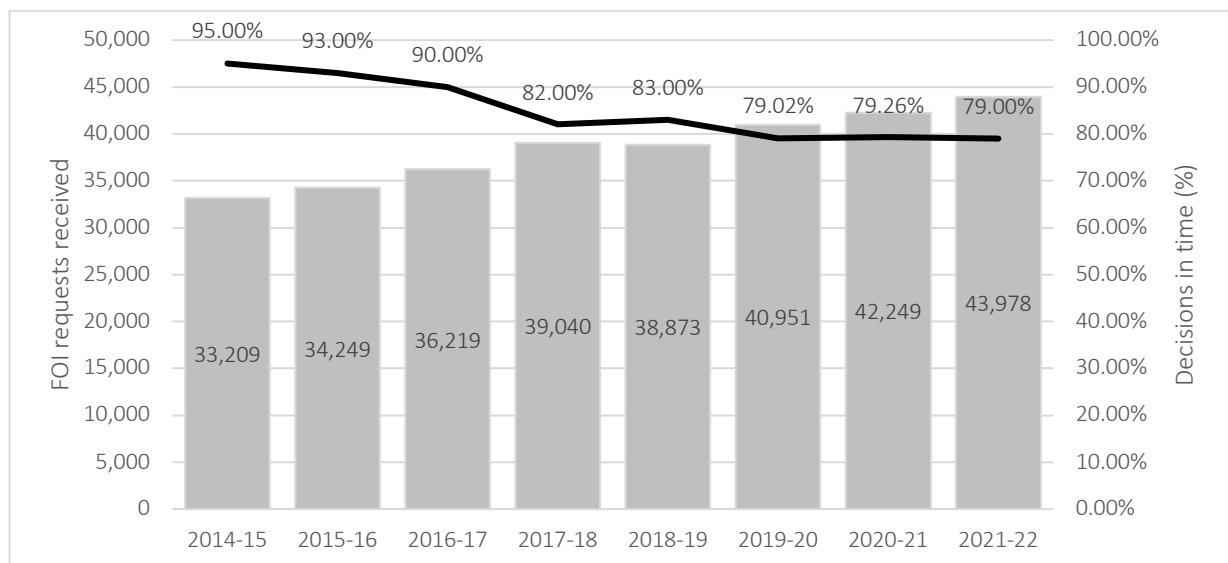


Figure 1: FOI requests received, and proportion of decisions made in time in Victoria

What steps have agencies taken since the investigation

All five agencies agreed to implement the recommendations made to them in the FOI OMI report.

In the year following the FOI OMI report, two of the five agencies have taken successful steps to address causes of delay within their organisations. However, Victoria Police, DJCS and DOT have all experienced a reduction in the proportion of FOI requests completed on time.

The typical time Victoria Police is taking to complete requests is substantially longer than it was last year, and its backlog of outstanding requests has increased from 2,101 in September 2021 to 2,637 in August 2022.

All agencies reported to OVIC six and 12 months following the tabling of the FOI OMI report (March 2022 and September 2022).

Below is an analysis of these agencies' progress towards implementing the recommendations based on the information provided in the biannual progress reports provided by the five agencies.

Victoria Police

Six recommendations were made to Victoria Police in relation to its FOI practices in the FOI OMI report.

Recommendation 1 – Resourcing of Victoria Police's FOI team

Victoria Police receives the largest volume of FOI requests of any Victorian agency. It also has a large team of FOI staff at various levels that are tasked with processing requests.

The FOI OMI report found a clear connection between the resourcing of Victoria Police's FOI Division and the timeliness of its FOI decisions.⁶ The number of FOI staff available to process requests relative to the number of requests received at any given time was considered a primary contributor to delays in FOI decision making at Victoria Police.⁷

Following the FOI OMI report, Victoria Police did not substantially increase the size of its FOI team until March 2022.

In March 2022, Victoria Police created four ongoing positions in the FOI Division including:

- 1 x VPS 5 position;

⁶ OVIC, FOI OMI report, p 24, para 98.

⁷ OVIC, FOI OMI report, p 24, para 98.

- 1 x VPS 4 position;
- 1 x VPS 3 position; and
- 1 x VPS 2 position.

It also created twelve temporary positions including:

- 3 x VPS 4 positions; and
- 9 x VPS 2 positions for a 12-month period.

In September 2022, Victoria Police advised that only nine of the 12 fixed term positions had been able to be filled. Victoria Police also advised that not all other positions had been filled.

At 31 August 2022, there were 35 Full-Time Equivalent staff (**FTE**) in the FOI Division, an increase from 25 FTE in March 2022.

Victoria Police also reported that there were five vacancies in its FOI team in September 2022. These included:

- 1 x ongoing VPS 3 position;
- 2 x fixed term VPS 3 positions; and
- 2 x fixed term VPS 2 positions.

Victoria Police noted that recruitment is underway to fill these positions.

While there has been an increase in the number of staff within the FOI Division, the backlog in processing FOI requests is significant and continues to grow.

It appears unlikely that it will be arrested without sufficient staffing to allow Victoria Police to process its incoming request load as well as the significant existing and escalating backlog.

The steps taken by Victoria Police to date have clearly been inadequate to deal with the backlog in processing FOI requests.

The Information Commissioner considers this recommendation is not implemented.

Recommendation 2 – Six monthly written reports to the Information Commissioner and Minister for Police and Emergency Services

The Information Commissioner recommended that Victoria Police provide six-monthly reports to the Information Commissioner and the Minister for Police and Emergency Services (**Minister**) regarding any steps Victoria Police had taken to manage the overdue requests and its progress in addressing the

backlog. These reports were to continue until the number of overdue requests is less than the number of requests Victoria Police is completing each month.⁸

The Information Commissioner considers this recommendation is implemented, but that it remains active.

Victoria Police should continue to provide six-monthly reports to the Information Commissioner until the backlog of overdue FOI requests is addressed.

Recommendation 3 – Provide information to current and prospective FOI applicants about the extent of delay

The FOI OMI report noted that due to the significant backlog in processing FOI requests by Victoria Police, FOI applicants will likely experience significant delays in receiving an FOI decision and any documents to be released.⁹

As a result, the Information Commissioner recommended that Victoria Police should provide information to current and prospective FOI applicants about the extent and causes of delayed FOI requests and provide an apology for its delay, where appropriate.

