

# Information Commissioner/CEO Update

## Privacy Commissioner Update

### Overview of Applications Received to the IPC

**Practitioners' Network Forum**  
May 2020

**Elizabeth Tydd**

IPC CEO, Information Commissioner  
NSW Open Data Advocate

**Samantha Gavel**

Privacy Commissioner



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# Information Commissioner/ CEO Update

# Privacy Commissioner Update

# Overview of Applications Received to the IPC

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- Applications between 1 July 2020 to 31 March 2020
- The OPIADS most commonly arising in the applications for external review
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# Information Commissioner/CEO Update

**Elizabeth Tydd**

IPC CEO, Information Commissioner

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# COVID-19 and the IPC

- The IPC is providing service as normal, however our office is no longer providing in-person enquiries, with all staff working remotely.
- We encourage you to contact us via email: [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au). For all information regarding COVID-19 and the IPC, please see our webpage [IPC COVID-19 Update](#).
- At this time, the IPC is continuing to progress complaints and applications made or notified to the IPC and will work with agencies, complainants and applicants to do so. There may be delays experienced resulting from arrangements put in place to respond to COVID-19 which may impact on our usual service standards and or the capacity for agencies to respond to requests from the IPC.
- The IPC will continue to update information relevant to the provision of IPC services to assist citizens and agencies on our dedicated IPC COVID -19 web page.

# COVID-19 and Information Access

- The IPC has developed and published information on COVID-19 and information access to assist practitioners. For information regarding COVID-19 and the IPC, see our webpage [IPC COVID-19 Update](#).
- The IPC has published relevant information on the following topics:
  - COVID-19 and GIPA
  - Lodgement of applications by legal representatives
  - Agency Decision making
  - Current IPC external reviews
  - Current complaints to the IPC under the GIIC Act

## The Information Commissioner has also released two statements on COVID-19

- [Statement – Transparency and access to information in the context of a global pandemic](#)  
The Australian Information Access Commissioners join with their international counterparts in their clear call for transparency and the right to access information as governments, businesses and citizens deal with the COVID-19 pandemic.
- [COVID-19 statement by the Information Commissioner](#)  
The NSW Information Commissioner and Open Data Advocate has released a statement on Information Access, Data Sharing and the COVID-19 pandemic.

# GIPA s37 Report

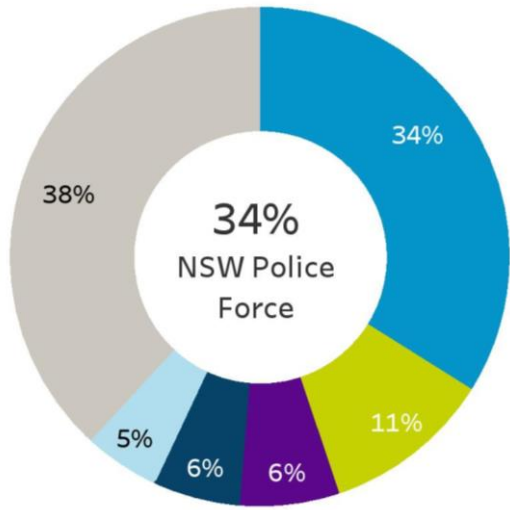
## Key Findings

**The Report on the Operation of the GIPA Act was lodged on 18 March 2020.**

**These are the key findings of the report:**

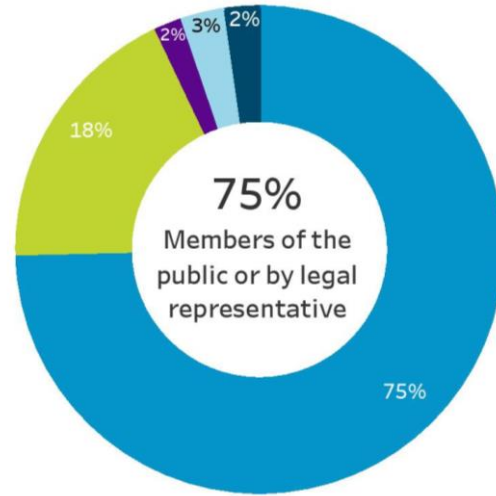
- Valid applications declined by 1%, 15,774 received
- Compliance with AIG requirements increased to 93%
- 100% compliance with the mandatory proactive requirements by department
- 20% had a partial list of major assets and acquisitions
- Programs for the release of government information increased to 93%
- Timeliness has been consistent at 87%
- Deemed refusals has increased steadily to 8%
- Highest release rates – private sector business at 76%
- Total number of reviews equivalent to 6% of total valid applications received
- 40% of all reviews were external review by Information Commissioner

