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Public Access Agency Reference Group (PAARG) Meeting Minutes

Date: Monday 26 August 2024

Time: 2:00pm – 3:00pm

Location: Microsoft Teams

Attendees: Sean Morrison, Information Commissioner, OVIC

Penny Eastman, Assistant Commissioner Public Access Reviews and Regulation, OVIC (Chair)

Shantelle Ryan, Assistant Commissioner Public Access Operations and Compliance, OVIC

Emma Stephens, Principal Policy Officer, OVIC

Andrew Mariadason, Legal Counsel – Manager Medico-Legal Services, The Royal Melbourne Hospital

Andrew Weston, Manager, Freedom of Information (FOI), Department of Transport

Delilah Nichols, Transport Accident Commission (TAC)

Jade Papathanasiou (DFFH), Acting Manager FOI, Department of Families, Fairness and Housing

Monica Barnes, Manager, FOI, Department of Education and Training

Peter Gannoni, Senior Governance Officer, City of Melbourne

Rebecca Cato, Legal Counsel FOI & Privacy, WorkSafe Victoria

Robin Davey, Manager, FOI Division, Victoria Police

Tiina Price, FOI Lead, University of Melbourne

Lisa Vescovi, the FOI Manager, Suburban Rail Loop Authority (SRLA)

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

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

Paul Pittorino, Senior Manager FOI, Department of Justice and Community Safety

Raffaella Di Maio, FOI Lead, University of Melbourne.

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Summary of key Agenda Items

1. Previous meeting minutes

Confirmed - All members confirmed minutes of [19 February 2024](#).

2. Acton Items

Nil action items from 29 February 2024 meeting.

3. Update from the new Information Commissioner, Sean Morrison

The Information Commissioner advised that OVIC's strategic plan for 2024-2027 would be published shortly. OVIC's vision / mission moving forward is to be: an independent regulator that promotes and upholds information rights in Victoria; aiming for a public sector culture that supports access to information and ensures its proper use and security.

OVIC's goals moving forward will focus on:

- Creating regulatory certainty;
- Enhancing agency accountability;
- Supporting information rights; and
- Advocating for best practice.

The Information Commissioner noted the high FOI workloads experienced by Victorian agencies and the difficulties associated with administering an outdated FOI Act, which were detailed in the [Culture of implementing Freedom of Information in Australia](#) report. The Information Commissioner highlighted that OVIC welcomed the findings and recommendations of this report; noting many aligned with points and recommendations made in OVIC's submission to the Integrity and Oversight Committee's (IOC) inquiry into the FOI Act. Notably, the Culture of FOI report recommends:

- Broad FOI policy and legislative reform toward a proactive information release (push) model rather than a model that relies on the administration of FOI law (pull).
- Additional support for agencies in developing proactive release policies.
- Legislative reform that simplifies and modernises FOI laws to make them accessible to the public and easier for agencies to administer.
- Enhanced training offerings, including sector-specific FOI training and training on FOI and records management for wider agency employees, including executives.

The Information Commissioner noted that a key theme from the report is how a lack of agency resourcing for FOI and 'information bottlenecks' contribute to a 'spiral of FOI functionality'. Highlighting that he sees the promotion of an access to information model based on proactive release of information as a way to, in part, remedy this. Believing such a model could ease the high administrative burden currently felt by agencies by making FOI requests a last resort, rather than the default mechanism for public access to information.

The Information Commissioner expressed optimism that significant legislative reform may be a reality in the not-too-distant future once the inquiry was complete and its report / recommendations released.

