

# The culture of implementing Freedom of Information in Australia

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## **ACKNOWLEDGEMENT OF COUNTRY**

This project was conducted on the traditional lands of the Whadjuk Nyoongar (Perth, Western Australia), Kaurna Meyunna (Adelaide, South Australia), and Bunurong people of the Kulin Nations (Melbourne, Victoria)

Monash University recognises that its Australian campuses are located on the unceded lands of the people of the Kulin Nations, and pay our respects to their Elders, past and present.

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## List of abbreviations

AI	Artificial intelligence
CEO	Chief Executive Officer
EU	European Union
FOI	Freedom of Information
HIS	Health Information Services
LHN	Local Health Network
MUHREC	Monash University Human Research Ethics Committee
NSW	New South Wales
OVIC	Office of the Victorian Information Commissioner
OIC WA	Office of the Information Commissioner Western Australia
PO	Principal Officer
PROV	Public Record Office Victoria
PRIS	Privacy and Responsible Information Sharing
PSI	Public Sector Information
RM	Records Management
RTI	Right to Information
SA	South Australia
SovCit	Sovereign Citizen/s
VIC	Victoria
WA	Western Australia

## Executive summary

This report is the culmination of three years of investigation into the culture and practice of administering the Freedom of Information (FOI) Acts across the Victorian, South Australian and Western Australian states, as well as the culture of implementing information access systems overall. This includes the processes of managing information (records management (RM)).

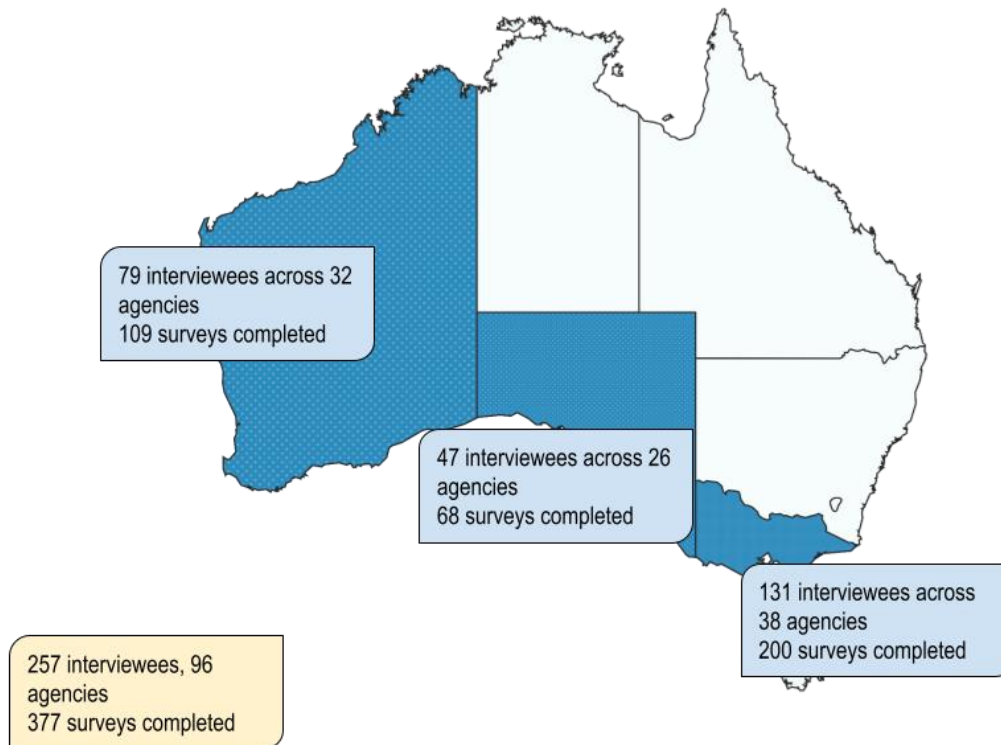
In September 2018, the School of Media, Film and Journalism at Monash University co-hosted a research roundtable with the Office of the Victorian Information Commissioner (OVIC) with participants from Victoria, Western Australia, Queensland, New South Wales (NSW), the Australian Commonwealth and a representative from the international access to information body, the Open Government Partnership. The research roundtable identified what research was needed to aid the participating Information Commissioners and ombudsmen in their quest to improve the practical functionality of FOI and Right to Information (RTI) systems in Australia. Functionality in this case is defined as how well the laws and systems deliver access to government-held information from a FOI/RTI user's point of view.

A pilot study was commissioned by OVIC to determine if the culture of implementing access to information could be captured. The study was executed by A/Professor Lidberg in 2019 and the conclusion was that the culture could be captured. In 2021, a second study expanded on the pilot study and widened the data capture from five to 30 Victorian agencies. This 2021 study design was used as a foundation for this project, expanding the study once again to include close to 30 agencies across the three participating states, as well as a broadening to encompass the university sector and include state government ministers with portfolios as participants.

The study was conducted across three years, 2021–2024, and was funded by the Australian Research Council and the Information Commissioners in Victoria and Western Australia and the SA Ombudsman.

The research team would like to thank the OVIC, OIC WA and the SA Ombudsman for their leadership in FOI and access to information development in Australia. Sincerest thanks also to all the FOI practitioners, executives and principal officers of government agencies, who openly and frankly shared their views, feedback and interpretations of FOI in this project.

## Key study facts



Response rate FOI practitioners, managers and agency executives: Victoria – 86%, South Australia – 62%, Western Australia – 74%

Response rate government ministers: negligible and statistically insignificant

## Recommendations

### FOI legislation

The following aspects of drafting of FOI laws have been identified as relevant to improving the culture of FOI administration:

1. **Making explicit that proactive information release should operate as the default rather than the use of FOI applications as a means for providing access to information.**
2. **Ensuring that terminology and procedures are reflective of modern digital environments, rather than of the paper-based environments that prevailed when the FOI Acts were first enacted.**
3. **Streamlining consultation requirements to ensure that consultation is required only when it is reasonable and practicable and that it does not unduly extend decision-making timelines.**

4. Ensuring that legislative timeframes are realistic having regard to the processes involved and based on working days rather than calendar days.
5. Including within the legislation clear and adequate procedures for dealing with vexatious applications.

### FOI administration

The research highlights the need for and potential benefits of:

1. Supporting agencies in developing proactive release policies relevant to their specific needs.
2. Ensuring that any ministerial noting processes are structured to ensure that FOI officers can process requests within required timeframes.
3. Providing recurring sector-specific FOI training.
4. Providing recurring RM and FOI education for wider agency employees, including executives.
5. Ensuring that RM rollout is consistent with both with RM best practice and FOI efficiency.
6. Working with state public record offices regarding agency adherence to RM policies and strengthening the knowledge and understanding between RM best practice and FOI efficiency.

### Freedom of information funding

The research also highlights the critical role of **adequate funding for RM and FOI processes** in promoting a culture of transparency and the effective operation of the FOI Acts. Inadequate funding for staffing, staff training (including guidance materials) and RM processes undermines not only the immediate efficiency of FOI processes but also the culture of FOI teams, leading to ongoing inefficiencies.

Further detail on the recommendations can be found in the discussion section, but for the moment we highlight the following key quotes from the focus groups and interviews.

*I would say what my role is supposed to be is, I guess, educating FOI staff on things like recent FOI decisions, keeping them up to date about matters happening in the FOI space, re-examining our work practices, making sure that we're compliant, making sure that we're making the right decisions on particular sorts of documents that we are always releasing as a part of the FOI process and providing intellectual leadership as well as all the supports that you would usually associate with being a manager.*

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

Interview V21

*We get a lot of general inquiries from people who may not even need to necessarily submit an FOI request, or they're just after information. They sometimes don't realize that that information could be*



*provided to them outside of the FOI Act. So it's more than just providing documents under FOI. I think sometimes it's a general source of information for people to provide advice about where to go.*

Interview SA20

*As a decision maker, I do put on a slightly different hat on purpose and say, we need to provide this document, but for all the other things that may apply and that involves doing the appropriate consultations, making sure that you understand the exemptions, the public interest tests ... And then if your decision is, yes, we're going to be releasing these documents that are potentially sensitive, then there's other ways of informing the organisation about how to manage those risks. But I wouldn't say for me that I think of the risk first. It's more looking at this as a decision by kind of seeing whether these documents can be released and if not, why not?*

Interview WA21

On finding information kept in hard copy:

*... it's not even a needle in a haystack. **It's like an atom in a haystack.** So, yeah, you won't be able to find it.*

Interview P

*There should be absolutely no involvement by the minister's office in any shape or form, let alone that we need to, because for the past year we now have got a process where if it's a 'hot topic', if it is an application that's classed as highly sensitive. We then need to basically get it approved. It's a process devised against my will. I completely disapprove and disagree with that. But essentially I had to request permission from my senior executives that relate to the area where the application of subject matter relates to basically, saying, 'I need to provide a notice, to issue a notification that the application is ready to be finalised and the decision is made.' So, then the minister's office gets notified and then eventually I will receive a notification that 'Yes, you can issue the decision.' It is completely contradicting the object and intent of the FOI legislation.*

Interview WA25

## Introduction

The cornerstone of FOI and access to information is accountability. A robust FOI process ensures independent access to government-held information, empowering the public, political opposition and journalists to hold governments accountable for their actions. This principle is fundamental to genuine liberal democracies, where those in positions of power are expected to be answerable for their exercise of authority.

The idea of accountability predates the development of liberal democracies. Accountability can be defined as:

*The relationship between an actor and a forum, in which the actor has an obligation to explain and justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences (Bovens, Schillermans, & Hart, 2008, p. 228).*

In organisational and corporate contexts, the concept of accountability is typically divided into two categories. First, 'accountability as a virtue' holds that it is desirable for individuals or organisations in positions of power to act responsibly and be answerable for their actions. Second, 'accountability as a mechanism' contends that individuals or entities must acknowledge their obligation to clarify and justify their actions to those empowered to assess and evaluate these (Vance, Lowry, & Eggett, 2013). Implementing and fairly administering FOI laws is a means for governments and public administrators to accept accountability.

There are two main tiers of information access under FOI: (1) individual or personal information, often referred to as first-party information, and (2) requests for access to non-personal information, also known as third-party information. In Victoria, South Australia and Western Australia, the first-party level of access generally functions effectively, while third-party access is more complex.

A well-functioning and comprehensive FOI system serves two primary purposes: (1) it acts as a deterrent against corruption and maladministration within the political and administrative systems, as those involved are aware of the high likelihood of being exposed, and (2) by empowering the public with independent access to information, it enables greater participation in the political process. This creates a mutually beneficial scenario where transparency and openness, exemplified by FOI, serve as tools to build trust between the political sphere and the public, fostering a healthier democratic environment.

Internationally, the evolution of FOI can be traced through four distinct periods. The first documented instance dates back to 1766, in one of the earliest Swedish parliaments. Following this, a series of FOI laws were enacted between 1766 and the end of World War II, marking significant milestones in the development of press freedom and information access globally (Lidberg, 2016).

The post-1945 period saw significant introspection within the United Nations regarding the causes of World War II, and the role of secrecy emerged as a focal point. It was acknowledged that excessive secrecy within Nazi Germany and among other nations significantly contributed to the outbreak of the war. This recognition led to the enactment of numerous FOI laws between 1945 and 1990, marking the second pivotal international FOI period. Australia participated in this wave, with the

Commonwealth of Australia and Victoria passing FOI laws in 1982, followed by South Australia in 1991 and Western Australia in 1992.

The collapse of the Soviet Union and its Eastern European satellite states heralded the third phase in the evolution of international FOI. As these nations aspired to establish themselves as full-fledged democracies, many introduced FOI laws as symbols of democratic transition.

The ongoing fourth stage of FOI commenced around the same time as the third stage, coinciding with the digital revolution of the early 1990s. This era witnessed a rapid transformation from traditional paper-based information sharing to digital platforms, enhancing the speed and ease of access to information. As of June 2024, 140 countries had implemented FOI laws, with Zambia being the most recent addition, in December 2023 (Centre for Law and Democracy, 2024).

All Australian jurisdictions have enacted FOI/RTI laws, reflecting the global trend towards transparency and information access.

### Previous studies

Previous research (Breit, Fitzgerald, Liu, & Neal, 2011; Lidberg, 2013; Roberts, 2006) has stressed the importance of the culture among FOI administrators when implementing information access systems. However, what remains lacking is comprehensive research that captures FOI culture and the factors that shape it. This study fills this gap, thereby making a distinct contribution to this field of research.

This project is not the first analysis of information access / FOI across Australia. State Information Commissioners and ombudsmen have produced research examining FOI in their respective states (OIC WA, 2010, OVIC, 2020a, 2020b; Ombudsman SA, 2014), and have also allowed external parties to undertake research (Lidberg, 2009, 2019; Lidberg & Bradshaw, 2021). Four previous Australian studies (OIC WA, 2010; Lidberg, 2009, 2019; Ombudsman SA, 2014) examining the culture of implementing FOI possess limitations in that they are either too small or not sufficiently in-depth to support generalisable conclusions. Notwithstanding, they provide very useful insights into the issues underlying FOI culture and the need for more comprehensive research in the area.

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

Previous studies also show that research must go beyond the letter of the law and FOI quantitative metrics to obtain a fuller picture of how FOI/RTI operates in practice. A good example of this is the Global Right to Information Rating, which is a vital resource in terms of gaining an initial snapshot of

how FOI/RTI laws compare on a number of key points (RTI Rating, 2021). However, rating systems based on laws only tend to rate newer laws at the top of the index. A case in point is that Afghanistan is currently ranked highest in the RTI Rating. If a practical functionality test were added to the rating along with a qualitative assessment of the information access culture, it is highly doubtful that Afghanistan would retain the top ranking. This illustrates the importance of capturing the culture that sits at the core of implementing FOI/RTI.

The literature highlights the increasing significance of FOI and information access systems in light of the rapid expansion and importance of the digital economy. This is exemplified by the 2003 European Union's Public Sector Information (PSI) directive, which aimed to simplify and facilitate access to information and data generated using public funds for utilisation and reutilisation across EU member countries (Barbero, Bartz, Linz, Mauritz, & Wauters, 2018). A prominent example is the software applications sector, which relies heavily on open data access for effective operation. For example, weather applications depend on continuous and open access to forecasts provided by national weather bureaus.

By 2015, nearly half of the EU member countries had transposed the directive into national legislation, bolstering the burgeoning digital and data economy in Europe. The impact of the 2003 PSI directive (along with its successor, the Digital Single Market) was evaluated in a 2018 report (Barbero et al., 2018). According to this assessment, the digital economy sector had expanded to 285 billion Euros by 2015, constituting 1.94% of the EU's GDP. By 2016, this figure had risen to 300 billion Euros, with projections indicating growth to 739 billion Euros by 2022—a more than doubling in six years. The report concluded that such growth would not have been achievable without the PSI system (Barbero et al., 2018). In comparison, Australia lags significantly in terms of open data access. An independent 2018 report evaluating Australia's commitments under the international Open Government Partnership revealed limited progress in fulfilling the commitment to 'continue making more public data openly accessible and supporting its utilization for commercial and non-profit ventures, research, data-driven decision-making, and problem-solving' (D. Stewart, 2018, p. 11).

### Aims of the project

The project's aims were as follows:

1. To capture and analyse how FOI practitioners, agency executives and government ministers view information access, and the factors that shape their attitudes towards implementing FOI.
2. To determine the factors that play a key role in determining FOI cultures within agencies.
3. To identify and develop practical measures that can be implemented by regulators to improve these cultures.
4. To identify any additional measures that may be required to improve the interface between RM and FOI practice.

Based on these project's aims, the following research questions were proposed.

For FOI practitioners and managers:

1. What is the understanding among FOI practitioners of the purpose and functionality of the access to information system in Victoria?
2. How do FOI practitioners view/describe their roles within the information access system?
3. What role does the culture of the agency play in creating and implementing an effective information access environment?
4. What role does RM currently play in implementing access to information in the agency? How can RM systems better assist the agency's culture of access to information?
5. Do FOI practitioners see technology as a tool that can assist with RM and/or enhancing access to information? If so, how?

For executives and agency management (Department Secretaries, CEOs, etc):

1. What is the understanding of the purpose and functionality of FOI and the information access system among senior government executives/managers?
  - How do they view their role in the information access system?
  - What is their understanding of the information access culture in their agency?
2. What is the understanding of alternative mechanisms (such as proactive release of information) to FOI among senior government executives/managers?
3. What role does RM currently play in implementing access to information in the agency? How can RM systems better assist the agency's culture of access to information?
4. Do senior government executives/managers see technology as a tool that can assist with RM and/or enhancing access to information? If so, how?

For government ministers:

1. What is the understanding of the purpose and functionality of FOI and the information access system among government ministers?
  - How do they view their role in the information access system?
  - What is their understanding of the information access culture in their agency/department?
2. What is the understanding of alternative mechanisms (such as proactive release of information) to FOI among government ministers?
3. How do they see the relationship between RM and access to information?
  - Do they see a link between better RM and better access to information?
  - Do they see technology as a tool that can assist with enhancing access to information? If so, how?

## Methodology and research design

The primary methodological consideration revolved around how to build a sample representative of the thousands of government agencies in Victoria, South Australia and Western Australia that make up the government sector and that are subject to FOI Acts. After examining the previous studies conducted in Victoria (Lidberg, 2019; Lidberg & Bradshaw, 2021), as well as considerable discussion

and consultation with the three partner organisations, three parameters were chosen as relevant to building the sample: the **number of FOI requests** received annually by an agency, the **different sectors of government** in which the agency operates and whether the agency is **metropolitan or regional** in nature.

Using the latest annual reports from OVIC, Ombudsman SA and OIC WA, we examined how many agencies received requests over a 12-month period. In Victoria, the top 30 agencies received approximately 85% of all requests, with the top agency receiving 3,986 requests and the agency placed 30th receiving 309 requests (OVIC, 2022). In South Australia, there were 10,057 total requests, with the top agency receiving 2,305 requests and the top 10 agencies receiving a combined 74% of total requests (Data SA, 2023). In Western Australia, 21,169 requests were received in total, with the top agency receiving 2,725 requests and the top 10 agencies receiving around 64% of the total (OIC WA 2022). Based on these numbers, it was concluded that a sample of 30 agencies per state would generate data that would be generalisable across the full spectrum of government sectors across the states in terms of the attitudes and culture of implementing FOI.

Analysing the composition of the 50 top agencies across each state indicated that they fell into three sectors: **health (hospitals)**, **government departments** and **statutory agencies**. To this was added a fourth sector with a lower numbers of requests: **local government**. This sector was added to the sample as it generates a type of FOI request that differs from the other sectors, albeit in lower numbers. Using this sectorised sampling approach, a wide variety of government agencies receiving a wide variety of requests was captured. This project also added a fifth sector – **universities** – in recognition of the fact that previous projects had not yet captured this cohort.

The geographical base for agencies was considered important as this had an impact on both the type and number of FOI requests received, which in turn may have influenced how FOI was implemented; hence, the inclusion of the geographical parameter.

One of the features contributing to the success of the 2019 pilot study and the 2021 commissioned OVIC report was the completely confidential approach to recruiting participants. The guarantee that no replies to online surveys or interviews could be traced back to any of the participants generated high-quality data for both studies. Given this, it was decided that such confidential design would be followed once more, allowing participants to speak completely freely. In line with this, none of the participating agencies are named in this report and great care has been taken to ensure that none of the interview / focus group replies included in this report can be traced back to any specific agency or individual.

After the successful inclusion of FOI POs (the executive leaders in the participating agencies) in the 2021 OVIC report, it was decided to continue their inclusion in this multi-state project. Moreover, it was decided to also include government ministers and state government portfolio holders, as we were very keen to capture any differences and similarities between these three cohorts. Thus, this project attempted to capture three levels of the information access 'pyramid' – FOI practitioners (FOI officers and managers), FOI POs (executive leaders, CEOs) and government ministers.

To address the research questions, a mixed methods approach was employed. Neuman (2013) describes this approach as most effective when a project attempts to capture issues of culture based on predominantly qualitative data. The baseline for this study was an online anonymous survey



regarding attitudes towards FOI and information access in general, which was distributed to the individuals in the participating agencies.

Building on the survey results, semi-structured interview templates were created. The aim of these was to further capture attitudes towards FOI and information access among the three cohorts, and the participants' views of how a facilitative information access culture can be built and maintained. Interviews were conducted in both focus group settings and as individual interviews. Great care was taken to ensure that the focus groups involved only participants at the same hierarchical level from each agency. In some cases, FOI coordinators and managers were interviewed individually.

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

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

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

The research component of the OVIC 2021 report coincided with the majority of the COVID-19 lockdowns and restrictions, restricting travel across Victoria. This necessitated pivoting to online software to conduct virtual focus groups and interviews. At the time, the research team conducted background research regarding the impact of conducting focus groups online. Scant literature was found during the pandemic (K. Stewart & Williams, 2005) but studies and recounts have since been published regarding video conferencing as a virtual focus group method (Santhosh, Rojas, & Lyons, 2021). Some have flagged concern regarding the quality of data obtained using online focus groups in terms of participants reacting to each other's replies, which sits at the core of, and is the main advantage, of focus groups. However, when A/Professor Lidberg (who conducted the pilot study in 2019) compared the real-life focus groups with the online ones, little or no difference was detected in how the participants performed, or in the quality of the data. If anything, the participants, both in focus groups and individual interviews, appeared more relaxed and forthcoming when the interviews were conducted online.

Though COVID-19 restrictions were rolled back in 2021 and lifted completely by 2022, hybrid work arrangements in government agencies remained in place. For the project, it was a welcome boon to have participants still opt for video conferencing platforms such as Teams or Zoom, as participants were able to participate in focus groups and one-on-one interviews at a time and place most convenient for them. For some, this was while they were rostered on in their agency office; others opted to conduct their interviews while at home. Participants' overwhelming preference for video

conferencing also meant the research assistants for this project could assist one another by interviewing interstate participants without cost or time loss.

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

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

## Findings

### Response rates

In Victoria, the survey population consisted of 232 individuals. The total number of survey responses received was 200, resulting in an 86% overall response rate. The rate was slightly higher for the FOI practitioner group. For South Australia, the full survey population was 109 individuals. The total number of survey responses was 68, yielding a response rate of 62%. The full survey population for Western Australia consisted of 148 individuals. The total number of responses was 109, yielding a 74% response rate for the FOI practitioner group, the executive cohort and the survey sent to government ministers. These are very healthy response rates, which makes the survey data and findings generalisable for each jurisdiction.

The high response rates serve as vindication for the research design, which involved partnering with the Information Commissioners / Ombudsman to ensure a healthy participation level in the study. These response rates are considered substantial, ensuring a high level of statistical reliability for the collected data (Neuman, 2013). It should be noted that our sampling technique involved purposeful sampling of a specific group of experts/practitioners rather than random sampling, which reduced the significance of the standard variance and margin of error (ibid).

### A note on Victorian survey results

The survey results for Victoria are comprised differently than the other states in this report. The FOI component of the Victorian study was split across 2021 and 2022–2023, while the RM component was split across 2022 and 2023. This is because, as outlined in the methodology, results from OVIC's 2021 study of FOI culture are included in this current project. The agencies recruited from the OVIC study were re-invited for an RM-only component in 2022 to 'make whole' their contribution to the project described in this report. As some agencies from the OVIC 2021 project declined the invitation to partake a second time, new agencies were recruited for a full FOI/RM study in 2022 and again in 2023, in order to make the final number of 30 agencies surveyed and interviewed for FOI and RM. Consequently, there is a significant number of results for Victoria that stretch across several Qualtrics surveys; OVIC's 2021 FOI-only study results, VIC's 2022/23 full FOI and RM survey, and VIC's 2022 RM-only results.



Participation rates of executives and ministers

It is troubling, but not surprising, that the higher the position of the person at the agency or sector, the less likely they were to respond – in any way – to this project. FOI practitioners and managers were overwhelmingly responsive and returned the highest number of responses. Executives were more elusive, but the keener among them made their presence known. Others delegated to agency principal officers and FOI managers and practitioners to speak on their behalf. Some were not heard from at all.

Ministers – those with, potentially, the most power over FOI functionality of all persons studied – were largely non-existent despite many attempts to make contact and arrange meetings. Inviting them to take even just the survey was met with only a handful of, mostly, incomplete survey responses. Of the 55 (25 in Victoria, 15 in SA and 15 in WA) cabinet ministers invited, only three (two in South Australia, one in Western Australia and none in Victoria) agreed to fully participate in the study. In total, seven ministers partly replied to the survey – four in South Australia and three in Western Australia. The extremely low participation rate for the minister cohort is a significant finding in itself and we will return to this in our discussion.

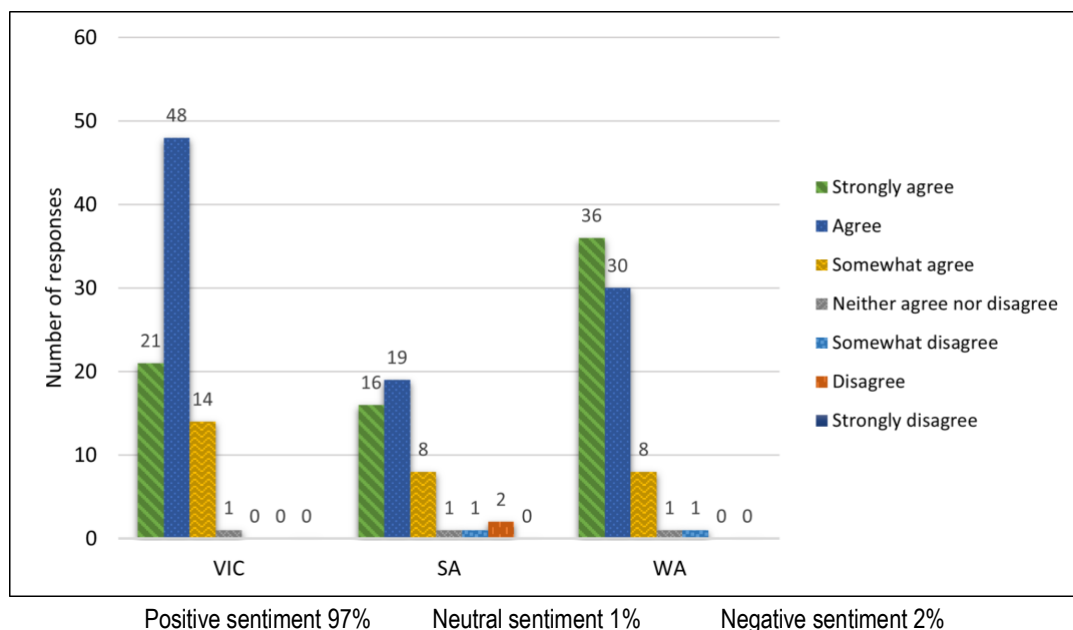
Free-text responses

In the ‘free-text’ sections of the practitioner and executive surveys, we combine the most salient responses from all three states, with the state of origin in brackets.

Online surveys

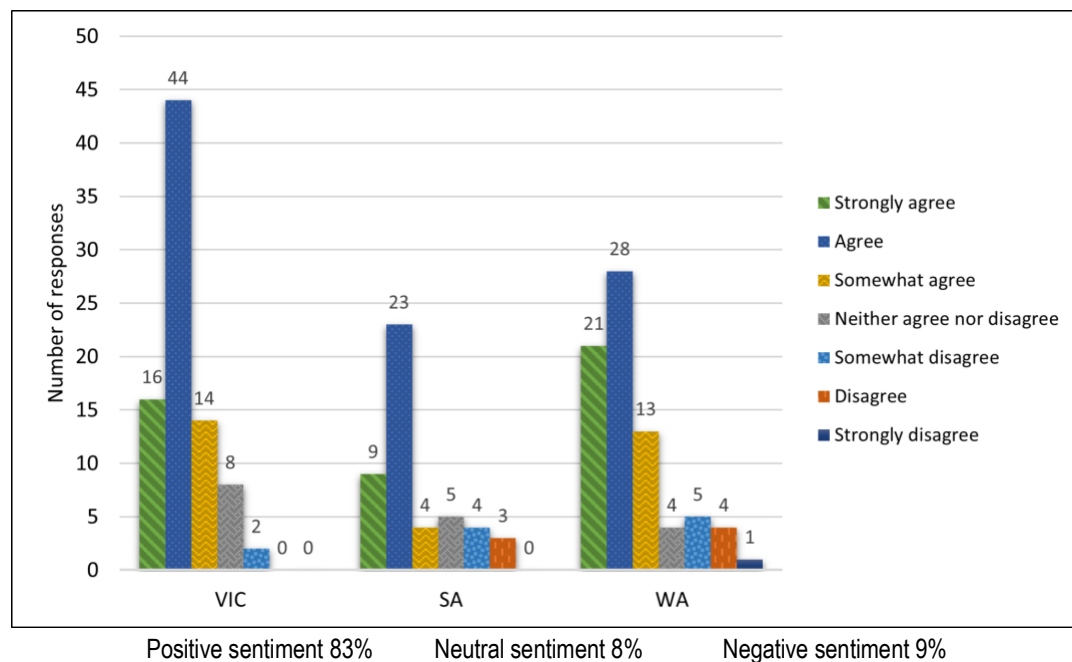
Practitioner survey: Freedom of information and information access

**Figure 1: The overarching purpose of the FOI Act is to provide an efficient and low cost means through which the public can access government information.**



Results indicate an overwhelming positive sentiment towards this question across all states surveyed. WA recorded the highest ‘strongly agree’ segment, with VIC recording the highest ‘agree’ segment.

**Figure 2: The information access system also involves the proactive and informal release of documents and information outside the FOI Act.**



WA and SA recorded a positive sentiment towards this question, but still recorded more disagreement responses than VIC.

**Free-text section: Is there anything else you would like to add regarding the state’s information access system or the objects of the FOI Act?**

*When we talk about efficient and low cost, it means efficient and low cost for the public to access documents, not efficient and low cost for the agencies to process. [VIC]*

*I think there is reluctance by some public offices to proactively and informally release documents outside the FOI Act. [VIC]*

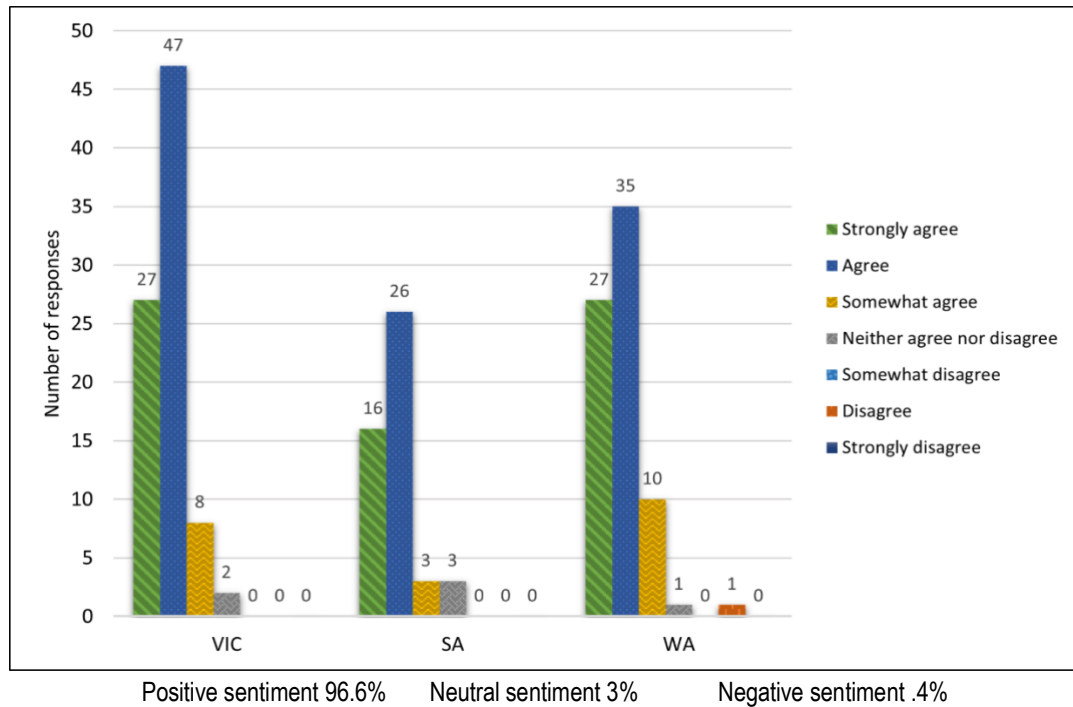
*Whilst Question 1.3 is the intended purpose of the government to proactively release, this is not always the case especially through internal government hold ups such as awaiting for documents to be allowed to be released through the noting process etc. The agency could have finished their side of things but are blocked along the way by the higher up chain. [SA]*

*Whilst FOI is supposed to be a last resort, it is too often used as a first port of call by agencies as a release mechanism. In my opinion, this is due to misconceptions by higher-ups about the type of information that is released through FOI (personal information of third parties), and the lack of incentive to assign resources to create information packages and release strategies, as Freedom of Information already fills this role (albeit extremely poorly, which they likely do not care about). [WA]*

*The objects of the Act are not sufficiently understood by those who are not practitioners of the Act. There is still a tendency to be protective of information. [WA]*

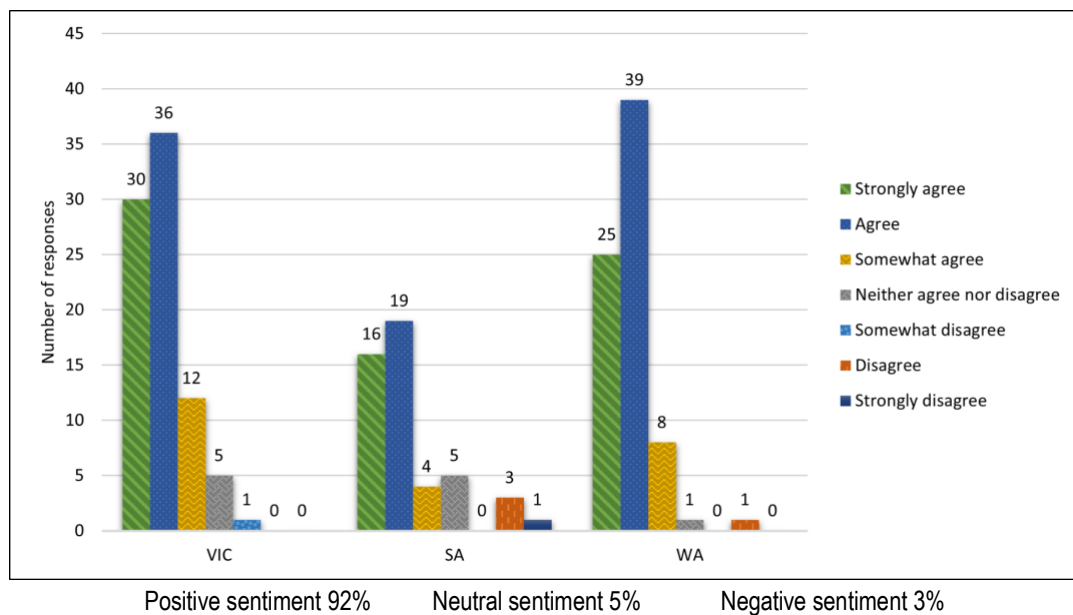
The themes and sentiments present in these free-text section responses were also seen and expanded on in the interview component of the project.

