



information  
and privacy  
commission  
new south wales

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

## 2019 – 2020

Open Government, Open Access, Open Data

# Letter of Transmission

The Hon. Matthew Ryan Mason-Cox MLC  
President, Legislative Council  
Parliament House  
Macquarie Street  
Sydney NSW 2000

The Hon. Jonathan O'Dea MP  
Speaker, Legislative Assembly  
Parliament House  
Macquarie Street  
Sydney NSW 2000

Dear Mr President and Mr Speaker,

In accordance with section 37 of the *Government Information (Information Commissioner) Act 2009*, I am pleased to present the *Report on the Operation of the Government Information (Public Access) Act 2009: 2019 – 2020*.

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

Yours sincerely,



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

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# Commissioner's Overview

## **Our governments must embrace openness and transparency and must forever relinquish their habitual instinct to control information.<sup>1</sup>**

The introduction of the *Government Information (Public Access) Act 2009* (GIPA Act) was intended to ensure that members of the public have access to the widest possible range of information to give them confidence in government decision-making. This ambitious commitment heralded the transformation of what was then the Freedom of Information (FOI) regime in NSW. The commitment was to turn the FOI regime 'on its head'.<sup>2</sup>

To achieve this ambition, the new legislation put in place a framework built upon the principles of:

1. 'proactive disclosure,
2. a presumption in favour of public interest disclosure, and
3. oversight by an independent champion of open government in the form of a new Information Commissioner'.<sup>3</sup>

We now have 10 years of data to examine the operation of the GIPA Act against these principles and within the prevailing context and culture. After 10 years, it is reasonable to expect a level of maturation of processes, systems and the ultimate operational determiner – culture.

The legislators' ambition to give 'New South Wales the nation's best freedom of information laws' will only be fully realised if accompanied by a profound cultural shift to openness.<sup>4</sup>

## **Lessons derived from 10 years of data 2010 to 2020**

Agencies make decisions using vastly different information and processes than they did in 2010. In 2020, government and agency decision-making is supported not only by data but in many instances real-time data. Likewise, machine enhanced decision-

making is increasingly prevalent. The GIPA Act requires agencies to identify and report on the kinds of information held by the agency and to describe the ways in which decision-making functions affect members of the public.<sup>5</sup> In a digital context compliance can only be achieved through the publication of information assets and decision-making processes including machine enhanced decision-making.

### **1. Proactive disclosure**

To achieve this ambition, a cornerstone of the GIPA Act was its emphasis on proactive disclosure, mandating the publication of 'open access information'.<sup>6</sup>

Open access information was tailored to address risks of corruption and serve a pro-integrity purpose unique to the sectors regulated under the GIPA Act. In 2020, the interface with industry is more proximate and reporting requirements are more crucial to combat the risk of corruption.

Open access information includes:

- details of an agency's structure and functions
- policy documents to assist members of the public in understanding the decisions made by government about the services they will receive and/or their rights and obligations
- a register of significant private sector contracts and a list of each department's major assets, including major acquisitions together with the total number and total value of properties disposed of by the department during the previous financial year to promote transparency in respect of the expenditure of public funds
- specific disclosures to combat corruption such as pecuniary and other interests in the Council sector.

### **How have agencies fulfilled their proactive disclosure requirements?**

Whilst there has been an overall increase to a compliance level of 72% in 2020 that figure also reflects a downward trend from an all-time high of 83% in 2017/18.

<sup>1</sup> Premier Nathan Rees GIPA Agreement in Principle Speech 17 June 2009

<sup>2</sup> *ibid*

<sup>3</sup> *ibid*

<sup>4</sup> *ibid*

<sup>5</sup> GIPA Act section 20

<sup>6</sup> GIPA Act section 18





Overall, the most significant finding from 10 years of data relates to the low levels of compliance by government departments with their five additional open access requirements. The results of compliance varied depending on the requirement. However, given the significant role government departments perform, their acquisition and disposal of public assets and their inherent risk of corruption, it is concerning that in 2020 only:

- 22% (two departments) had a full or partial list of major assets and acquisitions (consistent with 2018/19)
- 11% (one department) 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, while another 67% (six departments) had information only on the value of properties disposed of, mostly included in the department's annual report
- 11% (one department) had the department's guarantee of service (consistent with 2018/19).

Additionally, year-on-year data demonstrates that a significant proportion of complaints finalised by the IPC concern open access information with the highest level reported (23%) in 2019/20.

Equally, low levels of compliance by the Council sector in respect of their requirement to make available on their websites disclosures of pecuniary and other interests also represents a significant failure of systems, process, and culture.

Both sectors are entrusted with acquisition, development and disposal of public assets. The current public sector context is characterised by an increasingly commercial environment and interface with industry. In this context the mandatory proactive disclosure requirements serve a pro-integrity purpose that equips agencies to prevent and, where identified, combat corruption. These requirements serve the interests of both citizens and agencies.

In contrast, agencies have developed their authorised proactive release programs to high levels of maturity and the trajectory of increasing compliance which

commenced in 2017 has delivered commendable outcomes in all sectors in 2020 with compliance ranging from 97% in government departments to 86% in state-owned corporations.

## **2. A presumption in favour of public interest disclosure**

The legislation gave primacy to the presumption in favour of disclosure: 'The public's right to know must come first'.<sup>7</sup> To achieve this outcome the GIPA Act:

- requires the public interest test to be applied on a 'case by case basis'
- specifies 'that decisions by agencies are to be made independently of political considerations'
- expressly prohibits 'decision makers from taking into account any possible embarrassment to the Government that might arise if information is released'
- stipulates that 'public servants are not subject to ministerial direction and control in dealing with an application to access government information'.<sup>8</sup>

### **How have agencies adopted the presumption in favour of disclosure?**

The growth trajectory for access applications reflects a relatively consistent growth in applications to an all-time high in 2020 (17,246). Increases in applications have continued from 2010 to 2020 in all sectors with the exception of the State-Owned Corporation sector.

Applications from members of the public have increased from 6,000 in 2010 to 13,690 in 2020. This growth is also confirmed by successive Community Attitudes Surveys which consistently reveal that over 85% of members of the public value their right to access information.<sup>9</sup>

There has been a steady and sustained increase in the number of applications seeking personal information. Applications for personal information have grown from about 3,000 in 2010 to over 10,000 in 2020. This represents a 230% increase over the 10 years of reporting.

<sup>7</sup> See footnote 1

<sup>8</sup> See footnote 1

<sup>9</sup> [https://www.ipc.nsw.gov.au/sites/default/files/2019-09/Community\\_Attributes\\_to\\_Information\\_Access\\_Study\\_2019\\_Highlights.PDF](https://www.ipc.nsw.gov.au/sites/default/files/2019-09/Community_Attributes_to_Information_Access_Study_2019_Highlights.PDF)

# Commissioner's Overview

Applications seeking personal information are not currently reported against categories that distinguish applicants seeking their own personal information and applications seeking the personal information of others. In the absence of express reporting, useful insights are not available to policy makers or operators to inform better systems for managing access to information.

It is therefore important to recognise that notwithstanding a dramatic increase in this application type there has not been an increase in release rates in respect of applicants seeking personal information. Over the years, the combined release rates have remained steady at around 65%. This outcome should provide an impetus for agencies to consider how they might make the personal information of an applicant more accessible particularly through examination of the proactive and informal release pathways.

Significantly, applicants with the highest release rates are private sector business. These applicants have secured combined release rates of around 75% and they have maintained these rates over the last four years.

Accordingly, they are consistently exceeding release rates secured by members of the public (70%). This finding is significant in determining if the presumption in favour of access to information is operating as intended – to ensure that the public's right to know comes first.

Over the 10 years, there has been a notable increase in two conclusive overriding presumptions against disclosure (COPIAD):

- excluded information, and
- Cabinet in Confidence.

In the first three years of operation, reliance upon the Cabinet in Confidence COPIAD was 8.46% combined for government departments and the state-owned corporation sector. In the last three years government departments remained around 9%. However, in 2016/17 the IPC decoupled reporting state-owned corporation data from government departments and a significant trend became apparent. Notably, the State-Owned Corporation sector increased their reliance upon Cabinet in Confidence dramatically from 33% to 50% and 67% over the last three years of reporting.

## Ten years on context and culture - how is the presumption in favour of disclosure operating in 2020?

The public sector context has changed dramatically since 2010. As I reported in the 2018/19 Report, there are now three immutable features of the government sector:

1. Digital government – increasing reliance upon data to inform decisions and digital service delivery and associated treatment of government information as an asset
2. Increasing partnerships and outsourcing of traditional government services
3. Administrative arrangements and service delivery models that transcend agencies and sectors.

There is also a further dramatic transformation - the increasing reliance upon temporary and casual labour within the public sector. In 2010, 18.6% of employees were temporary and casual contractors and in 2020 that percentage had increased to 23.5%.<sup>10</sup> This is a significant increase in the context of those employees being aware of, and adequately trained in, the public sector requirement to create, preserve and provide public access to information.

These four features combine to present new risks and opportunities for the public's right to access information when determining applications on 'a case by case basis, independently of political considerations'.<sup>11</sup>

This new government paradigm brings new challenges as government increasingly applies technology and partners and/or outsources functions. In the absence of a new compact with citizens, their expectation is that government will continue to ensure that their right to access information is preserved.

There are two choices here:

- i. Engagement in meaningful dialogue with citizens regarding the loss or modification of extant rights when services are outsourced or otherwise commercialised; and/or
- ii. Government contracts preserve those rights through their express inclusion in contractual terms for specific services, including those involving machine learning.<sup>12</sup>

<sup>10</sup> <https://www.psc.nsw.gov.au/reports-and-data/state-of-the-nsw-public-sector/state-of-the-nsw-public-sector-report-2020/nsw-public-sector-at-a-glance#our-size-and-shape>

<sup>11</sup> See footnote 1

<sup>12</sup> 10 AINOW Algorithmic Accountability Policy Toolkit – Toolkit 01, October 2018.

### 3. Oversight by an independent champion of open government

The role and functions of the Information Commissioner are secured by both the GIPA Act the *Government Information (Information Commissioner) Act 2009* (GIIC Act). The regulatory model established under these statutes is one that relies upon influencing practices and culture. Coercive powers are therefore limited.

Since 2014, the Information Commissioner has been firmly established as the dominant avenue for independent review of agency decisions. There is a relatively stable and a proportionate Information Commissioner review rate between all sectors with the exception of the University and Ministerial sectors where fluctuations occur.

After four years of operation, the percentage of reviews by the Information Commissioner that recommended the agency make a new decision has remained reasonably stable at around 50%.

A lesser proportion of around 40% of agencies upheld the original decision on review following a recommendation by the Information Commissioner. This rate has remained stable over the last four years. Accordingly, in approximately 60% of cases agencies will vary their original decision in response to the guidance provided by the Information Commissioner.

#### Risk-based proactive regulatory approach

The proactive regulatory work of the IPC has matured significantly since 2010 with targeted risk based audits now a regular feature of our compliance program. Six information access compliance audits were undertaken in 2020 - a record high. All recommendations made by the Information Commissioner have been adopted by agencies subject to these audits.

Ten years of data demonstrates considerable maturation by agencies in their exercise of functions under the GIPA Act. The IPC's regulatory approach has developed to fortify this maturation.

The IPC's development of agency self-audit tools and the GIPA Dashboard demonstrates that maturity and enables agencies to positively engage with an assessment of their performance and avail themselves of the regulatory guidance provided within these tools.

Agencies must now actively monitor their own performance and apply these tools to improve the adequacy of their systems, policies and practices for exercising their functions under the GIPA Act and preserve the public asset that is government information.<sup>13</sup> This action signals the cultural change that is necessary to realise the 'generational change and reform that is long overdue' anticipated by the legislators in introducing the GIPA Act.<sup>14</sup>

#### Ten years on context and culture - how effective is the role of the independent champion of open government and what action is required?

The change that we have witnessed in the 10 years of reporting on the operation of the GIPA Act provides meaningful opportunities to realise the ambition of legislators to ensure that 'New South Wales has the nation's best freedom of information laws'.<sup>15</sup>

The GIPA Act provides the Information Commissioner with functions including the:

- monitoring of agency performance
- provision of advice and the issuance of publications to assist agencies and members of the public
- power to make recommendations to the Minister/s about proposals for legislative and administrative changes to further the object of the GIPA Act.<sup>16</sup>

In considering 10 years of data and the application of the right to access information in a contemporary government context, I am of the view that action to address the risks presented by our contemporary government is required by agencies, the Information Commissioner, policy makers and legislators.

#### Proposals for administrative and legislative change

1. Agencies now have access to efficient and effective regulatory tools including the IPC Agency Self-assessment Tools, Essential Guidance Toolkits and e-learning modules. I recommend that leaders articulate a commitment to managing government information and enhance oversight arrangements informed by these resources. Training in open government, information management and the right to access information should be calibrated to risk and foundation training and should be mandatory.

<sup>13</sup> GIIC Act section 21

<sup>14</sup> See footnote 1

<sup>15</sup> See footnote 1

<sup>16</sup> GIPA Act section 17

# Commissioner's Overview

2. Compliance with mandatory proactive disclosure requirements must be elevated. This is particularly evident in compliance by:

- government departments in respect of their requirements to meet the five additional open access requirements relevant to acquisition and disposal of public assets and their guarantee of service; and
- the Council sector in respect of disclosures of pecuniary and other interests.

Closer examination of these lower levels of compliance and associated recommendations to elevate compliance levels are being prioritised by the IPC as set out in this Report and our compliance calendar.<sup>17</sup> After 10 years, leaders must actively engage and prioritise these mandatory disclosure requirements according to the guidance provided by the IPC.

3. I recommend that the public's right to access their own information is further examined and facilitated in the context of digital government to provide seamless, low cost access to personal information of the applicant. This can be achieved by:

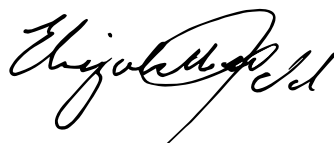
- prioritising administrative solutions that recognise data rights and enable the public to access information about themselves. This may manifest as a personal information dashboard.<sup>18</sup> The Digital Restart Fund may provide a vehicle for government in this regard.
- exploring legislative options to better understand the public's use of and experience in exercising their right to know. For example, including in the GIPA Regulation a requirement that agencies report on access applications that seek the personal information of the applicant or the personal information of another party and transfers of applications between agencies when applications are split.<sup>19</sup> Inclusion of these two additional reporting requirements would inform agencies of the information sought and enable them to better examine options to promote access to information.
- Standardising government procurement contracts particularly those involving machine enhanced decision-making to preserve the right to access information when government engages third party providers and/or outsources services.

4. The IPC has demonstrated 100% compliance with the 2018 legislative requirement to finalise cases within 40 days of receipt of all information. Our timeliness exceeds comparable jurisdictions. In the face of increasing applications and the extant threats to information access presented in digital government, I recommend examination of legislative solutions including:

- additional mechanisms to promptly resolve disputes in a low-cost manner. Options include engagement and consideration of legislative changes to introduce new regulatory powers such as the power to issue a notice to comply. This option would support the achievement of a timelier outcome particularly in cases of a failure to meet mandatory proactive disclosure requirements such as contracts, pecuniary and other interest disclosures and management of major assets<sup>20</sup>, and
- examination of additional offence provisions or other deterrents to safeguard the public information asset from reckless destruction, concealment or alteration.

There has never been a more important time to consider the right of citizens to access government information and to reflect our prevailing environment in which real-time data and swift decision-making is both required and expected of governments.

It is a privilege to present 10 years of data and the critical evaluation of the right to access information in a contemporary digital government context. This report is intended to provide government and citizens with a meaningful opportunity to ensure that the intent of the legislators is realised and that NSW really does have the best information access laws in the country.



**Elizabeth Tydd**  
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NSW Open Data Advocate

<sup>17</sup> GIPA Act section 17(g)

<sup>18</sup> <https://www.oaic.gov.au/consumer-data-right/consumer-dashboards/>

<sup>19</sup> GIPA Act section 44(2)

<sup>20</sup> [https://www.ipc.nsw.gov.au/sites/default/files/2020-10/Final\\_icare\\_Phase\\_1\\_Compliance\\_Report\\_October\\_2020.pdf](https://www.ipc.nsw.gov.au/sites/default/files/2020-10/Final_icare_Phase_1_Compliance_Report_October_2020.pdf)

# Future Focus

1

## MANDATORY PROACTIVE RELEASE

### IPC strategies

- Promote the IPC's Essential Guidance Toolkit, Agency Self-assessment Tool and e-learning modules.
- Promote compliance with *Open Access* requirements particularly in the Government Sector and Council Sector.
- Engage with the Department of Communities and Justice and Department of Customer Service to consider options for legislative change to introduce a power to issue a notice to comply where there is a failure to meet mandatory proactive disclosure requirements for contracts, pecuniary interest disclosures and management of major assets.

### Agency strategies

- Agency leaders articulate a commitment to managing government information and enhancing oversight arrangements.
- Undertake self-audit assessment, develop a compliance plan and ensure appropriate governance arrangements e.g. reporting to the Audit and Risk Committee.
- Implement mandatory foundation training in open government, information management and the right to access information.
- Prioritise, review and ensure compliance with *Open Access* requirements.

2

## AUTHORISED PROACTIVE RELEASE

### IPC strategies

- Lead the Open Government Partnership Nation Action Plan commitment to *Open by Design*.

### Agency strategies

- Maximise opportunities and apply insights to inform the agency's Agency Information Guide annual review.
- Prioritise administrative solutions that recognise data rights and enable the public to access information relevant to them.

3

## INFORMAL RELEASE

### IPC strategies

- Undertake research with NSW public sector agencies on the use of the informal access pathway.

### Agency strategies

- Promote release of open data and information/data holdings.

# Future Focus

## 4

### FORMAL ACCESS APPLICATIONS

#### IPC strategies

- Provide agencies with training in the use of the IPC GIPA Tool for managing access applications and annual reporting purposes.
- Develop resources concerning the personal information consideration in order to increase agency awareness of the definition of personal information as it applies to public officials.
- Engage with the Department of Communities and Justice and Department of Customer Service to explore options to amend the GIPA Regulation to require agencies to report on:
  - access requests for personal information, identifying whether the personal information is of the applicant or of another party
  - partial transfers of applications to another agency.
- Engage with the Department of Communities and Justice and Department of Customer Service to examine a possible additional offence provision or other deterrents to safeguard the public information asset from reckless destruction, concealment or alteration.

#### Agency strategies

- Utilise effective case management systems to manage formal access applications.
- Ensure staff receive ongoing training.
- Consider standardising government procurement contracts to facilitate the right to access information when government engages third party providers or outsources services.



# Year in Review

The 2018/19 Report identified a range of priority actions for the IPC and agencies. The outcomes of the IPC actions identified in that Report, as they are aligned with the information access pathways, are outlined below.

## Mandatory proactive release

The 2018/19 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
The IPC will update its guidance on copyright and the <i>Government Information (Public Access) Act 2009</i> (GIPA Act), noting decision of <i>Sandy v Kiama Municipal Council</i> [2019] NSWCATAD 49.	The revised guidance on the GIPA Act and copyright was published on the IPC website in December 2019: <a href="https://www.ipc.nsw.gov.au/fact-sheet-gipa-act-and-copyright-december-2019">https://www.ipc.nsw.gov.au/fact-sheet-gipa-act-and-copyright-december-2019</a>
The IPC will develop a fact sheet on open access information, with a focus on the Council sector.	Work is progressing on developing this resource. The resource will be informed by a current compliance audit.
The IPC will undertake identified proactive audits to elevate and influence compliance within the Council sector.	<p>In 2020/21, the IPC is undertaking an audit of Local Government which will bring together findings and recommendations from compliance audits of local councils and will comment on the compliance with open access requirements, in relation to the disclosure of pecuniary interests and the operation of the Information Commissioner's Information Access Guideline 1:</p> <p><a href="https://www.ipc.nsw.gov.au/information-access/gipa-compliance-reports/ipc-audit-work-program-202021">https://www.ipc.nsw.gov.au/information-access/gipa-compliance-reports/ipc-audit-work-program-202021</a></p> <p>In September 2020, the Information Commissioner released a report on compliance by Clarence Valley Council with the open access requirements of the GIPA Act:</p> <p><a href="https://www.ipc.nsw.gov.au/information-access/gipa-compliance-reports">https://www.ipc.nsw.gov.au/information-access/gipa-compliance-reports</a></p>

# Year in Review

Action	Outcome
The IPC will include a focus on compliance with mandatory proactive release by government departments in its review of the Agency Self-assessment Tool.	<p>The review of the Agency Self-assessment Tool was undertaken during 2019/20. As a result of the review, the Self-assessment Tool was refreshed with additional guidance materials for agencies included.</p> <p>The feedback from the review did not identify any key areas for change identified by the sector that would enhance their mandatory proactive release.</p> <p>The review recognised a positive level of awareness of the tool, but identified a need to actively promote the tool to increase utilisation. A program to enhance utilisation is underway.</p> <p>A regular review will now occur to continuously update the tool with additional resources to support agencies in their compliance.</p> <p>The tool has been included as part of an Essential Guidance Toolkit that has been issued to Agency heads.</p> <p>The Self-assessment Tool is available on the IPC website: <a href="https://www.ipc.nsw.gov.au/information-governance-agency-self-assessment-tools-information">https://www.ipc.nsw.gov.au/information-governance-agency-self-assessment-tools-information</a></p>

## Authorised proactive release

A priority for the IPC continues to be the publication of guidance on the legislative provisions that support the GIPA Act's 'push' model of information release, including authorised proactive release.

Action	Outcome
IPC will review and revise its guidance to agencies and citizens on authorised proactive release.	<p>Following a review of the guidance on authorised proactive release, in September 2020 the IPC released a fact sheet on automated decision-making, digital government and preserving information access rights: <a href="https://www.ipc.nsw.gov.au/fact-sheet-automated-decision-making-digital-government-and-preserving-information-access-rights-agencies">https://www.ipc.nsw.gov.au/fact-sheet-automated-decision-making-digital-government-and-preserving-information-access-rights-agencies</a></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
The IPC will conduct research about opening government.	This research is currently underway as an initiative under Australia's Open Government Partnership National Action Plan and will be published in the second half of 2021.



## Formal access applications

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

Action	Outcome
Examine fees and charges applied by agencies under the GIPA Act and provide guidance to citizens and agencies.	Examination of the fees and charges applied by agencies under the GIPA Act is underway.
Survey citizens on their experience of accessing information under the GIPA Act, including their experience of receiving advice and assistance from agencies under section 16 of the GIPA Act.	Results of the survey were released on 29 September 2020 during Right to Know Week NSW 2020 and are available on the IPC website: <a href="https://www.ipc.nsw.gov.au/information-access/research">https://www.ipc.nsw.gov.au/information-access/research</a> .

## External reviews

The IPC has undertaken a review of its workflows and procedures following an amendment to the GIPA Act in November 2018 introducing a 40-day time limit for the finalisation of external reviews by the Information Commissioner.

Action	Outcome
The IPC will enhance operations to ensure that statutory requirements for the finalisation of external reviews are met.	The IPC reviewed and implemented changes to its systems and business process to align its processes to fulfil the statutory requirements.
The IPC will publicly report on compliance with timeliness in finalising external reviews.	Compliance with timeliness in finalising external reviews is reported monthly and included in the IPC's quarterly and annual reports.

# Year in Review

## **Issue Highlight: Promoting good governance and managing government information as a strategic asset – Essential Information Access Guidance and self-audit tool**

In 2020, the world changed dramatically. Part of this unprecedented change was an acceleration in remote working, paperless processes and digital services. With these changes came an awareness of the vital significance of sound information governance practices.

The IPC responded to this change with the review and promotion of an online Self-assessment Tool first developed in May 2019. In October 2020, the IPC launched a compendium Essential Guidance Toolkit on information access.

