



information  
and privacy  
commission  
new south wales

# REPORT ON THE OPERATION OF THE GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009

## 2021 – 2022

Open Government, Open Access, Open Data

# Letter of Transmission

The Hon. Benjamin Cameron Franklin, MLC  
President, Legislative Council  
Parliament House  
Macquarie Street  
Sydney NSW 2000

Mr Gregory Michael Piper, MP  
Speaker, Legislative Assembly  
Parliament House  
Macquarie Street  
Sydney NSW 2000

Dear Mr President and Mr Speaker,

In accordance with section 37 of the *Government Information (Information Commissioner) Act 2009*, I am pleased to present the *Report on the Operation of the Government Information (Public Access) Act 2009: 2021 – 2022*.

I recommend that the Report be made public forthwith pursuant to section 39(2) of the *Government Information (Information Commissioner) Act 2009*.

Yours sincerely,



Elizabeth Tydd  
**IPC CEO, Information Commissioner**  
**NSW Open Data Advocate**

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# Commissioner's Overview

**The role of Information Commissioner has enlightened me in many ways, none more so than the galvanisation of my commitment to: the principles underpinning a responsible, representative system of government<sup>1</sup> and, securing the public interest in accessing information.<sup>2</sup>**

This, my last Report on the Operation of the *Government Information (Public Access) Act* (GIPA Act) in New South Wales (NSW), provides an opportunity to constructively reflect on:

- achievements in preserving and promoting the right to access information;
- contemporary challenges to the right to access information; and
- the way forward.

## Preserving and promoting the right to access information – what has been achieved?


Accountability and transparency have been a hallmark of the Information and Privacy Commission (IPC) throughout my two, five-year terms. The regulatory reports we publish serve dual purposes. They reflect our findings and guidance to improve compliance and therefore, they also reflect our regulatory action and its effectiveness.

I commenced the publication of Reports on the Operation of the GIPA Act in my first year of appointment with both a combined three-year retrospective report (2010-2013) and the 2013/14 Report. Since then, we have tracked compliance annually with the operation of the formal access pathway under the GIPA Act<sup>3</sup> and the publicly accessible GIPA dashboard that measures agency performance.<sup>4</sup>

The significant changes reported from 2013/14 to 2021/22 highlighted below, demonstrate sustained outcomes that reflect the:

1. extraordinary growth in applications from members of the public;
2. significant maturation of processes within agencies that support the right to access information in the face of an 84% increase in applications over 8 years; and
3. advanced regulatory effectiveness of the IPC.

From 2013/14 to 2021/22:

- applications received increased from 12,945 to 23,789 (84% increase)
- applications from members of the public increased from 48% to 83%
- applications from legally represented members of the public increased from 28% to 44%
- partly personal and partly other information applications increased from 6% to 19%
- decisions made within the statutory timeframe increased from 80% to 90% 
- decisions refused in full decreased from 8% to 5%
- decisions in which access was granted in full and in part decreased from 74% to 70%
- review by the Information Commissioner increased from 15% to 40% of all reviews.

These results unequivocally demonstrate the increasing exercise of the right to access government held information and the demonstrable value placed on that right by citizens. Legal representation has increased and so too has the percentage of applications seeking partly personal and partly other information.

Notwithstanding that technology should be making access to information easier, these outcomes might reflect an increase in complexity in the way information is stored in a digital government environment.

<sup>1</sup> GIPA Act section 3

<sup>2</sup> GIPA Act section 12

<sup>3</sup> GIPA Act section 9

<sup>4</sup> <https://www.ipc.nsw.gov.au/information-access/agency-gipa-dashboard/gipa-dashboard>



To promote the right of access to information in this more intricate environment, new lines of authority are developing.<sup>5</sup> For example, recognition that an agency cannot unilaterally extend time for decision-making where records are held in a digital archive that does not require extra effort to retrieve.

Despite an 84% increase in applications since 2013/14, timeliness of decision-making by agencies has increased. This demonstrates the maturation of the systems, processes and policies implemented by agencies to support their information application functions. NSW agencies are commended for this sustained improvement.

There are some variations in release rates. On one hand decisions to refuse in full have decreased but release rates have also decreased by a similar percentage.<sup>6</sup>

Fortunately, we have visibility over national trends through the national metrics initiated in my role as a member of Australia's Open Government Partnership.<sup>7</sup> This work commenced in 2014/15 and over that period, the NSW refused in full rate decreased steadily from 14% to 6%. As a similar proactive release regime, Queensland refused in full rate decreased from 24% to a low of 16%; and the lowest refused in full rate has been consistently occupied by Victoria, between 2% and 4%.

Release rates are measured somewhat differently under the national metrics. Those measures see an increase in release rates from 86% to 94% in NSW. The leading jurisdictions in release rates are Victoria and Western Australia with release rates of between 94% and 98%.

Considered in this national context NSW agencies are performing well.

The IPC is also performing well, particularly given it is the only Australian jurisdiction operating under a timeframe for finalisation of reviews. Our timeliness is superior notwithstanding significant year-on-year increases in applications and new functions.<sup>8</sup> The quality of, and trust in, our decisions is also evidenced by the growth in the percentage of reviews conducted by the IPC (providing one of two external review avenues) from 2.4% to 6% over the years 2014/15 to 2020/21.

External Review by the Information Commissioner has grown in recent years as the most utilised review avenue conducting 40% of all reviews including internal reviews.<sup>9</sup>

Further evidence of the value of the IPC is provided through independent brand awareness surveys and client feedback mechanisms.

Our 2022 IPC Brand Awareness Survey demonstrates significant improvements in the IPC's regulatory impact from the first survey in 2017. In 2022:

- 80% of respondents confirmed that they had heard of the IPC, an increase from 66%
- among those who had heard of the IPC, 39% were familiar with what we do, 10% higher than in 2017
- a significant growth in the application of IPC resources by users.

In 2022, the words that were most used to describe the IPC were 'trustworthy' (77%), 'independent' (76%) and 'respected' (74%).

In summary, the results across the past decade of reporting demonstrate that significant maturation and effective regulation has ensured that overall, the formal access pathway under the GIPA Act and Information Commissioner review functions are working effectively.

Additionally, significant changes must inform our way forward in modernising the GIPA Act, including:

- digital government and outsourced service provision;
- awareness of the need for government transparency and accountability;
- public interest factors in favour of disclosure including care and protection of the environment;
- the increased volume of applications;
- the increase in legal representation;
- the type of information sought; and
- the dominance of reviews by the Information Commissioner.

<sup>5</sup> *Ireland v Central Coast Council* [2022] NSWCATAD 366; *Eric Anthony Foster v Department of Planning and Environment* [2022] NSWCATAD 235

<sup>6</sup> National metrics dashboard [https://www.ipc.nsw.gov.au/sites/default/files/2022-06/OGP\\_Metrics\\_all\\_jurisdictions\\_all\\_years\\_June\\_2022.pdf](https://www.ipc.nsw.gov.au/sites/default/files/2022-06/OGP_Metrics_all_jurisdictions_all_years_June_2022.pdf)

<sup>7</sup> [https://www.ipc.nsw.gov.au/sites/default/files/2022-06/OGP\\_Metrics\\_all\\_jurisdictions\\_all\\_years\\_June\\_2022.pdf](https://www.ipc.nsw.gov.au/sites/default/files/2022-06/OGP_Metrics_all_jurisdictions_all_years_June_2022.pdf)

<sup>8</sup> *Digital Restart Fund Act 2013 section 10*

<sup>9</sup> IC reviews represent 40% of all reviews, Report on the Operation of the GIPA Act 2021/22

# Commissioner's Overview

Key areas for reform include:

- improved reporting to better understand if the applications seeking personal information are seeking their own or another's personal information
- barriers to accessing information that might inspire the increase in legally represented applicants
- national developments that inform factors in favour of and against disclosure including care and protection of the environment as a factor in favour of disclosure<sup>10</sup> and the operation of Cabinet in Confidence under the GIPA Act in circumstances where nationally and internationally this information is treated more transparently.<sup>11</sup>

More work is required in relation to the other pathways under the GIPA Act<sup>12</sup> to ensure that the Act's vision for transformation from closed government information to open by default is achieved. This year, I commissioned independent research to inform our guidance to agencies in promoting the informal access pathway.<sup>13</sup>

## Accountability and transparency in NSW – is the GIPA Act fit for purpose?

Effective governance has been frequently and imaginatively challenged in NSW. A progressive and robust framework of independent pro-integrity institutions is essential to prevent corruption. The GIPA Act and the role of the Information Commissioner combine to assure and promote the most effective treatment in combatting corruption - accountability and transparency.

All legislation requires regular examination against its objects and operation. New challenges to integrity have arisen during my terms in office as a feature of contemporary government. These challenges include the rapid transformation to digital government, the increasing prevalence of grants to citizens and other

entities, and contracts for the provision of traditional government services. It is from this perspective that I have engaged with Departments to modernise the GIPA Act and its complementary legislation, the *Government Information (Information Commissioner) Act 2009* (GIIC Act). The GIIC Act provides the Information Commissioner with regulatory powers including coercive powers.

To answer the question of 'Is the GIPA Act fit for purpose?' it is necessary to examine both statutes together with a thorough analysis of the extant systems, policies and practices of agencies that support the exercise of their functions under the GIPA Act.

Annual reports on the operation of the GIPA Act confirm that in some areas of mandatory proactive release agencies are performing well.<sup>14</sup>

However, one of the greatest challenges I have encountered in my soon to be 10 years in this office is risk identification within agencies. The vulnerabilities presented in agencies' operating environments inform our work to protect and promote the fundamental human right of access to information and require dedicated resources and skilled analysis.<sup>15</sup> Examination of this nature is challenged by the requirement for the IPC to apply its limited resources judiciously. This demands a balancing of our reactive and proactive regulatory workloads given our jurisdiction over more than 250 agencies across five sectors. Our audit and monitoring systems have matured and increasingly we are harnessing technology to enhance efficiencies.

In 2021, the IPC was independently assessed as arguably the most efficient Australian regulator of information access and privacy rights against complaint management and review functions.<sup>16</sup>

In areas that are critical to good governance and integrity, we have conducted more resource intensive analysis of systems, policies and practices.

<sup>10</sup> Currently only a factor against disclosure Table to section 14 of the GIPA Act

<sup>11</sup> Let the sun shine in – review of culture and accountability in the Queensland public sector, June 2022, Professor P Coaldrake

<sup>12</sup> Ss 6,7,8 of the GIPA Act

<sup>13</sup> UNSW Research to be published

<sup>14</sup> Compliance with general open access release requirements remains high at 84%, Report on the Operation of the GIPA Act 2021/22

<sup>15</sup> Universal Declaration of Human Rights Art. 19

<sup>16</sup> Operational Review of the Information and Privacy Commission, May 2021, p. 13-14

Those audits continue to reveal limited progress by agencies to institutionalise the GIPA Act's mandated pro-integrity measures. These mandatory requirements address the contemporary risks to integrity in modern governments.

Continuing low levels of compliance are identified in areas including:

- declarations of interests by councillors and key personnel in the Council sector,
- disclosure of major assets, acquisitions, properties and value by Departments appropriately classified for each financial year,
- disclosure logs, and
- other mandated open access information including contracts.

In 2015, I commenced proactive work to examine, report, and in conjunction with agencies remediate low levels of compliance with the three access pathways that stimulate release of information absent a formal application. Since that time, the IPC has published 20 information access compliance reports and others await publication. These reports provide a lens through which we can examine the systems and practices of agencies that reveal the level of organisational commitment to accountability and transparency. Additionally, we have developed and refined self-audit tools to assist agencies in efficiently and effectively identifying and remediating areas of low compliance.

Presented with largely suboptimal results more work is demanded and arguably new approaches facilitated by funded technology enhancements and contemporary regulatory powers.

The Information Commissioner's powers in relation to mandatory and proactive release do not readily align with her prescribed functions under the GIPA Act.<sup>17</sup> Rather those powers support regulatory action in relation to the formal information access pathway. Additionally, regulation of agencies' actions under the formal access pathway is supported by data reporting requirements and benchmarks. It is also subject to statutory Guidelines and public reporting via the GIPA dashboard and annual reports.

The three remaining access pathways contain limited or no data collection.<sup>18</sup> Further they are not facilitated by regulatory powers to reflect the importance of these pathways particularly those that mandate open access. Accordingly, data collection to reflect good administrative decision-making and regulatory powers including standards setting/code of practice and statutory instruments, such as a notice to comply, are required to establish and enforce standards of performance by agencies. The introduction of these powers under the GIPA Act would also support a more proportionate approach to the use of regulatory powers.

Currently, performance of these broad information release functions under the GIPA Act is subject to investigation by the Information Commissioner.<sup>19</sup> Yet examination of that performance is not accompanied by responsive statutory powers to set standards and guide performance by agencies as an important first step in regulatory action.

## The way forward

NSW is ideally positioned to modernise the GIPA Act and re-establish its reputation as a leader in the promotion of the right to access information. In conjunction with the Association of Information Access Commissioners (AIAC), the Open Government Partnership, UNESCO, the Centre for Law and Democracy and the Global Data Barometer (GDB), I have led the development and/or publication of the:

- Right to Information (RTI) jurisdictional compendium – comparing the features of right to information statutes operating throughout Australia
- RTI National Metrics to examine the operation of these statutes throughout Australia
- Key Features of RTI legislation agreed by the AIAC
- Citizen surveys to report the citizen experience of exercising their right to access information throughout NSW and Australia
- Principles to promote the proactive release of information agreed by the AIAC

<sup>17</sup> Section 17 GIPA Act

<sup>18</sup> Section 8 GIPA Act

<sup>19</sup> Section 21 GIIC Act

# Commissioner's Overview

- Assessment of the GIPA Act against the internationally accepted RTI Index produced by the Centre for Law and Democracy
- First sub-jurisdictional assessment of the governance, capacity, availability and thematic application of government data under the GDB
- Engagement with Indo-Pacific Nations as the inaugural practice expert to promote access to information in the region.

Applying these valuable insights, NSW is well placed to modernise the GIPA and GIIC Acts.

The IPC also requires augmentation to preserve its independence and ability to perform its functions free of budgetary, administrative, and political interference. Integrity agencies in NSW have, because of a Parliamentary Inquiry, achieved a necessary independent status and operating model. Whilst the IPC has the status of an integrity agency, it does not enjoy the same independent budgetary operating model, and this requires rectification.

## Conclusion


There has been a clear and committed understanding of the importance of the role of the IPC by Ministers responsible for the GIPA and GIIC Acts throughout my terms. The IPC's co-regulatory efforts have been embraced by other integrity offices and the positive professional relationships I have enjoyed with leaders of integrity agencies have also fortified our effectiveness.

Likewise, leaders from all regulated sectors have engaged productively with the IPC and generously shared insights. I am most grateful for their focus on information access and their responsiveness to the IPC.

Information access practitioners have engaged constructively with their work and the IPC. It has been a pleasure to see this voluntary group progress operational expertise across all sectors and effectively advocate for the promotion of the right to access information.

None of these achievements would have been possible without the commitment of every member of the IPC and the unfailing collegiality of the NSW Privacy Commissioner. The talent and appreciation of the promotion of rights by all IPC staff manifests each day in a productive and professional working environment that collectively strives for the best. There are also a number of largely unrecognised but indispensable contributors to the effectiveness of the IPC. Ms Rachel Jhinku and Ms Lynley Mattes are both dedicated and highly skilled officers who deserve special recognition. The leadership of Directors and constancy of the Director Investigation and Reporting, Ms Sonia Minutillo, over the years has embedded good practice from which we have collectively excelled.

This role has offered me unsurpassed purpose, reward, and joy. Each day in this office has heightened my appreciation of the role of integrity agencies in our democratic system of government and my gratitude for the opportunity to contribute to the NSW integrity framework in service of the public interest.



**Elizabeth Tydd**  
**IPC CEO, Information Commissioner**  
**NSW Open Data Advocate**



# Future Focus

## 1

### MANDATORY PROACTIVE RELEASE

#### IPC strategies

- Publish an IPC Compliance Report on the compliance with the additional open access requirements for Departments in relation to acquisitions and disposals as required by Schedule 6 of the *Government Information (Public Access) Regulation 2018* (GIPA Regulation)
- Publish an IPC Compliance Report to review the compliance with open access requirements by Local Councils, 12 months after the Information Commissioner's 2021 audit report. The focus will remain in relation to the disclosure of pecuniary interests by elected officials and key personnel and the application of the [Information Commissioner's Information Access Guideline 1](#)

#### Agency strategies

- Comply with open access requirements as required under the GIPA Act and the GIPA Regulation. Adopt the recommendations contained in the Information Commissioner's audit reports
- Apply the guidance provided by the [Information Commissioner's Information Access Guideline 6: Agency Information Guides](#)

## 2

### AUTHORISED PROACTIVE RELEASE

#### IPC strategies

- Undertake a review of the Agency Self-assessment Tool to improve functionality
- Undertake enhancements of the Agency Self-assessment Tool to improve functionality and user experience
- Promote self-assessment functionality improvements

#### Agency strategies

- Embed a commitment to proactive release in agency policies and culture, and identify information that can be proactively released as part of core agency business

# Future Focus

## 3

### INFORMAL RELEASE

#### IPC strategies

- Publish research on the use of the informal access pathway and work with agencies to implement recommendations from the research

#### Agency strategies

- Engage with and implement recommendations from the IPC research on the use of the informal access pathway

## 4

### FORMAL ACCESS APPLICATIONS

#### IPC strategies

- Undertake enhancements to the Agency GIPA Dashboard and Tool to enable agencies to undertake deeper analysis of their performance
- Engage with the Department of Communities and Justice and the Department of Customer Service to examine the public interest in and the importance of the environment as it appears only as a factor against disclosure in the GIPA Act and not as a factor in favour of disclosure of information
- Engage with the Department of Communities and Justice and the Department of Customer Service to examine options for a citizen facing portal to facilitate the lodgement of GIPA applications

#### Agency strategies

- Consider and apply the guidance provided in the [IPC Fact Sheet – Fundamentals for deciding an access application under the GIPA Act](#)

# Year in Review

The 2020/21 Report identified a range of priority actions for the IPC and agencies. The outcomes of the IPC actions identified in that Report, as they are aligned with the information access pathways, are outlined below.

## Mandatory proactive release

The 2020/21 Report identified that there were opportunities to enhance regulatory guidance and compliance with mandatory proactive release obligations, particularly for open access information requirements prescribed in Part 3, Clause 6 of the GIPA Regulation.

Action	Outcome
Promote the IPC's resources for agencies on mandatory proactive release requirements, including through the Essential Guidance Toolkit, e-learning modules and seek to develop agency maturity around the use of the Agency Self-assessment Tool.	The IPC has undertaken a review of its self-assessment tools informed by agencies. A refresh of the self-assessment tools informed by the feedback is underway. The IPC updated the Essential Guidance Toolkits for agencies and local government.
Promote compliance with Council sector-specific Open Access requirements under the GIPA Regulation as set out in the IPC's Checklist – Open Access requirements under the GIPA Act and GIPA Regulation – agency requirements.	The IPC developed and released an animation in relation to Guideline 1 and promoted this directly to local government and via targeted social media. It was also included in an Office of Local Government (OLG) circular. In July 2021, the IPC released Local Government Sector – GIPA Compliance Report Disclosure of Information (return disclosing the interest of councillors and designated persons). This report identified low levels of compliance and made recommendations to improve compliance by Local Councils.
Commit to a compliance program to better understand and address the low levels of compliance with Government Department additional access requirements for proactive release.	An audit of Government Departments is underway to inform understanding of the compliance levels and make recommendations regarding compliance with these mandatory open access requirements.

## Authorised proactive release

A priority for the IPC continues to be the promotion of the GIPA Act's 'push' model of information release, including authorised proactive release.

Action	Outcome
Promote awareness of information access requirements in all projects involving the increase in information holdings by agencies.	In providing advice to agencies seeking funding for digital projects through the Digital Restart Fund, the IPC promotes awareness of information access requirements. The IPC developed an animation on e-Governance and Digital Government.

# Year in Review

## Authorised proactive release (continued)

Action	Outcome
Promote compliance with the requirement to publish information regarding the exercise of functions by agencies (sections 20 and 21 of the GIPA Act).	These provisions set out the requirements for an agency's Agency Information Guide (AIG). In the reporting period the IPC commenced two audits of new agencies to measure and promote compliance with these fundamental requirements. Additionally, in providing advice to agencies seeking funding for digital projects through the Digital Restart Fund, the IPC promotes the need to update agency information guides to reflect its information holdings.
Promote awareness of information access requirements in all projects involving the increase in information holdings by agencies.	In providing advice to agencies seeking funding for digital projects through the Digital Restart Fund, the IPC promotes awareness of information access requirements.  The IPC developed an animation on e-Governance and Digital Government.

## Informal release

The GIPA Act authorises agencies to release government information in response to an informal request by an individual unless there is an overriding public interest against disclosure of the information.

Action	Outcome
Undertake scoping and research with public sector agencies on the use of the informal access pathway to better understand and, where appropriate, promote its use.	The IPC engaged UNSW to partner with in research on informal access pathways in conjunction with a review of selected agencies practices. The research is underway.

## Formal access applications

The GIPA Act provides citizens with an enforceable right to apply for, and access, government information unless there is an overriding public interest against disclosure.

Action	Outcome
Develop enhanced guidance on retrieving digital records from archives and conducting searches.	The IPC reviewed and updated IPC guidance on digital records with reference to relevant case law.  The IPC developed and published guidance on Microsoft platforms and searches.
Review and revise Information Access Guideline 2 – Discounting Charges and Information Access Guideline 4 – Personal information as a public interest consideration under the GIPA Act.	The revised Information Access Guideline 4 was published in May 2022.  The review of Information Access Guideline 2 is underway.
Review and revise IPC guidance Fact Sheet – What is the public interest test?	The revised Fact Sheet was published in August 2022.

# Information Release Pathways

# Pathway 1: Mandatory proactive release of information

Since 2010/11, the IPC has conducted an annual desktop audit of agency compliance with mandatory proactive release requirements under the GIPA Act (also known as Open Access information).

In 2021/22, the IPC conducted a desktop audit of the nine principal departments and a sample of 20 smaller agencies. The desktop audit identified whether, in compliance with the GIPA Act, each department or sampled smaller agency published on its website:

- an Agency Information Guide (AIG)
- agency policy documents
- an agency disclosure log
- an agency contracts register.

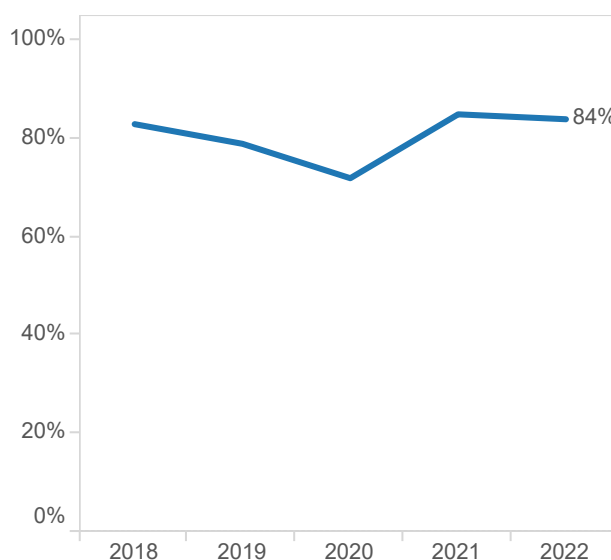
The desktop audit does not examine the comprehensiveness of the information made available, such as whether an agency has published all its policy documents or whether the information is up to date.

## Compliance with Open Access requirements is stable

Across all departments and sampled smaller agencies, the desktop audit found that compliance with the mandatory proactive release requirements remained stable this year at 84% consistent with 85% in 2020/21 (Figure 1).