**Figure 3: I play an important role in the information access system in facilitating or promoting access to information.**



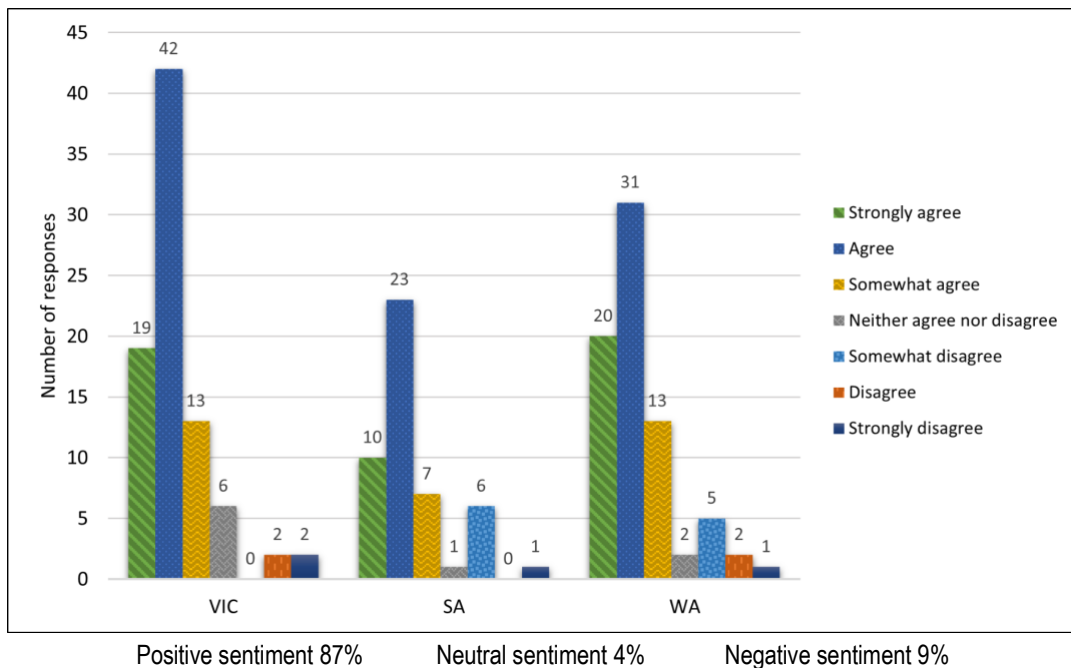
Results show practitioners across all three states believe in the importance of their role in the information access system, with negligible dissent towards this question.

**Figure 4: Part of my role involves facilitating or promoting proactive release of information.**



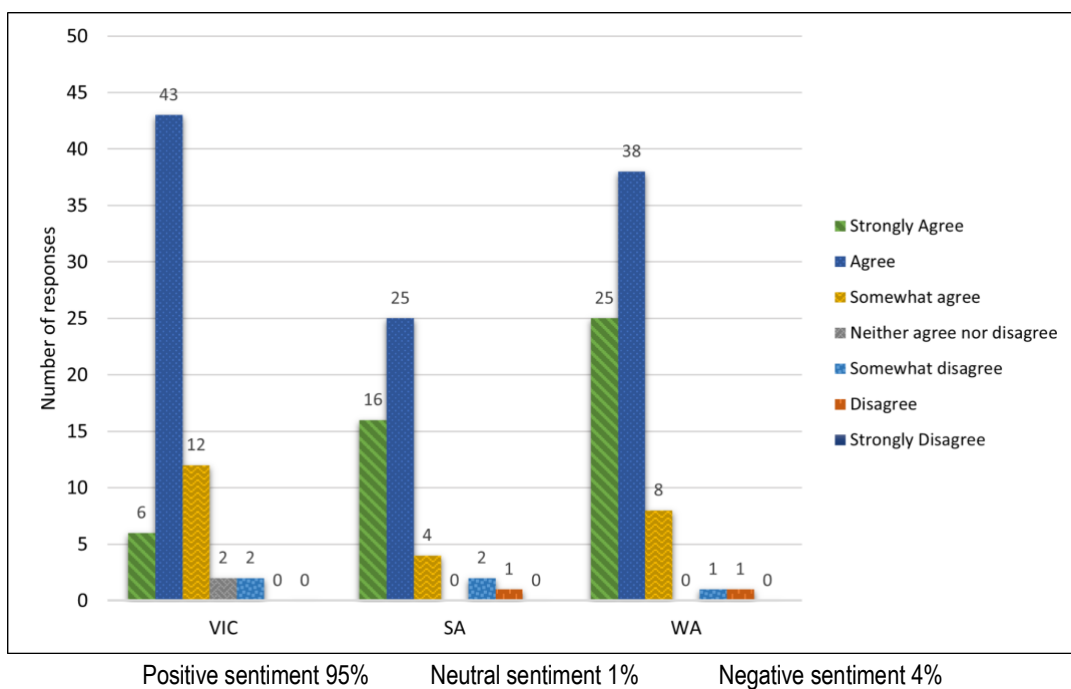
While similar 'strongly agree' and 'agree' results are displayed across the surveyed states, SA shows a modicum of outlying opinions regarding proactive release. Interviews with practitioners in SA helped contextualise these numbers.

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



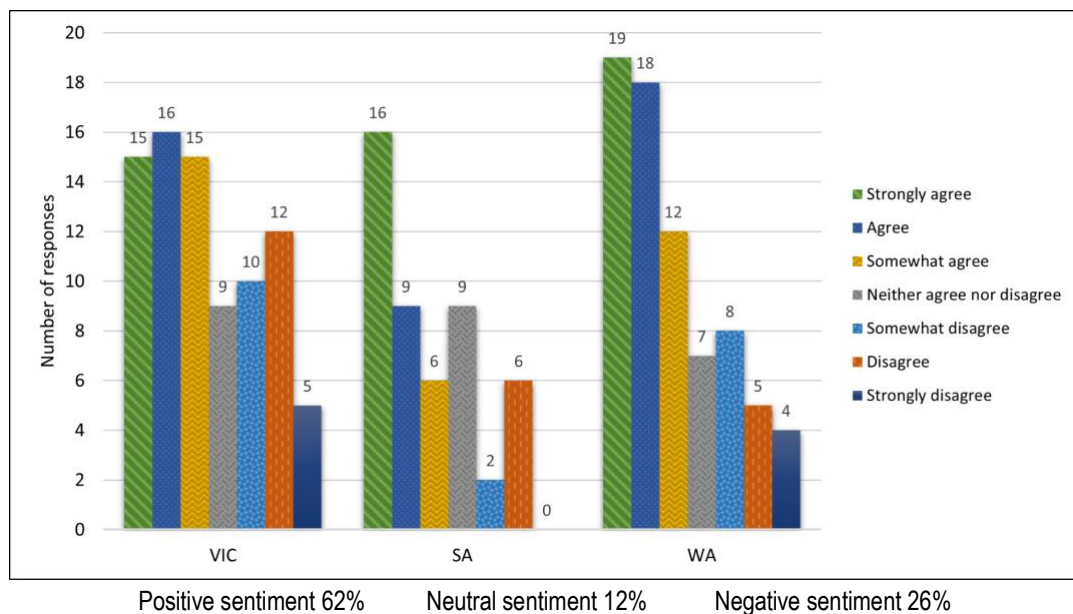
While significantly lower than the positive sentiment recorded, there still appears to be practitioners who do not believe they are given sufficient training and development. This may be due to either a handful of agencies not providing this training or some small sector-based issue.

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



While all three states produced significant positive sentiment towards this question, VIC showed more 'somewhat agree' than 'strongly agree'.

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



This question produced the most varied responses so far, perhaps because of differing sector interpretations of the definition of 'sensitive' (i.e. government departments or statutory agencies versus health sector or agencies dealing with highly sensitive clients).

**Free-text section: Is there anything else you would like to add regarding how you view your role in the information access system?**

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

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

*Providing internal advice across the agency to break down unnecessary barriers where staff assume information and work that they do should naturally be hidden/protected without any real justification. [SA]*

*The roles of the FOI Officers is restricted by agency and ministerial pressures. [SA]*

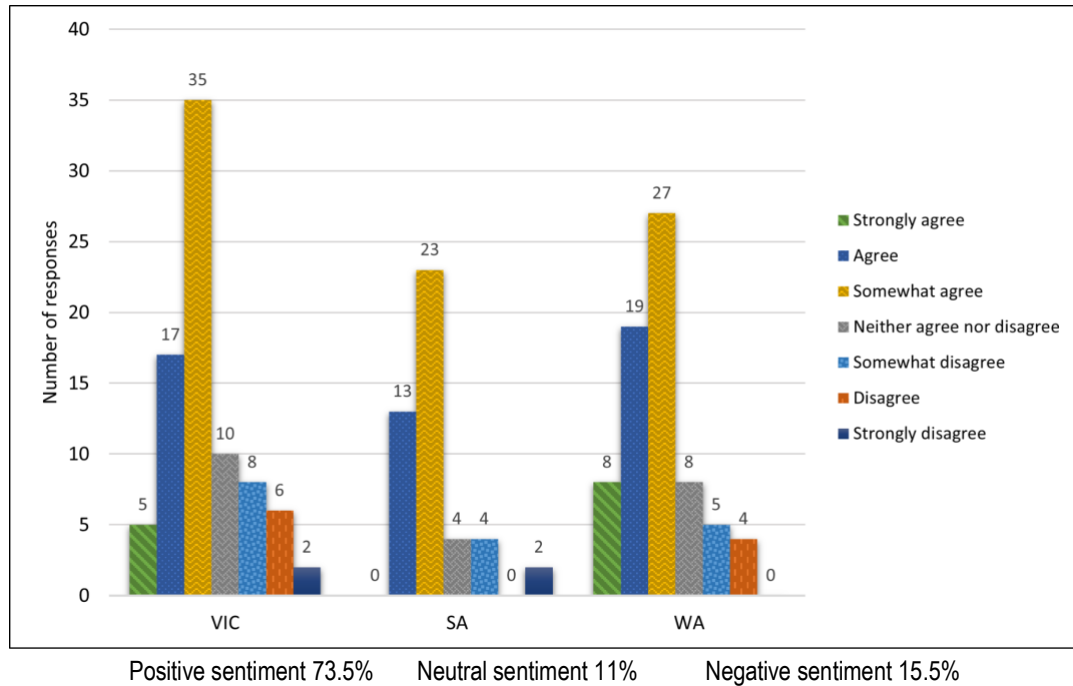
*It is difficult to balance the needs of the applicant and the desire of the organisation to not 'look bad'. [WA]*

*In a perfect world, FOI Officers would be promoting and providing access to sensitive documents and information where possible, even where there is risk to the agency and its image. Unfortunately these roles, particularly for larger agencies, act more as Public Relations Officers, addressing concerns of higher-ups and subject matter experts while attempting to follow the obligations of the Act (nothing more in terms of promoting access). [WA]*

*FOI is a small part of my role as [REDACTED] but due to the increasing volume of applications and their complexity, it is taking up more of my time than it should. We do not have a dedicated FOI Officer at [AGENCY]. [WA]*

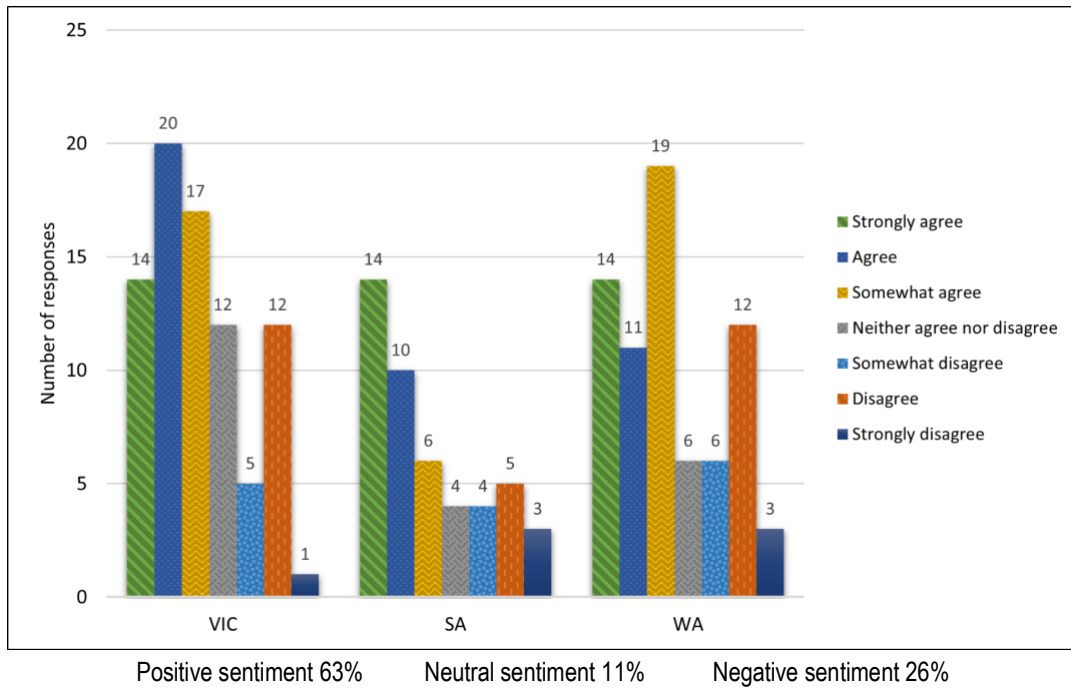
*I sometimes feel quite disappointed that I am not able to provide applicants with more meaningful information. I feel that we are more focused on protecting sensitive information over releasing personal information which could make a real difference to an individual. [WA]*

**Figure 8: In my view, the current information access system functions well.**



The vast number of responses to this question being ‘somewhat agree’ perhaps reflects the attitudes of practitioners considering all angles of the current information access system (i.e. for better and for worse). Results from the interviews helped to paint a more nuanced picture of the attitudes towards current state FOI systems – that while these could be worse, they could also certainly be better.

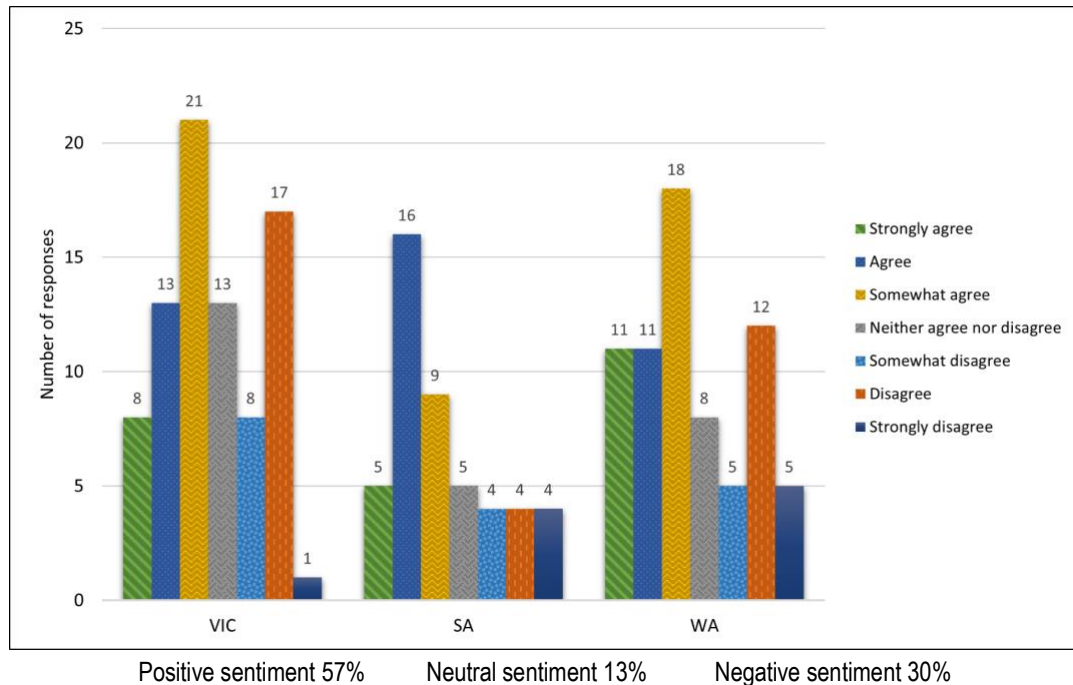
**Figure 9: In my view, a lack of resources to administer the FOI Act in my agency is a significant impediment to a better functioning information access system.**



The results from this survey question reflect the kind of responses the project received during the focus group portion. That is, some agencies and sectors believe their FOI departments are funded well, while others are ‘screaming out’ for more funding. This need for funding was found to run across all sectors, but depended on how many applications were received versus the time and effort required by the staff hired by the agency.



**Figure 10: In my view, a lack of understanding about the requirements of the FOI Act from senior personnel in my agency is a significant impediment to a better functioning information access system.**



While results appear similar across each state, it appears that responses from SA agreed more with this question than those from VIC or WA. This might be because of sector issues regarding senior leadership or agency-specific issues regarding senior personnel and their lack of understanding.

**Free-text section: Is there anything else you would like to add regarding the functioning of the current information access system in your state?**

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

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

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

*SA's FOI Act is incredibly challenging to navigate in terms of timeframes, resources available to produce determinations, Ombudsman pressures, and the inability for an agency to reach a threshold of 'we have too much work to meet the parameters of the Act/deadlines'. There is no middle ground and it's a constant struggle and a looming threat that information that is critically sensitive will be ordered to be released without any consideration by the Ombudsman if our agency is unable to respond to an external review due to juggling many external reviews at once. The cost burden of taxpayer dollars to them through SACAT review/administrative requirements seems to go against the value of the information being released in some instances. I am all about improving transparency and exposure of government information but currently the Act does not allow this to occur in a safe manner should an*



agency be overwhelmed by applications. It can easily dip into a reckless manner resulting in excessive cost burdens for agencies. [SA]

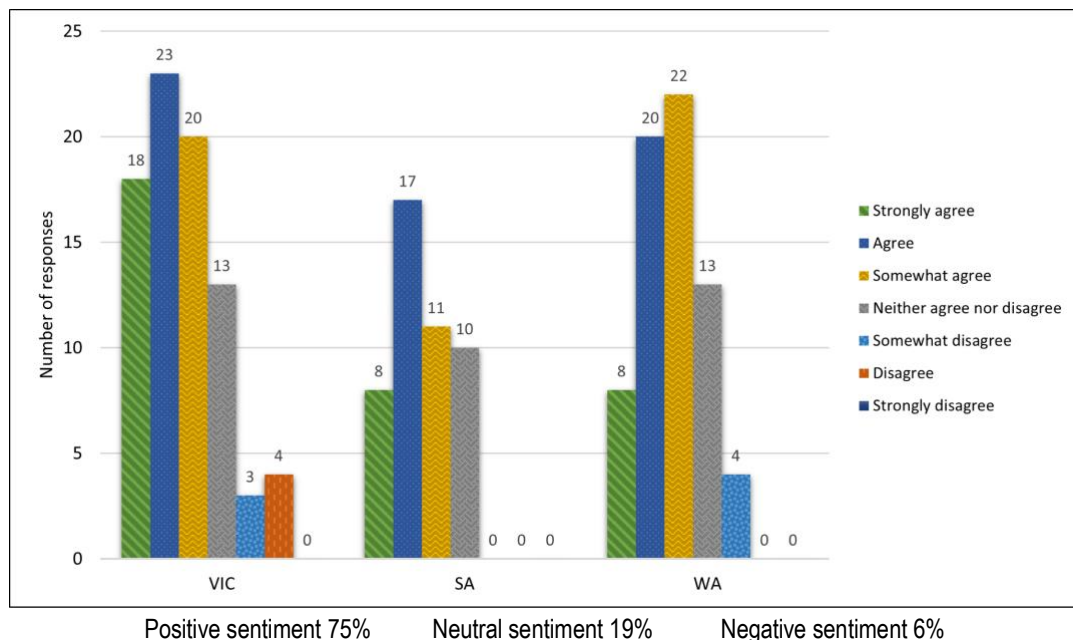
I do not want to be an Accredited Officer any more as a career. There is no consequence for a minister interfering with the release process, and no consequence for agencies that do not adequately resource the FOI departments. Nil succession planning and lack of experienced staff. We are forced to breach the legislation as a result of not releasing documents or not being able to meet deadlines. [SA]

A culture revolution is required if the government is serious about compliance. Discovery, consultation and the involvement of ministerial offices are all impeded by the low level of priority staff give to compliance. FOI officers and managers are left with no choice but to wait and continually chase up overdue actions. While most in government would express concern with the operation of the current office of the Ombudsman, more enforceable power to that office may help to drive such a revolution. More likely, current initiatives in South Australia aimed at improving customer experience may drive up FOI compliance. [SA]

... resourcing is a constant issue. There are options (and things that have been implemented) to allow us to work smarter and more efficiently, but you hit a ceiling of diminishing returns fairly soon. We are exploring additional workflow improvements and restructures that would allow more efficient delivery of information both inside and outside the constraints of FOI. Generally speaking, I would prefer to see more information 'pushed' out rather than 'pulled'. [WA]

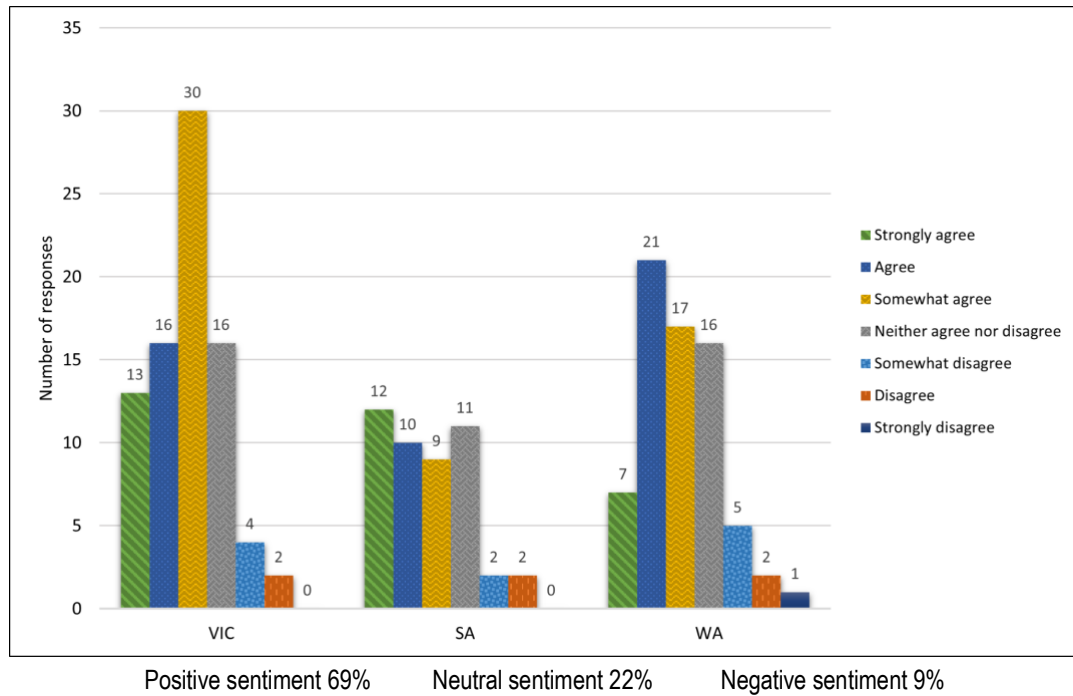
There are no constraints for dealing with serial FOI applicants who are not prepared to let go of their concerns which have been exhausted through the available complaint mechanisms. [WA]

**Figure 11: The information access system in my state needs to be improved.**

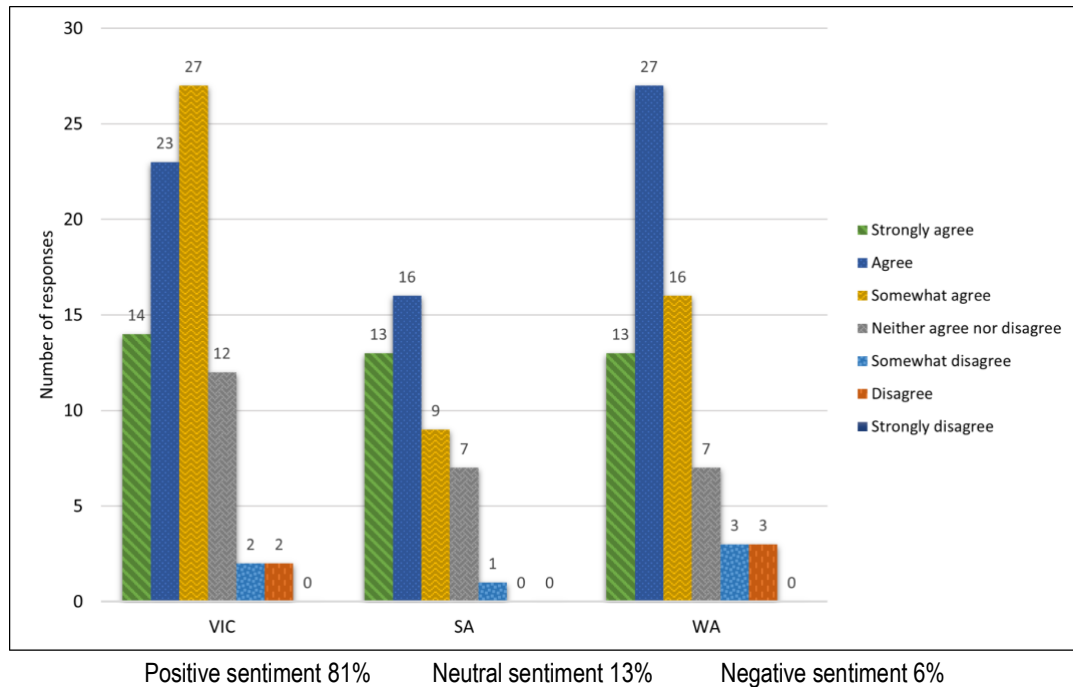


Both the survey responses and interview responses reflected this sentiment; practitioners believe the FOI systems in their states need to be improved, with VIC the only state that recorded any number of 'disagree' responses.

**Figure 12: An effective way to improve the information access system is by changing legislation.**



**Figure 13: An effective way to improve the information access system is by changing culture and practice.**



The results of the above two survey questions well reflect the responses from the practitioner interviews. Across the board, FOI practitioners saw the benefits to both legislative and cultural agency change towards FOI – hence the negligible changes in positive/negative sentimentality – and these attitudes were reflected on further in the interviews. That said, practitioners clearly identified changing culture and practice as more effective than legislative change.