### Where were applications lodged?



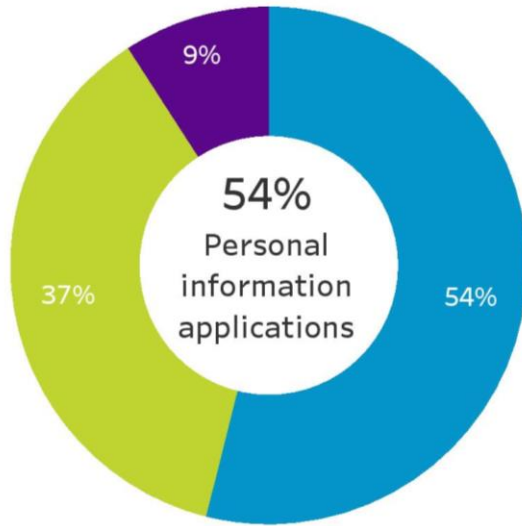
- New South Wales Police Force
- Roads and Maritime Services
- Department of Justice
- Department of Family and Community Services
- Safework NSW
- Other

### Who applied?



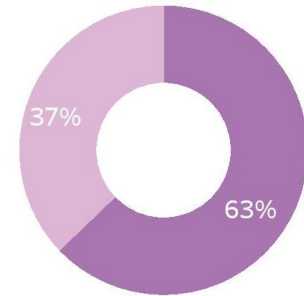
- Members of the public
- Private sector business
- Members of Parliament
- Media
- Not for profit organisation or community groups

### What was asked for?

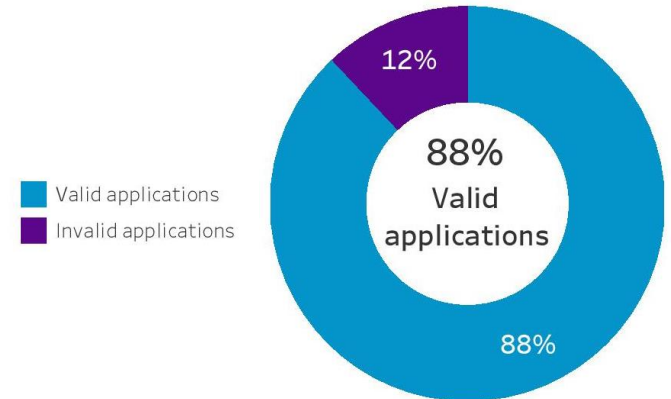


- Personal information applications
- Access Applications (other than personal information applications)
- Access Applications (that are partly personal information applications and partly other)

### Were applications invalid?

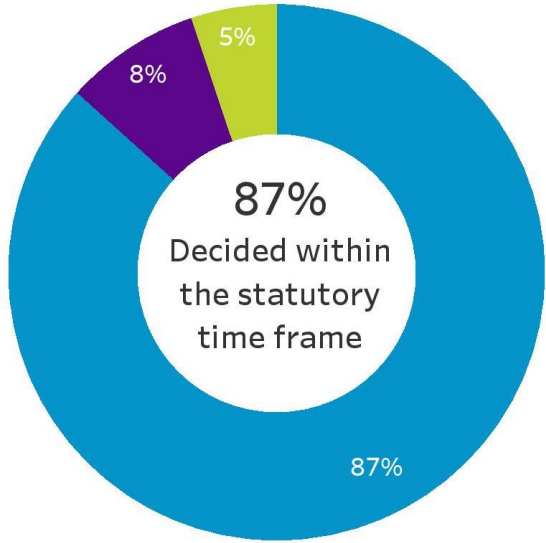


- Invalid applications that subsequently became valid applications
- Remained invalid applications