As explained below, Government departments are responsible for this outcome and they are commended for their focus on mandatory Open Access requirements.

**Figure 1: Departments and sampled smaller government agency compliance with mandatory proactive release requirements, 2017/18 to 2021/22**



The desktop audit also showed the following:

- 86% of sampled agencies had an AIG, consistent with 86% in 2020/21 and 90% in 2019/20
- 90% of sampled agencies had policy documents available, consistent with 90% in 2020/21 and 90% in 2019/20
- 86% of sampled agencies had a disclosure log, consistent with 86% in 2020/21 and an increase from 76% in 2019/20
- 79% of sampled agencies had a contract register, consistent with 79% in 2020/21 and an increase from 69% in 2019/20.

Consistent with 2020/21 results, compliance by departments was significantly higher at 100% than the rate for all agencies.

Agencies, other than departments, had a significantly lower overall compliance rate of 78%. This is consistent with the 2020/21 results (79%) for sampled agencies.

The lower compliance by other, often smaller agencies, will continue to be considered by the IPC when developing future regulatory priorities and resources. Significantly, the IPC has examined Open Access information within the Council sector and provided a [report](#).

## Compliance with additional Open Access requirements for departments continues to remain low

The nine principal departments are subject to several additional requirements for Open Access as set out in clause 6(2) of the GIPA Regulation. These are to make available:

- (a) *a list of the Department's major assets, other than land holdings, appropriately classified and highlighting major acquisitions during the previous financial year*
- (b) *the total number and total value of properties disposed of by the Department during the previous financial year*
- (c) *the Department's guarantee of service (if any)*
- (d) *the Department's code of conduct (if any)*
- (e) *any standard, code or other publication that has been applied, adopted or incorporated by reference in any Act or statutory rule that is administered by the Department.*

The IPC conducted a desktop audit of compliance by principal departments with these five additional Open Access requirements. The audit found that compliance with these additional requirements remains low.

The following results of compliance varied depending on the requirement:

- 11% (one department) fully met and 89% (eight departments) only partially met the requirement in relation to major assets and acquisitions. This is a significant increase from the 22% that partially met requirements in 2020/21.<sup>20</sup>
- 22% (two departments) fully met and 67% (six 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 significant increase on the 33% that partially met requirements in 2020/21.<sup>21</sup>

- 33% (three departments) had the department's guarantee of service. This is an increase from 22% (two departments) in 2020/21.
- 100% had the department's code of conduct, which is a moderate increase from 89% in 2020/21.
- 100% had a number of documents/webpages marked as "standard" or "code" available on the website, consistent with 100% in 2020/21.

Compliance with the first three of these five additional Open Access requirements continues to remain low, with departments either failing to publish the required Open Access information in full on their website or providing it via alternative mechanisms. For example, publication of Open Access information in the department's annual report rather than directly to the department's website.

This result demonstrates a need to continue to promote the checklist [Open Access information under the GIPA Act – agency requirements](#) to inform agencies and departments about Open Access information required to be released and assist them to identify their responsibilities for mandatory proactive release.

This low compliance rate with additional Open Access requirements by departments has been included in the IPC's work program. As explained in the Issue Highlight box below, an audit of compliance was commenced in 2022 with the results to be published in 2023.

## Complaints to the IPC about mandatory proactive release

Complaints to the IPC continue to identify concerns regarding compliance with the mandatory requirements for proactive release of information.

In 2021/22, 31% of complaints finalised by the IPC were about Open Access information, a moderate increase from 20.5% reported in 2020/21. As in previous years, Open Access-related complaints mainly concerned agencies not making Open Access information available.

In the Council sector, Open Access issues interact with other legislative requirements, such as the *Environment Planning and Assessment Act 1979* (NSW) and *Copyright Act 1968* (Cth). Wherever possible, the IPC engages with the agencies that are the subject of a complaint to address the compliance issues relevant to the mandatory proactive release of information requirements. This provides an effective approach to enhancing knowledge of the requirements and objects of the GIPA Act.

<sup>20</sup> To fully comply with this requirement, a list of major assets, appropriately classified and with major acquisitions highlighted, must be easily found on the department's website. Partial compliance refers to where a complete list of assets is available but only in the annual report (and not published on the department's website), or where an incomplete list is available either on the website or in the annual report but the assets are either not appropriately classified or major acquisitions are not highlighted.

<sup>21</sup> To fully comply with this requirement, the total number and total value of properties disposed of by the department during the previous financial year must be easily found on the department's website. Partial compliance refers to where both the total number and the total value of properties disposed of is only available in the annual report (and not published on the department's website) or where only some of the required information is available (that is, only the total number of properties disposed of, or only their total value), either on the website or in the annual report.

To assist councils with meeting their obligations under the mandatory proactive release provisions, the IPC published [Information Access Guideline 1 – For local councils on the disclosure of information contained in the returns disclosing the interests of councillors and designated persons developed under the Government Information \(Public Access\) Act 2009 \(NSW\)](#).

### **Case Study: Disclosure logs – supporting integrity and transparent decision-making**

The GIPA Act requires that open access information must be made publicly available unless there is an overriding public interest against disclosure of the information. Open access information is to be made available free of charge on a website maintained by an agency (unless to do so would impose unreasonable costs on the agency) and can be made publicly available in other ways determined appropriate by the agency.

An agency disclosure log under section 25 is one of the requirements of mandatory open access<sup>22</sup> required to be made publicly available. The disclosure log is a record an agency must keep that records information about access applications made to the agency that the agency decides by deciding to provide access (to some or all of the information applied for) if the information is information that the agency considers may be of interest to other members of the public. Information required to be included is:

- The date the application was decided
- A description of the information to which access was provided in response to the application
- A statement as to whether any of the information is now available from the agency to other members of the public and (if it is) how it can be accessed.

A disclosure log makes information that has already been publicly released in response to an access application available to other members of the public. It facilitates open access to government information of public significance and relevance to the NSW Community. Disclosure logs:

- indicate to the agency the type of information that it should consider releasing proactively,
- inform members of the public what type of information has already been released by the agency and what may be publicly available, and
- remove the need for agencies to process multiple applications for access to the same information.

The timely updating of disclosure logs is necessary to achieve the intent and responsibilities of the GIPA Act and in the proactive release of information. Although the GIPA Act does not prescribe a timeframe for including material in the disclosure log, agencies should have policies and procedures to update their disclosure log so that it is current and up to date.

Disclosure logs support the objective of the GIPA Act by giving members of the public open access to government information where it is in the public interest. Putting this information in the public domain also helps promote open government and transparency around government decision-making and enables citizens to self-serve.

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<sup>22</sup> Section 18 GIPA Act



## **Issue Highlight: Major Public Assets – what are they, how much are they worth and who holds them on your behalf?**

The NSW Government holds, manages and disposes of public assets on behalf of the NSW public. What are these assets and how are citizens informed about how they are managed on their behalf?

Major assets can range from sporting facilities, buildings, transport to health infrastructure. It is vital that citizens have access to information about these assets for reasons including:

- the promotion of open discussion about public affairs, enhancing government accountability and contributing to informed debate on issues of public importance;
- ensuring effective oversight of public funds; and
- preventing fraud and corruption.

We all have a fundamental human right to access information.<sup>23</sup> In NSW, the GIPA Act enshrines this right and provides that some government information must be proactively released.

Reporting on major assets must be provided by Government Departments. The GIPA Regulations require agencies to publish each year:

- a list of a Government Department's major assets – appropriately classified and highlighting major acquisitions during the previous financial year; and
- the total number and value of properties disposed of by each Department during the previous financial year.

Consistent with the object of the GIPA Act, the mandatory release of this information helps to foster responsible and representative government that is open, accountable, fair and effective.

In the 21<sup>st</sup> century the public sector is characterised by an increasingly commercial environment and interface with industry. In this context, the mandatory proactive disclosure requirements serve a pro-integrity purpose that equips agencies to prevent and, where identified, combat corruption. These requirements serve the interests of both citizens and agencies. Government departments have a significant integrity role in their acquisition and disposal of major assets which supports the delivery of government services to the community.

Yet year-on-year compliance with these obligations by Government Departments has been low.<sup>24</sup> The absence of action by departments in response to this protracted and prevalent non-compliance necessitated a commitment to the future application of compliance resources by the IPC. An audit of compliance was commenced in 2022 with the results to be published in 2023. The Information Commissioner is committed to assisting departments to fulfil their responsibilities.

Action to achieve compliance and elevate transparency, accountability and public trust is required by the departments subject to this audit.

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<sup>23</sup> Universal Declaration of Human Rights Art. 19

<sup>24</sup> Report on the Operation of the *Government Information (Public Access) Act 2019/20 and 2020/21*



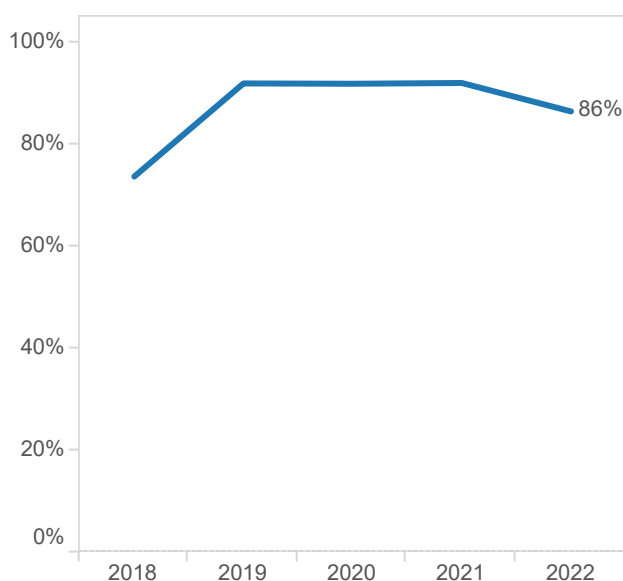
# Pathway 2: Authorised proactive release of information

## Agency reviews of programs for release of government information are stable

Agencies are required to conduct reviews of their program for the release of government information, at least annually (section 7(3) of the GIPA Act).

In 2021/22, 86% of agencies reported having conducted a review of their program for the release of government information. Overall, this is consistent with 92% in 2020/21 and 93% in both 2019/20 and 2018/19 (Figure 2). However there has been a more significant decline in reviews of proactive release programs by the Government and University sectors.

**Figure 2: Agencies that conducted annual information release reviews as a percentage of all agencies that reported, 2017/18 to 2021/22**

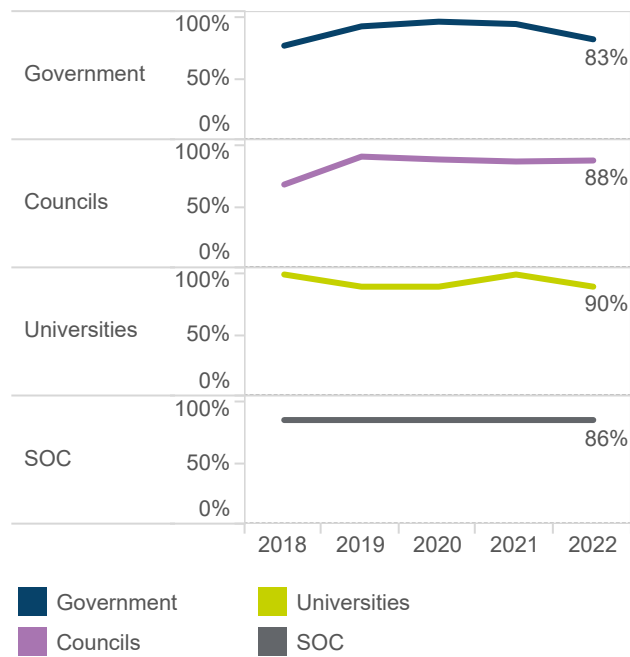


Results across the sectors varied (Figure 3):

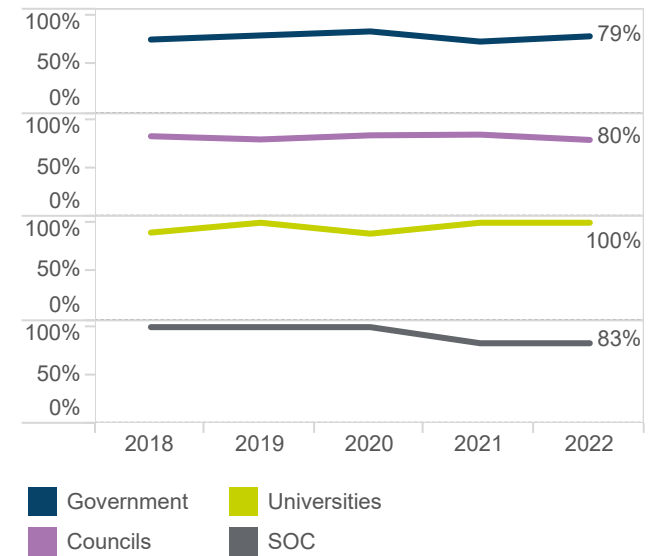
- 83% of agencies in the Government sector conducted reviews, a significant decline from 100% reported to the IPC in 2020/21.
- 88% of councils conducted reviews, consistent with 88% in 2020/21.
- 90% of universities conducted reviews, a moderate decline from 100% in 2020/21.
- 86% of state-owned corporations conducted reviews, consistent with 86% in 2020/21 and 2019/20.

Since July 2015, the IPC has focused on assisting agencies with proactive release programs in recognition of declining compliance with this obligation – first identified in 2013/14. Overall, this initiative has demonstrated success. As part of this initiative, the IPC enhanced the GIPA Tool in 2018/19 to remind agencies that conducting reviews of their program is mandatory. A further enhancement of the GIPA Tool is planned for 2023 to improve functionality and user experience. In 2020/21, the IPC's Essential Guidance Toolkit, Agency Self-assessment Tool and e-learning modules were promoted to agencies to assist them to self-assess their information governance compliance. Additionally, a review has commenced to enhance functionality of the self-assessment tools.

**Figure 3: Agencies that conducted annual information release reviews as a percentage of all agencies that reported, by sector, 2017/18 to 2021/22**



**Figure 4: Agencies that released additional information as a percentage of agencies that conducted a review, by sector, 2017/18 to 2021/22**



### Overall release of additional information following a review remained stable, with a decline in the Council sector

Ideally, all agency information release reviews should result in additional information being released. In 2021/22, 80% of agencies that conducted a review released additional information. This is consistent with the 83% reported in 2020/21. Figure 4 shows the trends in the percentage of reviews leading to the release of additional information and shows:

- 79% of agencies in the Government sector released additional information following review, a moderate increase from 73% reported in 2020/21
- 80% of councils released additional information following review, a moderate decline from the 86% reported in 2020/21
- 100% of universities released additional information following review, consistent with 2020/21
- 83% of state-owned corporations released additional information following review, consistent with 2020/21.



# Pathway 3: Informal release of information

The informal release of information provides benefits for agencies and citizens and helps to increase access to information. The effectiveness of this pathway can be enhanced through sound agency practices and by linking the pathway to broader agency access mechanisms such as AIGs.

## Agency practices

Agencies can release government information informally unless there is an overriding public interest against disclosure of the information.

Informal release under the GIPA Act is a quicker and cheaper access option for both the applicant and the agency. Agencies have flexibility in deciding the means by which information is to be informally released. Conditions can also be imposed on the use of the information released. Additionally, the GIPA Act provides protections for agencies using this pathway.

By highlighting the role of the informal release pathway, agencies can create opportunities to streamline the handling of common requests for information and ensure that citizens are able to avoid the cost, time and effort required to prepare and lodge a formal access application. Agencies should also use these insights to proactively release information and ensure a more effective application of their resources.

The IPC recommends that agencies exercise their discretion to deal with requests informally, wherever possible, to facilitate and encourage timely access to government information at the lowest reasonable cost. Review rights should also be considered by agencies in discussions with applicants regarding the option to deal with a request for information informally.

There is currently limited data available to the IPC to draw reliable conclusions on the frequency and volume of access requests made via the informal access pathway or the outcomes for applicants. Good administrative practices should support the use of this pathway.

In 2021/22, the IPC engaged with the University of New South Wales to partner in research on the use of the informal access pathway in conjunction with a review of selected agencies practices. This research will enable the IPC to better understand agency use of the informal access pathway and, where appropriate, promote its use. The research is currently underway and is expected to be released in 2023.

## Issue Highlight: Realising the benefits of informal release ...but how does it work?

In the 2020/21 Report on the Operation of the GIPA Act, the Information Commissioner highlighted an unprecedented 30% increase in applications to access government information, representing the largest increase in over a decade of reporting.

In the face of such an increase the Information Commissioner recognised the impact on agency resources. Commissioning research to investigate the other request-based pathway to access information helps to understand how this pathway can be maximised to deliver the benefits of information release to both agencies and citizens.

Informal release describes the process by which government agencies are authorised to provide information in response to a request for information without requiring a 'formal access application' to be made under the GIPA Act.

Releasing information informally has several benefits:

- Citizens can make a request over the telephone or via email or other informal manner.
- An informal request for information is free of any cost to citizens.
- Agencies can release information informally without a formal decision and timeframes.
- Agencies can impose conditions on how information is released, for example it might be in an excel spreadsheet and still retain the protections against criminal or civil action under the GIPA Act.
- It is less resource intensive for agencies because there are no formal requirements e.g. no requirement to determine validity and issue a notice of validity.

There are other longer-term benefits to be realised that ensure that information is increasingly released. In practice the informal release pathway should:

- enable agencies to identify the information that is commonly informally requested and released
- assist agencies to inform and better meet their proactive release of information obligations and update their Agency Information Guide to enable citizens to acquire the information via a 'self-service' approach
- result in fewer resources being applied by both agencies and citizens.

The Research, to be released in 2023, will provide an overview of current practices adopted by agencies in operating the informal release pathway and provide guidance to maximise the benefits of this pathway.





# Pathway 4: Formal applications

## **For the third consecutive year, valid applications increased to record numbers**

In 2021/22, there was a record number of applications: 23,789. That number exceeds the number of applications received in 2020/21 by 6%, following on from the 30% increase recorded between 2019/20 and 2020/21. This demonstrates the significance citizens place on their right to access information, and that they are increasingly exercising this right.

The GIPA Act provides citizens with a right to access government information, unless there is an overriding public interest against disclosure.

Agencies must assess each application for information that is received. For valid access applications, agencies must apply the public interest test and balance the factors for, and against, the disclosure of the information that is requested.

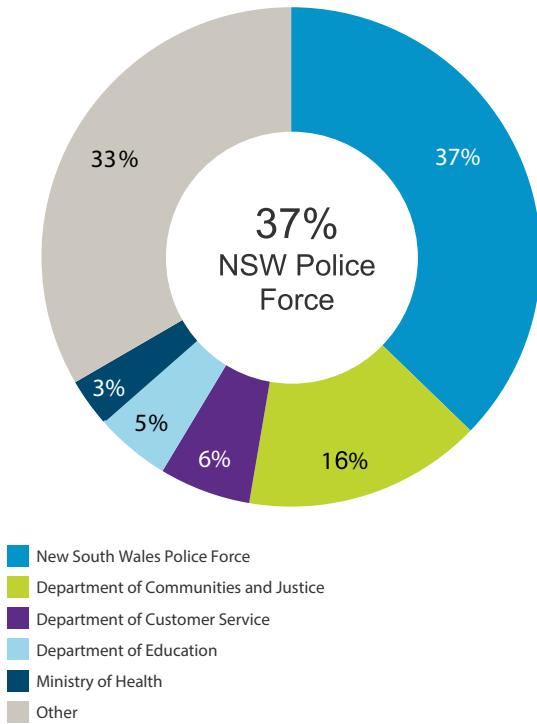
The main benefits of the formal access pathway:

- The right to seek access is legally enforceable.
- Agencies must process applications within statutory time frames.
- Agencies are not subject to the direction or control of any Minister in the exercise of the agency's functions when dealing with an access application.
- Agencies must apply the public interest balancing test and consult with third parties to whom the information relates.
- Applicants have a right to seek review of an agency's decision about the application through a number of review avenues: an internal review by the agency, an external review by the Information Commissioner and an external review by the NCAT.

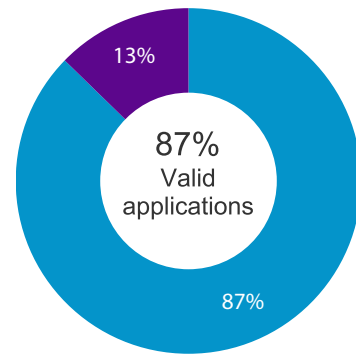
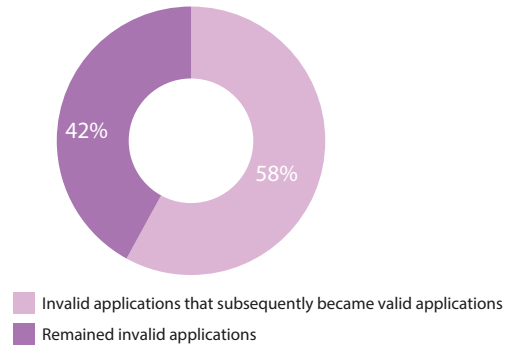
The IPC continues to publish a [publicly available dashboard](#) on its website, enabling easy access and understanding of NSW agencies' operation of the formal pathway. This initiative provides insights for agencies and citizens alike and has been widely commended.

# Year at a glance

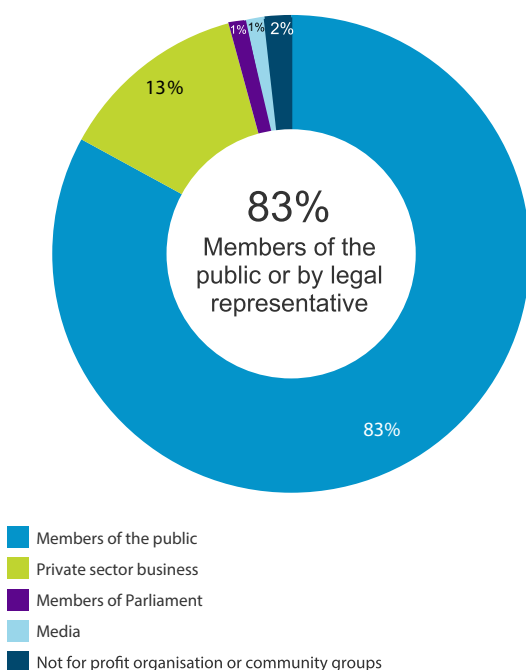
## Where were applications lodged? \*



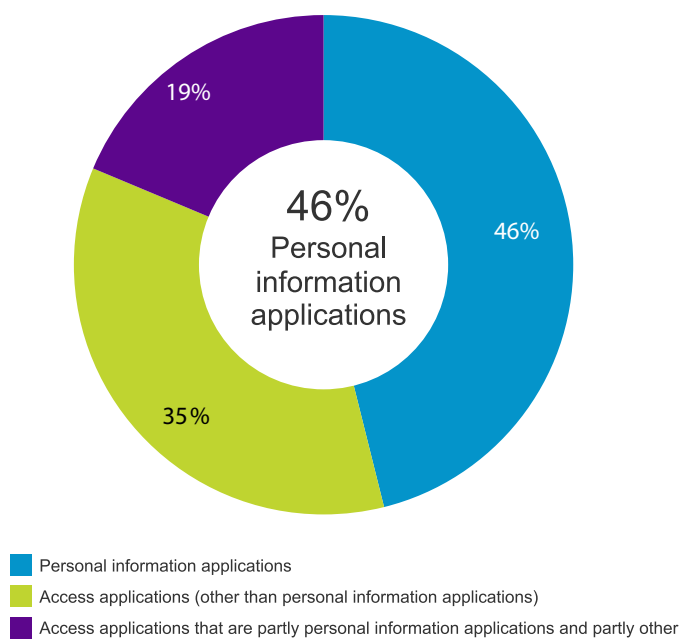
## Were applications invalid?



