



information
and privacy
commission
new south wales

**REPORT ON THE OPERATION OF
THE GOVERNMENT INFORMATION
(PUBLIC ACCESS) ACT 2009
2014 – 2015**

Letter of Transmission

The Honorable Don Harwin MLA
President, Legislative Council
Parliament of NSW
Parliament House
Macquarie Street
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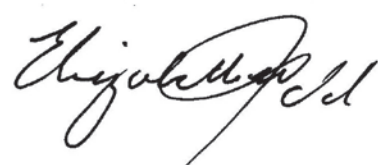
The Honorable Shelley Hancock MP
Speaker, Legislative Assembly
Parliament of NSW
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Mr President and Madam Speaker,

In accordance with section 37 of the *Government Information (Information Commissioner) Act 2009*, I am pleased to present the *Report on the Operation of the Government Information (Public Access) Act 2009: 2014 – 2015*.

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

Yours sincerely,



Elizabeth Tydd
Information Commissioner
CEO, Information and Privacy Commission NSW

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Commissioner's Overview



As our understanding of the *Government Information (Public Access) Act 2009* (GIPA Act) and Open Government has matured it is timely to draw upon this deeper understanding to question how the GIPA Act is operating and how its purpose is being achieved.

Significant trends and analysis in 2014/15

This is now my third report on the operation of the GIPA Act. In this context the previous Information Commissioner reports on the operation of the GIPA Act provide a rich and unique data set that has been applied to identify trends, and provide thought leadership in achieving Open Government. In preparing this Report the IPC engaged with stakeholders to understand their key requirements and to ensure that the Report maximises its regulatory purpose.

This year's Report includes additional commentary and analysis to provide:

- insights to inform the statutory review of the GIPA Act following five years of operation;
- stakeholders with greater guidance drawing from the body of data in three reports on the operations of the GIPA Act; and
- support for current initiatives to increase information and data sharing through the enactment of legislation, including the Data Analytics Centre (DAC).

Equipped with this deeper understanding we are well placed to better identify challenges and evaluate opportunities to enhance the operation of the GIPA Act and realise Open Government.

The most significant trends identified can be categorised according to the 'push' pathways – mandatory/proactive disclosure – and the 'pull' pathways – responding to requests for information.

'Push' pathways:

- Levels of mandatory proactive disclosure of information remain consistently below 85% for agencies, largely attributable to lower levels of compliance with contract reporting and disclosure logs
- There has been a consistent decline in the number of agency reviews of their proactive release programs, from 85% in 2012/13 to around 71% in 2014/15.

These trends indicate that:

- full compliance with the mandatory requirements of the GIPA Act is not being achieved and therefore the strategic intent of the GIPA Act is not being fully realised. This is particularly significant given requirements to promote proactive release mechanisms to support transparency and enable public participation
- harnessing the body of information held by government to deliver better services is only achieved through sound leadership and a rigorous, comprehensive approach to information management. The effectiveness of this approach has also been recognised in other jurisdictions.¹

'Pull' pathways:

- There has been an overall decline in information release in response to applications. In 2012/13 the rates of full and partial release combined was 80%. This year the combined release rate has declined to 69%
- Internal reviews as a proportion of all reviews have declined significantly from 70% in 2010/11 to 48% in 2014/15
- The percentage of internal reviews which upheld the decisions of agencies increased from approximately 20% in previous years to 54% in 2014/15
- There has been a significant increase in external reviews by the Information Commissioner and the NSW Civil and Administrative Tribunal (NCAT). The number of external reviews conducted by the Information Commissioner has more than doubled in five years from 156 in 2010/11 to 359 in 2014/15
- Over the past five years where agencies have adopted the Information Commissioner's recommendation to re-consider their original decisions, they have varied that decision in the majority of cases

¹ For example, see the report by the Victorian Auditor General, *Access to Public Sector Information*, December 2015

- Adherence to the statutory time frames by first instance decision-makers has consistently improved over five years to 91% in 2014/15. Pleasingly, there has been an accompanying decline in applications that were deemed to be refused, from 15% in 2013/14 to 6% in 2014/15
- There has been a consistent decline in invalid applications as a percentage of all formal applications received from 13% in 2010/11 to 8% in 2014/15, and a steady increase in the percentage of invalid applications that subsequently become valid, from 15% in 2010/11 to 40% in 2014/15
- The number of applications made by third party objectors to the release of information has increased from 4% of applications for review in 2013/14 to 11% in 2014/15.

These trends indicate that:

- information release rates are declining
- increasingly internal reviews of decisions are upholding the original decisions of agencies
- applications for external review are increasing and applications to the Information Commissioner have consistently and significantly increased
- at a transactional level agencies are improving processes to achieve timeliness, and are increasingly achieving the intent of the GIPA Act in providing advice and assistance to citizens making a request to access information.

Key challenges

The key challenges identified through examination of five years of operation of the GIPA Act are to ensure that:

1. The right to access information remains affordable and that the legislative intent of accessibility and timeliness is supported through appropriate review avenues
2. Accountability mechanisms and the right to access information continue to benefit citizens, businesses and agencies through maximising information release rates and responding to the increasing requirement to ensure that all public purpose service providers have access to information to better perform their service delivery functions
3. The proactive release of information is promoted to better support public participation.

Responding to key challenges

Responding to these key challenges requires a strategic, collaborative approach which identifies responsibilities and actions for both the regulator and the regulated sectors

The IPC is instituting a more strategic, proactive approach to its regulatory functions. In 2015, a proactive regulatory audit of universities' compliance with the statutory contract reporting requirements contained in the GIPA Act was undertaken. This work has resulted in a commitment from that sector to align practices with the recommendations made by the Information Commissioner to enhance compliance.

The IPC's approach and audit outcomes have also confirmed the IPC's significant role as an independent regulator and a partner to other independent regulatory agencies to promote the overall integrity of the NSW government sector.

The consistently increasing number of external reviews undertaken by the IPC during its first five years of operation has been a significant challenge. In 2010/11 the IPC conducted 156 external reviews and in 2014/15 the IPC completed 359 external reviews. Case management enhancements and process improvements have successfully managed what was a considerable backlog in information access cases. These results also reflect the professionalism and capability of IPC staff.

Since establishment the IPC has continued to operate within similar budgetary parameters. Given the significant increase in applications for external review and the introduction of a strategic, proactive regulatory approach in 2014/15, I am confident that the IPC has well demonstrated its efficiency and effectiveness by any contemporary measure.

The future focus of the IPC has been developed to respond to the issues identified in this Report through a structured, collaborative regulatory program.

Elizabeth Tydd
Information Commissioner,
CEO Information and Privacy Commission NSW

Future Focus and Priorities for 2016/17

1

MANDATORY PROACTIVE RELEASE

IPC strategies:

- Create opportunities to maximise agencies' compliance with mandatory proactive release requirements, and identify strategies to enhance the use and impact of this pathway
- Conduct a contract register compliance program across the government sector.

Agency strategies:

- Assess compliance with mandatory proactive release requirements to ensure that the information is available and easily accessible to the public, including information on the agency website to ensure it is current, accurate, adequate, complete and meaningful.

2

AUTHORISED PROACTIVE RELEASE

IPC strategies:

- Provide expert advice to information sharing and release initiatives across government
- Produce enhanced regulatory guidance on the proactive release of information
- Examine information access regimes in other jurisdictions and activate learnings.

Agency strategies:

- Apply the self-assessment tool located in the IPC's fact sheet on authorised proactive release of information
- Systematically conduct annual or more frequent reviews of the agency's proactive release programs.

3

INFORMAL RELEASE

IPC strategies:

- Review and update the IPC's regulatory guidance on informal release of information
- Promote agency use and understanding of the informal release pathway.

Agency strategies:

- Apply the IPC's regulatory guidance so that informal release outcomes contribute to proactive release of information
- Ensure systems are in place to provide comprehensive and consistent assistance to persons making an informal request for information, including all access rights.

4

FORMAL ACCESS APPLICATIONS

IPC strategies:

- Develop and publish guidance for the public on identified priorities
- Develop and consult with agencies on regulatory guidance to improve the application of the public interest balancing test, including on third party objector matters
- Promote a rigorous, comprehensive and citizen-centric approach to information management through sound leadership
- Promote and support the use of the GIPA Tool to improve quality and timeliness of agency application management and annual reporting
- Examine and respond to trends in information release rates and outcomes
- Work with NCAT to monitor the trend of GIPA Act matters, including dealing with applications involving the GIPA Act offence provisions.

Agency strategies:

- Support agency decision-makers in utilising IPC's training/regulatory guidance resources
- Promote opportunities to maintain a contemporary knowledge of the GIPA Act
- Continuously improve the recording of data for GIPA Act annual reporting.

The Legislated Right to Open Government

Open Government embodies a collective right, a right enjoyed for the benefit of communities. This right provides the foundation upon which we as a fair and open society effectively uphold and actively participate in our system of democracy.

Achieving Open Government requires legislation to enshrine citizens' right to access information and authorise decision-makers to release information.

Citizens expect government decision-making to be open, transparent and accountable and the GIPA Act represents NSW Parliament's commitment to realising that expectation.

The three fundamental elements of Open Government enshrined under the GIPA Act are:

- a legislative right to access information proactively and reactively;
- the right to hold government to account and to expect transparency; and
- public participation by citizens in government decision-making.

The public interest test enshrined in the GIPA Act provides a sound statutory decision-making process to carefully balance multiple considerations, including individual rights to personal and non-personal information, and to authorise the release of information.

Maximising information release is essential to Open Government and is achieved through:

1. proactive disclosure;
2. comprehensive application;
3. independence and a legislated right to access information; and
4. timeliness and accessibility.

1. Proactive disclosure

The second reading speech² articulates the core principle to be achieved through the GIPA Act – “The public’s right to know must come first”. It is only through enshrining this principle in legislation that information release will be achieved

The GIPA Act is based on principles of proactive disclosure, an explicit presumption in favour of public disclosure of information, and a public interest decision-making test. These principles promote information release to achieve accountability and promote public participation in decision-making.

Proactive disclosure underpins the provision of responsive and effective government services through maximising the availability of government held information.

In 2015, legislation was enacted to establish a Data Analytics Centre (DAC) which will enable government agencies to share data sets. The DAC reflects international developments designed to overcome barriers to sharing government data with the objective of improving policy development and service delivery. The Information Commissioner's statutory responsibilities align with this information sharing initiative.

2. Comprehensive application

The GIPA Act moves beyond a single focus on individual applications to a more comprehensive and purposeful approach to information management

The GIPA Act captures a broad range of government service providers including private sector contractors

² Second reading speech, *Government Information (Public Access) Bill 2009, Government Information (Information Commissioner) Bill 2009, Government Information (Public Access) (Consequential Amendments and Repeal) Bill 2009*

engaged to provide public services. This approach ensures that citizens have access to government information irrespective of the public purpose sector service provider.

Private sector businesses are utilising the GIPA Act to apply for and receive access to information. This Report demonstrates that private sector businesses were more likely to have access granted in full compared to other applicants. This outcome is to be contrasted with the barriers to accessing information reported by agencies and identified in recent research.³

Barriers to improved service delivery and policy development include the absence of a mature, comprehensive and balanced decision-making process to assist agencies in sharing information for proper purposes. Likewise the increasing number of providers operating in the public purpose sector necessitates greater information access to support the provision of services and ensure that providers are accountable.

The GIPA Act provides a sound and well appreciated framework to assist decision-makers in releasing information which could readily apply to facilitate appropriate information flow between agencies and between agencies' service providers. This model is adopted under the Queensland *Right to Information Act 2009* and is achieved through the object of that Act – “... to give a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give the access”.

3. Independence

The GIPA Act ensures that decisions at all levels are made independently

The second reading speech⁴ outlined the NSW Parliament's intent for the GIPA Act to be a tool for Open Government supported by the Information Commissioner as a prominent, independent champion

³ Social Policy Research Centre (SPRC) of the University of NSW (UNSW), *Opportunities for information sharing: case studies*, April 2015; University of Technology Sydney, *Advancing the objects of the Government Information (Public Access) Act 2009 (NSW): an international comparative evaluation of measures used to promote government information release*, June 2015

⁴ Second reading speech, Op Cit

and advocate of Open Government. In promoting Open Government, the Information Commissioner's role extends to recommending proposals for future legislative and administrative changes to further the object of the GIPA Act.

The current statutory review of the GIPA Act provides an opportunity to identify the aspects of the statute that are effective and aspects that could be improved. Significantly, IPC submissions have highlighted the interaction of the GIPA Act with other NSW law including the *Public Interest Disclosures Act 1994*, copyright and NSW privacy laws, and also proposed consideration of legislative mechanisms to promote government's role as a responsible custodian of information supported by independent regulatory oversight.

Independent decision-makers have been supported by the IPC through mechanisms including the:

- production of e-learning modules;
- development of an information management scholarship program;
- provision of support to the NSW Right to Information/Privacy Practitioners' Network; and
- production of regulatory guidance, publications and training.

Public participation is integral to Open Government and the GIPA Act provides mechanisms to support citizen participation and engagement with agencies. Under the GIPA Act, the Information Commissioner has powers to support NSW citizens' participation in the development of policies and service delivery by government.

The IPC will collaborate with NSW citizens and agencies to promote public participation and assist agencies in achieving success in their engagement with NSW citizens. ►

The Legislated Right to Open Government (cont'd)

4. Accessibility and timeliness

The GIPA Act promotes access and timeliness to ensure that government adopts a holistic, citizen-centric approach to information access

Statutory time periods apply to ensure that decisions are made within short and realistic time frames. Fees are expressly prescribed and fee increases cannot be made without the approval of NSW Parliament. Additionally, applications to the Information Commissioner for external review are free of charge. Agencies are required to assist citizens in accessing information through advice and transfer to appropriate agencies. These features promote the citizen-centric concept of 'One Government'.

The IPC has provided guidance and introduced a case management system to assist agencies in achieving timeliness. However increasingly, more formal resources and systems are being applied to determine applications for external review. The benefits of this allocation of judicial and quasi-judicial resources include finality and an increase in the body of authority to guide decision-makers at first instance. However consideration must also be given to the potential for an increase in costs and reduced timeliness.

The statutory review of the GIPA Act provides an opportunity to examine the increase in applications for external review and examine escalation models.

The statutory review of the GIPA Act also provides the opportunity to consider harmonisation of legislative regimes that impact upon information management both within NSW and nationally. The 120% increase in applicants to access personal information through the GIPA Act over the past five years well demonstrates the need to examine these relationships. Harmonisation of discrete legislative regimes may prove the most effective means of providing clarity for decision-makers and delivering the benefits of Open Government to citizens.

Research and international developments insights

Open Government is a tangible, consistent commitment by government to increase access to information, engage with citizens and be accountable. The GIPA Act provides a sound legislated framework from which Open Government can be achieved. The authoritative insights provided in this Report will enable the IPC to work more effectively with other regulators and agencies to promote Open Government through accessibility, proactive disclosure, a comprehensive approach to the management and release of government information, and independent, respected decision-making at all levels.

Insights into practice – identifying barriers to information release in NSW

The Social Policy Research Centre (SPRC) of the University of NSW (UNSW) conducted research into the perceived barriers to information release, *Opportunities for information sharing: case studies*, April 2015. The SPRC identified organisational factors as the most significant barriers and enablers of information sharing by NSW public sector agencies with each other and with third parties. For example, organisations with risk averse cultures or which value client confidentiality over other objectives were less likely to share information appropriately with other agencies. Technological barriers were also considered by the SPRC as generally able to be overcome. In contrast, the interpretation of legislation and policy rather than the instruments themselves, was considered as potentially creating a significant barrier. Confusion over the interpretation of legislation and policy could arise in situations where a gap existed between perceived and actual legislative or policy constraints, or where agency officers did not know where to go for advice about when information should be shared and the process for exchanging information.

International and interstate legislative and operational regimes also provide opportunities to examine possible solutions to these issues.

International insights – improving information release

In February 2015, the IPC commissioned the University of Technology, Sydney (UTS) to deliver a research report on *Advancing the objects of the Government Information (Public Access) Act 2009 (NSW): an international comparative evaluation of measures used to promote government information release*, which identified three sets of mechanisms that could promote information release by government. These are:

- legislative or structural features to build success – this involves promoting a model of proactive agency information sharing;
- promoting proactive release of government data across organisational walls – this involves recognising and rewarding an individual's efforts for proactively releasing data;
- building inter-agency trust – this involves the use of soft regulation; and
- ensuring accountability to citizens.

The experiences of jurisdictions internationally provide some examples and ideas of how these barriers could be overcome. The United Kingdom's (UK) approach is an example of a tangible commitment to responsible information sharing by government, and could be a useful complement to the proactive release pathways, public interest test and associated protections contained in the GIPA Act. The UK model ensures that the Information Commissioner promotes the release of information and data sharing within an appropriate legislative framework that commences from the position of granting access, but has regard to appropriate constraints to ensure the responsible stewardship of government held information. Further information can be found below in the *International Practice – efforts to create a culture of information sharing and release in the United Kingdom*.

International practice – efforts to create a culture of information sharing and release in the United Kingdom

The activities undertaken in the United Kingdom (UK) are examples of innovative practice that could be drawn on for ideas on how the four pathways could be extended.

- The Information Commissioner's Office (ICO) has been established to provide a single point of contact for citizens, businesses and all tiers of government – see <https://ico.org.uk/about-the-ico/what-we-do/>
- A statutory Data Sharing Code of Practice exists with the aim of ensuring that access is in compliance with the application of the safeguards proscribed in the Code – see <https://ico.org.uk/for-organisations/guide-to-data-protection/data-sharing/>

- A Five-Star Rating for Open Data initiative is currently in operation, designed to encourage continuous improvement by measuring the usability of data that is published on the internet. It focuses on how data is published, that is, the formats and technologies being used. The five-star model of open data sets out standards to enable data to have a high level of usability so that data manipulation, linkage and analysis can be freely undertaken – see <http://5stardata.info/en/>
- Open Data Certificates have been developed to measure how effectively an organisation is sharing information, including technical issues, rights and licensing, documentation and guarantees of availability. The certificates are meant to provide information and guidance to data re-users about the quality of the published data – see the Open Data Institute at <http://theodi.org> and <https://certificates.theodi.org> ▶

The Legislated Right to Open Government (cont'd)

- In 2014, 'Open Data Champions' were selected from across government agencies to set standards of open data and transparency – see <https://data.gov.uk/sites/default/files/Local%20Open%20Data%20Champion%20Case%20Studies.pdf>.

The UK approach has matured in its recognition of the civic benefits of an integrated holistic approach to information management. The approach recognises government's responsibility to form a contract with citizens about the use of data and information by governments to deliver better services, to inform

policy and decision-making regarding public expenditure, and to create a culture of openness.

Further information about other examples of international practice can be found in the Institute of Public Administration Australia (IPAA) *Today* article, *Around the world with open government* (April-June 2015) available at http://www.ipc.nsw.gov.au/sites/default/files/file_manager/Around_the_world_open_gov_ET_TODAY_May2015_ACC.pdf.

Insights into practice – characteristics of a well-functioning GIPA regime

To assist in fully activating the legislative right to access information, the IPC has considered what a GIPA Act regime could look like when it is achieving its objectives. A well-functioning regime of information access and release could be measured according to the following legislative, operational and cultural characteristics:

- Embeds a culture of proactive information release within agencies
- Provides mechanisms to promote a citizen centric One Government model
- Comprehensively deals with all types of government held information
- Facilitates the early and proactive release of information where a presumption in favour of disclosure is embedded early in policy-making ('open by default'/'access by design')
- Facilitates the release of information in a way that is accessible; that is, technically and legally open, usable and available
- Applies the public interest decision-making test with a keen understanding of the public interest factors for and against disclosure
- Applies dynamically, based on a sound understanding of the scope of each pathway and the relationships between the pathways
- Is flexible, responsive to change, and able to deal with non-traditional forms of information
- Enables the flow of information between agencies and to the public
- Ensures citizen engagement in government decision-making
- At the lowest reasonable cost, is accessible and comprehensible to citizens
- Is based on sound information and records management principles and practices
- Holds government to account
- Ensures that the right to access information is independently promoted and enforced.

The Year in Review

The 2013/14 Report identified a range of priority actions to be taken by the IPC and agencies. The outcomes of the actions as they are aligned with the priority themes of the 2013/14 Report are outlined below.

Responding to the digital age

The 2013/14 Report identified the information management challenges arising from the digitisation of records, their storage and access. In particular, the report stated that the GIPA Act should be sufficiently flexible to deal with data in non-traditional formats.

Action	Outcome
Fact sheet addressing challenges of managing data sets.	Working with agencies on the Enabling Information Sharing Working Group and the Open Government Steering Committee to improve the whole-of-government management of data.
<i>Creating new records under the GIPA Act</i> fact sheet.	A fact sheet was launched in April 2015, available on the IPC's website.
Review of the GIPA Tool.	The existing GIPA Tool was reviewed in 2014 and used to inform the development of the new online IPC GIPA Tool.
Assisting agencies with the introduction of online lodgement facilities.	The IPC launched an updated online GIPA Tool in July 2015. Information Commissioner authorised NSW Police Force's use of its own online lodgement system.

