Information Release Pathways

Pathway 1: Mandatory proactive release of information

Improvement in compliance with mandatory proactive release provisions

Since 2010/11, the IPC has conducted an annual desktop audit of the compliance of all nine NSW principal departments, together with a changing sample of other agencies, with key requirements under the GIPA Act to make publicly available specified open access information.

The desktop audit identified whether each agency had on its website:

- an AIG
- agency policy documents
- an agency disclosure log
- an agency contracts register.

The desktop audit did not examine the comprehensiveness of the information made available. For example, it was not possible to assess if all relevant policy documents were available.

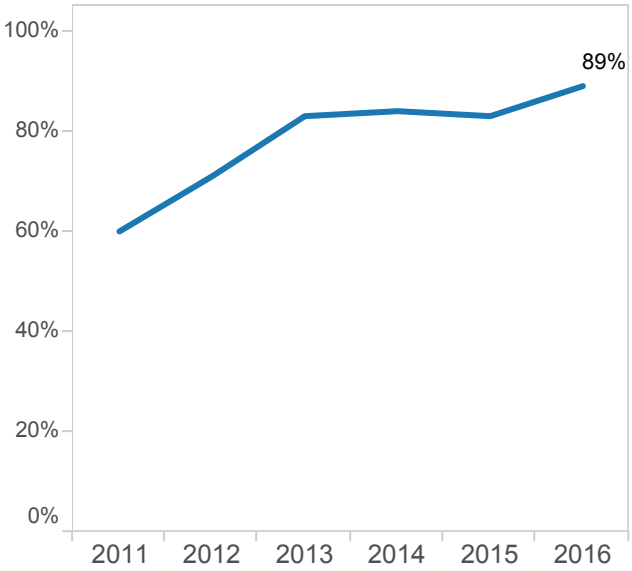
The desktop audit found that compliance with mandatory proactive release provisions has improved:

- 86% of sampled agencies had an AIG, an increase from 81% in 2014/15
- 97% of sampled agencies had policy documents available, an increase from 93% in 2014/15
- 86% of sampled agencies had a contracts register, an increase from 81% in 2014/15
- 86% of sampled agencies had a disclosure log, an increase from 80% in 2014/15.

The overall compliance rate for sampled government sector agencies increased to 89%, compared with 83% in 2014/2015 (Figure 8).

The increase across all four key requirements indicates that agencies have prioritised mandatory proactive release and improved the availability of government information to the public.

Figure 8: Sampled government sector compliance with mandatory proactive release



Additional open access information of certain agencies for the purpose of section 18(g) of the GIPA Act, is prescribed in Part 3, Clause 5 of the *Government Information (Public Access) Regulation 2009*.

Additional open access information of a minister includes:

- any media release issued by the minister
- details concerning overseas travel undertaken by the minister.

For government departments, additional open access information includes:

- details of the department's major assets
- the department's guarantee of service (if any)
- the department's code of conduct (if any).

Statutory bodies also have additional open access information, including:

- the total number and total value of properties disposed of by the statutory body during the previous financial year
- the statutory body's guarantee of service (if any).

These additional open access requirements have not been included in the desktop audit to date. The IPC will provide guidance to ministers, government departments and statutory bodies to support awareness and compliance, and will examine ways in which to include these requirements in future desktop audits.

Agency compliance with contract register requirements

An important element of mandatory proactive release requirements is for agencies to have a public register of contracts valued at $150,000 or more. Increased transparency with respect to government contracts with the private sector can lead to improved performance of outsourced services, as well as increased efficiency and value for money.

Following the IPC's April 2015 audit of the university sector's compliance with contract reporting requirements under the GIPA Act, the Auditor-General conducted a performance audit. In October 2016 a special report in the NSW Parliament, *Agency compliance with the GIPA Act*, was tabled which outlined the results of a review of a selection of 13 agencies' compliance with the requirements of Part 3 Division 5 of the GIPA Act.

The Auditor-General's report found that all of the agencies had published an adequately designed Government contracts register, but:

- some contracts valued at $150,000 or more were not recorded in the contracts register
- some contracts were not entered into the register within 45 working days of the contracts becoming effective
- there were instances where inaccurate information was recorded in the register when compared with the contracts
- additional information required for certain classes of contracts was not disclosed in some registers.

These findings are consistent with the IPC finding and recommendations arising from the review of university compliance with contract reporting requirements. The IPC will continue to work with co-regulators and with the Audit Office to ensure transparency through a collaborative regulatory approach and through the provision of guidance to agencies to support compliance. The Auditor-General's report is available on the Audit Office of NSW website.

ISSUE HIGHLIGHT: Improvement in universities' compliance with contract register requirements

In April 2015, the Information Commissioner conducted the first audit of New South Wales universities' compliance with mandatory requirements for disclosure of government contracts with the private sector. The results were published in the Universities' *Compliance with the GIPA Act: Audit Report 2015*, which found a low level of compliance with the mandatory requirements for contract reporting under the GIPA Act. In accordance with the report's commitment to a collaborative and guiding regulatory approach, the IPC worked with the university sector to identify and develop tools and knowledge to elevate compliance.

In June 2016, the IPC conducted a follow-up compliance audit. This found that universities' compliance with the contract register provisions of the GIPA Act had improved significantly since the 2015 compliance audit, with contract registers capturing on average 21% more obligations than in 2015, and the information contained on these contract registers was on average 17% more complete than in 2015.

These improvements demonstrate the effectiveness of the IPC's regulatory engagement and preparedness by the sector to improve performance.

In October 2016, the IPC released an updated learning module on contract registers to provide guidance to assist all agencies to comply with the requirements under the GIPA Act. The learning module is available on the IPC's E-learning Portal.

The *Universities' Compliance with the GIPA Act*: *Audit Report 2016* can be found on the IPC website.

Compliance with the requirements to provide an Agency Information Guide (AIG)

Part 3 section 20 of the GIPA Act provides that a regulated NSW public sector agency (other than a minister) must have a current AIG that specifies, among other things, any arrangements that exist to enable members of the public to participate in the formulation of the agency's policy and the exercise of the agency's functions.

In 2015/16, the IPC conducted a desktop review of a sample of current agency AIGs in accordance with section 17(g) of the GIPA Act. Each of the principal departments of the 10 NSW 'clusters' were selected and monitored. The IPC's AIG was also monitored in recognition of the requirement for regulators to demonstrate transparency and model compliance practices.

All principal departments and the IPC had an AIG in place on their website. However, in a number of cases it was not clear that agencies had met the obligation to review their AIG and adopt a new AIG at intervals of not more than 12 months:

- 50% (five) of the principal department AIGs did not indicate when they were last updated
- of the five AIGs that contained a date of review, four had been updated within two years and one had last been updated in December 2013.

In regard to public participation in agency policy formulation and the exercise of agency functions, 50% (five) of the principal departments provide some detail in their AIGs. However, the general nature of the description of arrangements for public participation, together with the absence of integration with any other existing arrangements for public participation, reduce the utility of, and compliance with, the legislative provisions to promote public participation. Accordingly, the potential of AIGs to inform, educate and engage the public is not yet being realised.

ISSUE HIGHLIGHT: Enhancing the application of Agency Information Guides

In September 2015, at an event to celebrate Right to Know Week, the NSW Information Commissioner announced a commitment to collaborate with NSW citizens and agencies to promote public participation and assist agencies in better engaging with citizens through a NSW Charter for Public Participation.

The program will assist agencies and the public to enhance the application of AIGs, strengthen compliance with the GIPA Act and promote arrangements for public participation. For example, maximising the purpose and value of AIGs would be supported by including links from the AIG to current engagement processes, including consultations, reviews, web content, expert panels and opportunities to make submissions. These arrangements are predicated upon the disclosure of open access information to ensure that public participation commences from a position of public knowledge.

In June 2016, the IPC released a report, *Towards a NSW Charter for Public Participation.* The Report set out the future actions that the IPC will take to advance public participation and Open Government through raising awareness and providing assistance to ensure that agencies and citizens realise the benefits of meaningful engagement supported by the GIPA Act.

The actions are to:

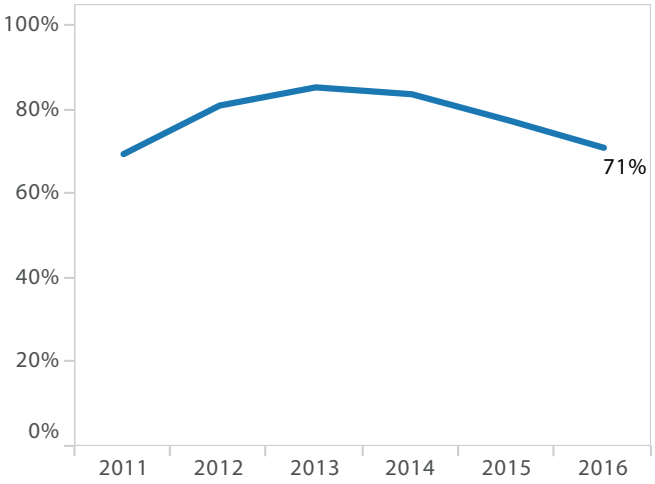
1. engage through 'Your Say IPC' with the public and agencies to understand attitudes towards AIGs and public participation, and to develop ideas for improving AIGs and inputs to a NSW Charter for Public Participation
2. revisit and update its guidance to agencies on AIGs
3. update its own AIG to be a model of good practice for agencies
4. engage with the principal departments to improve the quality of their AIGs
5. host a summit on public participation and AIGs
6. co-create a NSW Charter for Public Participation
7. work through the Open Government Steering Committee on how agencies connect AIGs with Open Government Plans
8. monitor agencies' use of AIGs to understand the trends in AIGs facilitating public participation
9. monitor disclosure logs and identification of the various kinds of government information held by agencies and made available by agencies with the objective of promoting Open Government and Open Data.

Pathway 2: Authorised proactive release of information

Continuing decline in reviews of programs for release of government information

In 2015/16, 71% of agencies reported having conducted a review of their program for the release of government information. This is a decline from around 78% in 2014/15.This decline appears to be driven by the reduction in reviews conducted in the council sector and may be attributable to the impacts of council mergers (Figure 9).

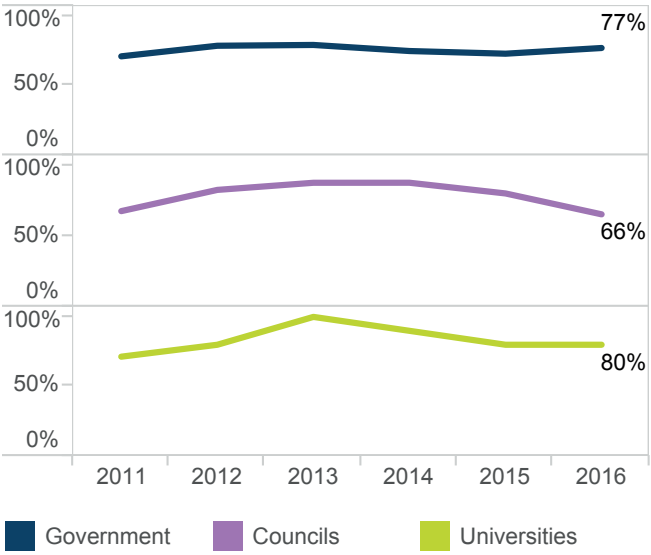
Figure 9: Agencies that conducted annual information release reviews as a percentage of all agencies that reported, 2010/11 to 2015/16



The conduct of reviews varied between sectors in 2015/16 (Figure 10):

- 77% of agencies in the government sector conducted reviews – an increase from 73% in 2014/15
- 66% of councils conducted reviews – a significant decline from 80% in 2014/15
- 80% of universities conducted reviews – unchanged from 2014/15.

Figure 10: Agencies that conducted annual information release reviews as a percentage of all agencies that reported, by sector, 2010/11 to 2015/16



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).

Declining compliance with this obligation was identified in the 2013/14 Report and, since July 2015, the IPC has focused on assisting agencies with proactive release programs through the provision of fact sheets and case studies, and through the Open Data Advocate work program.

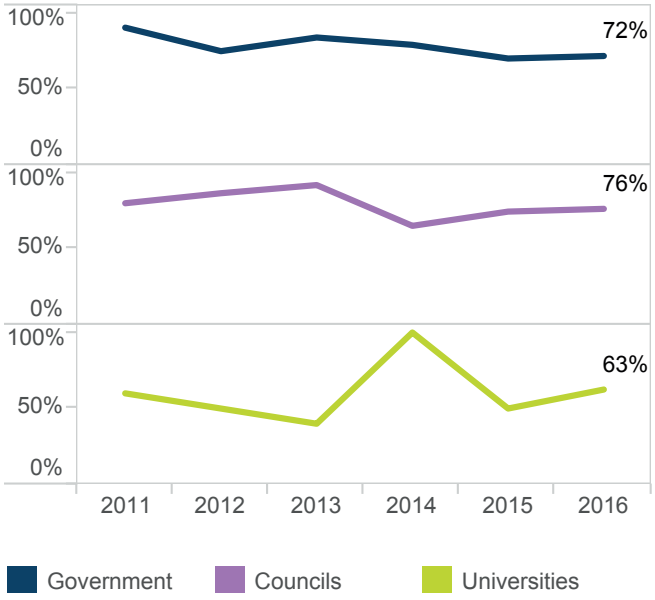
Additional practices to support proactive release may be implemented by agencies. However, in the absence of demonstrated compliance with this legislative obligation, the levels of compliance with this mandatory obligation are lower than other measures of mandatory compliance across the four release pathways provided under the GIPA Act. Accordingly, the IPC's forward work program contains a commitment to better identify factors impeding compliance and customise regulatory interventions to elevate compliance.

Release of additional information following a review increased significantly in the university sector and slightly in other sectors

Ideally, all agency information release reviews should result in additional information being released. In 2015/16, 74% of agencies that conducted a review released additional information. This is an increase from additional information release rates in 2013/14 (71%) and 2014/15 (72%). Figure 11 shows the trends in the percentage of reviews leading to the release of additional information in the government, council and university sectors and shows:

- 72% of agencies in the government sector released additional information following review – an increase from 70% in 2014/15
- 76% of councils released additional information following review – an increase from 75% in 2014/15
- 63% of universities released additional information following review – a significant increase from 50% in 2014/15.

Figure 11: Agencies that released additional information as a percentage of agencies that conducted a review, by sector, 2010/11 to 2015/16



ISSUE HIGHLIGHT: Practices to promote proactive release of information to the public

A key intention of the GIPA Act is to encourage a fundamental shift toward proactive public release of government information by agencies. The mandatory obligations for authorised proactive release is one of the major means for achieving the GIPA Act's broader goal of advancing democratic government that is open, accountable, fair and effective. The GIPA Act authorises agencies to have proactive release programs in place and requires these to be reviewed each year, with outcomes reported to the IPC. Release programs can be linked to the agency's information guide to support public participation in the formulation of the agency's policies and in the exercise of the agency's functions (see page 21 for a description of the IPC's recent activities to enhance the role of AIGs).

155 agencies reported to the IPC on actions they took during 2015/16 to improve the proactive release of information. A sample of actions are summarised below and are aligned to the strategies suggested by the IPC in its fact sheet, Authorised proactive release of government information.

The IPC recommends that agencies integrate a commitment to proactive release into the agency's corporate culture.

Agencies have demonstrated adoption of this recommendation:

- Albury City Council consulted widely and established a dedicated working party to maximise the proactive release of information. "The methodology used in this review was consultation with the Albury City Website Working Party to identify the type of information requested by the community and the current process for the proactive release of information. The Website Working Party comprises of key members of staff from each of Albury City's directorates and chaired by the Director of Planning and Environment. The Website Working Party was provided with an overview of the obligations under the GIPA Act and an outline of the review process." This form of consultation to promote a more rigorous proactive release program received a positive response.
- The Department of Premier and Cabinet required all branches to identify and report on information holdings to release more information and "…continued this program by issuing a memorandum to groups and branches requiring them to report… on any information that they hold, which may be suitable for authorised proactive release."

The IPC recommends that agencies identify the information that can be released proactively.

Agencies have demonstrated adoption of this recommendation:

- The University of Wollongong implemented a comprehensive approach to its proactive release program that draws upon all release pathways. The "…current program for the proactive release of information involves: Actively consulting with key stakeholders across the University to identify the kinds of information which may be of interest to the public; reviewing the types of information requested by the public, both informally and formally, to assess whether it may be of interest to the public generally; conducting and assessing responses from staff/student surveys; and regularly promoting and actioning feedback from staff, students and members of the public…"
- The NSW Audit Office's review of its proactive release program included:
  1. an annual examination of information made publicly available by other agencies on their websites
  2. a quarterly review of information produced, such as new policies to determine whether the information is suitable for proactive release.
- The City of Canada Bay Council recognised the value of applying data to ensure that its program reflected the needs of the community.[9]

The IPC recommends that agencies improve the accessibility of the information that it identifies could be proactively released.

Agencies have demonstrated adoption of this recommendation:

- Lake Macquarie City Council harnesses social media to release information proactively.[10]
- Newcastle City Council used accessible and diverse channels to release information proactively.[11]
- The NSW Environment Protection Authority addressed the needs of a diverse range of citizens by proactively releasing information in languages other than English, including Arabic, Mandarin, Cantonese and Vietnamese.

9 The City of Canada Bay advised that "…to identify categories of information repeatedly asked for, both formally and informally, statistics are compiled by Council regarding the type of access applications and the information requested. Regular meetings are held with responsible officers to determine if any repeat information can be proactively released. Council is highly committed to community engagement and as a result, initiatives, developments and projects relevant to the community are continually proactively released on Council's website."

10 "This year, Council used social media platforms Facebook, Twitter, Instagram and YouTube to distribute information to the community."

11 "Development of video content has been a priority this year as a tool to better inform our community."

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, recognising the safeguards for staff who release information informally and by linking the pathway to broader agency access mechanisms, in particular AIGs.

Agency practices

Agencies may release any information informally unless there is an overriding public interest that would prevent release.

Informal release under the GIPA Act can be quicker and less costly for the applicant and for the agency, and can be applied and interpreted flexibly. Agencies can decide how information is released: by phone, email, letter, fax, or in person. Conditions can also be imposed on the use of the information released. An example of one agency's approach in regard to closed circuit television (CCTV) is discussed in the case study on page 27.

Some agencies present applicants with a spectrum of choices to highlight the ways information can be made available:

- mandatory disclosure (see page 18)
- proactive release (see page 22)
- informal release
- as a 'last resort', release in response to a formal application.

Highlighting the role of the informal pathway avoids the time and effort needed to prepare an application and may also create opportunities for agencies to streamline the handling of common requests.

The IPC recommends that agencies exercise the discretion to deal with requests informally wherever possible as a way that furthers the object of the GIPA Act. It facilitates and encourages, promptly and at the lowest reasonable cost, access to government information.

Agencies retain the discretion to refuse an informal request or require a formal application to be lodged in appropriate circumstances such as where:

- searching for and retrieving the information sought would require a significant use of resources
- the material contains information about a third party that cannot be deleted easily or without rendering the information useless, and consultation would need to occur
- the material is sensitive in nature and requires careful balancing of public interests.

If an agency does decide to refuse an informal request for information, the agency should inform the applicant. The person seeking the information can then choose to apply for the information formally, or make a complaint to the Information Commissioner about the agency's conduct in dealing with the informal request.

In June 2016, the IPC published a template letter that agencies can use to communicate options to applicants for accessing information when advising applicants of a decision to refuse an informal release request.

Safeguards for staff who release information informally in good faith

Staff of agencies who decide to release information informally, and who believe in good faith that the decision is permitted or required by the GIPA Act, are not exposed to any personal liability, or to any action in defamation or breach of confidence, that may result from the disclosure, as provided for by sections 113 and 115 of the GIPA Act. Section 114 also protects staff from criminal liability that may arise merely because of a decision to disclose information made in good faith under the GIPA Act.

Agency Information Guides can be used to encourage informal release

AIGs are an important mechanism for accessing information that can be used to promote proactive and informal release of information. AIGs assist agencies to ensure that citizens have knowledge of, and access to, government information that is both current and significant in relation to the formulation of policy and service delivery by agencies, together with access to arrangements to participate in the formulation of policy and service delivery by agencies.

AIGs will sometimes be the starting point for applicants seeking information. They are therefore an important opportunity to highlight the use of the informal pathway and encourage its use when appropriate. Strengthening the role of AIGs to encourage the informal pathway can also contribute to the broader goal of improving public participation and Open Government.

CASE STUDY: Informal release of audio visual information

If an agency uses the informal pathway in the GIPA Act, it is able to release information subject to any reasonable conditions that the agency thinks fit to impose.

A government sector agency has used the informal pathway to release CCTV information to media applicants subject to conditions, such as a requirement to pixelate and remove personal information, before publishing the information. In order to achieve this outcome, the agency offers the applicant the opportunity to withdraw their formal request under the GIPA Act and make an informal request instead.

Using the informal pathway in this way has facilitated prompt access to the CCTV information at the lowest reasonable cost to the applicant and the agency. However it should be noted that conditions on informal release are not enforceable under the GIPA Act.

Pathway 4: Formal applications

In 2015/16, there was a significant increase in the number of applications lodged and a halt in the two year decline in the overall release rate.

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 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 are that:

- 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 NCAT.

ISSUE HIGHLIGHT: Open Government Partnership and understanding the public's use of freedom of information rights

The Information Commissioner co-ordinated the contribution of right to information jurisdictions in Australia towards collecting and publishing uniform data on public use of freedom of information rights. That contribution has now been incorporated in Australia's inaugural Open Government Partnership National Action Plan. As a democratic society it is important that we have systems in place to measure how citizens are using the legislated right to information and the provision of information in a timely, effective manner by governments in response to citizen requests.

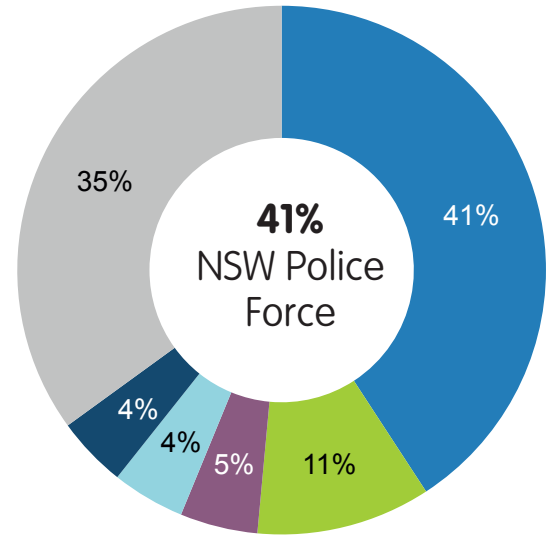
Although the Commonwealth, states and territories already collect data and produce statistics about applications to access government information, the data collected is not uniform across jurisdictions. This makes it difficult to compare and analyse how freedom of information rights are used across the country.

