

**5th INTERNATIONAL CONFERENCE OF INFORMATION COMMISSIONERS
WELLINGTON NEW ZEALAND
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Abstract

Own motion review of the Freedom of Information Act

In June 2006 the Victorian Ombudsman released his report of an own motion investigation into the Freedom of Information Act (FOI Act). This paper looks at the background to the review, including the basis for it; the development of a discussion paper; and agency responses. It is also a behind-the-scenes commentary on conducting a wide ranging systemic review and how to best achieve outcomes.

The Ombudsman made recommendations that included legislative change; that the Department of Justice take a stronger leadership role in providing guidance to FOI agencies; and that practice notes and guidelines be issued.

Since finalising the review the Victorian Government has committed to amending the FOI Act in line with the Ombudsman's recommendations.

**OWN MOTION INVESTIGATION INTO THE FREEDOM OF INFORMATION
ACT A REVIEW CONDUCTED BY OMBUDSMAN VICTORIA**

Background

The *Freedom of Information Act* (FOI Act) was passed by the Victorian Parliament in 1982, coming into operation on 5 July 1983. It followed the commencement 6 months earlier of the Commonwealth *Freedom of Information Act* 1982 and was the first FOI Act of any of the Australian States and Territories. Although it was introduced and passed by the Cain Government, it followed the introduction of Freedom of Information Bills by the earlier Thompson Government.

FOI is regarded as one of the pillars of modern democratic government. A lack of trust in the willingness to administer the FOI Act in accordance with the legislation and its objects could harm confidence in the institutions of democratic government. On 2 February 2000 the Victorian Attorney-General Robert Hulls referred to changes made to the FOI Act to 'foster a new culture of open and accountable government' and issued guidelines to assist the administration of the FOI Act and to require departments and agencies 'to make decisions under the FOI Act consistent with three key principles vital to a healthy democracy:

- Well informed people are more likely to become involved in both policy making and government
- A government open to scrutiny is more accountable, and
- People have a general right to know what information government holds about them.'

Scope of Investigation

In August 2004 the Ombudsman commenced an investigation of his own motion into the performance and compliance of departments and agencies with the FOI Act, having regard to:

- The timeliness and adequacy of responses to FOI requests
- The policies and practices adopted by departments and agencies for handling FOI requests
- The adequacy and effect of protocols and arrangements between the departments and contractors on the keeping and availability of documents where public functions are performed by bodies other than departments or agencies
- Obligations under other legislation including the *Public Records Act 1973*, the *Health Records Act 2001* and the *Information Privacy Act 2000*, and
- The legislative requirements imposed for departments and agencies.

At that time there were 10 government departments which were the subject of the investigation.

They were:

- Department of Education and Training (DET)
- Department of Human Services (DHS)
- Department of Infrastructure (DOI)
- Department of Innovation, Industry and Regional Development (DIIRD)
- Department of Justice (DOJ)
- Department of Premier and Cabinet (DPC)
- Department of Primary Industry (DPI)
- Department of Sustainability and Environment (DSE)
- Department of Treasury and Finance (DTF)
- Department for Victorian Communities (DVC).

The Ombudsman also commenced an investigation at the same time in his then capacity as Police Ombudsman into the policies, practices and procedures of Victoria Police in relation to the FOI Act, having regard to:

- The timeliness and adequacy of responses to FOI requests
- The provision of services by contractors and the adequacy and effect of protocols and arrangements between the police force and contractors on the keeping and availability of documents
- The legislative requirements imposed for the police force, and
- Obligations under other legislation including the *Public Records Act* and the *Information Privacy Act*.

The investigation in relation to departments was conducted under section 14 of the *Ombudsman Act 1973*. The Ombudsman commenced the investigation into Victoria Police as Police Ombudsman under the *Police Regulation Act 1958* ('PRA'). In November 2004 amendments to the PRA created the Office of Police Integrity ('OPI') and, as Ombudsman, he is now also the Director, Police Integrity ('DPI'). As DPI, he was able to continue the investigation in relation to Victoria Police under a transitional provision in the amended Act.

To conduct the investigation, we employed an experienced barrister, together with one full time staff member with extensive experience in dealing with FOI complaints.

