



information
and privacy
commission
new south wales

REPORT ON THE OPERATION OF THE GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009 2022 – 2023

Transmission

The Hon. Ben Franklin, MLC
Office of the President
NSW Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000

The Hon. Greg Piper, MP
Office of the Speaker
NSW Legislative Assembly
Parliament House
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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: 2022 – 2023.

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

Yours sincerely,

Rachel McCallum
IPC CEO, Information Commissioner

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Commissioner's Overview

In my first Report on the operation of the *Government Information (Public Access) Act 2009* (GIPA Act), I am pleased to present agencies' GIPA data for 2022/23, to highlight some trends suggested by that data, and to report on initiatives by the Information and Privacy Commission (IPC) that support access to government information in New South Wales (NSW).

The Information Commissioner has tabled a Report on the operation of the GIPA Act in the NSW Parliament each year since 2013, consistent with the role of this office in maintaining and enhancing the integrity of public sector administration. This annual report to Parliament is required under section 37 of the *Government Information (Information Commissioner) Act 2009* (GIIC Act).

Another strong year for GIPA applications

Access applications have increased from 12,945 in 2013/14 to 24,476 in this reporting year: an 89% increase and another record. The increase compared to 2021/22 was only 3% but it follows a 37.9% increase recorded between 2019/20 and 2021/22. I note that the reported data for 2022/23 contains limited information for ministers' offices, due to the State election that occurred in March 2023. Although the numbers in respect of ministers' offices are generally small, this issue is referred to in various places in this Report.

Between 2013/14 and 2022/23, there has also been a change in the profile of access applicants:

- applications from members of the public increased from 48% to 84%
- applications from legally represented members of the public increased from 28% to 48%.

In the data submitted by agencies to the IPC, 'members of the public' includes all applicants who are not Members of Parliament, media, community groups, or private sector businesses.

Despite the higher overall application numbers in 2022/23 and a different mix of applicants, agencies have reported higher levels of compliance with the statutory timeframes than in 2013/14. Agencies also report that they have refused access in full on fewer occasions:

- decisions made within the statutory timeframe increased from 80% to 88%
- decisions refused in full declined from 8% to 6%.

Spotlight on informal release

Under the GIPA Act, there are four pathways for people to access government information. Over the past 15 years, the IPC has collected data on three of these pathways but there is no legislated requirement for agencies to report on the informal release pathway. It has been difficult, therefore, to analyse the progress that agencies have made in relation to this pathway.

In the reporting year, the IPC focused additional oversight effort on the informal release activities of the public sector. In May 2023, the Information Commissioner released a report containing findings from research into the informal release pathway, which included an audit by the IPC of the practices of a selection of agencies. Encouragingly, 58% of audited agencies reported that they kept statistics on informal release, even though this data is not required under legislation. The audit also showed that 83% of informal requests recorded by agencies resulted in some information being released. However, it also found that 53% of agencies did not have a documented policy or procedure to support staff dealing with informal access requests. Additionally, 58% of agencies did not provide a written outcome to an applicant who requested information informally.

The Report and the IPC's audit results suggest that the informal release pathway may be underutilised and recommendations were made in the Report to improve informal release in NSW.

These recommendations included that the IPC issue guidance on informal release and a summary of best practice principles. New and updated informal access resources, including [Information Access Guideline 11 – Release of Information](#), were subsequently released during Right to Know Week NSW 2023. This new material also included a training webinar published on the IPC's [YouTube channel](#) on Informal Release of Information.

In March 2023, the IPC also included new fields about informal release in the IPC's GIPA Reporting Tool. Agencies using the Tool can now provide data on informal access to the IPC together with their mandatory reporting data. Many agencies did in fact provide such data during the reporting year, so for the first time this Report can include analysis about information released informally. Since providing the IPC with this information is voluntary, this Report can only supply limited insight into the operation of the pathway, not a developed understanding across the public sector. The IPC will consider how it can assist agencies and members of the public to utilise this pathway more effectively in the future.

Falling short on Open Access

Compliance with Open Access information requirements under the GIPA Act's mandatory release pathway continues to be a concern. As with past reports, IPC audits demonstrate that levels of agency compliance with Open Access obligations should improve.

The IPC invested in a website scanning tool during the reporting year to assist it to monitor compliance with website publication obligations. Using this tool, the IPC hopes to identify areas of non-compliance faster and more effectively. In the future, the tool can be used to supplement the IPC's manual desktop audits conducted for annual reporting purposes and can be adapted to locate a wide variety of material published on agency websites. In the next reporting year, the IPC will explore opportunities to deploy it to assist with the performance of the IPC's other regulatory functions and investigations.

Sharper focus on technology

New technology applications in the public sector continued during the reporting year, including for artificial intelligence (AI) and forms of automated decision-making. As this trend continues, the preservation of information access rights will remain an important integrity requirement.

The [AI Regulatory Scan](#) undertaken by the IPC during the reporting year provided an overview of the then current global approaches to risks associated with AI. The scan also considered the regulatory environment in NSW and the current treatments applied to AI risks within this jurisdiction.

The scan presented a range of options for preserving or enhancing information access rights in NSW in the context of expanding public sector AI and other technology uses, including:

- mandating proactive disclosure of the use of AI by agencies by specifying it as Open Access information under the GIPA Act
- specifying that AI Open Access information must include a statement of use, inputs and a description of the operation of the AI system
- preserving access to information rights in contracts for technology services both to and for agencies, particularly where the services include AI to assist administrative decision-making
- specifying AI as a factor in favour of the disclosure of information under the GIPA Act, to balance an existing asymmetry that protects the business interests of agencies and third-party providers.

As the new Information Commissioner, I support these legislative options being considered as a priority, both to manage the risk that public access rights are being eroded and to support good government. I also note that the GIPA Act already requires agencies to include a description of the ways in which their functions affect members of the public in their published Agency Information Guides (AIGs). Where agencies use automated or machine-enhanced decision-making, this information should be being included in their AIGs now.

I thank the officers of the IPC for their hard work in compiling the data in this Report for tabling in the NSW Parliament and I trust its contents will guide consideration of important administrative improvements and legislative change.

Rachel McCallum
IPC CEO, Information Commissioner

Future Focus

Drawing on the 2022/23 reporting outcomes, the following strategies are being implemented by the IPC in response to issues arising in this Report. The IPC encourages agencies to implement specific strategies too that respond to these issues.

1

MANDATORY PROACTIVE RELEASE

IPC strategies

- Engage with agencies on the outcome of the desktop audit of compliance with Open Access information requirements.
- Engage with agencies to request phrasing, consistent with GIPA Act terminology, be used when publishing AIGs. The website scanning tool that the IPC used to assess agency compliance with their Open Access information obligations found that several agencies have AIGs that were difficult to locate on their websites.
- Monitor compliance with the amendment to the Government Information (Public Access) Regulation 2018 that requires agencies to publish information on the administration of grants as Open Access information.

Agency strategies

- Apply the guidance set out in the [Information Commissioner's Information Access Guideline 6: Agency Information Guides](#).
- Ensure AIGs are easily located on agency websites, including by consistently describing them as 'Agency Information Guides' and preferably referring to the GIPA Act. These elements will assist users searching for Open Access information and support oversight by the IPC.
- Embed a commitment to proactive publication of information on grants and grants administration as required under the Government Information (Public Access) Regulation 2018 (clause 6A).

2

AUTHORISED PROACTIVE RELEASE

IPC strategies

- Analyse and report on agency compliance with the obligation to conduct an annual review of their proactive release program.
- Continue to promote the recently updated agency Self-assessment Tool to assist with the development of agency compliance maturity.

Agency strategies

- Apply a systematic approach to the proactive identification and release of government information.
- Utilise the IPC's Self-assessment Tool.

3

INFORMAL RELEASE

IPC strategies

- Review informal release data received from agencies through the GIPA Tool and consider recommendations to inform guidance and advice on informal release and collection of data in relation to the 2023/24 reporting year.
- Promote IPC resources on informal release and encourage agencies to adopt improved policies and procedures in relation to informal release.

Agency strategies

- Embed and commit to implementing policies and procedures for the informal release of government information, using the resources the IPC has released as guides to develop agency specific policies and procedures.

4

FORMAL ACCESS APPLICATIONS

IPC strategies

- Engage with The Cabinet Office, Premier's Department, Department of Communities and Justice and the Department of Customer Service to explore options for improving the reporting of information by ministers' offices following a change of Government or Machinery of Government changes. One option may be for all ministers' offices to use the GIPA Tool.
- Engage with State-Owned Corporations (SOCs) to address the increase of invalid applications received during 2022/23.

Agency strategies

- Commit to providing improved information on agency websites on the pathways to access government information to minimise the number of invalid applications received by agencies.

What is the GIPA Tool?

The GIPA Tool is a free internet application that is available for all agencies through IPC. It assists agencies to comply with their GIPA Act obligations, including reporting.

The GIPA Tool can be accessed on the IPC [website](#).

Year in Review

The 2021/22 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 reported below.

Mandatory proactive release

The 2021/22 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
<p>Publish an IPC Compliance Report on the compliance with the additional Open Access requirements for departments in relation to acquisitions and disposals of major assets as required by Clause 6 of the Government Information (Public Access) Regulation 2018 (GIPA Regulation).</p>	<p>The IPC carried out a compliance audit and in May 2023, published a report: Agency reporting on expenditure of public funds by disclosing the acquisition, disposal and value of major assets as required by the GIPA Act.</p> <p>The audit findings included that:</p> <ul style="list-style-type: none"> • 40% of departments disclosed assets and acquisitions publicly • only 20% of departments' additional Open Access requirements, assets and acquisitions, are easy to locate on their websites • only 20% of additional Open Access requirements are fully accessible to all users on the department's website without condition. <p>Recommendations for departments included:</p> <ul style="list-style-type: none"> • developing internal processes to ensure the information is available in a timely and consistent manner • taking steps to actively ensure ease of locating Open Access information • ensuring that both a list of major assets, and a list of major assets <u>acquired</u> in the previous financial year, as required by clause 6(2)(a) of the GIPA Regulation, together with disposals and the value of disposals is made publicly available.
<p>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 on the disclosure of pecuniary interests by elected officials and key personnel and the application of the Information Commissioner's Information Access Guideline 1.</p>	<p>The IPC carried out a compliance audit and in June 2023, the IPC published the following report: Local Government Sector – Follow-up GIPA Compliance Report Disclosure of Open Access Information (returns disclosing the interests of councillors and designated persons)</p> <p>The audit found that there had been an increase in compliance with their mandatory reporting requirements by the majority of councils.</p> <p>The audit found increases in compliance with:</p> <ul style="list-style-type: none"> • public availability of returns of interests by councillors and designated persons - a significant increase from to 61% to 88% fully compliant (+27%)

Year in Review

Mandatory proactive release (continued)

Action	Outcome
	<ul style="list-style-type: none"> the ease of accessibility of councillor returns of interests - significant improvements from 52% to 88% (+36%) making returns of interests fully accessible without conditions – again a significant increase from 65% to 88% (+23%). <p>The audit also identified six councils that had failed to take action to rectify their non-compliance with the requirement to publish disclosures of interests. These councils were referred for further consideration to the Office of Local Government within the Department of Planning, Housing and Infrastructure, which has regulatory powers in relation to compliance with legal requirements by councils.</p>

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
Undertake a review of the Agency Self-assessment Tool to improve functionality.	<p>The revised Information Access Self-assessment Tool incorporates valuable feedback the IPC received from agencies regarding their needs and requirements. The Tool now features a detailed framework for agencies to plan their steps for improvement. It also provides improved generation of reports and summaries to better identify forward actions.</p> <p>To assist agencies in navigating the revised Tool, the IPC has released a demonstration video outlining each of the components and how to use them effectively.</p> <p>The Information Access Self-assessment Tool and demonstration video are available for download via the IPC website.</p>

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
Publish research on the use of the informal access pathway and work with agencies to implement recommendations from the research.	In December 2022, the IPC, in collaboration with the University of New South Wales (UNSW) and the Centre of Public Law published the following report: Informal Release of Information under Section 8 of the Government Information (Public Access) Act 2009 (NSW)

Year in Review

Informal release (continued)

Action	Outcome
	<p>The Report recommended that the IPC should:</p> <ul style="list-style-type: none">• prepare guidance on informal release for NSW agencies;• include the summary of best practice principles (set out in Part IV of the Report) in the IPC's guidance;• consider how to support the informal release pathway amongst NSW agencies, including by providing templates, flowcharts and checklists, and information regarding legal issues;• offer training on how to manage an informal release program.

Formal access applications

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

Action	Outcome
Undertake enhancements to the Agency GIPA Dashboard and Tool to enable agencies to undertake deeper analysis of their performance.	The IPC's Agency GIPA Dashboard has been refreshed to enable a five-year comparison of data for agencies against their respective sectors and all agencies' reported figures. This enables better trend identification for each agency. All charts (except the cover page) can now compare the selected agency against data for their sector and against all agencies. Each chart has also been linked to the relevant page in the 2022/23 Report for further information.
Engage with the Department of Communities and Justice and the Department of Customer Service to propose consideration of legislative reform to identify the environment as a specific factor in favour of disclosure of information, not just a factor against disclosure (as it is currently).	The IPC has engaged with the Department of Communities and Justice and the Department of Customer Service to consider whether this would be an appropriate matter for legislative reform. This work is ongoing.
Engage with Department of Communities and Justice and the Department of Customer Service to examine options for a public portal to facilitate the lodgement of GIPA applications.	The IPC researched an existing lodgement system that deployed AI to assign applications to the relevant agency. The system is operating in the Philippines and was developed by the not-for-profit sector in conjunction with the Office of the Information Commissioner. The IPC explored funding for this project but has yet to receive any budget supplementation.

What is the Agency GIPA Dashboard?

The Agency GIPA Dashboard enables the public and agencies to see how the GIPA Act is working against key performance measures reported upon each year. The Agency GIPA Dashboard can be accessed on the [IPC website](#).

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 2022/23, the IPC conducted a desktop audit of the ten principal departments and a sample of 20 smaller agencies. The desktop audit identified whether each department or sampled smaller agency had complied with the GIPA Act to publish on its website:

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

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

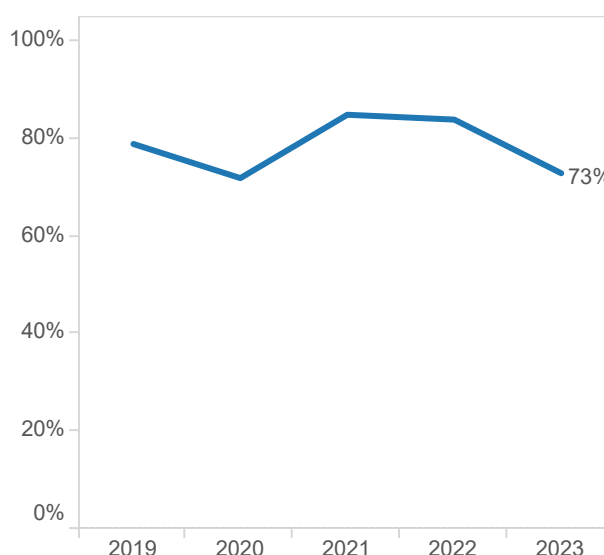
As a result of Machinery of Government changes which took effect from 1 July 2019, the total number of departments decreased from 10 in 2018/19 to eight in 2019/20. This number then increased to nine with the establishment of Regional NSW as a new Department in 2020. In 2021, the Department of Enterprise, Investment and Trade was established, bringing the total number of departments up to 10 for 2022/23.

When comparing the audit results from 2022/23 with past years, it is important to note that changes in the number of principal departments has affected the overall audit sample, which does not allow for accurate direct comparisons from year to year.

Compliance with Open Access requirements has declined

Across all departments and sampled smaller agencies, the desktop audit found that compliance with the mandatory proactive release requirements declined this year to 73% compared with 84% in 2021/22 and 85% in 2020/21 (Figure 1). The change is largely a result of a drop in compliance by the sampled smaller agencies.

Figure 1: Departments and sampled smaller government agency compliance with mandatory proactive release requirements, 2018/19 to 2022/23



The desktop audit also showed the following:

- 70% of sampled agencies had an AIG, a significant decline from 86% in 2021/22 and 2020/21
- 90% of sampled agencies had policy documents available, consistent with 90% in 2021/22 and 2020/21
- 63% of sampled agencies had a disclosure log, a significant decline from 86% in 2021/22 and 2020/21
- 67% of sampled agencies had a contract register, a moderate decline from 79% in 2021/22 and 2020/21.

Consistent with the 2021/22 results, compliance by departments was significantly higher at 98% than the rate for all agencies which was 73% overall.

Agencies, other than departments, had a significantly lower overall compliance rate of 60%. This is a decline from the 2021/22 results (78%) for sampled agencies. In response to the low compliance rate by smaller

agencies, the IPC has examined Open Access information compliance within the Council sector. The IPC first carried out an audit into the disclosure of information by the Council sector in 2020/21 and a follow-up audit was carried out in 2022/23. The [Report](#) was published in June 2023.

The results of the 2023 audit demonstrate that the majority of councils elevated compliance with their mandatory reporting requirements. However, given the rate of compliance by smaller agencies remains lower overall, it indicates that other (non-council) smaller agencies should focus on improvement.

In September 2023, the IPC engaged external consultants to assess the feasibility of conducting automated website scans to identify the existence of AIGs on agency websites (see 'Issue Highlight' at the end of this section for more detail). The ensuing website scans were conducted in December 2023 and January 2024. This scanning activity reflected the reporting year's audit results. It confirmed that smaller agencies struggled to meet their obligations to publish AIGs either at all or in an easily accessible way. The scanning results were similar to those found in the desktop audit, at 57% and 60% compliance respectively.

The IPC's use of the scanning tool will continue to be refined, however these preliminary results indicate it provides useful data in an efficient way that can be cross-checked against manual audit information. Cross-checking provides further assurance as to the estimated compliance rate of agencies. Due to the tool's effectiveness, the IPC will expand it to scan for disclosure logs and other policy documents. The scan results for these categories of information can also be cross-checked against data from manual audits for the purposes of monitoring compliance.

Compliance with *additional* Open Access requirements for departments remains low

The 10 principal departments are subject to a number of 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 were met by the major departments:

- 0% (none) fully met and 60% (six departments) only partially met the requirement in relation to major assets and acquisitions. This is a significant decline from the 89% that partially met requirements in 2021/22.¹
- 10% (one department) fully met and 60% (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 moderate decline on the 67% that partially met requirements in 2021/22.²
- 40% (four departments) had the department's guarantee of service. This is a moderate increase from 33% (three departments) in 2021/22.
- 100% had the department's code of conduct, consistent with 100% in 2021/22.
- 100% had a number of documents/webpages marked as 'standard' or 'code' available on the website, consistent with 100% in 2021/22.

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 provide 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.

The IPC will 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.

¹ 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.

² 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.

The IPC will also consider other ways in which it can support agencies to improve compliance with their mandatory proactive release obligations.

On 1 July 2023, the GIPA Regulation was amended to require agencies that administer grant schemes to make certain information about those grants publicly available, as Open Access information. Grant information is to be published on the designated website (<https://www.nsw.gov.au/grants-and-funding>). The IPC will review this website for compliance with the GIPA Regulation and provide further commentary on this in the 2023/24 Report. The IPC will also consider whether its new website scanning tool can be used to support an assessment of whether agencies are complying with the requirement to publish grant information.

Complaints to the IPC about mandatory proactive release

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

In 2022/23, 16% of complaints finalised by the IPC concerned Open Access information, a significant decline from 31% reported in 2021/22. Whilst this is a significant decline in percentage terms, in absolute terms it was only a decrease of 2 cases, from 15 cases to 13 cases, with this result reflecting the increase in the number of total complaints received in 2022/23. As in previous years, Open Access-related complaints mainly concerned agencies *not* making Open Access information available.

Case Study: Summary of audit findings concerning agency compliance with Disclosure Log and section 6(5) Requirements

A key object of the GIPA Act is to authorise and encourage the proactive public release of government information by NSW agencies. Following the low levels of compliance with Open Access requirements reported in 2022/23, the IPC undertook two separate, but related audits to examine the rates of compliance with:

- the requirement to maintain a record that publishes details of information released in response to access applications that the agency considers may be of interest to other members of the public (disclosure log); and
- the requirement to maintain a record of Open Access information that it does not make publicly available on the basis of an overriding public interest against disclosure (section 6(5) record).