Partnering for solutions

A key priority for the IPC continues to be to partner with NSW public sector agencies to achieve the objectives of the GIPA Act. ▶

Action	Outcome
E-learning module: Access training for decision makers.	An e-module on the GIPA Act was launched in March 2015 and is now operational.
<i>External review by the Information Commissioner</i> fact sheet.	A fact sheet was launched in July 2014, available on the IPC's website.
Information Management Scholarship program.	A program has been developed.
Case studies on the IPC website.	A case notes service was launched by the IPC in August 2015, and is available on the IPC website and in the <i>IPC Bulletin</i> .
Practitioner engagement – needs based training – develop webinar/seminar.	The IPC hosted Practitioner Consultative Group meetings. The Information Commissioner addressed each Practitioners' Forum. 24 external review reports were published on the IPC website in 2014/15.
Working with the university sector to promote compliance with contract register requirements.	An audit of universities' compliance with contract register requirements was completed in August 2015. Recommendations were made to enhance compliance.

The Year in Review (cont'd)

Championing our future

The 2013/14 Report highlighted the importance of promoting and facilitating the early, proactive release of information in recognition that information is a strategic asset.

The IPC has supported whole-of-government actions such as the establishment of a NSW Data Analytics Centre, which is intended to facilitate data sharing between agencies to inform more efficient, strategic, whole-of-government evidence-based decision-making.

The IPC has engaged with the Information and Privacy Advisory Committee (IPAC) to monitor and share national and international developments. This expertise has enabled the IPC to contribute authoritatively to the agenda of Open Government.

In 2015 the IPC led the contribution of our state and territory counterparts in the national agenda on Open Government. This work will continue in 2015/16.

Action	Outcome
Guideline to develop best practice key principles of effective proactive release programs.	A fact sheet on authorised proactive release was launched in July 2015, available on the IPC website.
Annual reviews of agencies' proactive release programs.	This Report contains reporting on mandatory proactive release access requirements.
Further analysis of compliance levels and issues faced by all sectors via website audits and reported on in Goal 31.	A website audit of State Owned Corporations' compliance with open access requirements was conducted and the findings reported on in this Report.
Monitoring reporting outcomes and data trends across all sectors.	The IPC consulted with agencies to identify how the IPC could best meet the needs of agencies and enhance future section 37 reports. This 2014/15 Report aligns with the feedback received and provides a sound regulatory tool to report on performance and compliance with the GIPA Act.

Information Release Pathways

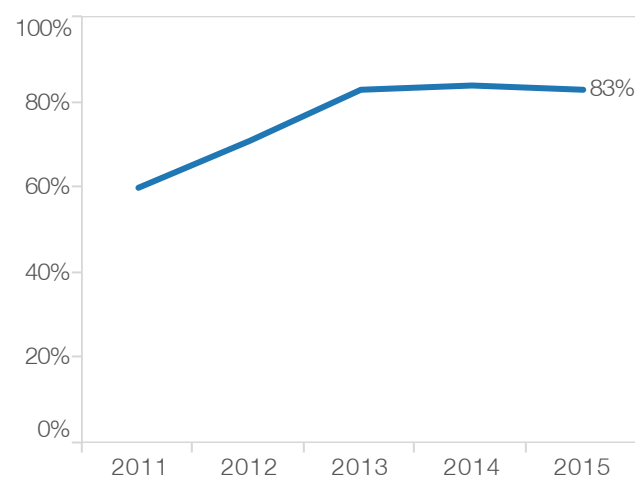
Pathway 1: Mandatory proactive release of information

Compliance with the mandatory proactive release provisions requires improvement

A desktop audit methodology was used and identified whether each agency in a sample had an agency information guide, policy documents, a disclosure log and contracts register in existence and that they were appropriately accessible on their websites. The audits 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 or only a selection.

Government sector agency compliance was 83% in 2014/15 (Figure 1). The IPC notes that after five years since the GIPA Act's commencement, compliance with mandatory proactive release requirements should increase. However, while compliance rates increased between 2010/11 and 2012/13, rates have remained consistent since 2012/13.

Figure 1: Sampled government sector compliance with mandatory proactive release



Mandatory proactive release is reported and measured by the IPC, which conducted a desktop audit of a sample of 75 government agencies' compliance with mandatory proactive release requirements in 2014/15.

The compliance rate by type of open access information in 2014/15 was:

- 93% of government agencies had policy documents available for public access on their websites;
- 81% of government agencies had an agency information guide on their websites;
- 81% of government agencies had a contracts register; and
- 80% of government agencies had a disclosure log.

The IPC also conducted a one-off assessment of compliance of 12 State Owned Corporations with mandatory proactive release requirements in 2014/15.

This found a compliance rate for State Owned Corporations of 100% (Figure 2) and represents adherence to the mandatory minimum requirements for effective disclosure through this pathway.

In addition, in 2014/15, 8% of complaints received by the IPC related to open access information not being available or that was not free of charge on agencies' (government and council) websites. The IPC received complaints across a range of issues, including informal release of information, deemed refusals and reviewable decisions.

Agencies need to ensure that each element of information that is required to be disclosed contributes to the broader strategic objective of the GIPA Act. This will require agencies to recognise the value and importance to possible users of various types of government information that is subject to mandatory proactive release, and to:

Figure 2: State Owned Corporation compliance with mandatory proactive release requirements

	Agency information Guide	Policy Documents	Disclosure Log	Contracts Register
Essential Energy	✓	✓	✓	✓
Endeavour Energy	✓	✓	✓	✓
Augrid	✓	✓	✓	✓
Port Authority of NSW	✓	✓	✓	✓
Hunter Water Corporation	✓	✓	✓	✓
Water NSW	✓	✓	✓	✓
Sydney Water Corporation	✓	✓	✓	✓
Superannuation Administration Corporation (Pillar Administration)	✓	✓	✓	✓
Landcom (trading as UrbanGrowth NSW)	✓	✓	✓	✓
Forestry Corporation	✓	✓	✓	✓
Delta Electricity	✓	✓	✓	✓
Transgrid	✓	✓	✓	✓

- prioritise compliance with mandatory proactive release requirements; and
- ensure that governance arrangements are sufficient to deliver a systematic and consistent approach to mandatory proactive release.

The council sector has additional mandatory proactive release obligations

In addition to the open access information outlined above, the council sector must make available additional open access information, including council reports, policies and plans, development application information, and application approvals and orders given. Councils must provide online access to information, allow free inspection of the information at council offices during office hours and provide a copy of the record (or photocopying facilities) for free or for a fee not exceeding the reasonable charge of photocopying.

The NSW Department of Planning and Environment's ePlanning program will assist in addressing some of these issues. A case study with further information on the ePlanning program is at page 17 of this Report. Additionally, the IPC will update its guidance material on copyright and the GIPA Act in light of changes to the *Environmental Planning and Assessment Act 1979*.

The IPC has undertaken consultations with councils during the development of and/or resulting in the strategic outputs of the IPC, for example, the *Report on the Operation of the Government Information (Public Access) Act 2009: 2013 – 2014*, the new IPC GIPA Tool, guidance materials (including the *Authorised proactive release of government information* fact sheet), e-learning modules (which are free of charge) and the *IPC Bulletin*. Councils are also represented on the Right to Information and Privacy Practitioners' Consultative Group. The IPC also worked with the Office of Local Government to release a circular on pecuniary interest registers relevant to councils. The IPC will continue to work with councils and the Office of Local Government on these issues.

Universities' compliance with contract reporting obligations was low

An important element of mandatory proactive release requirements is for agencies to have a public register of contracts valued at \$150,000 or more.

During 2014/15, the Information Commissioner conducted an audit of NSW universities' compliance with contract reporting obligations. The audit report (Compliance Report) can be found on the IPC website at http://www.ipc.nsw.gov.au/sites/default/files/file_manager/IPC_Report_universities_compliance_GIPA_August_2015_ACC.pdf. ▶

The Compliance Report acknowledged the role of NSW universities as significant public institutions and their contribution to positive social and economic outcomes. However, the audit found that universities:

- had a low level of compliance with the mandatory requirements for contract reporting under the GIPA Act;
- lacked operational maturity in managing compliance with the contract register obligations; and
- adopted different approaches towards compliance.

The IPC made recommendations to universities to promote the development of a robust governance framework to support the effective operation of the

register in the sector. In addition, the IPC proposed a set of regulatory actions that it would take forward in 2015/16 to provide universities with support and guidance. These are to:

- develop guidance material for contracts register obligations;
- conduct a future review of universities' contracts register compliance after 12 months; and
- review contracts register compliance in other sectors of the regulated population within 18 months.

A case study with further information on the audit and an example of positive practice is at page 17.

ISSUE HIGHLIGHT: Approaches to reporting disclosure logs across jurisdictions

All agencies must keep a record (called a 'disclosure log') of information that it has provided that it considers may be of interest to other members of the public. The GIPA Act requires agencies to record the following information about each access application in the disclosure log:

- The date the application was decided;
- A description of the information to which access was provided in response to the application; and
- A statement as to whether the agency intends to make the information available to other members of the public and, if so, how it can be accessed.

Disclosure logs are integral to accessing information, government accountability and engagement with the public. The logs are an efficient measure of ensuring 'self-service' by citizens and obviate the need for more resource intensive mechanisms, such as access applications.

However, the GIPA Act does not require agencies to publicly provide a copy of the released document in a disclosure log.

A number of other Australian jurisdictions have in place or are planning to establish a requirement that the released information be made available broadly beyond the individual who originally requested it.

- Queensland departments and Ministers are required to include a copy of the released information in disclosure logs after it has been accessed by the applicant under the *Right to Information Act 2009* (Queensland) (section 78). Queensland public sector agencies are required to include a copy of the information in disclosure logs if reasonably practicable (section 78A)
- In June 2015, the Tasmanian Government announced that it would institute a new policy so that all Tasmanians could access online the same information sought by others within 48 hours of that information being released to the applicant
- The Commonwealth *Freedom of Information Act 1982* provides that agencies and Ministers must publish the released information to members of the public, for example, through making the information available for downloading from the agency or minister's website (section 11C). Publication must occur within 10 working days after the day that the applicant accessed the document.

The IPC encourages agencies to consider whether the information released in response to access applications would be of interest to other members of the public and should be proactively released.

There are real benefits that flow from proactive release to promote Open Government. These include improved service delivery, increased community participation in government processes and decision-making, a better informed community, and reduced costs and resourcing needs by decreasing the need for and number of access applications.

The IPC's *Good practice for disclosure logs* guidance is available at <http://www.ipc.nsw.gov.au/good-practice-disclosure-logs>.

CASE STUDY: Local council sector, mandatory proactive release and technological solutions

The council sector holds significant and unique information relevant to the daily lives of citizens. Under the GIPA Act councils are required to provide access to information concerning development applications. The IPC works with councils and government agencies to assist in promoting awareness of these requirements and implement practical strategies to ensure the requirements are implemented.

The ePlanning program of the Department of Planning and Environment is transforming the planning system through the use of technology and the digitisation of planning services. The program is improving interactions between the Department, councils and the community by making services available beyond business hours and without the need to rely upon paper-based forms and maps.

DA Tracker is an online platform for real-time status updates of development applications (DAs) to over 100 councils. The status of DAs can be tracked through a Google map overlay embedded into the relevant councils' websites and it enables 'drill-down' to specific DAs.

DA Tracker provides significant participation and transparency benefits for the community, industry and local government, by enabling easy access to local development applications. It reduces residents' and local governments' time and financial costs involved with DA tracking enquiries.

CASE STUDY: University sector, compliance audit and improving mandatory proactive release across all sectors

Online publication of government contracts on government websites occurs in a number of jurisdictions nationally and internationally and has been described as a standard transparency mechanism. Contract reporting requirements in NSW support achieving this outcome. Making contracts information publicly available helps every agency to ensure that:

- contracts are awarded fairly;
- malfeasance, fraud and corruption is minimised;
- public expenditure is appropriate;
- the government is getting value for money; and
- agency resources are used efficiently and effectively.

The Compliance Report included a case study of positive practice that shows that it is possible to comply with the contracts register requirements on a practical level through an integrated approach to compliance. In 2006 and 2010, Reports by the Auditor-General resulted in one university improving its practice by introducing:

- a contracts register that sits within the university's Records and Archives Office;
- a central contact point for matters relating to registering contracts;
- an established procedure on how contracts are to be registered through the Records and Archives Office; and
- clear instructions on its website informing staff of their obligations with respect to contract registration.

The IPC Compliance Report's recommendations built on these practice improvements to guide the university sector in meeting its obligations. The recommendations in the Report also provide all agencies with important regulatory guidance on achieving compliance with the GIPA Act. The lessons learned from the university sector will assist all agencies to improve practice and outcomes in contract reporting ahead of the IPC examining compliance by other regulated sectors. The IPC will drive improvements in compliance in the future and assist agencies to take responsibility through facilitating opportunities to share lessons learned, including practical IT solutions.

The *Universities' Compliance with the GIPA ACT: Audit Report 2015* is available at http://www.ipc.nsw.gov.au/sites/default/files/file_manager/IPC_Report_universities_compliance_GIPA_August_2015_ACC.pdf.

Pathway 2: Authorised proactive release of information

Conduct of information release reviews declined

In 2014/15 the percentage of agencies that reported having conducted an information release review declined from a high of around 85% in 2012/13 to around 79% (Figure 3).

The conduct of reviews varied between sectors in 2014/15 (Figure 4):

- 73% of agencies in the government sector conducted reviews;
- 82% of councils conducted reviews; and
- 80% of universities conducted reviews.

Release of additional information following a review increased slightly

Ideally, all agency information release reviews should result in additional information being released. In 2014/15, 72% of agencies that conducted a review released additional information. This was consistent with 2013/14. Figure 5 shows the trends in the percentage of reviews leading to the release of additional information in the government, council and university sectors.

Agencies may be moving to continual review and proactive release of information

In their reports a number of agencies pointed out that they continually reviewed the information that they held to identify what could be released. The decline in the percentage of agencies that reported conducting an annual review could reflect a shift toward continual release by agencies and a shift away from relying on annual reviews. For example, one council reported that

Figure 3: Agencies that conducted annual information release reviews as a percentage of all agencies that reported, 2010/11 to 2014/15

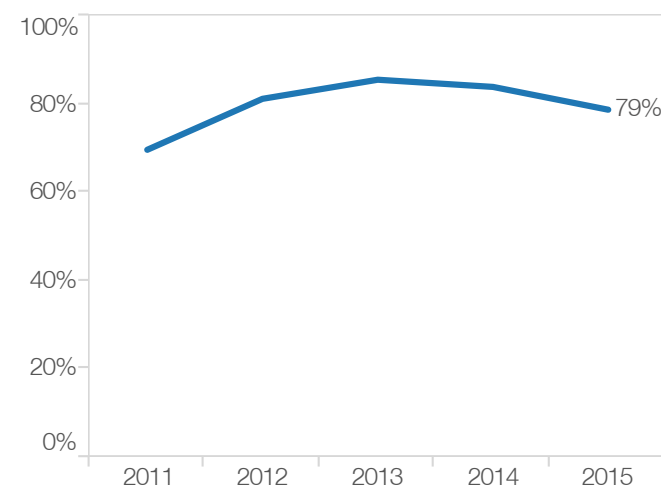


Figure 4: Agencies that conducted annual information release reviews as a percentage of all agencies that reported, by sector, 2010/11 to 2014/15

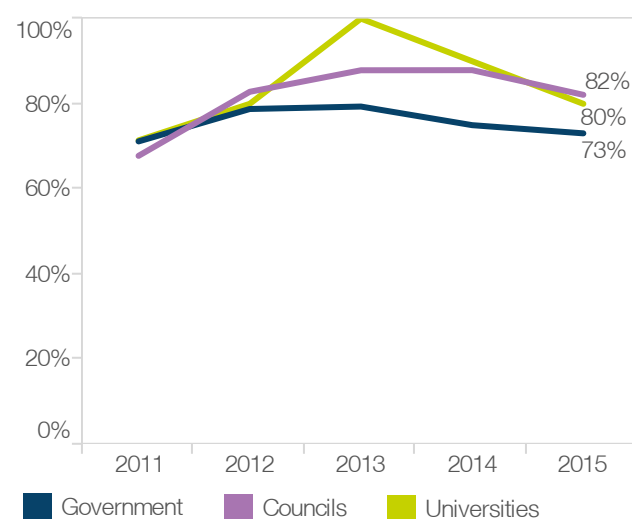
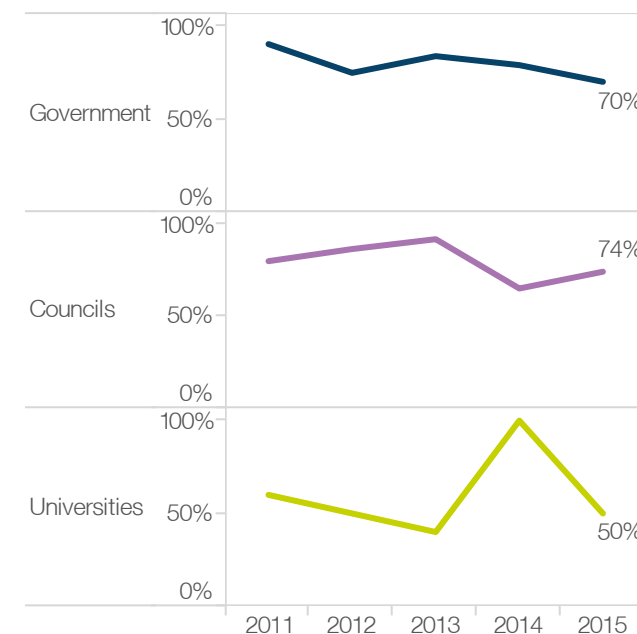


Figure 5: Agencies that released information as a percentage of agencies that conducted an annual review, by sector, 2010/11 to 2014/15



it reviewed information available by “regularly checking Council’s website... developing for Council an Access to Information Policy... [and] reviewing the informal requests and formal access requests” to assess if information could be proactively released. Another factor affecting this measure is the practice of some agencies reporting

via a single, cluster agency which provided an aggregate report to the IPC. This could have the effect of reducing the overall number of reported annual reviews.

If this approach is mature and rigorous, the annual review mandated by the GIPA Act may not provide the only vehicle to support the release of additional information. However, the current reporting arrangements to the IPC do not directly measure this important indicator of operational and cultural change.

The IPC has encouraged and improved the practice of proactive release

As foreshadowed in the 2013/14 Report, the IPC developed a fact sheet on proactive release to drive the cultural change envisaged by the GIPA Act. It was launched in July 2015 and is summarised on page 20. The guidance was intended to inform approaches by agencies in realising the benefits of proactive release and to elevate the levels of compliance. The fact sheet was developed in light of the findings of a survey of councils to identify best practices in proactive release, as well as consultations with practitioners in all sectors.

The *Issue Highlight: Proactive release insights from agencies’ responses* (page 21) primarily includes responses provided by the council sector in this reporting period on proactive release, and indicate the progress that has been made in achieving the legislative intent of authorised proactive release. ▶

ISSUE HIGHLIGHT: Enhancing the practice of proactive release would assist to achieve the GIPA Act’s objects

Models of information sharing exist that support and encourage the proactive release of information

Models of information sharing between government agencies and with contracted service providers exist. These arrangements have generally been given effect in other Australian jurisdictions through broader legislative objects to ensure information held by government is to be managed and shared for public purposes.

For example, the Queensland *Right to Information Act 2009* (RTI Act) has as its primary object “... to give a right of access to information in the government’s possession or under the government’s control unless, on balance, it is contrary to the public interest to give the access”. It aims to make more information available, provide equal access to information across all sectors of the community, and provide appropriate protection for individuals’ privacy.

The Queensland Office of the Information Commissioner has published guidance that “In order for Government to effectively and efficiently target its resources, support and services, agencies often need to share information. This may include sharing some of the personal information they hold with other agencies. ... Agencies have privacy obligations under the Information Privacy Act 2009 (IP Act). In most instances, these will not prevent personal information from being shared between agencies. Agencies do however need to consider their privacy obligations before deciding what, to whom and how personal information is to be shared”.

The regimes in other jurisdictions provide useful models on how to support and encourage information sharing between agencies in NSW.

Authorised proactive release is reported and measured by the requirement for agencies to report on annual GIPA activities under section 125 of the GIPA Act.

FACT SHEET: *Authorised proactive release of government information*

The fact sheet:

- describes what authorised proactive release is;
- explains the rationale and benefits of proactive release;
- identifies some emerging good practices in proactive release; and
- suggests a set of questions that agencies can apply to ensure their program for the authorised proactive release of information meets both the letter and spirit of the GIPA Act.

The self-assessment questions are intended to assist agencies in meeting legislative requirements and achieving the intent of the GIPA Act.

Available at <http://www.ipc.nsw.gov.au/authorised-proactive-release-government-information>.



