



## GIPA snapshots 2011 – 2012

### Annual reports by councils for 2011 – 2012

#### Introduction

This snapshot reports on compliance by NSW councils with their requirements under the *Government Information (Public Access) Act 2009* (GIPA Act) during 2011 – 2012.

Section 125 of the GIPA Act requires councils to provide a copy of their annual report to the Information Commissioner. The report must present data on the councils' obligations under the GIPA Act during the annual reporting period.

A total of 112 councils provided us with GIPA data through their annual reports for 2011 – 2012. These included 107 councils and five county councils. Department of Local Government data indicates there are 152 councils and 14 county councils in NSW, a total of 166 councils and county councils. In total 67 per cent of councils in NSW reported GIPA data to the Information Commissioner.

#### Annual reporting obligations

The annual reporting obligations for councils are set out in section 125 of the GIPA Act and in clause 7 and Schedule 2 to the *Government Information (Public Access) Regulation 2009* (GIPA Regulation). Councils must provide the Information Commissioner with a copy of their annual report that includes GIPA data. This data is to include the total number of valid applications received under the GIPA Act and the number of those applications that are decided with reference to a conclusively presumed overriding public interest against disclosure in the GIPA Act. It also includes data in table format from the tables set out in Schedule 2 to the GIPA Regulation (the Schedule).

For more information about the reporting obligations of councils under the GIPA Act and GIPA Regulation, please see Appendix 1.