A representative sample of 79 agencies across four sectors were selected for inclusion in both desktop audits, which were undertaken in mid-October 2023. The final reports in each audit were published in January 2024.

Although the audit examining agency compliance with disclosure log requirements identified that the vast majority of agencies sampled had made their disclosure log publicly available on their websites, almost half of the agencies sampled did not ensure that their disclosure logs are kept current and updated on a regular basis. The audit further identified that a minority of agencies sampled had failed to ensure that their disclosure log is publicly available. To assist agencies to improve their compliance with the requirements pertaining to disclosure logs, the audit report included six recommendations by the Information Commissioner.

In the audit examining agency compliance with section 6(5) of the GIPA Act (Open Access information not made available for reasons of overriding public interest), compliance failures across all agency sectors were identified. The audit report included seven recommendations by the Information Commissioner to assist agencies to understand the requirements under section 6(5) of the GIPA Act and to raise compliance rates.

The level of non-compliance identified in both audits undermines the object of the GIPA Act to support a responsible and representative system of government that is open, accountable, fair and effective. Agencies are encouraged to have regard to the guidance and recommendations made in both audit reports and to implement the Information Commissioner's recommendations.

Issue Highlight: Agency Information Guide Website Scanning Tool

In response to the steady number of complaints during the reporting year about Open Access information availability, the IPC assessed the feasibility of conducting automated searches to identify the existence of AIGs on agency websites.

An automation script was developed and tested, with the final script being run a number of times to identify additional refinements and ensure consistent outcomes. The final script was run using a comprehensive list of URLs of agency websites.

The January 2024 results for finding a match to 'Agency Information Guide' were as follows:

URL Category	Quantity	Found		Not found		Error*	
		Number	Percent	Number	Percent	Number	Percent
Local Councils	128	72	57%	26	20%	30	23%
Universities	10	4	40%	2	20%	4	40%
State-Owned Corporations	8	7	87%	1	13%	0	0%
Total	146	83	57%	29	20%	34	23%

* 'Error' is a result of the script not finding a yes/no result and instead leaving a technical error message.

There was a higher-than-expected number of errors with local councils at 30 (23%), with the automated script unable to confirm whether or not an AIG was present.

Following a manual review of agency websites, several sites that the automated tool determined not to have AIGs were found to have AIGs available. This was because the websites had not used the term 'Agency Information Guide' but had used name variations such as 'publication guide'. Future iterations of the automated tool can be adapted to broaden the search criteria to resolve this issue and further improve the reliability of its outputs. Agencies are also encouraged to make sure their AIGs are clearly identified as such for their website visitors, including by referencing the GIPA Act.

The manual review also confirmed that all of the initial 72 positive findings were correct. Of the 72 positive findings from local councils, 30 (42%) were also PDF format documents so additional details about the status of the AIG were available, including creation date and modified date. For example, the data returned from the scan of PDF AIGs contained 'document modified' dates ranging from 27 July 2011 through to 8 May 2023, and showed 50% of all documents were modified within the preceding 12 months.

Manual follow-up on universities indicated that the automated tool was less successful in identifying when an AIG was present. This was largely because the university websites tended to contain a large number of documents that included terms such as 'guide' and 'information'.



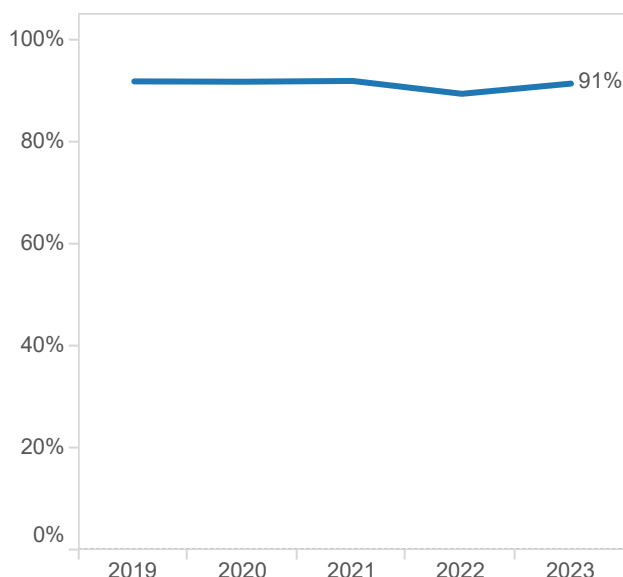
Pathway 2: Authorised proactive release of information

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 2022/23, 91% of agencies self-reported having conducted a review of their program for the release of government information. Overall, this is consistent with 86% in 2021/22, 92% in 2020/21 and 93% in both 2019/20 and 2018/19 (Figure 2).

Figure 2: Agencies that conducted annual information release reviews as a percentage of all agencies that reported, 2018/19 to 2022/23



Results across the sectors varied (Figure 3):

- 87% of agencies in the Government sector conducted reviews, consistent with 83% reported to the IPC in 2021/22.
- 100% of universities conducted reviews, a moderate increase from 90% in 2021/22.
- 88% of councils conducted reviews, consistent with 88% in 2021/22.
- 71% of SOCs conducted reviews, a significant decline from 86% in 2021/22.

Since July 2015, the IPC has focused on assisting agencies with proactive release programs. As part of this work, the IPC enhanced its GIPA Tool in 2018/19 to remind agencies that conducting annual reviews of their program is mandatory. In 2020/21, the IPC's Essential Guidance Toolkit, Information Access Self-assessment Tool and e-Learning modules were promoted to assist them to self-assess their information governance compliance.

In May 2023, the IPC revised its Information Access Self-assessment Tool. The revised Tool allows agencies to perform an assessment of their information access maturity level while also tracking their progress in improving their information access practices. The IPC is exploring options to audit or otherwise analyse agencies' activities in conducting their annual information release reviews.

Figure 3: Agencies that conducted annual information release reviews as a percentage of all agencies that reported, by sector, 2018/19 to 2022/23

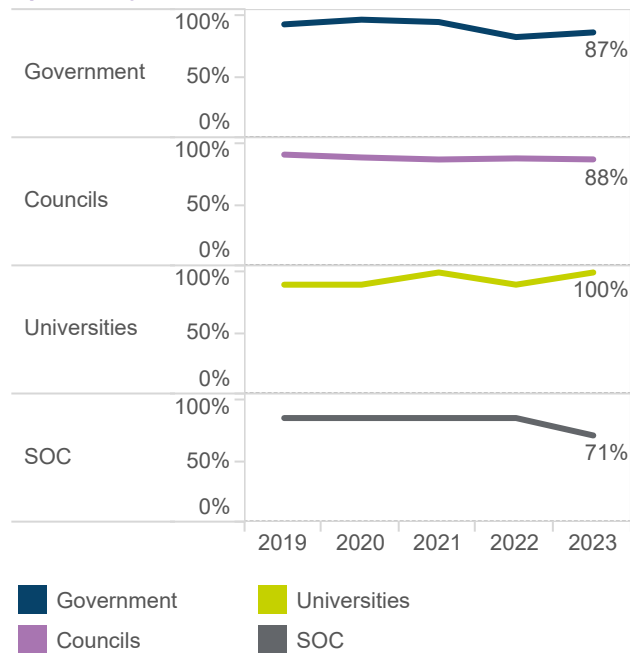
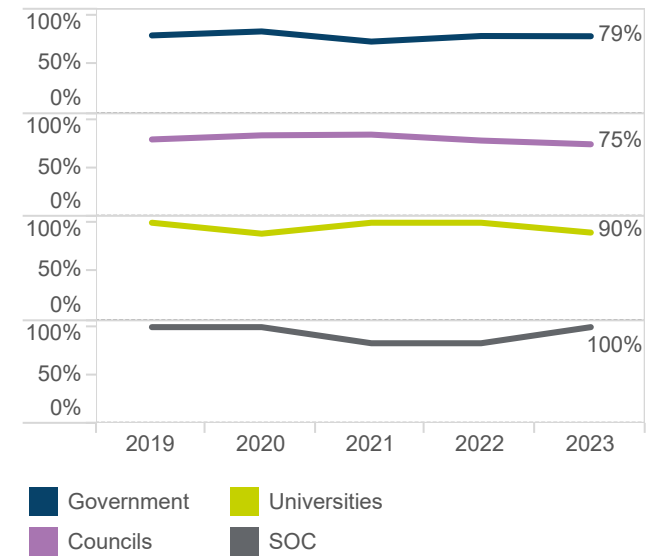


Figure 4: Agencies that released additional information as a percentage of agencies that conducted a review, by sector, 2018/19 to 2022/23



Overall release of additional information following a review remained stable, with a decline in the Council and Universities sectors

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, consistent with 79% reported in 2021/22.
- 75% of councils released additional information following review, with a moderate decline from the 80% reported in 2021/22.
- 90% of universities released additional information following review, a moderate decline from 100% in 2021/22.
- 100% of SOCs released additional information following review, a significant increase from 83% in 2021/22.



Pathway 3: Informal release of information

The informal release of information benefits both agencies and stakeholders by increasing options for access to information outside formal application processes. The effectiveness of this pathway depends on sound agency practices, including linking those processes to other access mechanisms, such as AIGs.

Agency practices

The GIPA Act authorises agencies to 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 how information is to be informally released. Conditions can also be imposed on the use of the information released this way, unlike formal access decisions. Additionally, the GIPA Act provides other legal 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 determine what information can be proactively released.

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

Previously, there has been limited data available to the IPC to draw reliable conclusions on the frequency and volume of access requests made via the informal pathway or the outcomes for applicants. In recognition of this, during the reporting year the IPC engaged with UNSW to partner in research on the use of the informal access pathway. The IPC supplemented the research with an audit of selected agencies' practices.

Informal release reporting

In October 2023, the IPC also included questions on informal release in the IPC's GIPA Tool and sent correspondence to all government agencies requesting that they voluntarily provide data on informal access applications. Data available from the voluntary reporting has shown a positive uptake, with 73 agencies providing data to the IPC on informal access applications for 2022/23, representing 27% of agencies that provided annual GIPA reporting to the IPC.

The data shows that agencies are receiving a high volume of informal access applications in addition to formal access applications. While the voluntary reporting only represented 27% of all agencies, the number of informal applications received was equivalent to 58% of the total access applications under the formal pathway received by all agencies.

The data also shows that agencies finalised 97% of requests received, however only 48% of these requests were finalised within 20 business days. Agencies also only reported on the outcomes of 40% of the informal release applications received, suggesting there is a need for agencies to develop policies and procedures for informal release applications and to better capture data on the outcomes.

The results are summarised in the table below.

Number of Informal Requests Received	Number of Informal Requests Closed	% of Informal Access Requests completed in 20 Business Days	% of Informal Access Requests where access granted in full	% of Informal Access Requests where access granted in part	% of Informal Access Requests where access was refused
14,217	13,764	48%	22%	14%	4%

Issue Highlight: The IPC commissioned research into the Informal Release of Information under section 8 of the *Government Information (Public Access) Act 2009 (NSW)*

In May 2023, the Information Commissioner [released a Report](#) containing findings from research into the informal release pathway and a compliance audit examining the informal release practices of NSW public sector agencies.

The Report made recommendations for the IPC about ways to improve informal release of government information in NSW:

1. The IPC should prepare guidance on informal release for NSW agencies, similar to what has been done in some other Australian jurisdictions.
2. The summary of best practice principles identified in the Report could be included in the IPC's guidance. There are particular matters that the research suggests would be important to emphasise. These included:
 - Recordkeeping of informal release requests and outcomes should be encouraged and relevant written correspondence filed.
 - Reporting of informal release outcomes.
 - Guidance on what information should be given and in which format in the context of a decision not to release the requested information in full.
 - Guidance on appropriate timeframes for responding to informal release requests, based on other GIPA Act timelines.
 - The benefits of documenting internal processes for making informal release decisions, with best practice anonymised examples from each sector included.
 - The importance of providing information to the public about the informal release pathway and process.
 - The range of possible decisions, including release subject to conditions and redaction of information which would otherwise prevent release of the whole document, should be stated.

In response to the identified gaps, the IPC has supported the use of the informal release pathway by NSW agencies, by providing:

- a suite of new and updated informal access resources released during Right to Know Week NSW 2023 (RTK Week), including:
 - Templates for Informal Release Decision Letters
 - a Checklist on Informal Access
 - Information Access Guideline 11 – Informal Release of Information
 - a Template for Agency Informal Release Records
 - an updated Fact Sheet for citizens on Frequently asked questions – Informal Release of Information.
- information regarding legal issues, including:
 - copyright
 - defamation
 - privacy
 - confidentiality
 - application of Schedule 1 of the GIPA Act.

In September 2023 as part of RTK Week, the IPC published a training webinar on Informal Release of Information. During the week, the webinar was promoted to over 1,600 information access practitioners and leaders. The webinar can be accessed via the [IPC's YouTube channel](#).



Pathway 4: Formal applications

For the third consecutive year, valid applications increased

In 2022/23, there was another record number of formal applications: 24,476. That number exceeds the number of applications received in 2021/22 by 3%, following on from a 30% increase recorded between 2019/20 and 2020/21.

The GIPA Act provides individuals and organisations with a legally enforceable right to access government information upon application, unless there is an overriding public interest against disclosure.

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

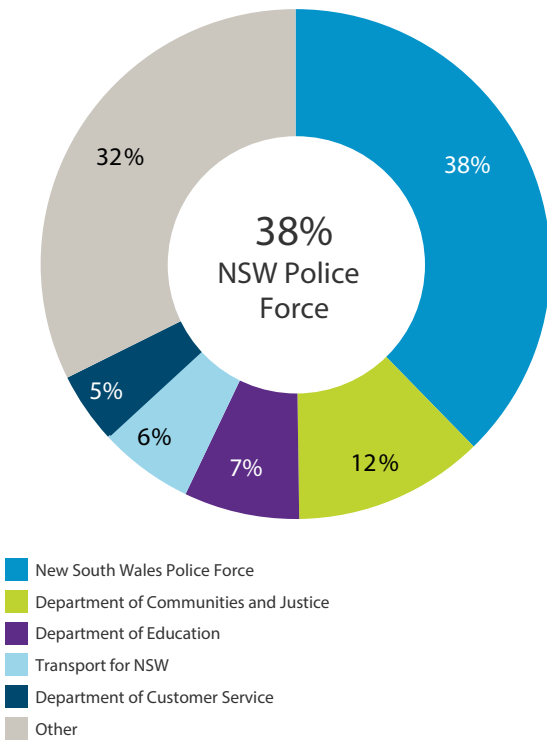
The main benefits of the formal access pathway include:

- The right to seek access is legally enforceable.
- Agencies must process applications within statutory timeframes.
- 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 NSW Civil and Administrative Tribunal (NCAT).

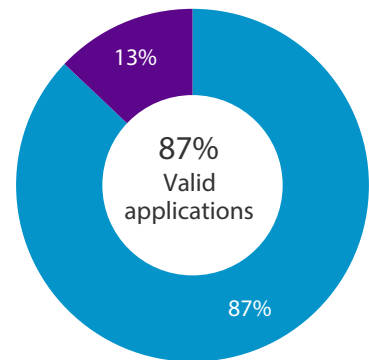
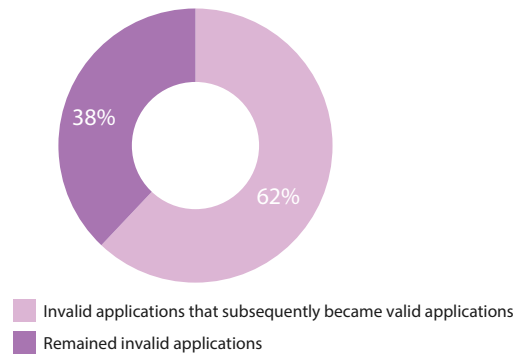
The IPC continues to publish a dashboard on its website, enabling easy access and understanding of NSW agencies' operation of the formal pathway.

Year at a glance

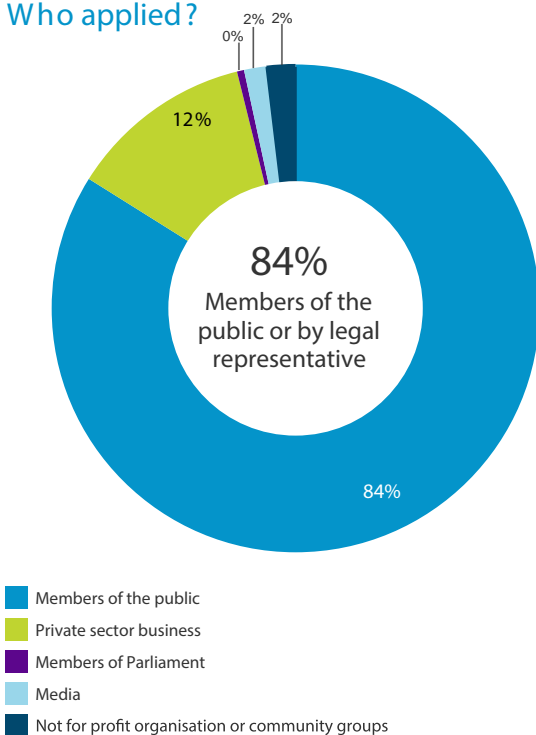
Where were applications lodged?



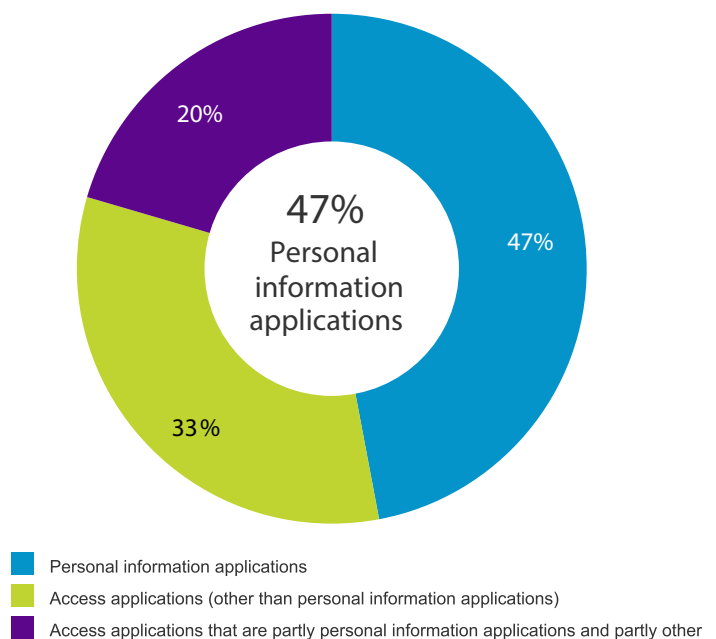
Were applications invalid?



Who applied?

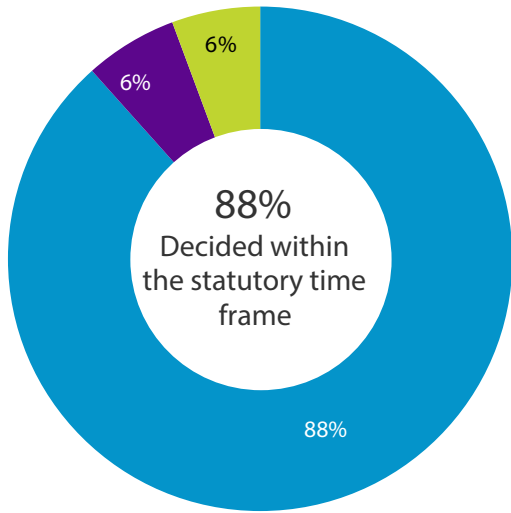


What was asked for?



