**Date**: 4 December 2020

**Topic**

*Challenges, Trends and Issues Facing FOI Practitioners in 2020/2021*

The Victorian Information Commissioner will outline the Challenges, Trends and Issues Facing FOI Practitioners next year and will highlight major developments and key lessons for agency practice. This session will also provide the opportunity for the Commissioner to address queries.

**Introduction and welcome**

1. Good morning everyone and thank you to the Leo Cussen Centre for Law for giving me the opportunity to speak with you this morning at the 2020 Leo Cussen FOI & Privacy Conference.
2. I would like to start by acknowledging the Wurundjeri people of the Kulin Nation as the Traditional Owners on the land on which I am presenting. I pay my respects to their Elders past, present and emerging, and the Elders from other communities who may be here with us today.
3. At the risk of sounding cliché, congratulations on making it through a particularly challenging year. I’m sure many of us thought reaching December was an impossible task given the current health crisis. While we’ve all certainly had to adapt to changing circumstances and restrictions on what we can do, we should all be proud of the way in which we have carried on with our ordinary business in such extraordinary circumstances. We should be proud of our shared efforts to reach this point, because it is indeed a *shared* and *collective* effort.
4. I am very pleased to be joining you today to talk about the challenges, trends and issues facing FOI practitioners in 2020 and 2021.
5. There are many things I could talk about in terms of what we have been seeing in the FOI space during 2020 and what we’ll likely see in 2021. However, today I want to focus on five key themes.
6. The first is the importance of trust in government and how we can improve it through transparency.
7. Under this umbrella, I will discuss some more operational themes and trends we’ve seen including:
   * Increases in FOI workloads;
   * Decreases in timeliness in agency FOI decision making;
   * Working flexibly; and
   * Using technology to assist with FOI.
8. Following this, I will outline a couple of OVIC initiatives for 2020 and 2021 that I trust will be of interest to you here today.
9. Lastly, there will be time for you to ask me questions at the end of my presentation. So please save any questions you may have, and I will do my best to answer as many as I can, time permitting.

**COVID-19 and 2020**

1. Now, before I get into the themes I just outlined, I wanted to set the scene by talking really briefly about what has been happening this year in 2020 from an FOI perspective.
2. Obviously, this year has been a little unusual, with remote working arrangements taking effect, restrictions placed on what we can do, and new challenges with respect to administering the FOI Act.
3. We began 2020 with a new report from OVIC on the State of FOI in Victoria that looked at five years of FOI data from our Annual Reports and provided insights into what FOI has looked like and where it is likely to go based on current projections. At the time of writing this report, however, we could not have foreshadowed the imminent health crisis and the impact it has had on the way in which we administer the FOI Act.
4. March of course marked the shift to working from home, which had us all quickly investigating and implementing new ways of working remotely to ensure business continuity insofar as possible.
5. In April we hosted a special Public Access Agency Reference Group meeting, where members discussed their experiences and challenges with working remotely. Some members noted the number of FOI requests being received initially decreased when remote working began. However, since that time the volume of requests has increased steadily for many agencies – particularly topical FOI requests related to COVID-19 and the government’s response.
6. In April, we also saw legislative change through the introduction of the *COVID-19 (Emergency Measures) Omnibus Act 2020* to make temporary changes to help us work better remotely.
7. As a result of this Act, in May we saw the creation of the *COVID-19 Omnibus (Emergency Measures) (Integrity Entities) Regulations 2020*, which, amongst other things, permitted agencies to electronically provide copies of documents to OVIC on review that we would normally need to inspect in person.
8. In June, OVIC completed a review of select Victorian government organisations’ compliance with the Professional Standards.
9. In August, OVIC published for the first time its regulatory priorities which will guide OVIC’s regulatory action for 2020-21, including specific FOI-related priorities.
10. In September, OVIC hosted a week’s worth of events and activities to celebrate International Access to Information Day.
11. And finally, in September, OVIC commenced its first own motion investigation under the FOI Act into the timeliness of FOI in Victoria. We began by inviting members of the public and other FOI users to share their experiences with us. The investigation will examine the FOI practices of selected agencies to identify causes for delay in releasing government information.
12. Today, while we are out of lockdown, I’d say most of us are still working remotely, and these arrangements have become business as usual to a certain extent.
13. Notably, throughout these periods of uncertainty and change, agencies have done a remarkable job of getting things done. Of course, this hasn’t been without challenges and issues.
14. For example, COVID-19 has significantly impacted agencies by changing the way they access, redact and disclose documents, and also by increasing, in many instances, the volume of requests being received. All of these factors affect how FOI requests are managed and will likely continue to impact how requests are processed into the future.
15. Having said that, no matter where we are in proximity to our physical offices, there are always opportunities in our everyday work to further the object of the FOI Act and promote transparency and open government.
16. This brings me to the first, rather overarching, theme that I will spend a bit of time talking about, and that is the importance of trust in government and building that trust through transparency.

