

Information Commissioner's Update

Presentation to the Practitioners' Network Forum

16 August 2023

Elizabeth Tydd

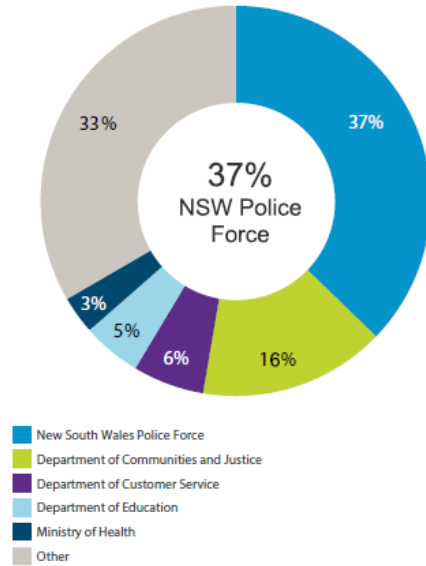
IPC CEO, Information Commissioner
NSW Open Data Advocate



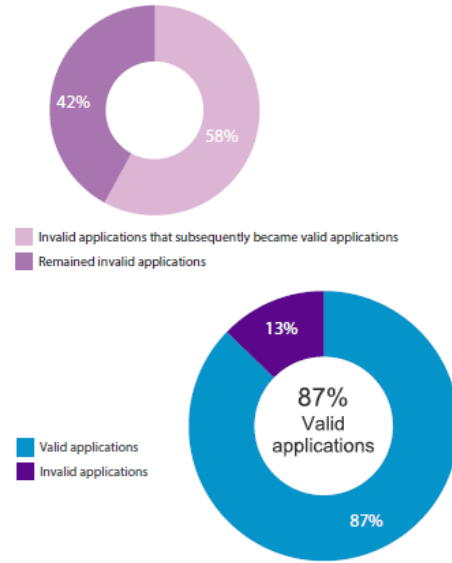
information and
privacy commission
new south wales

Report on the Operation of the GIPA Act 2021/22

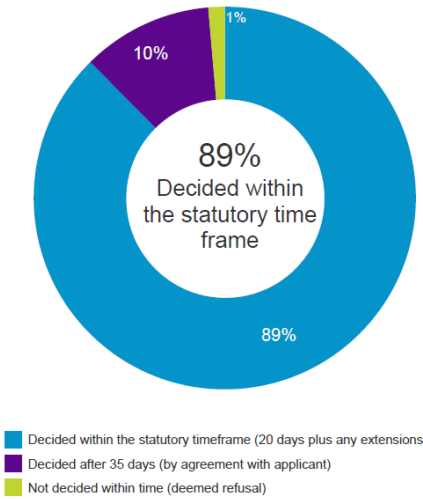
Where were applications lodged? *



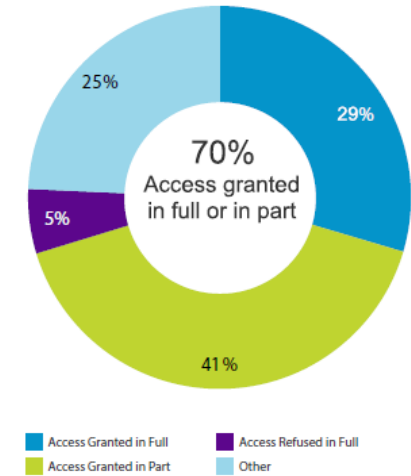
Were applications invalid?



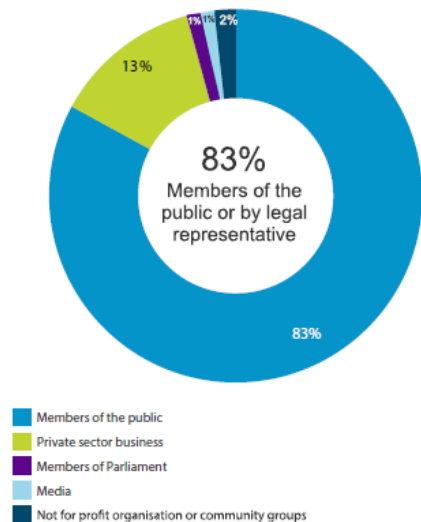
How quickly were decisions made?



