

IAID

International Access
to Information Day

The ideal state of Freedom of Information in Victoria

Information Access Series

Webinar

ovic.vic.gov.au/iaid

OVIC
Office of the Victorian
Information Commissioner

Acknowledgement of Country

We acknowledge the Wurundjeri Woi-wurrung people as the Traditional Owners of the land from which we are presenting today. Many of you will be joining from the traditional lands of other traditional owners. We pay our respects to their Elders, past and present, and Aboriginal Elders of other communities who may be with us today.





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The origins of access to information laws

United Nations

The birth of the right to access information

- 1948 Universal Declaration of Human Rights
- Article 19(2), International Covenant on Civil and Political Rights (ICCPR), ratified by Australia in 1980
- A core component of the right to freedom of expression
- Creates a positive, and ongoing obligation on Australia, to ensure public access to information held by all levels of Government



Flag of the United Nations

We need to have a dedicated access to information law



Target

16.10

Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements

Indicators ▲

16.10.1

Number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates in the previous 12 months

16.10.2

Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information

Section 94H of Victoria's Constitution



AN ACT

To re-enact the Law relating to the Constitution of the State of Victoria and for other purposes.

WHEREAS the Legislative Council of the colony of Victoria ^[19th November, 1975.] did in the year 1854 pass a Bill intituled "An Act to establish a Constitution in and for the colony for Victoria": Preamble.

And whereas the said Bill was presented to the then Lieutenant-Governor of Victoria for Her Majesty's assent and the said Lieutenant-Governor did thereupon declare that he reserved

Victoria's first access to information law

- The **Freedom of Information Act 1982 (Vic)** came into force on 5 January 1983 and commenced on 5 July 1983.
- Victoria was the first State or Territory to guarantee the right to information through dedicated legislation

“Open government in the true sense is a central need in a democracy.”

- former Victorian Premier, John Cain



John Cain introduced the FOI Act, based on 3 premises:

1. the public have a right to know what information is contained in government records about themselves
2. a government that is open to public scrutiny is more accountable to the people who elect it
3. when people are informed about government policies, they are more likely to become involved in policy making and in government itself



former Victorian Premier John Cain
1982-1990

2012

Since FOI legislation was introduced 30 years ago, Victoria has gone from being at the forefront of FOI law and administration to one of the least progressive jurisdictions in Australia. Over time, apathy and resistance to scrutiny have adversely affected the operation of the Act, restricting the amount of information released. ...

The public's right to timely, comprehensive and accurate information is consequently being frustrated. The Victorian public sector's systemic failure to support this right is a failure to deliver Parliament's intent.⁴

- Victorian Auditor-General's Office,
Freedom of Information: Victorian Auditor-General's report,
Melbourne, April 2012

2024

These days our FOI system too often fails to live up to the democratic ideals it was created to serve in the early years of the Cain Government. After a number of reports emphasising these problems, Parliament referred this Inquiry to the Integrity and Oversight Committee, to examine the current system, compare it to more modern systems and consider how best to improve Victoria's FOI regime.

Victoria's 40-year-old Freedom of Information (FOI) regime is struggling to meet the needs of our modern democracy.

- Chair's foreword, Victorian Parliament, Integrity and Oversight Committee, Inquiry into the Operation of the FOI Act, *Final Report* (September 2024)



Integrity and
Oversight Committee

The operation of the *Freedom of Information Act 1982 (Vic)*

Inquiry

September 2024

Published by order, or
under the authority, of the
Parliament of Victoria
September 2024

ISBN 978 1 922882 98 1 (print version)
ISBN 978 1 922882 99 8 (PDF version)
This report is available on the Committee's website:
parliament.vic.gov.au/ioc

Terms of reference

1. The **time and costs** involved in providing access to information under the current FOI Act
2. The **effectiveness** of the Act's **current policy model**, and other available options
3. Mechanisms for **proactive and informal release**
4. Efficient and timely mechanisms for people to **access their own personal and health information**, held by government
5. The **information management practices** required across government, to facilitate access to information
6. The **use of technology** to increase the disclosure of information
7. The **purposes and principles of access to information** and whether the Act meets those purposes and principles
8. The **effectiveness of the Act's processes** and how they could be made more streamlined and efficient



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101 recommendations for reform

RECOMMENDATION 1: That the Victorian Government introduce in the State a third-generation 'push' FOI system, which prioritises the proactive and informal release of government and public sector information. 45

RECOMMENDATION 2: That the Victorian Government seek to replace the *Freedom of Information Act 1982 (Vic)* with a third-generation 'push' FOI system Act (named the *Right to Information Act*), drafted in plain language and appropriate for the digital age. 50

A new start, a new name...