**Importance of trust in government**

1. The relationship between citizens and their government is somewhat unique. Government has powers that are not generally available to non-government bodies. For example, government has the power to make and enforce laws, regulate conduct, raise revenue, and even jail people where the law requires it to do so.
2. It is a fundamental aspect of modern democratic societies that we as citizens are prepared to give up some of our freedoms for a form of common benefit.
3. Unlike customers in the private sector, citizens cannot generally shop around for the public services they want in a competitive marketplace. We cannot, for example, choose which organisation with which we register our vehicles and apply for drivers’ licences. There is only one option: the government.
4. While the state does have a certain monopoly position in some respects, it is properly counterbalanced by being subject to limitations and scrutiny which do not apply to the private sector. For example, this includes obligations of transparency under FOI laws and particular requirements to protect privacy and other human rights.
5. The relationship between citizens and their government is put under particular strain during times of crisis. I think we all know which crisis I’m referring to here. And no, it’s not the significant increase in DIY haircuts we saw feature quite heavily over the last couple of months. Although, it is related.
6. When talking about the response to the COVID-19 pandemic, there is one factor that is highly relevant. That factor is trust.
7. Successfully implementing the measures needed to slow the spread of COVID-19 requires significant behavioural change by the population. As we all know too well, this change comes at considerable financial and social cost to individuals.
8. For the most part, the extent to which citizens are willing to engage in the behavioural change that the government says is necessary depends, to a significant extent, on citizens’ trust in the actions required of them and trust in the governments and institutions behind them.
9. Public trust in government enhances the likelihood that the community will comply with the measures – even more so, when government is transparent about the decisions it’s making and why. Individuals are more likely to do something if they understand why they’re being asked to do it and trust the action is necessary.
10. Trust is also crucial to the social, economic and democratic progress of a country. It is essential to the success of public policy, it influences people’s attitudes and responses to government’s actions, and it impacts government’s ability to govern effectively.

**Improving trust through transparency**

1. While trust is so important to the way governments function, surveys such as the 2020 Edelman Trust Barometer have found that trust in government in Australia is still declining.
2. This decline in trust is problematic, however rebuilding trust is not impossible. As Victoria’s Information Commissioner, I’m sure it will come as no surprise to you when I say that one way of rebuilding trust is by embracing and promoting transparency through access to information.
3. How information is controlled can define the relationship between government and its citizens. The public sector collects, creates and disseminates huge amounts of information about how it works, what it does, and why. To properly exercise our rights as citizens, we need access to that information.
4. Indeed, a critical factor necessary in liberal democracies to maintain governments’ social licence to impose restrictions on freedom of movement and economic trade during the pandemic has been, in part, the provision of timely information and data to inform citizens.
5. Additionally, promoting open government through transparency helps to illuminate instances of wrongdoing: of corruption, fraud, poor decision making and so on. Transparency therefore enhances government through accountability.
6. As public bodies, and those acting for public bodies, we should want to be open and transparent and provide as much information as we can to the communities we serve.
7. Providing the public with access to information levels the playing field and helps redistribute the balance of power from government to the public. As I mentioned just before, government has a somewhat unique relationship with its citizens, and obligations of transparency begin to counterbalance the government monopoly. Obligations of transparency also recognise that as the government, we work on behalf of the public.
8. Given we work on behalf of the public, we are custodians of information and we have a responsibility to ensure the public’s right to information is upheld and the public know what government does and the decisions it makes.
9. Having said that, there may be those who are afraid that transparency may uncover errors made in decision making and therefore reduce the public’s trust in government’s ability to make sound decisions. Or, are afraid that revealing these errors might stop public servants from providing frank and fearless advice to government in the future. There may be others yet who believe the nature of the information is simply not appropriate to release to the public.
10. Naturally, the public will not always accept or agree with every decision made by government. However, having access to information gives the public the ability to scrutinise those decisions and hold the government to account. These are important and essential parts of our democratic society.
11. Further, we should not underestimate the capacity of our citizens to understand the nature or content of documents that government produces. Many understand, for example, the status and nature of a draft document or that sometimes decisions change, or projects adapt to reflect new or changing circumstances. The importance is knowing what is happening, so as citizens we can scrutinise those decisions and ensure the government is acting in our best interests.
12. Do not forget that the purpose of FOI is to facilitate the participation of citizens in government processes through providing access to as much government information as possible. This access to information also enables other important human rights such as the right to vote and the right to freedom of expression.
13. We should try and avoid treating FOI as a compliance exercise, but rather focus on identifying how we can help contribute to a trustworthy government; one which is open and transparent with its citizens.