Discussion Paper

Following a review of complaints files and initial consultations with FOI practitioners, in May 2005 we issued a Discussion Paper seeking comment from the departments and agencies consulted, Members of Parliament with a specific interest in FOI, FOI practitioners and members of the public.

We advertised the review in the media, seeking written comments from interested parties. The paper set out issues which emerged from the consultations that have taken place with FOI officers and FOI users. It also set out information about the way in which the FOI Act was at the time given effect, existing powers of review, and matters which are the source of frequent complaint by users and administrators of the Act. A copy may be found at www.ombudsman.vic.gov.au.

Comment was sought on a range of issues including:

- Part II statements—publication of information by agencies
- Processing requests, including assessing the request and timeliness
- Reasons for decision
- Constructive possession
- Third party consultation
- Access charges
- Review of decisions
- Privacy and health records
- Open government
- Legislative issues.

Ombudsman role under the FOI Act

The Ombudsman has power to enquire into or investigate administrative actions taken in any Government department or public statutory body. Complaints are frequently made to the Ombudsman about a wide range of matters relating to the administration of the FOI Act. The Ombudsman does not generally conduct an investigation where the complainant has a right to apply to the Victorian Civil and Administrative Tribunal (VCAT) for review of a decision on an FOI request, unless the Ombudsman considers that in the particular circumstances it would not be reasonable to expect the complainant to resort to that right, or that the matter merits investigation in order to avoid injustice¹. The Ombudsman does not act as an alternative avenue of appeal to VCAT in respect of decisions under the FOI Act refusing applicant's access to documents.

One of the current problems with the FOI Act is that it makes a number of specific references to the Ombudsman, leading to some ambiguity whether complaints to the Ombudsman about FOI matters are made and handled under the Ombudsman Act or the FOI Act.

Specifically, the FOI Act makes reference to the Ombudsman in relation to:

- **Voluminous requests**

A complaint may be made to the Ombudsman about a decision to refuse access to a document on the ground that the request is voluminous or that it is apparent from the request that it relates only to exempt documents and that an edited copy could not be provided. If the complainant applies to VCAT for review of the decision the Ombudsman must provide a written report to VCAT².

- **Lost documents**

Where the decision is that a document does not exist or cannot, after a thorough and diligent search, be located, the applicant must be informed of the right to complain to the Ombudsman³.

- **Charges certificate**

An applicant who wishes to apply to VCAT for review of a decision as to the amount of a charge for access to a document must first obtain a certificate from the Ombudsman that the matter is of sufficient importance for the Tribunal to consider⁴.

¹ Ombudsman Act section 13(4)

² FOI Act section 25A(40)

³ FOI Act section 27(1)(e)

⁴ FOI Act section 50(2)(c)

- **Delay**

An applicant may complain to the Ombudsman before or after expiry of the 45-day period, concerning failure to make a decision on an FOI request. An application to the Tribunal under this provision shall not be made before the Ombudsman has informed the applicant of the result of the complaint in accordance with the provisions of the Ombudsman Act⁵. A certificate from the Ombudsman that there has been unreasonable delay operates as a deemed decision by the principal officer of the agency to refuse access, entitling the complainant to immediately apply to VCAT for review⁶.

- **Intervention**

The Ombudsman may intervene in an application before VCAT⁷. This is not an action we have taken in recent years. The criterion is that the Ombudsman shall have regard to:

- (a) The importance of the principal involved in the matter
- (b) The precedential value of the case
- (c) The financial means of the applicant
- (d) The applicant's prospects of success, and
- (e) The reasonableness of the agency's action in withholding the document.

The question of the source of power to investigate in FOI complaints is important. The bodies to which the FOI Act applies⁸ are defined differently from those in relation to which the Ombudsman is given power to enquire into or investigate.

The FOI Act talks about agencies, with an 'agency' meaning 'a department, council or prescribed authority'. The Ombudsman Act gives the Ombudsman jurisdiction over 'any Government Department or Public Statutory Body... or any member of staff of a municipal council'⁹.

