

# How were decisions reviewed?

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

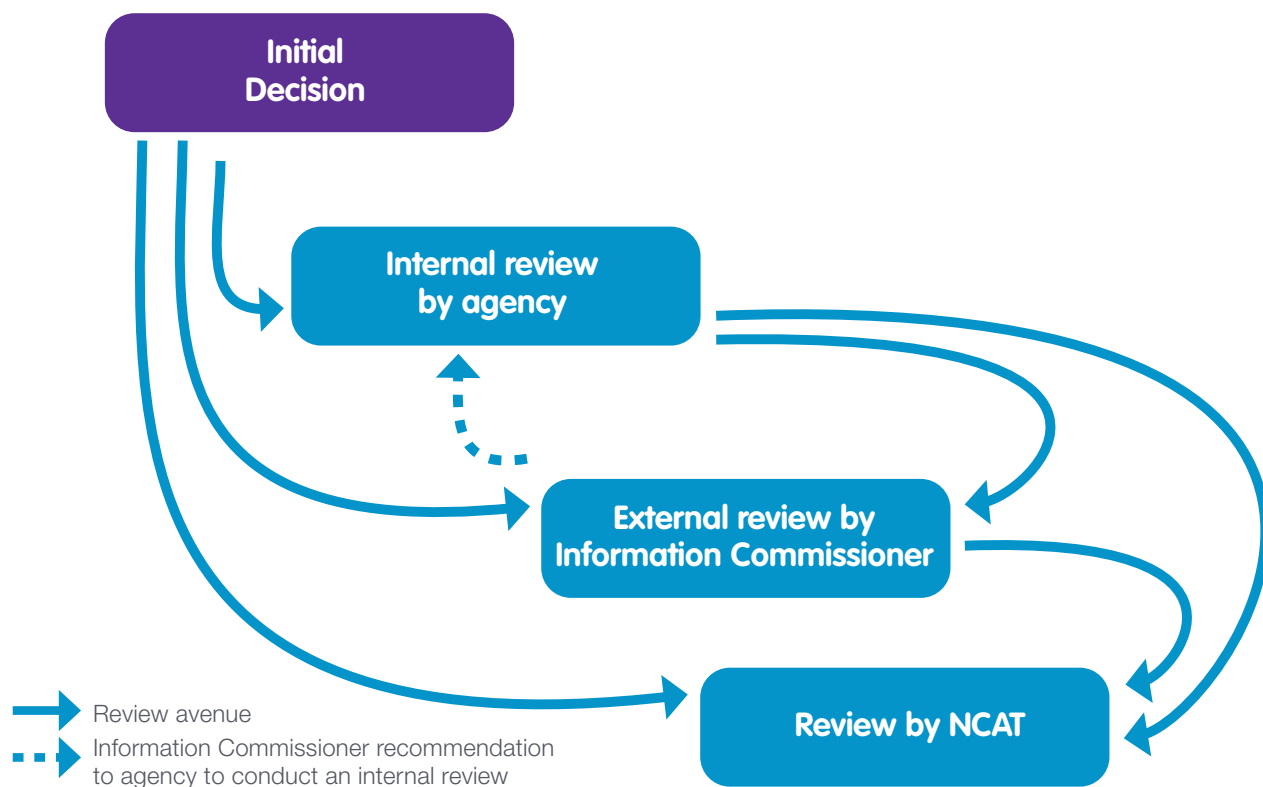
This section reports on the:

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

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

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

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



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

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

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

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

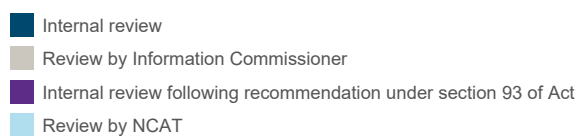
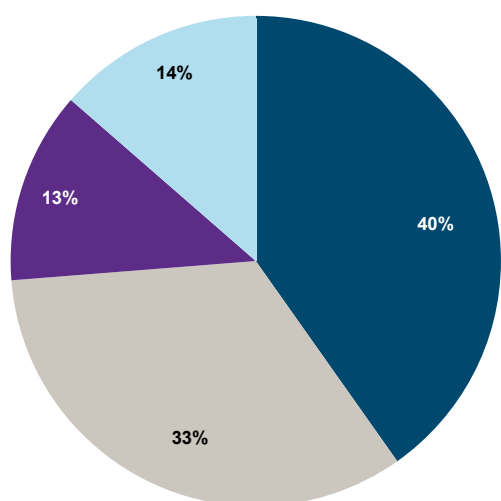
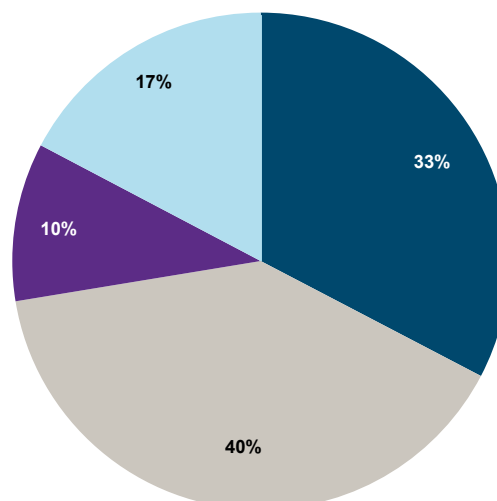


