

TRANSCRIPT

INTEGRITY AND OVERSIGHT COMMITTEE

Inquiry into the Operation of the Freedom of Information Act 1982

Melbourne – Monday 24 June 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*)

Steven Piasente, Chief Executive Officer, Latrobe City Council.

The CHAIR: We resume our public hearing of the Integrity and Oversight Committee's Inquiry into the Operation of the *Freedom of Information Act 1982*. To our witness: before you give your evidence, there are some formal matters to cover, so bear with me.

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I welcome Mr Steven Piasente, Chief Executive Officer of Latrobe City Council, to give evidence at this hearing. Steven, do you have any brief opening comments?

Steven PIASENTE: I do. Thank you, Chair. Thanks, and good afternoon.

The CHAIR: Sorry, just before you start, I forgot to introduce Committee members. Online we have MPs Eden Foster and Jade Benham, and in the room on my left is Belinda Wilson and on my right are Ryan Batchelor and Paul Mercurio. Sorry for interrupting. If you could make your opening remarks, please.

Steven PIASENTE: Thank you, Chair, and thank you, Committee members, for having me present today. I am pleased to represent Latrobe City Council. I will say at the outset that I am not the foremost expert in relation to the exact detail of all the points of the FOI [Freedom of Information] legislation; however, I have had extensive experience in dealing with a number of FOI applications, particularly as CEO, when they have come across my desk, and also with my staff in terms of how they manage them. Importantly, council is committed to transparency and accountability, and that is something that I strive for. We certainly share information proactively with our community wherever we can, if possible.

Notwithstanding those efforts, FOI matters can be challenging. We have certainly seen an increase in numbers, some of which you might have seen in our written submission, and I can just touch on that slightly. There have been some changes to that. In terms of the number of applications, I think in our submission we actually said somewhere around 25. That has increased again this year to 48, as of today. It might not seem like a large number to some, but it is for an organisation of our size. I think that even some smaller organisations than us, being a regional city at our level, and smaller councils, might find that even more difficult. I think it has been a trend across the sector from what I am seeing and talking to my counterparts in local governments. So that does place a strain on our resources, impacting our ability to do things effectively – and particularly within the legislative timeframes, I might add. As I said, we have seen the number of applications increase.

I think in our submission we said there were applications from an organisation. I have verified that today. It is actually a number of applications from a couple of individuals who utilised the ability to make FOI applications but not on behalf of their organisation – I think in our submission we might have said that. It was two individuals who made applications. Their email addresses might be linked to a particular organisation, but they have made 20 per cent of all of our applications. We have sought to provide all that detail to them outside of the FOI legislation, and in most cases we have. There was one case where we actually prepared all the information, had it processed and it was ready for release but the applicant would not pay the access charges. Therefore, that document actually in the end was not released, because there were costs associated with it. That was an impact on our organisation, preparing all that, and it ultimately was not provided.

There has also been an example of OVIC [Office of the Victorian Information Commissioner] upholding officers' decisions to refuse to process applications, due to a substantial and unreasonable timeframe and the diversion of resources. The applicant in that case subsequently split their request into four or five requests. They were then processed, and that can occur, as I understand it, because the matter had not been dealt with by VCAT [Victorian Civil and Administrative Tribunal] and had only been dealt with by OVIC, so

that led to an increase in the number of applications – that 48 I touched on earlier from only 25 in the previous year. That workload has increased due to the complexity of the requests as well and the diversity of information we now hold, whether that is audiovisual or digital documents. Locating them can be time-consuming. It is obviously part of the process, but that is a factor we think needs to be reconsidered, particularly in relation to the timeframe that is allowed for us to be able to provide for that before something happens – a further process. If it is of value to the Committee, I can elaborate a bit on those examples we provided at a later stage – if you think that is of interest.

We talked about particular types of applications we have received. The unpredictable nature of FOIs can strain our resources, and they can be costly. I acknowledge, as I said at the outset, that accountability is important, but it is ensuring we have the right processes to be able to support that. Most of our FOI applications are for non-personal information. Some of those relate to legal matters and some relate to people trying to see details related to particular issues. That can be complex to assess and sometimes requires third-party consultation, so that takes time. Obviously smaller councils would face significant challenges I think in being able to address that. The cost of administering FOI applications is not met by the current application fees. You are probably well aware of that, and that does place some additional costs on the council in terms of having to manage that.