## Who applied?

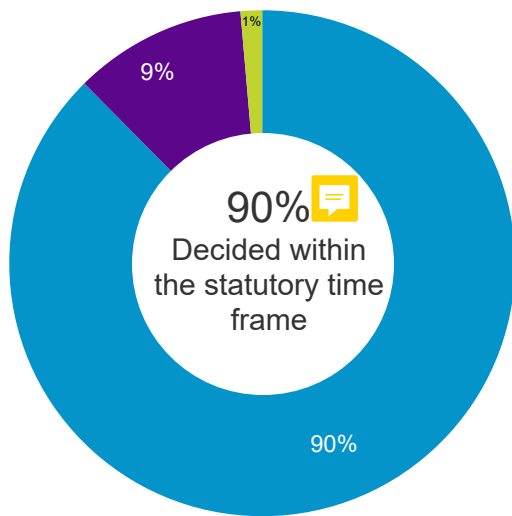


## What was asked for?

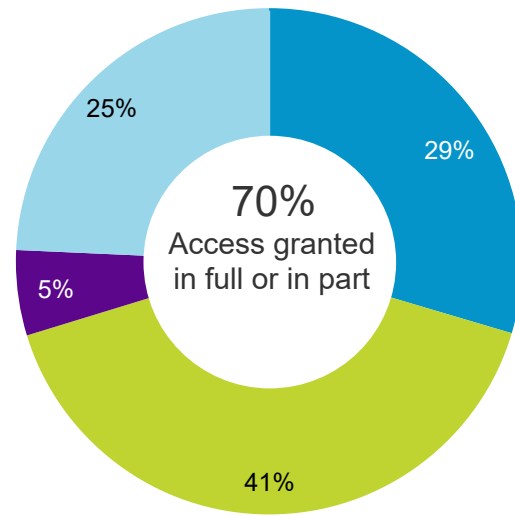


\* This graph represents applications lodged to government agencies.

## How quickly were decisions made? Did applicants get what they asked for?

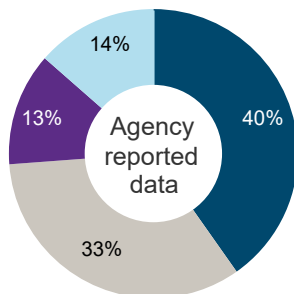


- Decided within the statutory timeframe (20 days plus any extensions)
- Decided after 35 days (by agreement with applicant)
- Not decided within time (deemed refusal)



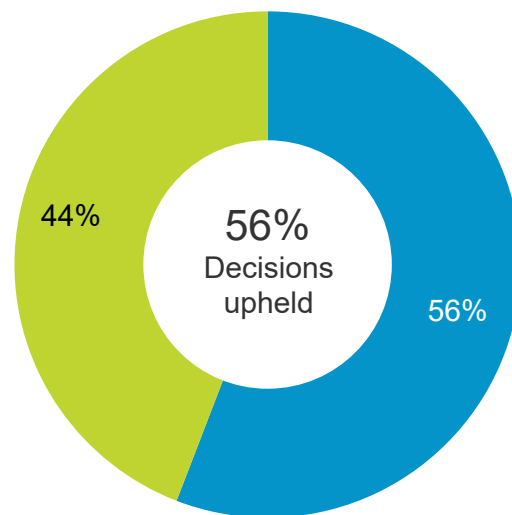
- Access Granted in Full
- Access Refused in Full
- Access Granted in Part
- Other

## How were decisions reviewed?



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

## What were the main review outcomes?



- Decision upheld
- Decision varied

# How many applications were lodged?

## The total number of valid applications received increased by 6%, following the significant increase in the previous reporting period

At the time of reporting, agencies advised that they received 23,789 valid applications during 2021/22. This compares with 22,349 valid applications in the previous financial year and represents a total increase of 1,440 (6%) in valid applications received. This suggests that the number of applications has stabilised somewhat following the significant increase reported in 2020/21, while continuing to grow at a more consistent rate with previous years prior to 2020/21. The trend in applications is shown in Figure 5.

The number of applications received by agencies can be affected by certain factors, such as the type of information sought, the extent to which agencies proactively make information available and the use of the informal access pathway.

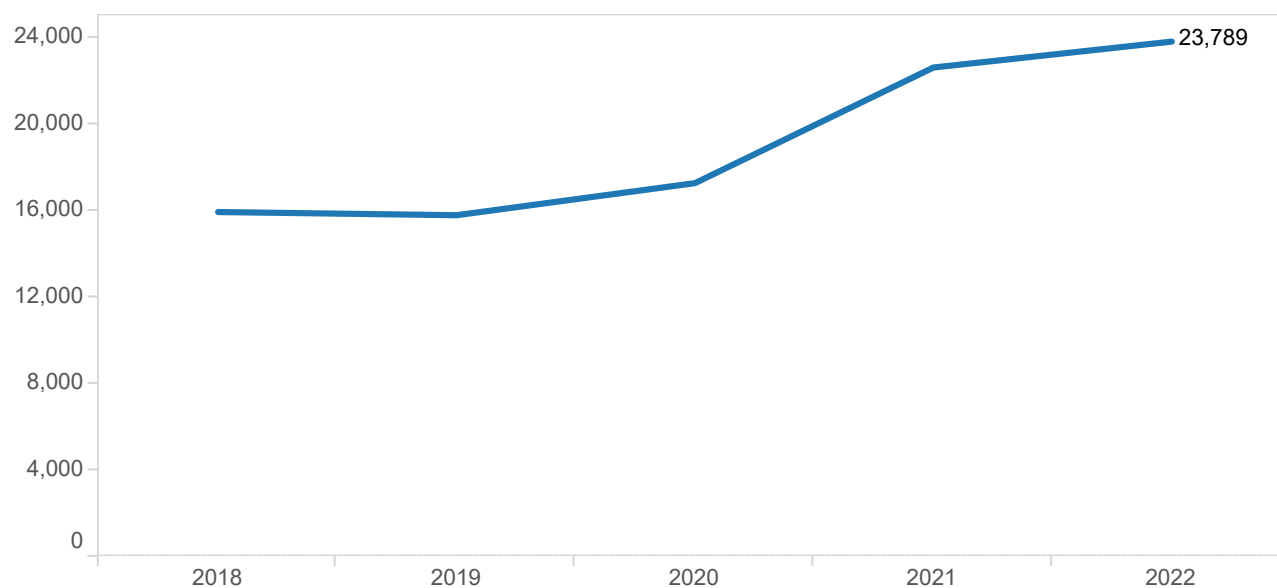
## Most applications were made to the Government sector<sup>25</sup>

Consistent with previous years, the Government sector continued to account for the great majority (19,219 or 81%) of valid applications (Figure 7). While the overall proportion of valid applications received by the Government sector remained stable, there was a moderate increase (8%) in the number of applications received, rising from 17,870 in 2020/21 to 19,250 in 2021/22.

In 2021/22, the NSW Police Force received 37% (8,862) of all valid applications, consistent with 36% in 2020/21 (Figure 6). While the NSW Police Force continued to receive the largest proportion of valid applications across all sectors, this proportion has declined steadily over time from 42% of valid applications in 2014/15 to 37% in 2021/22.

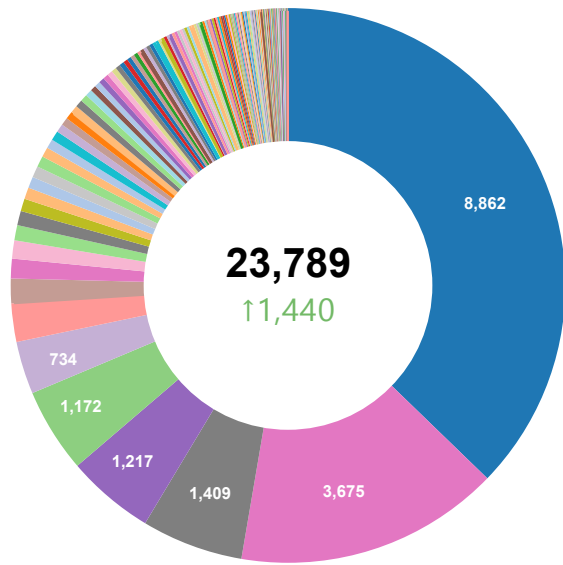
The top six government agencies by number of applications received is similar to last year (Figure 6).

Figure 5: Total number of valid applications received, 2017/18 to 2021/22



<sup>25</sup> Since 2016/17 data is reported across five sectors, including state-owned corporations. This will affect comparisons with the published reports in previous years.

**Figure 6: Distribution of valid applications received, by agency, 2021/22**



- New South Wales Police Force
- Department of Communities and Justice
- Department of Customer Service
- Transport for NSW
- Department of Education
- Ministry of Health

Notable changes in valid applications received across these agencies were:

- 253% increase in applications received by the Department of Customer Service (from 399 in 2020/21 to 1,409 in 2021/22). This increase is likely a result of changes in reporting arrangements with Safework NSW reporting via the Department of Customer Service commencing from the 2021/22 reporting period
- 54% increase in applications received by the Department of Education (from 759 in 2020/21 to 1,172 in 2021/22)
- 25% decline in applications received by Transport for NSW (from 1,634 in 2020/21 to 1,217 in 2021/22)
- 10% increase in applications received by the NSW Police Force (from 8,047 in 2020/21 to 8,862 in 2021/22)
- 8% increase in applications to the Department of Communities and Justice (from 3,405 in 2020/21 to 3,675 in 2021/22).

## Applications in the Government sector rose moderately, with declines recorded in the Minister, University and State-Owned Corporations sectors

The number of applications received by the Council sector remained consistent with results reported in 2020/21 (Figure 7).

The number of applications received by the Government sector increased moderately by 8% compared with the 2020/21 results.

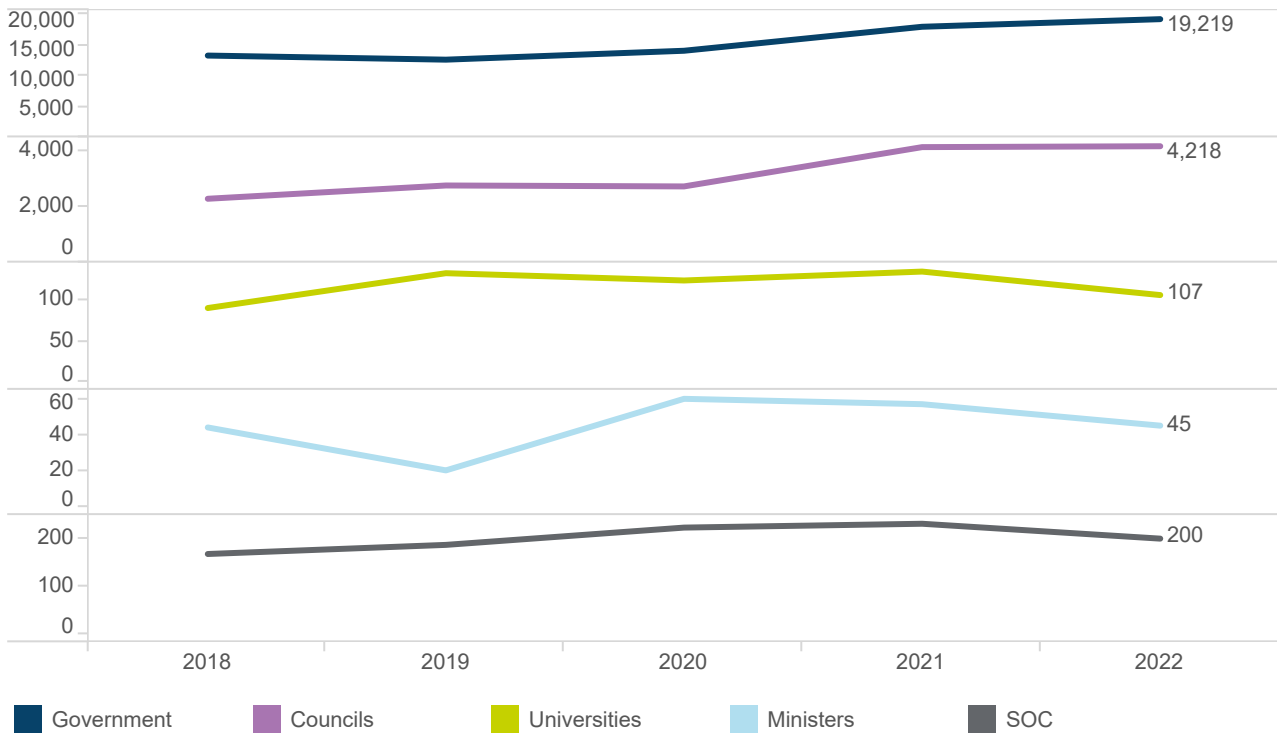
Applications received in the University sector declined significantly by 21% in 2021/22.

The State-Owned Corporations sector declined moderately by 13% compared to the previous year.

Applications received by the Minister sector declined significantly by 21% in 2021/22.

Each of the sectors that reported a decline receive relatively few applications and their year-on-year results are therefore more variable.

Figure 7: Number of applications received, by sector, 2017/18 to 2021/22



*‘How many applications were lodged?’ is reported and measured by the requirement for agencies to report on the total number of formal applications received during the year and that were assessed as valid in clause 8(b) of the GIPA Regulation.*

## Issue Highlight: Managing requests for information – What are an agency's obligations?

When a citizen requests information they can make their request under the two *reactive* pathways under the GIPA Act:

1. Informal release, or
2. Formal release.

Agencies have an obligation to assist citizens to make or who propose to make an application for information. The legislation makes clear the specific advice and assistance the agency should provide to the citizen who requests access to government information:

- (a) advice as to whether or not the information is publicly available from the agency and (if it is) how the information can be accessed,
- (b) advice on how to make an access application for the information if the information is not publicly available from the agency but appears likely to be held by the agency,
- (c) if the information appears unlikely to be held by the agency but appears likely to relate to the functions of some other agency, the contact details of the other agency,
- (d) the contact details of the Information Commissioner and advice on the availability of and how to access any information published by the Information Commissioner that it appears may be relevant to the person's request.<sup>26</sup>

These requirements ensure that the right to access information is preserved and unencumbered. That duty to preserve and promote information access in a timely and effective manner is confirmed and fortified throughout the GIPA Act. For example, while an agency may request an applicant use an application form to structure their access request, the GIPA Act does not require or compel an applicant to use a specific form. The absence of a prescribed form means that agencies can act flexibly when receiving access requests. If an agency requires:

- a form to be completed for the access application, or
- the applicant to talk through their access request via telephone or other communication before allowing them to lodge an application,

then that action would be inconsistent with the operation of the GIPA Act and may have the effect of creating a barrier to access.

Agencies must act in accordance with the GIPA Act in both its strict requirements to provide certain types of advice and assistance and in the spirit of the GIPA Act.

The right to information is a fundamental human right and it cannot be curtailed by actions which may be viewed as barriers to that fundamental human right.

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<sup>26</sup> GIPA Act section 16(2)(a) – (d)

# Invalid applications

The level and trend in invalid applications is an indicator of the extent to which the GIPA Act is understood by applicants and agencies. It can also be interpreted to measure the flexibility offered to applicants to amend their applications so that they can be considered.

Figure 8 shows the flow of applications from receipt to initial assessment and subsequent processing, together with the number of valid applications received in 2021/22.

Section 52(3) of the GIPA Act requires agencies to provide reasonable advice and assistance to enable applicants to make a valid application.

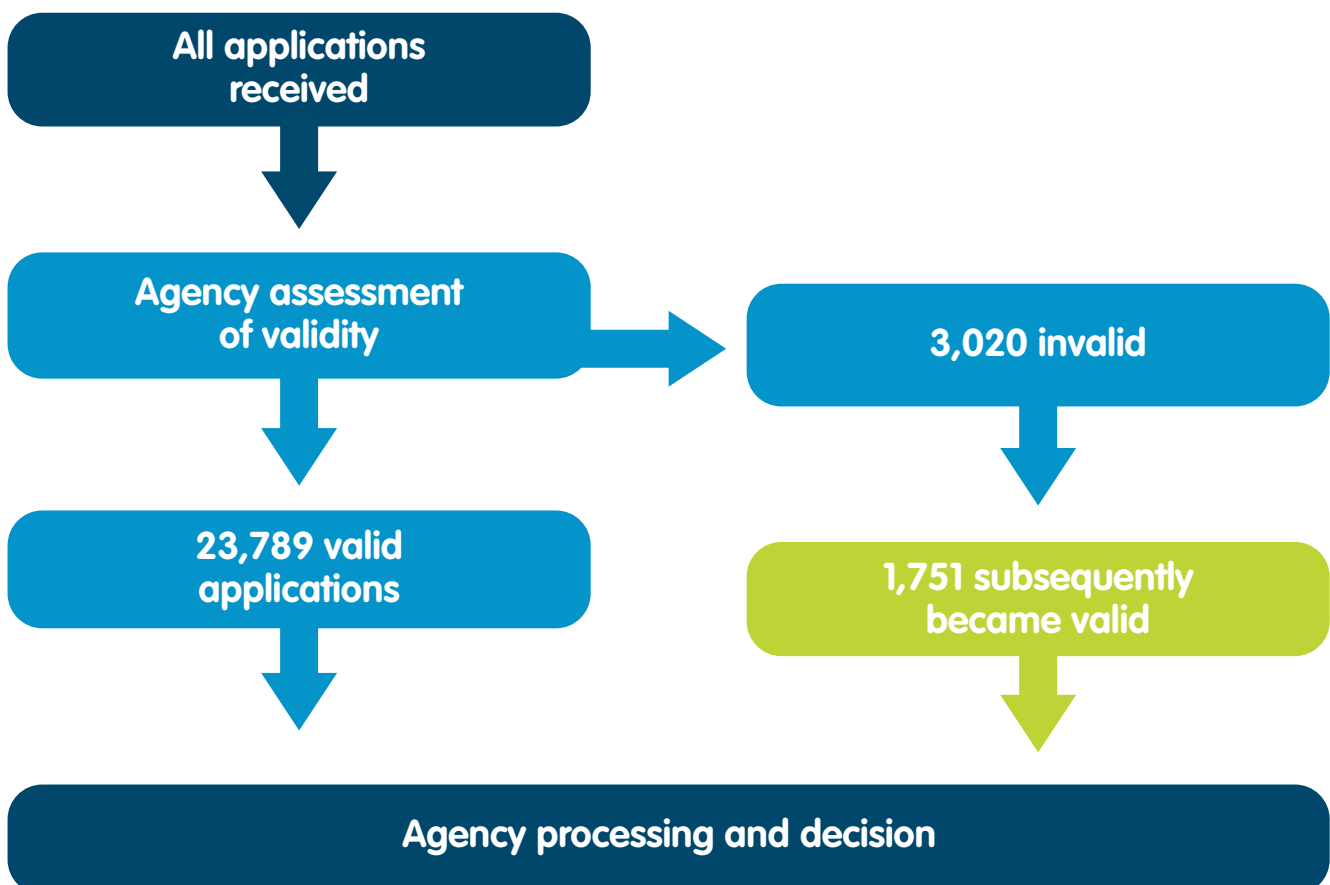
## The rate of invalid applications received remains high

In 2021/22, agencies received 3,020 invalid applications, equivalent to 13% of all formal applications received (Figure 9).

This is consistent with the 2,829 or 13% of invalid applications reported in 2020/21.

Consistent with previous years, in 2021/22 the most common reason for invalidity (applying in 96% of invalid applications) was that the application did not comply with formal requirements.

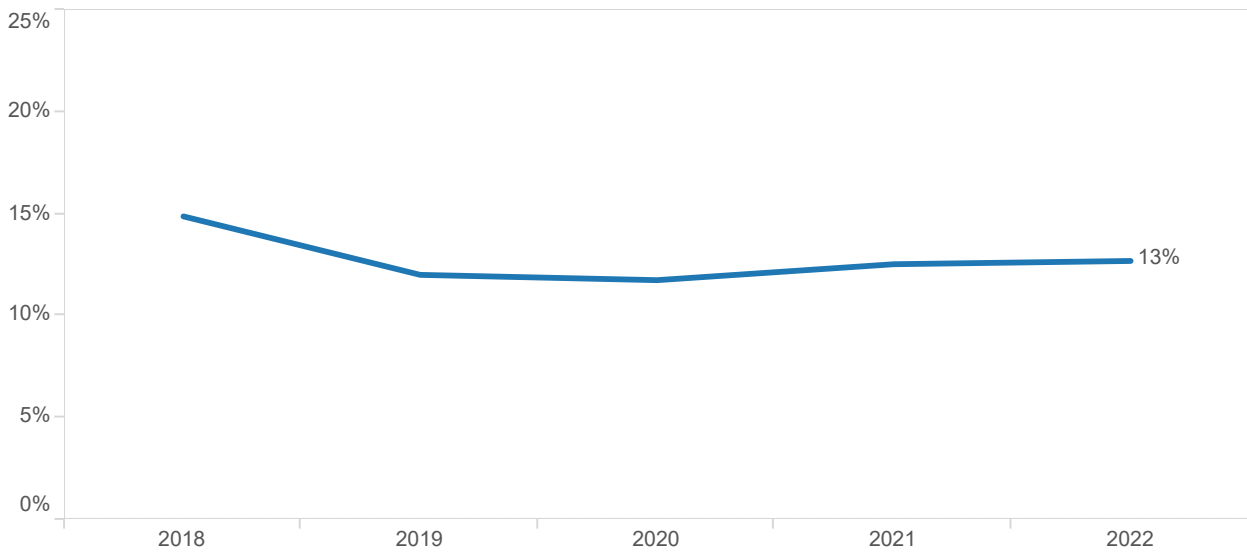
Figure 8: Flow of valid and invalid formal applications, 2021/22



*'Invalid applications' are reported and measured by the requirement for agencies to report on the number of invalid applications specified in Table C of Schedule 2 to the GIPA Regulation.*



**Figure 9: Invalid applications as a percentage of all formal applications received, 2017/18 to 2021/22**



The continuing high number of invalid applications remains concerning. As noted in previous reports, clear agency communication can help minimise the number of invalid applications and reduce time and effort that may be spent on preparing or assessing applications.

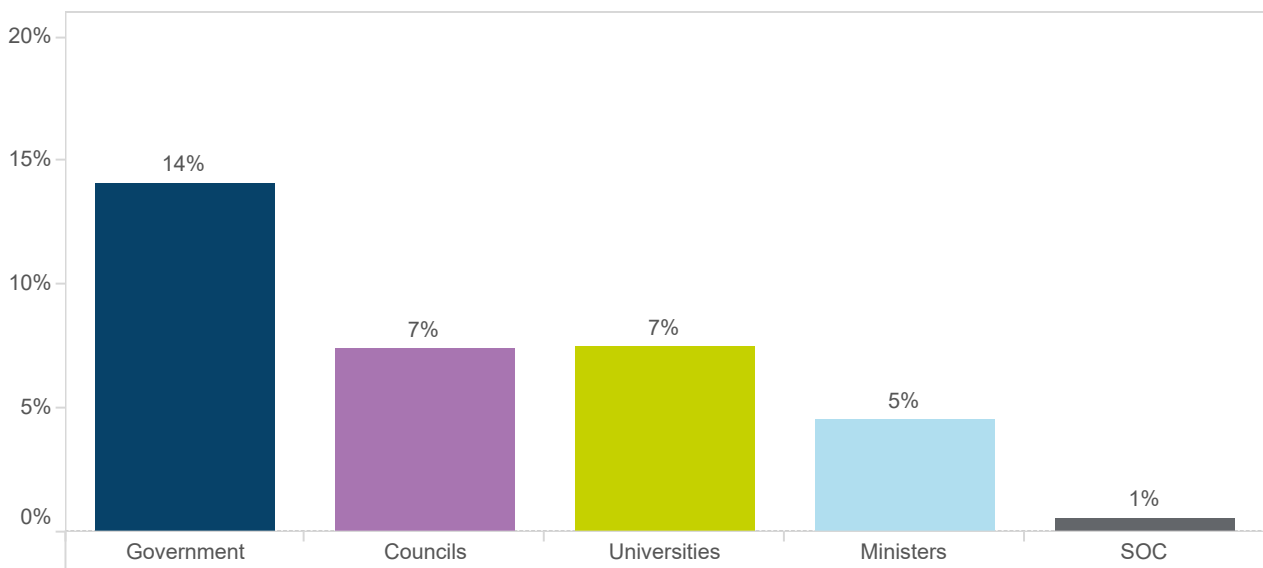
The GIPA Act requires an agency to provide advice and assistance to help an applicant make a valid application. Accordingly, opportunities to assist applicants through guided application processes, including electronic lodgement, should be promoted.

