

TRANSCRIPT

INTEGRITY AND OVERSIGHT COMMITTEE

Inquiry into the Operation of the *Freedom of Information Act 1982*

Melbourne – Monday 18 March 2024

MEMBERS

Dr Tim Read – Chair

Hon Kim Wells – Deputy Chair

Ryan Batchelor

Jade Benham

Eden Foster

Paul Mercurio

Rachel Payne

Belinda Wilson

WITNESSES

Susan Middleditch, Deputy Secretary, Corporate and Regulatory Services, and

Robin Davey, Manager, Freedom of Information Division, Victoria Police.

The CHAIR: We resume the public hearing of the Integrity and Oversight Committee's Inquiry into the Operation of the *Freedom of Information Act 1982*. To the witnesses, before you give your evidence, there are some formal things to cover, so bear with me.

Evidence taken by this committee is generally 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 once 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.

I welcome, from Victoria Police, Susan Middleditch, Deputy Secretary, Corporate and Regulatory Services, and Robin Davey, Manager of the Freedom of Information Division, who are giving evidence now. Do you have any introductory remarks?

Susan MIDDLEDITCH: If I may.

The CHAIR: Tremendous, thank you.

Susan MIDDLEDITCH: Thank you. Good afternoon, everybody. On behalf of Victoria Police, thank you for inviting us to appear before this inquiry today and for the opportunity to share our views on FOI. We recognise the important role that the Freedom-of-Information [FOI] laws play in keeping government accountable and providing access to information, which in many circumstances aids access to justice for the public.

Just to provide some context, Victoria Police receives around 4000 applications every year, easily the most of any agency. Of the requests we received last year, 85 per cent were personal – that means that they were predominantly for documents regarding the applicant – and 15 were non-personal. The types of applications we receive are varied: about 30 per cent last year applied to motor vehicle accidents, 30 per cent from victims of crime, 10 per cent from offenders, 6 per cent related to family violence and 5 per cent to historical sexual assault, 5 per cent from Members of the Parliament or the media, 3 per cent of applications from prisoners and 1 per cent from Victoria Police members either present or past.

As a law enforcement agency, Victoria Police holds a large amount of sensitive information about individuals, as you would expect. This information is collected and held to keep the community safe. By its very nature a lot of this information is not suitable for release under FOI due to the role of Victoria Police and the impact of releasing this information on third parties and the community. When it comes to VicPol [Victoria Police] information, we predominantly record our information by incident rather than by individual. Each incident will involve victims, offenders, witnesses, police members, et cetera, all of whom will have sensitive personal information stored by Victoria Police in those documents. For example, a motor vehicle accident will be recorded as a motor vehicle accident incident, not by driver, passenger or any other person involved.

Further, and as I mentioned, about 85 per cent of last year's applications were classified as personal. The intersection between information recorded by incident and the majority of requests being of a personal nature means that ensuring that we release the correct and applicable documents to applicants requires considered judgement. We do acknowledge that one of the purposes of the FOI Act is to protect the private and business affairs of persons in respect to whom the information is collected and held by agencies, and because of this and in this context we do consider each and every FOI application individually. As a result of the types of requests received and the way information is stored, the most used exemption in 2022–23 was section 33, personal affairs, which was used over 2700 times, and the next most used exemption, the law enforcement exemption, was used 836 times.

We do support the principles of FOI, and we are committed to ensuring the public has access to our documents appropriately. Our submission, as you would have read, has four suggested changes to the current Act. The first one is surrounding the exemption for the protection of intelligence holdings and the potential expansion of that section to include intelligence gathered throughout Victoria Police and not just that by the intelligence and covert support command. We have also requested consideration of the voluminous time frames process so that the time taken to negotiate the terms requested is considered separately from the 30 days that we have to process the request once the agreement is reached. Similarly, we request consideration of changing an inadvertent loophole that allows applicants to amend personal records even after being declined by Victoria Police, OVIC [Office of the Victorian Information Commissioner] and VCAT [Victorian Civil and Administrative Tribunal]. Finally, we would also suggest allowing sufficient time to consider appeals of OVIC decisions, which is currently 14 days for Victoria Police, and potentially bringing those in line to the applicant provisions, which is 60 days.