## Findings

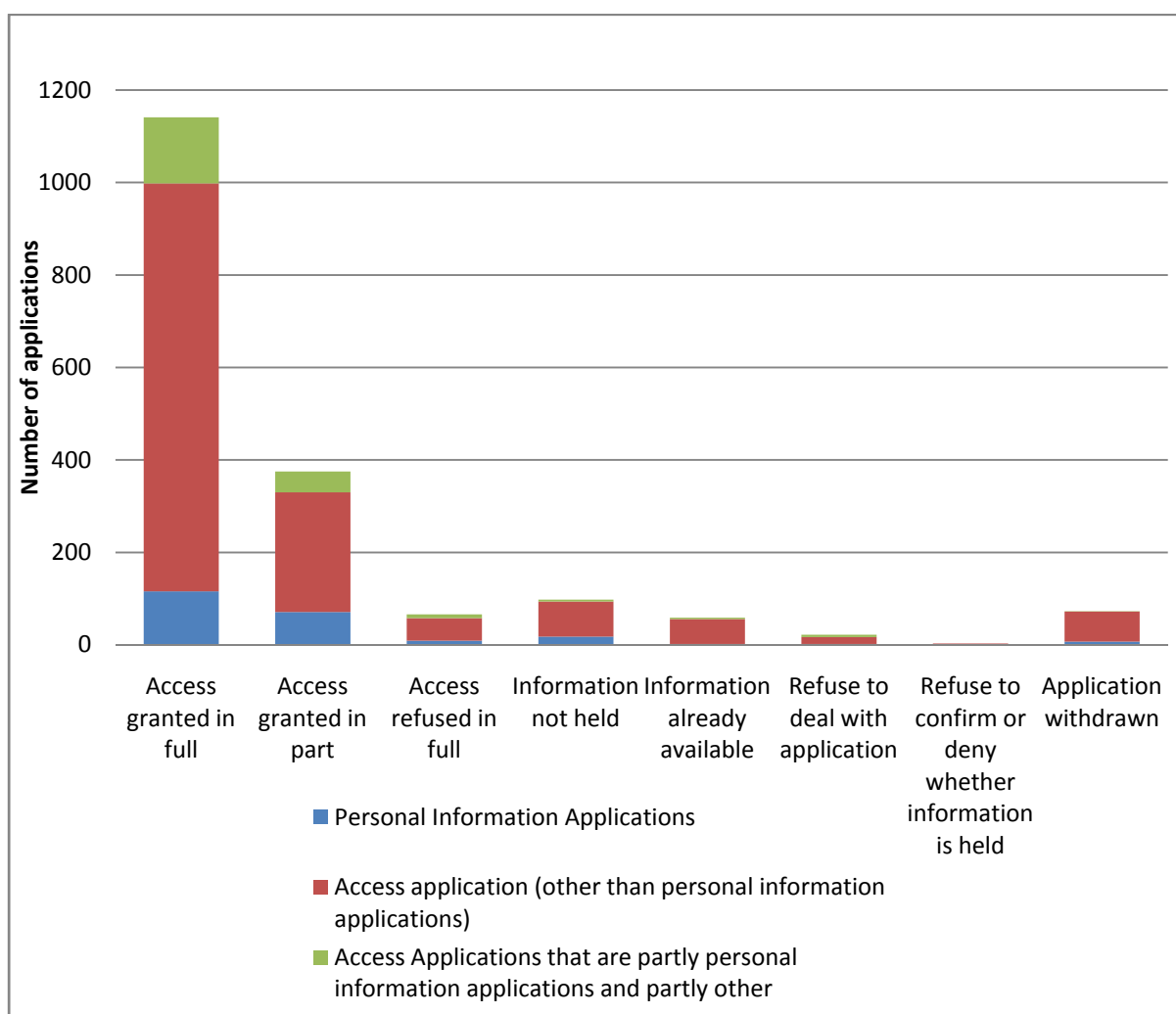
### Total applications

Of the councils that provided data for the 2011 – 2012 reporting year, the total number of valid access applications received was 1675.

Of the 1675 valid applications received, 78 were refused in part or in full because of a conclusively presumed overriding public interest against disclosure arising under Schedule 1 to the GIPA Act. Less than five per cent of decisions on valid applications involved the use of a conclusively presumed overriding public interest against disclosure in Schedule 1 to the GIPA Act.

Figure 1 shows the number of decisions made by type of information requested and outcome. The outcomes and type of information requested are determined by the data required to be reported in tables A and B of the Schedule.

**Number of decisions made by NSW councils  
by type of application and outcome**



*figure 1*

### Timeliness of decisions made by councils on GIPA applications (Table F of the Schedule)

The total number of applications reported on by councils for timeliness data was 1702. This total was used for our calculations of percentages since not all councils reported to us on the total number of valid applications they received, as is required by clause 7 of the GIPA Regulation.

Of the councils that reported data to us, 94 per cent (1607) of applications were decided by councils within the 20 working day time period plus available extensions. Two per cent (36) were decided after 35 days by agreement, and three per cent (59) were deemed refusals as they were not decided in time. These figures are rounded percentages.