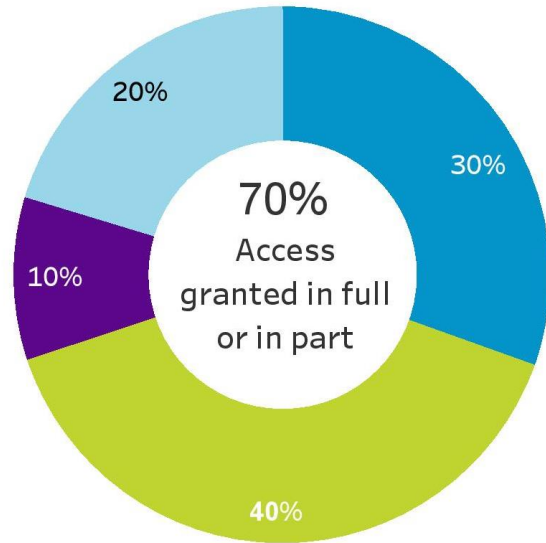
- Valid applications
- Invalid applications

## How quickly were decisions made?



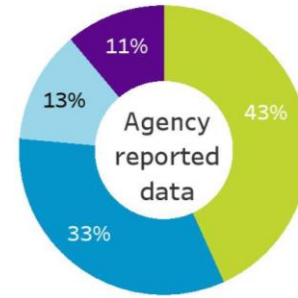
- Decided within the statutory timeframe (20 days plus an extensions)
- Not decided within time (deemed refusal)
- Decided after 35 days (by agreement with applicant)

## Did applicants get what they asked for?



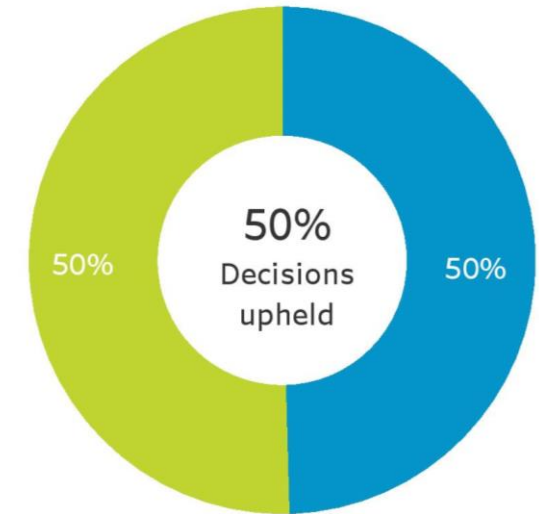
- Access Granted in Full
- Access Granted in Part
- Access Refused in Full
- Other

## How were decisions reviewed?



- Internal review
- Review by Information Commissioner
- Review by NCAT
- Internal review following recommendation under section 93 of Act

## What were the main review outcomes?



- Decision upheld
- Decision varied



# Information Awareness Month and Open Government Week

- This month, the IPC celebrates **Information Awareness Month (IAM)** and **Open Government Week (OGW)**.
- Information Awareness Month brings together various bodies within the records, archives, library, knowledge, information and data management communities with an aim to increase public awareness of information and its place in all aspects of our day-to-day lives. The 2020 theme for IAM is 'Eyes on Information'.
- Open Government Week focuses on citizen participation in government and this year will explore initiatives that tackle corruption, protect civic space, and ensure the inclusion of underrepresented voices.
- The IAM 2020 launch event was themed 'Informed about your Changing Environment'. It focused on the importance of the right information, how information can be derived, distributed, used (and misused) in critical situations and what we have learned from recent experiences. The Information took part in the panel discussion.
- The IPC developed a Case Note on an important IPC case on automated decision making and impacts to accessing information under the GIPA Act. This article will be featured in the Law Society Journal Online and was published in The Mandarin. The case is also available on the IPC website under Information Access Case Notes.
- You can watch the Information Commissioner's video on Open Government [here](#) and learn more about Information Awareness Month: <https://informationawarenessmonth.org/> and Australia's Open Government National Action Plans here: <https://ogpau.pmc.gov.au/>

# Information Access Resources

The following Information Access resources have been published since the last Forum:

## **NEW:**

- [Report on the Operation of the Government Information \(Public Access\) Act 2009: 2018-2019](#)

## **Updated:**

- [Checklist – Checklist for reporting a public interest disclosure \(PID\) alleging a government information contravention](#)
- [Fact Sheet – Delegation or authorisation of GIPA Act Functions](#)
- [Fact Sheet – Guide to section 121 of GIPA for agencies](#)
- [Fact Sheet – Guide to section 121 of GIPA for private sector contractors](#)
- [Fact Sheet – Monitoring compliance with the GIPA Act](#)
- [Flowchart – Public interest disclosures: complaint process and procedures](#)
- [Flowchart – Public interest disclosures: decision tree](#)
- [Form – Complaint to the Information Commissioner about an agency](#)
- [Fact Sheet – Being investigated by the IPC](#)