One of the things in our submission we did touch on is the identification of particularly our FOI officers and how that can translate in a smaller community. People in smaller communities are readily identifiable, particularly by their name. We have had occasions where FOI documents have been provided and have been shared on social media platforms, and that has led to concern from officers about that being provided. We think there might be some mechanisms that could be put in place to better address that, and we can touch on that. Also, OVIC, when they provide their annual statements, actually identify all particular matters that the FOI officers, by name, have dealt with and whether they have been supported or the like in terms of provision of information, and that definitely has created some concerns in terms of FOI officers I think – not just at our council.

I will just touch on, finally, some thoughts we had around possible changes to the legislation that might be of assistance, certainly from our perspective. The processing timeframe we think could be increased to a larger timeframe – say, 60 days rather than a minimum of 30 – and should probably reflect non-business days. We also have some closure periods over Christmas. That 60 days would cater for that, I suppose is what I am saying, if it was a longer timeframe. We do know that other organisations have faced similar challenges in relation to not being able to meet those timeframes. We think that strengthening some of the privacy protections for council officers, particularly in smaller communities, might be of value. That reporting at council level I touched on earlier. Ultimately, compliance with the FOI requirements is my responsibility, so I think there could be a different way of managing that, rather than disclosing individuals' names.

Introduction of clearer provisions to address particularly repetitive FOI applications – I touched on an example there of where we had somebody who did not get what they wanted through one application and then subsequently broke that up into smaller applications. That was one of the examples in our submission of what that person had done, and that led to significant additional work.

What I did not touch on – I am not sure if it is in our submission – is defining the hardship requirements. I think at the moment that is a little bit vague in terms of who can access those in terms of what the legislation says. So that might be of value. I have already touched on strengthening section 33 to protect staff privacy; it is an issue. I think having clearer guidance for the sector would be of value. They are probably the primary things, I think, maybe, some of those measures. I am sure you have had plenty of other submissions you will need to consider and think about for things you might need to include or recommend, including newly revised legislation. But that we think would strike a better balance between better transparency and responsible use of our resources and enhancing the efficiency of the process of FOI applications.

I will probably leave it at that and conclude. I will just highlight again that I am committed to transparency and providing what we can inside the legislation. It is something I always strive for. It is why I am using our resources to garner all the information through an FOI process. I will leave it at that, if you like, and I am happy to take any questions.

The CHAIR: Thank you. Indeed we do. Why don't we go to Eden Foster for our first questions.

Eden FOSTER: Thanks, Chair. And thanks, Steven, for attending. I know as a CEO of a local government area you are probably very busy, so thank you. I really appreciate your time. I guess part of my question you have answered partly already in terms of the many challenges that local councils face in terms of receiving, assessing and processing requests. You mentioned the costs, the staffing resources and also privacy of officers and things like that. Considering those FOI burdens and those staffing resources, are there potential solutions, do you think, such as sharing FOI staff resources across municipalities or improving the adequacy of current FOI Act provisions? Would that be of any assistance?

Steven PIASENTE: Yes, there is a network of FOI officers who collaborate quite regularly. I think that is more an informal setting in terms of having discussions about how they are managing FOI requests. We have explored in the past some shared service arrangements, not in relation to FOI officers but certainly other aspects of council. So, I do think, particularly as we are dealing with challenges we have faced financially and our ability to just continue to deliver services for people, that is something we are seriously going to have to consider around a whole range of other services. Certainly, that is one I think would be worth exploring in terms of a better framework for how you would support that, both within councils and from the State perspective. Rather than having a dedicated FOI officer, if we can share resources, in terms of the legislation, to provide, that is certainly worth considering.

Eden FOSTER: And are there any other improvements that you could recommend?