### Timeliness of council decisions on GIPA applications

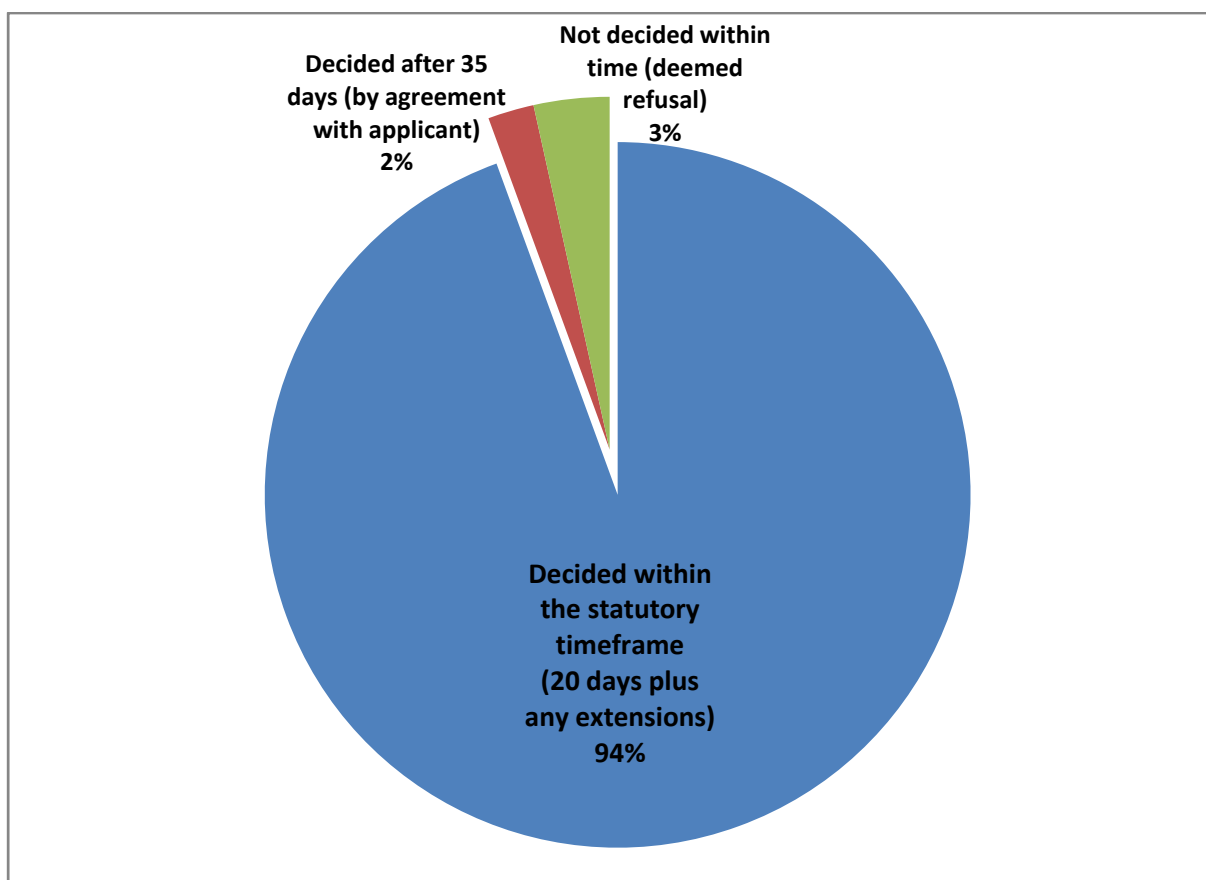


figure 2

### Reviews of council decisions on GIPA applications (Table G of the Schedule)

If an applicant is not satisfied with the council's decision on their GIPA application, they may be able to ask that someone else at the council make a new decision for them. This is called an "internal review". After that internal review, if they are still not satisfied with the decision, they may request that the Information Commissioner review that decision, and the decision of the council can also be reviewed by the Administrative Decisions Tribunal (ADT). A review by the Information Commissioner is sometimes referred to as an "external review".

The 2011 – 2012 reported data showed councils conducted 14 internal reviews (see figure 3). All of these internal reviews upheld the original decision made by councils. Internal reviews accounted for 44 per cent of all reviews reported by councils in the reporting period.

Councils reported on a total of seven reviews by the Information Commissioner. Five recommended varying the original decision of council and two recommended upholding the original decision.

Councils reported on a total of four internal reviews following a recommendation by the Information Commissioner under section 93 of the GIPA Act. Three of these varied the original decision made by the council, while two upheld the original decision.

Councils reported on seven reviews by the ADT. Four of these varied the original decision, while three upheld the original decision.

