SPEAKING POINTS

|  |  |
| --- | --- |
| **Event title:** | Council Transparency and Freedom of Information DJPR, Municipal Association of Victorian, and Local Government CEO Forum |
| **Speaker:** | Sven Bluemmel |
| **Event date:** | 5 October 2022 |

Introduction

* The Office of the Victorian Information Commissioner, or OVIC – is the primary regulator for freedom of information, information privacy, and information security in Victoria, administering both the *Freedom of Information Act 1982* (**FOI Act**)and *Privacy and Data Protection Act 2014*.
* This morning I want to explore transparency and openness in the local government sector, and identify opportunities for increasing transparency.
* I also want this to be an open discussion – to that end I welcome any questions you might have, and I am more than happy for this discussion to be guided by you. So as I speak, please feel free to interrupt with questions.

Contextualising transparency and openness

* A key strategic goal of my office is to promote fair access to information, thereby promoting open and transparent government. Since the inception of my office, this has been a significant area of focus and continues to be of great importance.
* Why? Well transparency builds trusts, and trust is essential to the success of public policy, and the delivery of efficient government services across all levels.
* And for you in particular, as representatives of local government, will know that public transparency is a key pillar of the *Local Government Act 2020* (**LG Act**)
* Broadly the transparency principles in the LG Act, require Council decision making processes to be transparent, and Council information to be publicly available unless it is confidential (by reason of the LG Act, or another Act) or contrary to the public interest. In addition, Councils are required to adopt and maintain a public transparency policy that gives effect to the public transparency principles.
* These obligations are very much complementary to, and supported by the FOI Act.
* The FOI Act encourages Councils to release information proactively and informally outside of the FOI Act where it is possible and lawful to do so, and to make the maximum amount of information available to the community promptly and inexpensively.

**Why openness and transparency is important**

* There is no doubt that local government is a vital tier of government. Being the closest level of government to the community, it relies very much on a social licence to operate, and this comes about in part through transparency and public trust.
* So it goes without saying that public access to information is a key pillar for government transparency. As public bodies interacting with the community on a daily basis, you should want to be open and transparent, and provide as much information as you can to the communities you are serving.
* Providing the community with access to information levels the playing field, and helps redistribute the balance of power from government to the public. And as custodians of information, we have a responsibility to ensure the public’s right to information is upheld.
* Not only is this important for promoting trust in the community about what we do, but being open and providing access to information is also important at an individual level. It enables citizens to participate meaningfully in a democratic society and scrutinise decisions, while facilitating other human rights such as the right to vote and the right to freedom of expression.

**The absence of transparency**

* A lack of transparency creates a *perception* of corruption, whether actual corruption is occurring or not. And here in Australia, whilst community attitude toward government is relatively positive, we continue to see perceptions of corruption on the rise.
* Over the last three years, Australia has seen one of biggest drop of any OECD country in Transparency International’s Corruption Perception Index score. From a high of 85 out 100 in 2012, to a low of 73 out of 100 just last year, where 100 is very clean and 0 is highly corrupt.
* This means our score has decreased 12 points over the last decade and shows a downward trend of public trust in government institutions.
* So why is this important? We know that more trusting societies are happier societies. Higher social and institutional trust levels are associated with greater community resilience to natural disasters and higher individual resilience to ill health, unemployment and discrimination.
* This makes sense. If we perceive the public bodies as corrupt and do not trust them to act in our best interests, we might second guess or be less willing to accept the legitimacy of their decisions and actions.

**The FOI Act and releasing information**

* In Victoria, the FOI Act underpins the right of access to information, and like other variations of FOI legislation in all other Australian jurisdictions, it was created to promote openness, accountability and transparency in the public sector.
* In Victoria, the object of the FOI Act is to extend as far as possible the right of the community to access public sector information. Achieving the purposes for which the FOI Act was created relies heavily on having positive attitudes towards the release of information.
* This means I want you to have a mindset of ‘Why can’t we release this information’, rather than ‘What exemptions should be applied?’. Access to information should be the rule, not the exception.
* Exemptions should only be applied where essential public interests would be affected if the information were to be released. In practice, this means that exemptions should be applied sparingly.
* Where a document would explain a decision on an important policy issue or decision that impacts the community, being an open and transparent Council would mean not applying an exemption to that document.
* Where a document, in isolation, may create a misleading impression if released, an open and transparent Council would release the document anyway, along with an explanation to the public that would dispel any potential misunderstanding.
* The willingness of Councils to be clear and transparent about how decisions are made and why certain actions are taken will increase public trust, despite any possible discomfort and embarrassment in the short term.
* And if you are continually transparent, the public and the media will take notice. This builds respect and earns trust.