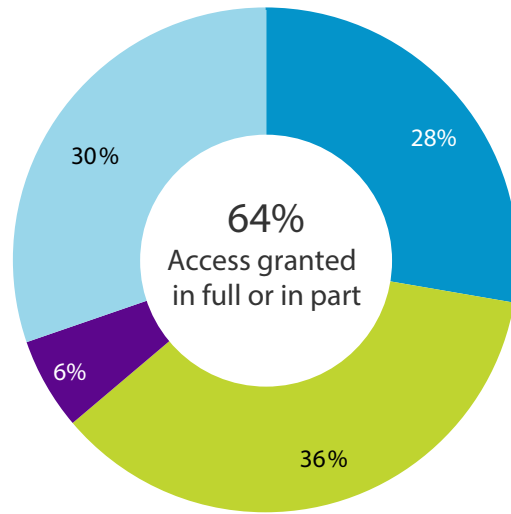
* This graph represents applications lodged to government agencies.

How quickly were decisions made?



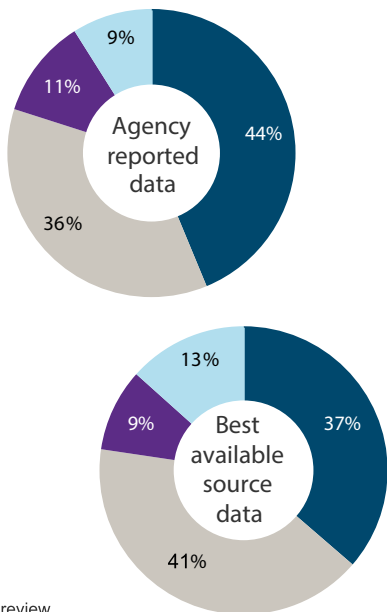
- Decided within the statutory timeframe (20 days plus any extensions)
- Decided after 35 days (by agreement with applicant)
- Not decided within timeframe (deemed refusal)

Did applicants get what they asked for?



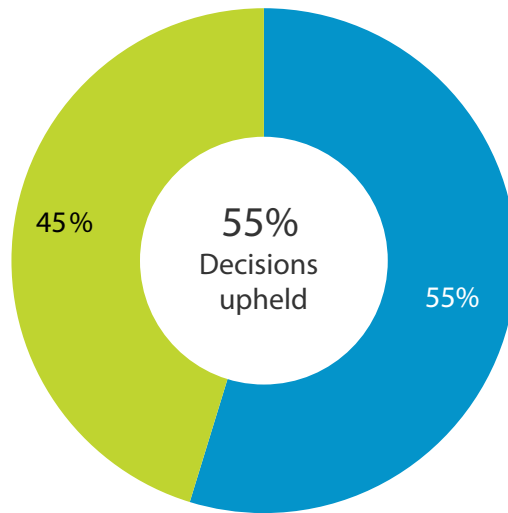
- Access Granted in Full
- Access Granted in Part
- Access Refused in Full
- Other

How were decisions reviewed?



- Internal review
- Review by Information Commissioner
- 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 3%, a slight increase compared to the previous reporting period

Agencies advised the IPC that they received 24,476 valid applications during 2022/23. This compares with 23,789 valid applications in the previous financial year and represents a total increase of 687 or 3% in valid applications received. The trend in applications is shown in Figure 5.

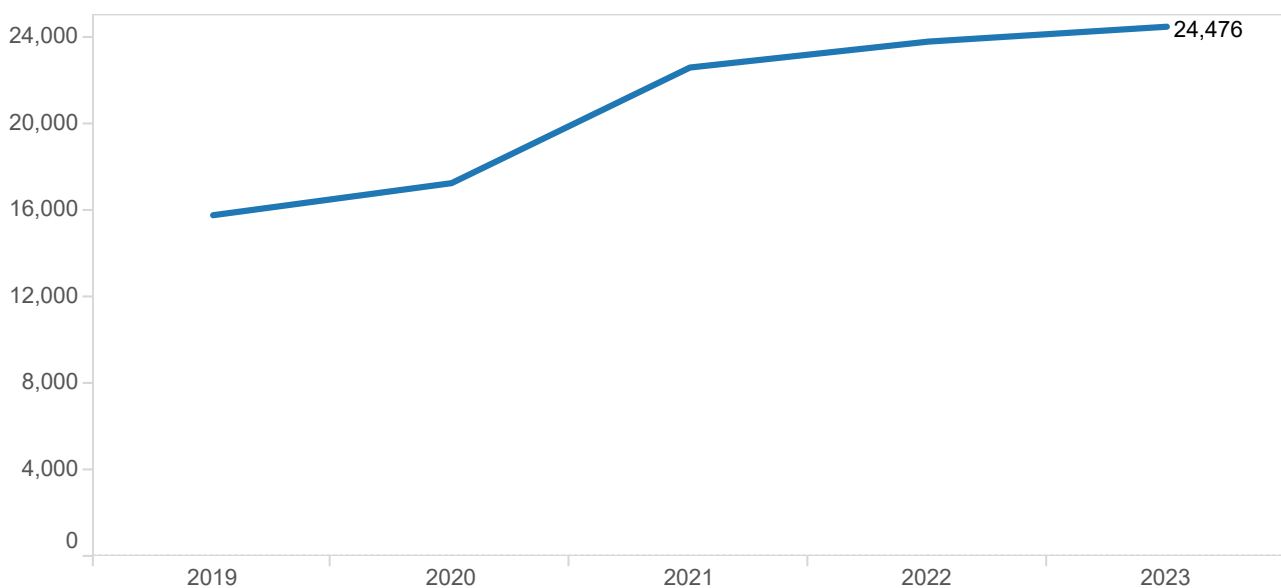
Most applications were made to the Government sector³

Consistent with previous years, the Government sector continued to account for most (19,752 or 81%) valid applications (Figure 7). The overall proportion of valid applications received by the Government sector remained stable, compared to 2021/22.

In 2022/23, the NSW Police Force received 38% of all valid applications, consistent with 37% in 2021/22 (Figure 6). While the NSW Police Force continued to receive the largest proportion of valid applications across all sectors, this proportion has declined over time from 42% of valid applications in 2014/15. The NSW Police Force has also experienced a moderate increase in the overall number of valid applications it has received, as set out below.

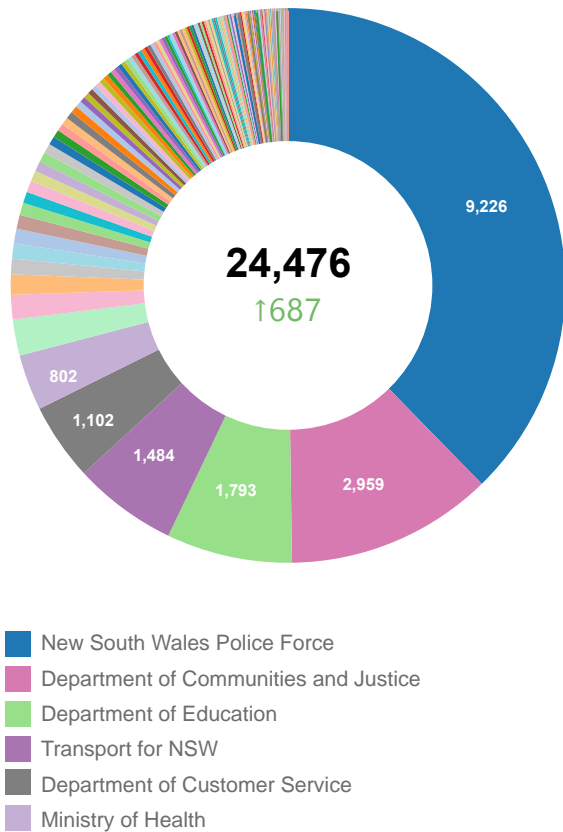
The top six government agencies by number of applications received is similar to last year (Figure 6).

Figure 5: Total number of valid applications received, 2018/19 to 2022/23



³ Since 2016/17, data has been reported across five sectors, including SOCs. This will affect comparisons with the published reports in earlier years.

Figure 6: Distribution of valid applications received, by government agency, 2022/23



Notable changes in valid applications received across these agencies were⁴ a:

- 22% decline in applications received by the Department of Customer Service, from 1,409 in 2021/22 to 1,102 in 2022/23.
- 53% increase in applications received by the Department of Education, from 1,172 in 2021/22 to 1,793 in 2022/23.
- 22% increase in applications received by Transport for NSW, from 1,217 in 2021/22 to 1,484 in 2022/23.
- 4% increase in applications received by the NSW Police Force, from 8,862 in 2021/22 to 9,226 in 2022/23.
- 19% decline in applications to the Department of Communities and Justice, from 3,675 in 2021/22 to 2,959 in 2022/23.

Applications in the Government, University and Council sectors increased, with a decline noted in the State-Owned Corporations sector and a lack of data for the Minister sector

The number of applications received by the Council sector increased by 4% compared with results reported in 2021/22 (Figure 7).

The number of applications received by the Government sector increased by 3% compared with the 2021/22 results.

Applications received in the University sector increased by 14% in 2022/23 compared with the previous year.

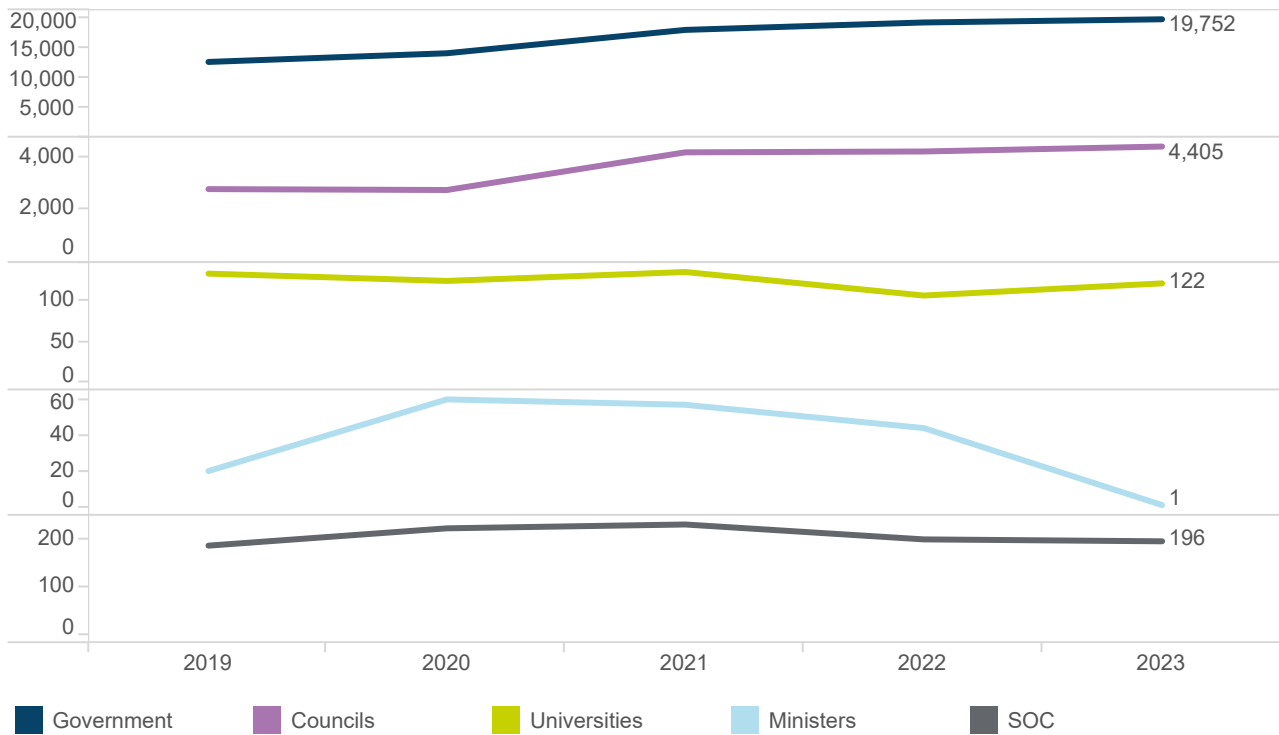
The State-Owned Corporations sector declined by 2% compared with the previous year.

Applications received by the Minister sector declined significantly by 98% in 2022/23. This decline in reported applications follows the State election on 25 March 2023. Only one such application to a Minister's office was reported in respect of the three month period following the State election.

As a result, this Report cannot analyse the performance of the Minister sector for 2022/23 as compared to previous years. While there are important conventions regarding access to records of former Ministries, it is a significant gap to have no data about most of the year in which a State general election is held.

⁴ These figures do not take into account any change in the functions of these agencies between reporting years, such as through Machinery of Government changes.

Figure 7: Number of applications received, by sector, 2018/19 to 2022/23



'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.

Invalid applications

Invalid applications

The number of invalid applications may be an indicator of the extent to which the GIPA Act is understood by applicants and agencies. It also provides insight into the level of flexibility offered by agencies to applicants to amend their applications so that they can be considered. Section 52(3) of the GIPA Act requires agencies to provide reasonable advice and assistance to enable applicants to make a valid application.

Figure 8 shows the flow of applications from receipt to initial assessment and subsequent processing, together with the number of valid applications received in 2022/23.

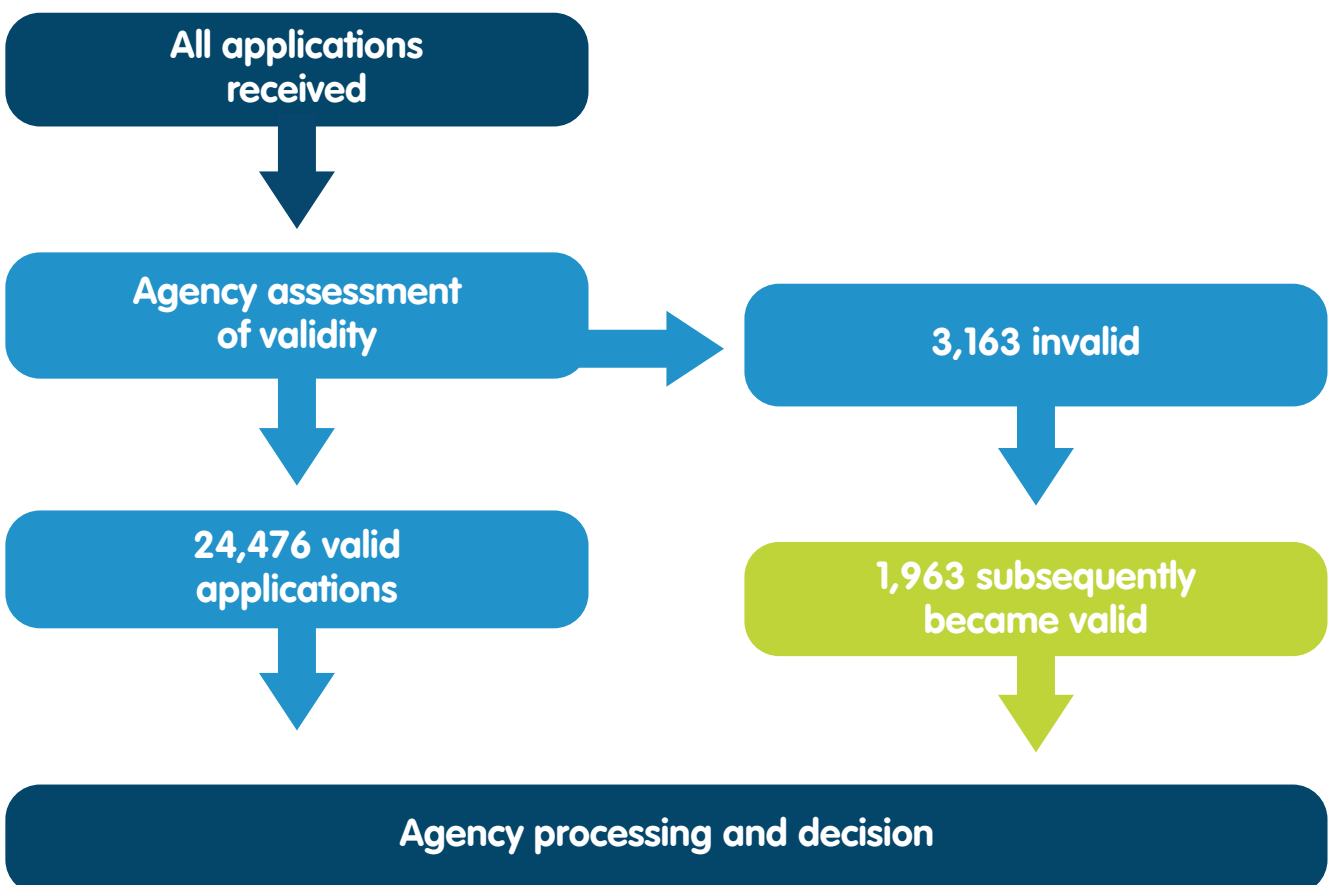
The rate of invalid applications received remains high

In 2022/23, agencies received 3,163 invalid formal applications, equivalent to 13% of all formal applications received (Figure 9).

This is consistent with the proportion of invalid applications reported in 2021/22 (3,022 or 13%).

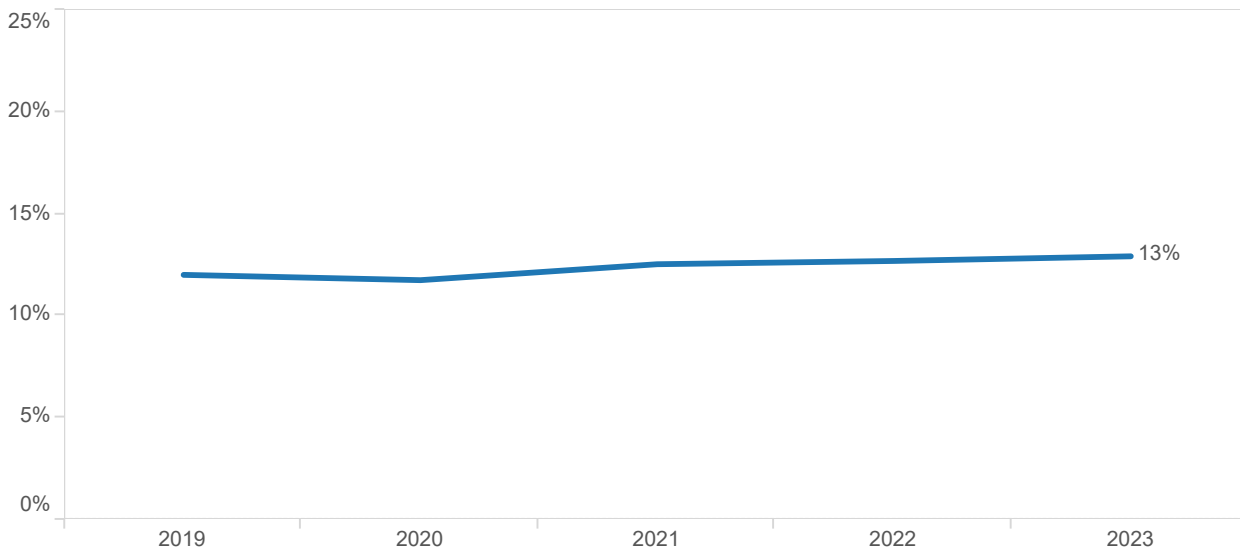
Consistent with previous years, in 2022/23 the most common reason for invalidity (applying in 96% of invalid applications) was that the application did not comply with formal requirements.

