

# **TRANSCRIPT INTEGRITY AND OVERSIGHT COMMITTEE**

## **Performance of Victorian Integrity Agencies, 2017/18–2018/19**

Melbourne—Monday, 2 March 2020

### **MEMBERS**

Mr Steve McGhie—Chair

Mr Brad Rowswell—Deputy Chair

Mr Stuart Grimley

Mr Dustin Halse

Ms Harriet Shing

Mr Jackson Taylor

Hon Kim Wells

### **WITNESSES**

Mr Sven Bluemmel (sworn), Information Commissioner,

Ms Joanne Kummrow, Public Access Deputy Commissioner (affirmed), and

Ms Rachel Dixon, Privacy and Data Protection Deputy Commissioner (affirmed), Office of the Victorian Information Commissioner.

**The CHAIR:** I declare open the public hearing for the Integrity and Oversight Committee's review into the annual reports for the Office of the Victorian Information Commissioner. I hope everyone's mobile phones are turned to silent. I welcome Sven Bluemmel, Information Commissioner—hi, Sven; Rachel Dixon, Privacy and Data Protection Deputy Commissioner; and Joanne Kummrow, Public Access Deputy Commissioner.

All evidence taken before this Committee is protected by parliamentary privilege; therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, including on social media, those comments may not be protected by this privilege. The Committee does not require witnesses to be sworn, but questions must be answered fully, accurately and truthfully. Witnesses found to be giving false or misleading evidence may be in contempt of Parliament and subject to penalty.

All evidence given today is being recorded by Hansard. You will be provided with a proof version of the transcript for you to check as soon as available. Verified transcripts, PowerPoint presentations and handouts will be placed on the Committee's website as soon as possible.

I welcome any media covering the hearing today. We remind you of the following guidelines. Cameras must remain focused only on the person speaking. Operators must not pan the public gallery, the Committee or witnesses and filming and recording must cease immediately at the completion of the hearing. Broadcasting or recording of this hearing by anyone other than accredited media is not permitted.

I invite you, Sven, to proceed with a brief opening statement to the Committee, which will be followed by questions from the Committee. Over to you.

**Mr BLUEMMEL:** Thank you, Chair, and thank you to the Committee for the opportunity to make a brief opening statement. Rather than taking the Committee through the operations and achievements of OVIC since it was established in September 2017, I would instead like to make some very brief remarks about why the information rights that OVIC oversees matter in the first place. Worldwide I believe we are seeing a decline in the trust people have in institutions. This includes but is by no means limited to government institutions. And while the situation in Australia and Victoria is less dire than in many other places, we are not immune. I am sure we all appreciate that this can cause harm to the very foundations of our democratic society, regardless of where any of us stand on the particular issues of policy.

But one of the ways to guard against this erosion of our democratic foundations is to establish and protect the kinds of information rights overseen by OVIC. A strong and effective freedom of information system not only holds government to account, it allows for greater participation of everyday citizens in our democracy. A robust system of privacy protections is not only essential to Victoria's Charter of Human Rights and Responsibilities, it also enables each member of the public to trust that government will treat them and their personal information with respect.

Finally, a genuinely risk-based approach to protective data security ensures that the information government holds is adequately protected, and as the regulator of these rights and responsibilities, my colleagues and I are keenly aware of the responsibilities that the Parliament has placed upon us on behalf of the people of Victoria, and it is this responsibility that shapes everything that we do. With that by way of context, I would of course be pleased to answer any questions the Committee has. Thank you.

**The CHAIR:** Thank you. I suppose I should lead off as the Chair, but I just want to raise an issue in regard to freedom of information. OVIC's output performance measure regarding time limits of FOI reviews was not met in 2018–19. Specifically there were differences between the target and the actual, and I think there was a negative 73 per cent measure. I suppose the general question is: how did this situation come about?

**Mr BLUEMMEL:** I will ask my colleague, Joanne Kummrow, the Public Access Deputy Commissioner, to elaborate on it. In brief, by way of introductory comment, it is due to a focus on the very large backlog that the office effectively came to when it was created, and in fact the figures show that since the creation of OVIC we have continually improved on those figures and exceeded the number of matters we have managed to close year on year by a considerable margin.

A large part of that, and what has led to that substantial discrepancy where we have failed to meet our timeliness criteria, is the fact that we have achieved those high numbers without resorting simply to the simplest

or most recent matters; we have actually done it by looking at the oldest matters that were already before the office to clear the backlog, and in fact in the answers to the questions on notice given in writing to this Committee a month or so ago the age profile of matters still before us has turned around dramatically. So it was that focus on catching up on the older and harder matters that put those figures into a substantial shortfall on timeliness. But I will ask Ms Kummrow to elaborate on that.

**Ms KUMMROW:** Thank you very much for the question. I endorse the Information Commissioner's response. I have been at OVIC in a decision-making role since May 2018. At that time there were about 470 review matters. We also have complaints as well. Reviews tend to be what we focus on, but we also have a fair number of complaints as well that occupy a deal of our time. There are over 450 reviews. As at today, there are 227. Now, those numbers go up and down on a daily basis, as you can imagine, depending on matters coming and matters going out. To give the Committee some idea, we get on average about 13 new reviews every week and about 10 new complaints every week. So in the last financial year we completed an additional 188 matters. It does not seem a lot, but we are constantly trying to deal with a flow of matters coming in as well as those going out.

To commence with, timeliness was certainly something that was on our minds with a large backlog, but we had to get through those aged matters. There was no other approach that I felt that we could take, and we have done that fairly conscientiously and continuously throughout that period. Whilst timeliness has certainly suffered, it is very much at the forefront of our minds now. Now that we are down to a review workload—we have currently 112 complaints as at this morning—timeliness is very much at the forefront of our minds, so we are looking at KPI targets internally of 30 per cent of matters completed within 30 days, another 30 within 60 days and another 30 within 90 days. And there will always be a small margin of outliers, I would call them—matters that are large and complex.

