

Information Commissioner's Update

Presentation to the Practitioners' Network Forum

18 May 2022

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NSW Open Data Advocate



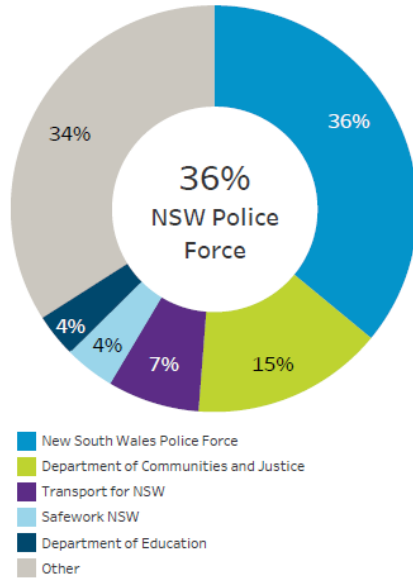
information and
privacy commission
new south wales

Information Awareness Month & Open Government Week

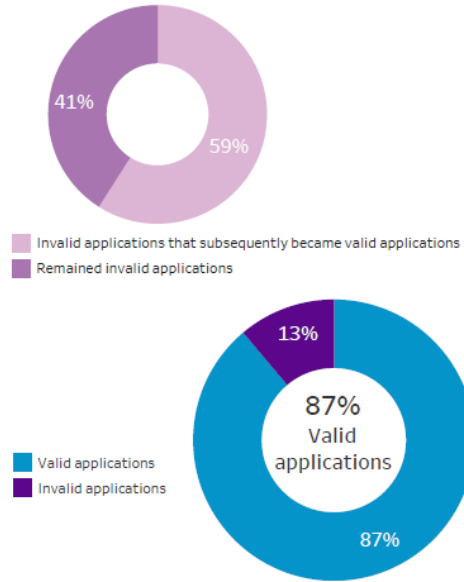
- **Information Awareness Month: May 2022**
 - brings together records, archives, library, knowledge, information & data management communities to promote public awareness of information and improve information management practices across Australia.
- **Open Government Week: 16 – 20 May 2022**
 - invites open government doers, leaders, and thinkers from around the world to come together and share ideas, discuss solutions, and commit to new levels of citizen participation in government
- The Information Commissioner will also be announcing **information access research** later this month

Report on the Operation of the GIPA Act 2020/21

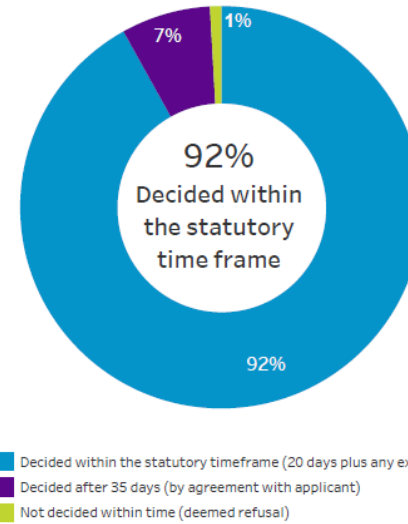
Where were applications lodged?



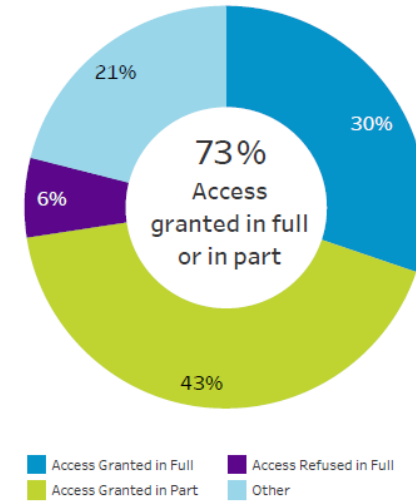
Were applications invalid?