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4. Summary of OVIC's supplementary submission of 31 July 2024 to the IOC's inquiry into the operation of the FOI Act

Members were advised that [OVIC's supplementary submission](#) to the IOC's Inquiry into the FOI Act relates to Term of Reference about improving efficient and timely access to health information. A summary of the three main themes to OVIC's supplementary submission was provided:

OVIC take over regulation of health information handling

- Firstly, OVIC reiterated its recommendation that the most efficient way to regulate the handling of personal and health information, would be for the Health Privacy Principles (HPPs) in the *Health Records Act 2001 (HR Act)* to be consolidated into the Information Privacy Principle (IPPs) in the *Privacy and Data Protection Act 2014 (PDP Act)*, and for OVIC to regulate the handling of both personal and health information. This recommendation is also supported by the Health Complaints Commissioner, in her response to Questions on Notice from the Committee.
- OVIC's submission drew attention to the fact that Victoria is the only jurisdiction in Australia that regulates the handling of personal and health information under a dual system, with two sets of principles, two legislative instruments and two regulators. If implemented, OVIC's recommendation would see personal and health information regulated under one set of principles, one legislative instrument and one regulator.

Access under ATI law only

- The second matter raised in our supplementary submission is that OVIC no longer supports recommendations 18(a) and (b) of the submission we made earlier this year. Those recommendations related to enabling access to personal and health information under the PDP Act and the HR Act, as well as under the State's Access to Information (ATI) Law. OVIC has now recommended to the Committee that access to personal and health information be regulated under one legislative instrument, and that this should be Victoria's ATI Law.
- We consider an ATI law that enables proactive, informal and formal pathways of access would provide the most efficient and timely legislative mechanisms to access personal and health information. Consequently, if Victoria had an ATI law with these access pathways, access under the PDP Act and HR Act would not be needed.
- OVIC's submission highlighted that containing access mechanisms in one legislative instrument, rather than multiple instruments, should create efficiencies in training Agency and Ministerial staff to understand their legislative obligations, efficiencies in implementation, and efficiencies for OVIC in performing its guidance, education and regulatory oversight functions. Access under one legislative instrument may also reduce confusion, making it easier for members of the public to understand and exercise their rights.

Informal release where information proposed to be withheld

- Finally, OVIC made an additional recommendation relating to OVIC's proposed informal release pathway in a new ATI law for Victoria. Our recommendation relates to situations where an Agency or Minister is processing a request informally, and is considering withholding information from release.
 - In this situation, OVIC considers that the legislation should offer two options.
 - The first option would enable the Agency or Minister, with agreement from the Applicant, to continue to process the request informally on the understanding that it will not give rise to review rights. Under this pathway, the information removed from the document need not fall within an exemption under the Act. For example, this pathway might be used where it would

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enable an Agency to process a request quickly if certain information was removed from a document, and the Applicant agrees with this approach and is satisfied to forego review rights.

- The second option would arise where an applicant does not agree to forego review rights. In this situation, OVIC considers that there should be a legislative mechanism that moves the informal request across to the formal pathway. This would then require the Agency or Minister to make a decision under the Act, applying exemptions to redacted information, and granting the same review rights as requests processed formally.
- OVIC envisages that these processes would be conducted in accordance with Guidelines issued by OVIC and would not be available where the disagreement with the applicant is about whether the request is clear or is voluminous. It would only be where the agency is wanting to withhold information and the applicant does not agree with this.
- The reason OVIC is suggesting a legislative mechanism to move an informal request across to the formal pathway, is to remove some of the bureaucracy that occurs under the current Act. Under the current FOI Act, an applicant must resubmit their request “formally” under the Act, to enable an agency to make a decision granting review rights. This procedure is frustrating for applicants, and in some cohorts can be retraumatising, given the applicant has already made a request to the agency, that the agency has been dealing with informally.
- OVIC’s recommendation aims to enable agencies, where appropriate, to handle requests informally, and thus allowing for greater flexibility and sensitivity to the needs of the applicant compared with formally processing a request, whilst still ensuring that important review rights are retained, where information is withheld.

Members had an opportunity to ask questions / provide comment on OVIC’s supplementary submission.