Right to Information Act

RTI

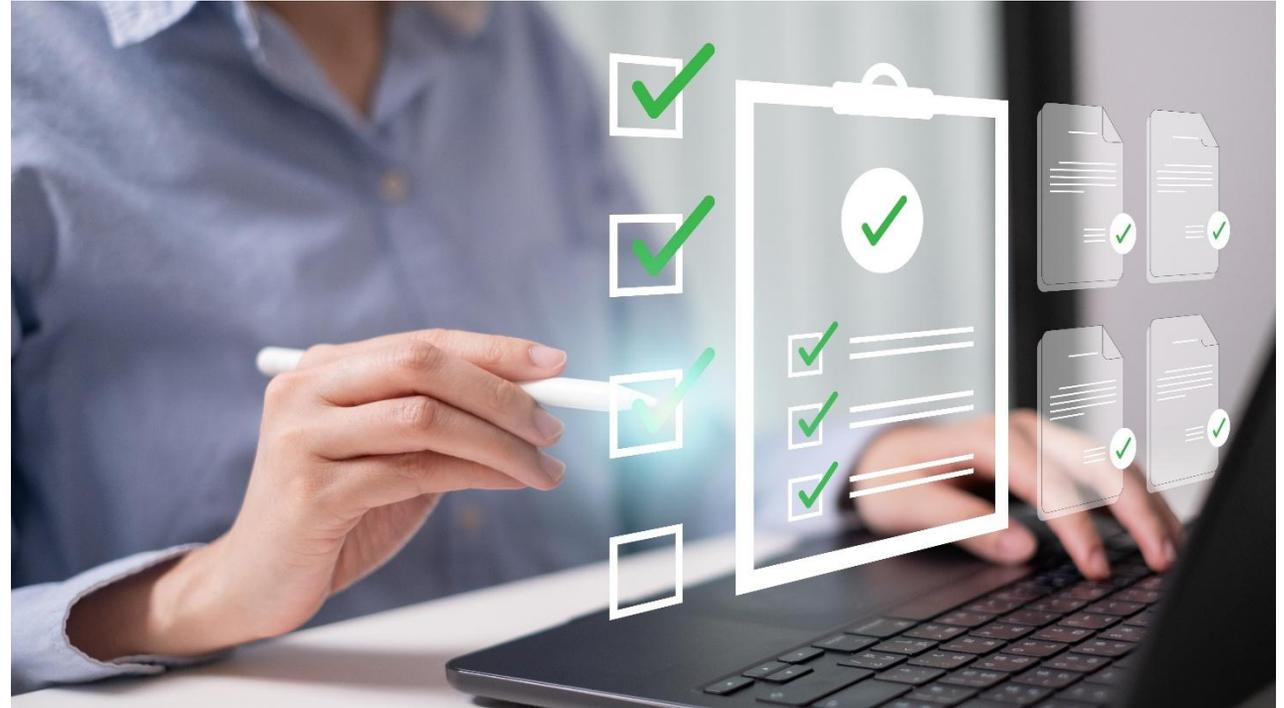
Policy model

Key principles of a good RTI law

Maximum disclosure

Proactive release of information

Members of the public should only have to ask for information as a last resort



Policy model

Current state

Pull model

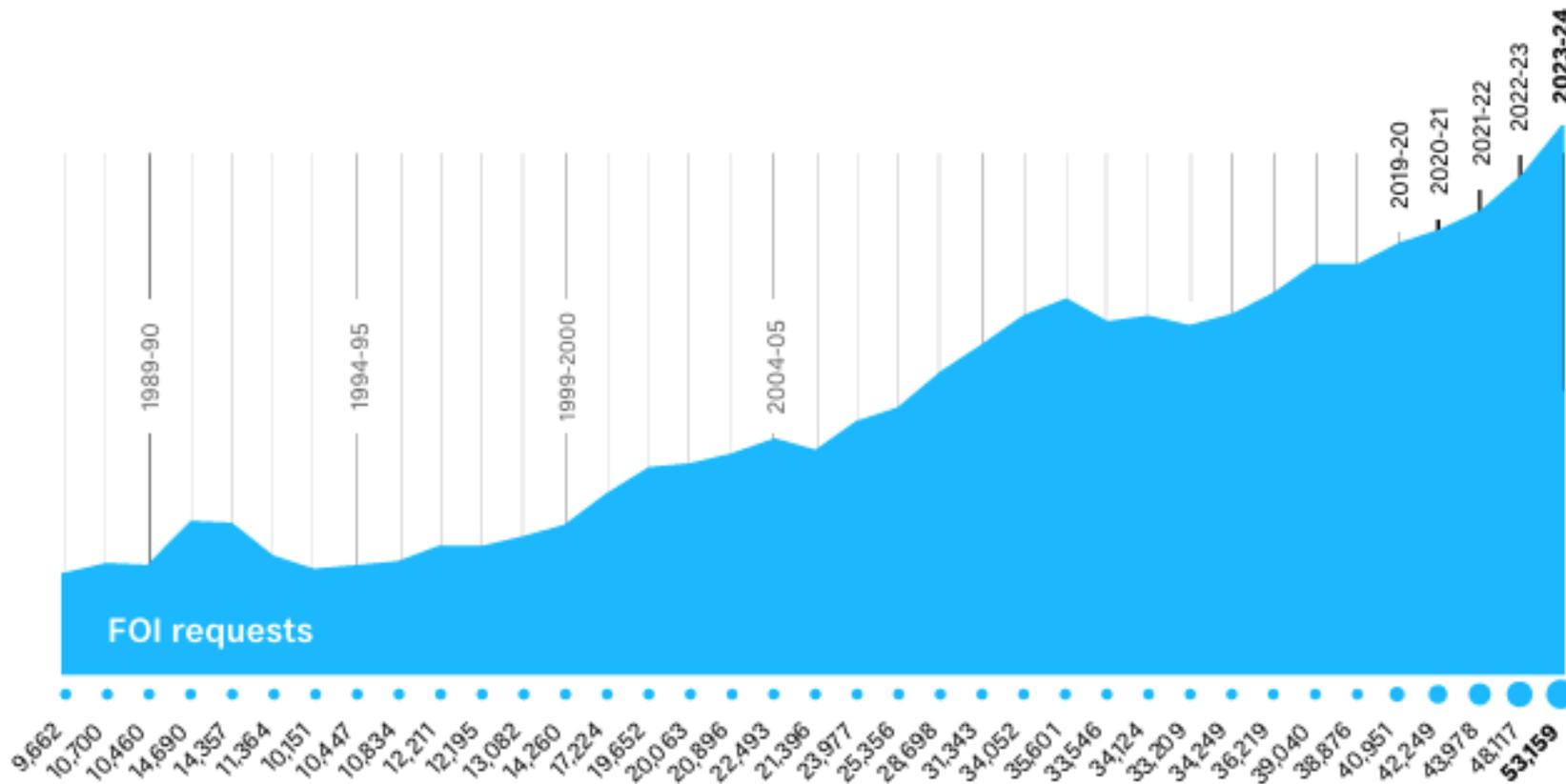
- Requires a person to request information and follow a formal procedure, before the government will provide access.
- **Reactive**, rather than proactive
- Increases no. of requests and workload on agency staff to process
- No longer the preferred policy model

Future state

Push model

- Publish as much information as possible
- Release information to requesters informally
- Formal request procedures are a last resort
- **Proactive**, rather than reactive
- Cth, Qld, NSW and Tasmania have had push models for over a decade
- Decreases no. of requests received, and workload on agency staff

