

Professional Standards review – OVIC’s response to the recommendations made in KPMG’s report

1. Update the Standards to provide for a staged information release scheme, where agreed with applicants, to improve access to information by minimising substantial and unreasonable impact of FOI requests on agency resources.

OVIC supports this recommendation. OVIC considers this recommendation will assist agencies in managing large requests and will give FOI Practitioners more flexibility when engaging with applicants to reduce the impact of FOI requests on agency resources.

2. Review resources for agencies and include information about:
 - exemptions and important information to inform FOI staff, such as any relevant secrecy provisions;
 - References to relevant provisions of the Code of Conduct for Victorian Public Sector Employees 2015 and Code of Conduct for Victorian Public Sector Employees in Special Bodies 2015 which are binding instruments under the Public Administration Act 2004 (Vic).

The updated resources shall be linked to the Standards and encouraged for perusal.

OVIC supports this recommendation. OVIC will review its current resources and consider the inclusion of additional information or resources to assist agencies when engaging with other business areas internally and to facilitate more timely responses to internal requests for information or documents.

3. Pending the outcome of the legislative amendment, consider updating resources to agencies to provide guidance on third-party consultations and the application of ‘*reasonably practicable*’. This may include consideration of factors that influence the assessment of what constitutes ‘*reasonably practicable*’.

OVIC supports this recommendation. On 29 August 2024, the *Justice Legislation Amendment (Integrity, Defamation and Other Matters) Bill 2024* was passed. This amendment provides that third party consultation is only required when it is “reasonably” practicable. Accordingly, OVIC will review and update its resources, including Professional Standard 7.1, to provide guidance to agencies on what it considers ‘reasonably practicable’.

4. OVIC to include an additional question on resourcing in the Professional Standards Self-Assessment Tool, to the effect of ‘The Principal Officer has taken adequate steps to address resourcing constraints impacting compliance with the FOI Act and FOI Professional Standards’ and require a descriptive response of actions taken. Questions may also be re-considered to place onus on the Principal Officer where required under the Act, as opposed to the agency.

When an agency is asked to complete the Professional Standards Self-Assessment Tool in response to non-compliance with the FOI Act or the Standards, the completed tool should be signed by the Principal Officer and provided to OVIC.

OVIC supports this recommendation. OVIC considers it is reasonable and practicable for the Principal Officer of an agency to be required to sign/acknowledge the agency's self-assessment results prior to it being provided to OVIC.

- 5. OVIC to consider updating the Standards to require Principal Officers to set expectations for noting and briefings to support release of information within statutory timeframes. Guidance notes for the update should reflect the role of the Principal Officer in directing the noting and briefing process, rather than FOI officers directing senior personnel.**

OVIC does **not support** this recommendation. OVIC notes the Professional Standards do not apply to Ministers and it is the agency's Principal Officer who is responsible for ensuring the agency complies with the Standards. OVIC notes that delays in FOI decision making, including delays due to noting and briefing processes can be dealt with under OVIC's complaint jurisdiction.

- 6. Add a Professional Standard requiring agencies to release documents to the applicant within a specific period e.g., 14 days after expiry of all available appeal rights under the FOI Act.**

OVIC supports this recommendation. OVIC considers this recommendation supports the prompt release of documents to an applicant and is likely to reduce complaints being made to OVIC concerning delays in the release of documents following expiry of appeal rights.

- 7. In light of the newly appointed Information Commissioner, update OVIC's engagement strategy with a focus on educating agencies and collaborative communication.**

OVIC supports this recommendation. OVIC will review its engagement strategy with a focus on updating guidance for agencies and enhancing collaborative communication. OVIC notes it regularly engages with agencies and delivers a range of educational events including Information Access Series webinars, regular newsletters, training sessions, and engagement with the Public Access Agency Reference Group, in addition to written resources published on its website including the FOI Guidelines, practice notes and templates.

- 8. Where appropriate, consider seeking a statutory declaration or attestation from the agency's Principal Officer or Minister attesting to why a document is not subject to the FOI Act, where such provisions may apply. In exceptional circumstances and where there is reasonable cause, OVIC may seek access to relevant documents to determine whether the documents are subject to the FOI Act or exempt from disclosure.**

OVIC supports this recommendation. Where appropriate, OVIC will seek an attestation or statutory declaration from the Principal Officer or Minister attesting why a document is not subject to the FOI Act. In certain circumstances, OVIC may request access to documents to determine whether the documents are subject to the FOI Act or exempt from disclosure.