Whether the Ombudsman has power to enquire or investigate the handling of FOI requests by some agencies may therefore depend upon which Act is seen as the primary source of power. In particular, it is unclear whether complaints in relation to the handling of FOI requests by Victoria Police should be dealt with by the Ombudsman or the DPI¹⁰.

Complaints about the administration of FOI are frequently made to the Ombudsman in relation to lost documents, delay, and decisions to refuse access to documents. A

⁵ FOI Act section 53(2)

⁶ FOI Act sections 53(2) and 53(3)

⁷ FOI Act section 57

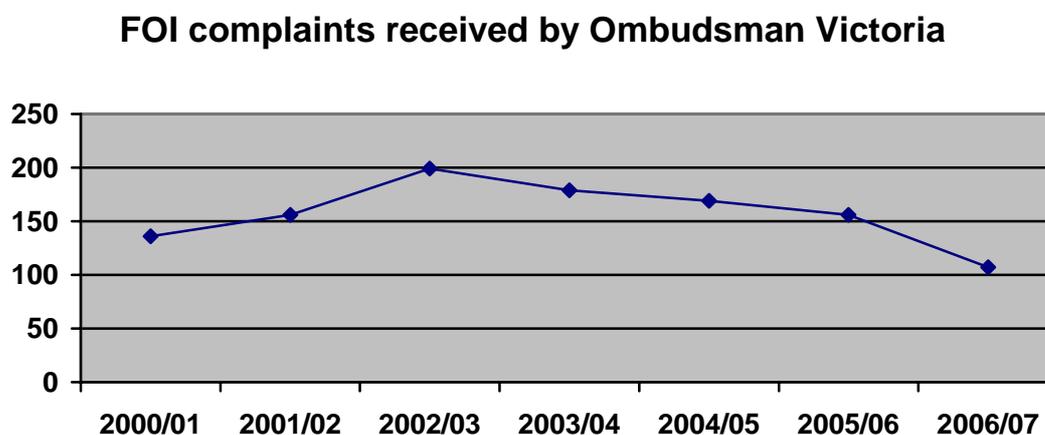
⁸ See FOI Act section 5(1), definition of 'agency' and section 5(2)

⁹ Ombudsman Act section 13

¹⁰ See Ombudsman Act section 13(3A) and PRA subsections 86N and 86NA

large proportion of those complaints are found to be substantiated or result in clarification or rectification.

Graph showing complaints received by Ombudsman Victoria since July 2000



Complaint issues

In 2003/04, at the time of developing the discussion paper, the Ombudsman received 179 FOI complaints, as follows:

Delays in processing requests	30%
Lost or non-existent documents	23
Unreasonable charges	5
Voluminous request (s25A referrals)	2
Refused access to documents	14
Intervention by Ombudsman	(1 instance)
Other	26

This breakdown of complaints by type is generally typical, with delay in processing being the most common source of complaint.

By 2006/07, FOI complaints had reduced to 107. However delay still amounted to 30% of all complaints, despite steps taken by the departments to increase resources to FOI units following the Ombudsman's own motion investigation.

Use of FOI

The Attorney-General publishes an annual report on the operation of the FOI Act¹¹. The report of 2003-04¹² records information from 378 agencies which are subject to receiving FOI requests. The 10 Departments (including Victoria Police) received less than 22% of the total number of requests. Victoria Police received more FOI requests

¹¹ FOI Act section 64(1)

¹² Annual Report by the Attorney-General of Victoria on Freedom of Information for 2004

than any other agency (2,198 in 2003-04), but only four Departments (DHS, DOI, DOJ and DET) were listed in the 'Top 30' agencies.

In 2003-04 133 applications were made to VCAT¹³ for review of decisions refusing access to documents, of which 16 applications were made by Members of Parliament. In 2005/06 the number of applications to VCAT was almost the same (132).

Consultation with Ministers' Offices

As part of their portfolio administration, Ministers are advised about potentially sensitive FOI requests. There are sound reasons for this which are expressed in the Attorney-General's Improved Accountability Guidelines for FOI. Ministers and their staff may hold, or be aware of, documents relevant to a request. They may also be aware of matters relevant to the application of exemptions. The Improved Accountability Guidelines state that, in making a decision, 'the FOI officer should take into account the views of Ministers, Ministerial advisers (who are in effect representing the Minister), the Principal Officer in an agency and any other relevant person'.