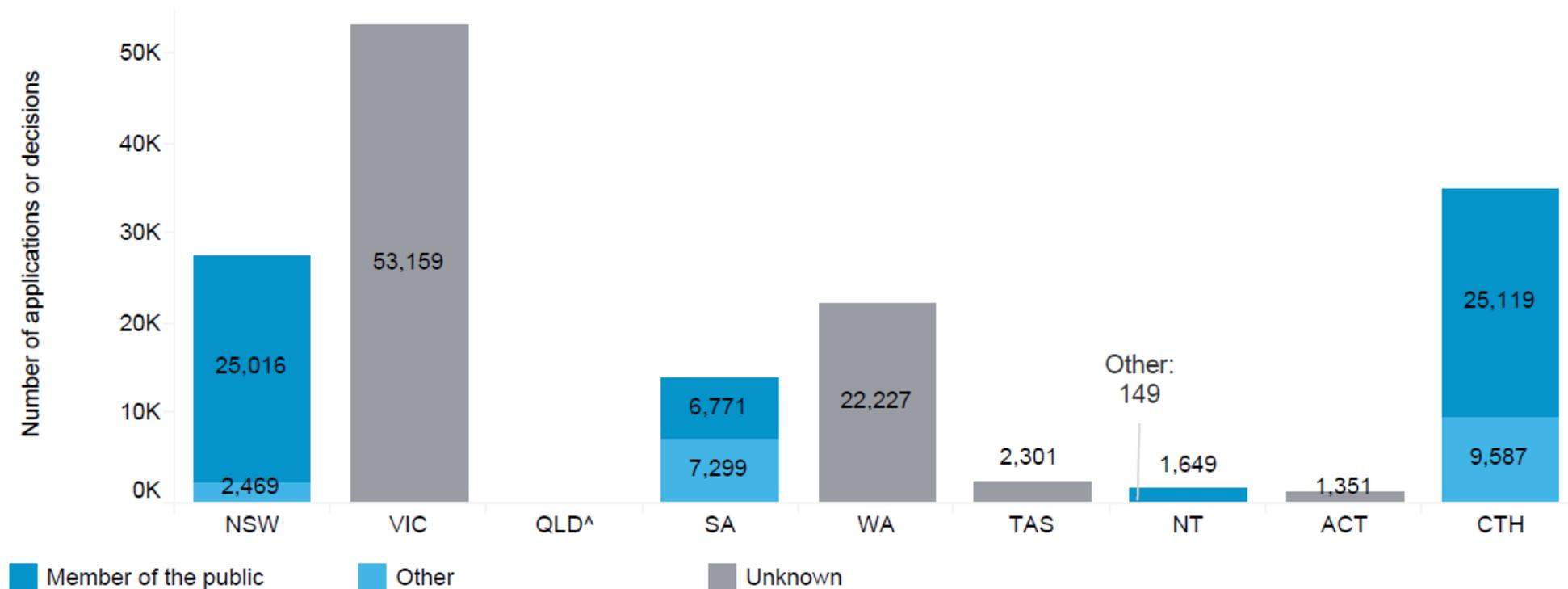
FOI requests are increasing in Victoria



- In 2024-25 Victorian government agencies received a record high 58,151 requests
- a 9.4% increase from last year
- Agencies reported significant impacts on workload, leading to delays in finalising decisions and staff not being able to complete non-FOI related duties

Victoria receives the most FOI requests in the nation

Metric 1: Count of formal applications/decisions by type of applicant



Metric 3: Percentage of all decisions made on formal applications/pages where access was granted in full or in part

Victoria receives the most FOI requests in the nation

Metric 2: Formal applications received per capita



Metric 4: Percentage of all decisions made on formal applications/pages where access was refused in full

It's taking longer to receive information

10 years ago, 95% of FOI decisions were made on time

In the 2024-25 financial year:

- 76.6% of requests were made within the statutory timeframe. A 3.5% decrease from 2023-24.
- 10% of requests were more than 100 days late

As at 30 June 2025, agencies reported 9,673 FOI requests outstanding. An 11.2% increase compared with 2023-24.

Committee recommends push model for Victoria

RECOMMENDATION 1: That the Victorian Government introduce in the State a third-generation ‘push’ FOI system, which prioritises the proactive and informal release of government and public sector information.

45

RECOMMENDATION 22: That legislation establishing Victoria’s new third-generation ‘push’ FOI system authorise the release of government-held information via the following four distinct mechanisms:

- (1) a mandatory proactive release mechanism
- (2) an additional proactive release mechanism
- (3) an informal release mechanism
- (4) a formal release mechanism with disclosure log requirements.

130

RECOMMENDATION 23: That legislation establishing Victoria’s new third-generation ‘push’ FOI system emphasise the primacy of the mandatory proactive, additional proactive and informal release mechanisms.

131

Committee recommends protection from liability for releasing information

RECOMMENDATION 24: That legislation establishing Victoria’s new third-generation ‘push’ FOI system protect agencies and ministers (and their staff) from civil and criminal liability where information is released in good faith under the mandatory proactive, additional proactive, informal and formal release mechanisms. **131**

RECOMMENDATION 25: That legislation establishing Victoria’s new third-generation ‘push’ FOI system protect the Information Commissioner and Public Access Deputy Commissioner from civil and criminal liability in respect of their performance of their statutory functions. Additionally, that these protections be extended to other persons employed by the regulator in respect of their performance of statutory functions on behalf of the Information Commissioner and Public Access Deputy Commissioner. **131**

Key principle of a good RTI law

Maximum disclosure

Protection from liability for releasing information

- FOI officers should not have to fear civil or criminal legal action for disclosing information in good faith



The four release pathways

Pathway 1: Mandatory proactive release

Features:

- Agencies required to publish more information on their websites, than currently required under Part II of the FOI Act
- Free of charge
- Types of information would be listed in RTI law, and would include category for information of significant public interest

The Committee agrees with OVIC that Victorian FOI legislation should include a mandatory proactive release mechanism, requiring agencies and ministers to release 'documents or information of significant public interest'⁷³ as well as information about:

- the kinds of information they hold, including what information they publish and are prepared to release (and whether it will be released free or for a fee)
- their organisational structure
- their functions and how their functions, particularly their 'decision making processes',⁷⁴ impact the public
- any arrangements that facilitate public participation in the development of their policies and exercise of their functions
- their operations (including, for example, their 'policies, guidelines and procedures relating to policy and decision making, and decisions, reports, statements and submissions')⁷⁵
- their strategic priorities, performance, financial affairs and related information published in tabled reports (including, for example, financial forecasting and profit and loss, procurement, third-party suppliers contracts, and grants administration)
- the kinds of information they routinely release in response to formal FOI requests
- how the public can request information from them informally and formally
- a register of documents determined to be unsuitable for proactive release
- a register of information released informally or formally that has been considered for proactive release.⁷⁶