CASE STUDY: *The government sector, authorised proactive release, service delivery and technological solutions*

The Office of Environment and Heritage (OEH) is working with local government, business and the community to build resilience by helping them to understand, plan for and adapt to the likely impacts of climate change.

The NSW Government, working with the ACT Government, funded the NSW and ACT Regional Climate Modelling (NARClIM) project. NARClIM has delivered the finest resolution and best regional climate change projections yet available for NSW and the ACT, and are making it available to the people who need it in the form that they require.

Launched in December 2014, AdaptNSW provides a one-stop-shop for climate change impacts and adaptation information. It delivers regionally specific climate change information that is targeted to the needs of local government and communities. AdaptNSW demonstrates the benefits of innovative, open and proactive release of information. It has:

- improved agency service delivery and efficiency using skills and capabilities from groups across OEH;
- enabled participation of the community in government processes by placing the community at the centre of the project, and helping to drive the development of research and new information;
- been designed to meet Open Government Principles, in which end users were consulted to help determine what products and tools were delivered to them;
- used a cyclical end user engagement model, in which OEH continuously re-engages with stakeholders once products have been released;
- reduced costs and resourcing needs by decreasing the number of access applications; and
- provided a single targeted platform for where the agency can access and respond to the needs of NSW stakeholders, reducing duplication of end-user engagement and avoiding “engagement burn out”.

Since its launch AdaptNSW has had over 31,500 unique visitors with over 120,000 page views. AdaptNSW media and social media reports have reached over 1.4 million people.

ISSUE HIGHLIGHT: *Proactive release insights from agencies’ responses*

Over 160 agencies reported to the IPC on actions they took during 2014/15 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*, June 2015 (summarised on page 20).

Integrate a commitment to proactive release into the agency’s corporate culture

Example actions:

- strengthening executive oversight and the establishment of a “GIPA Pro-Active Release Working Party” (meeting quarterly) to analyse GIPA applications every six months to identify possible content to be uploaded to the website;
- “...regularly consult[ing] with the community on its activities particularly through engagement on our website”;
- providing information which is not statutorily required to be provided;
- fostering a culture of release by promoting to staff a practice of openness and accountability in relation to information and decision-making; and
- identifying information that is requested most often, which could be made available in the future by self-service arrangements.

Identify the information that can be released proactively

Example actions:

One council demonstrated a systematic approach to inform its continuous cycle of disclosure by reviewing its:

- information sought by informal and formal access requests;
- disclosure log;
- staff surveys;
- websites of other councils to identify new strategies; and
- “...Customer Service Centre staff are consulted about the types of requests they receive through telephone calls and the service counter.”

Improve the accessibility of the information that it identifies could be proactively released

Example actions:

- strengthening access and ease of release by digitising records, focusing on the most requested or otherwise high value/interest documents;
- highlighting the availability of information by establishing a dedicated Access to Information Website;
- expanding the range of information to include historical records;
- improving access to important regulatory information by proactively releasing targeted safety alerts to highlight an incident or unsafe practice and provide prevention information; and
- using new technology, with one university reporting that its “... app is slowly increasing in usage indicating that mobile devices are an important means to access the University’s information”.

CASE STUDY: Government sector, authorised proactive release, leadership and technological solutions

The Office of Environment and Heritage (OEH) Open OEH program is developing capabilities and capacity in agency staff to incorporate open government principles across all its operations. The Open OEH program will support proactive release of information through:

- development of a proactive release framework and supporting tools;
- development of data release guidelines;
- development of an Open Data Portal; and
- devolution of responsibilities to Managers to cut down internal red tape and speed up approval for release processes.

During 2014/15, OEH undertook a number of initiatives to improve the immediacy and delivery of information to better inform the community, while reducing costs and decreasing the number of formal access applications. These included sites on <https://www.environment.nsw.gov.au> that:

- provide information about the Scientific Committee, its determinations and other related information;
- make energy efficiency program data available in both an interactive web page or through data download; and
- OEH also created the *Nature Near Me* app to help the NSW community discover and explore thousands of nature places throughout NSW.

OEH is working to increase public participation in government processes and decision-making through enabling active participation in design and delivery of government services and projects:

- Coastal Reforms Stage 2 – OEH worked collaboratively with local coastal councils to develop a new coastal manual and ensure that the manual was practical and accepted by councils;
- Native Vegetation – online tools were developed with landholders to provide them with information that helps them make decisions about native management on their property; and
- BioNet – this is the trusted source of biodiversity data related to NSW. Working with external stakeholders, data held in BioNet has been made available via an Open Application Programming Interface (API). This enables organisations and individuals to directly integrate biodiversity data into their software systems and unlock the innovation potential of this valuable data asset.

Pathway 3: Informal release of information

Agencies should implement practices to support use of informal release

The informal release of information provides benefits for agencies and citizens, and helps to increase access to information

This includes improving the accessibility of information and providing flexibility to agencies on what and how to release information.

The benefit for requestors is that it is easier to lodge requests as there is no need to satisfy the requirements of making a formal access application (for example, an access application must be in writing and sent to the agency concerned, accompanied by a \$30 fee and have a postal address).

For agencies, this pathway offers flexibility to:

- determine what information may be released and have greater flexibility in the time frame within which to decide an application;
- place reasonable conditions on the release of the information that the agency thinks fit to impose;
- facilitate access to information by redacting records if release of the information would otherwise result in there being an overriding public interest against disclosure of the information, for example, if it would result in the release of a third party's personal information; and
- determine how information may be released, for example, online, viewing the information in person or providing a copy of the information to the requestor.

Agencies could consider proactively releasing information that is informally requested

The informal release pathway is complementary to the proactive release pathway. Agencies have the opportunity to periodically identify and record emerging patterns of the types of information that is released informally and to instead release such information proactively.

This identification process could ultimately reduce the burden on agencies dealing with informal requests, promote the proactive release of information, enhance compliance with the proactive release pathway and take the next step in Open Government.

Agencies should inform persons of the benefits of alternatives to informal release

There are no formal review rights attached to the informal release pathway. This is in contrast with the review rights available when requests are made through formal access applications.

Agencies should assist persons that request information through the informal release pathway and communicate that if they have concerns with the agency's approach to their informal request, they can:

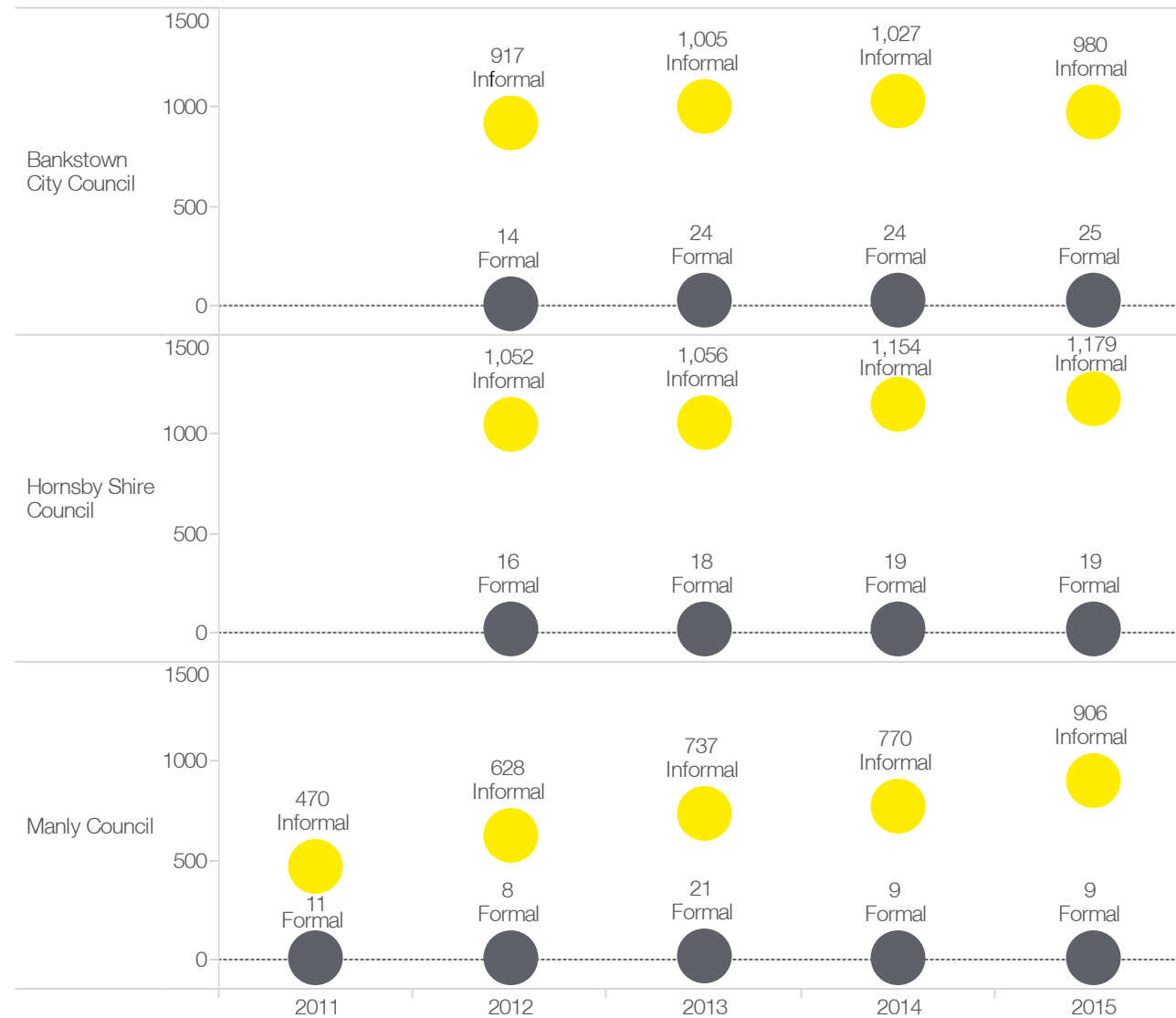
- make a formal access application; or
- lodge a complaint with the Information Commissioner. ►

ISSUE HIGHLIGHT: Informal release practices of selected councils

A number of local councils are making greater use of the informal release pathway. For example, informal requests represented around 98% of all requests (formal and informal applications) for Bankstown City Council, Manly Council and Hornsby Shire Council (Figure 6). For Manly Council in 2014/15, informal requests increased even further as a proportion of total requests to 99%.

This pattern has been identified for the first time and the IPC will examine its drivers further.

Figure 6: Number of informal and formal requests made to Bankstown City Council, Manly Council and Hornsby Shire Council, 2010/11 to 2014/15



Pathway 4: Formal applications

In 2014/15 total information release rates declined to 69% from 80% in 2010/11. The IPC is examining the factors affecting this decline

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

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

The main benefits of the formal access pathway 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; and
- applicants have a right to seek review of an agency's decision about the application through an internal review by the agency, an external review by the Information Commissioner or an external review by the NSW Civil and Administrative Tribunal (NCAT).

Year at a glance

Please see pages 26-27 for highlights, which include:

- Where were applications lodged?
- Were applications invalid?
- Who applied?
- What was asked for?
- How quickly were decisions made?
- Did applicants get what they asked for?
- How were decisions reviewed?
- What were the main review outcomes? ▶

ISSUE HIGHLIGHT: The GIPA Act flexibly responds to varying types of applicants and their information needs to maximise information release

The way the GIPA Act was used in 2014/15 highlights its relevance and responsiveness to the whole community. Whether applicants are individuals seeking personal information or NGOs and private sector businesses seeking non-personal information, the Act's structured approach and public interest test result in maximum appropriate release in each case. This responsiveness is shown in the very different patterns of applicants, information sought and release outcomes between the two agencies receiving the largest numbers of applications, the NSW Police Force and Roads and Maritime Services (RMS). Of significance is the marked difference in the full and partial release rates.

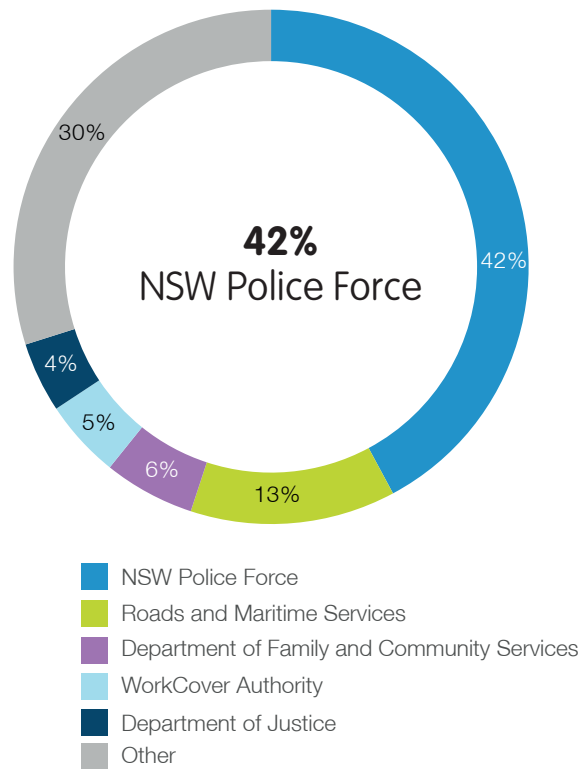
- For the NSW Police Force, 93% of all application outcomes in 2014/15 related to personal information and were overwhelmingly sought by members of the public. The overall release rate for members of the public was 70% (25% in full, 45% in part) and for personal information applications was 64% (16% in full, 49% in part).
- For RMS, 94% of application outcomes in 2014/15 related to other than personal information and 62% of applications were by private sector businesses. The overall release rate for private sector businesses was 70% (44% in full, 26% in part), and for other than personal information applications was 64% (44% in full, 20% in part).

This outcome demonstrates that the agencies are still achieving information release rates consistent with the sectors overall by maximising partial release in applications for personal information.

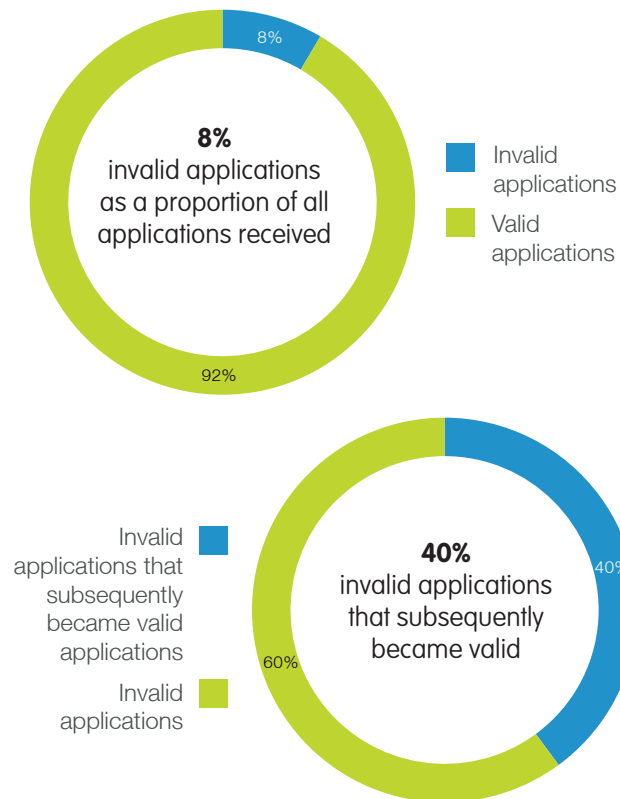
Trends in the type of information sought and those seeking the information are discussed later in this Report at sections *Who applied?* (page 34) and *What information was asked for?* (page 36).

Year at a glance

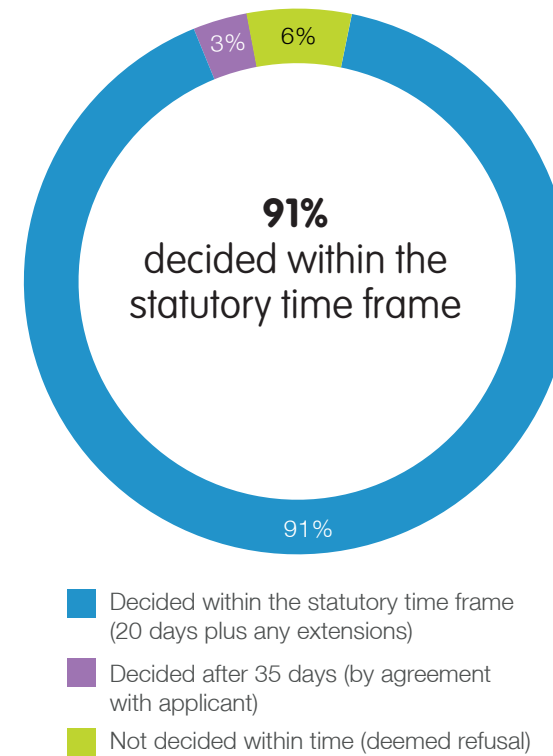
Where were applications lodged?



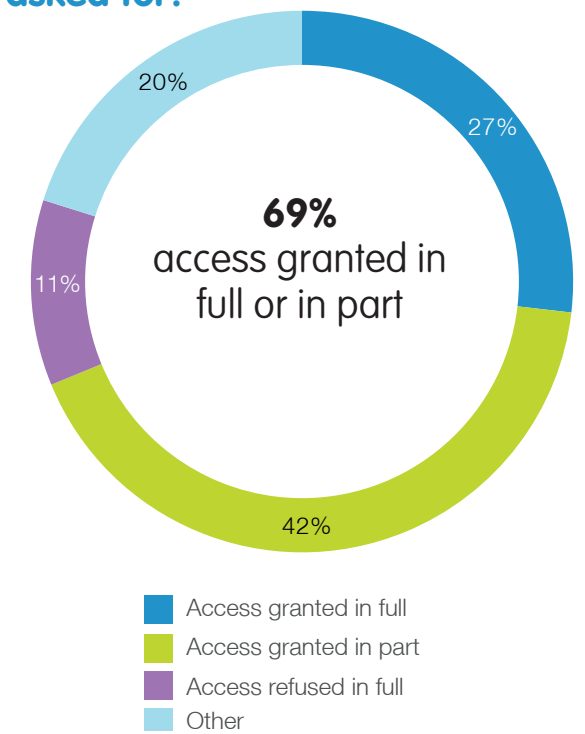
Were applications invalid?



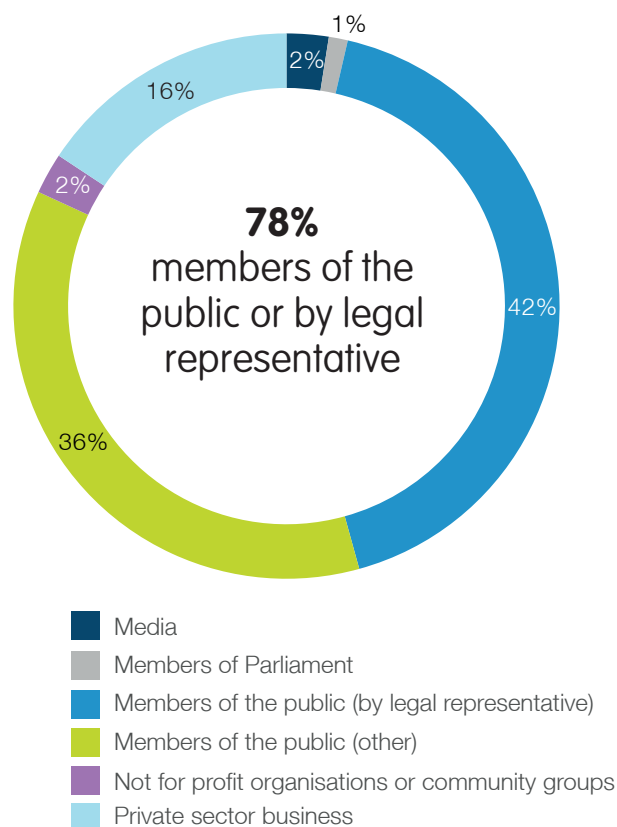
How quickly were decisions made?



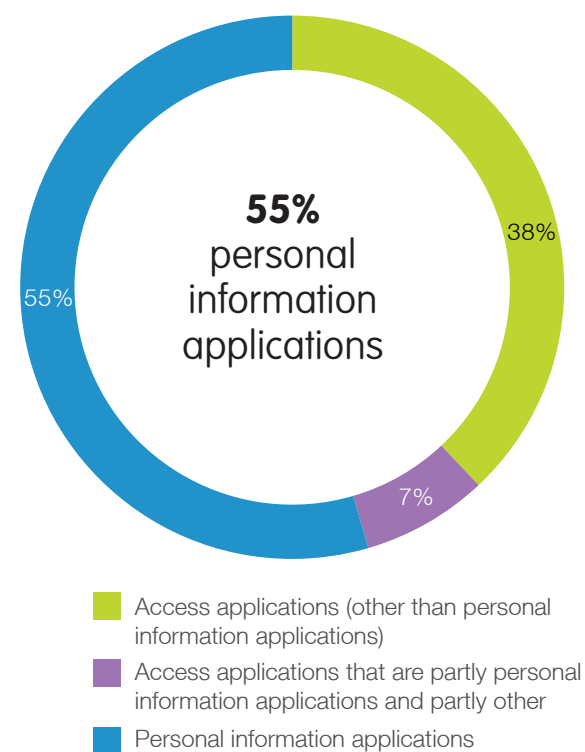
Did applicants get what they asked for?



