



**Office of the Victorian  
Information Commissioner**

# **Proactive and informal release of information in the Victorian public sector**

## **Discussion Paper**

16 March 2020

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## Discussion paper

<b>Introduction</b> .....	3
<b>Background</b> .....	4
<b>What is proactive release?</b> .....	4
<b>What is informal release?</b> .....	5
<b>The legislative basis for proactive and informal release</b> .....	6
<b>The FOI Act</b> .....	6
<b>FOI Professional Standards</b> .....	7
<b>Discussion questions</b> .....	7
<b>Proactive release</b> .....	7
<b>Informal release</b> .....	8
<b>Providing a submission</b> .....	9
<b>What happens next?</b> .....	9
<b>Collection of personal information</b> .....	9

## Introduction

A key function of the Office of the Victorian Information Commissioner (**OVIC**) is to promote understanding and acceptance by agencies and the public of the *Freedom of Information Act 1982* (Vic) (**FOI Act**) and its object, which is to extend as far as possible the right of access to information in the possession of the Victorian Government and other bodies constituted under the law of Victoria.<sup>1</sup>

Since the FOI Act commenced more than 35 years ago, there has been a focus on providing access to documents following receipt of a formal freedom of information (**FOI**) request. However, Victorian agencies may provide access to information outside of a formal FOI request. For example, the provision of information outside the FOI Act may involve agencies releasing information proactively without the need for an FOI request, or informally in response to a general request.

A 2019 Monash University pilot study commissioned by OVIC surveyed five Victorian agencies subject to the FOI Act and found proactive release of information by public sector agencies is important, but it needs to be better supported.<sup>2</sup> OVIC recognises the importance of providing access to as much public sector information as possible. This includes through proactive and informal release, which enables greater access to government information more frequently, and with less formality and expense.

OVIC also recognises the increasing FOI workloads agencies face, and that proactive and informal release may be the responsibility of an agency as a whole, rather than solely the agency's FOI unit. This is why OVIC is seeking to better understand agencies' views, challenges and practices with proactive and informal release, and to identify how OVIC can assist agencies. Therefore, the aim of this discussion paper is to:

- determine the extent to which agencies are proactively and/or informally releasing information in response to, or outside of, FOI requests;
- identify the tools and resources used by agencies that successfully and consistently release information proactively and/or informally;
- better understand the factors that affect how agencies proactively and/or informally release information and identify how OVIC can better support and assist agencies; and
- generate discussion in agencies about proactive and informal access to information.

While this discussion paper is directed at agencies subject to the FOI Act, OVIC welcomes submissions from anyone interested in providing comments on proactive and informal release in Victoria.

The right of access under the FOI Act is to a document in the possession of an agency or an official document of a Minister.<sup>3</sup> Since proactive and informal release may involve providing access to information as well as a document, the discussion paper refers to information in a broad sense. A reference to 'information' may also mean a reference to a document, as the case requires.

All legislative references are to the FOI Act, unless otherwise stated.

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<sup>1</sup> Section 6(2)(a); the object of the FOI Act is contained in section 3.

<sup>2</sup> Associate Professor Johan Lidberg, 'The Culture of Administering Access to Government Information and Freedom of Information in Victoria' (Pilot study May – August 2019, Monash University) <https://ovic.vic.gov.au/wp-content/uploads/2019/09/Monash-report-FOI-and-Information-Access-Culture-in-Victoria-pilot-study-2019.pdf>.

The report refers to 'proactive' release, however the discussion questions used in developing the report refer to both proactive and informal release. Similarly, the responses relate to both proactive and informal release of information. Therefore, OVIC interprets the reference to 'proactive' also refers to 'informal' in the report.

<sup>3</sup> Section 13.

## Background

The FOI Act was enacted by the Victorian Parliament to promote openness, accountability and transparency in the Victorian public sector by giving the public the right to access government documents and by requiring publication of certain information.<sup>4</sup>

Public access to Victorian public sector information is fundamental to open and accountable government. The right to access government information enables the public to hold government to account, participate meaningfully in society and support better government decision making. As custodians of information, government agencies have a responsibility to ensure the public's right to access government information is upheld.