The Improved Accountability Guidelines also require that 'where documents relate to a Minister's portfolio (except personal requests) and/or where the Minister could be asked by the media or in parliament to comment or explain, the agency will provide a brief to the Minister'. The brief is to be provided five days prior to the proposed release and include issues apparent from the documents proposed for release; background to the FOI application including the date of receipt; and the terms of the request. The Guidelines state that it is not the responsibility of the FOI officer to follow up if no input is received by the proposed release date.

Where the request relates to a Minister's portfolio or matters involving possible issues of liability (sometimes referred to as 'sensitive' requests), the Minister's office will be advised of the request when it is received. After the request has been fully processed, a brief is sent to the relevant Minister's office containing a copy of the request, the decision, the documents to be released, and an outline of the issues apparent from any documents to be released and background to the FOI request. Generally the Minister's office is given five days notice of the decision before it is sent to the applicant. Where the request is only for personal information and is not otherwise sensitive, it is sent directly to the applicant without any briefing to the Minister. The matters on which Ministerial briefings are provided vary between departments, as does the extent of the briefings.

FOI officers consulted in preparing the paper advised that the Minister's briefing includes a copy of the proposed decision letter. Some departments have a practice of

¹³ The figure of 133 excludes a number of apparently invalid and otherwise anomalous applications.

asking the program area responsible for the document search to provide to the FOI Unit, along with the search results, a draft briefing and in some cases any draft Proposed Parliamentary Questions for inclusion in the Minister's briefing.

FOI officers reported differing practices between departments, with some waiting for advice that a briefing to the Minister's office has been noted before sending out the decision unless the 45-day decision period has already expired, and others sending the decision on the fifth day after the briefing is provided whether or not the briefing has been noted.

All FOI officers consulted reported that the briefing on the proposed decision is sent to the Minister's office by way of advice. While some said there may have been occasions when the Minister's office was then able to advise of further documents which should have been included in the response, decisions on release were not altered as a result of the briefings.

Report on the Review

The Ombudsman received 63 submissions from agencies, organizations and individuals with a particular interest in FOI. DOJ prepared a 'Whole of Victorian Government' submission. In addition, separate submissions were received from DOJ, DHS, DOI, DPC, DTF, DVC and Victoria Police.

Submissions were also received from 12 councils, health agencies, universities, a media outlet, legal authorities and a number of interested citizens.

Investigation process

Evidence was gathered by a range of means, including:

- statistics
- reviewing policies and procedures
- data on staff resources
- interviews with agency staff
- holding several forums
- examining agency files.

In June 2006 the Ombudsman tabled his report on the review of the FOI Act in the Victorian Parliament (see www.ombudsman.vic.gov.au).

Key Findings

Statistics

- The 10 departments and Victoria Police receive 18 per cent of all FOI requests but are responsible for more than 67 per cent of applications to VCAT.

- The great majority of FOI requests are for information for private purposes, with only a relatively small number being for political or media use. Full access is given in response to 77 per cent of all requests. However, only 36 per cent of requests to departments and 31.5 per cent of requests to Victoria Police are given full access.
- Delay was a key issue. Only 56 per cent of FOI decisions by government departments in 2003-2004 were made within the statutory time frame of 45 days. Nearly 21 per cent of decisions took more than 90 days. Of requests dealt with by the Department of Human Services in 2003-4, 42 per cent of decisions were made within the statutory time limit and 37 per cent took over 90 days. This has improved however and since early 2005, the Department of Human Services has made over 65 per cent of decisions within the statutory time limit.
- Victoria Police has been unable to meet the statutory time requirement in a large proportion of cases. In the period from January to September 2005, Victoria Police had on average 365 active files of which, on average 147, or over 40 per cent, were more than 45 days old (the percentage over 45 days at any time varied between 24 per cent to 52 per cent).
- Its 10 officers each handle an average of 200 requests per annum compared with an average of about 48.5 for other departments.