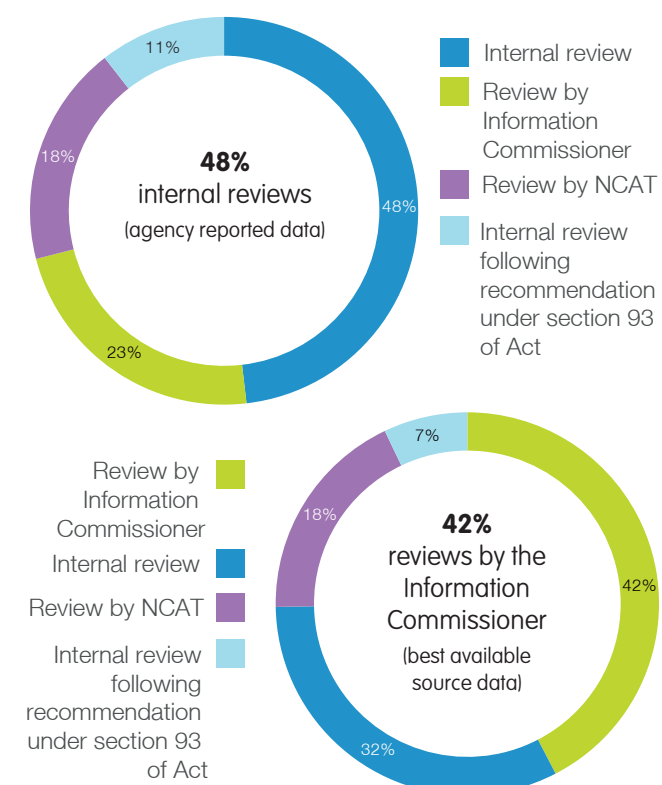
Who applied?



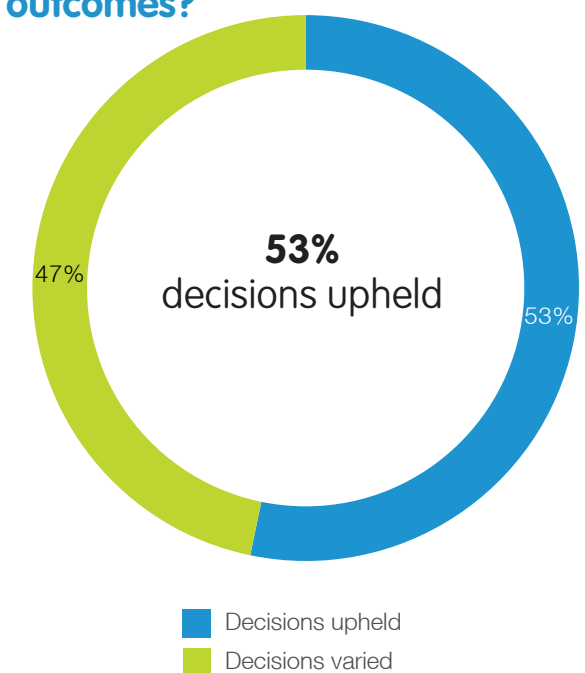
What was asked for?



How were decisions reviewed?



What were the main review outcomes?



How many applications were lodged?

The number of applications received was consistent with 2013/14 but varied between sectors

At the time of reporting, agencies had advised they received 12,914 applications during 2014/15. This compares with 12,972 applications in the previous financial year. The trend in applications is shown in Figure 7.

Most applications were made to the government sector

The government sector continued to account for the great majority (11,151 or over 85%) of valid applications.

In 2014/15, as in previous years, the NSW Police Force and Roads and Maritime Services (RMS) accounted for 55% of all valid applications (see Figure 8).

Applications to the government sector declined slightly but increased significantly for councils

The number of formal 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 pathway.

For example, in 2014/15 the government sector received 320 fewer applications (a decline of around 3%) compared to 2013/14 (Figure 9). One of the largest declines was in applications to RMS of 35%. RMS has stated that this decline was due to changes in the pathways used to release some types of information (for example, some information could be released without requiring a formal application), process improvements and greater proactive release of some information.

Applications to councils increased by 250 or 18% from 2013/14 to 1641 in 2014/15.

Universities received relatively few applications in 2014/15 (62 applications), which was consistent with 2013/14.

Figure 7: Total number of valid applications received, 2010/11 to 2014/15

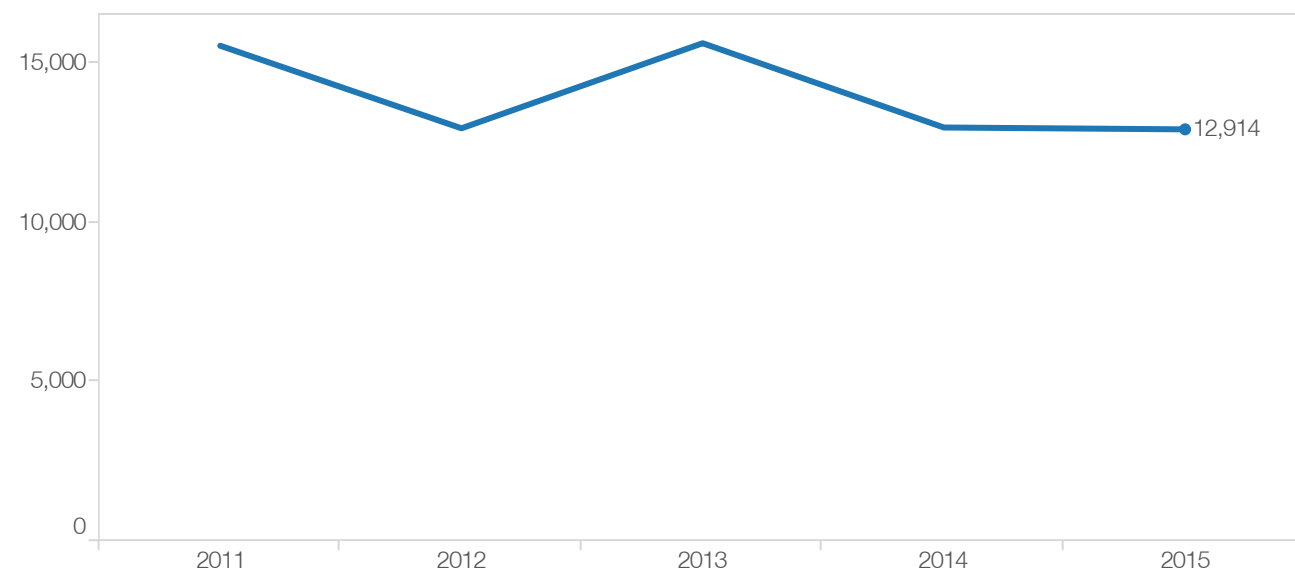


Figure 8: Distribution of valid applications received, by agency, 2014/15

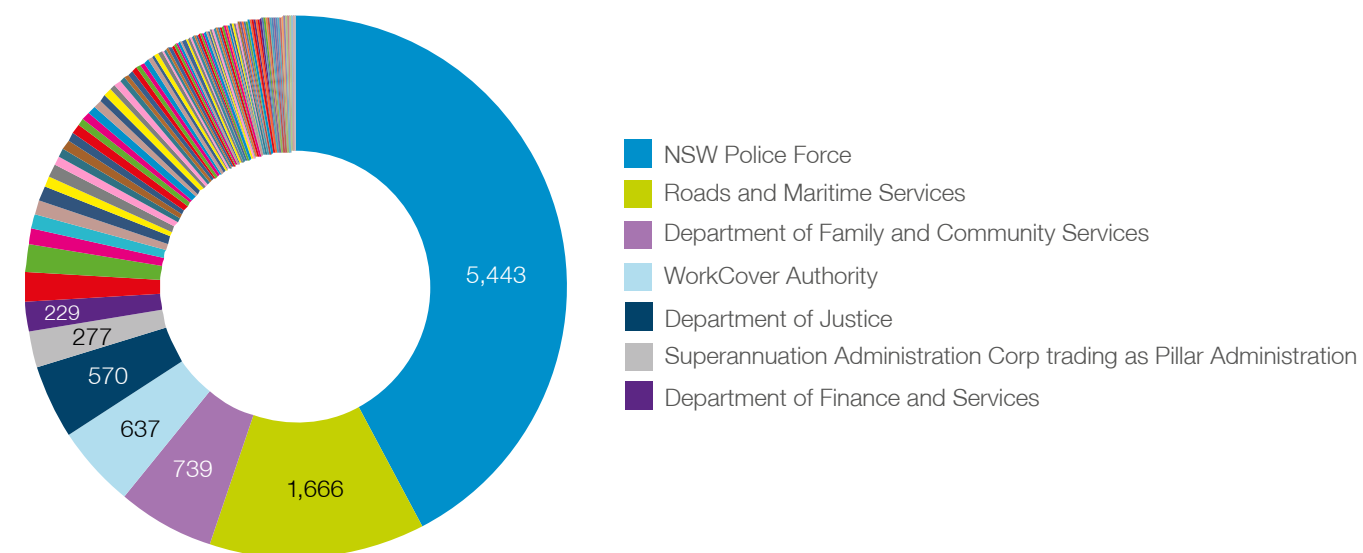
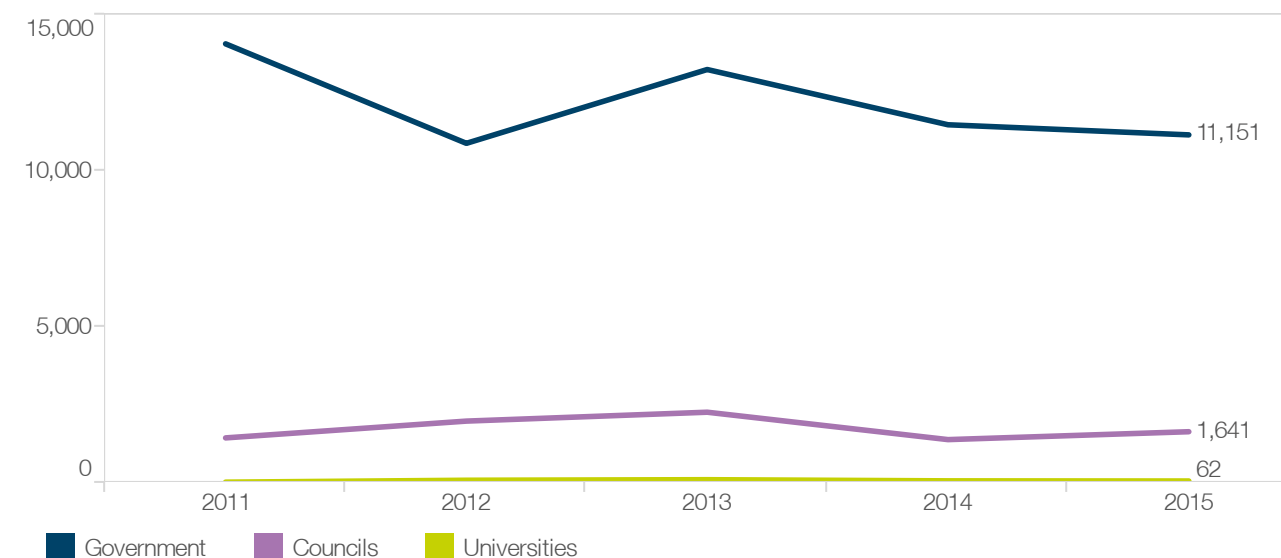


Figure 9: Number of applications received, by sector, 2010/11 to 2014/15



“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

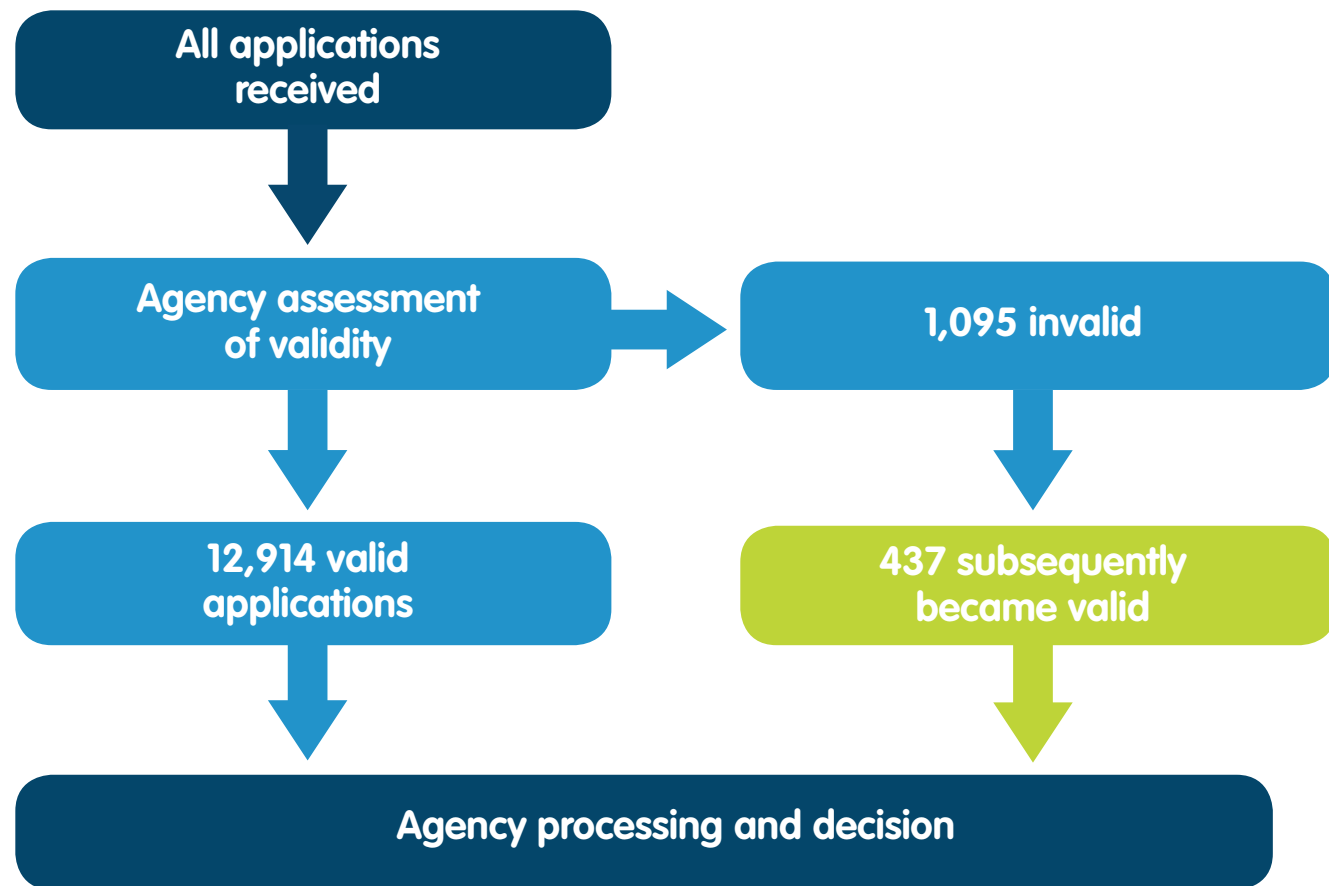
The level and trend in invalid applications is one indicator of the extent to which the GIPA Act is understood by applicants and agencies, as well as the flexibility offered to applicants to amend their applications so they can be considered

Figure 10 shows the flow of applications from receipt, to initial assessment and subsequent processing as well as the number of applications considered in 2014/15.

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

This section draws on data from Table C, Schedule 2 of the GIPA Regulation. A case study at page 33 provides an example of a recent NCAT case relating to the operation of section 110, which concerns orders that can be made by NCAT to restrain the making of unmeritorious access applications.

Figure 10: 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 of the GIPA Regulation.

There were relatively fewer invalid applications

In 2014/15 agencies received 1,095 invalid applications. This was equivalent to 8% of all formal applications received (Figure 11). This percentage declined from a high of 13% in the first year of the GIPA Act's operation.

In 2014/15 the most common reason for invalidity (applying in 99% of invalid applications) was that the application did not comply with formal requirements.

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. The IPC has also produced a template access application form for members of the public to use to apply for formal access to government information and which sets out the information required to make a valid application.

Ministers and the government sector had the highest percentage of invalid applications

As seen in Figure 12, the pattern of invalid applications as a percentage of all applications varied across sectors. Ministers and the government sector had the highest percentage of invalid applications and universities and councils the lowest. ▶

Figure 11: Invalid applications as a percentage of all formal applications received, 2010/11 to 2014/15

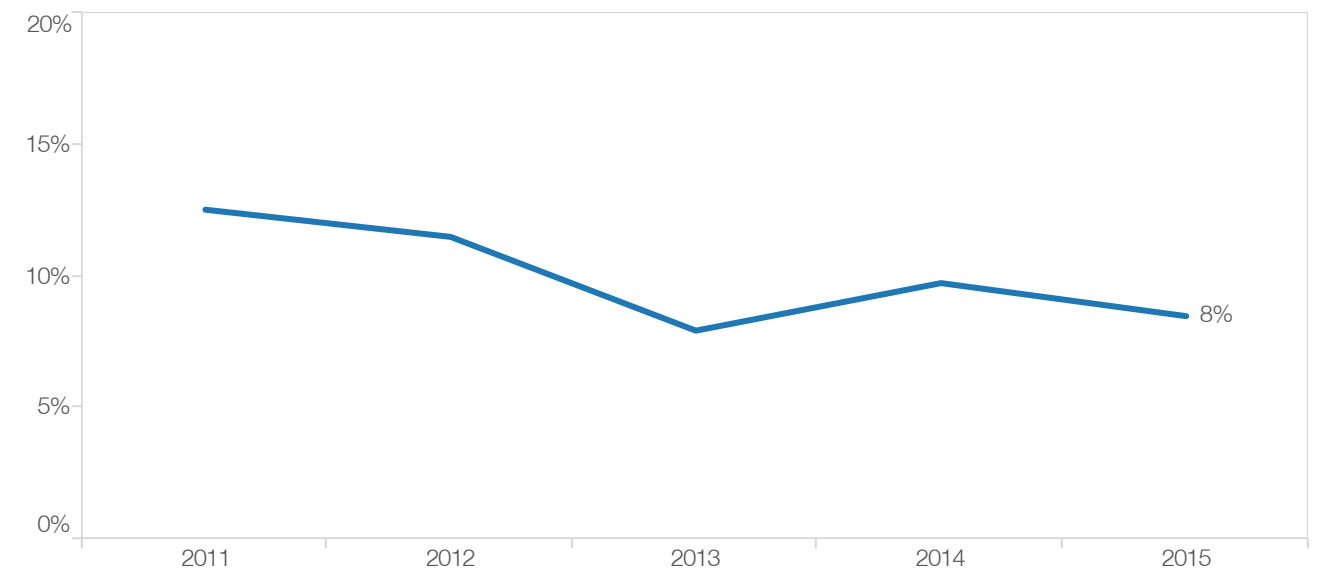
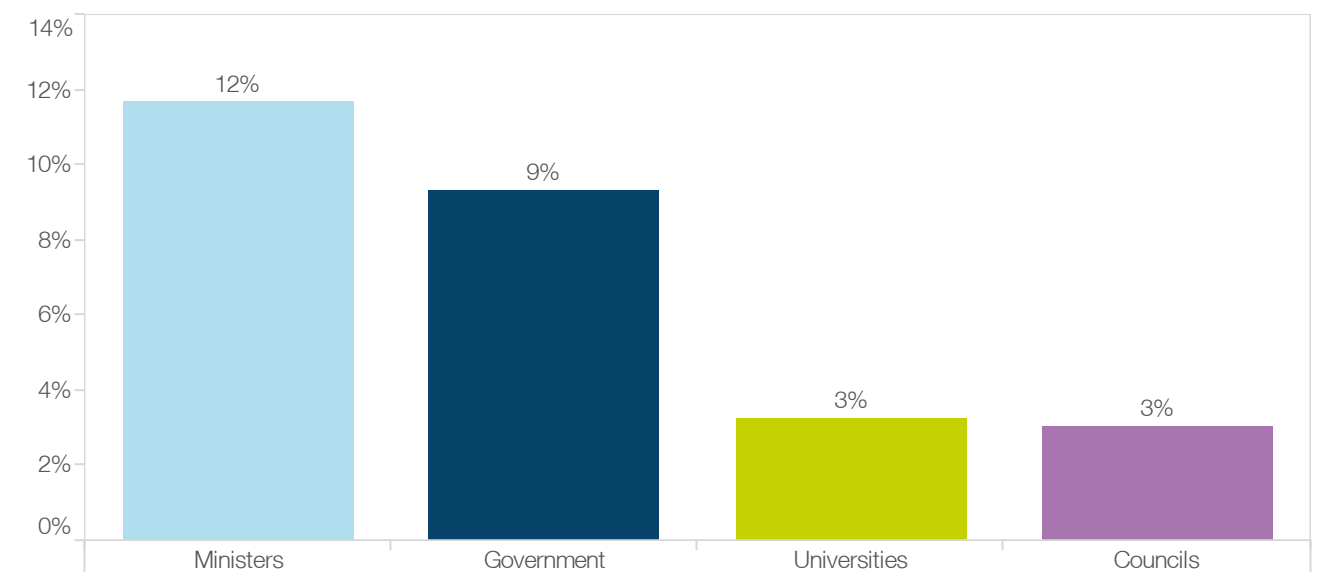


Figure 12: Invalid applications as a percentage of all formal applications received, by sector, 2014/15



Invalid applications were 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 2014/15, 40% of invalid applications subsequently became valid (Figure 13). As Figure 14 shows, the percentage of invalid applications that subsequently became valid has increased steadily from 15% in 2010/11 in the government sector.

