

How was the public interest test applied?

This section examines:

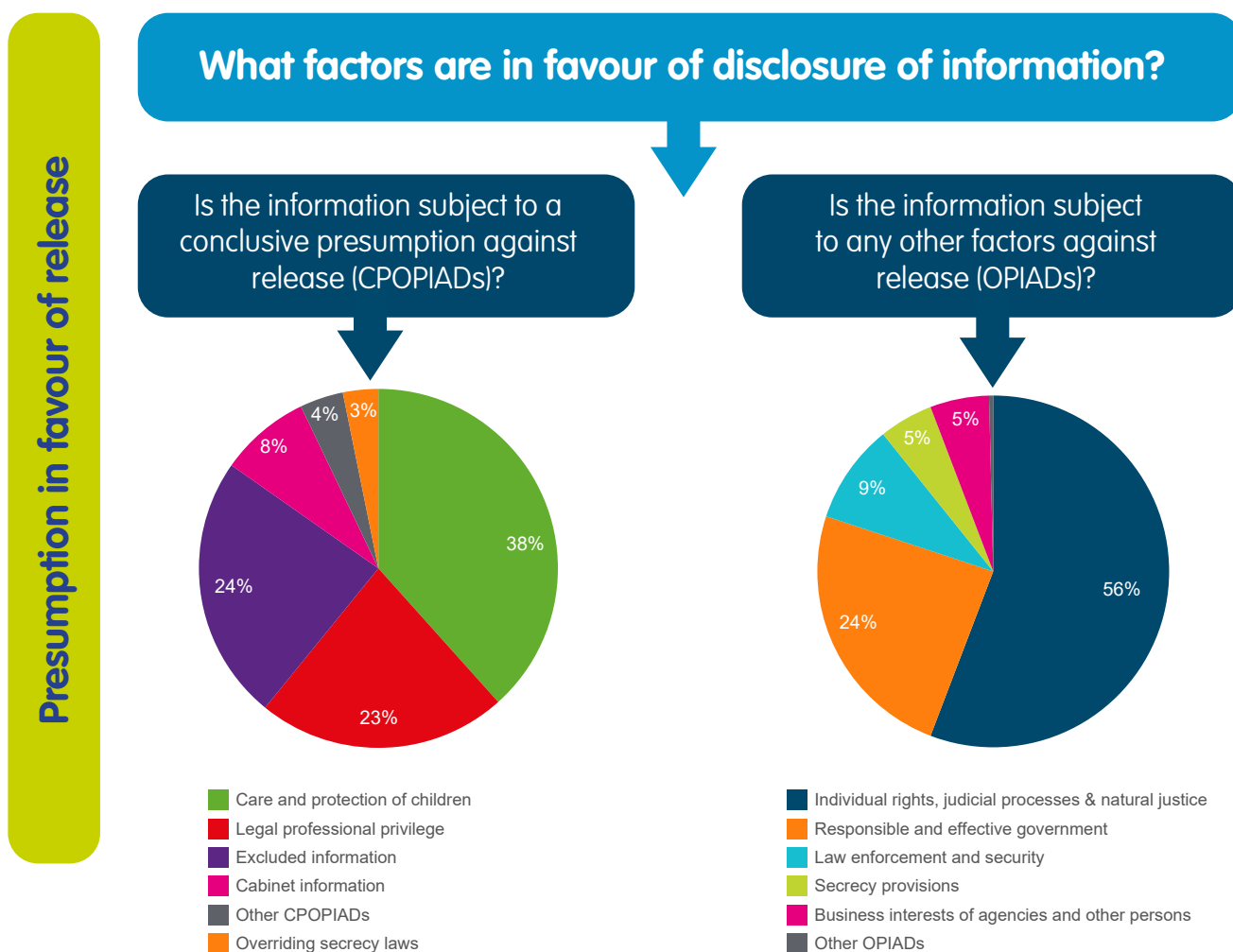
- the number of applications that were refused because of a conclusive presumption of overriding public interest against disclosure (CPOPIAD)
- which categories of CPOPIADs were applied
- the use of categories of considerations for which there is an overriding public interest against disclosure of information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

