

**'Ways forward in improving access to information' Moira Paterson –  
discussion notes for Future Directions in Rights-based Recordkeeping for Out-of-  
Home Care Symposium, 14 November 2024**

As I've previously [argued](#), access to one's personal information is an important aspect of the human right to privacy. Today I'd just like to discuss briefly ways forward in improving access to information under information access laws such as FOI Acts.

***Victorian amendments***

The main legislative change that has occurred in recent times is the enactment in Victoria of the [Justice Legislation Amendment \(Integrity, Defamation and Other Matters\) Act 2024](#) which is now in operation. Part 8 makes some important changes to the [Freedom of Information Act 1982](#) in terms of consultation and power of the Information Commissioner to resolve complaints informally.

In deciding whether an exemption applies, an agency is only required to consult with third parties where it is 'reasonably practicable'. This change affects all the exemption provisions that require third party consultation. I think that's important especially given the number of provisions that required this.

The Act has also been amended to provide that OVIC employees now have a duty to assist an individual to make a complaint in writing, if the individual is otherwise unable to do so.

Finally, the Information Commissioner also has more power to resolve a privacy complaint informally.

***The Integrity and Oversight Committee report***

Beyond that in September 2024 the Parliament of Victoria, Integrity and Oversight Committee, published an important report on [The operation of the Freedom of Information Act 1982 \(Vic\)](#). This recommended reforms to the FOI Act to establish a "new third-generation 'push' FOI system, including-

RECOMMENDATION 99: That legislation establishing Victoria's new third-generation 'push' FOI system authorise, strongly encourage and support agencies (and ministers) to release personal and health information through the informal-release mechanism as a first port of call, and establish, for that purpose, administrative access schemes for frequently requested information.

The report contains some useful comments regarding care leavers at p 200 including

- That the Committee considers that FOI legislation which authorises and encourages agencies ... to establish administrative access schemes under the informal release mechanism will allow them greater flexibility to respond effectively and efficiently to such requests; and
- That this should be supported by appropriate guidance issued by OVIC. In the Committee's view, this kind of arrangement is preferable to establishing an alternative statutory release scheme in child protection legislation, such as in the Children, Youth and Families Act 2005 (Vic).

The Committee also notes that a significant proportion of out-of-home care is provided by non-government contractors, not all of whom are subject to the FOI scheme. Presently, access to child welfare records held by such entities is provided under the [Privacy and Data Protection Act 2014](#). It further states that it considers that it would be prudent for the Victorian Government to explore the feasibility of making such contractors subject to the FOI scheme to ensure that Care Leavers' enforceable access and review rights under FOI legislation are secured with respect to child welfare records. Sadly, however there is no specific recommendation to this effect.

### ***Potential value in working with FOI regulators***

However, while these recommendations are great, I don't have much confidence that the government will take any action in the near future to enact them. Another research study that I have recently finished seemed to suggest a lack of interest in FOI on the part of Victorian ministers.

On the other hand, I would suggest that FOI regulators have a potential role to play in improving the situation. The FOI regulators in Victoria, South Australia and Western Australia have all expressed support for a report of another project in which I participated, [The culture of implementing Freedom of Information in Australia – Office of the Victorian Information Commissioner](#). That report similarly recommended implementation of push regimes and also cautioned about the nexus between record keeping and FOI access. I would suggest therefore that it would be really worthwhile to work with FOI regulators to get them to implement measures that encourage informal release as far as possible. I note in that regard that the Victorian regulator, which played a key role in the genesis of the FOI Culture report already has in place [guidance materials](#) that encourage the informal release of information.