9. **Review the FOI Self-Assessment Tool to enable collection of qualitative data through free text responses, in addition to quantitative data through set response options. Questions with free text fields should be worded to encourage agencies to reflect on nuanced experiences in FOI, challenges and anonymised case examples. The length and scalability of the tool should also be considered depending on the agency and its exposure to FOI requests.**

OVIC supports this recommendation. OVIC will review and update the FOI Self-Assessment tool to include free text fields to allow for the collection of quantitative data, and to consider the length and scalability of the tool so that it is suitable to capture the efforts or assess the maturity of smaller agencies.

10. **OVIC to consider mandating completion of the FOI Self-Assessment Tool for agencies who receive more than a specified number of FOI requests over a specified period.**

OVIC supports this recommendation. OVIC considers it is reasonable to require an agency to complete the FOI Self-assessment tool within 28 upon a request from the Commissioner. This will improve OVIC's ability to monitor an agency practices and compliance with the Standards. This will also assist OVIC in identifying systemic and substantial delays and to meaningfully engage with the agency to improve its statutory compliance.

11. **Implement a new Professional Standard that requires agencies to notify OVIC of a decision made in relation to a delay complaint known to the agency. Notification to OVIC should be made by the agency within a specified timeframe, eg., 7 days of the decision being made.**

OVIC supports this recommendation. OVIC considers it is reasonable to require an agency to notify OVIC within 7 days of a decision being made. This will improve the timeliness of finalisation of complaints concerning delayed decision making.

12. **OVIC to amend questions in the annual survey to also require agencies to report on:**

- (a) the number of decisions that were made after a delay of 100 days or more; and**
- (b) the maximum delay period for any one matter during the financial year.**

OVIC supports this recommendation. OVIC will review its annual report survey questions and consider additional questions around the period of delays in responding to FOI requests under the FOI Act.

13. **To improve training and resources, OVIC may consider:**

- (a) reinstating training sessions for experienced FOI practitioners with course content tailored to specific sectors or categories of agencies, with a focus on emerging issues and recent case studies;**
- (b) monitoring and strongly encouraging FOI training attendance for FOI staff in specific circumstances, including consideration of refresher training where there are legislative changes, amendments to the Standards and/or significant decisions made in VCAT that impact the application of the Act or Standards;**

- (c) updating its Frequently Asked Questions webpage with more detailed, practicable, and entity-specific content which can be effectively leveraged by agencies, or include guidance to redirect agencies to the appropriate resources; and
- (d) delivering new starter training across various forums and on varying days.

OVIC supports these recommendations in principle. OVIC will review its training and resources to ensure that training is current, relevant and covers key topics, and explore delivering such training across various forums and days so that it is more accessible to FOI Staff.

OVIC notes that actioning recommendations 13(a) and (b) will be dependent on available funding to reinstate training sessions.

OVIC does **not support** recommendation 13(c) as OVIC's FAQ blog post has been superseded by Part 1B of the FOI Guidelines.

14. OVIC to update its agency engagement strategy to highlight and promote awareness around various communication channels available to agencies.

OVIC supports this recommendation. OVIC will review its current communication strategy and consider other channels to improve the interaction between OVIC and agencies.

15. OVIC to consider updating its existing resources or developing a fact sheet for agencies to provide to applicants, summarising key aspects of the Standards and the Act, such as informing applicants of timeframes, the requirement to refine requests at times, exemptions that may apply and complaint and appeal rights.

OVIC supports this recommendation. OVIC will consider updating its existing resources and/or developing a fact sheet for agencies to provide to applicants with important FOI information to increase awareness and better manage applicants' expectations of the FOI process.

16. OVIC may consider adding a Standard requiring agencies to notify applicants of their complaint rights at the end of the statutory period of 30 days or at the end of any extended timeframes (as agreed upon under the relevant sections of the Act) if the decision has not been made by the agency within such timeframes.