The proposed measures will facilitate an assessment of the right to information, the exercise of that right and the effectiveness of that right in providing information to citizens. The measures will be designed to align with established international metrics including the World Justice Project Open Government Index and could include the type of applicant, application rates per capita, release rates, review rates and refusal rates.

The inclusion of the measurement of how citizens are using information access rights in the Open Government Partnership National Action Plan demonstrates Australia's commitment to assessing the effectiveness of this fundamental right. The analysis of these measures, including international benchmarking, will provide an assessment that contributes to Australia's commitment to the Open Government Partnership and to the advancement of Open Government in NSW.

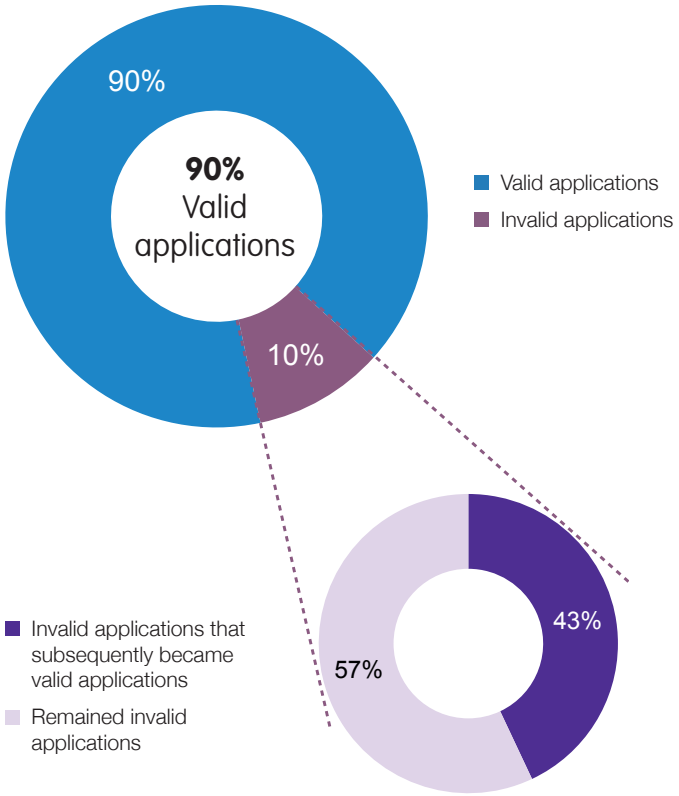
Year at a glance

Where were applications lodged?

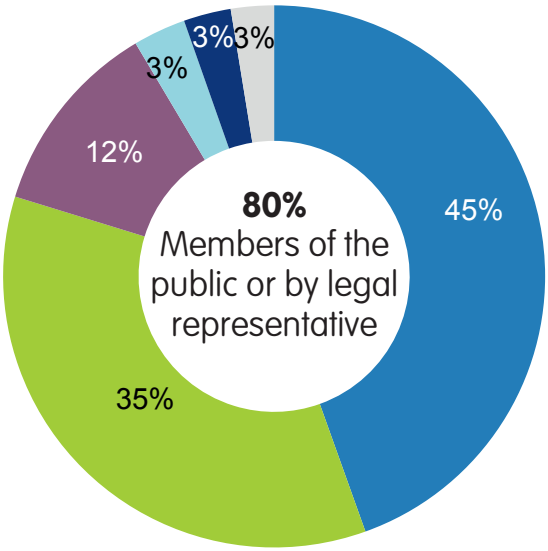


- NSW Police Force
- Roads and Maritime Services
- SafeWork NSW
- Department of Family and Community Services
- Department of Justice
- Other

Were applications invalid?

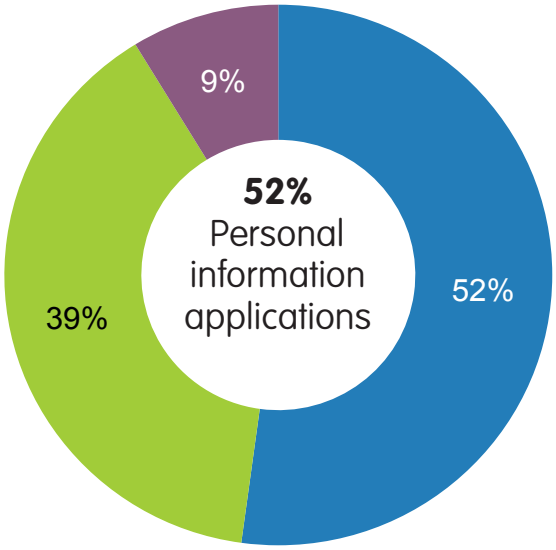


Who applied?



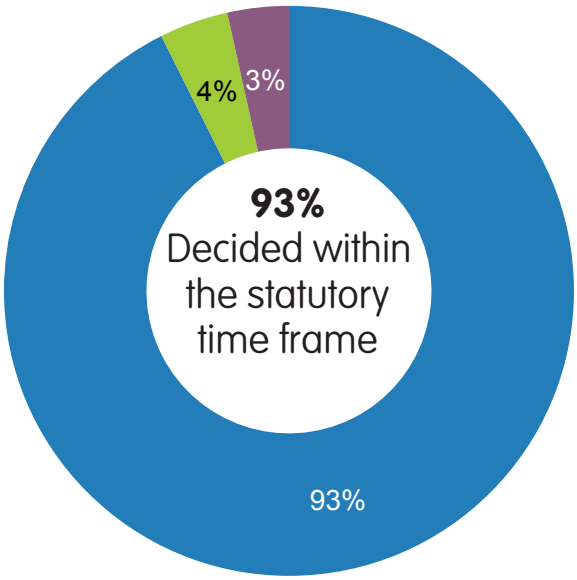
- Members of the Public (by legal representative)
- Members of the Public (other)
- Private sector business
- Media
- Members of Parliament
- Not for profit organisations or community groups

What was asked for?



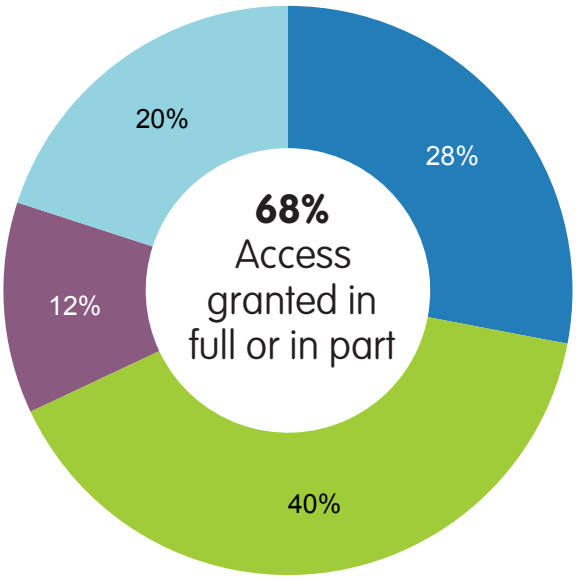
- Personal information applications
- Access applications (other than personal information applications)
- Access applications that are personal information applications and partly other

How quickly were decisions made?



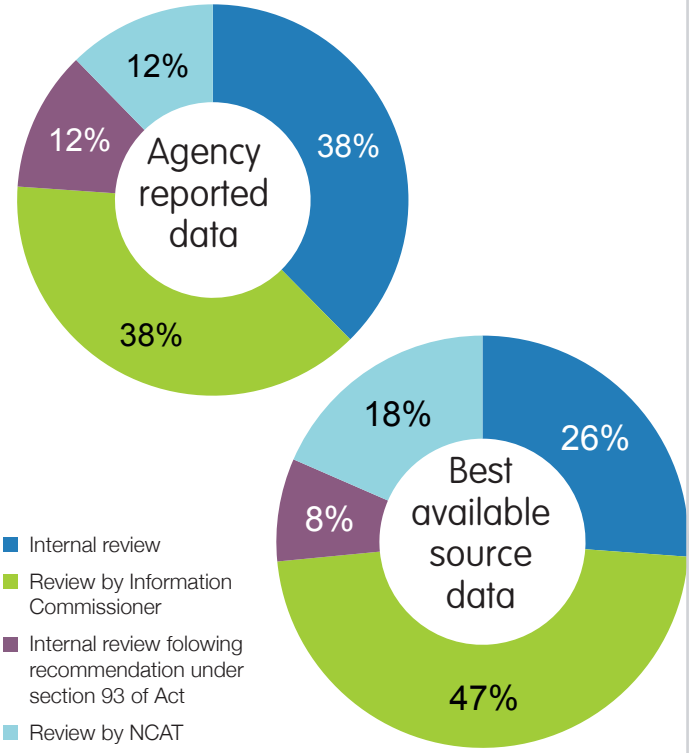
- Decided within the statutory time frame (20 days plus any extensions)
- Decided after 35 days (by agreement with applicant)
- Not decided within time (deemed refusal)

Did applicants get what they asked for?



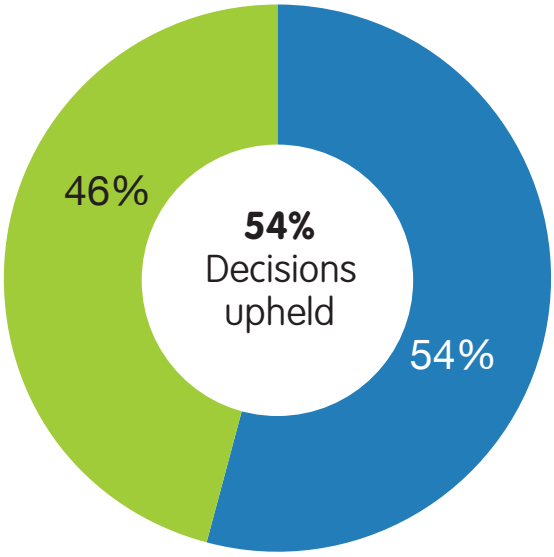
- Access granted in full
- Access refused in full
- Access granted in part
- Other

How were decisions reviewed?



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

What were the main review outcomes?



- Decisions upheld
- Decisions varied

How many applications were lodged?

The number of applications received increased significantly in 2015/16

At the time of reporting, agencies had advised they received 14,761 valid applications during 2015/16. This compares with 12,968 applications in the previous financial year and represents a total increase of 14% in applications received. The trend in applications is shown in Figure 12.[11] This overall increase represents a return to the numbers of applications received in 2012/13.

The number of applications received by agencies can be affected by a number of 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.

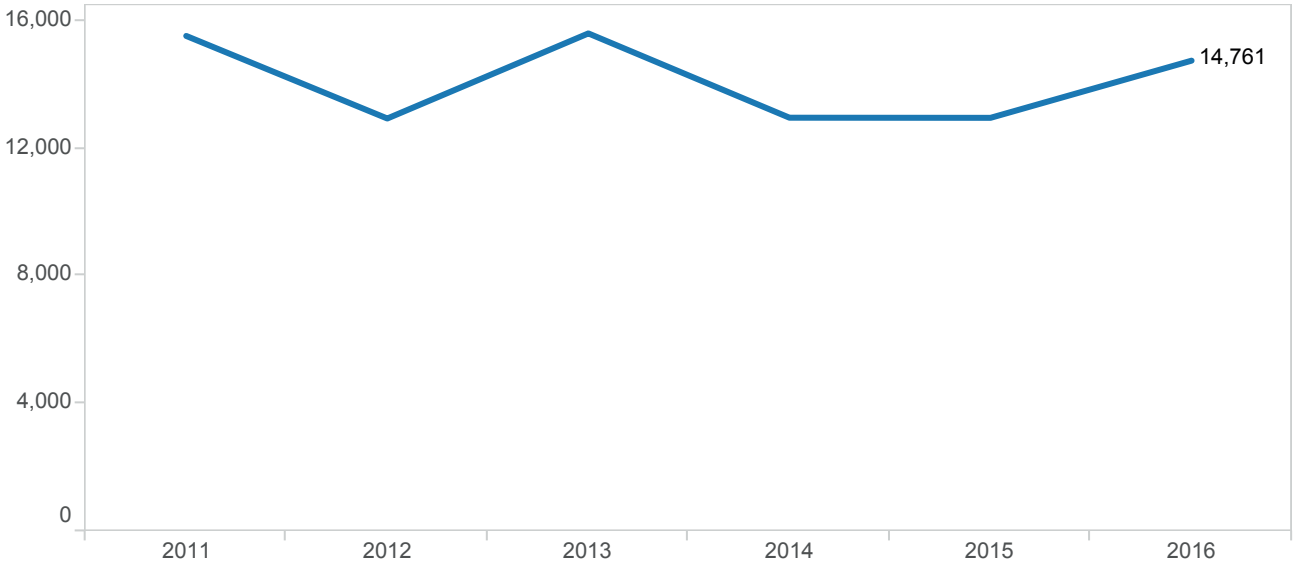
Most applications were made to the government sector

The government sector continued to account for the great majority (12,599 or 85%) of valid applications.

In 2015/16, the NSW Police Force and Roads and Maritime Services (RMS) combined accounted for 52% of all valid applications (Figure 13). This is a decline from 55% in 2014/15. There continues to be an upward trend in the number of applications received by the NSW Police Force since 2014. Conversely, the number of applications received by RMS has continued to decline since 2013.

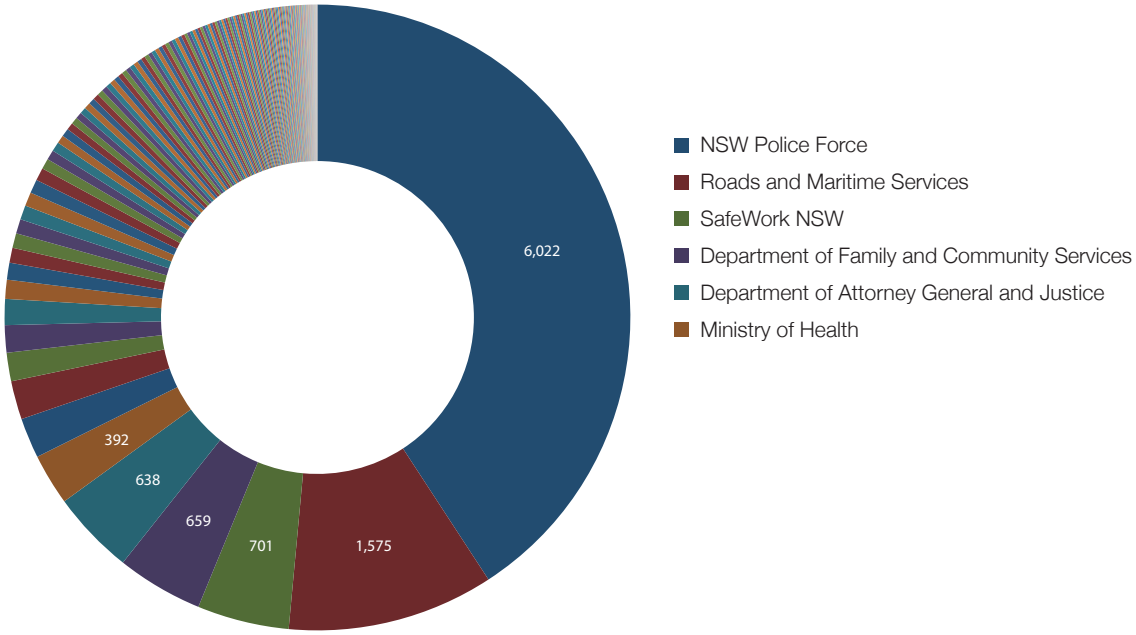
The number of applications received by SafeWork NSW (previously WorkCover Authority) increased from 637 to 701, and the number received by the Department of Family and Community Services declined from 739 to 659. As a result, SafeWork NSW received the third highest number of valid applications in 2015/16 and the Department of Family and Community Services moved from the third highest number of applications in 2014/15 to the fourth highest in 2015/16.

Figure 12: Total number of valid applications received, 2010/11 to 2015/16



11 It should be noted that: a) the number of reported applications received includes applications that may be transferred to other agencies, and b) numbers for 2014/15 vary slightly to those reported in the 2014/15 Report due to the late submission of data by some agencies.

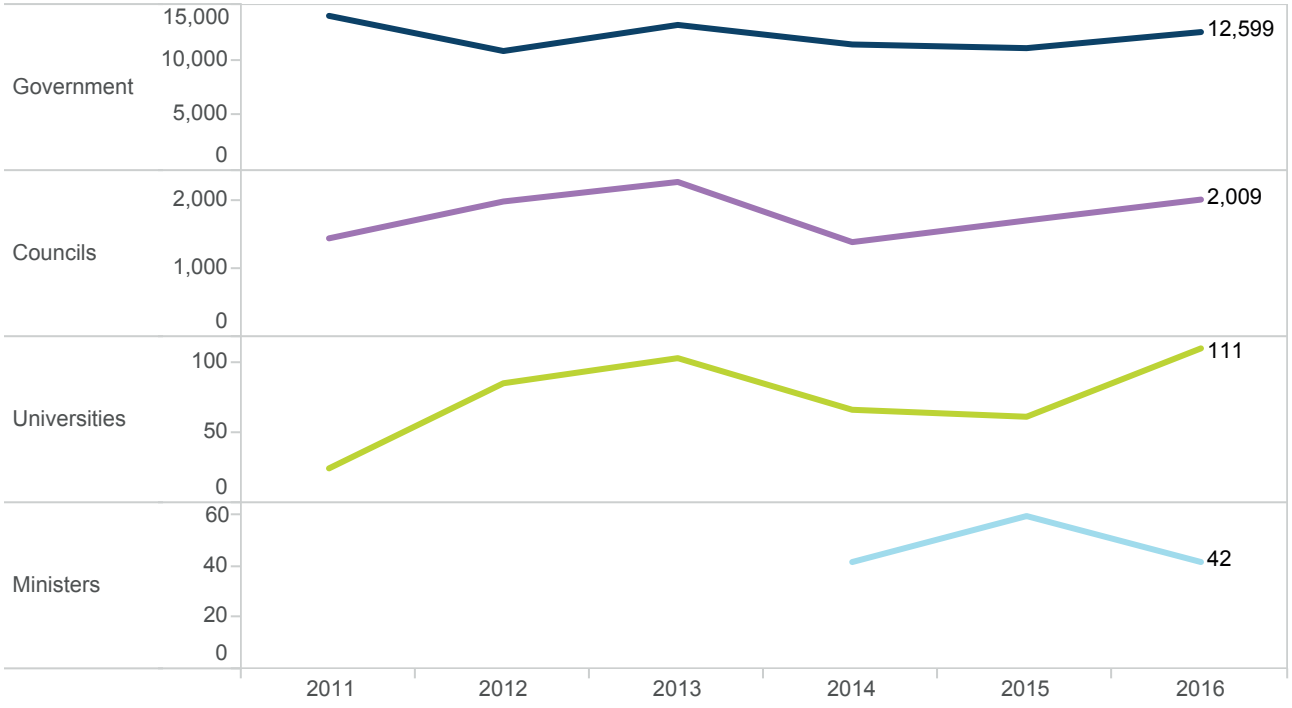
Figure 13: Distribution of valid applications received, by agency, 2015/16



Applications increased significantly in all sectors except the minister sector

- Applications to the government sector increased by 1,457 or 13%, from 11,142 in 2014/15 to 12,599 in 2015/16.
- Applications to the council sector increased by 305 or 18%, from 1,704 in 2014/15 to 2,009 in 2015/16.
- Applications to the university sector increased by 49 or 79%, from 62 in 2014/15 to 111 in 2015/16.
- Applications to the minister sector declined by 18 or 30%, from 60 in 2014/15 to 42 in 2015/16.

Figure 14: Number of applications received, by sector, 2010/11 to 2015/16



'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 7(b) of the GIPA Regulation.

Invalid applications

The level and trend in invalid applications is one indicator of the extent to which the GIPA Act is understood by applicants and agencies, as well as the flexibility offered to applicants to amend their applications so they can be considered.

Figure 15 shows the flow of applications from receipt, to initial assessment and subsequent processing, as well as the number of applications considered in 2015/16.

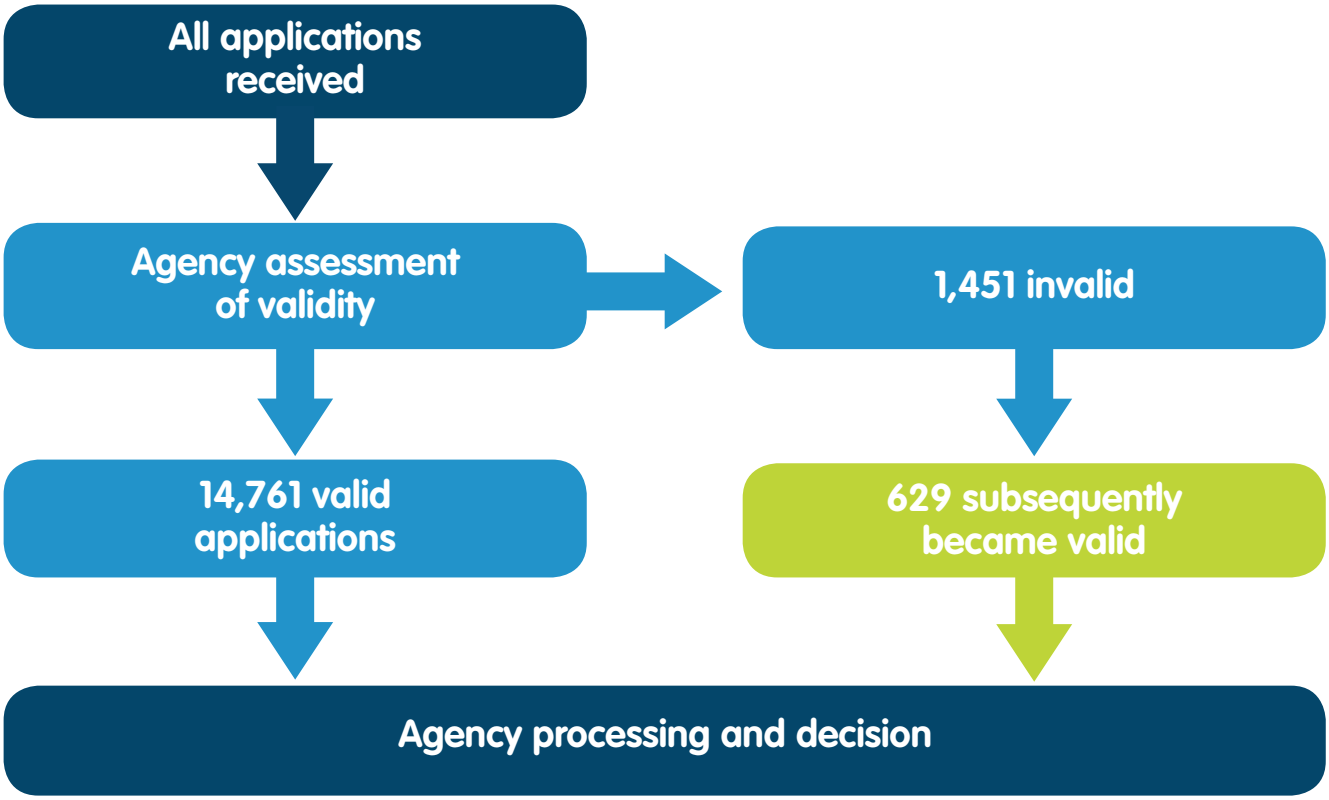
Section 52(3) of the GIPA Act requires agencies to provide reasonable advice and assistance to enable applicants to make a valid application.