But the team and I are fairly proud of the work that we have achieved over that time. One of the things that we did not want to do, as Sven mentioned, was disregard quality. We are a new organisation. Regardless of obviously being a new organisation, it was very important for us to build trust with our stakeholders—those being the public, obviously the Parliament and agencies. But the quality of the work and the quality of the decisions that were coming from our office were very high quality, and we think that that is borne out by the very minor number that have actually gone on to go to VCAT for review.

I might add those ones that we were working on were some of the, I call them, gnarly matters. They were large—hundreds of pages in some cases—and we have dutifully worked through most of those. So that is really the situation that was inherited, and we have just had to knuckle down and do a lot of good, strong work continuously to get that done, and we have done that by setting targets to get down by 25 matters every quarter. Now, that does not seem a lot, but remember that number coming in—it is a constant wave that we are working with. So we are still a work in progress. We are not exactly where we would like to be, but we have done it. We also have to do it in a sustainable way, and we have also sought to achieve that as well. I hope that answers your question.

**Mr WELLS:** Commissioner, as you can imagine, for the Liberal MPs the frustration over FOI is boiling over, and it is becoming a joke. It seems to be that no matter what the Liberal MP or Opposition Member puts in to the Government, the Government just has a standard no. They come to you for a review, and it seems to be that you just toe the Government line. Just step me through the process: when a Liberal Member of Parliament goes to your office for a review, what actually happens?

**Mr BLUEMMEL:** Thank you, Member. On the actual outcomes from the office and how we go about it and what the results are, in that 2018–19 review period my office has actually reached a different conclusion from the agency in half the cases that have come to us. So in one in every two cases that come to us, we overturn or substantially vary the agency's decision. So in that sense I think the rigour that we apply and the independence we apply is there for all to see. In fact our decisions are now published on the OVIC internet site as of 1 July last year, so in fact our decisions are held up to public scrutiny.

In terms of the process when a matter comes in, if it comes in from a non-government MP—a Liberal MP, an Independent or minor party MP—we treat it the same as we treat any other matter. We look at the merits of it, we seek and consider submissions from the party that is applying, we may seek further submissions from the

agency or the minister who made the original decision if there is not enough information in their decision itself to allow us to do our review, but ultimately all of us have basically taken a role where we are independent merits reviewers. So we not only look at whether the agency has done a proper or thorough job, we look at the merits of the decision. And quite often—as I said, in about 50 per cent of cases now—we actually change or overturn the agency’s decision.

**Mr WELLS:** To me that does not seem a very high number. If you put in a legitimate FOI to a department and only in half the cases you disagree with what the department is saying about releasing information—and this is what it is all about, releasing information—that number does not seem very high. So of the 50 per cent, has the Government fulfilled the requirement to release all the documents that you have insisted that they release?

**Mr BLUEMMEL:** Well, once we make our decision that is legally binding and the agency or the minister has to release it unless they choose to appeal to VCAT. What I am saying with that 50 per cent is that in all of the review matters that come to my office for review where we are effectively the independent tribunal, I will change or overturn the agency’s decision. In terms of the numbers, of course what our office deals with is less than 2 per cent of agency FOI decisions made across the sector as a whole, so 98 per cent of matters do not even come to my office. Now, why they don’t come—well, one could speculate either the person is happy with what they get or in other cases they simply do not want to expend the effort and time to take it further. We will never know because we do not deal with those; we do not interact with the parties in that regard.

In terms of the 2 per cent or thereabouts—I think I have got that roughly right—of matters that come to us, as I said, we reach a different decision to the Government in half the cases. Now, I do not know how that would compare with other courts or tribunals. I think that is a fairly high rate, because the matters that come to us are already somewhat balanced. The really straightforward matters where something is clearly exempt or clearly not exempt are less likely to come to our office, because there is not enough—unless there is something enormous at stake—for people to actually take that effort to go to what is essentially a tribunal, so we see the harder ones.

**Mr WELLS:** Okay. Just to follow-up, a final question, but it gets back to my question in regard to if you overrule the agencies, is there a follow-up system that you follow, based on your decision to overturn what the department has said, to ensure that the applicant gets the documents that he or she is after? Is there a follow-up process to ensure that that actually happens?

**Mr BLUEMMEL:** There is no formal process that we have put in place simply because our decision is legally binding, so we proceed on that basis—

**Mr WELLS:** But that does not necessarily mean that the department will do it.

**Mr BLUEMMEL:** Well, I would be deeply troubled if the department did not. If the department does not follow through and takes it to VCAT because the department disagrees with our decision, that is fine, and then VCAT will look at the merits and make its own independent decision. But if an agency chose not to take it to VCAT but also did not give out the documents that we ordered them to give out, that would be a huge problem. I think I would be bringing that to the attention of this Committee very quickly, and I am pleased to say I have not had cause to do so. If somebody who is an applicant believes that the agency has not done that, they could come to us and let us know. While our official duty in making the decision would be over, if we thought there was an injustice there, we would certainly take it further. I do not know if Ms Kummrow would like to add anything to that on the process.