OVIC supports this recommendation. OVIC will consider a new Standard requiring agencies to notify applicants of their complaint rights and the right to apply to the Victorian Civil and Administrative Tribunal (VCAT) on a deemed refusal at the expiry of the statutory timeframe if the decision has not been made by the agency within such timeframes.

17. OVIC to consider mandating the acknowledgement of all FOI requests within a reasonable time of receipt eg., 10 days. An acknowledgement may be a system generated email, depending on how the FOI request was submitted.

OVIC supports this recommendation. OVIC considers it best practice for FOI requests to be acknowledged by agencies. This recommendation aligns with practices in other FOI jurisdictions which require agencies to notify applicants of receipt or validity of their request.

18. It is recommended that OVIC adds a new Standard requiring agencies to decide on a request for waiver or seek further information from an applicant in support of their request for a fee waiver or reduction, within a specified timeframe so as to ensure that agencies do not delay the decision on waiver of the fee and subsequent release of information to the applicant.

OVIC supports the recommendation. OVIC will consider creating a new Standard requiring agencies to make a decision to reduce the fee, waive the fee or seek further information from an applicant in support of their request for a fee waiver/reduction, within a reasonable period of time.

19. OVIC to update the Standards to reflect 'hardship' in relation to application fees as beyond financial impact in line with the FOI guidelines and consider if existing OVIC guidance on assessing and deciding hardship for application fee or access charge waivers required updating.

OVIC does **not support** this recommendation. OVIC does not consider it is appropriate to draw clear boundaries for agencies on what is and is not hardship and what is and is not sufficient evidence, as waiver or reduction of the application fee is a discretionary power. However, OVIC will consider reviewing and updating its guidance material concerning fee waiver and reduction.

20. OVIC to add a new Standard requiring agencies to transfer the request to another relevant agency, where applicable to the nature of the request, within a specific timeframe eg., 14 days of receiving the original request.

OVIC supports this recommendation. OVIC considers a new Standard is appropriate to specify a timeframe in which an agency should transfer an FOI request to another agency to reduce delays and the impact to the receiving agency.

21. OVIC add a new Standard requiring agencies to notify an applicant within 14 days if the agency has used its discretion to transfer the applicant's request to another agency. The guidelines should be updated to align with the application of the new Standard.

OVIC does **not support** this recommendation. The power in the FOI Act is discretionary as to whether the agency informs the applicant of the transfer and therefore any timeframe would only apply where an agency has exercised its discretion to inform the applicant of the transfer. However, OVIC will consider this recommendation with Recommendation 20.

22. OVIC to consider amending Standard 1.2 to require agencies to notify the applicant about the impact of releasing information outside the Act, including where appeal rights are denied, and obtain written consent from the applicant for the same.

OVIC supports this recommendation. OVIC considers amending Standard 1.2 will improve the public's understanding of the benefits and impacts of consenting to the release of documents outside of the FOI Act.

23. OVIC may consider adding a Standard requiring agencies to notify applicants of any further clarifications requirements to make the request valid within a specific time frame.

OVIC supports this recommendation. OVIC will consider issuing a new Standard to ensure further

clarifications requirements to make the request valid are made within a specific time frame to reduce delays.

24. **OVIC to update the Standards to require that as part of a decision letter for document amendment requests, agencies shall identify what amendments and notations have been made to the document as per the request and what amendments and notations have not been made to the document and why.**

OVIC supports this recommendation. OVIC considers this will improve applicants understanding of why amendments and notations have or have not been made to the relevant document and why, so that they can make an informed decision on whether to exercise their review rights to OVIC.

25. **OVIC to amend Standard 10.2 to include complaints, in addition to reviews.**

OVIC supports this recommendation. OVIC considers this recommendation will support the timely resolution of complaints.

26. **OVIC to amend Standard 3.1 to make it clear that a time extension only applies in instances where the agency has notified the applicant in writing of their intention to extend timeframes under Section 21(2)(a) of the Act.**

OVIC supports this recommendation. OVIC accepts that this will improve applicants' awareness and understanding of the application of this Standard.

27. **OVIC to amend Standard 5.1 to require agencies to issue subsequent notifications, if any, under section 25A(6) within 14 days of the applicants' response to the first notification under the section.**

OVIC supports this recommendation. OVIC will consider updating the Standards to reduce delays associated with ongoing consultation processes.