In March 2022, Victoria Police reported that it provides information to FOI applicants about the delay and likely timeframes for the making of an FOI decision. It also noted that an apology for the delay is provided in the decision letter that is sent out.

In March 2022, Victoria Police reported that it was currently citing an average delay of 27 weeks. Since then, the average delay has increased to 34 weeks in September 2022, which is more than an eight-month delay.

The Information Commissioner considers this recommendation is implemented, but that it remains active. Victoria Police should continue to provide information to current and prospective FOI applicants about the extent and causes of delayed FOI requests and provide an apology for its delay, where appropriate.

Recommendation 4 – Review information release processes for efficiency opportunities

In March 2022, Victoria Police reported that staff in the FOI Division had received training in ‘Lean methodology’ to identify opportunities for ongoing improvement. This training has aimed to minimise waste and improve process efficiency. This has led to the identification of types of frequently sought information that can be provided to applicants outside of FOI.

⁸ OVIC, FOI OMI report, p 25, para 104.

⁹ OVIC, FOI OMI report, p 25, para 105.

Victoria Police also reported that it is focusing more attention on the pre-assessment stage of FOI requests to reduce over-processing. It also noted that in January 2022, a review of all overdue requests was undertaken to identify any that should be processed with priority.

Opportunities for efficiency improvements is also a standing agenda item at all FOI Division staff meetings. This indicates a willingness by Victoria Police to continue to improve process efficiency and access to information.

The Information Commissioner considers this recommendation is implemented, but that it remains active.

Given the continuing and escalating backlog of overdue FOI requests since the FOI OMI report was tabled, Victoria Police should continue to actively review its information release processes, to ensure that it is providing access to information as efficiently as it can.

Recommendation 5 – FOI division leadership engagement with executive on instances of significant or systemic delay

In September 2022, Victoria Police reported that staff at all levels are regularly reminded of their responsibilities to assist the FOI process. Recently, all staff were reminded of their obligations in a message from the Deputy Secretary, Corporate and Regulatory Services stating:

For anyone being called upon to assist with a request, please provide your ongoing support in the timely provision of documents and advice.

Victoria Police also advised OVIC that ‘on the rare occasion there is unreasonable delay in the provision of documents, the FOI Division continues to utilise hierarchical escalation channels’.

The Information Commissioner considers this recommendation is partially implemented and still active.

While reminding Victoria Police staff of their obligations around timely provision of documents is helpful, the Commissioner was not satisfied that Victoria Police executive leadership has been sufficiently engaged on the issue of significant and systemic delay, in light of the significant delay still apparent at Victoria Police.

Recommendation 6 – Consider how to communicate more effectively with FOI applicants

Recommendation 6 required Victoria Police to consider how it can communicate more effectively with FOI applicants, including seeking extensions of time where appropriate. In March 2022, Victoria Police reported that it was providing applicants with more information in line with recommendation 3, which is detailed in the above discussion of recommendation 3.

Victoria Police also noted in March 2022, that it considered seeking extensions of time from applicants to be disingenuous when the period of delay significantly exceeds the extension period. Victoria Police feels that the administrative effort involved would be better used in processing the requests rather than seeking extensions.

The Information Commissioner considers this recommendation is implemented.

Timely FOI at Victoria Police

In 2021-22, Victoria Police experienced its lowest overall timeliness rate in the last eight years with 26% of FOI requests processed in time. This was also the lowest rate of timeliness of all five agencies subject to the investigation.

The average time it took to complete a request as well as its backlog of overdue requests both increased substantially.

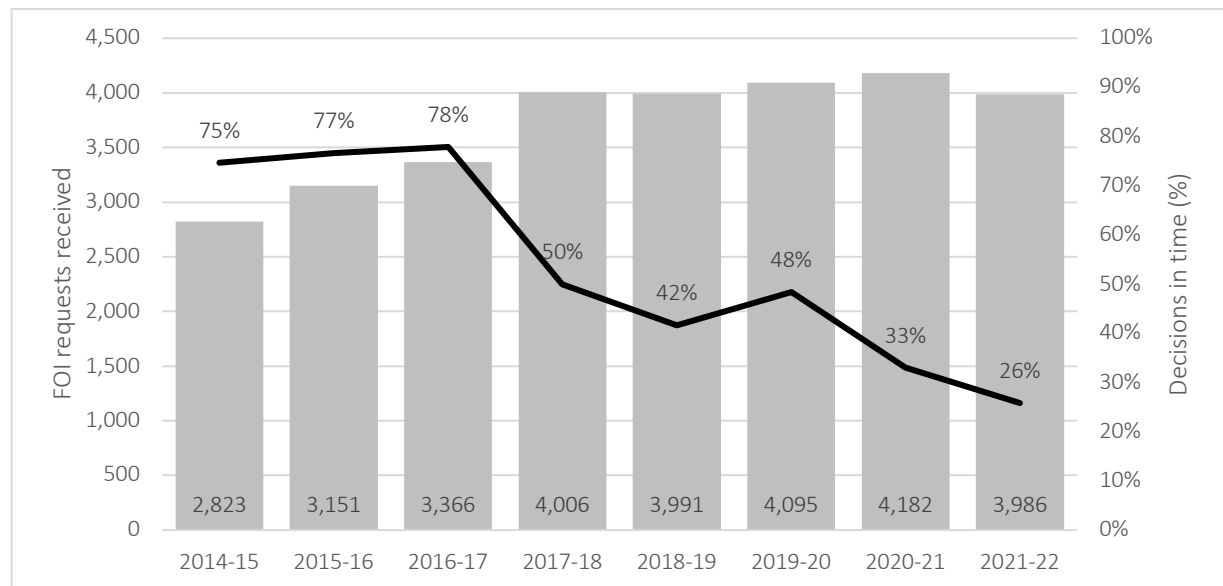


Figure 2: FOI requests received, and proportion of decisions made in time: Victoria Police

In August 2021, the backlog of overdue FOI requests at Victoria Police was 2,017. In the intervening 12 months, the backlog has continued to increase and currently stands at 2,637 overdue requests as at August 2022. This demonstrates that the backlog has continued to grow over the last year although the graph indicates a modest reduction in the backlog between February and April 2022.