**Ms KUMMROW:** And we have also issued professional standards, so by those standards agencies are obliged to assist us. The issue technically speaking is that under the FOI Act there is no specific provision that states that our decision—that of Sven or myself—is binding and overrules or takes the place of the agency’s decision, and nor are we able to—

And some agencies certainly raise this issue from time to time, that we do not have a power to direct the agency, but we interpret the FOI Act to mean that our decision is binding, as the Information Commissioner has stated but for an agency or an applicant or a third party seeking to appeal the decision to VCAT. We have had a

couple of instances, but I think it has been more by default than design that an agency—and it has been a smaller agency, not one of the larger agencies—has either misunderstood the nature of—

**Mr WELLS:** Misunderstood?

**Ms KUMMROW:** A smaller agency, not larger agencies, perhaps not those sort of matters I think that you are referring to. But I just might say that there is that absence in the Act of a specific provision that we are directing—you know, the force of our decision is to direct the department to release—but I think everybody has a fairly implicit understanding that our decision triggers in the agency a requirement to provide those documents. There is also no time limit either as to agencies releasing documents. I am not sure if that is another issue that you have—

**Mr WELLS:** Yes, exactly—that it can take forever.

**Ms KUMMROW:** There is not clarity in the FOI Act.

**Mr WELLS:** No, there is no time line on when they have to release the documentation, and it could go from one election to after the election, for example, hypothetically, before the documents are released.

**Ms KUMMROW:** We would encourage in those instances that a complaint be made by the applicant in relation to the agency's handling of that complaint, and then that would trigger the ability for us to look into the issue.

**Ms SHING:** I might just ask a couple of follow-up questions then, if I can. From your evidence, Mr Bluemmel, I have heard that in fact there is no difference whatsoever between the nature of requests that come in from a member of one political party versus a member of another or indeed an independent. Can you just verify that that is indeed the case?

**Mr BLUEMMELE:** In terms of the merits it certainly is the case. Where there might be some practical difference in treatment, for example, is if there were an election pending. Then matters that seek information that is highly relevant to a policy difference, say, between the parties or an election commitment or anything like that, we would certainly look at that as a reason to expedite the matter where we possibly can. In terms of the merits, no, for us there is absolutely no difference.

**Ms SHING:** Okay, thank you. And despite the fact that there is no declaration of the binding nature of an order or indeed a decision to provide, does VCAT proceed on the basis that that binding nature of the decision exists when and as a matter proceeds to that jurisdiction?

**Mr BLUEMMELE:** I might ask Ms Kummrow to elaborate on the detail of that, but I just want to then take the opportunity, given what I said earlier about the nature of our decisions, just to clarify that, as Ms Kummrow has clearly done. That would not change the fact that if any of us in the office were aware of an agency or a minister flouting our decisions—whether through delay or just non-action at all—we would certainly consider that a serious problem because that would go against the will of Parliament as far as we are concerned, and therefore we would bring that to the attention of the appropriate body, which I think would certainly include this Committee.

**Ms SHING:** Just on that, I note that there appears to be a distinction between the evidence, Ms Kummrow, that you have provided that you have had a couple of examples that you can think of—not by design but through a lack of intention not to provide—whereby information has not been provided. That was not in those instances provided to this Committee though?

**Ms KUMMROW:** Sorry, could you just repeat that?

**Ms SHING:** On the one hand, Mr Bluemmel, your evidence is that this would be a really serious matter if that material were not to be provided and that would be something that you would be bringing to the attention of this Committee, but on the other hand I think that you mentioned, Ms Kummrow, you had a couple of examples from really small agencies whereby that had occurred, not through design but for other purposes. In

that instance what has been the alternative to bringing it to this Committee, for those examples that you referred to earlier?

**Ms KUMMROW:** Certainly not by design, just by default, there was a misunderstanding by the agency FOI officer. And smaller agencies, their FOI officers are often their privacy officer, their records officer, and despite us providing that training, on occasion things will slip through.

**Ms SHING:** But you have said on the one hand that you would think that to be a serious matter that you would bring to this Committee—

**Ms KUMMROW:** It could be.

**Ms SHING:** But on the other hand you have not brought them to the Committee.

**Ms KUMMROW:** Well, where we can deal with things informally, and I think that we have a sense of—we make a telephone call. We obviously give that person procedural fairness rather than escalating it in the first instance. So we would always look into it, and we have done so. But I think when there is an instance where we are asked to intervene and look into a matter, we certainly tend to see some action.

**Ms SHING:** And just finally on the question of delays and timing. Do the objects of the legislation under which you operate provide a framework within which information is to be provided despite the fact that there is not a specified time frame to provide that information?

**Mr BLUEMMEL:** I think you can be sure the answer is no. There is nothing in the Act that expressly says once the Commissioner has made his or her decision it has to be done within that time frame. If I can just maybe clarify one thing about the evidence—apologies if it was not entirely clear from my phrasing—but I would consider that a serious issue if an agency simply did not give effect to it if it were done deliberately, let alone systematically—

**Ms SHING:** Yes, thank you for that clarification.

**Mr BLUEMMEL:** I think the examples that Ms Kummrow mentioned were inadvertent and at the misunderstanding end of the spectrum, and I think quickly rectified once drawn to the agency's attention, whereas I think the sorts of more substantive, deliberate matters that the honourable Member referred to, that would be a great concern. And also just in terms of the turnover rate of decisions, I think it is quite safe to say that a number of matters just in the last sort of 12 to 18 months where either Ms Kummrow or myself have made a decision in a matter involving an applicant who is a non-government MP and one of us has made a decision that information is to be released, it is actually in some cases the agency that then appeals our decision to VCAT because they think that we have got the merits of that wrong and they should not have to release it. So I think that is another contextual factor in terms of how seriously we take our independence.

**Ms SHING:** Thanks. One more small question: you have gone from 450 matters at the start of your operation down to I think 227 you indicated, and of that I think you said 112—was that right in terms of reviews?

**Ms KUMMROW:** Number of complaints that come across, yes.

**Ms SHING:** Complaints, I beg your pardon. When do you anticipate based on the modelling that you will in fact be well on top of the backlog associated with, firstly, meeting those older, tougher, harder matters, Mr Bluemmel, as you referred to—what did you—

**Mr BLUEMMEL:** Gnarly.

**Ms SHING:** Gnarly—I knew it was a surfing term. Now that you are on top of the context of those more complex complaints, does that then mean that you will continue to expedite and resolve matters more swiftly off the back of that progress?