**Free-text section: Is there anything else you would like to add regarding improvements to the information access system in your state?**

*From a health care perspective, we need consistency amongst agencies, we all seem to be interpreting the Act slightly differently so when applicants use the different services to access their information under FOI they report back that handling of the equivalent request is very different from agency to agency. [VIC]*

*Any improvements to the FOI scheme in Victoria should be based primarily on feedback from FOI practitioners and FOI applicants. Past amendments to FOI legislation in Victoria have too often been driven by either political factors, or as something of a PR exercise, and have often seemed to be more about giving the impression that something was being done about the FOI scheme rather than actually tackling the root issues. Any improvements should also focus on how information provision can be improved through the better use of technology. [VIC]*

*FOI will only be complied with if there is more of a 'stick' re non-compliance. There is no incentive for cultural change otherwise. [VIC]*

*Timeframes and rights of concession card holders and MPs require to be reconsidered. It is a case of being at their mercy. The act also does not take into consideration the volume of applications an agency is managing at any one time, causing unnecessary defaults to external review, and now our department is also seeing how this can move into SACAT review situations. [SA]*

*I do not believe legislative amendments alone would result in facilitating greater public access to government information. Agency culture change is definitely relevant, in terms of improving staff awareness of FOI obligations – including at executive level. [SA]*

*Allow access for personal information to be free for concession card holders; otherwise fees should apply. Restrict Member of Parliament access to 10 applications per agency per year. [SA]*

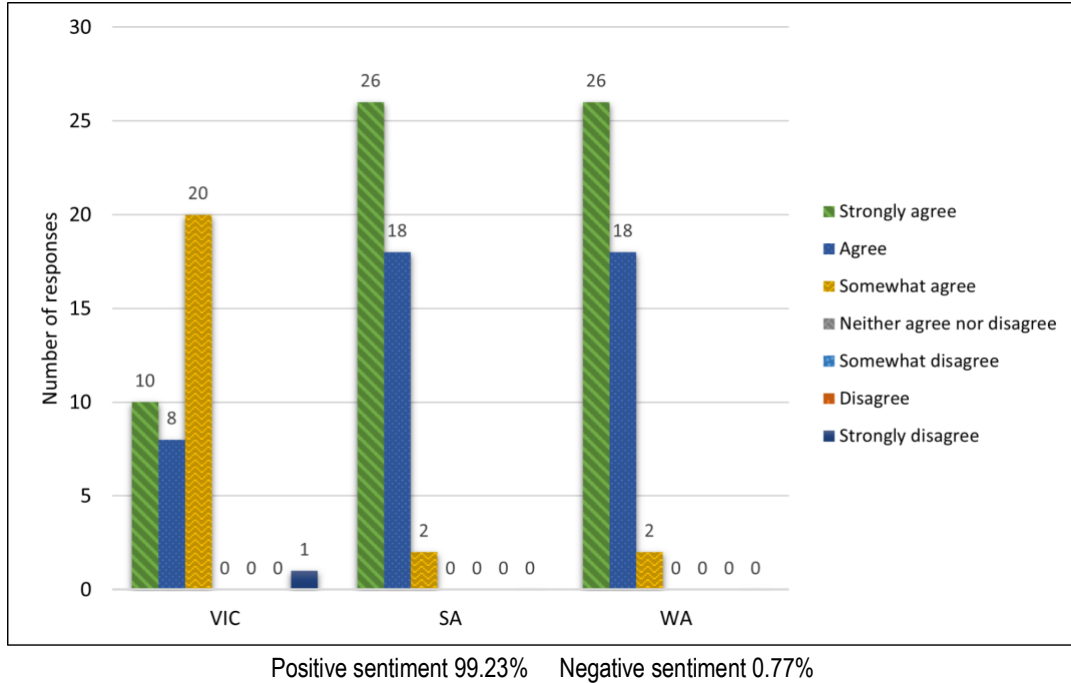
*The WA FOI legislation is 30 years old. Time for an update. [WA]*

*The legislation needs updating, but there also needs to be a major cultural shift especially in the middle management and executive, who at times can try to interfere and hinder the release of documents if they don't fully understand the requirements of the FOI Act. This can place FOI coordinators in a difficult position when trying to act in accordance with the legislation while not disobeying a directive from management. [WA]*

*Australia is known as the country of the long weekend. This reduces processing times by days. Maybe the 45 days could be changed to business days. [WA]*

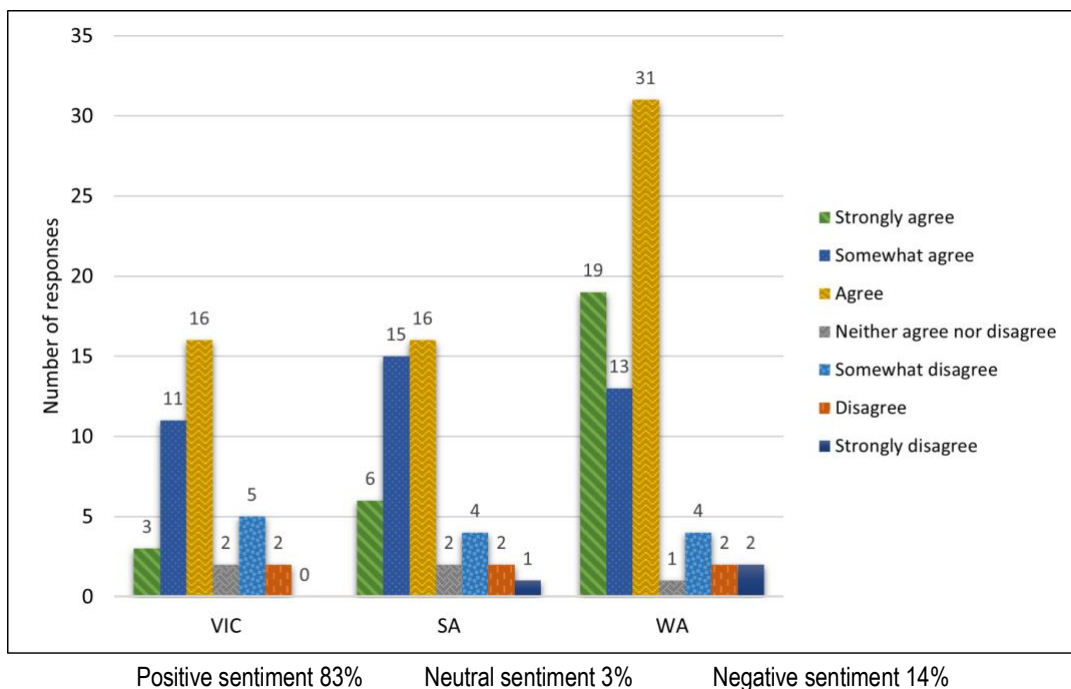
Practitioner survey: Records management

**Figure 14: A well-functioning records-management / record-keeping system promotes a positive attitude to upholding the objects and purpose of FOI.**

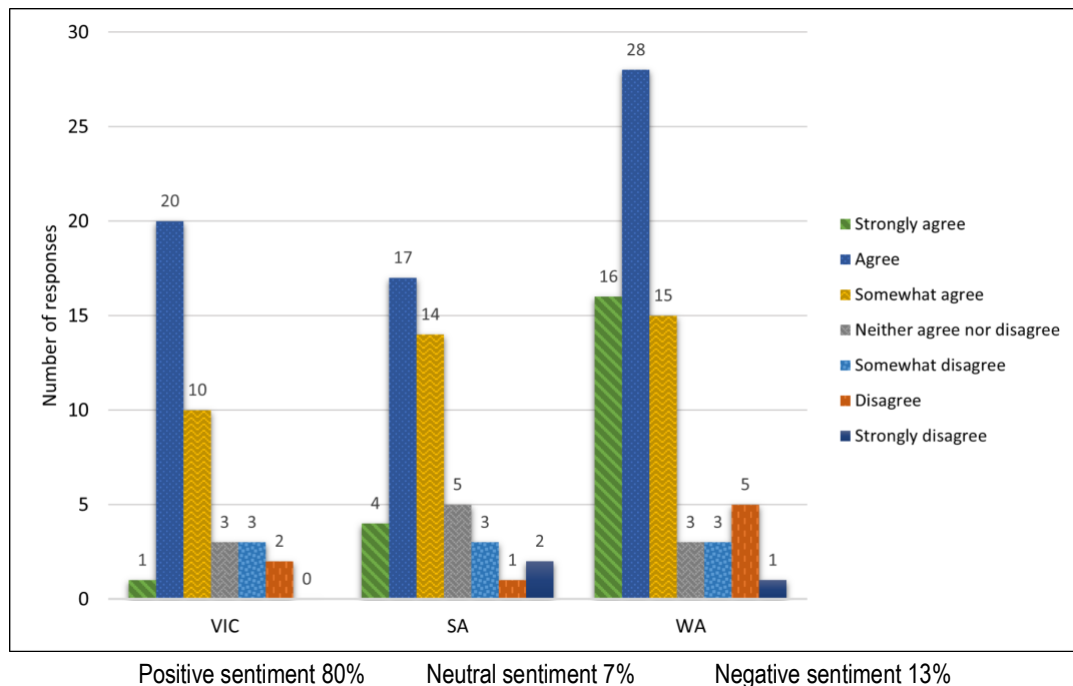


SA and WA produced identical results, while VIC produced more 'somewhat agree' overall.

**Figure 15: My agency uses a records-management / record-keeping system that enables me to perform effectively my role in facilitating access to information on request under the FOI Act.**



**Figure 16: My agency uses a records-management / record-keeping system that enables me to perform effectively my role in facilitating proactive disclosure of information.**



Despite a varied spread across the three states, WA appears to be the most positive about their record-keeping systems. Interestingly, however, the focus groups/interviews produced data that did not match the survey responses to this question.

**Free-text section: Is there anything that you would like to add regarding how records-management / record-keeping systems assist or hinder you in the effective performance of your FOI duties?**

*Records are held in multiple formats; some of the newer electronic formats do not allow for effective extraction or ability to conduct specific searches and are not supportive of what the FOI process needs. [VIC]*

*Increasing use of Microsoft 365 and records in email is not effectively managed. [VIC]*

*An effective records management program is critical to the proper operation of FOI. This needs to involve records held across the organisation in all systems and storage environments. One issue is that many public offices outsource services and programs and do not necessarily keep control of the records created by the third party delivering those functions. This places records of government*

*business outside government control, meaning that they are not made available through FOI or other access processes. [VIC]*

*Good systems are one thing – staff compliance with them is quite another. [SA]*

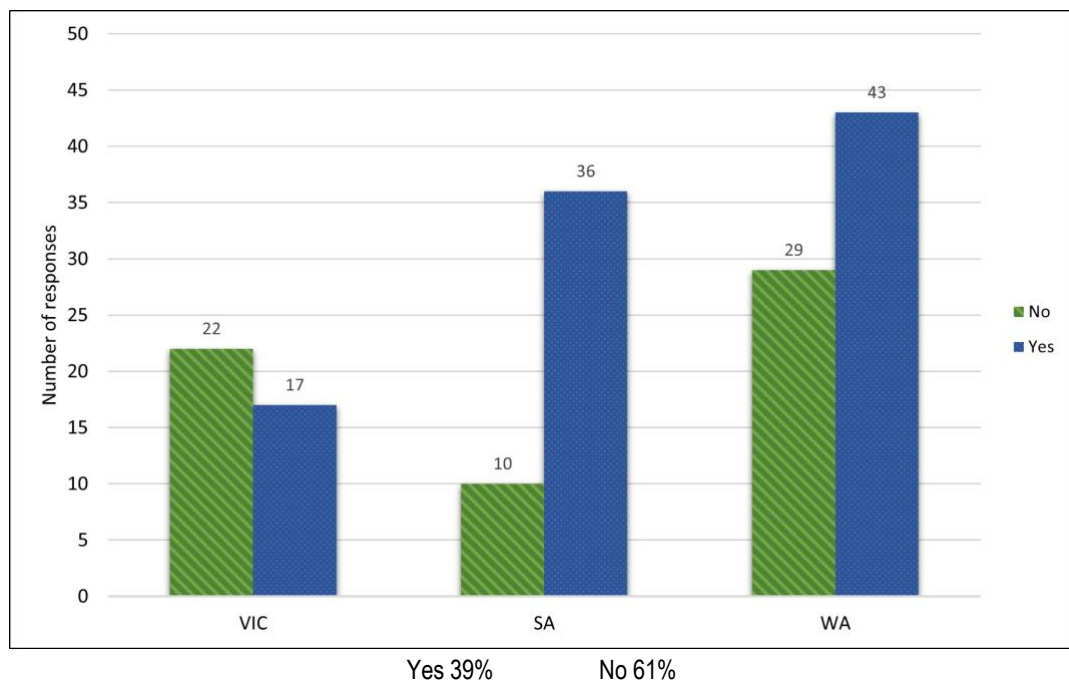
*Our records system in [AGENCY] is so behind. We need to be on Objective but there is a lack of enthusiasm and costs to get this on board. [SA]*

*We do not have a records management system and so searching for documents is ad hoc. [WA]*

*Several large and disparate departments were merged to form [AGENCY] that I work for. There are still not unified records-keeping processes – some are far better than others. [WA]*

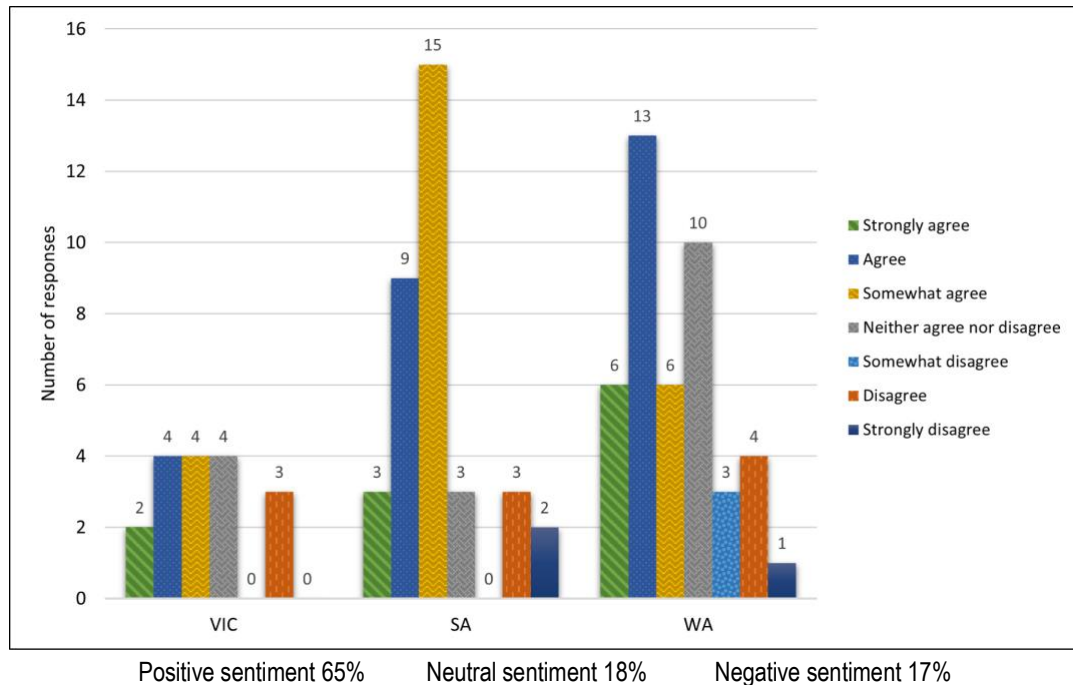
These responses make clear the many ways in which RM issues frustrate the work of FOI practitioners. It would seem that, contrary to what might be expected in a digital environment, the task of locating and extracting required data remains complex and difficult.

**Figure 17: Does your agency utilise an information sensitivity classification system when records are created?**

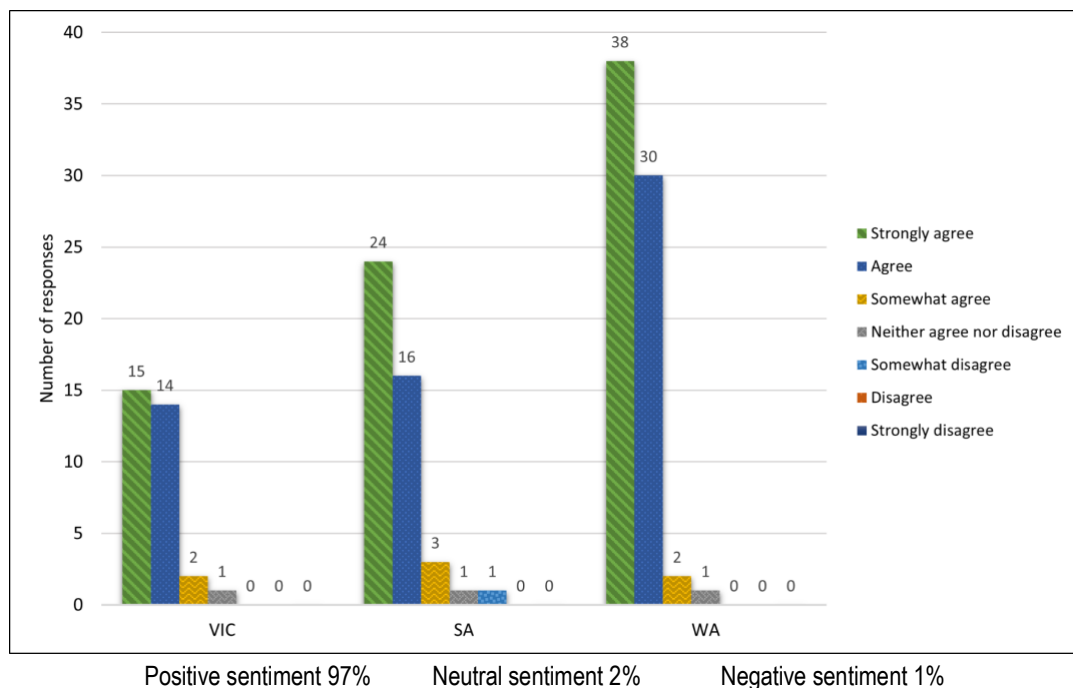




**Figure 18: The information sensitivity classification used at the time of the creation of records within my agency plays a role in my decision-making concerning access to those documents under the FOI Act.**



**Figure 19: In my view, technology has an important role to play in improving the effectiveness of the records-management / record-keeping system in my agency.**



This question produced a significant amount of positive sentiment from practitioners. However, when asked during the focus groups specifically about artificial intelligence technology and its possible role in FOI or RM, answers and sentiments were more varied. Nevertheless, practitioners can see how technology in general has an important role to play in improving agency RM systems.

**Free-text section: Is there anything you would like to add about specific technologies, e.g. technologies based on artificial intelligence, that could be used to improve records-management / record-keeping systems?**

*I understand the TRIM / HP content manager is used by many agencies and departments. OVIC could work with a commercial supplier to help co-ordinate or develop add-ins for existing IT systems to help FOI managers search and quality assure the outcomes of searches conducted internally by other staff. [VIC]*

*Tools that are able to automate data classification, audit the status and classification of business records throughout their lifecycle, and automate any retention and disposal processes would be beneficial in managing the volume and complexity of records created. However, I am not very familiar with these technology solutions in practice. I think a lot of nuanced records management will continue to rely on robust governance processes and human intervention. [VIC]*

*Organising files, filing records with correct naming convention, retrieving records, automatically classifying content like metadata, locating duplicates, retention timeframes, analysing the data and content of records, identifying and extracting personal information to de-identify documents. [VIC]*

*Transitioning historical hard records to searchable readable records would be of assistance in our agency. [SA]*

*Major difficulty with the main electronic system being used (EMR) is quite complex to extract the information. These issues have been addressed on many occasions but still haven't been improved after having teams review the process and making changes. Still requires a lot of time to extract the information, running many reports to do so and then having to extract images that have been scanned into the system. [SA]*

*I would not trust AI to grasp the nuance required in the very human responsibilities of our [AGENCY]. Records management systems (eg. EDRMS) can be used very effectively. The main difficulty lies in training ALL staff in the use and importance of records management and the system in use. [WA]*

*Requires a person to read and analyse documentation. Unsure how AI will work to improve records management. [WA]*

*Yes, automation of the capture of corporate information should be given more kudos, funding and resources. In order to remain compliant with technological advances including social media and other information platforms/applications. [WA]*

**Free-text section: Is there anything else you would like to add regarding the interrelationship between records-management / record-keeping systems and fulfilment of the objects and purpose of the FOI Act?**

*Moving into an electronic setting, it would be good to have a standard cost per page, equivalent to the FOI Act photocopying per page fee. [VIC]*

*FOI is not a primary factor in record-keeping systems. The focus tends to be its function and purpose for front-line users and then workarounds are made at the tail end when FOI becomes a consideration. There is an attitude that systems don't need to be built with FOI in mind, the focus is on system delivery and not ease of access for record extraction/generation. [VIC]*

*Search functionality is imperative. Also 'emails' is our biggest bug bear; not all staff will records manage their everyday emails. Email systems I also feel fall over in terms of technological*



*advancement. There is so much more that could be done with the email system to improve efficiency. [SA]*

*A properly used records management system gives the FOI officer greater oversight of documents which are potentially within the scope of an FOI application. This helps ensure all relevant documents are captured/provided by other staff, and assists decision-making about documents which may or may not fall within scope. [SA]*

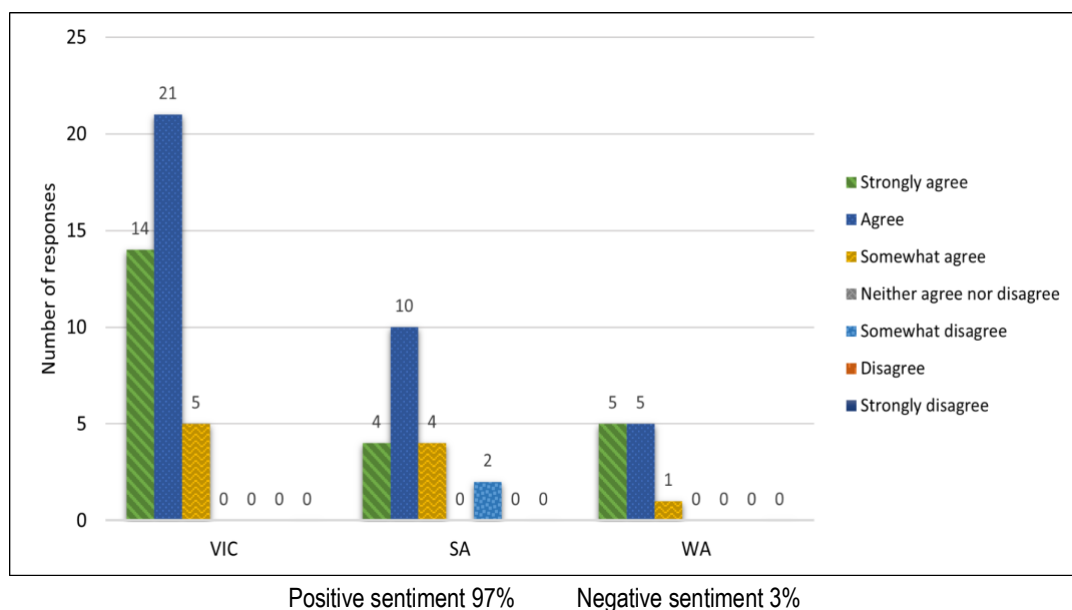
*The majority of information requested under the FOI process has a relationship with the applicant (close and/or distant), hence a system of (account-based web query?) self-service internally and externally is the key to managing the release of information internally as well as externally. [WA]*

*I believe we are being left behind and we need to catch up quickly. [WA]*

These answers again make clear that there is an important nexus between RM and FOI and that good RM plays a critical role in enabling FOI practitioners to carry out their work efficiently.

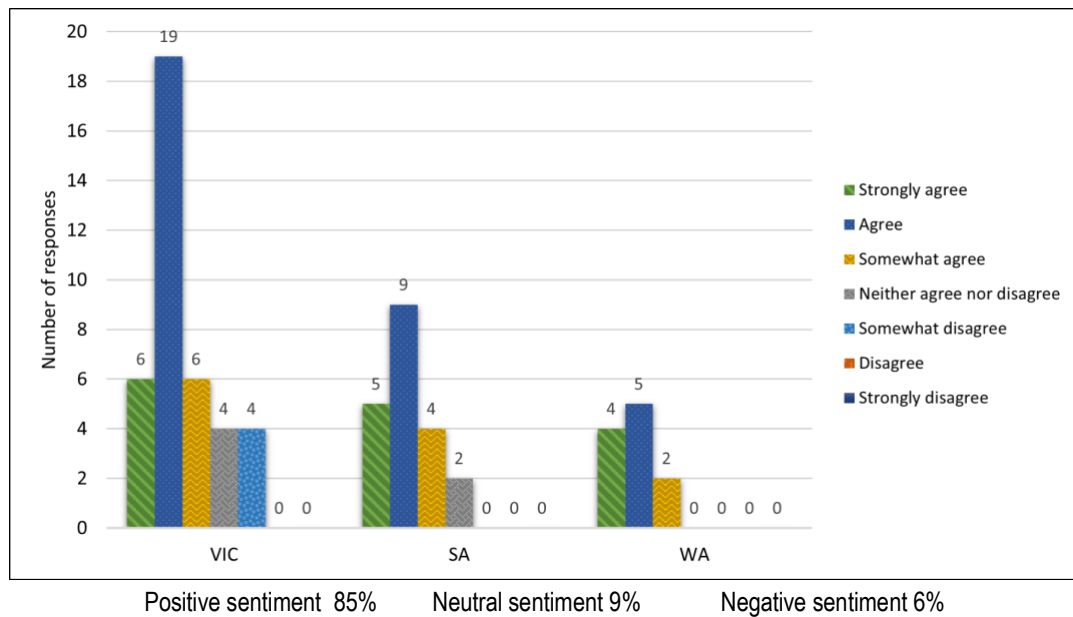
#### Executive and principal officer survey: Freedom of information and information access

**Figure 20: The overarching purpose of the FOI Act is to provide an efficient and low cost means through which the public can access government information.**



Across the three states, VIC executives appear to be in the most agreement with this question.

**Figure 21: The information access system also involves the proactive and informal release of documents and information outside the FOI Act.**



**Free-text section: Is there anything else you would like to add regarding the information access system or the objects of the FOI Act?**

*It would be helpful for Victorian legislation to have ‘vexatious applicant’ provisions (as in NSW), rather than just a vexatious litigant process. [VIC]*

*I think if there was more ‘acceptability’ or ‘approval’ of information to be released outside of FOI – Privacy seems to be a significant weight around disclosure/non-disclosure. [VIC]*

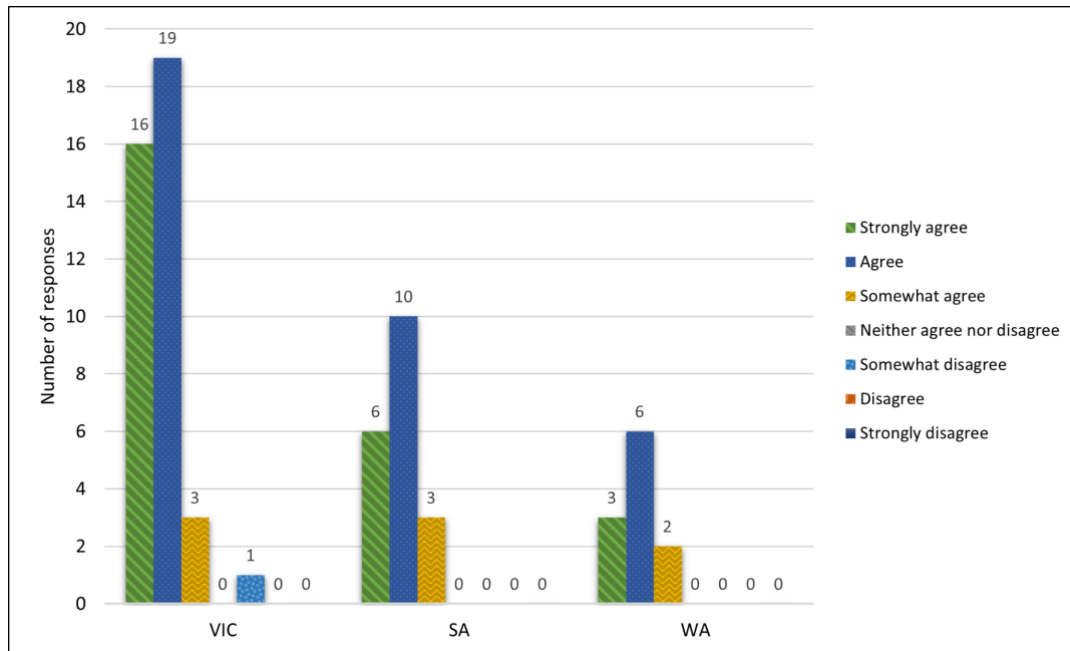
*At times the system is used as a weapon by applicants especially where there are arguing neighbours leaving agencies in the middle and is in no way a sound use of limited resourcing. [SA]*

*My experience across several jurisdictions is that maintaining the effectiveness of the laudable objectives can be undermined by the way in which the FOI Act is administered. [SA]*

*Low cost to the applicant proves to be high cost for agencies when applicants start to overload the system. The question of what is a reasonable cost to the taxpayer needs to be answered. [WA]*

*It is also mainly used by patients to access their own information. [WA]*

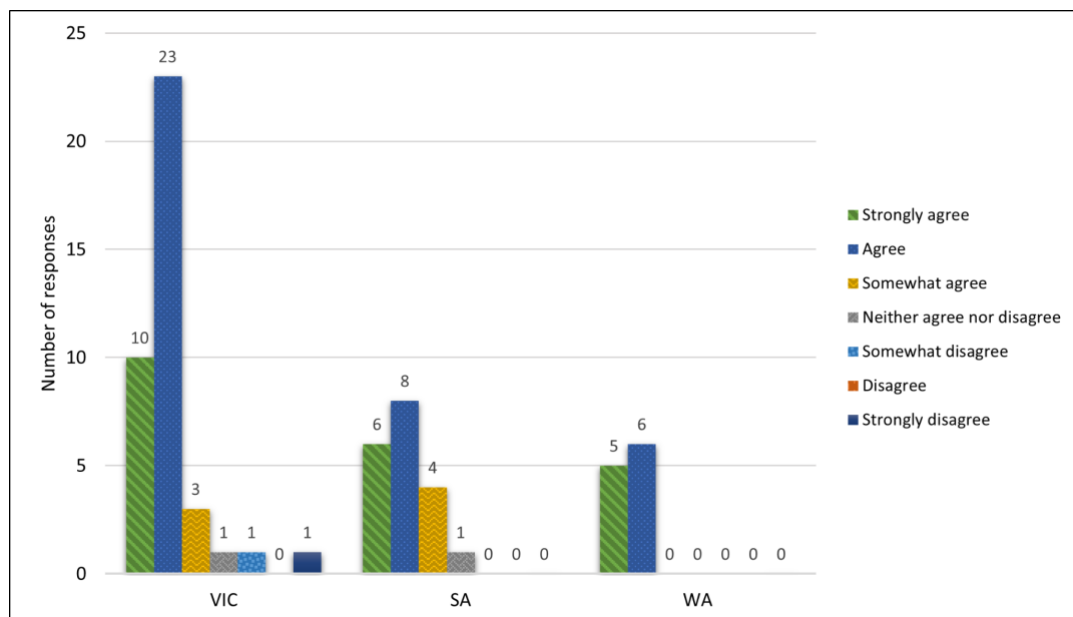
**Figure 22: I play an important role in the information access system in facilitating or promoting access to information.**



Positive sentiment 99%      Negative sentiment 1%

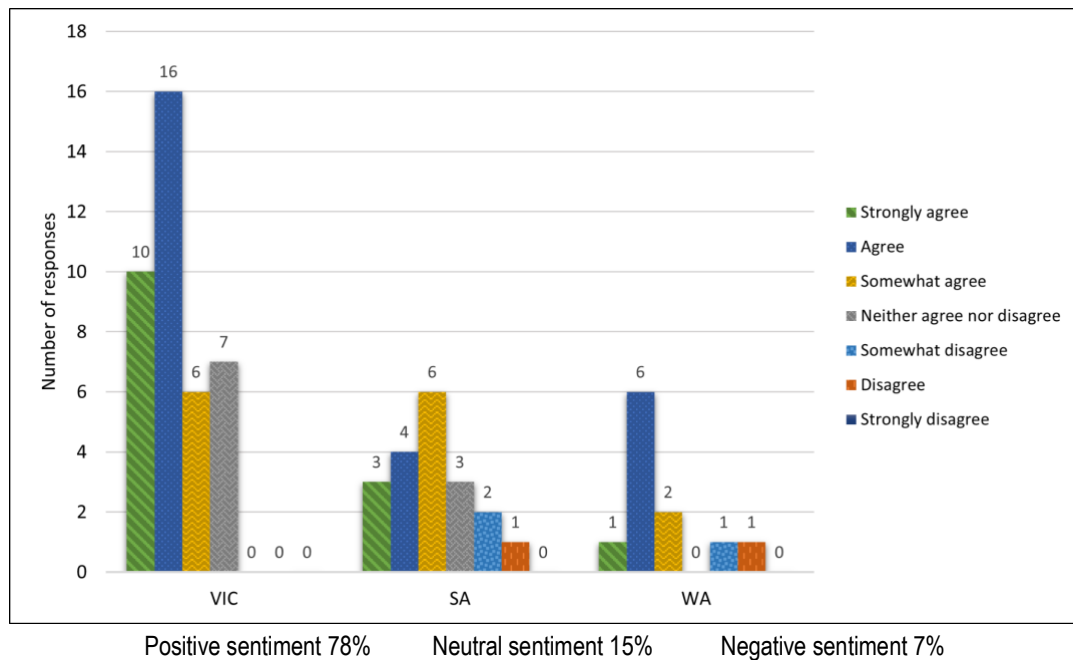
Across the three states, executives and principal officers perceive the important role they play in the information access system.

**Figure 23: Part of my role involves facilitating or promoting proactive release of information.**



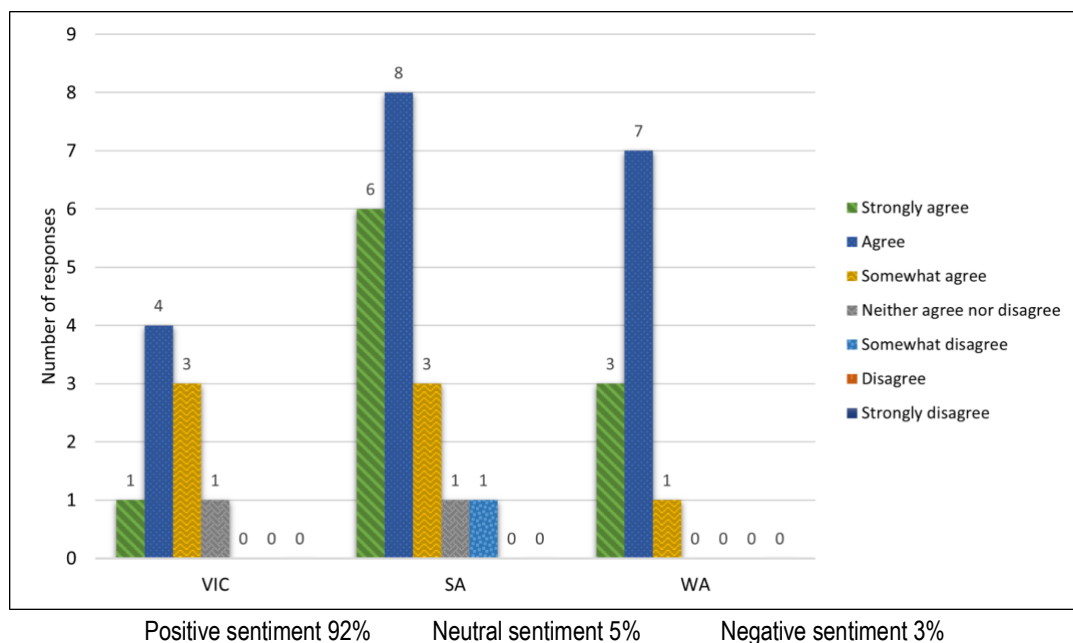
Positive sentiment 96%      Neutral sentiment 3%      Negative sentiment 3%

**Figure 24: I am provided with sufficient training and professional development to perform my duties effectively under the FOI Act.**

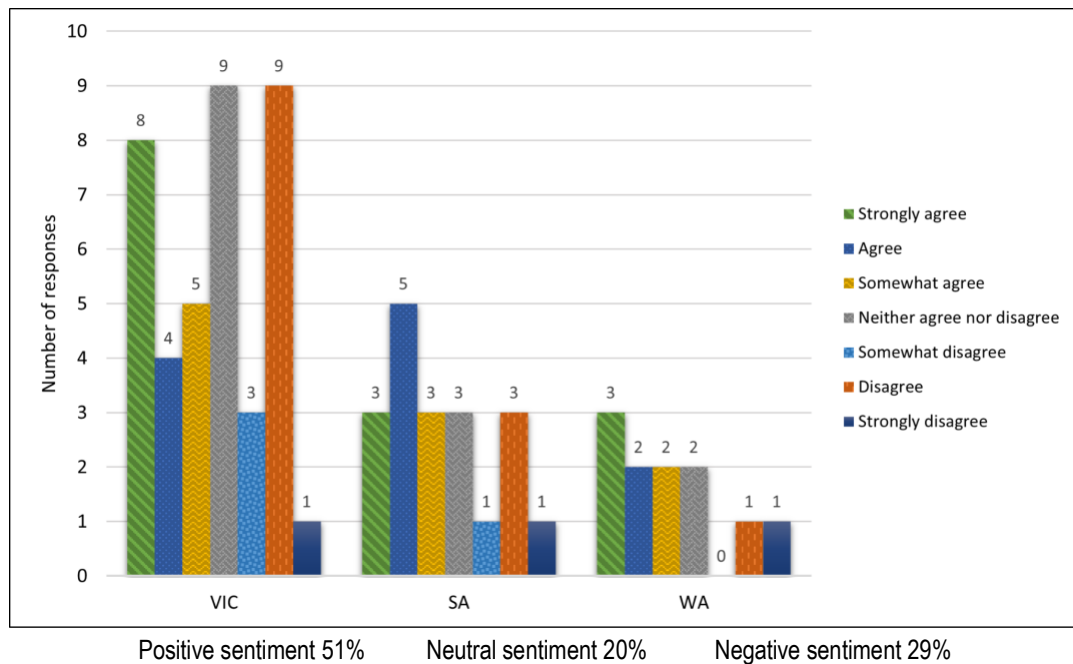


SA and WA appear to be similar in terms of holding negative sentiments when asked about the sufficiency of their FOI training. VIC on the other hand appears the outlier, with executives much more positive. This could possibly be due to the recent focus by OVIC to supply agency executives with FOI education.