Figure 8: Flow of valid and invalid formal applications, 2022/23



'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, 2018/19 to 2022/23



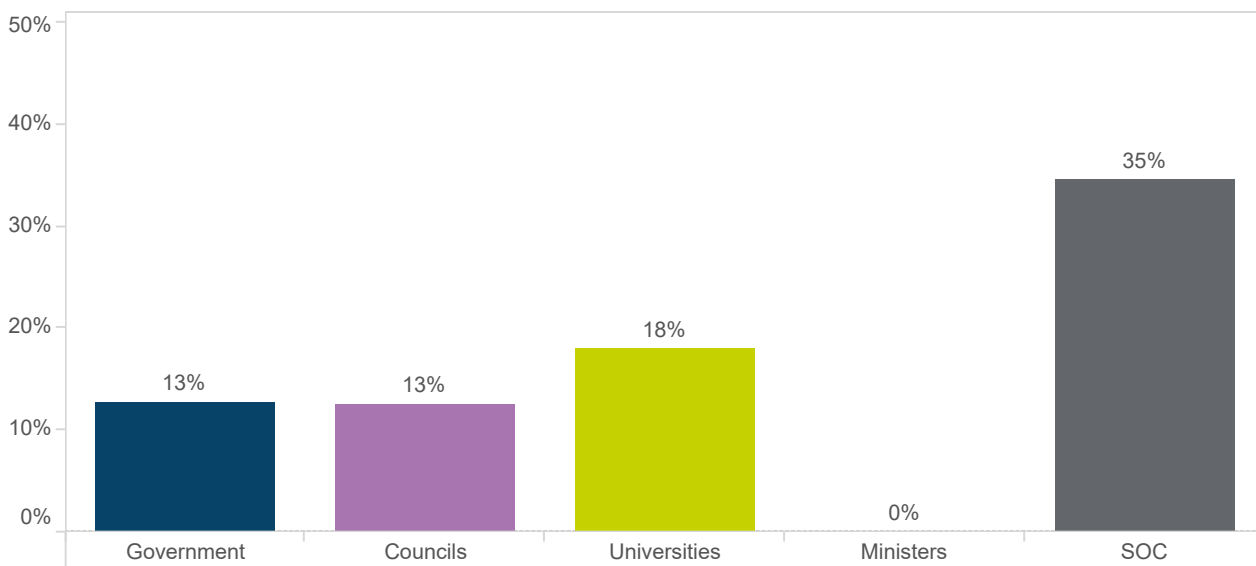
As noted in previous reports, clear agency communication can help minimise the number of invalid applications and reduce the time and effort that may be spent on preparing or assessing applications. The GIPA Act requires an agency to provide advice and assistance to help an applicant make a valid application. Accordingly, opportunities to assist applicants through guided application processes, including electronic lodgement, should be promoted.

The State-Owned Corporations sector had the highest percentage of invalid applications at 35% (Figure 10), compared to 1% in 2021/22. However, overall the number of total applications received by SOCs is still relatively low at 196 applications.

The 34% increase in invalid applications equates an increase of 69 applications compared to 2021/22. This is consistent with the observation that smaller sample sizes are subject to more drastic percentage changes due to the number of applications having a greater distortionary effect.

Data for the Minister sector has only been provided for the period following the 2023 State general election. As a result, this Report cannot provide analysis on the performance of the Minister sector as compared to previous years.

Figure 10: Invalid applications as a percentage of all formal applications received, by sector, 2022/23



The number of invalid applications received by the Government sector remained broadly stable

The number of invalid applications remained stable for the Government sector, however some agencies within the Government sector experienced moderate changes in the percentage of applications that were invalid compared with 2021/22. This included:

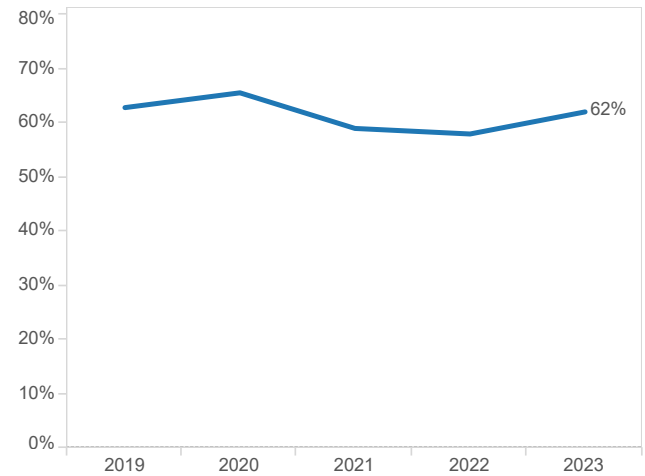
- the Department of Premier and Cabinet, declined from 13% in 2021/22 to 3% in 2022/23
- the Department of Education, increased from 13% in 2021/22 to 20% in 2022/23.

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

Invalid applications that have subsequently become valid remained stable

Agencies are required to assist applicants to make a valid access application. In 2022/23, 62% of invalid applications subsequently became valid. This is consistent with 58% in 2021/22 (Figure 11).

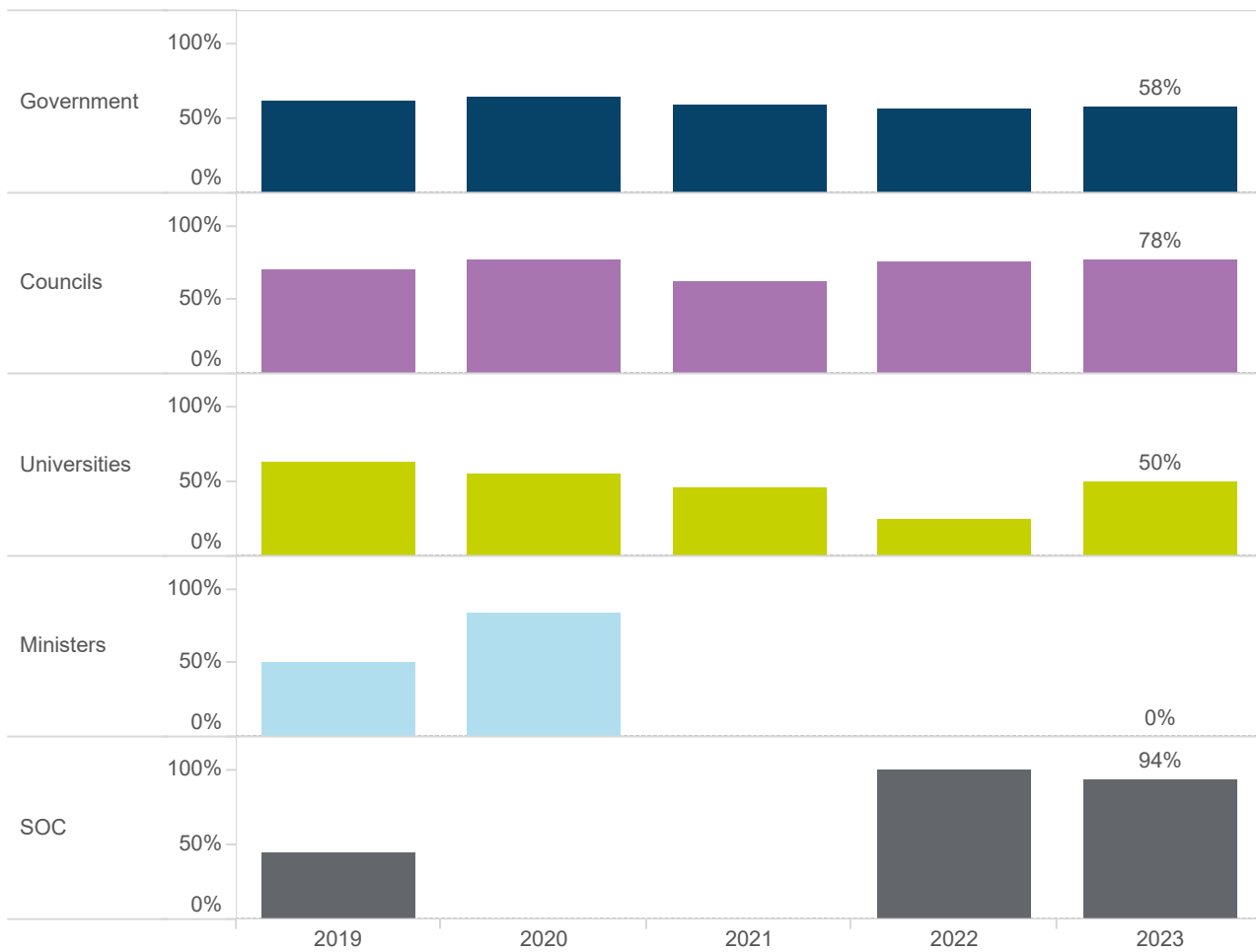
Figure 11: Invalid applications that became valid as a percentage of all invalid applications, 2018/19 to 2022/23



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

- remained consistent in the Government sector, with 58% reported in 2022/23 and 56% in 2021/22
- remained consistent in the Council sector, with 78% reported in 2022/23, compared to 76% in 2021/22
- significantly increased in the University sector, from 25% in 2021/22 to 50% in 2022/23
- moderately declined in the State-Owned Corporations sector from 100% in 2021/22 to 94% in 2022/23.

Figure 12: Invalid applications that became valid as a percentage of all invalid applications, by sector, 2018/19 to 2022/23

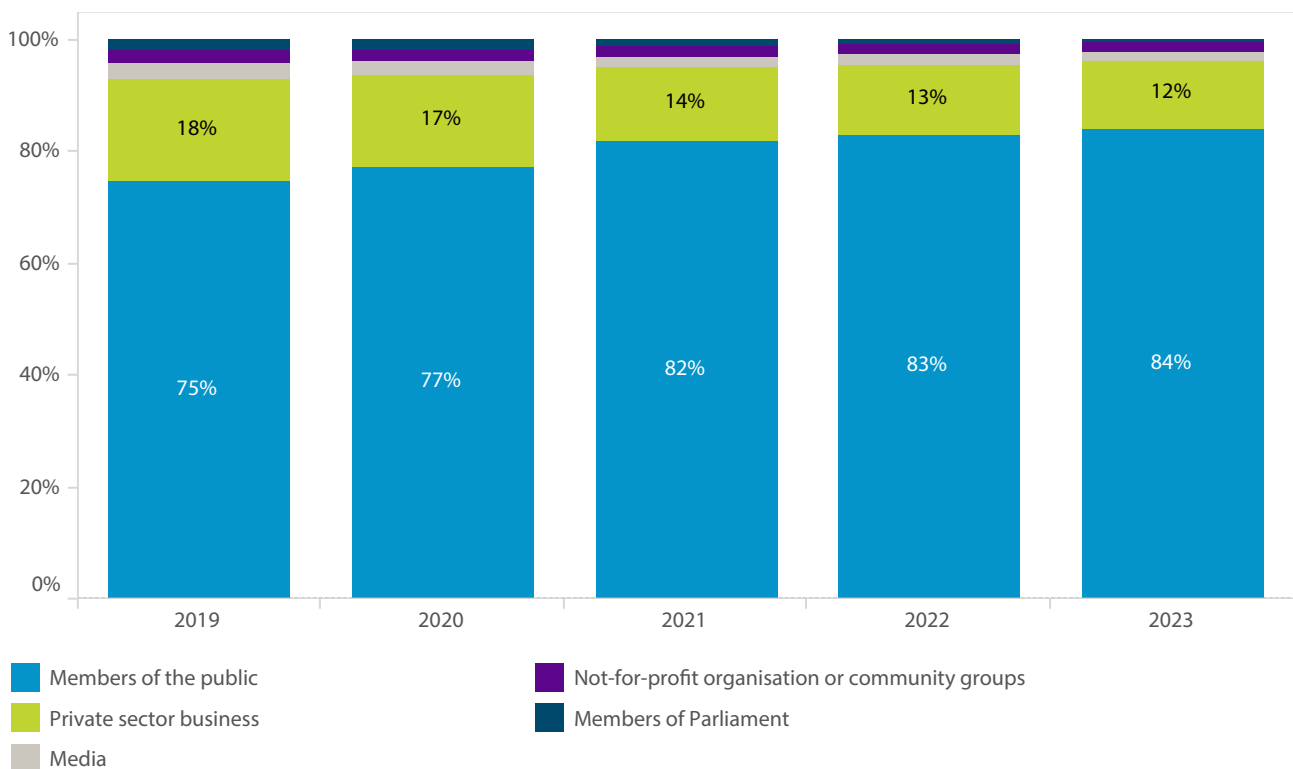


Who applied?

Application outcomes for members of the public remain highest

In 2022/23, 84% of all outcomes were related to applications from either a member of the public or their legal representative. This is consistent with the 83% reported in 2021/22. Within this group, the largest single applicant type at 48% was members of the public represented legally. In 2021/22, legally represented members of the public accounted for 44% of the total outcomes of applications.

Figure 13: Trend in the proportion of outcomes, by type of applicant, 2018/19 to 2022/23



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.

There was a moderate increase in outcomes for members of the public and a significant decline in outcomes for Members of Parliament

In 2022/23 (as in all years), the greatest number of outcomes was for applications by members of the public, which increased moderately by 9% compared with 2021/22, from 19,758 in 2021/22 to 21,556 in 2022/23 (Figure 14).

Outcomes for legally represented members of the public (48%) was consistent with the 44% recorded in 2021/22.

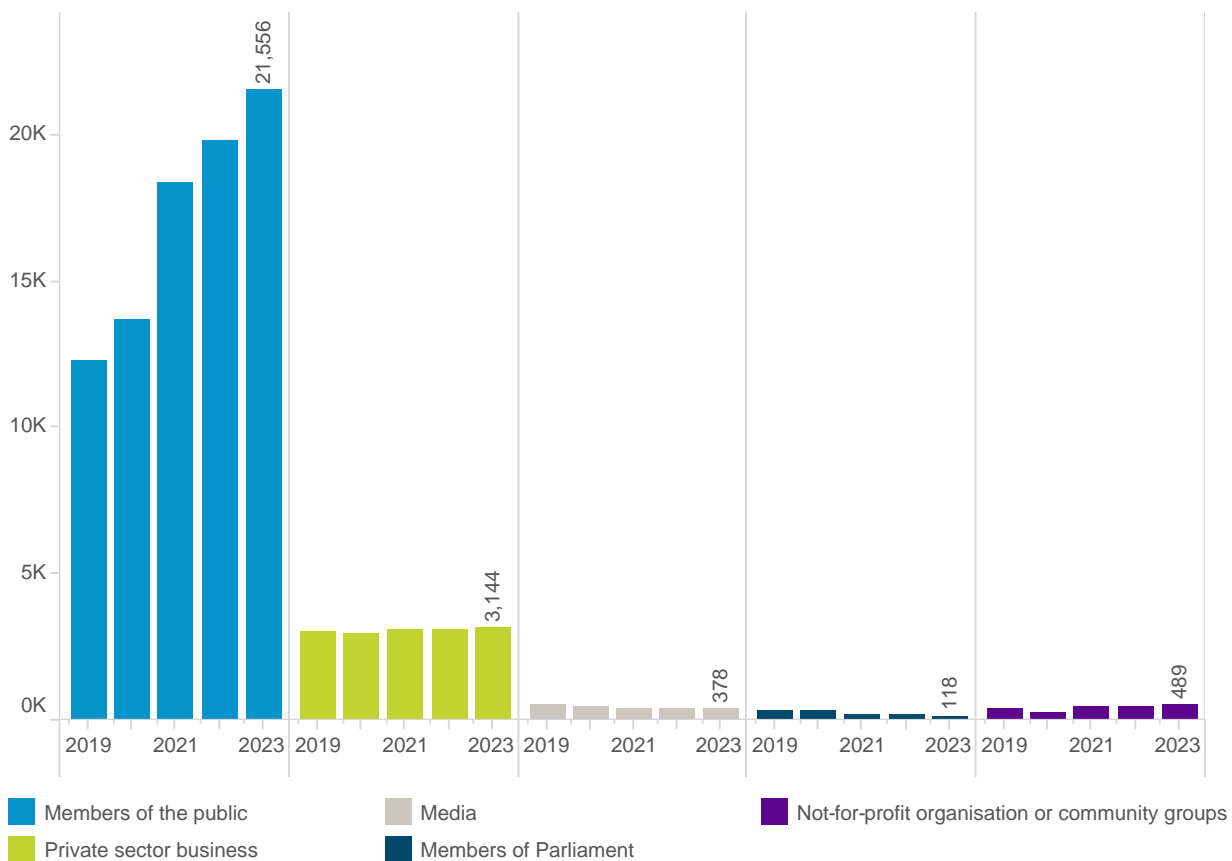
The number of outcomes for Members of Parliament significantly declined by 40%, from 198 in 2021/22 to 118 in 2022/23.

The number of outcomes for not-for-profit organisations or community groups increased significantly by 19% from the previous year, 412 in 2021/22 compared with 489 in 2022/23, 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 378 in 2022/23 following an 18% decline in 2020/21.

The number of outcomes for private sector businesses remained consistent with the previous year, with 3,053 in 2021/22 compared to 3,144 in 2022/23.

Figure 14: Number of outcomes by type of applicant, 2018/19 to 2022/23



'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.

Overall there were moderate changes to outcomes by applicant type, across sectors

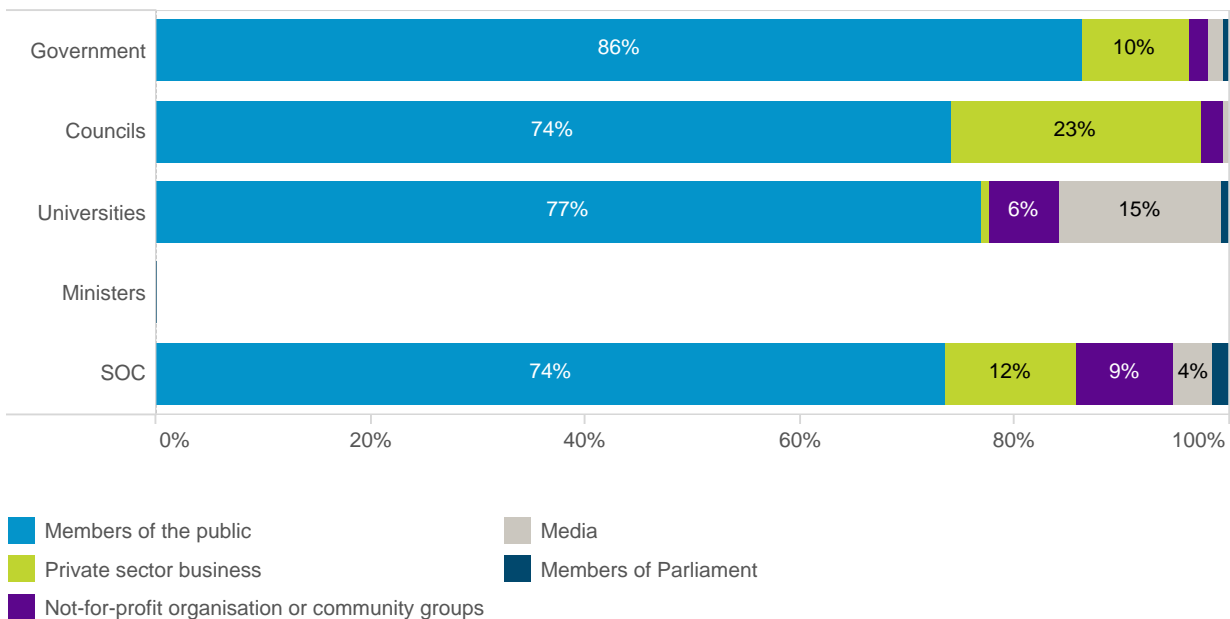
Similar to 2021/22, in 2022/23 the distribution of applicant types varied markedly across sectors (Figure 15).

Notable changes by sector this reporting year were:

- In the Council sector, outcomes for the members of the public declined from 80% in 2021/22 to 74% in 2022/23 and outcomes for Private Sector Businesses increased from 18% in 2021/22 to 23% in 2022/23.
- In the University sector, outcomes for the members of the public increased from 72% in 2021/22 to 77% in 2022/23 and outcomes for Media declined from 20% in 2021/22 to 15% in 2022/23.

- In the Minister sector, there were no outcomes reported for 2022/23. As previously noted, this lack of reporting is attributable to changes following the State general election in March 2023.
- In the State-Owned Corporations sector, outcomes for Private Sector Businesses declined from 18% in 2021/22 to 12% in 2022/23 and outcomes for Not-for-Profit Organisations and Community Groups increased from 4% in 2021/22 to 9% in 2022/23.

Figure 15: Percentage of outcomes by sector and type of applicant, 2022/23



What information was asked for?