### Victorian agencies receive a large and increasing volume of FOI requests

Victorian agencies receive more FOI requests than any other Australian State or Territory and receive the second largest number of requests after the Commonwealth.<sup>5</sup> Based on FOI data from the past five years, the number of requests Victorian agencies receive is anticipated to increase year on year.<sup>6</sup>

The growing number of FOI requests is partly due to the increasing amount of information being generated and retained by Victorian agencies and the public's strong awareness of, and engagement with, their information access rights under the FOI Act.

Another possible reason for the increase in FOI requests is due to the nature of the FOI Act being a 'pull' model of access legislation. While the FOI Act facilitates and promotes the release of information proactively and informally, the central mechanism for accessing government information is through making a formal FOI request. This 'pull' model serves an important role in facilitating access to Victorian government documents, however, the increasing number of formal FOI requests in Victoria presents a challenge for many agencies to process an increasing number of requests with limited resources.

Conversely, other Australian jurisdictions, such as the Commonwealth, New South Wales and Queensland, have enacted 'push' models of access legislation, which require the proactive and informal release of information.<sup>7</sup> These requirements aim to make formal access requests a last resort and elevate the importance of proactive and informal access to documents and information to promote and provide greater access to government information.

## What is proactive release?

Proactive release involves an agency making information publicly available, on its own accord, without an individual making an FOI or other request.<sup>8</sup> This may involve an agency publishing certain information, reports, submissions or other documents on its website.

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<sup>4</sup> The right of access is contained in section 13, and the requirement to publish certain information is in Part II.

<sup>5</sup> Report on the State of Freedom of Information in Victoria, OVIC (17 February 2020) <https://ovic.vic.gov.au/state-of-freedom-of-information-in-victoria/information-commissioners-foreword/>.

<sup>6</sup> Ibid.

<sup>7</sup> See, for example, *Government Information (Public Access) Act 2009* (NSW) and *Right to Information Act 2009* (Qld); for a comparison of access legislation in each Australian jurisdiction, see also Association of Information Access Commissioners, *Compendium of Information Access Laws across Australian States and Territories* (October 2017), 6 [https://www.ipc.nsw.gov.au/sites/default/files/file\\_manager/Jurisdictional%20Compendium%20OCT%202017.pdf](https://www.ipc.nsw.gov.au/sites/default/files/file_manager/Jurisdictional%20Compendium%20OCT%202017.pdf).

<sup>8</sup> OVIC has published an FOI practice note on proactive release, available here: <https://ovic.vic.gov.au/resource/proactive-release-of-information/>.

Many agencies already proactively release information, whether that is publishing information about their organisational structure, a particular project, or a report about a particular matter relevant to the agency or its functions.

Proactive release is consistent with an agency's obligations under the FOI Act to make the maximum amount of government information available to the public promptly and inexpensively.<sup>9</sup> It promotes government transparency and accountability by increasing the public's access to government information and allows them to participate in government decision making.

In addition to promoting open and accountable government, proactive release of information can reduce the need for formal FOI requests if the information sought is already available publicly. Proactive release can also enhance the public's trust in government by providing more information about agencies, what they do, and how they operate.

#### Examples of proactive release

- data published on [data.vic.gov.au](https://data.vic.gov.au)
- tender, contractual and financial information published on [Buying for Victoria](#)
- publication of other information, reports, submissions and documents on an agency's website
- information published in accordance with Part II of the FOI Act

## What is informal release?

Informal release involves an agency receiving a request for information or a document and providing access to the relevant information outside of the FOI Act.<sup>10</sup> Information can be informally released in response to a once off request for information, or under more structured information release schemes or policies. Informal release is also commonly referred to as administrative release, and is a typically reactive form of providing access to information.

Informal release may involve an agency providing access to a copy of a requested document without processing the request under the FOI Act. It may also involve an agency communicating requested information over the telephone in response to an enquiry.

In some cases, an agency may decide to set up an information release scheme where it identifies a significant number of requests for a particular type of information. For example, Victoria Police provides a service to persons wishing to access information about property loss or damage that occurred in Victoria and was reported to Victoria Police.<sup>11</sup> Individuals can apply to obtain the relevant crime report without making an FOI request.

Informal release is a simpler and more efficient process than responding to a formal request under the FOI Act. It provides agencies with flexibility in how they deal with requests for government information and fulfils the object of the FOI Act to make information available promptly and inexpensively.