## **Upcoming:**

- *Greyhound Welfare and Integrity Commission – Compliance Report*
- *Sydney Cricket and Sports Ground Trust – Follow Up Compliance Report*

# Privacy Commissioner Update

**Samantha Gavel**

Privacy Commissioner



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# COVID-19 and Privacy

- The IPC has developed and published information on COVID-19 and privacy to assist practitioners, please see our webpage [IPC COVID-19 Update](#).
- As the COVID-19 pandemic progresses, it is important that agencies continue to meet their privacy obligations to their staff and the public while managing the impact of the pandemic. In general, agency obligations under the PPIP Act and HRIP Act continue to apply in respect of dealing with issues relating to COVID-19.
- The IPC has published relevant information including:
  - Special arrangements that apply during the pandemic
  - Only collect what is necessary
  - Provide appropriate notification
  - Seek consent where possible
  - Disclosing information to staff
  - Privacy by Design and Privacy Impact Assessments
  - Remote working & information security

## **The Privacy Commissioner has released a statement on COVID-19**

- [COVID-19 response from Australian privacy regulators](#)  
Australian privacy regulators have convened a National COVID-19 Privacy Team between the Office of the Australian Commissioner (**OAIC**) and states and territories with privacy laws to respond to proposals with national implications.



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# Privacy Awareness Week



## 2020

### 4-10 May 2020



PREVENT



DETECT



PROTECT

## Public Sector Event

- Livestream event held 5 May 2020 with over 200 people taking part
- Ability for those in regional and rural areas to be involved
- Guest speakers focus was on Identity protection and cyber security.
- Release of the Community Attitude Study results for privacy
- Privacy Commissioner released two new guidances for agencies
- Publicised by media release and E-Alerts



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# Privacy Awareness Week



## 2020

### 4-10 May 2020



PREVENT



DETECT



PROTECT

## Campaign highlights

- 48 Champions helping to promote privacy this year
- Included dedicated library of resources on the campaign page for citizens
- Focus on pre and post publicity as well as during Privacy Awareness Week in terms of social media
- Champion resources this time included suggestions for online internal events and staff quiz to cater to working from home.
- Widespread internal promotion in agencies including, involvement of Emma Hogan, Secretary of Customer Service

# Community Attitudes Study – Privacy

The Privacy Commissioner released the results of the IPC's Community attitude study on Privacy. These are the findings:

- The vast majority of respondents felt that NSW government agencies protecting their information was important.
- Similarly, most were concerned about breaches or misuse of data currently held by NSW government agencies. However, level of concern about specific situations varies by age and gender.
- Three in five respondents were aware of their right to lodge a complaint or seek a review.
- Similar to previous years, over one in three were aware of their right to access personal information from at least one of the agencies listed, with many saying that would contact the agency directly for help.
- As in 2018, incidence of trying to access personal data was fairly low, however incidence of being fully or partially successful was high.
- On par with 2018, almost one quarter were unsure of where they would report the misuse of personal information. Incidence of making a privacy complaint varied across age and gender, with one in twenty overall having made a complaint.
- 38% were aware of the NSW Privacy Commissioner, similar to results from 2018. However, awareness was lower among those under 25 years old and higher with those aged over 55 years.

# Privacy Resources

The following Privacy resources have been published since the last Forum:

## **NEW:**

- [Fact Sheet – The PPIP Act: Agency delegations, systems and practices April 2020](#)
- [Fact Sheet – The Role of the Privacy Commissioner: Consulting the IPC on Initiatives and Projects](#)
- [Fact Sheet – Privacy by Design](#)
- [Revenue NSW – PPIP Act Compliance Report](#)

## **Updated:**

- [Checklist – Privacy Internal Review](#)
- [A Guide to Privacy Impact Assessments](#)
- [Fact Sheet – Reasonably Ascertainable Identity](#)

## **Upcoming:**

- [Fact Sheet – Data Sharing](#)



# Overview of Applications Received to the IPC

**Sonia Minutillo**

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# Overview of Information Access External Reviews Received by the IPC

## How many applications between 1 July 2020 to 31 March 2020?

- During this period, the IPC has received 292 applications for external review. In the same period the IPC has finalised 275.
- As at 27 April 2020 – there were 43 active external reviews on hand with the IPC. This reflects those that were ongoing at the end of March and those which have since been received.