The average time taken to complete a request in the month of August 2022 was 206 days. This equates to approximately 29 calendar weeks.

For an individual making a request in February 2022, they would experience an average delay of around 25 weeks or roughly six months on top of the statutory timeframe of 30 calendar days, subject to the application of extension of time provisions. This level of delay can have a significant impact on individuals making an FOI request to Victoria Police, particularly when obtaining the information is time sensitive.

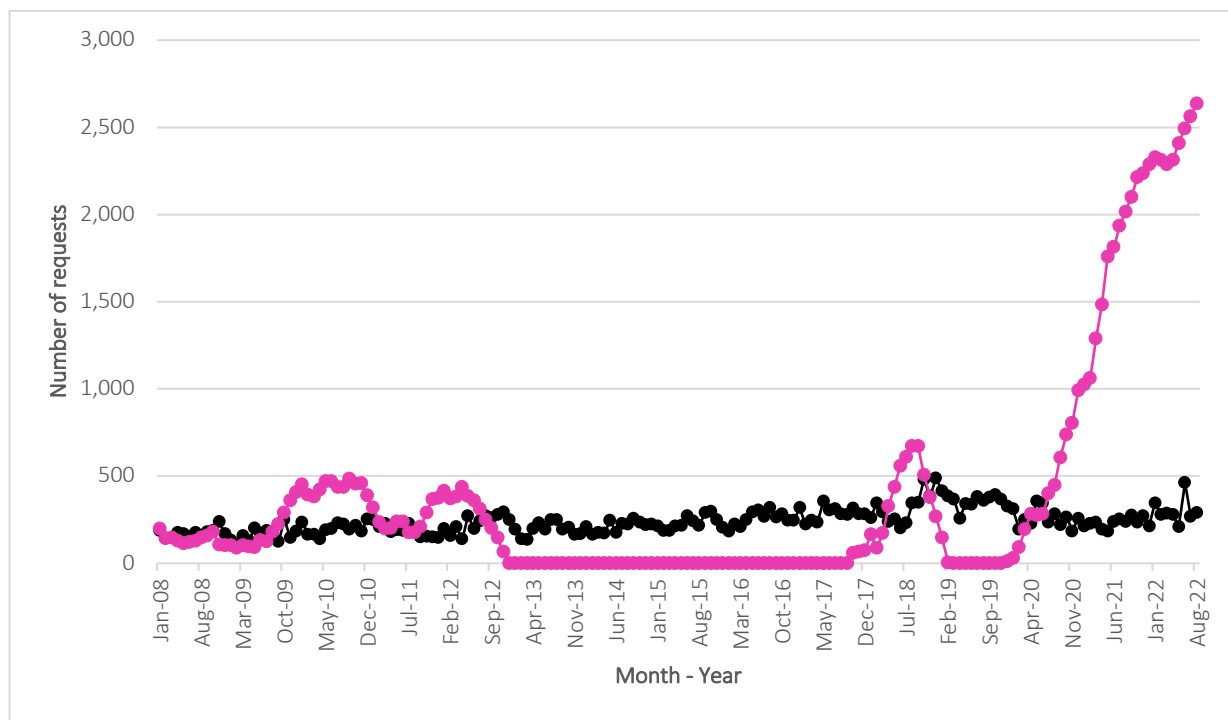


Figure 3: FOI requests finalised per month and number overdue at end of month: Victoria Police (Jan 2008 to August 2022)

Department of Transport

Two recommendations were made to DOT.

Recommendation 7 – FOI decision makers not to delay due to executive and ministerial noting

Recommendation 7 requires DOT to ensure FOI decision makers do not delay the finalisation of an FOI decision due to briefing and noting processes.¹⁰

Following the FOI OMI report, DOT developed an Action Plan to address the implementation of the recommendations.

Several of the activities in the Action Plan were aimed at ministerial noting processes including:

- Updating briefing processes and material to ensure more streamlined processing;
- Upgrading FOI reporting to DoT Groups and Ministerial Offices to improve FOI workflow and provide visibility of FOI requests and to support timely responses; and
- Proactive engagement with Deputy Secretary Groups and Ministerial Offices to raise awareness of FOI and promote timely responses to FOI requests (including tailored FOI ‘roadshows’ across DoT Groups and Divisions).

In March 2022, DOT reported that these initiatives had led to improved executive level engagement and oversight of the FOI process and reduced delays in FOI processing, including noting processes.

DOT also reported that the FOI team has moved into the DOT legal area and that this has provided opportunities for additional engagement and support for the management of FOI requests.

However, FOI decisions at DOT are still subject to lengthy noting periods. While noting periods have reduced considerably over the last twelve months, they still average more than 30 days.

Professional Standard 8.1 states that an FOI Officer must make their decision on an FOI request independently and that they cannot be directed to decide in a particular manner.

The FOI Act also states that government agencies must notify an FOI applicant of their decision as soon as practicable, but no later than 30 days after receiving a valid FOI request.

There is no provision in the FOI Act for the time for an agency to finalise an FOI decision to be paused or extended for consultation with, or noting by, a Minister or other stakeholder. Agencies have a legal duty

¹⁰ See FOI OMI report, p 33, para 134 for further details on the ministerial briefing and noting process.

to finalise FOI decisions within the statutory timeframe. This is not affected by any delay due to a noting process.

The length of noting periods at DOT suggests that FOI decision makers are waiting for ministerial or executive staff to note proposed decisions before they are made. This is inconsistent with DOT's obligations under the FOI Act and the Professional Standards.

The Information Commissioner considers this recommendation is not implemented.

DOT has explained to OVIC that review of briefings by executive staff is a key element of its FOI process. It said that in reviewing the ministerial briefing, executives are acting to ensure that the program area for which they are responsible has responded appropriately to the FOI request. DOT also states that it intends to continue to implement initiatives to ensure delays in noting processes are further minimised.

