T R A N S C R I P T

INTEGRITY AND OVERSIGHT COMMITTEE

Inquiry into the Operation of the *Freedom of Information Act 1982*

Melbourne – Tuesday 12 March 2024

MEMBERS

Dr Tim Read – Chair
Hon Kim Wells – Deputy Chair
Ryan Batchelor
Jade Benham
Eden Foster
Paul Mercurio
Rachel Payne
Belinda Wilson

WITNESS *(via videoconference)*

Dr Danielle Moon, Lecturer, Macquarie Law School, Macquarie University.

The CHAIR: We are reopening our Inquiry into the Operation of the *Freedom of Information Act 1982*. Dr Moon, there are some formal things I have to cover, so just bear with me as I read through this.

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All evidence given today is being recorded by Hansard, and you will be provided with a proof version of the transcript for you to check once available. Verified transcripts will be placed on the Committee's website. Broadcasting or recording of this hearing by anyone other than Hansard is not permitted.

I will first of all introduce the Committee. Online we have, in Mildura, Jade Benham, and then from my right we have Eden Foster; Ryan Batchelor; me, Tim Read; Deputy Chair Kim Wells; and Paul Mercurio at the end there.

I welcome Dr Danielle Moon to give evidence at this hearing. Dr Moon, I have got a question to kick us off, and feel free to add anything that you wanted to say at the beginning. I was just going to ask you about the methods, findings and significance of your FOI [Freedom of Information] research if you would like to give us something to start with.

Danielle MOON: Yes, absolutely. I suppose just by way of background, I did my law degree at Oxford University, and then I qualified as a government lawyer in the UK. I was in the UK at the time that they implemented the *Freedom of Information Act* there, because it was a bit later than in Australia. I had experience there of advising public officials in answering the first FOI requests that they received and then also representing the government in complaints to the Information Commission and the Administrative Tribunal when those decisions were challenged. I suppose that sparked my interest in the FOI field, because it was a huge change in practice and culture. Up until that time most of the laws in the UK had been about keeping government information private, and, you know, public officials have lots of obligations that they have to sign about not releasing things and that kind of thing. Then overnight almost there was this change to, 'Oh, but you must now release this information but still not this information.' So, it was really interesting for me to see and to be part of that process of having, I suppose, the law intending to change culture and practice in the public service and then thinking about how effective that was.

Then when I moved to Australia, I went into academia and did my Master's [degree] and PhD in Freedom of Information law. My Master's was comparing a very specific aspect of the legislation about the release of internal working documents, thinking-process documents and policy-type things in the UK and then in Australia, focusing, I should say, on the Commonwealth jurisdiction in Australia. And what I found there was that some changes that were made in the 2009–2010 period to the Commonwealth legislation had moved away a little bit from the UK approach and had kind of tilted the disclosure framework, particularly for internal working documents, towards disclosure, whereas originally it had been a little bit more balanced I think on the face of the legislation. But some of the changes tilted it towards disclosure.

Then I moved, in my PhD, to look at whether those changes in the law had in fact had the effect that they were intended to have. They were intended to result in more disclosure of internal working documents in particular. I did a thorough analysis of the law and the various different changes, not just of the exemption but of all the other changes that they made to things like fees, practical refusal and delays and processes, because I think they interrelate in a way that has a particular effect on the disclosure of internal working documents, because those requests are more complex and time-consuming and so they are more likely in the first place to run up against the process and procedure barriers, to cost too much or to be too extensive. They are seen as a diversion of government resourcing, and so they are refused on those grounds. Then, even if you can jump those hurdles, the application of the public interest test is very complicated.

I did some Freedom-of-Information requests myself actually. I made requests to the department that had been responsible for making the changes to the legislation, the FOI legislation, and just asked for the policy background and the decision-making process. What they have done now in the Commonwealth jurisdiction is that for the public interest test they have added a list of factors in favour of disclosure and a list of factors that cannot be relied on to withhold disclosure, but there is no list of factors that can be relied on to withhold disclosure. I asked for the policy background to that with an FOI request, as a case study to see whether the legislation had had the intended effect of making it easier to access this kind of information. My findings were that it had not. I did not get disclosure of that thinking process information, but more importantly than that it took, so first of all – and stop me if I am giving you too much detail.