**The recent VCAT decision**

* At this point I think it might be useful to look at a recent VCAT decision in *Wellington v Surf Coast Shire Council*, which I understand may have been discussed previously.
* In that decision, VCAT order the disclosure of a variety of documents relating to employee satisfaction surveys.
* While I won’t speak to the specifics of that matter in any great detail, I did want to highlight two points:
  + The VCAT decision broadly aligns with previous decisions of my office, concerning survey results. Where personal information is apparent or the results contain identifiable information, that information is generally exempt from disclosure. But where they merely disclose statistical results or the like, they are not.
    - <https://ovic.vic.gov.au/decision/bd2-and-bairnsdale-regional-health-service-freedom-of-information-2020-vicmr-35-21-february-2020/>
    - <https://ovic.vic.gov.au/decision/es6-and-gordon-institute-of-tafe-freedom-of-information-2022-vicmr-197-12-august-2022/>
  + Every year the Victorian Public Sector Commission undertakes a ‘people matter’ survey across the Victorian public sector. The ‘de-identified’ results of every organisation are published by the VPSC on their [website](https://vpsc.vic.gov.au/data-and-research/people-matter-survey-data-2021/results-by-public-sector-organisation/). This includes, the results of my office, with a relatively small staff of approximately 50 – 60.
  + Even in small organisations like OVIC, disclosure of the de-identified survey results has not caused response rate to drop, or any other controversy. Indeed, my office takes the opportunity to discuss the results openly amongst staff and work together to implement actions and strategies to address any issues.

Proactive and informal release of information

* So along with the release of documents under the FOI Act, Councils can also contribute to building openness through proactively and informally releasing information, without the need for an FOI request to be made.
* My office strongly encourages you to adopt policies and embrace practices that facilitate the proactive and informal release of information.
* To help guide you on this, I’d like to highlight some resources that my office is working on or has published. And I understand LGV will be sending around links to these resources later this week.
  + [Framework for releasing Council information proactively and informally under the Local Government Act 2020 (Vic) and the Freedom of Information Act 1982 (Vic)](https://ovic.vic.gov.au/freedom-of-information/resources-for-agencies/practice-notes/framework-for-releasing-council-information-proactively-and-informally-under-the-local-government-act-2020-vic-and-the-freedom-of-information-act-1982-vic/) – published this week, this practice note provides a step-by-step framework for Councils to identify, assess, and publicly release Council information under both the LG Act and FOI Act.
  + We will soon be releasing a template *Proactive and Informal Release Policy* that you can modify and adopt to provide a formal framework for all agency staff to follow when determining if a document can be made public. In the local government context, this template policy might complement and work alongside your Council’s transparency policy.
  + Two practice notes on –the [Informal release of information](https://ovic.vic.gov.au/freedom-of-information/practice-notes/informal-release-of-information/) and the [Proactive release of information](https://ovic.vic.gov.au/freedom-of-information/practice-notes/proactive-release-of-information/) – These practice notes provide an overview of each process, the benefits, and limitations of proactively or informally releasing information.
  + [FOI And Section 125 of the Local Government Act 2020](https://ovic.vic.gov.au/freedom-of-information/resources-for-agencies/practice-notes/foi-and-section-125-of-the-local-government-act-2020/) – published last month, this practice note explains how section 125 of the Local Government Act, in relation to protecting confidential information, has limited application in the context of disclosing documents and information under the FOI Act.

Senior and executive support is critical

* Through our engagement with the public sector, we’ve seen that there is an appetite for change, to make information access easier for the public, and to improve Victoria’s information access system overall.
* But executive and senior management support is crucial. What is needed is leadership within Councils to build and maintain a positive information access culture, prioritise access to information, and where possible, authorise making information available without the need for an FOI request.
* Our proactive and informal release research, as well as research being undertaking by Monash University on the culture of information access, consistently highlights the need for exeutive management support.
* The importance of executive support is also highlighted in our FOI Professional Standards, with principal officers – that is, Council CEOs, being responsible for ensuring employees concerned with the operation of the FOI Act are compliant with the Standards. And indeed, principal officers themselves must also comply with the Standards.
* Shifting Victoria’s information access culture from FOI as the primary mechanism for access, to a last resort, is not an easy process and will take time. And while your support is crucial, my office is also here to help and provide guidance.

**Resources and guidance to help**

* And finally, I will quickly touch on some further resources and guidance that may be useful to you and your staff that I haven’t mentioned yet.
  + My office has [published a report](https://ovic.vic.gov.au/about-us/documents-and-publications-we-produce/research-and-reports/) on proactive and informal release which was prepared by an external consultant, and looks at behavioural change, to enable more efficient FOI administration through proactive and informal release. We also published a paper summarising key findings from the report and the actions we are undertaking in the immediate and long-term future, to encourage proactive and informal release.
* And just last week, as part of International Access to Information Day, OVIC’s Public Access Team presented an overview of our FOI review and complaint functions, informal resolution processes, and the use of preliminary views. [A video of that session is available on our website](https://vimeo.com/754172528).
* Thank you.