The two tools are complementary and together they provide guidance, assessment processes and functional reports to secure robust information governance systems and expertise.

The Self-assessment Tools assist agencies in measuring the maturity of their information governance systems. The online tools enable agencies to:

- assess compliance against key privacy and information access requirements
- link to IPC guidance that promote better practices and enhance compliance
- generate dashboard reports detailing agency compliance levels
- more precisely identify areas where improvements are required
- develop comprehensive plans to improve compliance with privacy and information access requirements.

Importantly the Self-assessment Tool promotes the operation of all four information access pathways by setting out requirements and providing relevant guidance. It enables agencies to benchmark the maturity of their systems and processes, develop plans and implement systems to support their obligations under the GIPA Act.

By using the online tool agencies can effectively assess compliance by their organisation against key categories of information access requirements and generate a dashboard with a compliance rating for each category.

Within government agencies, Audit and Risk Committees (ARC) are established to oversight compliance. ARCs monitor and evaluate an organisation's compliance with financial, governance, information management and legislative standards. The IPC recommends that agencies consider reporting on compliance with information access requirements to their ARC. The IPC is encouraging all NSW government agencies to complete the self-assessment and report results to their ARC to provide oversight of information governance systems.

The dashboards generated by the self-audit tools can be reported to ARCs on a regular basis to show progress towards full compliance with fundamental information access requirements.

The Essential Guidance Toolkit on information access identifies the key guidance provided by the IPC to ensure that agencies are able to meet their fundamental requirements under the GIPA Act. The guidance has been arranged on a functional basis that reflects agency, senior executive and decision-maker responsibilities.

Together the Self-assessment Tool and the Essential Guidance Toolkit will facilitate both self-assessment of the information access, information management and good governance practices to guide agencies in efficiently managing government information.

The online tool is publicly available and can be accessed on the IPC website:

<https://www.ipc.nsw.gov.au/information-governance-agency-self-assessment-tools-information>



## GIPA Compliance Assessment

Culture and Leadership		Level of compliance	Compliance References and Guidelines
Select the response that best reflects your agency from the drop down list next to each requirement			
<b>Agencies with an open access/data culture:</b> a) Support and advocate an open access/data culture as a priority from the Board and executive to all levels of the organisation b) Have established governance around access to open information and data c) Reflect and monitor and regularly update what is open access and open data and how it may be made available to citizens d) Provide training and support to ensure staff are aware of open access and open data policies and requirements e) Promote the four pathways for access to information f) Promote a pro-disclosure culture g) Support informed and independent decision-making by Right to Information officers		Processes/procedures in place Processes/procedures in place Processes/procedures in place Processes/procedures in place Processes/procedures in place Processes/procedures in place Processes/procedures in place Processes/procedures in place  Agency comments:	<b>100%</b>  <b>IPC Resources to improve performance and achievement</b> <a href="#">Conditions: Enabling Open Data and Promoting a Data Sharing Culture</a> <a href="#">Fact Sheet - the role of principle officer and senior executives in supporting the object of the GIPA Act</a> <a href="#">Fact Sheet - delegation or authorisation of GIPA Act functions</a>
Governance		Level of compliance	Compliance References and Guidelines
Schedule 2 of the Government Information (Public Access) Regulation 2018 sets out the statistical information about access applications to be included in the annual report. This information informs the Information Commissioner's annual report on the operation of the GIPA Act.		Select the response that best reflects your agency from the drop down list next to each requirement	
<b>Agencies should:</b> a) Have in place procedures to comply with schedule 2		Compliant          Agency comments:	<b>100%</b>  <b>IPC Resources to improve performance and achievement</b> <a href="#">IPC GIPA Tool</a>
Legislative compliance and achievement		Level of compliance	Compliance References and Guidelines
<b>1. Open access information</b> Open Access Information is defined in section 18 of the GIPA Act and includes: the agency's information guide, policy documents, disclosure log of access applications, register of government contracts and record of open access information not made publicly available. Agencies are required to make open access information publicly available, unless there is an overriding public interest against disclosure (s6). The open access requirements vary according to the type of agency (see Parts 2, 3 and Schedule 1 GIPA Regulation).		Select the response that best reflects your agency from the drop down list next to each requirement	
<b>Agencies should have in place arrangements to ensure it:</b> a) Makes its open access information publicly available, unless there is an overriding public interest against disclosure b) Makes Open Access Information available free of charge on a website maintained by the agency (unless to do so would impose unreasonable additional costs on the agency) c) Ensures there is at least one way that people can access this information free of charge d) Keeps a record of the open access information that an agency does not make publicly available on the basis of an overriding public interest against disclosure e) Has an Agency Information Guide that meets the requirements specified in section 20 of the GIPA Act and the IPC's AIG guideline f) Reviews and updates the AIG every 12 months g) Notifies the Information Commissioner before amendment to, or release of, an AIG (section 22)		Compliant Compliant Compliant Compliant Compliant Non-compliant In Progress  Agency comments:	<b>79%</b>  <b>IPC Resources to improve performance and achievement</b> <a href="#">Fact Sheet - Open Access Information for Agencies</a> <a href="#">Checklist - Agency Information Guide self-assessment checks</a> <a href="#">Guideline 6 - Agency Information Guides</a>
2. Contract register (Division 5)		Level of compliance	Compliance References and Guidelines
All public sector agencies, Ministers, public authorities, public offices, local authorities and courts who enter into a contract with the private sector, must publish a register of all contracts that have a value, or are likely to have a value, of \$150,000 (including GST) or more. There are some exemptions to this requirement.		Select the response that best reflects your agency from the drop down list next to each requirement	
<b>Agencies should:</b> a) Maintain a register of all class 1 contracts with a value of \$150,000 (including GST) or more that identifies the name and business address of the contractor, the commencement date and duration of the contract, details of the project, project cost, basis for variations and selection process b) Update the register within 45 working days of the contract coming into effect c) Ensure that the contract register includes all additional information required for class 2 contracts (see section 30) d) Ensure that the register fully meets the requirements for Class 3 contracts (those with a value of \$5 million or more) (see section 31) e) Ensure that if a copy of a contract is not included on the agency register or only some of the provisions are included because it contains confidential information (see section 32), agencies place on the register: - the reasons why the contract or provisions have not been included on the register - a statement as to whether it is intended to include the contract or provisions at a later date, and when this is likely to occur - a general description of the types of provisions that have not been included. f) Ensure that processes are in place to update the register in the case of material variations to the contract. Material variations should be included in the register within 45 working days after the variation becomes effective.		Compliant In Progress Compliant Compliant Compliant  Agency comments:	<b>92%</b>  <b>IPC Resources to improve performance and achievement</b> <a href="#">Checklist - Agency Contract Register self-assessment</a> <a href="#">Contract register e-learning module</a>

## **Case Study: NSW to lead development of principles for a nationally consistent approach to the proactive release of information**

Citizens throughout Australia experience inconsistent levels of access to valuable and important information from government. This is particularly evident in the differences in proactive release of information between jurisdictions. Importantly, proactive release serves to promote and maintain integrity in government.

Under the Open Government Partnership's Third National Action Plan, the NSW Information Commissioner will lead a project on behalf of Australian Information Commissioners and Ombudsmen to improve the accessibility of information held by government through the development of principles for a nationally consistent approach to the proactive release of information.

In developing these principles, the project will draw upon existing surveys and research to identify information that is commonly sought by members of the Australian community or which they identify as valuable and/or necessary for open and accountable government.

The principles will recognise that the right to access government information should be promoted to address new service delivery and decision-making arrangements including outsourcing and machine enhanced decision-making and service provision.

The principles will also recognise and reflect the differences in the legislative regimes that operate within jurisdictions. While the principles will not be legally enforceable, agencies across jurisdictions will be strongly encouraged to apply a consistent approach, within the context of their specific legislative regime, to the proactive release of government information.

At the conclusion of the project, Information Commissioners and Ombudsmen will issue a joint statement of principles for a nationally consistent approach to the proactive release of government information.

# 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).

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 April 2020, taking on new functions and absorbing parts of the Department of Planning, Industry and Environment.

In 2019/20, the IPC conducted a desktop audit of the nine principal departments and a sample of 20 smaller agencies. The desktop audit identified whether, in compliance with the GIPA Act, each department or sampled smaller agency published on its website:

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

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

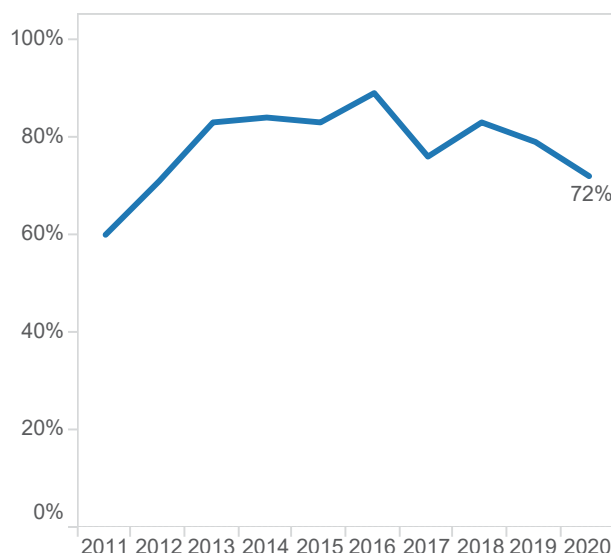
When comparing the audit results from 2019/20 with past years, it is important to note that the reduction in the number of principal departments has reduced the overall audit sample, which does not allow for accurate direct comparisons.

## 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 has declined over the past two years to 72% in 2019/20 compared to 79% in 2018/19, and 83% in 2017/18 (Figure 1).

This is a concerning development and increasing compliance with mandatory proactive disclosure will be included in the IPC's forward work program.

**Figure 1: Departments and sampled smaller government agency compliance with mandatory proactive release requirements 2019/20**



The desktop audit also showed the following:

- 90% of sampled agencies had an AIG, consistent with 93% in 2018/19
- 90% of sampled agencies had policy documents available, consistent with 93% in both 2018/19 and 2017/18
- 76% of sampled agencies had a disclosure log, compared to 87% in 2018/19. This figure decreases to 72% if Regional NSW, which only existed as an agency for two months of the reporting period, is excluded
- 69% of sampled agencies had a contracts register, compared to 87% in 2018/19 and 83% in 2017/18.

Compliance by departments was significantly higher at 94% than the rate for all agencies, although this is a decline from the 100% compliance recorded in the previous year.

Agencies, other than departments, had a significantly lower overall compliance rate of 74%. This is a moderate decrease compared to the 2018/19 results (85%) for sampled agencies. The lower compliance by other, often smaller government agencies, will continue to be considered by the IPC when developing future regulatory priorities.

## Additional open access requirements for departments

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

The IPC conducted a desktop audit of compliance

by principal departments with these five additional open access requirements. The audit found that compliance with these additional requirements remains low.

The following results of compliance varied depending on the requirement:

- 22% (two departments) had a full or partial list of major assets and acquisitions. This is consistent with 2018/19.<sup>1</sup>
- 11% (one department) 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 while another 67% (six departments) had information only on the value of properties disposed of, mostly included in the department's annual report. Whilst difficult to compare this partial compliance with previous years, the combined result is an increase on the reported 30% in 2018/19.<sup>2</sup>
- 11% (one department) had the department's guarantee of service (consistent with 2018/19)
- 89% (eight departments) had the department's code of conduct, compared to 100% in 2018/19. This result is not considered an actual decrease given the change in sample size from machinery of government changes to the number of departments including the recent establishment of Regional NSW
- 89% (eight departments) had a number of documents/webpages with "standard" or "code" available on the website, compared to 100% in 2018/19. Again, this result is not considered an actual decrease given the change in sample size from machinery of government changes to the number of departments.

Compliance with additional open access requirements remains low, with departments either failing to publish the required open access information or providing it via alternative mechanisms. For example, publication of open access information in the department's annual report rather than directly to the department's website.

This result demonstrates a need to further promote the fact sheet [Open access information under the GIPA Act – agency requirements](#) to inform agencies about open access information required to be released and assist them to identify their responsibilities for mandatory proactive release. This low compliance rate with additional open access requirements by departments will also be included in the IPC's forward work program.

<sup>1</sup> To fully comply with this requirement, a list of major assets, appropriately classified and with major acquisitions highlighted, must be easily found on the department's website. Partial compliance refers to where a complete list of assets is available but only in the annual report (and not published on the department's website), or where an incomplete list is available either on the website or in the annual report but the assets are either not appropriately classified or major acquisitions are not highlighted.

<sup>2</sup> To fully comply with this requirement, the total number and total value of properties disposed of by the department during the previous financial year must be easily found on the department's website. Partial compliance refers to where both the total number and the total value of properties disposed of is only available in the annual report (and not published on the department's website) or where only some of the required information is available (that is, only the total number of properties disposed of, or only their total value), either on the website or in the annual report.

## Complaints to the IPC about mandatory proactive release

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

In 2019/20, 23% of complaints finalised by the IPC were about open access information. This is the highest level reported over the last 3 years and represents a moderate increase from the 16% reported in 2018/19. The result for 2019/20 is similar to those seen in 2017/18 when 22% of complaints finalised concerned open access information. As in previous years, open access-related complaints mainly concerned agencies not making open access information available.

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

### Issue Highlight: Automated decision-making, digital government and preserving information access rights

In September 2020, the IPC published the fact sheet: [Automated decision-making, digital government and protecting information access rights](#).

The fact sheet provides guidance to agencies on the release of information in relation to the use of automated decision-making systems. It is essential that agencies consider their obligations under the GIPA Act when developing or applying new technologies and using data to inform decision-making.

The fact sheet sets out agencies' obligations relevant to digital government, notably under sections 20 and 23 of the GIPA Act. It also sets out measures that agencies can take to preserve the right to access information as government increasingly relies on digital forms of service delivery. These measures include:

- elevating procurement standards and contractual arrangements to meet the requirements of section 121 of the GIPA Act
- identifying datasets and other forms of digital information in AIGs in accordance with section 20 of the GIPA Act
- including inventories of machine enhanced decision-making systems in AIGs in accordance with section 20 of the GIPA Act
- ensuring that documents/information, which supports digital government and automated decision-making have been developed to assist agencies exercise their functions that affect members of the public, are available as open access information in accordance with section 23 of the GIPA Act.





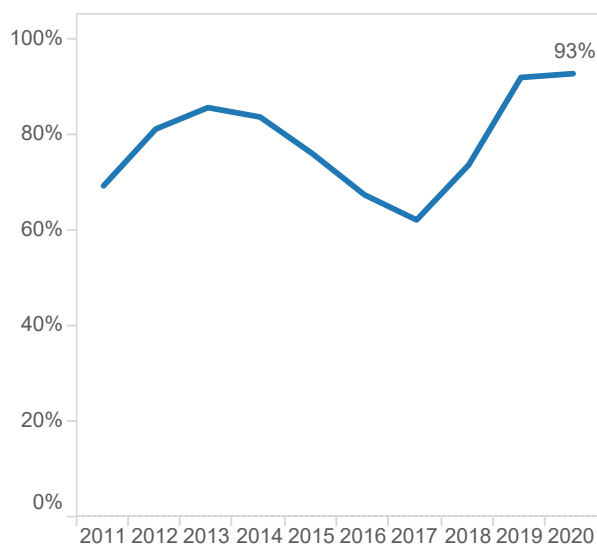
# Pathway 2: Authorised proactive release of information

## Significant increase in agency reviews of programs for release of government information

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).<sup>3</sup>

In 2019/20, 93% of agencies reported having conducted a review of their program for the release of government information. This is consistent with 93% in 2018/19 (Figure 2).

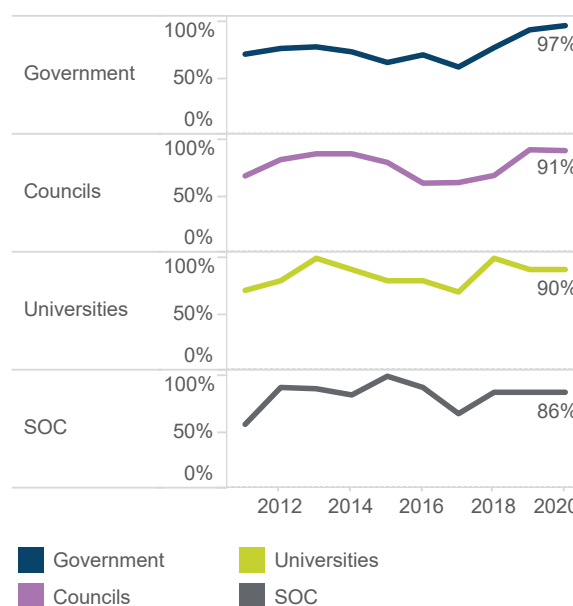
**Figure 2: Agencies that conducted annual information release reviews as a percentage of all agencies that reported, 2010/11 to 2019/20**



Results across the sectors remained relatively stable (Figure 3):

- 97% of agencies in the Government sector conducted reviews, consistent with 93% reported to the IPC in 2018/19
- 91% of councils conducted reviews, consistent with 92% in 2018/19
- 90% of universities conducted reviews, consistent with 90% in 2018/19
- 86% of state-owned corporations conducted reviews, consistent with 86% in 2018/19 and 2017/18.

**Figure 3: Agencies that conducted annual information release reviews as a percentage of all agencies that reported, by sector, 2010/11 to 2019/20**



<sup>3</sup> Clause 8 of the GIPA Regulation requires an agency (other than a Minister) to report the details of the review carried out by the agency under section 7(3) of the GIPA Act during the reporting year and the details of any information made publicly available as a result of the review.

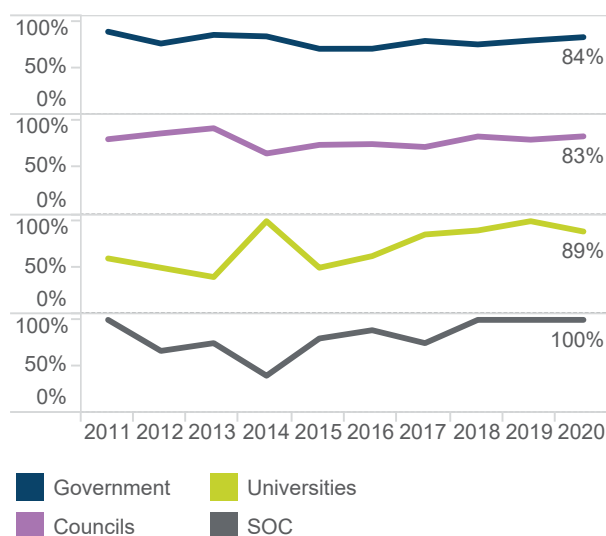
Since July 2015, the IPC has focused on assisting agencies with proactive release programs in recognition of declining compliance with this obligation – first identified in 2013/14. Overall, this initiative has demonstrated success. As part of this initiative, the IPC enhanced the GIPA Tool in 2018/19 to remind agencies that conducting reviews of their program is mandatory.

## Release of additional information following a review remained stable

Ideally, all agency information release reviews should result in additional information being released. In 2019/20, 78% of agencies that conducted a review released additional information. This is consistent with the 81% reported in 2018/19. Figure 4 shows the trends in the percentage of reviews leading to the release of additional information and shows:

- 84% of agencies in the Government sector released additional information following review, consistent with the 80% reported in 2018/19
- 83% of councils released additional information following review, consistent with the 80% reported in 2018/19
- 89% of universities released additional information following review, a moderate decrease from 100% in 2018/19
- 100% of state-owned corporations released additional information following review, consistent with the 100% reported in 2018/19 and 2017/18.

**Figure 4: Agencies that released additional information as a percentage of agencies that conducted a review, by sector, 2010/11 to 2019/20**



## Issue Highlight: Practices to promote proactive release of information to the public

### A commitment to proactive release effectively integrated into corporate culture

- The Department of Communities and Justice undertook a harmonisation process to ensure consistent practices in the review and identification of information for proactive release following the merger of the Department of Justice and Department of Family and Community Services as part of machinery of government changes in July 2019.
- North Sydney Council reviewed its mandatory online GIPA awareness training module and provided training to existing and newly appointed officers in public access practices.
- Many agencies established dedicated committees to undertake regular reviews of the agency's proactive release program. For example, in 2019/20:
  - Hornsby Council's Pro-active Release Program - Council formalised its Pro-active Release Program for review of information held. As a result of this program Council released additional information frequently sought by residents, including information about Council's COVID-19 response and its tree planting program. The review program also identified a need to upgrade the search functionality of Council business papers published on the website. This feature has now been implemented and allows for word or phrase searches across all business papers and attachments.
  - Transport for NSW established a Proactive Disclosure Committee for the Transport cluster and includes representatives from across the Transport cluster. The Committee conducts quarterly meetings to discuss categories of information which can be considered for proactive release and to update the proactive disclosure program. This practice ensures the currency of information released by the agency.

### Strategies to identify the information that can be released proactively

- Wollondilly Shire Council is monitoring analytics across its website to better identify areas of public interest and assist promotion of topical information.
- NSW Rural Fire Service developed the Guardian Project to proactively release information that will assist the public in bush fire risk mitigation and provide insight into risk mitigation activities across NSW.
- Campbelltown City Council reviewed the feasibility of proactively releasing all documents in relation to an active development application (DA). Council decided that all documents should be proactively released on the Council's DA portal from submission of the DA until the notice of determination is issued.<sup>4</sup>

### Improve the accessibility of the information identified for proactive release

- Greater Hume Shire Council has improved public access to Council meetings via the use of live streams so that the public may view the proceedings in real time and the uploading of recordings to the Council's Youtube channel for later viewing.
- Blayney Shire Council uses a mixture of traditional and online channels to improve public access to information including use of the Council's website and social media channels.
- Bellingen Shire Council is implementing new hardware and software systems to enhance the accessibility of publicly available information on the Council's website. This is an ongoing process and will continue throughout 2020/21.
- Hunter Water uses its Twitter account @HunterWater to provide up-to-date information to customers during incidents involving its assets, the environment, customers or employees.

<sup>4</sup> This is in addition to the statutory requirements concerning publication or exhibition of information about development applications required under relevant legislation, including the GIPA Act and Regulation and the [Environmental Planning and Assessment Act 1979](#).

### Case Study: Technology traverses the gap to enable ease of access to historical records

Cost and accessibility are two key barriers to access to information for the public. Citizens are often unsure what information is available or where it is held. Similarly, the cost of processing charges to access government information can be a significant barrier to access.

The development of online portals and the digitisation of records can significantly increase access to information and reduce the costs for citizens. A successful example of this approach is the City of Sydney's [Archives and History Resources](#) web portal, launched in February 2020.

The City of Sydney holds an extensive archives collection including corporate archives dating back to the establishment of the Municipal Council in 1842 and archives acquired to support the collection.

The new system brings together all of the City's archives from diverse systems into one. By using simple search and browse options users can access more than one million records, including photographs, historical maps and plans, property records, letters and books. Almost half of the records are available digitally and can be downloaded free of charge.

The City of Sydney receives thousands of requests for archival records each year. More than 80% of requests are location specific. These include requests for historical building plans, archival images of streetscapes or street maps. To encourage self-service, more than 80,000 items have been geo-tagged and can be accessed via the interactive map.

The collection is grouped within categories to promote access to information and contains an interactive map to facilitate searches for information.

This project has provided access to a significant volume of records that have never been available before, including nearly 100,000 property records and 11,000 transport images. The project provides a positive example of proactive release of information using contemporary technology.

### Case Study: Promoting transparency and accountability by opening the Report on the Operation of the Government Information (Public Access) Act 2009: 2018/19 dataset

In October 2020, the Information Commissioner and NSW Open Data Advocate, Elizabeth Tydd, released the dataset from the *Report on the Operation of the Government Information (Public Access) Act 2009: 2018/19* to Data.NSW, which was published to its website.

