

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

WITNESSES (*via videoconference*)

Peta McCammon, Secretary,

Nicola Quin, Deputy Secretary, Corporate and Delivery Services, and

Lisa Scholes, Manager, Freedom of Information Access, Department of Families, Fairness and Housing.

The CHAIR: I declare open this public hearing for the Integrity and Oversight Committee's Inquiry into the Operation of the *Freedom of Information Act 1982*.

I would like to welcome the public gallery and any members of the public watching the live broadcast. I also acknowledge my colleagues participating today: online we have Eden Foster and Jade Benham; on my left we have Belinda Wilson and on my right Ryan Batchelor and Paul Mercurio.

On behalf of the Committee I acknowledge First Nations peoples, the traditional owners of this land, which has served as a significant meeting place of the First Peoples of Victoria, and I acknowledge and pay respect to the elders of First Nations in Victoria past and present and welcome any elders and members of communities who may visit or participate in the public hearing today.

I have got some formal matters to cover, so bear with me. Evidence taken by this committee is generally protected by parliamentary privilege. You are protected against any action for what you say here today, but if you repeat the same things anywhere else, including on social media, those comments will not be protected by this privilege. Any deliberately false evidence or misleading of the Committee may be considered a contempt of Parliament.

All evidence given today is being recorded by Hansard. 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 welcome Ms Peta McCammon, Secretary of the Department of Families, Fairness and Housing [DFFH]; Ms Nicola Quin, Deputy Secretary, Corporate and Delivery Services; and Ms Lisa Scholes, Manager, Freedom of Information Access. Thank you all for coming. We welcome your brief opening comments, and we will follow that up with some questions.

Peta McCAMMON: Great. Thank you. I would also like to acknowledge the traditional owners of the land on which we are all meeting today, and I pay my respects to their elders past and present and the Aboriginal elders of other communities who may be watching today.

Thank you for the opportunity to speak at this important inquiry. Victorians who were placed for some or all of their childhood in state-run institutional or out-of-home care are currently required to seek access to their records under the *Freedom of Information Act [1982 (Vic); 'FOI Act']*. The department currently receives over 2000 requests each year, and 90 per cent of those are from care leavers. The department acknowledges the highly significant role that records hold for care leavers, who may not otherwise have access to key information about their childhood and family. The FOI Act was not drafted with care leavers in mind, and the complexity of the FOI process sometimes creates a barrier to care leavers accessing their records.

To address this issue, in 2016 the department established its Care Leavers Records Service, CLRS. While still adhering to the requirements of the FOI Act, the department has adopted a pro-release trauma-informed policy to better assist care leavers in applying for their records. The CLRS waives all application fees and access charges and prioritises requests on medical, legal or compassionate grounds. The department also runs a dedicated enquiry line to assist applicants in submitting applications and scoping their requests and offers a telephone support service to help care leavers make sense of their records at the point of document release. The department has also developed informal release mechanisms to support care leavers, including a pilot program to provide summary letters containing key information about a care leaver's placement history where this information is required for redress. Additionally, the department provides on-the-spot confirmation of time-in-care information outside of the FOI Act by email or letter to individuals or stakeholders representing care leavers. This assists with immediate access to funding services or passport and Centrelink applications.

Even with these initiatives to support care leavers, there are ongoing challenges in processing care leavers requests under the FOI Act. Care-leaver records can range in size from a two-page ward register entry from the 1920s to a 30,000-page electronic child protection file. Each page released under FOI has to be carefully assessed to consider redaction or protected information, including personal information of third parties, information provided in confidence and information protected under other legislation such as notifier details protected under the *Children, Youth and Families Act [2005 (Vic)]*. Care-leaver records often contain highly sensitive information about siblings and other family members, including details of abuse, and also contain information about unrelated clients such as other care leavers residing in the same group home. The FOI unit has a strongly pro-release approach, applying only minimal redactions which are required to protect the privacy of third parties and other confidential information. As outlined in the department's submission to the Committee, we understand that care leavers would be largely supportive of an alternative release pathway for personal information as it may offer several benefits, including a simpler process with less administrative formality, increased efficiency and timeliness of document release and greater sensitivity to the experience of care leavers. The department's submission to the Committee outlines our current model of records access delivery to care leavers and sets out high-level aspirations for future alternate records access.

A key issue for any alternative scheme will be how to manage the privacy of third parties as well as other protected information such as details of notifiers to child protection services. An alternative release scheme would need to consider how to balance these requirements with the rights of care leavers to access their records while also protecting agencies from liability when information is released in good faith. Any new records release pathway should be developed in a co-design model. Care leavers may wish to retain some elements of the current legislation such as the right of review of any redactions and provision of a timely response.