**Figure 25: My most important duty under the FOI Act is to facilitate access to information.**



**Figure 26: My most important duty under the FOI Act is to ensure sensitive information is NOT released.**



**Free-text section: Is there anything else you would like to add regarding how you view your role in the information access system?**

*Protecting one's information is just as important as releasing it. [VIC]*

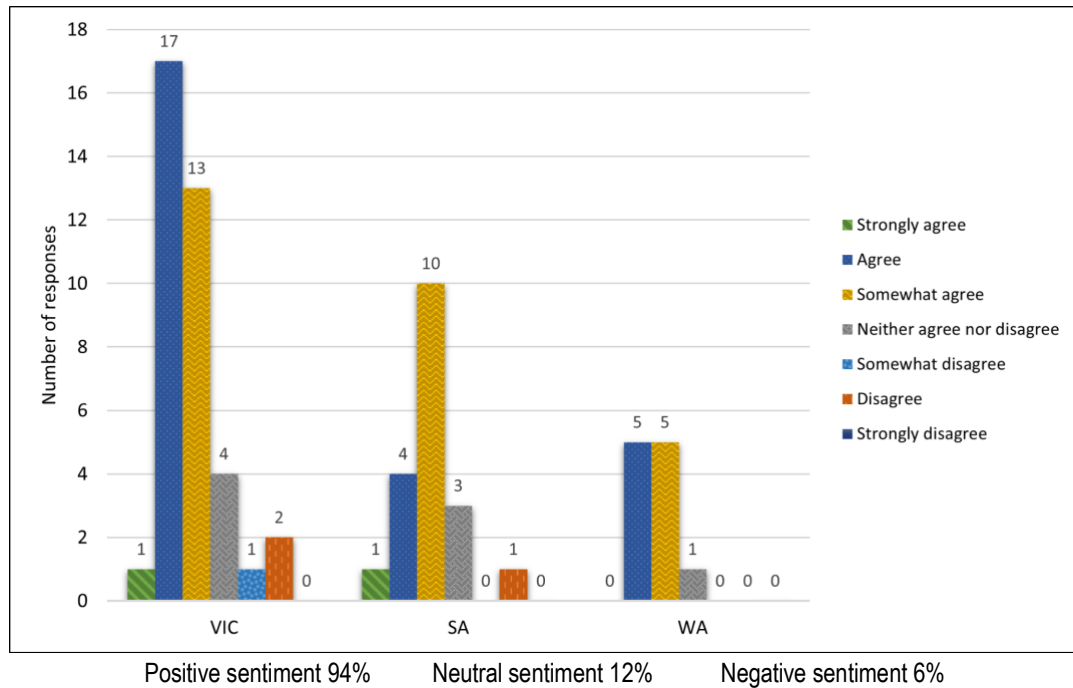
*It is important to assess the release of requested information that is sensitive within the bounds of the FOI Act – that is wherever appropriate public interest/access considerations are paramount, but not at the expense of impinging on an individual's right to privacy or safety. [VIC]*

*The conflicts between the rights of the public versus the rights of individuals and organisations can be a difficult balance to strike. [SA]*

*Oversight agencies need to understand that the ability to assess FOIs is becoming overly complicated and legalistic with ongoing precedents always set. It is hard to maintain the necessary level of expertise in a role that forms no more than 5% of an annual workload. Rural and regional council cannot and do not have dedicated resources. For all the want to provide and release information where multiple parties are involved it is incredibly complex to navigate. [SA]*

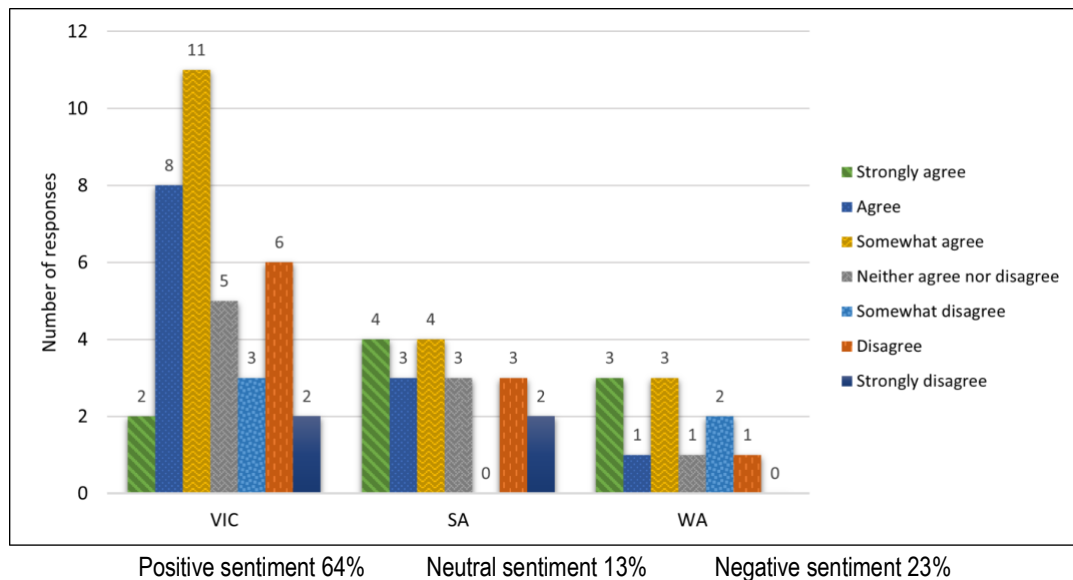
*I consider my most important duty is twofold – provide access to information wherever possible in the context of restricting access to sensitive information not suitable for release. [WA]*

**Figure 27: In my view, the current information access system functions well.**



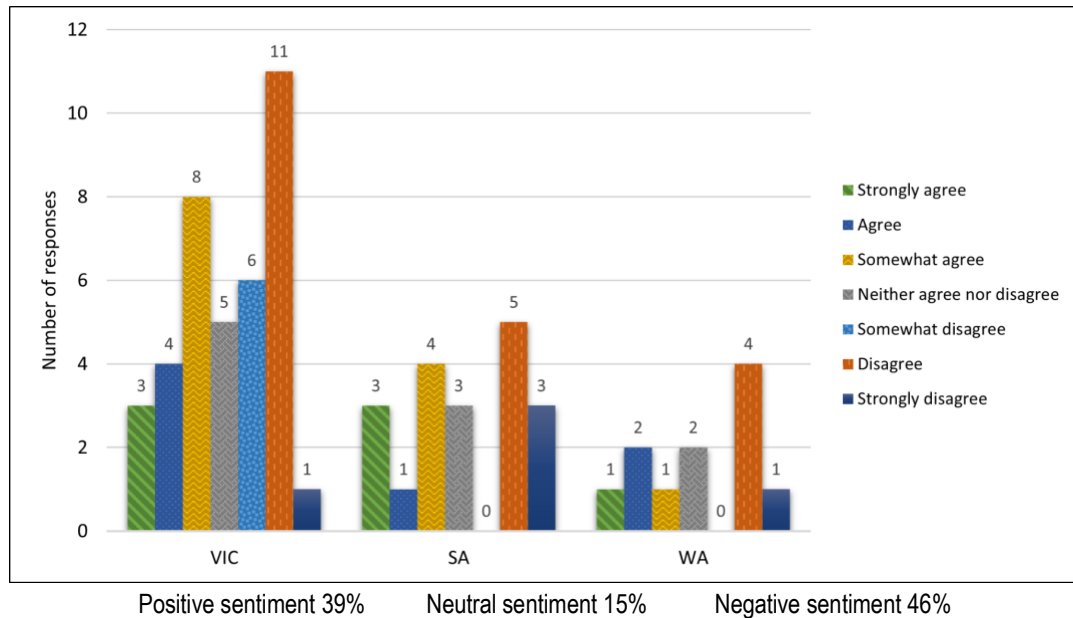
We know from previous studies that this view is not shared by most users of FOI (Lidberg, 2016).

**Figure 28: In my view, a lack of resources to administer the FOI Act in my agency is a significant impediment to a better functioning information access system**



These results indicate an understanding among executives that more funding is needed for FOI teams.

**Figure 29: In my view, a lack of understanding about the requirements of the FOI Act from senior personnel in my agency is a significant impediment to a better functioning information access system.**



This indicates that this is an area where Information Commissioners and ombudsmen could contribute to greater functionality by running professional development sessions for senior staff.

**Free-text section: Is there anything else you would like to add regarding the functioning of the current information access system in your state?**

*Current legislation is out of date and onerous for agencies to comply with. [VIC]*

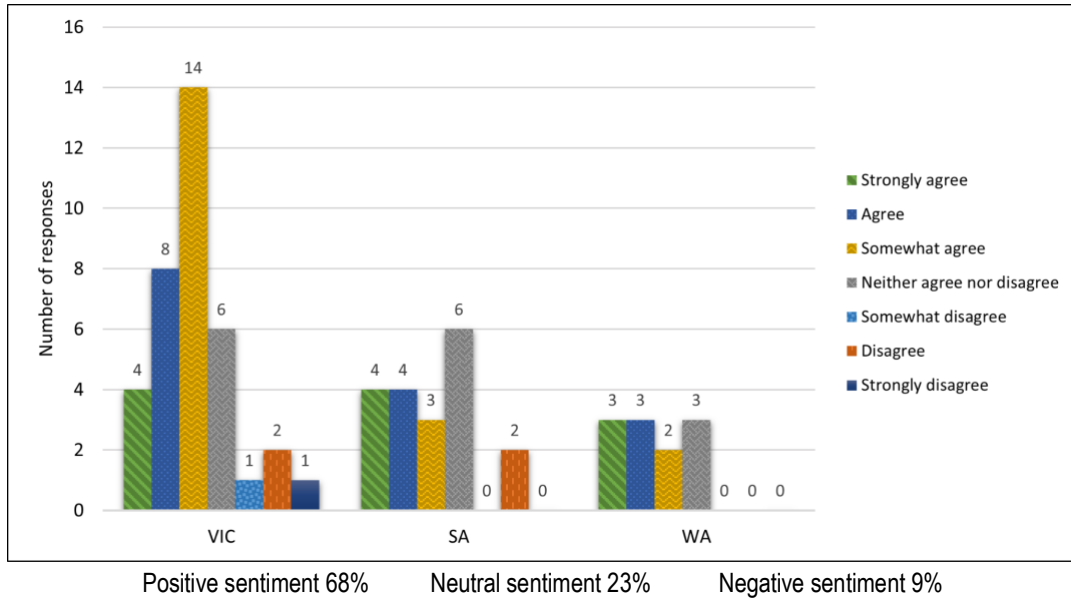
*Significant large quantities of hard copy records sitting in warehouses across Victoria costing thousands of dollars – need a statewide approach on reducing this – need to work with PROV. [VIC]*

*While highly supportive of the objectives of the Act, there seems to be little to discourage or manage those that use it to simply tie up the resources of the organisation because they have long-held gripes. These make up in the order of a third of our FOI requests. [SA]*

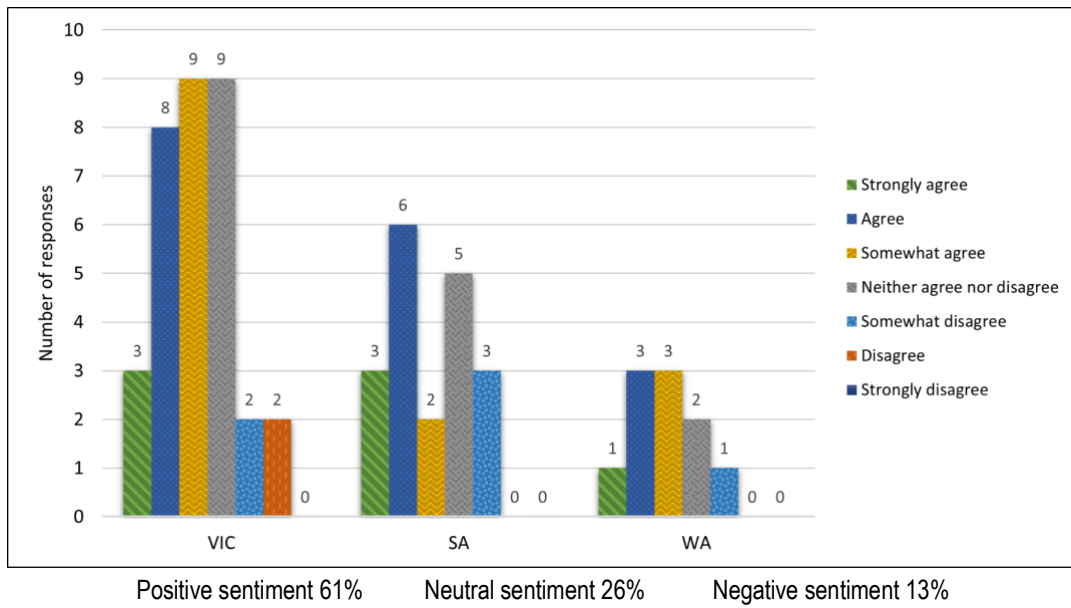
*The lack of resources is not necessarily the issue, the processes involved in retrieving information that may be historic in nature can be very time consuming. As technology is applied to current and aged records, easier and quicker information retrieval and sharing should be a reality. [WA]*

*Process is currently subject to overuse by applicants who use the system simply to find fault with individuals within an agency rather than material which is really in the public interest. [WA]*

**Figure 30: The information access system needs to be improved.**

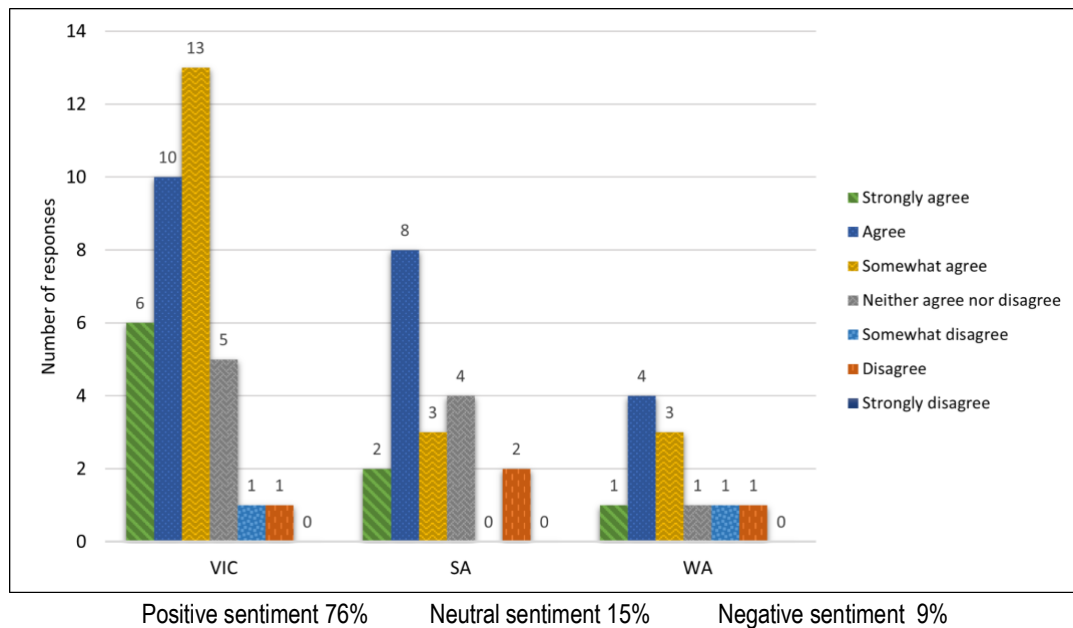


**Figure 31: An effective way to improve the information access system is by changing legislation**





**Figure 32: An effective way to improve the information access system is by changing culture and practice.**



It is worth noting here that the executives agree with the practitioners that culture change is more important than legislative change.

**Free-text section: Is there anything else you would like to add regarding improvements to the information access system in your state?**

*Over time, the Act has got ever more complex and ever more difficult to comply with – hardly conducive to efficiency or access. [VIC]*

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

*All FOI requests including from elected representatives need to be chargeable. I find it hard to understand why a member of the public is charged a fee, but an MP isn't. This would help resolve the vexatious use of FOI requests by some parties. Currently there is no cost applied to some FOI applications for the time and effort put in by staff. This should be equitable and not a cost borne by the taxpayer. [SA]*

*The public disclosure of emails has been detrimental to individuals and discouraged communication ... [SA]*

*The 45 days is often too tight – needs extending slightly. [WA]*

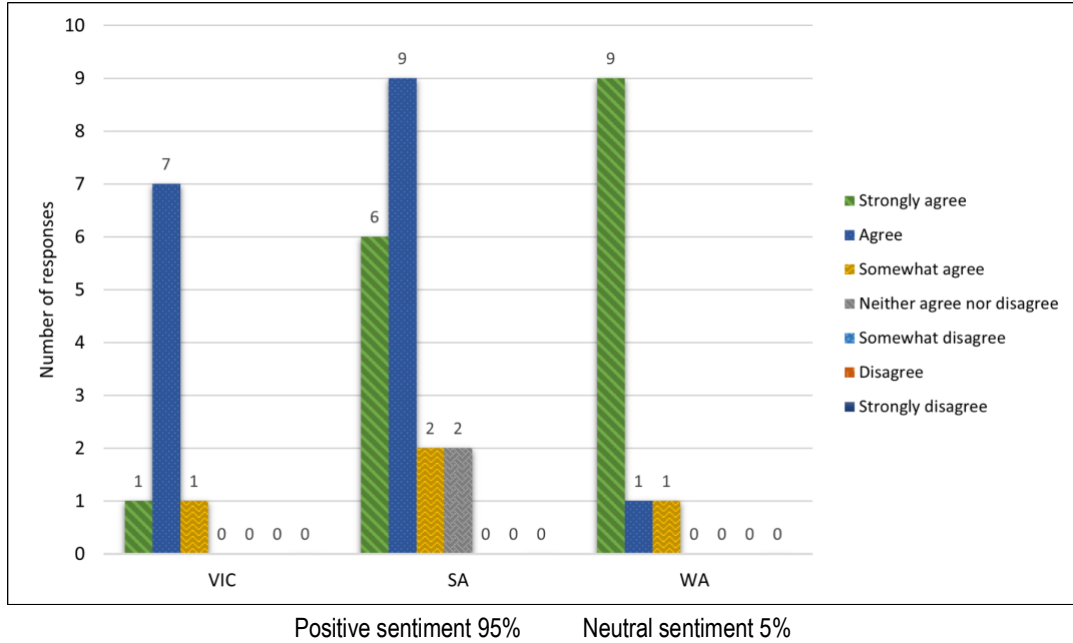
*Development of clear guidelines and case studies which provide interpretation of legislation and policy intent. [WA]*

*The fee structure needs to be reviewed to discourage fishing expeditions. [WA]*

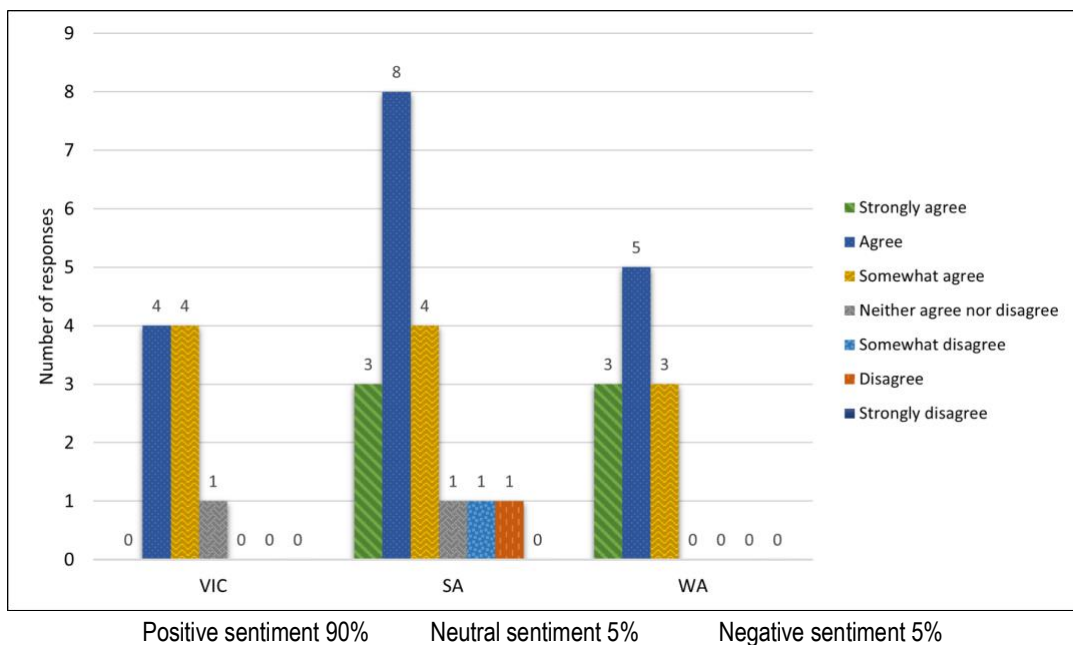
*Need to update the legislation to take into account the technology changes. Also need to address current gaps with the legislation; i.e. vexatious applications; having to do third-party consultation for what we deem to be prescribed details (and which can go into hundreds of staff for one application). [WA]*

Executives and principal officer survey: Records management

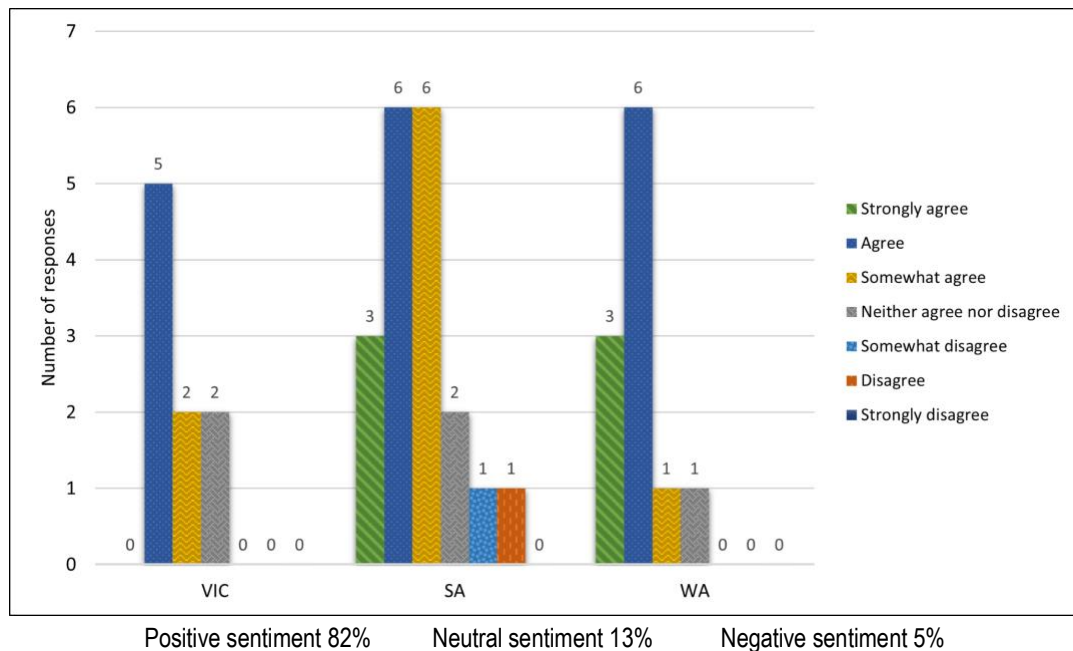
**Figure 33: A well-functioning records-management / record-keeping system promotes a positive attitude to upholding the objects and purpose of FOI.**



**Figure 34: My agency uses a records-management / record-keeping system that enables me to perform effectively my role in facilitating access to information on request under the FOI Act.**



**Figure 35: My agency uses a records-management / record-keeping system that enables me to perform effectively my role in facilitating proactive disclosure of information.**



It is worth noting here that while sentiment was generally positive, the comments below make clear that there is an awareness that RM issues make it more difficult for FOI laws to function efficiently.

**Free-text section: Is there anything that you would like to add regarding how records-management / record-keeping systems assist or hinder you in the effective performance of your FOI duties?**

*Functionally, record management and privacy roles are in separate areas but work closely together. [VIC]*

*Multiple systems and record types not stored centrally, which makes it difficult sometimes to find/access information. [VIC]*

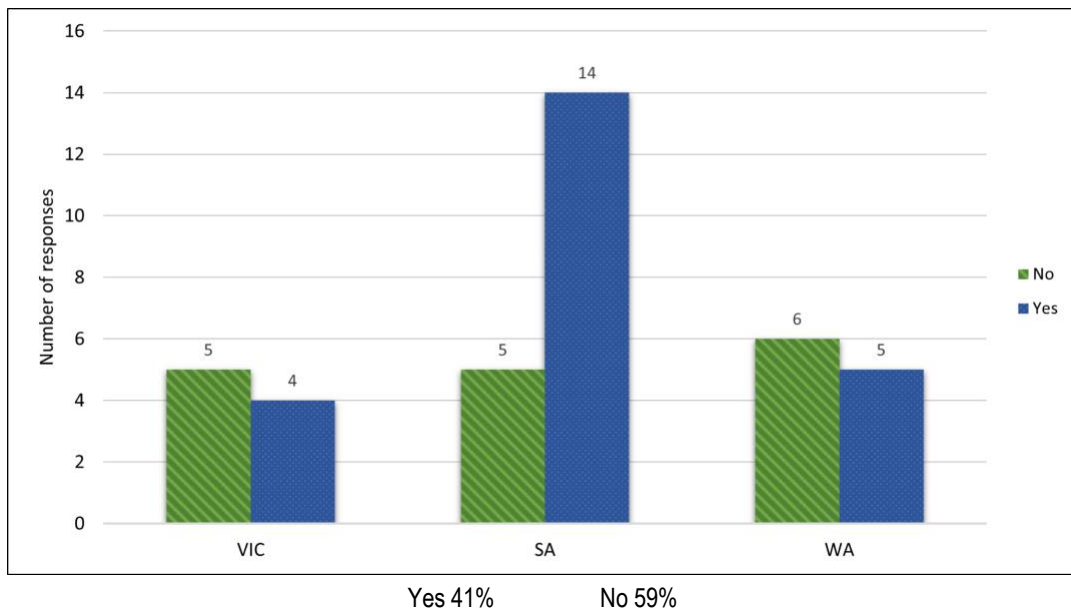
*Records management systems are an overhead on the business, however are needed to comply with legislative requirements. [SA]*

*At times historic records are difficult to find due to less comprehensive records having been kept and maintained. [SA]*

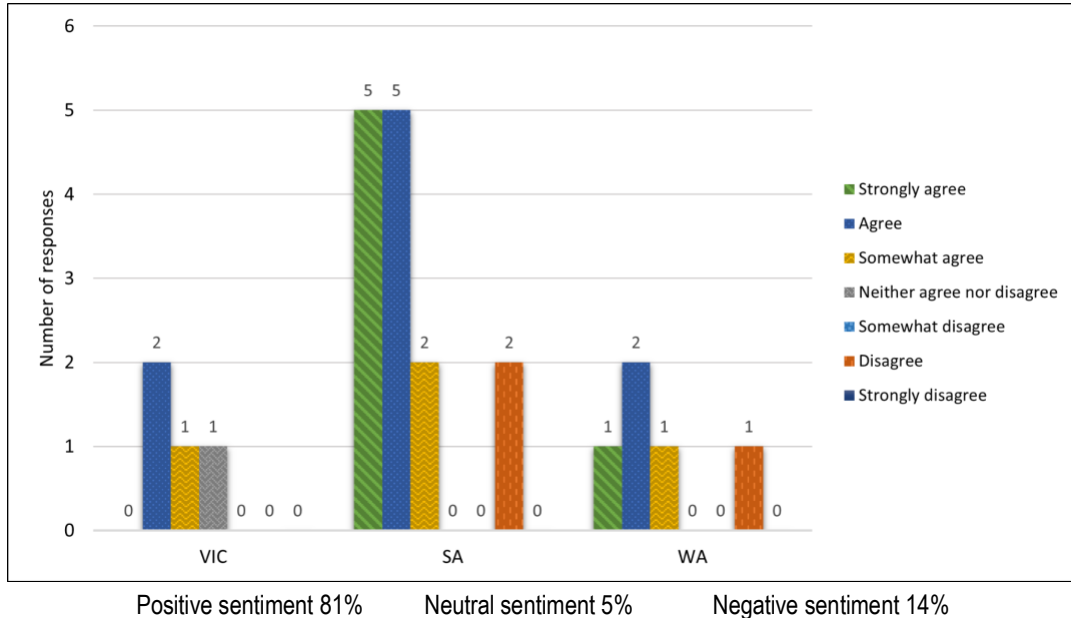
*Not all staff follow best practice record keeping; e.g. consistent naming, management of draft documents and documents created in error. This can cause delays in the FOI process. [WA]*

*The lack of integration between various systems makes it difficult to be confident all information is available in the first instance. [WA]*

**Figure 36: Does your agency utilise an information sensitivity classification system when records are created?**

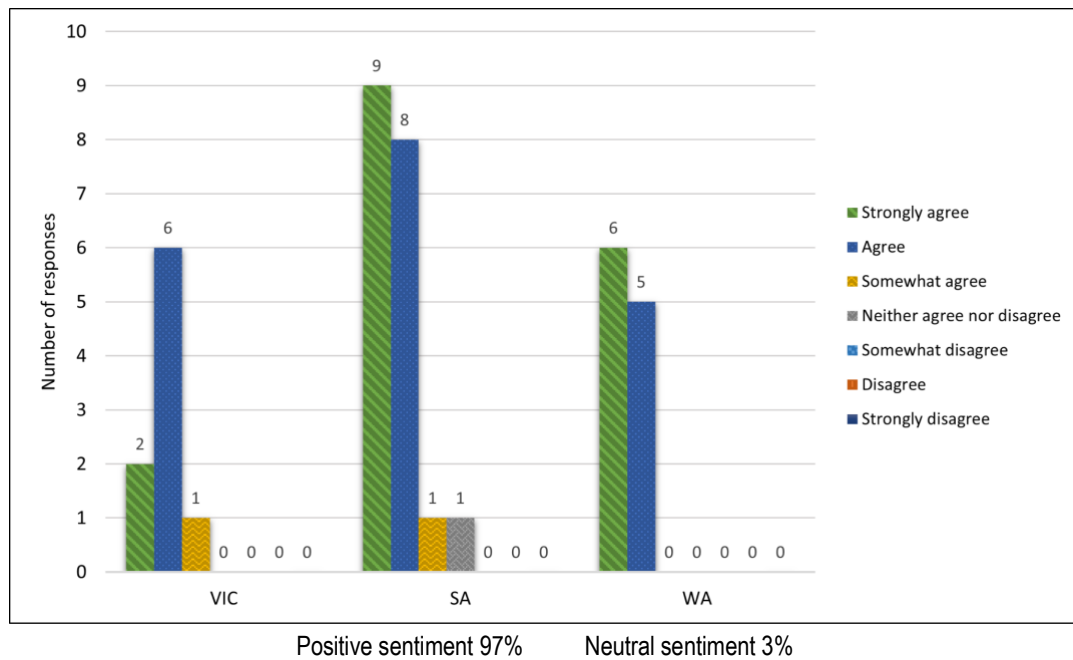


**Figure 37: The information sensitivity classification used at the time of the creation of records within my agency plays a role in my decision-making concerning access to those documents under the FOI Act.**



The responses to these questions suggest that the use of these systems is significantly more prevalent in South Australia, where they are also used more frequently as a basis for decision-making. Such systems have the potential to speed up the release of non-sensitive information, although they need to be treated with caution in respect of non-disclosure given that the sensitivity of documents may decrease with time.