*Increasing transparency through proactive and informal release*

1. Instilling a positive information access culture in Victoria has been something OVIC has been very passionate about since we were first established in 2017.
2. You may have heard me say before that we want agencies to have a mindset of ‘Why can’t we release this information?’, rather than ‘What exemptions should be applied?’. We want transparency, not secrecy, to be the default position.
3. Taking a default position of transparency is relevant not only for deciding formal FOI requests, but also for finding other ways to disseminate information to the public, for example through proactive and informal release.
4. At OVIC, we are strong advocates of proactive and informal release and believe these mechanisms have a greater role to play in facilitating access to information in Victoria. This is why, for example, we included a Professional Standard requiring agencies to first consider whether a document requested under the Act may be released outside the Act. It is also why we commenced a project on proactive and informal release, which I will discuss in more detail later.
5. In Victoria, we have a pull model of FOI legislation where individuals must typically ask government for access to information. This is opposed to push models of FOI legislation in other jurisdictions such as Queensland, where there is a focus on requiring publication of information proactively to *push* information to the public without being asked.
6. In Victoria, we want to see the amount of information proactively and informally released increase. We see benefits of proactive and informal release for both the public as well as agencies. For example, the public are able to access information quicker and potentially at a lower cost if it is already available publicly, or if it is available upon request outside the formal requirements of the FOI Act.
7. Similarly, agencies may save on time and resources needed to process formal requests by reducing the number of requests received altogether. For example, in OVIC’s 2019-20 Annual Report, 43 agencies noted the proactive release of information resulted in receiving or processing fewer FOI requests.
8. Of course, neither proactive nor informal release are intended to replace FOI altogether. There will always be FOI requests coming in – but where documents can properly be released outside this process, we strongly encourage agencies to do so.
9. We also strongly encourage agencies to look at the information they hold, the nature of requests they receive, and identify what can be released proactively or informally. For example, there may be certain datasets or types of documents that are regularly requested, and which are released in full to applicants. Consider whether those types of documents can be published, or otherwise released outside the Act.
10. By doing so, we can promote open government and preserve already strained resources by pushing this information out to reduce the number of requests received and processed.