The rate of invalid applications received rose slightly compared with 2014/15, but varied between sectors

In 2015/16, agencies received 1,451 invalid applications. This was equivalent to 10% of all formal applications received (Figure 16). As a percentage of all formal applications received, the proportion of invalid applications has increased from 8% in 2014/15, and declined overall from a high of 13% in the first year of the GIPA Act's operation.

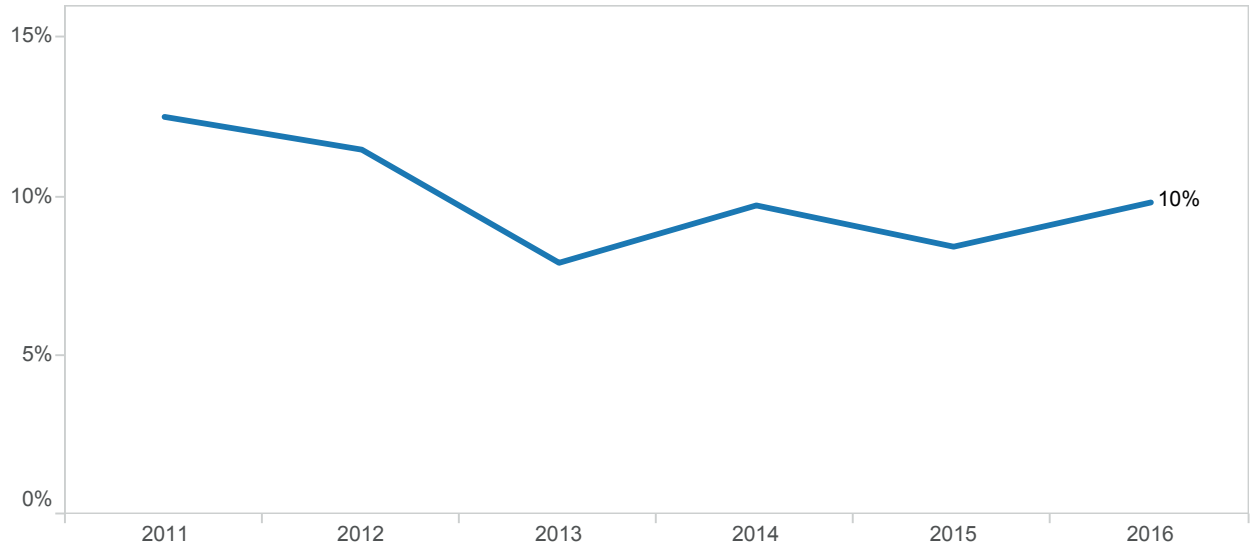
In 2015/16, the dominant reason for invalidity (applying in 97% of invalid applications) was that the application did not comply with formal requirements. This is consistent with the 99% for invalidity attributed to non-compliance with formal requirements reported in 2014/15.

Figure 15: Flow of valid and invalid formal applications



'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 16: Invalid applications as a percentage of all formal applications received, 2010/11 to 2015/16



Clear agency communication, including the provision of fact sheets and guidance to potential applicants, can help minimise the number of invalid applications and reduce time and effort that may be spent on preparing or assessing applications. The IPC provides guidance to agencies on the processing of valid and invalid applications and a template access application form to assist the provision of information required to make a valid application, available on the IPC website.

Year on year data confirms that most applications are made by members of the public. The requirement for certainty and assistance to applicants to ensure that valid applications are lodged has been recognised by the IPC. Building on the functionality supporting case management of GIPA applications in the 'GIPA Tool' developed to promote agency compliance, the IPC will examine further opportunities for digitisation of the GIPA application process.

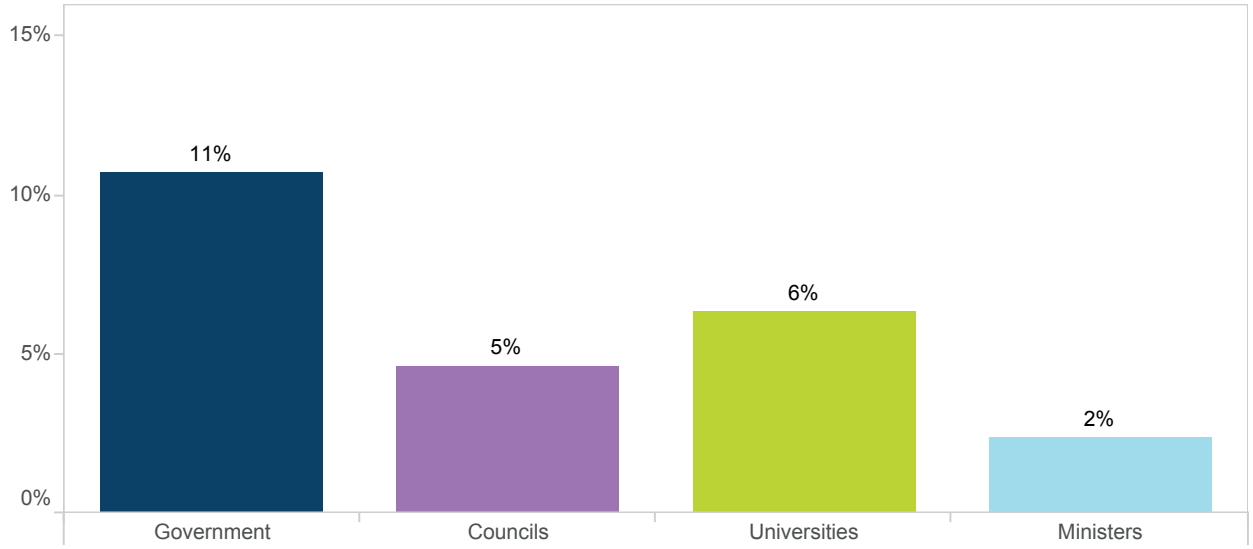
The university and government sectors had the highest percentage of invalid applications

As seen in Figure 17, the pattern of invalid applications as a percentage of all applications varied across sectors. The government and university sectors had the highest percentage of invalid applications.

The number of invalid applications received by the minister sector has significantly declined

The percentage of invalid applications as a percentage of all formal applications received by the minister sector declined from 12% in 2014/15 to only 2% in 2015/16. This is a positive outcome when compared to 2014/15 and a return to earlier low levels of invalid applications. However, the variation should be considered in the context of the overall low numbers of applications received by the minister sector.

Figure 17: Invalid applications as a percentage of all formal applications received, by sector, 2015/16



Invalid applications are increasingly becoming valid

An invalid application can subsequently become valid, for example, through the applicant providing further information to comply with the requirements of the GIPA Act.

In 2015/16, 43% of invalid applications subsequently became valid (Figure 18). This continues the upward trend in the percentage of invalid applications that became valid.

Figure 18: Invalid applications that became valid as a percentage of all invalid applications, 2010/11 to 2015/16

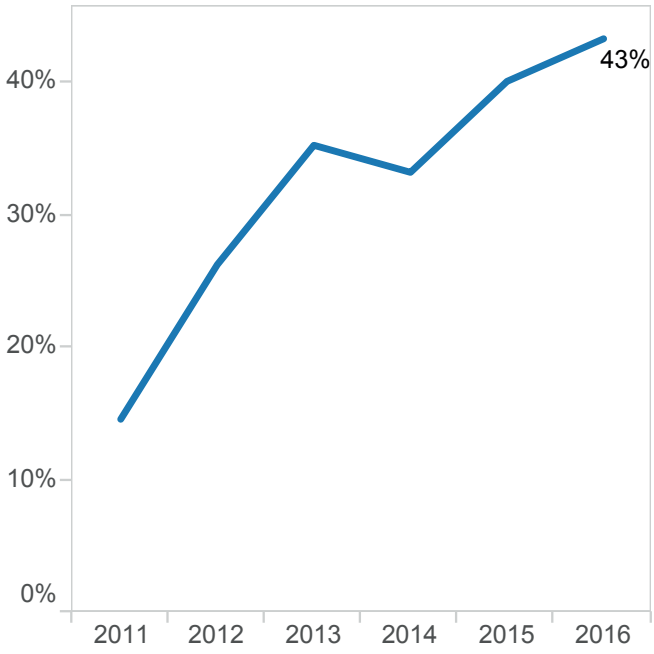
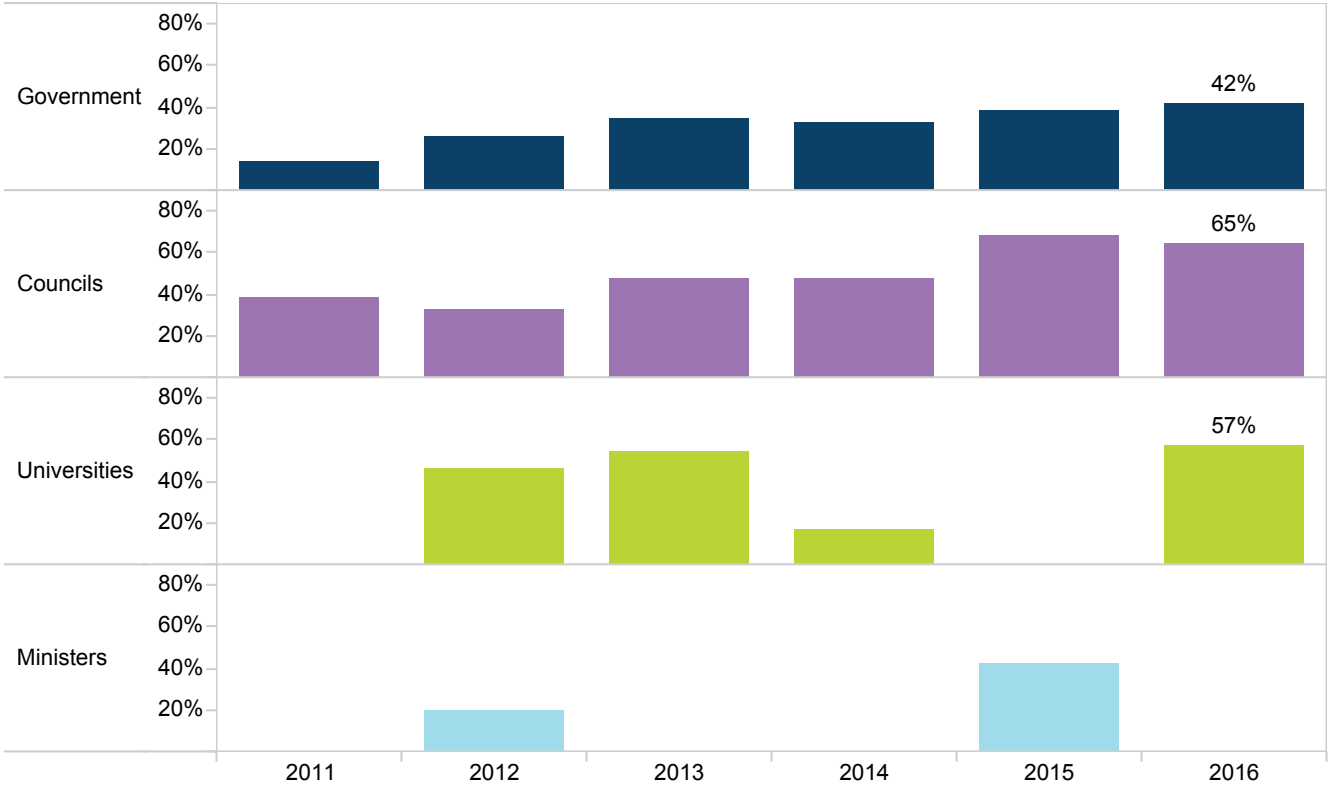


Figure 19: Invalid applications that became valid as a percentage of all invalid applications, by sector, 2010/11 to 2015/16



Note: In some years, some sectors did not receive any invalid applications that became valid.

As Figure 19 shows, the percentage of invalid applications that subsequently became valid has increased steadily from 15% in 2010/11 in the government sector.

Figure 19 also shows that the percentage of invalid applications received by universities that became valid increased significantly from 0% in 2014/15 to 57% in 2015/16.

The increase in the percentage of applications that became valid is a positive illustration of agencies discharging their responsibilities under the GIPA Act. The trend is consistent with efforts by agencies and the IPC to improve guidance to applicants and to raise their awareness of how to lodge a valid application.

ISSUE HIGHLIGHT: Information Commissioner approves additional facilities for making an access application and paying an application fee

The IPC is continually exploring ways to promote the objects of the GIPA Act and assist agencies with the exercise of their functions under the Act. Since June 2014, the Information Commissioner has provided approval under section 41(2) of the GIPA Act to three government agencies for additional facilities for the making of an access application or the payment of an application fee.

The Information Commissioner commends these agencies' efforts to create a more accessible platform for applicants to request access to government information. The additional facilities include applications via email, payment via bank transfer, and online services on an agency's website.

Benefits for members of the public can include:

- assistance to applicants through automated and real-time checks to ensure that the application is valid on submission
- 'any-time' lodgement of applications
- better accessibility of services for customers with mobility issues
- overall improved customer service through the provision of both face-to-face and online facilities
- immediate issue of application and receipt numbers that can be used for customer enquiries relating to progress of applications.

The IPC publishes a register of the Information Commissioner's approvals on the IPC website.

Who applied?

Most application outcomes were by or on behalf of members of the public

In 2015/16, over 80% of outcomes related to applications from either a member of the public or their legal representative. The largest single source (45%) related to applications by legal representatives. This is an increase from 42% of applications lodged by legal representatives in 2014/15.

As apparent from Figure 13, the volume and source of applications received by the NSW Police Force heavily influenced overall reported outcomes.

Figure 20 shows these differences in distribution. For example, the percentage of outcomes relating to applications by legally represented members of the public was 45% across all agencies and declined to 33% if NSW Police Force data was excluded. This is an increase from 2014/15 from 42% and 30% respectively.

Significant changes in applicant type were experienced in the university and minister sectors

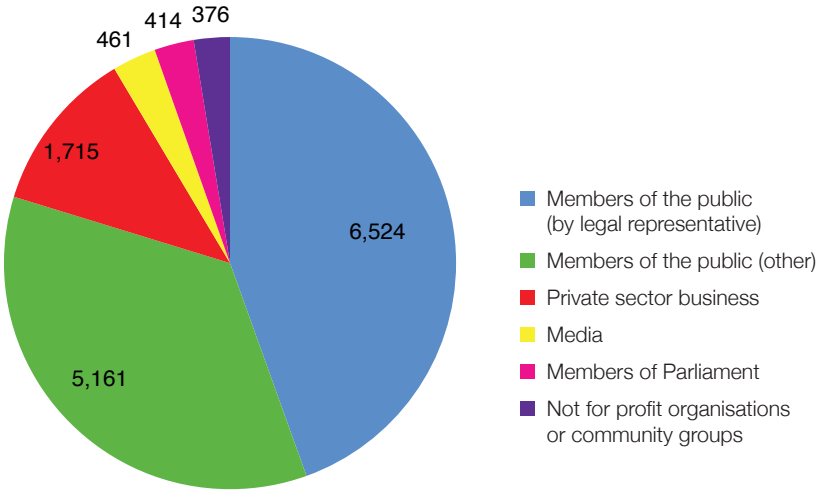
In 2015/16, the distribution of applicant types varied markedly across sectors. As Figure 21 shows, the greatest percentage of outcomes in the government and council sectors related to applications by members of the public (or their legal representative).

There was a significant decline in the percentage of outcomes in the university sector related to applications by members of the public (or their legal representative). In 2015/16, 55% of outcomes related to applications by members of the public (or their legal representative). This is a significant decline from 87% in 2014/15. There was an increase in the percentage of outcomes in the university sector related to applications by media and not-for-profit organisations or community groups.

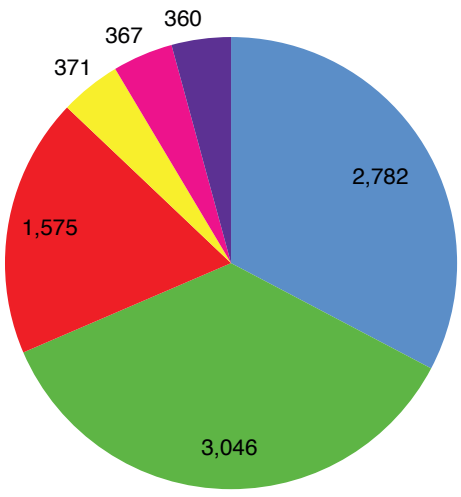
There was an increase in the percentage of outcomes in the minister sector related to applications by Members of Parliament. In 2015/16, 46% of outcomes related to applications by Members of Parliament, an increase from 31% in 2014/15.

Figure 20: Outcomes by type of applicant, 2015/16

All agencies including NSW Police Force

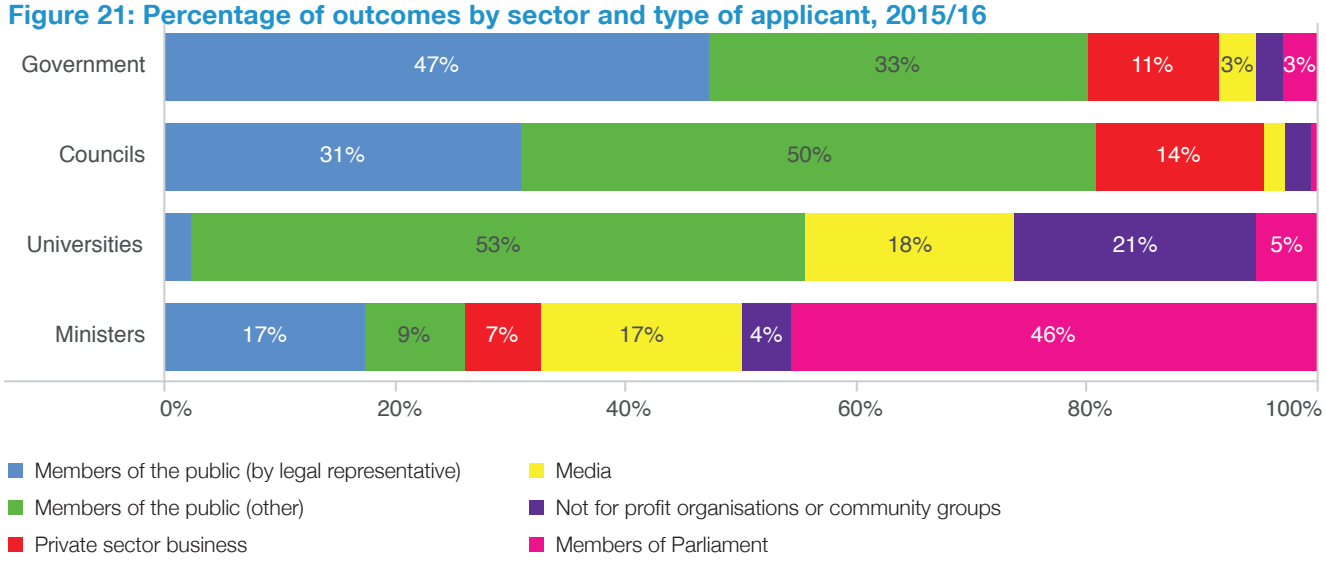


All agencies excluding NSW Police Force



'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 21: Percentage of outcomes by sector and type of applicant, 2015/16



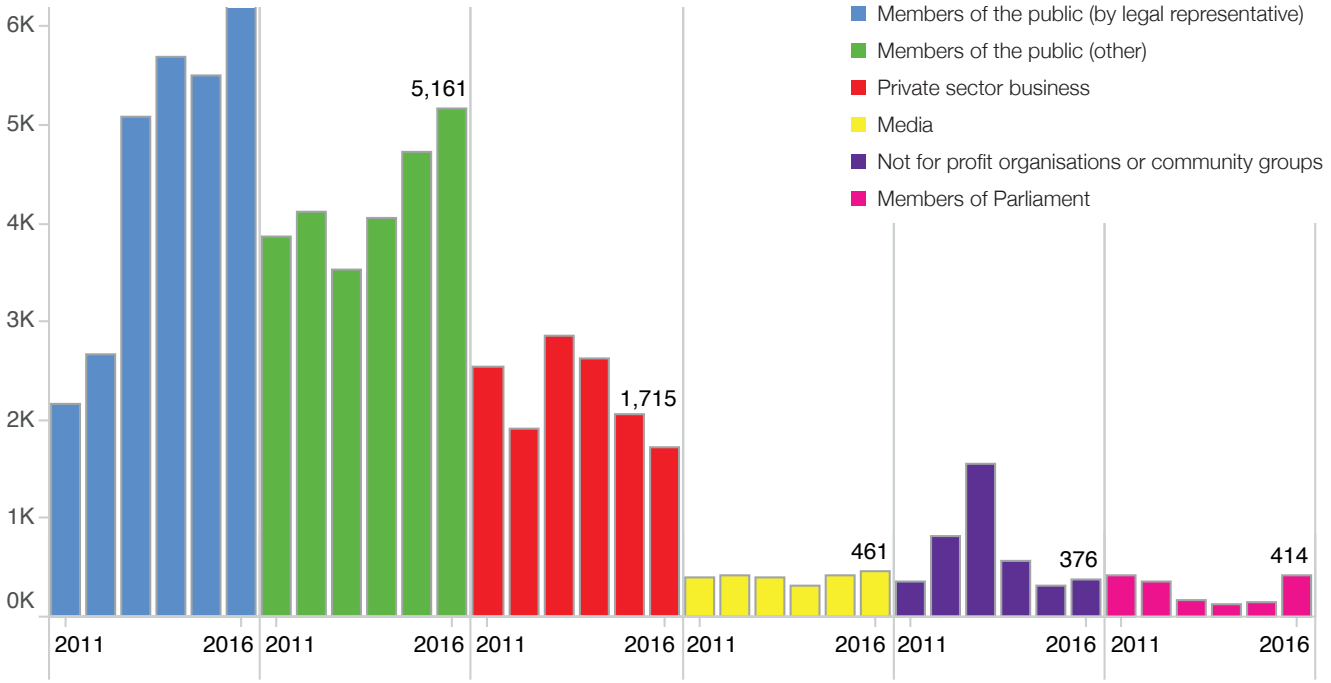
The trend of increasing outcomes for members of the public continues. However, the number of outcomes relating to applications by Members of Parliament has significantly increased in 2015/16.

