

TRANSCRIPT

INTEGRITY AND OVERSIGHT COMMITTEE

Inquiry into the Education and Prevention Functions of Victoria's Integrity Agencies

Melbourne—Monday, 7 June 2021

(via videoconference)

MEMBERS

Mr Stephen McGhie—Chair

Mr Brad Rowswell—Deputy Chair

Mr Stuart Grimley

Mr Dustin Halse

Ms Harriet Shing

Mr Jackson Taylor

Hon Kim Wells

WITNESSES

Mr Sven Bluemmel, Information Commissioner, and

Ms Joanne Kummrow, Public Access Deputy Commissioner, Office of the Victorian Information Commissioner.

The CHAIR: I declare open the public hearing for the Inquiry into the Education and Prevention Functions of Victoria's Integrity Agencies. I would like to welcome any members of the public watching the live broadcast. I also acknowledge my colleagues participating today.

I would like to begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands each of us has gathered on today, and pay my respects to their ancestors, elders and families.

All evidence taken by this Committee is protected by parliamentary privilege. You are protected against any action for what you say here today, but if you repeat the same things anywhere else, including on social media, those comments will not be protected by this privilege. Any deliberately false evidence or misleading of the Committee may be considered a contempt of Parliament.

All evidence given today is being recorded by Hansard. You will be provided with a proof version of the transcript for you to check as soon as available. Verified transcripts will be placed on the Committee's website. Broadcasting or recording of this hearing by anyone other than Hansard is not permitted.

I remind people to make sure that they mute their microphones when not speaking and also turn their mobile phones to silent.

I welcome from the Office of the Victorian Information Commissioner Mr Sven Bluemmel and Ms Joanne Kummrow. We welcome your opening comments for 5 to 10 minutes. This will be followed by questions from the Committee members. So, Commissioner, I will hand over to you to introduce yourself and introduce your organisation and Ms Kummrow. Thank you.

Mr BLUEMME: Great. Thank you, Chair. And thank you to the Committee for the opportunity to make a brief opening statement. I am very pleased to join you virtually today along with Joanne Kummrow, Public Access Deputy Commissioner. Unfortunately Privacy and Data Protection Deputy Commissioner Rachel Dixon, who I think is known to all of you, sends her sincere apologies. It is only a pressing and unavoidable matter that has prevented her from attending today. So Deputy Commissioner Kummrow and I look forward to discussing OVIC's education and prevention functions. But first I wanted to highlight the ongoing importance of information rights in the first place and the impact that proper information management can have on building trust in government.

At their core, information rights are important to our democracy and how government functions. Freedom of information and transparency more broadly enable public participation in a liberal democracy, uncover instances of wrongdoing such as corruption and hold government to account for its actions and decisions. A strong respect for privacy similarly builds trust in citizens that their information will be handled carefully. This trust builds the social licence that government needs to deal with individuals' personal information and helps individuals feel confident in handing over complete and accurate data to enable evidence-based policy formulation and service delivery. Finally, a risk-based approach to information security ensures that government-held information is available to the right people at the right time, while being properly protected from misuse and inappropriate disclosure. While information rights are important to our democracy, on a more practical level information management is a core service delivery function of every single agency. This means that government has opportunities every day to build trust through proper information-handling practices.

As you would have seen from our written submissions, our regulatory approach is not only to investigate and enforce the *Privacy and Data Protection Act* and the *Freedom of Information Act* in a fearless and independent manner but also to be proactive in educating the Victorian public sector and indeed the Victorian people. OVIC has functions under both of these Acts to educate the public sector about information rights and to make sure those rights are upheld. To do this, we regularly engage with agencies and organisations on initiatives, develop

guidance and deliver training and awareness sessions. This also extends to ensuring that members of the public are aware of their rights, from understanding how to access government information to knowing what to do when their privacy has been breached. An informed public that understands the issues and is aware of its rights is a powerful force against misconduct and corruption.

With that by way of an opening statement, Deputy Commissioner Kummrow and I will be very pleased to answer any questions that you have. Thank you.

The CHAIR: Thanks, Commissioner. I will open it up to Committee members for any questions. Who wishes to go first?

Mr TAYLOR: Yes, Chair. I have got a question.

The CHAIR: Mr Taylor. Yes, go right ahead.