**Ms KUMMROW:** Yes. That is really the front-end part of our operation that we need to look at and fine tune, and that is bringing our team along to do that and to consistently look at different ways of trying to better

meet our timeliness targets. It is a work in progress. We have 30 days to conduct a review. For the Committee's benefit, agencies are required under the professional standards to provide us with documents within a certain period of time. That is included within the 30 days. So it really is something that we are continuing to work at, and as I said, there will be some that are not complicated that we would like to see done in 30 days, 60 days and 90 days and those outliers of 10 per cent. But early resolution—and we have a triage operation at the start, so looking at all new matters when they come in and how they can best be dealt with. But we also like to provide a quality service, and that is very important for us as well.

**Mr ROWSWELL:** Commissioner, are you seeking an amendment to the FOI Act to reflect agencies be compelled to in fact provide documents and a time line in order for that to be enacted?

**Mr BLUEMMEL:** Not specifically. What we have done is the professional standards that Ms Kummrow mentioned, under the Act I have the power to issue professional standards, with the agreement of the minister, and standards were issued in December last year—or took effect in December last year, rather—and once issued and gazetted, those standards have the force of law. And so it is actually under those standards that we have included professional standards relating to timeliness and requirement for agencies to assist us in undertaking our review function, because that delay is something we are aware of. It is frustrating to the parties, and we want to do whatever we can in our review process to ensure that our review process at least is as timely as possible.

**Mr ROWSWELL:** I am more speaking about if you have made a decision which is contrary to another party's impression of the way matters should be dealt with and you overturn an agency's decision to provide—you know, they say, 'We don't want to provide information'. You say, 'It should be provided'. Would it be helpful for there to be a legislated time line in place for the agency to provide that information to the person who is asking for it?

**Mr BLUEMMEL:** Look it is not something we have specifically looked at, I think it is safe to say, simply because, as we said earlier, we are not aware of it being a systemic problem. If it is, we would like to know, because clearly the FOI Act is intended to provide access as quickly and as cheaply as possible. That is one of the early provisions in the Act. But I might just turn to Ms Kummrow for any further detail.

**Ms KUMMROW:** We issue practice notes. And I am almost positive, although I do not have access to it at the moment, that we have got a practice note—it does not have the force of law, but a practice note—and I think it may be within, you know, 'as soon as reasonably possible', but with a view that it would be within 14 days. And that would be obviously a matter for Parliament if it wanted to reduce that time frame.

**Mr ROWSWELL:** But if you have no capacity to monitor that circumstance, then you are also not in a capacity to identify where there is an issue, systemic or otherwise.

**Ms KUMMROW:** No. I think that is right. We do not have a power to direct an agency, but it is implicit that our decision will then—where it is a decision that differs from the agency's that the agency will abide by and implement that decision, or they will appeal it to VCAT.

**Mr ROWSWELL:** So the only way that you will find out whether an agency has complied with the decision that you have made is by a party coming back to you and saying, 'We still haven't got this information yet'.

**Ms KUMMROW:** Yes. We do not have, as I said, the power to make, for example, an order. VCAT would make an order to say the respondent agency must release these documents within X number of days. We do not have that power. And it could be difficult. Some matters are very simple and other matters are much more complex—we are talking about hundreds of documents. FOI, despite us being in 2020, for a number of agencies is still a very manual process. That can present challenges to them.

**Mr BLUEMMEL:** And if I can just clarify a particular term, these practice notes are different to the professional standards that we mentioned earlier. The professional standards, by virtue of the provisions of the FOI Act, have the force of law, unlike the practice notes.

**Ms KUMMROW:** But as I mentioned before, if there was a systemic issue, a repeated issue of agencies not releasing documents where a decision has been made—and an agency has 14 days to make an application to VCAT for review. So that is where I get the 14 days from, that the agency has those 14 days, that 14-day appeal period. So an applicant should feel empowered any time after that to make inquiries, or better still the agency has got those documents ready to be issued within that time, and ideally electronically so they can be received.

**Mr BLUEMMEL:** And if I may just add to that, in terms of part of your question, Member, about how else we would get the intelligence as to whether this is a problem and is in fact happening and it is something where we should push for some legislative amendment, while on a particular matter there is no express follow-up in the Act or in our processes as such, one of the things that we have been very keen to do in fact across all three of our jurisdictions in OVIC, but including in FOI since we have come into being, is a lot more engagement and outreach activities. So not just for agencies, for training them and trying to change mindsets—such as the mindset that says, ‘Well, if in doubt, don’t release’; we are trying to say, ‘Well, no. Turn that around: if in doubt, release’—but we are also trying to do a lot more with community, with public events, with live streaming of events. We regularly—well, every year, in fact—participate in a right to information day which is across jurisdictions: public events, forums and livestream sessions. It is early days, but we would hope that from those sorts of things if we have whether it is community groups, whether it is non-government MPs or individuals who are experiencing that, that that is another channel that we have opened to encourage, to hear from people. And in fact we have met with non-government MPs; our door is always open. We have done that on numerous occasions.

**Mr ROWSWELL:** Just one final question if I may, Chair, in relation to some questions that the Chair in fact asked about some of the delays in dealing with outstanding FOI matters. Have you put a case to the Government for additional resourcing to assist with the clearing of this backlog? If you have, have you been able to quantify that? What does that look like? And have you received indication at this point in time as to whether that will be received or otherwise?