**Increasing FOI workloads**

1. Now, the mention of strained resources gives me a nice segue to the next theme I would like to touch on, which is growing FOI workloads in agencies.
2. I’m sure it will come as no surprise to you when I say that Victorian agencies receive a lot of FOI requests, which generally increase every year. In fact, according to OVIC’s most recent Annual Report, in 2019-20, Victorian agencies received a record number 40,591 requests. This is an increase of 1,715 requests from last year’s figure of 38,876.
3. To put this figure into perspective, the Commonwealth jurisdiction received only 742 more requests than Victoria last financial year, with a total of 41,333 requests.
4. To keep up with the increasing demand of FOI requests, agencies must do their best to match pace in the form of FOI decision making. Accordingly, in keeping with the record number of FOI requests received, 2019-20 Annual Report data shows that agencies made a record number 34,895 FOI decisions. This is an increase of 331 decisions from 2018-19.
5. As I mentioned earlier, in the current 2020-21 financial year, we have already been hearing from agencies through stakeholder engagement activities that they are experiencing increasing FOI workloads – particularly topical FOI requests related to COVID-19.
6. Now, we all know FOI is not straightforward nor is it necessarily quick – as much as we would like it to be. Making FOI decisions requires a fine balancing of competing interests and complex legal analysis. It also involves a lot of rather unsexy but important administrative work like conducting document searches, sending correspondence, managing caseloads, updating applicants, and so on.
7. In many cases, FOI also involves consultation, whether that is with the applicant to try and reduce the scope of the request so you can process it, or with a third party whose information is in the document you are reviewing, to seek their views on whether their information can be released to the applicant.
8. In the case of the latter, third party consultation can be extremely time consuming and resource intensive, presenting ongoing challenges for agencies. For example, since the mandatory consultation requirements were introduced on 1 September 2017, agencies have reported that mandatory consultation has significantly increased their administrative workload and has led to delays in finalising decisions due to the time it takes to receive consultation responses. The Professional Standards review I mentioned before that my office undertook with select agencies also highlighted conducting consultation with third parties as a challenge.
9. Going back to FOI workloads more generally, OVIC’s 2019-20 Annual Report notes other difficulties in administering the FOI Act such as:
   * Meeting legislated timeframes with limited dedicated staff;
   * Re-assignment of staff due to COVID-19;
   * Costs recovered do not reflect the time and costs associated with processing requests;
   * Resourcing issues including an inability to recruit suitably skilled and knowledgeable FOI officers;
   * Engagement of external lawyers and contractors to assist in meeting FOI obligations – I’d say that probably includes several of you here today; and
   * Increasing FOI related workload due to the growing number of FOI requests received and requests becoming more voluminous and complex.
10. Based on current trends in FOI data, the number of requests that agencies receive will continue increasing. This, of course, means growing workloads for agencies with limited resources.
11. This trend in increasing requests and corresponding workload is an important one to monitor. On the one hand, it demonstrates a public who are aware of their right to request access to documents under the Act, and who do so, frequently.
12. However, on the other hand, it means an increasing demand on agencies, which, as I just mentioned, can lead to delays in decision making and therefore delays in getting access to information.
13. Can we solve this workload problem? Maybe not entirely, because as I’ve said before, FOI will always be relevant and important – there will always be FOI requests coming in. However, there are two key messages I’d like to share regarding increasing and challenging workloads.
14. First, as I have already touched on, we would like to see an increase in the amount of information proactively and informally released to make FOI a last resort. By increasing the amount of information publicly available, we may be able to reduce the need for formal requests in some instances. Or, by setting up administrative release schemes, we may disclose routinely requested information to individuals outside the formal requirements of the Act.
15. Second – and I appreciate this is outside the FOI unit’s control – appropriate resourcing, education and training is *incredibly* important to managing FOI requests. We strongly encourage executive and senior management in agencies to consider how their agency’s FOI units are resourced and skilled.
16. FOI units are often faced with challenges with resourcing and responsiveness from other areas in an agency. This is why OVIC included Professional Standards to this effect, including a requirement for Principal Officers to ensure their agency and its officers have the resources and training needed to administer the Act. Adequate staff training and development should continue to be a priority into 2021 and beyond.
17. As the regulator, OVIC will continue to engage with agencies, including executive and senior management, to promote the importance of FOI and access to information. OVIC also offers free training to FOI practitioners and we encourage agencies to visit OVIC’s website for access to our new webinar program, online training and educational resources, including published decisions, practice notes and templates.
18. We are always looking to improve our resources and address any gaps that may exist. As such, we encourage you to get in touch with us if you have any feedback about our current education and training offerings.