The Government sector had the highest percentage of invalid applications. The consistency of the percentage of invalid applications should be viewed in the context of increasing prevalence of online lodgement facilities.

These systems, if designed optimally, have the capacity to increase the number of valid applications by guiding applicants to meet the statutory requirements of a valid application. In response to the data reported for invalid applications in 2019/20, the IPC developed and published the [Simplified guide for information access](#), which provides guidance in a simplified form on how to make an application under the GIPA Act, including outlining the five requirements to make a valid application.

The percentage of invalid applications remained stable across all sectors. Consistent with other years, the Government sector continued to have a high percentage of invalid applications at 14% (Figure 10).

**Figure 10: Invalid applications as a percentage of all formal applications received, by sector, 2021/22**



### The number of invalid applications received remained largely stable

The number of invalid applications remained stable for most agencies, however, some government agencies experienced a moderate increase in the percentage of applications that were invalid compared with 2020/21. This included:

- the Ministry of Health, from 10% in 2020/21 to 17% in 2021/22
- the Department of Premier and Cabinet, from 5% in 2020/21 to 13% in 2021/22
- the Department of Planning and Environment, from 3% in 2020/21 to 9% in 2021/22.

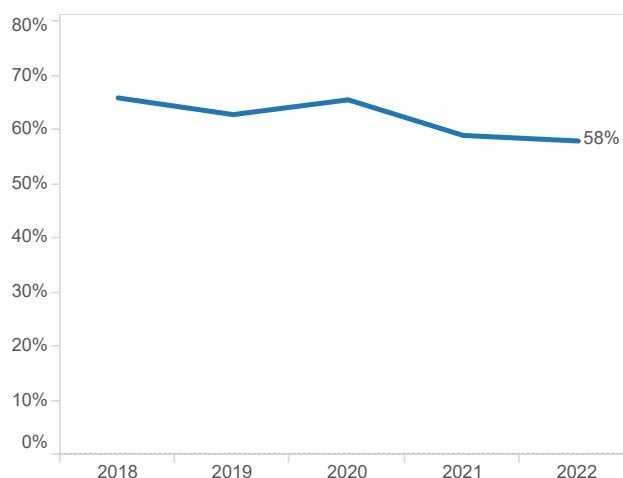
It should be noted that many invalid applications subsequently became valid.

### Invalid applications that have subsequently become valid remains stable this year

Agencies are required to assist applicants to make a valid access application, and compliance with this requirement of the GIPA Act is reflected in the percentage of applications that subsequently become valid.

In 2021/22, 58% of invalid applications subsequently became valid. This is consistent with 59% reported in 2020/21 (Figure 11).

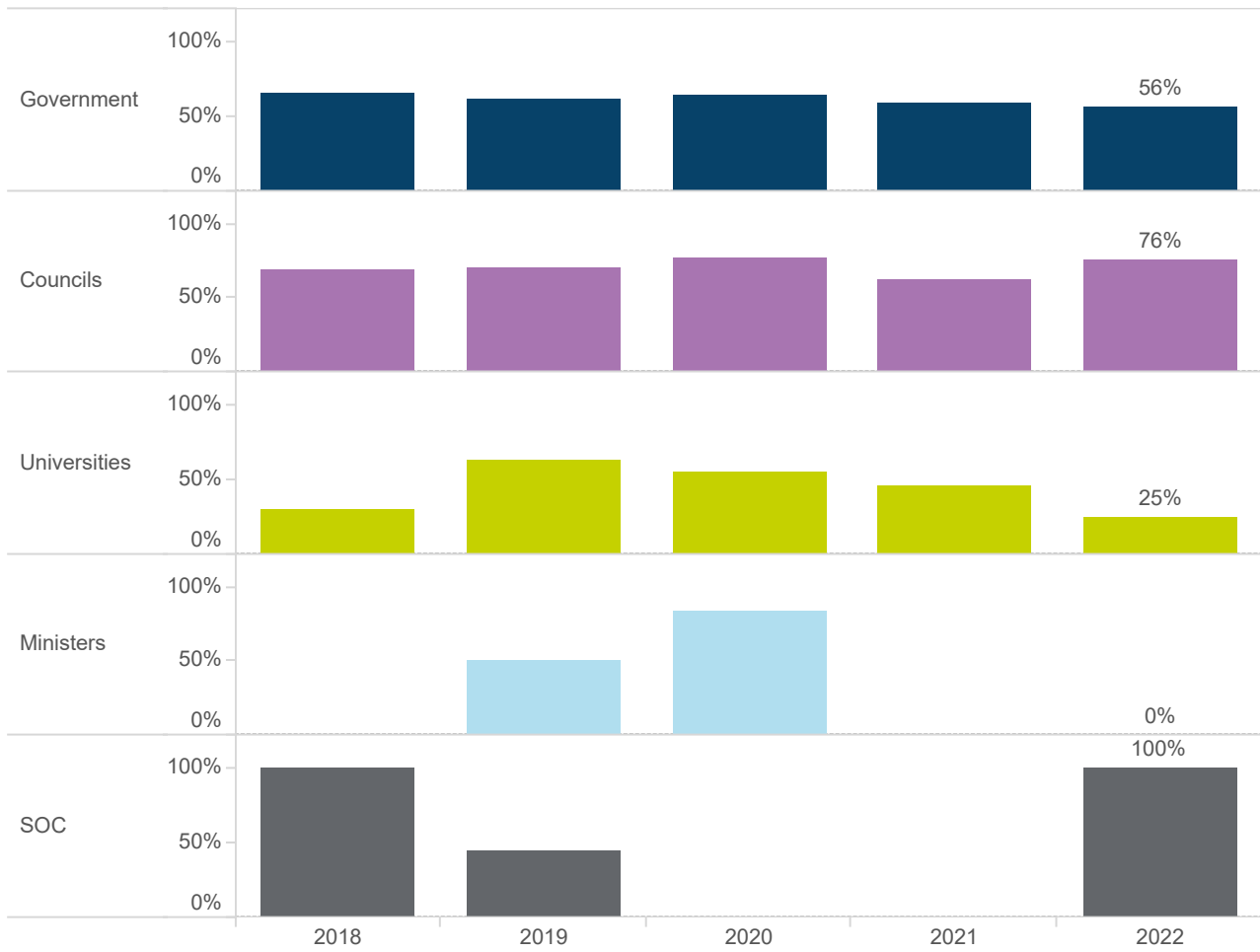
Figure 11: Invalid applications that became valid as a percentage of all invalid applications, 2017/18 to 2021/22



As Figure 12 shows, the percentage of invalid applications that subsequently became valid has:

- remained relatively stable in the Government sector, with 56% reported in 2021/22 consistent with 59% in 2020/21
- significantly increased in the Council sector, from 63% in 2020/21 to 76% in 2021/22
- significantly declined in the University sector, from 46% in 2020/21 to 25% in 2021/22
- significantly increased in the State-Owned Corporations sector from 0% in both 2019/20 and 2020/21 to 100% in 2021/22
- remained stable in the Minister sector, with 0% reported in 2021/22 and 2020/21 respectively.

Figure 12: Invalid applications that became valid as a percentage of all invalid applications, by sector, 2017/18 to 2021/22



## Issue Highlight: What factors should an agency consider for the purpose of the identification requirement in section 41(1)(e)? – *Jeray v Blue Mountains City Council* [2021] NSWCATAP 310

This case dealt with the issue of whether an access application made under the GIPA Act contains enough information to enable the agency to identify the information sought pursuant to section 41(1)(e) of the GIPA Act.

This question arose because the applicant sought all records concerning an upcoming event and requested that if there were many records that they be provided with an index of records held so that documents could be selected as required. The respondent advised the applicant that the application was invalid and invited them to amend the application. The applicant replaced the words “an index” with “a list of records held”.

The Appeal Panel overturned the Tribunal’s ruling that the application did not include “such information as is reasonably necessary to enable the government information applied for to be identified.” The Appeal Panel upheld the Appellant’s appeal of the Tribunal’s decision that the access application made was not valid according to section 41(1)(e) of the GIPA Act.

The Appeal Panel found that the wording of section 41(1)(e) requires a focus on the meaning of the “identification requirement” for validity and asks whether the application includes such information as is “reasonably necessary” to enable the government information to be “identified”.

The *purpose* of the identification requirement in section 41(1)(e) is to enable the agency to perform its functions under the GIPA Act. In this context, the Tribunal held that the following factors are not relevant to determining validity:

- an agency’s view of the reasonableness of an access application on its ability to perform its functions
- whether a broad scope of information is sought by an access application
- the time required to identify the information.

The Appeal Panel rejected the Tribunal’s emphasis on “reasonableness” as the test for interpreting the “identification requirement” for validity in section 41(1)(e). This section merely requires that an applicant provide such information as is reasonably necessary to enable the government information applied for to be identified. *The fact that the information requested is vast and/or difficult to locate, does not invalidate the application.*

The Appeal Panel found that the Tribunal erred in the way it construed the identification requirement in section 41(1)(e) because:

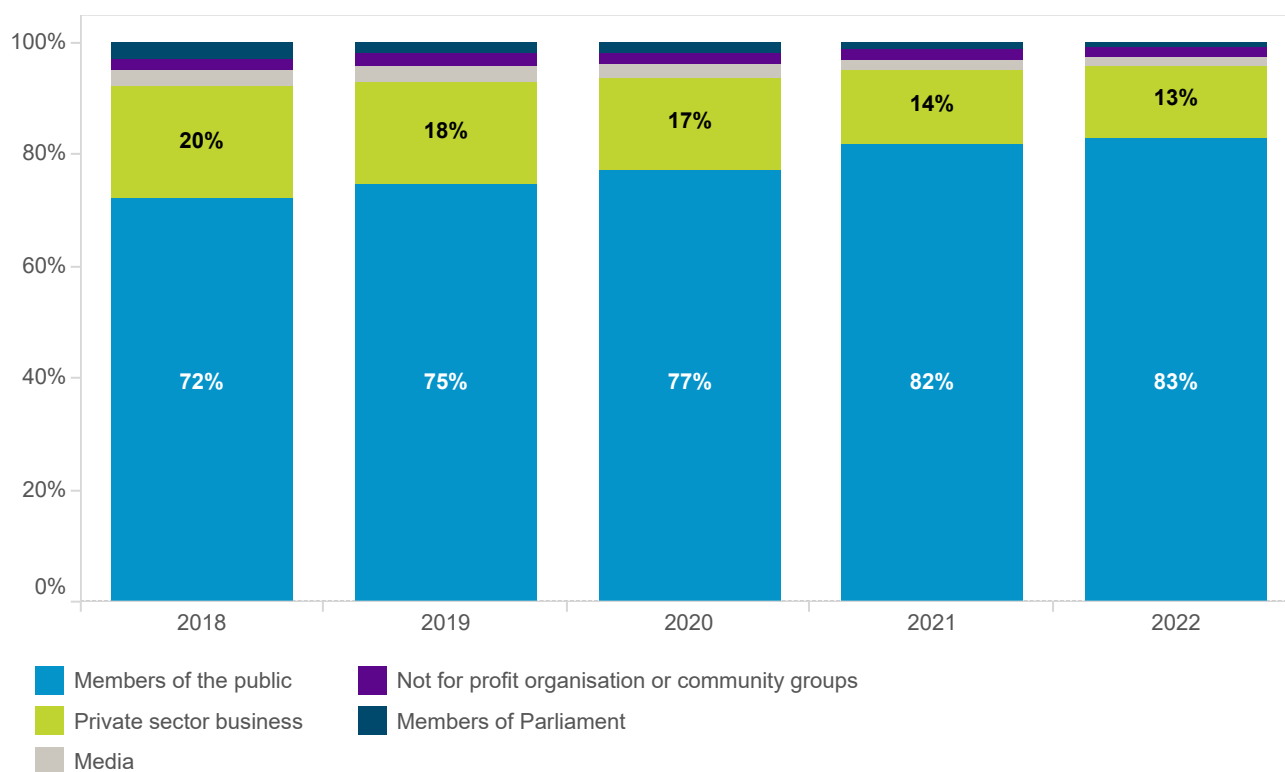
- it failed to focus on the wording of the provision
- it construed the identification requirement incorrectly as the application did include “such information as is *reasonably necessary* to enable the government information applied for to be *identified*”
- the broad scope of the application, the time it would take to identify the information, and the risk that some information will be missed were not relevant.

# Who applied?

## Application outcomes for members of the public remain at a record high

In 2021/22, 83% of all outcomes were related to applications from either a member of the public or their legal representative. This is consistent with the 82% reported in 2020/21. Within this group, the largest single applicant type (44%) was members of the public represented legally. In 2020/21, legally represented members of the public accounted for 51% of the total outcomes of applications.

Figure 13: Trend in the proportion of outcomes, by type of applicant, 2017/18 to 2021/22



## There was a moderate increase in outcomes for members of the public and a moderate decrease in outcomes for members of Parliament

In 2020/21 (as in all years), the greatest number of outcomes was for applications by members of the public, which increased moderately by 8%, compared with 2020/21 (from 18,229 in 2020/21 to 19,758 in 2021/22) (Figure 14).

Outcomes for legally represented members of the public (44%) declined moderately from the 51% recorded in 2020/21.

The number of outcomes for members of Parliament (1%) declined moderately by 7% (from 213 in 2020/21 to 198 in 2021/22), following an increase of 39% in 2020/21.

The number of outcomes for not-for-profit organisations or community groups remained consistent with the previous year (412 in 2021/22 compared with 404 in 2020/21) following a 49% increase in 2020/21.

The number of outcomes for media remained consistent with the previous year (375 in 2021/22 compared with 382 in 2020/21) following an 18% decline in 2020/21.

The number of outcomes for private sector businesses remained consistent with the previous year (3,053 in 2021/22 compared with 3,054 in 2020/21). However, this represents a steady decline from 20% in 2017/18. This corresponds with a considerable increase in applications from members of the public and the resultant percentage of outcomes recorded for this sector against the growth in total applications.

'Who applied?' is reported and measured by the requirement for agencies to report on the number of outcomes for applications by type of applicant. As an application can have multiple outcomes, the total number of outcomes reported in this section will usually be higher than the number of applications reported. This section draws on data from Table A of Schedule 2 to the GIPA Regulation.

Figure 14: Number of outcomes by type of applicant, 2017/18 to 2021/22

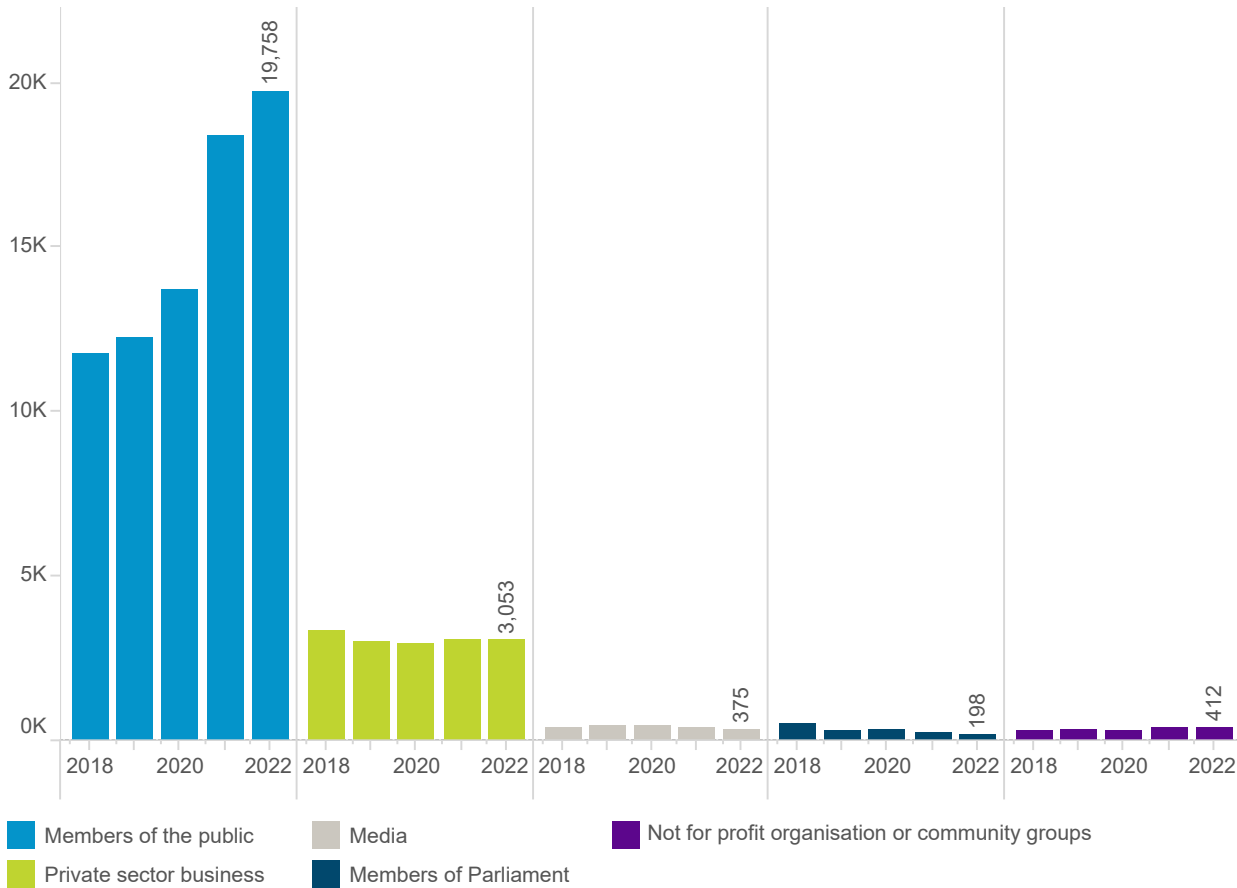
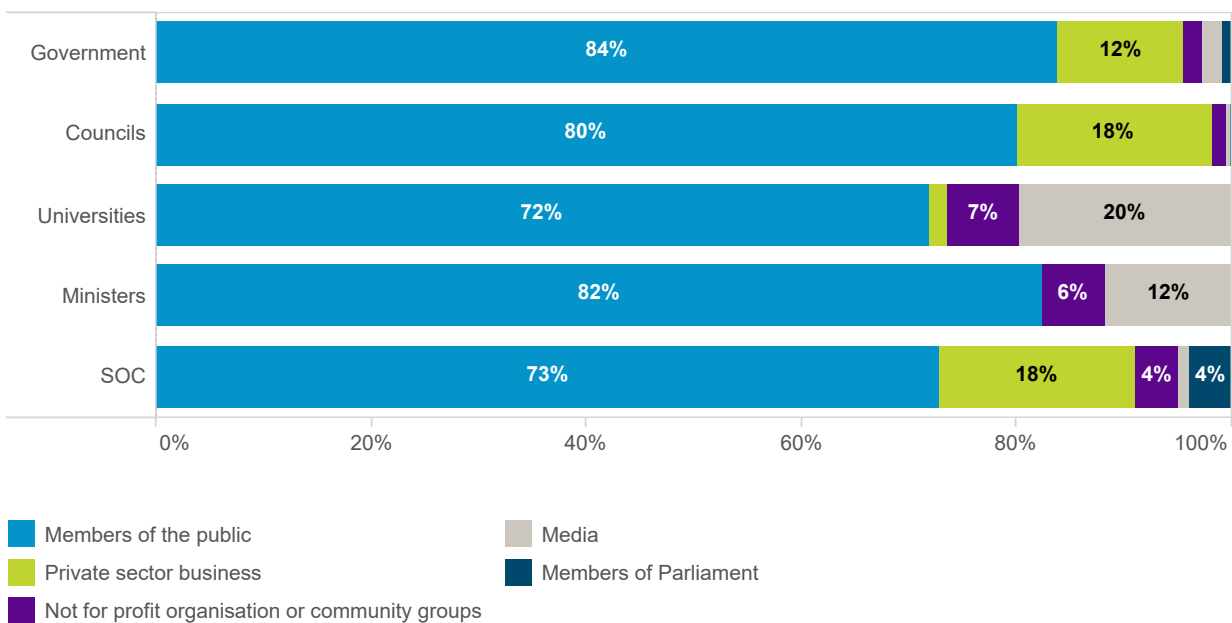


Figure 15: Percentage of outcomes by sector and type of applicant, 2021/22



## **Overall percentages remained largely stable for applicant type, with changes in applicant type across the Minister and State-Owned Corporations sectors**

Similar to 2020/21, in 2021/22 the distribution of applicant types varied markedly across sectors (Figure 15). Percentages remained consistent in the Government, Council and State-Owned Corporations sectors.

Notable changes by sector since 2020/21 were the:

- University sector – a moderate increase for the percentage of outcomes related to members of the public, from 63% to 72%, and a significant decline for media, from 20% to 12%, and not-for-profit or community groups, from 12% to 7%
- Minister sector – a significant increase for both the percentage of outcomes related to members of the public, from 55% to 82%, and a moderate decline for media from 18% to 12%, and not-for-profit or community groups from 13% to 6%.