The Information Commissioner welcomes any attempt by DOT to minimise delays. However, the FOI Act (and supporting professional standards) establishes a formal scheme for information release, which includes rules about timeliness. Any quality control process carried out by agencies must be completed within that statutory timeframe, not in addition to it.

Recommendation 8 – Record the number of FOI requests that are dealt with administratively and report to DOT management

DOT confirmed in March 2022 that there are few requests dealt with by the FOI unit administratively. However, when these requests are received, they are recorded in the FOI management system.

In 2021-22, DOT reported to OVIC that it provided documents to applicants outside the FOI Act 29 times.

In 2020-21, this number was at 34 and in 2019-20 it was 10. This demonstrates that DOT is recording and reporting when it provides documents administratively.

The Information Commissioner considers this recommendation is implemented.

Timely FOI at Department of Transport

Whilst DOT has taken steps to address issues related to delays in noting, the below graph indicates that significant time is still being dedicated to executive and ministerial noting leading to significant delays for applicants.

In March 2022, there was an average of 79 days that topical requests spent at the noting stage of DOT's FOI process.

In June 2022, the lowest average time spent at noting in the last 12 months was recorded at 30 days. This is seven times longer than the four days recommended by OVIC as an acceptable period for an agency to accommodate any internal noting process.¹¹

The below graph also indicates that in some months the average time taken for topical requests to complete noting is the same or longer than the average total time for an entire request to be processed.

This indicates there are still significant delays at DOT related to noting processes.

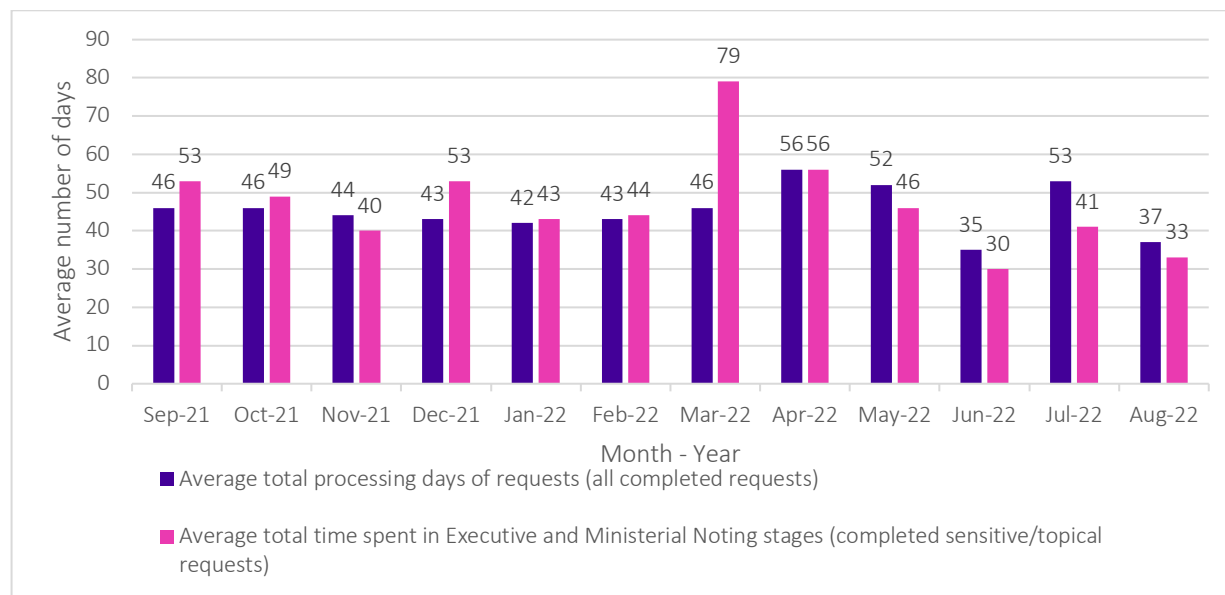


Figure 4: Average processing time for all FOI requests and average processing time spend in executive and ministerial noting stages for topical requests (Sep 2021 to Aug 2022)

During 2020-21, DOT experienced a modest increase in the overall timeliness of its FOI decision making. This should be considered a success in the context of the COVID-19 pandemic and the ‘stay-at-home’ orders.

In 2021-22, DOT experienced a sharp downturn in its overall FOI timeliness performance by recording a 45% timeliness rate, which is a 31% decrease on the previous year.

While DOT experienced a reduction in overall compliance with the 30-day statutory timeframe, DOT reduced the average processing time from 50 days in August 2021 to 35 days in June 2022. DOT also reported that 76% of requests were finalised within 45 days of receipt, with 26% finalised within 10 days

¹¹ See OVIC, Practice Note 23: Noting and briefing processes on Freedom of Information decisions, available at <https://ovic.vic.gov.au/freedom-of-information/resources-for-agencies/practice-notes/noting-and-briefing-processes-on-foi-decisions/>.

of the time limit. Finally, DOT reported that there has been a significant reduction of requests appealed to the Victorian Civil and Administrative Appeals Tribunal (VCAT). In 2020-21, 18 cases were appealed to VCAT compared to seven in 2021-22.