**Mr BLUEMMEL:** What I can say in that regard is that in our first full year of operation we actually received a substantial uplift of resources when OVIC came together. We effectively inherited the budgets of the two predecessor organisations, the FOI Commissioner and the Commissioner for Privacy and Data Protection, but we also asked for substantial additional resources on top of that for the work that we need to do. That was in the 2018 budget, and we received that and we have been putting that to good use.

**Mr ROWSWELL:** All of it?

**Mr BLUEMMEL:** I would not want to say too much in terms of the cabinet and ERC process. I would not want to breach—

**Mr ROWSWELL:** Seventy per cent of what you asked for—80 per cent?

**Mr BLUEMMEL:** Well, it has only allowed us to do what we think we needed to do. We believe it was what we needed and we are in fact now—those numbers that we have been able to describe to the Committee in terms of our substantial increase in output is a combination in part of the additional resources, of course, but also in part substantial changes to things like our structure, our processes, case management handling, reducing double handling, greater efficiencies—all of those sorts of things.

**Mr ROWSWELL:** So you have not asked for any additional resources in this budget period?

**Mr BLUEMMEL:** Well, again, I want to be careful what I say there in terms of—

**Mr WELLS:** Hang on a second. You are giving evidence to this Committee, so we would expect that we would want to know how much you have asked for and how much the Government has given you. It is a pretty fair question, because part of this role is also to make sure that we make sure that your organisation has the proper resources. If you are not telling us, then I want to know what the issue is.

**Ms SHING:** Just on that point before we do continue, I would like some guidance if we can get it in relation to the interface between evidence sought in this Committee on the one hand in hearings and matters which may or may not be the subject of cabinet in confidence or other matters that are privileged.



**Mr WELLS:** It is not cabinet in confidence.

**Ms SHING:** How would you know, Mr Wells?

**Mr WELLS:** Because he has put the request in. The Commissioner has put in a request that has got nothing to do with cabinet in confidence—

**Ms SHING:** Again, I would be asking for some guidance from the Chair.

**Mr WELLS:** It is not an issue because it is what the Commissioner has asked for in regards to resourcing.

**Ms SHING:** Okay, just some guidance would be great.

**The CHAIR:** Can I just intervene there and just say that I think the Commissioner actually responded to the question of resourcing and you said—

**Mr ROWSWELL:** Not for this budget term, Chair.

**The CHAIR:** Not for this budget, but he has in the past and has not responded to whether there are any additional resources requested. But I think to the initial question, that has been dealt with and in fact it goes to the part that you narrow down the volume of that backlog of cases that you are dealing with or issues that you are dealing with.

**Mr ROWSWELL:** The question is still outstanding though: in this budget term have you asked for additional resources or not, and have you got indications as to whether they will be delivered or otherwise?

**Ms SHING:** Sorry, just on a point of order there, getting an indication as to whether they will be approved or otherwise—just to paraphrase what you said, Mr Rowswell—may in fact be a breach of cabinet in confidence or cabinet subcommittee matters, and therefore I am again just asking for some guidance in relation to the way in which—

**Mr ROWSWELL:** I am happy to restate my question: what was your request?

**Mr BLUEMMEL:** Well, I would certainly be happy to—I think I can give a meaningful answer to that if that will be of assistance to the Committee. I have in the current budget process asked for a modest increase in resources, yes. In the previous year's budget that was still a carryover—not a carryover; that was still operating under the 2018 uplift. But in the current budget round for the 2020 budget I have asked for a moderate increase in resources.

**Mr WELLS:** Excuse me. What is your definition of 'moderate' or 'modest'? How much extra have you asked for?

**Mr BLUEMMEL:** I have not—

**Mr WELLS:** Hang on. Is there a problem with telling this Committee how much you have requested? It is not cabinet in confidence. There is no decision that is going to be made by ERC. We just want to know how much extra you have—what is the issue? Have I missed something? Every other officer that comes before us tells us exactly how much they have asked for in the budget process. It has never been an issue, but you are the first.

**Mr BLUEMMEL:** Well, in that case can I take the question on notice in terms of the amount? I have not got the amount in front of me, but I am certainly, in that case with the Committee's wishes, happy to provide it. I can provide that on notice very quickly.

**The CHAIR:** I think you can take the question on notice and come back.

**Mr ROWSWELL:** Thank you, Chair.

**Mr GRIMLEY:** I suspect we will probably come back to budget questions later on, but my question is in relation to data security in particular. It relates to the fact that OVIC has emphasised that government agencies

need to understand that protective data security often extends beyond cybersecurity and this includes anyone who has access to official information—for example, as contractors and volunteers. Are you able to elaborate in what instances a contractor or volunteer would have access to this information?

**Mr BLUEMEL:** I will ask Ms Dixon to elaborate on that, but I will just say by way of introduction that to us the issue of information security beyond IT or cybersecurity is a really big one. It is actually one of the main areas where we have tried to change the culture in agencies to think it is not just about that but it is about physical—it is about building security; it is about personnel security. That is very, very important to us and goes to the whole issue of culture change in that space as well, and the issue of contractors is a very topical one and one that is only getting stronger. So with that I will ask Ms Dixon to expand for you.

**Ms DIXON:** Excluding legislative sharing systems like the family violence information sharing scheme and the child protection information sharing scheme, we do take the issue of contractors very seriously. We go to great lengths with agencies, both by phone and by the various security network meetings, site visits and things like that, to try and stress to people that, yes, your pers. sec. is just as important. We take up with the water boards that, for example, somebody who has access to chemicals represents a risk. Even though it is not data—from a security standpoint, it is not even protective data—having those sorts of things secured is important because if you have got somebody who can do that, they can probably do other things as well. It goes to background checks if you have got somebody with a critical system. For some people it is risk-based. For everybody it is risk-based, but for some people it will be sufficient to do, say, a police check. For very sensitive data you may want to get some sort of security clearance for people acting in that role. So that pers. sec. angle is certainly extremely important, but the physical security is another thing we deal with.