# What information was asked for?

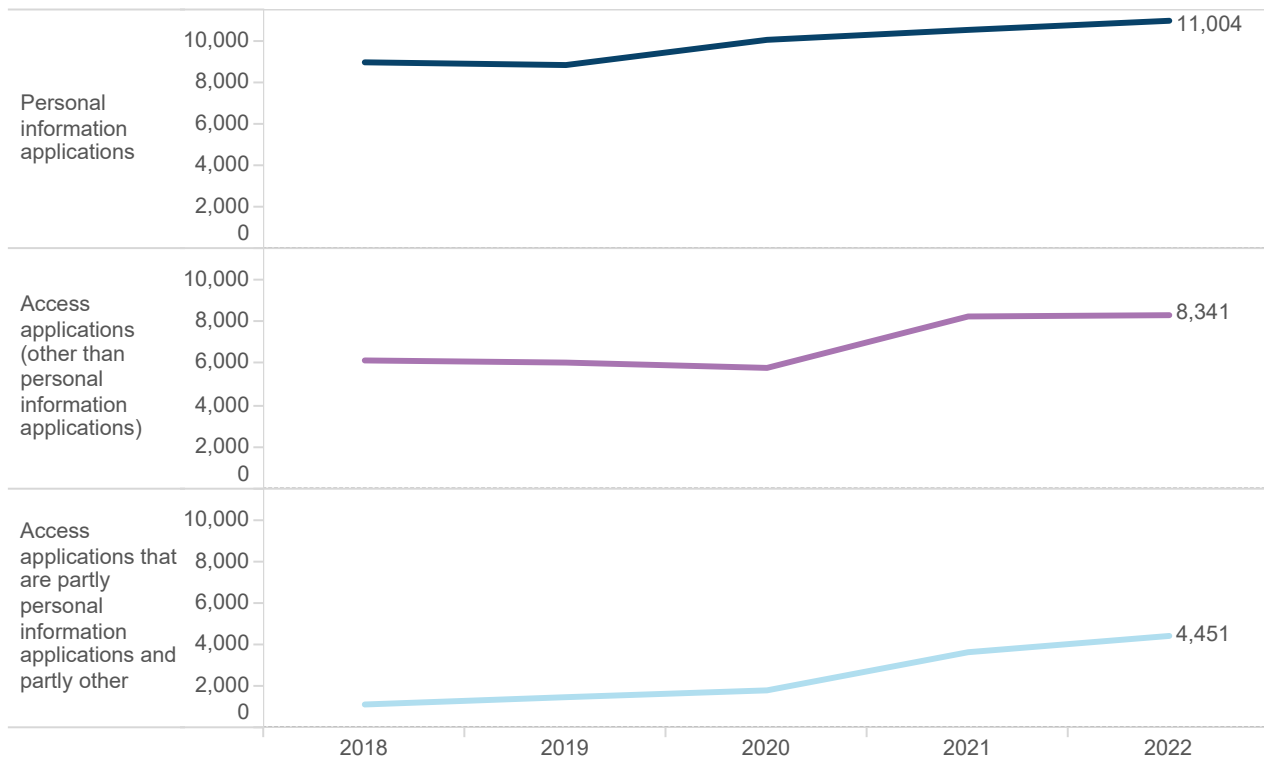
**There has been a 197% increase in outcomes for applications that sought partly personal information and partly other information over the four years since 2018/19; all other outcomes remained stable**

- ‘other than personal information’ outcomes were consistent with the previous year (8,126 outcomes in 2020/21 compared with 8,341 in 2021/22)
- personal information application outcomes were consistent with the previous year (10,549 outcomes in 2020/21 compared with 11,004 in 2021/22).

As Figure 16 shows, in 2021/22:

- outcomes that were partly personal information and partly other information increased significantly by 23% (from 3,607 outcomes in 2020/21 to 4,451 in 2021/22). This continues the trend observed in previous years, resulting in a 197% increase between 2018/19 and 2021/22

**Figure 16: Number of outcomes by type of information applied for, 2017/18 to 2021/22**



*‘What information was asked for?’ is reported and measured by the requirement for agencies to report on the number of outcomes for applications made for personal information, other than personal information, or a combination of both types of information from Table B, Schedule 2 to the GIPA Regulation.*



## The type of information sought varied across sectors

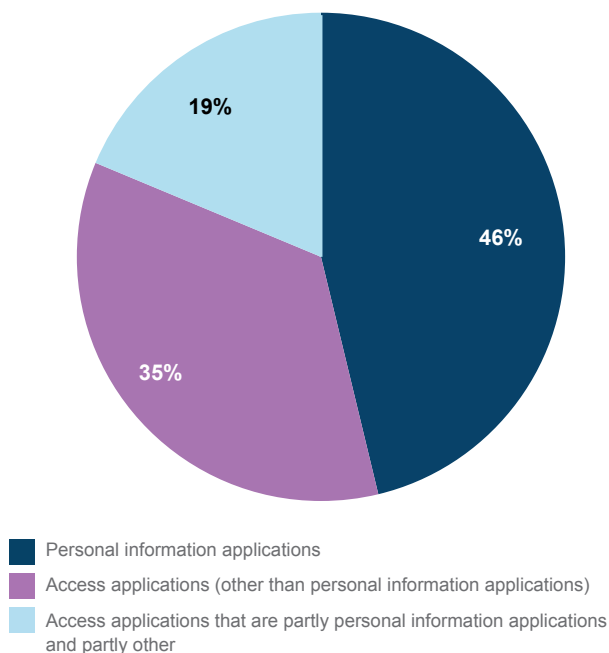
The percentage of outcomes remained consistent with the previous year.

In 2021/22:

- 46% of outcomes related to applications for personal information, compared with 47% in 2020/21
- 35% of outcomes related to applications for 'other than personal information', compared with 37% in 2020/21
- 19% of outcomes related to applications for both types of information, compared with 16% in 2020/21 (Figure 17).

All sectors experienced different patterns of outcomes by type of information applied for in 2021/22, however these patterns remained consistent with those reported in 2020/21, except the Minister sector which experienced significant changes in the outcomes by type of information applied for. The Minister sector receives relatively small numbers of applications and is subject to more variability than other sectors (Figure 18).

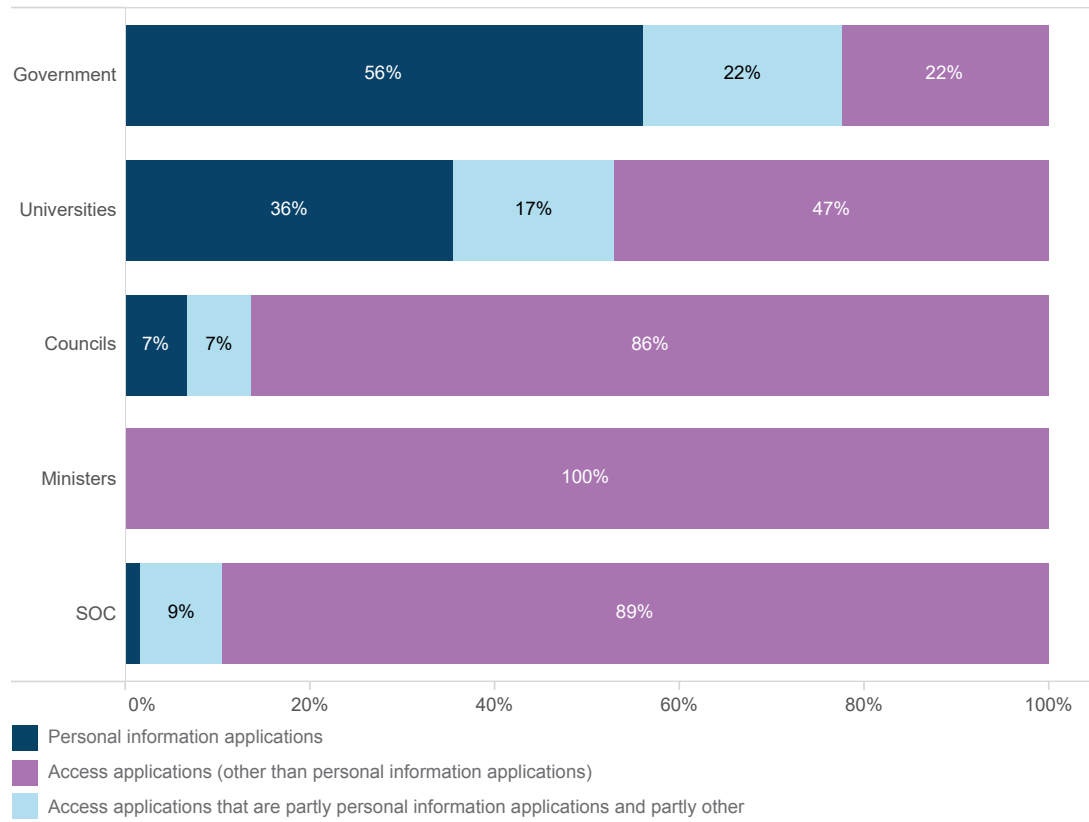
**Figure 17: Outcomes by type of information applied for, 2021/22**



In 2021/22:

- In the Minister sector, 100% of outcomes related to applications for 'other than personal information', a significant increase from 2020/21 (83%)
- In the State-Owned Corporations sector, outcomes were similar to the previous year with 89% of outcomes related to applications for 'other than personal information' compared with 83% in 2020/21 and 9% of outcomes related to applications for 'partly personal information and partly other information' compared to 12% in 2020/21
- In the University sector, outcomes remained consistent with the previous year across each application type: 36% of outcomes related to applications for personal information, compared with 32% in 2020/21, 47% of outcomes related to applications for 'other than personal information', compared to 51% in 2020/21, and outcomes related to applications that are 'partly personal information and partly other information' was consistent at 17% in 2021/22 and 2020/21 respectively
- In the Government sector, 56% of outcomes related to applications for personal information, consistent with 58% in 2020/21 and 22% of outcomes related to applications for 'partly personal information and partly other information' consistent with 18% in 2020/21
- In the Council sector, 86% of outcomes related to applications for 'other than personal information', consistent with 86% in the previous year.

Figure 18: Percentage of all outcomes, by type of information applied for, 2021/22



# Did applicants get what they asked for?

## Overall 'release rates' trending downwards

In 2021/22, the overall release rate was 70%, representing the combined access granted in full and in part outcomes (Figure 19). This is a decline from the 73% reported in 2020/21 and similar to the combined release rate of 69% in 2019/20 and 70% in 2018/19.

Consistent with 2020/21, release rates for 2021/22 were stable across all sectors except for a moderate decline in the Minister sector.

At the sector level (Figure 20), in 2021/22, the State-Owned Corporations sector had the highest overall release rate of 86%, similar to the 84% reported in 2020/21.

For the Council sector, 80% of outcomes granted access in full and in part in 2021/22. This is consistent with the 79% reported in 2020/21.

For the Government sector, 68% of outcomes resulted in access being granted in full and in part in 2021/22. Whilst this is similar to the 71% reported in 2020/21 the high volume in this sector has a material impact on overall release rates.

For the University sector 64% of outcomes resulted in access being granted in full and in part in 2021/22. This is consistent with the 65% reported in 2020/21.

For the Minister sector, 42% of outcomes resulted in access being granted in full and in part in 2021/22, a moderate decline from 52% in 2020/21.

Figure 19: Overall release rate across all sectors, 2017/18 to 2021/22

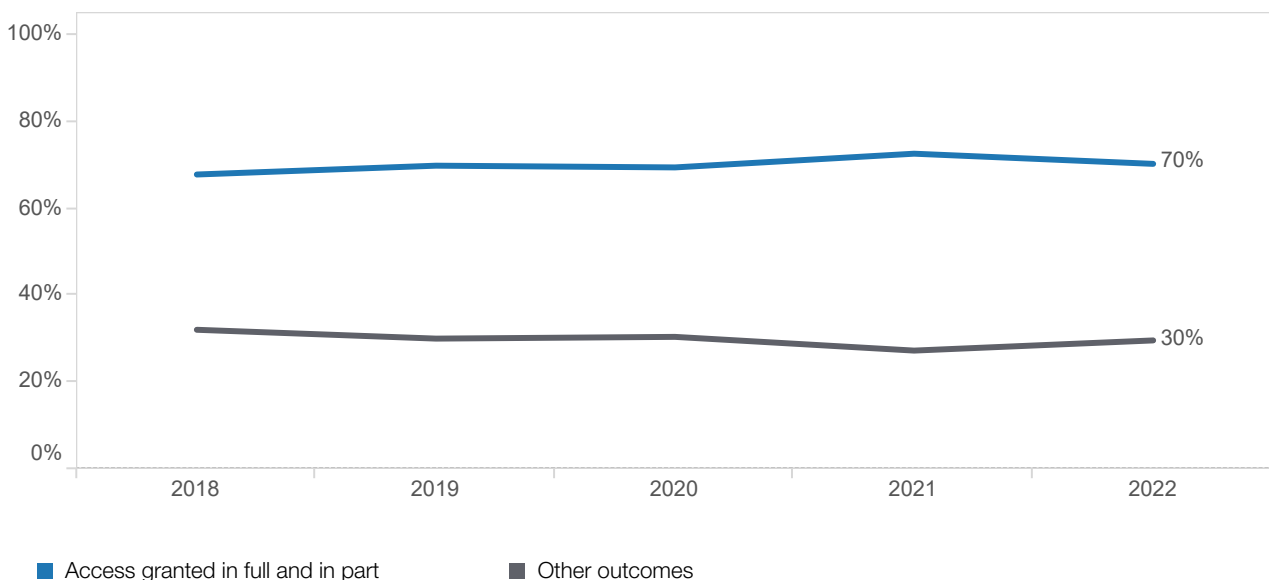


Figure 20: Overall release (access granted in full and in part) rate, by sector, 2017/18 to 2021/22

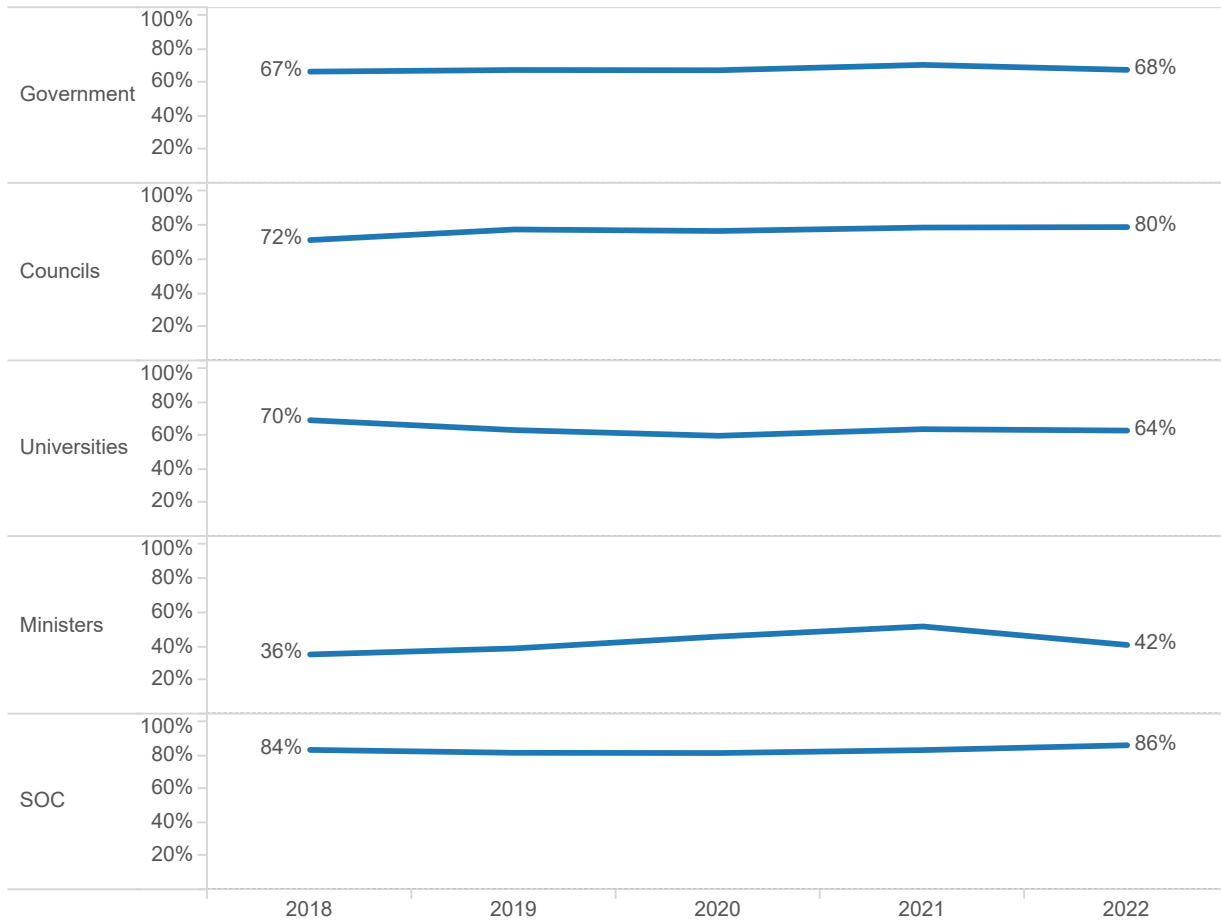
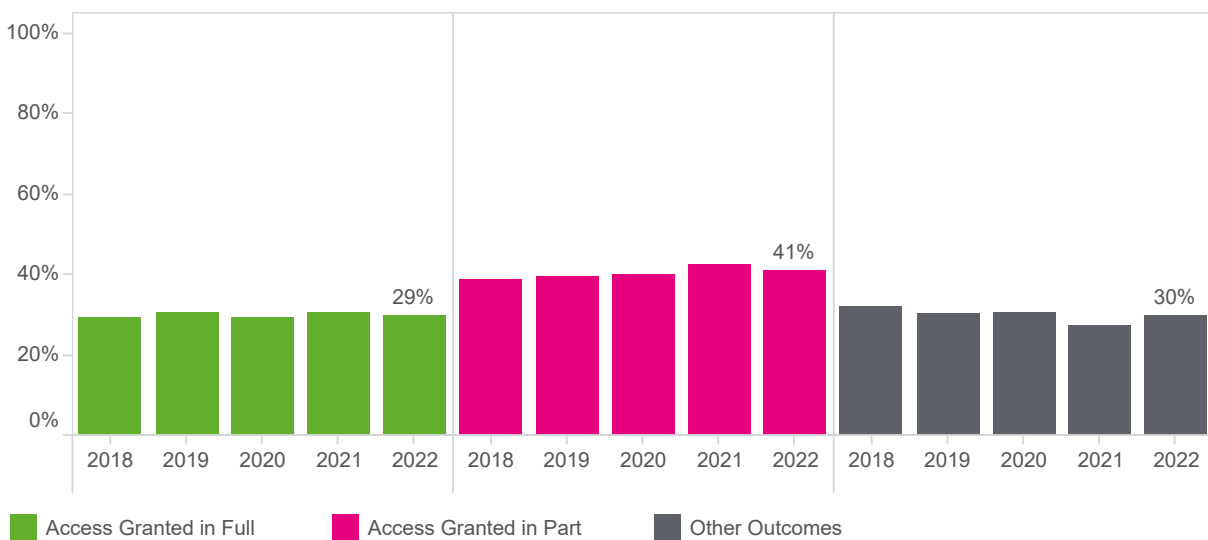
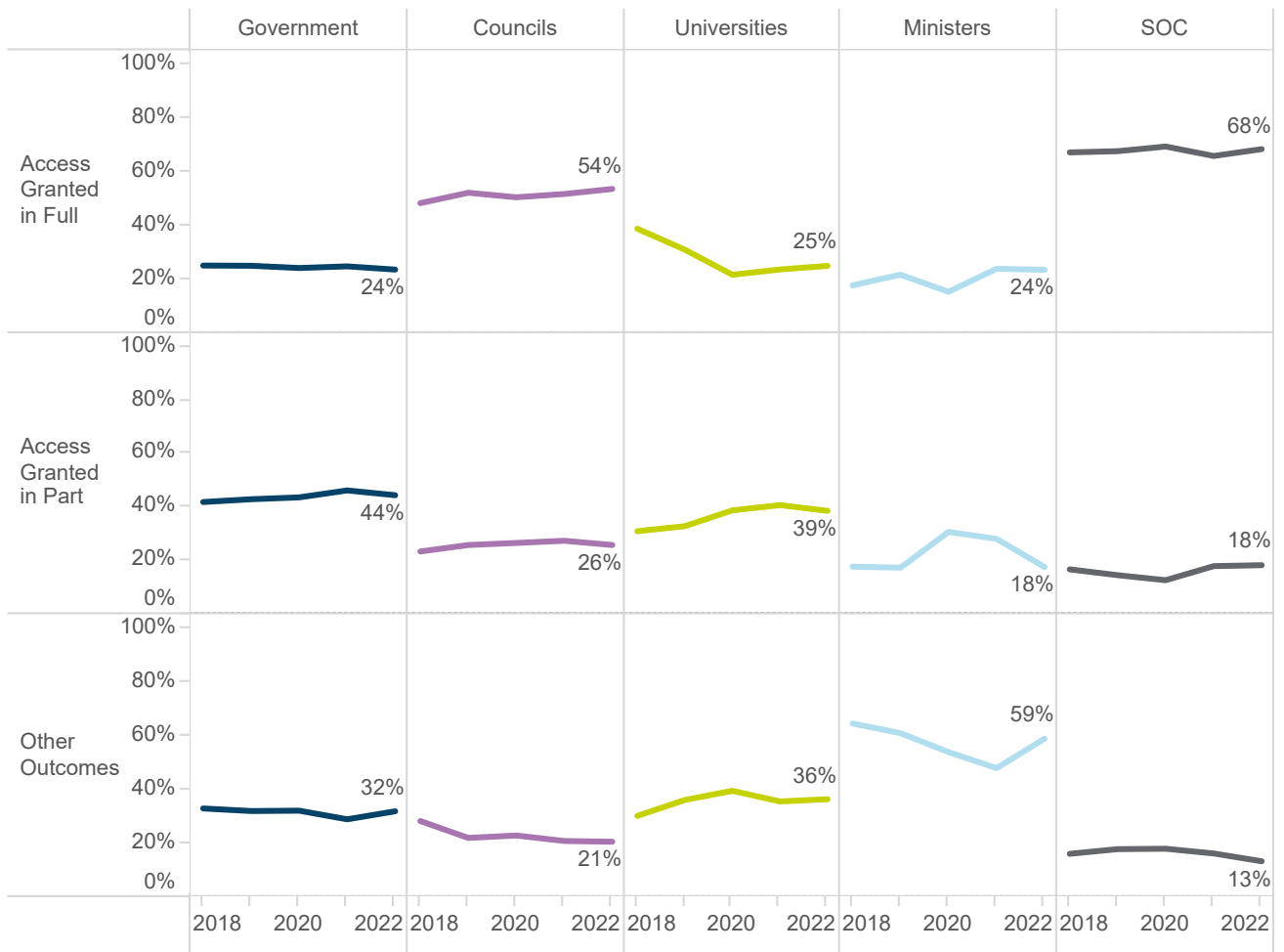


Figure 21: Release outcomes across all sectors, 2017/18 to 2021/22



‘Did applicants get what they asked for?’ is reported and measured by the requirement for agencies to report on the outcomes of applications for information by the type of applications (listed in Table A of Schedule 2 to the GIPA Regulation) and the type of information that is applied for (listed in Table B of Schedule 2 to the GIPA Regulation). The term ‘other outcomes’ refers to the following outcomes – access refused in full, information not held, information already available, refuse to deal with application, refuse to confirm or deny whether information is held, and application withdrawn.

Figure 22: Release outcomes, by sector, 2017/18 to 2021/22



### The overall release rate across all application types was stable

The overall release rates remained stable for all application types.

The overall release rate for 'other than personal information' was stable at 71% in 2021/22 consistent with results over the previous three years: 71% in 2020/21, 69% in 2019/20 and 71% in 2018/19.

The overall release rate for applications for personal information remained consistent with previous years at 70% in 2021/22, compared with 74% in 2020/21, 71% in 2019/20 and 70% in 2018/19.

The overall release rate for applications that sought partly personal and partly other information was 70% in 2021/22, consistent with 71% in 2020/21 (Figure 23).

### Release rates by applicant type remain stable

The lowest overall release rate (52%) was for applications made by members of Parliament which is consistent with 51% reported in 2020/21 (Figure 24). This is a change from 2020/21, where applications made by the media had the lowest release rate of 55%.