### Review of council decisions by type and outcome

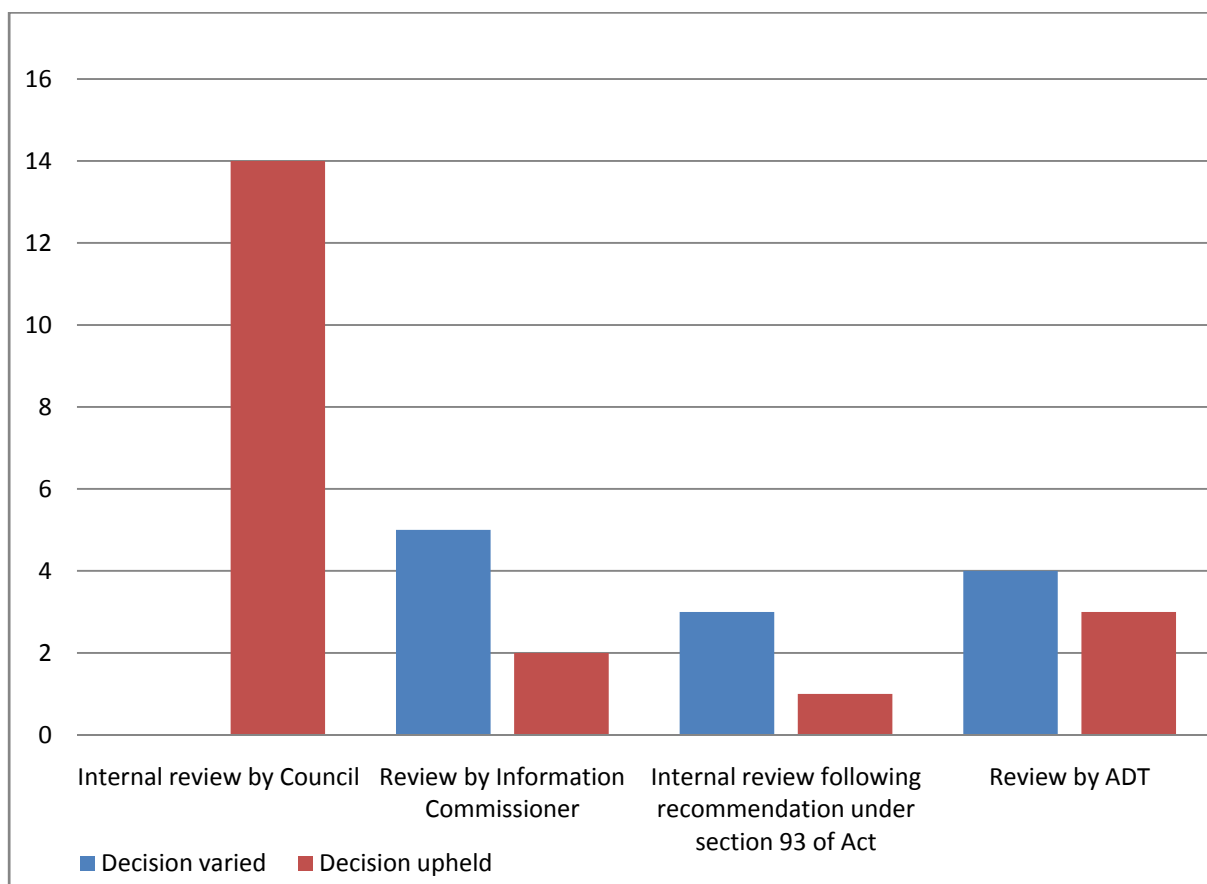


figure 3

While the sample size is very small, the trend we observe is that original decisions are more likely to be varied by reviews carried out by the Information Commissioner or the ADT.

In the 2011 – 2012 reporting year, 72 per cent of applications for reviews of council decisions were made by access applicants. The remaining 28 per cent were in respect of reviews requested by third parties.

## Observations

- There appears to be a high level of council compliance with the timeframes in the GIPA Act for making decisions on access applications
- The internal reviews conducted by councils did not vary the original decision made by council. Other types of reviews (such as reviews by the Information Commissioner or the ADT, and reviews by councils after a recommendation by the Information Commissioner) do vary the original decision made by council
- The fact that all the internal reviews conducted by councils uphold the original decision may indicate that the internal review process is not working as it was intended.

We will monitor this data in future reports to see if a pattern emerges that we may wish to act on.

## Other observations

These observations relate only to information released by councils in response to formal applications. They do not include informal releases of information by councils.

### **Outcome of decisions made by councils on GIPA applications (Table A of the Schedule)**

- 62 per cent of decisions on access applications provided full access to the information requested
- 20 per cent of decisions provided partial access to the information requested
- Four per cent of decisions refused access to information in full
- Five per cent of decisions indicated the information was not held
- One per cent of decisions refused to deal with the application
- Four per cent of applications were withdrawn
- Three per cent of decisions indicated the information was already available.

### **Type of applicant affected by decisions of councils on GIPA applications (Table A of the Schedule)**

- 68 per cent of decisions were for applications made by the general public
- 15 per cent of decisions were for private sector business applications
- 15 per cent of decisions were for applications made by members of the public through legal representatives
- One per cent of decisions were for not-for-profit and community organisations
- Decisions on applications made by media representatives and MPs each represented less than one per cent.

### **Decisions made by councils on applications for the personal information of the applicant (Table B of the Schedule)**

- 12 per cent of decisions made by councils involved applications for the personal information of an applicant
- 11 per cent of decisions related to applications for personal information of the applicant and other information
- A total of 23 per cent of decisions made by councils on GIPA applications concerned some element of the personal information of the applicant
- 76 per cent of decisions made by councils did not relate to the personal information of the applicant.

### **Invalid GIPA applications received by councils (Table C of the Schedule)**

- Councils received 58 invalid applications, representing three per cent of all GIPA applications
- 97 per cent of those applications were invalid because they did not comply with the formal requirements in section 41 of the GIPA Act
- 18 of the 58 invalid applications subsequently became valid, indicating that councils assisted applicants in complying with GIPA requirements.

We will monitor this figure as it is important that agencies are aware of, and are putting into effect, the object of the GIPA Act when it comes to assisting applicants in seeking access to the government information they want.

### **Council decisions on GIPA applications referring to a conclusively presumed overriding public interest against disclosure in Schedule 1 to the GIPA Act (Table D of the Schedule)**

Councils most often used legal professional privilege as a conclusively presumed overriding public interest against disclosure. This was followed by law enforcement and safety, excluded information, and Executive Council information. When a conclusively presumed overriding public interest against disclosure was used by a council, legal professional privilege was used 64 per cent of the time. It should be noted, however, that legal professional privilege was used by councils in less than four per cent of the decisions made on total applications.

