

TRANSCRIPT

INTEGRITY AND OVERSIGHT COMMITTEE

Performance of Victorian Integrity Agencies 2019/20

Melbourne—Monday, 15 March 2021

MEMBERS

Mr Steve McGhie—Chair

Mr Brad Rowswell—Deputy Chair

Mr Stuart Grimley

Mr Dustin Halse

Ms Harriet Shing

Mr Jackson Taylor

Hon Kim Wells

WITNESSES

Mr Sven Bluemmel, Information Commissioner,

Ms Joanne Kummrow, Public Access Deputy Commissioner, and

Ms Rachel Dixon, Privacy and Data Protection Deputy Commissioner, Office of the Victorian Information Commissioner.

The CHAIR: I declare open the public hearing for the Integrity and Oversight Committee's inquiry into the annual reports of the Office of the Victorian Information Commissioner. I would like to welcome all the members of the public watching the live broadcast. I also acknowledge my colleagues participating today. I would like to begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands each of us is gathered on today, and pay my respects to their ancestors, elders and families.

All evidence taken by this Committee is 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 as soon as 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. Please mute your microphones when not speaking to minimise interference and switch your mobile phones to silent. If you have technical difficulties, please disconnect and contact the Committee staff.

I welcome the Office of the Victorian Information Commissioner. We welcome you providing opening comments for 5 to 10 minutes. I would like you to introduce your team, and I will hand over to you to provide your presentation. Thank you.

Mr BLUEMMEL: Thank you very much, Chair. I hope that you can hear me; I am sure you will let me know if you cannot. Thank you to you and to all the members of the Committee for the opportunity to be here and make a brief opening statement as well. I am joined today by Ms Joanne Kummrow, Public Access Deputy Commissioner, and Ms Rachel Dixon, Privacy and Data Protection Deputy Commissioner.

In this very brief statement I just would like to take the Committee through the key developments in the Office of the Victorian Information Commissioner, or OVIC, since we last appeared before you, and that last appearance, as it turned out, was just before the pandemic changed all of our workplaces substantially. Just on that issue, the OVIC executive leadership group met on the morning of 13 March 2020 and decided at that meeting to trigger the office's business continuity plan as at close of business that day.

Prior to this, our transition to a fully digital environment was already underway, but obviously the development of the pandemic accelerated matters substantially. After some initial adjustments we were able to perform just about all of our statutory functions effectively and efficiently, as reflected in our performance metrics, and I will cover those metrics shortly. One area where we were limited was in relation to our inability to inspect certain documents held by agencies in the context of an FOI dispute. I am pleased to say that that limitation was subsequently addressed in the *COVID-19 Omnibus (Emergency Measures) (Integrity Entities) Regulations 2020* (Vic). They were made on 19 May 2020 under the COVID omnibus legislation. In response to that, our office selected, tested and deployed a new secure file-share platform to receive confidential documents securely and electronically from agencies, and that has been successful.

Another area where the pandemic response prevented us from fully undertaking our proposed scope of work was that we were only able to conduct one physical site inspection of Victoria Police facilities, as part of our regular oversight of information security, before the physical access to such facilities was limited by the pandemic response. We had planned to undertake a further two inspections between March and June 2020, but these had to be delayed. We are hoping to resume those shortly.

On specific regulatory actions during the year—the subject of the annual report—we have done further work to implement the FOI professional standards, including through the release of a self-assessment tool for agencies in December 2020. We completed an investigation into the publication of a dataset containing personal information about public transport trips in the form of myki data. You may be aware of that—it certainly got substantial media coverage. We also completed during that year an investigation into the unauthorised access to client information held in the database created and maintained by the Department of Health and Human Services, now the Department of Families, Fairness and Housing, which was accessible by a contracted service provider and their staff. You may have seen some media coverage of this investigation over the last three days. For reasons that are made clear in our report, as well as in the media over the weekend, the publication of that was delayed until just now. We also used our own-motion investigation powers to launch an investigation into the timeliness of FOI in Victoria, and that is currently ongoing.