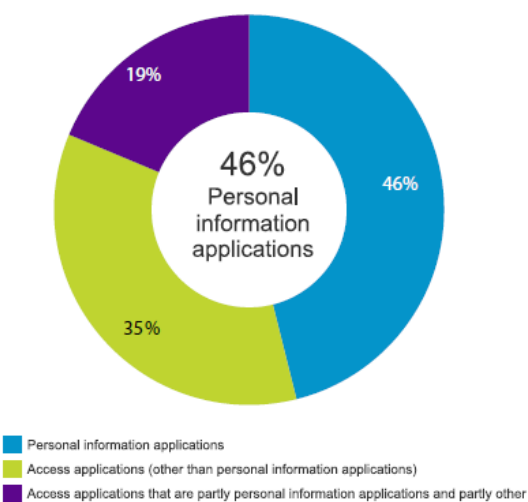
Did applicants get what they asked for?



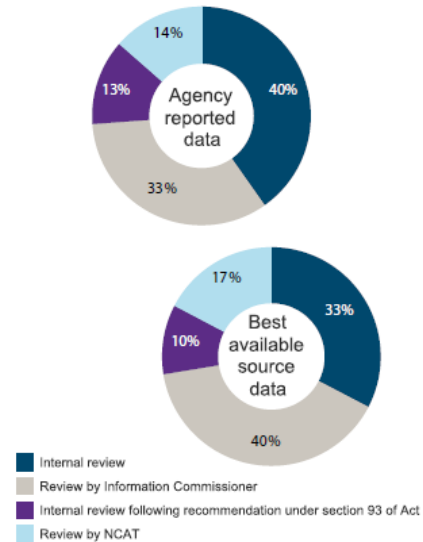
Who applied?



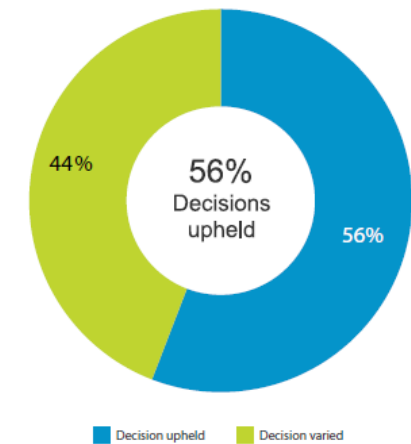
What was asked for?



How were decisions reviewed?



What were the main review outcomes?



Report on the Operation of the GIPA Act 2021/22

Tabled in Parliament on 22 May 2023

- The Report provides a comprehensive assessment of the operation of the right to information legislation in NSW and examines the performance of **over 250 public sector agencies**, provides important guidance to policymakers and agency heads, and promotes greater transparency for the NSW community.
- There was again an **increase in applications** for information made by NSW citizens to the highest recorded in over a decade of reporting:
 - applications for information received by agencies increased by 6% in 2021/22, with 23,789 valid applications received compared with 22,349 in the previous financial year.
- Consistent with previous years, the **Government sector** continued to account for the great majority (19,250 or 81%) of valid applications; the number of applications increased moderately by 8%

Report on the Operation of the GIPA Act 2021/22

- The underlying driver of the increase in applications relates to applications for **partly personal information** and **partly other information** where there was an increase of 23% (overall 197% increase between 2018/19 and 2021/22)
- Notably, the percentage of **applications made by members of the public** remains at a record high of 83%
- **Reviews by the Information Commissioner** continue to represent the most accessed review right, with applications for review by the Information Commissioner representing 40% of all reviews conducted
- The balance between **decisions upheld** and **decisions overturned** on internal and external review has changed this year; a moderate increase of 13% in decisions upheld in 2021/22