The CHAIR: No, this is interesting.

Ryan BATCHELOR: Very interesting.

Danielle MOON: First of all, the initial request, even though I had narrowed it as much as I possibly could, was seen as being too broad because there were a significant number of files that were implicated. They were trying to help me narrow it down, but really the only way that they could suggest to narrow it down was to ask for four files at a time and to ask for that sequentially so that I did not run up against the unreasonable-diversion refusal. The effect of that was that I essentially had to make five separate FOI requests and I had to make them consecutively, because otherwise they would have combined them into the one request again. The effect of that was that, overall, it took well over a year to get an answer to that request. Then at each of the beginning requests they imposed charges that I then asked for a review of. They then mitigated the charges, but I had to go through that for each request subsequent to that. So, it took a very long time and it was very expensive. I should say it took a year if you combine all of the different requests. I did not actually make all the requests one after the other because basically I asked for them for my Master's but I did not get the information in time for it to be useful for my Master's. So, I did my Master's and then there was a gap and then I did my PhD and then I went on maternity leave. So, it actually took over 3½ years, but not all of that was the government's doing. If you just add together their time, it was over a year.

Then the information that I had asked for – I got an enormous amount of information, but most of it was redacted and most of the key stuff that I was looking for was withheld on the exemption that I was looking into. The 47C [*Freedom of Information Act 1982* (Cth)] internal working documents [exemption]; they said that it was contrary to the public interest to give me the policy information and background to those documents, so I did not actually get the policy background. I have kind of pieced together some bits and pieces, but I did not get the key bit of the information that I was looking for. So, what I ended up with was a situation where it took an awfully long time and it cost a lot of – well, they reduced the cost, but potentially it cost a lot of money. There was practical refusal but I did not actually get any transparency. It seemed to me that that was the worst of all worlds: it was diverting government resources, it was having an impact on effective government working, but it was still not resulting in transparency, so it was the worst of all worlds.

What I then did was I interviewed public officials at a range of different departments across government about why this happens – what is so hard about releasing internal working documents? Because the changes did have an impact on other types of documents. There is greater disclosure of other types of materials, or so the public officials have told me, but there is this particular sticking point about internal working documents. So, I went and asked them why that was and then what they do about it: How do they manage that? Essentially, the answers were a very complex set of factors, but basically the public officials faced with requests for internal working documents are concerned about the effect that it has on resources, first and foremost, because they are very, very time-consuming and very tricky to answer.

I think one of the misconceptions is that because of the digital information age it should be easy to just type in a search to a records management system and get the information back and send it on – and you should be able to do that – but the flip side of the information age is that now, compared to when the FOI Act was originally introduced in 1982, the amount of documentation is huge. So you have got someone that is just looking for the background to a particular policy change – they might actually want an answer to a question – but what you have got perhaps is 10 drafts of an email with 10 different responses from different people and they have to work out which of those emails have been included in a previous chain and all of that kind of stuff; there is just an enormous amount of stuff. And then you have Word documents where they are the same document but 10 different people have put comments on 10 different versions. In theory all of those documents need to be

released so that you can have all the comments. So, it takes them a long time, and, as ever, government departments are being asked to do more with less, is what they say. And there are no resources to do that. So, the people that are answering those questions, the people that are pulling together that information and considering all the comments and working out whether each of those has been released or whether this is a separate email or whatnot, are the people that would otherwise be doing the policy work. It can be a very tricky time, I suppose.

This is another one of the things that they were saying: there is a difference between information that is requested about historical decisions – well, this is what they were saying, although that clearly was not the case in my case study. Historical information about decisions that have been made and policies that have been made tends to be easier, but what they are actually getting at the moment is a lot of requests for information about ongoing policy-making and decision-making by people that essentially want a seat at the decision-making table and want to see all of the information that government has got and is making those decisions on – which I personally think is what the legislation in some ways is designed to do; it is designed to increase public participation in democracy. But whether FOI is the right way to do that – because it takes an enormous time and you can only get a little bit of information.

