Submission to the Parliament of Victoria, Integrity and Oversight Committee, Inquiry into the Operation of *the Freedom of Information Act 1982* (Vic).

Dr Danielle Moon

19 March 2024

Practical refusal and fees

Procedural and financial provisions of Freedom of Information legislation can operate either to promote or discourage disclosure. This note briefly outlines 3 different charges and practical refusal frameworks: the original Commonwealth framework, the amended Commonwealth framework (following changes in 2009/10) and the UK framework. In my view, the UK model is a better fit with the democratic purpose of the legislation, than the Commonwealth 'user pays' model.

Fees

The Office of the Australian Information Commissioner has acknowledged that 'access charges are a way of controlling and managing demand for documents,'[1] although the way it does so is perhaps less transparent than the application of substantive exemptions. Charges that are too high, however, have the potential to undermine the objects of the legislation. In 2009 Joe Ludwig (then Cabinet Secretary and Special Minister of State) acknowledged that 'prohibitive costs and delays' were major impediments to the success of the original *FOI Act 1982*.[2] Such concerns formed the backdrop to the Labor Party election commitment 'to ensure that charges were 'not incompatible with the objects of disclosure and transparency'.[3]

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1 Office of the Australian Information Commissioner, *Review of Charges Under the Freedom of Information Act 1982 : Report to the Attorney General* (February 2012) (foreword).

2 Joe Ludwig, 'The Freedom of Information Act: No Longer a Substantial Disappointment' (2010) 59 *Admin Review* 5, 12.

3 Office of the Australian Information Commissioner, above n 1, foreword.

Original *Charges Regulations (Cth)*

The original charges framework was set out in the *Freedom of Information (Charges) Regulations 1982* (Cth)[4] (‘*Charges Regulations’*), which provided that Government should facilitate public access to Government information promptly and at the’ ‘lowest reasonable cost’.[5] In accordance with this aim the regulations provided that charges could not be inflated as a result of a document being filed incorrectly.[6]

The *Charges Regulations* made provision for two types of charge. First, there were a number of standard application fees that applied to all applications. Second, additional charges were calculated on the basis of the time taken to deal with individual requests. A Schedule set out the charges that could be imposed, including a $30 application fee and a fee of $40 fee for internal reviews, and a charge of $20 per hour for decision-making time. Charges could be levied irrespective of whether access was ultimately granted but there was a discretion to remit the application fee[7] and other charges.[8] In deciding whether to exercise this discretion, decision-makers were required to take into account whether the fee or charge would cause financial hardship, and whether access to the information was in the public interest.

Amended *Charges Regulations* (Cth)

The *Freedom of Information (Fees and Charges) Amendment Regulations 2010 (No. 1)* (Cth) made a number of changes to the *Charges Regulations*, removing the application and internal review fees and providing that the first 5 hours of decision-making time is free. There is no longer any fee for accessing personal information, or in cases where no answer is provided within the timeframe of the Act.[9]

However, the provisions relating to the calculation of charges remained largely unchanged, with departments still able to charge for ‘thinking time’. Although making the first 5 hours of decision-making time free will have gone some way to reducing charges, requests for internal working documents are more likely to be complex and time-consuming, and therefore to incur charges for thinking time beyond the 5 free hours.

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4 *Freedom of Information (Charges) Regulations 198*2 (Cth). These regulations were re-made as *Freedom of Information (Charges) Regulations 2019* (Cth).

5 Ibid, reg 3(4).

6 Ibid, reg 2(2).

7 *FOI Act 1982*, s 30A.

8 Ibid, s 29(4).

9 *Freedom of Information (Fees and Charges) Amendment Regulations 2010 (No. 1)* (Cth)

Comparison with the UK

In the UK the factors which may be considered when charging fees are strictly limited. Section 9 of *FOI Act 2000* (UK) provides that fees may be charged in accordance with regulations. The Regulations in turn provide that the maximum fee is the total cost the public authority reasonably expects to incur in—

> (2) The maximum fee is a sum equivalent to the total of—
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> (a)the costs which the public authority may take into account under regulation 4 in relation to that request,
>
> and
>
> (b)the costs it reasonably expects to incur in relation to the request in—
>
> (i)informing the person making the request whether it holds the information, and
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> (ii)communicating the information to the person making the request. [10]

When calculating the costs under Regulation 4 in relation to that request, authorities can include searching for the information and drawing it together but not reading it to see if exemptions apply, redacting data[11] or deciding whether it can be released. Importantly, decision-making time — that is, time taken in deciding whether exemptions apply or in considering questions of public interest — may not be taken into account. The effect of this is that significantly higher fees can be charged in Australia than in the UK.