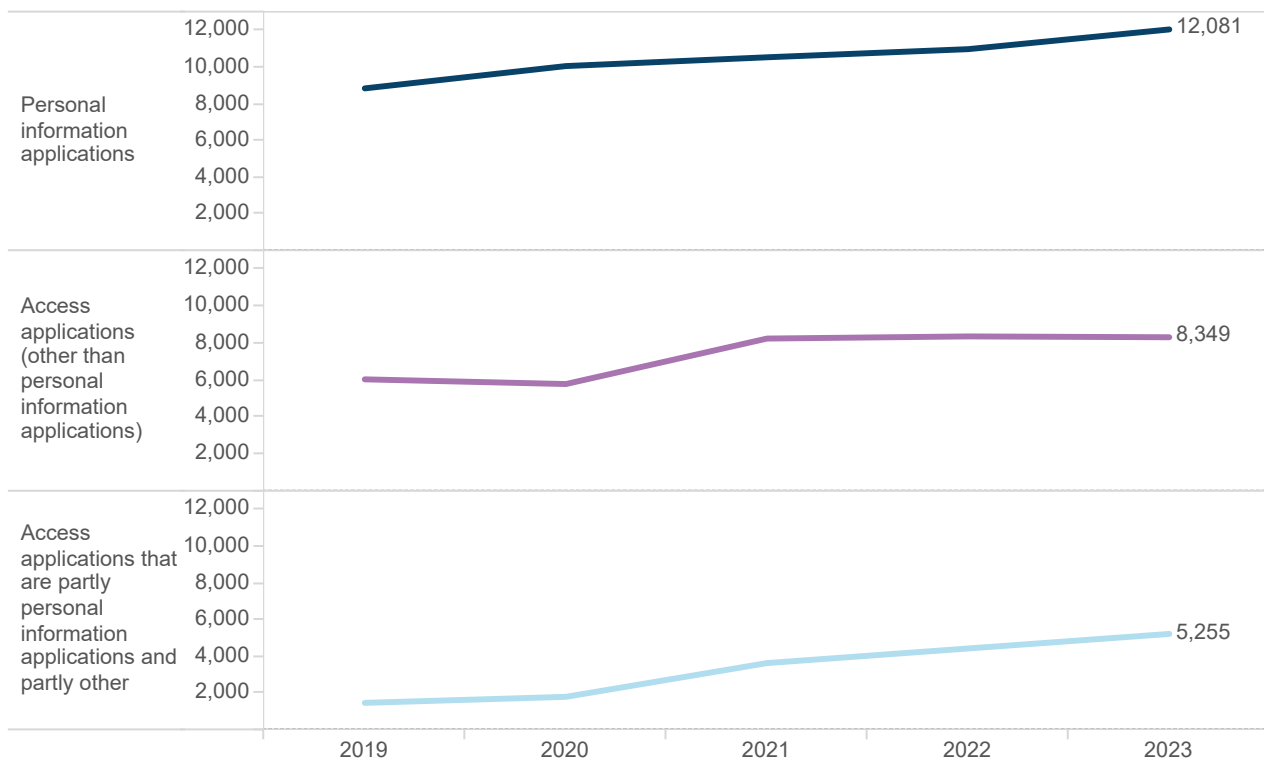
There have been significant increases in outcomes for applications that sought partly personal and partly other information

As Figure 16 shows, in 2022/23:

- Personal information application outcomes increased moderately by 10% from the previous year, with 12,081 outcomes in 2022/23 compared with 11,004 in 2021/22.

- Other than personal information, outcomes were consistent with the previous year with 8,349 outcomes in 2022/23 compared with 8,341 in 2021/22.
- Outcomes that were partly personal information and partly other information increased significantly by 18% from 4,451 outcomes in 2021/22 to 5,255 in 2022/23.

Figure 16: Number of outcomes by type of information applied for, 2018/19 to 2022/23



The type of information sought varied across sectors

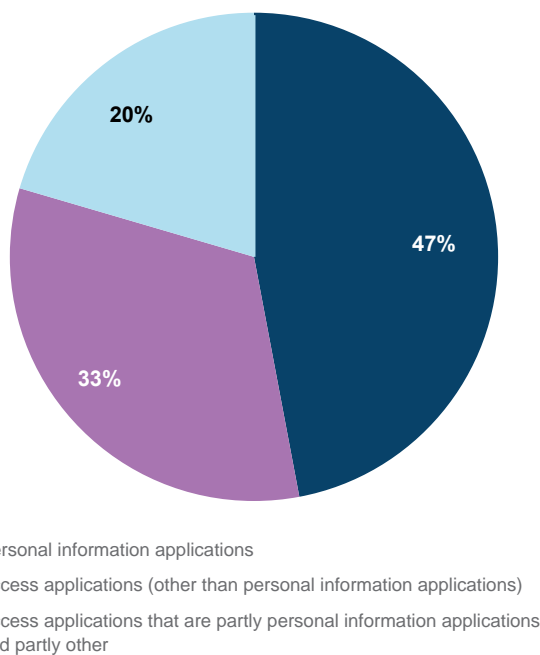
The percentage of outcomes remained consistent with the previous year.

In 2022/23:

- 47% of outcomes related to applications for personal information, compared with 46% in 2021/22
- 33% of outcomes related to applications for 'other than personal information', compared with 35% in 2021/22
- 20% of outcomes related to applications for both types of information, compared with 19% in 2021/22 (Figure 17).

All sectors experienced different patterns of outcomes by type of information applied for in 2022/23, however these patterns mostly remained consistent with those reported in 2021/22. There is an exception in the Minister sector, where no data was reported for outcomes due to the State general election on 25 March 2023. As a result, this Report cannot provide analysis on the performance of the Minister sector as compared to previous years.

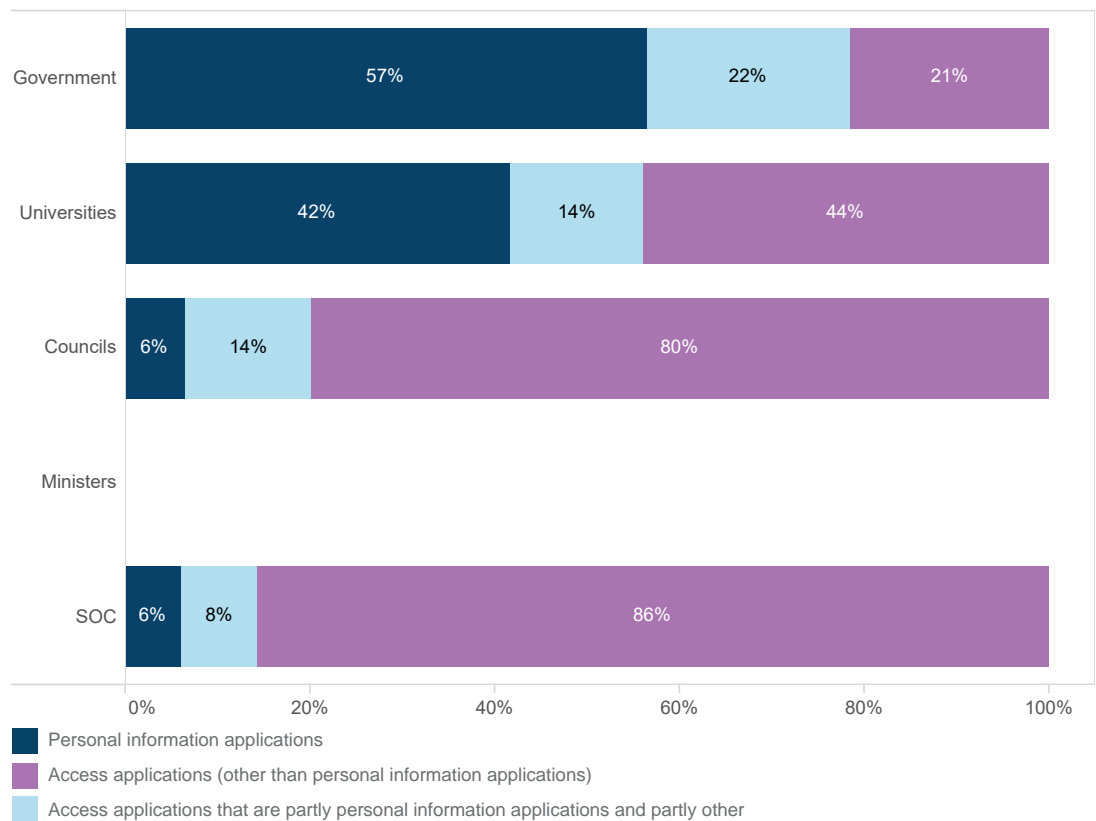
Figure 17: Outcomes by type of information applied for, 2022/23



In 2022/23:

- In the Government sector, 57% of outcomes related to applications for personal information, consistent with 56% in 2021/22, 22% of outcomes related to applications for 'partly personal information', consistent with 22% in 2021/22 and 21% of outcomes related to applications for 'other than personal information', consistent with 22% in 2021/22.
- In the University sector, 42% of outcomes related to applications for personal information, which is a moderate increase compared with 36% in 2021/22, 44% of outcomes related to applications for 'other than personal information', compared with 47% in 2021/22, and outcomes related to applications that are 'partly personal information and partly other information' was consistent at 14% in 2022/23 compared with 17% in 2021/22.
- In the Council sector, 80% of outcomes related to applications for 'other than personal information', a moderate decline from 86% in the previous year, 14% of outcomes related to applications for 'partly personal information', a moderate increase from 7% in 2021/22 and 6% of outcomes related to personal information, which is consistent with 7% in 2021/22.
- In the State-Owned Corporations sector, 86% of outcomes related to applications for 'other than personal information' compared with 89% in 2021/22, 8% of outcomes related to applications for 'partly personal information and partly other information' compared with 9% in 2021/22, and 6% of outcomes related to personal information, consistent with 6% in 2021/22.

Figure 18: Percentage of all outcomes, by type of information applied for, 2022/23



‘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.

Did applicants get what they asked for?

Overall 'release rates' trending downwards

In 2022/23, the overall release rate was 64%, representing the combined access granted in full and in part outcomes (Figure 19). This is a moderate decline from the 70% rate reported in 2021/22.

Compared to 2021/22, release rates for 2022/23 were mostly consistent across all sectors except for a significant decline in the Minister sector due to the State general election on 25 March 2023. As a result, this Report cannot provide analysis on the Minister sector with comparison to previous years.

At the sector level (Figure 20), in 2022/23, the State-Owned Corporations sector had the highest overall release rate of 86%, consistent with the 86% reported in 2021/22, although the rates of full and partial release reversed.

For the Council sector, 79% of outcomes granted access in full and in part in 2022/23. This is consistent with the 80% reported in 2021/22.

For the Government sector, 60% of outcomes resulted in access being granted in full and in part in 2022/23. This is a moderate decline from the 68% reported in 2021/22.

For the University sector, 63% of outcomes resulted in access being granted in full and in part in 2022/23. This is consistent with the 64% reported in 2021/22.

Figure 19: Overall release rate across all sectors, 2018/19 to 2022/23

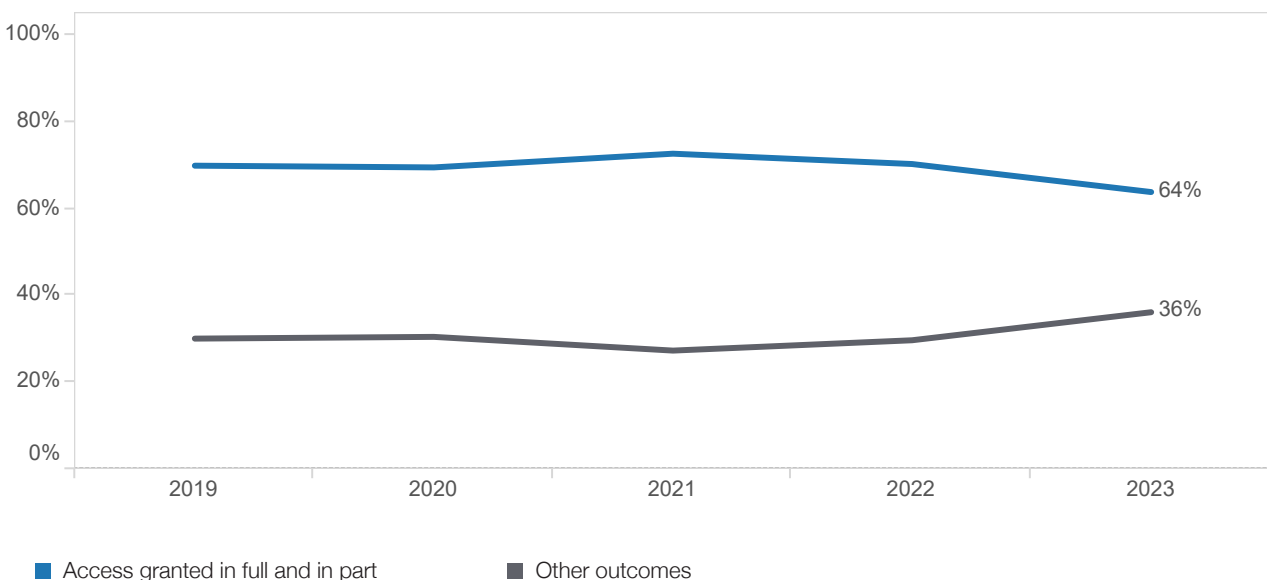


Figure 20: Overall release (access granted in full and in part) rate, by sector, 2018/19 to 2022/23

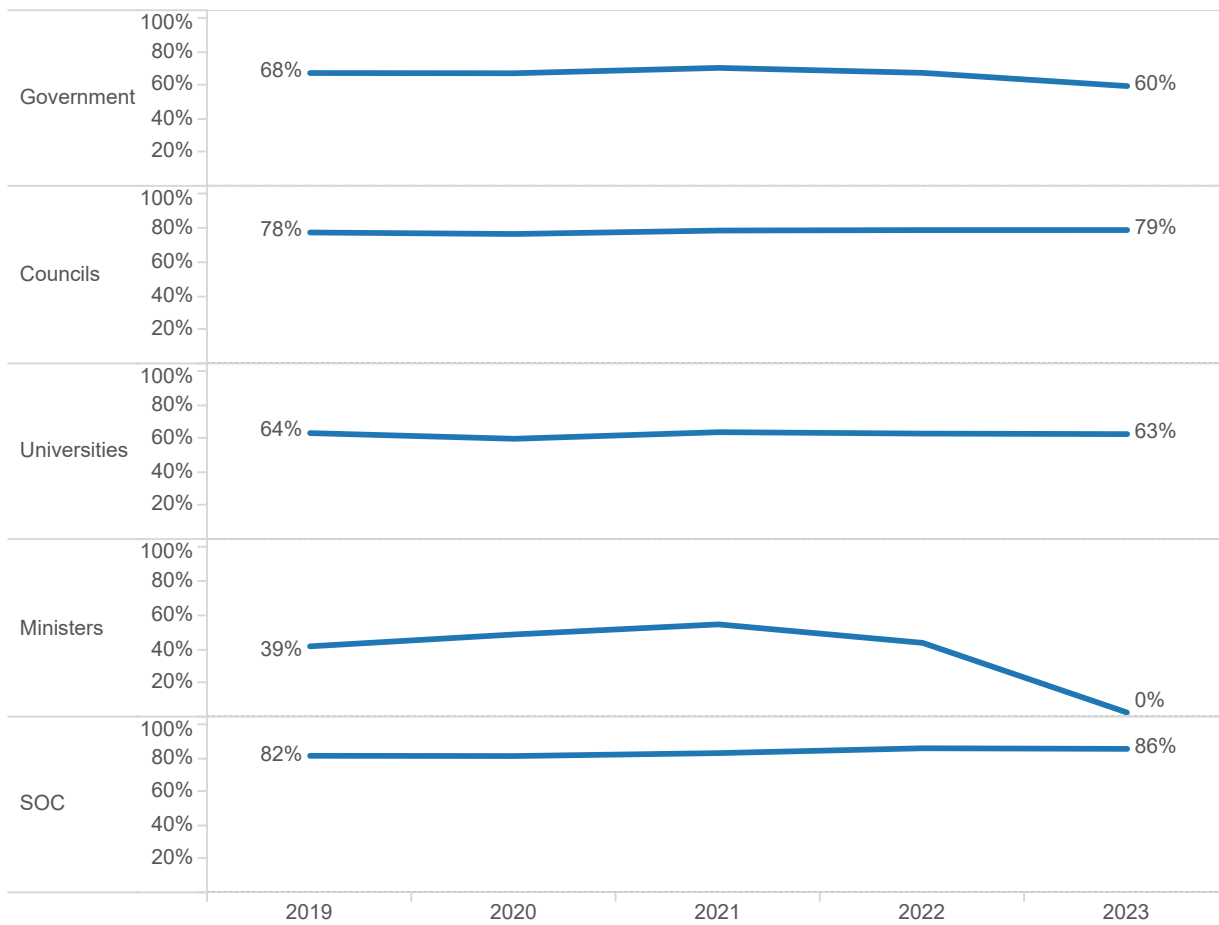
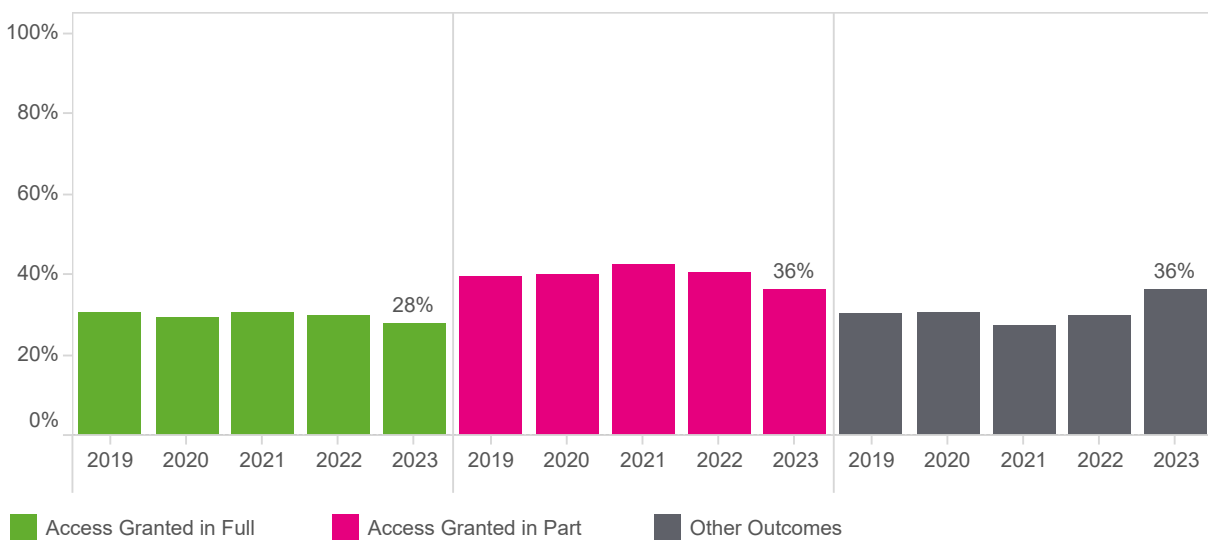
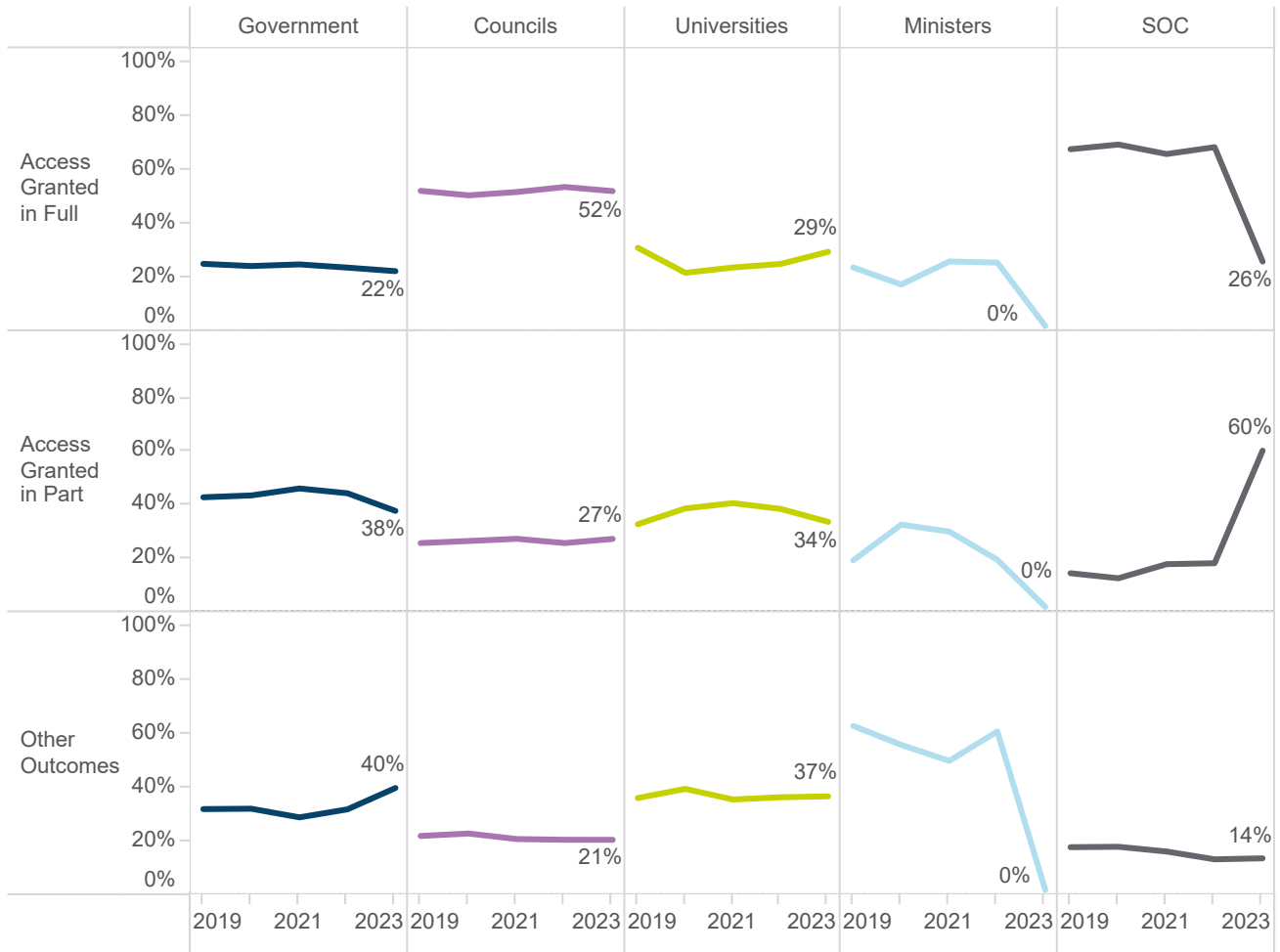


Figure 21: Release outcomes across all sectors, 2018/19 to 2022/23



'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, 2018/19 to 2022/23



The overall release rate declined for personal information and partly personal and partly other information applications

The overall release rate for applications for personal information moderately declined from previous years at 60% in 2022/23, compared with 74% in 2020/21, and 70% in 2021/22. The overall release rate for ‘other than personal information’ was 68% in 2022/23 consistent with results over the previous reporting periods: 71% in 2021/22, and 71% in 2020/21. The overall release rate for applications that sought partly personal and partly other information was 66% in 2022/23, slightly down from 70% in 2021/22 (Figure 23).