Figure 34: Distribution of reviews by type, using agency, IPC and NCAT data, 2021/22



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

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

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

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

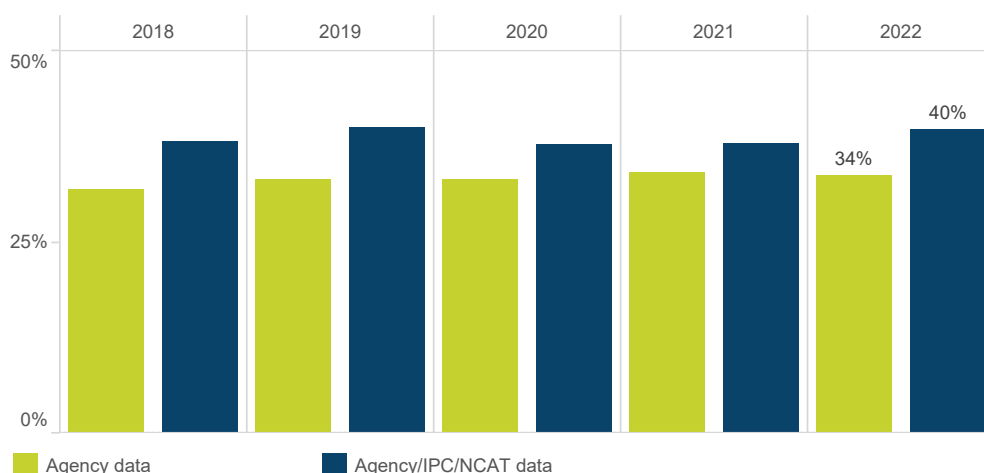
Due to ongoing disparity between agency reported data and the IPC data over the past 10 years, only IPC data will now be used for this section of the report.

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

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

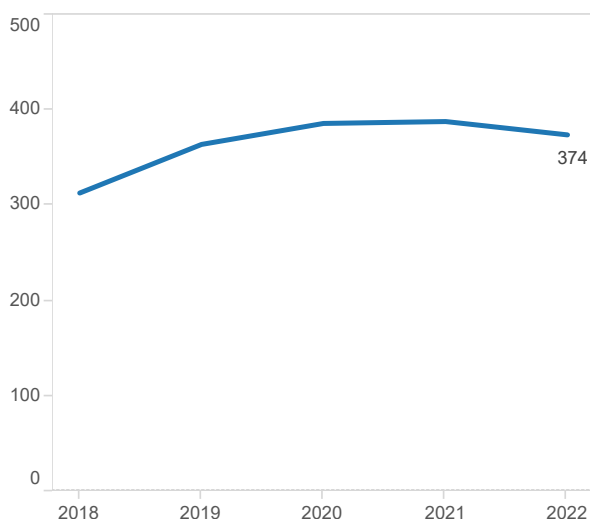
Similarly, the 163 review applications reported by NCAT is significantly higher than the 104 reviews reported by agencies.