So, there is the resources question, and then they were saying that they were concerned about the impact that it has on relationships – so their relationships with ministers, their relationships with third parties and their relationships sort of across the department. They were saying that in order to be able to have trusted relationships with ministers, if this information is disclosed about the thinking process and it creates and whips up conflict, then that makes it very difficult to give advice or to write down advice, and so they change the way they give advice or they change what they do and say. They do a balancing test, basically. Is the transparency that you get from this piece of information more valuable than, as they perceive, the public good that would be done by them just being able to get on with the business of government and do the policy? So, there are lots of things that intertwine to make it – on balance they see it as less valuable to disclose thinking-process material than it is to keep it confidential and get on with their core work, is how they see it.

Ultimately what you then find is that even though the legislation had made changes that were supposed to make access to this information easier, it is not doing that because they are not interpreting and applying the law in a straightforward way. Culture and organisational factors have an impact on how the law – so they are not being unlawful, they are stepping through the process, but because of the level of discretion and the things that they have got, it is not actually having the anticipated effect because of culture and organisational factors. So, where I am at now in my research is looking at what can be done from a kind of regulatory oversight point of view to get at that core of the problem.

The reason I think I am concentrating on that is because I have spent the last few years – I am now at Macquarie University as an academic permanently, but before that, for the last two or three years, I was at the New South Wales Ombudsman, managing their public interest disclosure team, so doing the review of whistleblowing law, but also refreshing the auditing and monitoring framework to see how, again, agencies are complying with their obligations under whistleblowing protection-type laws. So, what I am thinking about at the moment is what similar mechanisms might be useful in the information commissioner kind of space to really get to the core of what is going on in departments and make recommendations along the way and have a kind of deeper insight along the way rather than just relying on complaints from individuals who have been refused. Because then you are very much narrowing the types of cases that you see and you are putting the onus on the people that are trying to access information, whereas actually you want there to sort of be perhaps a bit more of a proactive, consistent review of what people are doing continuously. So anyway, that is where I am, and that is what I have been researching and finding, but I am very happy to answer more detailed questions on any aspects of those things.

The CHAIR: Thank you very much, Dr Moon. I have got one more specific question, which is: What does the best FOI public interest test look like, and how should FOI be balanced against competing rights and interests?

Danielle MOON: Look, I think that is really hard, and I think it comes back to being really clear about what you want FOI to achieve. Democracy has kind of changed in the 40 or so years since FOI was first introduced. There were lots of ideas behind what an FOI legislative regime could impact, and they were things like accountability and participation in democracy – all those kinds of things. But they were never on the face,

originally, of the Commonwealth legislation. It was originally just the objects clause. I think that is really important. The objects clause in the original legislation in the Commonwealth space, and I think it is similar in the Victorian space – I was having a look the other day – just says the purpose of the legislation is to balance the right to transparency against competing rights and interests. After the changes in 2009 and 10 the Commonwealth legislation objects clause changed. It has other bits and pieces as well, but it references those political ideals more directly and it says it is to facilitate participation in democracy. That is tricky, because I think what that leads to is a mismatch between what the government wants to be doing and what the public expect. Because to be able to participate in democracy, you need information in real time. You need to be able to get the core of the information in real time and be able to contribute to the decision-making process as it happens, and that is exactly the stuff that the government says is really hard to disclose because the process of it all distracts from them doing the policy work.