**Timeliness in agency decision making**

1. One of the challenges with increasing FOI workloads, particularly if resourcing cannot keep up with the demand, is that it impacts on the timeliness of decision making. In other words, finalising requests can take longer as workloads increase.
2. Impacts on timeliness have no doubt been pronounced this year, with COVID-19 impacting staff resourcing, increasing requests, and in some cases limiting access to documents.
3. This brings me to another key theme for 2020 and 2021 that I would like to touch on, which is the timeliness of agency decision making and the provision of information. Timeliness is something we monitor through Annual Report data, and as I have mentioned, OVIC is conducting an own motion investigation into timeliness.
4. When we talk about timeliness, we are talking about how long agencies take to process and finalise requests in the context of section 21 of the Act. For example, section 21 requires an agency to notify an applicant of a decision on FOI requests within 30 days. However, this time may be extended if third party consultation is required or if the applicant agrees to the extension.
5. There are also limited exceptions to how calendar days are calculated for responding to requests. For example, the processing period for unreasonably large requests is suspended under section 25A. Another example is if a deposit has been sought, the timeframe commences when the deposit has been paid under section 22(5).
6. Annual Report data from 2019-20 shows that 79.02% of requests were processed within the requirements of section 21. This is a 3.6% decrease in timeliness from the previous year.
7. Agencies also reported that 7.78% of requests were processed more than 45 days outside of the requirements of section 21. This is a 4.69% increase from the previous year.
8. This data shows that agencies are increasingly taking longer to respond to requests, outside of the requirements of section 21.
9. Additionally, we have also seen strong engagement with OVIC regarding timeliness. For example, the most common complaints OVIC receives under Part VIA of the Act relate to delays in decision making and providing access to information. In addition, since the FOI Professional Standards commenced there have been approximately 129 engagements involving 57 agencies, the majority of which relate to time. For example, the most common engagement related to Standard 10.3 regarding timing around providing OVIC documents and information in relation to a review, and the second most common engagement related to Standard 2.4 regarding time in which an agency must notify an applicant of an invalid request.
10. Now, this is not intended to chastise agencies. Delays happen and often they are unavoidable. We also appreciate that COVID-19 has had a significant impact on how agencies currently operate.
11. However, timeliness is an important aspect of transparency and access to information. Providing timely access to information is more than just a compliance exercise. If applicants are not receiving decisions on their requests in a timely manner, this acts as a barrier to their right to access information.
12. Therefore, it is important for us to monitor these trends and to try and better understand why they are occurring in the first place. This will in turn help us to develop training and resources that will hopefully assist agencies meet the legislative timeframes.
13. Given the importance of timely decision making and providing access to information, as I mentioned previously, this year OVIC commenced an own motion investigation under the FOI Act into this topic. This own motion investigation is the first of its kind to be launched under the FOI Act.
14. OVIC commenced the investigation in September this year, following the publication of the State of FOI in Victoria Report in February 2020, which revealed insights into the timeliness of FOI decisions made by agencies.
15. This investigation will examine the FOI practices of selected agencies to identify causes for delay in releasing government information.
16. We expect that the investigation will be completed in mid-2021, at which time, I may submit a report for tabling in Parliament, setting out any findings and recommendations to improve timeliness in FOI practices across Victoria.
17. So, that is three themes down. Importance of trust in government and building it through transparency, increasing FOI workloads and decreasing timeliness.

**Working flexibly in a time of crisis**

1. The next theme I’d like to speak to relates to something I touched on briefly at the start, and that is working flexibly during the COVID-19 pandemic.
2. We can’t talk about 2020 without talking about the sudden and sustained shift to working remotely; where your office mates perhaps became a little furrier and demanding of your attention – mine certainly did.
3. For some, this may have come as a welcome change while for others it may have been accepted more reluctantly. One thing we can probably all agree on though is that for the most part agencies seemed to successfully adapt to a very significant change in working conditions. And you did it quickly.
4. I’m sure many of you would have experienced initial challenges with accessing, redacting and disseminating documents electronically. Accessing documents may have been particularly challenging if your agency relies on hard copy documents or documents that cannot easily be accessed remotely for security or other reasons.
5. Similarly, for redacting and disseminating documents, it is of course essential that any redactions are effective – in other words, the redactions cannot be removed using computer programs – and that the documents are sent securely to the intended recipient.
6. The transition to remote working therefore involved the rapid investigation into, and adoption of, new technologies to ensure continued administration of the FOI Act. The transition undoubtedly involved changes to processes too.
7. In my view, this uptake of new technology and way of working is a really positive thing. Agencies now have the tools and infrastructure to work more flexibly and, in many cases, more efficiently.
8. From our perspective at OVIC, this was certainly the case. We had to quickly make the shift to an online way of working, including digital communication and training tools, online redaction software, and so on. Given we now have the infrastructure in place to work this way, we will continue to offer staff the opportunity to do so, because it simply works and some staff can work more efficiently this way.
9. Further, by adopting new communication and webinar technologies, OVIC can deliver events and training to a greater audience, no longer constrained by geographical boundaries.
10. Therefore, even when it is safe to return to work, we expect to see agencies continuing to work flexibly in the future, including working remotely. A key factor in being able to do so is the fact that agencies now have the tools and infrastructure in place to so. For some, these tools may have already existed, or perhaps they were in a business plan for later down the track. What lockdown did was expedite the process.
11. So, while there were undoubtedly challenges with making the shift to remote working, I believe it will and has improved how we work.