Release rates by applicant type remain stable

The lowest overall release rate was for applications made by media industry representatives at 48%. This differs to 2021/22 where Members of Parliament had the lowest overall release rate of 52% (Figure 24).

The highest release rate in 2022/23 was for applications made by private sector business at 75%, consistent with 74% in 2021/22 and 76% in 2020/21.

The release rate for members of the public was 62%, slightly down from 71% reported in both 2021/22 and 2020/21.

Unlike overall release rates, the composition of outcomes fluctuated somewhat in 2022/23:

- For members of the public, 25% of outcomes granted access in full, and 37% granted access in part. This is consistent with outcomes reported in 2021/22, 2020/21 and 2019/20.
- For private sector business, 44% of outcomes granted access in full is a moderate increase compared with the 35% reported in 2021/22, and 31% granted access in part is a moderate decline compared to outcomes reported in 2021/22, 2020/21 and 2019/20.
- For media, 25% of outcomes granted access in full, a moderate decline from 36% in 2021/22, and 23% granted in part, consistent with 20% reported in 2021/22.
- For Members of Parliament, 25% of outcomes granted access in full, and 25% granted access in part, consistent with outcomes reported in 2021/22, 2020/21 and 2019/20.
- For not-for-profit organisations or community groups, 35% of outcomes granted access in full consistent with outcomes reported in 2021/22, 2020/21 and 2019/20, and 31% of outcomes granted access in part, which is a moderate decline compared with outcomes reported in the three previous reporting periods.

Figure 23: Release outcomes by application type, 2018/19 to 2022/23

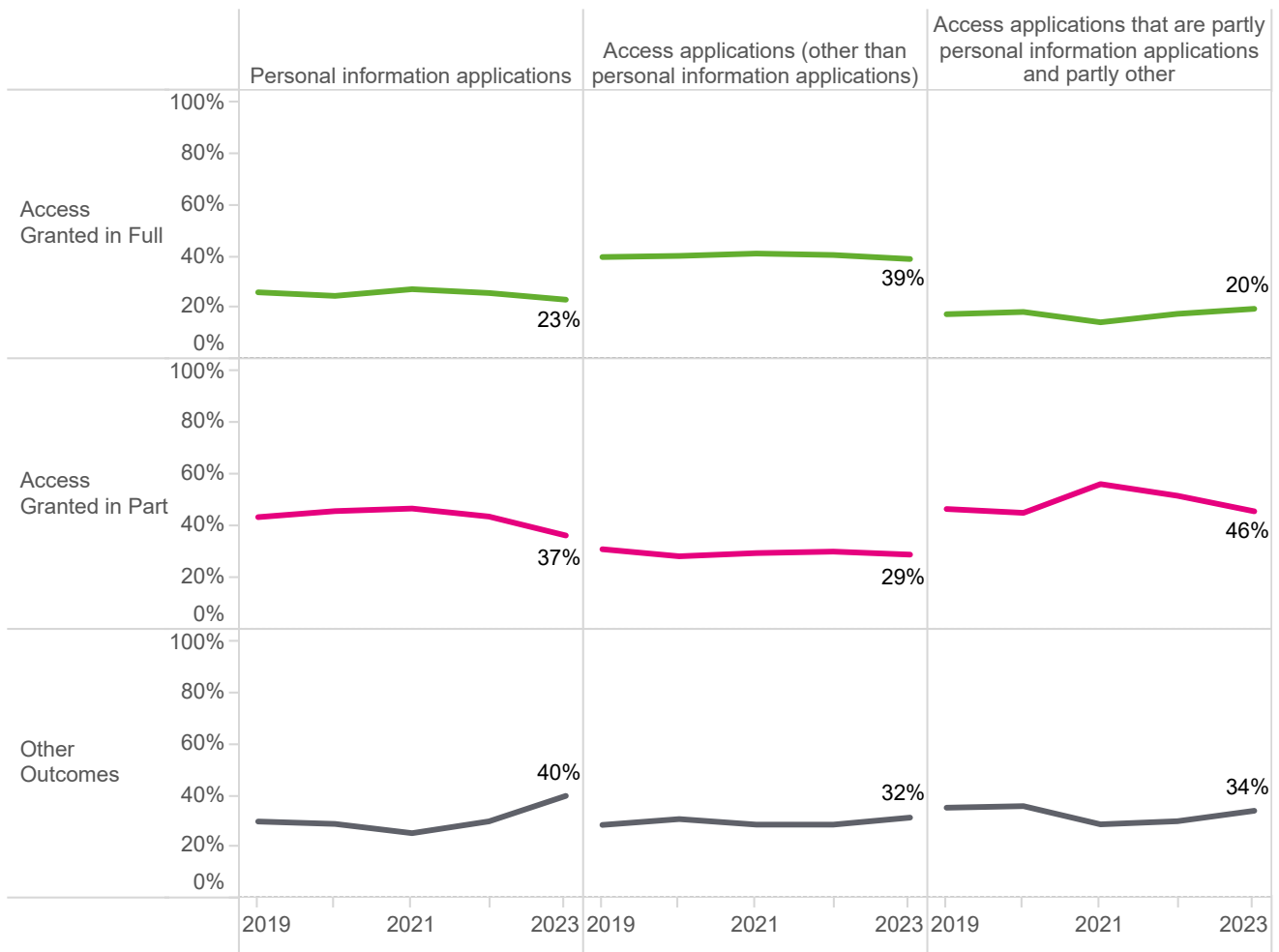
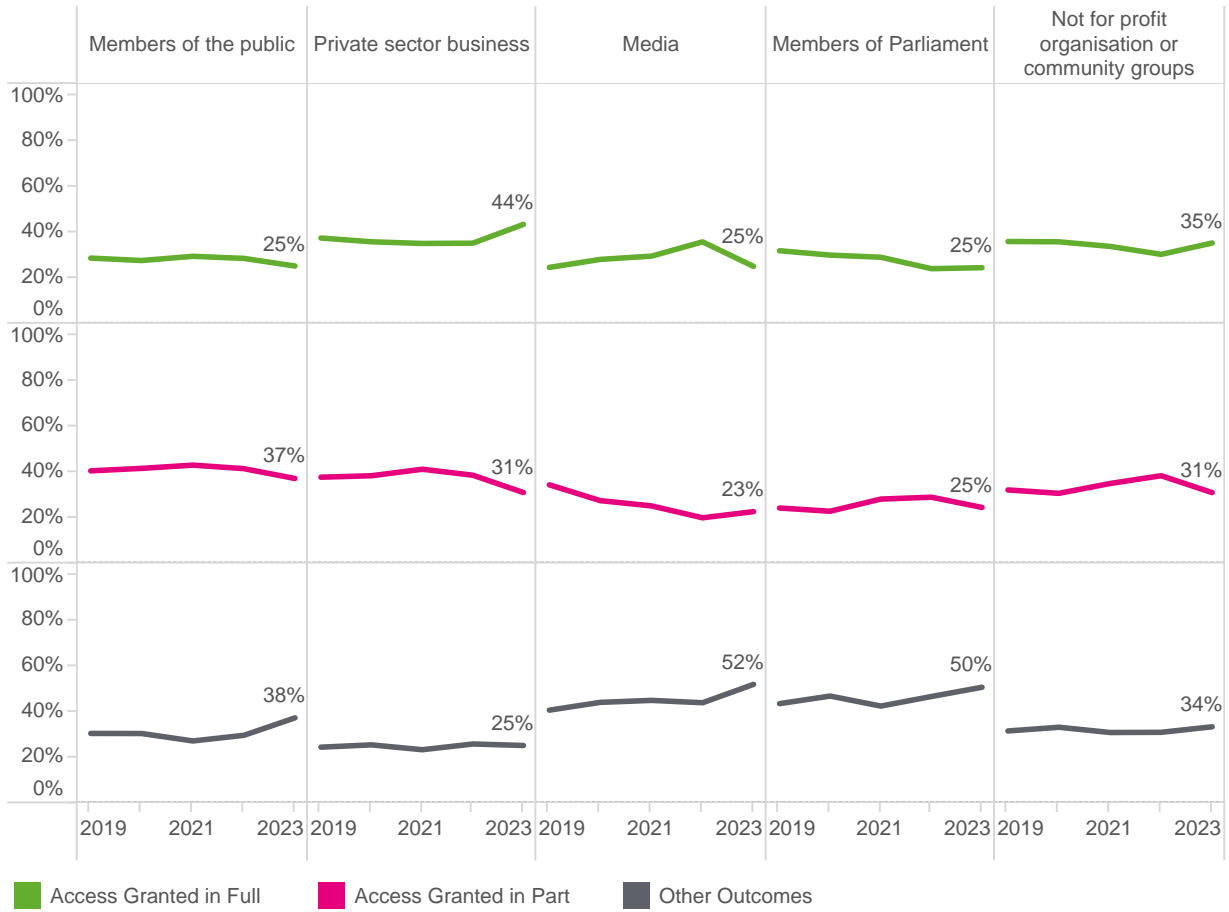


Figure 24: Outcomes by applicant type, 2018/19 to 2022/23



How quickly were decisions made?

Overall timeliness of decisions has remained stable

In 2022/23, 88% of decisions by agencies were made within the statutory timeframe (Figure 25). This result is consistent with 90% in 2021/22.

The number of applications decided after 35 days by agreement with the applicant, moderately declined from 9% in 2021/22 to 6% in 2022/23.

The rate of deemed refusals moderately increased from 1% in 2021/22 to 6% in 2022/23.

Timeliness has moderately increased across most sectors

In 2022/23 (Figure 26):

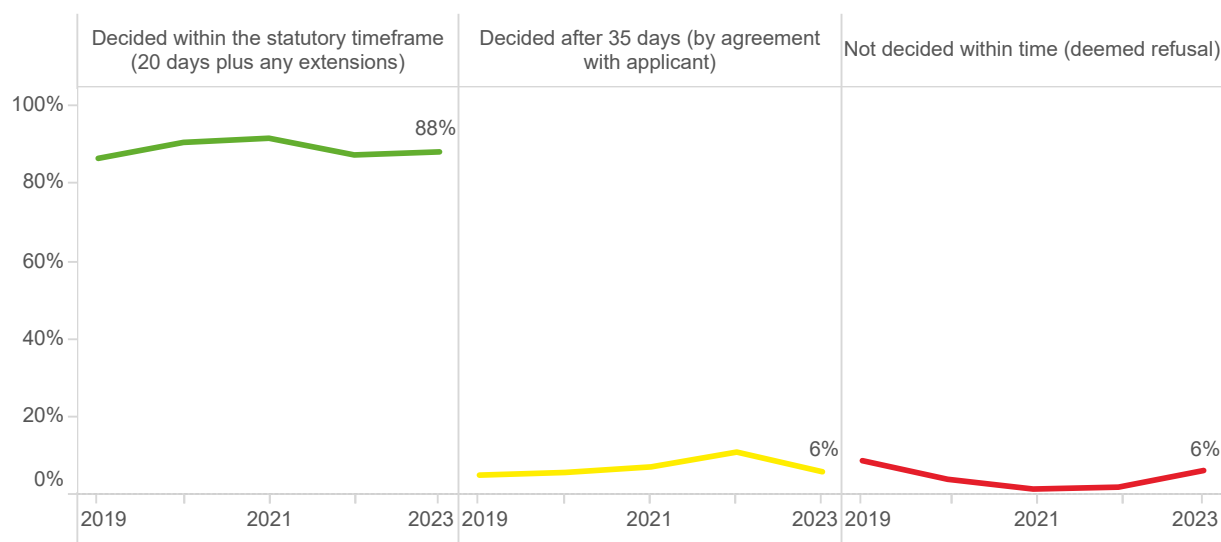
- The Government sector decided 88% of applications within the statutory timeframe, consistent with 90% reported in 2021/22.
- The Council sector decided 92% of applications within the statutory timeframe, an increase from 91% reported in 2021/22.
- The University sector decided 80% of applications within the statutory timeframe, a moderate increase from 67% reported in 2021/22.

- The Minister sector decided 0% of applications within the statutory timeframe. Data for the Minister sector has only been provided for the period commencing after the March 2023 State general election. As a result, this Report cannot provide analysis on the performance of the Minister sector as compared to previous years.
- The State-Owned Corporations sector decided 83% of applications within the statutory timeframe, a moderate increase from the 74% reported in the previous year.

Timeliness was maintained at high levels for the NSW Police Force, Department of Customer Service, Department of Education, and Transport for NSW. Most principal departments were consistent with the previous reporting period, however:

- the Department of Planning, Industry and Environment reported an increase in timeliness from 90% in 2021/22 to 95% in 2022/23;
- the Department of Communities and Justice reported a significant decline in timeliness from 52% in 2021/22 to 21% in 2022/23.

Figure 25: Applications that were decided within the statutory timeframe as a percentage of all applications decided, 2018/19 to 2022/23



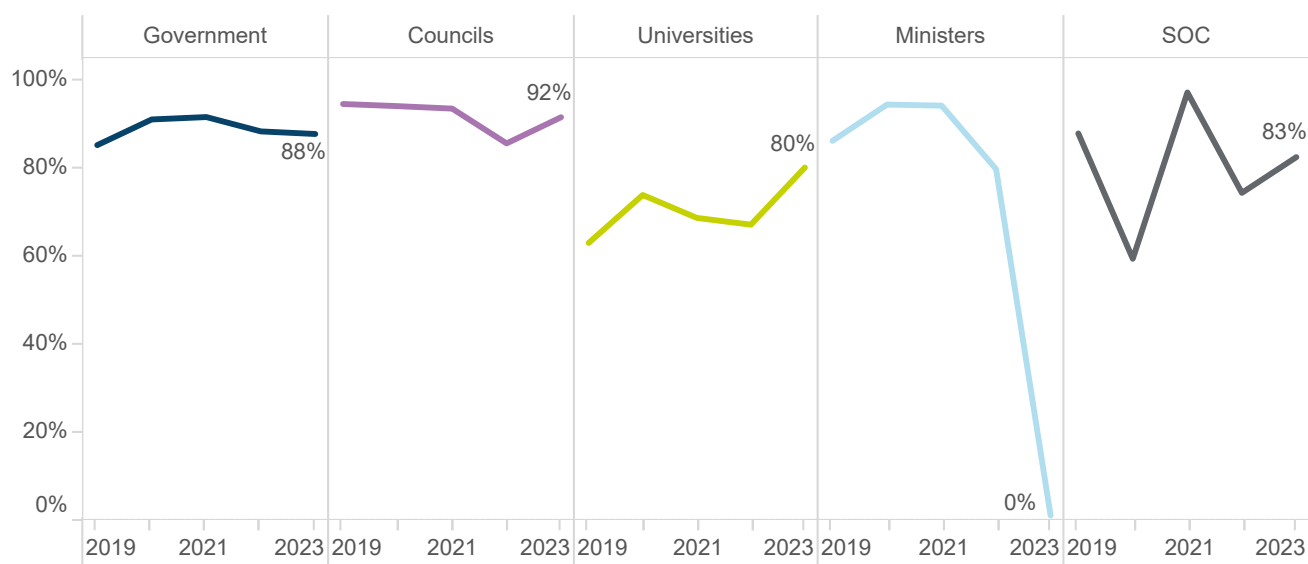
What are the statutory timeframes?

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. In the context of digital government and the availability of digital solutions for supporting access to information, any rise in extensions of time should be carefully considered by agencies to ensure their processes remain aligned to the transparency objectives of the GIPA Act.

Figure 26: Applications that were decided within the statutory timeframe, by sector, as a percentage of all applications decided, by sector, 2018/19 to 2022/23



Overall improvements in timeliness may reflect improved agency processes for dealing with applications. In particular, the implementation of electronic lodgement and automated management systems by some larger agencies may have generated efficiencies. Additionally, the review of business processes prior to the deployment of such new technology can facilitate process improvement.

Agencies struggling with timeliness should use the guidance issued by the IPC and the sound practice examples provided by other agencies to improve their own statutory timeframe compliance.