The experience of other jurisdictions, including New South Wales and Queensland, will be helpful in informing the development of a new scheme in Victoria. The department also refers the Committee to the Department of Social Services access principles for records holders and best practice guidelines in providing access to records. These guidelines inform the development of the department's current care-leaver records access policy and will provide relevant guidance in developing any alternative release pathway. Thank you for the opportunity to present today.

The CHAIR: Thank you very much for that. Why don't we go to Belinda Wilson for the first couple of questions.

Belinda WILSON: Thanks so much for your time and for being here today. This is a really important space we are in, and it is great to have the three of you here with us. My first question is: What are the biggest factors impacting the Department of Families, Fairness and Housing's timelines in processing FOI requests?

Peta McCAMMON: Yes. Thanks. I might make a start and then get Lisa – and I think some of the comments were made in the opening statement.

Belinda WILSON: Yes, you did outline some of them. You did, yes.

Peta McCAMMON: Yes. So clearly there is a volume of requests that comes through to the department. I think it has increased by 55 per cent in the past six years, and the volume of those requests are as well, so they can, as I said, range up to 30,000 pages in some cases. But I think the complexity of the task also is really important, to give the Committee a bit of a sense, so I might ask Lisa to talk a bit more about that.

Lisa SCHOLES: Absolutely. Thanks, Peta. The records as they are presented to us were created over a vast range of time. They can be handwritten, and they are quite detailed, often involving intertwined information with not only family members of care leavers but also third parties that are unrelated. Other children who might have been in the same out-of-home care placement and unrelated children's information are often intertwined throughout the files. So when we are reviewing for third-party privacy we go page by page, and while we have a pro-release focus, we are conscious of risks for third parties in the release of anything inadvertently that will disclose their sensitive information. So we release as much as we possibly can, but it does take time and a lot of experience from our staff to get that balance right, and dedication. We manage to really come at the front end of the question by providing information as quickly as we can outside the Act with our confirmation of time in care. We will also work with our applicants when they first come in to find out what they need straightaway so that we can give them maybe one or two documents. If it is a closure summary that they are after, we will do

that very quickly if we can, or if it is summary documents from the whole file. We do our best to work through what is needed in the first instance, but we are facing a high volume of documents for each request. You can find with FOI – and you probably have already discovered this – one request does not equal another request. It depends on what is being asked for.

Belinda WILSON: Do you think that number of 2000 is likely to decrease as the years progress or do you think it is going to get more?

Lisa SCHOLES: I think it is going to grow. I think in the context of redress schemes there is a lot of attention on that. People are looking for their history, and rightly so. I think an increase is what we are looking for.

Belinda WILSON: Yes. My next question is: What technology would assist DFFH to process FOI requests with the statutory timeframe that you have at the moment? What technology would help you?

Nicola QUIN: Thanks. I will answer that one. We do have some redaction technology in place, and we are about to go out to market again for an upgrade to that. As Lisa said, it is not necessarily the technology; it depends on the file format. As per our submission, we have got many, many historical documents that are archived. It depends on the status of those, and a lot of those are digitised but a lot of them need still to be digitised, so we will pull them out of records and then digitise them. While there are definitely some efficiencies we can get with new technology, we do not believe at this point in time that generative artificial intelligence [AI] is going to help us, just because of the task we have to get all the records together and the different file types we can have. Certainly in years to come we may see the importance of AI, but at this time it is really quite analytical, the technology we are utilising and will continue to utilise.

Belinda WILSON: Thanks so much.

The CHAIR: Terrific. We might go to Eden Foster now for the next question.

Eden FOSTER: Thanks, Chair. Thank you to all of you for joining us today. Does DFFH have consistent information-management and record-keeping practices across all divisions? And the second part to that is: Are there any improvements you could make that would help DFFH process FOI requests more efficiently and effectively?

Nicola QUIN: In terms of information management we have consistency across the department, and certainly as you will be aware, the way our children and families system works, quite a lot of that is run through agencies outside. Currently, under the FOI Act obviously a care leaver, coming in through us – we will be liaising with third parties, and it will depend on what we hold and what the third party holds as to how that is done. But in terms of information-management practices we do have consistency across us as a department, so in terms of improvements to that there is nothing that readily springs to mind from my perspective. Lisa, I am not sure if there is –

Lisa SCHOLES: I could probably add to that just briefly. By 2016 the department had undertaken a full digitisation – as much as possible – of the archival holdings, and that is now up online as a collection guide of the historical records for care leavers that we hold. That digitisation has enabled us to pinpoint many more records for an individual – so maybe not just their file but also where they are mentioned in other administrative files. So that was a great leap forward, I think, from our FOI perspective for care leavers. Current child-protection records are all electronic and easily accessible. Certainly the digitisation means that my staff can actually look on our records-management system and see if the records exist immediately, which is fantastic. I think we will continue to look at what options are available, but at the moment I think we are doing well on that front.

