

VICTORIAN INSPECTORATE

28 March 2024

Dr Tim Read MP
Chair
Integrity and Oversight Committee
Parliament House
Spring Street
East Melbourne VIC 3002

Dear Chair

Integrity and Oversight Committee's Inquiry into the Operation of Freedom of Information Act 1982 (Vic) – response to questions on notice

1. Thank you for your questions in relation to the Victorian Inspectorate's (VI) submission to the Committee's inquiry (**Inquiry**) into the Operation of the *Freedom of Information Act 1982* (Vic) (**FOI Act**).
2. Please find my response on behalf of the VI below.

Question 1: How can pt II of the Freedom of Information Act 1982 (Vic) better set out what information agencies should publish on their websites or make available for inspection?

3. In paragraph 7 of the VI's submission dated 23 November 2023 (**the submission**), the VI identified that Part II of the FOI Act can be confusing for agencies as it is not clear what documents are required to be published on an agency's website or made available for inspection.
4. In the VI's experience, this part of the FOI Act can also be confusing for members of the public. The VI has previously received a request for information relating to the VI's Part II statement which is published on the VI's website. It was clear from the applicant's request that they were not aware of the requirements in Part II of the FOI Act for a statement to be published which contained the information sought in their request. In this instance, the VI was able to refer the FOI applicant to the VI's website. However, this experience demonstrates that members of the public also have difficulty in interpreting Part II of the FOI Act.
5. In the VI's view, the *Government Information (Public Access) Act 2009* (NSW) (**Government Information Act**) provides clearer mechanisms for proactive release. Section 18 of the Government Information Act firstly identifies what constitutes "open access information", which can include policy documents, an agency's disclosure log of access applications and an agency's register of government contracts.

6. Division 2 of Part 3 clearly identifies what is required in an agency's information guide, which has a similar purpose to the Part II Statement in the FOI Act. There is also a role for the NSW Information Commissioner to consult with and guide agencies on their information guide.
7. The VI is of the view that the NSW information publication scheme strikes the correct balance in making certain types of information readily available for members of the public whilst protecting the confidentiality of the investigative, audit and complaints functions of agencies such as the Independent Commission Against Corruption and the Office of the Inspector of the Independent Commission Against Corruption.¹

Question 2: Why is the retention of the Freedom of Information (FOI) exemptions applicable to information held by the VI (e.g., those under s 102 of the Victorian Inspectorate Act 2011 (Vic)) important?

8. Section 102 of the *Victorian Inspectorate Act 2011 (VI Act)* recognises the sensitive and often complex information that is in the VI's possession which relates to the VI's operational functions. The retention of the exemption in section 102 is important for the VI to continue to perform our functions and exercise powers under the VI Act.
9. Other parts of the VI Act also recognise the importance of confidentiality including section 33 which makes it an offence for VI officers to disclose information acquired by reason of, or in the course of, the performance of duties and functions and the exercise of powers under the VI Act.
10. Complaints received and investigations conducted at the VI may involve disclosures made under the *Public Interest Disclosures Act 2012 (PID Act)*. The PID Act provides protections and confidentiality in respect of such disclosures. There is therefore a clear public interest in individuals being able to disclose improper conduct and freely participate in a VI investigation as a witness or person of interest, without the fear that their safety or reputation could be compromised if their information could be released through FOI. The retention of section 102 is also important as it prioritises the welfare and reputation of individuals given the nature of the documents that would be in the possession of the VI.
11. The VI also possesses documents which may reveal investigative or law enforcement methodologies of both the VI and the agencies that we oversight. The VI's oversight of other integrity agencies includes the use of coercive powers and law enforcement tools such as surveillance devices and telecommunications interceptions. If this information is readily available to members of the public, this would severely compromise the ability of law enforcement and integrity agencies to perform their functions, duties and exercise powers.

Question 3: In your view, can Victoria's FOI legislation better protect against agencies' misuse of, or overreliance on, statutory exemptions to providing access to information? If so, how?

12. The VI can only comment on what has been our experience with the FOI Act. The VI reiterates its earlier submission that the object of the FOI Act in section 3 is a key provision to promote access to information. The object of the FOI Act is an important consideration for the VI when receiving and processing FOI requests to ensure access to information where possible.

¹ Section 19 of the *Government Information (Public Access) Act 2009* provides that Part 3 of the Act does not apply to an agency in respect of any functions of the agency listed in Schedule 2.

13. The VI draws the Committee's attention to section 5 of the Government Information Act which outlines 'a presumption in favour of the disclosure of government information unless there is an overriding public interest against disclosure'. Consideration could be given as to whether a similar presumption could be included in the Victorian FOI Act.
14. The VI considers that this type of presumption, in combination with the current object of the FOI Act, could promote further access to information and potentially less reliance on the use of statutory exemptions.

Question 4: Could the VI proactively release more information than it currently does? If so, why? If not, why not?

15. The VI proactively releases information in accordance with Part II of the FOI Act. The VI has published internal policies and guidelines such as our Public Interest Disclosure Guidelines and our Integrity Response Guidelines which provide important information to members of the public in relation to their rights and how we undertake our functions.
16. The VI actively reviews and updates its Part II Statement every 12 months in accordance with section 7(1)(b) of the FOI Act. Additional policies and information were added in our latest update in October 2023.
17. As well as proactively releasing information under the FOI Act, the VI also publishes reports in accordance with our powers under the VI Act and other legislation such as the *Surveillance Devices Act 1999* and the *Terrorism (Community Protection) Act 2003*.
18. As noted above, the VI also holds a significant amount of information that would be covered by the exemption in section 102 of the VI Act. Although the VI actively looks for ways to proactively release further information, this must be balanced with its clear and important legislative functions and obligations under the VI Act and PID Act with respect to our operational material.
19. Thank you again for the opportunity to contribute to the Inquiry.

Yours sincerely



Eamonn Moran PSM KC
Inspector