

28 May 2024

Dr Tim Read  
Chair  
Integrity and Oversight Committee  
Victorian Parliament

By email only: [ioc@parliament.vic.gov.au](mailto:ioc@parliament.vic.gov.au)

Dear Chair,

Thank you for the opportunity to provide further information to the Integrity and Oversight Committee's (**Committee**) Inquiry into the operation of the *Freedom of Information Act 1982 (Vic)* (**FOI Act**).

At the public hearing on 25 March 2024, the Committee requested further information from my office, the Office of the Victorian Information Commissioner (**OVIC**), regarding:

- the authority under which some agencies impose page number, or 'batch', limits on requests made under the FOI Act; and
- whether OVIC provides guidance to agencies on this issue; and
- OVIC's views on how this issue can best be addressed.

#### OVIC's position

OVIC does not support an approach to processing FOI requests, that:

- applies a rigid or blanket approach to the number of pages an applicant can request access to at any one time; and
- sequentially processes batches of pages as separate requests.

There is nothing in the FOI Act that permits an agency to initially restrict an applicant's right to access information to a certain page limit per FOI request without first assessing the merits and impact of that request, or to require an applicant to make multiple requests over time to receive access to pages exceeding the agency's page limit.

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OVIC does not support this practice and considers it is contrary to the FOI Act, and Parliament's intention, as set out in the objects clause of the FOI Act. It is OVIC's view that this practice does not strike the right balance between two competing and important public interests, namely the objects of the Act, to facilitate and promote the prompt disclosure of information, and the public interest in efficient government administration.

Regardless of the above, there may be some instances where, after stepping through the requirements of section 25(A)(1) of the FOI Act, and engaging in good faith with an applicant, the FOI Act will permit an agency to limit the number of pages falling within a request. This is done for the purposes of enabling the agency to process the request without substantially and unreasonably diverting its resources from its other operations. More information about this mechanism is contained in the last part of this letter.

## **Processing requests with page limits**

In late 2022, during the handling of complaints, the former Public Access Deputy Commissioner became aware of an Agency imposing a 150-page limit on certain valid FOI requests.

The former Public Access Deputy Commissioner requested the Agency to immediately cease this practice and commence processing FOI requests in accordance with the FOI Act.

On 15 December 2022, the former Public Access Deputy Commissioner met with a senior member at the Agency to discuss the Agency's proposal to process certain FOI requests in 500-page batches as a temporary measure while they were experiencing significant increases in FOI requests and challenges in recruiting appropriately qualified FOI staff. The Agency confirmed this approach would be considered on a case-by-case basis, rather than a blanket approach. The Agency confirmed the process would include consultation with applicants to confirm their agreement to this approach and to allow the applicant to determine the priority of the first 500 pages to be processed. This approach was accepted by OVIC as a temporary measure only, while the Agency has a backlog of FOI requests.

OVIC has continued to monitor the Agency's performance under the FOI Act and the Professional Standards through its review and complaints functions and via ongoing stakeholder engagement meetings. OVIC is aware that the Agency continues to use the above approach for requests involving a high number of pages, in consultation with the applicant. OVIC accepts this approach as a temporary measure while the Agency still has a backlog of FOI requests and continues to face resourcing challenges.

## **Processing requests for prisoner records**

On 28 April 2023, OVIC made adverse findings against the Department of Justice and Community Safety (DJCS) with respect to processing an applicant's requests in a rigidly sequential manner, its delay in FOI decision making regarding several of the applicant's requests and its failure to communicate with the applicant regarding its delayed decision making.

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The following adverse findings were made against DJCS and published in OVIC's 2022-23 Annual Report:

1. DJCS failed to comply with its statutory obligations under section 21 of the FOI Act by not providing the applicant with decisions on 20 FOI requests the applicant made in 2021 and 2022 within the statutory timeframes, noting that 14 of the 20 requests took 200+ days to process and with the longest delay involving more than 500 days.
2. Instead of processing FOI requests made by the applicant in 2021 and 2022 in accordance with its obligations to facilitate and promote prompt disclosure of information under sections 3 and 21 of the FOI Act, DJCS instead processed these FOI requests in a rigidly sequential manner.
3. DJCS failed to communicate with the applicant regarding progress on their FOI requests as a matter of good practice and fairness given the substantial delays in DJCS processing the requests.

DJCS was requested to undertake several actions in response to the findings which included a written confirmation that it would cease processing requests in a rigidly sequential manner and issuing the applicant with an apology for the delays.

## **Appropriately managing an agency's resources to process requests**

Section 25A(1) of the FOI Act allows an agency to refuse to process a request if doing so would be a substantial and unreasonable diversion of the agency's resources. Section 25A(1) does not permit an agency to apply blanket limits on the number of pages that can be requested by an applicant at any one time.

If an agency considers a request would be a substantial and unreasonable diversion of its resources to process, section 25A(6) requires the agency to consult with the applicant and provide information that would enable the applicant to amend their request in a way that would enable the agency to process it within the statutory timeframe in section 21 of the FOI Act. The changes required to a request, to enable an agency to process it, will necessarily be different depending on the nature of the requested documents and the extent of the agency's resources at the time of the request.

In some cases, this consultation process under section 25A(6) may result in an applicant agreeing to reduce the scope of their request, by reducing the number of pages or reducing the number or types of documents requested. This will not be the case for all situations.

OVIC's [FOI Guidelines](#) make it clear that section 25A(1) is only intended to apply in clear and limited circumstances, and it will depend on the facts of each case, with detailed evidence usually required by an agency or Minister, to establish this exception.

If an agency finds itself regularly unable to process requests within the statutory timeframe, the FOI Guidelines make it clear that an agency or Minister must review the adequacy of its resourcing.

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Adopting rigid and blanket rules about how many pages an applicant can request access to, is not an appropriate and enduring solution to manage an agency's resources.

I hope this further information assists the Committee in its Inquiry.

If you would like to discuss the contents of this letter, or if OVIC can be of further assistance to the Committee, please contact me directly at [REDACTED] or Emma Stephens, Senior Policy Officer at [REDACTED].

Yours Sincerely

[REDACTED]

**Sean Morrison**

Information Commissioner