## **Next steps**

We will follow up with councils that failed to submit data to the Information Commissioner. In addition, we will raise the issue of data quality and consistency, particularly with respect to the requirements of clause 7 of the GIPA Regulation.

## Annual reports by Ministers for 2011 – 2012

### Introduction

This snapshot reports on compliance by NSW Ministers with their requirements under the *Government Information (Public Access) Act 2009* (GIPA Act) during 2011 – 2012.

The annual reporting obligations for Ministers are set out in section 125 of the GIPA Act.

Ministers are obliged to furnish the Attorney General, as the Minister administering the GIPA Act, with such information concerning their obligations as an agency under the GIPA Act, as the Attorney General may require. Ministers are exempt from clause 7 and Schedule 2 to the *Government Information (Public Access) Regulation 2009* (GIPA Regulation). Please see Appendix 2 of this snapshot for further information about the GIPA reporting obligations of Ministers.

Twenty-two Ministers reported for the 2011 – 2012 year. Their GIPA information was included in the annual report of the Department of Attorney General and Justice.

The GIPA Act allows the Attorney General to set the requirements for the GIPA data Ministers are to report on. The data reported to us was the same data as the statistical data specified in Schedule 2 to the GIPA Regulation (the Schedule).

### Findings

#### **Total applications and timeliness (Table F of the Schedule)**

Ministers reported a total of 30 GIPA applications in the 2011 – 2012 year. Twenty-four of the applications were decided by Ministers within the 20 working day time period plus available extensions, while three were decided after 35 days by agreement. Another three applications were deemed refusals not decided within time.

## Timeliness of GIPA decisions made by Ministers

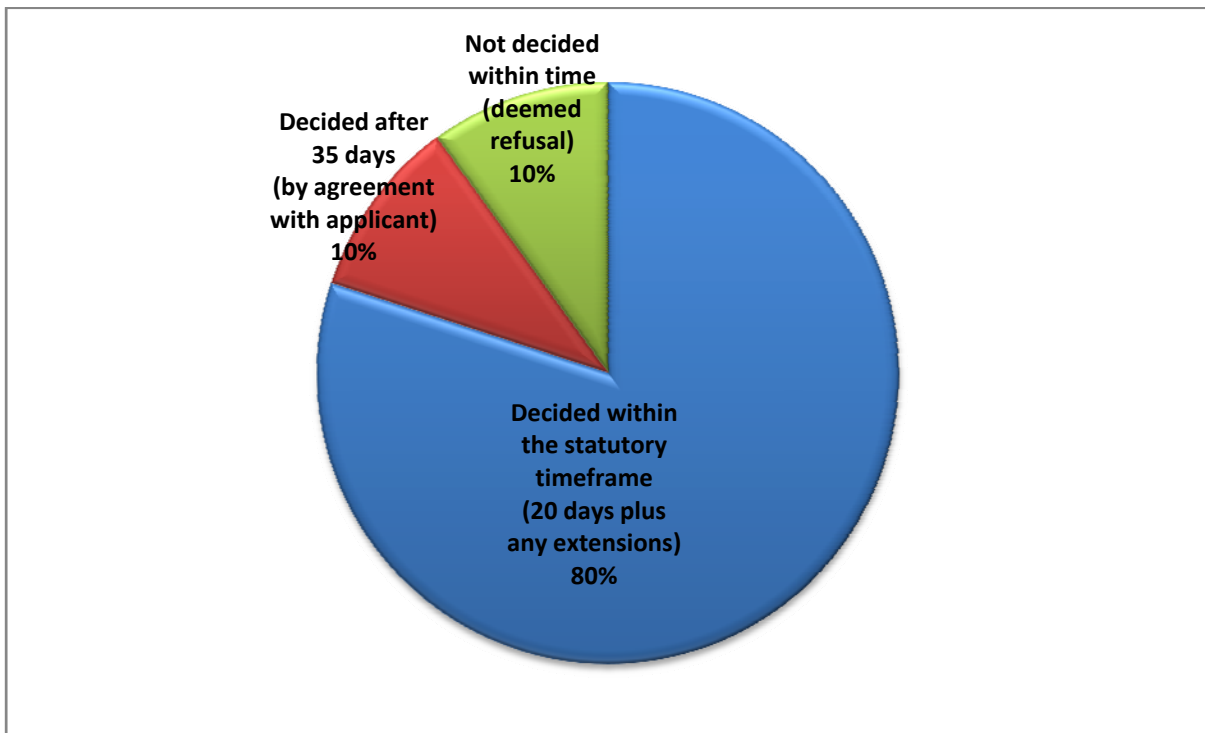


figure 4

### Reviews of GIPA decisions made by Ministers (Tables G and H of the Schedule)

From the data reported by Ministers there were two reviews conducted by the Information Commissioner. The two reported reviews were made by access applicants.