Report on the Operation of the GIPA Act 2021/22

- A desktop audit found that **compliance with the general open access release requirements** remains high at 84% similar to the 85% reported in 2020/21.
- **100% of Government departments** achieved compliance with the general mandatory proactive release requirements, consistent with 2020/21.
- In the majority of cases, applicants are receiving the information they request, with an **overall release rate of 70%**
- The **highest release rates in 2021/22** were for applications by private sector business, with combined release rates of 74%, consistent with the past three years of reporting
- Although **timeliness** of decisions declined slightly, with 89% of decisions made within the statutory timeframe, this has not resulted in an increase in deemed refusals

Report on the Operation of the GIPA Act 2021/22

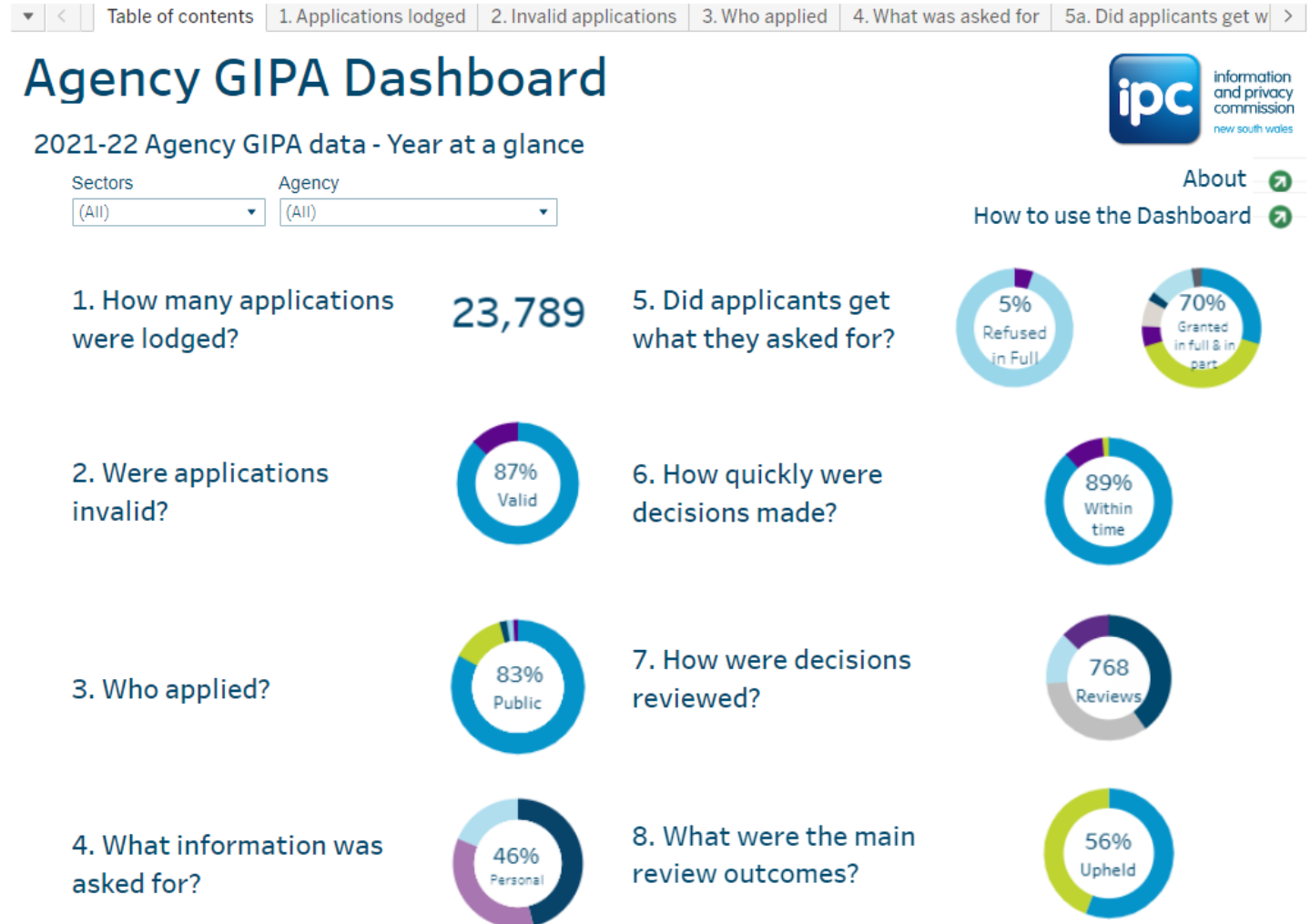
- This year, like previous years, **compliance by Government departments** with their requirements to meet their five additional open access requirements continues to remain low. Results for this year indicate some improvement, however the low rates for full compliance remain a significant concern. In 2021/22:
 - 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
 - 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
 - 33% (three departments) had the department's **guarantee of service**. This is an increase from 22% (two departments) in 2020/21