5. Update on the independent review of the FOI Professional Standards

Members were advised that the independent review for the FOI Professional Standards (the **Standards**) had recently been completed and provided with the below summary of the recommendations and the next steps:

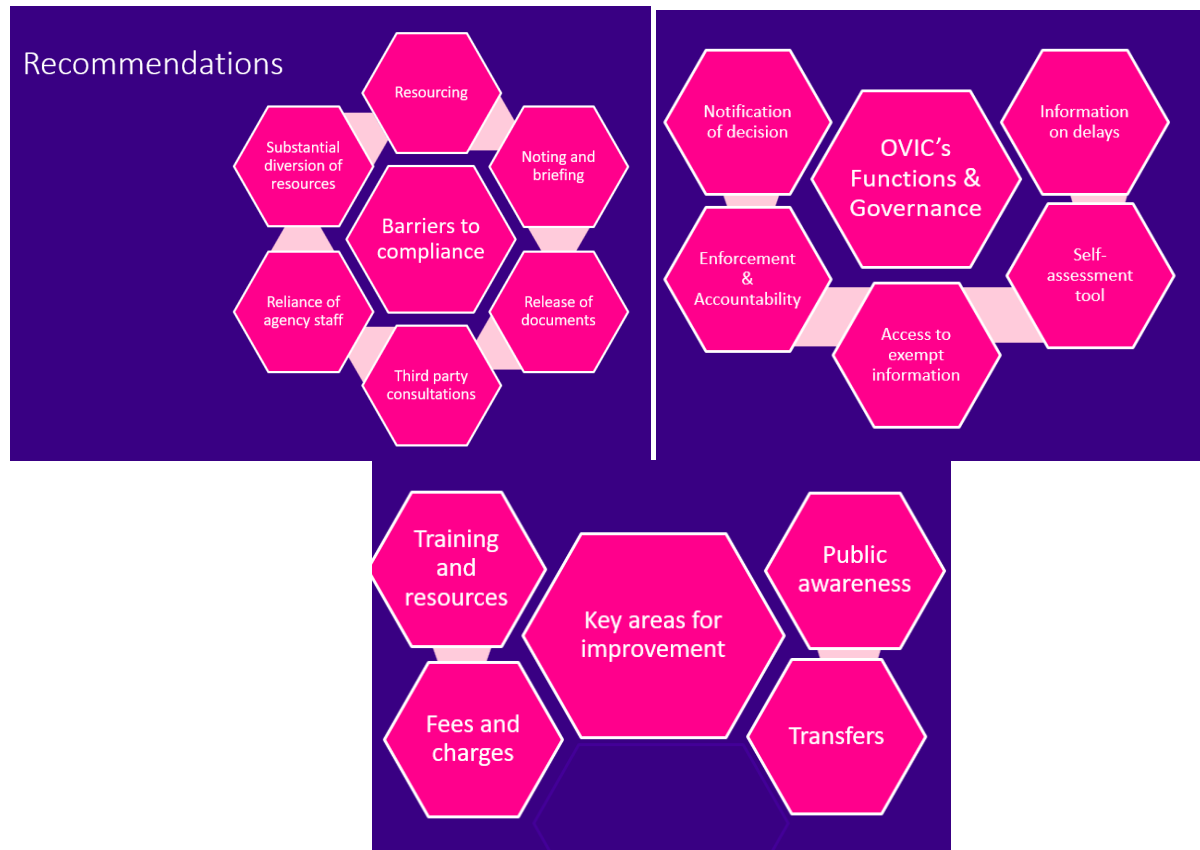
Scope of the review

- OVIC engaged KPMG to undertake an independent review of the Standards for the purpose of assessing:
 - level of agency knowledge and understanding of and engagement with the Standards, including any barriers to compliance with the Standards; and
 - the effectiveness of OVIC’s resources and educational activities provided to agencies in relation to the Standards, including the FOI Professional Standards self-assessment tool.
- KPMG completed the following tasks:
 - Review of OVIC and agency specific policies, guidelines, OVIC training tool and investigations;
 - Workshops with OVIC to staff;
 - Workshops with the participating agencies;
 - Desktop review of guidance from comparable interstate regulators to identify area for improvement; and
 - Prepare a report with findings and recommendations.

