

Date: Monday 20 November 2023

Location: Microsoft Teams

Attendees: Joanne Kummrow, Acting Information Commissioner, OVIC (Chair)
Shantelle Ryan, Acting Public Access Deputy Commissioner, OVIC
Penny Eastman, Assistant Commissioner Public Access Reviews and Regulation, OVIC
Sarah Crossman, Acting Assistant Commissioner, Policy, OVIC
Anique Owen, Assistant Commissioner, Privacy Guidance and Dispute Resolution, OVIC
Tyrrell Davidson, Acting Assistant Commissioner Public Access Operations and Compliance
Andrew Weston, Manager, Freedom of Information (**FOI**), Department of Transport
Paul Pittorino, FOI Manager, Department of Justice and Community Safety
Monica Barnes, Manager FOI and Privacy, Country Fire Authority
Peter Gannoni, Acting Senior Governance Officer, City of Melbourne
Robin Davey, Manager, FOI Division, Victoria Police
Raffaella Di Maio, FOI Lead, University of Melbourne
Andrew Mariadason, Legal Counsel – Manager Medico-Legal Services, The Royal Melbourne Hospital
Claire Coghill, Director, Access, Feedback and Parliament, Department of Families, Fairness and Housing
Jade Papathanasiou, Manager, Care Leavers, Department of Families, Fairness and Housing
Louise Smith, Senior Information & Privacy Officer, Transport Accident Commission (TAC)
Rebecca Cato, Legal Counsel FOI & Privacy, WorkSafe

Apologies: Bronte Wright, Legal Counsel - FOI & Privacy, WorkSafe Victoria
Cameron Montgomery, Executive Manager Safety Governance and Risk, City of Ballarat
Elle Maroudas, Acting Manager, FOI, Department of Education and Training
Felicity Wright, Information & Privacy Manager, Transport Accident Commission
Lisa Scholes, Manager, FOI, Department of Families, Fairness and Housing
Susan Maye, Manager, Regulatory Advisory Services, University of Melbourne

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Meeting opened at 2:00 pm

Welcome

OVIC acknowledged the Wurundjeri people of the Kulin Nation as the Traditional Owners of the land on which we are exchanging our ideas today, and paid respects to their Elders, past and present, and Aboriginal Elders of other communities who may be with us today.

Claire Coghill and Jade Papathanasiou (Department of Families, Fairness and Housing), Louise Smith (TAC) and Rebecca Cato (WorkSafe) welcomed.

OVIC thanked those who attended the in-person celebration of the 40th anniversary of the FOI Act event on 24 October. Attendees advised that a recording of the event is available on OVIC's website. Refer <https://vimeo.com/880432046>

OVIC noted since the last meeting, OVIC's 2022-23 Annual Report – Then. Now. Next has been tabled in Parliament. This included the results of the annual agency FOI survey and showed another record for the number of FOI requests made to Victorian government agencies in a single year, being over 48000. Refer <https://ovic.vic.gov.au/wp-content/uploads/2023/10/Ovic-Annual-Report-2022-23-Digital.pdf>

Agenda Items

1. Apologies

Bronte Wright, Legal Counsel - FOI & Privacy, WorkSafe Victoria

Cameron Montgomery, Executive Manager Safety Governance and Risk, City of Ballarat

Elle Maroudas, Acting Manager, FOI, Department of Education and Training

Felicity Wright, Information & Privacy Manager, Transport Accident Commission

Lisa Scholes, Manager, FOI, Department of Families, Fairness and Housing

Susan Maye, Manager, Regulatory Advisory Services, University of Melbourne

2. Previous Meeting Minutes

Confirmed – All members confirmed minutes of [Minutes 21 August 2023](#)

3. Action Items

Nil

4. OVIC acting Information Commissioner arrangements and budget cuts

On 15 November, Joanne Kummrow was appointed as the acting Information Commissioner until the role is permanently filled. Shantelle Ryan is currently acting Public Access Deputy Commissioner.

OVIC recently suffered a considerable budget cut of 19.5% over four years. This has forced us to dramatically reduce our education and communications functions, and reduce the size of our workforce by 16%. This has included the Public Access branch losing three full time positions.