**Figure 38: In my view technology has an important role to play in improving the effectiveness of the records-management / record-keeping system in my agency.**



**Free-text section: Is there anything you would like to add about specific technologies, e.g. technologies based on artificial intelligence, that could be used to improve records management / record-keeping systems?**

*Very difficult when thousands of records are in hard copy format – if they were able to be converted digitally that would make a difference but the volume is too high and the cost too prohibitive. [VIC]*

*AI will undoubtedly assist finding information in scope but not assist with judgement of individual documents. [SA]*

*Again there is only limited resourcing, therefore the application of technology is limited but every effort is made to comply with records laws and the importance they play in FOI. [SA]*

*It is currently a very manual and time-consuming activity – there are many aspects that could be assisted by technology. [WA]*

*Current process relies on users to make a conscious decision to register items. Systems should incorporate AI ability to ensure all records are automatically captured and is integrated with email systems. [WA]*

**Free-text section: Is there anything else you would like to add regarding the interrelationship between records-management / record-keeping systems and fulfilment of the objects and purpose of the FOI Act?**

*Excellent records management helps facilitate FOI searches and discovery and classification of documents. [SA]*

*As many FOI requests relate to very old matters, the electronic record-keeping system doesn't assist with those so it will likely be some time before technology will reduce the need for manual processing. [WA]*

*The reliance on manually searching for relevant records is fraught and improved records-keeping systems would greatly assist. [WA]*

## Government ministers

All state government ministers with portfolios (senior ministers) from Victoria (25), South Australia (15) and Western Australia (15) were invited multiple times to participate in the project – both by the project's lead research coordinators and each state's Information Commissioner / ombudsman. Response rates to the project were as follows:

VIC: 0 ministers

SA: 2 ministers responded to the survey and interviews

WA: 1 minister responded to the survey and interviews

The severe lack of survey responses from ministers across all three states (a mere three of the total 55 invited) made the miniscule responses we actually received for the survey component too insignificant to publish in this report, as any reporting would be neither statistically reliable nor valid. This was incredibly disappointing. However, one inference we might draw from the lack of responses is that government ministers care little for improving information access systems in their respective states.

## Focus groups and interviews

### Number of interviews conducted

The total number of interviews conducted across the project are as follows:

Victoria: 131 individuals interviewed across 38 agencies. This is a combination of OVIC 2021 interviews [83 individuals interviewed, pseudonyms A21–X21 and 1\_21 to 50\_21] and the ARC study [48 individuals interviewed pseudonyms A–AV]. Quotes pulled from the OVIC 2021 interviews have been given the suffix 21 to define them as interviews conducted during the 2021 OVIC commissioned report.

South Australia: 47 individuals interviewed across 26 agencies (this is not including State Records which would add 1 to each category). The 40 individuals interviewed independently were de-identified and only identified in this study by using the following pseudonyms: SA01–SA40. The focus groups are identified as FG01–FG03.

Western Australia: 79 individuals interviewed across 32 agencies. The 79 individuals interviewed were de-identified and only identified in this study by using the following pseudonyms: WA01–WA79.

To maintain the anonymity of the universities that participated in the study, all university interviewees are identified in this report by their state only.

Interviews and focus group responses are grouped under each question asked during the interviews. Answers from all three states are grouped together under each question to allow for comparisons and analysis.

Practitioners: Freedom of information

*What is the understanding among FOI practitioners (FOI officers and managers) of the purpose and functionality of the access to information systems?*

## **Victoria**

Interview participants demonstrated a superior level of knowledge and understanding regarding the purpose and functionality of the information access system and their role within it. Common terms used evoked themes of accountability, transparency and democratic access to information by members of the public.

*Well, it's to be as transparent as possible. You know, I think that's the overall purpose of it, is to be able to provide people with documentation when they want it, and for government agencies to be transparent and assist people with providing that information.*

Interview AS

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

Interview V21

Other interviewees pointed out other caveats while answering this question. Interviewee P21 stated the human right regarding access to information. Interviewees such as AA and AB also made mention of the 'reasonable cost to do so' when providing this service.

In short, interviewee H summarised this as follows:

*... to make as much information as possible available to the public. In the quickest time at the lowest cost.*

## **South Australia**

South Australian practitioners were well-versed in their role within the FOI system and understood the purpose and importance of the Act. As in Victoria, themes of accountability, transparency and allowing the public to access information were common.

*I would describe my role as, I guess, ensuring that the principles underpinning the FOI legislation are met. And to ensure information is provided properly and efficiently and that requests are responded to in accordance with the parameters that have been set by the applicant. Just to make sure that the whole process runs smoothly and that, you know, the goals of transparency, etc. are achieved.*

Interview SA08

## **Western Australia**



Interview participants in Western Australia demonstrated a good understanding of their role in the current FOI system and were clear on the objectives and themes of the FOI Act (WA) with terms such as 'transparency', 'accountability' and 'access' being used often to describe how the FOI Act is currently working. More often than not, the mention of the 'public' having access was also noted.

*The main goal is to provide the general public with as much information and transparency as possible.*

Interview WA01

*It's a concept allowing individuals and organisations to gain access to the state's [WA] and other organisations' information regarding the business of individuals.*

Interview WA12

*In particular, the Act itself talks about the objective ... by creating a general right of access to documents.*

Interview WA33

*It's for transparency and for the public, you know, accountability of the government and enabling the public to be informed.*

Interview WA35

*My interpretation of FOI is that it's providing access to information for transparency. So yeah, I think that the biggest one for me is accountability and transparency and making sure that we try to release as much as possible within the constraints of the Act.*

Interview WA62

### *How do FOI practitioners view/describe their roles within the information access system?*

#### **Victoria**

In Victoria, practitioners and managers were able to summarise their role at their agency fully and succinctly as well as how they saw their role within the state's information access system. Some interviewees made mention that other Victorian laws complement the Freedom of Information Act when carrying out their functions; for example, the Local Council Act and updated Environmental Protection Act make mention of information disclosure and sharing provisions. A number of practitioners and managers at local council agencies mentioned crossover of laws.

Some Victorian interviewees noticed a disparity between what their role was 'supposed' to be versus what their role was in reality because of severe time and agency resource constraints:

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

*a lot of intellectual leadership as well as all the supports that you would usually associate with being a manager.*

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

Interview V21

Some made mention regarding their role, and FOI as a concept, within businesses and organisations.

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

Interview X21

### *Describing themselves as an assessor of requests or facilitator of access to information*

#### **Victoria**

In Victoria, some interviewees, such as AA and AB, used the term 'facilitator' when asked to describe their role, without prompt from the interviewer. Overwhelmingly, practitioners and managers saw themselves as both facilitator and assessor, and were able to skilfully articulate why this was the case.

*All those words [assessor or facilitator], I think, apply one in one sense or another. So yes, people come to me to try to get access to documents. They come to me with requests under the Act. If I can give documents to a person without them having to make a formal request under the FOI Act, I absolutely do that.*

*But, you know, if a request is made formally under the FOI request, then my role does involve at one point in the process assessing those documents full disclosure in accordance with the provisions that might exempt documents. So I am an assessor in this part of the process.*

*Am I a gatekeeper? Well, in a sense that I'm also looking after the rights of the [agency] under the FOI Act, I suppose in that sense, I might be seen as a gatekeeper, but I'm not beholden to the dictates of the [agency] in that role. Yeah, I suppose I'm trusted to hold the keys to that gate, knowing that I'll apply the rules under the law appropriately and sensibly.*

Interview A

*I'm helping them get the information they need. But obviously, a large part of it is assessing it, too ... But usually I would start from the viewpoint of the public's information.*

Interview H

## South Australia

Overwhelmingly, practitioners saw themselves as both facilitator and assessor and were able to skilfully articulate why this was the case. However, managers often took on more of an assessor role or would look after the potentially more complex or contentious applications.

*Members of my team would actually make those determinations in assessing, you know, actually proactively processing those applications, assessing the documents and then making determinations.*

*So my role would only come into play if there are any particular issues that are, you know, whether there are any sticky issues in a matter.*

*And if I need legal advice or if there's a matter that goes on to the next level. So there's an internal review or there's an external review.*

Interview SA09

FOI practitioners who viewed themselves as taking on the role of 'facilitator' often spoke of the 'people management' nature of the role, often engaging with the FOI applicant and assisting them with their application or training other staff about FOI.

*We get a lot of general inquiries from people who may not even need to necessarily submit an FOI request, or they're just after information. They sometimes don't realise that that information could be provided to them outside of the FOI Act. So it's more than just providing documents under FOI. I think sometimes it's a general source of information for people to provide advice about where to go.*

Interview SA20

*We do still have staff members who are very reluctant to hand over information. And it's a constant, no, I wouldn't say a constant battle, but there are regular battles, you know, to try and explain the system.*

Interview SA15

## Western Australia

For practitioners in WA, the question of whether they would label themselves as assessors or facilitators in the FOI space came with some introspection. For many who found themselves in entry-level positions, their main role was the collation of information, with middle or higher management making decisions about what would be redacted or released to applicants.

*We are very much here to facilitate ... I always start with the point that, you know, we are going to try to grant access in some way or other.*

Interview WA49

*I'd say it depends on the nature of the application. If it is from the person, then it's a facilitation because you know that it's likely to have issues in terms of the scope overlapping. Whereas if it's the, unfortunately rare, instance of a person whose interest is in a media enquiry it is likely to be more fairly scoped. So the media enquiries could have far worse reputational ramifications, but they tend to be clear, they tend to be concise and the FOI Act has a straightforward application. So those ones are facilitated. Then you have those problematic applicants. Then there is an extent to which the internal consultation process where you would be reverting to the same number of internal stakeholders and*

*asking the same questions over and over or slightly different formations from the essence of the same question does consume resources just in a futile application. And it is somewhat an assessment role to reduce the impact on potentially affected areas.*

Interview WA20

For those practitioners who were in middle management and deemed their work to include the 'assessing' role, participants mentioned that they followed the 'rules' of the WA FOI Act. For a number of agencies, this 'assessing' role was a 'team' decision, rather than relying solely on one person to shoulder the responsibility. This was particularly apparent in agencies that were subject to contentious FOI requests or those subject to 'in the public interest' FOI requests from media organisations. For smaller agencies, the role of 'facilitator' and 'assessor' was a combined role, forcing participants to wear different 'hats'. In some of these instances, participants saw this as problematic because it meant that an individual was collecting, collating and analysing documents for FOI applications, and their sole understanding and experience with the Act could colour their decision on what was delivered to the applicant.

*At the end of the day, we've got to read the policy in the act to ensure that it's correct.*

Interview WA64

*The due diligence is the full check and the full information got forwarded on when it is sensitive. So when I think there are parameters around why that information shouldn't be shared, I will put that in an email to the FOI Coordinator and it's usually for the deliberative process of the board ... that's the only caveat that I ever use.*

Interview WA29

*So anything contentious, anything that has a media interest, anything that's a high profile case ... And I mean, that's a risk to the organisation.*

Interview WA68

*As a decision maker, I do put on a slightly different hat on purpose and say, we need to provide this document, but for all the other things that may apply and that involves doing the appropriate consultations, making sure that you understand the exemptions, the public interest tests ... And then if your decision is, yes, we're going to be releasing these documents that are potentially sensitive, then there's other ways of informing the organisation about how to manage those risks. But I wouldn't say for me that I think of the risk first. It's more looking at this as a decision by kind of seeing whether these documents can be released and if not, why not?*

Interview WA21

*But there is the theme of this, this was in the past with the managers of corporate records through the virtue of ease of information, discovery, because it's a person who works in a position of trust and has good access to a lot of things. But there isn't a dedicated team, and to this day, there still isn't. There should absolutely be a team and potentially with different lines of management to what we have had in the past. There has never been a central dedicated FOI coordinator or otherwise staff person. It has always been incidental and accidental.*

Interview WA12

In Western Australia, several interview participants suggested that the public's understanding of the FOI Act, particularly around what information the public can actually request, causes a number of issues, from an expression of disappointment regarding what the applicant has received to being subject to abuse or potentially threatening behaviour from the applicant towards the FOI practitioner.

*Most people are, you know, might be surprised. But I mean, some people are kind of like, 'oh, well, it's the government, I was expecting to wait.'*

Interview WA46

*And again, people can also utilise their internal review rights as well. So we are open and transparent regarding that. Majority of people agree. They [applicants] do get frustrated and you can understand that.*

Interview WA24

*People struggle with that difference; it's not designed for the release of private information.*

Interview WA36

*... with all the rubbish that we go through, I think there's a general feeling that we're not transparent.*

Interview WA04

*For example, me being a new FOI coordinator, [the applicant] wanted to know my qualifications.*

Interview WA56

*And it has escalated to a point where, you know, these people ... they are so angry with [the agency] that they just want to create havoc where they land with the scattergun, you know, verbal, vitriolic emails. They just want to create havoc and then won't be happy until [the agency] burns to a crisp.*

Interview WA44

*But it was the same for the fact that we were having to deal with a person [an applicant] who was someone who could present it and it could have created at least a perception or concern to act in a threatening manner towards two staff.*

Interview WA20

*You have to have thick skin to work in FOI. And then they [new employees in the FOI space] come, they come over and they're like, 'Oh, this isn't what I expected', because it's a high volume, high stress area. And I wouldn't say that there's rewards, because more often you get told [from applicants] that 'I hope you die of cancer.'*

Interview WA25

### *Being an FOI practitioner: Multiple hats and stressors*

*... the FOI clocks don't stop. So how do you ever take a break?*

Interview AP, AQ

There appears to be no sector or metro/regional divide when it comes to the role of an FOI practitioner; this depended more on the size of the agency and their intake of FOI applications and

requests. It was noted that the size of the agency (i.e. total number of staff) did not directly equate to the number of people able to be utilised in an FOI capacity, nor did it dictate the amount of resources or spending dedicated to FOI at that agency.

### **Multiple ‘hats’**

It was identified that, in many cases, being in charge of, or in the position of, ‘freedom of information officer’ is not the person’s sole job. Usually, this individual has additional responsibilities or job requirements (e.g. paralegal *and* FOI officer) that they must fulfil. In some cases, the FOI officer is a part-time employee. This means that, sometimes, especially when agencies are experiencing a rush of, or rise in, applications, the FOI officer must decide which job responsibilities **to drop (their FOI work or their other agency work) in order to fulfil other responsibilities.**

### **Limited numbers of staff**

If there are limited numbers of FOI staff at an agency (i.e. a single staff member, or an imbalance of staff versus requests), the following issues may occur:

1. Staff cannot, or do not, take leave. This is because there are always deadlines looming for applications and a limited time within which application emails must be acknowledged and responded to. This timeframe is irrespective of public holidays, weekends or other temporary closures or shutdown periods the agency may experience (i.e. seasonal holidays). Additionally, some practitioners stated that in their agencies, no other persons could take on the role to allow for the practitioner’s sick days or leave.
2. If the agency has not balanced the number of FOI staff against the number of received requests, FOI staff are forever in ‘siege mode’, as described by V21, and prone to burnout.
3. No time for training, research or bettering of the staff and wider agency via FOI education.

These above factors appear to be widespread across the sectors; however, from the interviews conducted, government departments do not appear to experience these issues.

These above issues – or due to reaching the age of retirement – mean seasoned FOI practitioners leave the industry. Along with them goes the intricate, nuanced knowledge base of the FOI industry and any agency or industry specifics they have accumulated. This knowledge rarely gets replaced when hiring or onboarding new FOI staff.

In addition, newly hired and onboarded FOI staff may experience a ‘culture shock’ when they realise just how much prior knowledge they are assumed to already possess – both in terms of the overall sector and the specifics of whichever agency has hired them. They are thrown in the proverbial ‘deep end’ and expected to swim leagues. As such, interviewees commented on the high turnover rate of FOI staff.

*So, it's very pressured work because you've got impossible deadlines to meet and the same things you hear from all the offices and local councils that nobody can take leave. That people plan leave and then just have to cancel it because you've got these deadlines. You have to make up the time.*

*I feel like the Act in terms of like the intention and the whole thing is really good. But I feel like I have no meaning to ... I don't know if they realise it but they've kind of made the culture for the processing office not great.*

Interview AP, AQ

## **South Australia**

Staffing levels were also mentioned as a problem for South Australian practitioners; this was particularly evident in the health sector.

*It took two years for us to get the extra staff and we needed to fight tooth and nail.*

Interview FG01

*I think we either need more staff or more proactive release.*

Interview SA35

## *FOI training*

### **South Australia**

In South Australia, the current training requirements for FOI officers is three days, taught remotely since the pandemic.

Practitioners often referenced this perceived lack of training as a component in current staffing issues. Typically, new practitioners join an FOI team, become overwhelmed and then quit – leaving the original team still struggling. Existing practitioners spoke of being too task-loaded to help new staff members with training, and also struggled under the mental weight of feeling that they are 'indispensable'.

*But I'm not always going to be here, and I sometimes worry, you know, what happens? Have I upskilled people enough that when I take a job somewhere else or find another opportunity, are they able to survive and continue?*

Interview SA12

These practitioner conditions and wider issues with FOI staffing may not be limited to state-based FOI systems, as the Commonwealth FOI system appears to have staffing and retainment issues as well (Shields & Browne, 2023, pp. 10–11).

### **Western Australia**

In WA, the theme of training was raised in the majority of interviews with participants, usually around answering questions about staffing of FOI departments, high turnover of staff and the (limited) extent to which practitioners suggested FOI was important for management. In most cases, practitioners expressed that training in FOI was not deemed 'important' by management, with many mentioning that



it was no longer an explicit requirement for new staff inductions, along with more training being required in learning and development.

*So, the advice that I've received is that there's, there's already seven mandatory courses and they don't want to increase the mandatory courses. And I've kind of communicated more with upper management the concerns about not having it as part of the induction.*

Interview WA67

*We only get this two-day course. It's an online course through FOI, but I think there could be more with all the access and everything that we got from staff if we had a little bit more in-depth training. Yeah, but learning and development ... Yes, there's room for that.*

Interview WA64

For many of the participants, the lack of further career development and training meant that they had to learn 'on the job', and this, coupled with staff turnover and a lack of specific FOI training for their sector, meant they felt overwhelmed at times.

*I think there is a lack of training and specialisation in our workforce.*

Interview WA62

*Staff, one of the big issues ... essentially I believe that there is a push and it is coming very, very soon and very, very fast, and it will be a point where the public will be like, 'Hey, I have access, I have the ability to request this', and we're getting a trickle in now, but it's going increase and they are going to be asking for more and more public records to be retrieved, more information to be provided. There will be that general push ... we are understaffed and overworked and underfunded. And when push comes to shove and when we have legislative requirements that are going to ask us and require us to answer these questions, to answer these queries, to provide that information, we don't have the resources to provide it.*

Interview WA56

### *Proactive release*

#### **Victoria**

In Victoria, opinions and feedback regarding proactive release varied. It was clear that some practitioners and agencies had a clear grasp as to how proactive release worked for their agency, while others remained confused or unsure.

*Obviously, we've got the protections under the Act. So, if it can be released, we will. But if not, we will process it under the Act.*

Interview P

*[Proactive release is] confused. I think nobody seems to know what's okay to release outside [of FOI] and what's not. I've had, you know, some say, you know, it's purely things like that you would put on your website, the things that, you know, things like that. Others sort of suggest, well, you know, if there's nothing really sensitive about the document, why can't we just release it? Or if it's that person's*

*information, why can't we just release it? Why would they have to – why do they have to jump through hoops if it's something simple that's just theirs? And I think there's a lot of confusion around that. I'm confused about that.*

Interview AA

Proactive release was found to be understood and utilised differently according to specific sectors and states, as outlined further below.

### **South Australia**

Proactive release seems to be more widely encouraged in local government, with councils often putting documents up on their website if they are of public interest or if they received requests for the same information from multiple applicants.

*Often the things that are requested from members of the media. So, elected members' expenses, that's all provided online on a six-monthly basis so that people can access that information. They don't need to put in an FOI request for that type of information. Planning and development, some of the stuff that is requested under FOI is already available. And I think it has to be made available under the PDI Act (Planning, Development and Infrastructure) anyway. However, it's just more accessible than it used to be. So that's helpful.*

Interview SA15

However, in other sectors, proactive release is often in the 'too hard basket'. Particularly for FOI Officers who are already task-loaded, proactive release was seen as something additional that would add to their to-do list. Hesitancy around proactive release was also often correlated with a culture of fear around releasing the 'wrong thing'.

### **Western Australia**

For many practitioners in WA, the idea and/or application of proactive release was a welcome addition because, in some sectors, it has reduced the number of FOI applications.

*Our agency does have, I suppose, information release outside of the FOI Act. We have a number of tailored products specifically for specific purposes and then obviously information release that happens at officer level across the agency as well.*

Interview WA74

A number of interview participants also said that they felt there had been an increase in FOI requests because the public was more aware of their rights to access information due to media coverage. This in turn pushed some agencies to think about more proactive release.

*I think there's an increased awareness of people's right to access information. I also think the term 'freedom of information' is not useful because of the word 'freedom'; there are limitations within the legislation. So it doesn't mean you can just have it. But I think when people hear 'freedom of information', they think that means 'this is a free right to access information'. So that doesn't help. It's*

*in the media more, you know, just with technology and people having access to information on the web easier; they're more aware of their rights.*

Interview WA75

*I think it's more linked to a sort of prevailing rise that seems to be rising within basically our societal culture, which is that state-led state bodies and governments actually can be held accountable for their actions. And I think that across the board, particularly where people are alerted to rights that they actually do have, I think the increased knowledge is starting to build of knowing that, 'Hey, this is a thing that I can do.' So I can seek justice, that I can seek levels of accountability that would never usually normally not be provided by governing bodies or state government organisations. And I can actually hold them accountable to that. And in my honest opinion, I think that's a great thing. I think that we should be like if the public is only starting to realise that, you know, that they actually have the ability to call up state organisations to ask for information, particularly not only just about themselves, but they believe projects or policies that they might have concern with and they want to get the sort of background information for them. I'm absolutely all for it. So if they want to go ahead and make those requests, I can absolutely do everything I can to try and answer.*

Interview WA56

In instances where agencies are being confronted by the media to release information about a contentious issue, many participants said that they worked within their teams to try and come up with different options that can be offered outside of the FOI space.

*We always try to offer an alternative to release outside of FOI, which we've done a few times. I've tried to think outside the box sometimes just to open up different avenues.*

Interview WA74

For some agencies, while the idea of proactive release sounded great in theory, the practical applications left them feeling that the agency could be held accountable or liable for legal action if the proactively released information was not part of a pre-approved package by the agency or had little to no risk assessment attached to it.

*Personally, I would be concerned because I'm just thinking about the kinds of information [the agency deals with]. If it's people who want to find their own information, just their own information, then absolutely, I agree taking a proactive stance is good but at the moment, if you start involving other people, just give the kind of information that [the agency] works with, I would definitely want to see how it's [if it was added to the Act] worded.*

Interview WA73

In addition, because of the lack of a Privacy Act in WA, some practitioners felt it was a dangerous area to become involved with.

*I think it's a bit dangerous to have a proactive release with us because we might be thinking we are releasing something with good intentions. But we could be interjecting and releasing someone else's personal information.*

Interview WA68

Following an initial consultation period in late 2019, the WA Government, under former Premier Mark McGowan, announced in December 2022 that they were beginning to draft new Privacy and Responsible Information Sharing (PRIS) legislation to reform personal privacy protections, as well as reforming the accountability of information sharing with government. While the Australian Government's Privacy Act 1988 (Cth)<sup>1</sup> will continue to apply, this new legislation is designed to provide Western Australians with more control over their personal privacy and promotes responsible sharing of information through seven areas of reform.<sup>2</sup>

Proactive release products have been a work in progress for many sectors in WA, with many of these products reducing the load on FOI teams. But for others, the nature of their agency meant that proactive or informal release of information was more of a pipe dream.

*So, we have information products outside of freedom of information. And many, many years ago, every Tom, Dick and Harry was writing into freedom information to get access to files. So, we created a product outside the Act.*

Interview WA69

*We are doing it as much as possible. But I think in our area, in the type of records and the type of information we hold, it means it is not necessarily easily achievable in all instances.*

Interview WA25

*I worked at a place previously and they had other information release products outside of FOIs, which was really handy because it was a simple process for you to get exactly what you're looking for ... So yeah, I find that I'm kind of trapped here a little bit at times. Yeah, a bit of a challenge.*

Interview WA34

### NDIS and health agencies in SA

FOI practitioners and managers working in the health sector often mentioned the impact of NDIS on FOI. FOI officers spoke of large FOI requests that take significantly longer to process than 'standard' FOI applications.

*You know, they need this stuff to apply for the NDIS or, you know, update their funding or whatever.*

Interview SA21

*Like dealing with consumers and helping them out, making sure they've got what they need to get their NDIS applications in.*

Interview SA12

*NDIS is another one, you know, the patient is needing their whole medical record to prove that they have a disability, you know, compared to what it used to be like, back in the day where they just*

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<sup>1</sup> <https://www.legislation.gov.au/Details/C2023C00347>

<sup>2</sup> <https://www.wa.gov.au/government/publications/privacy-and-responsible-information-sharing-fact-sheet#:~:text=The%20WA%20Government%20is%20drafting,of%20information%20sharing%20within%20government>

*needed a letter from their specialist or a GP, you know. NDIS has its own practitioners who are making these assessments. So that is impacting on our demand.*

Interview SA29

While one practitioner did confirm that NDIS do not actually require every single document in a patient's medical file, their case worker/assessor would often tell them they did. In South Australia, there appears to be an ongoing miscommunication between the NDIS and its clients that is leading FOI practitioners to become overwhelmed trying to source patients' entire medical histories.

*So, I think you're saying that NDIS patients may need that whole record, but your average Joe Blow probably doesn't?*

*Well, no, NDIS don't need everything. So I have had a discussion with the NDIS. And that's something that they need to teach their patients as well. This is what we need, you know, summaries letters or things like that, you know, we don't need your whole medical record. It's too broad.*

Interview SA14

## Health agencies

### Victoria

In Victoria, feedback from interviewed health agencies found proactive release was being utilised when by patients seeking to access their patient discharge summaries, and that triage and other patient-facing personnel in the sector were educated on this matter. From the feedback and statements received from related FOI practitioners, it appeared this was operating well.

However, for obvious reasons, some health agencies, by the very nature of their practice, information gathering and storing, found it hard to make further efforts to release information proactively without breaching the confidentiality of clients, staff and those who work or volunteer for them.

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

Interview 24.21

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

Interview H21

### South Australia

Staffing remains an ongoing issue; a situation only exacerbated by COVID-19. Local health networks that cover major metropolitan hospitals appear to bear the brunt of FOI applications. NDIS emerged as

a major stressor for FOI practitioners; however, this was seemingly due to a misunderstanding between the NDIS and its clients about what is required for their application.

Health FOI practitioners also spoke about the overlapping Acts they have to navigate including those pertaining to mental health, child safety and Aboriginal health care as well as laws around mandatory notification. Navigating these as well as the FOI Act was often a barrier for FOI practitioners attempting to meet the 30-day deadline.

*We don't have any legal training or anything like that, so sometimes we have to consult with other agencies to find out which way we have to go about things. So it sort of can be time-consuming and eat into the time of getting the information out there.*

Interview FG02

Interestingly, health FOI practitioners noted a significant increase in public interest for historic records, or applicants seeking information on their parents or other deceased relatives. Some practitioners attributed this to an increased interest in family history and websites like ancestry.com.

*But I am finding as time goes on there's a lot of people who want records of their own birth or their parents' record file. So we are starting to find, there are greater requests for the historic records.*

Interview SA12

## **Western Australia**

Participant feedback from interviewed agencies within WA health were circumspect on their sector within the current FOI parameters. While many mentioned being hamstrung and delayed by what they felt were 'outdated' requirements to releasing information – for example, the Consulting Third Parties<sup>3</sup> (Section 32 and 33 of the WA FOI Act) – they also mentioned issues related to under-staffing, a lack of standardised FOI structures across metropolitan and regional areas and acknowledgement that public education regarding what can be accessed by an individual in regards to their or someone else's health, as well as needing to access several systems to facilitate an FOI request in Western Australia.

*Dealing with that information requires more time to be spent looking at what it is that the applicant requires finding the information and then seeing whether or not you need to have third party consultation or, you know, whether or not it's exempt information.*

Interview WA25

*The patient's record at the end of the day ... is wholly owned by the state government. And that is why we need to make sure we comply with everything. It's not even though the information is about the patient, the patient doesn't own all that information because of the third party content within the patient record as well. Those need to be considered with any release of information. Even with the GP, you need to consider that because GPs are really happy just to print something out and give it to the patient, so they'd be aware of that. So that's what I would think.*

Interview WA66

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<sup>3</sup> <https://www.oic.wa.gov.au/en-au/FA008>

*But for patient information, I think it's education [that is needed] to interpret all their own information. And why FOI enables them to seek further information.*

Interview WA65

*There are multiple ways of being able to get your information, depending on what kind of information you require and the process. The core process is the same, but every region has a different system ... if someone has moved from the metro area, that process could be different to what is in the regional areas. There's no overarching process across the state. So that's what I mean in regards to it [the FOI process] being a broken system.*

Interview WA11

### *Universities: On the cusp of public and private entity*

It was revealed in interviews that universities possess a unique challenge when assessing what information can be made public or revealed through FOI.

*We often have a conversation about are we really a government body or not? Yes, we are established under an act of parliament and yes, we are an agency. We fall under the Act, but we have less and less government funding over the years. And so we're having to try and we have to build. I mean, I get this all the time when people try to access council papers and we actually apply all the exemptions around, you know, trade secrets.*

*... because a lot of it is so confidential and it's commercial and where universities are having to generate their own revenue now more and more and more like a commercial entity. And so we can't disclose ...*

*That's where we draw the line in the sand because we start to ask about more detailed personal remuneration, and it makes it really difficult for us to be competitive in the sector.*

UNI<sup>4</sup>

Agencies in this sector attempt to provide the public with information (i.e. salary brackets of professionals) as proactive release (e.g. in annual reports) while also reserving specifics (i.e. exact salary numbers) under commercial confidence. Unique as they are, straddling the private and public sector can lead to uncomfortable FOI requests regarding senior executives.

*So I would put it directly to [university department responsible for FOI]. So there are certain areas to also report to them that we would have assumed would take more proactive applications. And they've actually withdrawn a little bit from actually publishing than they used to publish. I think it's a little bit of risk aversion. I also think there may be a little bit of risk aversion and a little bit of resource evasion, so to speak.*

UNI

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<sup>4</sup> Given the low number of universities participating, we could not guarantee anonymity if we identified which state the interview quote was taken from; hence the attribution UNI and no VIC, SA or WA.



*The thing is that I think the underlying premise here is this is not a choice we have. We've got a legislative obligation to process these applications and release information if it's appropriate to do so under the Act.*

*However, we also work as part of a business, so we do have to manage those relationships. So if it's a particularly sensitive matter or it's a matter that may involve the senior executive, for instance, say, for instance, that we've had a recent matter where our senior executive's emails were requested. And that does happen more often than you would want it to happen. I think those are tricky.*

*It [the current FOI Act] is not sufficiently nuanced to prevent abuse of the legislation, and it tends to be those who are aggrieved or have a particular grievance with the public agency who are using the processes under the FOI Act to require the agency to respond. And as it is not actually documentation, which they are assessing, but instead to challenge a decision of the agency, and that's something that is pervasive. And that means that there are a number of other applicants under the FOI Act who are disproportionately consuming the resources, which doesn't reflect the intention of the Act, which is to simply provide information. It is how it's being used that it means that they, for instance, are lodging numerous FOI applications, one after the other for overlapping subject matter. And under the existing legislation, we need to continue to respond to each of them, even if the response is something that confirms that there are some bits that are out of scope or some bits that compels the university to respond in each instance.*

UNI

Universities exist in a 'grey area' between private and public.

*We are a government institution in one way because we get government funding and things like that. But then also with private interests and business interests.*

*I know that, for example, the VCs of all the three unis had their salaries published in the paper and there was commentary on that.*

UNI

FOI officers are often embedded within the legal team and have legal training. They often wear 'multiple hats', with FOI being just one role they hold. Those who were not trained in legalese mentioned that it felt 'overwhelming' when dealing with some applications and how they relate to specific parts of the state's FOI Acts that come through, and suggested it would be helpful for the state FOI Commissioner's Office to develop education to dispel jargon and 'bureaucratse'.

*I'm an FOI officer, I am also a lawyer and work as part of the legal team.*

UNI

*You do sometimes find it very confusing and you have to read it like five times to actually understand what [the Act] is actually telling you ... that it's sort of very legalese and that some areas of the Act could be taken in several different contexts. More training or a manual that kind of went through it a bit more. Easier terminology and with some examples.*

UNI

Regarding university records management, it was noted that 'clunky' RM systems are present in some universities. However, FOI practitioners spoken with were not dealing with a huge number of applications each year, so this was not seen as a major barrier.

*It's not a great system and I think many universities will have a similar problem, unfortunately. As times change, we sort of try to bring more progressive systems in place. And I mean, we've got a couple of new systems that are a lot more user-friendly. But because we've got this records management framework, it's got to go back into that main system.*

*So look, that system in itself isn't very good. But, you know, you just learn to work with it and that's just what we've got, I suppose.*

UNI

Based on the interview findings above, it is clear that public universities are unclear regarding the extent to which they are, or are not, a public agency. This appears to exert a significant impact on the FOI practitioners' attitudes towards implementing FOI. It seems the Information Commissioners and ombudsmen have a challenge to clarify the obligations of public universities and offer professional development for their FOI officers.