Eden FOSTER: Thank you.

The CHAIR: Terrific. Thanks, Eden. I would like to ask about the DFFH pilot program for FOI requests for child welfare, which I think you have already referred to – the requests for child welfare records – and whether you regard that as having been successful. Would there be advantages in adopting this program for all FOI requests for personal information received by the department?

Peta McCAMMON: The pilot at the moment has been I think since September, so we are still, I guess, in early days, but I think that there is definitely some promise in that to be able to provide back to care leavers or their legal representation at least the confirmation of time in care. It is quite specific to care leavers in terms of, I guess, their immediate requirement around confirming care that might be about, then, redress. I might get Lisa to talk a bit more about where we might see that pilot going, if that is okay.

Lisa SCHOLES: Yes, absolutely. That pilot – we call it the summary letter pilot – was developed with one particular law firm, and then we sort of spread it out across our law firms and stakeholder agencies and individuals. It really is still a pilot; we are refining it. It is not meeting everybody's needs at the moment, so we are working with groups to try and develop it further so that it gives them what they need outside the Act and within a timeframe that works for them. Because our care-leaver records are 90 per cent of our 2000-odd requests each year, that is where it is going to be most useful, but when I think about our other release areas, including housing records, we do try to give information where we can immediately outside the Act. It is actually a policy approach, but we will do that where we can, and this pilot is very targeted for care leavers.

The CHAIR: Okay. Thanks for clarifying that. Let us go to Ryan Batchelor.

Ryan BATCHELOR: Thanks, everyone. Coming to this issue of things being released informally, outside the scope of the FOI Act, you sort of touched a bit on housing. Would that be the bulk of what the other 10 per cent is, or are there other areas where much of your FOI requests are coming from? And how much of that do you think would be amenable to an informal FOI regime?

Lisa SCHOLES: I am happy to take this one. Certainly housing would be the biggest component of the remaining records. We do have the topical or non-personal requests, which you have heard about before, I imagine, where we are being asked for reports or statistical data, so it is not really relevant there. But in terms of informal release, I think we really want to talk from a care-leaver's perspective, because I think for us that is where we are going to see the most gains for our applicants.

Ryan BATCHELOR: Given the complexities with third-party privacy and the sort of intertwined nature of many of these records, how successful do you think an informal release scheme is going to be at overcoming some of the issues that fundamentally slow down or add complexity to the document-release task?

Lisa SCHOLES: Great question, Ryan. I will take that again if you are happy. It is a question we ask ourselves regularly. What we have done with our care-leaver records access policy is, really, streamlined what is required of us under the FOI Act and made it much simpler and applied that as a policy. If we were to look at an alternate release pathway that was informal, but formalised in a sense, we would want it to follow that pathway. So, it is much more targeted: it recognises the special nature of records for care leavers and it is much more specific about the pro-release approach, so that that third-party information, where it is relevant – for example, in relation to the reasons for entering the care system, which would involve family information – is considered, there is more direction given and care-leavers' needs are put front and centre. That is why we are looking towards ideally a co-design process in terms of designing the implementation for whatever recommendations occur.

Ryan BATCHELOR: You talked a bit about the policy architecture that would need to go around an informal-release scheme. It is my feeling that one of the benefits of that would be that it is more adaptable, changeable – it can be updated a lot faster than the FOI regime, which has not really had a significant overhaul in 40 years. Do you think that there would be benefits from some rules that would, firstly, be able to be codified in some way but also be more responsive to the system as it changes? And what are the sorts of elements, do you think, that would need to be included in the policy architecture for an informal-release scheme?

Nicola QUIN: You may have to forgive us, Members; our thinking has not gone really into that level of design. It is more to share the issues we see at hand each day with the way the FOI Act interplays with the care-leaver record. I do not think –

Ryan BATCHELOR: You would not know. Let me take it a step back, then. Do you think one would be necessary, without getting into what it would need to contain? From your point of view, how much guidance do you need between the FOI Act being prescriptive in its description of what is required and a blank page?

Lisa SCHOLES: In relation to someone seeking their records, if you take it right back, you want a simple pathway with less administrative burden than the Act currently has, so a streamlined, targeted, ‘This is what I want’, and the government then can release it. But I think what we would be looking for, if you take it to the future state, is the open-by-design [approach]. When new systems are being created or record-keeping systems are being upgraded, let us think about how we can build so that a fair amount of personal information is actually readily available to the person involved. If we are looking to the future, that is what we would like to see – that that is immediately and readily available outside of any request process. We propose in our submission a potential online portal for current child-protection clients, where key documents are managed and retained, and they would have lifetime access to that, in an ideal state.