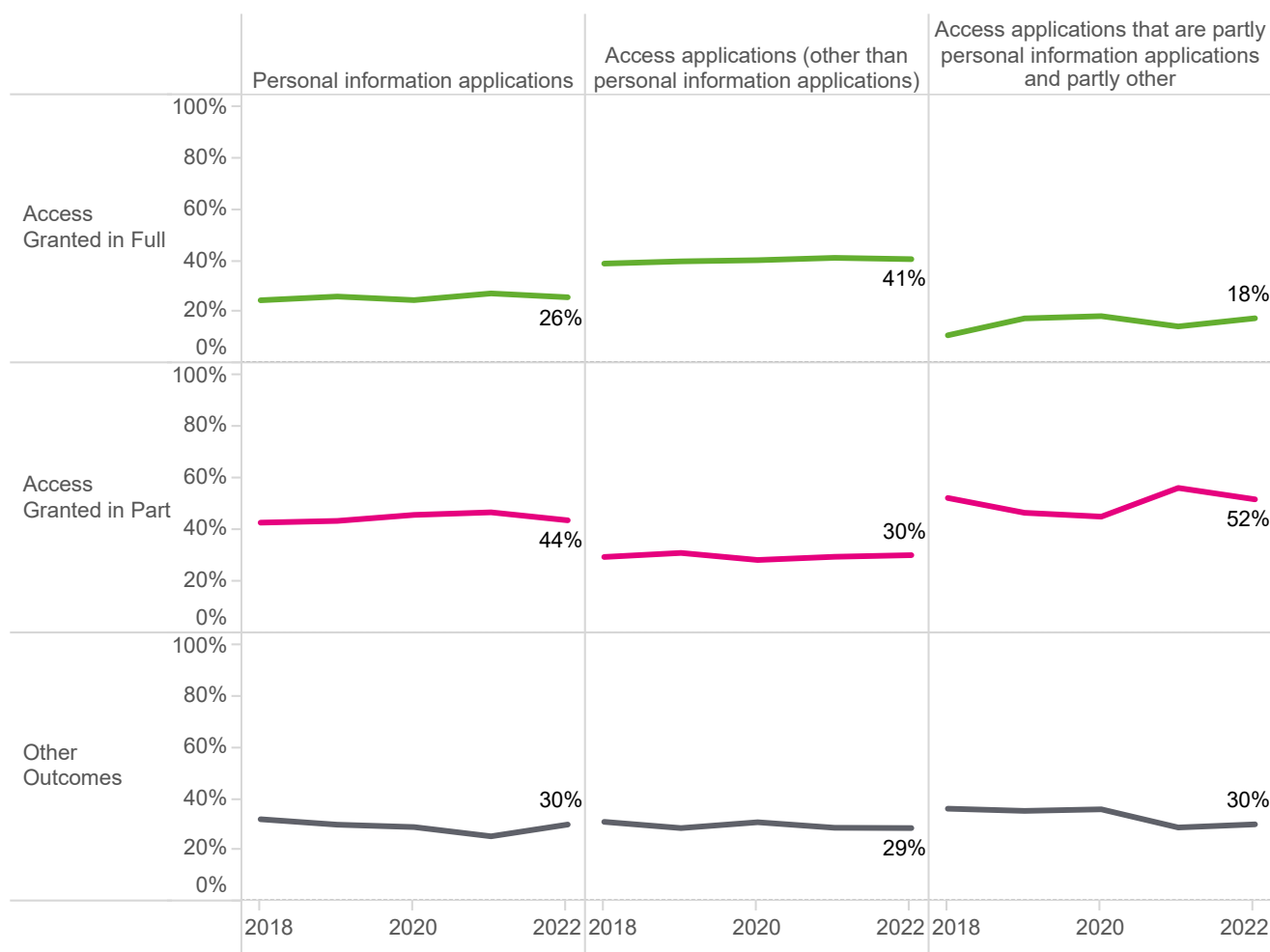
The highest release rate in 2021/22 was for applications made by private sector business (74%), consistent with results for 2020/21 (76%), 2019/20 (75%) and 2018/19 (76%).

The release rate for members of the public was 71%, consistent with 71% in 2020/21, 70% in 2019/20 and 2018/19 respectively.

Consistent with overall release rates, the composition of outcomes remained relatively stable in 2021/22:

- For members of the public, 29% of outcomes granted access in full and 42% granted access in part. This is consistent with outcomes reported in 2020/21, 2019/20 and 2018/19
- For private sector business, 35% of outcomes granted access in full, and 39% granted access in part. This is consistent with outcomes reported in 2020/21, 2019/20 and 2018/19
- For not-for-profit organisations or community groups, 31% of outcomes granted access in full, and 39% granted access in part, consistent with results for 2020/21 and 2019/20
- For members of Parliament, 24% of outcomes granted access in full, a moderate decline from 2020/21, while 28% of outcomes granted access in part, consistent with results for 2020/21 and 2019/20. 48% of outcomes in 2021/22 resulted in “other outcomes” a slight increase from 43% in 2020/21. The increase on this category was largely the result of an overall decline in the number of outcomes recorded for members of Parliament rather than a meaningful increase in the number of “other outcomes” recorded
- For media, 36% of outcomes granted access in full, a moderate increase from 30% in 2020/21, and 20% granted in part, consistent with outcomes reported in 2020/21 and 2019/20.

Figure 23: Release outcomes by application type, 2017/18 to 2021/22

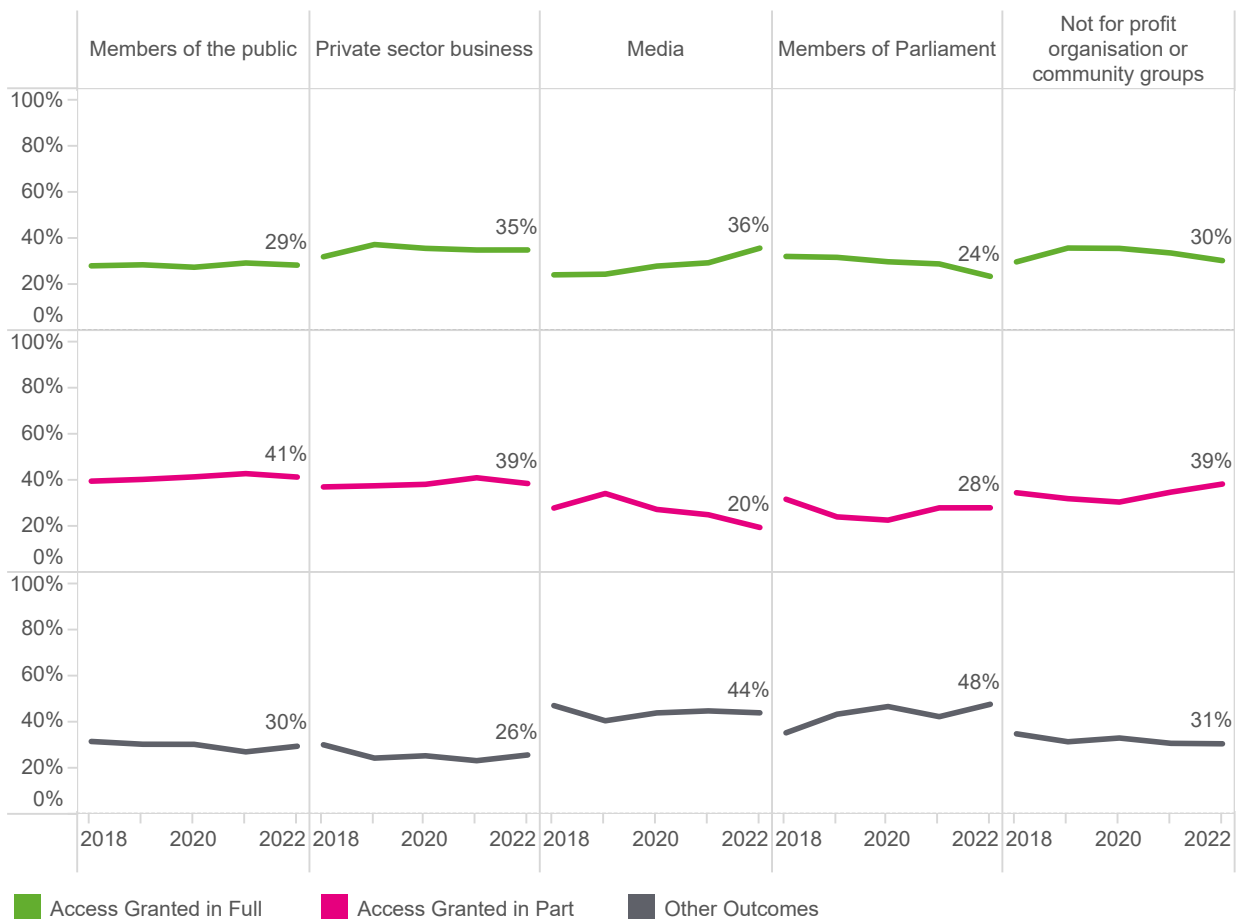


## What is an outcome?

The GIPA regime provides for a number of possible outcomes in relation to a formal access application. These are reported as:

- access granted in full – where the applicant receives all information applied for
- access granted in part – where the applicant receives some of the information applied for
- other outcomes - this refers to a range of possible outcomes: access refused in full; information not held; information already available; refuse to deal with application; refuse to confirm or deny whether information is held, or application withdrawn.

Figure 24: Outcomes by applicant type, 2017/18 to 2021/22



# How quickly were decisions made?

## Overall timeliness of decisions has declined slightly, however deemed refusals remain at low levels

In 2021/22, 90% of decisions by agencies were made within the statutory time frame (Figure 25). This result is a slight decline from 92% in 2020/21 and 91% in 2019/20.

The number of applications decided after 35 days by agreement with the applicant, increased from 7% in 2020/21 to 9% in 2021/22.

The rate of deemed refusals in 2021/22 remained stable at 1%, consistent with results in 2020/21.

## Timeliness is stable across most sectors

In 2021/22 (Figure 26), the:

- Government sector decided 90% of applications within the statutory time frame, a slight decline from 92% reported in 2020/21
- Council sector decided 91% of applications within the statutory time frame, a slight decline from 94% reported in 2020/21
- University sector decided 67% of applications within the statutory time frame, consistent with 69% reported in 2020/21

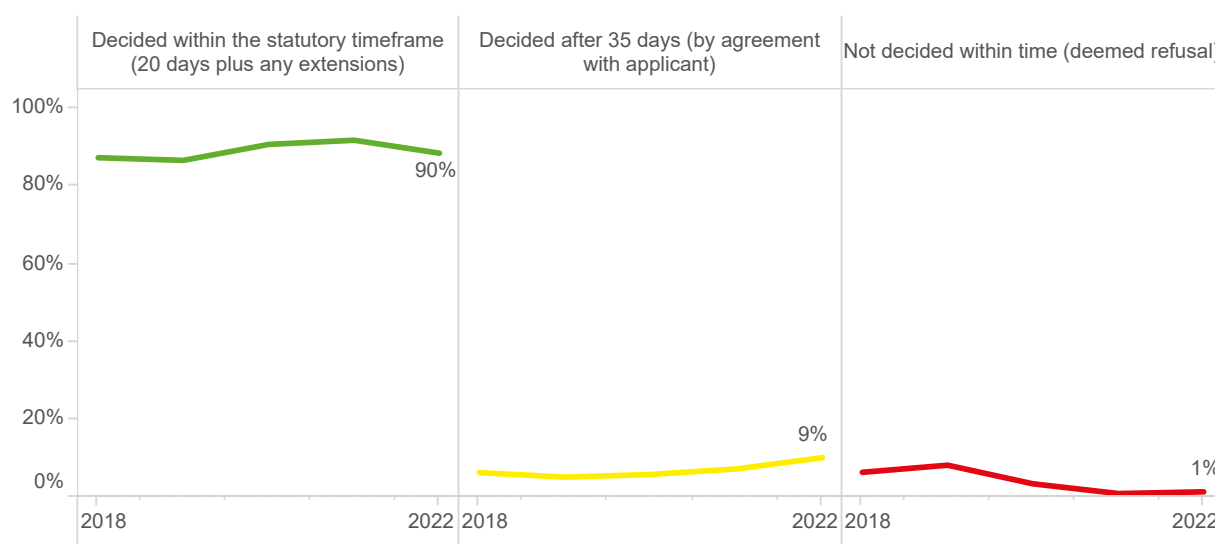
- Minister sector decided 79% of applications within the statutory time frame, a moderate decline from 93% reported in 2020/21
- The State-Owned Corporations sector decided 74% of applications within the statutory time frame, a significant decline from the 97% reported in the previous year.

Timeliness was maintained at high levels for the NSW Police Force, Department of Customer Service, Department of Education, Department of Planning and Environment, and Transport for NSW. This result is pleasing and builds on the positive results reported in 2020/21 as most of these agencies experienced an increase on the number of applications received.

Of the principal departments, three departments reported a moderate or significant decline in compliance with the first reporting category: statutory timeframe (20 days plus any extensions). In 2021/22:

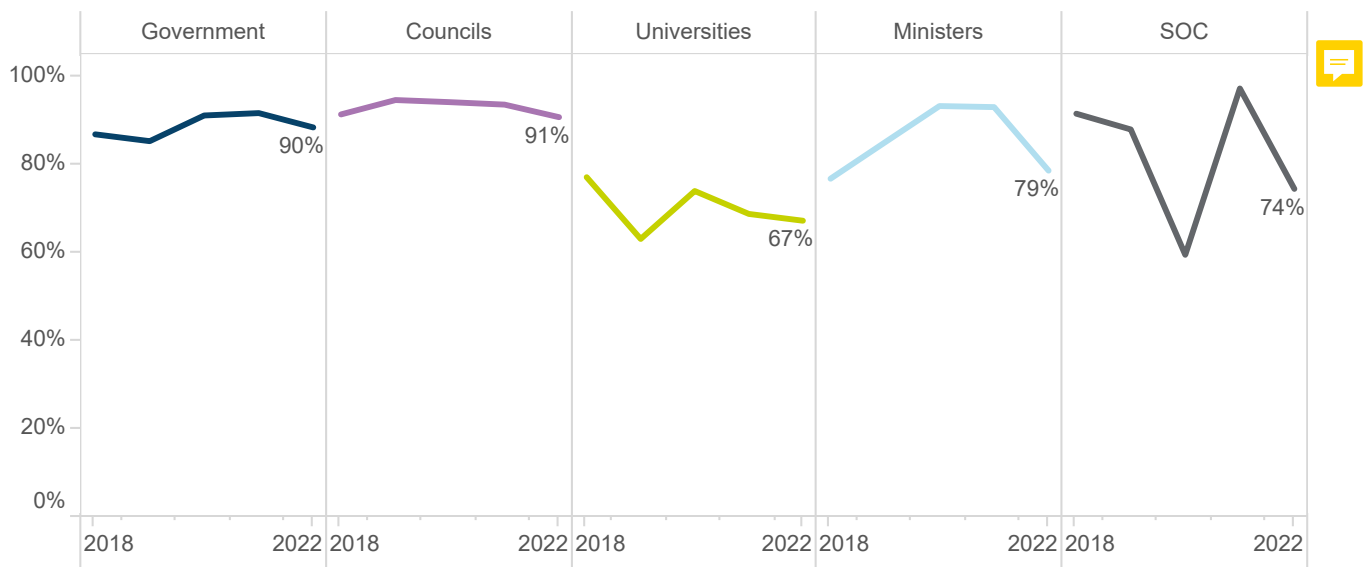
- Department of Communities and Justice reported 52% of applications were decided within the statutory timeframe, compared with 79% in 2020/21

Figure 25: Applications that were decided within the statutory time frame as a percentage of all applications decided, 2017/18 to 2021/22





**Figure 26: Applications that were decided within the statutory time frame as a percentage of all applications decided, by sector, 2017/18 to 2021/22**



- Department of Premier and Cabinet reported 60% of applications were decided within the statutory time frame, compared with 71% in 2020/21
- NSW Treasury reported 78% of applications were decided within the statutory time frame, compared with 85% in 2020/21.

It is important that agencies apply the data available to them, together with regulatory guidance and the good practices demonstrated by other agencies, to elevate compliance with statutory time frames. Better practice will ensure that agencies are able to meet statutory time frames when faced with increasing volumes and complexity of applications.

Whilst engaging with an applicant to extend time is contemplated under the GIPA Act agencies should be mindful of an increased reliance upon this avenue to extend time. It is important to maintain vigilance in relation to timeliness to ensure the object of the GIPA Act is achieved. Additionally the digitisation of records should facilitate ease of access and preparation of reports. In this context the increase in extensions of time by agreement that has grown over the last 5 years should be managed thoughtfully by agencies.

### What are the statutory timeframes?

Agencies are required to report on timeliness against the three categories prescribed in Table F of the GIPA Regulation:

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

These reporting categories reflect the requirements of the GIPA Regulation. Importantly the categories accommodate agencies' engagement with applicants and the agreement to extend time with consent. However, agencies should be mindful that in the context of digital government and the availability of digital solutions to effect ready access to information, a rise in extension of times may be at odds with the object of the GIPA Act and in particular, to provide access in a timely manner.

### **Issue Highlight: Extensions of time and retrieval from digital archives - *Walton v Eurobodalla Shire Council* [2022] NSWCATAD 46**

This case dealt with the issue of whether the Council could extend the time to make the GIPA decision on the basis that retrieval from a digital archive satisfied the preconditions concerning records retrieval.

Section 57(1) of the GIPA Act provides an agency with 20 working days, after receipt of an access application, to determine the application. Under section 57(2)(b), this period may be extended by up to 10 working days if records are required to be retrieved from a records archive.

The Council submitted that the GIPA Act does not restrict the term 'archive' to a physical place such as a library or warehouse. The Council submitted that it was commonplace to refer to a 'digital back end server' as a 'digital archive' and that not only is an act of retrieval required but also special permissions to access the software.

The Tribunal agreed with the submissions of the Information Commissioner that the process involved in retrieving records must involve some degree of difficulty related to the act of retrieval from a place where public or historical records are kept, for the provision to be enlivened. Given that the records sought were at the time only a maximum of eight months old, it was concerning that the Council's position was that it needed additional time to search its email archives to retrieve them. The fact that searches were being done on a digital archive did not of itself establish any additional time requirements.

Ultimately, the Tribunal disagreed with the notion that once records are digitally archived, the provisions of section 57(2)(b) would be enlivened. The Council's evidence indicated that records are routinely archived after a period of only 90 days. This means that in the majority of GIPA applications citizens would be seeking information from the Council that has been archived. It was the Tribunal's view that irrespective of the retrieval process, that cannot be what was intended.

The Tribunal found that the matter had not been decided within the period provided for in section 57(1) because the extension of the decision-making period by the Council was without foundation.

*'How quickly were decisions made?' is reported and measured by the requirement for agencies to report on how quickly they dealt with access applications that they received. The data used in this section draws on Table F, Schedule 2 to the GIPA Regulation.*

# How was the public interest test applied?

This section examines:

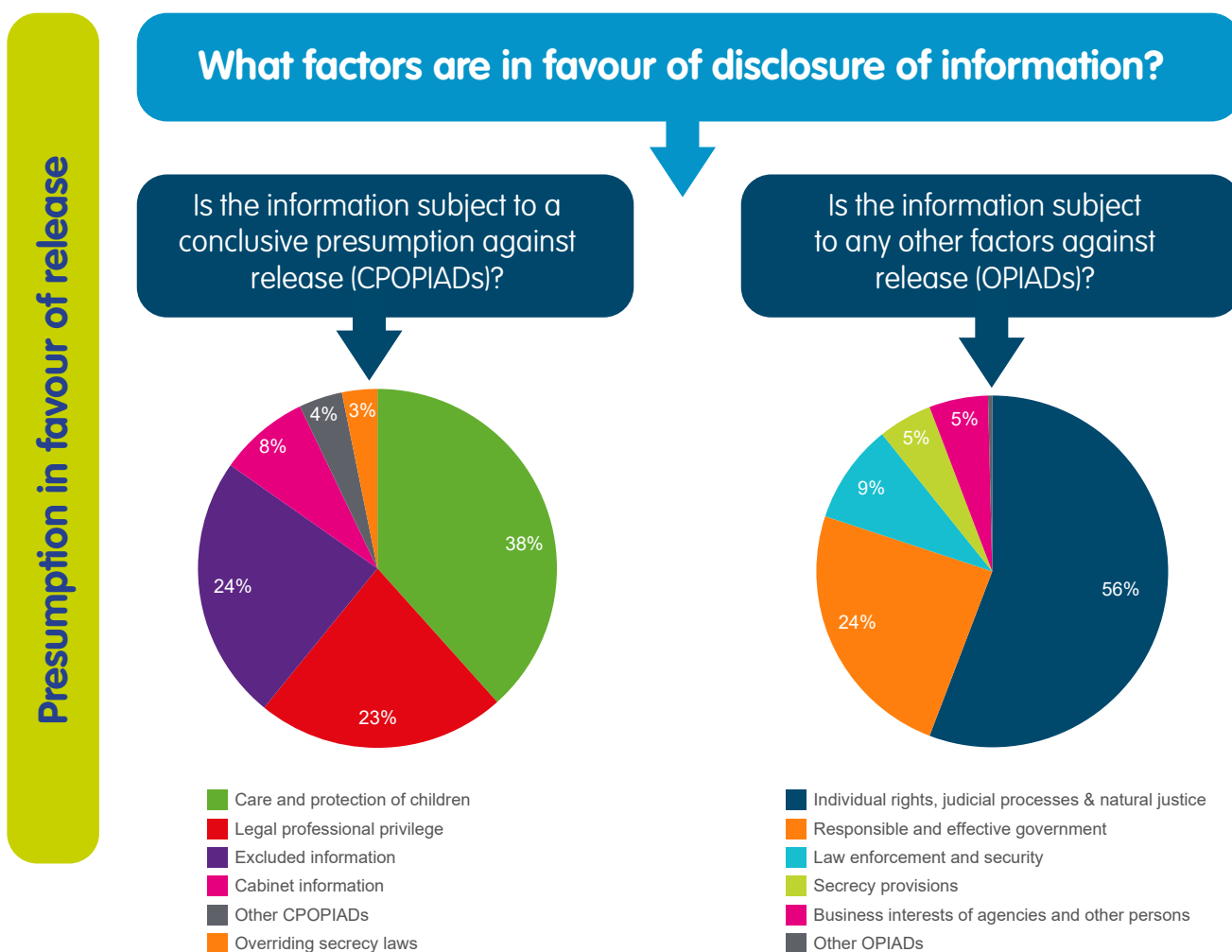
- the number of applications that were refused because of a conclusive presumption of overriding public interest against disclosure (CPOPIAD)
- which categories of CPOPIADs were applied
- the use of categories of considerations for which there is an overriding public interest against disclosure of information (OPIAD).

More than one CPOPIAD and OPIAD may apply in respect of an application. Each consideration is recorded only once per application.

## Only a small number of applications were refused because of a CPOPIAD

In 2021/22, 1,326 applications (or 6% of total applications received) were refused wholly or partly because of a CPOPIAD. This is consistent with previous years.

Figure 27: A snapshot of the use of CPOPIAD and OPIADs, 2021/22



'How was the public interest test applied?' is reported in Tables D and E of Schedule 2 to the GIPA Regulation.

## Care and protection of children was the most applied CPOPIAD

In 2021/22, the care and protection of children was the most applied CPOPIAD across all sectors (Figure 28). The care and protection of children CPOPIAD was applied 38% of all the times that CPOPIADs were applied. This is consistent with 38% in 2020/21.

The legal professional privilege consideration was the second most applied CPOPIAD, being applied 23% of the time, a moderate decline from 28% in 2020/21.