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.

Figure 13: Invalid applications that became valid as a percentage of all invalid applications, 2010/11 to 2014/15

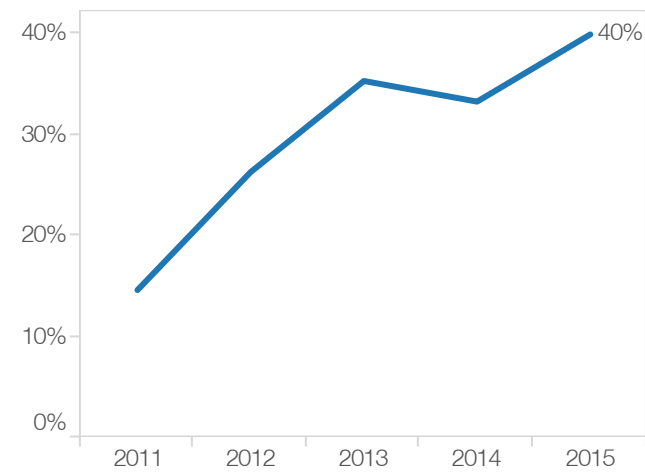
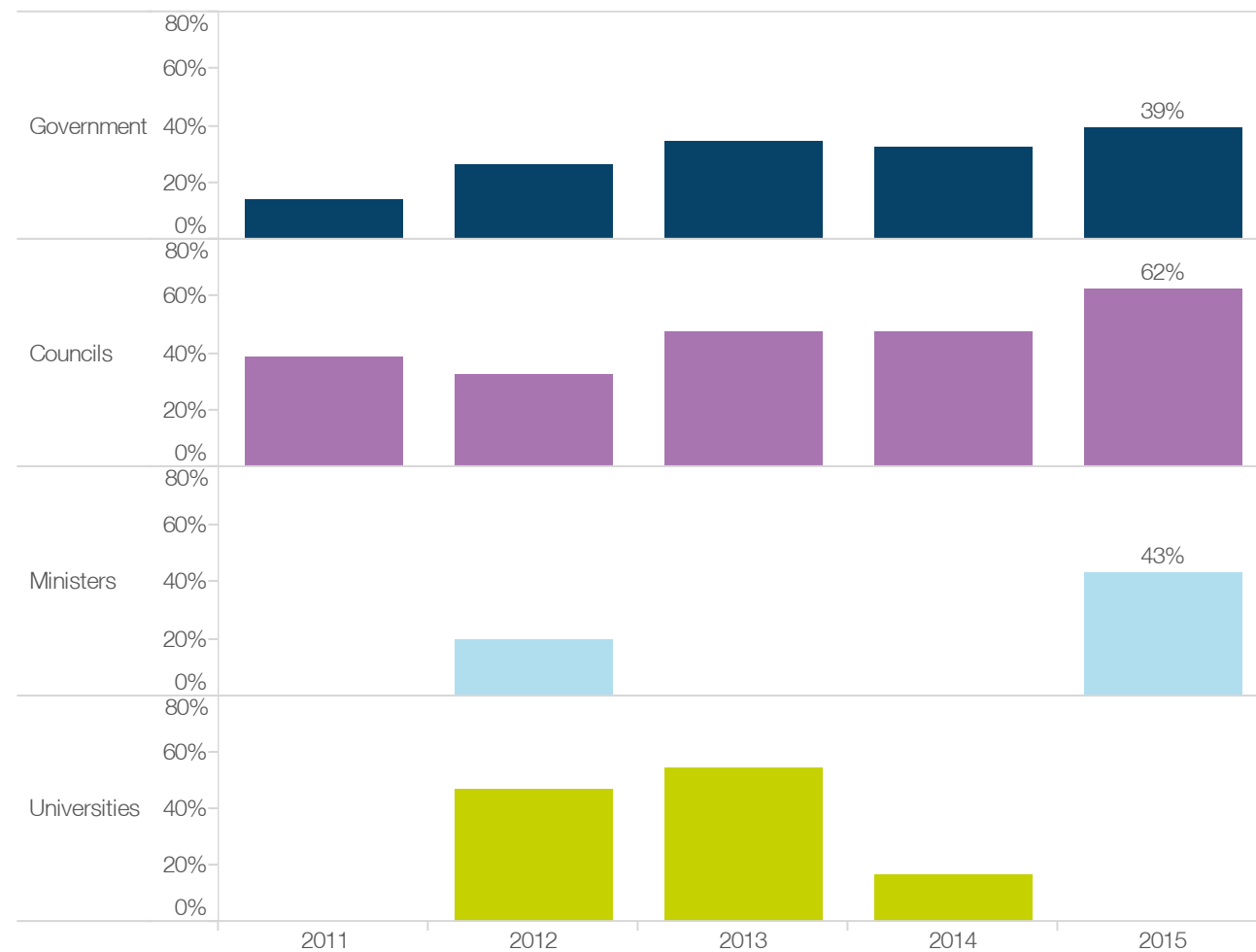


Figure 14: Invalid applications that became valid as a percentage of all invalid applications, by sector, 2010/11 to 2014/15



CASE STUDY: Local council sector access applications dealing with persistent and unmeritorious applications

In 2015, NCAT considered and found for the first time, that the right of access provided by the GIPA Act was not absolute.

Under section 110 of the GIPA Act agencies can apply to NCAT seeking an order to restrain the making of unmeritorious access applications. NCAT has discretion to restrain an access applicant if it is satisfied that:

- there is a history of applications to the agency by the relevant person under the GIPA Act;
- the application lacks merit because the documents are not held by the agency, or to deal with them would require an unreasonable and substantial diversion of resources, or access entitlements have lapsed; and
- three or more such applications have been received in the two years prior to the application for the restraining order.

The effect of a restraining order is that a person cannot make an access application to an agency without first obtaining the approval of the Tribunal. If the person makes an application to the agency without obtaining that approval, the application is taken to be invalid.

In 2015 NCAT determined the first two cases under this section, making restraint orders in *Pittwater Council v Walker [2015] NSWCATAD 34* and in *Palerang Council, Queanbeyan City Council and Goulburn Mulwaree Council v Powell [2015] NSWCATAD 44*.

The Tribunal considered the GIPA Act as beneficial legislation and that it was necessary to balance the interests outlined in the object to the GIPA Act against conduct that unreasonably interferes with the operations of agencies.

These proceedings were the first to examine the limitations placed on the right to know in NSW and the Information Commissioner took a role in the Palerang proceedings to ensure that all relevant information was available to the Tribunal. The Information Commissioner's submissions noted that other information access jurisdictions approach applications regarded as lacking in merit by declaring that a person is a "vexatious applicant". For example, there was a declaration by the Australian Information Commissioner (Professor John McMillan) in the *Department of Defence and W [2013] AICmr 2*.

The Information Commissioner's view is that access applications should continue to be assessed individually and on the specifics of each application. The Information Commissioner noted that persistent and repeated access applications by individuals for the same or similar government information may be behaviour that impacts on an agency's ability and resources to promote open access to information to the public generally.

The decisions in Pittwater and Palerang illustrate that NCAT will balance the impact of persistent and unmeritorious applications requiring an unreasonable and substantial diversion of resources with an agency's ability to respond to all access applications received. The case note is available on the IPC website here: <http://www.ipc.nsw.gov.au/information-access-case-note-section-110-restraint-orders-pittwater-council-v-walker-2015-nswcatad>.

Who applied?

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

In 2014/15 over 78% of outcomes related to applications from either a member of the public or their legal representative. The largest single source (42%) related to applications by legal representatives.

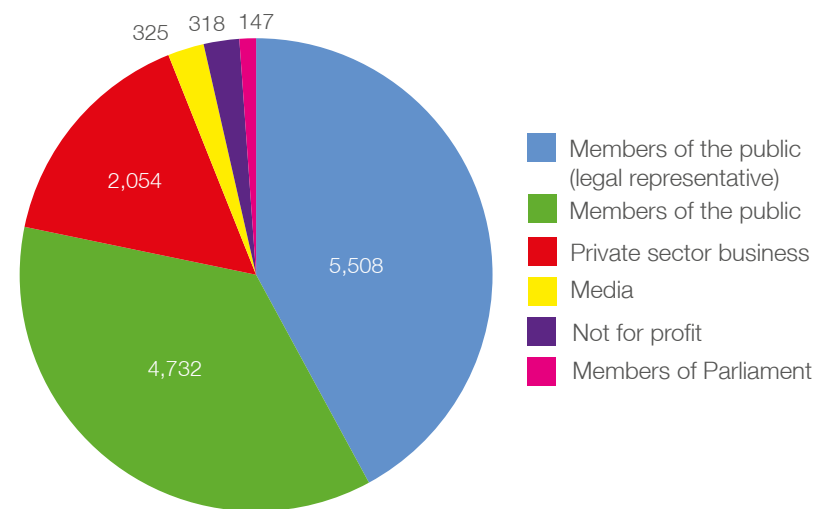
As noted in *How many applications were lodged?*, page 28, the volume and source of applications received by the NSW Police Force heavily influenced overall reported outcomes.

Figure 15 shows these differences in distribution. For example, the percentage of outcomes relating to applications by private sector businesses was 16% across all agencies and rose to 25% if NSW Police Force data was excluded.

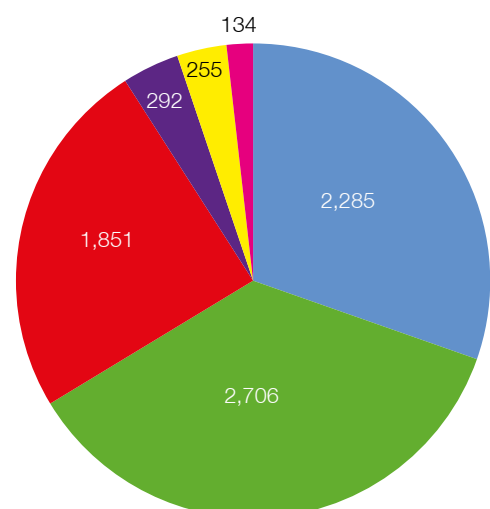
This pattern of use has been identified for the first time and the IPC will examine it further.

Figure 15: Outcomes by type of applicant, 2014/15

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 of the GIPA Regulation.

The major types of applicant varied across sectors and over time

In 2014/15 the percentage of applicant types varied markedly across sectors. As Figure 16 shows, the greatest percentage of outcomes provided by the government and council sectors related to applications by members of the public (or their legal representative). Ministers had different and more varied sources of outcomes.

Figure 17 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).

Figure 16: Percentage of outcomes by sector and type of applicant, 2014/15

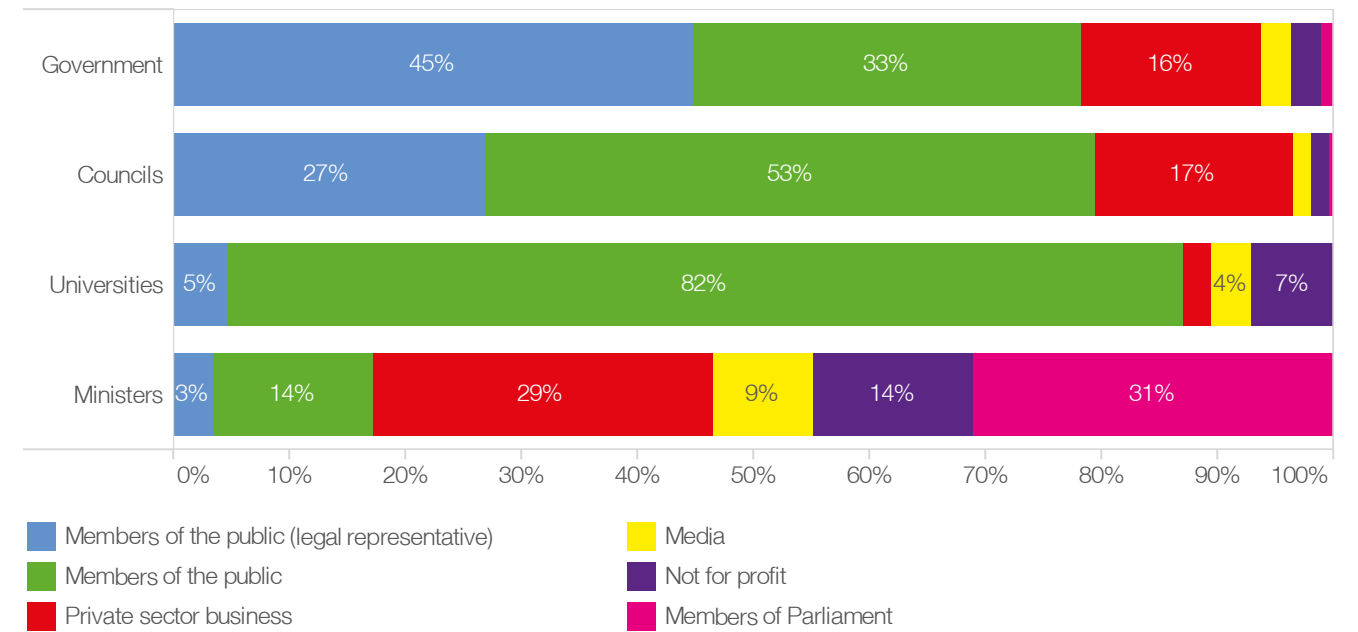
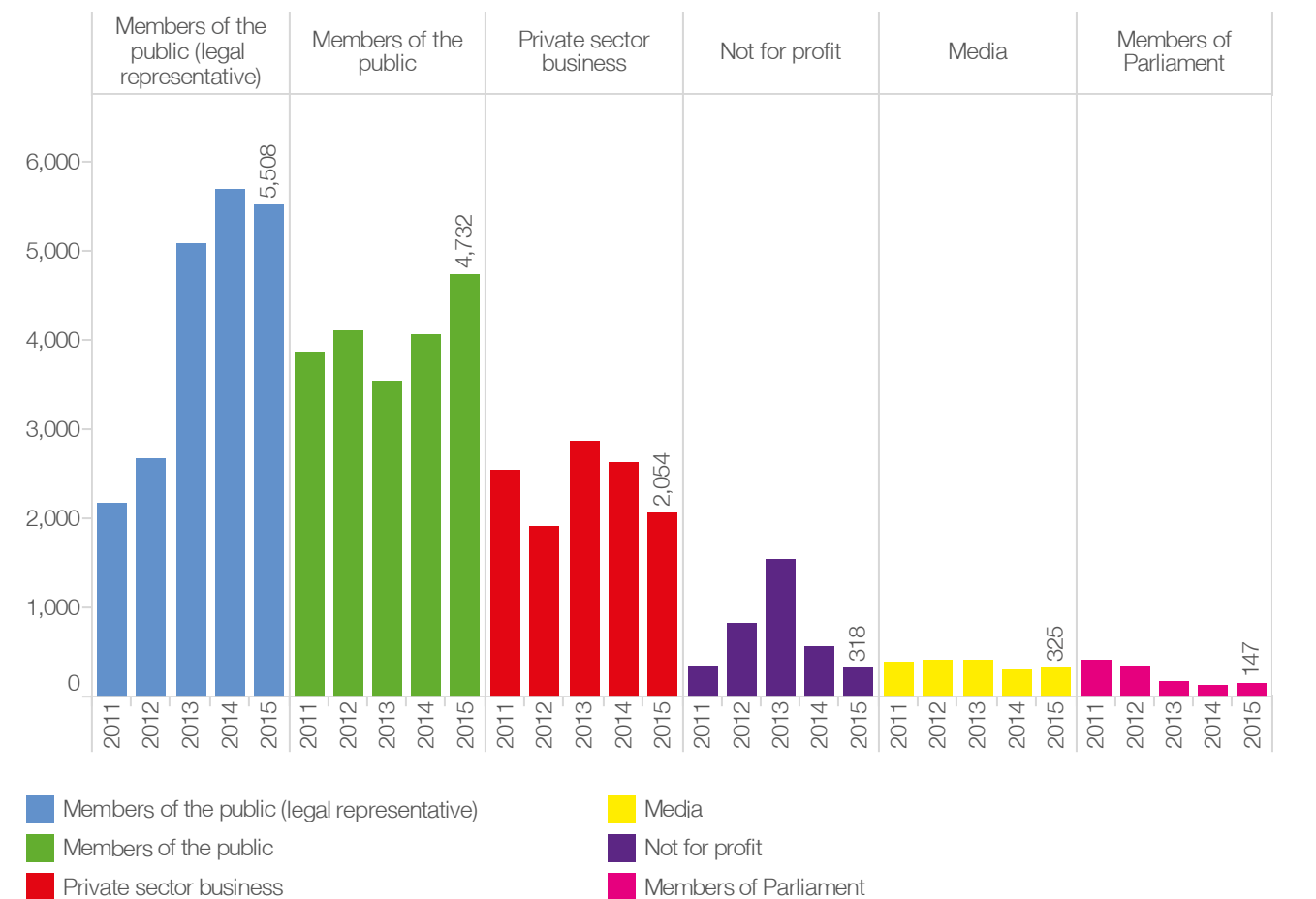


Figure 17: Number of outcomes by type of applicant, 2010/11 to 2014/15



What information was asked for?

Most applications were for personal information

In 2014/15 across all sectors (Figure 18):

- 55% of outcomes related to personal information applications;
- 38% of outcomes related to applications for other than personal information; and
- 7% of outcomes related to applications for both types of information.

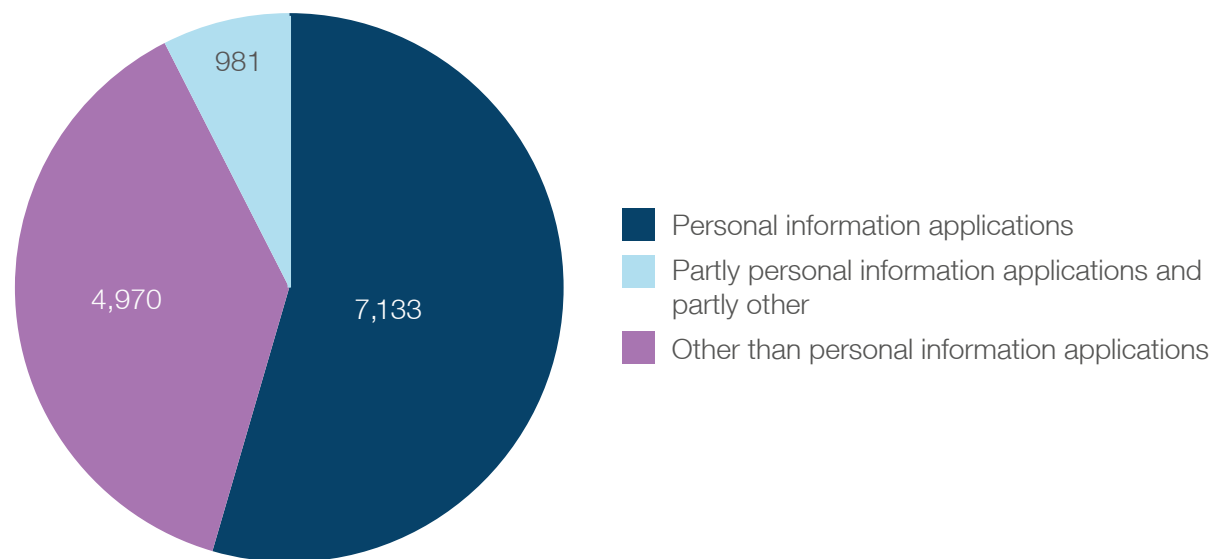
As Figure 19 shows, the distribution of outcomes across application types was consistent with 2013/14. There has been a 120% increase in the number of outcomes relating to applications for personal information, from 3,247 in 2010/11 to 7,133 in 2014/15.