We welcome this inquiry as well as the feedback received in submissions that apply to Victoria Police. We have heavily invested in our FOI team and processes, and we are always open to exploring other ideas of how our internal processes can be improved. Thank you, and I look forward to answering further questions from the committee.

The CHAIR: Thank you. Actually, I want to ask something about something you just said. Could you just give us a very quick example of the sort of personal information that might commonly trigger that personal affairs exemption that was so commonly used?

Susan MIDDLEDITCH: Of course. As I said, we collect data in terms of incidents, so there could be all sorts of personal information in the incident – obviously a person’s information of name, address, et cetera. It could also include previous or current criminal records through our LEAP database as well as any ongoing court matters, but there are also family violence considerations and all sorts of other police data that is in there as well.

The CHAIR: Okay, great. That was what I needed. And presumably that would just lead to a redaction, rather than denial of any information?

Susan MIDDLEDITCH: Correct. Robin and his team very thoroughly review all of those documents and do redact personal information where that is appropriate.

The CHAIR: Thank you. Let us go to Rachel Payne.

Rachel PAYNE: Thank you, Chair. Thank you both for your time today. As a committee we have received evidence that Body Worn Camera footage of police officers should not be excluded from the operation of Victoria’s FOI Act. Are you able to share what your view, or Victoria Police’s view, of that is?

Susan MIDDLEDITCH: Yes. Firstly, what I would say is the determination of what is included in the FOI Act or any other legislation is a matter for government. The comment I would include is that currently Body Worn Camera footage is actually protected information under the *Surveillance Devices Act* and therefore cannot be released under FOI in accordance with section 38 of the FOI Act. Body Worn Cameras are deployed during all active police work and therefore capture an enormous amount of footage. Like all other types of surveillance devices it also includes private conversations of members of the public. We also use Body Worn Cameras to take statements in family violence matters and other incidents, which may be used as evidence in court hearings. We believe that releasing Body Worn Camera footage through FOI requests would have a significant adverse impact on the protection of privacy: firstly, that exists in the context of police and our PSOs, and it would also potentially have an impact on victims. There is no restriction on the use of that information that a person may use once they have obtained the information under the FOI Act, and we would have some concerns that Body Worn Camera footage may then potentially lead to widespread public dissemination – so on YouTube, Facebook, et cetera – which in turn may have impacts on the privacy of all of the people that are actually included in that Body Worn Camera footage.

Body Worn Camera footage also includes operational police tactics. We would be concerned, with the release of raw footage, around releasing information on operational police tactics. Then overlay that on the consideration of the administrative impact that that would have in terms of reviewing and editing Body Worn

Camera footage. Robin was telling me on the way up that it takes about four times as long as the time that is in the Body Worn Camera footage to actually review and edit that.

There are already a number of prescribed purposes where Body Worn Camera footage can be released, and the two that I can comment on are, firstly, we do give copies of Body Worn Camera footage where a person has been arrested for an indictable offence, so that is theft, criminal damage or serious assaults. Those persons can attend a police station and request that Body Worn Camera footage, and we are required to do that within seven days. Also, where there is a complaint against a police officer, the person can also attend a police station and review that Body Worn Camera footage for that complaint.

Kim WELLS: Just a couple of questions on that: so that is obviously before it goes to court that the offender or accused can have that.

Susan MIDDLEDITCH: Correct.

Kim WELLS: After it is played in court, hypothetically, would police have a problem with it being released as part of an FOI publicly if it has already been released publicly in a courtroom anyway? In an open court I mean.

Susan MIDDLEDITCH: I will ask Robin.

Robin DAVEY: That is one of the exceptions in the *Surveillance Devices Act*, if it has been played in court. If you can identify the part – that is the tricky bit, identifying which part of the Body Worn Camera footage has been played in court – then you can release it under FOI under the current rules.