Ryan BATCHELOR: In your current care-leaver records access policy you have got a set of principles, nine or so principles, that govern how that works. Are there any of those that you think could help point us towards reform of the FOI system that is required? What are the principles that you think would be most useful for us to apply to the system overall?

Lisa SCHOLES: I think the pro-release – sorry, I am jumping in again if that is okay. The pro-release [principle] is really why we designed it with the specific needs of care leavers, so training for staff in relation to the care-leaver experience and what that means. There is a pro-release focus, so we are wanting maximum access with minimum administrative burden and minimum risk of re-traumatisation through the process of accessing records. There is the right to timely access, and I think one of the risks that may happen when an informal scheme is initiated without clear guidelines around timeliness expectations – there are risks about the length of time it may take for the records to come out. We would not want any loss of rights that we currently have for our applicants. And also that right of review I think is very significant – if any redactions are to occur, having that right to have them reviewed.

Nicola QUIN: And in that we have got the collaboration with other agencies. Obviously as we think about the landscape, the modern and historical landscapes, while co-designed by care leavers, there is also a really important piece I think around how our agencies would like this to operate.

Ryan BATCHELOR: Thanks, Chair. There is one thing that I will come back to at the end.

The CHAIR: Okay, sure. I am just looking at the time. We will need to keep questions and answers concise.

Paul MERCURIO: I will ask my question very quickly. I do apologise if you hear me coughing in the background. What statutory exemptions does DFFH most frequently rely on when denying access to information under the FOI, and why should these exemptions be retained?

Lisa SCHOLES: The personal privacy exemption, obviously, for third parties is the exemption that we use most often. But, as Peta mentioned in the opening statement, there are secrecy provisions in other legislation – for example, the *Children, Youth and Families Act* – that protect the person who makes an original report in relation to a child-protection matter. It is extremely significant that we protect that. It is a high-risk area. Those two are probably our key ones. Section 35(1)(b) is the consultation process, and that, as you may have heard in other sessions, is a challenging one for us. That would be the third one that we would probably like to have looked at in terms of having a clearer expectation of when consultation is likely to be useful and helpful in relation to confidential information that has been provided.

Paul MERCURIO: Thank you.

The CHAIR: All right. Thank you. Jade Benham might have a question or two.

Jade BENHAM: Thank you, Chair. I am going to jump ahead as well. There has been some evidence that we should be looking at a tiered system for prioritising and processing FOI applications, particularly, as you said, because some documents and requests are 30,000 pages long. What kinds of personal information – it is hard to go into it, but what is your view on having a tiered, prioritised system?

Peta McCAMMON: We have some tiering in terms of a person’s personal circumstance about what might be considered urgent, so that might be around someone’s medical condition. We have that through the service already. I think Lisa talked a little bit, or she might be able to, about where there is an opportunity for someone

if there is a clear document they might want, but I do not know whether we have any category of documents that we ‘tier’.

Lisa SCHOLES: No, not specifically, Peta. It is about working with each person to see what they are seeking in the first instance and following that. The basic view is that for all FOIs, the requests that we receive are really important and we will manage each one as quickly as we can to provide the person with what they are seeking.

Jade BENHAM: That is great, so by a case-by-case basis, obviously.

Lisa SCHOLES: Yes.

Jade BENHAM: Great. Thank you.

The CHAIR: Thanks, Jade. One last very quick question from Ryan Batchelor, and then we will wrap up.

Ryan BATCHELOR: You mentioned in the description of the informal, et cetera, schemes the role that I believe with the existing provisions the FOI Act plays in protecting agencies from liability. I am just wondering if you can unpack what that is, why it is important and how that intersects with any informal release policies you have.

Lisa SCHOLES: Obviously releasing third-party information carries a risk, so we need to be mindful that we release the right information without breaching anyone’s privacy. So we release it in good faith in accordance with our authorised policy, and we are releasing third-party information all the time. Information about siblings: when two children went into an out-of-home care system historically, they may have been separated. So we want to release as much of that history as possible – family tracing certainly is a big part of records access – but we are doing that in good faith. We are risking a privacy breach when we do that, and those protections are really important. So, that is where we are coming from about those good-faith releases. There are protections in the current FOI Act for that. We would like an informal pathway to have that as well.

The CHAIR: Great. I would like to thank the three of you very much for your evidence today and your earlier submission. Thanks again. We will suspend the hearing now and resume in about 10 minutes.

Witnesses withdrew.