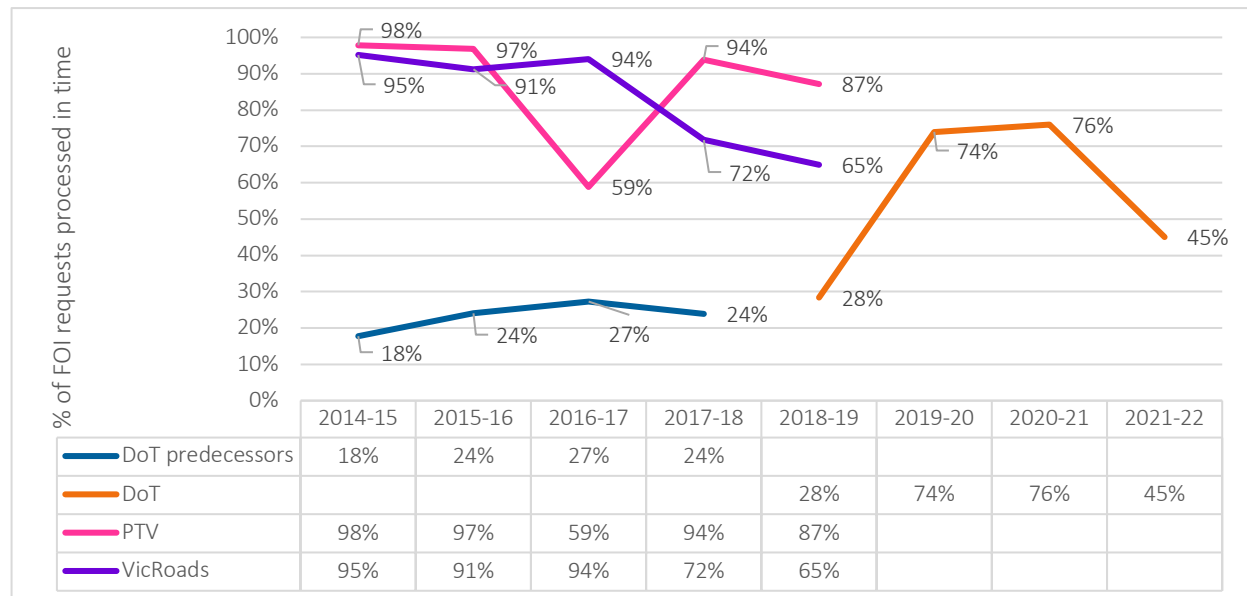


Figure 5: Proportion of FOI decisions made in time by VicRoads, Public Transport Victoria (PTV), DOT and predecessor departments

In 2020-21, DOT received 1,702 FOI requests, the highest number of requests received by DOT or its predecessor agencies in eight years. The number of FOI requests received in 2021-22 declined to 1,584 on the previous year, a reduction of 118 requests.

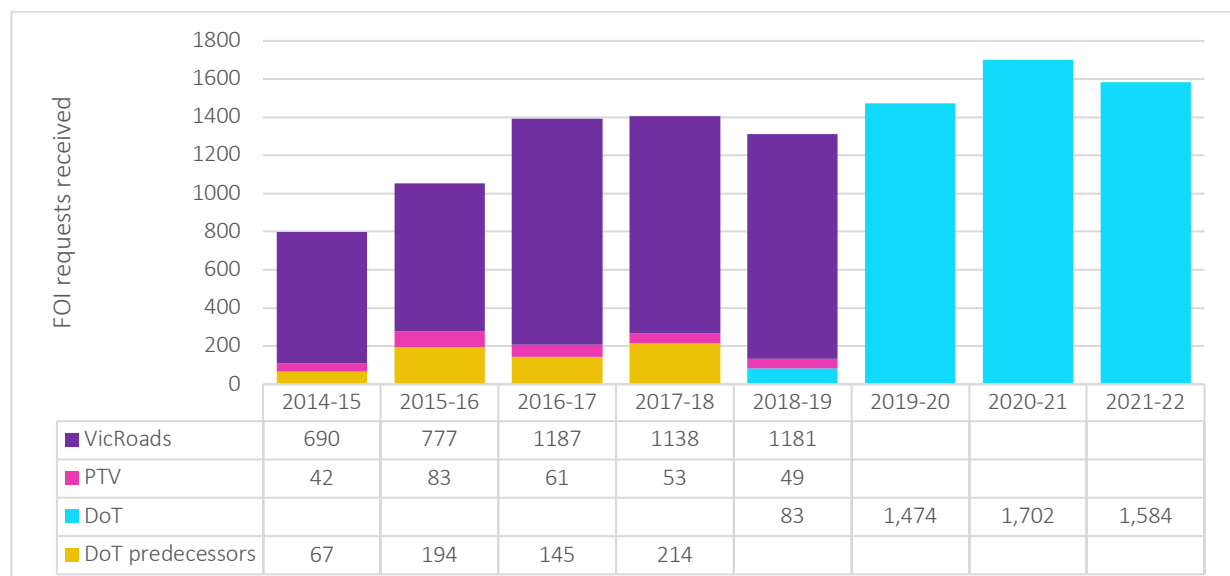


Figure 6: Number of FOI requests received by VicRoads, PTV, DOT and predecessor departments

Department of Justice and Community Safety

Two recommendations were made to DJCS.

Recommendation 9 – Continued monitoring of timeliness performance

Recommendation 9 required DJCS to continue to monitor its timeliness performance following the implementation of its FOI Reform Project.

The FOI Reform Project¹² was instituted by DJCS in 2020 to improve its FOI performance and resulted in the creation of four ongoing FOI officer positions and the clearance of both topical and non-topical FOI request backlogs by October 2020.¹³

In March 2022, DJCS reported that its monitoring and reporting of timeliness is well embedded at every level in the department, as well as the status of cases on hand.

In September 2022, DJCS noted that it provides a weekly Performance and Status report to the department's Board of Management, as well as weekly FOI reporting to specific business areas on the status of FOI requests within their business unit. DJCS also noted that the FOI leadership team meet regularly to review the status of requests, resolve issues and escalate requests as needed.

The Information Commissioner considers this recommendation is implemented and still active.

DJCS should continue to monitor its timeliness performance as it has experienced an 18% reduction in timeliness in 2021-22 on the previous year.

Recommendation 10 – Identify mechanisms to improve communications with FOI applicants about Corrections related requests

Recommendation 10 required DJCS to consider ways that it might improve communications with FOI applicants making Corrections related requests.

The FOI OMI report found that the majority of FOI requests made to DJCS are made by, or on behalf of, an incarcerated person.¹⁴

¹² See FOI OMI report, p 41, para 169 for further details of the FOI Reform Project.

¹³ OVIC, FOI OMI report, p 41-42, para 169.

¹⁴ OVIC, FOI OMI report, p 43, para 172.

DJCS advised that it only communicated with incarcerated persons in writing, which could contribute to delays.¹⁵

Recommendation 10 aimed to improve communication between DJCS and Corrections related FOI applicants to reduce potential delay.

In March 2022, DJCS advised that its processes to inform staff and prisoners of categories of information that can be accessed outside the FOI Act have become more established.