Under the GIPA Act and the GIPA Regulation, agencies are obligated to report their GIPA data annually to the Information Commissioner. This data is then collected from agencies via the IPC's GIPA Tool and is used by the IPC to inform the Information Commissioner's annual *Report on the Operation of the GIPA Act*, across all agencies.

The publishing of this data on the Data.NSW website makes agency-level data more accessible by publishing it in a form that allows deeper analysis and comparisons. Increasing the amount of government data that is available improves transparency and accountability within government, supports evidence-based policy development and provides a platform for innovation.

The value of GIPA Act compliance reporting by agencies lies in the transparency of information and the ability to apply trend insights to highlight, and where necessary address, performance issues.

Data.NSW is a key element in the provision of open data in NSW as it is the main channel for access to NSW open data and data-related guidance.

The Data.NSW website also allows a better-informed community to engage and collaborate with government through a contemporary digital channel to improve engagement and outcomes. Researchers and stakeholders can also build on the work of government and offer fresh insights and analysis.

The dataset can be found on the Data.NSW [website](#).



# Pathway 3: Informal release of information

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

## Agency practices

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

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

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.

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

There is currently limited data available to the IPC to draw reliable conclusions on the frequency and volume of access requests made via the informal access pathway or the outcomes for applicants. In 2020/21, the IPC will undertake research with public sector agencies on the use of the informal access pathway.





# Pathway 4: Formal Applications

## **2019/20 saw the highest number of applications ever reported**

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

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

The main benefits of the formal access pathway:

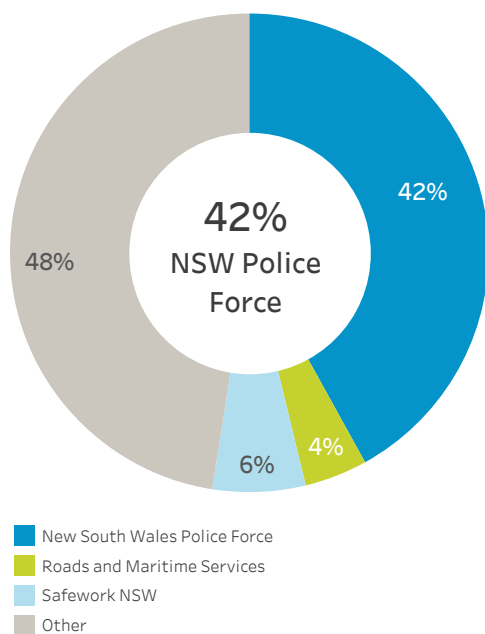
- The right to seek access is legally enforceable
- Agencies are not subject to the direction or control of any Minister in the exercise of the agency's functions when dealing with an access application
- Agencies must apply the public interest balancing test and consult with third parties to whom the 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 on its website a publicly available dashboard enabling easy access and understanding of NSW agencies' operation of the formal pathway. This initiative provides insights for agencies and citizens alike and has been widely commended.

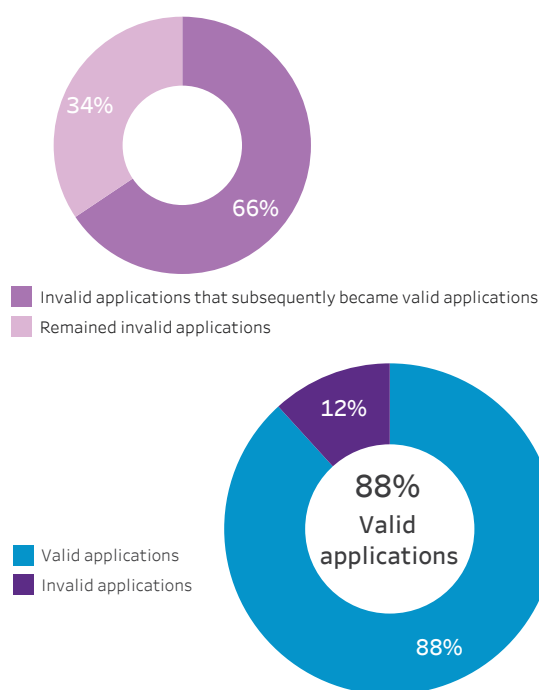
This year we have seen a record number of information access applications.

# Year at a glance

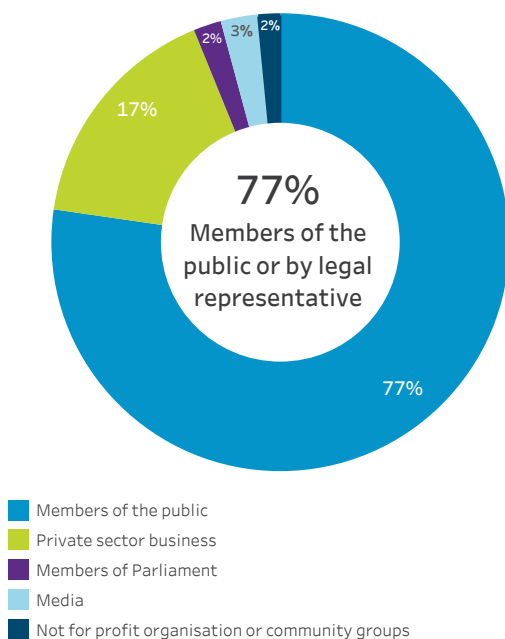
Where were applications lodged?



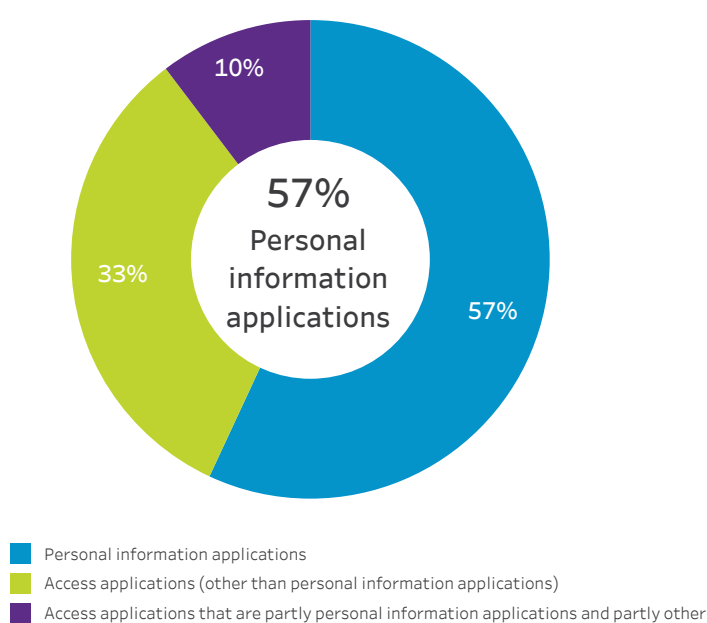
Were applications invalid?



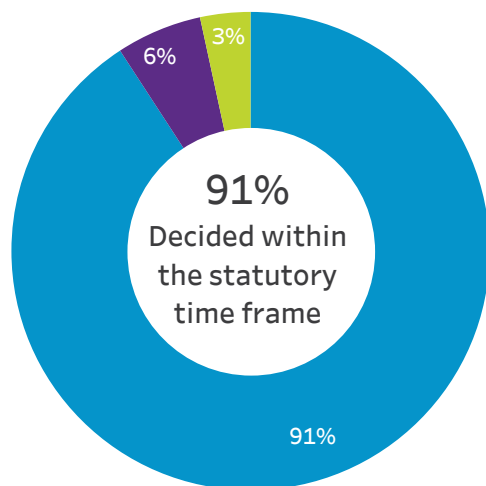
Who applied?



What was asked for?

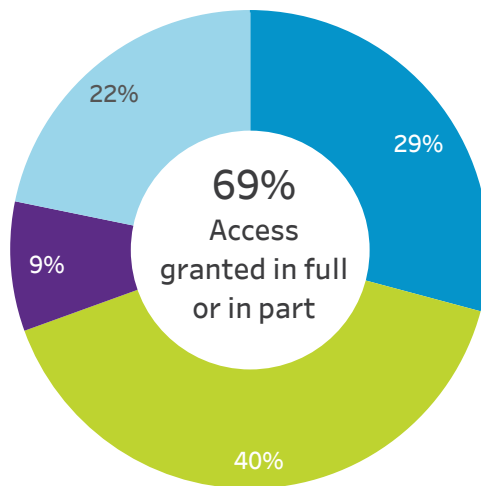


## How quickly were decisions made?



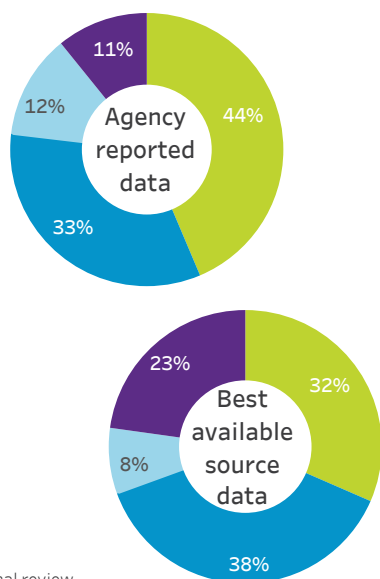
- Decided within the statutory timeframe (20 days plus any extensions)
- Decided after 35 days (by agreement with applicant)
- Not decided within time (deemed refusal)

## Did applicants get what they asked for?



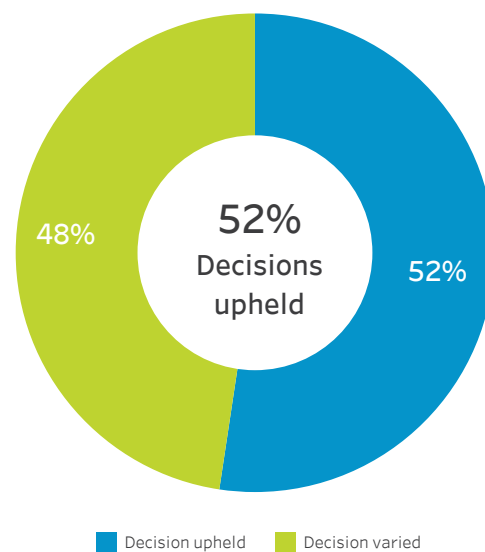
- Access Granted in Full
- Access Granted in Part
- Access Refused in Full
- Other

## 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 9% in 2019/20 representing a record high number of access applications

At the time of reporting, agencies advised that they received 17,246 valid applications during 2019/20. This compares with 15,774 valid applications in the previous financial year and represents a total increase of 1,472 (9%) in valid applications received. Having remained stable over the past three reporting periods, this increase is the second largest increase in a decade of reporting. It has resulted in 2019/20 producing the highest number of valid applications received over the past 10 years. The trend in applications is shown in Figure 5.

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

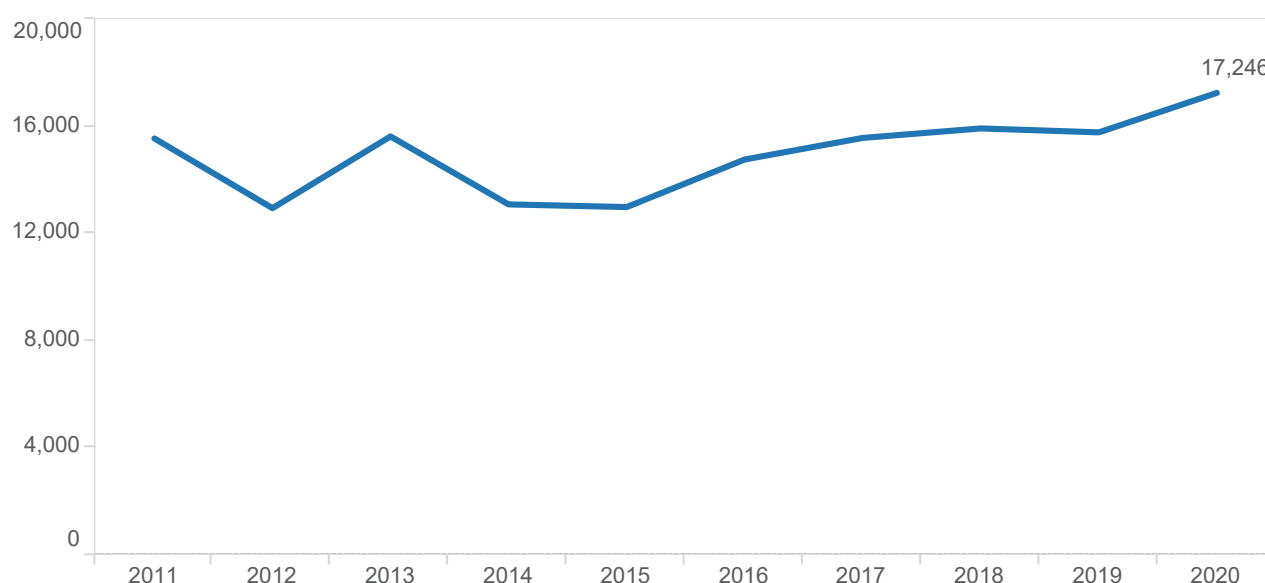
## Most applications were made to the Government sector<sup>5</sup>

Consistent with previous years, the Government sector continued to account for the great majority (14,082 or 82%) of valid applications (Figure 7). While the overall proportion of valid applications received by the Government sector remained stable, the number of applications increased by 11% from 12,637 in 2018/19 to 14,082 in 2019/20.

In 2019/20, the NSW Police Force received 35% (5,997) of all valid applications (Figure 6). While NSW Police Force continued to receive the largest proportion of valid applications across all sectors, this proportion has decreased steadily over time from 42% of valid applications in 2014/15 to 35% in 2019/20.

Due in part to machinery of government changes implemented on 1 July 2019, the top six agencies by number of applications received has shifted significantly for the first time since 2015/16.

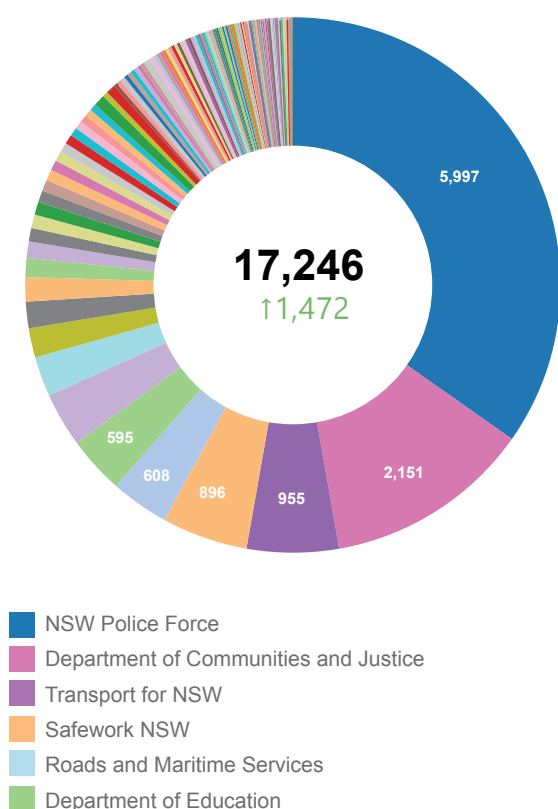
Figure 5: Total number of valid applications received, 2010/11 to 2019/20



<sup>5</sup> Since 2016/17 data is reported across five sectors, including state-owned corporations. This will affect comparisons with the published reports in previous years.

*'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.*

**Figure 6: Distribution of valid applications received, by agency, 2019/20**



- A 14% increase in applications received by the NSW Police Force (from 5,278 in 2018/19 to 5,997 in 2019/20)
- A 14% increase in applications to the Department of Communities and Justice (from 1,883 in 2018/19 to 2,151 in 2019/20). This agency was created on 1 July 2019 and comparison is to the 2018/19 combined result for the former Department of Justice and Department of Family and Community Services.

### Applications in the Government sector rose to the highest level in 10 years, with significant increases also recorded in the Minister and State-Owned Corporations sectors

The number of applications received by the Government sector increased by 11% compared to the 2018/19 results (Figure 7). This number is now at its highest level since 2010/11.

The number of applications received by the Council sector remained stable.

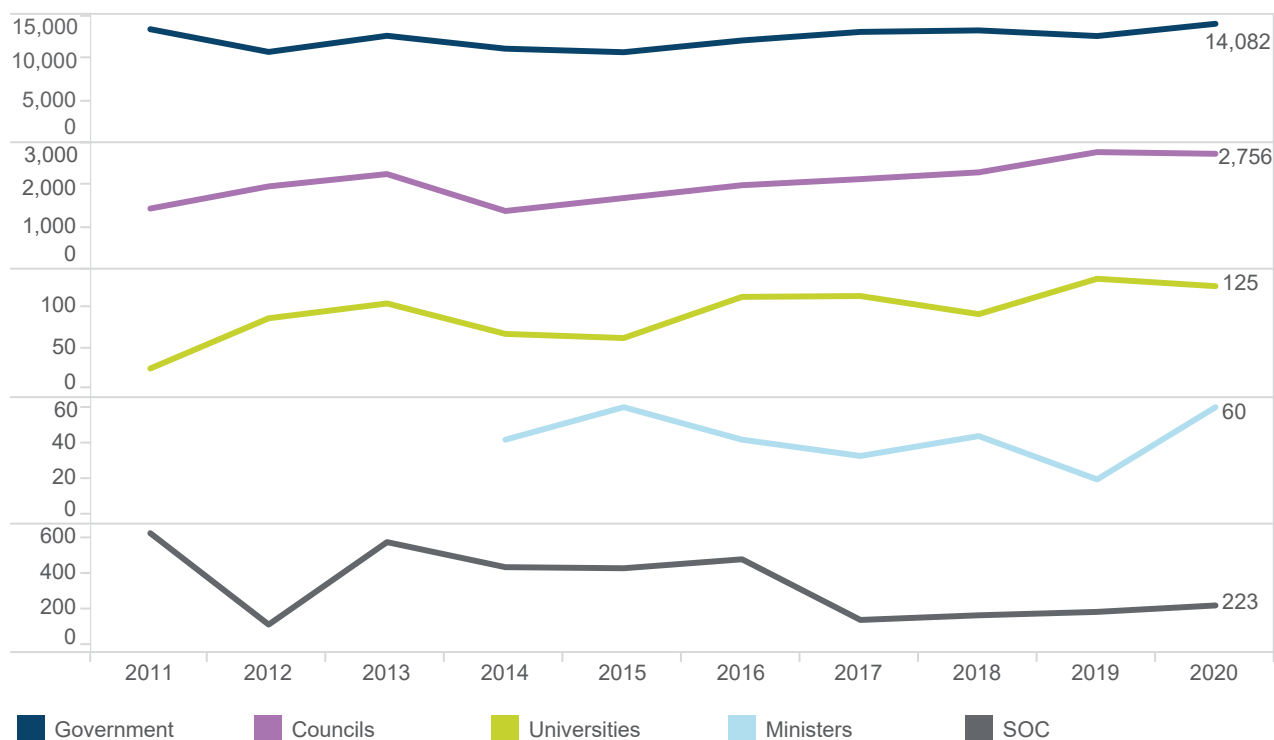
Applications received by the Minister sector increased significantly, rising by 200% in 2019/20. This is the highest level recorded since 2014/15. This increase has been driven by significant increases in applications to the NSW Premier, Minister for Transport, Minister for Planning and Public Spaces and the Minister for Education. However, numbers of applications are low ranging from 0 to 9 applications to individual Ministers.

Applications received in the University sector decreased moderately, falling by 7% in 2019/20. A significant increase was reported for the State-Owned Corporations sector which rose by 19%. Each of these sectors receive relatively few applications and their year-on-year results are therefore more variable.

Notable changes in applications received across these agencies were:

- A 400% increase in applications received by Transport for NSW (from 191 in 2018/19 to 955 in 2019/20). This is likely to be the result of the merger of Roads and Maritime Services and Transport for NSW
- A 64% decrease in applications received by Roads and Maritime Services (from 1,705 in 2018/19 to 608 in 2019/20). Roads and Maritime Services was merged with Transport for NSW on 1 December 2019. Any access applications received after that date were dealt with by Transport for NSW
- A 36% increase in applications received by the Department of Education (from 438 in 2018/19 to 595 in 2019/20). This is the highest level recorded for this agency to date and a 148% increase since 2014/15
- An 18% increase in applications received by Safework NSW (from 757 in 2018/19 to 896 in 2019/20)

Figure 7: Number of applications received, by sector, 2010/11 to 2019/20



# Invalid applications

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

Figure 8 shows the flow of applications from receipt to initial assessment and subsequent processing, together with the number of applications received in 2019/20.

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

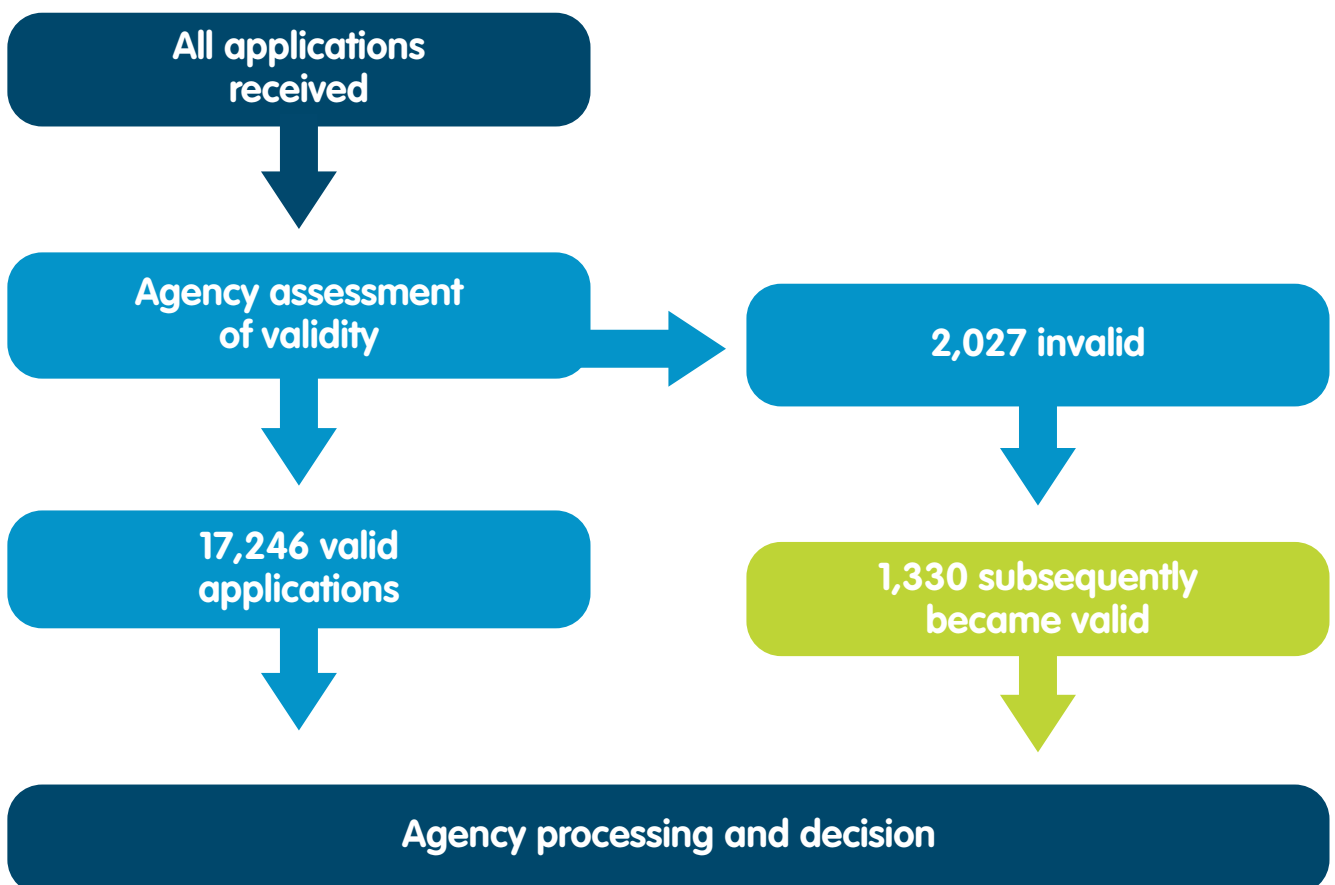
## The rate of invalid applications received remains high

In 2019/20, agencies received 2,027 invalid applications, equivalent to 12% of all formal applications received (Figure 9).

