

Information Commissioner's Update

Presentation to the Practitioners' Network Forum

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information and
privacy commission
new south wales

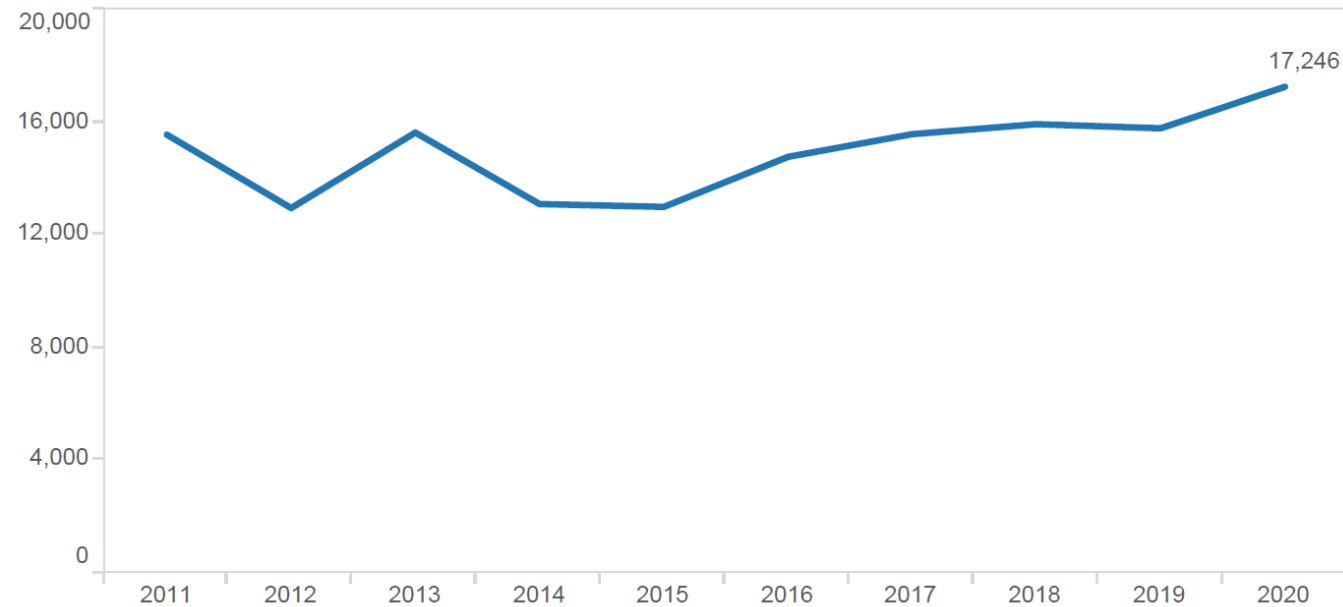
Report on the Operation of the GIPA Act 2019/20

The Information Commissioner tabled the report on 26 July 2021 (electronically) and the full report is available for download via the IPC website.

Key findings:

- The number of applications received by agencies increased by 9% in 2019/20 with 17,246 valid applications received compared to 15,774 in the previous financial year.

Figure 5: Total number of valid applications received, 2010/11 to 2019/20



Key findings:

- Applications from members of the public have increased from 6,000 in 2010/11 to 13,690 in 2019/20.
- Overall release rates remained stable at 69%, similar to the 70% in 2018/19 and 68% in 2017/18. However, in considering long terms trends, it is noted that after reaching a peak of 80% in 2012/13, the overall release rate has remained static at an average of 65% over the six years since 2014/15.
- The highest release rates in 2019/20 were for applications by private sector business. These applicants have secured combined release rates around 75% and they have maintained these rates over the last 4 years. Accordingly, they are consistently exceeding release rates secured by members of the public (70%).