The FOI unit has been working with Corrections Victoria to make fact sheets for staff and prisoners more comprehensive. DJCS also advised that it has been working with applicants to assist them to identify categories of information held by DJCS and are directing urgent requests related to conduct to the Prisoner Information Management System, which includes information about incident summaries and urinalysis.

The Information Commissioner considers this recommendation is implemented.

Timely FOI at Department of Justice and Community Safety

In 2020-21, DJCS reported improved overall timeliness of FOI decision making at 66%, an increase of 26% on the previous year.

In September 2022, DJCS told OVIC that this was due to the implementation of its FOI Reform Project. However, in 2020-21, DJCS also experienced a drop in the number of FOI requests received.

In 2021-22, the number of FOI requests received by DJCS continued to decline but so did the overall timeliness of its FOI decision making with only 48% of decisions made in time.

¹⁵ OVIC, FOI OMI report, p 43, para 175, 176.

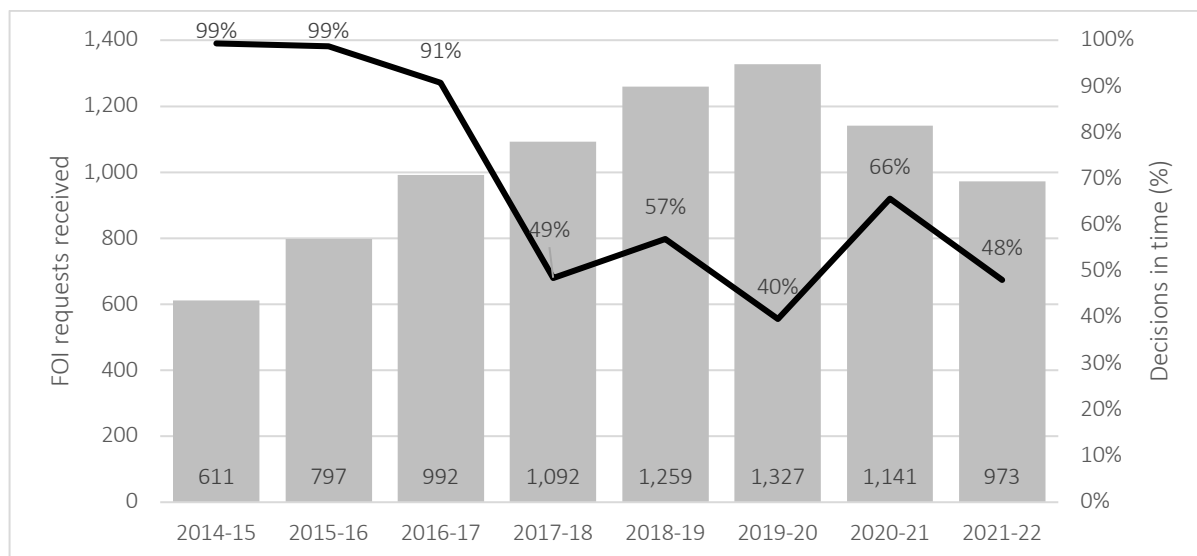


Figure 7: FOI requests received, and proportion of decisions made in time: DJCS and predecessor departments

The FOI OMI report identified a number of challenges to the timeliness of FOI in agencies across the Victorian public sector.

In September 2022, DJCS noted that many of these issues, including shortages of experienced FOI practitioners and resourcing efficiencies, continue to raise difficulties for timely FOI decision making. DJCS also noted that since February 2022 it had approval to recruit for nine positions and vacant positions continue to be considered on a monthly basis.

DJCS also highlighted the impact of the 30 day legislative timeframe for FOI requests, noting that it processes a high volume of large, complex and sensitive FOI requests which require careful assessment. However, DJCS would also be likely to deal with a substantial number of less complex requests that do not fall into this category.

Alfred Health

Three recommendations were made to Alfred Health.

Recommendation 11 – Review suitability of case management system

This recommendation required Alfred Health to review the suitability of its FOI case management system. The FOI OMI report revealed that Alfred Health's case management system was more than 10 years old and was considered no longer fit for purpose.¹⁶

During the investigation, Alfred Health worked to improve its FOI case management system.¹⁷ Alfred Health also reported in March 2022 that its FOI project working group engaged the health service's digital team, legal support services team and other key stakeholders to review and optimise the system.

This review found that in the long term, the system would not be fit for purpose and Alfred Health is now considering alternative systems.

The Information Commissioner considers this recommendation is implemented.

Recommendation 12 – Provide regular reporting on FOI to executive

Recommendation 12 required Alfred Health to provide regular reports to its management and executive on the status of FOI requests including timeliness. This recommendation aimed to ensure that management at Alfred Health had visibility of the FOI unit's functions and performance.

Alfred Health reported in March 2022 that the performance of the FOI unit, including compliance with statutory timeframes is included in monthly reports to the executive committee.

The Information Commissioner considers this recommendation is implemented.

Recommendation 13 – Utilise extension of time provisions where appropriate

Recommendation 13 required Alfred Health to use extension of time provisions under the FOI Act where appropriate. Alfred Health had advised it did not previously use extension of time provisions.¹⁸ This recommendation aimed to assist Alfred Health to consider appropriate opportunities for extension provisions and increase engagement with FOI applicants.

¹⁶ OVIC, FOI OMI report, p48, para 202.

¹⁷ OVIC, FOI OMI report, p48, para 201.

¹⁸ OVIC, FOI OMI report, p 50, para 211.

In September 2022, Alfred Health advised that its FOI staff were aware of extension provisions, had received feedback and education related to this and would use the provisions in appropriate circumstances.

The Information Commissioner considers this recommendation is implemented.

Timely FOI at Alfred Health

Alfred Health receives high numbers of FOI requests each year. In 2020-21, Alfred Health experienced a decline in the number of requests received (2,594) and an increase in decisions made within statutory timeframes to 46% (an increase of 7% on the previous year).

In 2021-22, Alfred Health experienced a significant increase in both the number of requests received, and its timeliness, recording 93% of decisions made within statutory timeframes compared to 43% in the previous year.