Pathway 1: Mandatory proactive release

Information of significant public interest

Legislative or regulatory guidance is needed on what information meets the threshold of 'significant public interest'.⁶⁸ Such information may include, for example:

- information that the digital economy relies on being able to access easily and quickly⁶⁹
- environmental management (including information about the exploitation of natural resources, the environmental impact of large-scale government-led projects and extraction of natural resources, governmental management of pollution, and how risks associated with major hazard facilities are assessed and managed)
- expenditure of public funds on government infrastructure projects, including progress reports related to such projects
- policies and practices relating to overt, covert and indirect⁷⁰ government surveillance
- information that is important to informing the public discussion on issues of major public concern;⁷¹ for example, the funding of large-scale public infrastructure projects.⁷²
- The use of Artificial Intelligence and automated decision making

Pathway 2: Additional proactive release

Features:

- Promotes an increase in proactive disclosure over time.
- Agencies prompted to review their proactive release information every 12 months.
- Release is free of charge

Legislated principles for proactive release of information (pathways 1 and 2)

Agencies are responsible for publishing information in a **timely way**, and in a manner that is:

- practical
- easy to find
- clear
- capable of being understood
- accessible

Agencies are responsible for making the public aware of the **availability** of the information they hold

Pathway 3: Informal release

Features:

- Reduces burden on agencies administering RTI law.
- Where appropriate, allows for quicker and easier access, than using the formal process
- More flexible than formal pathway. Redaction permitted with consent of applicant. No review rights.
- Allows for administrative schemes to be set up for similar types of information
- Release without charge or at the lowest reasonable cost

Types of information suitable for administrative release schemes:

- child welfare records,⁴⁸² including records needed to support Victorian Redress Scheme applications⁴⁸³
- legal client files⁴⁸⁴
- mental health records⁴⁸⁵
- prisoner health records⁴⁸⁶
- police employee mental health records held by Victoria Police⁴⁸⁷
- motor vehicle accident reports and investigations records held by Victoria Police⁴⁸⁸
- personal information needed to determine the source of identity compromise and misuse.⁴⁸⁹

Pathway 4: formal release

Similarities with current process under the FOI Act

- Requirement to make request in writing, follow procedures in the Act, access may be refused, reasons for decision, review rights.
- Requests can only be made for information that is not already publicly available

Differences to current process:

- Requirement to keep a disclosure log.

Disclosure logs

Benefits:

- Supports maximum disclosure
- Reduces requests for the same information, reducing burden on the scheme.
- Increases public awareness of the types of documents held by an agency
- Promotes consistent FOI decision making. Agencies can see what other agencies have been releasing.

Example disclosure log, Department of Home Affairs website

Disclosure Date	Reference Number	Title	Access
12/09/2025	FA 25/08/01723	Media Transcripts of interviews with Minister Burke and Assistant Minister Hill, dated 20 August 2025 Documents released (1.3MB PDF)	Partial
11/09/2025	FA 25/08/00694	Salary rates and total remuneration for Australian Border Force Inspector, Superintendent, Assistant Commissioner and Commissioner, from 2024 and 2025 Documents released (172KB PDF)	Full
11/09/2025	FA 25/05/02095	Provision of Health and Wellbeing Services Contract between Healthcare Australia and the Department of Home Affairs Documents released part 1 (9MB PDF) Documents released part 2 (9MB PDF) Documents released part 3 (7.1MB PDF)	Partial

Modern disclosure logs

RECOMMENDATION 36: That legislation establishing the formal release mechanism in Victoria's new third-generation 'push' FOI system contain guiding principles on how agencies and ministers are expected to meet their obligations with respect to disclosure logs. These principles should:

- emphasise the responsibility of agencies and ministers to ensure that their disclosure log is easy to find, search and use, and up-to-date and useful
- set minimum requirements for the format of disclosure logs (for example, the type of document released and a description of its content)
- permit agencies and ministers to provide additional contextual information with respect to a document recorded in a disclosure log, if they consider that it will help the public to understand it
- set out how documents recorded in a disclosure log are to be released to the public (for example, online via an active electronic link in the log)
- permit agencies and ministers to publish information in a different form and format from that provided to the requester if publishing it in its original format would be impractical or unreasonably burdensome.

Modern reporting and oversight

RECOMMENDATION 39: That legislation establishing Victoria's new third-generation 'push' FOI system include agency and ministerial reporting requirements with respect to the cost of administering the FOI scheme; compliance with their obligations under the proactive release mechanisms; the public's use of the informal release mechanisms; and the operational efficiency of those mechanisms.