The type of information sought varied across sectors

Different sectors experienced markedly different patterns of outcomes in 2014/15. In the government sector, over 60% of outcomes were for applications for personal information. As Figure 20 shows, this percentage fell to 31% if outcomes relating to the NSW Police Force were excluded (as over 90% of outcomes for that agency related to applications for personal information). This pattern of use has been identified for the first time and the IPC will examine it further.

In the council sector, over 80% of outcomes related to applications for other than personal information.

Figure 18: Outcomes by type of information applied for, 2014/15



“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 of the GIPA Regulation.

Figure 19: Number of outcomes by type of information applied for, 2010/11 to 2014/15

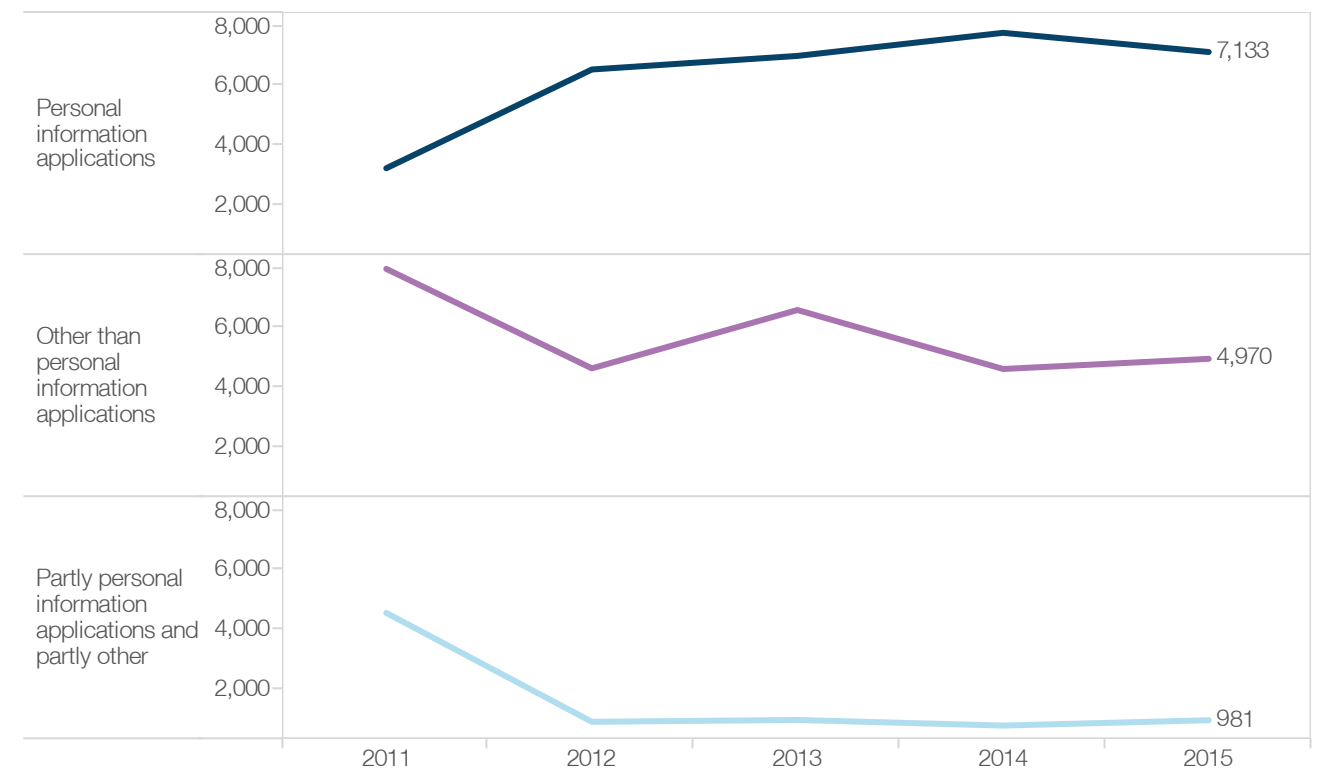
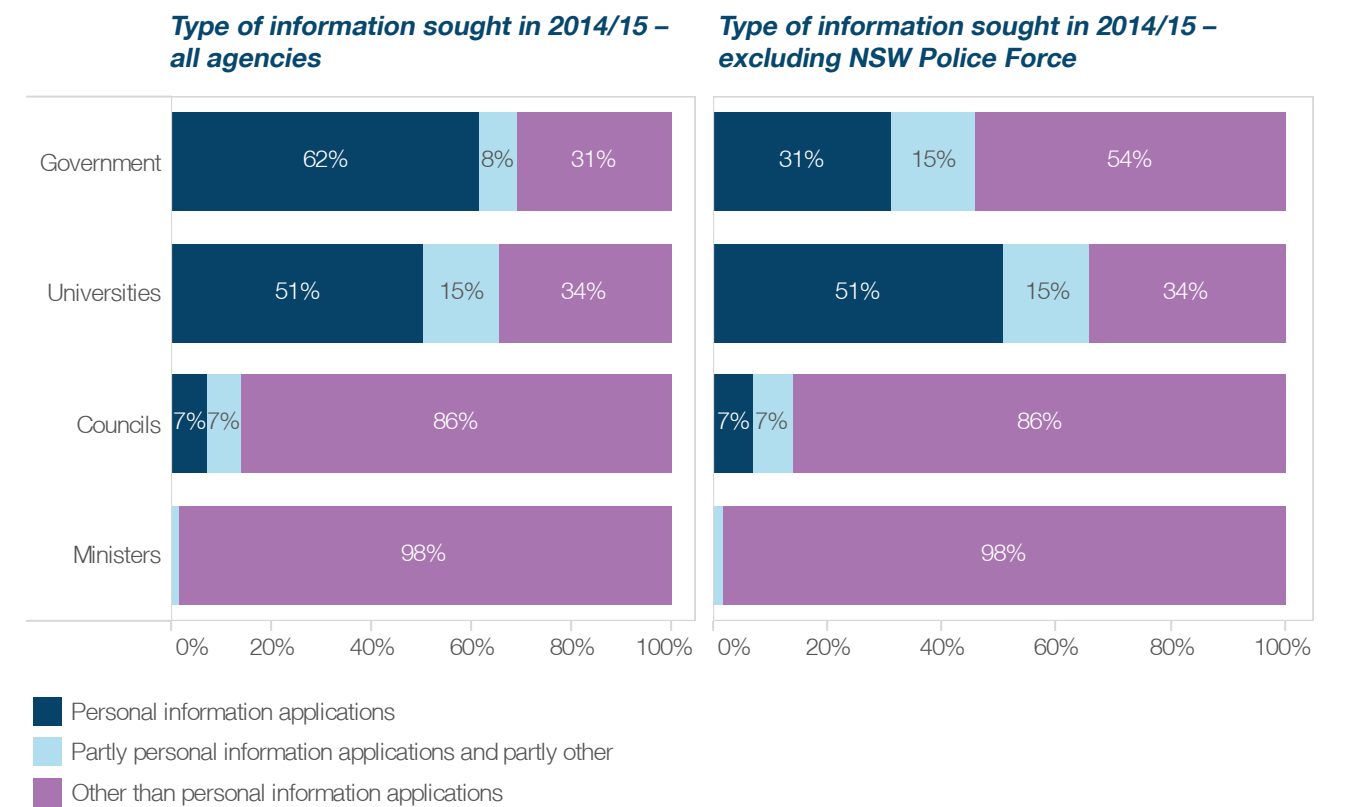


Figure 20: Percentage of all outcomes by type of information applied for, including and excluding NSW Police Force data, 2014/15



Did applicants get what they asked for?

The overall 'release rate' of information has declined

In 2014/15, the overall release rate was 69% (access granted in full or in part outcomes) (Figure 21). This was a decline from a high in 2012/13, when the overall release rate was 80%.

There were corresponding declines in the government and council sectors. In 2014/15, 68% of outcomes from the government sector resulted in access being granted in full or in part, a decline from a high of 80% in 2012/13 (Figure 22).

For the council sector, 73% of outcomes granted access in full or in part in 2014/15, a decline from a high of 82% in 2012/13 (Figure 22).

Figure 21: Overall release rate across all sectors, 2010/11 to 2014/15

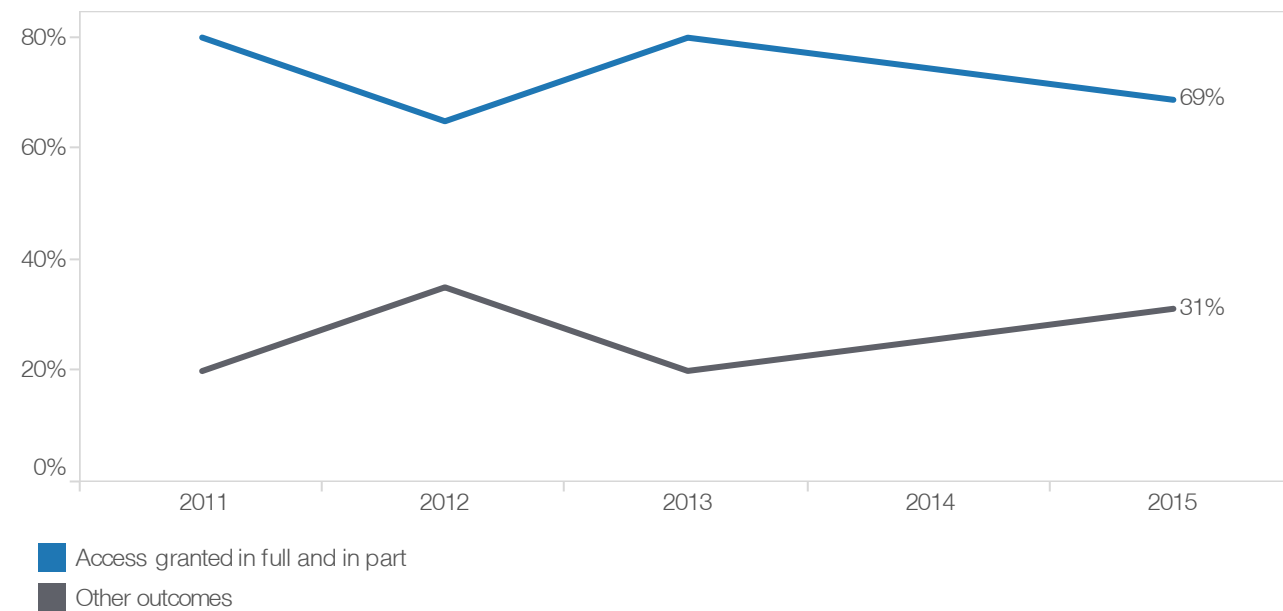
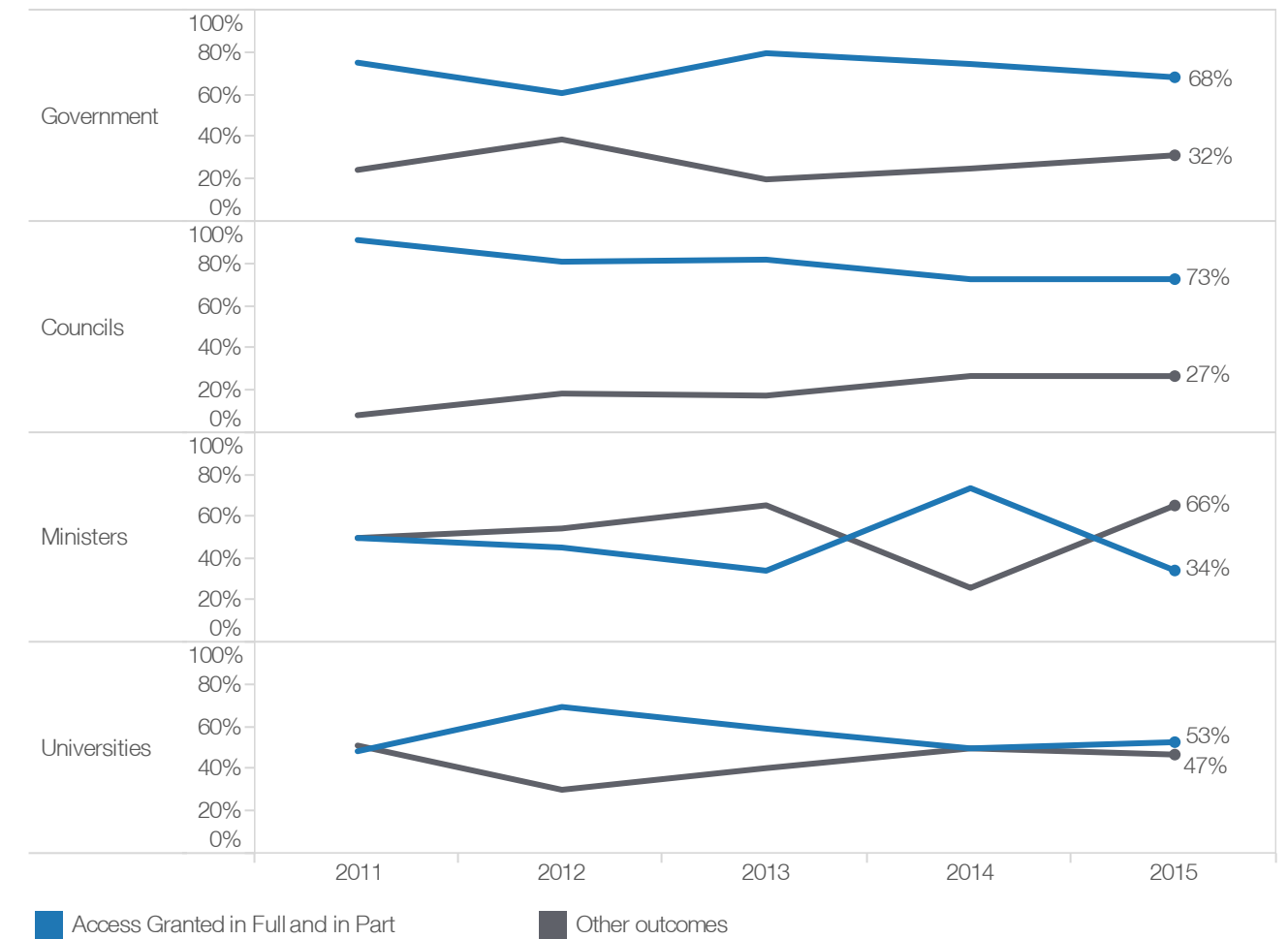


Figure 22: Overall release rate by sector, 2010/11 to 2014/15



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

In 2014/15, 27% of all outcomes granted access in full (Figure 23), a decline from a high of 55% in 2010/11.

- This decline was accompanied by an increase in access granted in part outcomes, from 25% in 2010/11 to 42% in 2014/15
- Since 2012/13, there have been more outcomes granting access in part than granting access in full. This difference increased from four percentage points in 2012/13 to 15 percentage points in 2014/15.

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

- In 2014/15, 24% of all outcomes provided by the government sector granted access in full (Figure 24), a decline from a high of 45% in 2010/11. Access granted in part represented 44% of all outcomes, an increase from 30% in 2010/11.
- In 2014/15, councils were more likely to grant access in full (44% of all outcomes) than grant access in part (28% of all outcomes). However, there was a decline in access granted in full outcomes from a high of 79% in 2010/11. ▶

“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 applicants (listed in Table A of Schedule 2 of the GIPA Regulation) and the type of information that is applied for (listed in Table B of Schedule 2 of 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 23: Release outcomes across all sectors, 2010/11 to 2014/15

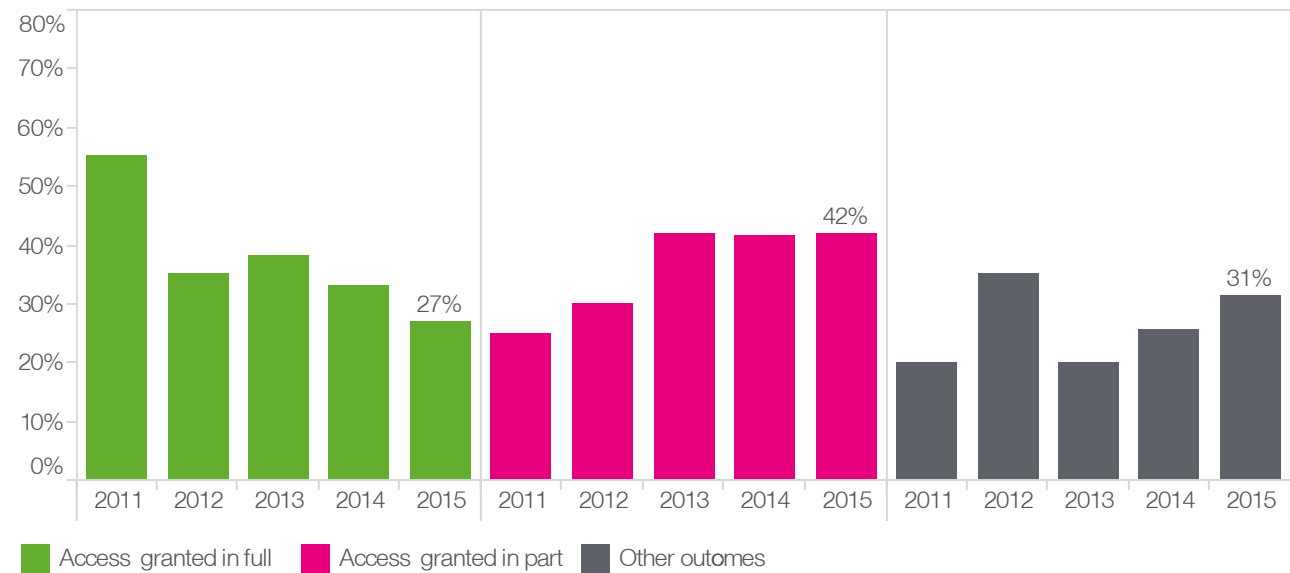
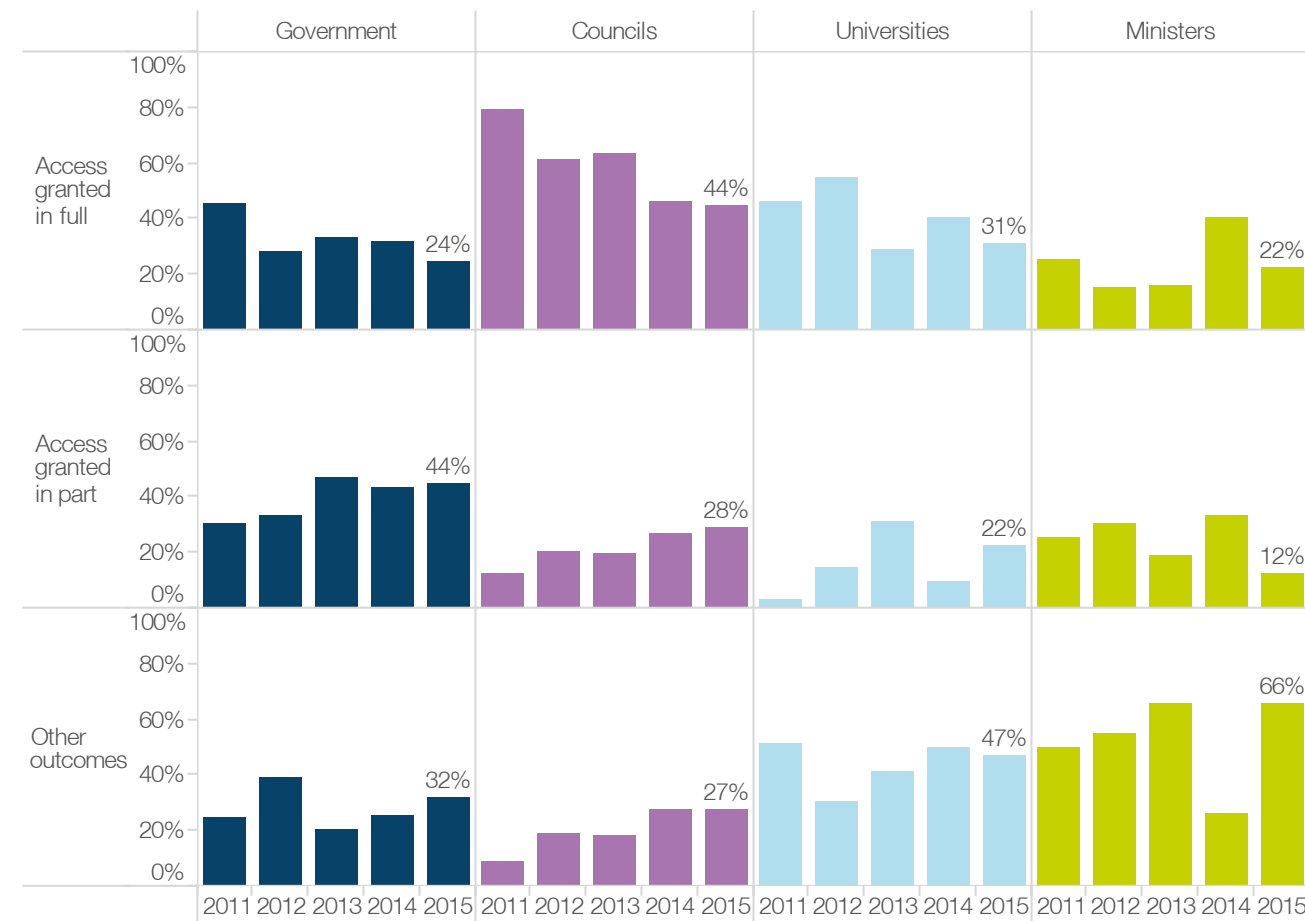