The first thing I would say is to be really clear on the face of the legislation. Are you aiming for accountability after the fact? Do you want people after the fact to be able to look at how this decision was made and review it and use that in an accountability mechanism? Or are you aiming for participation in the here and now, in which case you have to think about whether the pull model is really useful for that, because it takes a very long time and people can only get a very specific piece of information before they come up against the practical refusal thing. If you want participation, maybe you need to think about different models of releasing that information in a way that is not so resource-intensive and also allows release of the whole context not just the specific bit that someone is asking for. You have always got the freedom to do that, but I am not sure that that is how it actually happens. So that is the first thing. The second thing, I think, is to be really careful about what you apply a public interest test to, because they are very nuanced and complicated in terms of the actual balancing test and if public officials are doing the balancing test. It is supposed to be an objective measure about what is objectively in the public interest, but people come at these things with their own – I do not mean agendas but their own personal perspectives and what they think that is going to do. So, you really want to narrow what the public interest test looks like or applies to.

In the Australian context 'internal working documents' is a huge category of information, and all of it is subject to a public interest test. In the UK they have gone a different way – policy development information but for central government departments only, so it is not all agencies it applies to. But central government policy development is just subject to an absolute exemption. No-one can ever get that. I do not necessarily think that is right. I think you need ways of being able to get that, but I think if in practice you are never going to be able to get access to information about policy through an FOI request, it is better to be honest about that on the face of the legislation than to give this illusion of transparency so that people spend time and money and effort trying to get the policy information and they cannot ever get it, and so to be really careful about breaking down the exemptions that you are looking at into what needs a public interest test here and what does not – what are we never going to release regardless, what should we always be releasing, what just should not be covered under this exemption, what should we just always be releasing here – and then narrow down the really tricky bits to be the things that have the public interest test attached to them.

There are different ways of going, but I do not particularly like the lists of factors that can and cannot and should not be taken into consideration being in the legislation, and there are a couple of reasons for that. The first one, really, as I was just saying, is that it does not seem to have worked. Even putting factors in the legislation that really strongly push in favour of disclosure does not seem to have worked, and actually there is some research that suggests that the more you push in favour of something in legislation, the more you lead to a culture of resistance. You actually have the opposite effect. The stronger you push in legislation, the stronger a culture of resistance builds up. Public officials find ways around doing what the legislation says they must do, because it does not give them a way to openly say, 'This is a problem,' so they have to say, 'Well, I'm not allowed to rely on this now, so I'm going to have to do this instead.' Their belief that it is problematic does not change, it is just what they can do to answer that belief that changes. So, I would prefer to have the more simple public interest test in the legislation itself and then to have – again, via the information commissioner – perhaps those lists of factors and guidelines that they must take account of. I think it is tricky that, because people can say, 'Well, I took account of it, but I didn't agree with it.' I think again there is potential for an increased role for the regulator here. You could have an obligation on departments that when they take account of the guidelines and decide to go against them, they may have to notify the information commissioner that they have done that and explain why, for example.

I also have been thinking about this little bit. If we are going to narrow down the factors they can and cannot take into account through guidelines or narrow down what the public interest test applies to, I think there will always be these really exceptional cases where, because of the particular circumstances and the particular facts, it is very, very hard. Like, it would be genuinely problematic for that to be out in the public domain. The way that old legislation in the Commonwealth used to do that was by conclusive certificate. I think the minister or head of department could conclusively certify that this would be contrary to the public interest and then it was essentially beyond review. But that was really problematic because it was beyond review. You could never tell whether it was being used legitimately. But, now we have the option of information commissioners, I do wonder whether there is a scope for saying, 'Okay, under the legislative framework and guidelines, this information should routinely be disclosed; however, you can approach the information commissioner for an exceptional exemption to that.' You can say, 'Based on this particular case, we think we should exceptionally be allowed to withhold this for these reasons.' I think the advantage of that is that – well, first of all, some of the interviewees in my research suggested that that is almost what happens anyway. So, if they do not want to release something, not because of the content but because they do not want to be seen as recommending the release of something because it is unpopular, they will refuse, knowing that there will be an appeal, and then the information commissioner will order for it to be released, and the blame for it sits over here rather than there.