One of the things we have recently undertaken is a program of site visits to audit some of the processes. People have given us their protective data security plans. We have looked at them. We have assessed the things that they have said that they are doing. We have looked for some outliers in some of those plans to see that there are things that we can see a pattern in. When we visit them, one of the reasons for visiting them at their premises, as opposed to at our premises, and compelling them, is we go into the foyer, we see what the security is like in the foyer and we see how easy it would be to get into that organisation. We see how freely people come and go. Those sorts of things are important to us, and we raise it with agencies if we see something that is not up to standard. We have only recently begun that program of site audits, although we do do that with VicPol quite regularly. We do about five of those a year with VicPol. But I think, on Sven's point, that is a key thing for us. The cybersecurity unit of ESV—in a price services branch in DPC—do a lot of education around the cyber risk, and we collaborate with them around that. We speak at events together and we make sure that we have got a consistent message. But the rest of that dimension—there is no point in having a fantastic firewall if you can walk out the door with a file. So that is a very big focus for us and something that is stressed at every VISN. The VISN is the Victorian Information Security Network, and we hold, I think, between three and four of those year.

**Mr GRIMLEY:** With the site visit audits, is that a random—

**Ms DIXON:** Yes. Sorry, since we have only just begun them—every agency is required to submit a protective data security plan to us every two years, and then every alternate year the head of the agency submits an attestation that they are still following the plan, or if there has been sufficient divergence they let us know that there is a divergence. But we look at those plans—and of course the first of those were only submitted in the 2017–18 year—and, as I said before, we look for comparable agencies and whether they are measuring their risks in same way, and then we look for some outliers. I will not give away whom, but we had a small agency submit to us that they did not rely on any other government systems. In other words, they were kind of self-contained. We thought that was strange, given the size of the agency and their function. As we went to visit them, it turned out they just had a misunderstanding about what that meant. Now, they do have further work to do on that. They were in fact users of the Cenitex system. So that makes sense for the size of agency they are. They could not manage a full-blown IT team of their own. But we would not have done that unless we had looked for that kind of differential between what they, as a small agency in that portfolio, were attesting versus another. So it is not completely random. We do it on the basis of what we see in the PDSPs.

**Mr GRIMLEY:** And given that it has only just recently begun, how many times or on how many occasions have there been any issues identified with those audits?

**Ms DIXON:** So far all of them have had something. That is not surprising. I will say that, as you have probably gathered from the press, data security is something that organisations, not just governments, struggle with. Every large organisation struggles with information security, so it is always going to be a movable feast. One of the things that I think we do say publicly to agencies is that if you print a PDSP that says your organisation is perfect, that is almost certainly going to trigger an audit.

**Mr GRIMLEY:** And given that, are there any plans to increase the amount of audits?

**Ms DIXON:** We would like to, I guess, but what I am conscious of is that the team that does this needs to be focused as well on that education function. It is a combined piece. If we spend all our time auditing, we will put the fear of God into people, but we will probably then get people into a compliance mindset, and one of the challenges in security is that you do not want people to say, 'Tick, tick, tick, tick; I have done all these things'. What you want them to have is an awareness of the risks their organisation faces. Otherwise governments will spend way too much money securing things that are not important and may miss the things that are.

We have a five-step action plan. The very first step is know the information and systems that you have. If you do not know the information that you have got, you do not know whether people are interested in it or whether it is valuable or whether it represents a threat. If you did not have it any more or if it was compromised, would that be a threat to your organisation? The second step is value it, and then look at security measures to put around that. So we are very much focused on that. The state of maturity is get the information asset register first. Not all agencies, can I just say—that is the first step that a lot of them actually fail at in the sense that some of them have got legacy systems; they do not know all of the detail of that. So we have been working with them to try and get them to understand that that is the first one. Then you know whether you are taking any risks or not.

**Mr GRIMLEY:** Just one more question, if I can, just very quickly. It is in relation to OVIC's annual reporting, and it focuses on the effective implementation of recommendations from OVIC and other systemic information security issues rather than the raw security information incident data. So how does OVIC assess the extent of information security risks associated, particularly with Victoria Police?

**Ms DIXON:** With Victoria Police, one of the problems I think there that I would just highlight is that we reported, or predecessor organisations to OVIC began reporting, on security incidents with Victoria Police back in the 2013–14 year. In that year what was then the Commissioner for Law Enforcement Data Security transitioned into CPDP, which was the Commissioner for Privacy and Data Protection. Then of course a couple of years later it became OVIC. I will say that unfortunately, if I can just refer to some of my notes here, the methodology that was used for some of that reporting varied year on year, so it made it very difficult to actually figure out what was going on and whether things were getting better or worse. To give you an idea, in 2015–2016 they took some raw reporting from police systems with other risk-assessed reporting in the SIR, and you will have seen, I think, there may have been some duplicate incidents in that reporting. It may have looked worse than it actually was. It does not make any sense to take something that is reported as, say, for example, serious without any risk controls applied to it and then merge that with other reporting that is saying, 'This is what we have done after we have actually assessed the incident'. So they were not good figures.

In 2016–17 the methodology changed again, and you will have noticed an annual report from that period where the table showed them split by major, minor and insignificant. But if you look at the footnote in the 2016–17 annual report, it will say, for example, that after the major incident was reported it was actually found, again, to not be a significant incident. That was part of that confusion of risk-managed with non-risk-managed stuff.