During the 2019/20 financial year we also published substantial systemic guidance to assist agencies better discharge their privacy and FOI obligations, as well as publishing guidance on the application of information rights to specific technologies, such as artificial intelligence.

In the information security space we received and processed protective data security plans from VPS [Victorian Public Service] agencies under the protective data security framework. We selected 30 of those plans for deeper qualitative analysis to allow us to better understand the level of protective data security maturity across the public sector, and we are using the results from this to target our information security work better across the whole sector.

I would like to end this opening statement just by sharing with you four very short diagrams that highlight the key performance metrics of the office over the relevant financial year.

Visual presentation.

Mr BLUEMEL: Now, this will not take me long to go through. So the first slide is about privacy. Again this is the comparison of the financial year under review, 2019/20, with the previous financial year. So the 2019/20 financial year is in the darker colour and it is a lighter colour for the previous year. You can see there a 24 per cent increase in the privacy complaints that we received. Pleasingly, to more than make up for that, we had a 57 per cent increase in the number of privacy complaints we finalised. So we actually improved the situation, and that is well reflected in the average time taken to finalise those complaints, which went down from 185 days in the previous year to 144 days.

The next slide is all about freedom of information. The number of review applications received—so this is where an applicant wants us to review the merits of the decision made by an agency or a minister—we had a 6.4 per cent increase in the number of applications we received. We had a very slight decrease in the number of applications we finalised, but again, pleasingly, we finalised more than we received. And again, like last year—this came up in our previous hearing—in just under 50 per cent of cases we actually made a decision that differed from that of the minister or the agency.

Continuing on FOI, this is also very pleasing: in terms of the average time taken to finalise a review application, it dropped from 197 to 139 days, and of course we are trying to improve that further still.

In the next diagram there you can see that the percentage of decisions that we made that were made within the statutory or agreed time frame increase from 24 per cent to just over 40 per cent in the year under review. And at the same time the number of those that then were further appealed to VCAT actually decreased from 66 to 57, and we see that as a pleasing outcome also.

The final slide, the number of FOI complaints we received—so this might be complaints about delay, failing to find documents or general handling of FOI applications—increased by just over 3 per cent, so a modest increase. The number that we finalised increased slightly by five but again, pleasingly, the time taken by my office to finalise those improved from 117 to 71 days.

I will now stop sharing my slides. I hope you can see me again. That was the opening statement. Of course further detail is in the annual report, and my colleagues and I would of course be pleased to now answer any questions that you have. Thank you, Chair.

The CHAIR: Thank you, Commissioner. Look, I might open up with a question. Obviously it is subject to COVID hitting last year, but I was just wondering, given that you made reference to the Public Transport Victoria report, what follow-up has occurred since your report was tabled in August 2019 and how that may have affected your follow-up last year with the COVID pandemic.

Mr BLUEMMEL: Certainly. I might ask Deputy Commissioner Dixon to take that question. She has been liaising very closely with the relevant agencies. So over to you, please.

Ms DIXON: Thank you, Sven. I am pleased to say that we have made six recommendations in regard to that report, and of those recommendations four have been completed. Those are the ones that were mostly associated with the Department of Transport. The ones that are still outstanding, which are the only ones that were really affected by the pandemic, were that we recommended the uplift of data capability across the VPS and then we put a recommendation for a process to support data release decisions.

Now, the latter one—the process—is certainly underway and is I think fairly close to finalisation. The uplift in data capability has taken quite some time, and a major part of that I think is that a number of the DPC [Department of Premier and Cabinet] representatives that we were liaising with were seconded into other agencies for COVID-related work, in particular the Department of Health and Human Services. So there was a lot of staff turnover there and it made our engagement with them obviously less speedy than it might have otherwise been, and they found it hard to get resources internally as well because obviously the attention of most of the senior staff at both DPC and many other agencies—obviously COVID was the primary thing.