### Outcome of decisions made by Ministers on GIPA applications (Table A of the Schedule)

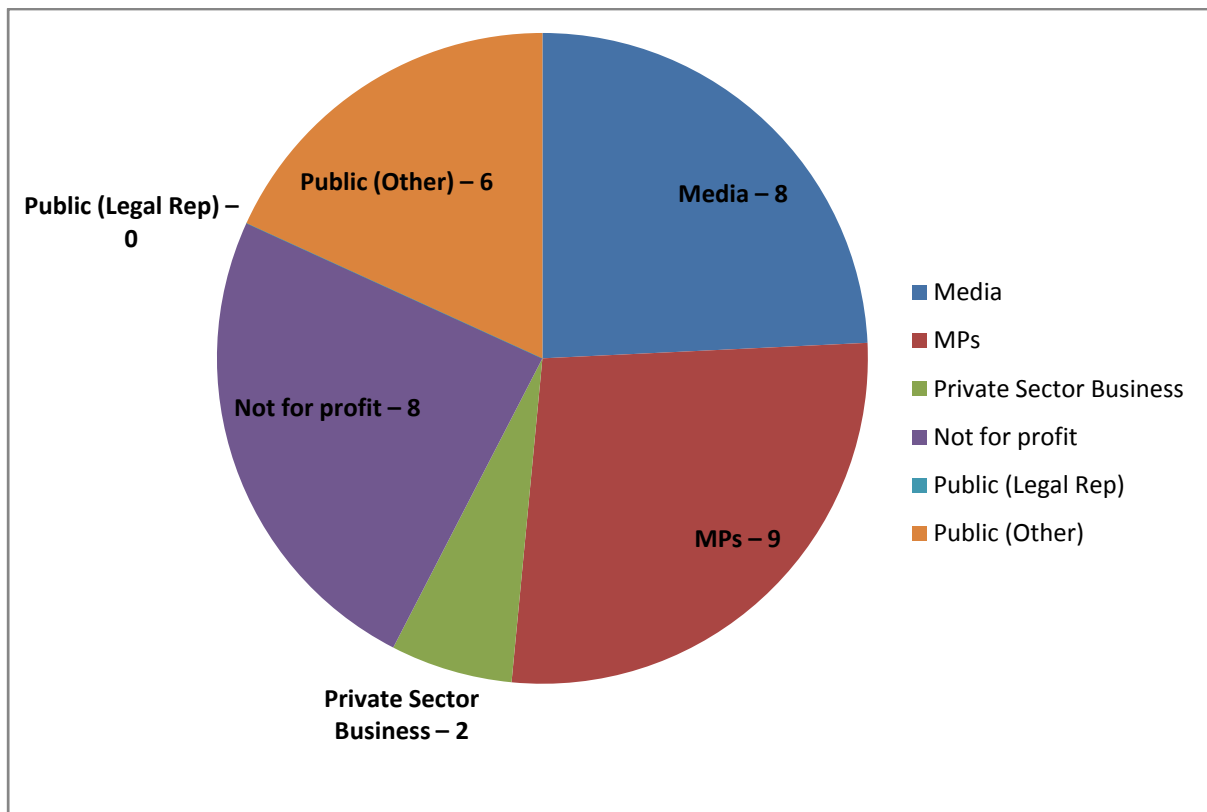
- Five decisions on access applications reported by Ministers were decided by providing full access to the information requested
- Eight decisions provided partial access to the information requested
- Four decisions refused access to the requested information in full
- 10 decisions found that the information requested was not held
- Three applications were withdrawn
- One decision was that the information was already available
- No decisions were made that refused to deal with an application, nor was any decision made to refuse to confirm or deny that information was held
- More than one decision may be made by a Minister on an application.