Figure 22 shows how the number of outcomes for each applicant type has varied since 2010/11. The greatest increase in the number of outcomes was for applications by members of the public (by a legal representative). In 2014/15, 5,508 outcomes related to members of the public (by a legal representative) and this significantly increased by 18% to 6,524 in 2015/16.

Outcomes for private sector business had the greatest decline in the number of outcomes. In 2014/15, 2,054 outcomes related to private sector businesses, significantly declining by 18% to 1,715 in 2015/16.

However, the most significant percentage increase was in the number of outcomes by Members of Parliament, which rose from a small base of 147 in 2014/15 to 414 in 2015/16. This represents a 182% increase in the number of outcomes attributable to applications by Members of Parliament.

Figure 22: Number of outcomes by type of applicant, 2010/11 to 2015/16



What information was asked for?

The trend of decreasing applications for personal information continued in 2015/16

In 2015/16, the outcomes across all sectors remained consistent with 2014/15 outcomes. However, the three year decline in applications for personal information has continued:

- 52% of outcomes related to personal information applications compared with 55% in 2014/15 and 59% in 2013/14
- 39% of outcomes related to applications for other than personal information compared with 38% in 2014/15
- 9% of outcomes related to applications for both types of information compared with 7% in 2014/15. (Figure 23)

As Figure 24 shows, in 2015/16 the number of outcomes across all application types increased compared with 2014/15:

- personal information outcomes increased by 6%. However, when compared to the 14% increase in total application numbers, this represents a decline in the share of all outcomes which were for personal information to 52%
- other than personal information outcomes increased significantly by 15%
- outcomes that were partly personal information and partly other also increased significantly by 30%.

Figure 23: Outcomes by type of information applied for, 2015/16

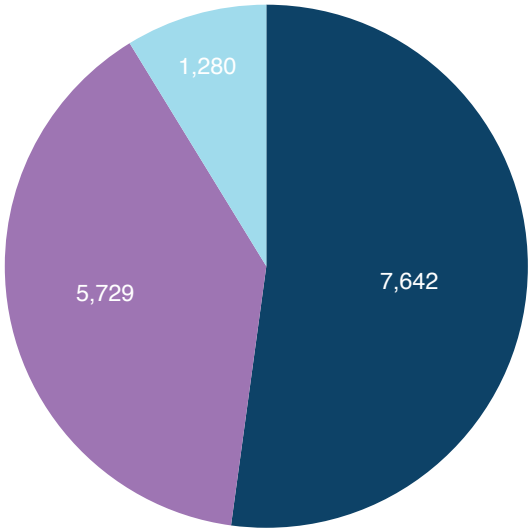
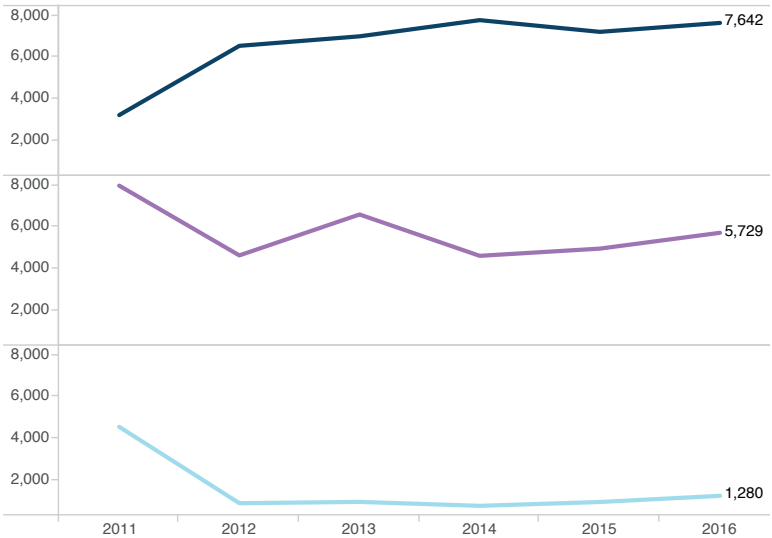


Figure 24: Number of outcomes by type of information applied for, 2010/11 to 2015/16



- Personal information applications
- Access applications (other than personal information applications)
- Access applications that are partly personal information applications and partly other

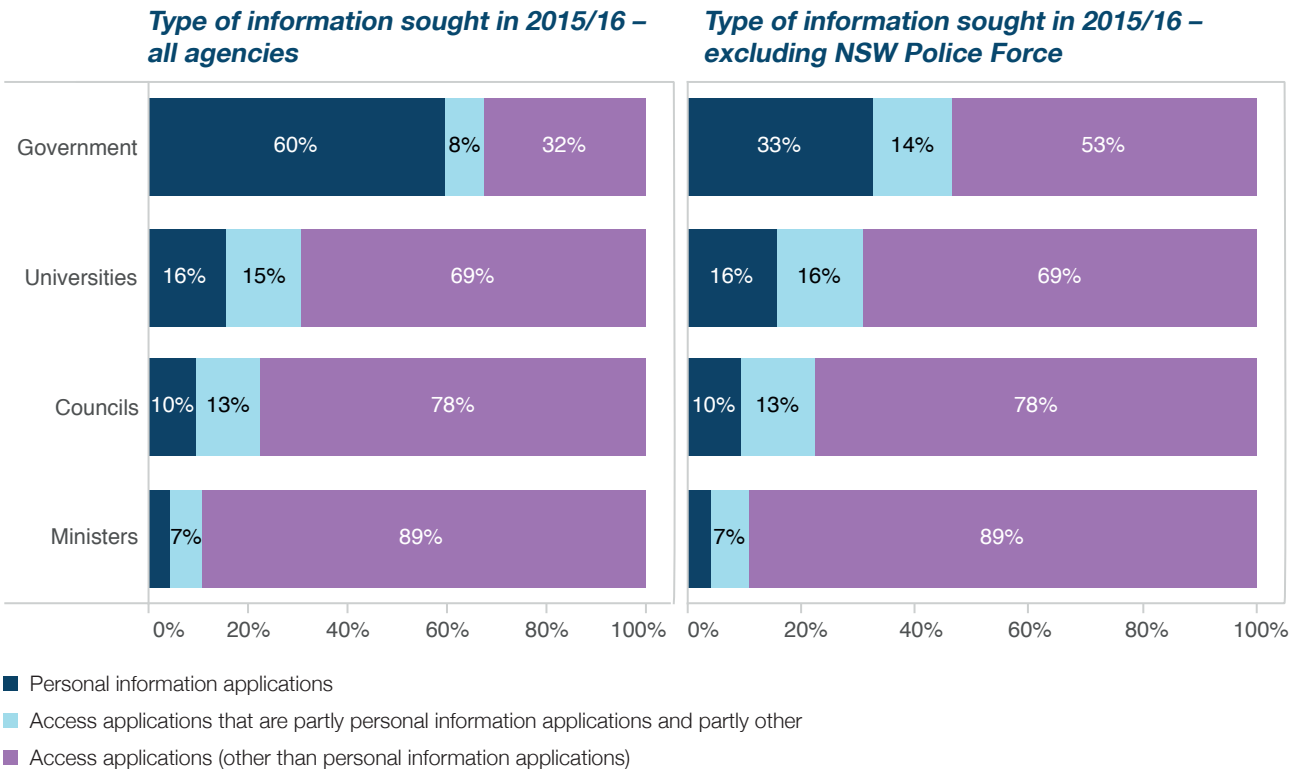
'What information was asked for?' is reported and measured by the requirement for agencies to report on the number of outcomes for applications made for personal information, other than personal information, or a combination of both types of information from Table B, Schedule 2 to the GIPA Regulation.

The type of information sought varied across sectors and in the university sector applications for personal information significantly declined

Different sectors experienced markedly different patterns of outcomes in 2015/16. This was consistent with the outcomes reported in 2014/15.

In the government sector, 60% of outcomes related to applications for personal information. As Figure 25 shows, this fell to 33% if outcomes relating to the NSW Police Force were excluded (as 87% of outcomes for that agency related to applications for personal information). This pattern of use is consistent with the data reported in 2014/15, when this pattern was identified for the first time.

Figure 25: Percentage of all outcomes by type of information applied for, including and excluding NSW Police Force data, 2015/16



In the council sector, nearly 80% of outcomes related to applications for other than personal information. This is a decline of 6% from 2014/15.

The university sector displayed a significant change in reported outcomes. In 2015/16 the university sector reported that 16% of applications were for personal information. This is a significant decline from the 51% reported in 2014/15.

Coinciding with this decline there has been a significant increase in outcomes relating to applications for non-personal information from 34% in 2014/15 to 69% in 2015/16.

Did applicants get what they asked for?

There has been a plateauing of overall 'release rates' driven largely by the government and council sectors

In 2015/16, the overall release rate was 68%, representing the combined access granted in full and in part outcomes (Figure 26). This is consistent with the combined release rate of 69% in 2014/15. These rates indicate a plateauing of release rates over the past two years and a decline from a high in 2012/13 when the overall release rate was 80%.

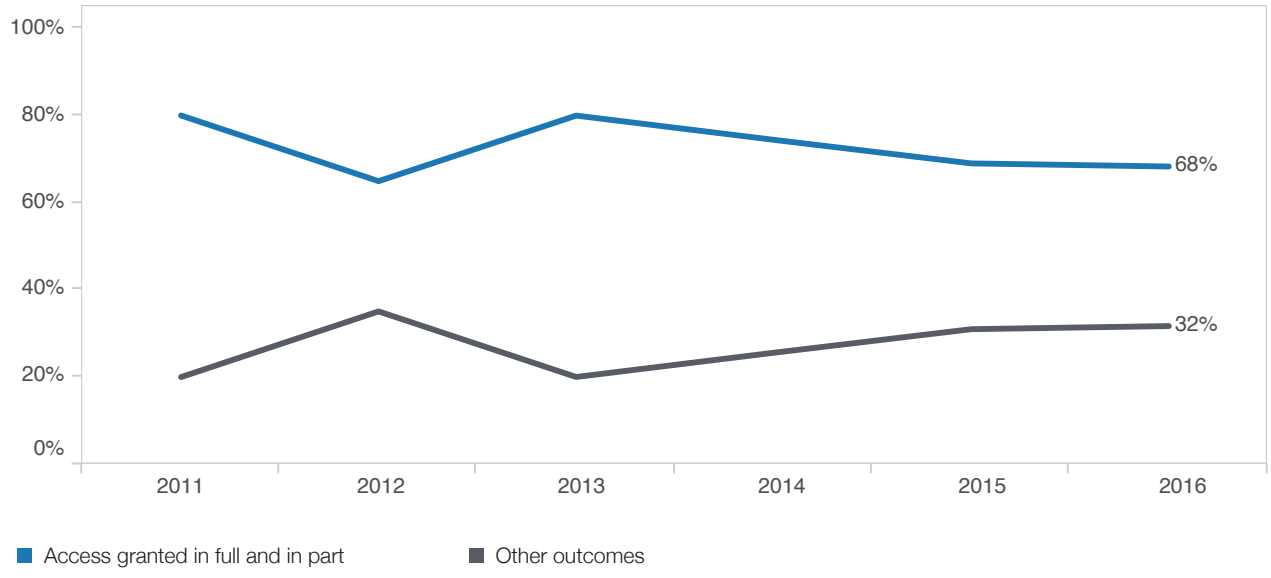
At the sector level, in 2015/16, 68% of outcomes from the government sector resulted in access being granted in full or in part. This is similar to the release rates reported in 2014/15 and continues the decline from a high of 80% in 2012/13 (Figure 27).

For the council sector, 70% of outcomes granted access in full or in part in 2015/16, a decline from 73% in 2014/15.

The minister sector demonstrated a significant increase in access being granted in full or in part with a release rate of 54% in 2015/16, an increase from 34% in 2014/15. This variation should be considered in the context of the overall low numbers of applications received by the minister sector.

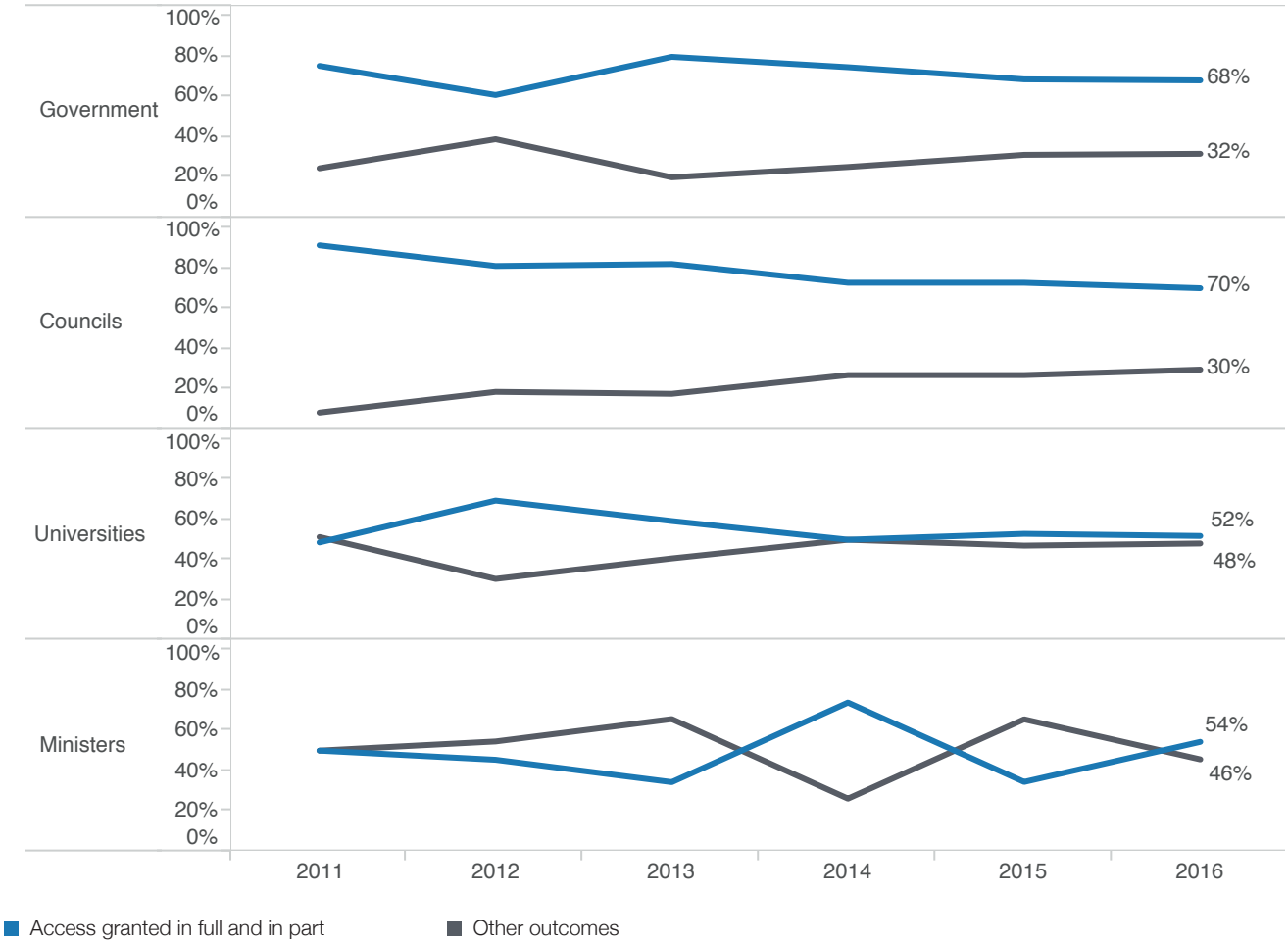
For the university sector, 52% of outcomes granted access in full or in part in 2015/16. This is similar to the release rates reported in 2014/15 of 53%.

Figure 26: Overall release rate across all sectors, 2010/11 to 2015/16



'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.

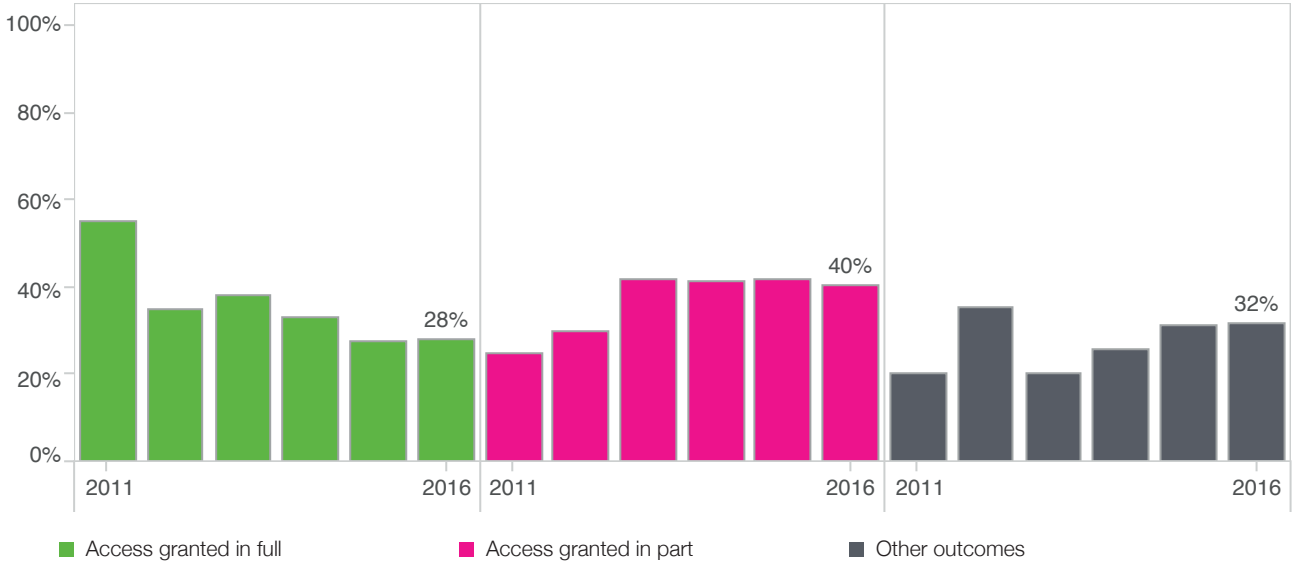
Figure 27: Overall release rate by sector, 2010/11 to 2015/16



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

In 2015/16, 28% of all outcomes granted access in full (Figure 28). This is consistent with the 27% reported in 2014/15 and confirms the decline from a high of 55% in 2010/11.

Figure 28: Release outcomes across all sectors, 2010/11 to 2015/16

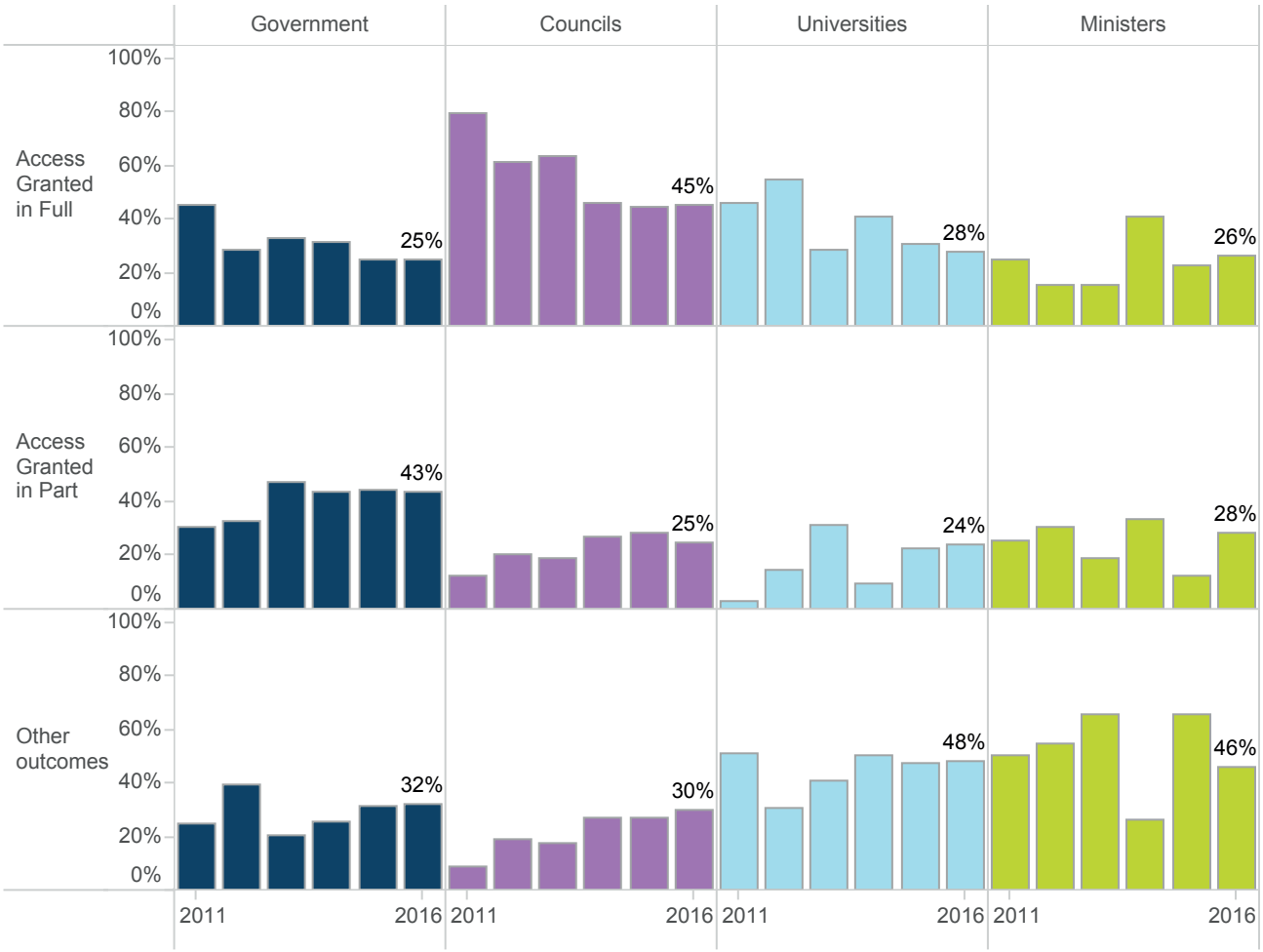


However, there has been an increase in access granted in part outcomes, from 25% in 2010/11 to 40% in 2015/16. For each year since 2012/13 there have been more outcomes granting access in part than granting access in full.