Practical Refusal

Another way in which access may be restricted under FOI legislation is by providing that departments can refuse to give access where it would be too resource-intensive.

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10 *Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004* (UK) SI 2004/3244, reg 7. Regulation 4 in turn provides that the public authority may take into account the costs it reasonably expects to incur in relation to the request in–(a)determining whether it holds the information, (b)locating the information, or a document which may contain the information,(c)retrieving the information, or a document which may contain the information, and (d)extracting the information from a document containing it.

11 *Chief Constable of South Yorkshire v Information Commissione*r [2011] EWHC 44 (Admin).

Original *FOI Act 1982* (Cth)

Section 24(1) of the original *FOI Act 1982* provided that access could be refused on practical grounds where the work involved would 'substantially and unreasonably divert resources of the agency, or interfere with the performance of the Minister's functions.'

Bruce Chen has noted of similar provisions in the Victorian legislation[12] that the difficulty with these grounds is that the terms 'substantially and unreasonably divert' are vague and undefined; there is no objectively definable upper limit, either in terms of time taken or cost.[13] Application of this exemption therefore depends upon the resources of the department and upon a subjective judgement about how resources ought to be used.

Further, in deciding whether the practical refusal ground is made out, s 24(2) required consideration to be given to both the time taken to identify and collate the documents and the time taken to decide whether to 'grant, refuse, or defer' access.[14] This provision has been interpreted as applying in relation to single applications and to a series of requests covering similar information.[15] The same difficulty arises that arises in relation to charges and fees, as described above; the ability to take thinking time into account means that even relatively narrow requests might relatively quickly reach a threshold beyond which it might be said to be a substantial and unreasonable diversion of resources to continue with the request.

Amended *FOI Act 1982* (Cth)

The provisions in the amended *FOI Act 1982* (Cth) are broadly the same as in the original. Section 24AA sets out the same test, providing that there is an exemption for answering requests where to do so 'substantially and unreasonably divert resources' and that in assessing the application of the exemption time taken to decide whether to 'grant, refuse, or defer' must be taken into account.[16] The reforms did not change this.

The problems caused by this were acknowledged by the Australian Information Commissioner in his 2012 review of fees. The reforms suggested in that review would bring the provisions somewhat into line with UK, by imposing a time ceiling in place of the 'practical refusal'

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12 *Freedom of Information Act 1982* (Vic) , s 25A.

13 Bruce Chen, 'Refusing to Process Voluminous Requests: Contrary to the Spirit of Freedom of Information?' (2011) 37(3) *Monash University Law Review* 132, 140-144.

14 *FOI Act 1982*, s 24(2).

15 *Re Shewcroft and Australian Broadcasting Corporation* (1985) 7 ALN N307, N308.

16 *FOI Act 1982*, (s 24AA(2)(b)).

mechanism.[17] But even if these measures were implemented the fact that decision making time can be taken into account would still put Australian applicants at a disadvantage compared with their UK counterparts.

Comparison with UK

Section 12 of the *FOI Act 2000* (UK) sets out an exemption to the duty to provide information where the cost of doing so would exceed the 'appropriate limit' set out in regulations. The regulations[18] set the 'appropriate limit' for central Government agencies at £600, calculated at £25 per hour. The activities that can be taken into account in determining the fee charged are: (a) determining whether the department holds the information, (b) locating the information, (c) retrieving the information, and (d) extracting the information.[19]

As with the Australian practical refusal exemption, this limit has the potential to undermine disclosure, particularly where the reason for the costs limit being exceeded is inadequate record keeping. Despite this, however, the UK approach is less likely to lead to the withholding of information, because of the way in which the costs limit is calculated.