Kim WELLS: Right. So that is one of the exceptions?

Robin DAVEY: Yes, under the current rules.

Kim WELLS: Okay. All right. Thanks.

The CHAIR: Just before you go on, can you just clarify: If a complaint has been made against police, a person could go to a police station and watch the footage. Can they take it away with them?

Susan MIDDLEDITCH: No. They can view the footage.

The CHAIR: They can view it. If they have been charged, does the same apply, or can they take it away with them then?

Susan MIDDLEDITCH: No, my understanding is if they have been charged with an indictable offence, we provide a copy of the footage.

The CHAIR: Presumably with appropriate redactions of third parties or whatever.

Susan MIDDLEDITCH: We would review the footage and make sure they receive the appropriate footage.

The CHAIR: And this can be used by their legal representatives and so on?

Susan MIDDLEDITCH: Correct. Obviously through a court proceedings when there is disclosure, et cetera, we release the Body Worn Camera footage, as we would any other evidentiary disclosure.

The CHAIR: Thank you.

Paul MERCURIO: Can I also add: you mentioned quite a few times about editing that footage – can you clarify what you are editing or why you edit it?

Susan MIDDLEDITCH: It is about the time frames in which we are releasing the information. If we have members that are going to an event, there is not just one, there can be many, and they turn on their Body Worn cameras at different times. So, as they are approaching the incident, one will turn on their Body Worn Camera and start to actually record before they even attend the incident. They will be talking through operational tactics, doing a risk assessment of what they are potentially going into, et cetera, and then you could have five

or six members from different angles. So it is not just one Body Worn Camera's footage, and it is not just the same time frame. There are multiple time frames and multiple angles. If we were to release that under FOI, we would need to review all of that and ensure that it was only the appropriate period of time and edit, redact the operational tactics and then the private information that is gathered through that Body Worn Camera footage.

Kim WELLS: Sorry to be a pain – so if there were three police officers turning up to a domestic violence situation and someone is being charged, then would the offender have access to the three Body Worn Cameras? They could be there at a police station looking at three different sorts.

Susan MIDDLEDITCH: Sure, yes.

Kim WELLS: Yes, okay.

The CHAIR: Thank you very much. Let us go to Jade Benham.

Jade BENHAM: Terrific, thank you. Considering all that and third parties and the amount of information with body cams as well as everything else, does Victoria Police consider that third parties' privacy rights are adequately protected under the FOI Act?

Susan MIDDLEDITCH: We do currently think that the FOI Act does adequately protect third-party rights. We do obviously acknowledge the purposes of the FOI Act, and one of those is to protect the private and business affairs of people in respect to whom the information is collected and held by agencies. And as I said, we do hold a lot of information on individuals, so therefore we see that we actually have a responsibility to safeguard that information as well. So, yes, we would say that the Act is fit for purpose for that purpose.

Jade BENHAM: Okay. Further to that, could you just explain Victoria Police's view on the FOI Act section 31, the exemption in relation to probable prejudice to police investigation and related matters?

Susan MIDDLEDITCH: I might ask Robin to comment on that.

Robin DAVEY: So, 31 sort of follows the process of investigation. I guess 31(1)(a) talks about whether release of information would impair an investigation. We are not going to release information that would undermine an ongoing investigation. 31(1)(b) talks about the fair trial of an individual. We are not going to release information before the matter goes to court. And then – I am not going to do it from memory – 31(1)(c) talks about confidential sources. Again, we want to protect confidential sources. 31(1)(d) is about police methodology, which is a two-limbed exemption, the second one of which is the one that I have fights with members about, because the methodology has to be one that if we tell people about it, we will not be able to use it in the future, in layman's terms. So it is not just that it is police methodology, it has got to be methodology that, if we release details of it, it will become something that is not useful in the future. It is not, we pull people over for speeding, it is a bit more detailed than that.

Jade BENHAM: Which then could relate back to body-cam redactions and things like that.

Robin DAVEY: Yes, possibly.