This is consistent with the 1,895 or 12% of invalid applications reported in 2018/19.

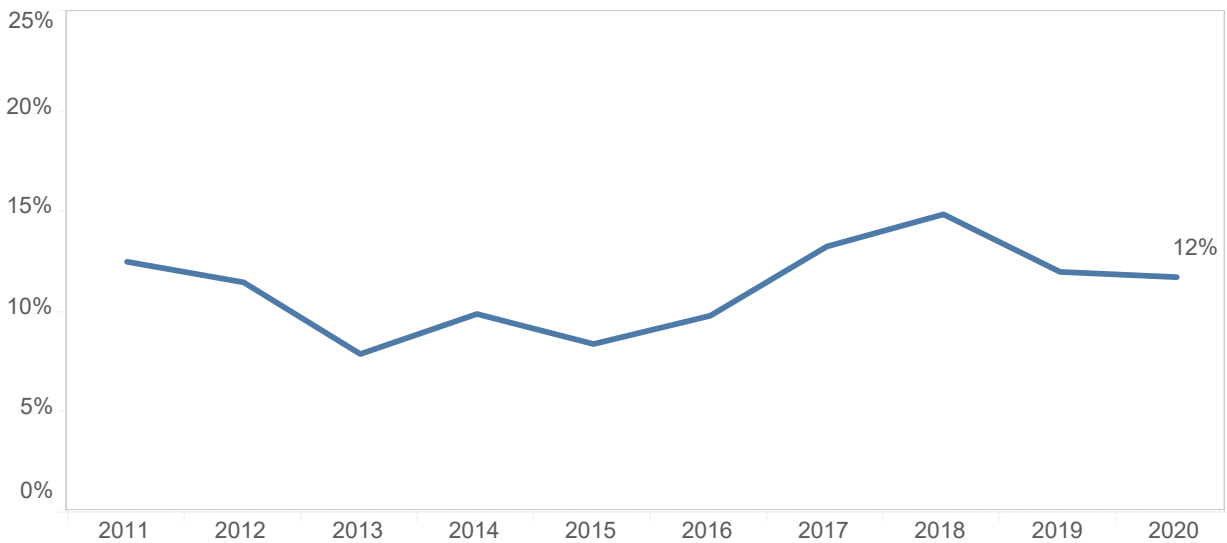
Consistent with previous years, in 2019/20 the most common reason for invalidity (applying in 98% of invalid applications) was that the application did not comply with formal requirements.

Figure 8: Flow of valid and invalid formal applications, 2019/20



*'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, 2010/11 to 2019/20**



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

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

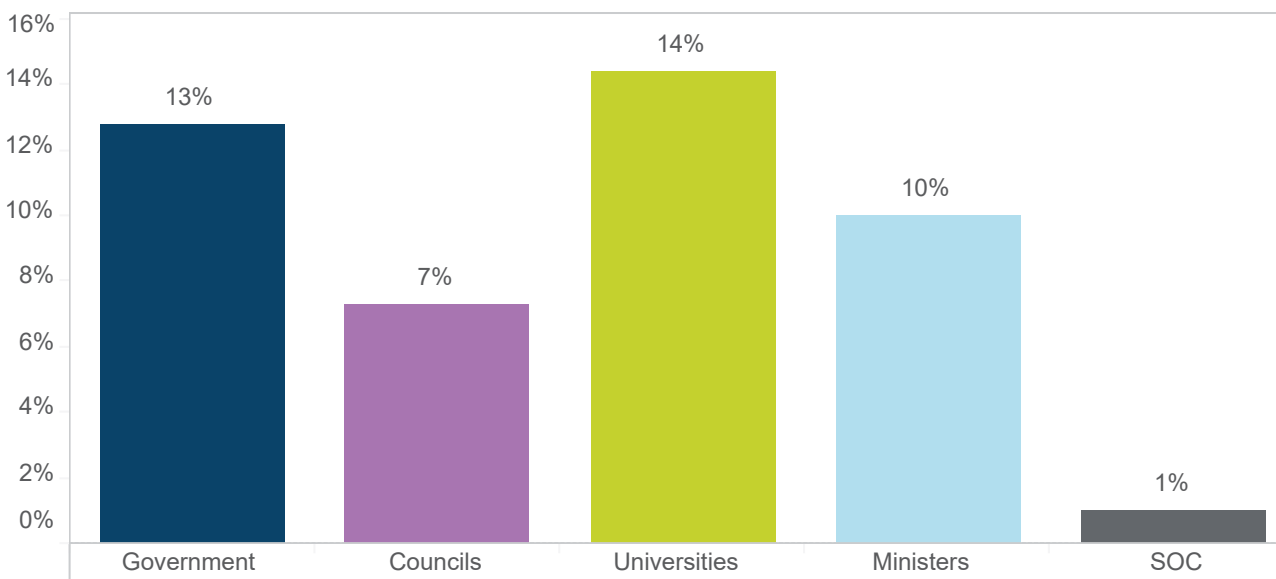
The Government sector had the highest percentage of invalid applications. The consistency of the percentage of invalid applications should be viewed in the context of increasing prevalence of online lodgement facilities. These systems, if designed optimally have the capacity

to increase the number of valid applications by guiding applicants to meet the statutory requirements of a valid application. This issue will be examined further by the IPC.

The percentage of invalid applications remained stable across all sectors except for the University and State-Owned Corporations sectors. Consistent with other years, the Government sector continued to have a high percentage of invalid applications at 13%.

There was a moderate increase in invalid applications in the University sector from 8% in 2018/19 to 14% in 2019/20. The State-Owned Corporations sector recorded a moderate decrease, with invalid applications falling from 10% in 2018/19 to 1% in 2019/20 (Figure 10).

**Figure 10: Invalid applications as a percentage of all formal applications received, by sector, 2019/20**





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

The number of invalid applications remained stable for most agencies, however some agencies experienced a decline in the percentage of applications that were invalid compared to 2018/19:

- 22% for Department of Customer Service, down from 40% in 2018/19<sup>6</sup>
- 38% for the Department of Communities and Justice, down from the 51% combined result for the former Department of Justice and former Department of Family and Community Services in 2018/19.<sup>7</sup>

The significant increase in invalid applications reported by the Department of Education in 2018/19 has remained stable during the current reporting period, at 22% in 2019/20, consistent with 26% reported in 2018/19.

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

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

- remained stable in the Government and Council sectors since 2016/17
- decreased moderately in the University sector from 64% in 2018/19 to 56% in 2019/20
- increased significantly for the Minister sector from 50% in 2018/19 to 83% in 2019/20
- decreased significantly in the State-Owned Corporations sector over the past two years from 100% in 2017/18 to 0% in 2019/20. However, this result must be considered within the context of the very low number of invalid applications received by the sector in 2019/20.

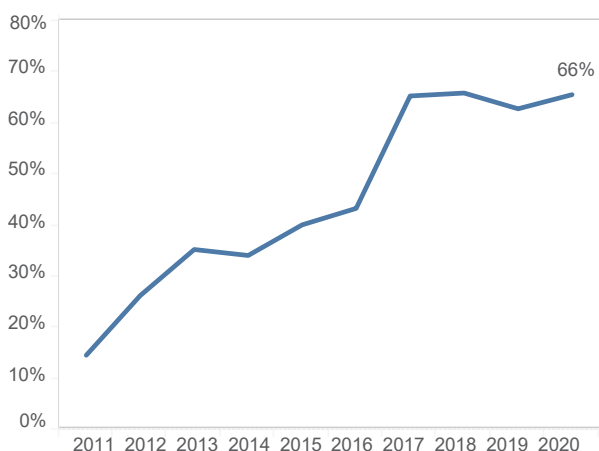
The high rate of invalid applications that became valid is a positive illustration of agencies discharging their responsibilities under the GIPA Act to assist applicants.

### Invalid applications are increasingly becoming valid

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

Consistent with 2018/19, 66% of invalid applications subsequently became valid in 2019/20 (Figure 11). The percentage of invalid applications which subsequently became valid has remained stable at over 60% across the past four years.

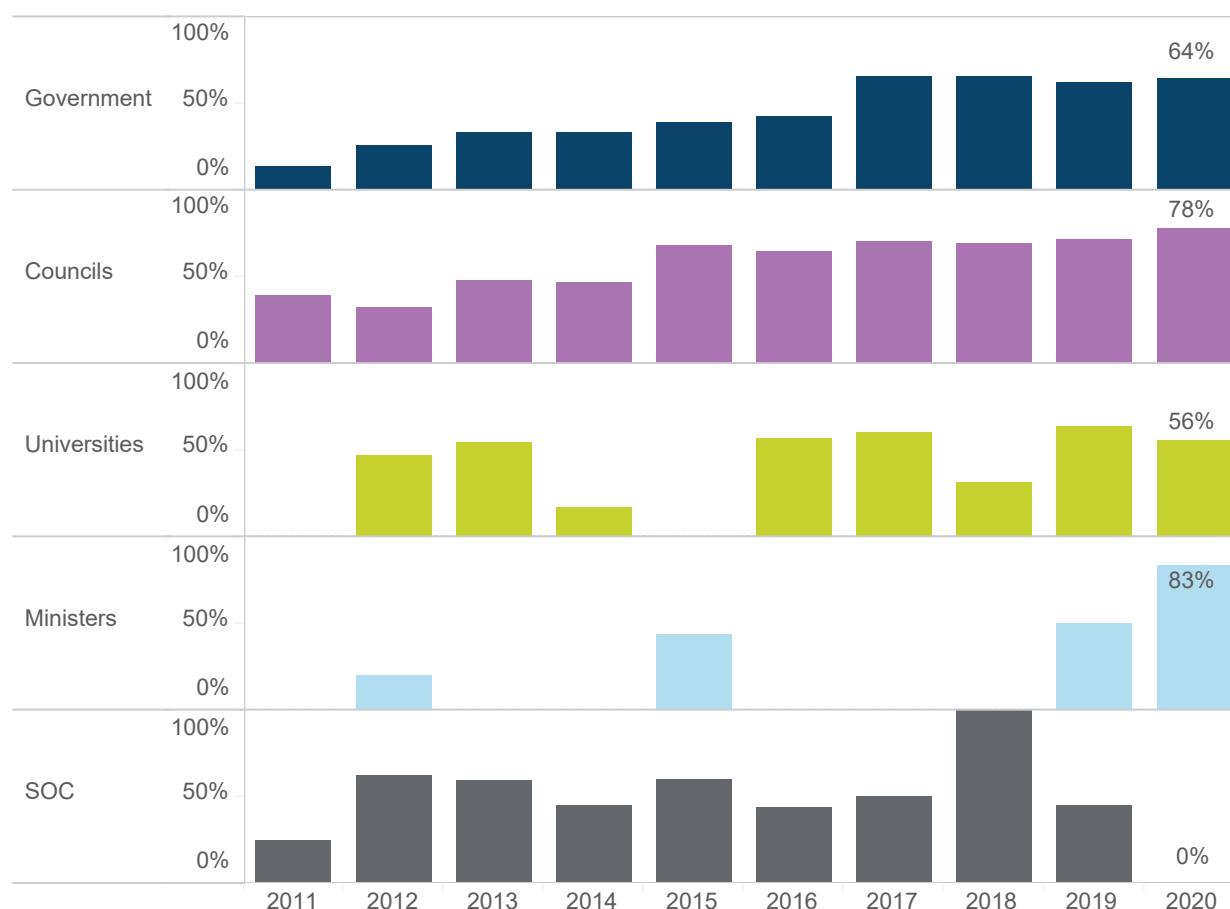
**Figure 11: Invalid applications that became valid as a percentage of all invalid applications, 2010/11 to 2019/20**



<sup>6</sup> The figure reported for 2018/19 relates to the former Department of Finance, Services and Innovation. Under machinery of government changes implemented on 1 July 2019, the Department of Finance, Services and Innovation was replaced by the Department of Customer Service.

<sup>7</sup> On 1 July 2019 the former Department of Justice and former Department of Families and Community Services were amalgamated to form the Department of Communities and Justice.

**Figure 12: Invalid applications that became valid as a percentage of all invalid applications, by sector, 2010/11 to 2019/20**



### Issue Highlight: Applications cannot be severed into valid and invalid parts

In *Department of Communities and Justice v Zonneville* [2020] NSWCATAP 126, the Appeal Panel confirmed that an application for government information cannot be severed into both valid and invalid parts because an application must comply with all of the requirements in section 41(1)(a)-(e) to be a valid “access application” within the meaning of section 4 of the GIPA Act. The words “the government information” in section 41(1)(e) mean all the requested government information, not a severable part of that information.

When making the initial decision as to validity under section 51, an agency is required to consider the validity of any communication that appears to be intended to be an access application even if, on closer scrutiny, it is not a valid access application because it does not comply with any one of the formal requirements.

Recent amendments to the GIPA Act that enable applications to be ‘split’ and transferred in part or in whole were not considered in this decision (s44(2)).

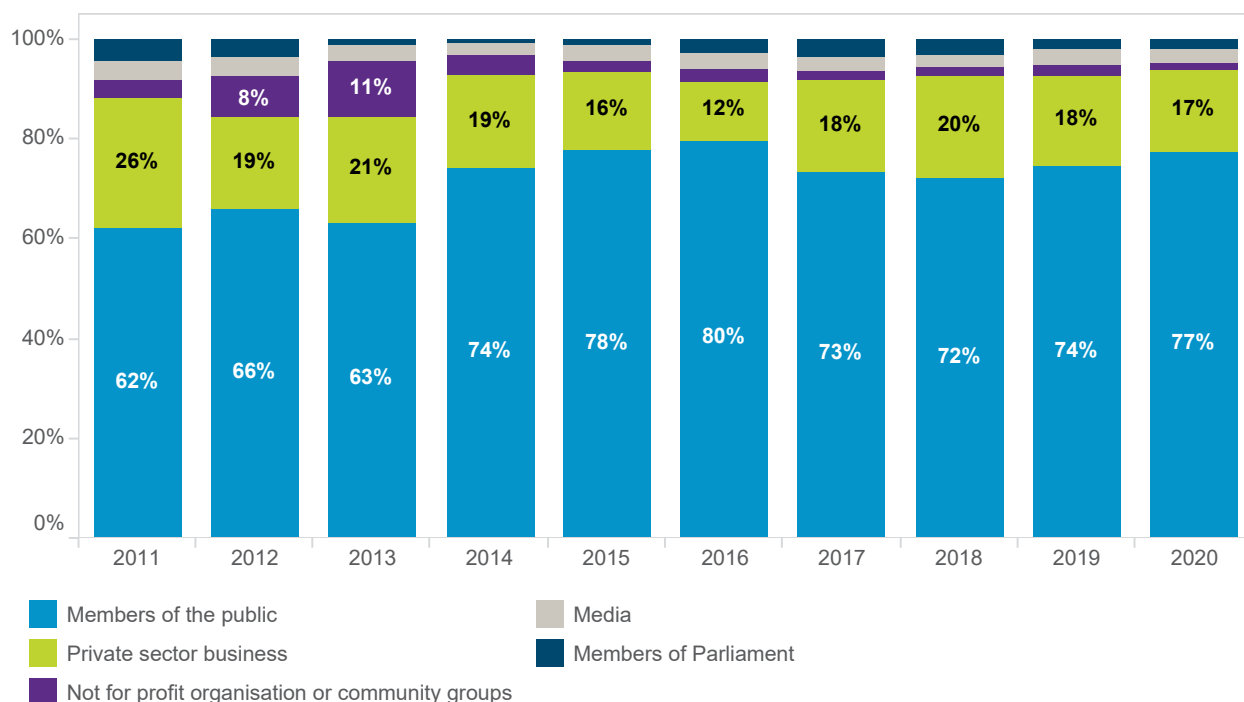
Agencies must undertake the steps set out in section 52 to assist a person to make a valid application. If the application is invalid because the applicant has failed to provide required information, the agency must invite the applicant to provide the information. The application becomes a valid access application if the applicant provides the required information.

# Who applied?

## Most application outcomes continue to be by, or on behalf of, members of the public

In 2019/20, 77% of all outcomes related to applications from either a member of the public or their legal representative. This is consistent with the 74% reported in 2018/19. Within this group, the largest single applicant type (37%) was members of the public represented legally.

Figure 13: Trend in the proportion of outcomes, by type of applicant, 2010/11 to 2019/20



## There were increased outcomes for members of the public and members of Parliament

In 2019/20 (as in all years), the greatest number of outcomes was for applications by members of the public, which increased by 12%, a significant increase compared with 2018/19 (from 12,244 in 2018/19 to 13,690 in 2019/20) (Figure 14).

Outcomes for legally represented members of the public (37%) remained consistent with the results recorded in 2018/19 and 2017/18 (38% respectively).

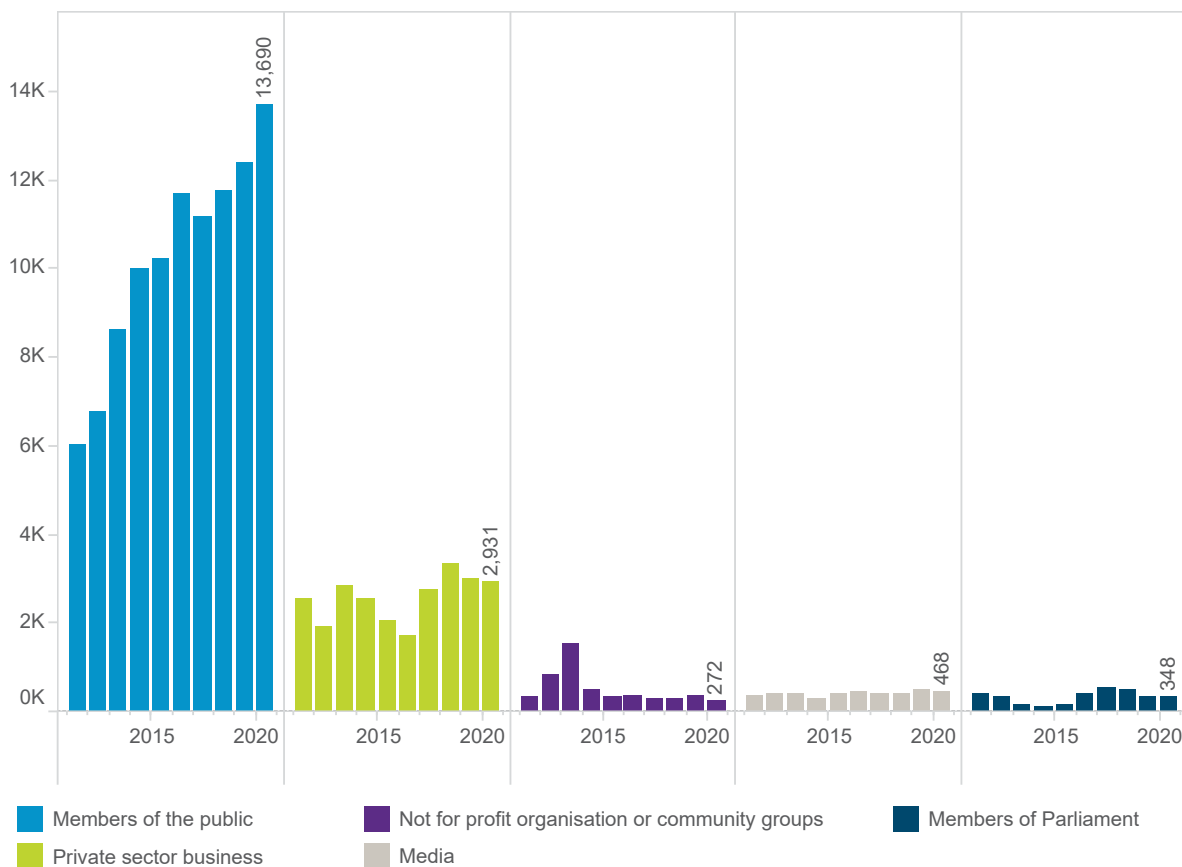
The number of outcomes for media and private sector businesses remained stable.

The number of outcomes for not-for-profit organisations or community groups decreased significantly, declining by 26% (from 369 in 2018/19 to 272 in 2019/20).

The number of outcomes for members of Parliament increased significantly, rising by 16% (from 300 in 2018/19 to 348 in 2019/20).

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

Figure 14: Number of outcomes by type of applicant, 2010/11 to 2019/2020



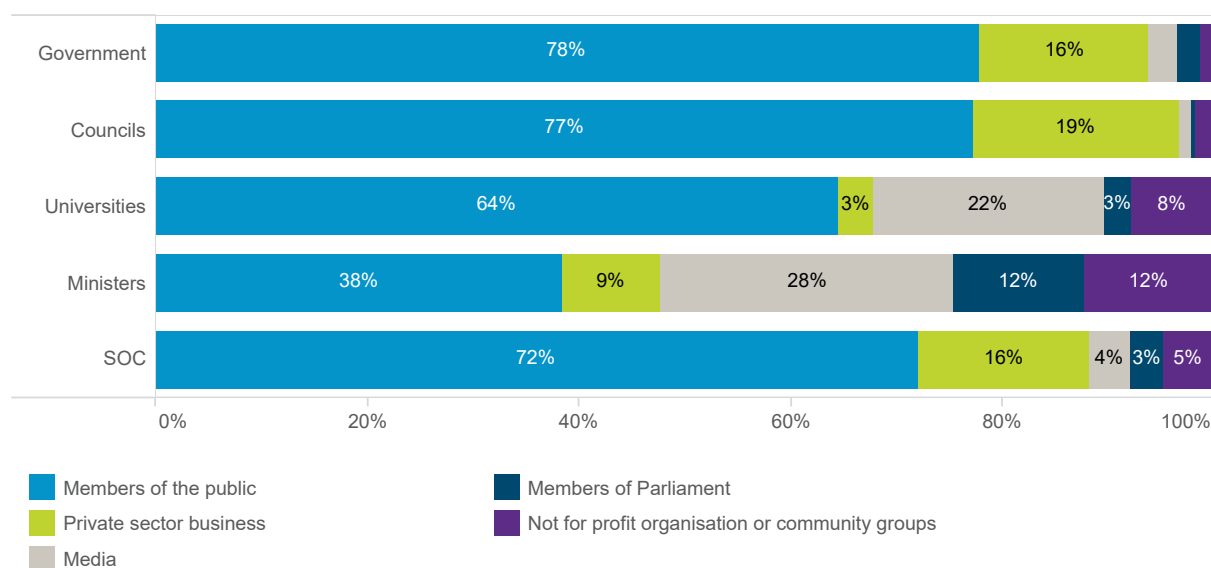
## Significant changes in applicant type were experienced in the University, Minister and State-Owned Corporations sectors

In 2019/20, the distribution of applicant types varied markedly across sectors (Figure 15). Percentages remained stable in the Government and Council sectors.