In Australia, as described above, the legislation leaves it up to Government to decide whether the diversion of resources involved in answering an FOI request is unreasonable or substantial. By contrast the UK regulations set out a more objective[20] mechanism of calculating how the limit is to be applied, with the application of a standardised cost per hour for specified activities, and an upper costs limit. It might be thought that such a fixed costs cap might result in more refusals to disclose than the Australian legislation, which has no such cap, and where the costs per hour ($15 search and retrieval, $20 per hour decision making after the first 5 hours) are lower. However, there is provision in the *FOI Act 2000* (UK) to charge additional costs where the request exceeds the upper costs limit, so that the costs limit doesn't necessarily act as an absolute bar to disclosure.[21]

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17 Office of the Australian Information Commissioner, *Review of charges under the Freedom of Information Act 1982 – Report to the Attorney-General* (February 2012) http://www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-reports/review-of-charges-under-the-freedom-of-information-act-1982.

18 *Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004* (UK) SI 2004/3244, reg 3(2).

19 Ibid, reg 4(3).

20 Even this mechanism is not completely objective, in that it does not guard against the fact that some people work more slowly than others, for example.

21 *FOI Act 2000 (UK)*, s 13. Although this is at the discretion of the decision-maker and should not be regarded as a safeguard in all cases.

Further the prohibition on taking into account 'thinking time' for the purpose of calculating whether the cost limit is reached means that it is less likely to prove a barrier to access than the Australian federal legislation. As with the calculation of fees, the range of factors that may be taken into account when calculating whether the costs limit has been reached is strictly limited in the UK. As described above, in deciding to rely on the practical refusal exemption, an Australian agency *must* take account of thinking time. By contrast, in deciding whether the appropriate limit has been reached, the UK agency *may not* take into consideration the time taken in deciding whether an exemption applies, including consideration of the public interest. In fact, a proposal to amend the regulations to allow thinking time to be taken into account was rejected in the UK, with the post-legislative scrutiny committee noting that allowing 'thinking time' to be considered took insufficient account of the public interest in access to information, and of the fact that it is very difficult to assess such activities in any objective way.[22]

[22] House of Commons Justice Committee 'Post-Legislative Scrutiny of the Freedom of Information Act 2000 ' (96-1, 3 July 2012)[58].

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Cabinet Documents

Dr Danielle Moon

10 May 2024

Disclosure of Cabinet Documents

Do you have a view on the desirability of Cabinet documents being disclosed, either through FOI legislation or proactively outside it?

As with internal working documents, greater transparency of Cabinet material has the potential to enhance public trust and participation in government, in addition to increasing accountability. As such, my view is:

a. Public participation, trust and accountability should be stated as aims of the legislation in an objects clause, which is taken into account when performing the public interest balancing test;
b. Some categories of Cabinet documents should routinely be released proactively, as they now are in New Zealand[1] and Queensland,[2] noting that neither NZ or QLD requires the proactive disclosure of *all* cabinet documents.
c. In relation to material that is not disclosed proactively, the exemption in the Freedom of Information Act should be amended so that
    i. it captures only to a narrow category of material, and is framed as a 'harm based' rather than class based exemption – e.g. only material that would prejudice the effective conduct of government is captured;

[1] Proactive Release of Cabinet Material: Updated Requirements, Cabinet Office Circular, CO (23) 04, 29 June 2023. Cabinet Office Circular CO (23) 4 Proactive Release of Cabinet Material: Updated Requirements - 29 June 2023 - Cabinet Office (dpmc.govt.nz).
[2] Queensland Cabinet Handbook, Part 7, Department of the Premier and Cabinet, 2024. 7.0 Proactive release of Cabinet Material (premiers.qld.gov.au).

ii. the legislation spells out on its face what such prejudice constitutes. It should be clear if, for example, the intention is to preserve collective responsibility of the Cabinet, policy making, and/or effective advice.
iii. The exemption should be subject to a public interest test, in acknowledgment of the fact that in some cases, disclosure may be in the public interest even if it compromises collective cabinet responsibility.
iv. The exemption should cease to apply after a specified period of time (e.g. 5 years);
v. The legislation should not spell out public interest factors, but should require the Information Commissioner to make (and regularly update) guidelines that set out:
    1. Factors in favour of disclosure. This might include a time period or event after which presumption will be in favour of disclosure – for example, when policy on the matter is settled;
    2. Factors against disclosure;
    3. Factors that cannot be used to argue against disclosure.