Steven PIASENTE: I think most of them are probably covered in the submission. I certainly know, in talking to our FOI officers, that over the last year they have certainly had an increased workload and felt a little bit overwhelmed. We have tried to support that – or we have supported that – by having external resources. That also takes a challenge to manage all of that, so it is probably not ideal in terms of their ability to go and use things – to seek legal advice or support through some other agencies who might be in the public service from more of a legal perspective. They say, ‘We don’t work inside the organisations,’ so I think that is probably one. The repetitive nature of some of the requests when they come in: as I said, in one of the larger ones we had somewhere in the examples I think the individual was seeking – in fact it was applications B and C in our submission, from memory. The person had originally put in one application, and that was refused. It was supported by OVIC, but it was too much. Then they came back and they broke it up into a number of different applications. That was only two of them, and they ended up with five or six to garner that information they were seeking, which in my view did not actually lead to any different outcome, but the information that was provided for them. That could have been far more streamlined to give more of an opportunity to be dealt with rather than having multiple ones – that is what I have been certainly thinking about. And that took significant amounts of work for an officer to process. It was pretty frustrating to go through that process. With one of those other examples, the information actually did not end up being released because somebody did not pay the fee associated with some of that. As I understand, only part of those costs can be recovered, not the full application costs, and it has been challenging for them.

Eden FOSTER: So, you are saying that you went through the whole process only to find out that the payment was not received and then obviously you did not release that information. Okay.

Steven PIASENTE: That is one of the examples here – one of the other examples. It was not in A, B or C; it was a separate one where the applicant had been through the whole process. To give a bit more clarity, that was an application that I think was made to every council in Victoria. They probably garnered enough information from everyone else, and, in the end, they did not need ours and did not bother paying the cost and just left it. We had that resource used to not provide something. It was very frustrating from our perspective.

Eden FOSTER: Okay. Thank you, Steven.

Steven PIASENTE: My pleasure.

The CHAIR: Great. Thanks very much. I want to go now to Paul Mercurio, who will have to leave the hearing shortly. We will go to Paul next.

Paul MERCURIO: I am going to ask you a question and then run, Steven. Are there any improvements you could make to record keeping and management that would help you process FOI requests more efficiently and effectively?

Steven PIASENTE: Yes, definitely. I think from an internal perspective that is something that we need to do more work on. We are making recommendations around that. That is something we have been working on internally – if we had better processes. We have a document-management system, and I think that could be better utilised inside the organisation, which would help. But that still does not overcome some of those other challenges around duplicates and where people might want to record a couple of pieces of information in relation to an issue. There should be a version history if it is worked on as one document; sometimes you can have multiples. It definitely would help. I totally agree that it is one of the things that we need to improve our own house on in terms of getting it right from an internal perspective.

Paul MERCURIO: And are you doing that currently?

Steven PIASENTE: We are doing work on it, so that is certainly in progress for us. I have worked elsewhere where there have probably been better systems, but that is something we are working on in terms of improving that, definitely.

Paul MERCURIO: Okay, thank you.

Steven PIASENTE: My pleasure.

The CHAIR: Great. Let us go to Belinda Wilson.

Belinda WILSON: Hi. Thanks so much for your time. Would it be helpful to local councils if there were clear provisions in the FOI Act on the management of vexatious FOI requests?

Steven PIASENTE: Yes, I think so. I did not use the word ‘vexatious’ in what I said – it might have been in our submission – but repetitive ones can become vexatious. There have been a couple of examples that I have certainly seen where the individual did not like the outcome they were receiving and so they then became more aggressive in terms of the number of applications they made. So, I think that is one of the areas that we are thinking to put clearer provisions through to address those vexatious or repetitive applications. What is the trigger for us – the threshold for us, I suppose – to actually provide that rather than just putting the same information in requesting the same thing? There was one example that I do recall – it is an issue, as you probably know, called a fishing expedition – where the person put in some pretty vague parameters and tried to seek some information and they had to go back and refine it, refine it and refine it. That was one of the examples that took a lot of time and effort, so it was a bit annoying just for the sake of trying to make it more difficult than it needed to be.

Belinda WILSON: Thank you.

The CHAIR: Great. Let us go to Jade Benham.

Jade BENHAM: Thank you, Chair. Thank you for your time today, Steven. Having been around the local government area, I understand the issues that this can cause, the fishing expeditions and then sharing and the distribution. You mentioned in your opening statement about the mechanisms that are controlling how documents have been ‘FOI-ed’. They have been paid for and then they get shared on social media or in other ways. Can you just unpack that a little bit for me?