Figure 14: Number of outcomes by type of applicant, 2010/11 to 2019/2020

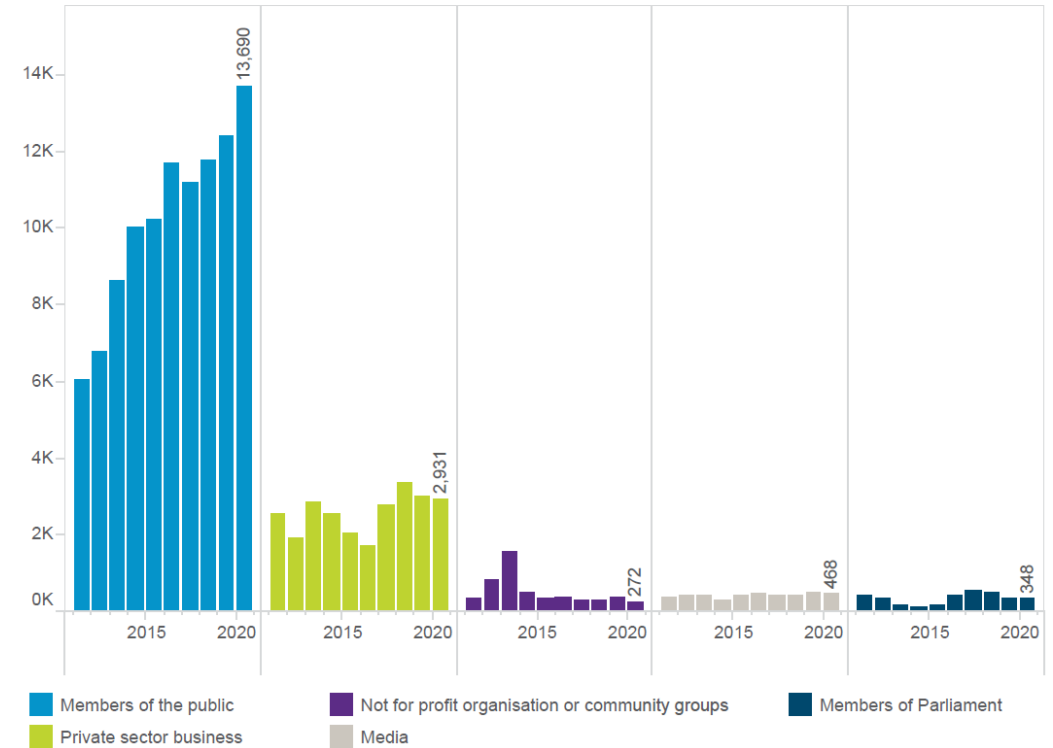
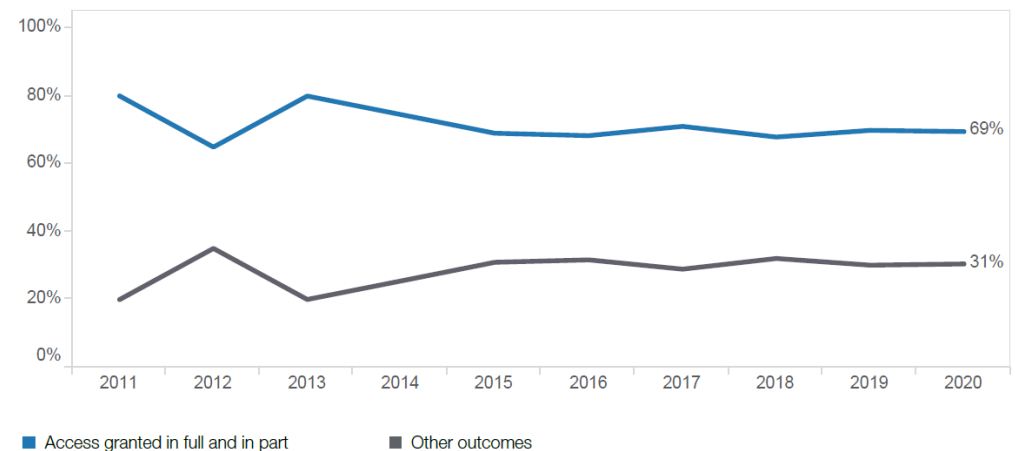