File examination

- In many of the files examined requests were handled promptly, diligently and well. However, many files demonstrated undue delay.
- The Attorney-General's Guidelines advise five days should be allowed for noting by the Minister's office of decisions on sensitive FOI requests, but this was exceeded in many cases, often exacerbating delays.

Case study 1

A request for access to a report commissioned by a department, regarding a survey for a project, took about 35 days to process to the point of preparation of a proposed decision. The program area had recommended access be denied, in part because it believed the report was liable to be misinterpreted. The FOI officer decided to release the report. The proposed decision was then sent to the Minister's office for noting. The FOI officer then waited 26 days for advice that the Minister had been fully briefed on the sensitivities of the report. Release of the decision and the report was then further delayed until the return from leave of an officer who was thought best able to handle any press reaction to the document. The final notification of decision was 23 days overdue.

Case study 2

Internal review took 160 days. The proposed internal review decision remained with first the department's executive and then the Minister's office for lengthy periods. The decision was further delayed waiting on the preparation of PPQs. The original decision to refuse access to documents had obvious problems and was most likely incorrect. One of the problems identified included the decision to exempt certain information because a third party who was consulted objected to its release, despite having no reason or basis for the objection. There was no reference on file to these problems, which appear to have been completely overlooked in the internal review.

- In several cases examined the reasons given for claiming exemptions were misleading. In some cases departments asserted requests were unclear or voluminous with little or no justification. In many cases they failed to give proper assistance to applicants in amending their requests. The effect was to delay answering the request without appearing to exceed the time limits of the Act.

Case study 3

A department decided that a request for documents detailing expenditure on office improvements including art and furniture did not include in its scope expenditure on promotional posters and hire furniture. The applicant was not made aware of the decision to exclude these specific items.

As a result, the released documents gave a misleading impression to the applicant. In my opinion the applicant should have been made aware of the interpretation that was being applied and should have been allowed to ask for the further material. Deliberate withholding of information and documents on spurious and technical grounds betrays the public's trust in the FOI process.

- In a number of cases, requests were said to be unclear when it appeared they were 'voluminous'. This extended the time available to the agency.
- Some decisions showed little regard for the objects of the Act. Some responses provided material that might technically be relevant to the request but was of little or no value to the applicant. Some took advantage of every available exemption to provide as little material as possible.

Case study 4

A request sought access to documents relating to consultancy services provided by a specified company. The department adopted a definition of “consultancy services” taken from the Victorian Government purchasing Board’s (VGPB) Supply Policies and Guidelines which excluded “contracts”. The applicant was not made aware of the definition that had been applied or that a number of documents were then treated as irrelevant on the basis that they related to ‘contracts’ and not ‘consultancy services’. A file note referred to the exclusion of some documents as ‘lucky’.

The VGPB’s definition of ‘consultancy services’ may be appropriate in its context but was irrelevant to the request as made. In my opinion the response was misleading.

- In many cases statements of reason were inadequate. The material facts on which the decision was based were not stated and the documents for which exemption was claimed were not identified or linked to the reasons given. The reasons given for denial of access upon internal review were generally more considered and careful than the initial reasons for the decision.
- Examination of cases indicated little evidence that multiple requests overwhelmed the resources of the department. It did not support the need for an extension of time available to agencies to respond.
- The files examined did not suggest that third party consultation was necessarily a source of undue delay.

Case study 5

A request was made for access to a report commissioned by a department. Access was denied to the body of the report on the grounds that it was ‘not necessarily representative of final decision that may be taken ... release... would give rise to unnecessary conjecture, could be misleading and is capable of causing mischief and undermining the integrity of the decision-making process’ and that the document contained information relating to the personal affairs of individuals. The reasons stated that many comments made to the person who prepared the report ‘were informal in nature and some were expressed to be confidential. It would therefore be unreasonable to disclose the personal affairs information of those persons.’

These reasons exemplify the formulaic responses often given for denial of access which fail to reflect the real nature and content of the document. For the most part the references in the report to comments and submissions were paraphrased and anonymous, and the few identifiable references to individuals could have been deleted. Whether release of the document would have led to the predicted ills is hard to say, but nothing in the reasons explained why it was likely, reflected the content of the report, or indicated any balancing

of factors in favour of release. Other applicants also requested the report and, following an application to VCAT, the report was released, but by then decisions on the report's implementation had been made.