We have recently had more discussions I guess with DPC and with VCDI, the Victorian Centre for Data Insights, which obviously sits under the DPC portfolio. As part of the finalisation of that part they are running a trial program now for data uplift with the executives of the Department of Transport, which is entirely appropriate. Subject to the review of that trial program, we will declare that particular recommendation implemented, because if we have reviewed the program once it has been delivered and it works, then we can say, ‘Okay, as a tick, they’ve done what we asked’, and that can then be rolled out to other agencies. So we are very close I think. It will take another two months or so to wind that one up.

The CHAIR: Thank you, Ms Dixon. Anyone else with any questions?

Mr HALSE: Chair, if I may?

The CHAIR: Yes, Mr Halse.

Mr HALSE: Thank you for the presentation. I just noticed on the first screen that you have noted that the number of complaints received has increased during the period that we are discussing and the finalisation of those complaints, the time period, has decreased. Can you walk us through just some of the efficiencies, also the rationale as well, behind how that has occurred and just some of the things that you have had to adapt to in the period that we are looking at with COVID restrictions? Thank you.

Mr BLUEMMEL: I will say a couple of opening words and then ask Ms Dixon to highlight a bit more. The first slide there was specifically about privacy complaints, but I think that a lot of what we have done applies equally to our FOI reviews and our FOI complaints. In short, we have continued to invest in making sure that our staff are appropriately trained in alternative dispute resolution, in those sorts of mediation-conciliation skills, clear language—all of those sorts of things. The three of us appearing before you today have just made it very clear to all of our teams that really what we want to see is a real focus on fast, early, informal, practical resolution. Clearly that is not going to work in all cases. Some of these cases are inherently so complex, where competing valid public interests have to be weighed up. They are obviously a bit less likely to be successfully conciliated quickly and early, but ‘Let’s leave the full process for those’ is the approach that we have done.

The other thing is we have just given our staff—well, obviously we have given them the technology and the ability to work flexibly and efficiently, and we have had some very pleasing results in the latest People Matter survey about how supported they have felt during the adjustments to our way of working, which is good to hear. But also we have given them really clear licence that once they are experienced and have demonstrated their skills in the office, they are to use their experience and judgement to try and resolve matters early where the parties can be brought to a form of agreement. So that is an initial response. That may be sufficient for you, or if you would like more specific detail on either how we are doing privacy and therefore our resolution, then I would be pleased to either ask Ms Kummrow or Ms Dixon to take that forward.

Mr HALSE: No, thank you. Thank you for the response.

The CHAIR: Thank you, Commissioner. Any other questions for the Commissioner? Mr Grimley.

Mr GRIMLEY: Thank you, Chair. My question is just in relation to the facility inspection of Victoria Police in the previous financial year. You mentioned there was one facility inspection. So my question is in relation to how the process was that OVIC was able to determine that Victoria Police had demonstrated its commitment to identifying, reviewing and acting on hard-copy documentation according to the obligations based on that one facility inspection.

Mr BLUEMMEL: I will ask Ms Dixon to answer that in more detail. That issue of hard copy is a real focus area for us, not just with Victoria Police but certainly strongly with Victoria Police. It is almost getting easier to forget about the hard copy and focus more on the electronic, and of course agencies and we ourselves need to do all of that and even the verbal, for that matter. Verbal information security is an issue as well. In fact the first site inspection that we had to delay was going to have a very particular focus on hard-copy documentation. But I will just hand over to Ms Dixon to take you through how we are proposing to handle that in the interim and of course once we get back to the full inspection regime as well.