This gap between access granted in full and in part outcomes is attributable to the government sector:

- In 2015/16, 25% of all outcomes provided by the government sector granted access in full (Figure 29), consistent with 2014/15 and a decline from a high of 45% in 2010/11. Access granted in part represented 43% of all outcomes, consistent with 2014/15, and an increase from 30% in 2010/11.
- In 2015/16, 45% of all outcomes provided by the council sector granted access in full consistent with 2014/15, and a decline from a high of 79% in 2010/11. Access granted in part represented 25% of all outcomes, consistent with 2014/15, and an increase from 12% in 2010/11.
- In 2015/16, 26% of all outcomes provided by the minister sector granted access in full, an increase from 22% in 2014/15. Access granted in part represented 28%, a significant increase from 12% in 2014/15.

Figure 29: Release outcomes by sector, 2010/11 to 2015/16



Applications for personal information resulted in a greater release of information. However, applications for 'other than personal' information were more likely to have access granted in full

The overall release rate of information for applications for personal information and applications for other than personal information were similar in 2015/16, at 71% and 65% respectively. These release rates are consistent with those reported in 2014/15.

However, the composition of outcomes for each type of application was different (Figure 30):

- In 2015/16, 21% of all outcomes for applications for personal information granted access in full and 50% of all outcomes granted access in part. The gap between access granted in full and access granted in part outcomes has remained consistently large since 2012/13, averaging around 31%.
- In 2015/16, 40% of all outcomes for applications for other than personal information granted access in full and 25% of all outcomes granted access in part. However, access granted in full outcomes declined from a high of 58% in 2010/11.

Figure 30: Release outcomes by application type, 2010/11 to 2015/16

Overall release rates are highest for members of the public and private sector business. However release rates for not-for-profit organisations or community groups are significantly lower.

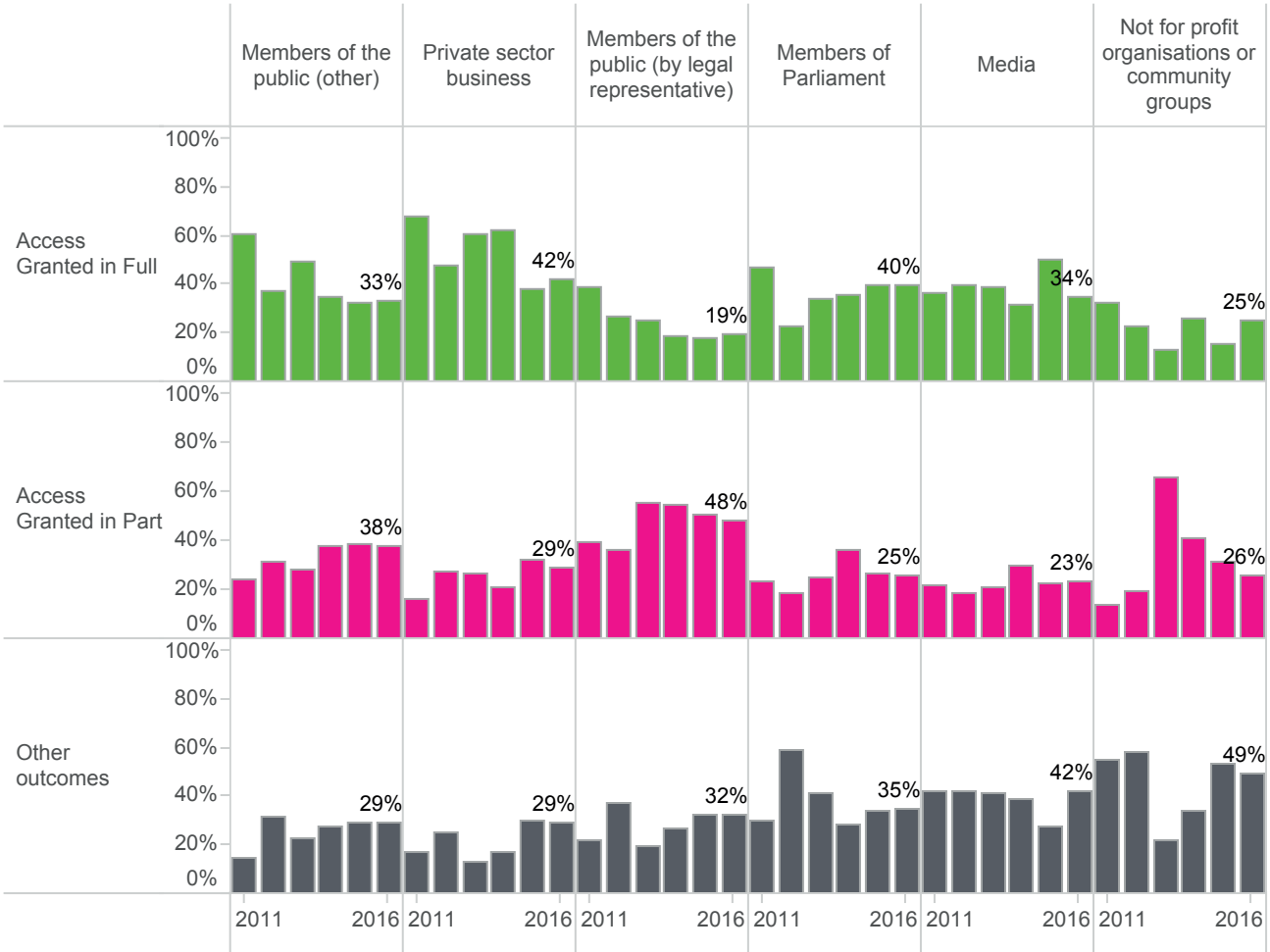
The highest release rates in 2015/16 were for applications by members of the public (71%), private sector business (71%) and members of the public (by a legal representative) (67%) (Figure 31).

The lowest overall release rate (51%) was for not-for-profit organisations or community groups, an increase from 46% in 2014/15. However, the 20% difference in release rates between members of the public and not-for-profit or community groups is significant and will be monitored.

The composition of outcomes for the top three applicant types varied in 2015/16 from 2014/15 in relation to private sector business, but remained consistent for members of the public and legally represented members of the public:

- For members of the public, 33% of outcomes granted access in full and 38% granted access in part. Access granted in full outcomes declined from a high of 61% in 2010/11, while access granted in part outcomes increased from 24% in 2010/11.
- For private sector business, 42% of outcomes granted access in full, an increase from 38% in 2014/15 and 29% granted access in part, a decline from 32% in 2014/15. Private sector businesses continue to be likely to have access granted in full compared to other applicant types. However, the percentage of access granted in full outcomes declined in 2015/16 from over 60% between 2012/13 and 2013/14.
- For legal representatives, 19% of outcomes granted access in full and 48% granted access in part. The gap between access granted in full and access granted in part outcomes has remained consistently large since 2012/13, at around 32%.

Figure 31: Outcomes by applicant type, 2010/11 to 2015/16



ISSUE HIGHLIGHT: Trends in agency release rates

The 2014/15 Report noted that the rate at which agencies decided to release information in response to formal applications either in full or in part – the 'release rate' – had fallen from 80% of decisions in 2012/13 to 69% in 2014/15.

In response, the IPC identified as a priority to "Examine and respond to trends in information release rates and outcomes". This Issue Highlight presents in more detail the trends in release rates, discusses some possible explanations for the trends, and describes actions the IPC will take to address these trends.

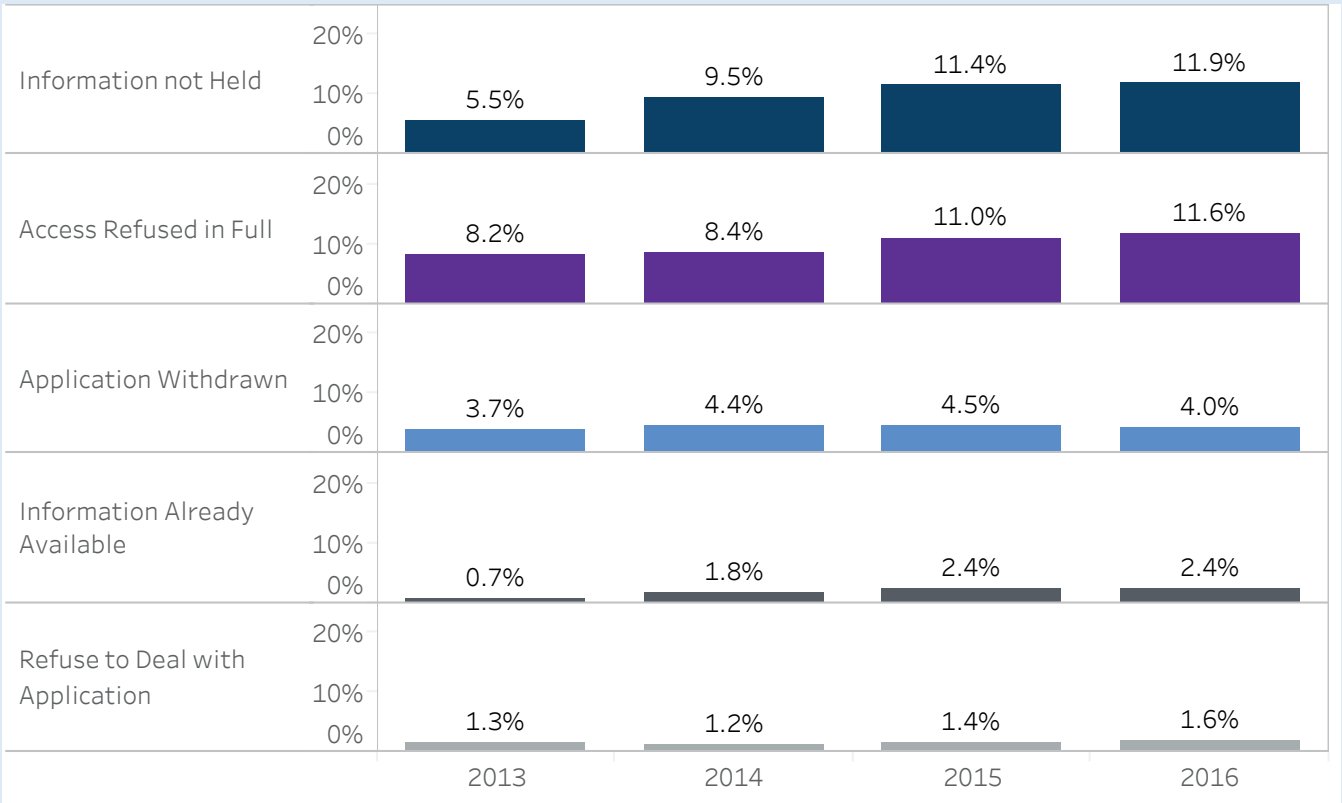
Growth in other outcomes

Under the GIPA Act reporting requirements, agencies must record formal application outcomes according to eight categories. Two of these outcomes reflect decisions to provide access to information and represent the overall release rate. The remaining six outcomes provide alternatives to the release of information. Data on each of these six outcomes has been examined by the IPC. Of those, five outcomes have increased. These increases have been identified as a factor impacting upon the overall decline in release rates over the period 2012/13 to 2015/16:

- Information Not Held outcomes have increased from 5.5% to 11.9%
- Refused to Provide Access in Full outcomes have increased from 8.2% to 11.6%
- Application Withdrawn outcomes have increased from 3.7% to 4%
- Information Already Available outcomes have increased from 0.7% to 2.4%
- Refused to Deal with Application outcomes have increased from 1.3% to 1.6%.

The rise in these five outcomes across all sectors is demonstrated in Figure 32 below.

Figure 32: Trend in selected outcomes 2012/13 to 2015/16 as a percentage of all outcomes



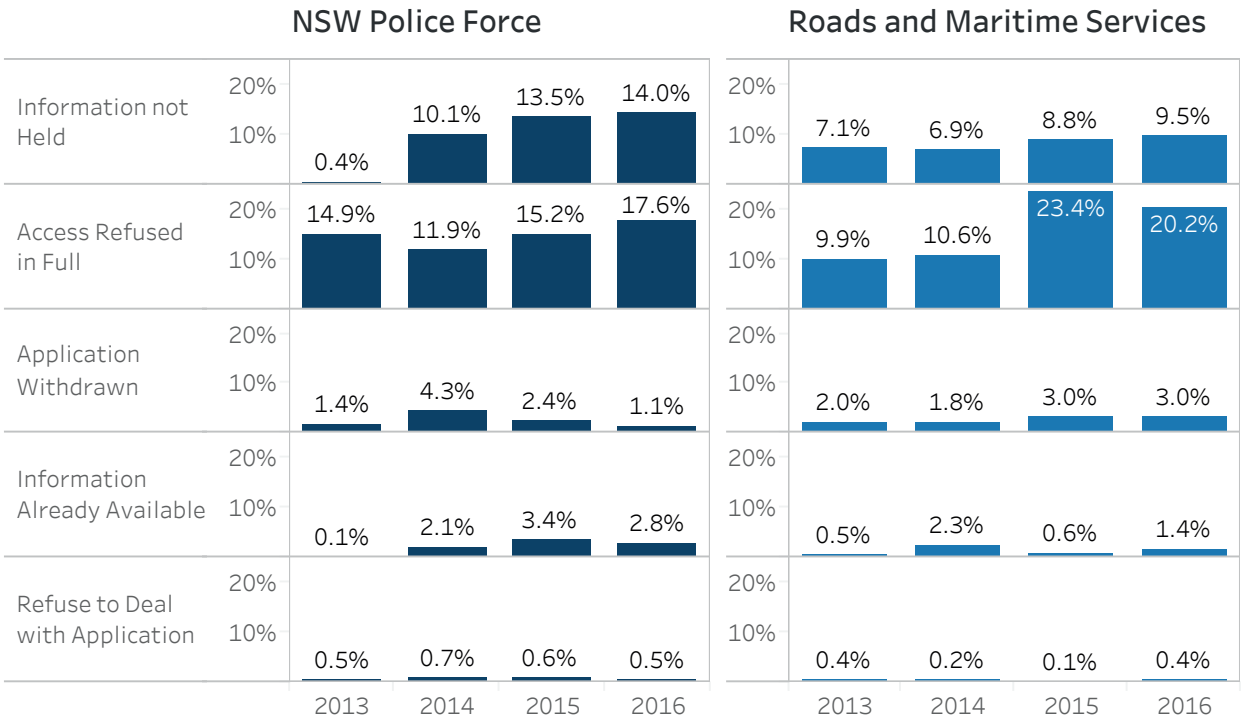
The primary increases influencing the decline in release rates from 2012/13 to 2015/16 relate to two of these five outcomes: Information Not Held (which increased by 993 application outcomes) and Access Refused in Full (which increased by 584 application outcomes).

As noted on page 32, the NSW Police Force and RMS collectively account for 51% of all access applications and, accordingly, trends in decision-making by those agencies have a significant impact upon overall trends.

An examination of agency level data confirms that these two agencies demonstrated the most significant increase in Access Refused in Full outcomes compared to all sectors. The NSW Police Force also demonstrated a more significant increase in Information Not Held outcomes compared to all sectors.

Application outcomes for the NSW Police Force and RMS are demonstrated in Figure 33 below.

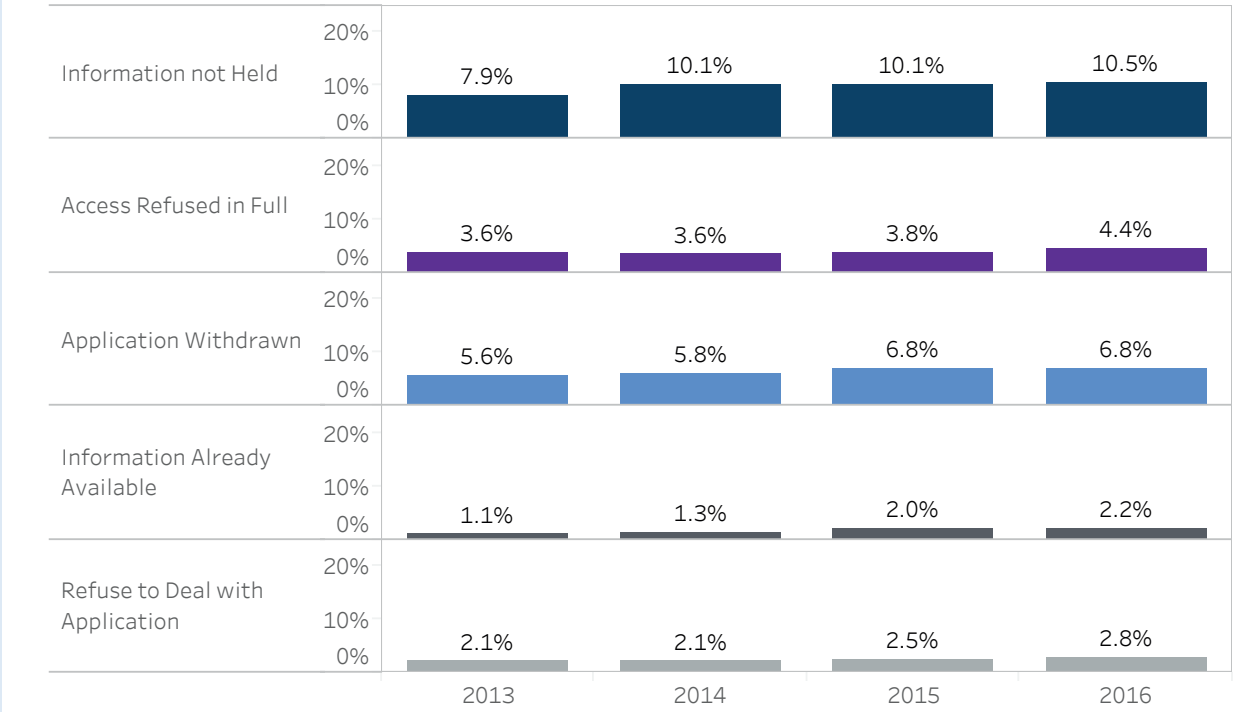
Figure 33: Trend in selected outcomes 2012/13 to 2015/16 as a percentage of all outcomes – NSW Police Force and Roads and Maritime Services



The identification of the NSW Police Force and RMS in influencing overall release rates as a result of their increasing Refusal in Full and Information Not Held outcomes is further demonstrated in Figure 34 below which contains sector outcomes excluding the NSW Police Force and RMS.

When the NSW Police Force and RMS are excluded from sector outcome trends, the overall Refused in Full and Information Not Held outcomes decrease from 11.6% and 11.9% respectively to 4.4% and 10.5% respectively.

Figure 34: Trend in selected outcomes 2012/13 to 2015/16 as a percentage of all outcomes – excluding NSW Police and Roads and Maritime Services



Conclusions

Using the data available to the IPC it is possible to identify some factors affecting the decline in overall release rates:

Access Refused in Full outcomes increasing

- The growth in overall refusal rates is largely attributable to two government sector agencies that account for a large proportion of applications and decision outcomes. The increasing number of outcomes that reflect a decision to Refuse Access in Full by these agencies will inform the IPC's regulatory interventions with these agencies through a closer examination of application type, applicant type, operational processes and organisational culture.

Information Not Held outcomes increasing

- The growth in Information not Held outcomes also has some impact upon overall release rates. There is also a disproportionate representation of this outcome by the NSW Police Force. However, outcomes of this type also suggest that a greater focus is required to assist applicants in determining the scope and target of their information access application. This issue will be considered in the context of exploring options to improve both the validity of applications and the application process generally.

The IPC will continue to investigate the drivers behind these trends in agency decision-making over 2016/17 and engage with agencies having the most significant impact on overall release rates.

As part of the Open Government Partnership National Access Plan, the IPC is leading work to develop uniform metrics to better measure and improve our understanding of the public's use of rights under freedom of information laws. These will be used by the IPC to inform the development of benchmarks and guide future regulatory actions.

How quickly were decisions made?