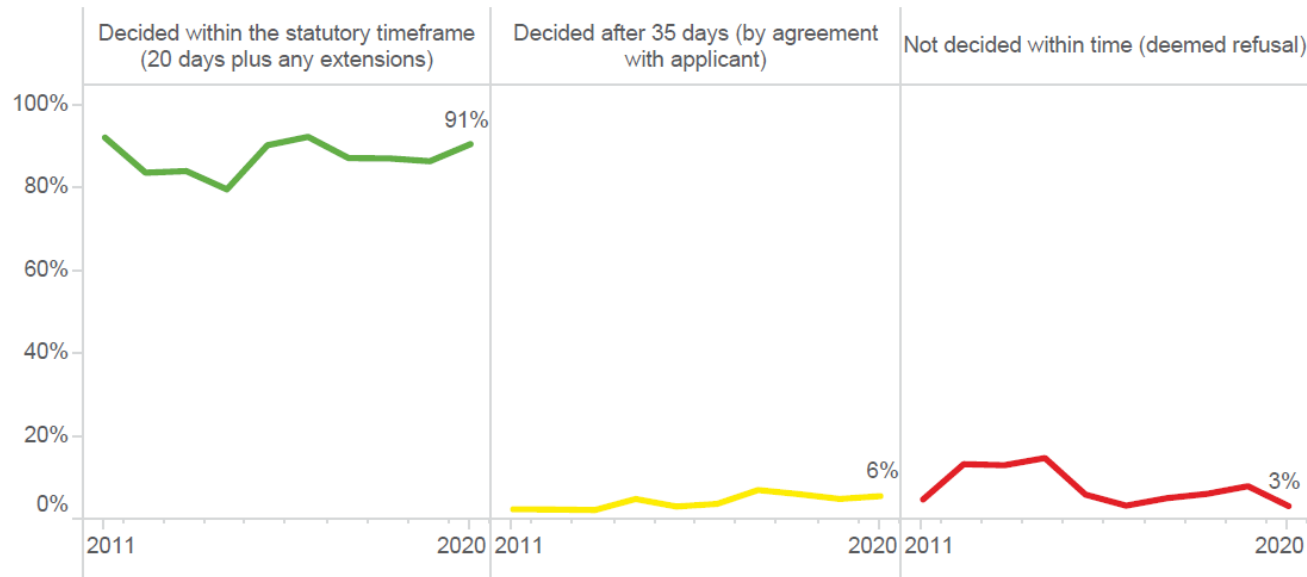
Figure 19: Overall release rate across all sectors, 2010/11 to 2019/20



Key findings:

- Timeliness of decisions has remained stable, with 91% of decisions made within the statutory timeframe consistent with 2018/19 (87%). However, viewed in the context of a 9% increase in valid applications this is a positive outcome. The government sector decided 91% of applications within the statutory time frame, a moderate increase from 85% in 2018/19.

Figure 25: Applications that were decided within the statutory time frame as a percentage of all applications decided, 2010/11 to 2019/20