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5. Policy update

- [IOC Review of the FOI Act submission](#)

OVIC warmly welcomed the announcement that the Integrity and Oversight Committee (**the Committee**) of the Victorian Parliament is conducting an independent and comprehensive review of the FOI Act.

The Committee is examining a range of issues related to the FOI Act. There are eight [Terms of reference](#), relating to topics like the effectiveness of the FOI Act's policy model, mechanisms for proactive and informal release of information, and the effectiveness of the Act's processes.

OVIC understands over 200 agencies were approached directly by the Committee to make a submission to its review. OVIC is not privy to which agencies were directly approached. The Committee has also called for public submissions. Submissions are due by 15 January 2024 and OVIC strongly encourages all agencies, including PAARG representatives, to make a submission. Refer to the Committee's website for further information. Agencies that have not been directly approached, can still submit a submission to the Committee by 15 January 2024.

Prior to the meeting, OVIC provided the PAARG meeting with a summary document detailing the high level key messages that OVIC's final submission will focus on. These key messages relate to general themes about the rights and character of the legislation we have, the policy model underpinning the FOI Act, operational challenges with the FOI Act, proactive and informal release, culture, technology, and exemptions and exceptions. Feedback or comment on these key messages was invited.

One member advised that their agency was seeking internal approval to make a submission. Another indicated their agency was preparing a submission.

The high representation of the health sector in the Top 30 agencies that receive the most FOI requests each year was noted. OVIC noted that this review potentially represents an opportunity for individual health agencies or a collective health sector group to highlight the difficulties faced with administering the current FOI Act and potentially explore options for the future for release of more health information outside of the FOI scheme.

- [Proactive and informal Release](#)

In late September 2023, OVIC published the [Proactive and Informal Release \(PAIR\) Policy template and guidance for agencies](#). Anecdotally, OVIC has heard of a number of agencies using or considering using the policy which OVIC is also in the process of adopting. Comments invited from attendees – nil provided.

OVIC will reach out separately to PAARG members seeking their feedback.

- [FOI Guidelines project](#)

The final draft sections of the FOI Guidelines are currently published on [OVIC's website](#) for consultation, with feedback closing on 1 December. This includes sections 29, 30, 34, 35 and 38. Thank you for considering the draft FOI Guidelines and providing your feedback.

OVIC recently published the final content for Part VIA – Complaints. Refer <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/>

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6. Agency updates

The new FOI portal was successfully launched on 15 November 2023 with 24 agencies included on this.

One member confirmed its recent staffing increase and success in recruiting suitable staff, combined with engaging with an external consultant to assist with processing FOI requests is having a positive impact on work volume. Information also provided on a trial initiative around care leaver records being processed outside the FOI Act.

7. OVIC Privacy and Public Access Operational Updates

- Privacy

Members attention directed to OVIC's recent [public statement](#) made pursuant to section 8C(1)(f) of the *Privacy and Data Protection Act 2014* (Vic) (**PDP Act**) setting out OVIC's minimum expectations for Victorian public sector organisations adopting Microsoft 365 *Copilot*, a generative artificial intelligence (**AI**) tool.

The statement outlines the privacy and information security risks and considerations for VPS organisations, and provides guidance on the steps that should be taken prior to implementing *Copilot*. OVIC acknowledges that *Copilot*, and other similar products that are entering the market, appear to offer opportunities to optimise routine tasks across the VPS which can be a particularly attractive proposition in times of reduced staffing and high workloads. However, the capabilities and productivity impact of *Copilot* and other generative AI tools will depend on the specific context, the circumstances in which it is used, and the level of training and knowledge of the user.

Caution is encouraged, noting organisations are responsible for all actions and content generated by *Copilot*. Where an information security incident or interference with privacy occurs through the use of *Copilot*, organisations will not be able to simply say that the incident or interference was "caused by the Gen-AI".

Trends

Members attention was drawn to the increase in data breaches arising from the use of SharePoint due to misconfigurations of user permissions and access controls. Data breaches of this type are increasing in frequency, as such new guidance will be published in the coming weeks.