RECOMMENDATION 38: That legislation establishing Victoria's new third-generation 'push' FOI system require agencies and ministers to develop, implement and publish a policy setting out, among other matters, their compliance with the guiding principles for the proactive release mechanisms; their processes for releasing information under the proactive, informal and formal release mechanisms; and their compliance with disclosure log requirements (including the kinds of information released under the informal and formal release mechanisms that will not be released to the broader public).

Access to personal and health information

Key principles of a good RTI law

Maximum disclosure

Respect for human dignity and autonomy



Access to personal and health information

Current state

Formal requests under FOI Act

- In 2024-25, **68.1%** of requests in Victoria were for an individual's own personal or health information.
- 22 of the top 30 agencies that receive the most FOI requests are health agencies
- 75.4% of requests to health agencies are released in full

Future state

Informal and formal release mechanisms

- More use of informal release mechanism
- Quicker and easier for people to access their own information, and for agencies to process
- Formal requests and review rights retained as last resort
- Regulation under one scheme

Amendment and correction of personal and health information

Future state

- **Not part of the State's Right to Information Act**
- Moved to *Privacy and Data Protection Act 2014 (Vic)*
- Health Privacy Principles and Information Privacy Principles merged into one set of principles to regulate both personal information and health information
- OVIC as regulator of both personal information and health information

Indigenous Data Sovereignty

Future state

- Indigenous Data Governance principles reflected in RTI Act and whole of Victorian government information management framework

MAIAM NAYRI WINGARA INDIGENOUS DATA SOVEREIGNTY PRINCIPLES

Delegates asserted that in Australia, Indigenous peoples have the right to:

1. Exercise control of the data ecosystem including creation, development, stewardship, analysis, dissemination and infrastructure.
2. Data that are contextual and disaggregated (available and accessible at individual, community and First Nations levels).
3. Data that are relevant and empowers sustainable self-determination and effective self-governance.
4. Data structures that are accountable to Indigenous peoples and First Nations.
5. Data that are protective and respects our individual and collective interests.

Reference: *Maiam nayri Wingara. (2018). Indigenous Data Sovereignty Communique Indigenous Data Sovereignty Summit 20th June 2018, Canberra, ACT. Available [here](#).*

Reasons to refuse access

Key principle of a good RTI law

Maximum disclosure

Reasons for refusal are clear and narrow

Onus on government agency to prove harm outweighs the public interest in disclosure



Practical refusal

Current state

Practical reasons to not process a request in Part 3:

- Information is already publicly available
- Unreasonable diversion of resources
- Repeat requests exception lacks utility. Has too high a bar to satisfy and therefore is rarely used

‘Exempt documents’ in Part 4

- 26 pages of legislative drafting
- apply inconsistent tests

Future state

Practical reasons to not process a request in Part 3:

- Information is already publicly available
- Unreasonable diversion of resources
- A more practical repeat requests exception, to reduce unnecessary workload for agencies

‘Exempt documents’ in Part 4

- 26 pages of legislative drafting
- apply inconsistent tests

Reasons to refuse access

Current state

‘Exempt documents’ in Part 4 of the FOI Act

- 26 pages of technical legislative drafting
- hard to understand
- apply inconsistent tests
- Language and layout lends itself to them being overused in a risk-averse way – a laundry list of reasons to refuse access, with maximum disclosure not front of mind.
- “A document is an exempt document if...”

Future state

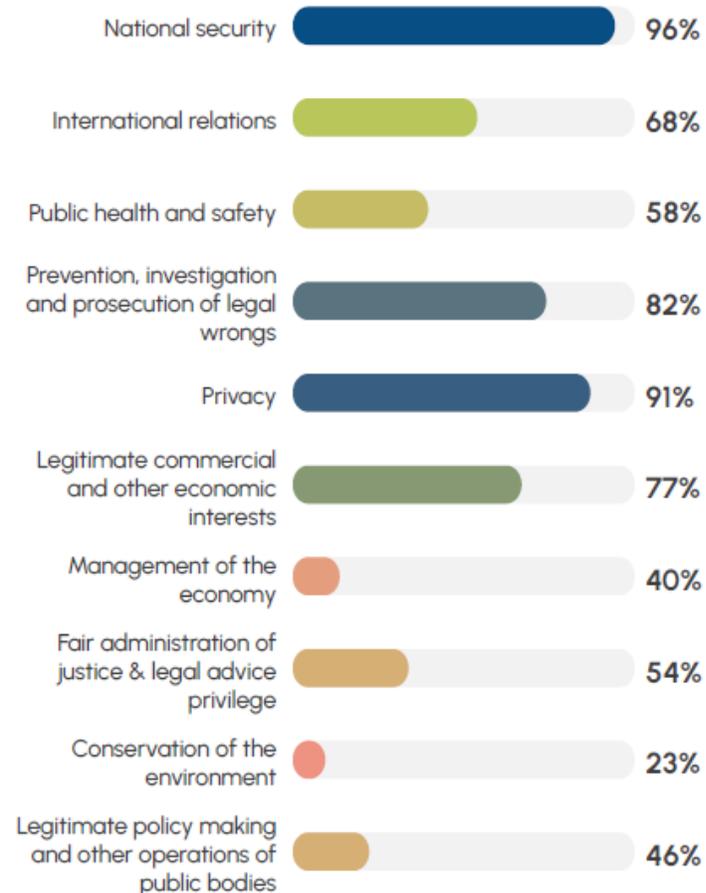
- Relabeled as ‘limited exceptions’ or ‘limited reasons to refuse access’
- Clear presumption in favour of access, and requirement to interpret exceptions narrowly
- Clear legislative drafting
- Uniform **3 step test** for majority of exemptions that aligns with best practice principles
- Focus on context of release on case-by-case basis, rather than documents or information that will always be exempt
- “An agency or Minister may only refuse access to information if...”