Conclusions

- Many of the difficulties experienced by applicants and FOI officers relate to the interpretation of requests and whether they are valid under section 17(2), i.e. does the request provide sufficient information to enable the identification of the document/s.
- While multiple requests and complex requests for sensitive documents can be demanding, it is part of the general flow of work for departments and other agencies for which their FOI units should be adequately resourced.
- The 45 days allowed for processing under the Act is already longer than is allowed by most Australian jurisdictions and the Ombudsman did not see grounds for the time to be extended for multiple requests. However, he recommended that up to a further 30 days be allowed for the purpose of consultation with affected third parties.
- If there is a reason that a decision cannot be made within 45 days, the agency should immediately advise the applicant in writing, providing details.
- At present few Victorian agencies fully comply with the publication requirements of Part II statements. This affects applicants' knowledge of the documents available and their ability to clearly frame requests.
- Departmental record management systems are often not designed or sufficiently well maintained to be an efficient tool for an FOI search.
- Victoria Police, the Department of Human Services, and some other departments have acquired software that enables them to edit electronically scanned copies of documents with a considerable saving in time over the previous manual methods. This would be a useful tool for other agencies and should be explored by them.
- Departments frequently claim exemptions on grounds of confidentiality or personal information without contacting the third parties whose interests are involved to establish and/or confirm the grounds for those exemptions.
- In many cases information about the reasons for exemption is prepared for internal use and advice but is not given to the applicant. In most cases where information such as a schedule of documents and the reasons for exemption is already prepared for advice to management or the Minister's office, it should be provided to the applicant.
- Some departments have pro forma documents and procedures that do not correctly reflect the requirements of the Act.

A summary of the recommendations and outcomes is at Attachment 1.

Legislative review

- While it is not necessary to establish a single regime to cover both access and privacy, the Ombudsman recommended the Act be amended to use the expression 'personal information', consistent with the Information Privacy Act.
- The review identified a number of sections of the Act which required amendment to ensure greater clarity about jurisdiction and improved ability to meet the objects of the Act.
- It was noted that The Department of Justice has a key leadership role to provide support and guidance to benchmark the performance of agencies.

Leadership and Open Government

The examination of FOI files and discussions with FOI managers has highlighted the importance of leadership in setting the culture within which FOI requests are dealt with.

The Act has a major role in supporting open government which is an important democratic principle. The executive managers of departments and other agencies therefore have a critical role in ensuring that the objects of the Act are met in reality and is not given mere lip service.

That is not to suggest that all FOI requests can or should be granted, or that both genuine disputes and mistakes do not occur from time to time. There are examples of times when granting an FOI request has been inappropriate and has caused real harm. Some applicants, including some 'professional' applicants, repeatedly generate requests that are unclear and lacking in focus and which are frequently either invalid or voluminous.

The challenge for agencies therefore is to maintain the openness which is a part of the objects of the Act while still protecting the interests of the public and of business and individuals in relation to confidential and private matters. In reaching that balance FOI officers inevitably are subject to pressures both from within the agency and from applicants.

Proposed changes to the Act

The Department of Justice proposes to make other legislative changes as well as those recommended by the Ombudsman, as follows:

- The Amendment Bill aims to introduce a new provision allowing part of a body to be a prescribed authority in the regulations. The new provision will also allow the Department of Justice to complete recommendation 11.
- Consequential changes to other sections of the Act resulting from proposed changes to Part II of the Act.

- Consequential changes to certain legislation due to proposed removal of conclusive certificates in relation to Cabinet documents.

Comments by Premier

Finally, the Victorian Government has publicly committed to providing greater access to government information. In a recent media statement, the Premier Mr Brumby said that:

“New FOI legislation would implement reforms of the FOI process recommended by the Ombudsman”¹⁴.

In my view, the proposed amendments to the FOI Act will go a long way towards achieving that outcome.