**Type of applicant affected by decisions of Ministers on GIPA applications (Table A of the Schedule)**

- Nine decisions were for applications made by Members of Parliament (MPs)
- Eight decisions were for applications made by media representatives
- Eight decisions were for not-for-profit organisations and community groups
- Six decisions were for applications made by the general public and
- Two decisions were for applications made by private sector business.

**Type of applicant affected by Ministers' decisions on GIPA applications**



*figure 5*

**Decisions made by Ministers on applications for the personal information of the applicant (Table B of the Schedule)**

- Two decisions were made that related to the personal information of the GIPA applicant
- Three decisions were made that related to the personal information of the GIPA applicant and other information
- A total of five decisions were made on GIPA applications that concerned some element of the personal information of the person that made the GIPA application
- 26 decisions were made that did not involve the personal information of the GIPA applicant.

### **Invalid GIPA applications received by Ministers (Table C of the Schedule)**

Ministers received five invalid applications. These applications were invalid because they did not comply with the formal requirements of access applications in section 41 of the GIPA Act. One of the five invalid applications was subsequently made valid.

Invalid applications comprised 17 per cent of the total applications reported by Ministers.

### **Ministers' decisions on GIPA applications referring to a conclusively presumed overriding public interest against disclosure in Schedule 1 to the GIPA Act (Table D of the Schedule)**

Contempt is the most often cited conclusively presumed overriding public interest consideration against disclosure, being used in four decisions made by Ministers on GIPA applications. Cabinet information and legal professional privilege were each referred to in two decisions made by Ministers.

# Appendix 1

## Councils' GIPA Reporting Obligations

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The reporting obligations of councils under the GIPA Act are set out in section 125 of the GIPA Act and in clause 7 and Schedule 2 to the GIPA Regulation. Councils must provide the Information Commissioner a report that includes information:

1. about the council's review of its program under section 7 of the GIPA Act for the proactive release of government information that it is in the public interest to make publicly available;
2. about the number of GIPA applications councils receive;
3. about how many of the applications received were dealt with by referring to the provisions of the GIPA Act concerning information for which there is a conclusively presumed overriding public interest against disclosure; and
4. that is statistical information about GIPA applications decided by the council in the reporting year in table format set out in Schedule 2 to the GIPA Regulation.

The relevant provisions of the legislation are:

### ***The Government Information (Public Access) Act 2009 (GIPA Act)***

#### **125 Reports to Parliament**

- (1) Each agency (other than a Minister) must, within 4 months after the end of each reporting year, prepare an annual report on the agency's obligations under this Act for submission to the Minister responsible for the agency. A copy of the report is to be provided to the Information Commissioner.
- (2) Each Minister must, on or before 31 August each year, furnish the Minister administering this Act with such information concerning the Minister's obligations as an agency under this Act as the Minister administering this Act may require.
- (3) The Minister administering this Act must, on or before 31 December each year, prepare an annual report on the obligations of each Minister as an agency under this Act. A copy of the report is to be provided to the Information Commissioner.
- (4) An annual report under this section must be tabled in each House of Parliament by the relevant Minister as soon as practicable after it is prepared unless it is included in an annual report prepared for the purposes of the *Annual Reports (Departments) Act 1985* or the *Annual Reports (Statutory Bodies) Act 1984*.
- (5) The annual report referred to in subsection (3) may be included in the annual report for the Department of Attorney General and Justice prepared for the purposes of the *Annual Reports (Departments) Act 1985*.
- (6) The regulations may make provision for:
  - (a) the information to be included in annual reports, and
  - (b) the form in which annual reports are to be prepared.
- (7) In this section, a reference to the reporting year of an agency is a reference to:
  - (a) the financial year of the agency for the purposes of the *Annual Reports (Departments) Act 1985* or the *Annual Reports (Statutory Bodies) Act 1984*, or
  - (b) if the agency does not have a financial year for the purposes of either of those Acts, the year ending 30 June.

## The Government Information (Public Access) Regulation 2009

### 7 Annual reporting requirements under section 125 of Act

The annual report of an agency (other than a Minister) required to be prepared under section 125 of the Act must include the following:

**Note.** An agency's report under section 125 of the Act can be included in the agency's annual report required to be prepared under the annual reporting legislation—see section 6 of the *Annual Reports (Departments) Act 1985* or section 5A of the *Annual Reports (Statutory Bodies) Act 1984* (as the case requires).