Figure 24: Release outcomes by sector, 2010/11 to 2014/15



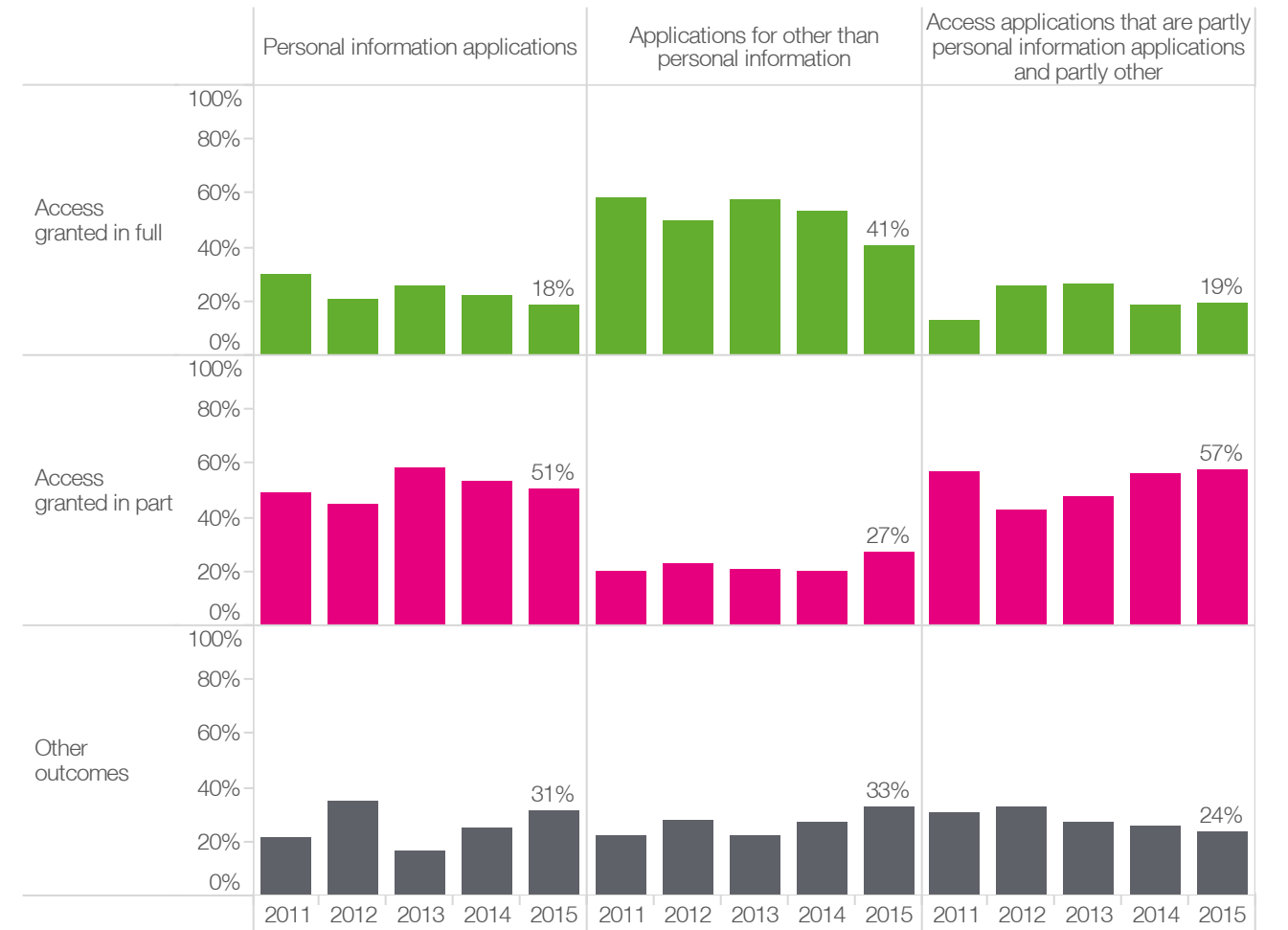
Applications for other than personal information were more likely to have access granted in full

The overall release rate of information for applications for personal information and applications for other than personal information were similar in 2014/15, at 69% and 67% respectively.

However, the composition of outcomes for each type of application was different (Figure 25):

- In 2014/15, 18% of all outcomes for applications for personal information granted access in full and 51% 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, at around 32 percentage points
- In 2014/15, 41% of all outcomes for applications for other than personal information granted access in full and 27% of all outcomes granted access in part. However, access granted in full outcomes declined from a high of 57% in 2012/13. ▶

Figure 25: Release outcomes by application type, 2010/11 to 2014/15



The overall release rate for most types of applicants was 65% or more

The highest release rates in 2014/15 were for members of the public (71%), private sector business (70%) and members of the public (by a legal representative) (68%).

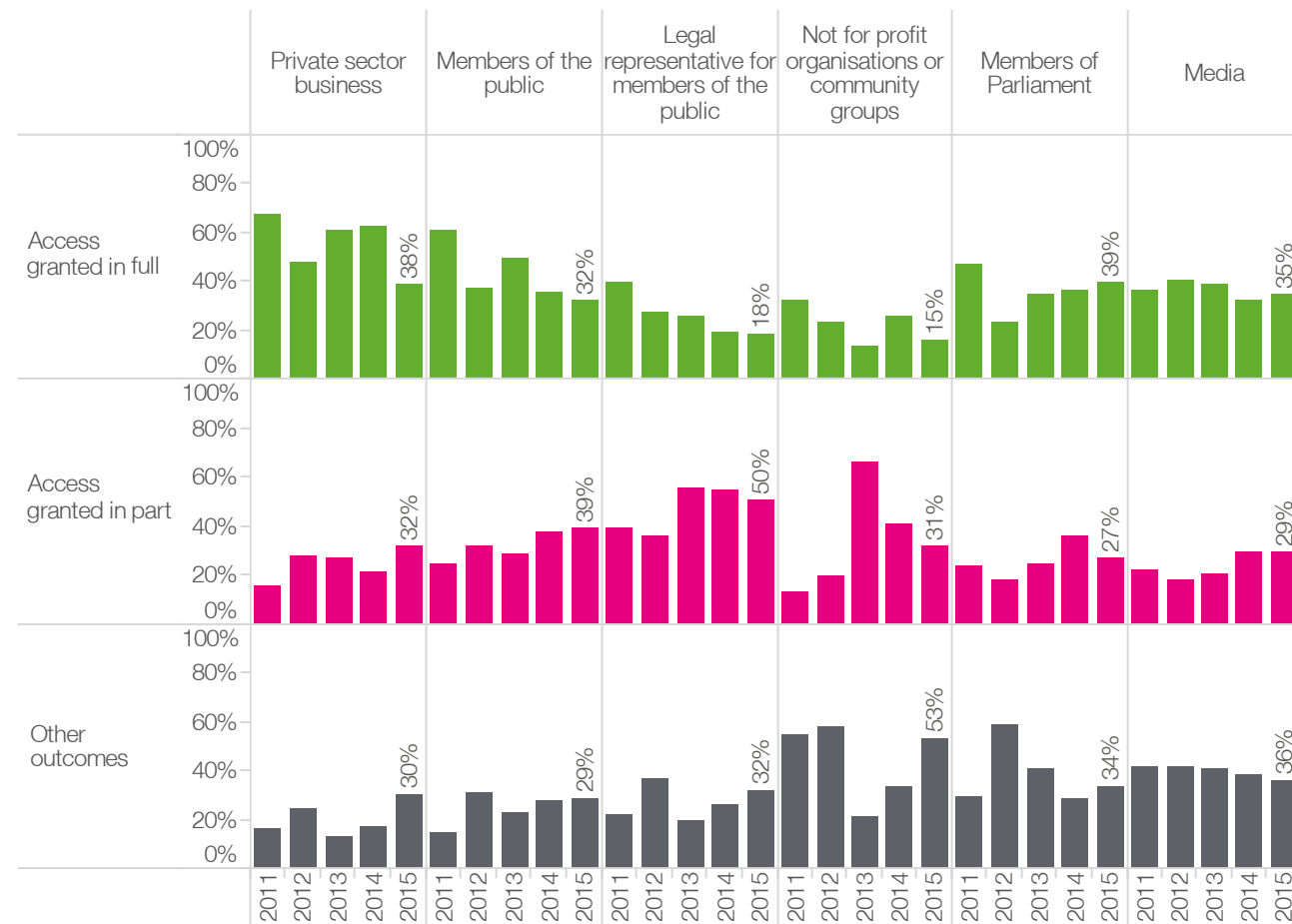
For not for profit organisations or community groups the overall release rate was 46%.

The composition of outcomes for the top three applicant types was different in 2014/15 (Figure 26):

- For members of the public, 32% of outcomes granted access in full and 39% granted access in part. Access granted in full outcomes declined from a high of 61% in 2010/11, while access granted in part outcomes have increased from 24% in 2010/11

- For private sector business, 38% of outcomes granted access in full and 32% granted access in part. Private sector businesses were more likely to have access granted in full compared to other applicant types. However, the percentage of access granted in full outcomes declined in 2014/15 from over 60% in the previous two years
- For legal representatives, 18% of outcomes granted access in full and 50% 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 33 percentage points.

Figure 26: Outcomes by applicant type, 2010/11 to 2014/15



CASE STUDY: NSW Civil and Administrative Tribunal (NCAT), Legal Professional Privilege CPOPIAD, paragraph by paragraph consideration for information release

A 2015 decision by NCAT addresses the Legal Professional Privilege CPOPIAD (conclusively presumed that there is an overriding public interest against disclosure of any government information described in Schedule 1) and usefully demonstrates the shift from the Freedom of Information (FOI) regime and its focus on exemptions and 'classes' of documents, to the GIPA regime and its application of the public interest test to information.

In *Starr v Superannuation Administration Corporation [2015] NSWCATAD 76*, the applicant had applied for access to information in documents contained in his superannuation membership file. The respondent provided access to the information requested, with the exception of 12 pages covering a communication to the respondent containing advice prepared by external lawyers. The respondent's reason for refusing to provide those pages was that they contained material that would be privileged from production in legal proceedings on the grounds of legal professional privilege.

However, the Tribunal found that in relation to the communication of the external lawyers advice to the respondent, only those paragraphs containing the external confidential legal advice were subject to the overriding public interest against disclosure. The applicant was entitled to have access to the remaining paragraphs of the communication.

Traditionally, CPOPIADS have been applied broadly to the information sought. This decision highlights that decision-makers must turn their minds to the detail of the information contained in material when determining the public interest considerations for and against disclosure. This approach recognises that public interest considerations arise from the specifics of the information and the circumstances, as well as the interpretative provisions of section 4 of the GIPA Act where 'government information' means information contained in a record.

How quickly were decisions made?

Agencies are improving the timeliness of decisions

In 2014/15, 11,804 or 91% of applications received were decided within the statutory time frame (Figure 27). This was an increase from 80% in 2013/14 and was accompanied with a decline in applications that were deemed to be refused, from a high of 15% in 2013/14 to 6% in 2014/15.

The government sector improved the timeliness of decision-making

In 2014/15 (Figure 28):

- the government sector decided 91% of applications within the statutory time frame, an increase from 79% in 2013/14
- councils decided 91% of applications within time, and have consistently been deciding over 90% of applications within time since 2010/11.

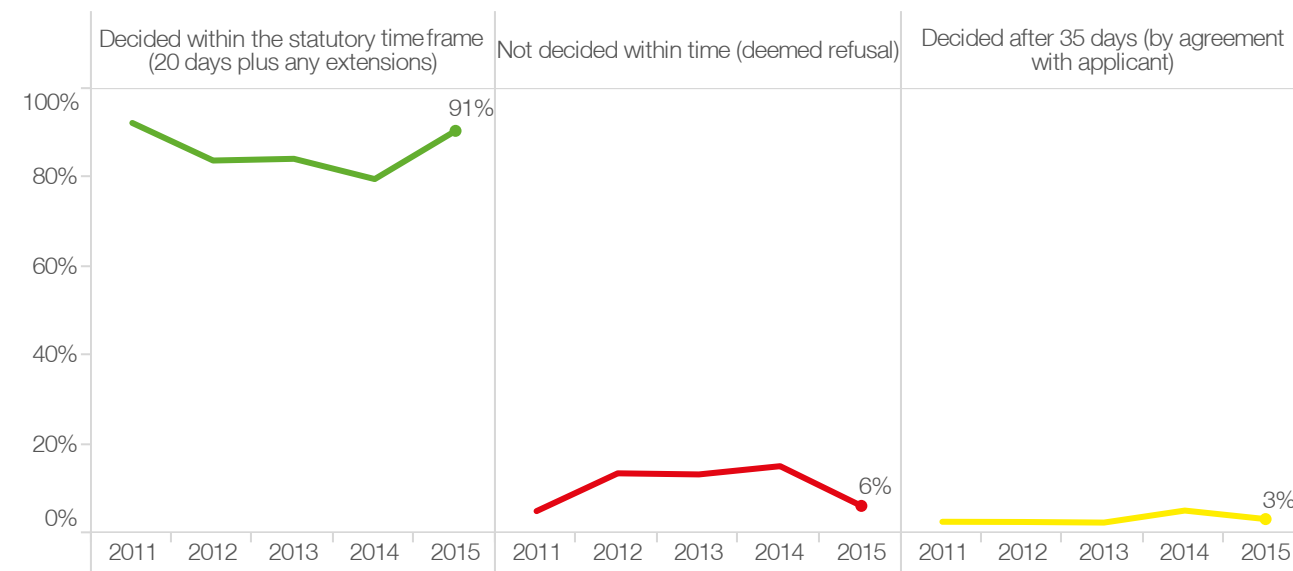
The timeliness of decision-making by Ministers and universities has declined since 2010/11 to 59% and 62% respectively in 2014/15.

The NSW Police Force took a number of actions to improve timeliness

The IPC has worked with the NSW Police Force since 2011 to improve its compliance with GIPA Act obligations.

In 2014/15, 93% of access applications to the NSW Police Force were decided within the statutory time frame, a marked increase from 2013/14 when 71% of applications were decided within time.

Figure 27: Timeliness of applications as a percentage of all applications received, 2010/11 to 2014/15



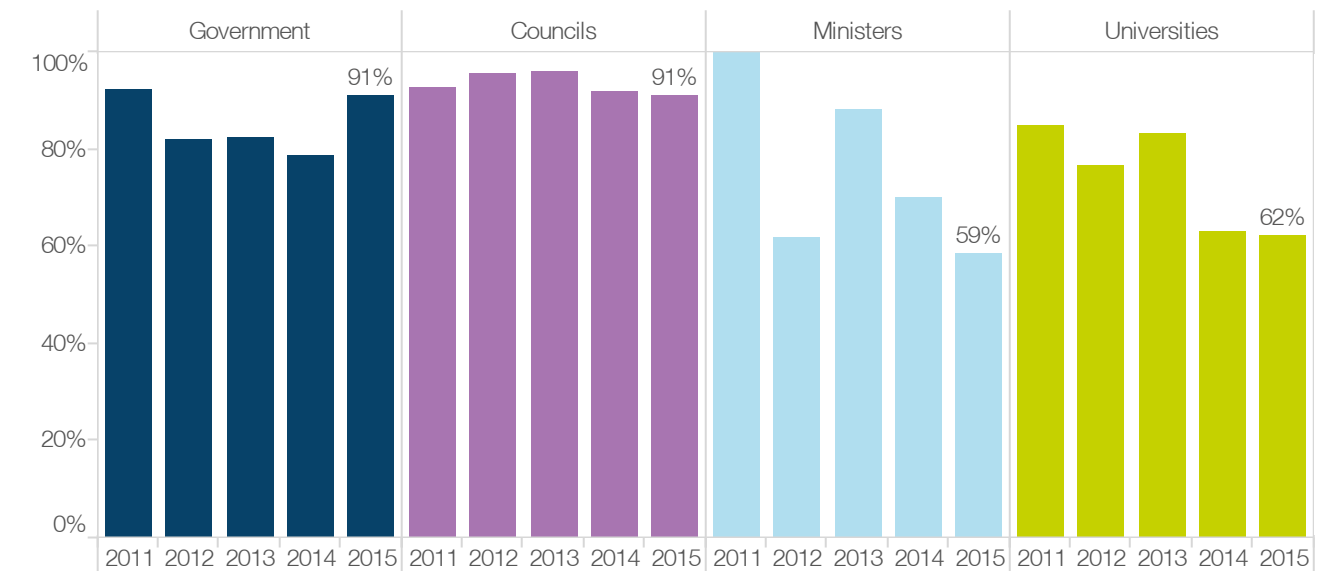
“How quickly were decisions made?” is reported and measured by the requirement for agencies to report on how quickly they dealt with access applications that they received. The data used in this section draws on Table F, Schedule 2 of the GIPA Regulation.

The NSW Police Force advised that the improvement was due to reviewing and streamlining its internal processes (for example, providing greater delegated authority to officers). These improvements led to a reduction in the backlog and improved timeliness, which in turn reduced complaints and internal reviews (see *How were decisions reviewed?*, page 50, for further information on internal reviews).

In 2014, the IPC authorised the agency to implement its own online tool for lodging formal access applications under the GIPA Act.

As large numbers of applications were lodged with the NSW Police Force, this improvement contributed to the overall improvement in timeliness.

Figure 28: Applications that were decided within the statutory time frame as a percentage of all applications received, by sector, 2010/11 to 2014/15



CASE STUDY: All sectors, access applications, timeliness in relation to applications for access to information concerning a third party

Where an agency receives an application for access to information concerning a third party (someone other than the applicant or the agency that received the application), the agency is required to take all reasonable steps to consult with the third party to obtain their views and take these into account in making its final decision – but the final decision on release remains that of the agency. If the agency proposes to grant access despite third party objections, then the agency must inform the third party of its decision and cannot release the information until the third party has exhausted all their review rights. If the agency agrees with the third party’s objections and denies access to the information, then the applicant has similar review rights.

Dealing with access applications involving multiple third parties can be a complex and lengthy process, as one government agency detailed in its GIPA annual report. Due to the nature of the agency, most applications seek access to information received from, or related to, third party businesses. Consultation frequently involves a large volume of complex and technical information with consequent challenges in interpretation and sensitivities. One case which was finalised during the reporting year concerned an application originally received in 2012. In addition to the original decision, that application was subject to three Information Commissioner reviews and three subsequent agency decisions before being finalised in 2015.

The Information Commissioner is alive to issues involving third party consultation, objections and review rights including the notice requirements, the burden of proof under the GIPA Act and the impact on the application time frames. In 2016, the Information Commissioner will be developing and consulting on guidelines to assist agencies and third parties on access applications.

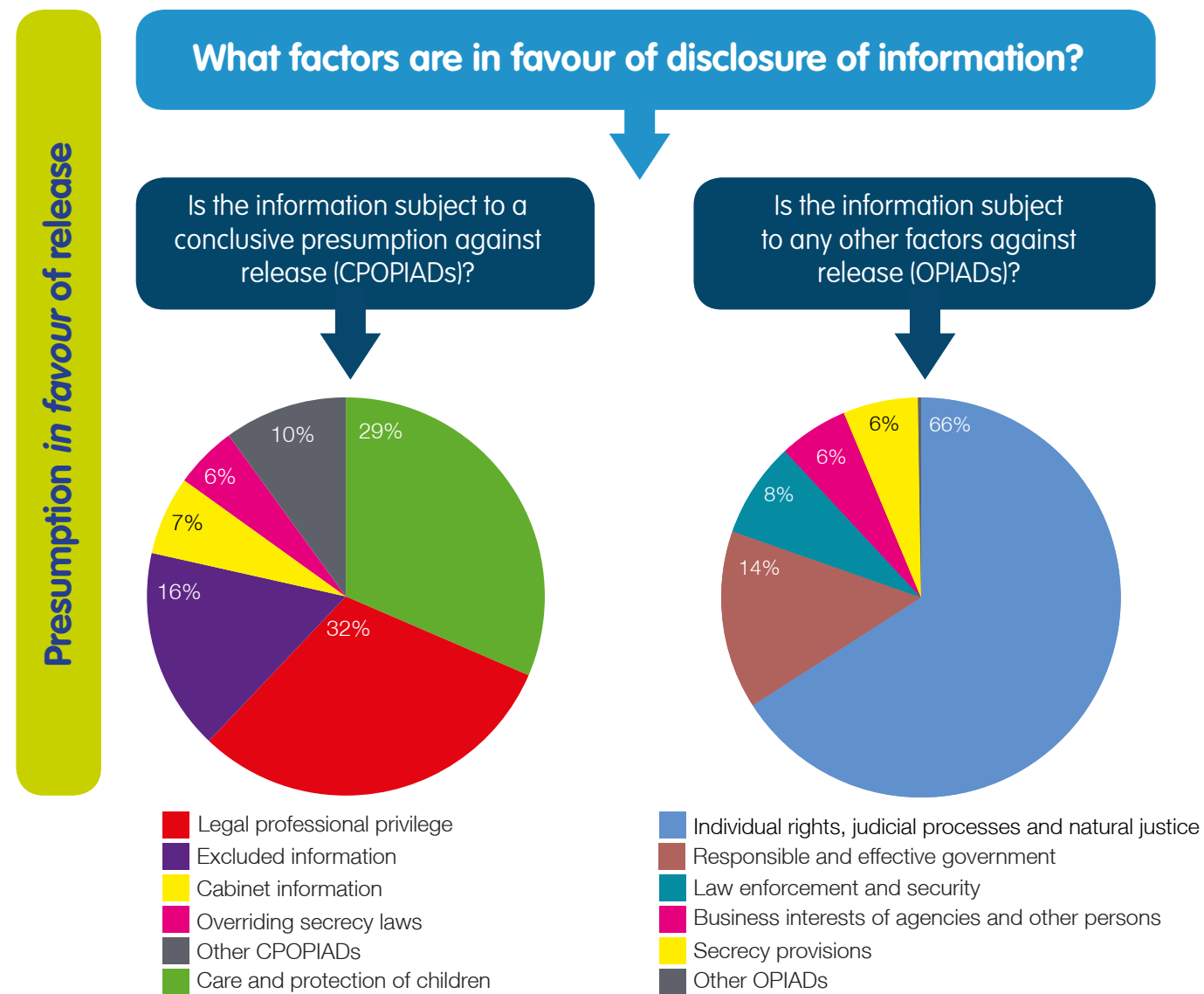
How was the public interest test applied?