Notable changes by sector since 2018/19 were:

- University sector – a significant decrease in the percentage of outcomes related to members of the public, from 86% to 64% and a significant increase in the percentage of outcomes related to the media, from 2% to 22%
- Minister sector – a moderate decrease in the percentage of outcomes related to not-for-profit organisations, from 22% to 12%
- State-Owned Corporations sector – a moderate increase in the percentage of outcomes related to members of the public, from 66% to 72% and a moderate decrease in outcomes related to private sector business, from 23% to 16%.

Figure 15: Percentage of outcomes by sector and type of applicant, 2019/20



### Issue Highlight: Out of Home Care Leavers Checklist – an aid to care leavers making an application for information about their out-of-home care

In June 2020, the IPC published the checklist - [Care Leavers: Making an application for out-of-home care records under the GIPA Act](#).

The checklist was developed for use by out-of-home care leavers (OOHC) who are seeking access to their records under the GIPA Act. The GIPA Act entitles individuals to seek access to care records held by NSW public sector agencies, but also requires an applicant to clearly describe the information that they are seeking.

The checklist is complementary to *Information Access Guideline 8 – Care Leavers’ access to their out of home care records*. That Guideline was released in 2019 in response to an identified need to ensure agencies understood and considered all of the factors in favour of disclosure of these important records.

For Aboriginal and Torres Strait Islander persons who have been forcibly removed from their families and communities, access to care records is important to provide access to basic family information, and information about their communities.

The checklist responds to the unique challenges faced by care leavers seeking access to their care records. These records can capture a long period of time in OOHC. Sometimes a care leaver may not remember many details about their care, placement or provider. Historical care records may have been destroyed or lost.

If an application does not clearly identify the information the individual is seeking, it may be difficult for an agency to identify and locate the records. For these reasons it is essential to ensure that the application is structured in a way that clearly identifies the information sought and meets all of the requirements of the GIPA Act. The care leaver checklist provides guidance to assist an applicant to achieve a better outcome when making an access application for their NSW OOHC records under the GIPA Act.

# What information was asked for?

## Partly personal applications outcomes increased significantly

As Figure 16 shows, in 2019/20:

- Outcomes that were partly personal information and partly other information increased significantly by 22% (from 1,499 outcomes in 2018/19 to 1,828 in 2019/20). This continues the trend observed in the previous year, resulting in a 59% increase over the two years between 2017/18 and 2019/20
- Personal information application outcomes increased by 14% (10,085 outcomes in 2019/20 compared with 8,870 in 2018/19)
- ‘Other than personal information’ outcomes remained consistent with the previous year (5,812 outcomes in 2019/20 compared with 6,075 in 2018/19).

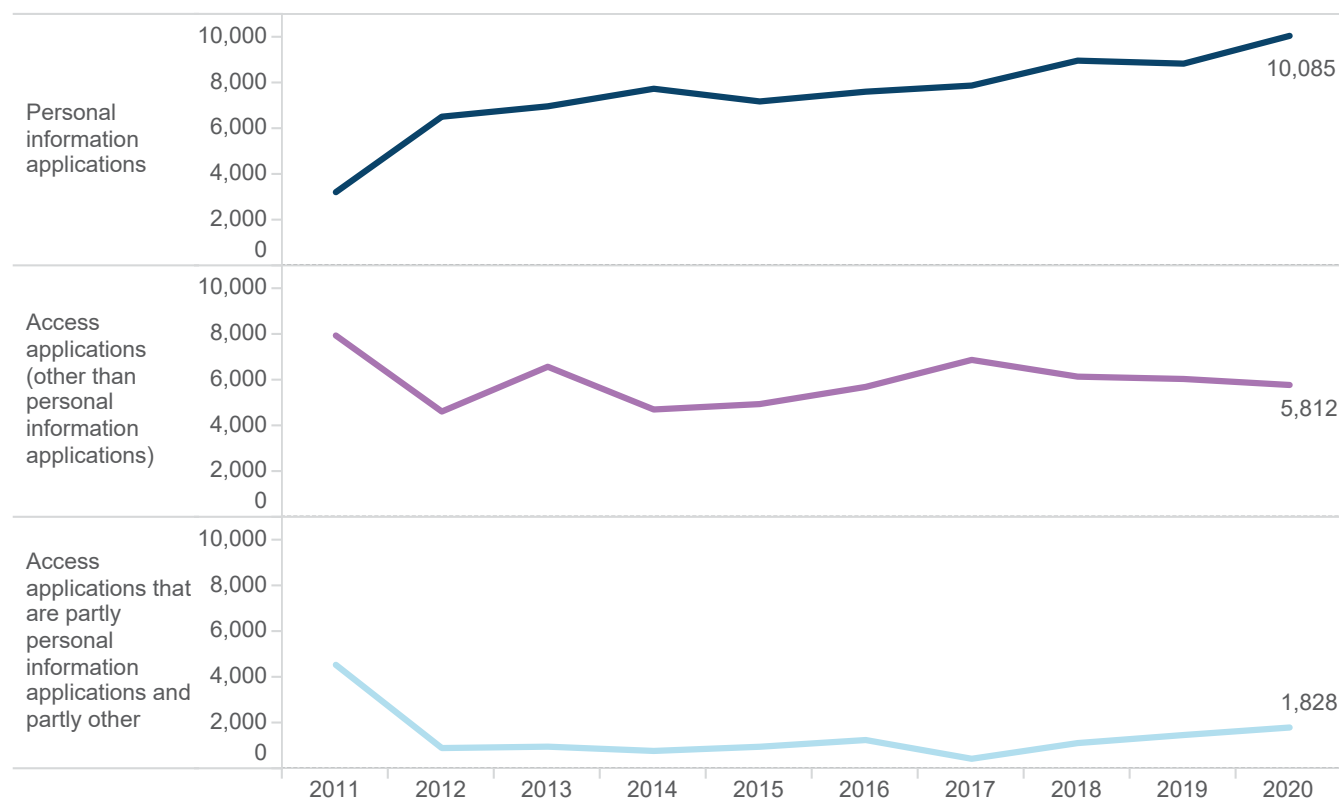
## The type of information sought varied across sectors, and in the University sector applications for personal information significantly decreased

Notwithstanding the significant increase in the number of outcomes for partly personal information, the percentage of outcomes remained consistent with previous years.

In 2019/20:

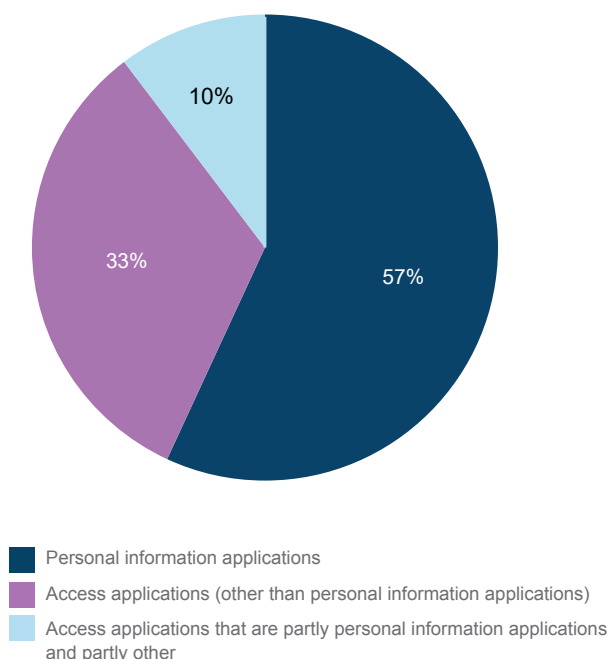
- 57% of outcomes related to applications for personal information, compared with 54% in 2018/19
- 33% of outcomes related to applications for ‘other than personal information’, compared with 37% in 2018/19
- 10% of outcomes related to applications for both types of information, compared with 9% in 2018/19 (Figure 17).

Figure 16: Number of outcomes by type of information applied for, 2010/11 to 2019/20



*‘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.*

**Figure 17: Outcomes by type of information applied for, 2019/20**

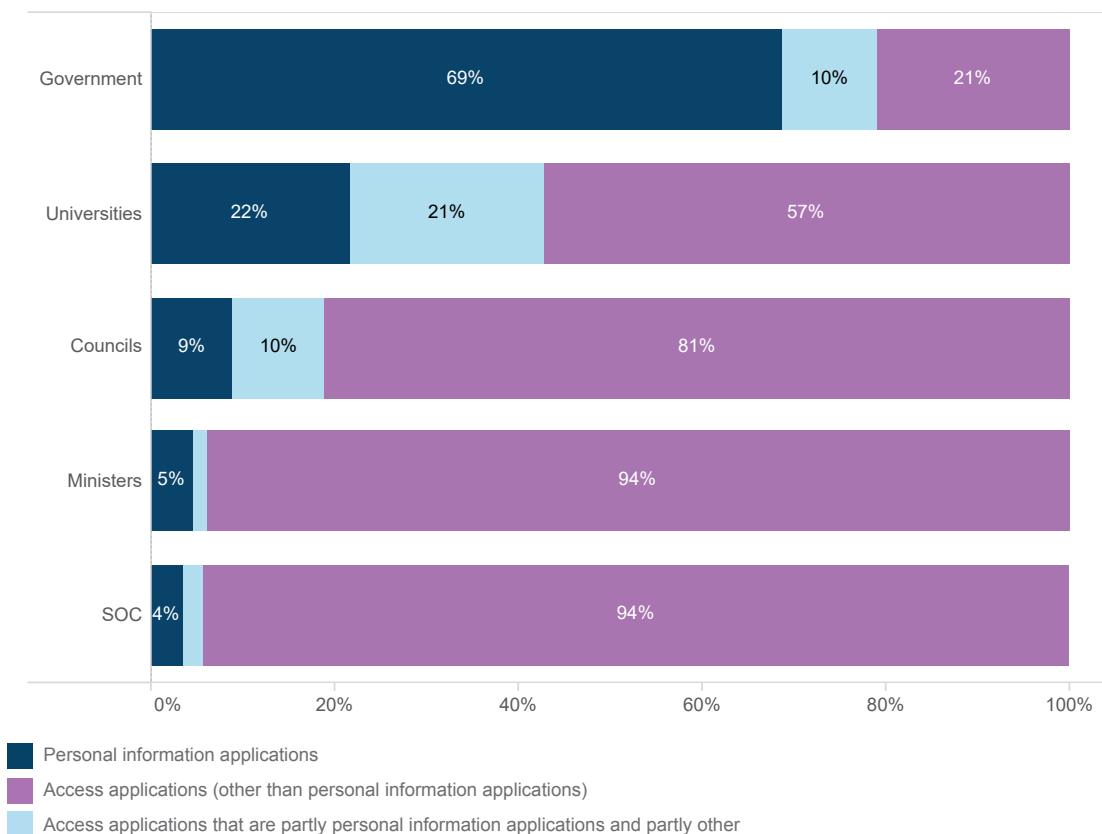


Different sectors experienced different patterns of outcomes in 2019/20, however these patterns remain consistent with those reported in 2018/19 for all sectors except the University sector.

In 2019/20:

- In the University sector, 22% of outcomes related to applications for personal information compared with 48% in 2018/19. A corresponding increase was reported in outcomes related to applications for 'other than personal information', rising to 57% in 2019/20 compared with 41% in 2018/19, and outcomes related to applications for 'partly personal information and partly other information' rising to 21% in 2019/20 compared with 11% in 2018/19
- The number of applications for 'other than personal information' in the State-Owned Corporations sector remained consistent with 2018/19, accounting for 94% of all outcomes in this sector
- In the Council sector, 81% of outcomes related to applications for 'other than personal information', consistent with results for 2018/19 and 2017/18
- In the Minister sector, 94% of outcomes related to applications for 'other than personal information', consistent with results for 2018/19 and 2017/18
- In the Government sector, 69% of outcomes related to applications for personal information, consistent with results for 2018/19 and 2017/18 (Figure 18).

**Figure 18: Percentage of all outcomes by type of information applied for, 2019/20**



## Issue Highlight: Responding to digital government with contemporary regulatory advice

In May 2020, the Information Commissioner released a new fact sheet – [Digital Records and the GIPA Act](#).

The fact sheet was developed to provide guidance about the definition of a record and in particular digital records under the GIPA Act and what it means for agencies.

As technology continues to evolve and government increasingly adopts and utilises new technologies and digital platforms to carry out their functions or deliver services, understanding what is a record under the GIPA Act is central to enabling access rights by applicants.

Agencies should be aware that the GIPA Act encompasses all information held by a government agency, including records held in digital form. Where agencies use digital technologies to conduct their business whether within or externally, an agency is creating digital records. Agencies need to determine how these records are to be captured, stored and make them available if required under the GIPA Act.

In summary, the fact sheet addresses:

- What a record is under the GIPA Act
- Types of digital records
- When a digital record is not government information under the GIPA Act
- When a digital record is not held
- Managing digital records
- Record keeping and the GIPA Act.

In developing the fact sheet, the IPC collaborated with the State Records and Archive Authority (SARA). Importantly the SARA oversees the creation and preservation of government records and without those records there would be no government information to access.



# Did applicants get what they asked for?

## Overall 'release rates' are stable

In 2019/20, the overall release rate was 69%, representing the combined access granted in full and in part outcomes (Figure 19). This is similar to the combined release rate of 70% in 2018/19 and 68% in 2017/18. After reaching a peak of 80% in 2012/13, the combined release rate has remained static at an average of 69% over the six years since 2014/15.

Release rates were stable across all sectors with the exception of the Minister sector.

At the sector level (Figure 20), in 2019/20 the State-Owned Corporations sector had the highest release rate of 82%, consistent with 82% in 2018/19 and 84% in 2017/18.

For the Council sector, 77% of outcomes granted access in full and in part in 2019/20, consistent with 78% in 2018/19.

For the Government sector, 68% of outcomes resulted in access being granted in full and in part in 2019/20. This is consistent with 68% in 2018/19 and 67% in 2017/18.

For the University sector, 61% of outcomes granted access in full and in part in 2019/20, similar to 64% reported in 2018/19.

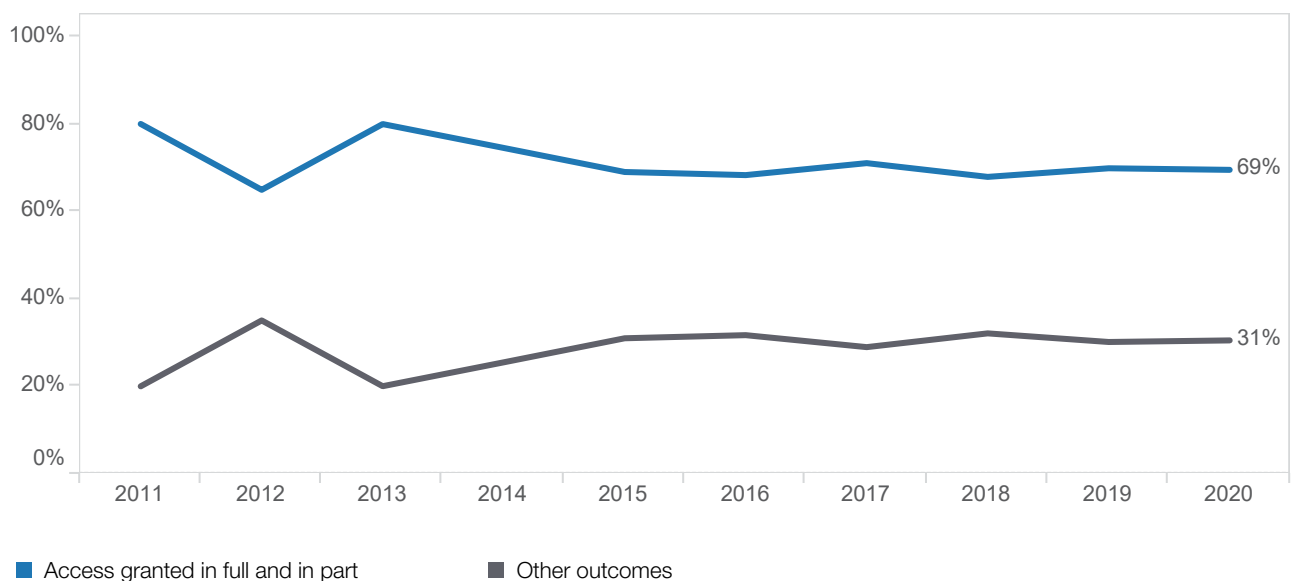
For the Minister sector, 46% of outcomes resulted in access being granted in full and in part in 2019/20, a moderate increase from 39% in 2018/19. This outcome should be considered in the context of information holdings and the overall low numbers of applications (60) received by the Minister sector.

## Applicants were more likely to be granted access in part than access in full

In 2019/20, 29% of all outcomes granted access in full (Figure 21). This rate has remained stable since 2014/15, with an average 29% of all outcomes granted access in full across the six years to 2019/20.

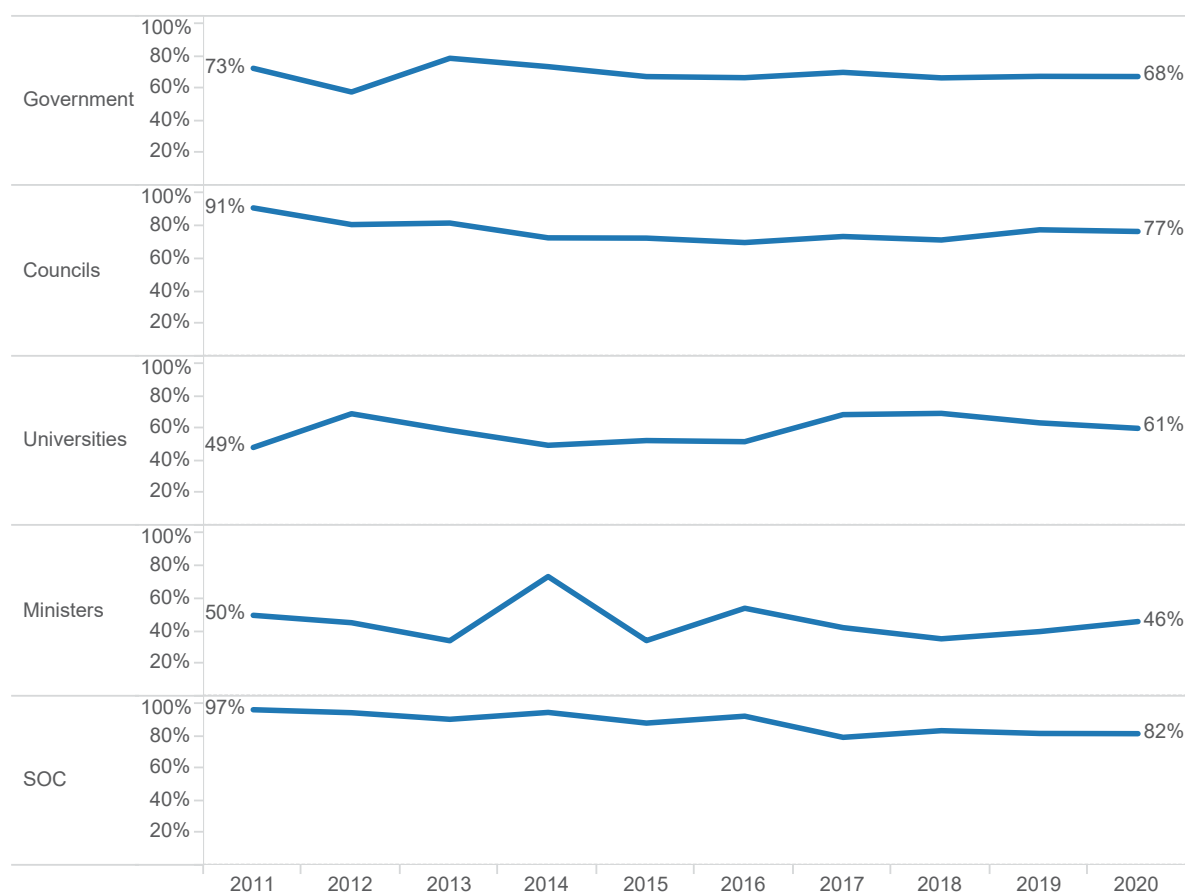
Access granted in part outcomes were similar to previous years at 40%. For each year since 2012/13 there have been more outcomes granting access in part than granting access in full.

Figure 19: Overall release rate across all sectors, 2010/11 to 2019/20



*'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 20: Overall release (access granted in full and in part) rate by sector, 2010/11 to 2019/20**



**Figure 21: Release outcomes across all sectors, 2010/11 to 2019/20**

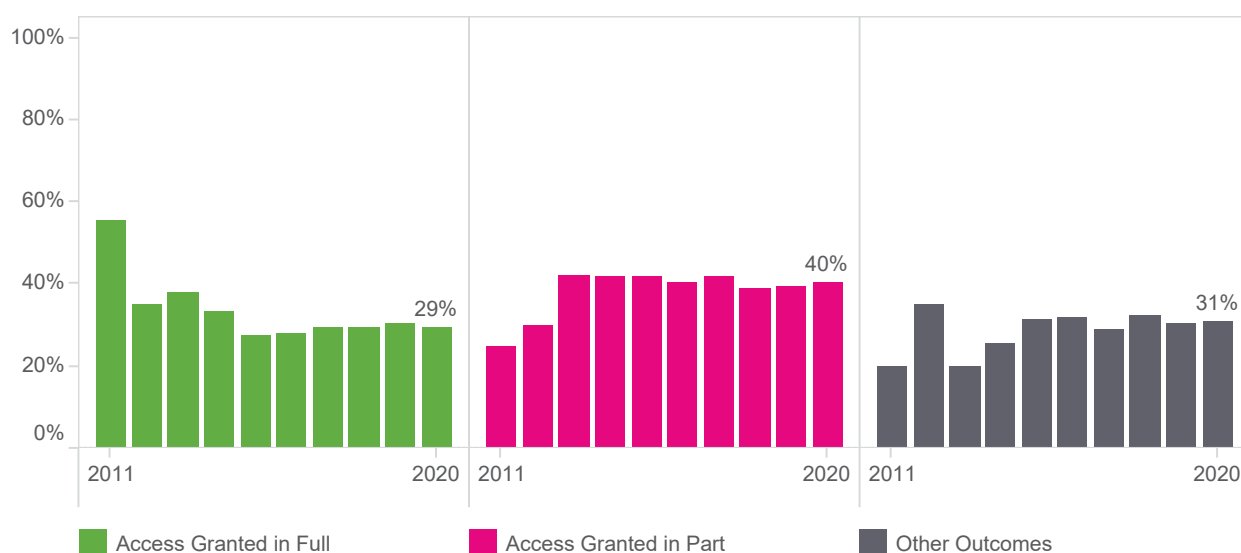
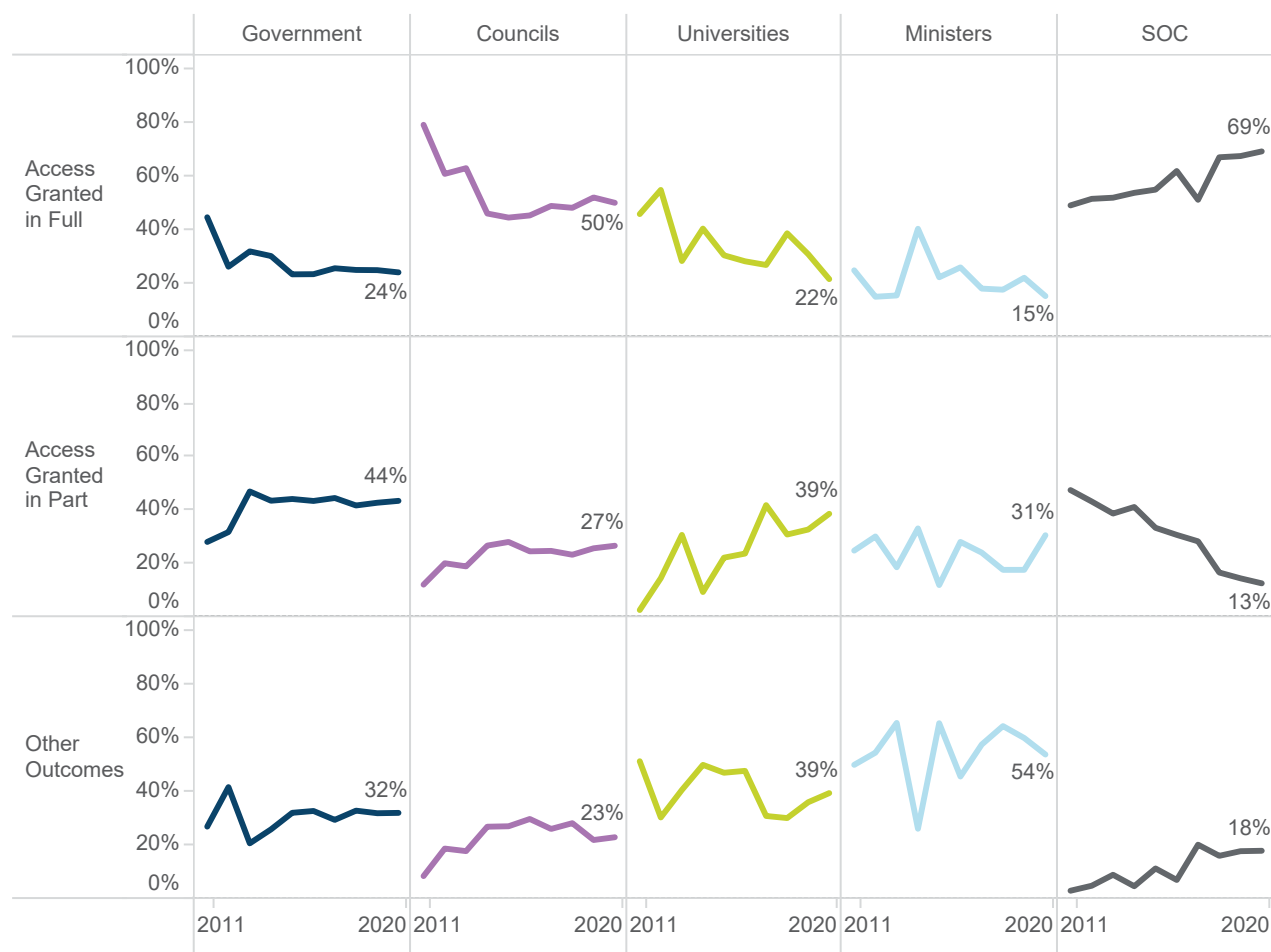


Figure 22: Release outcomes by sector, 2010/11 to 2019/20



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

The overall release rates remained stable for all applications types: personal information, 'other than personal information' or partly personal and partly other.