## Where did the applications come from:

- Of those finalised they were represented across the following sectors, with the overwhelming majority from the State Government.
- Considering the volume of applications made to Local Councils the proportion that are subject to IC review is high.

Sector	Number received
State Government	195
Local Government	62
Public University	9
Private Individual	4
Other	3
Private Organisation for Profit	2
<b>Grand Total</b>	<b>275</b>

# Overview of IC Review Applications

## How many recommendation did the IPC make?

- 114 recommendations on IC review were made that the Agency make a new decision under section 93 of the GIPA Act. This represents approximately 41% of all review applications finalised.
- In addition the IPC made a number of recommendations under Section 92 and Section 95 of the GIPA Act, which went to systems, policies and approaches. Where appropriate the IPC is increasingly considering the application of recommendations under section 92 and 95 with the aim of building agency capacity.
- The IPC also made three referrals to the NCAT under section 99 of the GIPA Act. The referrals were made in consultation with the Applicant and all related to the same information that was applied for but to different agencies. Those matters are now before the NCAT being heard together.

# Overview of Applications Received to the IPC

## What were the OPIADS most commonly arising in the applications for external review?

- Of the reviews that have been finalised the key OPIADS raised are set out below. It is of course the case that one external review will likely raise multiple considerations.

OPIAD Raised	Number
s14T(3)(a) personal information	68
s14T(1)(f) effective exercise agency function	45
s14T(1)(d) supply of confidential information/agency function	44
s14T(4)(d) business/professional interests	31
s14T(3)(b) IPP/HPP	31
s14T(1)(e) deliberative process of government	29
s14T(1)(g) breach of confidence	26
s14T(1)(h) audit/test/investigation/review	18
s14T(4)(c) commercial value of information	17
s14T(3)(c) court proceedings	13
s14T(3)(f) serious harassment/intimidation	11
s14T(3)(e) defamatory allegations	11

# Overview of Applications Received to the IPC

## What does the IPC look for in an external review?

Some of the key aspects that the IPC looks for on external review includes but not limited to:

- Have the requirements under Section 61 been met.
- Have the requirements for Section 126 been met.
- Are the search efforts described (including key words, systems searched for example) and are they included in the Notice of Decision.
- Have section 55 Personal Factors been taken into consideration.
- Was consultation undertaken.
- Did the agency identify and consider relevant factors in favour of disclosure beyond just those provided for in the GIPA Act.
- Does the review demonstrate an application of the public interest test and a weighting of those factors.
- Application of any procedural steps and/or timeframes as required by the legislation.
- How has the Agency practically assisted an applicant in any decision to refuse to deal because of the volume of the request before refusing the application.

# Overview of Applications Received to the IPC

## IPC observations on the applications for external review received.

Some re-occurring issues/themes the IPC has observed on external review include:

### *Decision making process*

- Holistic application of considerations against disclosure to the information (consider *Taylor* <https://www.ipc.nsw.gov.au/node/1535>)
- Assertion of a public interest consideration to information without demonstrating how the release of the information would have the required effect outlined
- Consultation being applied as a determinative factor against disclosure
- Misapplication of the definition of personal information as it applies to information about a public official exercising a public function(see Sch. 4 cl.4)
- No consideration of any factors in favour of disclosure beyond those listed within the GIPA Act

### *Action in support of processing the application*

- Late decisions on internal review despite section 86(5) requirements
- Misunderstanding or misinterpretation of the scope of the application resulting in narrowed and limited searches
- Form of access requested not considered in the decision made

# Overview of Applications Received to the IPC

More broadly, where an agency has made a good decision, it is because the decision stands alone and demonstrates a well-articulated identification of the public interest test against the particular and specific information, including addressing the elements of the consideration and the effect that would occur if the information was released. It has considered the factors in favour of release beyond those set out in the GIPA Act.

For example for *Prejudice an Agency Function* – the decision identifies and describes the specific agency function that is relevant, and how, if the information was released would prejudice the exercise of that function through the release of the information.