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Findings of the review

- KPMG identified multiple opportunities for improvements across a range of themes, including Agency barriers to compliance, OVIC's functions and governance and OVIC's resources and engagement, and made 27 recommendations as broadly depicted below:



What now?

- OVIC will consider KPMG's report, findings and recommendations. OVIC will publish a formal response each of the recommendations and then draft any amended Standards.
- Members will be invited to review and provide feedback on the draft amended Standards prior to these going out for public consultation.
- Under section 6U(4) of the FOI Act, before publishing amended Standards the Information Commissioner must—
 - (a) publish the draft professional standards on OVIC's website; and
 - (b) notify, principal officers and any other relevant person that—
 - i. the draft professional standards have been published; and
 - ii. submissions may be made to the Information Commissioner on or before the date specified in the notice.
- The timeframe for public consultation is 28 days.
- As soon as practicable after finalising the draft Standards, the Information Commissioner must publish them:
 - in the Government Gazette; and
 - on the OVIC website.
- Not more than 6 sitting days after their publication in the Gazette, the Information Commissioner must cause a copy to be laid before each House of Parliament. The new Standards will then come into

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effect on or after:

- (a) the date specified in the Standards; or
- (b) 20 business days after they are published in the Gazette (which ever is later).

- Prior to the new Standards coming into effect, OVIC intends to:
 - Promote the new Standards via its communication channels to raise awareness; and
 - Deliver training to ensure FOI Practitioners understand their obligations and responsibilities under the new Standards

6. Agency Updates

Several members provided updates in relation to their agencies FOI workloads, resourcing, staff changes, proactive and informal release schemes and internal education initiatives.

Discussion had on the challenges associated with increases in the volume of FOI requests received coupled with decreases in budget, along with the difficulties with recruiting and retaining FOI staff in the current market.

7. OVIC Policy and Operational Updates

Members advised of the following key actions since the last meeting:

- the departure of our Public Access Deputy Commissioner, Jo Kummrow, who is now the Information Commissioner in Queensland;
- the publication of all chapters of the FOI Guidelines;
- OVIC's attendance at a public hearing as part of the IOC's inquiry into the FOI Act and the submission of the above-mentioned supplementary submission;
- the release of the report and recommendations into the culture of FOI in Australia following the completion for the study lead by Monash University;
- an independent review of the FOI Professional Standards being completed; and
- the annual agency FOI survey being run.

Further updates provided on:

Public Access caseload:

- As at 26 August 2024, OVIC staff were working through 513 files, including 281 complaints, 228 reviews and 4 access charge matters. This is our highest case load in recent years. When comparing incoming matters, we recorded:
 - **50.8%** increase in the number of complaints received in July 2024 compared to July 2023.
 - **32.5%** increase in the number of reviews received in July 2024 compared to July 2023.

Upcoming FOI events:

- The next Information Access Series lunchtime webinar will be on 28 August 2024 focused on informal resolution.
- International Access to Information Day events will be held in week commencing 23 September 2024, including a panel discussion on 24 September and a lightning talk on 25 September. The UNESCO theme this year is: *Mainstreaming access to information and participation in the public sector* – See

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<https://www.unesco.org/en/days/universal-access-information> and OVIC's website for more details.

FOI Prisoner education project:

- This project aims to increase the awareness of information access rights within the prison population through the distribution of FOI factsheets, information packs and posters to each prison in Victoria. The posters have been translated into several languages for better accessibility.

Members were invited to provide feedback post the meeting on ongoing feedback on the FOI Guidelines, to ensure they remain their currency and utility and also on the Proactive and Informal Release agency policy template / guidance.

Meeting closed 2:57PM.

The next quarterly PAARG meeting is scheduled for 25 November 2024.