The overall release rate for 'other than personal information' was stable at 69% in 2019/20, compared with 71% in 2018/19. The overall release rate for applications for personal information remained stable at 71% in 2019/20, compared with 70% in 2018/19. Similarly, the overall release rate for applications that sought partly personal and partly other information was stable at 63% in 2019/20, compared with 65% in 2018/19 (Figure 23).

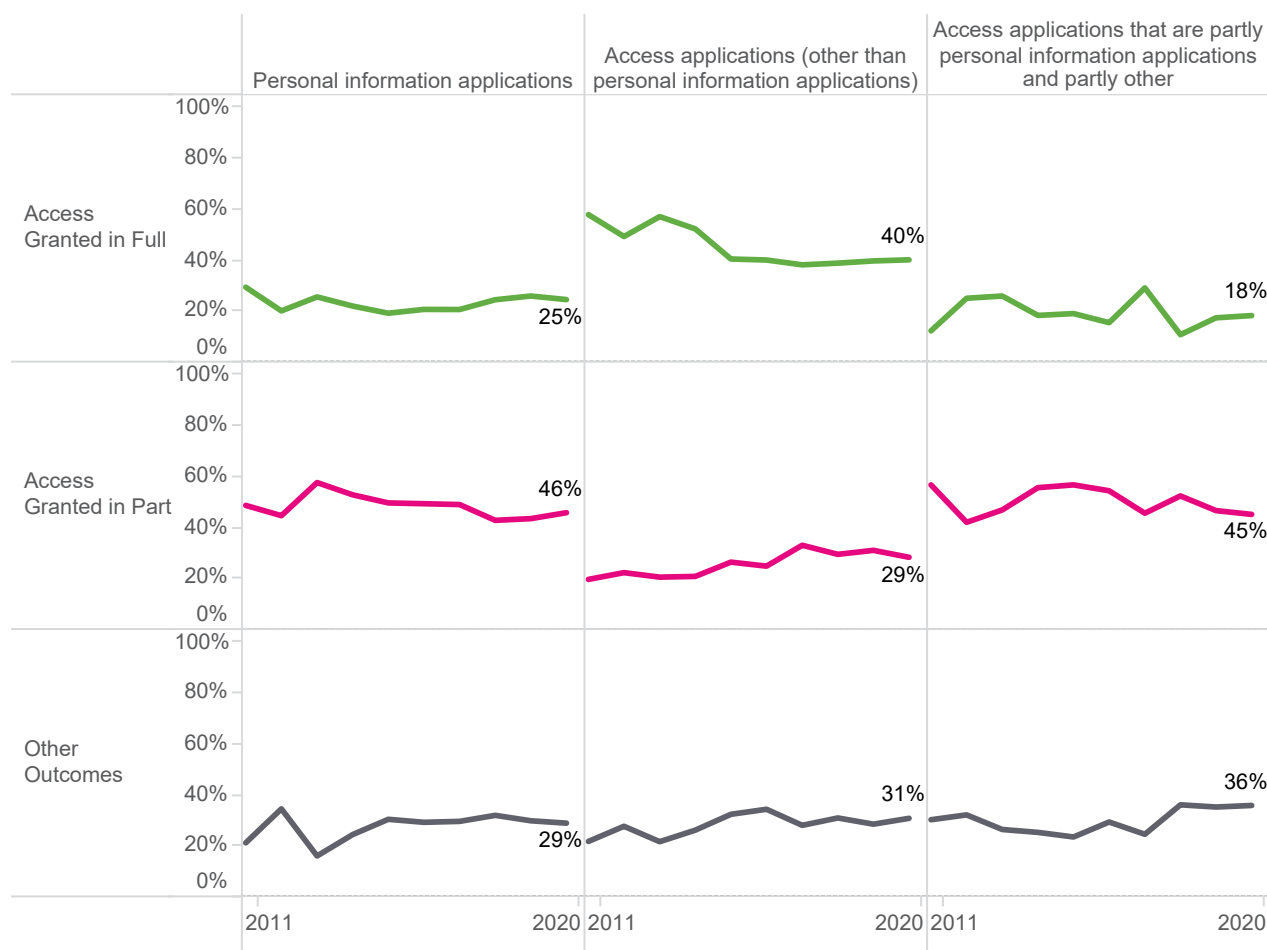
## Release rates by applicant type remain stable

The lowest overall release rate (53%) was for applications made by members of Parliament, consistent with 56% in 2018/19.

The highest release rate in 2019/20 was for applications made by private sector business (75%), consistent with results for 2018/19 (76%). This is reflective of a continuing increase in the release rates for private sector businesses.

The release rate for members of the public was 70%, consistent with 70% in 2018/19 and 68% in 2017/18. The overall release rate for members of the media remained stable at 56%, consistent with the 59% reported in 2018/19 (Figure 24).

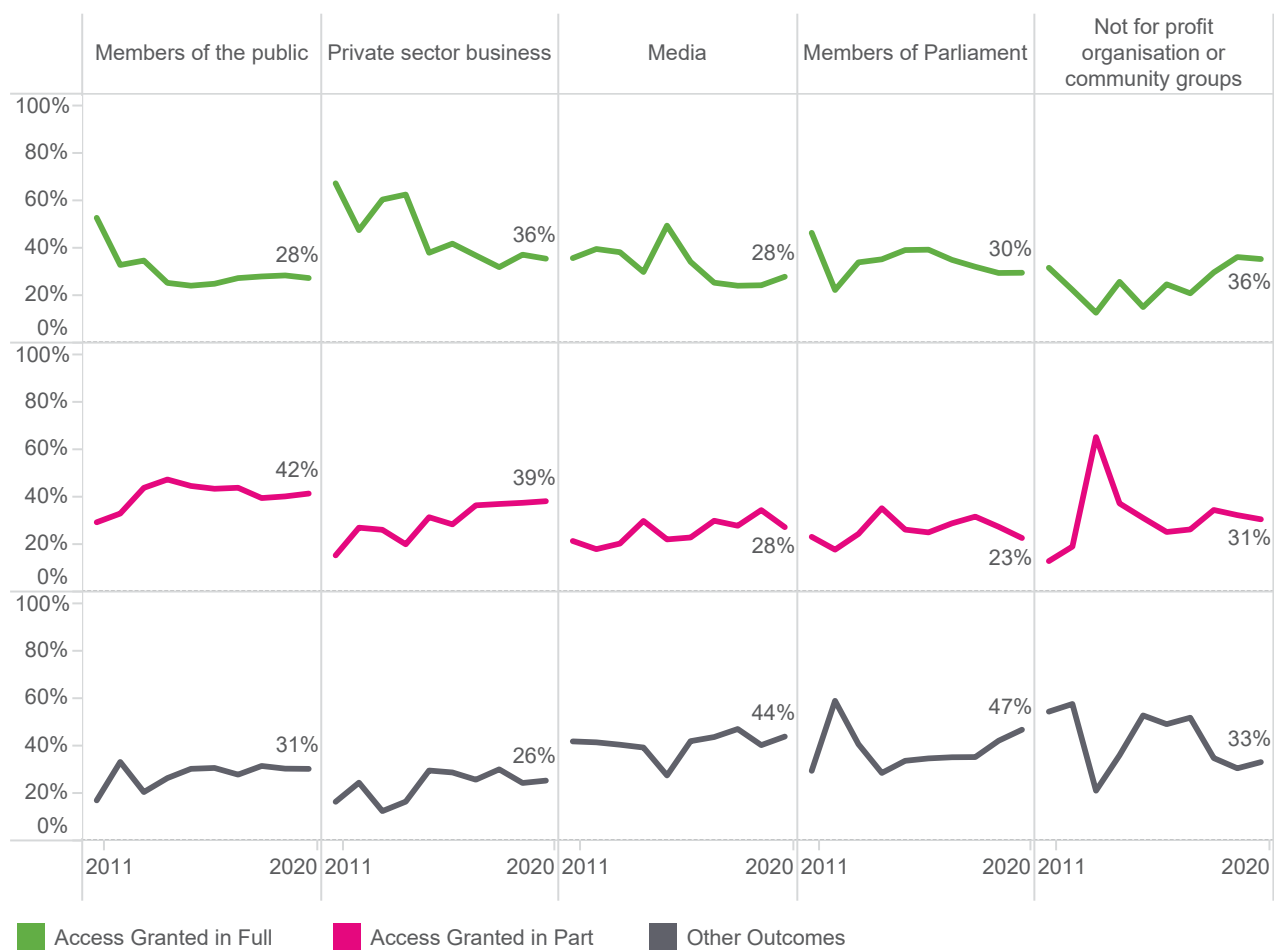
Figure 23: Release outcomes by application type, 2010/11 to 2019/20



Consistent with overall release rates, the composition of outcomes remained relatively stable in 2019/20:

- For members of the public, 28% of outcomes granted access in full and 42% granted access in part. This is consistent with outcomes reported in 2018/19 and 2017/18.
- For private sector business, 36% of outcomes granted access in full, and 39% granted access in part, consistent with results for 2018/19.
- For media, 28% of outcomes granted access in full, consistent with 2018/19. There was a moderate decrease in access granted in part, from 34% in 2018/19 to 28% in 2019/20.
- For members of Parliament, 30% of outcomes granted access in full, and 23% of outcomes granted access in part, consistent with results for 2018/19.
- For not-for-profit organisations, 36% of outcomes granted access in full, and 31% granted access in part, consistent with results for 2018/19.

Figure 24: Outcomes by applicant type, 2010/11 to 2019/20



# How quickly were decisions made?

## Overall timeliness of decisions has remained relatively stable and deemed refusals have declined

In 2019/20, 91% of decisions by agencies were made within the statutory time frame (Figure 25). While this result is similar to timeliness in 2018/19 (87%), it is the first increase in timeliness recorded in the past four years.

The rate of deemed refusals in 2019/20 was 3% compared to the 8% reported in 2018/19. This decrease is of note, given the steady increase in deemed refusals previously reported between 2015/16 and 2018/19 and in the context of the 9% increase in valid applications received in 2019/20.

## Timeliness has improved across most sectors

In 2019/20 (Figure 26) the:

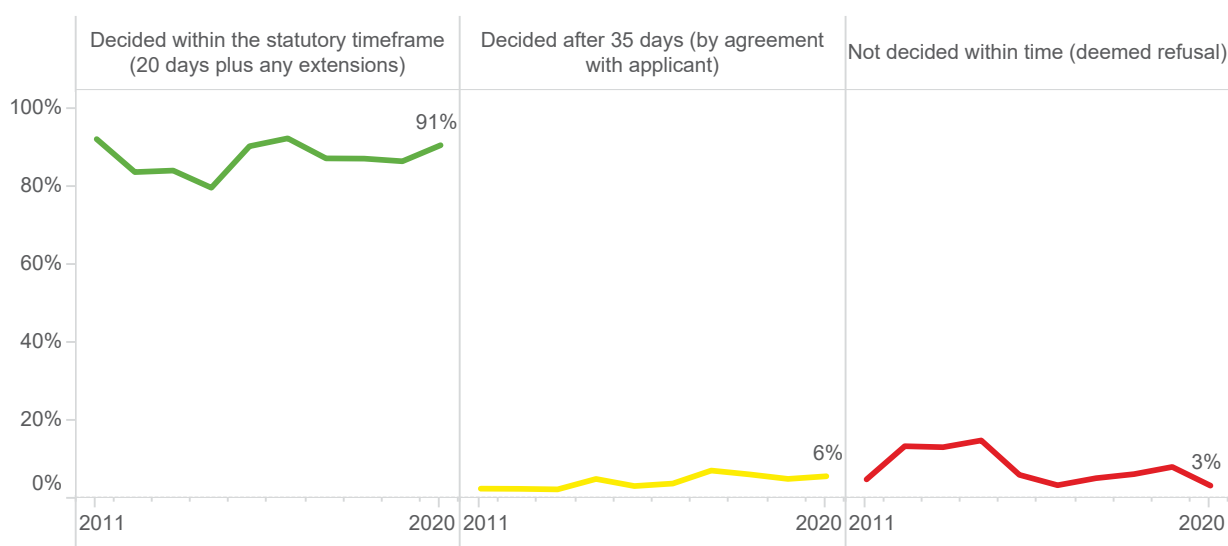
- Government sector decided 91% of applications within the statutory time frame, a moderate but convincing increase from the 85% reported in 2018/19
- Council sector decided 94% of applications within the statutory time frame, consistent with 95% reported in 2018/19, with this sector consistently deciding 90% or more applications within time since 2010/11

- University sector decided 74% of applications within the statutory time frame, a moderate increase in timeliness from the 64% reported in 2018/19
- Minister sector decided 93% of applications within the statutory time frame, a moderate increase from 85% in 2018/19
- The State-Owned Corporations sector decided 59% of applications within the statutory time frame, a significant decrease from the 88% reported in the previous year. This result may be attributable in part to the 19% increase in applications received by this sector in 2019/20.

After a sustained period of declining timeliness between 2015/16 (92%) and 2018/19 (73%), the NSW Police Force has reported a significant increase in timeliness in 2019/20 (91%). It is noted that this improvement has occurred within the context of a 14% increase the number of valid applications received by the agency (page 28).

Timeliness was maintained at high levels for the Department of Education, Department of Premier and Cabinet, Department of Communities and Justice, Safework NSW, Transport for NSW and NSW State Emergency Service.

**Figure 25: Applications that were decided within the statutory time frame as a percentage of all applications decided, 2010/11 to 2019/20**



Timeliness improved moderately for:

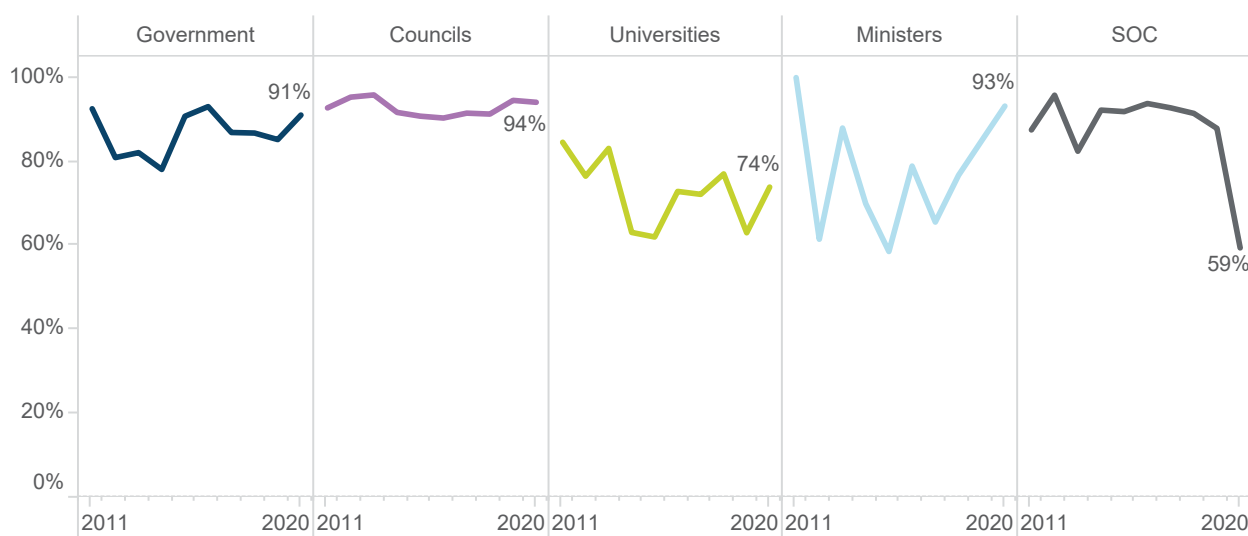
- NSW Treasury from 89% in 2018/19 to 96% in 2019/20
- Department of Customer Service from 63% in 2018/19 to 71% in 2019/20.<sup>8</sup>

Of the principal departments, only the Ministry of Health reported a decline in timeliness. In 2019/20, 85% of applications were decided within the statutory time frame, a moderate decline from 93% in 2018/19.

These improvements in timeliness may also be reflective of improved processes for dealing with applications. In particular, the implementation of electronic lodgement and automated management systems by some larger agencies may have resulted in the efficiencies envisaged by investment in technology. Additionally, the review of business processes prior to deployment of technology may also facilitate process improvement.

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

**Figure 26: Applications that were decided within the statutory time frame, as a percentage of all applications decided, by sector, 2010/11 to 2019/20**



*'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.*

<sup>8</sup> Data for 2018/19 relates to the Department of Finance Services and Innovation. This agency was replaced by the department of Customer Service on 1 July 2019.

# How was the public interest test applied?

This section examines:

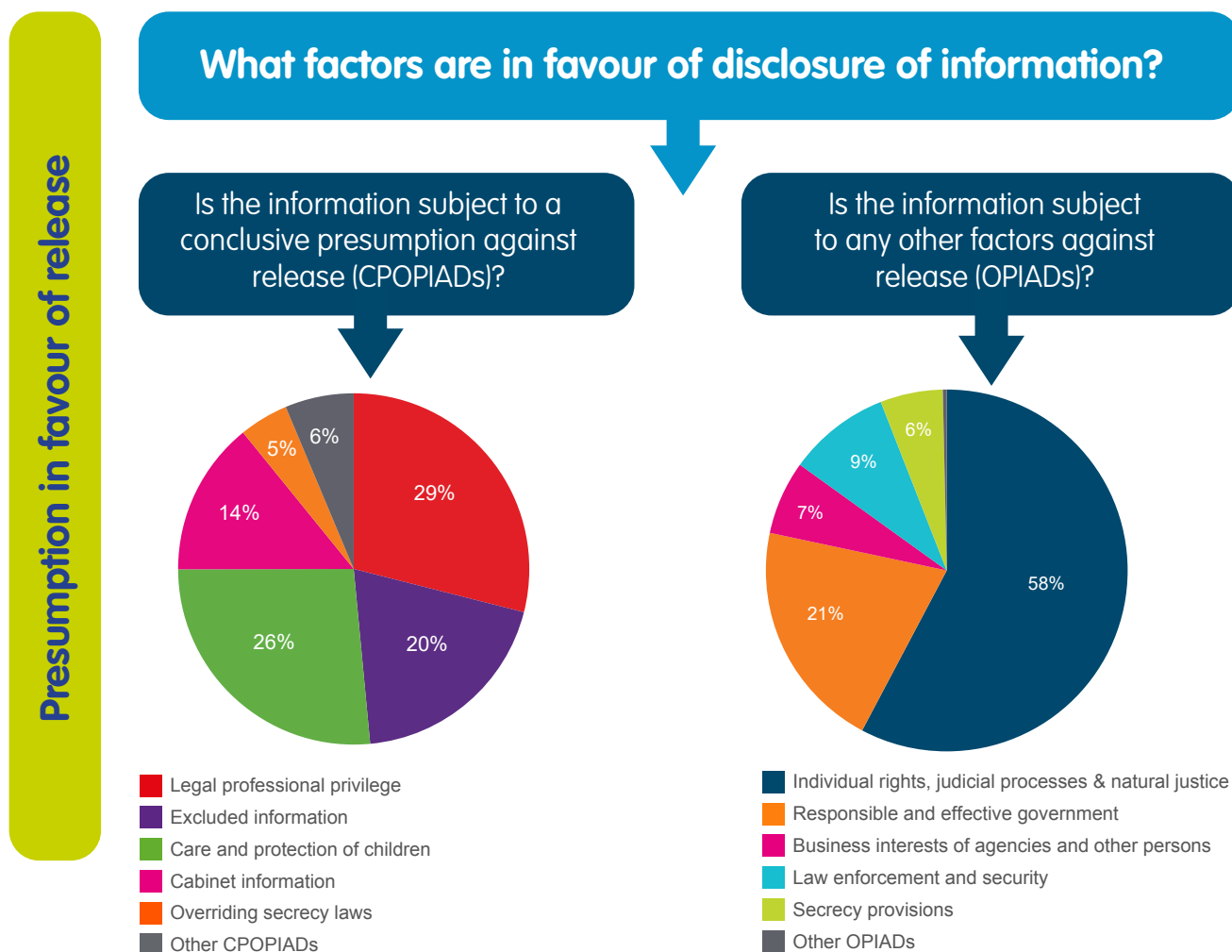
- the number of applications that were refused because of a conclusive presumption of overriding public interest against disclosure (CPOPIAD)
- which categories of CPOPIADs were applied
- the use of categories of considerations for which there is an overriding public interest against disclosure of information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

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

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

In 2019/20, 841 applications (or 5% of total applications received) were refused wholly or partly because of a CPOPIAD. This is consistent with previous years.

Figure 27: A snapshot of the use of CPOPIADs and OPIADs 2019/20



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



## Legal professional privilege continues to be the most applied CPOPIAD

In 2019/20, legal professional privilege remained the most applied CPOPIAD across all sectors (Figure 28). This CPOPIAD was applied 29% of all the times that CPOPIADs were applied. This is consistent with the 33% in 2018/19.