Three step test

Step 1: Identify a legitimate interest that needs protecting

- Parliament decides what the legitimate interests are, and they are listed in the legislation.

Figure 2.1 Permissible exemptions in Access to Information legal guarantees



Source: UNESCO, *A steady path forward: UNESCO 2022 report on public access to information (SDG 16.10.2)*, Paris, 2023, p. 16.

Three step test

Step 2 – Substantial harm

- Disclosure would or would be reasonably likely to cause substantial harm to that protected interest
- Onus is on agency or Minister to identify and demonstrate harm

Step 3 – public interest in disclosure

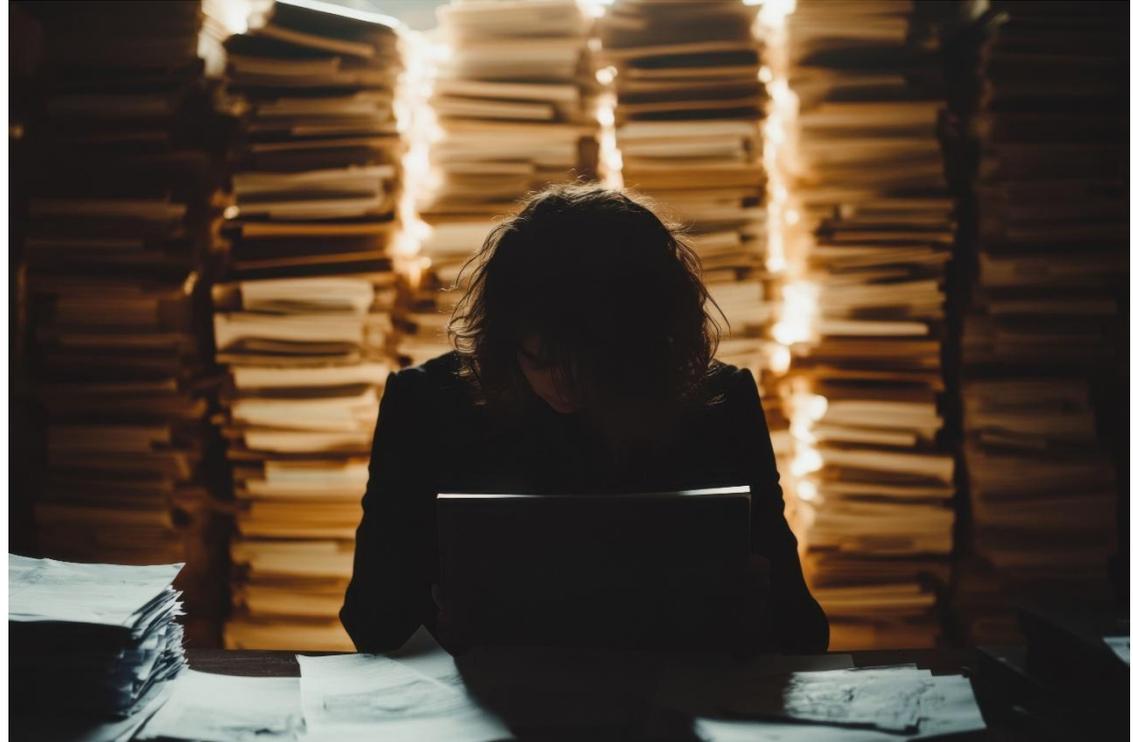
- Do the benefits of disclosure outweigh the identified harm? If yes, the information should be released.
- Slightly different to second generation legislation that lists factors for and against disclosure

Irrelevant considerations

- Protecting the government from embarrassment or a loss of confidence in government
- That disclosure might be misinterpreted or misunderstood by someone or that disclosure would cause confusion of unnecessary debate.
- The high seniority of the person who developed the document or information. Senior leaders should not use FOI to avoid accountability.