But the problem with that is that it then puts again the onus on the person requesting the information to go through and appeal and put all of that together, and that can be really daunting, expensive and time-consuming. If they are going to do that anyway, I think that onus should sit on the department and they should just go to the information commissioner and say, 'These are the facts of this case. Can we have an exception? Can you exceptionally find that the public interest test applies here to withholding?' We would need to think that through a little bit, and I could do some more thinking about that, but that is I think a safety valve for public officials so that they know that if something is genuinely going to be problematic, they do not have to disclose it. The agreement of the information commissioner is probably important in avoiding some of the avoidance behaviours that we see and that they have openly said are happening.

The CHAIR: Thank you. Mr Mercurio.

Paul MERCURIO: Thank you, Dr Moon. Just a question: How should internal working documents, such as deliberative documents or thinking-process materials, be best treated under the Freedom-of-Information systems?

Danielle MOON: It is similar I think to what I was just saying, and that is that they are very closely linked, the public interest test and the internal working documents thing. I would narrow the scope of the exemption so that, for example, you treat historical policy documents differently to current ongoing decision-making, because again that is what public officials sort of said: the current decision-making is the bit where the most problematic things come into play that distract from the ongoing policymaking and that kind of thing.

I would perhaps have different assumptions around whether historical policymaking information and current policymaking information is withheld either under a public interest test or under an absolute exemption. What is the time frame we are looking at? Essentially you get all this under the *Archives Act* anyway in 30 years or so. Does it really need to be 30 years? If it is historical and we want to use it for accountability purposes, always going back to the accountability purpose of it, there is not much use having it in 30 years. When does it stop being a problem to the current thinking process but become an important accountability measure? I think you can divide those things up.

Like I was saying, 'internal working documents' is very, very broad. Again, you could perhaps narrow that and separate out the consideration. In the UK, as I was saying, they have 'policy' as an absolute exemption. I would perhaps tweak that and say that policymaking is an absolute exemption until five years or four years or however many years after the decision has been made. But for the rest of it, all of the other thinking process material that does not fall under policymaking, there is a prejudice-based exemption.

I should clarify; there are two types of exemption that you can have. One is a class-based exemption, and that is for a type of document. It is for a policy document or a Cabinet paper, those kinds of things. The other type of exemption is a prejudice-based exemption, so it is an exemption based on the type of harm it will cause. At the moment in the Commonwealth system and in the Victorian system 'internal working documents' is a class-based system, because it is anything that is an internal working document, with a public interest test attached.

What the UK does is divide the internal working documents into different categories, so policy information is a class-based exemption and there is no public interest test. It is an absolute exemption. All the rest of the thinking-process material is not exempt just because it is thinking-process material. The exemption that falls under is essentially: if there will be prejudice to the free and frank giving of advice or otherwise to the effective conduct of government affairs, then that exemption applies. Yet it still has a public interest test applied to it.

The effect of that is that it kind of acknowledges that there is a balancing act. Having transparency almost certainly will have an effect on the effective conduct of government affairs. In one of my interviews, I interviewed James Popple, who is a former information commissioner, and this is in the PhD; this was not a confidential interview. He said it is almost inevitable that introducing transparency does impact on effective conduct of government affairs, but by protecting entirely effective conduct of government affairs by never releasing policy and that kind of thing you do not get the benefits of transparency.

Either way there is a harm, so you have to choose which harm you are more comfortable with. You know, do you want total transparency, or do you want total effectiveness of government affairs? You have to balance those. But having a prejudice-based exemption based on prejudice of government affairs is acknowledging that transparency will have an effect on government affairs, and that is not determinative. You still need to decide whether, even though it is having this prejudicial effect, it is in the public interest to disclose it. That is what sort of effect dividing those up into class based or prejudice based has.

So, yes, I think I would go 'historical' and 'current' and then I would really pick apart the internal working documents thing and think about which regime is more appropriate for different types of information that currently fall under that one single heading. Do you mind if I just check my notes on that? There might been something else.

The CHAIR: Go ahead.