Jade BENHAM: Potentially.

Robin DAVEY: Yes. And then 31(1)(e) talks about safety of people involved in law enforcement and people who provide information in the law enforcement environment – informers, et cetera. That is sort of a really broad summary of the law-enforcement exemptions, if that makes sense. It is all the different aspects of the law-enforcement environment, if you like.

Jade BENHAM: Is that adequate at the moment?

Robin DAVEY: I think so. I think we have got a broad coverage. It is in the intelligence holdings that, as our submission talks about, I think there are some gaps in what we do, because we have evolved as an organisation.

Jade BENHAM: Okay. Thank you.

The CHAIR: Thank you. Let us go to Kim Wells.

Kim WELLS: In your view, how might mandatory consultation requirements under the FOI Act be improved to lessen the burden on agencies like Victoria Police?

Susan MIDDLEDITCH: One of the challenges with some of the applications we get in Victoria Police is the broad requests that we get, and on first blush of that Robin and his team look at it and go, 'There's a lot in that,' and it is not bounded very well. So where we can consult with the applicant and redefine those requests, it is helpful in terms of our ability then to provide exactly the information and documents that the applicant is looking for. Some of that mandatory consultation process will help. In our submission we have suggested that that time frame could well be extended. Did you want to add to that?

Robin DAVEY: Yes, so the amendments made in 2017 have actually assisted. I was a little bit sceptical when they were proposed, but our experience is that about 25 per cent of people we consult with have agreed to release personal information, which was much higher than I anticipated it would be, so it has had a positive effect. Consultation with third parties – 15 days is not quite long enough to do it properly, and the Commonwealth Act provides 30 days for consultation in relation to personal privacy in particular. I think that would be a useful amendment to the Act, to increase the time to consult. We could therefore do it a bit better and a bit more fulsomely. The current wording of the Act, where it talks about, 'You consult where it's practical and reasonable in the circumstances in relation to personal privacy and confidentiality' – I think they work. There is enough room there to make some sensible, logical decisions about when you do, when you do not, who you talk to and who you do not. So I am quite happy with the Act at the moment, but an increase from 15 to 30 days to get that done would certainly be beneficial to allow us to release a bit more information, to talk to some more third parties and possibly release some more information.

Kim WELLS: Okay, thanks.

The CHAIR: Thank you. Just another question from an information-management perspective: What barriers does Victoria Police face in providing timely access to information and adapting to a push FOI model?

Susan MIDDLEDITCH: As I said in my opening comments, probably the main barrier is the way in which we store information around the incident and not around an individual. Therefore, when we are gathering those documents and that information in terms of reviewing, we are reviewing it from an incident perspective, and, as I mentioned, there will be all sorts of people that are recorded, and information about them that is recorded in that incident. In terms of a push methodology, Victoria Police is very committed to proactively releasing information, but as I also mentioned, 85 per cent of our applications are actually applications around private individuals, so therefore that information does not lend itself of course to a push methodology. Where we do already do proactive release of a lot of our corporate information, when it comes to the types of applications and the types of information that we are releasing under Freedom of Information, it does not naturally lend itself to a proactive release process.

The CHAIR: Okay. Hospitals sometimes give patients discharge summaries when they leave. You could in theory give information to people you have charged or been investigating as a routine. That could be a form of push release of information. Have you considered anything like that?

Susan MIDDLEDITCH: It is an interesting proposition. I do not know whether in Robin's time we have considered that sort of push of information, but not during my time at VicPol. I am certainly happy to take it away and ask. Have we?

Robin DAVEY: No.

Susan MIDDLEDITCH: We would have to take that on notice, if we may.

Robin DAVEY: I guess, yes, it is not really an FOI thing, because we react to questions we get asked, in my world.

The CHAIR: Of course. Let us go to Ryan Batchelor.