I would also note that greater transparency is not only possible through the disclosure of Cabinet *documents*. Although FOI legislation tends to be based on the release of existing documents, this can be a cause of frustration for both applicants and those tasked with responding to FOI requests. I note that Associate Professor Lidberg has recommended a change from a focus on 'documents' to a focus on 'information'.[3] OVIC has recommended both an updated definition of 'document' and a provision requiring agencies to extract information from records they hold.[4] I strongly concur with both recommendations.

In addition, in my view, consideration should be given to whether, for Cabinet documents and internal working documents in particular, an alternative form of disclosure could enhance transparency while protecting competing interests. For example, even in cases where documents are not released (or would need to be heavily redacted) because they would prejudice Cabinet conventions, it might be possible to compile a document that outlined what was discussed, arguments for and against, and reasons for the ultimate decision. I understand that this would have resource implications, but so too does the need to find, collate, consider

[3] Associate Professor Johan Lidberg, Submission 20, Inquiry into The Operation Of The Freedom Of Information Act 1982, 1 December 2023.
[4] Office of the Victorian Information Commissioner (OVIC), Submission 55, Inquiry into The Operation Of The Freedom Of Information Act 1982, 15 January 2024.

disclosure of, and react, existing documents. Compiling a statement has the potential to be less resource intensive and result in greater transparency than responding to – and potentially refusing - a request for existing documents.

UK Approach to Cabinet Documents

In particular, you noted the UK system in which there is an absolute, class-based exemption for central-government policy documents and prejudice-based exemptions for other Cabinet material. What are the merits of this approach?

The UK does not have an express exemption for Cabinet material. Instead, there are two exemptions that potentially cover Cabinet material of different types. There is a class-based exemption - information relating to the formulation or development of government policy – which applies only to Central government.[5] There is also a harm-based exemption - prejudice to effective conduct of government affairs.[6] The latter incorporates a safeguard against over-reliance on this exemption by requiring that a 'qualified person' (usually a Minister, in central government cases) must determine that exemption is engaged. Both the class-based and prejudice-based exemptions are subject to public interest test. Guidelines make clear that this is the case even for material that has the potential to affect collective cabinet responsibility. This means that even if the qualified person decides effective conduct of government affairs would be prejudiced by disclosure, the public interest test still must be applied, and may fall on the side of disclosure. However, the Guidelines note, 'the importance of maintaining collective responsibility is likely to carry significant weight in the public interest test'. [7]

The advantage of this approach is that it moves away from grouping all Cabinet documents as a single class and refusing access to them all. It thus promotes maximum disclosure by applying the least restrictive type of exemption to as much material as possible; the class-based exemption is reserved for documents that are regarded, as a class, as being potentially harmful.

While I do not agree that all material relating to the formulation of policy is potentially harmful, this approach does reduce the complexity (and hopefully time and resources) of applying the exemption, because it removes the need to rehearse arguments about whether the disclosure of material relating to the development of policy is potentially harmful. It also makes transparent on the face of the legislation that this material will be more difficult to access. As I

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[5] *Freedom of Information Act 2010* (UK) s35.
[6] *Freedom of Information Act 2010* (UK) s36.
[7] Information Commissioner (UK) Guidelines Section 36 - Prejudice to the effective conduct of public affairs | ICO.

note at the end of this submission, although I prefer prejudice-based exemptions with a public interest test, if in practice the government does not intend to disclose a certain category of material, it is better to be transparent about that on the face of the legislation, and in Parliament, than to create an illusion of transparency.

Australian Approach to Cabinet Documents

How do you think the Australian approaches to Cabinet-document exemptions (in particular, the Commonwealth, Victorian, and new Queensland, systems) compare with the UK's and New Zealand's?

The systems vary in a number of ways, which makes direct comparison difficult. The exemptions do not exist in a vacuum and must be read in the context of the legislative framework and government culture and transparency practice as a whole. There are a number of variables that are combined in different ways in different jurisdictions, including:

- Definition of Cabinet documents – broad v narrow;
- Class based v harm based exemptions;
- Public interest test v no public interest test;
- Additional factors such as time limits beyond which information is no longer exempt, or whether exemptions can only be engaged with the approval of a 'qualified person';
- The existence of 'veto' powers that override disclosure requirements;
- The culture and practice of officials in interpreting and applying all of the above.

Nonetheless, while direct comparison is challenging, it is possible to conceive of the nature of disclosure arrangements as spectrum, from those least likely to, to those most likely, to result in transparency of Cabinet material.