Steven PIASENTE: Yes. We were talking about this internally in terms of, particularly, the issue around the naming of FOI officers, when their details are shared in a small community, which might then create concern for them or the potential for harassment. Not that we have seen that necessarily occur, but that can be a symptom of that. People who follow social media can quite readily see some of this information and can become very negative quite quickly towards an individual. I have certainly seen that. In some other examples we were thinking about, if you look at how our local laws officers issue infringement [notices], we do it by identification – local laws officer number, whatever it is – and there is a process for them to be identified internally so that they do not then get people raising issues with them as individuals, say, on social media. They just get an infringement notice. In that example that might be a mechanism that you might be able to use for FOI officers. I think it is that broader one of when things are reported, doing that at a council level rather than saying, ‘This FOI officer dealt with this many matters and here are the outcomes of all of those.’ They were a couple of the mechanisms that might be able to be used, we thought, understanding that these people need to be held accountable. The individual officers are held accountable in our organisation. And even if it was under my name that it was put out, rather than the FOI officer’s, it might be something from the CEO, for example. I get named quite regularly, I should say, on social media.

That does not bother me; it is part of the job. But in terms of that protection for individual officers, particularly in providing a safe workplace, it is certainly something we are thinking about: How is that better managed?

Jade BENHAM: How would that work? You were talking about networks earlier, and if you had a network that shared resources – FOI officers, for example – would that still work?

Steven PIASENTE: I think it would. If FOI officers had an FOI officer number XXX that is regulated in some other way, rather than their individual name being shared, I think that would still be managed effectively in that way. As I said, ultimately from my personal perspective, if it was to go out under my name as compared to the FOI officer who had dealt with it, that might be another mechanism. It still puts a bit of pressure on me in terms of what people would say. I do not tend to look on social media. I tend to focus on the more positive things in society. But when people share that and people highlight it, it does become a concern to individual officers. It is certainly something we have been talking about internally on how we better manage that and what is effective, so it is one of the thoughts around that.

Jade BENHAM: Terrific. Thank you.

The CHAIR: Great. Thank you. Let us go to Ryan Batchelor.

Ryan BATCHELOR: Thanks, Chair. Steven, you mentioned that the current timeframes for processing requests need to be extended. What do you think the biggest drivers are currently of things taking longer than 30 days to resolve?

Steven PIASENTE: I think some can be resolved within the 30 days, but there have been a couple, a definite number, that we have had that have taken significant research internally to, firstly, find the documents and then, the most critical part, assess them. So, our FOI officer, the primary officer who deals with these, has had to spend a lot of time with some applications going through them because there has been a significant volume of them to actually assess and see what can and cannot be released effectively.

Ryan BATCHELOR: What is the sort of information that is being requested? I am trying to get a sense. We have had other evidence from other places where people are seeking information about themselves. You have said to us that is not really the case here. So, what sorts of things do people want to know and are using FOI in this way to get to?

Steven PIASENTE: One example I think was example A, and I will just go to that page in the submission – application A. I will just go through those if you like. That was 388 documents that were released. There [was] certainly a high volume of documents that were identified. That related to a matter of litigation, so the applicant was seeking details in relation to a matter that they had had legal advice around and they were seeking, through their lawyers, particular details. So that took a lot of time and effort. As I said earlier, it is not information related to someone's personal details, it is more of those technical, more complex matters. The other two applications were B and C. As I understand it, definitely B does relate to a town-planning matter where they were trying to seek particular details in relation to that that I think, in the end, they would have liked to have taken to VCAT in terms of challenging a particular council decision. From memory, application C was the same. In terms of application A, the net was very broad in relation to that request. That captured all of the councillors, me, all the senior officers – a vast array of people within the organisation – and there were numerous emails and documents which were all recorded that the FOI officer had to go through and obviously weed out duplicates, get it all provided and then analyse the detail of what could be released. So, it is really those matters, the more complex ones, that take time.

Ryan BATCHELOR: In that case, is this pre-trial, pre-court?

Steven PIASENTE: Yes.

Ryan BATCHELOR: So, it was not using FOI as a substitute for court discovery?

Steven PIASENTE: That matter would have gone through VCAT, is my recollection, so I do not think that

Ryan BATCHELOR: It had gone through VCAT, okay.