- (a) details of the review carried out by the agency under section 7 (3) of the Act during the reporting year and the details of any information made publicly available by the agency as a result of the review,
- (b) the total number of access applications received by the agency during the reporting year (including withdrawn applications but not including invalid applications),
- (c) the total number of access applications received by the agency during the reporting year that the agency refused, either wholly or partly, because the application was for the disclosure of information referred to in Schedule 1 to the Act (Information for which there is conclusive presumption of overriding public interest against disclosure),

**Note.** Table D in Schedule 2 also requires information relating to access applications in respect of which there is a conclusive presumption of overriding public interest against disclosure.

- (d) information, as set out in the form required by the tables in Schedule 2, relating to the access applications (if any) made to the agency during the reporting year.

### Schedule 2 Statistical information about access applications to be included in annual report

(Clause 7)

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Media								
Members of Parliament								
Private sector business								
Not for profit organisations or community groups								
Members of the public (application by legal representative)								
Members of the public (other)								

\* More than one decision can be made in respect of a particular access application. If so, a recording must be made in relation to each such decision. This also applies to Table B.

<b>Table B: Number of applications by type of application and outcome</b>								
	<b>Access granted in full</b>	<b>Access granted in part</b>	<b>Access refused in full</b>	<b>Information not held</b>	<b>Information already available</b>	<b>Refuse to deal with application</b>	<b>Refuse to confirm/deny whether information is held</b>	<b>Application withdrawn</b>
Personal information applications*								
Access applications (other than personal information applications)								
Access applications that are partly personal information applications and partly other								

\* A *personal information application* is an access application for personal information (as defined in clause 4 of Schedule 4 to the Act) about the applicant (the applicant being an individual).

<b>Table C: Invalid applications</b>	
<b>Reason for invalidity</b>	<b>No of applications</b>
Application does not comply with formal requirements (section 41 of the Act)	
Application is for excluded information of the agency (section 43 of the Act)	
Application contravenes restraint order (section 110 of the Act)	
Total number of invalid applications received	
Invalid applications that subsequently became valid applications	

<b>Table D: Conclusive presumption of overriding public interest against disclosure: matters listed in Schedule 1 to Act</b>	
	<b>Number of times consideration used*</b>
Overriding secrecy laws	
Cabinet information	
Executive Council information	
Contempt	
Legal professional privilege	
Excluded information	
Documents affecting law enforcement and public safety	
Transport safety	

Adoption	
Care and protection of children	
Ministerial code of conduct	
Aboriginal and environmental heritage	

\* More than one public interest consideration may apply in relation to a particular access application and, if so, each such consideration is to be recorded (but only once per application). This also applies in relation to Table E.

**Table E: Other public interest considerations against disclosure: matters listed in table to section 14 of Act**

	Number of occasions when application not successful
Responsible and effective government	
Law enforcement and security	
Individual rights, judicial processes and natural justice	
Business interests of agencies and other persons	
Environment, culture, economy and general matters	
Secrecy provisions	
Exempt documents under interstate Freedom of Information legislation	

**Table F: Timeliness**

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

**Table G: Number of applications reviewed under Part 5 of the Act (by type of review and outcome)**

	Decision varied	Decision upheld	Total
Internal review			
Review by Information Commissioner*			
Internal review following recommendation under section 93 of Act			
Review by ADT			
Total			

\* The Information Commissioner does not have the authority to vary decisions, but can make recommendations to the original decision-maker. The data in this case indicates that a recommendation to vary or uphold the original decision has been made by the Information Commissioner.

**Table H: Applications for review under Part 5 of the Act (by type of applicant)**

	Number of applications for review
Applications by access applicants	
Applications by persons to whom information the subject of access application relates (see section 54 of the Act)	

## Appendix 2

### Ministers' GIPA reporting obligations

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The reporting obligations of Ministers under the GIPA Act are set out in section 125 of the GIPA Act. Ministers must provide the Attorney General with information about the Ministers' obligations under the GIPA Act that the Attorney General may require. The Attorney General must provide the Information Commissioner with a report on the obligations of each Minister as an agency under the GIPA Act.

The Attorney General requires Ministers to provide the statistical GIPA information in Schedule 2 of the GIPA Regulation.

The relevant provisions of the legislation relating to Ministers are:

#### ***The Government Information (Public Access) Act 2009 (GIPA Act)***

##### **125 Reports to Parliament**

- (1) ...
- (2) Each Minister must, on or before 31 August each year, furnish the Minister administering this Act with such information concerning the Minister's obligations as an agency under this Act as the Minister administering this Act may require.
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  - (b) if the agency does not have a financial year for the purposes of either of those Acts, the year ending 30 June.