'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:

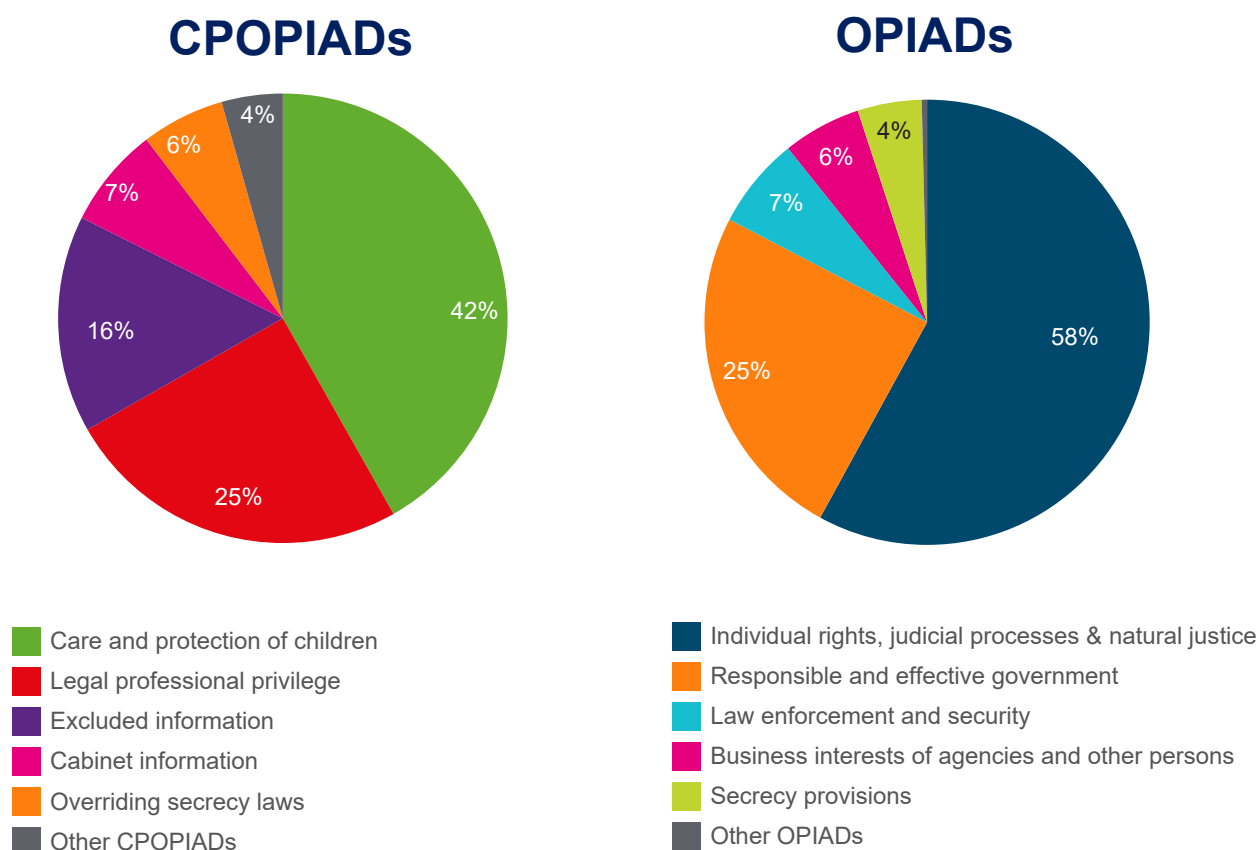
- the number of applications that were refused because of a conclusive presumption of an overriding public interest against disclosure (CPOPIAD)
- which categories of CPOPIADs were applied
- the use of categories of considerations for which there is an overriding public interest against disclosure of 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 2022/23, 1,060 applications (4% of total applications received) were refused wholly or partly because of a CPOPIAD. This is consistent with 2021/22.

Figure 27: A snapshot of the use of CPOPIADs and OPIADs, 2022/23



'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 2022/23, 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 42% of all the times that CPOPIADs were applied. This is consistent with 38% in 2021/22.

The legal professional privilege consideration was the second most applied CPOPIAD, being applied 25% of the time, consistent with 22% in 2021/22.

The excluded information consideration was the third most applied CPOPIAD, being applied 16% of all the times that CPOPIADs were applied, a moderate decline from 24% in 2021/22.

The use of the Cabinet information consideration was applied on 7% of occasions in 2022/23, consistent with 8% in 2021/22.

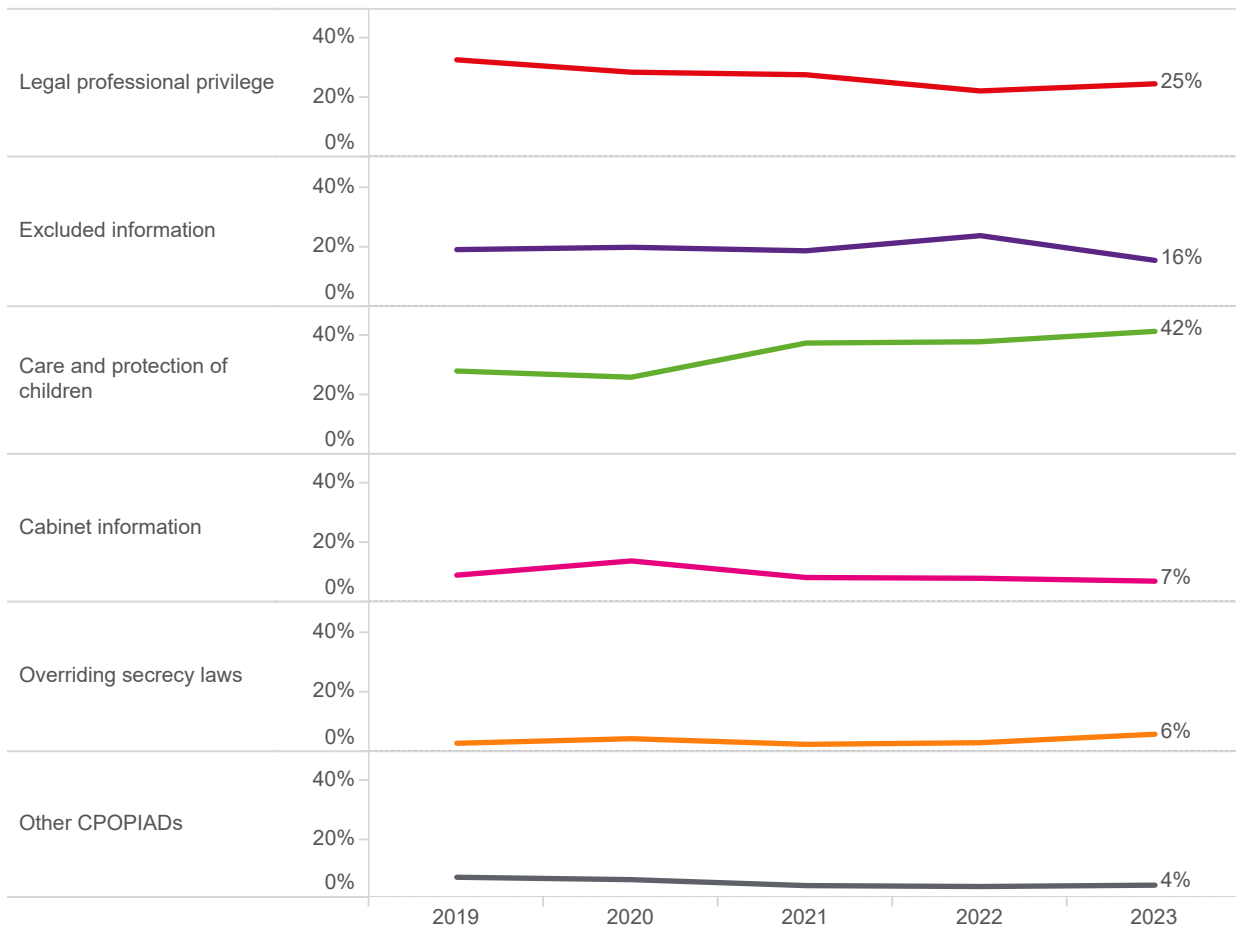
The application of the legal professional privilege CPOPIAD declined in the Council and State-Owned Corporations sectors and increased in the University and Government sectors

Consistent with the three previous reporting periods, the most applied CPOPIAD across the Council, University and State-Owned Corporations sectors in 2022/23 was legal professional privilege, accounting for 68% of cases in the Council sector, 83% in the University sector, and 63% in the State-Owned Corporations sector (Figure 29).

The use of this CPOPIAD remained stable in the University sector from 79% in 2021/22 to 83% in 2022/23 and the Government sector from 18% in 2021/22 to 22% in 2022/23.

There was a moderate decline in the use of this CPOPIAD in both the Council sector from 83% in 2021/22 to 68% in 2022/23, and the State-Owned Corporations sector from 78% in 2021/22 to 63% in 2022/23.

Figure 28: Percentage distribution of the use of CPOPIADs, 2018/19 to 2022/23



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 and the Department of Education were the main agencies that applied the legal professional privilege CPOPIAD.

In the State-Owned Corporations sector, reliance upon the Cabinet information CPOPIAD moderately increased from 11% in 2021/22 to 25% in 2022/23.

Figure 29: Percentage distribution of CPOPIADs applied, by sector, 2018/19 to 2022/23



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

Consistent with the last five years, the most frequently applied OPIAD in 2022/23 was individual rights, judicial processes and natural justice with 58%. 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.

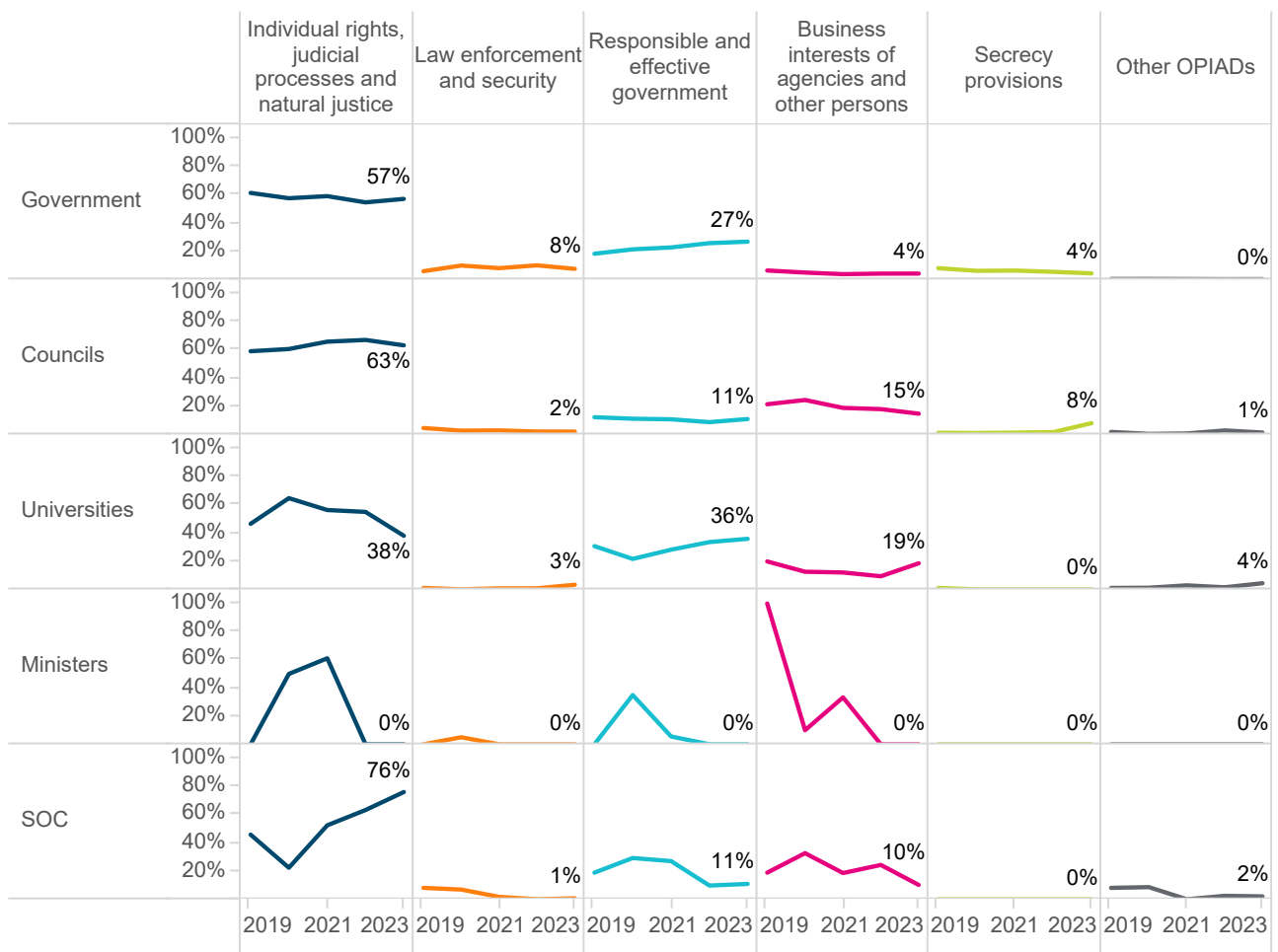
This OPIAD was applied on 63% of occasions in the Council sector, 76% of occasions in the State-Owned Corporations sector, 57% in the Government sector and 38% in the University sector.

These patterns mostly remained consistent with those reported in 2021/22, except the Minister sector, where there was no data on any decisions in 2022/23 following the State general election on 25 March 2023. As a result, this Report cannot provide analysis on the performance of the Minister sector as compared to previous years.

For agencies that received more than 40 applications, this OPIAD was most often considered and applied 100% of the time by the SAS Trustee Corporation, 96% by the Sydney Water Corporation, 88% by the State Emergency Services, 86% by the Ministry of Health and 71% by the Department of Regional 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.

Figure 30: Percentage distribution of OPIADS applied, by sector, 2018/19 to 2022/23



Issue Highlight: Personal factors under section 55 inform the public interest test but are themselves not public interest considerations

In *Snape v Commissioner of Police No 2* [2022] NSWCATAP 244, the Appeal Panel of the NCAT dealt with whether the balancing exercise required by the public interest test was properly applied and how personal factors are to be considered in the balancing test.

The GIPA Act requires the agency to balance the public interest considerations in favour of disclosure against the public interest considerations against disclosure. The general public interest in access to information always applies when an agency decides an access application. An agency is also required to identify any specific public interests in favour of disclosure, assign them weight, and balance them against the public interest considerations against disclosure.

The Appeal Panel said that the personal factors of an access applicant may be taken into account in conducting the balancing test. They may be factors supporting considerations in favour of or against disclosure.

The Appeal Panel also said, however, that while personal factors may coincide with or highlight a public interest in favour of disclosure, they do not of themselves constitute a public interest.

How were decisions reviewed?

The right of review can be exercised by the original information access applicant or by third parties where information about or concerning them is the subject of the application

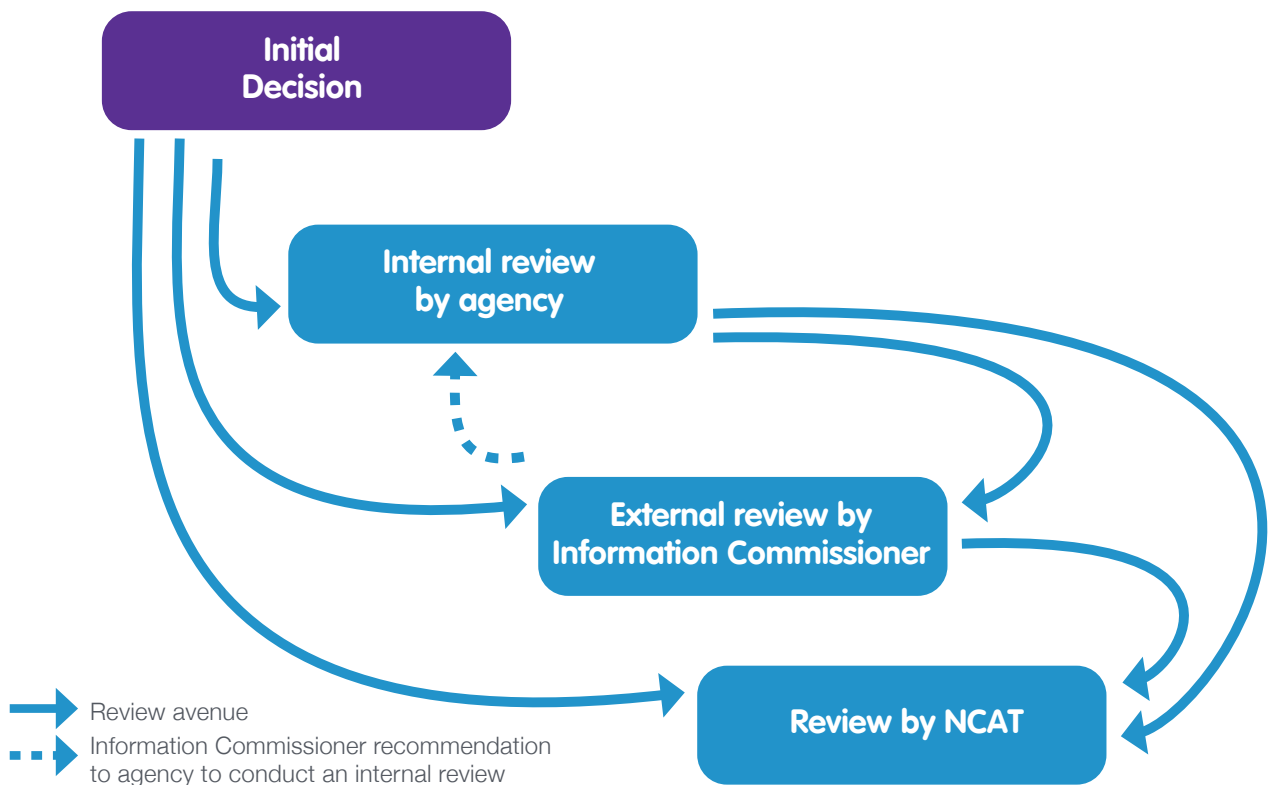
This section reports on the:

- 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 883 reviews were conducted in 2022/23. This result is a moderate decline of 6% from the 943 reviews conducted in 2021/22.

This is a significantly higher number of reviews than reported by agencies (736), particularly in respect of external reviews by the Information Commissioner and external reviews by NCAT. The distribution of reviews using the best available data is shown in Figure 34.

Figure 31: 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, 2022/23

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	321	321
External review by the Information Commissioner	267	362
Review by NCAT	66	118
Agency internal review/reconsideration following a recommendation by the Information Commissioner	82	82
Total	736	883

Figure 33: Distribution of review by type, as reported by agencies, 2022/23

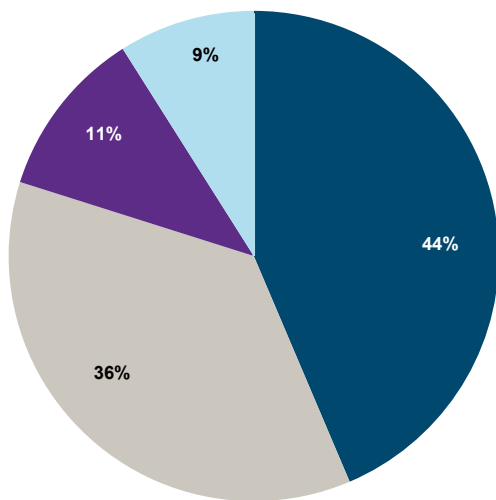
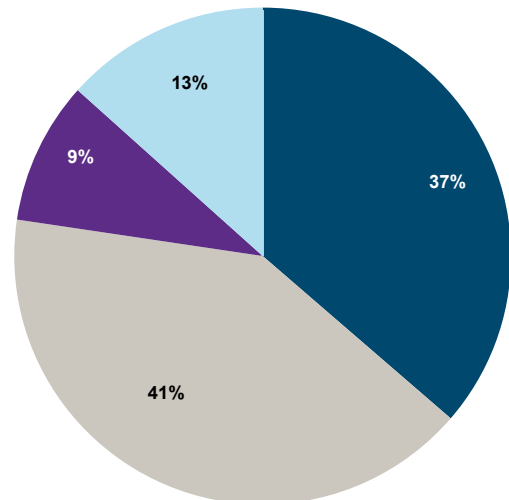


Figure 34: Distribution of review by type, using agency, IPC and NCAT data, 2022/23



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

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 under-reporting of external reviews by agencies.

Using IPC internal data, the number of external reviews conducted by the Information Commissioner was consistent in 2022/23, with 362 reviews, compared with 374 reviews in 2021/22.