OVIC has also observed an increase in the number of incidents where FOI practitioners have not redacted the personal information of individuals included within documents subject to an FOI request. This may be due to oversight, or failure to adequately consult prior to the release of documents. Members may wish to review OVIC's FOI Practice Note on Consultation and Notification of Third Parties, and review its internal procedures and training to ensure new and existing staff are aware of the correct processes for consultation and redaction of personal information.

Lastly, members were reminded to evaluate the amount of personal information disclosed to OVIC when reporting a privacy breach to avoid a potential secondary breach as this may be considered a contravention of Information Privacy Principle 2.1 and result in two privacy complaints (the primary incident, and subsequent disclosure to OVIC of the affected persons information). OVIC only

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requires details related to the incident, not the names or personal details of the individuals involved or affected.

- [Public Access](#)

Complaints:

As of 17 November 2023, OVIC has received **311** complaints and closed **275** this financial year, compared with 243 received and 313 closed at this time last financial year.

OVIC currently has **233** open complaints (up from 201 in October 2023). Refer attached for further breakdown around complaint type.

Professional Standards:

OVIC has recorded a total of **118** Professional Standard engagements thus far this financial year.

OVIC recorded **42** Professional Standard engagements in October 2023, this is an increase of 25 engagements from September 2023.

There has been a decrease in the number of substantial engagements recorded, from **13** in September 2023 to **9** in October 2023.

19 engagements were informally resolved in October 2023.

No formal action was taken against an agency in October however, 9 substantial breaches are yet to be finalised.

Standards 10.3 and 2.4 remain the most engaged.

Standard 8.2 engagements have increased, from **3** in September 2023 to **7** in October 2023, while engagements concerning Standard 5.1 have decreased from **7** in September 2023 to **1** in October 2023.

OVIC continues to work with agencies when non-compliance is identified, and the majority of minor engagements are resolved informally.

Reviews:

Thus far this financial year, OVIC has received **203** reviews which is two more than the same period in 2022. We have closed 190 reviews, compared to 181 for the same period in 2022.

We are currently working on **188** reviews. Focus continues to be directed at trying to resolve as many matters as possible informally without the need for a Commissioner's decision. Currently, we are successful in this mission about 25% of the time. Our other focus is on finalising our aged reviews (300+ days old) and improving our overall timeliness wherever possible; noting the recent staffing reduction makes this increasingly challenging.

8. [PAARG meetings in 2024](#)

Members confirmed content with current schedule of four meetings a year. Members provided their support for membership to be extended to potentially include additional health and local government sector representatives.

Several members advised they found the Privacy updates including at several 2023 meetings useful. These will continue in 2024.

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A brief survey will be distributed to members in December seeking their feedback which will be incorporated into PAARG meeting planning for 2024. Welcome recommendations on membership, meeting structure and specific themes or topics to be covered in future.

Dates for 2024 meetings will follow.

9. Other Business

Nil

Meeting closed: 2:58 pm

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Closed complaints as 17 November 2023 by outcome:

OVIC Outcome	Total this year	%	Difference from previous year
Dismissed under s 61B(1)(b) - pursued to fullest extent	120	44	+41
Complaint - dismissed S61(B)(3)	0	0	
Complaint declined or dismissed under s61(B)(2)	12	4	+8
Complaint out of jurisdiction	5	2	+4
Complaint withdrawn	42	15	+8
Resolved informally	96	35	-99
Recommendations under s 61L	0	0	0
Grand Total	275		-38

Open complaints as of 17 November 2023 by complaint type:

NB: Certain complaints involve multiple complaint categories, and each complaint category is recorded as a separate complaint in the below data. Therefore, there are 250 listed below, despite there only being 233 actual complaints.

Category	Number	Percentage
Adequacy of Search	19	7.6%
Breach of Professional Standards	9	3.6%
Delay	182	72.8%
Documents do not Exist or Cannot be Found	10	4%
General Handling	25	10%
Request not Clear Under S17	4	1.6%
Uncategorised/Not in jurisdiction	1	0.4%
Total	250	