At the least transparent end of the spectrum are frameworks that include a broad definition of Cabinet documents, a class-based exemption with no public interest, with no time-limit (except as set out in archives legislation) beyond which exemption no longer applies, and no routine, proactive disclosure of Cabinet material. The Commonwealth[8] and current Victorian system fall towards this end of the continuum, although there is a time-limit of 10 years in the Victorian legislation.[9]

[8] *Freedom of Information Act 1982* (Cth) s34.
[9] *Freedom of Information Act 1982* (Vic), s 28.

At the most transparent end of the spectrum would be a system with proactive disclosure of all cabinet documents, including those that potentially compromise collective cabinet responsibility. No jurisdiction in Australia or NZ currently has this arrangement. While NZ[10] and QLD both have proactive disclosure of some cabinet documents,[11] both systems exclude some information from proactive disclosure (for example, in NZ, material will not be proactively disclosed if there is a 'good reason' not to) AND still have exemptions for Cabinet Documents (or that apply to Cabinet documents) in FOI legislation. In NZ, documents are exempt if necessary to maintain specified constitutional conventions, with the application of a public interest test.[12] In Queensland, the exemption combines aspects of a class-based and harm-based exemption,[13] and is not subject to a public interest test, although there is a time limit after which the exemption ceases to apply.

The UK does not have proactive disclosure of Cabinet material. As outlined above, UK exemptions are arguably narrower, and at least some Cabinet material is subject to both a prejudice based exemption and a public interest test. However, the UK government has a power of veto, which enables them to refuse to comply with a decision notice requiring disclosure on public interest grounds by the Information Commissioner or Tribunal.[14] Comparative research would be needed to understand the outcomes of these different frameworks.

Exceptional withholding

At the hearing, you suggested that it might be advantageous for agencies to be authorised to seek from an information commissioner an exemption for particular information, on a case-by-case basis, when it is not in the public interest for it to be disclosed:

... now we have the option of information commissioners, I do wonder whether there is scope for saying, 'Okay, under the legislative framework and guidelines, this information should be routinely disclosed; however, you can approach the information commissioner

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[10] Proactive Release of Cabinet Material: Updated Requirements, Cabinet Office Circular, CO (23) 04, 29 June 2023. Cabinet Office Circular CO (23) 4 Proactive Release of Cabinet Material: Updated Requirements - 29 June 2023 - Cabinet Office (dpmc.govt.nz).

[11] Queensland Cabinet Handbook, Part 7, Department of the Premier and Cabinet, 2024. 7.0 Proactive release of Cabinet Material (premiers.qld.gov.au).

[12] Official Information Act 1982 (NZ), s9(2)(f-g). Note that this exemption is slightly different from other 'prejudice based' exemptions in that it does not expressly refer to harm or prejudice. It applies where it is necessary to maintain constitutional conventions'.

[13] It covers material that '(a) has been brought into existence for the consideration of Cabinet; or (b) its disclosure would reveal any consideration of Cabinet or would otherwise prejudice the confidentiality of Cabinet considerations or operations; or (c) it has been brought into existence in the course of the State's budgetary processes'.

[14] *Freedom of Information Act 2010* (UK) s 53.

for an exceptional exemption to that'. You can say, 'Based on this particular case, we think we should exceptionally be allowed to withhold for these reasons.'

Some FOI frameworks include provisions that can be viewed as a 'safety valve'. As mentioned above, the UK government has a power of veto. The original Commonwealth legislation had 'conclusive certificates', which enabled government to conclusively certify that disclosure would be against the public interest. These measures are barriers to access, and conclusive certificates were (rightly) abolished in the Commonwealth in 2010. However, in my view, the provision of an appropriately robust 'safety valve' for particularly difficult cases may enable law-makers and officials to be bolder in framing, interpreting and applying exemptions.

The safety valve could be drawn in a number of ways, and careful consideration would be needed in relation to applicability to different kinds of information and to the process, to ensure that it was not over-used and appropriate safeguards were in place. However, I think it is likely that a properly funded and empowered Information Commissioner, rather than Government, would be more appropriately placed to determine whether the safety valve applies in any given case.