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

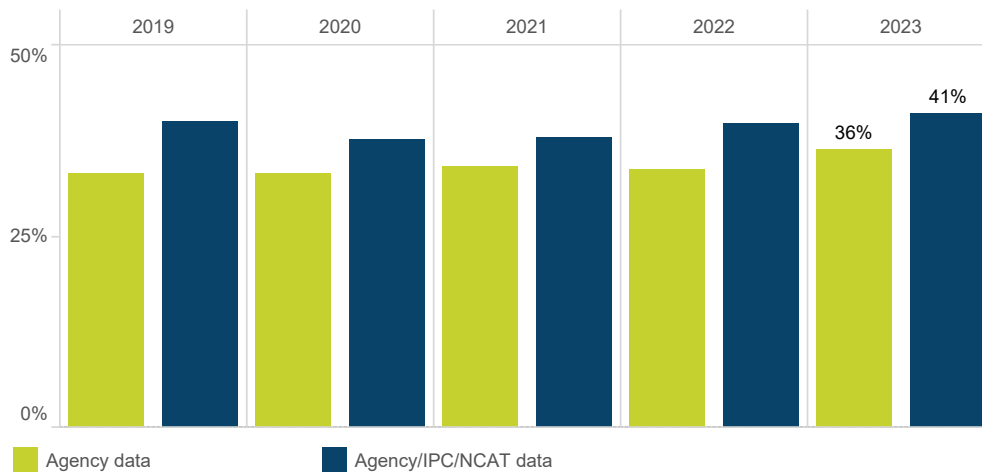
Due to ongoing disparity between agency reported data and the IPC data, only IPC data will be used for this section of the Report.

Using the IPC data, external reviews by the Information Commissioner accounted for 41% of all reviews conducted, consistent with 40% in 2021/22 (Figure 35).

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

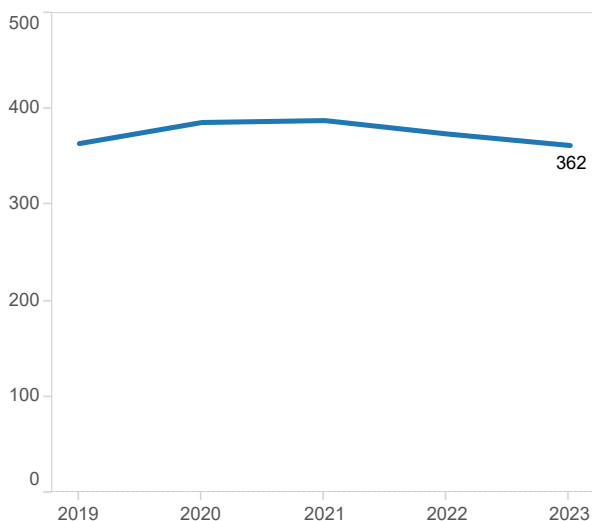
The 118 review applications reported by NCAT is significantly higher than the 66 reviews reported by agencies.

Figure 35: External reviews by the Information Commissioner as a percentage of all reviews, 2018/19 to 2022/23



Source: agency, NCAT and IPC data

Figure 36: Number of external reviews conducted by the Information Commissioner, 2018/19 to 2022/23



Source: IPC data

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

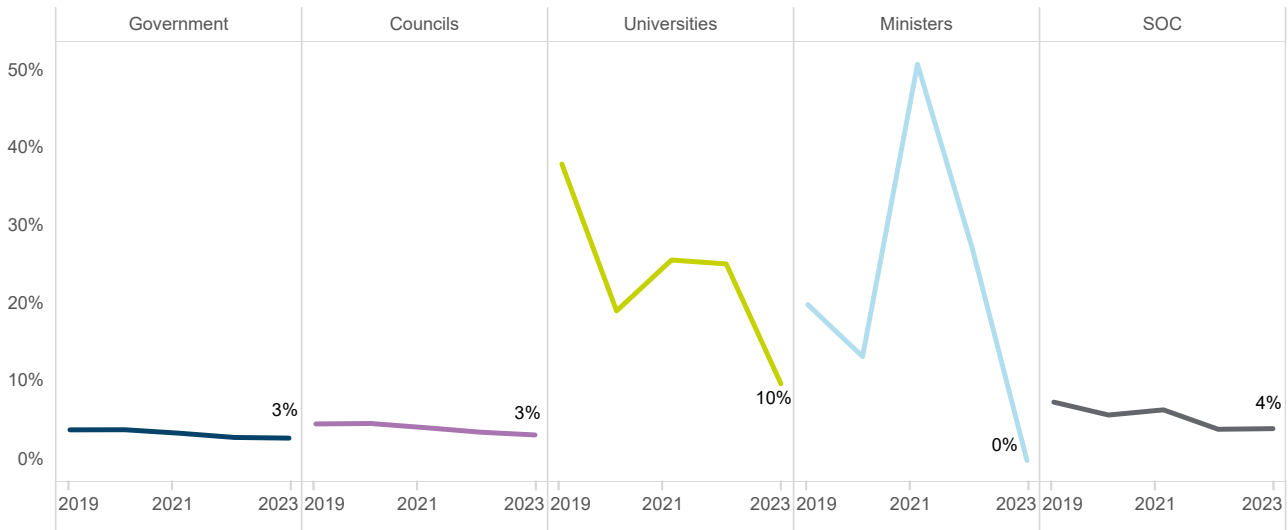
The percentage of applications for review received by the Government sector, as a percentage of all applications to that sector, remained stable at 3% in 2022/23, consistent with 3% in 2021/22. The Council (3%) and State-Owned Corporations (4%) sectors also remained stable (Figure 37).

For universities, the percentage significantly declined to 10% from 25% in 2021/22 and 26% in 2020/21.

For the reasons referred to earlier in this Report, for the Minister sector there was no data available. As a result, this Report cannot provide analysis on the performance of the Minister sector as compared to previous years.

These trends will remain under observation by the IPC to identify any appropriate sector-specific regulatory response.

Figure 37: Total number of reviews, as a percentage of all applications received, by sector, 2018/19 to 2022/23



Source: agency data

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

In 2022/23, 92% of applications for review were made by the original applicant, rather than a third party objector. This is consistent with levels observed in 2021/22, when 93% of applications for review were made by the original applicant.

The number of applications made by third party objectors was 8% in 2022/23, consistent with 7% in 2021/22.

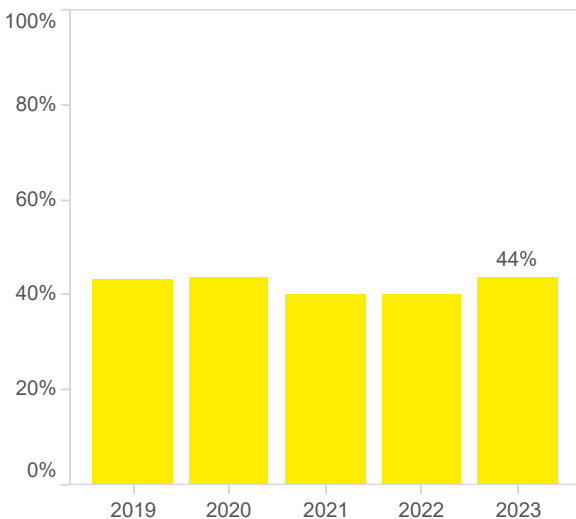
Internal reviews as a percentage of all reviews conducted remained stable

Internal reviews represented 44% of all reviews conducted in 2022/23 (Figure 38), consistent with 40% of all reviews conducted in 2021/22.

Reviews by NCAT have declined

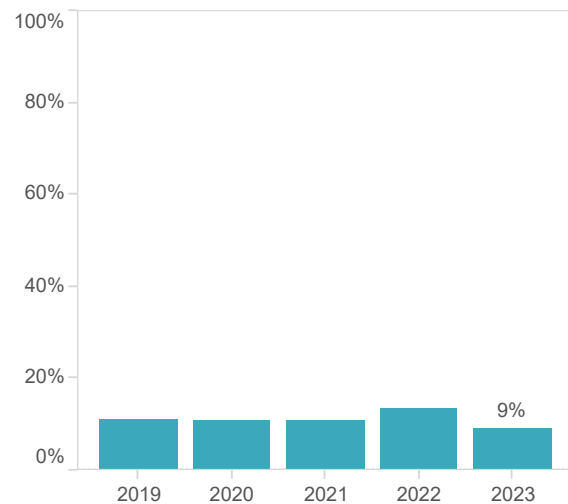
Using data reported by agencies, reviews by NCAT represented 9% of all reviews conducted in 2022/23 (Figure 39). This is a moderate decline from the previous year (14%).

Figure 38: Internal review as a percentage of all reviews, 2018/19 to 2022/23



Source: agency data

Figure 39: NCAT reviews as a percentage of all reviews, 2018/19 to 2022/23

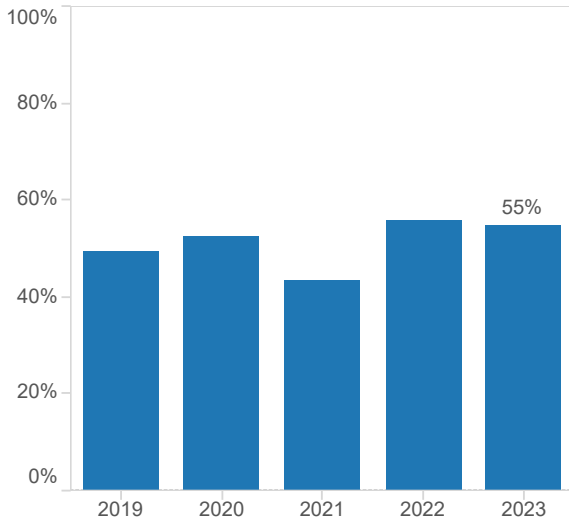


Source: agency data

The balance between decisions upheld and overturned on external review has remained consistent

In 2022/23, 55% of all internal and external reviews conducted upheld agencies' decisions. This is consistent with 56% in 2021/22 (Figure 40).

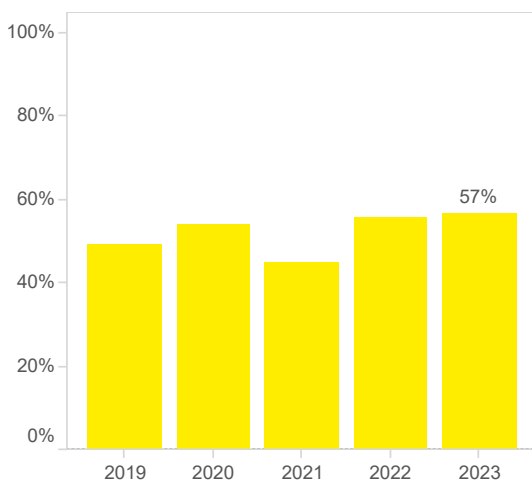
Figure 40: Percentage of all reviews that upheld the original decision, 2018/19 to 2022/23



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

In 2022/23, 57% of all internal reviews upheld agencies' decisions, consistent with the 56% reported in 2021/22 (Figure 41).

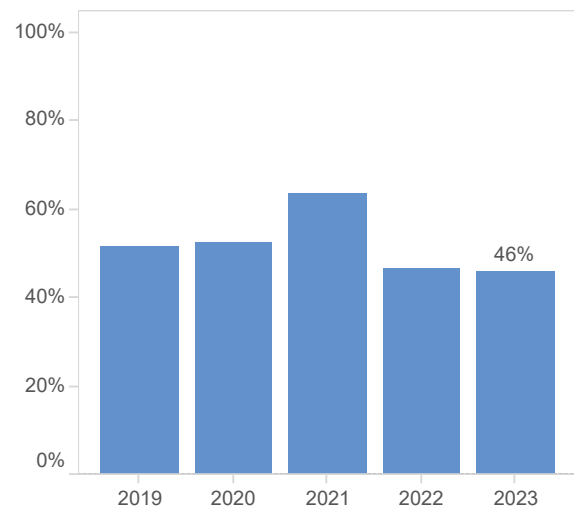
Figure 41: Internal reviews where the decision was upheld as a percentage of all internal reviews, 2018/19 to 2022/23



Reviews by the Information Commissioner that recommended agencies reconsider their decision remained consistent

In 2022/23, agencies reported that 46% of reviews by the Information Commissioner recommended that agencies reconsider their decisions, consistent with 47% reported in 2021/22 (Figure 42).

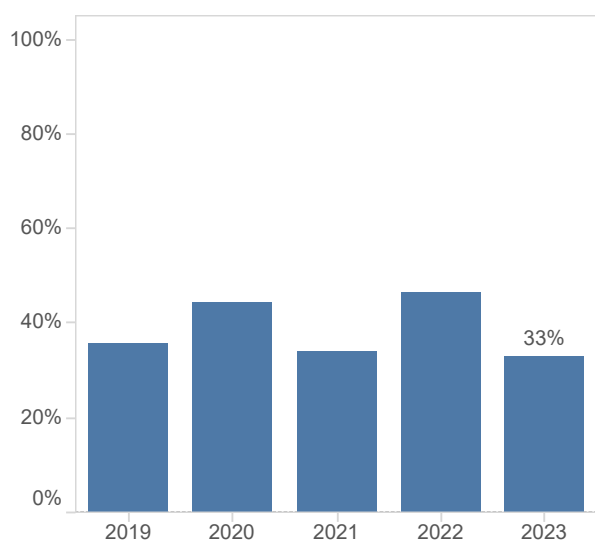
Figure 42: Reviews by the Information Commissioner where there was a recommendation to reconsider the decision as a percentage of all reviews by the Information Commissioner, 2018/19 to 2022/23



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

In 2022/23, agencies reported 33% of internal reviews that followed a section 93 GIPA Act recommendation (a recommendation from the Information Commissioner that the agency reconsider its decision) arrived at the same decision as the original decision. This is a moderate decline on the 46% reported in 2021/22 (Figure 43).

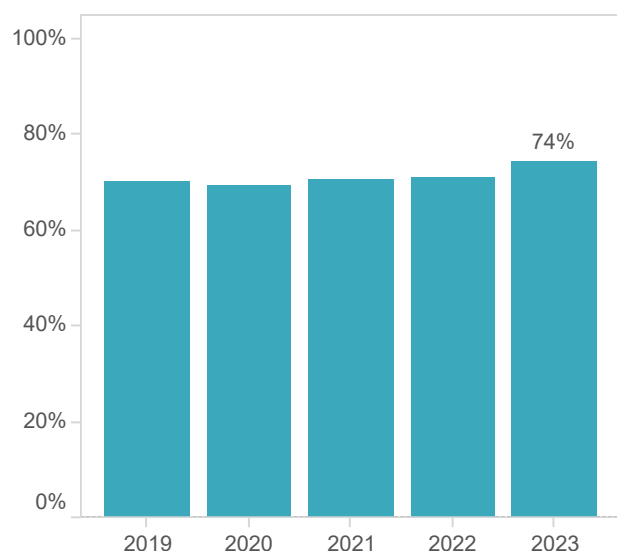
Figure 43: Internal reviews following a section 93 recommendation that upheld agencies' original decisions as a percentage of all internal reviews, 2018/19 to 2022/23



Reviews by NCAT of agency decisions

In 2022/23, agencies reported that 74% of reviews by NCAT upheld agency decisions, consistent with the 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, 2018/19 to 2022/23



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 consistent at 9% in 2022/23 compared to 12% in 2021/22.

The proportion of all reviews conducted by the Information Commissioner relating to OPIADs remained consistent at 41% compared to 43% in 2021/22. Other issues that were the subject of review by the Information Commissioner include:

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

Reviews conducted by the Information Commissioner can provide insights into the operational and cultural environment in which access decisions are made within agencies. Data gathered through conducting these reviews is 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 2022/23, the top three CPOPIADs that were relied on by agencies that were subject to the Information Commissioner's review were:

- legal professional privilege (34%), was stable compared to 33% reported in 2021/22
- cabinet information (16%), was stable compared to 15% reported in 2021/22
- excluded information (24%) increased moderately compared to 10% reported in 2021/22.

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 2022/23, 44% 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 to 42% in 2021/22, 35% in 2020/21, 46% in 2019/20, 38% in 2018/19 and 45% in 2017/18.

In the reporting year, the top three CPOPIADs claimed in reviews to which the Information Commissioner recommended agencies reconsider their decision:

- legal professional privilege consideration: 62% resulted in a recommendation to agencies to reconsider the decision, a significant increase from 47% in 2021/22
- overriding secrecy laws consideration: 50% resulted in a recommendation to agencies to reconsider the decision, consistent with 50% in 2021/22
- complaints handling & investigative information: 25% resulted in a recommendation to agencies to reconsider the decision. This CPOPIAD was not represented in the top three in 2021/22.

OPIADs: Responsible and effective government was the main OPIAD subject to 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:

- responsible and effective government (42%)
- individual rights, judicial processes and natural justice (38%)
- business interests of agencies and other persons (12%).

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 2022/23, 53% 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 increase from 39% in 2021/22.

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: 48% resulted in a recommendation to agencies to reconsider the decision, a significant increase compared to 33% in 2021/22
- responsible and effective government consideration: 57% resulted in a recommendation to agencies to reconsider the decision, representing a moderate increase compared to 43% in 2021/22
- business interests of agencies and other persons consideration: 65% resulted in a recommendation to agencies to reconsider the decision, representing a significant increase compared to 47% in 2021/22.

Were applications transferred between agencies?

Decline in transfers between agencies

During 2022/23, agencies reported that 480 applications were transferred to another agency (Figure 46). This is a 7% decline from the 516 transfers reported in 2021/22. This result represents the lowest number of transfers recorded over the past five years and a 44% decline from the highest number of transfers, 854 reported in 2017/18.

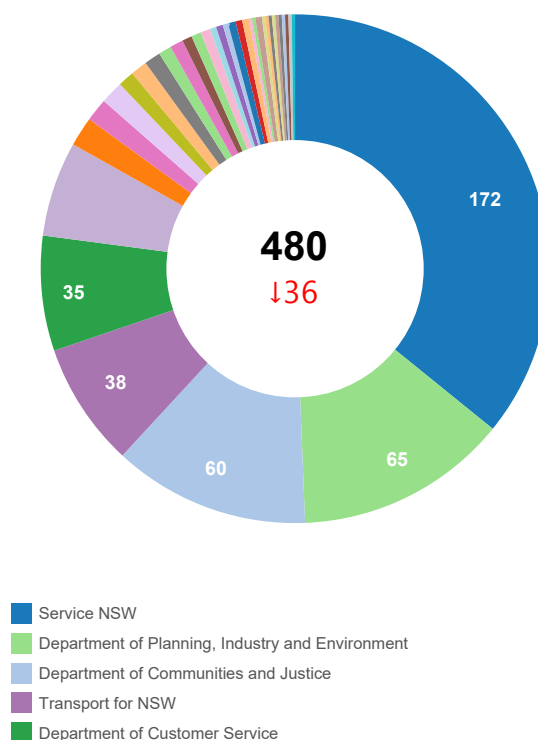
Figure 45 shows that the Government sector accounted for most transfers with 97% which is consistent with 2021/22. Most transfers were agency-initiated with 79%, which is a moderate increase from 72% in 2021/22.

Figure 45: Number of applications that were transferred, by sector and by whether agency or applicant initiated, 2022/23

Sector	Agency initiated transfers	Applicant initiated transfers	Total
Government	367	99	466
Council	7	3	10
University	0	1	1
Minister	0	0	0
State-Owned Corporations	3	0	3
Total	377	103	480

In 2022/23, Service NSW accounted for 36% of transferred applications, a significant increase from 21% in 2021/22. The second highest number of transfers was reported by the Department of Planning Industry and Environment with 14% of transferred applications, which is a moderate decline from 19% in 2021/22. The third highest was the Department of Communities and Justice with 13% followed by Transport for NSW with 8% and the Department of Customer Service with 7% (Figure 46).

Figure 46: Distribution of applications transferred, by agency, 2022/23



The transfer mechanism facilitates a whole-of-government, applicant-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* (GIPA Act) 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 for the reporting year as available at 24 January 2024 (the date when the IPC commenced downloading agencies' reported data from the GIPA Tool).

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 and 2021/22 Report. On 29 April 2019, 7 July 2023 and 17 November 2023, 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
- Council
- University
- Minister
- State-Owned Corporations.

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 Dashboard was updated in 2023 to enable a five-year comparison of data for agencies against their respective sectors and all agencies' reported figures. This enables better trend identification for each agency. 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 here, however, to assist with cross-sector comparability. For example, GIPA data from universities' 2022 annual reporting has been treated as for the 2022/23 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 and functions 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 2022/23 reflects the structure of agencies as of 30 June 2023.

Limited data was supplied from the Minister sector. As noted throughout this Report, this lack of data is attributable to the changes that occurred after the State general election on 25 March 2023.

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 individuals and organisations 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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