True exemptions

- Very limited, and specific in scope
- Three step test does not apply.
- Examples:
 - Legal professional privilege
 - Police intelligence
 - Work of integrity agencies



Key principle of a good RTI law

Secrecy laws should not be excessive

- Secrecy provisions in other enactments should not be contrary to the objects of the State's access to information law



RTI processes – formal release pathway

Key principle of a good RTI law

Quick and fair processing of requests

- Simple, clear and easy to understand procedures
- Reasons given, where access denied



Key principle of a good RTI law

Procedures should not deter people from requesting information

- Costs should not be so excessive that they deter people from requesting access to information
- Applicants should not have to disclose the reason for making a request



Features to be retained

- OVIC as the independent integrity agency, with existing powers and functions to conduct reviews, handle complaints, provide advice and education to agencies and the public, issue professional standards and conduct investigations.
- Applicants are not required to identify themselves (except when applying for personal or health information), or provide reasons for their request
- No requirement to use a form when making a request
- Agencies must assist applicants to make a valid request
- Reasons given, where access denied

Things that might be different

- 30 business days to process request – slight change from 30 calendar days
- Requirement to acknowledge a request within 5 business days
- No application fee at all, or for access to personal and health information
- Access charges limited to copying and delivery, and simpler and broader discretion to waive or refund fees. No more charges to search for documents.
- Offence provisions for:
 - destroying, concealing or altering a record for the purpose of preventing disclosure under the RTI legislation
 - wilfully obstructing access, including directing or improperly influencing an FOI decision-maker to decide a request contrary to the requirements of the scheme

Things that might be different with OVIC

- OVIC empowered to direct agencies to review the adequacy of their FOI resourcing
- Power for OVIC to make a vexatious applicant declaration
- Binding OVIC recommendations in connection with an FOI complaint
- Binding OVIC professional standards and guidelines on how provisions should be interpreted
- OVIC power to review access charges decisions
- OVIC powers to impose sanctions for serious or serial agency non-compliance with statutory obligations
- Offence provision for wilfully obstructing or hindering or resisting OVIC

Supporting a culture of open access

Key principle of a good RTI law

Culture of open government

- Mandatory FOI **training** for all government staff, Ministers and advisers
- Effective **records and information management** practices
- Effective reporting and oversight by an **independent body**
- **Sanctions** for the wilful withholding of information that should be released



Future state

Information management framework

- Applies to the entire Victorian public sector
- Includes the purposes and benefits of public access to information within the framework
- Embeds e-governance and access by design principles
- Requirement to maintain an information asset register (IAR) and publish a public version

Mandatory training

- For the entire Victorian public sector
- Covering records management, data governance and the RTI scheme

Access by design

- Improved records management and PROV monitoring and enforcement
- Writing for release
- Tools that assist agencies to release information
 - Siloing sensitive information
 - Metadata to flag information for public release
 - Tagging information to better enable relevant searches
 - Automating FOI processes
- A centralized RTI portal where requests can be made and the public can access IARs and disclosure logs

Where to now?

The ideal state of FOI in Victoria

- RTI not FOI
- More information is made available to the public
- Easier for the public to access information:
 - easier to find and understand information that is released
 - easier to know what to ask for
 - easier to make a request and move through the process
- Easier for agencies to provide access
 - easier to identify information for release
 - easier to process requests
 - safety and support in release
- Easier for agencies to administer the scheme
 - less requests to process
 - simpler and more flexible processes
- Efficient and robust review rights and regulatory oversight

Benefits of a good right to information law

- Transparency
- Accountability and good governance
- Democratic participation
- **Integrity** – a disinfectant for government corruption and wrongdoing
- **Knowledge and truth** – reducing misinformation and disinformation
- Human dignity and personal autonomy
- Innovation and economic development
- Sustainable development

It is common ground that in a society which professes to be democratic, citizens ought to be informed about what their government is doing. Citizens have a right to decide by whom and by what rules they shall be governed, and are entitled to call on those who govern on their behalf to account for their conduct. But if people are to fulfil the role democracy assigns to them—if they are to cast intelligent and rational votes and exercise sound judgment on the conduct of the government and the merits of public policies—they must have the facts, the true facts.¹⁴⁴

Enid Campbell (as she then was), 'Public access to government documents', *Australian Law Journal*, vol. 41, no. 3, July 1967, p. 74.

Thank you for listening!
enquiries@ovic.vic.gov.au

OVIC