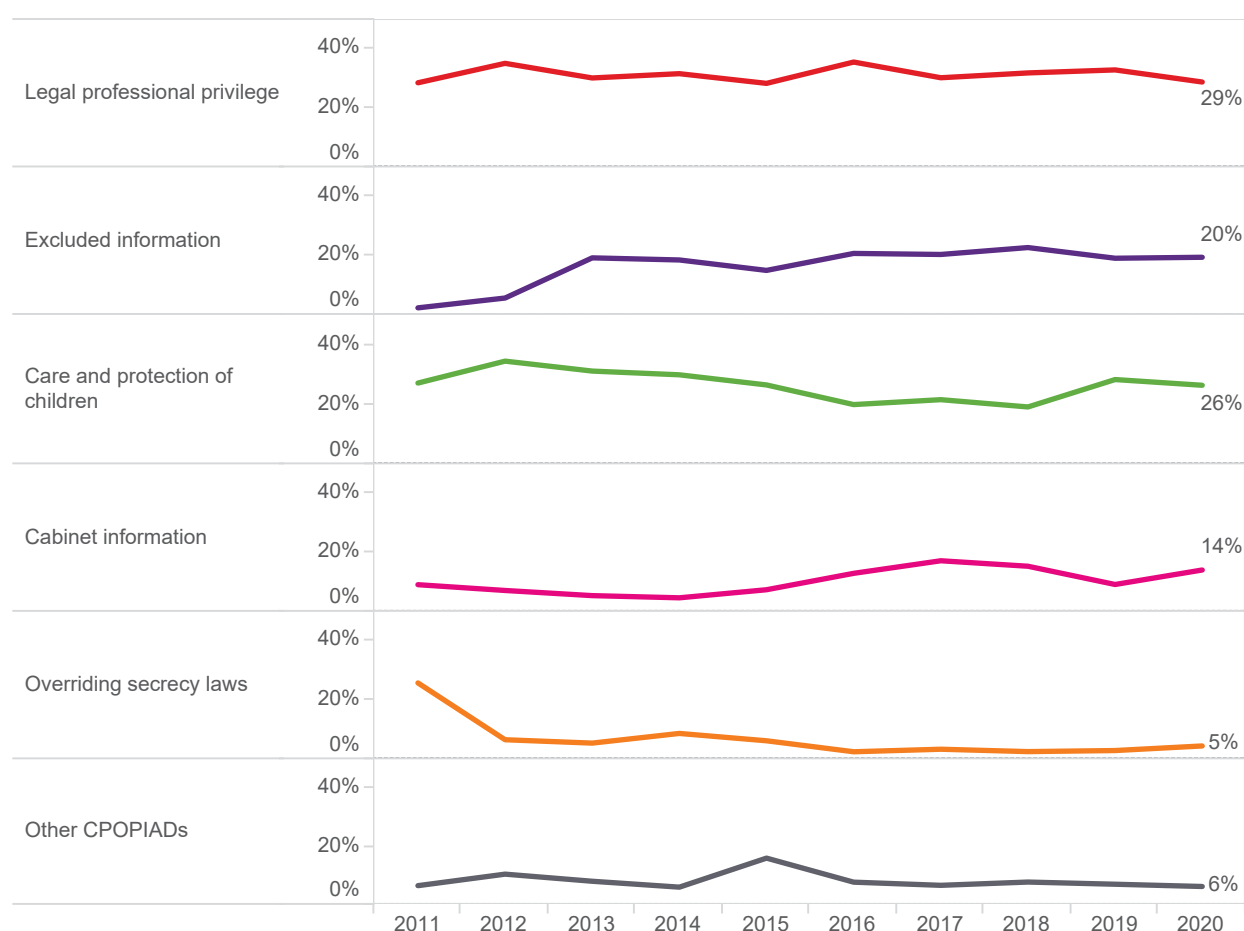
The care and protection of children consideration was the second most applied CPOPIAD, being applied 26% of the time, consistent with 28% in 2018/19.

The excluded information consideration was the third most applied CPOPIAD, being applied 20% of all the times that CPOPIADs were applied, compared with 19% in 2018/19.

The use of the Cabinet information consideration was applied on 14% of occasions in 2019/20, compared with 9% in 2018/19. Given the stability in other CPOPIAD application, this represents a notable increase. Application of this CPOPIAD was relatively stable over the first half of the past decade, where it fluctuated between 4% and 10%. Commencing in 2015/16, application of this CPOPIAD increased significantly, ranging between 13% and 17% with the exception of 2018/19 which saw a brief decline to 9%.

The increased reliance upon the Cabinet in Confidence consideration was most prevalent in the State-Owned Corporations sector which rose from 50% to 67%. In the Minister sector it rose from 20% in 2018/19 to 43% in 2019/20 and in the Government sector it increased from 10% to 14%.

Figure 28: Percentage distribution of the use of CPOPIADs, 2010/11 to 2019/20



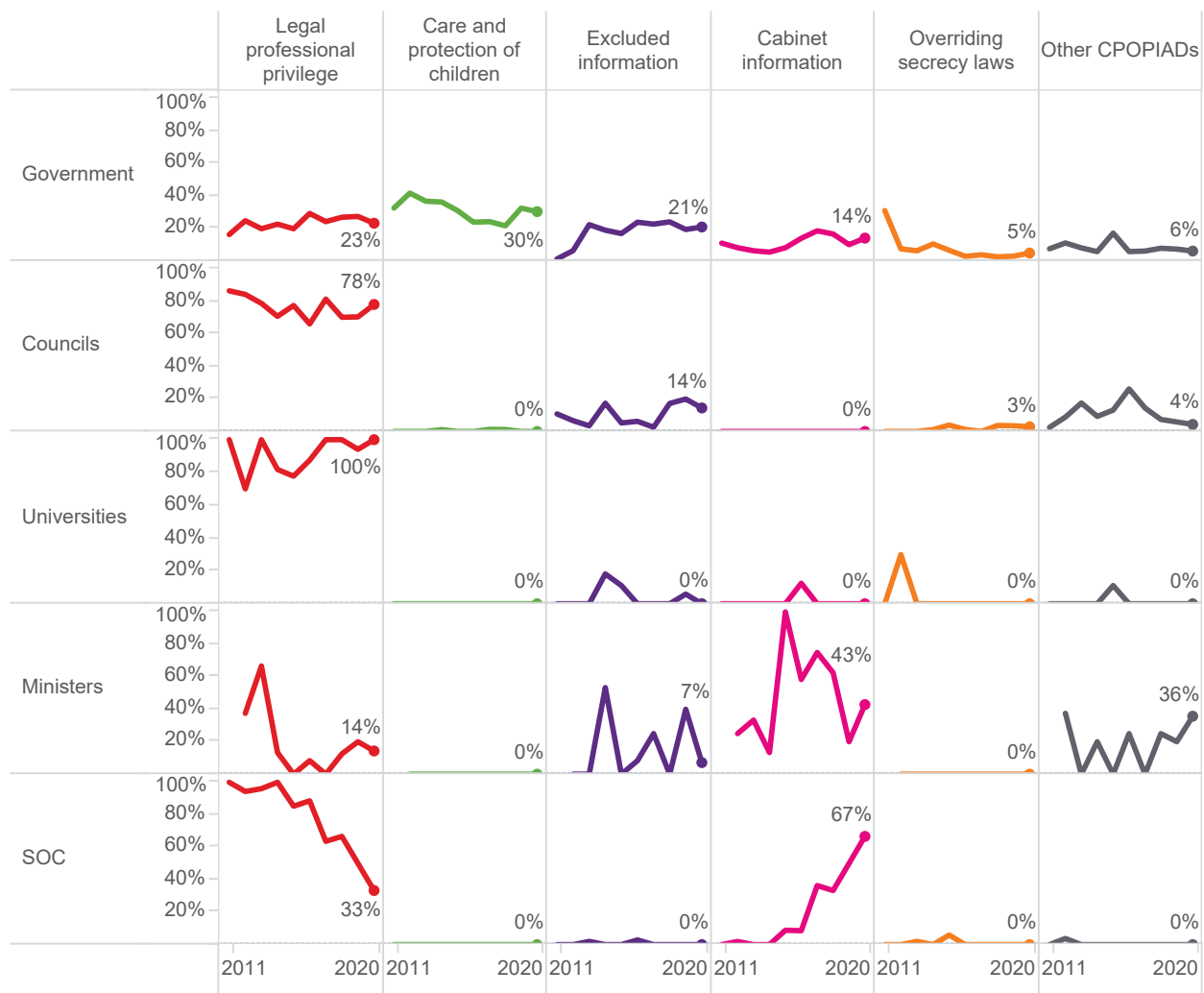
## The application of the legal professional privilege CPOPIAD remained high in the Council and University sectors

Consistent with 2018/19, the most applied CPOPIAD across the Council and University sectors in 2019/20 was legal professional privilege, accounting for 78% of cases in the Council sector and 100% in the University sector (Figure 29). The use of this CPOPIAD in the State-Owned Corporations sector decreased significantly from 50% in 2018/19 to 33% in 2019/20.

In the Government sector there was a greater diversity of CPOPIADs applied with the care and protection of children (30%) and excluded information CPOPIAD (21%) also used. The Department of Communities and Justice (formerly the Department of Family and Community Services) primarily applied the care and protection of children CPOPIAD. The NSW Police Force was the main agency that applied the excluded information CPOPIAD.

The Minister sector reported a significant increase in the use of Other CPOPIADs (36% in 2019/20 compared with 20% in 2018/19). In contrast, the use of the excluded information CPOPIAD decreased significantly (7% in 2019/20 compared with 40% in 2018/19).

Figure 29: Percentage distribution of CPOPIADs applied, by sector, 2010/11 to 2019/20



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

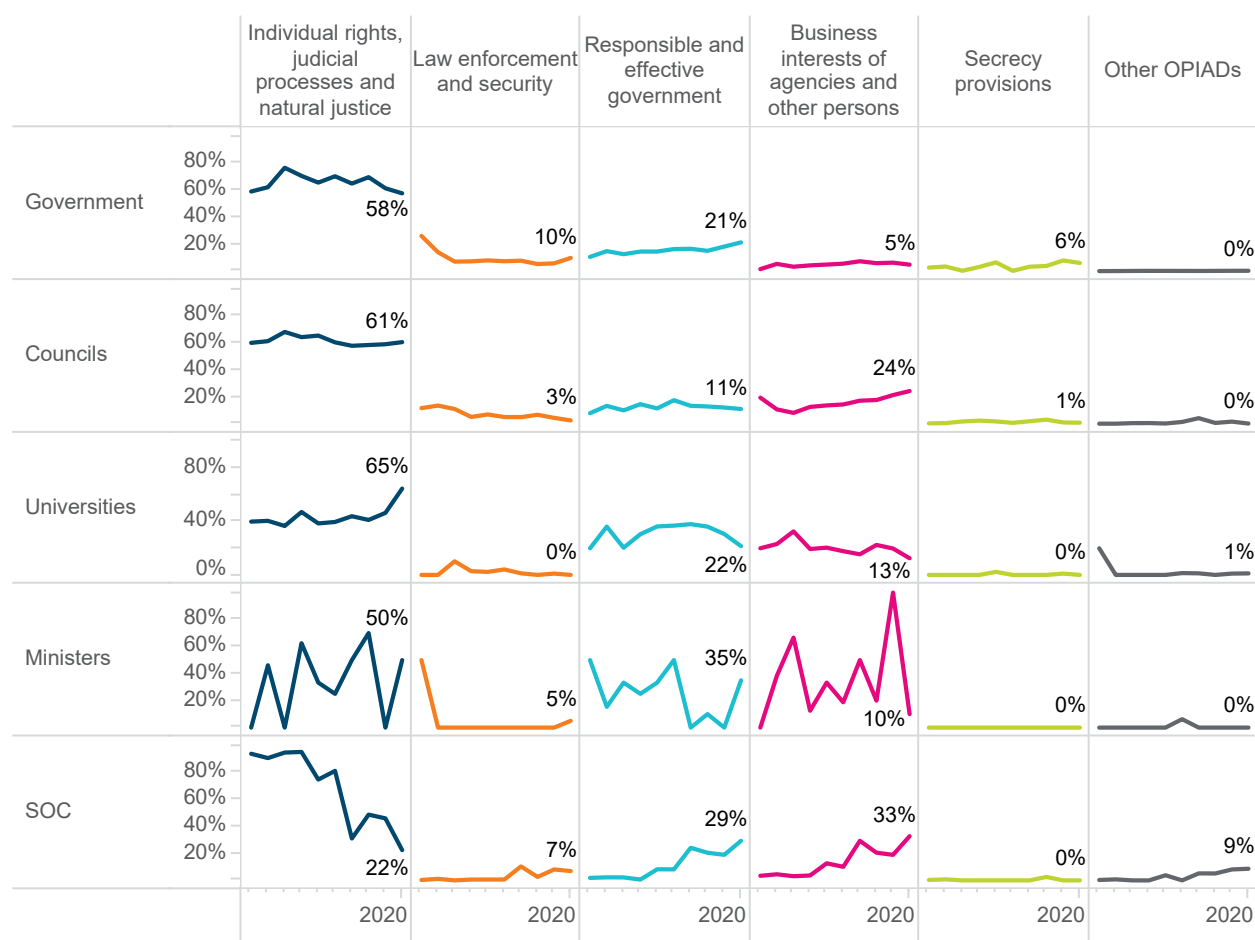
Consistent with 2018/19 and 2017/18, the most frequently applied OPIAD in 2019/20 was individual rights, judicial processes and natural justice across most sectors (Figure 30). Reliance on this OPIAD is consistent with all previous years since 2010/11.

This OPIAD was applied on 58% of occasions in the Government sector (Figure 30). For major agencies, the consideration was applied 94% of the time by Roads and Maritime Services, 63% by the Department of Education, 60% by the Department of Customer Service, 54% by the NSW Police Force and 53% by the Department of Communities and Justice.

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

Noting the trends in the application of OPIADS and intelligence from IPC internal data, the IPC will be developing resources concerning the personal information consideration in order to increase agency awareness of the definition of personal information as it applies to public officials. This will be included in the IPC's forward work program.

Figure 30: Percentage distribution of OPIADS applied, by sector, 2010/11 to 2019/20



### Issue Highlight: Does excluded information retain its character under the GIPA Act?

This case highlights information that is characterised as excluded information and the retention of that characterisation.

#### ***Betis v Commissioner of Police [2020] NSWCATAD 71***

The Tribunal reviewed the decision by the Commissioner of Police (respondent) to withhold a coronial brief of evidence provided to the NSW Coroner, and police investigation materials which had been sought under the GIPA Act. This information concerned the respondent's investigation into the death of the applicant's father, which had been referred to the Coroner.

The Tribunal affirmed the agency's decision that the information in a coronial brief to the NSW Coroner was excluded information under the GIPA Act. Information that is determined to be excluded information under the GIPA Act, but has been provided to the access applicant through another jurisdiction, retains its character as excluded information; and the fact it has been provided does not overcome this conclusive presumption of an overriding public interest against disclosure.

### Issue Highlight: Release of sensitive personal information to a third-party

#### ***AIG Australia Ltd & NM Insurance Pty Limited v Commissioner of Police, NSW Police Force [2020] NSWCATAD 84***

This case dealt with the release of sensitive personal information to a third-party insurer.

The Tribunal set aside the agency's decision not to release a certificate of blood sample analysis to the insurer, finding that the insurer's personal factors and motives for determining an indemnity claim outweighed the significant public interest against disclosure with respect to this personal information.

The Tribunal reviewed the decision by the Commissioner of Police (respondent) to withhold a certificate of analysis in respect of a blood sample analysis which had been sought by an access application under the GIPA Act. This information related to the respondent's investigation into the collision of a boating vessel, for which the access applicant was the insurer, and sought the information pursuant to a property damage and public liability policy held by the owner (the insured) of the vessel.

The respondent claimed the public interest considerations against disclosure in clauses 3(a) and 3(b), arguing that release of the certificate would reveal personal information, and that disclosure of the blood sample test could reasonably be expected to contravene an information privacy principle under the *Privacy and Personal Information Protection Act 1998* (PPIP Act).

The Tribunal was satisfied that the considerations in clauses 3(a) and 3(b) were made out. However, the Tribunal found that these public interest considerations against disclosure did not outweigh the public interest considerations in favour of disclosure, being the personal factors of the application in this case within the meaning of section 55 of the GIPA Act. The Tribunal attached significant weight to the evidence that a third party (a person on board the vessel) who was consulted by the respondent had made no response to the opportunity to contest the disclosure. The Tribunal gave substantial weight to the personal factors of the application and the insurer's valid reasons for seeking access to the blood test results. While the Tribunal also considered the fact that disclosure under the GIPA Act cannot be subject to conditions, this did not outweigh these personal factors. The information was released to the applicant.

# How were decisions reviewed?

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

This section reports on the:

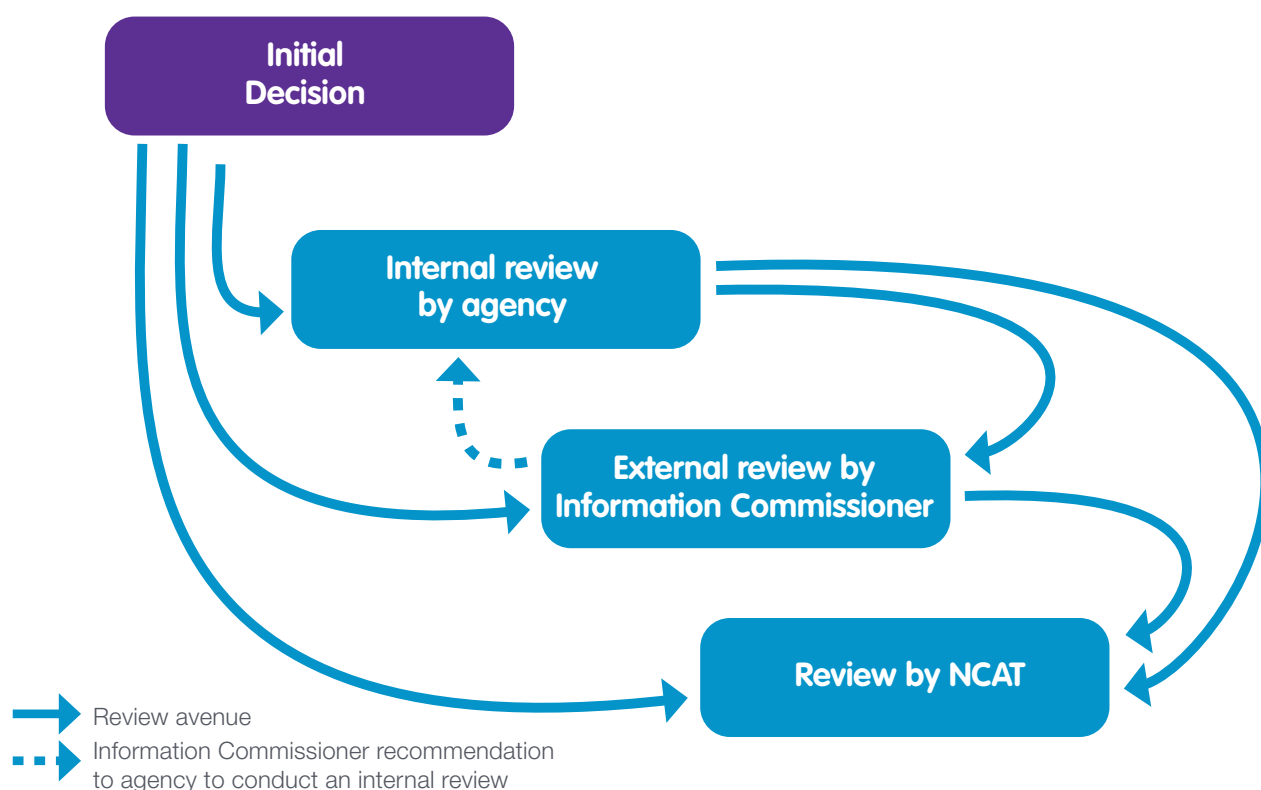
- number of reviews as a percentage of the number of relevant applications – a ‘review rate’
- number of reviews by type of review
- composition of reviews by type of review.

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

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 1,018 reviews were conducted in 2019/20. This is a moderate increase (12%) from the 913 reviews conducted in 2018/19. In this context it is noted that the total number of applications received in 2019/20 increased by 9%.

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

**Figure 31: The relationship between the review pathways in Part 5, GIPA Act**

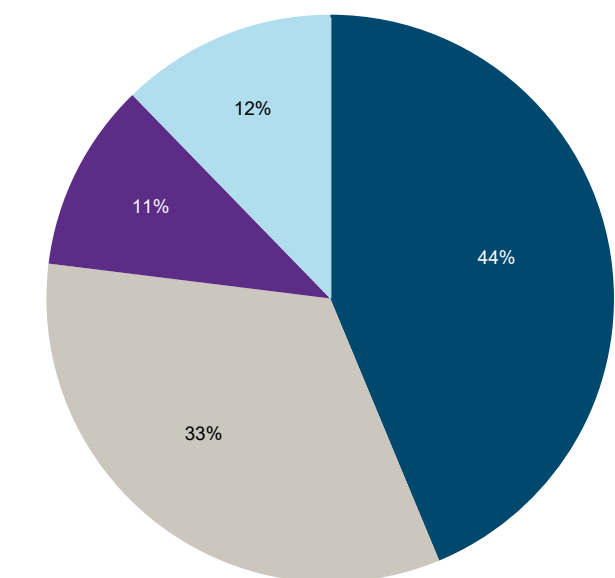


*‘How were decisions reviewed?’ is reported and measured by the requirement for agencies to report on the number of applications reviewed under Part 5 of the GIPA Act in Tables G and H of Schedule 2 to the GIPA Regulation.*

Figure 32: Agency, IPC and NCAT data on internal and external reviews, 2019/20

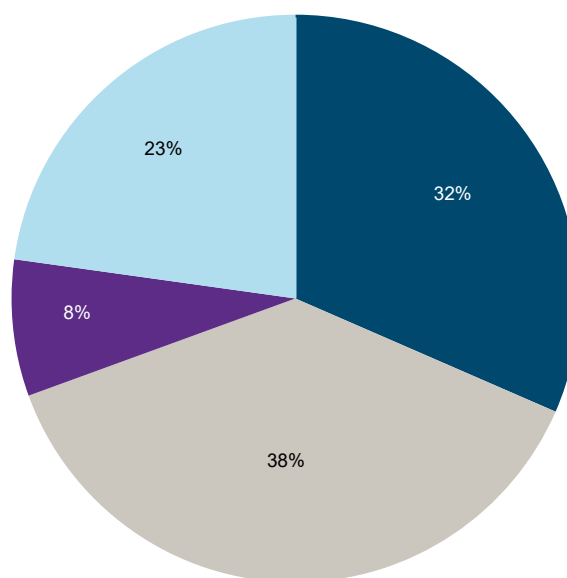
Review type	A: Agency reported data for all reviews closed	B: Using agency, IPC and NCAT data on reviews closed
Agency internal review of initial decision	321	321
External review by the Information Commissioner	244	386
Review by NCAT	90	232
Agency internal review/reconsideration following a recommendation by the Information Commissioner	79	79
<b>Total</b>	<b>734</b>	<b>1018</b>

Figure 33: Distribution of reviews by type, as reported by agencies, 2019/20



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

Figure 34: Distribution of reviews by type, using agency, IPC and NCAT data, 2019/20



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 Information Commissioner reviews. The IPC has engaged with agencies across all sectors to improve the reporting of GIPA Act data. Since 2013/14 the under-reporting has declined from 81% to 45% in 2019/20, consistent with the results in 2018/19, but an increase on the lowest level of 26% reported in 2016/17.

Using IPC internal data, the number of external reviews conducted by the Information Commissioner increased by 6% between 2019/20 (386 reviews) and 2018/19 (364 reviews). This is a moderate increase in applications to the Information Commissioner and consistent with a 9% increase in applications to agencies.