This indicates a return to the strong timeliness Alfred Health reported prior to 2018.

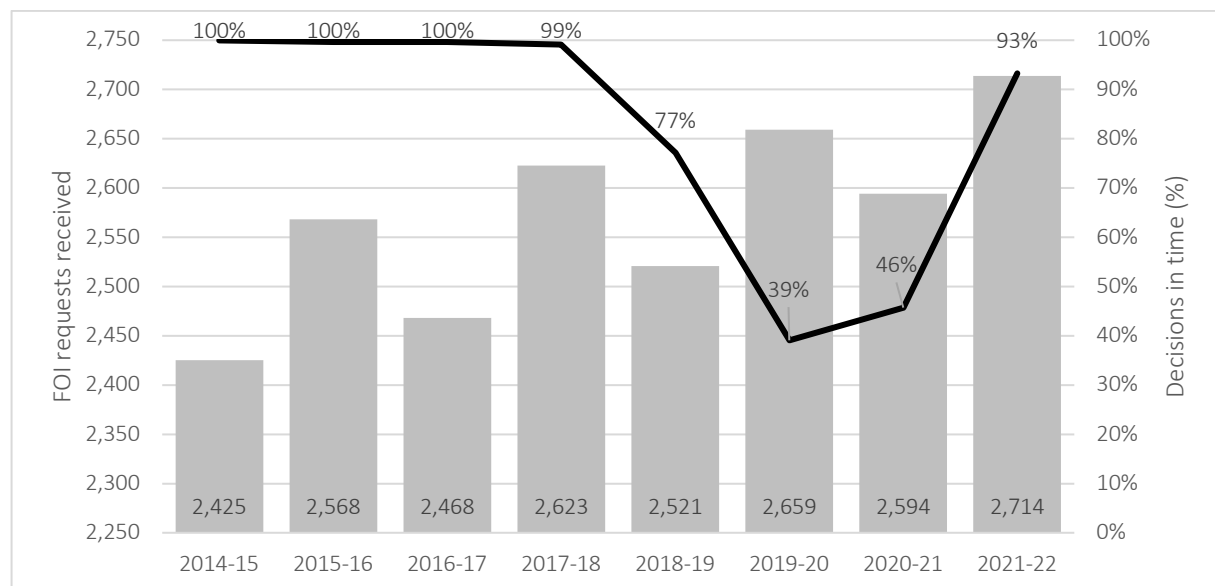


Figure 8: FOI requests received, and proportion of decisions made in time: Alfred Health

Frankston City Council

Three recommendations were made to Frankston Council.

Recommendation 14 – Appointment of alternative FOI decision maker

Recommendation 14 required Frankston Council to identify another FOI decision maker capable of supporting the FOI Coordinator in their duties and able to make FOI decisions when the FOI Coordinator was unavailable.

This recommendation aimed to support the FOI Coordinator and acknowledged having a single point of dependency for FOI processing was problematic.¹⁹

Within the first six months of the report being tabled, Frankston Council created an additional permanent position whose responsibilities included performing the role of additional FOI decision maker. Having an extra decision maker impacted positively on Frankston Council's compliance with statutory timeframes and meant that Frankston Council improved its timeliness considerably.

Unfortunately, this position became vacant after a few months and Frankston Council reported that during the period of vacancy, the timeliness of FOI decision-making suffered. However, Frankston Council has reported that the vacancy has now been filled and improvements to timeliness have again been noted.

Frankston Council also reported that finding and retaining suitably trained FOI staff has been problematic. This is a sentiment that has been echoed across most of the agencies subject to the FOI OMI and may indicate a broader issue in the FOI space.

Frankston Council also highlighted that as an agency with a small FOI unit which receives a modest number of requests, the loss of one staff member can have significant impacts on timeliness.

The Information Commissioner considers this recommendation is implemented.

Recommendation 15 – Development of KPIs for inclusion in internal reporting

Recommendation 15 required Frankston Council to develop KPIs for inclusion in internal reports to councillors.

This recommendation aimed to ensure Frankston Council's executive was kept updated on its FOI performance to ensure that any issues arising related to FOI performance are identified at an early stage.

¹⁹ OVIC, FOI OMI report, p 54, para 232.

Frankston Council reported in February that it had introduced two new KPI measures in for inclusion in quarterly performance reports and in the CEO's quarterly report provided to councillors.

They include:

- Freedom of Information statutory timeframes met; and
- Freedom of Information decision letter provided within statutory timeframe.

This has meant that councillors have visibility of changes in timeliness and are provided statistics that reflect those reported to OVIC.

The Information Commissioner considers this recommendation is implemented.

Recommendation 16 – Record and report on FOI requests dealt with administratively

Recommendation 16 required Frankston Council to record and report to councillors and the CEO on numbers of FOI requests dealt with administratively. This was to ensure that Frankston Council management had a complete understanding of the full extent of the work undertaken by the FOI unit in relation to information release, and not just the FOI statistics.

This recommendation aimed to improve visibility of work undertaken by the FOI team. Frankston Council reported in March 2022 that figures on FOI requests dealt with administratively are provided in quarterly and annual FOI reports to Frankston Council's CEO and councillors.

In 2021-22, Frankston Council reported 33 instances where documents were provided to applicants outside of the FOI Act.

In 2020-21, this figure was reported as 29 and in 2019-20 the figure was at 31.

The number of requests dealt with administratively also exceeds the number of requests processed by Frankston Council under the FOI Act each year. This indicates that Frankston Council consistently looks for opportunities to provide documents to applicants outside the FOI Act where appropriate and demonstrates Frankston Council's commitment to administrative and informal release.

The Information Commissioner considers this recommendation is implemented.

Timely FOI at Frankston Council

Frankston Council receives low numbers of requests each year. Due to the low numbers, statistics around timeliness should be considered with caution. This is because a small number of requests processed outside of statutory timeframes may lead to a significant change in timeliness.

Since the FOI OMI began in 2020, Frankston Council has significantly improved its overall timeliness of FOI processing.

In 2020-21, it improved its FOI timeliness to 50%, an increase of 17% on the previous year.

In 2021-22, Frankston Council experienced a further increase to 90% of FOI requests processed within statutory timeframes.