### *Local governments: Different services; no consensus*

#### **Victoria**

In Victoria, local governments were keenly aware of what they had to release as prescribed under the updated Local Council Act. Other agencies identified where the bulk of their applications were coming from and modified their applications to accommodate proactive document release.

*About 50% of applications were about planning related matters and that's dropped down quite significantly since we've taken on that proactive program and that's because now we can bundle it into a standard application for planning documents where you pay a fee and you get access to the planning permit or whatever. They've just basically included the delegate report in that bundle of documents. And so that's really great because people want access to that delegate report available. You just pay the administrative fees and you go and it's provided to them.*

Interview AR

The issues that were raised in the interviews, however, extended beyond this scope. Some local government practitioners pointed out that their councils offered a myriad of programs and services for their ratepayers, such as maternal health, libraries and family violence programs, as well as arts and theatre programs. As each local government that participated in this study had its own unique blend of programs, organisations and policies, some participants expressed the view that it was hard for practitioners to find and utilise OVIC's decisions and best practices to assist them in decision-making regarding the proactive release of these documents.

Participants stated that local governments were unique in this regard, as they felt agencies in other sectors such as health, statutory agencies and state government departments had better-defined rules and guidelines regarding which documents, policies and datasets could be released outside of the Act. As such, they felt more help from OVIC regarding local government's unique position would be very much welcomed.

#### **South Australia**

Councils in South Australia were overwhelmingly the most enthusiastic about FOI and their role.

*We're pretty well empowered in our organisation. We've got the delegations, we've done the training.*

Interview SA07

FOI practitioners working in local government had also formed a solid community among themselves. They have a messaging 'group chat' where practitioners ask each other for advice regarding contentious applications and, prior to COVID, practitioners would also meet socially.

However, many FOI practitioners in this sector noted an added layer of concern as people are living and working within the same community. These practitioners often have to deal with neighbourhood quarrels and disputes.

One FOI officer spoke about an ongoing FOI request involving neighbours.

*Our FOI officer refused to give out the information, [they] didn't feel comfortable. That decision was overturned. And within a week or two, the neighbour's dog was dead. It had been poisoned. So, there is a very real threat. I think it's a reputational threat when you're talking [about] ministers, but there is actually a real threat when you're talking [about] members of the public.*

Interview SA22

*I guess unlike other agencies, [in] local government, you know where the people live. That puts a little bit of pressure on the FOI officers. And they can be very nervous about making the wrong decision.*

Interview SA30

## **Western Australia**

In Western Australia, interview participants from local councils, which included metropolitan and regional councils, had an extremely knowledgeable skill set and reverence for the FOI Act. Bearing this in mind, and without prompting, one of elements mentioned in the majority of complaints in this sector was frustration with elected councillors not being aware of what FOI is and what it pertains to.

*But when it comes to the media and elected members, councillors opening their big mouths, we get a media enquiry which gets shut down. So as a consequence I've got a massive FOI, you know. So from that perspective I guess the media is going 'You guys are blocking us, you're not giving us the information we want.' You know, then they bring out the threats and lawyers and all that kind of stuff. So that's kind of intimidating for me in that I'm not a lawyer either.*

Interview WA04

*If so, why isn't there education for the councillors? I'll be honest with you. It's really hard. The [agency] actually put out a video ages ago. A couple of years ago. I had to really dig it up. And I don't think that's where they put the new portal and I am trying to get that admitted to their [new elected councillors] induction. When we get new councillors, we run through somewhat of a three-month induction program with them. We can't do it in one chunk, we do it over time. And we always try to get that put in there. It's eight minutes. Eight minutes of your time.*

Interview WA10

*You know, the one or two councillors might be aware. There might be something mentioned at the next council meeting to say this is what should be happening [in relation to FOI]. But it's never a focus in inductions, and it should be.*

Interview WA43

Making information for ratepayers available without having to access FOI processes was on the whole a process that interview participants were wholeheartedly behind, even if processes to check with other departments within the agency are in place.

*Well, I think the city does such. So the city does that obviously through the annual report and through, you know, the council process and all that. There's a lot of transparency.*

*Yeah, I think where the situation would be conducive to doing that, you do that. So if it's just somebody wanting information that is easy to give them that we know they're entitled to anyway and just putting it through the process seems a little bit ridiculous.*

Interview WA39 and WA40

*Probably, I don't know, a few years ago it was quite simple. People who were dealing with them [FOI applications] would give information. And then it seems like, somewhere along the lines, you know, everyone got their back up about something and everything became a question about, 'Oh, can I really say what I think I know?' But as far as the council releasing information, you know, it's fairly, you know, it's fairly proactive as far as being available and informal stuff that we have, even to the point, obviously updating council meeting minutes, are out there.*

*When [someone within the agency] finds an amount of information, I normally go to the department, and ask them 'Would you normally release that?', and then they would give me an explanation of why they wouldn't. And normally we get enquiries from other departments that they're sending and what they've sent customers to us.*

Interview WA42 and WA43

The advent of a grassroots group started by the employees of many of the WA city council FOI employees was noted as a highlight in the interviews. This group was mentioned by almost all interview participants, particularly those who were sole employees in the FOI space in their agencies.

*And if I've got a question I can just email. [Name withheld], 'Hi, can you just send this out to the group?' Whoever's got time or knowledge, they'll respond. So I got 15 responses from a question a couple of weeks ago. I got five from another question last week. So that's really good with information sharing. Like people will share ideas and stuff.*

Interview WA04

*One of the things, I guess, is education and just probably when people have telephoned me or emailed me, I'm actually proud of that education. So if we get to actually have that conversation, that information actually would potentially be accessible to everyone [in the group].*

Interview WA10

*People will send questions through that. And I have had a couple people ring me a couple times. I've also rung them a couple of times over the years. It's really good because, you know, just having someone else, doing the same thing.*

Interview WA53

The group also aided in forging a council records-management group, which has formed separate to the FOI group.

*I think we kind of pulled away, this local government records managers group as well, and I think if you should be part of that and then we just went, hang on, everyone's getting bigger, less separate. And then the two groups kind of talk to each other. There is overlap obviously because we're all local government. So, you know, the FOI minutes will go to the local government records minutes also. It's great. So if I get six responses, I'll do up a table. This was my question; this is who responded, this is their response. Everyone who responded here, go ahead. Everyone else answers. So I was sharing that information, not just collecting it.*

Interview WA04

People employed in the FOI space within the local government framework asked for more education, including examples centred on their sector, from the WA Information Commissioner's Office.

*I know [agency withheld] just had one because I tried to give some advice to the record officer as the FOI officer, we have to be and this is probably the hardest thing, that type of thing to learn because we're not lawyers. We're government officers, very rarely lawyers. So my thought is we very rarely are we. So it's a real learning process. So the more work this is part of the education that the Commissioner's Office does as well, the more we can be savvy in getting them [applicants] to really hone in on what it is that they want within their scope, the easier it is.*

Interview WA12

### *Repeat and vexatious FOI applications: 'Weaponising' the Act*

This theme was mentioned by many FOI practitioners. Alongside the terms 'repeat' and 'vexatious' applicants/applications, other terms of description were 'nuisance applicants' or individuals putting in 'multiple requests'.

It is important to note that interviewees made it explicit that these applications were different from individuals or organisations who may use FOI repeatedly; asking for different things in each application or perhaps clarifying their initial request. Rather, the term 'repeat' or 'vexatious' was used to describe individuals who insistently and incessantly request the same information using the same terms despite the practitioners discussing the situation with them, or their previous applications finding all there was to find in the agency, or persons who deliberately use the FOI system to 'punish' the agency or department by wasting their time and resources.

### **Victoria**

In Victoria, there was firm agreement that the current wording of the vexatious application section in the FOI Act is not clear enough.

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

Focus group L and M

## **South Australia**

Repeat or vexatious FOI applications were also an issue for SA practitioners. Often, these practitioners would reference applicants with a Health Care Card who are able to make FOI requests without charge. As a result, FOI practitioners had no ability to negotiate down the scope of a request. However, practitioners were unable to see an alternative solution.

*When you've got people asking for their whole client file and the client files are seven volumes of files and they are on a concession card, we don't really have that mechanism of sort of going, 'Whoa, it's going to cost you this much money so you better narrow your scope.'*

Interview SA21

'Fishing expeditions' was a phrase used by a number of FOI officers to refer to FOI requests seeking specific information but also using broad parameters to ensure all potentially relevant information was captured. Often these FOI applications would be lodged by individuals working in politics or the media. Practitioners often attributed this to a perceived culture of secrecy.

However, the term 'weaponising the Act' or FOI being used as a 'weapon' was only mentioned by a respondent to our SA executive survey.

*At times the system is used as a weapon by applicants, especially where there are [disagreements] leaving agencies in the middle. It is in no way a sound use of limited resourcing. [SA]*

## **Western Australia**

The theme of 'vexatious' or 'repeat' applicants was mentioned by almost the entire cohort of interview participants in Western Australia. While the majority of participants said it was part of the job, several mentioned that the issues around these types of applicants were having an impact on their role personally from a resource perspective, and that FOI was, in fact, being weaponised by applicants who were abusing the process and not using it 'in the spirit of the FOI Act'.

In several interviews, applicants voiced their disappointment with the Office of the Information Commissioner because they felt that it was within its power to make changes, particularly in this area.

*So what frustrates me is that the Information Commissioner has a role with vexatious applicants. Yes, but it's only once it gets to them. We have no process to deal with those vexatious applicants. And that was one of the changes I would like to see. And I mentioned that because, I would think, probably every agency would like to see this [change].*

Interview WA44



*But definitely there are applications that we would label as vexatious on the basis that sometimes we get applications for people who don't actually appear to want the information, but test the patience of the agency. In terms of futile applications, often these are understandable because people don't necessarily understand all the rules regarding FOI applications, in particular to third-party release information. So we very frequently get applications where we're simply not going to be able to provide those documents because people aren't trying to find out about the government, they're trying to find out about their [information withheld].*

Interview WA72

*And there's no vexation capabilities within the FOI Act, which is problematic. I just don't have enough time for it at the moment with the open disclosure. I know that's where the IOC would like us to go, like that's where we are getting interesting statistics from, I think coming out of Queensland, and maybe New South Wales as well. The more we disclose, the less number of applications we're receiving, is what the IOC is saying. Whereas WA, the statistics if you look at us, we're actually getting a lot more applications [than they previously were getting].*

Interview WA10

*You sort of become aware that people are in those sorts of scenarios applying to multiple agencies at the same time as well to try and figure out where to get information from.*

Interview WA74

*Preparing for civil suits or deciding if they want to take action against another party. Some people are usually seeking business information about other parties where it's more of just a coincidence that we hold documents just because of reporting obligations or different bits of legislation. And it's more often than not just pure luck that we hold these types of things and then applicants will come through and ask for them. And so it's not really in line with the objectives of the Act about government transparency or our processes or people confirming their own information. They [lawyers or those involved in litigation] usually seek information about other parties.*

Interview WA32

For many interviewed participants across various sectors, sovereign citizens (SovCits)<sup>5</sup> featured when speaking about vexatious or repeat applicants. The sovereign citizen movement and persons identifying as sovereign citizens, or equivalent, have been around in Australia for decades. Historically, these views resulted in people seeking different methods to disconnect from social systems, and featured eccentrics who sought to build 'micro-nations' on distant parcels of land, designing their own flags and money, as well as radical libertarians who refused to comply with society obligations such as paying taxes or acquiring a driver's licence.

In this research, SovCits were much focused on applications with scope around COVID-19 government mandates and other particular government rules and regulations.

*I think ever since the mandates have happened, people are a little bit more questioning of their government's rights. And we're dealing with a lot of these types of people that are putting in these types of requests for other people's information, thinking they automatically have the right to access*

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<sup>5</sup> <https://theconversation.com/living-people-who-are-the-sovereign-citizens-or-sovcits-and-why-do-they-believe-they-have-immunity-from-the-law-143438>



*that. And they don't want to pay for it. They'll make it under a personal application. And we just refuse it. And we just want to complain. You know, we're talking about sovereign citizens.*

Interview WA69

*I mean, we've had applicants that have actively stated they're using FOI to just hassle us.*

Interview WA32

One participant likened these types of applications as a form of 'office warfare', saying they felt helpless against the onslaught.

*They call it a cultural thing now. And I think people are questioning their government's role and, and with that it was like, it's called paper terrorism. It's actually a thing. It just floods agencies with futile requests ... And the Act doesn't really have anything to empower us to refuse repeat applicants or vexatious applicants, anything that the Information Commissioner can advise with these people [dealing with them] on certain grounds, but we don't have any sort of empowerment to do that.*

Interview WA70

*So the Information Commissioner, if someone is vexatious for them, they can turn around and refuse to deal with them. I think an agency should have that ability as well and I don't mean that we would do that every time someone is annoying, but when you've got someone who has made it clear that they are dedicated to being a nuisance [something needs to be done]. And I have had so many over many years, it would be like, well, no, we have done as much as we can. Enough is enough.*

Interview WA24

Interestingly, interview participants in several cases said the media warranted being called 'vexatious' and 'inappropriate' at times in terms of their FOI applications.

*We get regular requests every two years. [Topic and theme of FOI request withheld]. Every two years. Here it comes. And they'll have a standard template ready [FOI application and scope].*

Interview WA38

*You have three pet subjects that they'll trot out every 12 months. Without fail.*

Interview WA45

*Well, of course, it's on a case by case basis. And, you know, we will get those documents from wherever they need to come from and release them if we can. But one example, they ask for reports on sexual assaults, not specific incident reports, but they wanted CCTV footage of sexual assaults. Now, in this instance, it was all confidential from operations because no way would anybody be wanting to release any footage of a sexual assault, because that's just wrong, in my view.*

Interview WA44

### *Local councils and sovereign citizens*

The issue of sovereign citizens was also raised by participants in interviews with Victorian local councils. The issue was raised without interviewer input, prompting unstructured questions pertaining to their behaviour and its relation to FOI. The interviewer let the participants speak freely on the issue.

SovCits appear slightly different in scope and tone to ‘vexatious applicants’, which every agency across every sector and state faces. While vexatious applicants may be behaving in this fashion due to specific agency grievances or because of personal issues, SovCits appear to behave in this manner because they wish to see the government sector abolished entirely (Baker, 2023).

SovCits is not a recent phenomenon, and gained prominence in the US during the 1970s (see Lee, 2022 for further reading and references). In Australia, SovCits saw a marked increase in activity during the COVID-19 pandemic, particularly in states that imposed multiple lockdown restrictions and/or pandemic measures in 2020 and 2021. However, the rise of the movement is not specifically isolated to these states (Kesteven & Carrick, 2023).

SovCits interact with local governments beyond FOI applications and have been reported on in the Victorian media using threats of violence or becoming violent in local council public galleries. As a result, some councils are closing this public space during council meetings (ibid).

Practitioners, managers and executives all spoke about this issue. One interviewee pondered what closing an integral public space due to threats of, or actual, violence would mean for transparent and open government over time.

*[Councils] invite a public gallery ... But it's that level of closeness I think that community feels, which is also that's part of it. The fabric of our democracy. But ... It's almost like at the moment it's being taken advantage of and, you know, fear of intimidation and threat of violence.*

*... And I'm concerned about what that does actually mean for decision-making down the track. You might find that councils are making different decisions to what they would have made had they not had the threat of intimidation and those things kind of breathing down their neck a bit.*

Interview AT

In the case of FOI, the issue then becomes how to reconcile the disconnect of trust between the applicant and the government they are asking for documents. Applicants such as these come to the FOI process in an already adversarial relationship with the agency and government in general, rather than both parties in the process having a neutral or even mutual understanding. The applicant is ready and waiting for conflict.

*We always try to be transparent with people, of course, as to what they want and we try and give them access to things outside of FOI, but when you've got someone who distrusts the system and distrusts the government or the institution or myself as a representative for someone processing FOI, that is difficult, like they won't trust that what you've given them is true.*

Interview AR

These applicants may apply for information or documents that do not exist, thinking they are being withheld or kept secret or away from the public. When their application outcome shows these documents do not exist, this further entrenches their belief they are being hidden.

In terms of how to process FOIs from sovereign citizens or those with significant distrust in the process, interviewee AR stated the following:

*I've literally had long conversations with people where I provide them documentation and they question if that documentation is real. They've been certain that there's been stuff that's still being hidden or obfuscated.*

*What [this] leads me to do as a practitioner is to really cling to the legislation and really cling to the Act ... Here's what you're looking for. Let me define it exactly and I'll repeat it back to you. And that my understanding is correct. And then we will deliver them exactly what they're looking for.*

*I'm very conscious that they will, though, even though they don't believe in the government or there's massive distrust, they'll still go to the OVIC and the review process, which takes up even more time. So I need to make sure that everything I've done with the Act is very clear, yet very deliberate, so that I'm in the best place I can be to be successful.*

In South Australia, there was only one reference to a single sovereign citizen, whose motivation was believed to be more about wasting time and resources.

*He just keeps putting it [FOI requests] in because he thinks by doing this he's wasting [agency] time and resources. He thinks magistrates are corrupt, he thinks [agency] is corrupt. He's a sovereign citizen and doesn't believe in state powers. Whether he's right or wrong, it doesn't matter. He thinks he's wasting our time and that's what he wants to achieve.*

Interview SA13

In your view, who owns government-created information? Is it the government or is it the public?

## **Victoria**

In many interviews, this question was received very well, and participants enjoyed pondering the philosophical factors posed.

In the health sector, the overwhelming answer to this question was 'the public' or 'the patient'. There was little doubt that the information health agencies were holding was that of the patient, and their answers definitively reflected this.

*So obviously, if it's health information, I would say it's the patients' or consumers' information ... You know, I think there's been a shift. I think previously, health information was very much the organisation's information, but I think, to some extent, that culture shift has changed.*

Interview AD, AE, AF

Elsewhere, such as local government, answers were more nuanced. Participants saw that the agency was responsible for the 'upkeep' of information, such as the costs associated with creation, maintenance and (eventual) destruction, as well as enforcing other factors such as privacy.

*Well, I guess we kind of own it, but we provide it so the public should have access to it. But in terms of keeping it in our systems, we have certain levels of security to keep that information safe. But it's private, which I think is important because obviously bringing privacy in as well, you know, you've gotta keep it on that stuff. So even if you know the public can have it, I'd say that we actually own it in terms of the administration backed up.*

Interview AS

But some pondered if that enabled them any kind of 'ownership' over the data.

*Well, we own the data. But yeah, I'm sort of thinking, you know, things that they've submitted or a phone call that they've made to us ... You know, it's a record of something they've, they've given us. Like, even though we own it, is it really something that we should be making them jump through hoops to get?*

Interview AA, AB

At one agency, there appeared to be an issue with the concept of who owns the hard copy data. Interviewees B and C recounted that retiring staff had developed a habit of taking hard copy documents with them under the impression that, since the retiring staff member created those files, they own those documents. This problem comes to a head for the agency when RM or FOI practitioners begin searching for historic documents created by retired staff, and realise that they could very well have taken those documents with them on retirement.

### **South Australia**

Responses to these questions were varied in South Australia. While many practitioners understood public information belongs to the public in theory, there were mixed opinions surrounding how this works in practice. For health agencies, releasing sensitive information was an area of concern, despite acknowledging that the information belongs to the applicant.

*Someone might want the results of an x-ray or a blood test, but that needs to go to their GP. It's a process, we can't just hand it to them.*

Interview SA29

Health records belonging to deceased loved ones was an area seen as an ethical dilemma for some practitioners, but they had developed processes to allow these records to be released to the next of kin. This was often a lengthy process involving approval from the CEO.

*Sometimes it might be information about a birth or about deceased people. So we have a process for that.*

*It's time-consuming but it's important to make sure that the information is protected and not just handed out.*

Interview SA29

For other sectors, the right of the public to know was sometimes met with hesitation about releasing sensitive information.

*I think we need to be very careful about disclosure of everything because there are things and certain documents that we don't really need or the public doesn't need to see.*

Interview SA13

*We do have some cultural issues within the [agency] and it's not just in relation to FOI applications, it's kind of across the board. There tends to be that default position of 'don't tell anyone' and I don't really*

*know why that exists. I don't understand it myself. But, yeah, that is something that is going to have to be a big attitude change.*

Interview SA27

However, some practitioners believed that public records belong to the agency that created them or would actively avoid the need to create a document that could fall under FOI at all.

*A lot of the public would say that's [the document] their property, but in fact it is [agency] property.*

*RA: But if it's about them?*

*But it's our document, we're the owners of it.*

Focus Group 01

*FOI requests will very rarely capture the sort of conversations that make you go 'what do we do about this?' And probably in part because there is a culture of having those conversations in the hallways and not recording them.*

Interview SA16

## **Western Australia**

In Western Australia, practitioners were circumspect in their responses, with several saying that, in theory, the public 'owns' the information, but logistically those that worked in the FOI space were 'gatekeepers' and felt that they should be trusted to get the all the information the applicant was looking for, within the scope of the Act.

In some cases, practitioners also mentioned that information that fell within an applicant's scope was included in their initial package to the applicants, but their managers or executives would have it removed or heavily redacted because of past bad experiences.

*And that comes back to that education, doesn't it? And that there is some protection provided by the FOI Act and the people who are releasing the information through it.*

*And trust the decision maker.*

Interview WA06 & WA07

*We do a lot of informal releases or we take things outside of the formal legislation. So things like, you know, handing over some discharge information to a GP because they're the one doing the follow up with the patient. We are very cognisant of consent where needed. But yeah, we do act outside of the Act where we can ... I know some regions are very apprehensive to go outside the Act. They take everything through FOI and they redact 90% of what they release. But you know, I think that's because there's a bit of a fear that they're going to release something inappropriately. And that comes down to, I think, lack of training and specialisation in our workforce ... I think because we hire people into these positions, we give them very limited training. So again, they're very focused like this is the Act, this is the process. And it's like, you know, there's a lack of ability to make a call and, you know, determine that, you know, a patient. What patient information probably doesn't need to go through the FOI Act? We as an organisation can look at the notes and go, Yeah, I mean, it's their information. There's nothing highly contentious about this case. I just want to take it to their GP. So rather than going, you know, fill out this form within 45 days, will give it to you. It's like knowing their appointments next week.*

*Let me be a little bit more flexible and agile in terms of what information we're providing and when and how to get it done. I don't think [the agency] does it well.*

Interview WA62

*[Management], their position is sort of the opposite of what happens. It's always the opposite. Our job is to enable access. If that is, this fits within the areas of the Act. And to locate all of the documents and to help this applicant get them. But [management] is to protect the [agency]. And so as far as they're concerned, if we book a meeting room to have a conversation [about the application] that's legal and privileged just because they're all in the meeting. With us, it's a culture of openness. It's when you bring in third parties that the secrets come in.*

Interview WA45

*I think a lot of the government agencies are not as open to accountability and transparency. And I know one of the executive directors that I dealt with in relation to a couple of my contentious ones was very adverse to release and so wanted to apply as many exemptions as possible. It probably stretched the interpretation of one of the exemptions to remove a document. And so we actually disputed that. But I believe the decision makers ultimately have the responsibility. And so we did have a conference to talk very kindly of what the exemption actually is and what the legal advice was on that. We didn't recommend that it fell in scope, but they made the call. They thought it did fall in scope based on their understanding. And that was as a result of a very bad situation they experienced in [working in another state FOI space] scare. You know they've taken that on board and they're now really adverse to releasing things. So we do try to uphold the legislation in true, the true intent of the legislation, which is to release as much as possible. But that doesn't mean that the decision maker will be staying the same mind, and especially if the decision maker is not someone who has a whole lot of understanding around it. So they will interpret things differently based on their understanding.*

Interview WA65

*Actually, during the last financial year because they were quite big. And I did go up to executive level and we had a couple of them stonewalling us ... And I can't search because I'm too busy. I'm going on holiday, blah, blah, blah. But we managed to do those releases in two tranches to make them [applicants] happy with something. So we managed to negotiate that. I guess being lucky that the applicants were amenable to that is a good thing.*

Interview WA04

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

When participants were asked if they assisted applicants in finding the information they needed, the response was positive. Some stated they would call or email the applicant to help whittle down or hone-in their requests. Some would – after checking the documents for privacy and other caveats – release proactively without the need for the application. Interviewees also stated that if they knew an FOI application was not needed and where the applicant could find the information, they would show them (e.g. on agency websites.)



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

While each response was different, we were able to separate responses and agencies into two categories: those who already had an entrenched process for raising these types of applications and those who stated the agency did this on a case-by-case basis.

Agencies with entrenched processes can be summarised as follows. The application proceeds as normal, while relevant stakeholders within the agency are notified. This includes any persons or departments who may be affected by the information being released, any media departments (if the agency has one), human resources and any management or executives who need to be informed or briefed. A number of agency practitioners and managers gave examples of historical cases where this had occurred, but for the sake of confidentiality and privacy, we have elected not to disclose these specifics. When documents and information were released, agencies experienced media coverage to varying degrees but there were no regrets regarding the course of action taken.

Those who stated that their processes were ad hoc or case by case nevertheless followed this above process – including giving those within the agency a ‘heads-up’ on what they were about to release.

While answering this question, at no point did any agency or participant mention the application would be rejected. On all accounts, the embarrassing information would be released. As many participants stated, embarrassment is not an FOI exemption.

*... embarrassment is not an exemption and that is a good learning opportunity for them to ensure that the way they record information is [not problematic]. And I have released embarrassing information. And it's been a really good learning opportunity.*

Interview SA18

## Practitioners: Records management

What role does RM currently play in implementing access to information in the agency?

### **Records-management systems**

When interviewing practitioners and managers about their agency's RM software and programs, common RM programs cited were:

- TRIM
- SharePoint
- Content Manager.

Other common programs practitioners used to search included:

- Avanti
- Office 365
- Outlook / Email programs
- Pathway



- Discovery
- EDRMS
- Objective.

It was noted that some teams are overwhelmed by how many RM systems their agency has, as this means time spent on accessing all of them to search. This was very obvious in the health agencies, and to some extent local councils.

#### System complexities and communication

In many of the interviews conducted, when asked if their programs spoke to each other, or if their systems followed FOI applications from beginning to end, participants laughed. In short; no, programs do not speak to each other.

The programs containing the records and data they need do not talk to each other. Interview D noted that SharePoint and Pathway do 'talk' to each other a little bit, but across many of the interviews, FOI practitioners described 'dipping' in and out of individual programs to collect the materials required. One local government in Victoria had a program called iFerret that could search across numerous programs, as well as emails.

Some agencies utilise Microsoft Excel to help track where different applications are at with their processes. A few agencies had physical markers, such as in/out trays or paper cover summaries, to identify and track where applications were in the process. This appeared common in regional agencies.

#### Health agencies and records management

From the interviews, it was identified that the health sector has an unmanageable number of programs to run through to collect information. It appears every sector of medicine has their own records-management system/program (i.e. mental health, acute care, sub-acute care). This is on top of any hard copy files or file systems and programs that were discontinued or out of use, but still contained relevant patient files.

#### **Victoria**

In the Victorian health sector, the more regional an agency, the more likely that it will still have files on site, utilise hard copy data and have FOI application management systems that operate 'by hand' rather than by software or computer. This is especially the case for regional health agencies with low numbers of FOI applications.

#### **South Australia**

FOI practitioners working in health in South Australia often use multiple RM systems, from 'current' systems to 'old' software in the process of being phased out. One of the systems currently being used collates all patient records from all presentations at all South Australian hospitals, leaving practitioners to manually redact 'pages and pages' of records.

However, practitioners often put this down to their sector being about 'health and welfare first' and not RM. This reasoning was provided by multiple practitioners from different agencies.

*To be fair, the core business is treating people. We're on the periphery, we're not the most important and that nor should we be. You know, the core business is helping with health and welfare. It's not providing the media with statistics or, you know, insurance companies with information. The core is treating the people. So that's where the focus of these electronic medical records should be.*

Focus Group 01

## **Western Australia**

In Western Australia, there were several similarities found with Victoria and South Australia; namely, the more remote the location from Perth, the more likely an agency was dealing with onsite, hard copy records. In addition, the health sectors in WA were aware of the issues around RM and, at the time of collecting data for this report, were in the process of putting together a plan to streamline the FOI process. This, however, was not helping in the short term, with many participants noting that in recent times they were required to check more systems for information.

*In the most recent cases we had to check probably about seven or eight systems.*

Interview WA17

### Location of RM relative to FOI staff in agencies

*We used to be in the same division. We got split up. The reason was never made clear why we split up.*

Interview I

Depending on the agency or sector, the location of the department that handles records and data management differed. In health sectors, FOI is usually situated in, or close to, Health Information Services (HIS). For other sectors, it was difficult to find a common thread. As such, it clearly depends on the agency as to how they structure the organisation and where they feel the two sectors best fit within it. Common locations include RM and FOI under the same 'silo' or umbrella, or RM being within the same group as IT (or as interviewee D put it 'lumped in'), while FOI is in corporate risk/governance. In one agency, RM remains with their mailroom and in the same place as their front desk, carpark and security.

However, overwhelmingly, FOI departments and RM departments had an ongoing line of communication with each other despite this agency disconnect between locations.

### Systems access

From the interviews, we were able to divide agencies into two categories: those who provide their FOI staff with limited access to agency files and those who provide 'unfettered' or full access to files. Processes regarding the search and collation of files differed not by sector but according to which of the above categories the agency ascribed to.

### **Limited access / Departmental-only access**

For those with limited access, or if access was limited to specific sectors of the agency, the process (and their subsequent problems and issues) can be summarised as follows. The practitioner would request either the document holder, or someone within the specified department or section with access to those files, to search for them. The person would search for and retrieve them for the practitioner, whereby the practitioner would collate, assess and redact as necessary for the application.

Agencies who used this type of process stated that those with access to the specific files were often well-versed in the 'ins and outs' of not only the content of the files requested but the programs the files were kept on, and the traditional 'running' of the department. This means that the person would know – by their own knowledge and experience of the department and how it runs – which files the FOI practitioner and managers actually require for the request, rather than anything that would be considered unrelated to the application. They would also know where to look for files or how the department named them. One agency had a 'data custodian' system, so while there were many places in the agency to access possible data, they were able to contact key stakeholders to help expedite the process depending on what data needed to be accessed.

Agency managers and practitioners who used this type of process discussed with us the types of issues they sometimes faced.

### Delays

For agencies utilising this type of search process, it was discussed in many of the interviews that delays would sometimes occur. When probed, common reasons for delays included the following.

#### **1. The workload and staffing of the section or department being asked to do FOI searches**

Requests for searches for FOI were commonly 'put on the back burner' when departments were short staffed, overworked or experiencing heavy workloads. Thus, not only does FOI need to be adequately resourced, this applies to the agency as a whole. For departments to do a thorough and diligent search of agency material, agencies need staffed and resourced departments.

#### **2. The level of agency education on FOI**

This pertains not to the level of FOI education of FOI staff, but rather the FOI education of general agency staff. Lack of adequate FOI knowledge meant there were instances of hesitation (either unintentional or intentional) by the person being asked to search for agency documents.

Consequently, there were examples raised in the interviews where this lack of education led to ineffective or insufficient searching for documents. This relates to point 1 on departmental resourcing, but also ties in to the overall level of importance the department and/or agency ascribes to FOI. Some interviewees stated that persons conducting the searches, due to issues raised either by point 1 or 2, would give 'guesstimates' on the time they took to search and the keywords searched for.

Other times, the FOI practitioner or manager knew the document existed and/or where it was located, but the staff search did not yield the document. It was stated in one interview that

some staff in the agency held their own opinions and views on what 'could and couldn't be FOI'd', contrary to correct procedures.

Delays were commonly solved by the FOI teams. In some cases, FOI practitioners or managers would email the person asking them to do an FOI search for documents and attach either an explanation of what FOI is and what it requires, or a checklist or other document that the FOI practitioner or manager had made themselves. There were also examples where FOI staff in agencies would conduct their own education or agency training on FOI and related concepts (often privacy) in order to combat agency 'caution' or 'fear' surrounding FOI. These programs and documents involved work on top of their duties as FOI practitioner or manager.

### **3. Issues with planning access failsafe and flow of authority**

In this kind of delay, if the person in charge of searching for and/or retrieving documents is sick, on leave or otherwise absent, the questions arises as to who else has access.

#### **All access / 'unfettered' access**

For those with full, or near-full, access to agency files, the process can be summarised as follows. The practitioner would access agency RM programs and search for the specified documents. The person would retrieve them, then collate, assess and redact as necessary for the application.

One possible risk to this type of process is the ability for this power to be abused. However, there were no examples or evidence given in the interviews of such abuse occurring. In fact, some agencies stated that they had privacy auditing systems to ensure practitioners were not abusing this power.

Those with this type of process outlined some of the challenges of this system, as follows.

#### **Lack of departmental or speciality knowledge by FOI staff**

In this challenge, FOI staff – especially new staff – may not know which search terms are the best to use or where department staff keep documents (i.e. agency guidelines call for documents to be held in a specific repository, but in reality they are elsewhere). Similarly, FOI staff sometimes lack departmental knowledge regarding file naming conventions, and thus do not know which search terms will result in the correct data being discovered. Moreover, department staff may not know which files to include / exclude in searches.