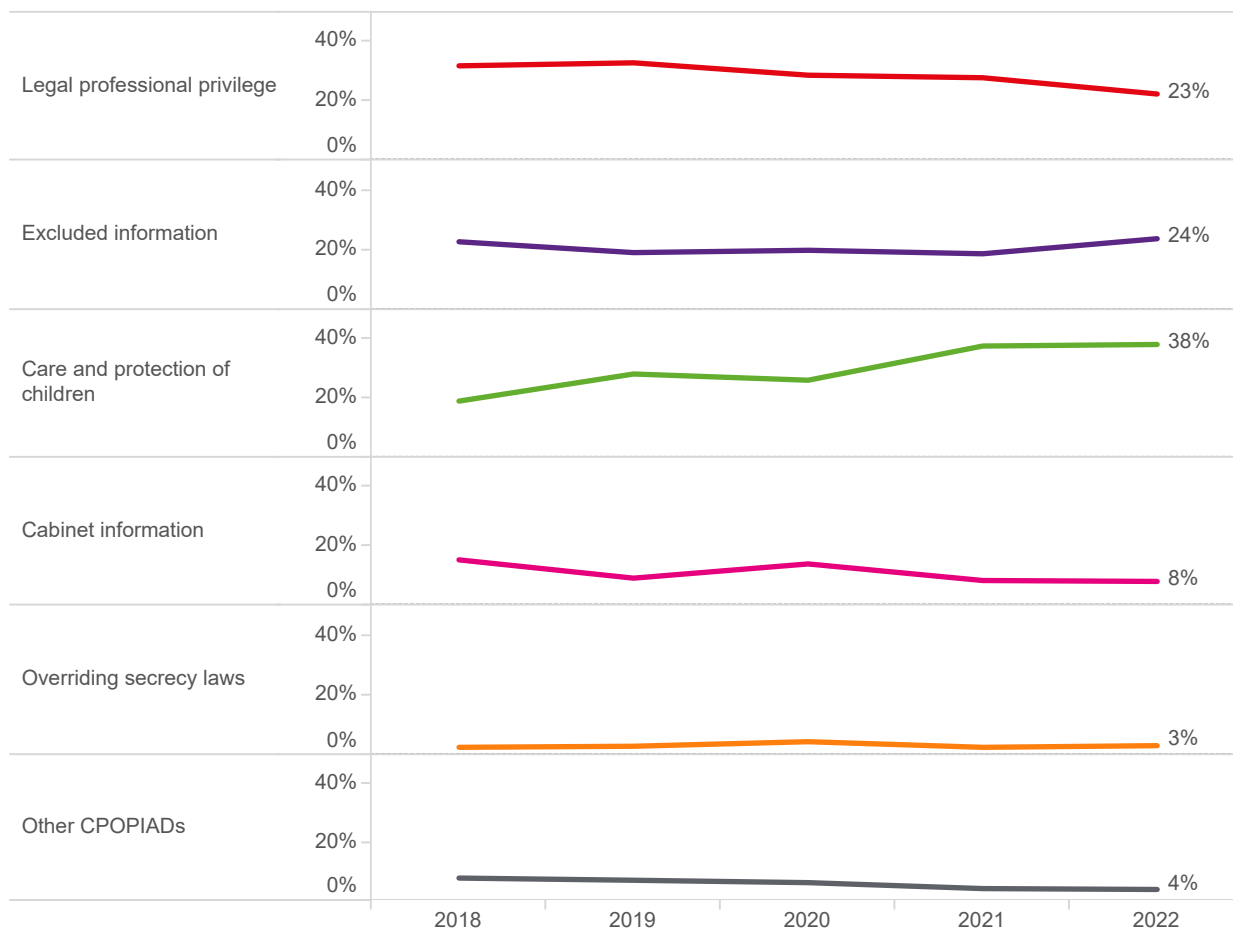
The excluded information consideration was the third most applied CPOPIAD, being applied 24% of all the times that CPOPIADs were applied, consistent with 19% in 2020/21.

The use of the Cabinet information consideration was applied on 8% of occasions in 2021/22, consistent with 8% in 2020/21.

## The application of the legal professional privilege CPOPIAD remained high in the Council, University and State-Owned Corporations sectors and increased in the Minister sector

Consistent with 2020/21 and 2019/20, the most applied CPOPIAD across the Council, University and State-Owned Corporations sectors in 2021/22 was legal professional privilege, accounting for 83% of cases in the Council sector, 79% in the University sector, and 78% in the State-Owned Corporations sector (Figure 29).

Figure 28: Percentage distribution of the use of CPOPIADs, 2017/18 to 2021/22



There was a moderate decline in the use of this CPOPIAD by the University sector from 92% in 2020/21 to 79% in 2021/22, and a moderate increase in both the Council sector from 75% in 2020/21 to 83% in 2021/22, and the State-Owned Corporations sector from 67% in 2020/21 to 78% in 2021/22.

The Minister sector reported a significant increase in the use of this CPOPIAD during the reporting period from 9% in 2020/21 to 50% in 2021/22. In the Government sector, there was a greater diversity of CPOPIADs applied: the care and protection of children (41%), excluded information (25%) and legal professional privilege (18%).

The Department of Communities and Justice primarily applied the care and protection of children CPOPIAD. The NSW Police Force was the main agency that applied the excluded information CPOPIAD and icare was the main agency that applied the legal professional privilege CPOPIAD.

In the State-Owned Corporations sector, reliance upon the Cabinet information CPOPIAD significantly declined from 25% in 2020/21 to 11% in 2021/22. Reliance on this CPOPIAD moderately declined in the Minister sector from 64% to 50% (Figure 29).

**Figure 29: Percentage distribution of CPOPIADs applied, by sector, 2017/18 to 2021/22**



## Individual rights, judicial processes and natural justice was the most applied OPIAD

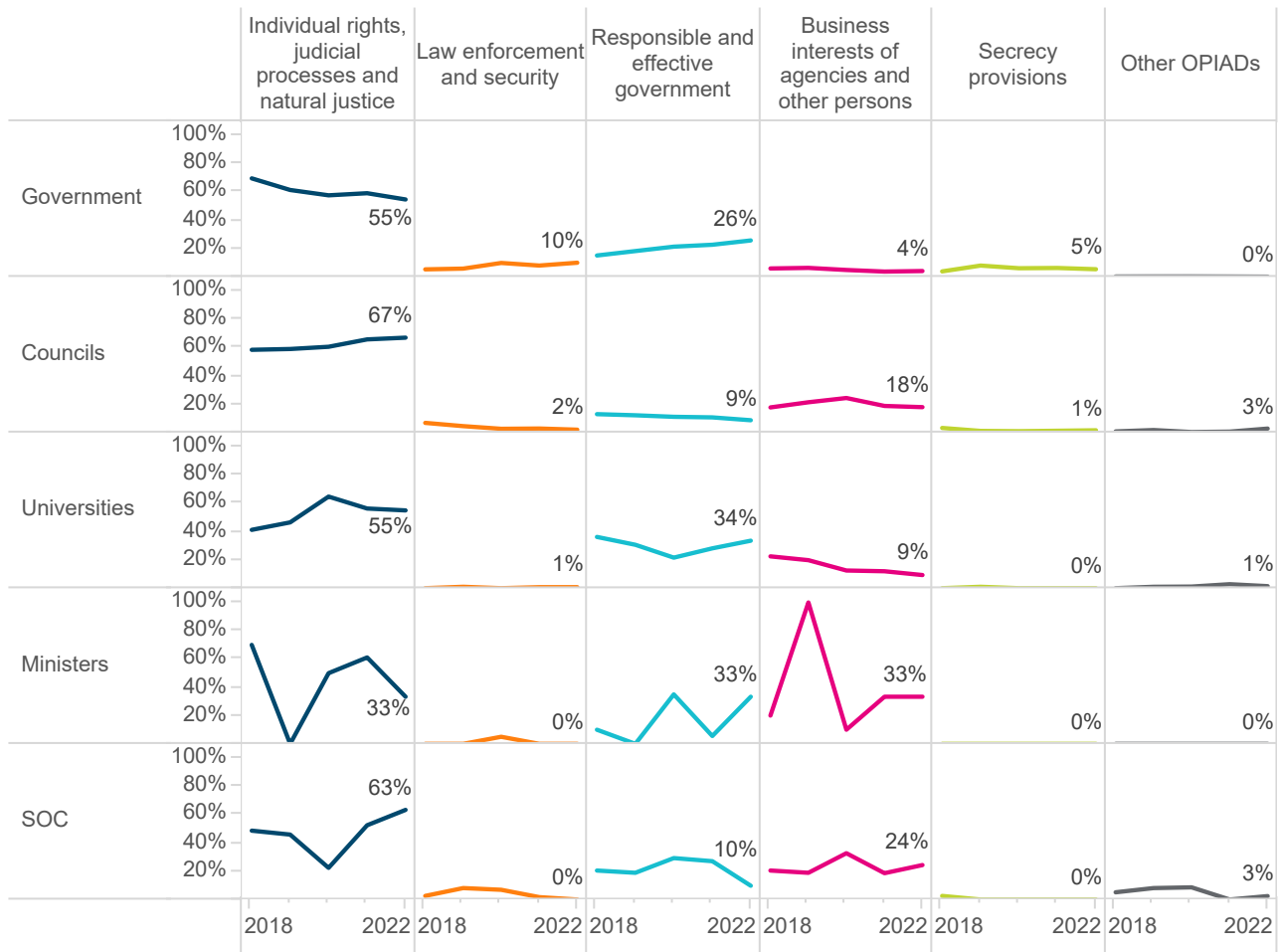
Consistent with the last four years, the most frequently applied OPIAD in 2021/22 was individual rights, judicial processes and natural justice (56%). This year, it was the most applied OPIAD for all sectors (Figure 30). Reliance on this OPIAD is consistent with all previous years since 2016/17.

This OPIAD was applied on 67% of occasions in the Council sector, 63% of occasions in the State-Owned Corporations sector and 33% of occasions in the Minister sector. It was applied on 55% of occasions respectively in the Government and University sectors.

This OPIAD was most often considered and applied 81% of the time by Fire and Rescue NSW, 55% by the Department of Education, 55% by the Department of Communities and Justice, 54% by the NSW Police Force, 50% by the Department of Planning and Environment, 50% by the Department of Customer Service and 49% by Transport for NSW.

This category of OPIAD contains a broad range of specific considerations, from personal information and privacy through to court proceedings, a fair trial, and unsubstantiated allegations. As such, the application of this OPIAD by agencies could have been related to any of these specific considerations in this category and is likely to reflect the nature of the information held by these agencies.

Figure 30: Percentage distribution of OPIADS applied, by sector, 2017/18 to 2021/22



# How were decisions reviewed?

## The right of review can be exercised by the original information access applicant or by third parties whose information is the subject of the application

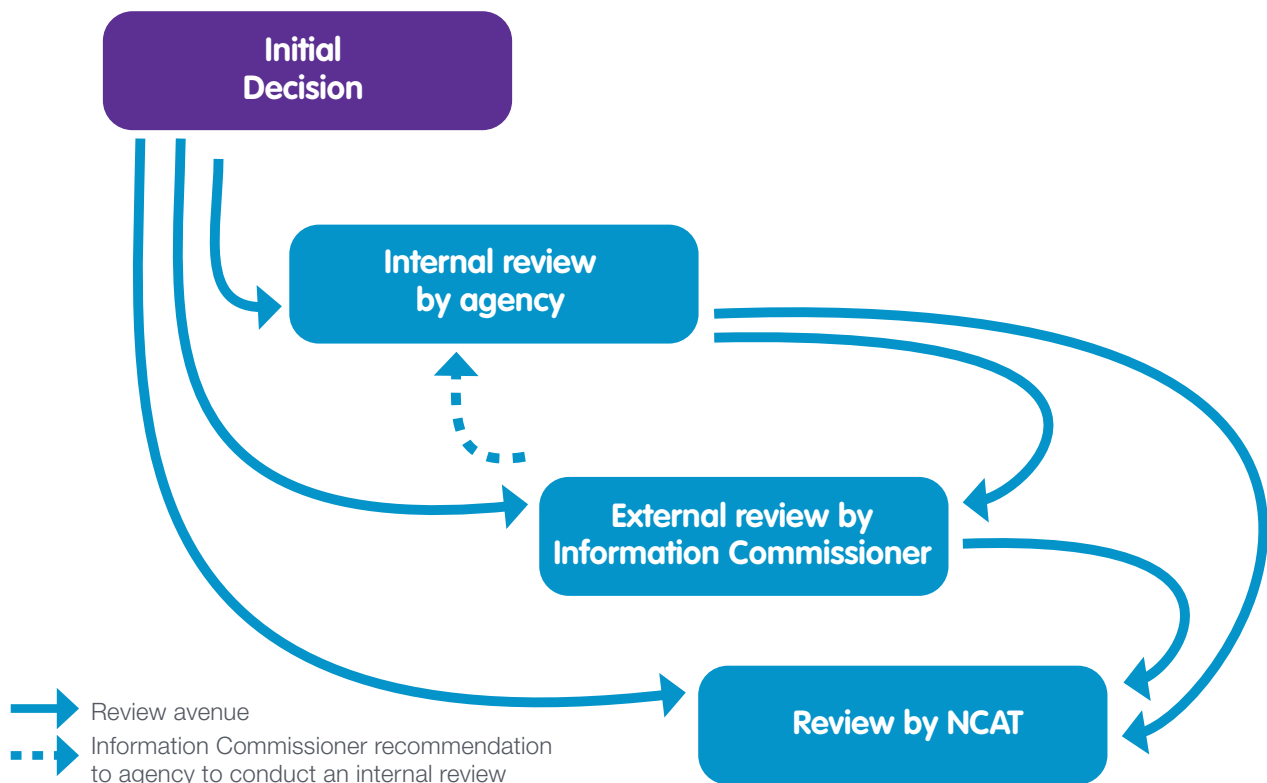
This section reports on the:

- number of reviews as a percentage of the number of relevant applications – a ‘review rate’
- number of reviews by type of review
- composition of reviews by type of review.

The distribution of reviews across all review avenues as reported by agencies is shown in Figure 33. If the most reliable source for each review avenue is used to calculate the total number of reviews, a total of 942 reviews were conducted in 2021/22. This result is a moderate decline (8%) from the 1,023 reviews conducted in 2020/21.

This is a significantly higher number of reviews than reported by agencies (766), particularly in respect of external reviews by the Information Commissioner and external reviews by NCAT. The distribution of reviews is shown in Figure 34.

Figure 31 shows the different pathways available for reviews in the GIPA Act

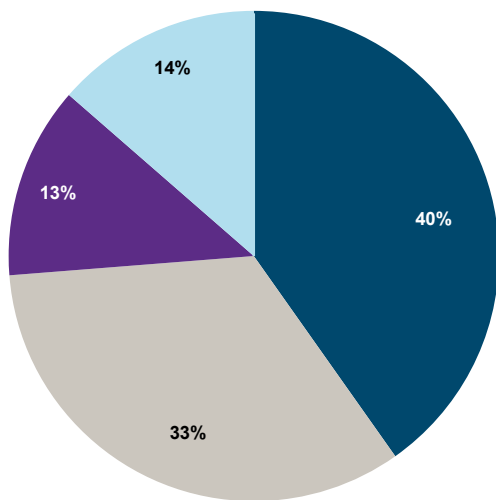


'How were decisions reviewed?' is reported and measured by the requirement for agencies to report on the number of applications reviewed under Part 5 of the GIPA Act in Tables G and H of Schedule 2 to the GIPA Regulation.

Figure 32: Agency, IPC and NCAT data on internal and external reviews, 2021/22

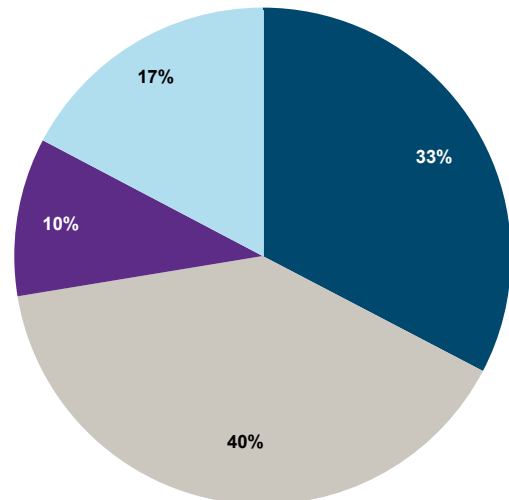
Review type	A: Agency reported data for all reviews closed	B: Using agency, IPC and NCAT data on reviews closed
Agency internal review of initial decision	308	308
External review by the Information Commissioner	257	374
Review by NCAT	104	163
Agency internal review/reconsideration following a recommendation by the Information Commissioner	97	97
<b>Total</b>	<b>766</b>	<b>942</b>

Figure 33: Distribution of reviews by type, as reported by agencies, 2021/22



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

Figure 34: Distribution of reviews by type, using agency, IPC and NCAT data, 2021/22



Source: Agency, IPC and NCAT data. Note this data applies to cases reported as closed in the year.



The completion of reviews during this reporting period that were received in the previous financial year may be a factor contributing to agency under-reporting of external reviews by the Information Commissioner. The IPC has engaged with agencies across all sectors to improve the reporting of GIPA Act data. Since 2013/14, the under-reporting has declined from 81% to 21% in 2021/22. This is the lowest level reported to date.

Using IPC internal data, the number of external reviews conducted by the Information Commissioner was consistent in 2021/22 with 374 reviews, compared with 388 reviews in 2020/21.

## External reviews by the Information Commissioner remain consistent as a proportion of all reviews conducted

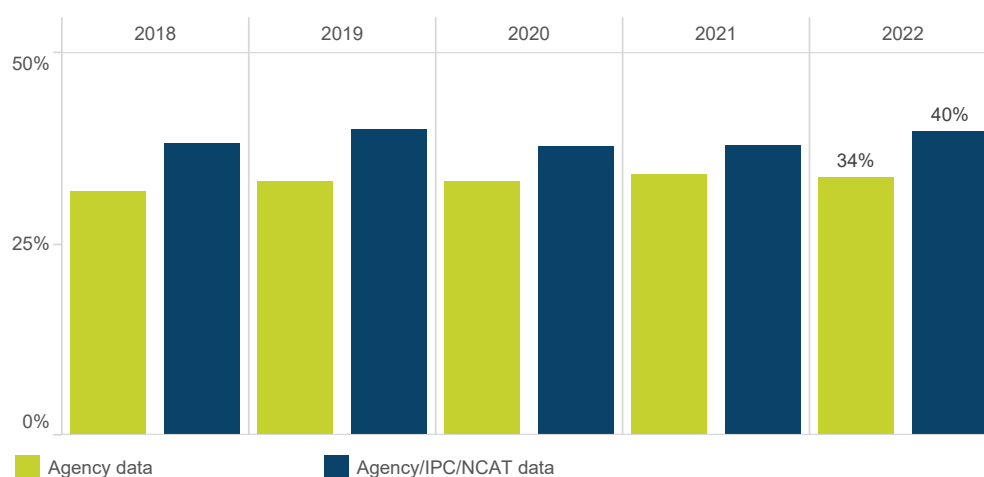
Due to ongoing disparity between agency reported data and the IPC data over the past 10 years, only IPC data will now be used for this section of the report.

Using the more reliable IPC data, external reviews by the Information Commissioner accounted for 40% of all reviews conducted, consistent with 38% in 2020/21 (Figure 35).

Accordingly, the review pathway most frequently used is external review by the Information Commissioner.

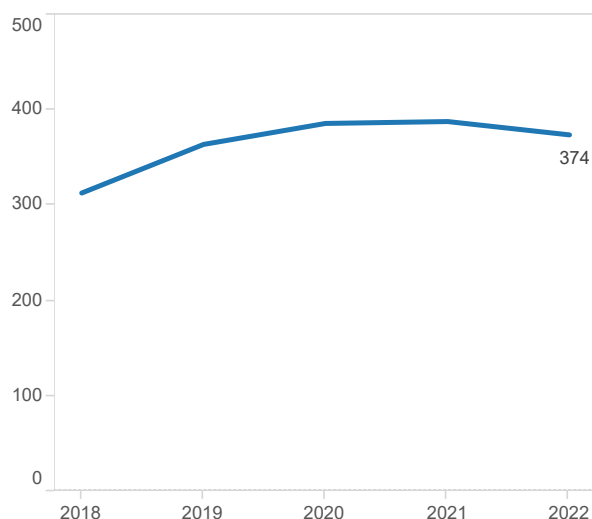
Similarly, the 163 review applications reported by NCAT is significantly higher than the 104 reviews reported by agencies.

**Figure 35: External reviews by the Information Commissioner as a percentage of all reviews, 2017/18 to 2021/22**



Source: agency, NCAT and IPC data

**Figure 36: Number of external reviews conducted by the Information Commissioner, 2017/18 to 2021/22**



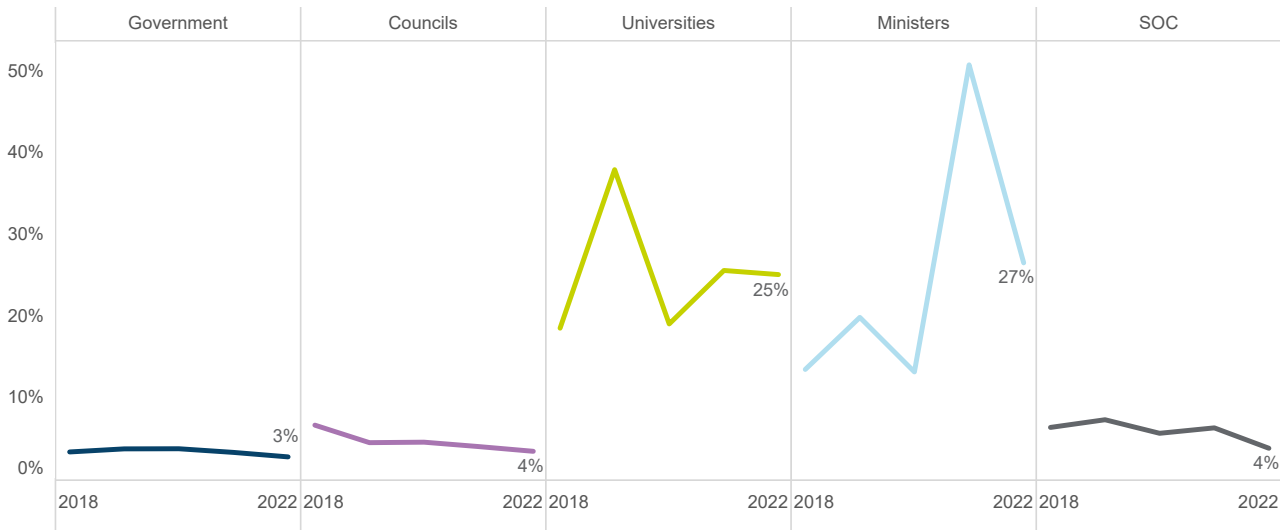
Source: IPC data

## Review rates have remained stable in the Government, Council and State-Owned Corporations sectors

The percentage of applications for review received by the Government sector, as a percentage of all applications to that sector, remained stable at 3% in 2021/22, consistent with 3% in 2020/21. The Council (4%) and State-Owned Corporations (4%) sectors also remained stable (Figure 37).

The percentage of applications for review received by the Minister sector, as a percentage of all applications to that sector, declined significantly to 27% in 2021/22, from 51% in 2020/21. For universities, the percentage remained similar at 25% in 2021/22 compared to 26% in 2020/21, following a period of fluctuation over the previous three years.

**Figure 37: Total number of reviews, as a percentage of all applications received, by sector, 2017/18 to 2021/22**



Source: agency data

These two sectors received relatively small numbers of applications and are subject to more variability than other sectors. These trends will continue to remain under observation to ensure that an appropriate sector-specific regulatory response is implemented if required.

**The majority of applications for review were made by the original applicant for information**

In 2021/22, 92% of applications for review were made by the original applicant. This is consistent with levels observed in 2020/21, when 93% of applications for review were made by the original applicant.

The number of applications made by third party objectors was 8% in 2020/21, consistent with 7% in 2020/21.