In 2017–18 the reporting was split over two periods because of the restructure from CPDP to OVIC, and obviously one of the things that we have been doing is trying to actually get our own reporting systems as part of that restructure in place. One of the things we have done there, and VicPol has done this as part of a series of recommendations, is we encouraged VicPol to actually do some online training modules on their serious incident reporting system and for all recruits who go through the academy to be trained in SIRs as well. So that is something that has been rolled out relatively recently. That should actually account for both better reporting through the SIR process and also an increased amount of reporting through the SIR process. But I stress that those comparisons are based on a sort of looking back over say a two-week to a month period of, 'This is the thing that came in as serious. What did police integrity assess it as after they had actually had a look at it? Was

it a badge missing?'. You know, there is a very frequent thing where police are coming close to retirement and they may misplace a badge. Police integrity look at that. That is a very different incident from if a policeman deliberately gave information to somebody else about an individual or, you know, a breach of protected information or something like that.

So it is really looking at: well, what did they find when they did their internal investigation? If we think it is serious, we have a monthly meeting with them and we go through any outstanding issues that we have concerns about as a standing item on our meetings. The other things we focused on there, really, in addition to not just being about raw numbers is trying to get ahead of them on some things, like new programs they are bringing in and the change in comms they are doing around that. So our efforts in the last year have been directed more to that than the raw numbers. As a result we get to see things like, you know, they are having a drone program. We get a briefing on that before they have the drone program. It is a much better thing than looking backwards.

**Ms SHING:** I would like to pick up on some of the themes from the evidence given in the first part of this hearing on what appears to be an often tricky tension to strike between education on the one hand and compliance and those elements of dealing with complaints, reviews and culture and how in fact you work toward voluntary provision of information and OVIC's philosophy in fact of providing proactive, informal release of information pursuant to the relevant legislation. So what I would be keen to hear from one or indeed all of you about is the way in which you are encouraging agencies to in fact do better and—I think just to paraphrase you, Mr Bluemmel—when in doubt release rather than withhold. So again in the real-world context of what we face around perhaps a resistance to doing that, how do you work with agencies again to not strike the fear of God into them but in fact to encourage the provision of information?

**Mr BLUEMME:** I might start on that. That culture change is probably our single biggest message for agencies and for government. It is that we do not want agencies to start with a mindset of, 'We've had this request. What exemption applies?', which we do sometimes see happening. Of course in those matters that we review, where we obtain submissions, we see how the decision was made. Sometimes that betrays a mindset of 'We have got to find this exempt because it is embarrassing, it is inconvenient, to release. How do we justify an exemption?' So what we want to change is to say, 'Well, no, this is not your information. You're just the custodian. You are only holding this information on behalf of the people of Victoria—hopefully with very good reason. But when there is a request for that, everything is on the table, even if it is embarrassing'. We have never made a decision since I have been there that says it is exempt because information released would be embarrassing to government or would harm trust in government. To us, those are not relevant factors.

The way we get those messages across, probably most powerfully at the moment, is in the publication of our FOI decisions, because those agencies that run that argument to say, 'Well, if this was released, it would result in ill-informed debate or it would result in public confusion'—those are two factors that we are very unsympathetic to. And those agencies that now try that argument and receive a decision from us to say, 'Well, that's not relevant. If you put someone in danger, yes of course it will be exempt, but if it is just embarrassing that is not good enough', they will see our decisions published to the world, whereas that was not the case before 1 July 2019. Our decisions, or our predecessor's decisions, were never published. We now publish them. That is probably the most powerful one.

It is buttressed by all of our training. Whenever we have FOI training it is usually heavily oversubscribed. We have a lot of demand for it; it is all free for agencies. Wherever I or Ms Kummrow can, we will open those sessions, which are full of government decision-makers and FOI officers, with that message. Start with everything is on the table. Why can't it all be given out? In addition to that, we have already mentioned a couple of times the professional standards, which have the force of law now that they are in place and gazetted. Those also require agencies to consider whether information can be released outside the FOI process, because the FOI process is a procedural straitjacket. It is designed to balance public interests for and against disclosure in difficult cases, and I think in those cases it works quite well. For a lot of other information it is almost procedural overkill, so we are encouraging agencies to release outside FOI unless there is a really good reason not to do so.

Some of the other ways we do that is whenever Ms Kummrow or I give a speech somewhere at an event, at a law council event where we are talking to the advisors to government—whatever it might be—we send that message. We say it can be a win-win because for you as the agencies it increases the level of trust when you

release things that are embarrassing but not exempt. For the person applying for the document, they do not have to go through the FOI process and for you as an agency it also usually saves you time. So they are the main mechanisms. I am not sure if I missed any.

**Ms KUMMROW:** Also this month we will be releasing a discussion paper on proactive informal disclosure. One of the issues that we are looking at, as well as that front-end work, is in Victoria we have the highest number of FOI requests made. Last year we just were beaten by the Commonwealth—all of the Commonwealth agencies. The year before that we exceeded the number of FOI requests. So there is a very healthy FOI request culture.

**Ms SHING:** The origins for that culture may be unclear, though. If people feel like they cannot get information through an ordinary request and receive process, that might then give rise to a formal step being taken.

**Ms KUMMROW:** That is right. We want to work with agencies, but we have to understand what agencies are doing and where they are open to and what the blockers are and then work with agencies. That is very much a cultural piece, which should lead, we would like to think, to a reduction in the number of FOI requests made in Victoria. That will be evidence of the work that we are doing. So you will leave FOI ideally, as the Information Commissioner has often said, as the last resort and leave it for those matters where there is a fine balance between competing interests—personal, public and business interests—in the release or non-release of a document.

**Ms SHING:** Does that become combative in the context of seeking a facilitated process on the one hand with agencies and the natural inclination that some agencies might have not to give anything away lest it set a precedent or lest it become further work or lest it undermine the status quo? I can imagine that that must present some difficulties in the context of a working environment that does not in fact tend toward perhaps your interpretation of fairness within the meaning of the Act and what an agency might see as being its primary obligation and responsibility.