John R Taylor
Deputy Ombudsman
Ombudsman Victoria

¹⁴ Brumby vows to strengthen accountability in Victoria – Press Release 7/8/07

Attachment 1 - Summary of Recommendations and outcomes

No	Recommendation	Outcome
	Legislative recommendations	
1	Section 25 of the Act be amended in terms similar to section 22 of the Commonwealth FOI Act to enable agencies to delete material that is not within the scope of the request where deletion is both practicable and not contrary to the applicant's known wishes.	Agreed and implemented as part of the Terrorism (Community Protection) Further Amendment Bill (2006).
2	Section 21 of the Act be amended in terms similar to section 15(5) and 15(6) of the Commonwealth Act, so that where an agency or Minister determines in writing that the requirements of section 34 make it appropriate to extend the period referred to in section 21: a) the period is taken to be extended by a further period of 30 days; and b) the agency or Minister must, as soon as practicable, inform the applicant that the period has been extended.	Agreed. This recommendation is being considered as part of the development of an FOI Amendment Bill due for introduction into Parliament in the Spring 2007 session.
3	Section 21 of the Act be amended to extend the period for making a decision by up to 30 days where: a) a document which may be exempt under section 33 by reason of information that may be disclosed relating to the personal affairs of a person (including a deceased person), to enable the agency to seek the views of the person who is the subject of that information (or in the case of a deceased person, their next-of-kin); and b) where there is reason to believe that a document may be exempt under section 35, to enable the agency to seek the views of the person or government by or on behalf of whom the information was communicated, for the purpose of determining if the information was disclosed in confidence and, in the case of sub-section 35(1)(b), whether in all the circumstances it is against the public interest for the information to be disclosed.	As per recommendation 2
4	The expression 'personal affairs' in section 33 of the Act be amended to 'personal information' to be consistent with the Information Privacy Act 2001.	As per recommendation 2

No	Recommendation	Outcome
5	Section 25A(8) of the Act be repealed.	As per recommendation 2
6	The Ombudsman Act be amended to expressly provide that, subject to the provisions of the Act, the functions of the Ombudsman include enquiring into or investigating administrative actions taken in any agency within the meaning of the Act and in connection with the Act.	As per recommendation 2
7	Section 50(2)(e) be amended to provide that a person who has consented to the release of a document may not apply to the Victorian Civil and Administrative Tribunal (VCAT) for review of the decision to release that document, so that the 60 day reverse-FOI period will not apply.	As per recommendation 2
8	Section 33 be amended to adopt the definition of 'next of kin' in section 3 of the Human Tissue Act 1982.	As per recommendation 2
9	The Act be amended to clarify that where the decision is that no documents exist relevant to a request, a complaint can be made to the Ombudsman and there is no right of review.	As per recommendation 2
10	As part of any wider review of the Act, consideration be given to review the burden placed on the RSPCA by its declaration as a prescribed authority.	As per recommendation 2
11	As part of any wider review of the Act, consideration be given to the possibility of amendments to allow FOI obligations for non-government bodies declared as prescribed authorities to be limited to those functions or activities which are supported, directly or indirectly, by government funds or other assistance.	As per recommendation 2
	Process recommendations	
12	Victorian FOI agencies adopt the following practices, to be supported by practice notes issued by the Department of Justice: a) where an agency finds uncertainty or ambiguity in interpreting a request, it advises the applicant as soon as possible. Consultation with applicants by telephone or in person, where appropriate, is encouraged to expedite the process;	Agreed. The 10 Departments and Victoria Police have implemented those recommendations which were not already part of their standard procedures.