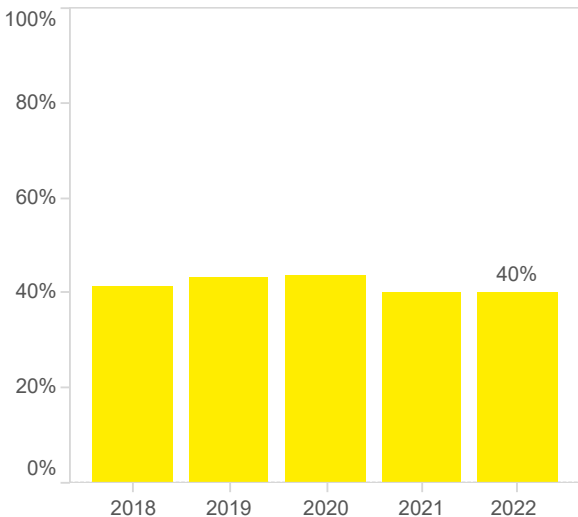
**Internal reviews as a percentage of all reviews conducted remained stable**

Internal reviews represented 40% of all reviews conducted in 2021/22 (Figure 38), consistent with 40% of all reviews conducted in 2020/21.

**Reviews by NCAT remained stable**

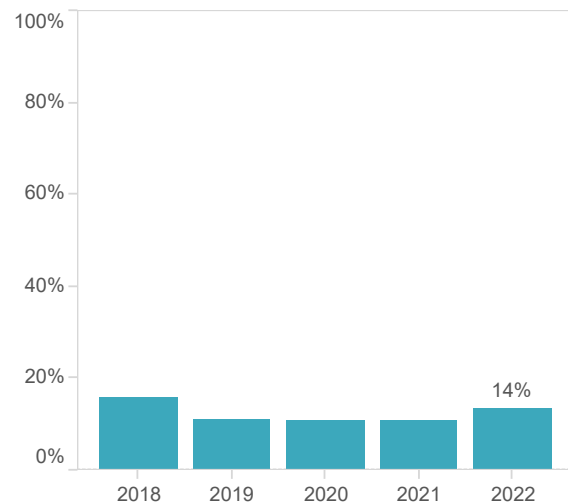
Using data reported by agencies, reviews by NCAT represented 14% of all reviews conducted in 2021/22 (Figure 39). This is consistent with the previous three years (11% respectively).

**Figure 38: Internal review as a percentage of all reviews, 2017/18 to 2021/22**



Source: agency data

**Figure 39: NCAT reviews as a percentage of all reviews, 2017/18 to 2021/22**

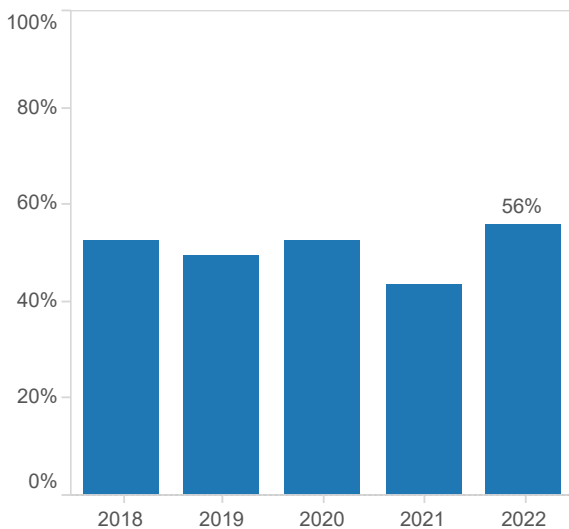


Source: agency data

## There has been a change in the balance between decisions upheld and overturned on review

In 2021/22, 56% of all internal and external reviews conducted upheld agencies' decisions. This is a moderate increase from 43% in 2020/21. This is the highest rate recorded over the past five years (Figure 40).

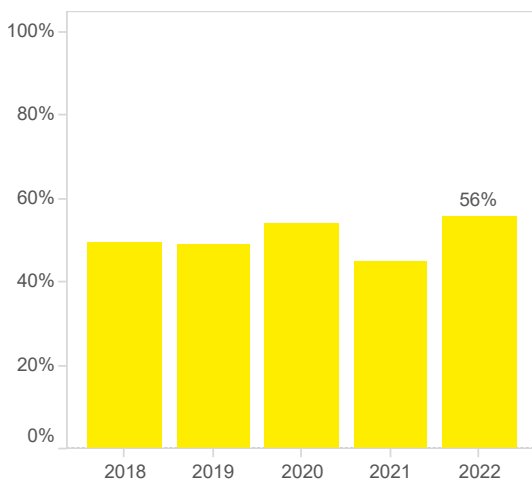
**Figure 40: Percentage of all reviews that upheld the original decision, 2017/18 to 2021/22**



Internal reviews were closely balanced between upholding and overturning the original decisions.

In 2021/22, 56% of all internal reviews upheld agencies' decisions, a moderate increase on the 45% reported in 2020/21 and similar to the 54% reported in 2019/20 (Figure 41).

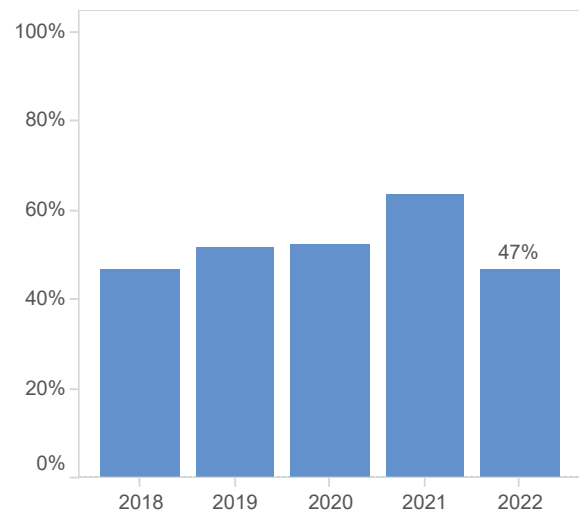
**Figure 41: Internal reviews where the decision was upheld as a percentage of all internal reviews, 2017/18 to 2021/22**



## Reviews by the Information Commissioner were less likely to recommend that agencies reconsider their decision

In 2021/22, agencies reported that 47% of reviews by the Information Commissioner recommended that agencies reconsider their decisions, a significant decline on the 64% reported in 2020/21 (Figure 42).

**Figure 42: Reviews by the Information Commissioner where there was a recommendation to reconsider the decision as a percentage of all reviews by the Information Commissioner, 2017/18 to 2021/22**

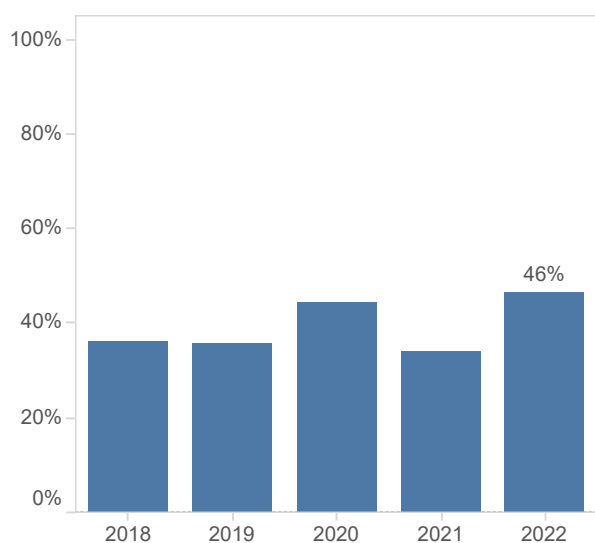


## Internal reviews following a section 93 recommendation by the Information Commissioner which upheld the original decision increased

In 2021/22, agencies reported 46% of internal reviews that followed a section 93 GIPA Act recommendation (a recommendation from the Information Commissioner that the agency reconsider its decision) upheld agencies' original decisions. This is a moderate increase on the 34% reported in 2020/21 (Figure 43).

Accordingly, for 2021/22, in 54% of internal reviews, agencies modified their decision in response to a recommendation by the Information Commissioner.

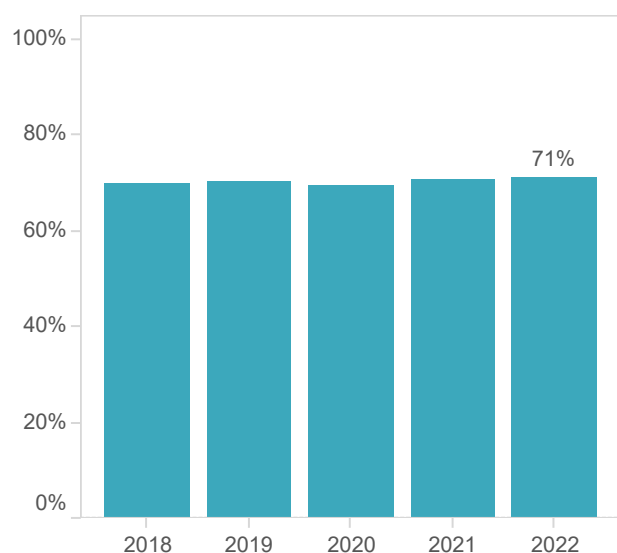
**Figure 43: Internal reviews following a section 93 recommendation that upheld agencies' original decisions as a percentage of all internal reviews, 2017/18 to 2021/22**



## Reviews by NCAT of agency decisions

In 2021/22, agencies reported that 71% of reviews by NCAT upheld agency decisions, consistent with results across the previous four years (Figure 44).

**Figure 44: Reviews by NCAT where the decision was upheld as a percentage of all reviews by NCAT, 2017/18 to 2021/22**



## External review by the Information Commissioner of agencies' use of CPOPIADs and OPIADs

The IPC's internal data provides further insight into external reviews by the Information Commissioner in relation to the application of the considerations against disclosure by agencies.

The Information Commissioner conducts external reviews that cover a range of different issues that go to the process for dealing with applications and agencies' decisions to provide or refuse access to information.

The proportion of all reviews conducted by the Information Commissioner relating to CPOPIADs remained stable at 12% in 2021/22, compared to 11% in 2020/21.

The proportion of all reviews conducted by the Information Commissioner relating to OPIADs declined moderately to 43% compared to 49% in 2020/21 and 2019/20 respectively. Other issues that were the subject of review by the Information Commissioner include:

- personal information
- searches
- effective exercise of agency functions.

Reviews regarding these more administrative or mechanical matters can provide insights into the operational and cultural environment in which access decisions are made within agencies. Accordingly, intelligence gathered through conducting these reviews is collected and analysed to inform the Information Commissioner's forward work program.

### CPOPIADs: Legal professional privilege remains the primary CPOPIAD subject of external review by the Information Commissioner

In 2021/22, the top three CPOPIADs that were relied on by agencies that were subject to the Information Commissioner's review were:

- legal professional privilege (33%) a significant decline on the 51% reported in 2020/21
- Cabinet information (15%), a significant decline from the 30% in 2020/21
- care and protection of children (13%), which displaces overriding secrecy laws as the third most relied upon CPOPIAD 2020/21.

**CPOPIADs: There has been significant changes for the top three CPOPIADs in number of external reviews by the Information Commissioner of CPOPIADs that resulted in a recommendation to agencies to reconsider the decision**

In 2021/22, 42% of all the CPOPIADs that were the subject of review by the Information Commissioner resulted in a recommendation to agencies to reconsider the decision, compared with 35% in 2020/21, 46% in 2019/20, 38% in 2018/19 and 45% in 2017/18.

Following a review, the Information Commissioner's findings in respect of the top three CPOPIADs were for reviews of the:

- legal professional privilege consideration: 47% resulted in a recommendation to agencies to reconsider the decision, consistent with 45% in 2020/21
- overriding secrecy laws consideration: 50% resulted in a recommendation to agencies to reconsider the decision, a significant increase from 25% in 2020/21
- complaints handling & investigative information: 20% resulted in a recommendation to agencies to reconsider the decision. This CPOPIAD was not represented in the top three in 2020/21.

**OPIADs: Individual rights, judicial processes and natural justice was the main OPIAD subject of external review by the Information Commissioner**

The top three OPIADs that were relied on by agencies and subject to the Information Commissioner's review were:

- individual rights, judicial processes and natural justice (40%)
- responsible and effective government (38%)
- business interests of agencies and other persons (14%).

**OPIADs: The number of external reviews by the Information Commissioner of OPIADs that resulted in a recommendation to agencies to reconsider overall has increased**

In 2021/22, 39% of all the OPIADs that were the subject of review by the Information Commissioner resulted in a recommendation to agencies to reconsider the decision, a significant decline from 68% in 2020/21.

Following a review, the Information Commissioner's findings in respect of the top three OPIADs were for reviews of the:

- individual rights, judicial processes and natural justice consideration: 33% resulted in a recommendation to agencies to reconsider the decision, a significant decline compared with 59% in 2020/21
- responsible and effective government consideration: 43% resulted in a recommendation to agencies to reconsider the decision, representing a significant decline compared with 74% in 2020/21
- business interests of agencies and other persons consideration: 47% resulted in a recommendation to agencies to reconsider the decision, representing a significant decline compared with 76% in 2020/21.

Although the number of reviews relating to environment, culture, economy and general matters was low, it is noted that 75% resulted in a recommendation to agencies to reconsider the decision.

The significance of these changes informs the IPC's forward work program. Pleasingly, this year it appears that agencies are justifying their reliance on the above three OPIADs in more cases demonstrating a maturation of decision-making in this regard. However, new issues are emerging in relation to agencies' reliance on the environment, culture and the economy OPIADs. The IPC has recognised the public interest in and the importance of the environment as it appears only as an OPIAD in the GIPA Act and not as a factor in favour of disclosure of information.

# Were applications transferred between agencies?

## Decline in transfers between agencies

During 2021/22, agencies reported that 516 applications were transferred to another agency (Figure 46). This is a 22% decrease from the 664 transfers reported in 2020/21. This result represents the lowest number of transfers recorded over the past five years and a 40% decline from the highest number of transfers (854) reported in 2017/18.

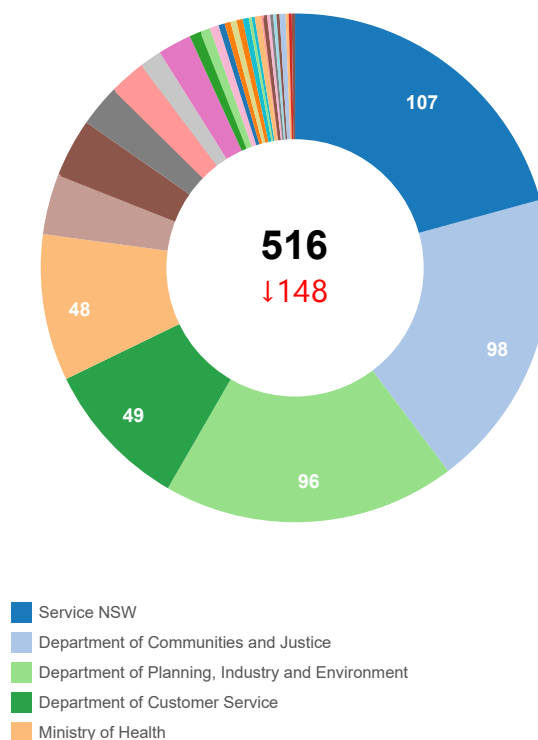
Figure 45 shows that the Government sector accounted for most transfers (95%), which is consistent with 2020/21. Most transfers were agency-initiated (72%), which is similar to 77% in 2020/21.

**Figure 45: Number of applications that were transferred, by sector and by whether agency or applicant initiated, 2021/22**

Sector	Agency initiated transfers	Applicant initiated transfers	Total
Government	350	141	491
Council	16	3	19
University	0	0	0
Minister	2	0	2
State-Owned Corporations	4	0	4
<b>Total</b>	<b>372</b>	<b>144</b>	<b>516</b>

In 2021/22, Service NSW accounted for 21% of transferred applications, which is consistent with 20% in 2020/21. The second highest number of transfers was reported by the Department of Communities and Justice with 19% of transferred applications, which is a moderate decline from 31% in 2020/21. The third highest was the Department of Planning, Industry and Environment (19%), followed by the Department of Customer Service (9%), and the Ministry of Health (9%) (Figure 46).

**Figure 46: Distribution of applications transferred, by agency, 2021/22**



Importantly, the transfer mechanism facilitates a whole-of-government, citizen-centric approach to information access. The inclusion of this data provides a means of examining the assistance provided by agencies to applicants.

# Appendices

# Appendix 1

## Notes on data sources and previous reports

The IPC's annual report on the Operation of the *Government Information (Public Access) Act 2009* is based on information submitted by NSW public sector agencies and analysed within the IPC. Data has been collected since 2010/11.

For the first four years, data was submitted by agencies in a variety of formats, and then manually entered into a database within the IPC.

In mid-2015, the IPC introduced a new online GIPA Tool as a way for agencies to manage their applications, provide their annual reports to the IPC and directly upload data.

The data analysed for this Report should be considered as a snapshot of agencies' compliance as of 12 January 2023 (the date when the IPC commenced downloading agencies' reported data from the GIPA Tool). It should be noted that not all agencies had submitted their annual reports to the IPC by this time. This means their data is not included in the Report.

Data updates by agencies may affect historical data and future reports. This is particularly relevant to data regarding timeliness reported in the 2017/18 Report. On 29 April 2019, the Information Commissioner tabled an erratum notice to correct data reported by an agency.

Since 2016/17, data has been reported from the following sectors:

- government
- councils
- universities
- ministers
- state-owned corporations (SOCs).

Previously, SOC data had been included with that of the Government sector. Since 2016/17 SOCs have been separately identified in order to give greater insight into their GIPA operations and those of the Government sector. Accordingly, data for the Government sector reported prior to 2016/17 is not comparable to data in this Report.

In March 2018, the IPC published an online, interactive [Agency GIPA Dashboard](#) to facilitate agency and community access to this data. This online data may be updated to take account of changes advised by agencies. Accordingly, the online GIPA Dashboard will represent the most up-to-date and accurate source of data on agency GIPA operations.

The annual reporting period for universities and the Department of Education is a calendar year. This calendar year data is included in the relevant financial year to assist with cross-sector comparability. For example, GIPA data from universities' 2021 annual reporting has been treated as for the 2021/22 financial year.

Data reported in relation to mandatory proactive release reflects the number and composition of the principal departments for each financial year. Periodic changes to the number of principal departments alters the overall audit sample for that reporting period and therefore does not allow for direct comparisons with previous years' results.



Data reported for 2021/22 reflects the structure of agencies after the machinery of government changes which commenced on 1 July 2019 and further. For some agencies, this has the result that data may not be directly comparable with previous years. For example:

- from 1 July 2019, the previous Department of Justice and Department of Families and Community Services were amalgamated to form the Department of Communities and Justice
- the former Roads and Maritime Services was dissolved on 1 December 2020 by the *Transport Administration Amendment (RMS Dissolution) Act 2019*. Any access application received after that date was received by Transport for NSW and dealt with as an application to that agency
- the Department of Customer Service was established on 1 July 2019, replacing the former Department of Finance, Services and Innovation
- the Department of Regional NSW was established on 2 April 2020.

# Appendix 2

## The Legislative Framework

### Government Information (Public Access) Act 2009

The object of the *Government Information (Public Access) Act 2009* (GIPA Act) is to maintain and advance a system of responsible and representative government that is open, accountable, fair and effective by:

- authorising and encouraging the proactive public release of government information by agencies
- giving members of the public an enforceable right to access government information
- ensuring that access to government information is restricted only when there is an overriding public interest against disclosure.

The GIPA Act applies to Government departments and agencies, local councils, universities, ministers and their staff, and state-owned corporations.

The guiding principle of the GIPA Act is to make information more accessible to the public. The Act embodies the general presumption that the disclosure of information is in the public interest unless there is a strong case to the contrary.

#### 1. Mandatory proactive release

The mandatory proactive release of information is one of the GIPA Act's four pathways for information release and access. Through this pathway, the GIPA Act requires NSW public sector agencies to release a prescribed set of information to the public, known as Open Access information. This information must be made publicly available online and free of charge. Open Access information of ministers may be made available on the website of the relevant department.

The benefit of mandatory proactive release is that the pathway ensures that a minimum, consistent set of information that is regularly reviewed and updated to maintain relevance and currency, is freely available to the public. Mandatory proactive release is an important vehicle in achieving better service delivery through information access, transparency and increased citizen input to government policy and service delivery.

#### 2. Authorised proactive release

The GIPA Act authorises and encourages agencies to make information available unless there is an overriding public interest against disclosure.

Agencies (except ministers) are required under the GIPA Act to review their program for the proactive release of information at least annually, and identify additional kinds of information that should be made publicly available. These agency reviews are not merely a reporting obligation. They provide the tool to drive the continuous release of information under this pathway. This information can be made publicly available in any manner that the agency considers appropriate, either free or at the lowest reasonable cost.

Through this pathway, agencies have a responsibility to promote policies and practices that ensure as much information as possible is made publicly available.

The aim of proactive release is to maximise the amount of information that is released by agencies. This requires creating a culture where information release is a matter of course. The proactive release of information has many benefits, including a more informed community that is better able to engage and influence the development and delivery of services, agency operations and broader policy and community debates.

### 3. Informal release

The GIPA Act enables agencies to release government information in response to an informal request for information, unless there is an overriding public interest against disclosure.

This pathway promotes the transition to a system which will result in the general release of government information.

### 4. Formal access applications

The GIPA Act provides citizens with a right to apply for, and access most government information, unless there is an overriding public interest against disclosure (section 9). The GIPA Act outlines a formal process that must be followed by applicants and agencies. The steps for applicants include:

- putting an application in writing
- stating that the application is seeking information under the GIPA Act
- including a postal address or email address
- explaining clearly the information that is being requested
- paying an application fee of \$30.

Agencies must assess each application that is received. For valid access applications, agencies must apply the public interest balancing test and consider the factors for and against the disclosure of the information that is being requested.

The main benefits of the formal access pathway include:

- the right to seek access is legally enforceable
- agencies are not subject to the direction or control of any Minister in the exercise of the agency's functions when dealing with an access application
- agencies must apply the public interest balancing test and consult with third parties to whom the information relates, and also may consult with other agencies
- applicants have a right to seek review of an agency's decision about the application through an internal review by the agency, an external review by the Information Commissioner or an external review by NCAT.

Section 125 of the GIPA Act requires agencies to report to Parliament annually on their obligations under the GIPA Act, including reporting on GIPA data. A copy of the Report is to be provided to the Information Commissioner after the Report has been tabled in Parliament. This mandated information is set out in clause 8(a), (b), (c) and (d) of the GIPA Regulation. Schedule 2 of the GIPA Regulation sets out the prescribed form for clause 8(d) reporting through Tables A – I.

## Government Information (Public Access) Regulation 2018

The Government Information (Public Access) Regulation 2018 (GIPA Regulation):

- prescribes additional Open Access information that local authorities, ministers, departments and statutory bodies must make publicly available
- sets out the statistical information regarding formal applications that agencies must include in their annual reports
- in the case of an access application relating to a school, extends the period in which the application must be decided if the usual 20-day period for deciding the application occurs during the school holidays
- specifies the corresponding access to information laws of other Australian jurisdictions under which information may be exempt (this is a relevant public interest consideration against disclosure under section 14)
- declares certain bodies to be public authorities for the purpose of the GIPA Act
- declares certain entities to be sub-agencies and parent agencies for the purpose of access applications
- provides that records held by the Audit Office or the Ombudsman's Office that were originally created or received by another agency, are taken to be held by the original agency.

## **Government Information (Information Commissioner) Act 2009**

The system of public access to information is overseen by the Information Commissioner, established under the *Government Information (Information Commissioner) Act 2009* (GIIC Act). Under the GIIC Act, the Information Commissioner's role includes:

- promoting public awareness and understanding of the Act
- providing information, advice, assistance and training to agencies and the public
- dealing with complaints about agencies
- investigating agencies' systems, policies and practices
- reporting on compliance with the Act.

Under section 37 of the GIIC Act, the Information Commissioner is required to provide an annual report to Parliament on the operation of the GIPA Act, generally, across all agencies.

This Report fulfils the Information Commissioner's obligation in this regard.



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privacy commission

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