Agencies are improving the timeliness of decisions

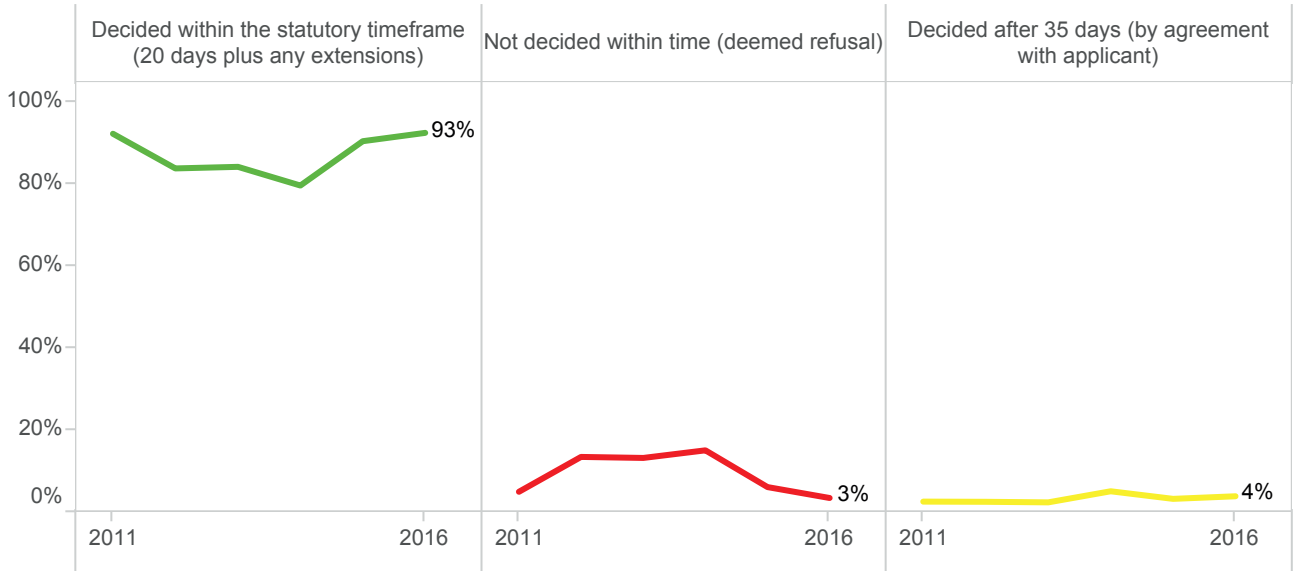
In 2015/16, 12,678 or 93% of applications received by agencies were decided within the statutory time frame (Figure 35). This was an increase in timeliness from 2014/15 (91%). This result continues an upward trend that has occurred since 2013/14. That trend is accompanied by a decline in applications that were deemed to be refused, from a high of 15% in 2013/14 to 3% in 2015/16.

All sectors are achieving positive results for the timeliness of decision-making

In 2015/16 (Figure 36) the:

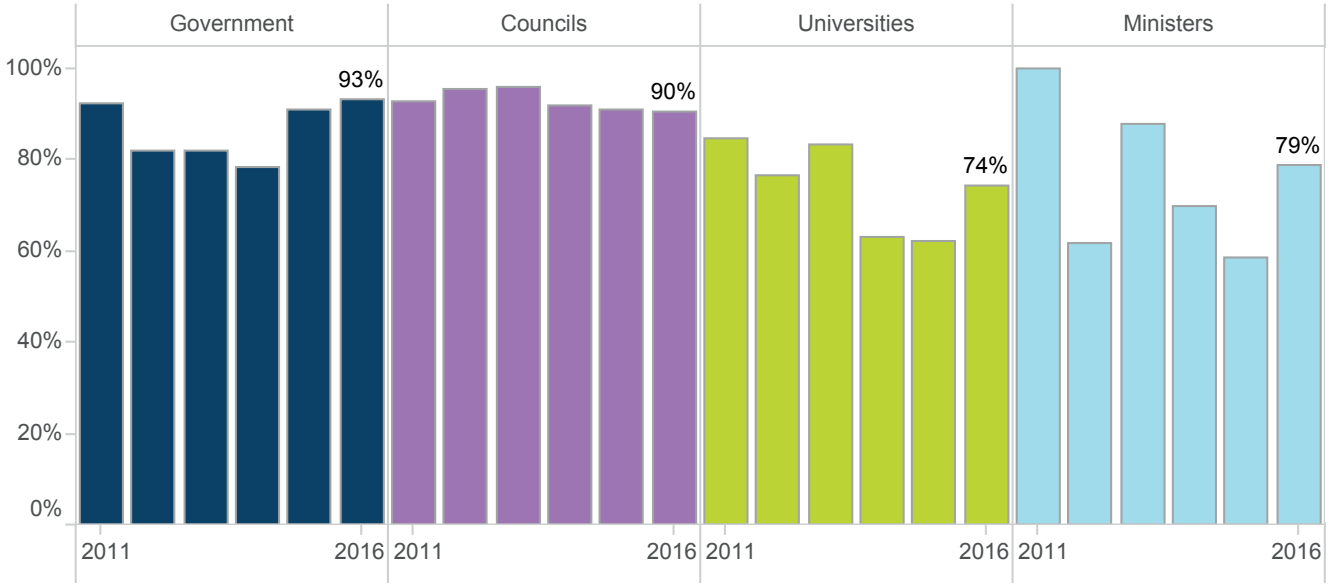
- government sector decided 93% of applications within the statutory time frame, consistent with 91% in 2014/15
- council sector decided 90% of applications within the statutory time frame, and have consistently been deciding 90% or more applications within time since 2010/11
- minister sector decided 79% of applications within the statutory time frame, which is a significant increase from 59% in 2014/15
- university sector decided 74% of applications within time, which is a significant increase from 62% in 2014/15.

Figure 35: Timeliness of applications as a percentage of all applications received, 2010/11 to 2015/16



'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 of the GIPA Regulation.

Figure 36: Applications that were decided within the statutory time frame as a percentage of all applications received, by sector, 2010/11 to 2015/16



ISSUE HIGHLIGHT: Local council 'fast track' fee inconsistent with the GIPA Act

In 2015, the IPC received a complaint about a local council that had introduced a 'fast track fee'. The council offered the public the option of paying a $150 'fast track fee', in addition to the $30 application fee, processing charges, and photocopying fees, to expedite decision-making on GIPA applications to a service standard of 5 business days.

The council advised that the fee had been introduced under the Local Government Act 1993 (LGA) provisions, which authorise councils to introduce fees in certain circumstances.

The Information Commissioner wrote to the council to advise that the GIPA Act identifies and sets both the fee to be paid for an access application (section 41) and the processing charges (section 64) that may be imposed. An agency is able, under section 127, to waive, reduce or refund any fee or charge payable under the GIPA Act. The Information Commissioner also drew the council's attention to section 610 of the LGA, which states that a council may not determine a fee for service that is inconsistent with an amount determined under another Act, or that is in addition to an amount determined under another Act.

The Information Commissioner informed the council that the introduction of a 'fast track fee' of $150 was inconsistent with both the object of the GIPA Act in section 3 and the statutory fee set by section 41. The council was asked to remove the option of a 'fast track fee' from its access application form.

In response to the advice from the Information Commissioner, the council was co-operative in resolving the complaint and advised that it would comply with the request, that the fee had not been used and that it would no longer apply the 'fast track fee' to access applications.

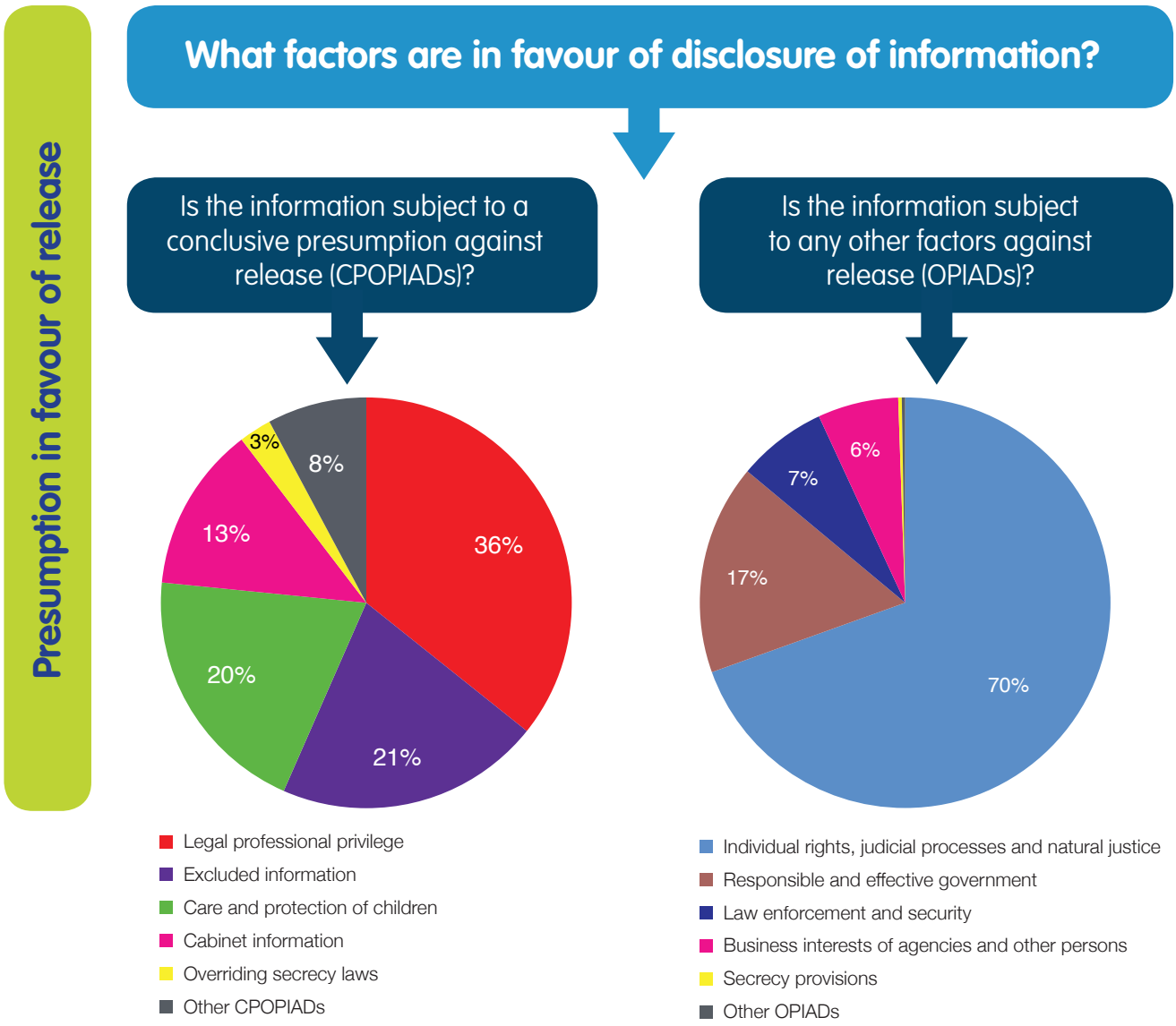
How was the public interest test applied?

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.

Figure 37: A snapshot of the use of CPOPIADs and OPIADs public interest test, 2015/16



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

In 2015/16, 829 applications (or 6% of total applications received) were refused wholly or partly because of a CPOPIAD.

Legal professional privilege continues to be the most applied CPOPIAD, however application of the 'excluded information' CPOPIAD has increased

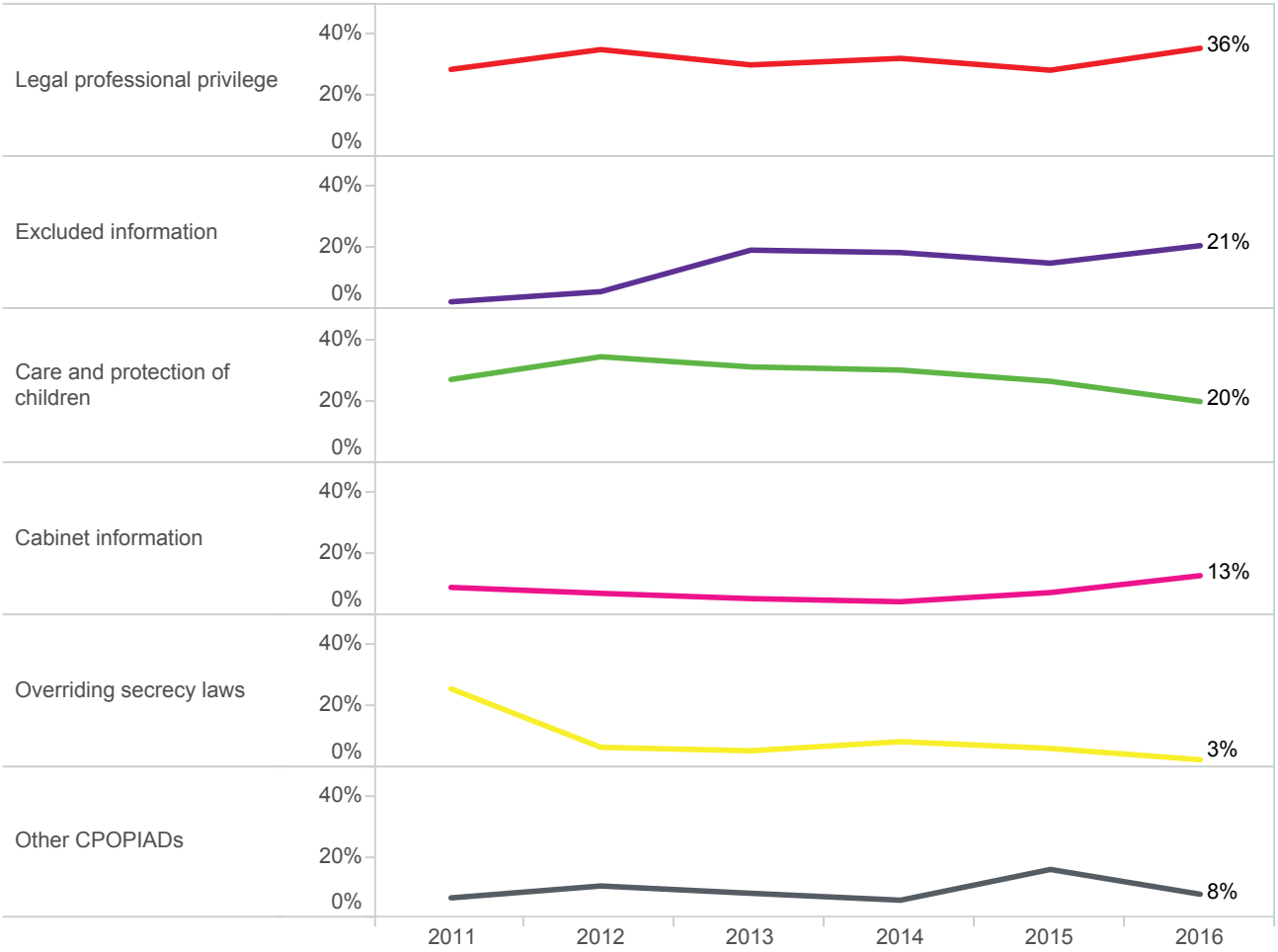
In 2015/16, legal professional privilege remained the most applied CPOPIAD across all sectors (Figure 37). The CPOPIAD was applied 36% of all the times that CPOPIADs were applied. This is an increase from 29% in 2014/15.

The excluded information consideration was the second most applied CPOPIAD, being applied 21% of all the times that CPOPIADs were applied in 2015/16. This is an increase from 15% in 2014/15, when it was the third most applied CPOPIAD. It is a significant increase from the percentage of times that the excluded information consideration was applied in 2010/11, which was 2%.

In 2015/16, the care and protection of children consideration was the third most applied CPOPIAD, being applied 20% of all the times that CPOPIADs were applied. This consideration was the second most applied CPOPIAD in 2014/15, at 27%.

Figure 38 demonstrates the significant decline in the application of overriding secrecy laws as a CPOPIAD from 26% in 2011/12 to 3% in 2015/16.

Figure 38: Percentage distribution of CPOPIADs, 2010/11 to 2015/16



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

The application of the legal professional privilege CPOPIAD remained high in the government and university sectors but declined in the council sector.

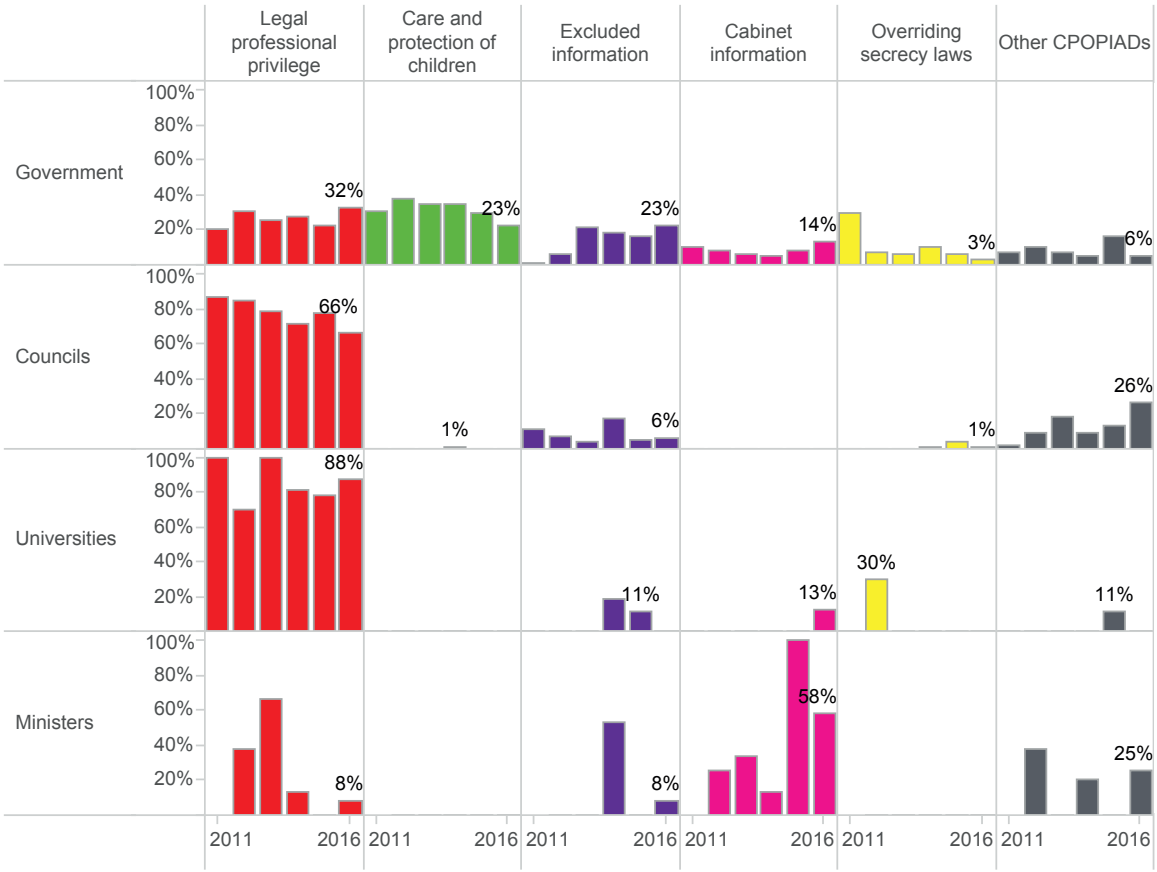
In the government sector, the most applied CPOPIAD in 2015/16 was legal professional privilege (32%) (Figure 39). The primary government agencies applying this CPOPIAD were the Department of Education, NSW Self Insurance Corporation and SafeWork NSW. The second most applied CPOPIADs in the government sector were the care and protection of children (23%) and excluded information (also 23%).

The Department of Family and Community Services was the main agency that applied the care and protection of children CPOPIAD. The NSW Police Force was the main agency that applied the excluded information CPOPIAD.

The legal professional privilege consideration remained the most applied CPOPIAD for the council sector at 66% but declined moderately from 2014/15 when it represented 78% of all CPOPIADs.

In the university sector the most applied CPOPIAD in 2015/16 was legal professional privilege (88%). This was an increase from 78% in 2014/15 (Figure 39).

Figure 39: Percentage distribution of CPOPIADs applied, by sector, 2010/11 to 2015/16



Note: In some years, certain CPOPIADs were not applied to received applications in the council, university and minister sectors.

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

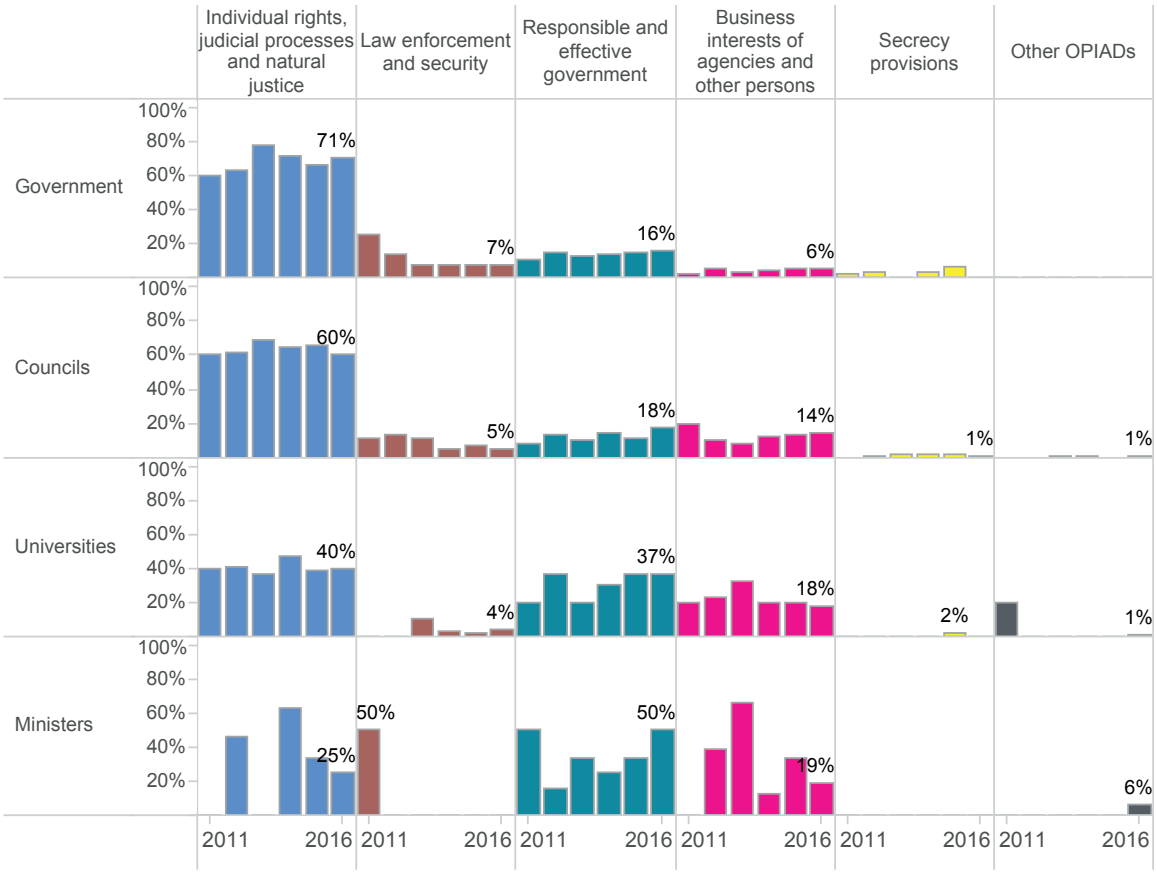
The most frequently applied OPIAD in 2015/16 was individual rights, judicial processes and natural justice across all sectors (70%) (Figure 37). This was the dominant OPIAD applied by the government sector (71%) and councils sector (60%) in 2015/16 (Figure 40). Reliance on this OPIAD is consistent with all previous years since 2010/11.