**Technology to assist with FOI**

1. A key factor in being able to make this shift to working remotely was the adoption of technology. This brings me to the next theme I would like to discuss, which is the more general use of technology to assist with FOI.
2. In general, I see the role of technology becoming more prominent in the FOI space to increase efficiency, and I hope, to increase transparency.
3. As technology develops and becomes increasingly available, we will see more and more agencies looking to invest in tools that will help make their work easier – just like we saw for transitioning to working remotely. For example, I see a growing space for technology using artificial intelligence to assist with document searches – indeed I’m sure tools like this are already being used.
4. Technology can present a real opportunity to close the gap between the cost of manually searching for documents and fees collected from applicants in doing so. Not only will this potentially lower the overall cost for document searches, but also lighten FOI workloads by removing or supplementing an otherwise very manual and time-consuming process.
5. Depending on the type of document management and record keeping practices of the agency, technology may help to streamline document searching even further by removing the need to ask business units within the agency to conduct their own searches. Again, I’m sure many of you use document management software which already enables this, at least to a certain extent.
6. Therefore, technology may be able to assist with the growing demands on agencies’ resources I touched on earlier.
7. However, it is important to bear in mind that even with the best technology, the foundation of FOI and providing timely access to information comes down to good record keeping and document management. So, make sure you have the right foundations in place to maximise the benefits of deploying any new technology.
8. Similarly, with new technology it is important to remember to consider privacy and transparency and build these concepts into design insofar as possible. To do so, we encourage taking a privacy by design and a transparency by design approach.
9. For example, if AI is used for administrative decision making, you must be able to explain the decision that was made. Given the complexity of some AI and the algorithms used, this can be extremely difficult and must be considered in line with your administrative law obligations.

**OVIC initiatives**

1. I’d now like to talk to you about three OVIC initiatives that we have been progressing. This includes the Professional Standards self-assessment tool, the proactive and informal release project, and new FOI Act Guidelines.

*Professional Standards self-assessment tool*

1. Starting with the Professional Standards self-assessment tool, this year, OVIC undertook a review of agency compliance with the Standards. This involved site visits with a number of different sector agencies (such as government departments, health, and local government).
2. Following the review, OVIC created a prototype self-assessment tool and I am very pleased to say the final version was launched earlier this week on Wednesday the 2nd of December.
3. The tool aims to assist Victorian public sector organisations and FOI practitioners under the FOI Act to measure the maturity of their practices regarding adherence to, and compliance with, the professional standards. It will also allow agencies to identify and develop strategies to assist them in improving their own internal processes.
4. The tool is an interactive document consisting of 91 statements across 10 themes and will take around 15 to 20 minutes to complete. Agencies can respond to each of the statements from a choice of four responses.
5. We recognise that an agency may have a different approach to satisfying a particular Standard and therefore we would not expect any agency to answer ‘yes’ in response to all of the statements.
6. The tool includes hyperlinks to OVIC’s guidance material to assist Agencies in developing strategies to comply with the Standards. Agencies can consider adopting the suggested strategies, or they can develop their own different strategies to address the particular Standard.
7. Agency responses to the initial self-assessment can be used as a starting point or benchmark to identify how current processes could be improved to satisfy obligations under the Standards. Agencies may also complete the self-assessment several times a year to track improvements.
8. The tool is available on OVIC’s website and is available to all Victorian public sector organisations and FOI practitioners under the FOI Act, and so I would encourage you all to take a look at it if you haven’t already.