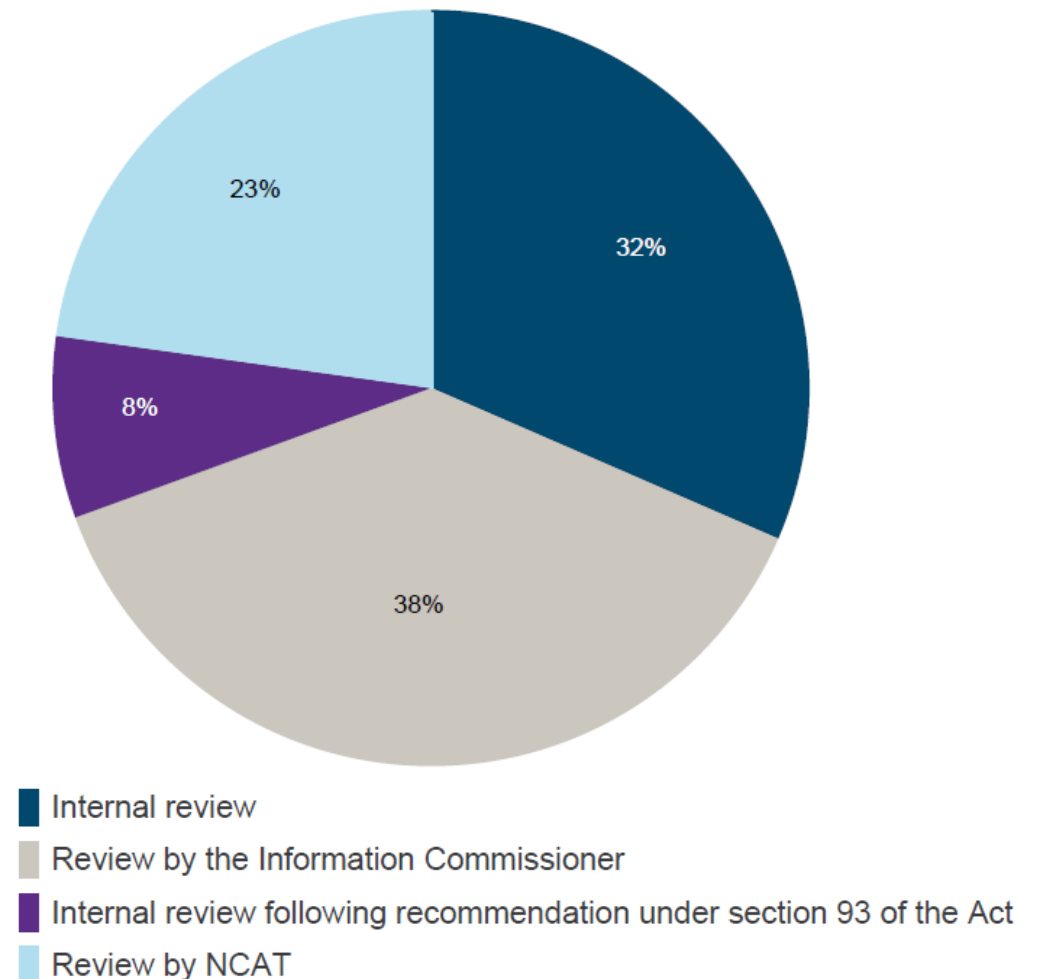


- The rate of deemed refusals has decreased from 8% in 2018/19 to 3% in 2019/20. This decrease is of note given the steady increase in deemed refusals previously reported between 2015/16 and 2018/19 and in the context of the 9% increase in valid applications received in 2019/20.

Key findings:

- Reviews by the Information Commissioner represent 38% of all reviews conducted, demonstrating the importance of independent review. The number of external reviews conducted by the Information Commissioner increased by 6% between 2018/19 (364 reviews) and 2019/20 (386 reviews).

Figure 34: Distribution of reviews by type, using agency, IPC and NCAT data, 2019/20



Key findings:

- Compliance by government departments with their requirements to meet their five additional open access requirements was low. Given the significant role government departments perform, their acquisition and disposal of public assets and their inherent risk of corruption it is concerning that in 2020:
 - 22% (two departments) had a full or partial list of major assets and acquisitions (consistent with 2018-19)
 - 11% (one department) partially met the requirement in relation to both the total number and the total value of properties the department disposed of during the previous financial year while another 67% (six departments) had information only on the value of properties disposed of, mostly included in the department's annual report.
 - 11% (one department) had the department's guarantee of service (consistent with 2018/19).
- Equally, low levels of compliance by the council sector in respect of their requirement to make available on their websites disclosures of pecuniary and other interests also represents a significant failure of systems, process, and culture.

10 years of the operation of the GIPA Act

- In his 2009 announcement of the GIPA Bill, then-Premier of NSW shared a compelling vision for the Act:

“Our public sector must embrace openness and transparency and governments must forever relinquish their habitual instinct to control information.”

- The GIPA Act was to put power in citizens’ hands via information release. Three principles informed the framework of GIPA:
 - proactive disclosure
 - consistent presumption in favour of public interest
 - oversight by an independent Information Commissioner.

10 years of the operation of the GIPA Act (cont.)

Citizens value their right to know and are increasingly exercising that right, but more needs to be done to release the personal information of an applicant

- The 128% growth in applications from members of the public is unparalleled by any other applicants. In 2010 there were 6,000 applications from members of the public and in 2020 there were 13,690. This growth is supported by community attitude studies, which report that more than 85% of NSW citizens value their right to access information.
- There was a staggering 230% increase in applications seeking personal information between 2010 (3,000) and 2020 (10,000). The release rate for members of the public is around 70%.

10 years of the operation of the GIPA Act (cont'd)

While progress has been made, much remains to be done to proactively disclose information

- From an all-time low of 60% in 2010, compliance with proactive disclosure requirements by government departments and sampled smaller agencies rose to 72% in 2019/20. However, that figure reflects a downward trend from an all-time high of 83% in 2017/18.
- Immature systems and process and more broadly, culture, impedes compliance with disclosure of assets by government departments and declarations of interests by local councils.
- Engaged and committed leadership is required to realise the objective of open government. Leaders must make obvious their commitment to open government and call for regular assessments of compliance within their agencies.
- Self-audit tools support agencies on their journey to cultural transformation, and increased uptake will benefit citizens and agencies alike.