Ms DIXON: Thank you, Sven. Look, we have not stopped that particular focus. I should also add that generally speaking the site inspection program that we have run at OVIC over a number of years does not just focus on the hard-copy stuff; it focuses on all those aspects. I think the line in our annual report from last year mentioned hard copy because that was the theme, I guess, that we were looking to focus on for that particular year. Now, because that program has been interrupted, we will continue that focus again for next year, so we will continue to address that. But then in subsequent years we may pull out another area—for example, like personnel or about laptop security or something like that. Having said that, we also have monthly meetings with Victoria Police management around the overall practices at VicPol. Now, they cannot be in person. They are remote at the moment. But one of the things that has happened, in addition to the site inspection we did, is that VicPol's information management governance committee has obviously been established and is chaired by their CIO [Chief Information Officer]. Hard-copy information forms part of their general improvement of policies, and their current strategy was endorsed by their information management committee.

We are awaiting a presentation by that committee now. Their endorsement only actually happened in February 2021, of their new policy, so we are awaiting the opportunity to review that. I would expect that to happen not at the next meeting we have but at the meeting we have after that, so certainly before the end of this financial year.

Mr GRIMLEY: Thanks, Ms Dixon. Thanks, Chair.

The CHAIR: Thank you. Any other questions? Ms Shing.

Ms SHING: Thank you very much. Thank you to both of you for the information you have provided to date. There was a reference—I think it was you, Mr Bluemmel—in relation to alternative dispute resolution and the facilitated process to discuss complaints. I note that there have been a significant number of complaints, FOI complaints in particular, that do not proceed and that there is specialised skill-set for OVIC staff in relation to ADR and other professional expertise that they might bring. I am keen to understand a little bit more about how that works in practice and the sorts of tools that team members have and how it is that you ensure consistency in the way that complainants are assisted throughout this process given the wide variety of presentations that you might receive as part of the complaints process in these areas.

Mr BLUEMMEL: Certainly. On that, I might ask Ms Kummrow to specifically take you through that, because at least in the FOI space, both with reviews and complaints, that is the team that primarily handles those. So I might ask Ms Kummrow to take you through that now.

Ms SHING: Thank you. Ms Kummrow.

Ms KUMMROW: Thanks, Sven. Thanks, Chair. And thanks, Ms Shing, for the question. Look, we receive an increasing number of FOI reviews and complaints, and that is the work of our public access team. It is not just reviews but complaints. So, with the resources that we have, we have to look at ways—and it is also required under the legislation—to try and approach reviews and complaints with as little technicality and

formality as possible, in that the *FOI Act* is a positive piece of legislation that is about granting access to information unless a relevant exemption or exception applies.

We have allocated resources within the team, and that is generally through expressions of interest from team members who are really keen to get in at an early stage. They are good communicators, good listeners. They will pick up the phone quite often and speak to applicants and complainants and really find out what it is that they are seeking to achieve through a request or what are the issues in relation to a complaint. We have obviously got the professional standards in operation now, so they have formalised in some ways our complaint function as well—they sort of feed into that—but it is a tripartite sort of process sometimes now: reviews, complaints and professional standards. With the professional standards, whilst we might be able to resolve a complaint, we are also looking to drive best practice by agencies in the way in which they administer the Act and uphold the object of the Act. So getting the right staff at the front end and, as Sven said, very early on if possible—that is where there is, we believe, that window of opportunity.

FOI can be a lengthy process, particularly over the last year. COVID has obviously led to delays, and a lot of our complaints have increased, or a number of our complaints have increased, in relation to delays that have been experienced. But I think with good communication—and, look, with the understanding and cooperation of an applicant and, I might add, agencies, where they are willing to bring an open mind to a potential resolution—we often like to think that we are able to make some difference there. Some agencies, you know, understandably lament a little bit. They will say, ‘Well, we tried that and we offered that, but they wouldn’t accept it’. I think that is where an independent service really comes in—that hopefully we are trusted and we can talk to an applicant or a complainant and manage their expectations but also work with an agency. So where we can, we see that is a way that we can continue to drive improvements in relation to timeliness but also good outcomes for applicants and complainants and agencies as well.