*Proactive and informal release project*

1. I’d now like to talk about a project that OVIC is progressing on proactive and informal release. I know I have mentioned these access mechanisms a couple of times today, however the frequency with which I mention them reinforces how important we think they are.
2. The project has so far involved publishing a discussion paper for public consultation, on which some of you provided submissions, and for which we thank you. In publishing this paper, we wanted to better understand the practices and experiences of Victorian agencies with proactive and informal release.
3. We heard from agencies, a large majority of them being local councils, that they release many documents proactively in accordance with the requirements not only under Part II of the FOI Act, but other legislation such as the Local Government Act, the Planning Act, and the Building Act. Similarly, the agencies we heard from also released information informally outside the FOI Act.
4. The types of documents being released informally and proactively include budgets, annual reports, policies and procedures, strategies, correspondence with individuals, planning and building documents, and documents available for a fee or public inspection.
5. Many of the agencies who released information proactively and informally noted that they did not have formal policies and procedures in place. This was something that agencies want guidance on, to help them create their own policies for proactive and informal release.
6. Some of the factors that influence proactive and informal release included:
   * the nature of the document and the information – so for example, whether it was sensitive;
   * the functions and activities of the agency;
   * conditions on the use of and access to certain documents;
   * the form of release; and
   * the opinion of the information owner about the potential harm if the information were to be released.
7. Consultation on the discussion paper provided an important foundation for beginning to understand agencies’ experiences and challenges with proactive and informal release.
8. Next, we will be looking to engage with agencies further to understand the perspectives and experiences of more agencies, with the overall aim of developing work in the future such as targeted resources to assist and support agencies to proactively and informally release information.

*FOI Act Guidelines*

1. Another key project for OVIC in 2020-21 is the development of FOI Act Guidelines.
2. As many of you are already aware, OVIC currently publishes a suite of practice notes, templates and other guidance to assist agencies and members of the public with the FOI Act. For agencies, this includes procedural as well as exemption practice notes.
3. The aim of FOI Act Guidelines project is to create an accessible and comprehensive digital guide to the FOI Act that is available to both the general public and agencies. The guidelines are intended to be an authoritative guide to the FOI Act that incorporates all of OVIC’s current guidance, to create a central location for our stakeholders to access guidance.
4. In addition to incorporating existing OVIC guidance, the guidelines will incorporate relevant case law, OVIC decisions, and other legislative commentary.
5. As you can imagine, this is a very big task, creating a comprehensive guide to the FOI Act. As such, it will take some time to create and then publish the guidelines.
6. However, we do intend on consulting with our stakeholders on draft guidelines, so keep an eye out for communications from us about that next year.

**Concluding remarks**

1. That brings me to the end of the discussion of key themes in 2020 and 2021 and some of OVIC’s key initiatives. Before I move on to questions though, I wanted to leave you with a couple of key messages – I would say to take home, but I gather most of you are at home already – so I will say to take back to your day-to-day work, wherever that may be.
2. First, do not underestimate your individual role in building a positive information access culture in Victoria. Consider how your individual daily actions can contribute to a transparent and trustworthy government – whether that is as an agency officer or someone advising an agency.
3. Second, when processing FOI requests, think about whether the requested information can be provided informally, outside the FOI Act. If you need to make a decision under the FOI Act, take a default position of transparency and only apply exemptions that are absolutely necessary. Even if exemptions are necessary, remember, under section 16, you can still provide access to exempt documents.
4. Third, continue to work flexibly and investigate tools and technology to help streamline processes and increase efficiency. In doing so, remember to build privacy and transparency into the design of any new technology or process.
5. Fourth, when working with OVIC, be open and transparent about any challenges you are experiencing, particularly if this impacts your ability to meet statutory obligations including timeframes.
6. Fifth and last, remember to reach out to OVIC. As I outlined earlier, agencies are facing increasing workloads with limited resources, which in some instances are leading to delays. While we are the regulator, we are also here to help and support agencies administer the FOI Act.