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



Source: agency, NCAT and IPC data

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



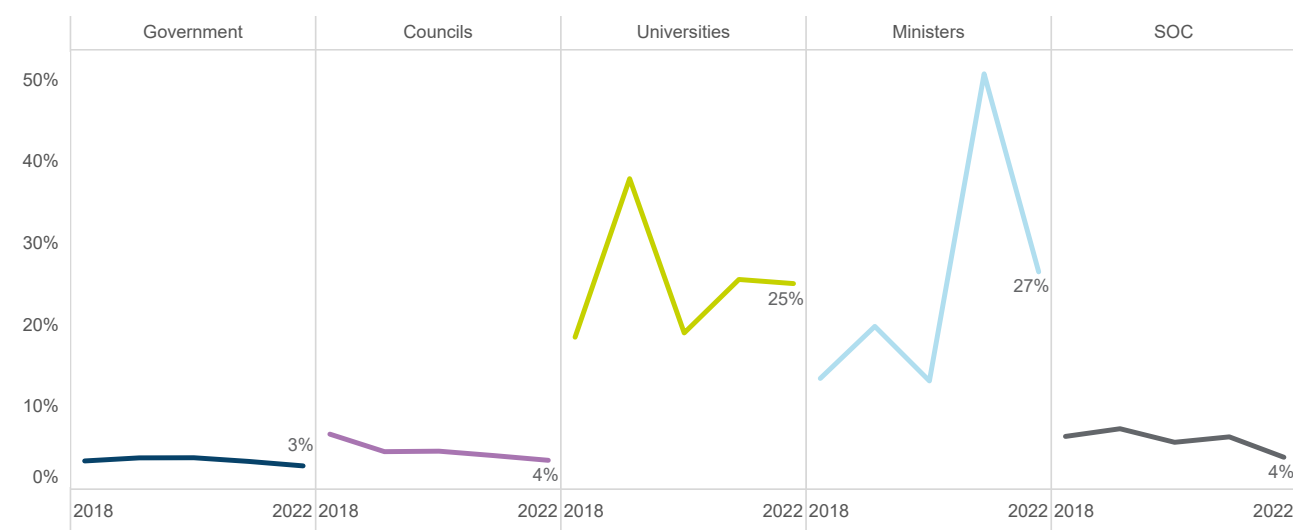
Source: IPC data

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

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

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

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



Source: agency data

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

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

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

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

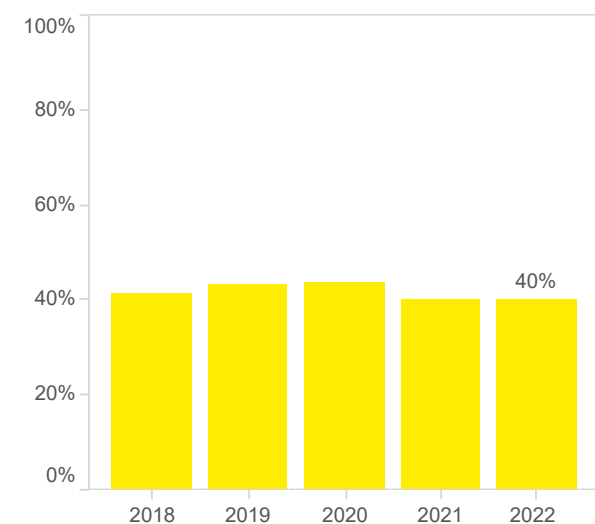
#### **Internal reviews as a percentage of all reviews conducted remained stable**

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

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

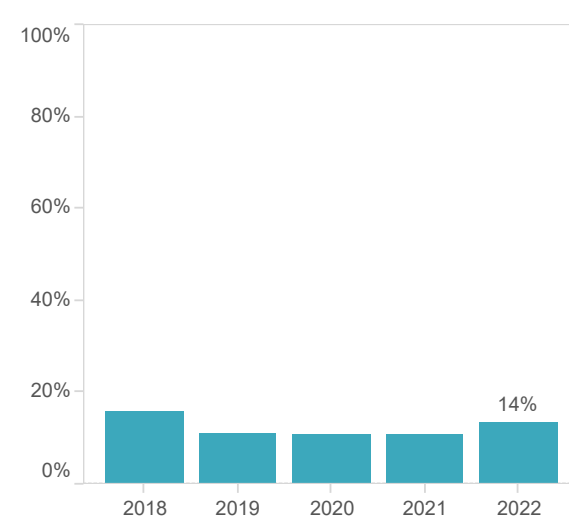
Using data reported by agencies, reviews by NCAT represented 14% of all reviews conducted in 2021/22 (Figure 39). This is consistent with the previous three years (11% respectively).