No	Recommendation	Outcome
	<p>b) where applications are unclear or potentially voluminous the agency, where appropriate, assist the applicant to make a valid and non-voluminous request. This is to be done by giving information such as a fair indication of the documents or classes of documents it holds that may relate to the subject of the request or of the type of information recorded by the agency and the way in which it is kept;</p> <p>c) agencies not adopt artificial definitions or constructions of the terms in which a request is expressed. Any reasonable doubt is to be clarified as soon as it is identified. The applicant is to be advised if an exclusionary definition is applied and the documents or classes of documents excluded;</p> <p>d) subject to the recommendation that section 25 of the Act be amended, where only part of a document appears relevant to the topic, the agency is not to delete the irrelevant information unless it is clear the applicant would be satisfied with the relevant part only of the document. Except with the agreement of the applicant, only discrete parts or sections of documents are to be deleted for irrelevance;</p> <p>e) where documents do not exist or cannot, after a thorough and diligent search, be located, a notice under section 27 is to advise the applicant of what searches have been conducted and/or what other steps have been taken to establish that the document does not exist or cannot be located and, in the case of a document that has existed, when and where it is last known to have been. This is in addition to the section 27(1)(e) requirement to notify the applicant of the right to complain to the Ombudsman;</p> <p>f) where a schedule or similar descriptive material is prepared in relation to those documents to which access is denied, it is to be provided as a part of the section 27 notice except to the extent that it would provide information which itself would be exempt</p>	<p>Practice Notes addressing these issues have been drafted and posted on the FOI Online website.</p>

No	Recommendation	Outcome
	<p>or where it is proper, having regard to section 27(2) and section 33(6), to withhold the information; and</p> <p>g) where an agency receives multiple requests and believes it will not be reasonably able to resolve them in 45 days, the agency consult with the applicant over the priority of the various requests and if appropriate negotiate to reduce the scope of the requests.</p>	
13	<p>DOJ prepare a practice note for the guidance of Victorian FOI agencies, detailing:</p> <p>a) what is required for compliance with the section 27 obligation to provide reasons for any decision that an applicant is not entitled to access (in whole or in part) to a document, that access be deferred, or that a document does not exist;</p> <p>b) what information should be provided to applicants as a matter of proper administrative practice; and</p> <p>c) when it is proper for information to be withheld.</p>	<p>Agreed and Practice Notes addressing these issues have been drafted and posted on the FOI Online website.</p>
14	<p>DOJ issue practice notes setting acceptable standards for handling FOI requests, including decision letter and a set of standard-form letters.</p>	<p>Agreed and Practice Notes addressing these issues have been drafted and posted on the FOI Online website.</p>
15	<p>DOJ provide advice to all FOI agencies on any significant developments in FOI including legislative changes and decisions interpreting the Act.</p>	<p>Agreed and Agencies are advised of significant developments in FOI by direct notification (letter, e-mail, etc) and via FOI Online website.</p>
16	<p>In addition to holding monthly meetings of department FOI managers, DOJ facilitate the sharing of experience and expertise amongst other FOI agencies.</p>	<p>Agreed. DOJ has already convened a number of professional development seminars and regional FOI forums</p>

No	Recommendation	Outcome
		and more of each is planned.
17	Victoria Police maintain more detailed data on FOI requests, particularly in relation to timeliness.	Agreed and implemented.
	Administrative recommendations	
18	<p>The Ombudsman recommended that:</p> <p>Guidelines are issued indicating that where government agencies engage non-government entities to carry out functions prescribed by statute, they ensure that the terms of contract give the agency the right of access to documents produced in the course of performing those functions.</p>	Agreed and Practice Notes addressing these issues have been drafted and posted on the FOI Online website.
19	A mechanism is implemented to collect and record the level of officers involved and the time spent responding to FOI requests.	Agreed and to be implemented as part of the collection of data for the 2007/08 FOI Annual Report.
20	Agencies provide access to documents in electronic form where requested by applicants, unless it would be unreasonable to do so.	Agreed and to be implemented, where appropriate.
21	Either a guideline is issued or the Act amended to define the expression 'routine request'.	Agreed and Practice Notes addressing these issues have been drafted and posted on the FOI Online website.
22	Either a guideline is issued or the Act amended in relation to applying and waiving charges.	Agreed and Practice Notes addressing these issues have been drafted and posted on the FOI Online website.
23	VCAT be given power to declare a person a vexatious applicant, with the effect that further applications by that person may be made only with the consent of VCAT.	As per recommendation 2

No	Recommendation	Outcome
24	Government departments and agencies review their compliance with Part II of the Act.	As per recommendation 2
25	Part II is reviewed as a matter of urgency, giving consideration to adopting a system of publication schemes on the model of the United Kingdom FOI Act.	As per recommendation 2
26	DOJ should monitor the compliance by agencies with Part II.	As per recommendation 2