Ryan BATCHELOR: Thank you, Chair. I just want to talk a bit about your processing times. We have seen some evidence we have had from other submissions about the length of time it takes Victoria Police to get

through. I think the Police Association used a figure of about 35 weeks. I do not know how accurate that is. I am interested in understanding whether you think that is a result of the volume of applications you are getting and the type and nature attached to that as a resourcing question, or whether you think – how much of it is sort of legislative complexity of processes under the Act? Whilst we cannot fix the volume and we cannot fix the resourcing question, are there things from a legislative efficiency point of view that you think the Committee should be thinking about in order to help reduce some of those time frames for delay?

Susan MIDDLEDITCH: The Police Association is not wrong. I think our current general time frame is 36 weeks, so they were not wrong in saying that. We realise that that is well outside of the time frames that are required under the legislation. The answer to your question is multifaceted, to be perfectly honest. I observe that prior to the legislative changes that moved the 45-day time period down to 30 days, Victoria Police did not have a backlog of overdue applications back in 2017–18, so therefore certainly the shortening of the time frame had an immediate impact on that. I would also observe that the complexity and the open-endedness of a number of the requests that we have been getting since that period of time makes our FOI applications far more complex in terms of working through exactly what applicants are looking for.

In saying that, we have introduced a number of initiatives to try and move towards the most effective FOI-processing team that we can within the available limitations to VicPol. Over the last 12 to 18 months, we have included 14 additional FOI-processing staff into Robin's team. Like every other government agency, we have similar challenges in keeping people in those roles. We have a large turnover, so therefore we are continuously recruiting into those roles, but, in the main, the majority of those are filled. We do now triage requests for FOI applications, particularly ones that are overdue, to ensure that they are still required. We also have entered into a process where we do advise applicants of likely delays and try and make an assessment of the relative importance and prioritisation of those requests. And a number of the larger law firms particularly have been successfully engaged around the complexities of the FOI and requests, and we keep in touch with them to make sure that we are providing information as they might need too.

Ryan BATCHELOR: Sorry, just on that, you mentioned that 30 per cent of the requests are coming with respect to motor vehicle claims. Would they largely be coming via law firms, or are they –

Robin DAVEY: To a very large extent, yes.

Ryan BATCHELOR: Right, okay. Sorry, I did not mean to interrupt, but I just wanted to –

Susan MIDDLEDITCH: No, that is all right. And a large number of those will be for the law firm to do an initial assessment as to whether there is any potential liability.

Going back to your question, we have now trained all of our staff in lean methodologies – we have put a lean methodology process over our FOI processes, and we are continuing to work through the best way we can to make that more efficient. The types of applications that we get are complex and many of them are very broad in their initial requests. As Robin said, the early consultation that we can do around trying to make those applications more targeted and us producing exactly what the applicant wants is very helpful to us.

Ryan BATCHELOR: Do you think that the legislation provides you – this has come up a couple of times, where people have said working with applicants to get the scope right makes the whole process better.

Susan MIDDLEDITCH: Yes.

Ryan BATCHELOR: Do you think the legislation gives you enough scope to do that back and forth with the applicant to try and actually get to what they are interested in, not asking for more than they possibly need?

Susan MIDDLEDITCH: I think some of the time frames in the current legislation, as Robin said before, do not enable a really fulsome consultation with the applicant. So if we have more time to do that, then that would help. The legislation also does not allow for – once we have consulted and agreed on a new scope, the 30 days to respond does not restart. So you are doing your consultation process and the time frame, the 30 days, is still ticking along. Noting that we breach the 30 days regularly because of the complexity, the fact that that time frame does not start again does not help. Certainly if there was a process that was being contemplated where we could work with applicants to scope the FOI request adequately in more detail that meets the applicants' requirements but also assists with our processing, that would help.

Ryan BATCHELOR: Two things, but you can take them on notice if you want. First, you mentioned the retention issues, just in general. But what do you think the turnover in the team is on an annual basis –

Susan MIDDLEDITCH: Robin can answer that off the top of his head.