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



Source: agency data

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

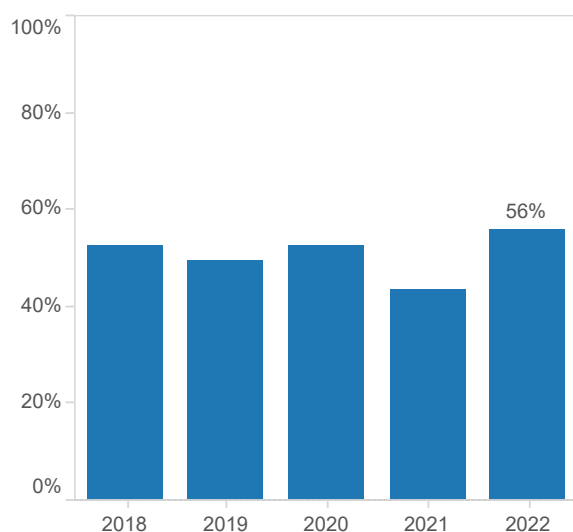


Source: agency data

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

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

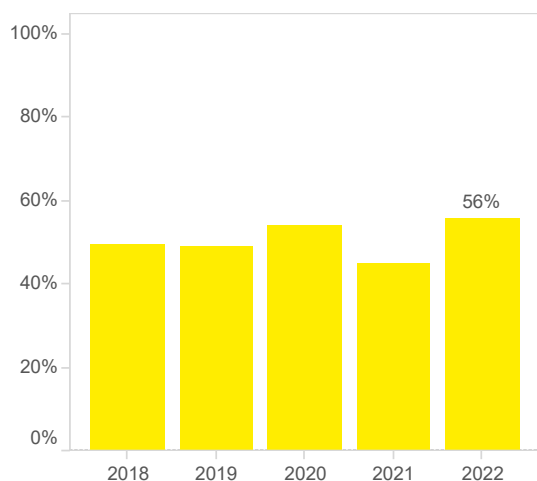
**Figure 40: Percentage of all reviews that upheld the original decision, 2017/18 to 2021/22**



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

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

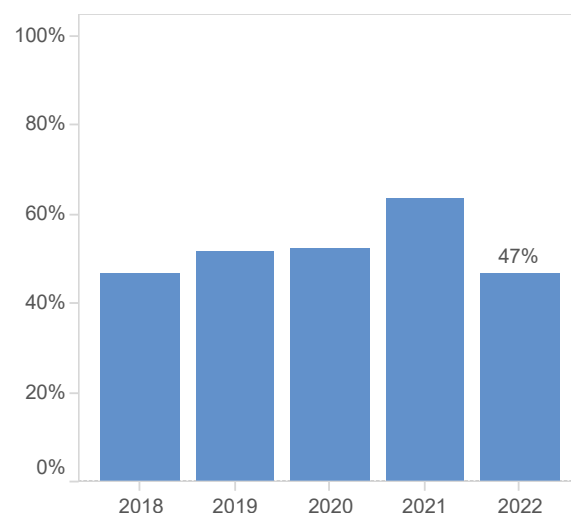
**Figure 41: Internal reviews where the decision was upheld as a percentage of all internal reviews, 2017/18 to 2021/22**



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

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

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

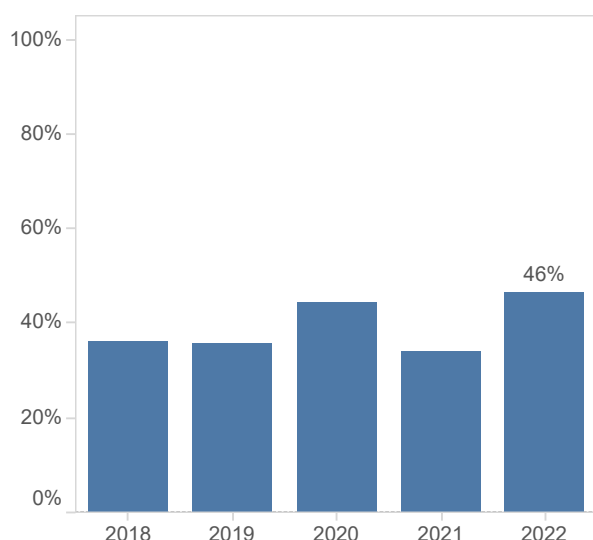


## Internal reviews following a section 93 recommendation by the Information Commissioner which upheld the original decision increased

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

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

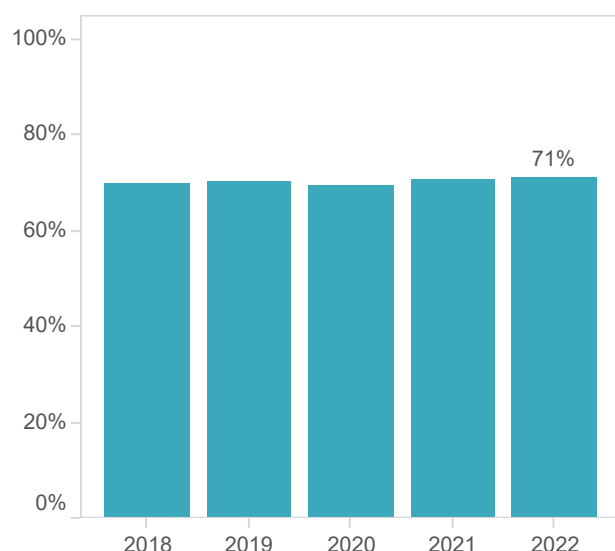
**Figure 43: Internal reviews following a section 93 recommendation that upheld agencies' original decisions as a percentage of all internal reviews, 2017/18 to 2021/22**



## Reviews by NCAT of agency decisions

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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