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

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

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

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



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

Care and protection of children was the most applied CPOPIAD

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

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

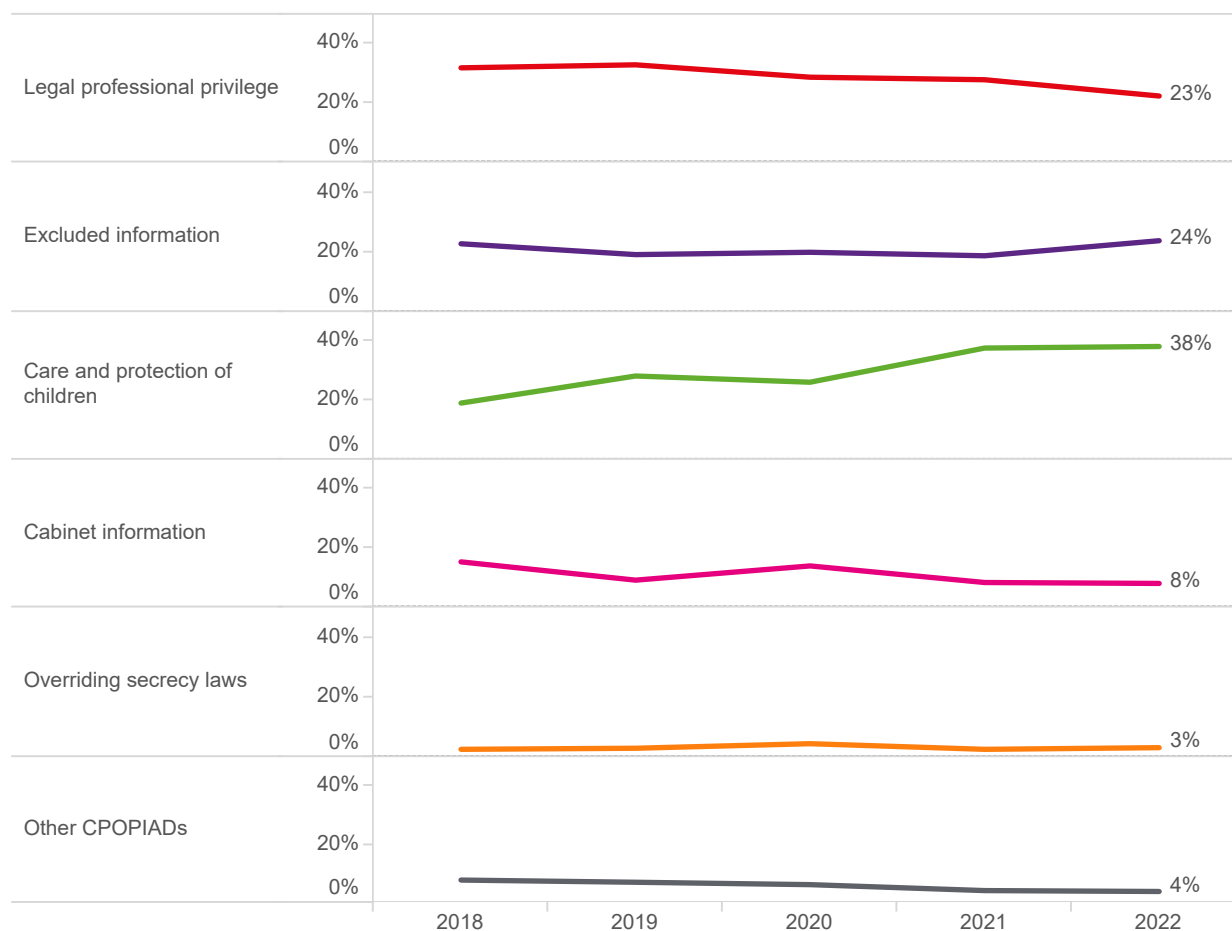
The excluded information consideration was the third most applied CPOPIAD, being applied 24% of all the times that CPOPIADs were applied, consistent with 19% in 2020/21.

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