Mr TAYLOR: Thank you very much. Thank you very much to you both for coming along today. I will just get into the question quickly. Your submission recognises that OVIC could improve how it raises awareness of what constitutes information misuse and how that can enable and constitute corrupt conduct. Given the complexity of the Victorian integrity system, how can OVIC avoid duplication and overlap and better promote integrity to the Victorian public sector?

Mr BLUEMMEL: Look, the main way we do that is by ensuring that we are in constant dialogue with those other agencies that have a really important role to play. That obviously includes the Auditor-General. They include the Victorian Ombudsman, IBAC and in some cases even police. We just maintain the channels with those agencies to make sure that, one, we do not trip over each other's feet in terms of the same issue, but two, to make sure that our messages where they can be and where it is appropriate for them to be are consistent. So when you are talking about information misuse, for example, that is something that we can be quite consistent about with, for example, the Auditor-General or indeed IBAC, so just making sure that we are consistent. Then, secondly, the thing that we do is where we are using our regulatory functions—for example, whether we are undertaking an own-motion investigation, whether we are regulating agencies in the information security space—we explain to other agencies and indeed the public what we are doing. We do not just sort of do it behind closed doors. Sometimes we have to do parts behind closed doors, as you can imagine. In fact certain of our legislation requires us to undertake these things in private while we are investigating. But the lessons that come out of those regulatory actions are generally things that we can share and are usually very desirable to share. I hope that answers the question.

Mr TAYLOR: Yes. Thank you, Sven. Appreciate it.

The CHAIR: Thanks, Commissioner. Thanks, Mr Taylor. Ms Shing.

Ms SHING: Thank you very much, Mr Bluemmel and Ms Kummrow, for attending this afternoon. I would like to know a little bit more about your perspectives on how things have changed around public expectation of the role and the roles that you play around education and information to gauge just how successful it has been. How are you in the process of, I suppose, empowering people to understand what good provision of information is and how compliance activities will be undertaken to identify and to find the necessary fix in a regulatory sense to act where that conduct has fallen well short of the mark? I suppose there are two parts to that question: what does success look like and to what extent have you achieved it?

Mr BLUEMMEL: Okay. Well, very briefly what success looks like is that the right thing is just done as a matter of course and we only have to intervene by exception. Now, we are a long way from that, frankly. I think we are closer than we have ever been, but we are not by any means there yet. So success to me looks like an agency when it is dealing with an FOI request, or indeed just a request for information, applying the thinking and saying, 'Well, why can't we give it out?' rather than, 'How can we find it exempt?' Now, across agencies that spectrum varies enormously. Some agencies are very good; other agencies are more reluctant to give information out, for example, and that is just in the FOI space. In the information security space, similarly, success looks like senior decision-makers in agencies understanding that they have a responsibility for information security. They do not have to be experts on the details of encryption or anything like that, but they have to know that they are responsible for an organisation that deals with information where information is almost the most valuable thing that they have, and they have to deal with it accordingly. They are supported in

that, of course; they do not need to do the detail, but that sort of attitude needs to be there. Similarly, privacy agencies need to understand that if they respect people's privacy appropriately—and it does not have to conflict with FOI; it rarely, if ever, does in practice—then the people will trust them more with their information. That is what success looks like.

How has it changed? A couple of things, if I may. Obviously our office was created about 3½ years ago. Structurally what that allowed us to do was we suddenly had enough capacity—or well, we certainly had some capacity—for that proactive work. Our two or really three predecessor organisations, depending on how far back you go, were obviously understandably much smaller, and their resourcing simply meant that they had to be a lot more reactive and responsive where they could be, but there was little left over for doing that sort of proactive work. With us now we can actually have some shared policy capability within OVIC. We can have some shared investigative capacity and some shared communications capacity. What that allows us to do is just be a lot more out there and proactive. So when we develop any guidance for agencies we liaise with agencies, and where we can even with members of the public, as to how we best do that. So there is just a lot more of that proactive work than there was there before. I hope that goes in the right direction.

Ms SHING: Yes, it absolutely does. Ms Kummrow, did you want to add anything to that, not to put you on the spot but rather to give you the opportunity?