Recommendations from 10 years GIPA data

1. Leaders commitment to managing government information and enhance oversight arrangements informed by IPC resources. Training in open government, information management and the right to access information should be calibrated to risk and foundation training and should be mandatory.
2. Compliance with mandatory proactive disclosure requirements must be elevated by:
 - government departments in respect of their requirements to meet the five additional open access requirements relevant to acquisition and disposal of public assets and their guarantee of service; and the Council sector in respect of disclosures of pecuniary and other interests.
3. The public's right to access their own information is further examined and facilitated in the context of digital government achieved by:
 - prioritising administrative solutions that recognise data rights and enable the public to access information about themselves. This may manifest as a personal information dashboard.
 - exploring legislative options to better understand the public's use of and experience in exercising their right to know e.g. including in the GIPA Regulation a requirement that agencies report on access applications that seek the personal information of the applicant and transfers of applications between agencies when applications are split. Standardising government procurement contracts to preserve the right to access information.

Recommendations (cont.)

4. *The IPC has demonstrated 100% compliance with the 2018 legislative requirement to finalise cases within 40 days of receipt of all information. Our timeliness exceeds comparable jurisdictions. In the face of increasing applications and the extant threats to information access presented in digital government, I recommend examination of legislative solutions including:*

- additional mechanisms to promptly resolve disputes in a low-cost manner. Options include engagement and consideration of legislative changes to introduce new regulatory powers such as the power to issue a notice to comply. This option would support the achievement of a timelier outcome particularly in cases of a failure to meet mandatory proactive disclosure requirements such as contracts, pecuniary and other interest disclosures and management of major assets, and*
- examination of additional offence provisions or other deterrents to safeguard the public information asset from reckless destruction, concealment or alteration.*

Digital Restart Fund (DRF)

Update

- The Digital Restart Fund will be extended for an additional year.
- As at 9 August, the IPC has received business cases for 133 projects and provided 130 advices to date.
- Areas of projects now also cover Smart Cities and Education.

IPC Proactive Audit Program and Significant Regulatory Matters

Completed major regulatory action

- icare – Phase 2 compliance audit
- Local councils – compliance with Guideline 1

Current major regulatory action

- Phase 2 – Police Audit
- Processing Charges

Right to Know Week NSW 2021

27 September – 3 October

- This year's theme is **Open by Design: integrity through greater transparency and accountability in government.**
- We will be celebrating 10 years of the operation of the GIPA Act throughout the campaign.
- Right to Know Week webpage has been launched:
<https://www.ipc.nsw.gov.au/RTK2021>
- Registrations are now open for agencies to sign up as Right to Know Week 2021 Champions on the webpage.

For your diary – RTK Week 2021 Events

IPC Right to Know Week NSW 2021 Online Launch Event

- Monday 27 September (TBC)
- Speakers include the Information Commissioner, Serena Lillywhite (CEO, Transparency International), the Hon. Peter Hall QC (Chief Commissioner, ICAC) and facilitated by Tom Burton (Australian Financial Review)
- Registrations are open on the Right to Know Week NSW webpage.

InfoGovANZ Webinar

- Thursday 30 September, 1:00 pm
- Speakers include the Information Commissioner, Sven Bluemmel (Victorian Information Commissioner) and facilitated by Susan Bennett (Founder and Executive Director, InfoGovANZ).

Regulatory engagement

Local Government Sector – GIPA Compliance Report

- Proactive audit into the compliance of councils with publishing returns of interest of councillors, designated staff and delegates in accordance with the GIPA Act.
- The audit follows extensive consultation and publication in 2019 of an Information Commissioner Guideline (Guideline 1) to support compliance by councils with the requirement to publish returns of interests.
- The results demonstrate that the majority of councils were compliant but there was a high level of non-compliance with the open access requirements of the GIPA Act:
 - 61% (32) councils were fully compliant with the requirement to publish the returns of the interests of councillors, designated persons and delegates
 - 29% (15) councils failed to comply with the requirement to publish the returns of the interests of councillors, designated persons and delegates.

IPC Case Notes

IPC published the following information access case notes since the last Forum which can be found on the IPC website:

- *McEwan v Port Stephens Council* [2021] NSWCATAD 110

Information Access Resources

The following information access resources have been updated:

UPDATED:

- Form – Application for External Review by the Information Commissioner
- Template – Notice of Decision
- Fact Sheet – Reasonable searches under the GIPA Act

NEW

- Digital Restart Fund: assessing information access and privacy impacts

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