Ms SHING: Thanks very much, Ms Kummrow. Thanks, Mr Bluemmel. Thanks, Chair.

The CHAIR: Thanks, Ms Shing. Any further questions?

Mr ROWSWELL: Chair, if I may. I understand that OVIC undertook seven consultancies exceeding \$10 000 in 2019/20. What was the general nature of the services engaged by OVIC for this purpose?

Mr BLUEMMELE: I will take you through those. One of them was for a security risk assessment for a product that we were providing to the agencies. This is a product for agencies that allows them to undertake what we call a business impact level assessment. This is where you look at the actual security value of your information and say, ‘At what level does this have to be protected? What is the risk? What is the likelihood?’ and so on. Obviously we wanted to make sure that that application that we were making available was itself secure and did not introduce a vulnerability. So that was a security risk assessment for that app; that was one of them.

Another one was a consultancy where we asked a consultant to undertake an external review of our assurance process for submissions of agency security plans under the Victorian Protective Data Security Framework. We as the regulator ask agencies to provide these to us. We then analyse it. We provide them guidance as to how they best submit and so on. This was really an external review to make sure that we were doing that well and note where we can improve. We do not want to be a regulator that does not actually improve things because we are not doing them competently. Therefore the second one was an external process. You would not call it a technical audit, but it was effectively an external assurance process to say, ‘How good is our process, and where do we need to do better?’

Another one was another security assessment. This was for the secure file-sharing application that I mentioned earlier, where before the omnibus regulations certain information such as law enforcement information under FOI could not be provided to our office electronically. One of my staff or one of Ms Kummrow’s staff would have to go and inspect those documents on site. Now, clearly that was not possible during the pandemic, so therefore we procured this file-sharing platform. So one of the consultancies was to undertake a security risk assessment of that, again, to make sure that this highly sensitive information was being kept secure in transit and at either end.

Two of them related to user research consultancies. These were about the users of our website—Are they getting what they need? So this is FOI applicants, government agencies, potential complainants and so on—making sure that the website was actually clear, simple and easy to use: ‘What’s missing?’, ‘What do people

need that we're not currently giving them?' and so on. So that was really identifying what communications needs our users had from us: 'What information do they need from us?' and 'Where are the gaps?'. Now, that is really important to us because of course in 2017 substantial changes were made to information regulation in Victoria, and a really big part of that was to say, 'We need to change agency practice. We need to get away from the secrecy reflex and all of those sorts of things'. So communications from us in that regard have to hit the mark. They cannot just be general. And they are certainly not about promoting OVIC as an organisation but rather promoting people's rights. What can they do? How can agencies do better?

And the last one was some legal advice that we got to improve our contracting at OVIC to make sure that the contracting framework we have is appropriate for things like intellectual property, liability and so on, just making sure that all of our contracts line up again. We are the regulator; we have to be doing the right thing in that regard, and we do not want to be setting a bad example. They are all the consultancies over \$10 000.

Mr ROWSWELL: Thank you, Commissioner. Just on the second-last one, what was the exact cost of that particular consultancy to review the effectiveness of the website? And I have a follow-up question to the last matter that you mentioned too.

Mr BLUEMMEL: Of those second-last ones to do with user research and our website, there were two parts to it. The first one was really finding out the users' needs; the value of that was \$39 820. And the second part of that was then to actually identify, 'What do we need to do?', and get assistance with doing it, and that was \$24 926.

Mr ROWSWELL: In relation to the last consultancy that you referred to, you did not feel that there was sufficient expertise existing within government to be able to provide those services—there was a requirement to go outside of the remit of government and government resources for that information?

Mr BLUEMMEL: There were two reasons for that. One was we do have a small internal legal team, but I wanted—or, in fact, with the legal team we decided that the best thing to do—would be to actually get that done externally because that way again we have that arms-length assurance that what we are doing is best practice, whereas if we had it done internally there could always be the idea of saying, 'Well, you're only looking at this from how you have always done it', and you could argue there could be a conflict because you might just be trying to say, 'Well, the way we're doing it is the right way', whereas an external consultant might actually say, 'Well, look, there's better practice now, so you should do that'.