Ryan BATCHELOR: and then how long do you think it takes, in training terms, to get a new FOI officer properly trained? And you can take them on notice if you want. I am happy to –

Robin DAVEY: We specialise. The FOI process of Victoria Police is we have got staff who will do the doc [document] search, different staff who will do the consultation with third parties and then staff who assess and make the decision. Obviously the training for the doc search staff is a lot less, consultation not so much and assessing documents takes longer, so there are different time frames involved. We have had some success in recent times in employing some return-to-work non-operational police members, who are non-operational for a whole raft of reasons, to come in and work with FOI as a return-to-work process. We have got a few of them working with us at the moment. They are really easy to train because a lot of our doc search training is about ‘This is how Victoria Police works,’ and they have got a fair insight into that, having been 14-plus-year Victoria Police members. So we have had some success there. The training for the doc search people – they can be quite productive within a few weeks. Consultation is a little bit more, and it is some months for an assessor. Again, FOI is a really good spot to work because you never stop learning. You can be a productive assessor after a few months training, but you keep learning along the way. You start with the easier files, and you progress through. Our retention rate varies a lot. I think I did some stats last year for my boss that said I had recruited something like I think 26 positions – it might have been 36 actually – of the 39 that I have got, in the last couple of years.

Ryan BATCHELOR: Right. That is a lot.

Robin DAVEY: So it is very high. Now, there were circumstances. We had some agency staff working for us for a while, and they boosted the numbers up. But at the moment turnover seems to be quite high. We have just gone through that, so right now my problem is I have got a lot of inexperienced staff that I am training, but I hope I will keep them for a while.

Ryan BATCHELOR: Thanks very much.

The CHAIR: Eden Foster.

Eden FOSTER: Thank you, Chair. My question is about the format of responses to requests. The Committee have received evidence that FOI applicants should be able to request that agencies provide information in a particular format in response to their request, such as electronic format or rather hard copy. What would you say is VicPol’s view on this?

Susan MIDDLEDITCH: We would agree with that. The Act currently allows applicants to select the form of access they require, and certainly since COVID our preferred method of providing those documents is via email. We do also enable USBs if the information is too big via email. We only now provide hard copy documents in very rare circumstances. The only challenge that we would acknowledge is that our organisation does not allow for documents to be shared via SharePoint, and that is just a security issue for us. But other than that, yes, electronic is our preferred method.

Eden FOSTER: Thank you.

The CHAIR: Very good. Paul Mercurio.

Paul MERCURIO: Just going on from that, your submission noted that you have proactively released the Victoria Police Manual, but the Committee understands that it is not published on the force’s website. I guess the question is: Has Victoria Police considered publishing it electronically in a free, accessible form on your website?

Susan MIDDLEDITCH: Currently there is a subscription service to the Victoria Police Manual, and we release it through that subscription service. I am also informed that there is a copy at the State Library, except I suspect it is extremely old. But, yes, we are currently investigating providing that Victoria Police Manual on our website.

Paul MERCURIO: For free?

Susan MIDDLEDITCH: For free, yes.

Paul MERCURIO: Who would subscribe to it, just out of interest? You said there is a subscription. I am curious about who would.

Robin DAVEY: Law firms will.

Susan MIDDLEDITCH: Law firms mainly.

Paul MERCURIO: Okay. Makes sense.

Susan MIDDLEDITCH: Yes. The only comment I would make – and this goes for the subscription service as well – is there are a number of sections in the Victoria Police Manual that go to operational police methods and tactics, and they would remain confidential within VicPol. So we would not release those.

Paul MERCURIO: Yes, okay.

The CHAIR: Very good. Let us go to Belinda Wilson.

Belinda WILSON: Sorry, I missed a few minutes; you started early.

The CHAIR: Yes, we did.

Belinda WILSON: As you may be aware, jurisdictions like New South Wales, Queensland and the Commonwealth have push FOI models that promote proactive and informal release. I just wondered if you have spoken with the police force[s] in these jurisdictions, and if so, what insights have they offered regarding their experiences?