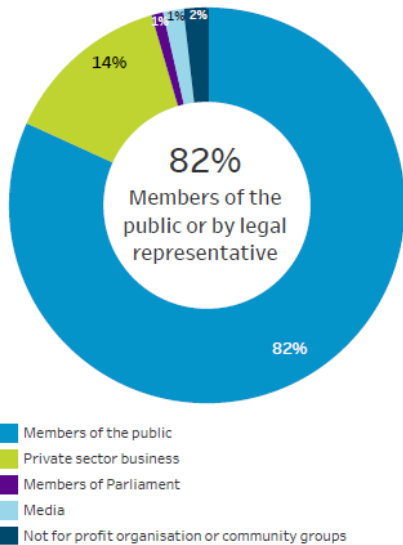
How quickly were decisions made?



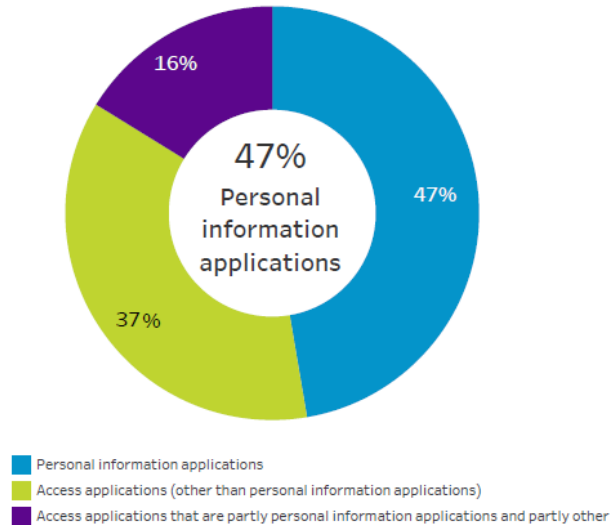
Did applicants get what they asked for?



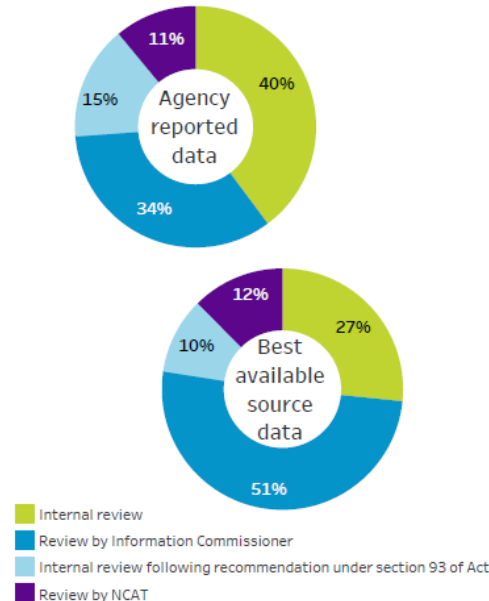
Who applied?



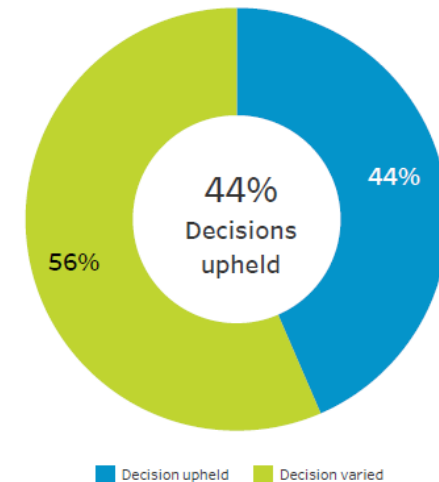
What was asked for?



How were decisions reviewed?



What were the main review outcomes?