Danielle MOON: Oh, yes, that was the other thing I was going to say: the exceptional withholding thing. I think if you change the framework of the exemption so that more information is routinely withheld – so some of it might be absolute for a certain period of time – and then routinely disclosed, so after the period of time has passed it is all automatically exposed, and some of the other information then does not fall under the exemption at all, I think then going back to the idea of exceptional withholding, even though you are not covered by this exemption or it is not clear whether the public interest test falls in favour of withholding or disclosure, the option to go to the information commissioner and get a kind of ruling – what would you decide if this came to an information commissioner case? I think it gives kind of an escape, so it tightens things up but also gives a pressure valve to avoid those kinds of temptations to avoid the disclosure.

Then I think also you need to think about a push model for some internal working documents. Again, one of the problems with the FOI regime – and it is difficult, I think, because most regimes work in this way – is it does not actually attach to information; it attaches to documents. You do not have a right to phone a department and go, 'Hey, can you explain why this decision was made?' You have to go, 'Oh, can you please give me all of the documents that you've got that show why this decision was made?' And that in some cases is why it takes so long, because they have to pull together all of this information, whereas actually they could probably answer it in a 10-minute phone call. It was done because the idea of the FOI Act was that it was supposed to not create work. There is no right for any individual to write to a government department and ask them for a written explanation of something. It is not supposed to impose an obligation to create something that did not exist. But actually what it does in trying to meet that is it creates an enormous amount of work pulling together all these documents that probably do not give the person the answer that they need anyway. So, I think that for policy things and for participating in decision-making a system of being more proactive about releasing the pertinent, key information up-front is probably going to do more in terms of transparency and effective government, which includes participatory democracy, than tweaks to the public interest test or the exemption for the disclosure of internal working documents. In my view, I think that in modern reviews of FOI we should be looking at what we need to do more proactively and whether that can take the pressure off the individual FOI request.

The CHAIR: Dr Moon, we might go to Mr Batchelor, but also just in the short time we have left we might need some more concise answers just so we can get through a bit more material.

Danielle MOON: Oh, sorry. Cool, no worries.

The CHAIR: But having said that, it has all been extremely relevant and helpful, so keep going.

Danielle MOON: Of course.

Ryan BATCHELOR: Thanks, Dr Moon. I think you answered part of this with your discussion about the comments that Mr Popple gave you in your question about the observer effect – so FOI introduces an observer effect to government or to the public service in the formulation of their advice, and that therefore changes the nature of the act of the advice provision. What effect do you think there is, or have you seen any evidence that there has been a change in behaviour, a change in practice or an otherwise chilling effect, I suppose, on the provision of advice that is written down?

Danielle MOON: Look, some of the officials that I spoke to said that there is a shift towards oral advice, and some of them attribute that to FOI, but some of them say that that kind of was happening for other reasons, that because there is a fast pace to policymaking now, it is actually just quicker to give quick oral advice and then let that happen. So, it is not just FOI that has that effect on whether advice is written down. The other thing is, I suppose what I would say, being concise, is almost that I do not know. My research did not show whether it did have that effect, but what it showed very strongly is that public officials believe that it has that effect, and it is that belief that drives their behaviour. They believe that disclosing this information will have this effect and that it will be detrimental, so they work around legislation for what they are going to do with the request for disclosure. So, it is the belief that you have to tackle, and that is why I have been trying to work towards thinking about regulatory things that can understand that belief and potentially shift it, rather than legal changes.

Ryan BATCHELOR: Thank you.

The CHAIR: All right. A quick question from Ms Foster.

Eden FOSTER: Thank you, Dr Moon. I will be quick. I think you have touched on some of this, but do you have a view on the desirability of Cabinet documents being disclosed either proactively or through FOI legislation, and what is the UK's approach to these issues?

Danielle MOON: I have not focused as much on Cabinet documents. I do not know what the current UK approach is. I can go away and look at that and send you a note on it if that would be helpful. Cabinet documents, I would say – the New Zealand approach about being proactive about the release of some documents has been interesting because I do not think it is had any of the negative effects that people perhaps would have anticipated. I think that is a really useful model. The problem with Cabinet documents at the moment is they are so absolute that people can just attach other documents to them and use that. Someone mentioned that to me as an option: if you are really concerned with an internal working document going out, you can attach it to a Cabinet submission and then you know it is protected. So, I think they are problematic from that point of view. Just as a participation in democracy and accountability I think there is just as much value in Cabinet documents being out there as internal working documents. It also shows that the culture from the top is really influential in terms of what departments are willing to release, and so I think if Cabinet documents were more transparent, you would expect that to lead to a shift in more transparency in departments. But that is probably all I would have to say about Cabinet documents.