**Ms KUMMROW:** It certainly takes a good measure of leadership to determine what information can be released in agencies. There is a bit of work that we feel still needs to be done, not with FOI units necessarily but in the executive leadership of agencies, to identify the information that they have got, which is a complement that we have with information security—what their information assets are—and then how do they classify or identify that information and what can be released proactively or informally. And that is owned by the whole agency, not just FOI.

**Ms SHING:** And that work is ongoing?

**Ms KUMMROW:** Very much so.

**Ms SHING:** Great.

**Ms KUMMROW:** There is a public discussion paper coming out in this month with responses and submissions to be received by agencies.

**Mr BLUEMMEL:** All three of us will regularly attend senior meetings at agencies to send exactly that message. We did a lot of that when OVIC was first created, and that is very important to us. One body of work that Ms Kummrow referred to was some work we did with Monash University into the culture of FOI in Victoria. That was a pilot study, and we are hoping to run that out more broadly. The thing that that found, perhaps unsurprisingly, is that the senior executive level in agencies is the most important one for us to address. Often we see the issue that the FOI officer might say, 'We've got to give this out; let's just do it', but it is then some pressure from above that says, 'Well, don't; maybe reconsider'. Having identified that, which again is not entirely surprising, is the area that we are working on.

**Ms SHING:** That is the focus of your efforts.

**Mr BLUEMMEL:** One of them, that is right. One of the things that we do say—I probably say it perhaps a bit too strongly—is that when I am presented with this idea that erring on the side of caution means you do not

release, I see where it is coming from but I actually then ask people to put themselves in the shoes of someone who lives in a fragile democracy, perhaps one that has only just emerged from years of authoritarianism or perhaps one that might be slipping into authoritarianism. I am pleased to say we are not in that situation, but if you were in that person's shoes, you might say, 'If in any doubt, release' to strengthen the democracy, to prevent the slide. Yes, some short-term pain and embarrassment, and that is difficult to deal with, but we ask people to bear that in mind. And in fact I think so far—from a lot of the feedback we get from agencies—people do actually genuinely appreciate that. What we then need to do is continue turning that around in practice, on the ground, every day.

**Mr HALSE:** Commissioner, I have a couple of quick questions. On page 15 of your annual report you note under the subheading 'Workplace relations' that:

No industrial relations issues were registered or grievances received in the course of the reporting period.

I am just wanting confirmation of that.

**Mr BLUEMMEL:** Yes, that is certainly my understanding.

You are probably familiar with the People Matter survey that is undertaken across the sector every year. This last reporting period we were actually asked whether we would like our results from that to be published proactively. From next year I think it will be across the board, but they were looking for volunteers for early publication. We offered our data to be published. And the report did give us some areas that we need to work on. In terms of some workplace areas, there were some very strong areas. There were a couple of areas where we needed to take some action by way of ensuring that our culture gets stronger, ensuring that people feel that their concerns are listened to, but nothing actually escalated beyond that.

**Mr HALSE:** Okay. To follow-up from that, you did note in a response to this Committee on 20 January that there is room for improvement in the areas of job-related stress, innovation and taking proactive steps to eliminate bullying, harassment and discrimination. What type of proactive steps are being taken in this space, and what type of external support have you sought to take these proactive steps?

**Mr BLUEMMEL:** Firstly, there was internal communication. So as soon as we got these results, at the staff meeting we had following those results we laid them all out for staff—the good, which was thankfully the vast majority of the report, and these areas for improvement. We just opened it up for discussion. So that was the first step—to just be open about it and say, 'We hear you, and we will take the good and the bad and reflect on that'.

Beyond that, in terms of the actual action, we have since then implemented a substantial amount of training. So we have actually developed an action plan from the People Matter survey report, and for us that is going to be an ongoing, regular thing—we will do it regardless of what the People Matter survey tells us. We will look at that and say, 'Right, what can we do to improve? What do we need to do?'. And on those areas that you mentioned, with things like work levels and innovation, they are areas where we have taken some action.

To be a bit more specific, we have done some facilitated training for managers, exploring ways to support staff during higher workloads and how to better manage demands on their time. We have had a facilitated discussion with all managers in the office about how we can improve our innovation, better service delivery. We have coming up a work-life planning workshop. One of the issues that was identified in the report is that there were, particularly within OVIC, some limited opportunities for development and advancement, which in part is due to the small size of the office of course but we want to do better in that regard. So we are bringing in some experts to talk to our staff about that and how we can do that better. We have also got some targeted workshops again for managers in terms of how to make sure that we are at every stage having a strong workplace culture and one that respects people. That is really important. They are the specific actions that have come out of that.

**Ms SHING:** One very quick question, if I may. I note that at page 9 you have got a breakdown of your staff and the staff profile. Could we get perhaps on notice please a breakdown of the levels of the 38 female staff who are listed there? That would be very helpful, thank you very much. I note that page 10 has got them listed by VPS-2 through to STS, but again just to see where they sit within those parameters would be fantastic.

**Mr BLUEMMEL:** Yes, certainly we can do that.

**Ms SHING:** Thank you.

**Mr BLUEMMEL:** So in terms of the female staff, their distribution across the levels? Is that essentially—

**Ms SHING:** Yes, that is correct.

**Mr BLUEMMEL:** Yes, great. Certainly we will do that.

**Ms SHING:** Just by number, not by identity obviously.

**Mr BLUEMMEL:** Of course.

**The CHAIR:** Thank you. I would just like to thank you for attending and giving us your responses to a range of questions. Obviously we will make sure that the transcript is available to you in the next couple of weeks. There are two questions on notice that you will come back to us on. On that basis, as I say, thank you for attending today and answering our questions. I close the hearing. Thank you.

**Mr BLUEMMEL:** Thank you.

**Ms KUMMROW:** Thank you.

**Committee adjourned.**