Susan MIDDLEDITCH: We have. And as I mentioned in my opening comments – I apologise for you missing those – about 85 per cent of Victoria Police FOI applications are due to private individuals. I know from speaking to our other police colleagues, particularly in Queensland and New South Wales, they have the same challenges around their FOI applications as well in terms of the types of applicants they get. As I was explaining in answer to an earlier question, the fact that those are requests from private individuals means there is a lot of private information in there, which hampers our ability to do push or proactive release of information. Of course we are very committed to doing proactive release of all of our corporate information, and we have reviewed whether there is other information that we can proactively release. But when we balance that with the privacy of the individuals and through the requests that we are getting through FOI, we think there is still a balance there about considering the privacy needs. We think that the FOI application process for those purposes is the best trigger for individuals to gain access to their information.

Belinda WILSON: Thank you.

The CHAIR: Thanks. I just want to go back to section 31 briefly. I think in your submission you mentioned the exemption section 31(3) of the Act and a need to amend that to protect operational information. I wonder if you could just expand on that for us.

Susan MIDDLEDITCH: Sure. When that section was included in the Act, I think in 2014 –

Robin DAVEY: It was included in the very beginning.

Susan MIDDLEDITCH: In the very beginning. There we go.

Robin DAVEY: Yes. We have changed the name a bit along the way.

Susan MIDDLEDITCH: So the exemption under that Act is around intelligence documents and records that are stored by our intelligence and covert support command, ICSC. The contemporary gathering of intelligence now sees intelligence information being created by the command or area that it relates to rather than centrally at ICSC. While that streamlines an improved operational police work, it has also created a legislative gap, whereas the FOI exemption does not apply to intelligence documents that are prepared outside

of ICSC. As we have mentioned in our submission, what we would like to see is a closing of that legislative gap and the exemption being to intelligence documents being held by Victoria Police rather than just intelligence documents being held by ICSC. If that legislative gap is not closed, there is a risk for us that the general intelligence that is gathered out in our other regions and commands potentially could be used for counter purposes to crime prevention and community safety.

If I can just give an example for that: when I am talking about contemporary intelligence gathering, our sworn members in stations right across the state will be and may be preparing intelligence documents from things that community members may have reported, et cetera. A person of interest might be down at the local pub with three or four of his mates, and that can form an intelligence document by the station. That is not exempted currently under the FOI Act, where if it was prepared by ICSC it would be exempted.

The CHAIR: Okay, thank you. I have a question on an unrelated matter. A lot of the exempt information that your staff reviewing documents would be trying not to release would relate to confidential third-party information sources and so on. Is there something that could be done with regard to the way the information is recorded or entered so that at the time the information is recorded it is made clear that that is confidential and not for disclosure? Have you considered any process whereby, at the time the document is created, it could be somehow quarantined?

Susan MIDDLEDITCH: If your question is ‘Have we considered it?’ the short answer – given that Robin and I are looking at one another – has to be no.

The CHAIR: I think you have answered that one. Do you think it might be possible?

Robin DAVEY: I do not know if this answers your question or not, but the way incidents are recorded is that the front page will say ‘the offender’, ‘the affected family member’ – Joe Smith, Mary Smith – and then the narrative will talk about ‘the offender did this’, ‘the affected family member did that’, so that when we are releasing the information we redact the names on the front page and we can release the rest. So the story gets told about the people involved and we are not redacting names all the way through, because that is the way police record it. I do not know if that partly answers your question.

The CHAIR: It does.

Robin DAVEY: We are already doing that to that extent. It is just the index up the front where we have to redact the personal information as far as the names go. If they are actually recorded as making statements, we will still redact that out of the narrative, because that is their personal information, but the general flow of the story, if you like, in the LEAP [Law Enforcement Assistance Program] narrative we will release because it is depersonalised to the extent that you are attributing roles rather than people.

The CHAIR: All right. Thank you. Any other questions from the Committee? Terrific. Thank you very much. Thank you for your submission as well, and thanks for your helpful answers today. We will suspend the hearing now and resume after lunch at 2:50 pm.

Witnesses withdrew.