Report on the Operation of the GIPA Act 2021/22

- 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.
- Significant changes identified within this Report and the changing patterns in delivery of government functions and services must inform our way forward in **modernising the GIPA Act**.
- An erratum was made to the Report on 7 July following a data entry error in data submitted to the IPC.

IPC Agency GIPA Dashboard

- Dashboard has been refreshed to enable a five-year comparison of data
- It now enables better trend identification for each agency
- All charts (except the cover page) can now compare their selected agency against data for the sector and all agencies
- www.ipc.nsw.gov.au/information-access/gipa-dashboard



Right to Know Week NSW 2023



Save the date

- Right to Know Week NSW 2022 will take place on 25 September – 1 October 2023
- The theme is **The importance of the online space for access to information**
- The RTK NSW 2023 webpage will be launched soon
- The RTK Champion program has also launched and agencies can sign up via the IPC website or via: www.ipc.nsw.gov.au/RTK2023Champion
- The IPC will be releasing new resources to support agencies with informal release and releasing a training webinar on the informal release pathway.

Significant regulatory matters

- IPC released the following GIPA Compliance Audits in the past quarter:
 - [Assets and Acquisitions](#)
 - [Local Council Sector – Follow-up audit](#)
- Information Commissioner attended the Association of Information Access Commissioners (AIAC) meeting hosted by OAIC on 2 June 2023 in Sydney
- IPC finalised stage one of GIPA ‘modernisation’ project
- Information Commissioner provided an Oceania update and participated in a panel discussion at the 14th Edition of the International Commissioners in the Philippines
- IC is making a submission to the Artificial Intelligence Inquiry
- New online webforms for citizens for [Application for external review by the Information Commissioner](#) and [Complaint to the Information Commissioner](#)

Information access NCAT matter

Ooi v NSW Ministry of Health [2023] NSWCATAD 107

The Tribunal:

- affirmed the agency's decision that it did not hold a record which responded to the applicant's request for the patient de-identified data about COVID, which had informed a report published by the Ministry of Health in early 2022.
- found that the patient-level data was not retained or stored in any form
- affirmed the decision of *Redfern Legal Centre v Commissioner of Police* [2021] NSWCATAD 288
- limited the construction of 'government information' to information which exists at the time of the access application; there is no obligation on agencies to aggregate data sets or write code in order to treat data, in order to answer access applications.

Speaking Engagements

The Information Commissioner presented at the following engagements last quarter:

- Executive Leadership Essentials, 31 May
- UNESCO: African Network of Information Commissioners – 7 June
- 2nd Open Government Partnership Meeting – 14 June
- 14th Edition of the International Conference of Information Commissioners (ICIC) – 21 June

Upcoming

- Corruption Prevention Network Lunchtime Seminar – 16 August
- NSW Parliament: Member Development Sessions – 13 September
- Executive Leaderships Essentials – 11 October
- FOI in WA Conference – 2 November

Information access publications

NEW

- Information Access Self-assessment Tool

UPDATED

- Guide to reporting on agency GIPA operations
- Fact Sheet – Open access information for citizens
- Guideline 8: Care Leavers' access to their Out-of-Home Care Records
- Fact Sheet – The GIPA Act and Copyright
- Fact Sheet – Offences under the GIPA Act
- Fact Sheet – Safeguards to address misuse of the GIPA Act
- Fact Sheet – Information Commissioner's right of appearance in the NSW Civil and Administrative Tribunal
- Checklist – Tips for framing your information access application

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