#### *Storage and retrieval of records and data*

For the purposes of this section, data are separated into physical records, files and data ('hard' copy) and emails and computer-generated and stored records, files and data ('soft' copy).

#### **Hard copy files**

Some agencies have limited amounts of hard copy files still on site. This may be a deliberate storage decision because the agency is still creating hard copy records (e.g. rural/regional health agencies in particular) or because agency departments (i.e. either the FOI team, the RM team or the agency department who created the record) are so time-poor that the transition from hard copy to soft copy has temporarily – or perpetually – stalled.

Standard agency practice regarding physical records and hard copy data storage is to utilise a qualified and authorised third party to store hard copy files offsite in warehouse locations. However, depending on the agency's budget, differences can occur. Third-party storage and retrieval systems have a tiered system according to the amount of money spent by the agency. For some agencies, if they request a document from the storage facility, the company will retrieve and scan the documents for the agency and send them electronically. For those who do not pay extra for this service, files are retrieved and sent via post. When probed, agencies who do not pay for the electronic delivery admit there are impacts on timeframes and efficiency while waiting for the physical copy to arrive. Agencies that utilise electronic document delivery are satisfied with this process.

For most agencies, hard copies stored offsite are often historical records and files, with the number of hard copy files lessening over time due to their past decision to become totally – or predominantly – digital.

### **Historical agencies: A time capsule of records management**

Agencies that have existed for extended periods of time represent an organisational 'time capsule' of historic data and historical storage systems from across the twentieth century. As such, agencies need to not only keep these historic data but:

1. have enough working technology on hand to retrieve/extract the stored data. Otherwise, data are stranded on the storage element and locked inside in perpetuity. These documents are not traditional paper files and require different types of technology to access them. For example, health agencies must have access to technology that allows them to view MRIs and X-rays across a spectrum of data capsules such as Floppy Disk, CD-ROM and Microfilm. Other agencies may have audio and/or video stored on different capsules such as VHS, Betamax, CD-ROMs and tape cassettes.
2. understand the significance of holding these kinds of historic data and have the tools and knowledge for their preservation. Otherwise, hard copy files run the risk of being destroyed, lost, corrupted or rotten, among others.
3. have an executive or management team that sufficiently resources the agency to fulfil the above two factors.

Historical agencies were seen across nearly all sectors interviewed. For agencies that have a protracted history or need to store a significant amount of data, it was acknowledged that there can be dead-end points in their searches and too many individual systems to check, which has led to criticism by the FOI Commissioners.

*... it's not even a needle in a haystack. **It's like an atom in a haystack.** So, yeah, you won't be able to find it.*

Interview P

*Most of it's still paper. I'll just show you our map of our systems so you can see how many [records management] systems we have.*

Interview WA18

*... But we know from FOI and things like that, that we've been criticised a few times by the Commissioner around our record keeping.*

Interview WA07

As the Act states that documents are only 'FOI-able' after a certain point, sometimes these agencies will utilise this caveat instead of searching their myriad of files and documents.

### *Future issue: The rapid evolution of 21st century technology*

An evolving issue foreseeable to the researchers is the evolution of FOI-able 'documents' and where these should be stored, maintained and retrieved. For example, meetings on conference software such as Zoom or Microsoft Teams, collaborative working spaces such as Google Docs, or camera-mounted vehicles and body cameras. While not a traditional 'document' per se, these technologies could still be considered as such under the Act. We have yet to find an agency that has developed responses to this issue, and we encourage state commissioners to consider this issue and provide best practice/guidelines to agencies.

### Digital and soft-copy files

A significant number of interviewed agencies have digitised much of their RM and storage process, and this evolution – with the exception of some small hiccups – has gone smoothly. This pivot from networked storage to cloud computing and storage/retrieval came into sharp focus during the COVID-19 pandemic.

### Agencies during COVID-19

COVID was mentioned by several agencies as a reason why digitisation and migration to cloud computing was either sped up or the decision to do so previously was now very much vindicated. This allowed agencies' work to continue from personal homes without much impact to productivity.

However, agencies that had not yet made the move were heavily affected by this period in time. Interviewees B and C explained that, because their agency was heavily utilised and involved in this period, it was hard to collect hard copy documents as staff were away from their usual locations. These interviewees noted that their agency was very comfortable still utilising hard copy until COVID happened. This, combined with increased funding for better digital records creation and management, is creating a huge swell of culture change within this agency currently.

For one local government agency, COVID meant that nearly all staff worked from home, but a handful of staff attended the premises to check the mail, scanned hard copies straight into their digital databases, then left within a few hours. Work continued with little to no issues.

### Issue: Transitions to new software or methods

While some agencies stated their transition to digital-only or digital-majority had proceeded without issue, at least two agencies had stories about significant challenges when pivoting to new file management software. These two agencies had company-wide software changes without company-

wide notification or training. This meant a significant impact not only for their ‘customer-facing’ divisions, but also for the FOI and RM teams.

*I don't really know [whose idea it was]. I think that maybe it was an end of contract or sort of product life type situation here. But I do remember talking to the manager of the contact centre ... And I was talking to this person asking questions about the system. And she was just shaking her head, just going, I don't know because I don't know how. I don't know how this system works. We're just working it out as we go along ... I don't quite understand how you can make a decision to implement a new system that is so fundamental to our operations like that and to have not provided training.*

Interview A

*Yeah, things sort of moved and changed. Yeah, it kind of fell by the wayside. So what we're looking at doing now is we don't have very good information governance at the [agency]. So one of our priorities is to start doing more training around those information governance principles. So yeah, privacy protection retention, but also include FOI in that as well. I mean, it really does need to happen here. And we've flagged that it's, it's going to happen. It's just up to us to have the resources to put it in place.*

WA38

Another agency employed an RM program without consultation from the FOI department. According to the interviewee, it is now the bane of their existence as it does not work for what they specifically need it to do.

There were also examples where, during the moving of an agency from one physical location to another, files were lost.

*But I do know that when we moved ... there was a lot of throwing out of information. I've heard that anecdotally. Yeah. So, I know that when we've sometimes gone to do searches. For all the information that we think should be there. It's just not there.*

Interviewee I

### *Power of IT relative to RM and FOI*

It was identified that agency IT departments were a big influence in which programs were chosen for an agency, including FOI and RM programs. This also extended to software upkeep, as well as adherence to RM policies and guidelines as set out by state public record laws. While the two examples outlined by interviewee A and interviewee K above show the catastrophic impacts of sudden or unconsulted changes, several agencies did express the opinion that agency IT departments wield too much power and sway over opinion when management considers changes to company-wide software or other RM changes. To achieve better data governance, agency management should therefore consider any IT changes alongside the feedback and opinions of RM and FOI departments.

### Issue: Naming and storing files

In some agencies, lack of consistent naming and storing conventions for files hampers FOI practitioners.



*Interviewee F: The difficulty is in the naming conventions, I guess, because you need to know what you're looking for ... And as far as an FOI request is concerned, the person making the request might not necessarily be requesting the document in the form that it's named by the officer who stored it. So, yeah.*

*Interviewer: So do you find that naming conventions are quite important in terms of trying to access these things. Do you become hamstrung?*

*Interviewee F: Very, very much. Very important. And we're not very good at it.*

In some cases, while the agency has policies and procedures in place for uploading soft-copy information to their repositories (thus making this visible for FOI practitioners to search and retrieve), staff behaviour does not correlate and files are, at times, kept elsewhere, outside the RM system.

*Yes. So once the FOI officer identifies the documents through a thorough and diligent search as far as practicable as I said ... it's something that is fairly easily searched if you put in the right sort of keywords that you're looking for. But the things that are stored on people's desktop ... if I've got something stored on my desktop and I haven't put it into one of the storage systems, then she'd never find it unless she was aware that I had it and kind of asked for it.*

Interviewee F

This can also come to a head when staff leave their position and do not upload their files into repositories.

*Things should be saved on Content Manager and they're not ... even recently we're trying to find documents and I had to get access to an old network drive ... So it hasn't been transferred over to SharePoint or Content Manager or whatnot. So yeah, there's still stuff that might be saved on people's individual drives that have left ...*

Interviewee D

One staff member, when asked if they were confident that all files had been found for their applicants, said no.

*Definitely when we do FOI requests, when I respond to them, I don't in my heart and I don't believe we've given 100% of what we've got to counsel. And it's due to poor record management. It's due to staff that have left.*

Interviewee D

### *Retention of hard and soft copy records and data*

Questions were raised to practitioners and managers regarding the retention schedule for hard copy files. For many agencies, soft-copy data are kept in perpetuity. Retention schedules are either not complied with or non-existent. This is not out of malice, but rather, the result of staff that are overworked and incredibly time-poor, and thus have no time for this exercise. This task falls by the wayside as they focus on their most pressing tasks; namely, processing FOI requests.

However, utilising a catch-all 'tick and flick' or AI-based programming may 'come back to bite them' if not done correctly at conception, as interviewee D explains:

*We were working on adding retention labels to SharePoint, so all documents would have a retention label. I was a guinea pig for that when the previous records manager was trying to roll it out.*

*... I was big at talking against it because it was more of a tick and flick exercise ... what's [actually] in the documents actually might mean it's something else. And you're doing this now ... That's going to be hundreds, if not thousands of documents that on this day in seven years time, we are going to just – **what's the plan for seven years time? 'Oh, we'll think about that later.'***

Interviewees were asked if there had ever been any issues with hard copy records not being where they were stated to be.

*Yep. And sometimes ... you have to go through the scan of the claim really carefully because a lot of it is old notes – handwritten notes and there's information in there about all the clients because somebody has dumped the box ... They've just dumped another client into the same client box. And you'll be reading that one person and go, hang on, who's this other person?"*

Interview I

Again, the question raised earlier as to who owns the information and data produced by agencies returns. In interviews with B and C, FOI and RM staff encountered issues with sourcing historical files during FOI discovery periods, as retiring agency staff had developed a habit of taking their hard copy documents with them under the assumption that they own those documents.

### *Use of AI in RM and FOI*

In Victoria, responses to this topic could be placed into two categories: those who did not know enough about AI and its applications to form an opinion and those who knew enough to discuss their opinions.

In the second category, interviewees could see uses for AI in a limited capacity (i.e. given a very specific role with clearly defined caveats and datasets), but also flagged potential detriments of this kind of technology being applied broadly to an incredibly nuanced and 'grey' decision-making industry. Interviewees stated the coding/building of FOI or RM AI would have any human biases the coder possessed and could see future issues with accountability if problematic decisions were made by AI.

Opinions on AI were seen to evolve over the course of the project. As world events and technological developments arose (i.e. the launch of Chat GPT and other 'AI' programs), interviewees mentioned them in their responses.

### AI in South Australia

Practitioners in South Australia generally fell into one of two categories: those who had limited awareness or understanding of AI and those who were excited about the potential use of AI technology in FOI. Those who did not understand AI appeared hesitant to embrace the new technology.

*No, I think generally we're pretty ordered without. We can find [documents] pretty readily if we need to.*

*As long as our systems are in place and we've got it all structured so that we can find anything in a drop of a hat. I think we only need that, but I don't understand it enough to be able to comment further.*

Interview SA33

Practitioners with a greater understanding of AI were excited about the potential for both discovery and destruction of documents.

*I would love to, we are kind of banking on that coming along. Particularly with destruction, with the amount of time and effort that would take our team to go back and review old files.*

*So we're banking on technology catching up, that the indexing will get better and the classifications will get better.*

Interview SA12

### AI in Western Australia

Practitioners in Western Australia, on the whole, found this question laughable, and needed clarification on what the interviewer was actually asking them about. Once they understood the content of the question, it was met with incredulity that other states were at such an advanced state that they could be implementing these technologies.

*Haven't heard anything about that? No, I mean, WA is a bit backward.*

Interview WA69

*Well, WA does stand for 'wait a while'.*

Interview WA08

For many of the practitioners, the struggle to get historical paper-based files, still held in offsite facilities, transferred into digital files was more of a pressing issue. For many agencies, just having the ability to scan hard copy documents in house, and having FOI application documentation housed electronically on websites, was a welcome addition.

*So that was when this draft started actually within the [agency] which was about three or so years ago. And it was a project to digitise the microfiche films and they are readily available to physically go in and then get it. So that went through. Apart from that, I mean, if you're going to have to digitalise, go back through, and digitise every single hard copy case file and all that stuff, that pretty much is an impossible task. It would take decades. So, I mean, if you go back to a certain point, that's reasonable. It could possibly be done, but you would need a whole team with a whole lot of luck, and insurmountable budget and resources.*

Interview WA70

*I think that's something I think that we're jumping with joy, the fact that we get scanning, you know, you need to have electronics, you need that to have that, you need to have a database available that you can actually draw on. We don't have that at the moment with our [agency] records. It's all hard copy. But I mean there's a whole bunch of means with which you can actually fast track information requests. We're still advancing, but we're still basically quite primitive. You know, having the FOI application*

*electronically, that's something that we've raised before and we're going to raise it again. So as opposed to them like, you know, scanning it, they can send it online, complete it. That will have advantages. I can see that being something that we can do in the future. But at the moment we are scanning, so it's a good start.*

Interview WA06

*I think to start with, you'd have to have some sort of enterprise search tool, which we don't have. And that would be, I mean, we've been talking about that sort of thing for a few years. However, with so many systems, it's really difficult to build something that encompasses all those systems. And it comes down to the keeper being quite conservative as well.*

Interview WA04

### Executives and principal officers: Freedom of information

#### What is the understanding among executives and principal officers of the purpose and functionality of the access to information system

When asked about the overarching objectives of FOI and the information access system, executive-level personnel utilised the same key words of openness, transparency and good governance.

*Oh, look, I think it's you know, it's transparency more than anything, you know, transparent transparency and good governance.*

Interview AJ

*I think ultimately the ultimate goal is a spirit of transparency and accountability around government agencies. And I think it's a good one. And I think the legislation certainly does try to do that, but strike a balance between what is, you know, what should be kind of disclosed and disclosures that are made in the spirit of good governance, good government and good governance. And then where we must protect it, whether it's people's rights or information or the information of an organisation. So there are challenges around it, but I feel like that's the ultimate aim, just to reach that balance somehow.*

Interview T

#### How do executives and principal officers view/describe their roles within the information access system?

When asked to surmise or view their role within the agency's FOI system, executives and principal officers were able to place themselves accurately within the hierarchy of the agency and FOI systems. For the purposes of maintaining confidentiality, quotes from participants will not be offered here.

#### *Proactive release*

When asked about proactive release, executives were generally positive about the concept. Some gave examples of their agency or industry using or being proactive about information release. This was common for local government executives.

*I guess the question I start with is, 'Is there any reason why not?'*

Interview AO

*Yeah, I think that [proactive release] seems to be where a lot of governments are starting to turn their attention to, how we can increase transparency through things like open data. I know there's [an agency] who has started a transparency hub where they upload as much as they can ...*

*... We're here to serve the public and it's in the public's interest to provide information in a transparent, open and open way for the purposes of accountability.*

Interview AT

This is in obvious comparison to local government FOI practitioners, who, while generally positive about the concept of proactive release, were more nuanced in their feedback regarding the realities and actualities of their agency truly *being* proactive, as their position at the proverbial 'coal-face' of FOI gave them insights their executives may not be privy to; namely, the issue of how to interpret which documents and information can be released proactively on a consistent basis.

*In your view, who owns government-created information? Is it the government, or is it the public?*

Much like with the practitioners, this question was much philosophised upon.

*Ah, well, that's an interesting question because my first response is to say that the agency owns it, um, but then there's that bit of nuance because the agency owns the day to day communications and internal workings that lead to the decisions that get made. I mean, but ultimately we are public servants ...*

Interview AO

## **Western Australia**

The way that an agency handles FOI applications and whether the FOI Act's objectives are fulfilled are thought to be closely related to the agency's culture in relation to attitudes towards openness, accountability and transparency. A strong commitment to the principles and promotion of openness, accountability and transparency is essential for ministers, executives and FOI coordinators in order for FOI to be handled successfully, efficiently and equitably inside agencies.

While these interviewees' responses appeared to show the agency 'doing the right thing' in relation to FOI, executive responses indicated that they were aware that FOI requests could be risky to the agency, particularly around proactive release.

*So I think the question is, you know, how, how well is the kind of proactive release supported by ... You know, I think our focus is more on organising your information in a way that makes that possible to do. We probably don't, you know, we wouldn't do a lot of, you know, direct promotion or communication about proactive release. We will sometimes support statements from the Information Commission or others that kind of promote that, but we don't tend to do a lot.*

Interview WA77

*I think it depends on the context. I mean, a lot of the stuff in [this agency] everyone has a view of, it's very confidential.*

Interview WA27

*I worked at a place previously and they had other information release products outside of FOI, which was really handy because it was like, here's a much more simple process for you to get exactly what you're looking for. I find that I'm kind of trapped here a little bit at times. I think it is hard sometimes to release stuff ... A bit of a challenge.*

Interview WA34

*I think it's important. I think it's a really good endeavour. I think some agencies do a lot better than others. Proactive release obviously saves time, saves energy. So it is probably something that my government doesn't necessarily do, um, I can't say that I'm doing great.*

Interview WA51

*I think it's a bit that the records that [this agency] hold probably don't allow for that as much, and it doesn't happen as much here just because of the type of records. So, our agency came to a decision that it's just not practical.*

Interview WA52

*I think it's the lack of safeguards that makes a lot of people nervous with proactive release.*

Interview WA51

In other instances, FOI executives said they encouraged their staff to be proactive with requests. For several executives, this process was important to implement through decision-making on applications.

*I encourage it here at work. So, I am always looking at ways that we can proactively release information or even establish our own policies, administrative release and things like that.*

Interview WA28

*I think where the situation would be conducive to doing that, you do that. So if it's just somebody wanting information that is easy to give them that we know they're entitled to anyway and just putting it through the process seems a little bit ridiculous.*

Interview WA39

*So we are very clear on the principles which are around that transparent release information. So where practicable and at the appropriate level of the office, we will release information in an informal process, mainly because it's the customer's information.*

Interview WA39

*I think it's an organisational culture. We have to publish whatever we can as much as we can ... it's an internal audit and scrutiny of things, but also transparency in decision-making and standing accountable. We expect that of those that we regulate, so we should obviously do it ourselves. That's what we practise.*

Interview WA30

While some executives want their agency and staff to be more proactive, they currently feel the Act in WA hampers their ability to do this.

*We, generally at the moment, our Act essentially doesn't allow us to release the information that I'd like to release administratively.*

Interview WA28

For some executives in the FOI space, the lack of a specific Privacy Act in WA is seen as part of the reason why there is confusion regarding the FOI Act. Such Privacy Act is on the government agenda in WA, and this is seen as a way for the FOI Act to be 'cleaned up'.

*Time is just asking about some other initiatives underway in WA. So a couple of things we're talking about. One is privacy, responsible advice and sharing. So the [current] government made a commitment to this. That's going to be interesting because there's kind of two sides to that. One is some clarity because that in a way, it's privacy and responsible information sharing. It's a combination of quite an interesting approach, actually, to put the two things together. And then it reflects the dual nature of that. So on one hand, information sharing is kind of like this proactive thing and trying to clarify and make it clearer about what agencies can share. So that's typically a proactive release thing. And then privacy is the other thing where you've got to make sure that you're looking after privacy. But in a lot of cases, I think the reality is that organisations are probably collecting too much, too often. And so our communication now and into the future from an information perspective will be on trying to encourage agencies not to collect stuff that they really don't need to.*

Interview WA77

Executives also mentioned that while being proactive in releasing information was important, there appears to be a lack of understanding of what information the public has the 'right' to access and the FOI process as a whole.

*I'm not sure that it [FOI] is that clear. I'm not sure that people that choose to receive information really understand the intent. Why would they? And also maybe that lack of clarity is what emerges throughout the process ... But my dealing with people that are putting in or seeking requests, maybe not as clear.*

Interview WA29

### *Is there a culture of openness or a culture of secrecy within the agency?*

In the majority of interviews conducted with management and senior leadership, the indications were that they felt their organisations and their direct leadership was of an 'open' nature. The mention of making sure their employees and practitioners in particular felt that they could approach them in an open manner was of particular importance. Where management indicated that they thought the culture within their agency was of a more 'closed' nature, this was usually an indication of the nature of the types of FOI applications they received or because they felt that the current FOI Act in Western Australia made it difficult for them to have an 'open' culture.

*Could the Act allow the agency to do more? I'm sure it could, but I think it is pretty open in terms of what the Information Commissioner expects from the sector.*

Interview WA29



*I definitely have to say openness, yet I haven't met or come up against any kind of secrecy yet. There really isn't anything that is preventing us from releasing it.*

Interview WA29

*I think the team is pretty open. I think the whole organisation has come along this journey with this idea of not really knowing what we do, and why we're doing it. So because every time we approach the application we actually go, this is why we're doing it. And we will be releasing everything you provide as a singular consideration of how to tell this line that we're trying to find the, you know, rather than exemptions. I think FOIs are almost conflicting in a way with the Code of Conduct. You know, it tells us not to release information that you would deem confidential or not to release documents, but yet our job is to release documents. So I think the agency is pretty good at protecting information about itself, rather than being open.*

Interview WA26

*Not that's not secrecy, that's just adherence to the FOI Act. But yeah, I think it's secrecy because of the type of documents that we do. It's because of the environment we are in.*

Interview WA51

### *Records management*

When asked about their agency's RM systems and processes, responses were light. However, executives were able to name some specific programs the agency used as part of their RM systems.

### *Culture at the agency*

When asked if they'd describe their agency's culture as being open or secret, overwhelmingly, executives answered 'open'.

*Uh, well, it's a good question. I think it's increasingly more open ... and I think there is a lot of interest in providing more about what we do. But the specifics of what people sometimes want to see are made clear through this process from time to time. And so there's a live conversation, about how much of what.*

Interview U

*I think we've got a reputation as a council for being as transparent as anyone can be. I know that there will be times when in particular we have, as most local governments, have two or three citizens who want to make a statement. And will say 'Why did you have that meeting? That part of the meeting was confidential.' Yeah, it was because we were picking the new company to pick up our rubbish. Well, yes, you know, it's a pretty competitive business here and we couldn't really deal with that in public.*

Interview AN

*I think the thing that most government agencies have underestimated is the ability to actually respond to the volume of requests in a timely way. I don't think that I necessarily need better training for my fellow officers. I think they've got this nailed. What I do think is missing is the broader education across the organisation about being aware that there is no such thing as a personal record on a government email account.*

Interview SA

Is FOI and access to information reported and discussed regularly in the executive committee meetings in your agency?

This question resulted in mixed responses. Some executives stated that FOI statistics were presented to them annually via reports, for example. Others stated they obtained this information quarterly. FOI and information access was found to not be a regular executive meeting agenda item.

*I wouldn't say it's discussed regularly. I think there are regular reports of FOI activity for, you know, audit and risk and compliance reports. But I think it's fair to say it's not something we would discuss on a frequent basis.*

Interview Q

*So, it's reported on [FOI]. I think by extension, it is discussed. So, you know, it's not always an item for discussion, but an item for noting. And then, you know, depending on the individual request, it might be discussed. But not all of them at any point.*

Interview U

## **South Australia**

South Australian FOI practitioners overwhelmingly stated that access to information and FOI was not discussed regularly or included as an agenda item at executive meetings. Practitioners said FOI was discussed with executives on a case-by-case basis, generally in regards to contentious or sensitive FOI applications.

## **Western Australia**

Executives or managers working in RM said that there is still confusion around when a 'document' should be destroyed.

In addition, those working in RM stated that, due to the amount of information being collected and held, it was extremely difficult to ensure information was 'discoverable', particularly when so many agencies have offsite storage. A push to make agencies bring in new technology to 'hold' information was one solution.

*One of the reasons is that its information needs to be discoverable. It's a burden for it to be searched.*

Interview WA77

*So [the agency should have] responsibility to take that information carried in place and move it over to more usable technology.*

Interview WA78

One agency in WA has recently been working on a business case for a program that would start the process of centralising records. They mentioned other jurisdictions in Australia that are currently implementing this process, with resources being set aside to start consolidating offsite data so that an agency can start taking action.

*And then it's more efficient because you've got an equivalent to use that can then go, okay, let's have a program to migrate that stuff and make it accessible. If it's split across hundreds of repositories, which would certainly be the case for us, and then that job is much harder, you still do it, but potentially you're going to duplicate that effort across thousands of repositories.*

Interview WA76

Another agency has made concerted efforts in transferring legacy or historical documents from hard copy to electronic repositories.

*Basically only one half of it has gone electronically in the last three years. Yeah. And then we've got one remaining little area that is still hard copy. The rest of the agency, electronic.*

Interview WA28

*Yeah, we're really kind of digital first. We're always trying to look for the best possible solutions going forward. We've got really good systems in place. But, you know, it is very, very good here. And I guess that's the benefit of being, in our minds, a smaller organisation. We're not the Health Department, no, that would be completely different.*

Interview WA27

For some executives, the centralising of records meant that accountability would still be important, particularly when looking back historically at decisions made by former governments.

When the topic of AI or other emergent technologies was mentioned in helping RM, the majority of executives said their agencies had not looked into the idea.

*We used document content searching Content Manager for a little while, but we just found it was a bit clunky, you know, that the search's face ID time didn't really return what you were looking for.*

Interview WA28

#### Does your agency have an information access policy?

*It's on our website. Well we put the external stuff on the website, but we have an internal protocol for our own staff on that intranet, and it is reviewed annually.*

Interview WA29

### Opinions on the functionality of freedom of information and records management

Opinions were varied as to how each state's information access system was functioning.

The Freedom of Information Act in Western Australia is over 30 years old,<sup>6</sup> and showing its age. Several interview participants took the opportunity to mention that the current Act needs to be amended because it's no longer fit for purpose given the changing types of information and technology for storage – mentioning its age as soon as the first question was asked.

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<sup>6</sup> [https://www.legislation.wa.gov.au/legislation/statutes.nsf/main\\_mrtitle\\_353\\_homepage.html](https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_353_homepage.html)

*Because it (the Act) is still in the dark ages and sitting on a bench.*

Interview WA55

*I think that it's not contemporary and it doesn't really make it easy, I think, for people accessing information.*

Interview WA13

*I think I'm pretty proficient in understanding the legislation and I think that in terms of accessing information, I think the legislation is just in dire need of an overhaul.*

Interview WA17

*I feel that it's not an effective system. Because I feel that there is the inability to ensure governance over the requests and that the times fail to comply with the Act because it has not been overhauled.*

Interview WA23

*I have been of the opinion for such a long time that the legislation needs review and they have to stop putting it off. It's just outdated. There's so much that has happened in the last ten to twelve years and then even across the 30 years. And it just can't keep on.*

Interview WA13

*I think it's a broken system.*

Interview WA11

For those with a nuanced understanding of the FOI Act in Western Australia, the Act's age and its lack of development meant that it could be subject to abuse.

*I believe that it is in its intended outcomes in terms of enabling the public to have, I guess, visibility and transparency of decision making. For the public agencies, I would say that it is a fairly blunt instrument in the sense that it provides applicants sweeping access, which is fine. But for Western Australia ... they are not sufficiently nuanced to prevent abuse of the legislation. And it tends to be those who are aggrieved or have a particular grievance with the public agency who are using the processes under the FOI Act to require the agency to respond.*

Interview WA20

*I think the current objectives are good. It's there to promote transparency, it's there to promote accountability. I think sometimes how it's used or what people use it for sometimes are not what it was established for. I think that also falls in line with the fact that it's 30 years old and it's never been touched. So the way people access information or the more, I guess, litigious potential side of life is going ... People see FOI as a tool to help with that. And that's not necessarily, in my opinion, what it was created for. It was created for an open and transparent government to keep people accountable.*

Interview WA41

*What I think I'd like to see FOI being used primarily for is things like I want information on. For example, what the agency's drone policy is or on how this works or budget to do with such and such. Actual governance.*

Interview WA21

For a number of interview participants who had worked for several different agencies in the FOI space, they felt that how well the Act worked was dependent on which agency they were working for.

*It's organisation dependent. Like I said, I've been in a few different organisations and they all manage FOI very differently.*

Interview WA13

*So I think it does have a place, but I think in some agencies it's much more complex than others.*

Interview WA36

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

### **Changing the law**

By far, the most common suggestion was to either update or rewrite the FOI Act. This was feedback that transcended both industry and state lines.

*It's time to update the old fashioned Part II Statement. I mean, how old's the Act? That part was made back when everything was still hard copy. So we haven't caught up with how we currently work.*

Interview AI

*I think that change would come faster if it was legislated.*

Interview AT

### **Changing the agency culture**

Changing agency culture was examined more closely during this section of the interviews. When asked if trying to enact culture change worked better if coming from the 'top' (i.e. CEOs, executive teams) or from the 'bottom' (i.e. practitioners and managers), many said it had to come from the top.

### **Updating the Act or changing the culture? Both are needed**

When asked which was more important, the majority of interviewees said they were just as important as each other.

### **Resourcing the FOI sector: Law change and agency change**

*... We're continually asked to do more and more with less. And that never changes, you know ... it makes sense that these systems don't get better. They just get worse and worse. And so, then you **think about how that affects transparency and access to documents.***

Interview A

*So the training I think is a moot point. We've got great training packages. Who wants to do them? No one. Who's really interested? No one. Until they get caught.*

Interview SA

While some small-to-mid-level agencies are comfortable with their resourcing versus the work required, the majority of those interviewed expressed concerns regarding under-resourcing, under-funding and under-staffing. Despite this, practitioners and their managers make-do to deliver for the wider agency.

*So, when I started here ... the training that was available to people was not particularly well set out. Mind you, there was one person who was processing all requests, all by [themselves] ... And I could say that that's really all [they] had time to do.*

*... I see the benefits that flow from it [the education] both for myself in my role, but also just demystifying the process. It means that people then know ... what the purposes of what's going to happen with it, what they're doing. So I see that as really important. And so wherever I could, I was rolling out a little trademark talk that I just developed. We're now in the process of looking at getting a module together that kind of brings together privacy, information management and that it's sort of a quick grab of all those different areas upfront, for starters."*

Interview A

### **Victoria: Things are better than they were before**

In some interviews with practitioners and managers who have been in the industry for a long period, it was beneficial to hear their opinions on what they had seen change during this time.

*It's a lot better than it was ... they [previous iterations before current OVIC] were very Big Brother, talking at you ... to [now] moving off to partnering and educating.*

Interview AI

*I've worked in [FOI] for 20 years and on and off during that time ... There's been lots of changes ... I can remember years ago decisions would just be made saying this is exempt basically 'because we said so' and it really didn't come knocking on the door.*

*Interviewer: So what do you think has changed in your time between when you started doing FOI versus now?*

*It's our education. Not only with it within our agency and I think across agencies and [the industry]. This is a more sophisticated understanding and also the public themselves that they know a lot more.*

*... We used to have basically zero resources, so no one cared. [FOI] What's that? What's that? Off. Down the back for that one. But it's not like that now. [We] have more requests from people. [Employees] know that their stuff's going to get out there and it's just much more well known. Across the board.*

Interview H

However, this should not mean complacency, as practitioners and managers were clear in stating that improvements were absolutely necessary for FOI functionality to improve in the state.

### **Summary of opinions on the functionality of records management**

- **RM software rollout that caters to proper RM codes and efficiencies of agencies and sectors**
- **Work with state public record offices regarding agency adherence to RM policies, and strengthen the knowledge and understanding between RM best practice and FOI efficiencies**
- **Be aware of the current AND future issues pertaining to RM compliance**
- **One central RM system. Funding and resourcing hamstrings this**
- **A RM system that ‘talks’ to all the other programs and systems in an agency.**

### Minister interviews

Again, as with the survey component, all state government ministers with portfolios from Victoria, South Australia and Western Australia were invited multiple times to participate in the project, both by the project’s lead research coordinators and each state information commissioner/ombudsman.

Fifty-five (55) ministers in total were invited to take part in this study. A grand total of three government ministers agreed to be interviewed (2 from SA, 1 from WA). One of the three interviewees displayed genuine interest in access to information issues; two were extremely guarded and non-committal regarding the importance of FOI as a governance accountability mechanism and trust-building tool.

### Western Australia

On a few occasions, interview participants were candid in their responses about circumstances where they had been questioned on FOI applications from staff members answering directly to ministers and their portfolios. This ranged from questions around how many FOI applications were currently being worked on to questions around final outcomes of applications. These participants indicated that they felt ‘uncomfortable’ with the current procedure and saw it as ‘problematic’ as regards the spirit of the FOI Act.

*There has to be something in the legislation that will make it, that will ensure that this information should not be, the government [in power at the time] or the minister who has the portfolio, that they [ministers and their staff] remain completely disconnected. Uninformed and outside of the FOI process.*

Interview WA25

In one particular example, the participant said it was a common occurrence that they be contacted by the minister’s office and asked if any FOI applications had been submitted around contentious issues or potentially embarrassing issues that would undermine confidence in the minister and their office.

In the following example, the participant confirmed that when they were ready to submit a response to an application on these types of issues, their leadership indicated that it needed to be forwarded to the minister’s office for ‘review and sign off’ before it could be sent to the applicant.