Report on the Operation of the GIPA Act 2020/21

Tabled in Parliament on 24 March 2022

- The Report examines the performance of **over 250 public sector agencies**
- There was an **unprecedented increase in applications** for information made by NSW citizens
 - Application increased by a staggering 30% in 2020/21 (22,349 valid applications received compared with 17,246 in the previous financial year)
 - 82% of the increase in applications this year has been driven by members of the public
- Consistent with previous years, the **Government sector** continued to account for the great majority (17,870 or 80%) of valid applications
- **Applications to the Council sector** also increased significantly by 47% (2,756 in 2019/20 to 4,055 in 2020/21)

Report on the Operation of the GIPA Act 2020/21

- This year, like last year, compliance by Government departments with their requirements to meet their **five additional open access requirements** continues to remain low:
 - 22% (two departments) only partially met the requirement in relation to **major assets and acquisitions**. This is consistent with 2019/20
 - 33% (three departments) only 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, with this being a moderate increase on 11% in 2019/20; another 67% (five departments) had some information only on the value of properties disposed of, mainly in the department's annual report. This is consistent with 2019/20
 - 22% (two departments) had the **department's guarantee of service**. This is an increase from 11% (one department) in 2019/20

IPC Proactive Audit Program and Significant Regulatory Matters

Current major regulatory action

Forward Audit Program for 2022

- NSW New Agencies Proactive compliance audit to assist new entities with compliance following MOG changes- Machinery of Government (Q4 2021/22)
- NSW Government Agencies - additional open access requirements (Q1 2022/23)
- Local Government - Open Access (Q1 2022/2023)

Other regulatory activities

- IPC hosted Association of Information Access Commissioners (AIAC) meeting - April 2022
- Information Awareness Month & Open Government Week May 2022

Information access case notes

Walton v Eurobodalla Shire Council [2022] NSWCATAD 46

- The manner in which an agency routinely saves records to its normal electronic record keeping system does not ordinarily enliven the discretion to extend the decision period by 10 days
- The process of retrieval from a records archive must involve some difficulty, for the discretion to be enlivened
- Access application seeking a combination of personal and non-personal information – all personal information is ‘mixed information’ for the purposes of the GIPA Act – no processing charge for the first 20 hours of processing.

Information access case notes

Jeray v Blue Mountains City Council [2021] NSWCATAP 310

- The Appeal Panel confirmed that the “identification requirement” in section 41(1)(e) of the GIPA Act in finding validity of an access application should not be confused with an agency’s view of the reasonableness of the application and its ability to perform its functions under the GIPA Act, whether the application contains a broad scope of information, and the time required to identify the information

Information access case note

O'Brien v Secretary, Department Communities and Justice [2022] NSWCATAD 100

- This decision involves a contract that predates s121 of the GIPA Act. In the absence of a contractual requirement the agency does not have an immediate right of access.
- Agencies should consider the commercial in confidence aspects of contracts *at present or in the future*
- This matter highlights the importance of preserving access rights where an agency enters into a contract with a private sector entity and the potential for curtailment of a citizen's right to access government information in digital government

Information access NCAT submissions

FlyBlue Management Pty Ltd - Department of Planning and Environment – hearing 28 March

- The decision that was under review was whether documents withheld are subject to a claim of legal professional privilege
- The matter also raises concerns regarding the Agency's compliance with the search requirements under the GIPA Act. 536 days after the Applicant lodged their access application, and after making two decisions, the first in relation to 49 documents and the second in relation to an additional 23 documents, the Respondent identified a further 2,443 documents in its email archive possibly falling within the scope of the access application
- The matter highlights how important it is for agencies to have systems in place to ensure that digital records are well managed, including that the records can be easily located and retrieved

Speaking Engagements

The Information Commissioner presented at the following engagements this quarter:

- Vital Information Series, NSW Parliament House – 17 March 2022
- Local Government Professionals Conference – 23 March 2022
- Clarence Valley Council – 29 March 2022
- Executive Leadership Essentials – 30 March 2022
- AIAC Meeting – 8 April 2022
- Integrity Agencies Staff Symposium – 28 April 2022
- AI, Facial Recognition Technology and Law Enforcement: In Search of a Good Governance Framework – 5 May 2022

Information Access Resources

The following information access resources have been published since the last Forum:

NEW

- Practice Guide – Redacting signatures on public facing documents

UPDATED

- Information Access Guideline 4 - Personal information as a public interest consideration under the GIPA Act NB inclusion of recent case law

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