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<sup>9</sup> Section 3(2).

<sup>10</sup> OVIC has published an FOI practice note on informal release, which is available here: <https://ovic.vic.gov.au/resource/informal-release-of-information/>.

<sup>11</sup> Victoria Police, *Crime Reports for Insurance*, <https://www.police.vic.gov.au/crime-reports>.

### Examples of informal release

- providing access to a copy of a document or information outside the FOI Act
- facilitating an inspection of a document outside the FOI Act
- providing information by way of a telephone or email enquiry
- referring an individual to a separate information access scheme or policy outside the FOI Act

## The legislative basis for proactive and informal release

### The FOI Act

The FOI Act provides every person with a legally enforceable right to obtain access in accordance with the FOI Act to a document of an agency and an official document of a Minister, except an exempt document.<sup>12</sup> The FOI Act sets out a formal process for receiving and responding to a valid FOI request. However, in many instances a requested document can be provided to an applicant proactively or informally, outside of the FOI Act.

#### Agencies have a general obligation to provide access to as much information as possible

The object of the FOI Act is to extend as far as possible the right of the community to access information in the possession of Victorian agencies.<sup>13</sup> It outlines two ways to do this.

The first is by making information available to the public about agencies' operations, ensuring rules and practices affecting members of the public in their dealings with agencies are readily available to persons affected by those rules and practices. This refers to the formal information publication scheme in Part II.

The second is by creating a general right of access to information in documentary form. For example, by making a formal FOI request.

Section 3(2) makes Parliament's intention clear that the FOI Act is to be interpreted to further the object in section 3(1), and any legislative discretions are to be exercised as far as possible to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information. The object therefore creates a general obligation for agencies to provide access to as much information as possible.

#### Agencies may provide access to documents, even if they are exempt

The FOI Act requires agencies to administer the FOI Act with a view to making the maximum amount of government information available to the public, promptly and inexpensively.<sup>14</sup> It outlines agencies have a general discretion to provide access to a document, including an exempt document, provided they are not otherwise prohibited from doing so (for example, taking into account secrecy or other provisions that may prohibit the release of certain information).

Therefore, the FOI Act allows agencies to provide informal access to documents in response to an FOI request. Similarly, agencies may also develop information release schemes that are administered outside the FOI Act. For example, the Victoria Police information access scheme referred to above.

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<sup>12</sup> Section 13.

<sup>13</sup> Section 3(1).

<sup>14</sup> Section 16.

## Agencies must publish certain information and documents

Part II of the FOI Act requires each agency to provide for an information publication scheme. Part II outlines specific information and documents Victorian agencies must publish or otherwise provide access to subject to certain exceptions. The scheme aims to ensure members of the public can effectively exercise their right to access government information which may affect them. To do this, the public must be informed about what government does, how it carries out its functions and what information it holds.

### **FOI Professional Standards**

The FOI Professional Standards require agencies to consider whether documents requested under the FOI Act can be provided informally, outside the FOI Act, wherever possible.<sup>15</sup> For example, *Professional Standard 1.1* requires an agency to consider whether a document in its possession, that is requested under the FOI Act, can properly be provided to an applicant outside the FOI Act. If it can, then *Professional Standard 1.2* requires an agency to either facilitate access to the document (for example, provide a copy or arrange an inspection), or advise the applicant on how the document can be accessed (for example, through a statutory release scheme or for purchase).

## **Discussion questions**

OVIC seeks submissions from agencies about their proactive and informal release practices. OVIC prepared discussion questions, outlined below, aimed at facilitating a discussion around proactive and informal release and prompt submissions to this discussion paper. Agencies are encouraged, but not required, to address these questions or use them to inform their submission.

OVIC prepared a submission template to assist agencies in responding to this discussion paper. Agencies are also welcome to provide a submission in any form they wish (for example, a letter).

### **Proactive release**

#### *General*

1. Does your agency proactively release information outside the FOI Act? If yes, what kind of information does your agency typically release proactively?

#### *Proactive release data*

2. Does your agency collect and/or retain data about its proactive release of information? If yes, what kind of data is collected and/or retained?
3. Does your agency's proactive release of information result in it receiving fewer FOI requests?