In terms of practical application, the legislative framework could provide that the department could, with the approval of the department head, apply to the information commissioner for approval to withhold information that would otherwise not be covered by an exemption. This might apply if, for example, the 5-year time limit for the exemption had lapsed, but the issue remained live. Another example might be where the department considers that disclosure of information is contrary to the public interest, but guidelines prohibit them from relying on particular factors to withhold material under the exemption. This has the advantage of shifting the burden of appeal from the person seeking the information, to the department seeking to withhold it.

In many cases, government applies exemptions with an eye not just to the disclosure of the particular material in question, but to future cases. This can lead to a tendency to interpret and apply exemptions conservatively, and to push back against amendments designed to result in more transparency due to genuine concern about potential impact. Although a novel approach, including a 'safety valve', with appropriate safeguards, might encourage acceptance of a more liberal legislative framework, and an interpretation and application of exemptions in a way that both promotes maximum transparency and allows other interests to be protected in appropriate cases.

Absolute, Class-based exemptions

In your view, is there ever any justification for an absolute, class-based—as opposed to a content-based/prejudice-based—exemption for documents/information, one that is not subject to a public interest test?

For example, in relation to Cabinet documents that would disclose Cabinet deliberations or decisions, or certain law-enforcement or integrity agency documents that might undermine or prejudice their current or future investigations?

Or should all documents be subject to content-based tests (such as the three-step legitimate interest, substantial harm, and public interest–override test proposed by OVIC)?

In principle, I agree with OVIC, that exemptions (or, preferably, exceptions) should be based on the protection of legitimate interests from substantial harm and should be subject to a public interest override.

In relation to Cabinet documents in particular, my view is that some of the historical justifications for strict adherence to collective responsibility are losing strength. At the same time, a shift towards a participatory (rather than purely representative democracy) means that people need more and better information in order to be able to participate effectively. Research also shows that people strongly value honesty from government,[15] which calls into question the continued existence of an exemption that requires the a 'fiction' of Cabinet unity to be maintained at all costs. While government may be hesitant to release cabinet material, a framework that combines routine proactive disclosure of Cabinet material, with a narrow exception that is both harm-based and subject to a public interest test would put Victoria amongst the most progressive jurisdictions in Australia in relation to the release of Cabinet material and would lay the foundation for genuine transparency.

My hesitation about the removal of class-based absolute exemptions is a practical one: my research that shows that even where a public interest override exists, it can be routinely applied in such a way as to avoid disclosure. The result of this is that it can appear, on the face of the legislation, that access to a particular class of information is possible. However, in practice, for a range of reasons including cultural practices and assumptions, the public interest test is interpreted and applied in such a way as to routinely refuse disclosure of material of a particular type. In my research I was concerned primarily with internal working documents/deliberative

[15] Alan Renwick, Ben Lauderdale, Meg Russell, and James Cleaver, *What Kind of Democracy Do People Want?* The Constitution Unit School of Public Policy, University College, London, January 2022.

material, but many of the same public interest arguments could be applied in relation to cabinet material, in addition to separate arguments about the maintenance of Cabinet conventions.

The potential effect of this is that people seeking access to information go to considerable time and expense to seek the information, only to be met with ultimate – and arguably predictable – refusal. By way of example, for my research, I made a single FOI request to the Commonwealth government for the policy background into a specific amendment to the FOI Act 1982. To avoid refusal on resource grounds, I was required to split that request into 5 separate requests, to be made sequentially, and charged for separately. The result was that it took over a year to have the full request answered – and in each of the requests, the material that I was seeking was withheld on the basis that disclosure was contrary to the public interest. This was notwithstanding that the information that I sought was several years old and the changes to the legislation had already been made.

It is noteworthy that this refusal took place after legal changes that were expressly intended to promote greater disclosure of internal working documents. This indicates that legal change does not translate into cultural or practical change in a straightforward way. If there are culturally engrained views within a particular government or agency that it is contrary to the public interest to disclose certain categories of information it is likely that, absent effective culture change, even exemptions qualified by a public interest test will be routinely applied in such a way as to withhold information.

I am firmly in favour of greater transparency and would strongly prefer the framework advocated by OVIC, accompanied by a strong pro-disclosure culture that makes disclosure a reality. However, if in practice government will never agree to disclosure of particular categories of information, I would prefer to see that honestly acknowledged on the face of the legislation – and in Parliament - over a legislative framework that appears on the surface to grant access to certain kinds of information, when in fact that access will rarely, or never, be granted. In my view, the illusion of transparency is more problematic than the acknowledged lack of it.