The other thing is, why didn't we go elsewhere in government? The primary issue here for us is again the conflict issue. We are obviously an independent regulator. We did not want to go to a service provider who might be under our jurisdiction that we might want to have to investigate, so that was important to us as well.

Mr ROWSWELL: Thank you, Commissioner.

Mr BLUEMMEL: Great. Thank you.

The CHAIR: Thanks, Commissioner. I think there might be one more question before we wind up from Mr Halse, if I am correct.

Mr HALSE: Yes, thank you, Chair. I just wanted to ask if there are novel ways that OVIC has engaged its employees over this COVID period to maintain their wellbeing, and some of the ways that you might not have expected to engage with your staffing cohort to support them during what has been obviously a very challenging time for the organisation?

Mr BLUEMMEL: Yes, look, it certainly has been, and I know we are not alone in that. I know many organisations are having to adapt, some quite radically. Firstly, and I will make this very brief, but in terms of even just recruiting new staff and so on, we have been doing that during the pandemic. I have had the situation where until we had our staff Christmas party last year, I had colleagues that I had been working with for six months that I had not actually met in person. The challenge of that then was less so the actual selection and technical onboarding process. I mean yes, you courier laptops and RSA keys and all of those sorts of things and send out office chairs in taxis; we did all that, but the hardest thing was getting them to feel part of a team. That was the really, really hard thing.

So a couple of things we did there was, firstly, at all levels of management in the organisation we all take a very strong view that that stuff is important. That is not a side issue. That is not a little luxury here on the side; that is core business for you if you are managing people. Part of that is having those initial discussions with people when they come on board, making sure you give them a call a couple of times a day or at least a week on a videoconferencing service to say, 'How are you going?' and so on. Other ways to stay in touch—we have done things as management where every working day since 13 March last year I sent around a little newsletter at the end of the day just so that everyone across the office knew what was happening across the office. We have done a few social things where late on Friday afternoon you have got virtual drinks and you do the crossword or you do the quiz, all of those sorts of things. I am not sure if that is what you are heading toward, because it is those so-called soft things—and I actually do not like calling them soft things, because they are just as important as the technical skill, but they are the sort of things that we have done. Is there a particular area you would like to explore further? I am happy to.

Mr HALSE: No, no, it is a good analysis of some of the things that you have done. You used that term 'soft areas', and they are probably not, but general wellbeing practices that support staff that have been isolated for long periods of time, having that foresight to be able to do that during a difficult time and looking ahead to make sure that that is a proactive step, not a reactive step, and that staff wellbeing is at the forefront of what the organisation is doing. So it is just interesting to hear about some of the novel practices that you have employed. Thank you.

Mr BLUEMEL: If I may just briefly round off, we have also obviously kept a very close eye on things like the people matter survey. The [Victorian] Public Sector Commission did a pulse survey during the pandemic, which is a much shorter one roughly every three months just to see how people are going—are they feeling supported and so on? Whenever we see something where the result is just not where we want it to be we really look at that as a management team and actually say, 'What can we do?' In some cases it is as simple as saying, you know, pick up the phone to someone. Give them a video call and see how they are going, and just listen to them. It might be that their home situation means that they are under particular pressure at the moment, but there is something we can do to help them deal with it, and those sorts of things.

Mr HALSE: Thank you.

The CHAIR: Thanks, Mr Halse. Thanks, Commissioner. I thank you and Ms Kummrow and Ms Dixon for your presentation today and certainly answering the questions. We really appreciate that in regard to your annual reports. We will provide some questions on notice in writing to you and follow up on those with you. I do appreciate your attendance today and providing your presentation and answering questions, so thank you very much for that.

Witnesses withdrew.