#### *How information is proactively released*

4. How does your agency proactively release information? For example, is it available free of charge, for a fee, online?

#### *Determining whether to proactively release information – processes, policies, procedures*

5. What factors influence the proactive release of information by your agency? Does your agency have a process, policy or procedure for determining whether information can be proactively

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<sup>15</sup> The FOI Professional Standards are available here: <https://ovic.vic.gov.au/freedom-of-information/professional-standards/>.

released? If yes, please specify the role(s) of agency staff who authorise or determine whether information should be released proactively, and any process, policy or procedure supporting this and how it was developed.

#### *Barriers, concerns, challenges*

6. Are there barriers that affect your agency proactively releasing information? If yes, what kinds of barriers exist?
7. Does your agency have concerns, or experience challenges, with proactively releasing information? If yes, please describe them.

#### *Assistance and support*

8. What factors, assistance, or support would assist your agency to begin or improve proactively releasing information?
9. OVIC has published a practice note on proactive release on its [website](#). How can this practice note be improved to better meet the needs of your agency?

### **Informal release**

#### *General*

10. Does your agency informally release information outside the FOI Act? If yes, what kind of information does your agency typically release informally? What kind of information or FOI requests does your agency typically decide must be processed under the FOI Act, and why?

#### *Informal release data*

11. Does your agency collect and/or retain data about its informal release of information? If yes, what kind of data is collected and/or retained?
12. Approximately how often/what proportion of information or FOI requests are responded to informally?

#### *How information is informally released*

13. How does your agency informally release information?

#### *Determining whether to informally release information – processes, policies, procedures*

14. What factors influence the informal release of information by your agency? Does your agency have a process, policy or procedure for determining whether information can be informally released? If yes, please specify the role(s) of agency staff who authorise or determine whether information should be released informally, and any process, policy or procedure supporting this process and how it was developed.

#### *Barriers, concerns, challenges*

15. Are there barriers that affect your agency informally releasing information? If yes, what kinds of barriers exist?
16. Does your agency have concerns, or experience challenges, with informally releasing information? If yes, please describe them.

## Assistance and support

17. What factors, assistance, or support would assist your agency to begin or improve informally releasing information?
18. OVIC has published a practice note on the informal release of information on its [website](#). How can this practice note be improved to better meet the needs of your agency?

## Providing a submission

OVIC developed a submission template (available on OVIC's website) that agencies are encouraged, but not required, to use when providing a submission in response to this discussion paper.

Submissions must be provided to OVIC by **5pm, Friday 1 May 2020**. Submissions can be made by:

- **Email** to [policyteam@ovic.vic.gov.au](mailto:policyteam@ovic.vic.gov.au)
- **Post** to:  
Policy team  
Office of the Victorian Information Commissioner  
PO Box 24274  
Melbourne VIC 3001

If you have any questions about this discussion paper, including how to make a submission, please contact OVIC by telephone at 1300 006 842 (1300 00 OVIC) or by email to [enquiries@ovic.vic.gov.au](mailto:enquiries@ovic.vic.gov.au).

## What happens next?

At the end of the consultation period, OVIC will review all submissions to identify ways OVIC can assist and support agencies to proactively and informally release information.

OVIC intends to publish submissions received where an agency or person provides their prior consent. Please indicate in your submission whether you or your agency agrees for the submission to be published in full, published with personal information removed, or not published.

## Collection of personal information

You are not required to provide any personal information in order to make a submission to this discussion paper. Providing personal information is optional. Where you choose to provide personal information, OVIC may use it to provide you consolidated feedback on the submissions we receive, seek clarification on your submission or follow up with you where you have indicated you wish to be involved further in OVIC's work. If you choose to provide personal information, we ask that you do not include this information anywhere other than the designated fields on this form.

If you choose to make your submission by email, we may be able to identify you from your email address. If you prefer to remain anonymous, you can post your submission to OVIC.

OVIC will not disclose your personal information without your consent, except where required to do so by law. You may contact OVIC to request access to any personal information you have provided to us by emailing [enquiries@ovic.vic.gov.au](mailto:enquiries@ovic.vic.gov.au). For further information on how OVIC handles personal information, please review our privacy policy.<sup>16</sup>

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<sup>16</sup> OVIC's Privacy Policy is available here: <https://ovic.vic.gov.au/privacy-policy/>.