*There should be absolutely no involvement by the minister's office in any shape or form, let alone that we need to, because for the past year we now have got a process where if it's a ‘hot topic’, if it is an application that's classed as highly sensitive. We then need to basically get it approved. It's a process devised against my will. I completely disapprove and disagree with that. But essentially, I had to request permission from my senior executives that relate to the area where the application of subject*



*matter relates to basically, saying, 'I need to provide a notice, to issue a notification that the application is ready to be finalised and the decision is made.' So, then the minister's office gets notified and then eventually I will receive a notification that 'Yes, you can issue the decision.' It is completely contradicting the object and intent of the FOI legislation.*

Interview WA25

## Discussion and analysis

In this chapter, select results from the findings chapter will be examined in more detail, identifying the most salient and important factors found in the study. This in turn will form the basis for the recommendations, presented in the next chapter.

### At a glance: Comparing and contrasting the states

The Venn diagrams below offer a visual representation of the similarities and differences between all three states examined in this project with regards to FOI and RM.



As depicted in the diagram, commonalities include how practitioners and managers described themselves as both assessor and facilitator of agency information, using similar terms and concepts to describe state information access systems, and the issue of vexatious/nuisance applicants.

The shared commonality between VIC and SA is how the legislative changes to timeframes have created workload issues among agency staff. The shared commonality between SA and WA is that interview participants in both states expressed a fear of sharing the 'wrong' information with applicants (i.e. sensitive, private or confidential information), leading to tentativeness surrounding proactive release. The shared commonality between WA and VIC is that both sets of practitioner cohorts found the Act in each state to be outdated and recommended changes.

In Victoria, it was found that the health sector was in the habit of releasing patient discharge summaries by default, without the need for the patient to send in an FOI request. It was also noted that local governments were in the process of examining their documents and information to see what could be proactively released 'by default'.

In South Australia, proactive release was a contentious issue, described in health as 'not their job', and found to be generally not encouraged as a way to provide information to the public. It was also found that South Australia's NDIS applicants are routinely encouraged to lodge an FOI application to receive their patient information in order to apply to the program. As such, this was creating complex FOI requests in the health sector.

Finally, in Western Australia, there was found to be resistance to proactive release almost by 'default' in the areas of health and statutory agencies. Moreover, practitioners and managers interviewed in WA mentioned feeling 'bad' or 'disappointed' that they could not provide more information to applicants.

### State comparison: RM



As identified in the above diagram, commonalities for all three states were numerous. For the majority of agencies in the three states, paper records and hard copy records are kept offsite by a third-party document storage service. Interviews also found there were common software programs that were utilised by agencies, including SharePoint, TRIM and others. Additionally, while numerous agency corporate structures were identified, FOI and RM practitioners consistently stated in interviews they maintained a good relationship and line of communication between their two areas. Finally, universally, two main types of RM for FOI staff were identified: either the agency allowed unfettered access to company documents and information or the information was held within each department, requiring departmental access.

Shared commonalities for VIC and SA were that both states identified issues with agency RM processes; namely, staff education in the wider agency regarding correct RM procedures. VIC and SA practitioners and managers also stated feeling overwhelmed by how many RM systems and programs they had. This was identified particularly in the health sector, and in some cases local government. A commonality shared by VIC and WA was that both states were still using 'legacy' systems; that is, old or historic RM systems that their agencies had moved on from (e.g. discontinued network drives).

In Victoria, it was found that the majority of agencies had made the switch to digital-only, with rural or underfunded agencies still using a paper–digital hybrid system. In South Australia, most agencies were moving towards becoming digital-only, but a number of statutory agencies were still creating paper records as part of their daily workings. Comparatively, in Western Australia, no agency

interviewed was digital-only. Of the sectors examined, the health sector was the farthest along in the transition to digital-only.

### Survey discussion: FOI survey free-text responses

There were a great number of similar responses, across all states and all levels of the invited agencies. This is perhaps in part due to how long FOI has been researched and discussed within government agencies. All levels of staff (practitioners, managers and executives) are clearly very aware of what needs to be worked on. Free-text responses provided a great amount of detailed information into the responses chosen by all participants, and suggestions as to what should be tackled when introducing changes to the information access system.

By examining the free-text responses in more detail, a major issue with many interwoven themes emerged – across all three states, there was an evident gulf between the idealism of FOI and proactive release and what these seek to achieve, and its working actualities.

### The idealism of FOI versus actualities

This overarching theme encompasses two key, heavily interwoven issues: information bottlenecks and departmental resourcing.

#### **The FOI Ideal: A movement towards proactive release and releasing information by default**

#### **The Actuality: Information bottlenecks created by ‘higher-ups’ – middle management, executives and government ministers**

*I think there is reluctance by some public offices to proactively and informally release documents outside the FOI Act. [VIC]*

*I think it's very common knowledge that the minister's office is cited on FOI releases before they go out. That's not spoken about in, say, legislation. Nobody would directly say this is something that happens to the ombudsman, that the ombudsman knows that it happens just as well as he knows his own name. [SA]*

It was clear through the free-text responses in the surveys that timeframes for third parties and timeframes for government ministers were affecting FOI staff.

*Whilst Question 1.3 is the intended purpose of the government to proactively release, this is not always the case especially through internal government hold ups such as awaiting for documents to be allowed to be released through the noting process etc. The agency could have finished their side of things but are blocked along the way by the higher up chain. [SA]*

Responses also highlighted a lack of education or ‘care’ about what FOI is and must entail by agency staff beyond the FOI department.

*The objects of the Act are not sufficiently understood by those who are not practitioners of the Act. There is still a tendency to be protective of information. [WA]*

*The legislation needs updating, but there also needs to be a major cultural shift, especially in the middle management and executive who at times can try and interfere and hinder the release of*

*documents if they don't fully understand the requirements of the FOI Act. This can place FOI coordinators in a difficult position when trying to act in accordance with the legislation while not disobeying a directive from management. [WA]*

*[My role is] Providing internal advice across the agency to break down unnecessary barriers where staff assume information and work that they do should naturally be hidden/protected without any real justification. [SA]*

*I do not believe legislative amendments alone would result in facilitating greater public access to government information. Agency culture change is definitely relevant, in terms of improving staff awareness of FOI obligations – including at executive level. [SA]*

As a result, this either makes the agency protective about what can be released or act as 'PR' and damage control for the agency.

*It is difficult to balance the needs of the applicant and the desire of the organisation to not 'look bad'. [WA]*

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

*In a perfect world, FOI officers would be promoting and providing access to sensitive documents and information where possible, even where there is risk to the agency and its image. Unfortunately these roles, particularly for larger agencies, act more as Public Relations Officers, addressing concerns of higher-ups and subject matter experts while attempting to follow the obligations of the Act (nothing more in terms of promoting access). [WA]*

This has the result of putting pressure on FOI staff to err on the side of not releasing documents.

*The roles of the FOI Officers is restricted by agency and ministerial pressures. [SA]*

*I sometimes feel quite disappointed that I am not able to provide applicants with more meaningful information. I feel that we are more focused on protecting sensitive information over releasing personal information which could make a real difference to an individual. [WA]*

## **The FOI Ideal: An adequately resourced FOI system**

### **The Actuality: Not nearly enough resourcing**

Resourcing, in the form of time, human resources and funding, was raised both in the free-text responses and the interviews. Lack of agency resourcing towards FOI means some practitioners cannot act on their initiatives, such as looking into additional documents that could be released by default, undergoing updated training on FOI and information access processes, or creating agency or industry-specific education modules. Instead, they can only do the bare minimum; that is, processing FOI applications.

*FOI is a small part of my role as [REDACTED] but due to the increasing volume of applications and their complexity, it is taking up more of my time than it should. We do not have a dedicated FOI officer at [AGENCY]. [WA]*

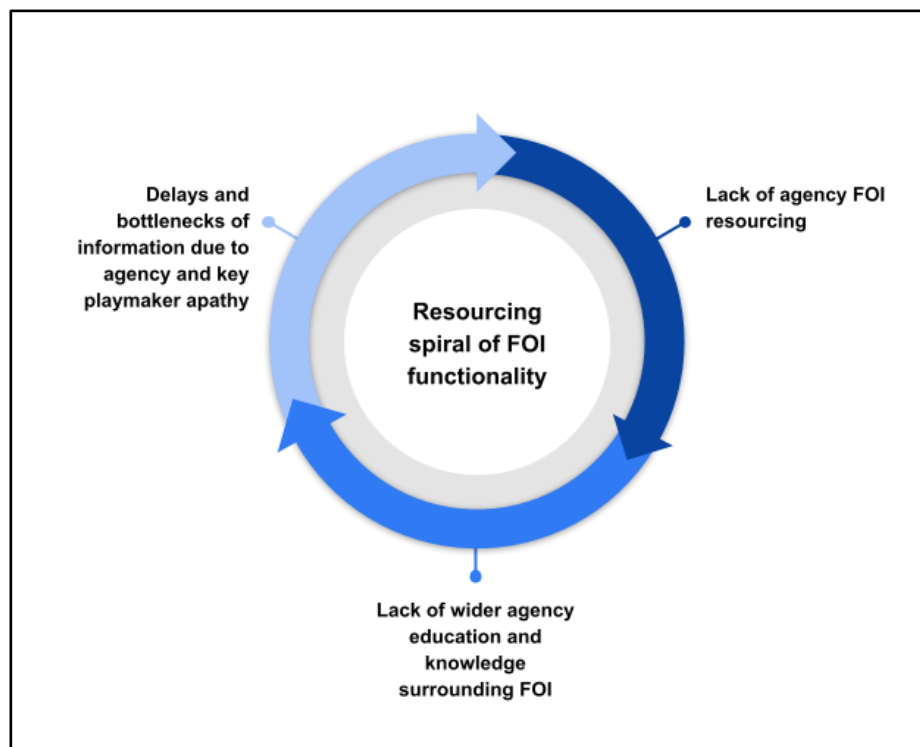
*... resourcing is a constant issue. There are options (and things that have been implemented) to allow us to work smarter and more efficiently, but you hit a ceiling of diminishing returns fairly soon. We are*

*exploring additional workflow improvements and restructures that would allow more efficient delivery of information both inside and outside the constraints of FOI. Generally speaking, I would prefer to see more information 'pushed' out rather than 'pulled'. [WA]*

*Whilst FOI is supposed to be a last resort, it is too often used as a first port of call by agencies as a release mechanism. In my opinion, this is due to misconceptions by higher-ups about the type of information that is released through FOI (personal information of third parties), and the lack of incentive to assign resources to create information packages and release strategies, as Freedom of Information already fills this role (albeit extremely poorly, which they likely do not care about). [WA]*

The clear flow-on effect of this resourcing issue is that knowledge and understanding of FOI is insular – only those who are doing the FOI job know about FOI. Again, this means those beyond the FOI department are not educated on the process, creating the bottlenecks and pushbacks that subsequently affect the FOI staff once more. It is clear that in some agencies it has become a self-fulfilling prophecy; no one knows about or cares about FOI, so no one will resource it properly. Thus, no one in the agency knows or cares about FOI.

**Figure 39: Resourcing spiral that affects agency education and causes delays and bottlenecks to the FOI process.**



Survey discussion: Free-text records-management section

The issues discussed above were observed once again in the RM survey component.

**The RM ideal: Adequate resourcing**

**The Actuality: Lack of resourcing**

*We do not have a record management system and so searching for documents is ad hoc. [WA]*

Just as in the FOI section, a lack of adequate resourcing for compliant RM systems could be seen to have a number of flow-on effects. First, as for FOI, a lack of adequate RM funding and resourcing meant:

**Lack of staff (including executives) understanding (or caring) about how complying with RM systems means effectiveness of agency functioning**

*Our records system in [AGENCY] is so behind. We need to be on Objective but there is a lack of enthusiasm and costs to get this on board. [SA]*

*Major difficulty with the main electronic system being used (EMR) is quite complex to extract the information. These issues have been addressed on many occasions but still haven't been improved after having teams review the process and making changes. Still requires a lot of time to extract the information, running many reports to do so and then having to extract images that have been scanned into the system. [SA]*

A lack of staff understanding, or an abundance of staff apathy, towards RM consequently means:

**Lack of compliance**

*Good systems are one thing – staff compliance with them is quite another. [SA]*

*Increasing use of Microsoft 365 and records in email not effectively managed. [VIC]*

*A properly used records management system gives the FOI officer greater oversight of documents which are potentially within the scope of an FOI application. This helps ensure all relevant documents are captured/provided by other staff, and assists decision-making about documents which may or may not fall within scope. [SA]*

A lack of RM compliance makes the role of both FOI staff and any RM staff infinitely more difficult.

One executive response to a free-text survey question warrants further exploration.

When asked, *Is there anything that you would like to add regarding how records management / record keeping systems assist or hinder you / your staff in the effective performance of FOI duties?* the executive wrote:

*Records management systems are an overhead on the business, however are needed to comply with legislative requirements.*

This response was very common when asking practitioners and managers during the interview process about their agency's RM systems. There appears to be a consistent belief among executives that RM systems are a 'burden' to businesses and exist only as a legal or compliance hurdle.

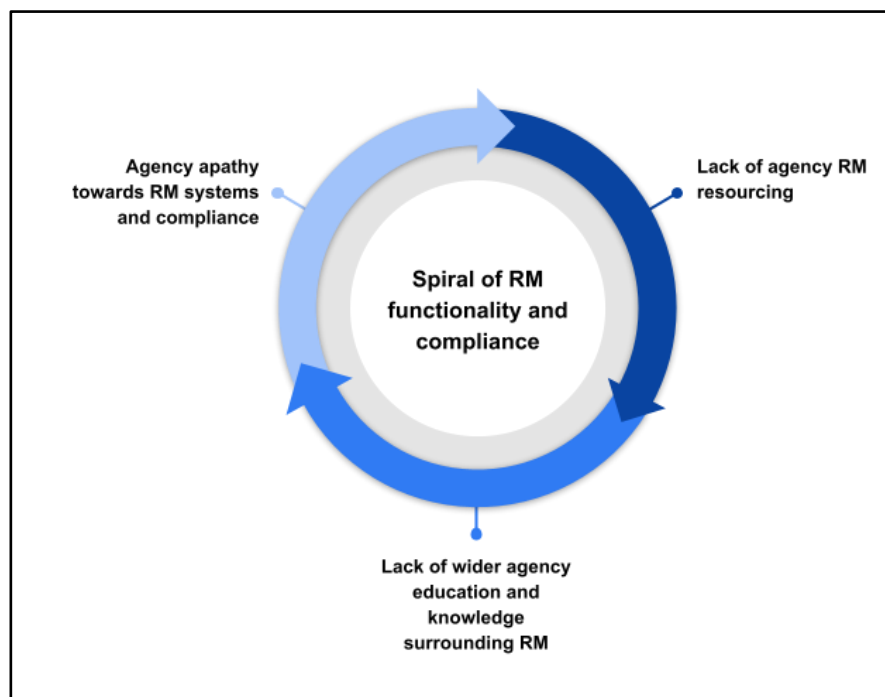
This may be contributing to the lackadaisical approach to RM funding and to wider agency apathy towards its uptake. While RM is not the sole reason that government agencies exist, it is nevertheless an important part of any government agency, and has wide-reaching ramifications when ignored, such as:



- increased budgetary measures for perpetual storage of hard copy files, which only increase year by year when there is no time for staff to digitise the hard copy files
- lack of induction and refresher training on RM processes, coinciding with lax behaviours by wider agency staff when naming and storing files
- increased time taken by FOI and RM staff searching for data and information that is improperly named and stored.

It has been shown throughout this project that RM and FOI are intrinsically linked, and good RM systems help promote an effective FOI team in any agency.

**Figure 40: Resourcing spiral that affects agency education on RM and causes apathy towards RM compliance**



Finally, another major issue was identified, as follows.

### Ill-suited agency software and RM systems for FOI directives

*Records are held in multiple formats; some of the newer electronic formats do not allow for effective extraction or ability to conduct specific searches and is not supportive of the FOI process needs. [VIC]*

*FOI is not a primary factor in record keeping systems. The focus tends to be its function and purpose for front line users and then workarounds are made at the tail end when FOI becomes a consideration. There is an attitude that systems don't need to be built with FOI in mind, the focus is on system delivery and not ease of access for record extraction/generation. [VIC]*

The survey responses quoted above were a common talking point when participants were asked about their agency's record-keeping processes and – to a wider extent – the software programs used at the agency. Participants pointed out that FOI and RM were not what their agencies 'did' in terms of customer-facing or front-line agency staff. Their purpose was to do the job of the agency.

However, they also talked about how, while certain software and programs helped the front-line staff do their job, it made those of the FOI and RM staff difficult, as these programs could be clunky to search in or were many in number (as seen in the health industry).

While it may be difficult for agencies to strike a balance between their front-line directives and that of FOI and RM compliance, agencies – particularly those with decision-making capabilities – should take into consideration the feedback and opinions of FOI and RM staff when deciding on software programs.

### Survey result comparisons

The surveys showed a number of areas of agreement between FOI practitioners, managers and agency executives as well as agreement across state lines. There were also, however, some noted differences. In particular, we draw attention to differences expressed between FOI practitioners versus executives, as well as differences identified between VIC, SA and WA.

### Practitioner versus executive differences

#### 1. Senior staff understandings of FOI

In regards to opinions on the levels of knowledge and understanding of FOI requirements by senior agency staff, surveys showed discrepancy between what practitioners and managers believed versus what executive staff believed. This was noted across all three states.

**Table 1: Sentiments of practitioners versus executives: In my view, a lack of understanding about the requirements of the FOI Act from senior personnel in my agency is a significant impediment to a better functioning information access system.**

In my view, a lack of understanding about the requirements of the FOI Act from senior personnel in my agency is a significant impediment to a better functioning information access system.			
	Positive sentiment	Neutral sentiment	Negative sentiment
Practitioners	57%	13%	30%
Executives	39%	15%	46%

2. Opinions on improving FOI

While there was general agreement between the two groups, practitioners and managers were much more adamant in their sentiments regarding using legislation and agency culture change to improve FOI outcomes.

**Table 2: Sentiments of practitioners versus executives: An effective way to improve the information access system is by changing legislation.**

An effective way to improve the information access system is by changing legislation.			
	Positive sentiment	Neutral sentiment	Negative sentiment
Practitioners	69%	22%	9%
Executives	61%	26%	13%

**Table 3: Sentiments of practitioners versus executives: An effective way to improve the information access system is by changing culture and practice.**

An effective way to improve the information access system is by changing culture and practice.			
	Positive sentiment	Neutral sentiment	Negative sentiment
Practitioners	81%	13%	6%
Executives	76%	15%	9%

### 3. Feedback regarding agency records-management systems

Executive agency staff were more positive about their RM systems and their capabilities compared to practitioners and managers.

**Table 4: Sentiments of practitioners versus executives: My agency uses a records-management / record-keeping system that enables me to perform effectively my role in facilitating access to information on request under the FOI Act.**

My agency uses a records-management / record-keeping system that enables me to perform effectively my role in facilitating access to information on request under the FOI Act.			
	Positive sentiment	Neutral sentiment	Negative sentiment
Practitioners	83%	3%	14%
Executives	90%	5%	5%

**Table 5: Sentiments of practitioners versus executives: My agency uses a records-management / record-keeping system that enables me to perform effectively my role in facilitating proactive disclosure of information.**

My agency uses a records-management / record-keeping system that enables me to perform effectively my role in facilitating proactive disclosure of information.			
	Positive sentiment	Neutral sentiment	Negative sentiment
Practitioners	80%	7%	13%
Executives	82%	13%	5%

### State differences

While most survey questions saw consistent response trends between all three states, there were some areas where there were differences.

#### 1. Proactive release

When examining the survey responses pertaining to informal or proactive release, there was a large discrepancy between Victoria's responses versus those from South Australia and Western Australia:

**Table 6: Sentiments of states: The information access system also involves the proactive and informal release of documents and information outside the FOI Act.**

The information access system also involves the proactive and informal release of documents and information outside the FOI Act.			
	Positive sentiment	Neutral sentiment	Negative sentiment
Victoria	88%	9.5%	2.5%
South Australia	75%	10%	15%
Western Australia	82%	5%	13%

However, West Australian practitioners had a higher positive response rate when asked about roles.

**Table 7: Sentiments of states: Part of my role involves facilitating or promoting proactive release of information**

Part of my role involves facilitating or promoting proactive release of information			
	Positive sentiment	Neutral sentiment	Negative sentiment
Victoria	81%	5%	1%
South Australia	81%	10.5%	8.5%
Western Australia	97.3%	1.35%	1.35%

Victoria's sentiments remained steady in the survey questions regarding proactive release. Agencies spoken to during the interview process were able to outline what and how they release documents and information proactively, but some sectors – namely local government – expressed challenges regarding what could be consistently released under proactive release, given so many local governments offer different services. The dominant positive agreement with this question regarding proactive release may be due to Victoria's 'open by design' mentality to the FOI Act over the years, as overseen by OVIC.

South Australia in both instances was in less agreement than VIC and WA, and more likely to disagree with the questions regarding proactive release.

## 2. Confidence in RM programs

When asked questions about RM systems, WA appeared to have the most confidence that their systems enabled them to perform their roles effectively.

**Table 8: Sentiment of states: My agency uses a records-management / record-keeping system that enables me to perform effectively my role in facilitating access to information on request under the FOI Act.**

My agency uses a records-management / record-keeping system that enables me to perform effectively my role in facilitating access to information on request under the FOI Act			
	Positive sentiment	Neutral sentiment	Negative sentiment
Victoria	77%	5%	18%
South Australia	80.4%	4.4%	15.2%
Western Australia	87.5%	1.4%	11.1%

**Table 9: Sentiment of states: My agency uses a records-management / record-keeping system that enables me to perform effectively my role in facilitating proactive disclosure of information.**

My agency uses a records-management / record-keeping system that enables me to perform effectively my role in facilitating proactive disclosure of information.			
	Positive sentiment	Neutral sentiment	Negative sentiment
Victoria	79%	8%	13%
South Australia	76%	11%	13%
Western Australia	83%	4%	13%

However, when examining the free-text sections of the survey, as well as discussion in the focus groups, all three states experienced dissatisfaction with elements of their RM processes.

### Recommendations

FOI requests have risen year on year, but resourcing, staffing and attitudes in agencies towards FOI appear to be the same. FOI practitioners and managers are consistently asked to do more with less,

and this may be a reason why agencies are increasingly relying on exemptions to refuse FOI applications and decrease their workload (OVIC, 2022).

### **FOI legislation**

The following aspects of drafting of FOI laws have been identified as relevant to improving the culture of FOI administration:

1. **Making explicit that proactive information release should operate as the default rather than the use of FOI applications as a means for providing access to information.**
2. **Ensuring that terminology and procedures are reflective of modern digital environments, rather than the paper-based environments that prevailed when the FOI Acts were first enacted.**
3. **Streamlining consultation requirements to ensure that consultation is required only where it is reasonable and practicable and that it does not unduly extend decision-making timelines.**
4. **Ensuring that legislative timeframes are realistic having regard to the processes involved and based on working days, rather than calendar days.**
5. **Including within the legislation clear and adequate procedures for dealing with vexatious applications.**

### **FOI administration**

The research highlights the need for and potential benefits of:

1. **Supporting agencies in developing proactive release policies relevant to their specific needs.**
2. **Ensuring that any ministerial noting processes are structured to ensure that FOI officers can process requests within required timeframes.**
3. **Providing recurring sector-specific FOI training.**
4. **Providing recurring RM and FOI education for wider agency employees, including executives.**
5. **Ensuring that RM rollout is consistent with both with RM best practice and FOI efficiency.**
6. **Working with state public record offices regarding agency adherence to RM policies and strengthening the knowledge and understanding between RM best practice and FOI efficiencies.**

### **FOI funding**

The research also highlights the critical role of **adequate funding for RM and FOI processes** in promoting a culture of transparency and the effective operation of the FOI Acts. Inadequate funding for staffing, staff training (including guidance materials) and RM processes undermines not only the immediate efficiency of FOI processes but the culture of FOI teams, leading to ongoing inefficiencies.



### State-specific recommendations

<b>Western Australia</b>	<p>Review and reform of the Freedom of Information Act</p> <p>Update OIC WA website to be user friendly to both applicants and practitioners</p> <p>Provide sectors with more bespoke education and examples</p>
<b>Victoria</b>	<p>Provide local government sector with more bespoke proactive release guides</p>
<b>South Australia</b>	<p>Review advice given to FOI applicants with respect to NDIS applications</p>
<b>SA / WA</b>	<p>Examine how proactive release could assist sectors by releasing commonly requested documents by default</p>

### The time for research is over: The time for action is now

The findings from this three-year project provide a comprehensive analysis of the current information access / FOI climate across the three states. The results, however, are not novel, and in fact strongly align with results from the numerous studies and reports previously commissioned and published across the decades (OIC WA, 2010, 2022; OVIC, 2020a, 2020b, 2021, 2022a, 2022b). Furthermore, the South Australian government previously sought consultation in 2019/2020 regarding the state's FOI laws (YourSAy, 2019). The *Freedom of Information (Ministerial Diaries) Amendment Bill 2022 (SA)* was introduced into parliament with the proposed changes in 2022 but there has been no movement on the matter since September 2022. Western Australia is in a unique position, having had no review of the Act since its enactment in 1992.<sup>7</sup> In June 2022, Western Australia Information Commissioner Catherine Fletcher formally responded to Attorney General John Quigley's invitation for a submission regarding the need for a comprehensive review of the Freedom of Information Act 1992. With Quigley's announcement in February 2024 that he would be quitting politics at the next election in 2025,<sup>8</sup> it is of paramount importance that the review and reform process proceeds as soon as possible.

The table below presents the recommendations produced by this report in the blue column, compared to previous studies and their recommendations regarding FOI / information access culture. The

<sup>7</sup> The Freedom of Information Act began operation on 1 November 1993.

<sup>8</sup> <https://www.abc.net.au/news/2024-02-19/john-quigley-wa-attorney-general-to-resign-at-next-election/103483714>

studies, bills and other documents referenced as evidence are footnoted at the bottom of each page. Five of the recommendations have previously been recommended by prior research and submissions.

**Table 10: Comparison table between report recommendations and previous documents and submission recommendations**

2024 Report Recommendations	VIC previous recommendations	SA previous recommendations	WA previous recommendations	Commonwealth previous recommendations
Update the FOI Act	✓ <sup>9</sup>	✓ <sup>10</sup>		✓ <sup>11*</sup> recommends full rewrite
Update FOI Act to change/modify decision-making timeframes	✓ <sup>12</sup>	✓ <sup>13</sup>	✓ <sup>14</sup>	✓ <sup>15</sup>
Increased funding and resourcing of agency FOI and RM	✓ <sup>16 17</sup>		✓ <sup>18</sup>	✓ <sup>19</sup>

<sup>9</sup> Impediments to timely FOI and information release own-motion investigation under section 61O of the Freedom of Information Act 1982 (Vic) PP no. 270, Session 2018–21

<sup>10</sup> [https://yoursay.sa.gov.au/freedom-of-information-laws/news\\_feed/what-are-the-changes](https://yoursay.sa.gov.au/freedom-of-information-laws/news_feed/what-are-the-changes)

<sup>11</sup> Hawke, A. 2013, Review of the Freedom of Information Act 1982 and Australian Information Commissioner Act 2010

<sup>12</sup> Impediments to timely FOI and information release own-motion investigation under section 61O of the Freedom of Information Act 1982 (Vic) PP no. 270, Session 2018–21

<sup>13</sup> [https://yoursay.sa.gov.au/freedom-of-information-laws/news\\_feed/what-are-the-changes](https://yoursay.sa.gov.au/freedom-of-information-laws/news_feed/what-are-the-changes)

<sup>14</sup> <https://www.oic.wa.gov.au/Materials/FOI%20Review%202010%20-%20Summary%20Report.pdf>

<sup>15</sup> Hawke, A. (2013). Review of the Freedom of Information Act 1982 and Australian Information Commissioner Act 2010

<sup>16</sup> <https://ovic.vic.gov.au/wp-content/uploads/2022/04/20220422-State-of-FOI-in-Victoria-Special-Report.pdf>

<sup>17</sup> <https://ovic.vic.gov.au/wp-content/uploads/2021/09/Enhancing-Victorias-FOI-Culture-to-be-Open-by-Design.pdf>

<sup>18</sup> <https://www.oic.wa.gov.au/Materials/FOI%20Review%202010%20-%20Summary%20Report.pdf>

<sup>19</sup> George, A.-J. M., & Tarr, J.-A. (2023). Submissions: Senate Committee Inquiry into the operation of Commonwealth Freedom of Information (FOI) laws (7 June 2023). Parliament of Australia.

<b>Modify vexatious applicant provisions in FOI Act</b>	✓ <sup>20</sup>	✓ <sup>21</sup>	* mentioned, but no recommendations <sup>22</sup>	✓ <sup>23</sup>
<b>Education of wider agency staff on FOI and RM</b>			✓ <sup>24</sup>	
<b>Education of Executive and senior personnel on FOI and RM</b>	✓*(FOI training mentioned)			
<b>RM software rollouts that caters to proper records-management compliances and efficiencies</b>				
<b>Strengthen the knowledge and understanding between RM best practice and FOI efficiencies</b>				

<sup>20</sup> <https://ovic.vic.gov.au/wp-content/uploads/2021/09/Enhancing-Victorias-FOI-Culture-to-be-Open-by-Design.pdf>

<sup>21</sup> [https://yoursay.sa.gov.au/freedom-of-information-laws/news\\_feed/what-are-the-changes](https://yoursay.sa.gov.au/freedom-of-information-laws/news_feed/what-are-the-changes)

<sup>22</sup> <https://www.oic.wa.gov.au/Materials/FOI%20Review%202010%20-%20Summary%20Report.pdf>

<sup>23</sup> Hawke, A. (2013). Review of the Freedom of Information Act 1982 and Australian Information Commissioner Act 2010

<sup>24</sup> <https://www.oic.wa.gov.au/Materials/FOI%20Review%202010%20-%20Summary%20Report.pdf>

It was noted in 2010 in WA that poor RM was a significant impediment to FOI.

*The review highlighted that poor recordkeeping can fundamentally undermine the intent of FOI. It is crucial that an agency can quickly and reliably identify all documents which may come within the scope of a FOI request and then make a decision as to whether and how those documents are to be disclosed. The review found that not all agencies are able to meet this goal and that many particularly struggle with managing electronic records such as emails. It is, therefore, important that agencies are mindful of their obligations under the State Records Act 2000. (OIC WA, 2010)<sup>25</sup>*

## Conclusion

To recap, this project's aims were as follows:

1. to capture and analyse how FOI practitioners, agency executives and government ministers view information access, and the factors that shape their attitudes towards implementing FOI
2. to determine the factors that play a key role in determining FOI cultures within agencies
3. to identify and develop practical measures that can be implemented by regulators to improve these cultures
4. to identify any additional measures that may be required to improve the interface between RM and FOI practice.

Having analysed a total of 377 surveys and interviews with 257 individuals at 96 agencies, we conclude that the findings, the analysis and the recommendations presented in this report are a valid and generalisable representation of the cultures of implementing FOI in Victoria, South Australia and Western Australia. Given previous studies of other Australian jurisdictions (Lidberg, 2009, 2016), it is arguable that replicating this study in other jurisdictions would capture similar data and arrive at similar conclusions.

The survey and interview responses have demonstrated how practitioners and executives view information access, and that both legislation and agency culture can shape behaviours and attitudes towards implementing FOI. It was found that there were differences in information release practices between sectors (e.g. health agencies versus local government), and that the following other factors could be seen as playing key roles in determining FOI cultures within agencies:

- resourcing, including appropriate FTE to the number of FOI applications
- level of experience of the practitioners
- level of autonomy given to practitioners to do their jobs effectively
- level of knowledge and understanding of FOI by executives
- level of compliance with RM systems contributing to an increased workload for some agency practitioners.

We can conclude that across the board, FOI practitioners possess a deep knowledge and understanding of the purposes, functions and challenges facing the information access systems in

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<sup>25</sup> <https://www.oic.wa.gov.au/Materials/FOI%20Review%202010%20-%20Summary%20Report.pdf>

their respective states. It behoves their agencies, as well as the state commissioners, to listen to what they are saying. Practitioners want to make FOI work better.

This project has endeavoured to interpret their feedback, as well as our own analysis of the information, into recommendations, as seen in the discussion chapter above.

As pointed out above, government ministers in all three jurisdictions did not engage with this study in a meaningful way. This is deeply disappointing but also an important finding in itself. The one group of actors/stakeholders with the greatest potential impact on the functionality of FOI did not judge access to information important enough to provide their views and attitudes. Until government ministers include FOI / access to information functionality on their policy agenda, little is likely to change.

This and other research projects have captured, analysed and recommended what needs to be done. Now it is up to governments to implement these changes. Well-functioning access to information systems are crucial both to rebuild trust in government institutions and agencies and to grow the digital economy.

Kofi Annan, the former Secretary General of the United Nations and Nobel Peace Prize winner, had this to say about knowledge gained by independent access to information. It provides a fitting note to end on.

*... it is ignorance, not knowledge, that makes enemies of men. It is ignorance, not knowledge, that makes children fighters. It is ignorance, not knowledge, that leads some to advocate tyranny over democracy. It is ignorance, not knowledge, that makes some think that human misery is inevitable. It is ignorance, not knowledge, that makes others say that there are many worlds, when we know there is one. Ours. (Annan, 1997)*

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