Steven PIASENTE: They had not lodged a VCAT application at that point. But they had lawyers appointed who were trying to ascertain their position and wanted access to documents that council might have had held that were relevant, so they sought that through the FOI process. It did not afford that discovery, but it was really the degree of that process was quite extensive in that example. We certainly had three weeks of work, and that was just the FOI officer. That did not include other staff who had to provide all the detail and councillors and others who fell under that net, as I said earlier. They are probably examples that are the more complex. Whether there is, under any changes to the Act, if it relates to more complex matters, some mechanism threshold to have a longer timeframe, or whether it is just a broader longer timeframe for all applications; I think we were suggesting that 60 days would be better, but whether it is something more moderate that is related to complexity with what can be managed.

Ryan BATCHELOR: Just briefly, you touched on fees again in your opening. Can you elaborate a little bit more on your assessment of the current fee regime and what you think we could look at by way of reform?

Steven PIASENTE: I do not think we made recommendations in relation to that other than that it probably should be increased. I am happy to take that on notice and see if my team have any other thoughts around how that might be better. Obviously, with the application fee there would be a waiver if somebody meets a particular hardship, which I do not think is well defined from my research – a lot of effort goes into that – acknowledging again there is a right for people to obtain their own details. I think it is probably the more complex ones, where it actually takes a lot more time and effort, where you might then need to have some reconsideration of how people might contribute to that, and doing research into defining that information might be of value.

Ryan BATCHELOR: Any ideas your team have and can give to us on notice would be greatly appreciated. Thanks, Chair.

Steven PIASENTE: Yes, we can take that question on notice and provide that.

The CHAIR: Thanks very much. A couple of quick questions from me – you mentioned OVIC with regard to a particular matter. How do you think OVIC could provide better guidance to councils regarding their decision-making about what they can and should proactively release?

Steven PIASENTE: They do some good work in this respect. I reflect on some other agencies and the work that they have done in terms of providing clear guidance, whether that is Local Government Victoria or other entities – IBAC [Independent Broad-based Anti-corruption Commission] – in terms of how things should operate. I think in terms of publication the citing and support of individual officers is something for us to think about. I am happy to monitor it further and see if they have any further views around that. I think we have some general statements in our submission, but I can certainly get them to elaborate on that if that would be of value.

The CHAIR: If I can just ask you to think broadly about all the FOI matters you can remember, do you think you could reduce your FOI workload if some of that material had been proactively released? To put it another way, is it feasible or practical for you to proactively release some of that material?

Steven PIASENTE: Yes, I think a lot of the applications we have dealt with outside of the FOI Act. I suppose I could answer this question in two parts. We have been discussing with our councillors greater transparency generally, so what we can provide. That is made available on our own website, and we are doing that. We have done work on that in the past, and we continue to that. Some of the requests that have come in have been for councillor costs in relation to their allowances and the like and some of those sorts of requests. They are already readily available on the website, so we point people to that. So, we do not deal with it through the FOI process; we just provide that to them. For other requests that come in, we just provide the information. A number that I can think of recently have probably been more related to councillors and their costs and/or the costs of senior executives in terms of travel and those sorts of things, so we provide those outside of the FOI process, in consultation, advising the councillors that we have had these requests. We have done that. So, I think that is one way – just providing it.

The other one is through greater transparency. We have been talking about something the City of Frankston did – a transparency hub. We have had a bit of a look at that on their website. A lot of that information was already available elsewhere; they have just tried to put all that together. So that is something that we have been talking

about, certainly for our next update, our next council website update. In future, we are trying to drive more of the information so it is readily available, so if do we get those requests, we can just point people to that. I think if an FOI request came in and we were able to just push it into that process and say, 'It is already available. We don't need to deal with it in that way,' then the FOI application should end, in my view. But some might choose to pursue it. So that is where we are at – twofold – heading. We provide it readily where we can, and we try and provide more information that is readily accessible publicly on our website, particularly if it is source information and that sort of transparency concept.

The CHAIR: Thank you. Now, unless any Committee members have anything further to ask – Eden or Jade – then I think that is it for our questions. I would like to thank Mr Piasente for presenting today and answering our questions, and I declare this hearing closed.

Committee adjourned.