The CHAIR: Thanks Dr Moon. We might just jump ahead a bit in our order and go to Jade Benham in Mildura. Jade, we might skip number six if you want to take us from number seven.

Jade BENHAM: Sure. Great. Thanks. That is very interesting, Dr Moon. Thank you for all this information. Just to change focus a little bit, your experience working as a government lawyer in the UK as opposed to your academic research – Can you just give us a quick synopsis on what you learned between working in the sector and researching the sector?

Danielle MOON: Yes. I suppose they are not that different – in some ways, yes. I always thought that the public official perspective was really important because they are instrumental in absolutely every aspect of the success of FOI or otherwise. You know, they create the documents that it bites on. They decide whether or not it should be released. They store it and record it in particular ways. So, my perspective working as a lawyer – in the early days we would go through the exemptions and then go, 'Okay, in layman's terms, what are you

actually concerned about?' And they would be like, 'Oh, nothing.' And you go, 'Well, can't you release it then?' And they would go, 'Are we allowed to do that?' The shift was so big that the idea that you could release information was massive. That was my kind of experience, that the training and the focus was all on exemptions and how you could apply and how you could withhold, and that has a really big effect on people's mentality around disclosure and withholding. How you approach training – it is the culture and organisational stuff rather than legal framework.

That was what my kind of hunch was from being a practitioner, and I think that was really borne out, because being a researcher it was very frustrating not being able to get the information, so it was useful to come at it from the other side. But then again, the researching with the interview with the public officials, the range of things that they think about all kind of chimed [in] with my experience of advising people in the UK, I think. Is that what you were kind of getting at?

Jade BENHAM: Yes, very much so. It is very interesting. Thank you.

The CHAIR: Well, I will just follow up with the last one. Do you have any final recommendations or things that the Committee should be wary of as we assess potential FOI reforms?

Danielle MOON: I think I have touched on perhaps giving greater regulatory powers to the information commissioner, an audit and monitoring power, and perhaps some notification requirements for the departments as they do particular things that are contrary to guidelines or things like that and perhaps the exceptional withholding thing. The other thing I think I would perhaps look at is the way that fees and charges and practical refusals work. If we are running out of time, I could send you a note on that if that is helpful. But in the UK those things are kind of combined so that there is an actual concrete dollar limit – well, pound limit – on how much work a department is obliged to do. So, instead of this vague 'unreasonably diverts resources', there is an actual dollar limit, which has pros and cons, but it enables consistency and certainty. But, actually, fees are almost never charged, and certainly not in the same way. So, again, it is about having clarity about what the purpose of charges is. Is it cost recovery? Is it full cost recovery? Why do we charge fees? Is it to kind of show skin in the game? I think that has kind of been missing in the Australian context in the past, and that has led to an inconsistent approach to charging, which can then become a barrier to access when it was not intended to be. I think a review of the fees and how they relate to practical and resource refusal, perhaps drawing on some of the lessons from the UK, would be helpful.

The CHAIR: Thank you, Dr Moon. That was great. If you are able to send us a bit more guidance on that question, that would be very helpful as well.

Danielle MOON: Particularly on fees and practical refusal?

The CHAIR: Yes. Thank you.

Danielle MOON: Sure.

The CHAIR: Great. I think we will wrap it at this point and just suspend for a few minutes. Thank you again, Dr Moon, for making some time available.

Danielle MOON: Thank you. I am sorry for oversharing on some of the –

The CHAIR: No, not at all. It was really helpful. It is quite possible we may have some more questions for you at some stage.

Danielle MOON: Great. Thank you very much.

The CHAIR: Thank you.

Witness withdrew.