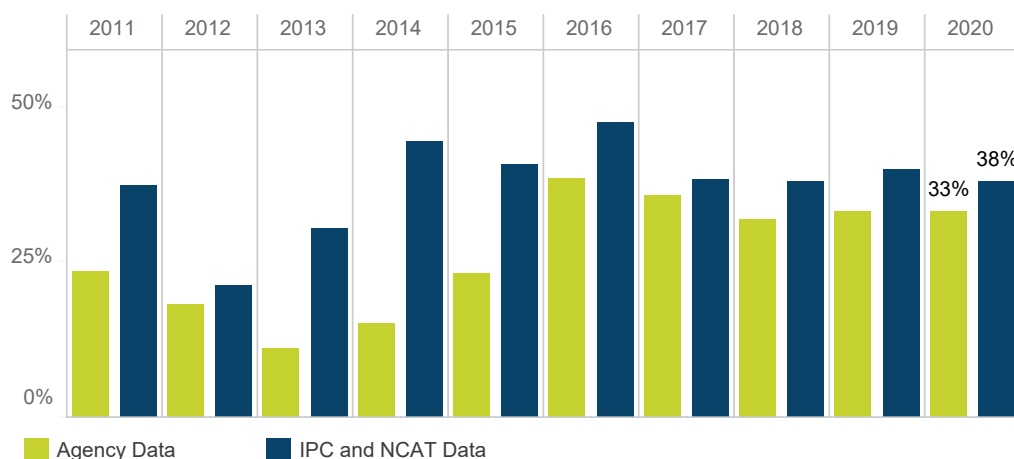
## External reviews by the Information Commissioner remain consistent as a proportion of all reviews conducted

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

Using the more reliable IPC data, external reviews by the Information Commissioner accounted for 38% of all reviews conducted, similar to 40% in 2018/19 (Figure 35).

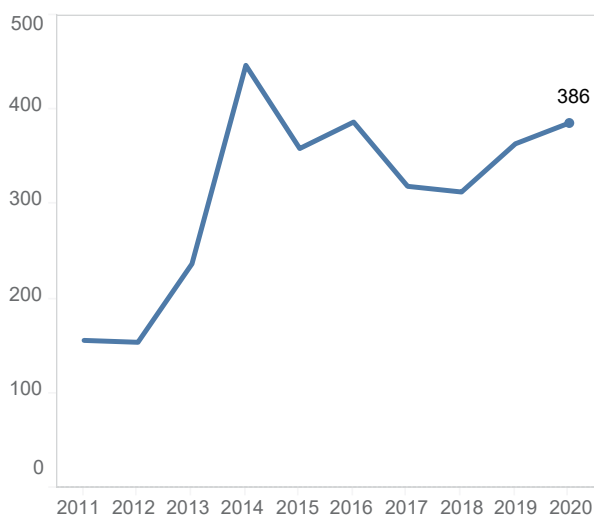
Accordingly, the review pathway most frequently used is external review by the Information Commissioner.

**Figure 35: External reviews by the Information Commissioner as a percentage of all reviews, 2010/11 to 2019/20**



Source: agency, NCAT and IPC data

**Figure 36: Number of external reviews conducted by the Information Commissioner, 2010/11 to 2019/20**



Source: IPC data

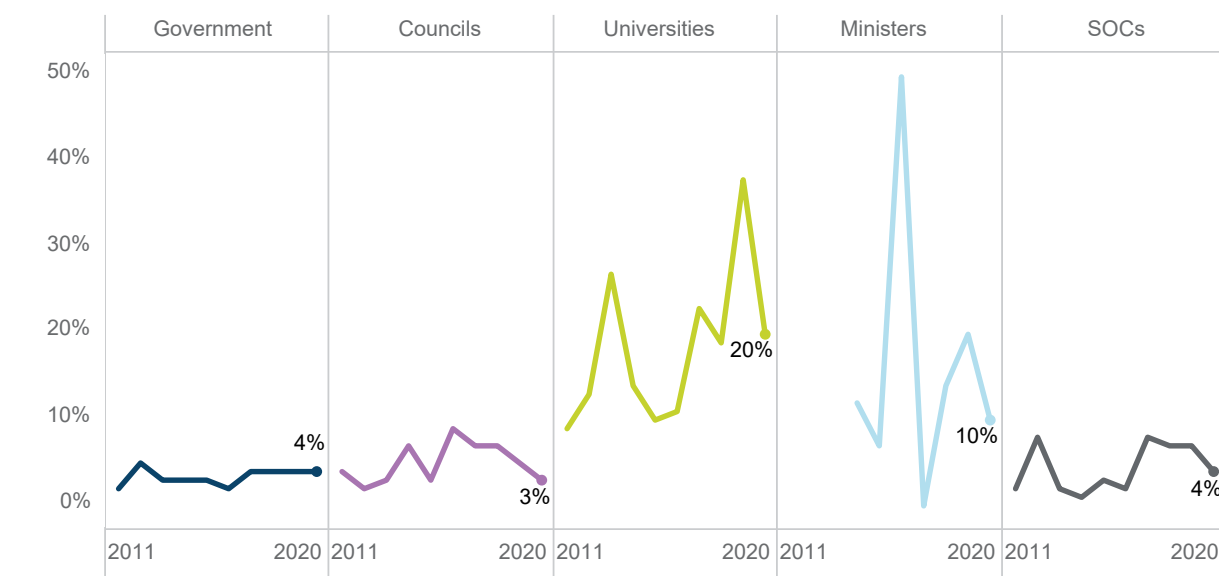
Similarly, the 232 review applications reported by NCAT is significantly higher than the 90 reviews reported by agencies.

For reporting purposes, the remainder of this section only uses data reported by agencies to allow for comparison across review avenues, across sectors and to examine changes over time.

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

The percentage of applications for review received by the Government sector, as a percentage of all applications to that sector, remained stable at 4% in 2019/20, consistent with 4% in 2018/19 and 2017/18. The Council (3%) and State-Owned Corporations (4%) sectors also remained stable (Figure 37).

**Figure 37: Total number of reviews, as a percentage of all applications received, by sector, 2010/11 to 2019/20**



Source: agency data

The percentage of applications for review received by the Minister sector, as a percentage of all applications to that sector, decreased moderately to 10% in 2019/20, from 20% in 2018/19. For Universities, the percentage decreased significantly from 38% in 2018/19, to 20% in 2019/20.

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

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

In 2019/20, 90% of applications for review were made by the original applicant. This is consistent with levels observed in 2018/19 when 89% of applications for review were made by the original applicant.

The number of applications made by third party objectors was 10% in 2019/20 compared with 11% in 2018/19.

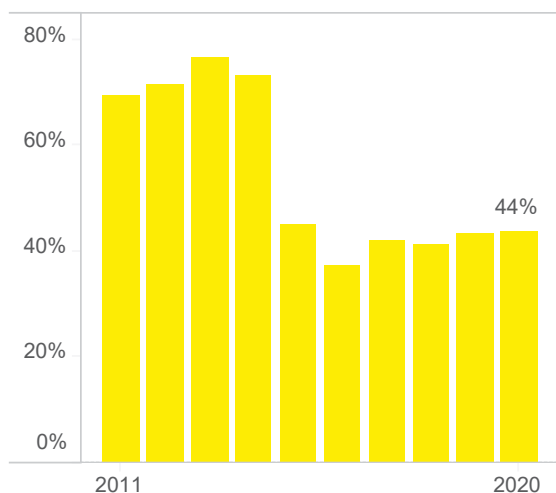
#### **Internal reviews as a percentage of all reviews conducted remained stable**

Internal reviews represented 44% of all reviews conducted in 2019/20 (Figure 38), consistent with 43% of all reviews conducted in 2018/19.

#### **Reviews by NCAT remained stable**

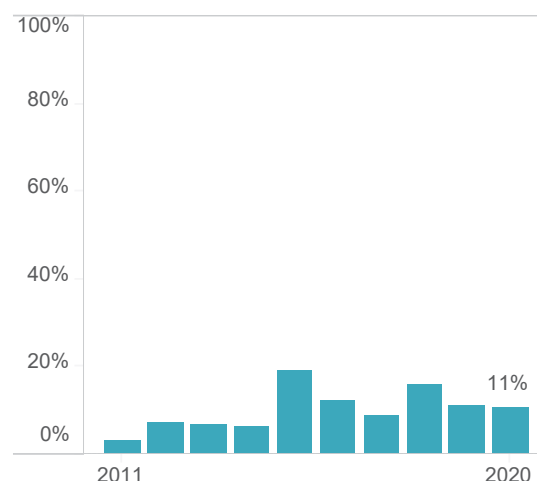
Using data reported by agencies, reviews by NCAT represented 11% of all reviews conducted in 2019/20 (Figure 39). This is similar to 2018/19 and 2017/18 when NCAT reviews represented 11% and 16% respectively of all reviews conducted.

**Figure 38: Internal review as a percentage of all reviews, 2010/11 to 2019/20**



Source: agency data

**Figure 39: NCAT reviews as a percentage of all reviews, 2010/11 to 2019/20**



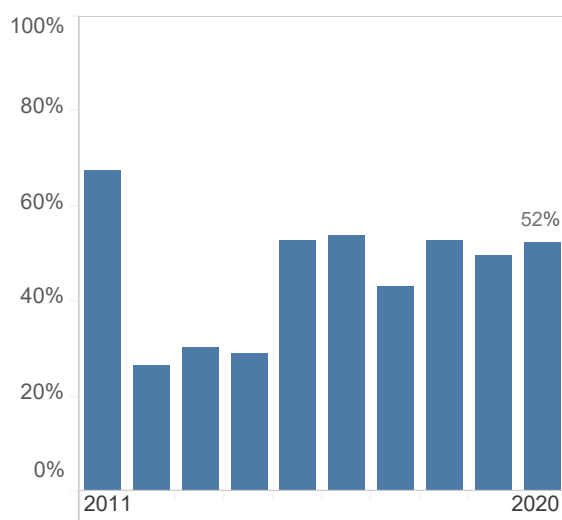
Source: agency data



## Overall, there was an equal balance between decisions upheld and overturned on review

In 2019/20, 52% of all internal and external reviews conducted upheld agencies' decisions. This is similar to 2018/19, when 50% of reviews upheld agencies' decisions (Figure 40). This finding has remained relatively stable across the past six years.

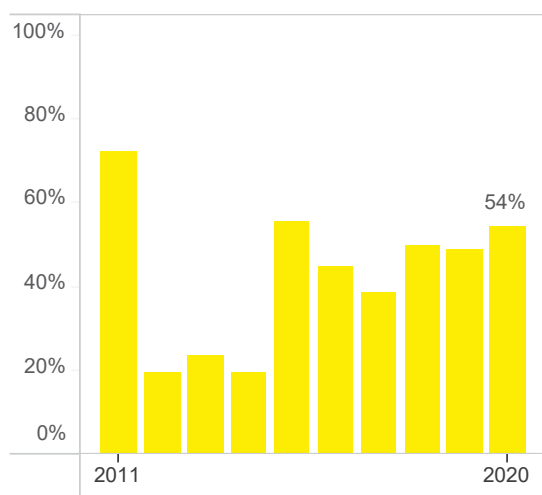
**Figure 40: Percentage of all reviews that upheld the original decision, 2010/11 to 2019/20**



## Internal reviews were closely balanced between upholding and overturning the original decision

In 2019/20, 54% of all internal reviews upheld agencies' decisions, a small increase on the 49% reported in 2018/19 (Figure 41).

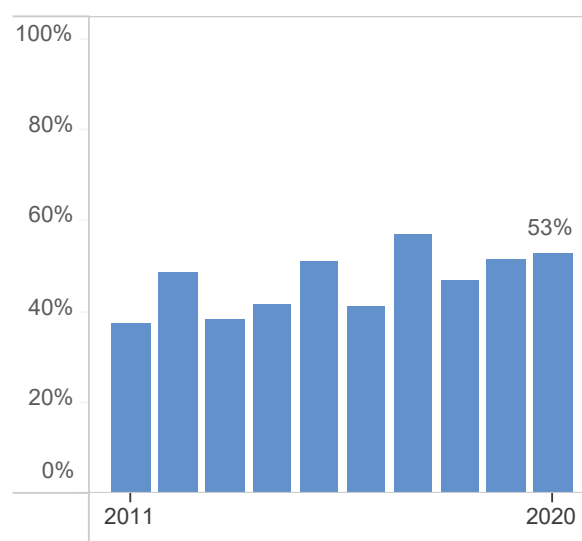
**Figure 41: Internal reviews where the decision was upheld as a percentage of all internal reviews, 2010/11 to 2019/20**



## Reviews by the Information Commissioner were slightly more likely to recommend that agencies re-consider their decision

Agencies reported that 53% of reviews by the Information Commissioner in 2019/20 recommended that agencies reconsider their decisions, similar to 52% reported in 2018/19 (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, 2010/11 to 2019/20**

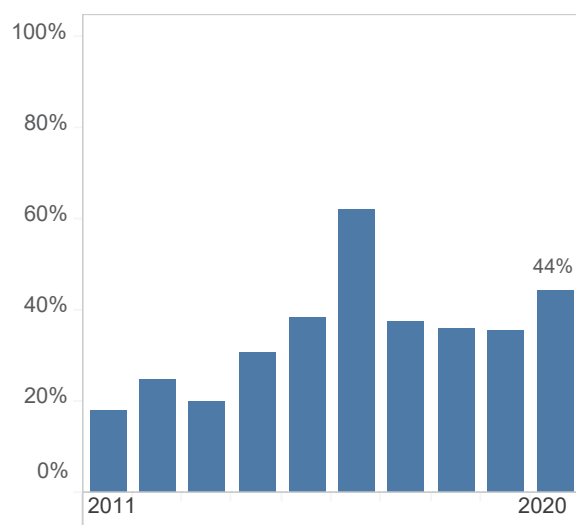


## Internal reviews following a section 93 recommendation by the Information Commissioner which upheld the original decision increased

In 2019/20, agencies reported 44% of internal reviews that followed a section 93 GIPA Act recommendation (a recommendation from the Information Commissioner that the agency reconsider its decision) upheld agencies' original decisions. This is a moderate increase from 36% in 2018/19 (Figure 43).

Accordingly, in 56% of internal reviews in 2019/20, agencies modified their decision in response to a recommendation by the Information Commissioner.

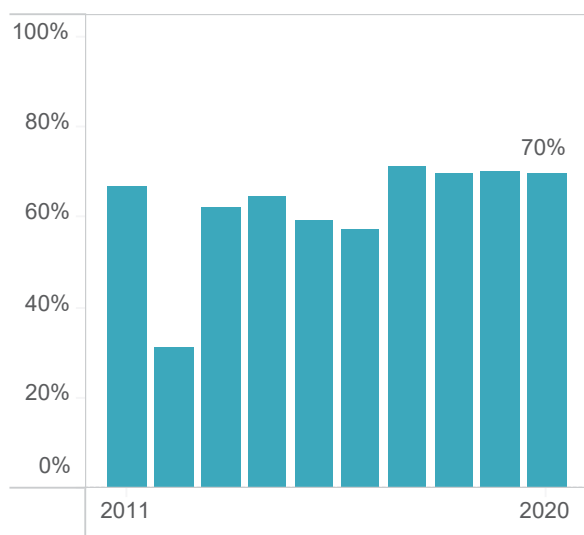
**Figure 43: Internal reviews following a section 93 recommendation that upheld agencies' original decisions as a percentage of all internal reviews, 2010/11 to 2019/20**



## Reviews by NCAT of agency decisions

Agencies reported that 70% of reviews by NCAT upheld agency decisions in 2019/20, consistent with 70% in 2018/19 (Figure 44). This result has remained stable over the past four years.

**Figure 44: Reviews by NCAT where the decision was upheld as a percentage of all reviews by NCAT, 2010/11 to 2019/20**



## 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 with the previous year at 15% in 2019/20.

The proportion of all reviews conducted by the Information Commissioner relating to OPIADs remained relatively stable at 49% in 2019/20 compared with 45% in 2018/19. Other issues that were the subject of review by the Information Commissioner include:

- conduct of searches by agencies
- imposition of fees and charges
- unreasonable and substantial diversion of resources
- refusal to deal on the basis of acting in concert or court proceedings.

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

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

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

- legal professional privilege (36%) representing a moderate decrease from the 46% reported in 2018/19
- Cabinet information (25%) representing a moderate increase in the 17% reported in 2018/19
- complaints handling and investigation (9%) displaces excluded information as the third most relied upon CPOPIAD.

**CPOPIADs: There has been a moderate increase in the number of external reviews by the Information Commissioner of CPOPIADs that resulted in a recommendation to agencies to reconsider the decision**

In 2019/20, 46% of all the CPOPIADs that were the subject of review by the Information Commissioner resulted in a recommendation to agencies to reconsider the decision, compared with 38% in 2018/19, 45% in 2017/18 and 62% in 2016/17.

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

- for reviews of the legal professional privilege consideration, 85% resulted in a recommendation to agencies to reconsider the decision, a significant increase from 59% in 2018/19
- for reviews of the Cabinet information consideration, 8% resulted in a recommendation to agencies to reconsider the decision. This represents a decrease from 13% in 2018/19
- for reviews of the complaints handling and investigation consideration, 20% resulted in a recommendation to agencies to reconsider the decision. This CPOPIAD was not represented in the top three CPOPIADs in 2018/19.

**OPIADs: Responsible and effective government was the main OPIAD subject of external review by the Information Commissioner**

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

- responsible and effective government (40%)
- individual rights, judicial processes and natural justice (36%)
- business interests of agencies and other persons (14%).

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

In 2019/20, 59% of all the OPIADs that were the subject of review by the Information Commissioner resulted in a recommendation to agencies to reconsider the decision, an increase on the 54% in 2018/19.

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

- for reviews of the responsible and effective government consideration, 59% resulted in a recommendation to agencies to reconsider the decision, representing a significant increase compared with 46% in 2018/19
- for reviews of the individual rights, judicial processes and natural justice consideration, 59% resulted in a recommendation to agencies to reconsider the decision, compared with 52% in 2018/19
- for reviews of the business interests of agencies and other persons consideration, 65% resulted in a recommendation to agencies to reconsider the decision, representing a significant decrease compared with 77% in 2018/19.

# Were applications transferred between agencies?

## Increase in transfers between agencies

During 2019/20, agencies reported that 727 applications were transferred to another agency (Figure 46). This is a 23% increase from the 591 transfers reported in 2018/19. This increase may reflect amendment of the GIPA Act to enable partial transfer (see Issue Highlight on page 63).

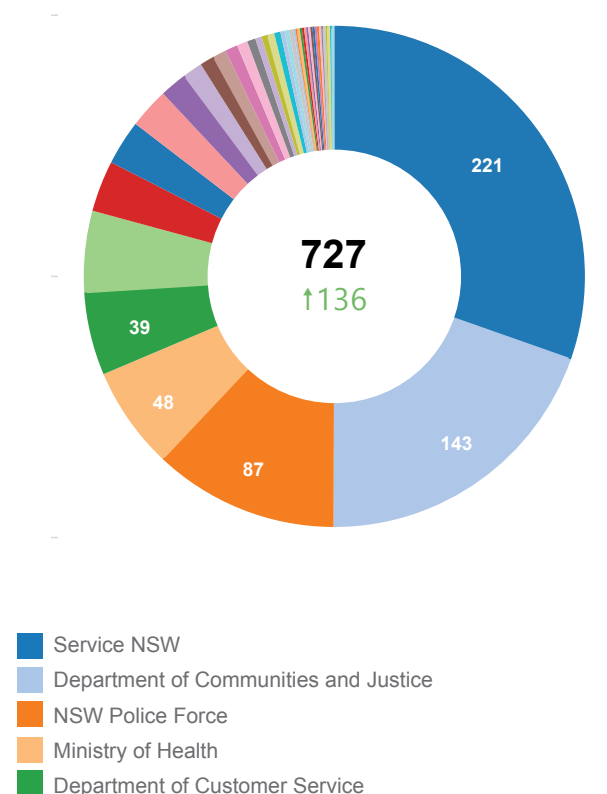
Figure 45 shows that the Government sector accounted for most transfers (97%), and that most transfers were agency-initiated (88%).

**Figure 45: Number of applications that were transferred, by sector and by whether agency or applicant initiated, 2019/20**

Sector	Agency initiated transfers	Applicant initiated transfers	Total
Government	625	82	707
Council	8	2	10
University	7	0	7
State Owned Corporations	0	0	0
Minister	3	0	3
<b>Total</b>	<b>643</b>	<b>84</b>	<b>727</b>

In 2019/20, Service NSW accounted for 221 (30%) of transferred applications, a decrease from 51% in 2018/19 and 64% in 2017/18. The second highest number of transfers was reported by the Department of Communities and Justice with 143 transferred applications (20%), followed by the NSW Police Force (12%) and Ministry of Health (7%) (Figure 46).

**Figure 46: Distribution of applications transferred, by agency, 2019/20**



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

### **Issue Highlight: New provisions enabling transfer of applications**

Under the GIPA Act, it is open to an Agency to transfer an access application to another Agency, if the Agency is of the view that the information is information of a kind that may be more likely be held by that Agency.

Prior to the 2018 amendments, if a recipient agency held any of the information requested, it was required to process the application with respect to the information it holds, and inform the applicant that other agencies hold some or all of the outstanding information as requested. This had the effect of providing an applicant with only some of the information requested and requiring the applicant to make additional applications to the other agencies (and pay additional application fees) to access the remaining information.

In November 2018, the GIPA Act was amended to enable partial transfers of an access application. The introduction of section 44(2) of the GIPA Act provides that an Agency that receives an application may split an application for the purposes of transferring the application to another agency either as an agency-initiated transfer or applicant-initiated transfer.

Partial transfer of an application was considered on external review in relation to an access application made to the Office of the Premier. In the access application under review, the applicant requested access to information which in part related to the Premier's former role as Minister for Transport.

The introduction of partial transfers of an application promote access to information and further minimise the obstructions for applicants.

Agencies are encouraged to have regard to the partial transfer provisions under the GIPA Act in order to facilitate access to information under the GIPA Act consistent with the objects of the Act.

# Appendices

# Appendix 1

## Notes on data sources and previous reports

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

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

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

The data analysed for this Report should be considered as a snapshot of agencies' compliance as at 13 April 2021 (the date when the IPC commenced downloading agencies' reported data from the GIPA Tool). It should be noted that not all agencies had submitted their annual reports to the IPC by this time. This means their data is not included in the Report.

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

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

- Government
- Councils
- Universities
- Ministers
- State-Owned Corporations.

Previously, State-Owned Corporations (SOC) data had been included with that of the Government sector. SOCs have now 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 in previous years is not comparable to data in this Report.

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

The annual reporting period for universities and the Department of Education is a calendar year. This calendar-year data is included in the relevant financial year to assist with cross-sector comparability. For example, GIPA data from universities' 2019 annual reporting has been treated as for the 2019/20 financial year.

Data reported for 2019/20 reflects the structure of agencies after the machinery of government changes which commenced on 1 July 2019 and further. For some agencies, this has the result that data may not be directly comparable with previous years. For example:

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



# Appendix 2

## The Legislative Framework

### Government Information (Public Access) Act 2009

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

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

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

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

#### 1. Mandatory proactive release

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

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

#### 2. Authorised proactive release

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

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

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

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

### 3. Informal release

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

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

### 4. Formal access applications

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

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

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

The main benefits of the formal access pathway include:

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

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

## Government Information (Public Access) Regulation 2018

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

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

## Government Information (Information Commissioner) Act 2009

The system of public access to information is overseen by the Information Commissioner, established under the *Government Information (Information Commissioner) Act 2009* (GIIIC 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.



information and  
privacy commission

new south wales

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