Ms KUMMROW: Thank you. No, not at all. I endorse some of the Commissioner's views. I think one of the developments that has come out in recent times is our Regulatory Action Plan, which sets out a clear blueprint of what our priorities are in terms of regulatory action and also then the activities that flow from that. I agree with the Commissioner's comments in relation to executive engagement within the agency, certainly with information security but also too for FOI and the provision of access to information. Success for us is, I believe, despite a year of a pandemic, we have made really strong inroads in getting out into regional Victoria, rural Victoria, through our education initiatives and events and also recently an executive briefing to certain executives across the VPS [Victorian Public Service]. Look, it is a work in progress. There is much to do and at different levels I think too—Sven, isn't it?—within an organisation. But I think agencies doing the right thing because they want to do the right thing would certainly be a successful sign.

Mr BLUEMMEL: And just another tool that we are doing is publishing our FOI review decisions so everyone can see how we have reached an FOI review decision. That does at least two things: one is an educative effect for the public and indeed for agencies; but second, it holds us to account. People can see how we have arrived at our conclusion. Rather than just saying yes or no, they can hold us to account and say, 'Well, we disagree with that', and we will make an argument for that in the future.

Ms SHING: Very quickly, also, Chair—sorry—I have now picked up on another point that I would like to raise based on what you have both said. The tension that exists between a tendency to disclosure around the principal objectives of FOI legislation and the policy framework that underpins it on the one hand versus integrity of data and security by which various levels of information are retained is something which I think makes for a series of challenges not just from a regulatory perspective but also culturally. Do you think the public has a good grasp of the tension that exists there and the work that different agencies are seeking to achieve in their handling of those matters? To go back to the success point, I suppose: how are we working through that in what public understanding looks like?

Mr BLUEMMEL: Yes. Look, the level of understanding for the public, I think, would vary enormously. I think most members of the public—and this is by no means a criticism—probably would not understand the detail of some of those tensions. But I think it is up to us as the regulator and up to government as a whole to make sure that they are welcome to understand it but they do not have to in order to know they live in a fair and accountable democracy. More broadly, as I said, the tension between privacy and FOI—it is actually pretty rare that that comes up. We obviously see both. I think the concern is that the two pull in different directions and therefore an oversight system that manages both would be troubled. In real practice it is very, very rare. There are occasions, and I will just highlight one conceptual area: the area of things like data analytics and artificial intelligence and machine processing. As you will know, my office did an investigation a couple of years ago into the disclosure of a myki dataset which was released in what was a genuine attempt at a de-identified but valuable dataset. We just found that it was able to be re-identified. That is the sort of thing that is quite advanced in terms of concept, in terms of computing and so on, but that is the kind of issue where it happens. That is where you have got to be careful, because if something like that is done poorly of course you can cause

a lot of damage unintentionally. But we are working with government on all of those things to make sure that that is done as well as possible.

Ms SHING: Thank you both very much. Thanks, Chair.

The CHAIR: Mr Grimley first, then I will come to Mr Rowswell.

Mr GRIMLEY: Thank you, Chair. And thank you, Sven and Joanne, for your presentation. It is good to see you again. I have got a question in relation to the video animations that have been up and about, particularly on privacy and the responsible holding of information. I have had a look at the videos, and they are very bright and engaging; I encourage all the Committee members to do the same. As visual learners they are quite easy to digest. My question is in relation to what the user response has been to those video animations in terms of the public engagement and also the actual message that is being understood. How has that been received?

Mr BLUEMMEL: Look, we have received anecdotal feedback. We have not gone out with a program of saying, 'What do people like or dislike about them? What's the level of comprehension after versus pre the video?' and those sorts of things. We have not gone out to that, because by their nature obviously the videos are public, so it is hard to follow up with individuals. They are still fairly new for us, but all I can say at the moment is anecdotally we get really good feedback. But if you would like, what I can do is if I can take that as a concept on notice and just see if there are some particular bits of feedback we have had and if we can pull those together, obviously, in a way that is privacy sensitive but still gives insight, we will have a look at that. I do not want to raise expectations too high; I do not think we will be able to come back to you with a well-analysed dataset of responses or anything like that. But we will get back to you with whatever we can.

Mr GRIMLEY: Thanks, Sven. I will keep my expectations low, as I normally do. Thanks, Chair.

The CHAIR: Thanks, Mr Grimley. Thanks, Commissioner. Mr Rowswell.

Mr ROWSWELL: Thank you, Chair. Thank you, Commissioner. You mentioned in an answer to Ms Shing's first question that there are some agencies which are less inclined to provide information, perhaps, through the FOI process. Who are those agencies?