At an agency level, the consideration was applied 94% of the time by Roads and Maritime Services (RMS), 74% by the NSW Police Force, 57% by SafeWork NSW, and 56% by the Department of Family and Community Services.

There was a significant increase in the proportion of use of this OPIAD by the RMS in 2015/16 compared with 2014/15 (55%). This was commensurate with a decline in its use of the secrecy OPIAD from 42% in 2014/15 to 0% in 2015/16. The application of the secrecy OPIAD by RMS was highlighted in the 2014/15 Report.

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 the NSW Police Force and other 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 40: Percentage distribution of OPIADS applied, by sector, 2010/11 to 2015/16



Note: In some years, certain OPIADs were not applied to received applications across all sectors.

In relation to the personal information consideration, the IPC's Guideline 4: Personal information as a public interest consideration under the GIPA Act assists agencies to understand what personal information means and how to properly apply the considerations when carrying out the public interest test.

ISSUE HIGHLIGHT: CCTV and other video and audio recordings

In 2015/16, the IPC identified that Closed Circuit Television (CCTV) and other video and audio recordings are an emerging form of information sought by applicants under the GIPA Act. In light of this, CCTV and other video and audio recordings were identified as an area for examination in the Information Commissioner's Regulatory Plan 2016/17.

In particular, some of the common issues raised in the external review of agency decisions by the Information Commissioner include:

- how access to CCTV footage is provided
- availability of technology resources
- cost and time to pixelate footage
- addressing the personal information within the footage.

It is reasonable to expect that there will be an increase in access applications relating to audio visual information as information is increasingly becoming more digitised or captured and held in digital form.

The IPC is working with the State Archives and Records Authority, Department of Finance, Services and Innovation, NSW Office of Local Government, NSW government agencies that receive a high volume of access applications or are likely to hold audio visual information, and other stakeholders that have an interest in the efficient and robust management of digital information. The IPC hosted a round table to collaborate and discuss the opportunities and challenges posed by this issue. The round table will inform the development and publication of regulatory guidance on the release of audio visual information under the GIPA Act.

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 as the number of relevant applications – a 'review rate'
- number of reviews, by type
- composition of reviews, by type.

Figure 41 shows the different pathways available for reviews in the GIPA Act.

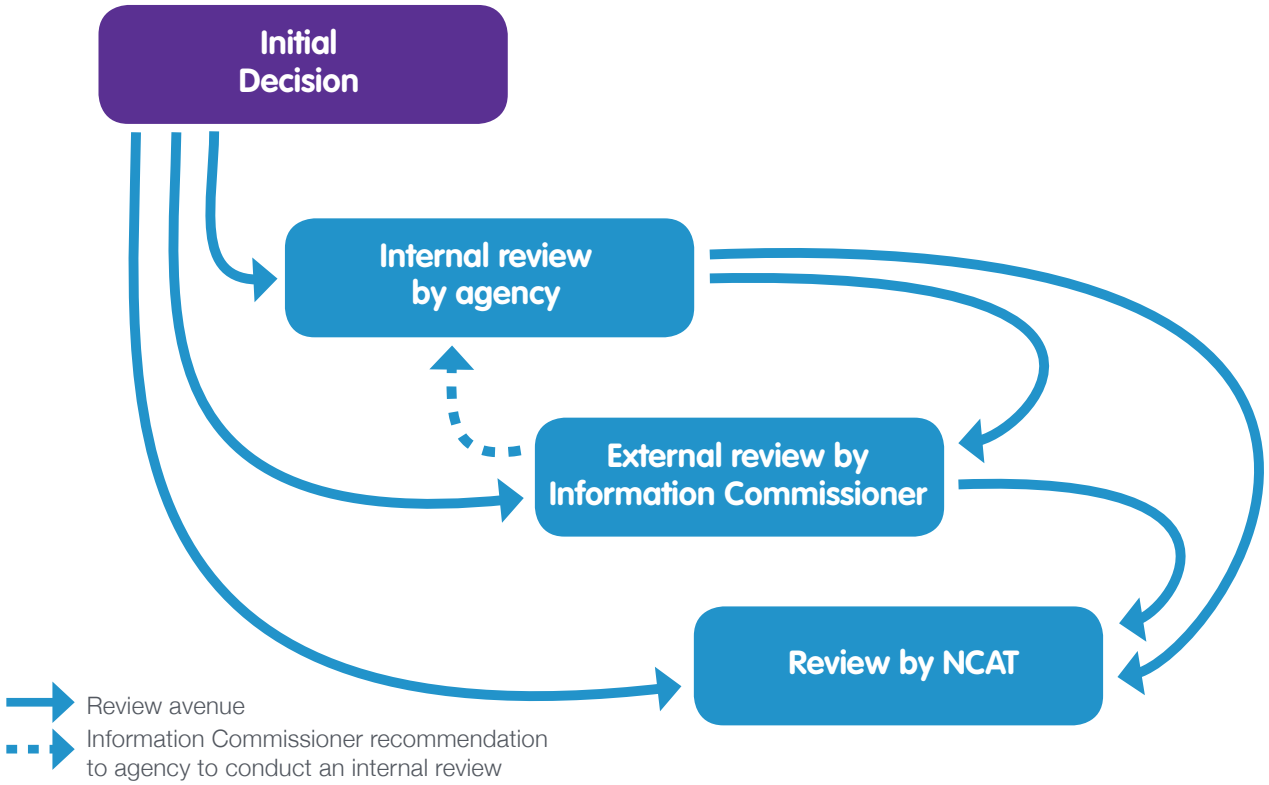
'How were decisions reviewed?' is reported and measured by the requirement for agencies to report on the number of applications reviewed under Part 5 of the Act in Tables G and H of Schedule 2 of the GIPA Regulation.

The overall review rate for total valid applications was 6%

Using the most reliable sources of data to calculate the total number of reviews, reviews were equivalent to 6% of total valid applications received across all sectors in 2015/16. This is consistent with the review rate of 7% reported in 2014/15.

As shown in Figure 42, data on reviews under the GIPA Act is available from agency reported data and data held by the IPC and published by NCAT.

Figure 41: 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 Act in Tables G and H of Schedule 2 of the GIPA Regulation.

Figure 42: Agency, IPC and NCAT data on internal and external reviews, 2015/16

Review type	A: Agency reported data for all reviews	B: Using agency, IPC and NCAT data
Agency internal review of initial decision	214	214
External review by the Information Commissioner	219	387
Review by NCAT	70	151
Agency internal review/reconsideration following a recommendation by the Information Commissioner	66	66
Total	**569**	**818**

Figure 43: Reviews as reported by agencies, 2015/16

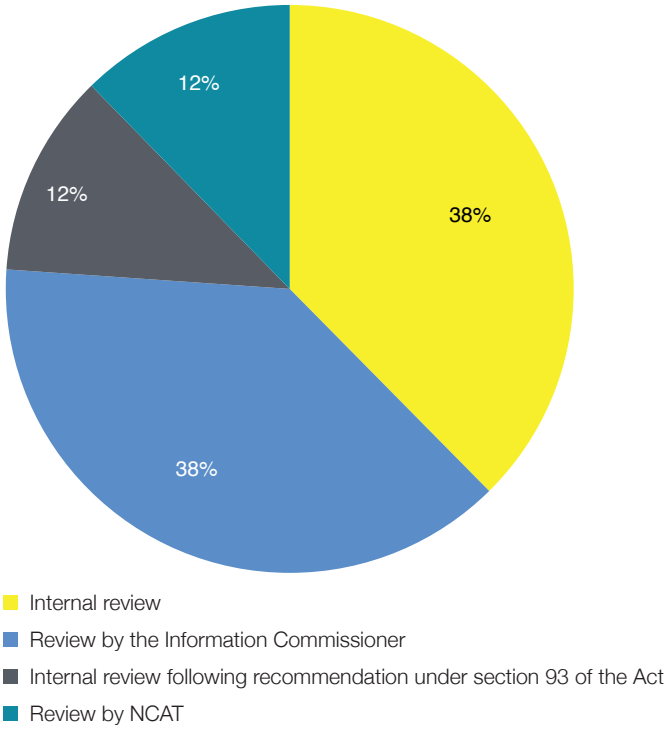
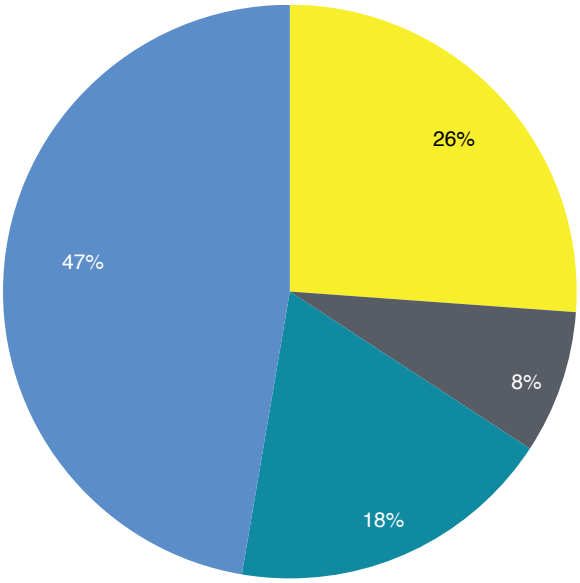


Figure 44: Reviews, using agency, IPC and NCAT data, 2015/16



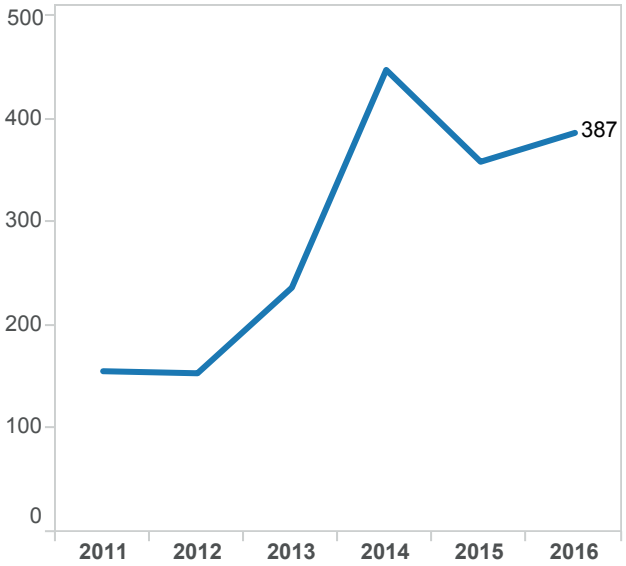
The distribution of reviews across all review avenues as reported by agencies is shown in Figure 43. If the most reliable source for each review avenue is used to calculate the total number of reviews, a total of 818 reviews were conducted. This distribution is shown in Figure 44.

This is a significantly higher number of reviews than reported by agencies, particularly in respect of external reviews by the Information Commissioner.

The discrepancy may be attributed to the completion of reviews this reporting period that were received in the previous financial year. The IPC will continue to engage with agencies across all sectors to examine this discrepancy and improve the reporting of GIPA data.

The proportion of all reviews conducted by the Information Commissioner has increased by 5%. In 2015/16, the review applications to the Information Commissioner represented 47% of all reviews and in 2014/15 they represented 42% of all reviews.

Figure 45: Number of external reviews conducted by the Information Commissioner, 2010/11 to 2015/16

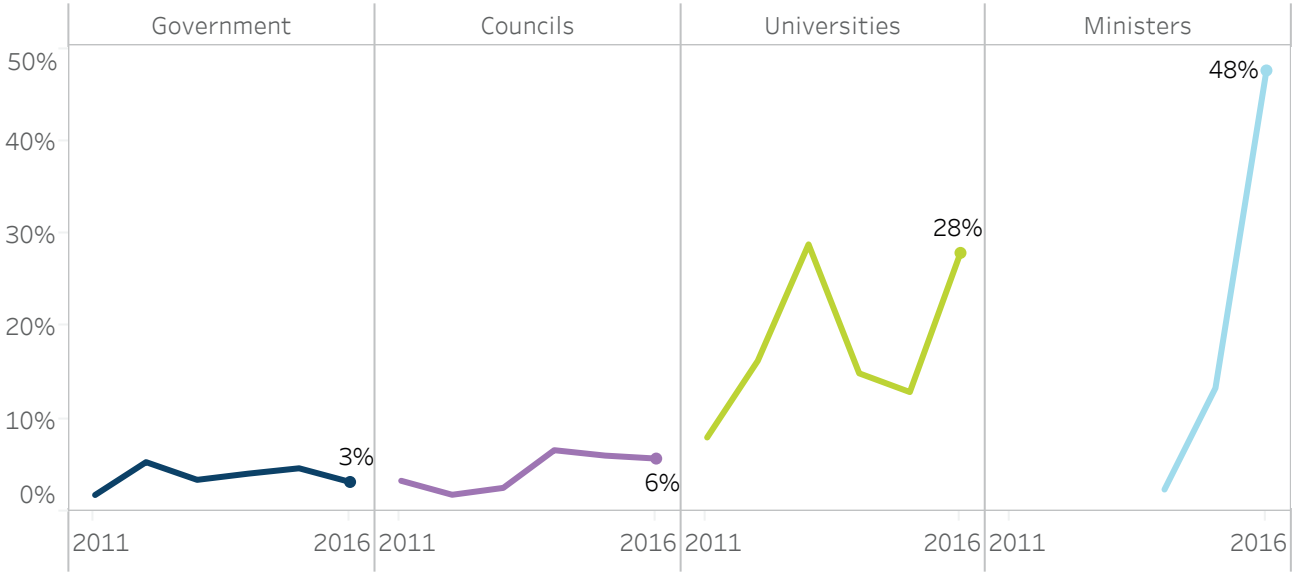


Using IPC data, there has been a rise in the number of external reviews conducted by the Information Commissioner, from 156 in 2010/11 to 387 matters in 2015/16 (Figure 45). In 2014/15, the Information Commissioner conducted 359 external reviews and in 2015/16 the Information Commissioner conducted 387 external reviews. Applying this source data there has been an 8% increase in the number of applications for external review by the Information Commissioner in 2015/16.

Similarly, the 151 review applications reported by NCAT in its 2015/16 Annual Report is significantly higher than the 70 reviews reported by agencies.

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

Figure 46: Total number of reviews as a percentage of all applications received, by sector, 2010/11 to 2015/16



Review rates have increased significantly in the university and minister sectors and remained steady in other sectors

The percentage of applications for review received by the minister sector as a percentage of all applications to that sector increased significantly to 48% in 2015/16, from 13% in 2014/15.

The percentage of applications for review received by the university sector as a percentage of all applications to that sector also increased significantly to 28% in 2015/16, from 13% in 2014/15.

These two sectors received relatively small numbers of review applications and the changes to numbers result in variable data presentation. These trends will remain under observation to ensure that an appropriate sector specific regulatory response is implemented.

The percentage of applications for review received by the council sector remained consistent with last year at 6% of all applications received by the sector (Figure 46).

Similarly, the percentage of applications for review in 2015/16 for the government sector was 3% of all applications received by the sector and was consistent with 2014/15.

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

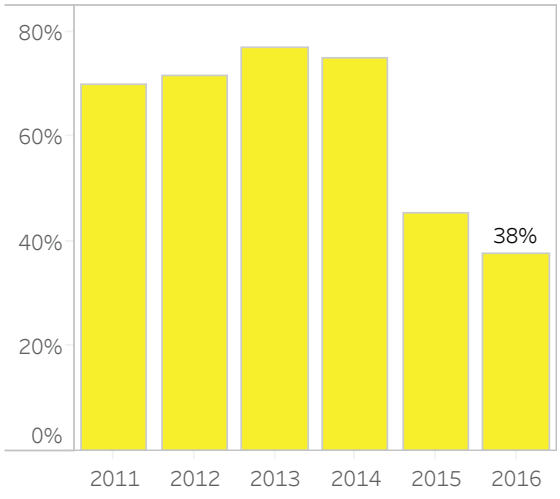
In 2015/16, 428 (88%) applications for review were made by the original applicant. This is consistent with levels observed in 2014/15 when 87% of applications for review were made by the original applicant. The number of applications made by third party objectors in 2015/16 was 56 (12%) and is consistent with the levels observed in 2014/15 of 58 (13%).

Internal reviews continued to decrease as a percentage of all reviews conducted

Internal reviews represented 38% of all reviews conducted in 2015/16 (Figure 47), compared to 45% of all reviews conducted in 2014/15 and 75% in 2013/14. This is a significant shift in review avenues over the three years of reporting.

This shift is also reflected in the overall rates of internal reviews, equivalent to 1% of total valid applications received across all sectors in 2015/16, compared to 2% in 2014/15.

Figure 47: Internal review as a percentage of all reviews 2010/11 to 2015/16



The proportion of Information Commissioner reviews significantly increased

Using data reported by agencies, external reviews by the Information Commissioner represented 38% of all reviews conducted in 2015/16, an increase from 23% in 2014/15 (Figure 48). However, using the more reliable IPC data, the number and share of reviews that were external reviews by the Information Commissioner rises to 387 and 47% of all reviews conducted.

There was a decline in reviews by NCAT

Reviews by NCAT represented 12% of all reviews conducted in 2015/16 (Figure 49). This is a decline from 2014/15 when NCAT reviews represented 19% of all reviews conducted. While this reflects a decline in the percentage of all reviews conducted by NCAT, it remains elevated compared with the percentages reported between 2010/2011 and 2013/14.

Figure 49: NCAT reviews as a percentage of all reviews, 2010/11 to 2015/16

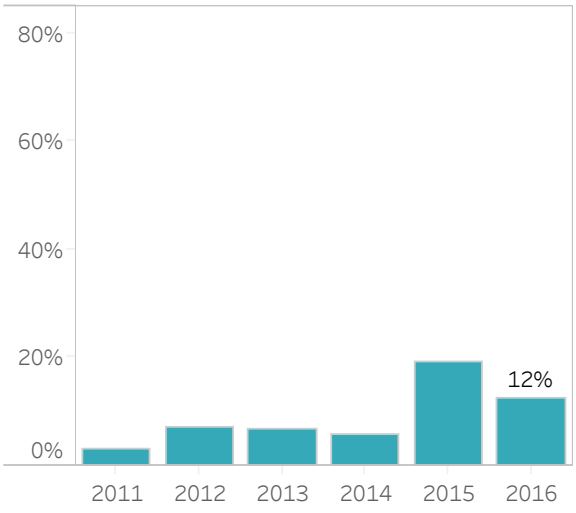
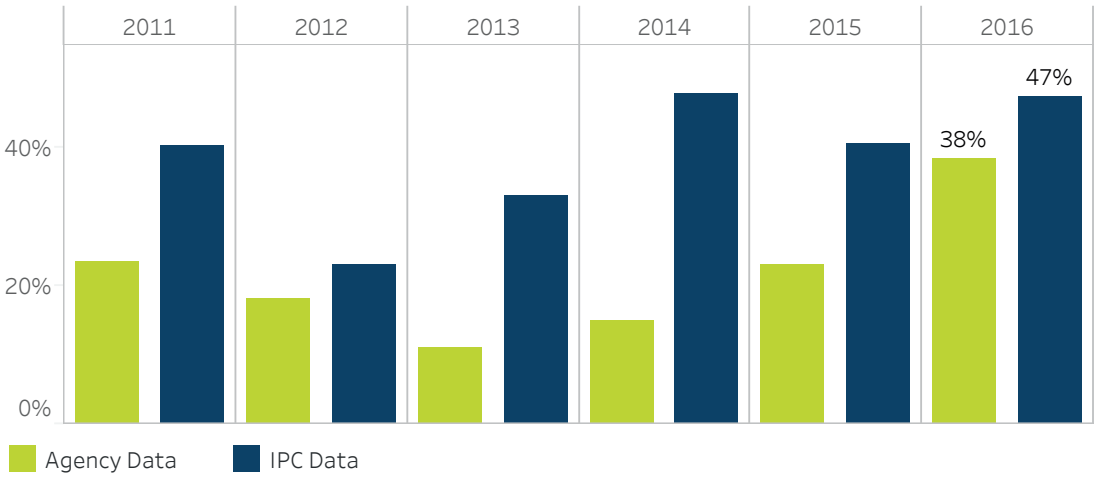


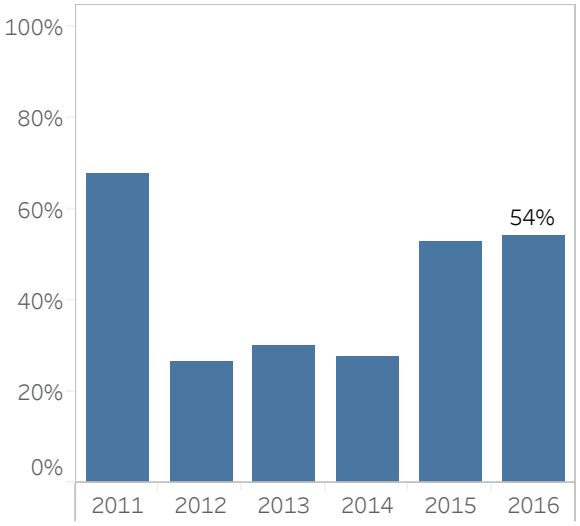
Figure 48: External reviews by the Information Commissioner as a percentage of all reviews, 2010/11 to 2015/16



Overall, internal and external review outcomes remain consistent

In 2015/16, 54% of all internal and external reviews conducted upheld agencies' decisions. This is consistent with 2014/15 when 53% of reviews upheld agencies' decisions (Figure 50).