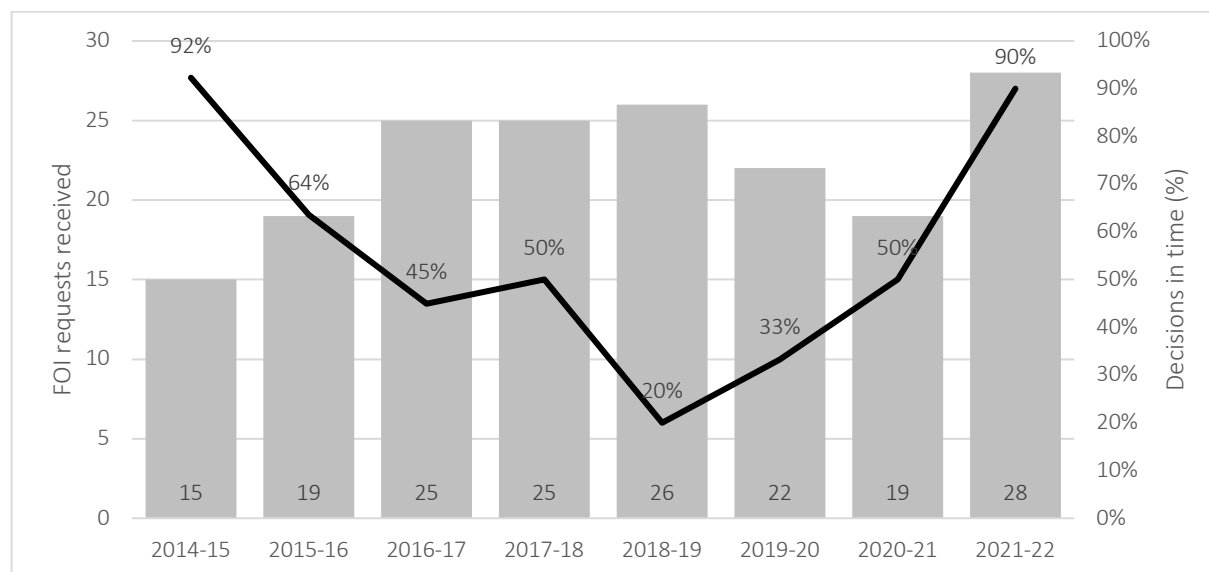


Figure 9: FOI requests received, and proportion of decisions made in time: Frankston City Council

Whole of Victorian Government

Recommendation 17 – Wide-ranging review of the FOI Act

The FOI OMI report also made a recommendation to the Victorian Government. This recommendation sought a public, consultative, and wide-ranging review of the FOI Act, to update the Act to reflect modern public administration and the digital information environment.

Since the FOI OMI report was tabled in the Victorian Parliament on 1 September 2021, OVIC has not received a formal response from the Victorian Government in relation to this recommendation.

As such, the Information Commissioner concludes that there has been no progress in relation to its implementation.

The Information Commissioner remains strongly of the view it is evident, through the findings of the FOI OMI report that concern timely FOI decision making and access to government-held documents under the FOI Act, that a public and comprehensive review of Victoria's 1982 FOI legislation is imperative to improve the community's access to information and create contemporary and effective mechanisms under which government agencies can provide timely public access to information.

The Information Commissioner considers this recommendation is not implemented.

Appendix A

Number	Recommendation	Status
1	Victoria Police should substantially increase the staffing resources of its FOI team to deal with the backlog caused by COVID-19.	Not implemented
2	Victoria Police should provide a written report to the Information Commissioner and to the Minister for Police and Emergency Services every six months about its progress in dealing with the backlog of overdue FOI requests, until the backlog is addressed.	Implemented and remains active
3	Victoria Police should provide information to current and prospective FOI applicants about the extent and causes of delayed FOI, and provide an apology for delay, where appropriate. This information should be provided with a view to offering accountability, transparency and empathy.	Implemented and remains active
4	Victoria Police should conduct a general review of its information release processes, to ensure that it is providing access to information as efficiently as it can.	Implemented and remains active
5	The members of Victoria Police's leadership group that oversee the FOI Division should engage directly with their executive colleagues to address cases of significant or systemic delay in responses to FOI requests.	Partially implemented and remains active
6	Victoria Police should consider how it can communicate more effectively with FOI applicants about the status of FOI requests, including seeking extensions where appropriate.	Implemented
7	Department of Transport should ensure FOI decision makers do not delay the finalisation of an FOI decision due to executive or ministerial noting processes.	Not implemented
8	Department of Transport should record the number of requests to its FOI unit that are dealt with administratively and include those numbers in reports from the FOI unit to DOT management.	Implemented
9	Department of Justice and Community Safety should continue to monitor its timeliness performance following the implementation of the FOI reform project.	Implemented and remains active
10	Department of Justice and Community Safety should identify mechanisms to improve communications with FOI applicants about corrections-related requests and consider whether there are any other categories of information that can be provided without an FOI request.	Implemented
11	Alfred Health should review the ongoing suitability of its case management system and its ability to undertake the functions required for accurate management and monitoring of FOI requests.	Implemented
12	Alfred Health should provide regular internal reports to management and executive regarding the status of FOI requests, including measures of timeliness.	Implemented
13	Alfred Health should use the extension of time provisions in the FOI Act in appropriate cases.	Implemented

14	Frankston City Council should identify an individual who can serve as an alternative FOI decision maker and processor for times when the FOI Coordinator is unavailable. That person should be appointed as an authorised decision maker and be provided with sufficient training to allow them to complete an FOI request in the absence of the FOI Coordinator	Implemented
15	Frankston City Council should develop KPIs that can be consistently included in all internal reports to management and councillors about its FOI performance, including measures of timeliness	Implemented
16	Frankston City Council should record the number of requests to its FOI unit that are dealt with administratively and include those numbers in reports to councillors and its CEO so they have visibility of all the work the FOI unit is completing.	Implemented
17	The Victorian Government should conduct a public, consultative, and wide-ranging review of the FOI Act, to update the Act to reflect modern public administration and the digital information environment.	Not implemented



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