Mr BLUEMMEL: Look, as I said, it is on a case-by-case basis. I should have chosen my words, perhaps, with a little bit more care. It is probably not even whole agencies that are better or worse; it is probably agencies' behaviour in the context of a particular FOI dispute where it is better or worse. What I certainly can say is that the sorts of characteristics of the behaviour that we really do not like to see and that we do try and educate agencies to address are where you have an agency claiming an exemption simply because it might potentially apply or it might technically apply without expressly turning their minds to the objects of the FOI Act—which are to release as much as quickly and cheaply as possible; I am paraphrasing—or taking technical interpretations of aspects of the Act that even delay our officers' ability to undertake a review. For example, an agency will say, 'Look, the 30-day period has expired; you've got no jurisdiction left', whereas we are strongly of the view that we do, of course—all of those sorts of issues. So where a technical interpretation of any part of the Act is taken, that is really disappointing. In terms of—

Mr ROWSWELL: Would you have hard data on the worst offending agencies? And is that something that is publicly available? The reason I am asking these questions, Commissioner, is to then ask: Are the worst offending agencies, if you like, the agencies that you then focus your educative work with more rather than others?

Mr BLUEMMEL: The short answer to the second part is yes. But, again, we do that on what comes out of, say, a particular interaction we have with them from an FOI perspective—usually an FOI review—where, say, if we think that an agency has taken a very technical approach to something where, in our expectation, Parliament would have said, 'This is the kind of thing that should go out', obviously we will make our decision, which may not go in their favour, but in any event we may then address that with the agency. Ms Kummrow has regular meetings with the big FOI agencies that have a big FOI workload, and those sorts of things are addressed.

In terms of the hard data, what we do have—and I think this came out before this Committee in its other investigation in terms of the performance of the integrity agencies—is that in I think either 49 or 51 per cent of

cases my office actually makes a different decision on an FOI review to the original decision made by agencies. So I think that gives you an idea that, you know, in half of the cases we think the agency has got at least some of its decision wrong. Now, that may turn on interpretation and so on, of course, but I think that is too high. While that shows that we are a strongly independent regulator, in some ways I would be much happier if that number were much lower because the things that came before us were being done really, really well in the first instance.

What I would caution about with numbers like that, not the numbers of what we overturn but the numbers of, say, the proportion of FOI decisions that an agency might refuse—so much of that depends on other factors. Let me give you an example: an agency that does what we really encourage, which is to provide a lot of information released outside the formal FOI process—if they have a really good, mature, open process that says, ‘Look, when someone comes in and asks for information, we use FOI as a last resort. We try and give it out when we can, without a form, without anything—here it is’, if an agency does that really well and saves the FOIs for the really hard stuff, then on raw data that agency might look like quite bad because a higher portion of their formal FOI decisions might actually go against disclosure, but you do not see the tenfold material that goes out outside of FOI. On the other hand, an agency that says, ‘Look, every single request for any kind of information that we get we are putting into the FOI pipeline’—their FOI pipeline, 95 per cent of that might get given out because it is all really innocuous information. And so they look really good but they are not doing what we want them to do.

I might ask Ms Kummrow to comment on that if there is something further to add. That is why we are careful about reading too much into raw data like that. I mean, I certainly agree—we would love to have that more qualitative aspect of it, but the quantitative aspect of it has those limitations. I might just hand over to Jo Kummrow.

Ms KUMMROW: Certainly. Thanks, Sven. I think regular engagement with agencies, particularly those with large workloads, case loads, absolutely, and I guess working through methods. We have also obviously got the professional standards now. Where there is an issue—there has been an engagement or a potential compliance issue with professional standards—that is raised with the FOI practitioner, FOI officer, or the agency and in some cases the principal officer who is ultimately responsible for the agency complying. So at the same time that it is doing a review or handling a complaint, the FOI, our team are also looking at compliance with the professional standards. So that is a really strong tool for us at the moment that has increased our ability, I guess, to oversee best practice of the administration and operation of the Act with agencies.

Mr ROWSWELL: Thanks, Chair.

The CHAIR: Thank you. Thanks, Commissioner and Deputy Commissioner. I am mindful of the time, and we have probably run out of time for this session, but I thank you for your presentations today and answering the questions of the Committee.

I dare say from this session that there will be some questions on notice, if you do not mind, that we will give you as soon as we possibly can. So again, I thank you for your written submission and your oral submissions today and answering the questions of the Committee members, and we will forward those questions on notice, as I said, as soon as we can.

And what I would do is declare this hearing closed. Thank you again.

Witnesses withdrew.