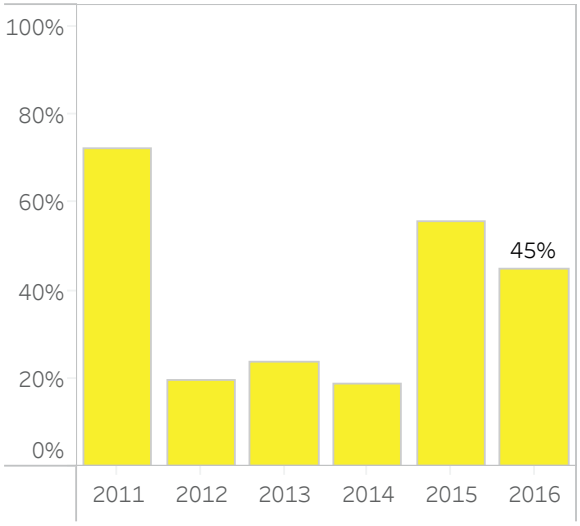
Figure 50: Reviews where the decision was upheld as a percentage of all reviews, 2010/11 to 2015/16



Overall there has been a significant decline in the number of internal reviews upholding agencies' decisions

In 2015/16, 45% of all internal reviews upheld agencies' decisions, which is a significant decline from 2014/15 when 56% of internal reviews upheld the decisions (Figure 51). However, these rates remain higher than the reported percentage of outcomes that upheld the agency decisions between 2011/12 and 2013/14.

Figure 51: Internal reviews where the decision was upheld as a percentage of all internal reviews, 2010/11 to 2015/16

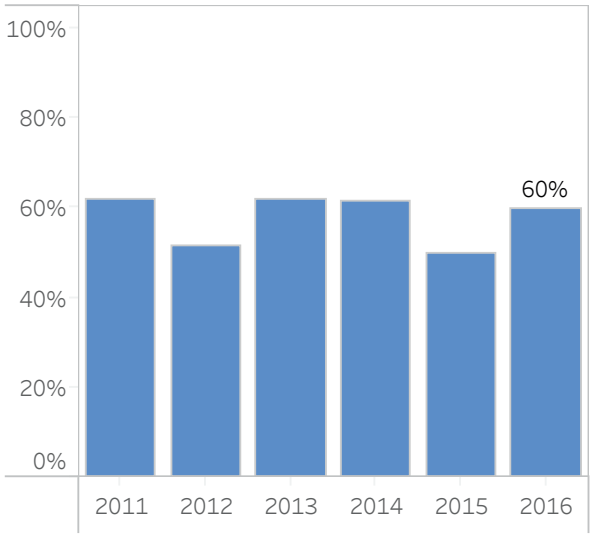


There was an increase in the number of Information Commissioner reviews where there was no recommendation to reconsider the decision by the agency

Agencies reported that 60% of reviews by the Information Commissioner in 2015/16 did not result in a recommendation to agencies to reconsider their decisions, an increase from 50% in 2014/15 (Figure 52). This increase to 60% is a return to the levels reported in 2012/13 and 2013/14. The outcomes are also consistent with the outcomes following an NCAT review.

The majority of internal reviews that followed a section 93 recommendation upheld the original decisions of agencies.

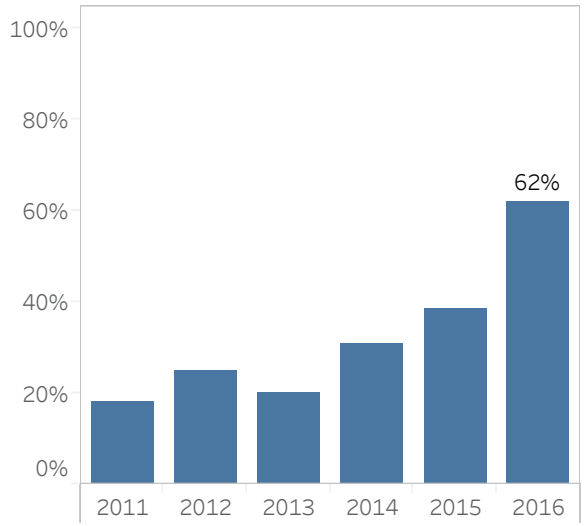
Figure 52: Reviews by the Information Commissioner where there was no recommendation to reconsider the decision as a percentage of all reviews by the Information Commissioner, 2010/11 to 2015/16



Agencies reported that in 2015/16, 62% of internal reviews that followed a section 93 GIPA Act recommendation upheld agencies' original decisions. This is a significant increase from 38% in 2014/15 (Figure 53).

The IPC will explore the reasons for this increase in the percentage of agencies that uphold their original decision following a section 93 GIPA Act recommendation, and engage with all sectors to ensure that agencies continue to apply the objects of the GIPA Act in their decision-making.

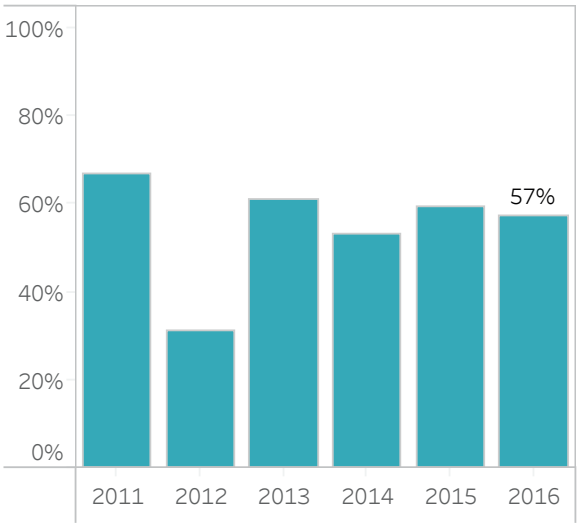
Figure 53: Percentage of internal reviews following a section 93 recommendation that upheld agencies' original decision, 2010/11 to 2015/16



Reviews by NCAT that upheld agencies' decisions

Agencies reported that 57% of reviews by NCAT upheld agency decisions in 2015/16. This outcome is consistent with the 59% reported in 2014/15 (Figure 54).

Figure 54: Reviews by NCAT where the decision was upheld as a percentage of all reviews by NCAT, 2010/11 to 2015/16



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 agencies' application of the considerations against disclosure.

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 was 10% in 2015/16, consistent with the 8% reported in 2014/15.

There was an increase in the proportion of all reviews conducted by the Information Commissioner relating to OPIADs, from 33% in 2014/15 to 45% in 2015/16.

Other issues that were the subject of review by the Information Commissioner include:

- the conduct of searches by agencies
- imposition of fees and charges
- the invalidity of applications
- decisions that the information was not held and decisions that the information was already available to the applicant
- refusals to deal with applications and the requirements to give reasons in a notice of decision.

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 and were subject to the Information Commissioner's review were:

- legal professional privilege (48%)
- cabinet information (17%)
- care and protection of children (10%).

In 2015/16, care and protection of children was the third most considered CPOPIAD.In 2014/15 excluded information was the third most used CPOPIAD.

CPOPIADs: Over 60% of external reviews by the Information Commissioner of CPOPIADs did not result in a recommendation to agencies to reconsider

In 2015/16, 65% of all the CPOPIADs that were the subject of review by the Information Commissioner did not result in a recommendation to agencies to reconsider the decision. This is consistent with the 66% reported in 2014/15.

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

- for reviews of the legal professional privilege consideration, 52% resulted in a recommendation to reconsider the decision
- for reviews of the care and protection of children consideration, 20% resulted in a recommendation that agencies reconsider the decision
- for reviews of the cabinet information consideration, 12% resulted in a recommendation that agencies reconsider the decision.

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

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

- individual rights, judicial processes and natural justice (39%)
- responsible and effective government (36%)
- business interests of agencies and other persons (13%).

These ranking and percentages are consistent with those reported in 2014/15.

OPIADs: Around 60% of external reviews by the Information Commissioner of OPIADs resulted in a recommendation to agencies to reconsider

In 2015/16, 57% of all the OPIADs that were the subject of review by the Information Commissioner resulted in a recommendation to agencies to reconsider the decision. This is consistent with the 56% reported in 2014/15.

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

- for reviews of the individual rights, judicial processes and natural justice consideration, 52% resulted in a recommendation to agencies to reconsider the decision, compared to 53% in 2014/15
- for reviews of the responsible and effective government consideration, 54% resulted in a recommendation to agencies to reconsider the decision, compared to 53% in 2014/15
- for reviews of the business interests of agencies and other persons consideration, 61% resulted in a recommendation to agencies to reconsider the decision, compared to 65% in 2014/15.

These outcomes demonstrate that there is an opportunity for the IPC to continue to work with agencies to improve their understanding and use of the top three most reviewed OPIADs. This issue will inform the Information Commissioner's forward work program.

ISSUE HIGHLIGHT: IPC produces resources on fees and charges

In 2015/16, the IPC analysed performance data and identified and responded to the need for enhanced guidance to agencies and the public to support improvements in dealing with fees and charges under the GIPA Act. In consultation with stakeholders, the IPC developed and published three resources which are available on the IPC's website:

- Guideline 2 – Discounting Charges (revised) – to assist agencies to decide whether to reduce processing charges on the grounds that the information is of special benefit to the public generally in accordance with section 66(3) of the GIPA Act.
- Fact Sheet: GIPA Act fees and charges (revised) – aims to clarify the circumstances in which fees and charges for access to information may be levied, reduced, waived or refunded under the GIPA Act.
- Fact Sheet: Substantial and unreasonable diversion of agency resources (new) – aims to clarify what may be considered an unreasonable and substantial diversion of resources and what review rights apply if an agency decides to refuse to deal with an access application.
- Importantly, the resources include authority from two recent decisions of the NSW Civil and Administrative Tribunal (NCAT) which were summarised in IPC case notes *Shoebridge v Forestry Corporation [2016] NSWCATAD 93* and *National Tertiary Education Union v Southern Cross University [2015] NSWCATAD 151*.

In *Shoebridge*, NCAT observed:

- Agencies must have regard to guidelines issued by the Information Commissioner in determining whether there is an overriding public interest against disclosure. The Information Commissioner's guidelines on other issues such as fees and charges are helpful aides, but not bound to be considered under section 15(b) of the GIPA Act.
- When considering a statute which is to be construed beneficially in favour of disclosure, there is no requirement for an extraordinary or exceptional benefit to the community at large, but merely something which is different from the ordinary or usual.
- When considering whether information applied for is of a special benefit to the public generally, a decision maker must decide whether he or she is satisfied that there is a benefit that is different from what is ordinary or usual to the general public and thus not merely the private interests of the applicant alone.

In *National Tertiary Education Union*, NCAT determined:

- Processing charges are imposed at the time an application is decided. Communication with an applicant advising estimated processing charges is not a decision to impose processing charges, merely an indication of what the charges are likely to be.
- An agency can apply reductions to the amounts calculated as an advance deposit in terms of sections 65 (financial hardship) and 66 (special public benefit) of the GIPA Act, but that the 50% reductions provided by these sections are not cumulative.

ISSUE HIGHLIGHT: In 2015/16, NCAT affirmed or partly affirmed the majority of agencies' decisions

The IPC examined 50 NCAT cases that were decided and published in 2015/16 to provide further insight into the use of NCAT as a review avenue.

Twelve of the NCAT decisions concerned matters outside the external review function of NCAT under the GIPA Act. Those 12 decisions concerned:

- leave to make an application out of time (five cases). Of these, four were dismissed for want of jurisdiction. None of these applications were the subject of an external review by the Information Commissioner
- approval for the making of access applications in compliance with section 110 orders made by NCAT (three cases)
- orders for contempt. Both applications were dismissed by NCAT (two cases)
- operation of a section 29 certificate under the Children and Young Persons (Care and Protection) Act 1998 (one case)
- reporting of improper conduct under section 112 (one case).

The remaining 38 decisions include seven Appeal Panel decisions. Of the 38 decisions, 30 related to the government sector, five to local councils, and three to universities.

The distribution of decisions across the regulated sectors was consistent with the number of cases for 2014/15, with the government sector representing the largest category.

The grounds of review for the NCAT decisions included:

- 13 decisions (41%) included issues relating to CPOPIADs, of which eight (26%) related to legal professional privilege
- 15 decisions (48%) included issues relating to OPIADs, of which nine (29%) related to personal information and seven (23%) related to prejudice of agency functions
- 11 decisions (35%) related to operational matters, including reasonable searches for information conducted by agencies, processing charges, advance deposits, disclosure logs, creation of new records, refuse to deal because of unreasonable and substantial diversion of resources or previously decided.

The number of cases that were lodged with NCAT and which had been subject of external review by the Information Commissioner was 14%. This is consistent with 2014/15.

All the cases dealt with by NCAT relating to personal information were attributed to the government sector.

In 80% of the cases, NCAT affirmed or partly affirmed the agencies' decision. 48% of cases affirmed the decisions of the agencies and 32% partly affirmed the decision of the agency. This is consistent with the combined outcomes of cases in 2014/15.

In 2015/16, there were seven Appeal Panel cases, an increase from three in 2014/15. Five applications to the Appeal Panel were made by individuals and two were made by an agency.

Of the appeal cases:

- one related to personal information and the Appeal Panel upheld the decision in full
- one related to legal professional privilege and was upheld in part and dismissed in part
- one related to the decision of NCAT not to issue summonses and was upheld
- one related to obtaining confidential information from another government entity, supply of confidential information and exempt documents under interstate freedom of information law which was granted in part and dismissed in part
- two were related to prejudice agency function (conduct, effectiveness or integrity of any audit, investigation or review, found action against agency decision, information provided in confidence, personal information and prejudice professional interests) and were dismissed
- one related to prejudice agency function (conduct of test or investigation, revealing the identify of an informant and prevention, detection or investigation of contravention of law and refuse to confirm or deny that the agency held the requested information). The Appeal Panel affirmed the decision in part and set aside the decision in part, remitting that part of the decision to refuse to confirm or deny back to the agency for reconsideration.

Applications to NCAT for review reflect a higher proportion of applications requiring CPOPIADs than applications made to the Information Commissioner. This may be reflective of the requirement for certainty in determination of these applications and the proper application of judicial guidance.

Similarly, the percentage of applications to the Information Commissioner that necessitate consideration of more administrative or operational aspects of the legislation is higher than the percentage of applications concerning those matters in NCAT. However, the proportion of applications to NCAT remained consistent with the 38% reported in 2014/15.

ISSUE HIGHLIGHT: Good faith under the GIPA Act

In 2015/16, NCAT handed down two significant decisions dealing with section 112 of the GIPA Act, which enables NCAT to refer to the relevant minister any circumstances where an officer of an agency may be thought to have acted inappropriately with respect to his or her functions under the GIPA Act. The decisions were; *Zonnevylle v Department of Education and Communities [2016] NSWCATAD 49* and *Zonnevylle v NSW Department of Finance and Services [2016] NSWCATAD 47*.

NCAT confirmed that the object of section 112 of the GIPA Act is to enable the relevant minister to be informed of any circumstances where an officer of an agency may be thought to have acted inappropriately with respect to his or her functions under the GIPA Act. A referral would permit that minister to take appropriate administrative or disciplinary steps and thereby achieve the objects of the GIPA Act and ensure greater compliance with the GIPA Act in the future.

In summary, NCAT found that any referral under section 112 must be made in relation to an "officer of an agency", not against the agency generally; and the conduct complained about must be a failure "to exercise in good faith a function conferred on the officer by or under the GIPA Act".

In these decisions, NCAT confirmed that the exercise of good faith requires an honest and conscientious approach, which means that to show the officer lacked good faith the officer's conduct needs to show more than honest ineptitude. The test of good faith is predominantly a subjective one, however there are some objective components, including any attempt made to respond to the request for information and the level of consideration given to the application for access to information by the agency.

In both cases NCAT found the applicant had failed to demonstrate that the respondent was not honest and conscientious in their approach to the functions conferred under the GIPA Act, and therefore found that action under section 112 of the GIPA Act was not warranted.

ISSUE HIGHLIGHT: Discounting charges under the GIPA Act and guidelines issued by the Information Commissioner

The Information Commissioner has an important role under the GIPA Act to issue guidelines and other publications for the assistance of agencies in the exercise of their functions and for the public in connection with their rights under the GIPA Act. This was noted in the 2015/16 decision of the NCAT in Shoebridge v Forestry Corporation [2016] NSWCATAD 93, which confirmed the requirements under section 15(b) of the GIPA Act that agencies must have regard to guidelines issued by the Information Commissioner in determining whether there is an overriding public interest against disclosure.

NCAT also observed that the guidelines issued by the Information Commissioner – *GIPA Guideline 2 Discounting charges* – are "helpful aides", yet not bound to be considered under section 15(b) of the GIPA Act.

In considering the application of this test, NCAT provided guidance regarding the construction of 'special benefit' and 'the public generally'. NCAT recognised the consistency of interpretation of the 'public generally' contained through illustrative examples in the Information Commissioner's guidance and within existing case law.

In considering the construction of 'special benefit' as contained in section 66(1), NCAT observed that the GIPA Act is to be construed beneficially in favour of disclosure. Accordingly, NCAT was satisfied that there is no requirement to construe 'special' as having "an extraordinary or exceptional benefit to the community at large, but merely something which is different from the ordinary or usual."

NCAT concluded that a decision maker, in considering whether the information applied for is of special benefit to the public "must decide whether he or she is satisfied that there is a benefit that is different from what is ordinary or usual to the general public and thus not merely the private interests of the applicant alone".

NCAT then considered the wording of the guidelines and section 66 of the GIPA Act and the facts of the case. NCAT was satisfied that a 'special benefit' was derived by the public generally for a number of reasons. NCAT found that Mr Shoebridge had made out the requirements of section 66(1), and that there should be a 50% reduction in the processing fees and charges to be paid by Mr Shoebridge

The Information Commissioner considered this decision in the review and re-publication of Guideline 2.

Source: Table G, Schedule 1, GIPA Regulation

Were applications transferred between agencies?

New reporting requirements and a significant increase in reported transfers between agencies

During 2015/16, agencies reported that 601 applications were transferred to another agency (Figure 55). This is a significant increase from the 93 transfers reported in 2014/15.

A contributing factor to this increase may be that agencies' understanding of reporting requirements developed in 2015/16 following an amendment to the GIPA Regulation on 12 December 2014.

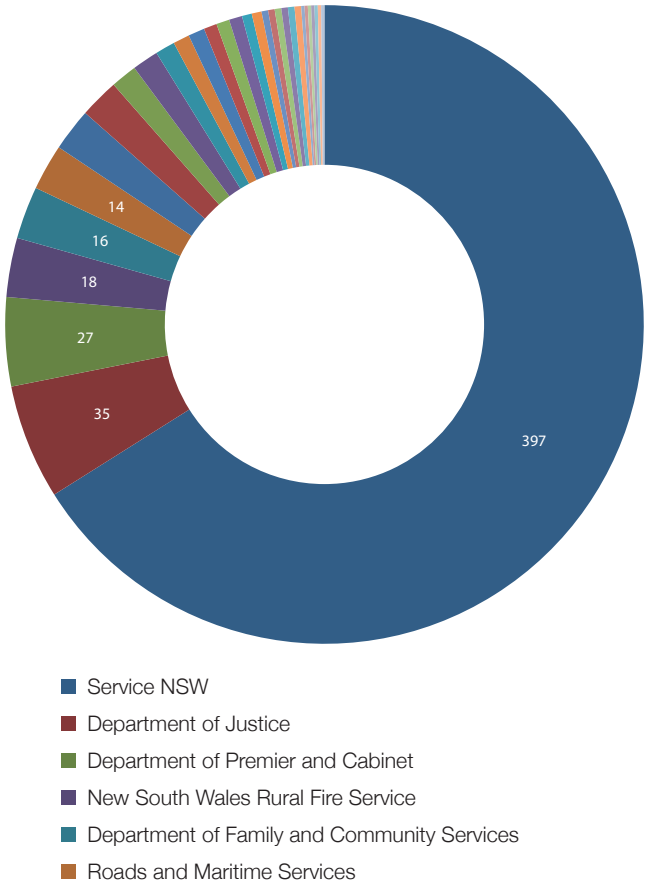
Figure 55 shows that the government sector accounted for most transfers, and that most transfers were agency-initiated.

Figure 55: Number of applications that were transferred, by sector and by whether agency or applicant initiated, 2015/16

	Agency initiated transfers	Applicant initiated transfers	Total
Government	563	33	596
Councils	5	0	5
Universities	0	0	0
Ministers	0	0	0
Grand total	**568**	**33**	**601**

In 2015/16, Service NSW accounted for 397, or 66%, of transferred applications. This may be attributable to the increasing recognition and usage by the community of Service NSW as a 'one stop shop' for government services. The second and third highest numbers of transfers were attributed to the Department of Justice, with 35 transferred applications (6%), and the Department of Premier and Cabinet, with 27 transferred applications (5%) (Figure 56).

Figure 56: Distribution of applications transferred, by agency, 2015/16



The inclusion of this reporting requirement and data provides a means of examining the assistance provided by agencies to applicants in upholding their information access obligations. More importantly, it provides a mechanism to facilitate a whole of government citizen-centric approach to information access.

ISSUE HIGHLIGHT: IPC GUIDANCE – Appropriate transfers at the first instance assist in providing information in a timely and efficient manner

An access applicant lodged a complaint with the IPC after difficulties gaining access to information:

- The applicant initially sent their application to a hospital, and it was 'returned to sender'.
- The application was re-submitted and the hospital transferred the application to Justice Health.
- Justice Health in turn forwarded the application to the Local Health District which operates the hospital.
- The applicant did not receive a response from the Local Health District, and so contacted the Information Commissioner.

The Local Health District informed the IPC that the application was intended to be transferred to another agency as the agency that is likely to hold the information requested, but due to an administrative oversight this did not occur.

Section 45(2) of the GIPA Act requires agencies to transfer applications within 10 working days after the application is received. As this had not occurred, the Local Health District was then required to deal with the access application. As it had not done so within the statutory time frame, the Local Health District was deemed to have refused to deal with the application.

Following involvement by the IPC, the Local Health District advised that it would be prepared to make a late decision on the application, and while it did not hold the information, it would provide assistance to the applicant so that an application for access could be directed to the correct agency.

The GIPA Act provides a streamlined process for the transfer of applications and agencies are encouraged to ensure that training and awareness of this statutory provision is elevated to achieve efficiencies in the use of time and resources.