This section examines how agencies have applied the public interest balancing test in relation to formal access applications, specifically which categories of considerations against disclosure are being applied

This section examines:

- the number of applications that were refused because of a conclusive presumption of overriding public interest against disclosure (CPOPIAD) (clause 7(c), GIPA Regulation);
- which categories of CPOPIADs were applied (Table D, GIPA Regulation); and

Figure 29: A snapshot of the use of CPOPIADs and OPIADs public interest test 2014/15



- the use of categories of considerations for which there is an overriding public interest against disclosure of information (OPIAD) (Table E, GIPA Regulation).

More than one CPOPIAD and OPIAD may apply in respect of an application. Each consideration is recorded only once per application. This is reflected in the data in Tables D and E.

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

In 2014/15, 855 applications (or 7% of total applications received) were refused wholly or partly because of a CPOPIAD.

Legal professional privilege was the most applied CPOPIAD

In 2014/15, legal professional privilege remains the most applied CPOPIAD across all sectors (Figure 29).

Consistent with 2013/14, the CPOPIAD was used 32% of all the times that CPOPIADs were applied.

To support agency decision-making, the IPC released a fact sheet in October 2014 explaining legal professional privilege. The aim of the fact sheet was to assist agencies and decision-makers in the practical application of this CPOPIAD and to assist applicants to understand the test that agencies should apply.

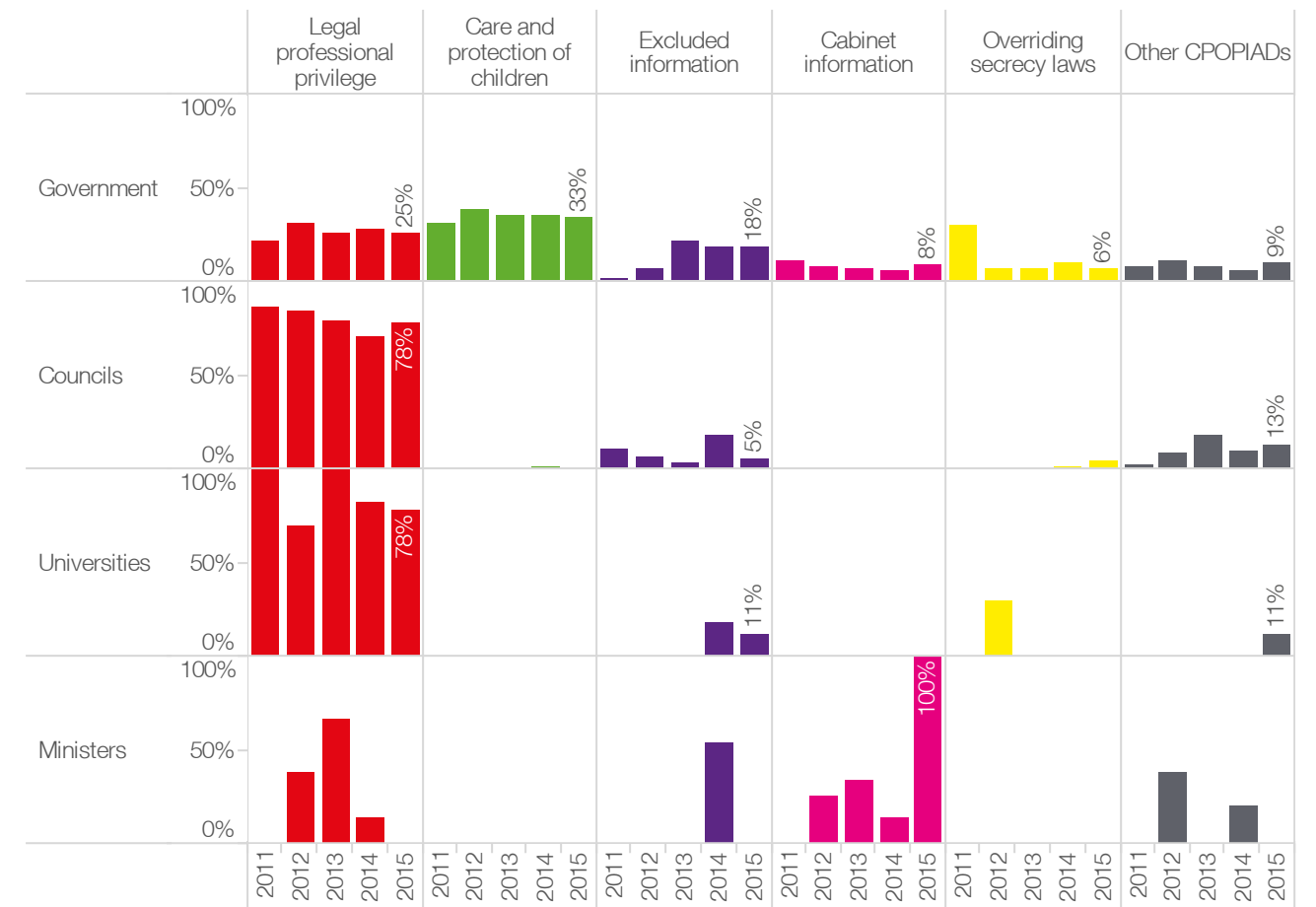
The care and protection of children consideration was the second most applied CPOPIAD (29%) in 2014/15. This was consistent with previous years.

The percentage of times that the excluded information consideration was applied increased from 1% in 2010/11 to 16% in 2014/15. However, this was a small decline from 19% in 2013/14.

The pattern of CPOPIAD use was different across sectors

In the government sector, the most applied CPOPIAD in 2014/15 was the care and protection of children (33%) (Figure 30).

Figure 30: Percentage distribution of CPOPIADs applied, by sector, 2010/11 to 2014/15



"How was the public interest test applied?" is reported and measured by the requirement for agencies to report on the use of the conclusive presumption of overriding public interest against disclosure and other public interest considerations against disclosure in Tables D and E of Schedule 2 of the GIPA Regulation.

The main government agencies that applied this CPOPIAD were the Department of Family and Community Services, the Department of Education and Communities, and the NSW Police Force. The second most applied CPOPIAD was legal professional privilege (25%).

In contrast, the legal professional privilege consideration was the most applied consideration for councils (78%) and universities (78%) in 2014/15. This was largely consistent with previous years (Figure 30).

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

The most frequently applied OPIAD in 2014/15 was individual rights, judicial processes and natural justice across all sectors (66%) (Figure 29). This was the dominant OPIAD applied by the government sector (66%) and councils (65%) in 2014/15 (Figure 31). This was consistent with previous years.

At an agency level, the consideration was applied 85% of the time by the Department of Justice, 72% by NSW Police Force, 56% by the former WorkCover Authority and 55% by Roads and Maritime Services (RMS) in 2014/15.

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 related to any of these specific considerations in this category and reflect the nature of the information held by these agencies.

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. The guideline is available on the IPC's website at <http://www.ipc.nsw.gov.au/gipa-guideline-4-personal-information-public-interest-consideration>.

Agency highlight: There has been an increase in the number of times Roads and Maritime Services has used the secrecy OPIAD

As shown in Figure 31, the secrecy OPIAD has been applied relatively infrequently since 2010/11. In 2014/15, RMS was one of the few agencies that used this OPIAD, and its use of the OPIAD increased from 215 times in 2013/14 to 514 times in 2014/15.

RMS advised that the increased use of this consideration was due to a change in practice in 2013 which led to a broader range of OPIADs, including the secrecy OPIAD, being considered and applied. This was due to a greater recognition of secrecy provisions in legislation, such as the *Road Transport Act 2013*.

CASE STUDY: NSW Civil and Administrative Tribunal (NCAT), access applications, direction on the application of the Cabinet CPOPIAD

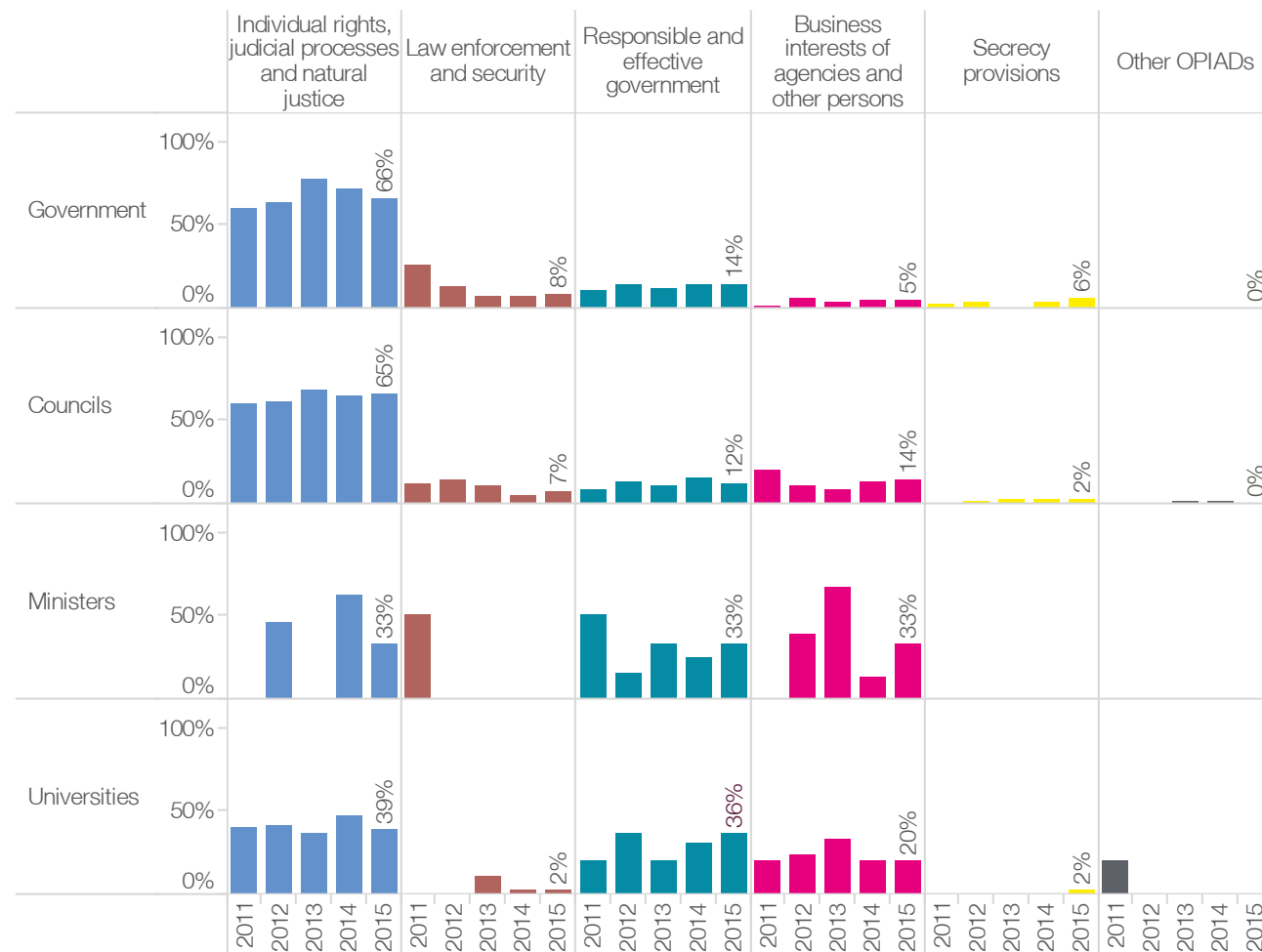
A significant development in 2014/15 was an NCAT case addressing the cabinet information CPOPIAD. In *D'Adam v New South Wales Treasury and the Premier of New South Wales [2015] NSWCATAP 61*, the NCAT Appeal Panel (the Appeal Panel) considered if the conclusive presumption against disclosure of documents prepared for the dominant purpose of submission to Cabinet applied to 'information' or 'documents'.

The Appeal Panel was satisfied that the documents in question were documents prepared for the dominant purpose of submission to Cabinet. The Appeal Panel noted it was clear that the information protected was the information contained in 'a document prepared for the dominant purpose of its being submitted to Cabinet for its consideration'.

The Appeal Panel's decision clarified that in order to attract this CPOPIAD, the document containing the information must have been submitted or prepared for submission to Cabinet.

The implication of this decision is that, for this CPOPIAD, the purpose for which the document is prepared (that is, for Cabinet) determines whether the document is able to be released. Should the same information be contained in another document (such as a summary document prepared for another purpose), then the CPOPIAD would not apply.

Figure 31: Percentage distribution of OPIADS applied, by sector, 2010/11 to 2014/15



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

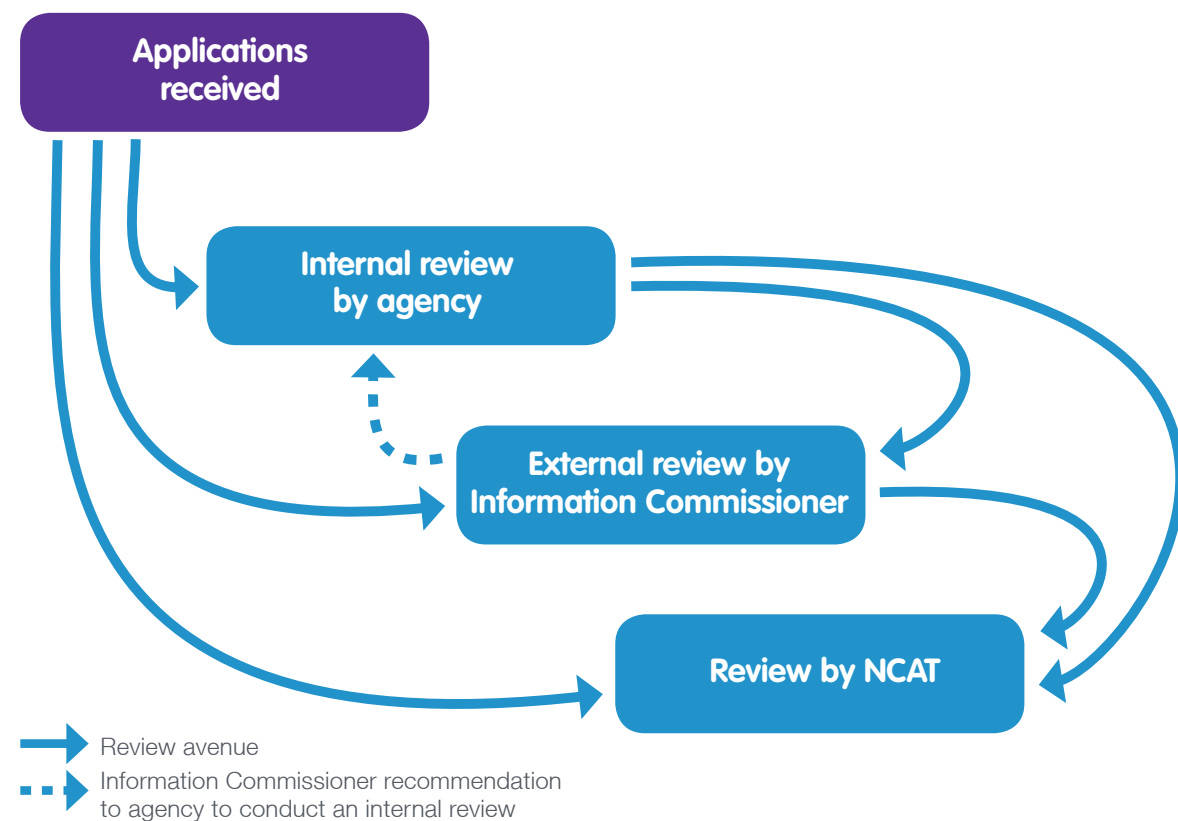
The review rate for total valid applications was 7% using source data

Using the most reliable sources of data to calculate the total number of reviews, reviews were equivalent to 7% of total valid applications received across all sectors in 2014/15.

As shown in the table in Figure 35, data on reviews under the GIPA Act are available from agency reported data and data held by the IPC and published by NCAT.

Data reported by agencies indicated a total of 569 reviews in 2014/15 (column A of the table in Figure 35).

Figure 32: 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 33: Reviews as reported by agencies, 2014/15

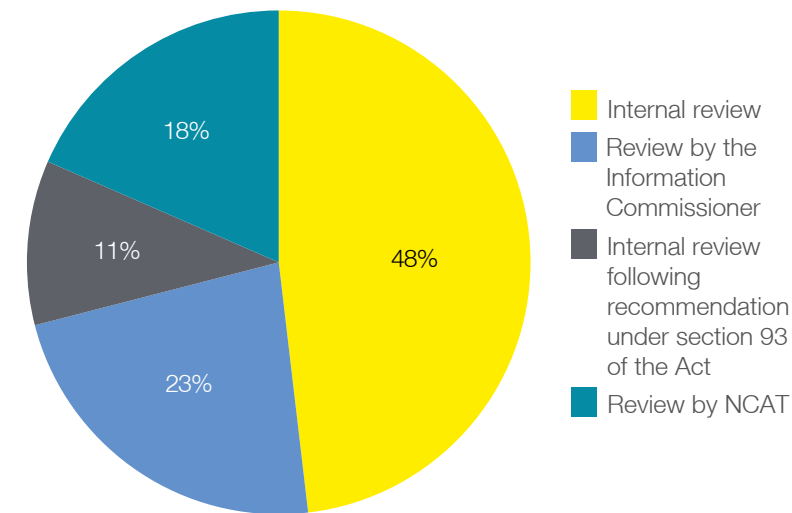


Figure 34: Reviews, using agency, IPC and NCAT data, 2014/15

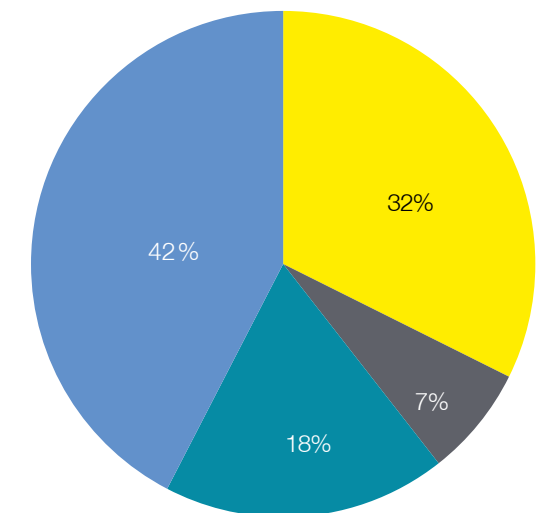


Figure 35: Agency, IPC and NCAT data on internal and external reviews, 2014/15

Review type	A: Agency reported data for all reviews	B: Using agency, IPC and NCAT data
Agency internal review of initial decision	274	274
External review by the Information Commissioner	130	359
Review by NCAT	105	154
Agency internal review/reconsideration following a recommendation by the Information Commissioner	60	60
Total	569	847

The distribution of reviews across all review avenues is shown in Figure 33 above. If the most reliable source for each review avenue is used to calculate the total number of reviews (column B of the table in Figure 35), this shows that a total of 847 reviews in 2014/15. This is a significantly higher number of reviews, in particular, external reviews by the Information Commissioner. This distribution is shown in Figure 34 above.

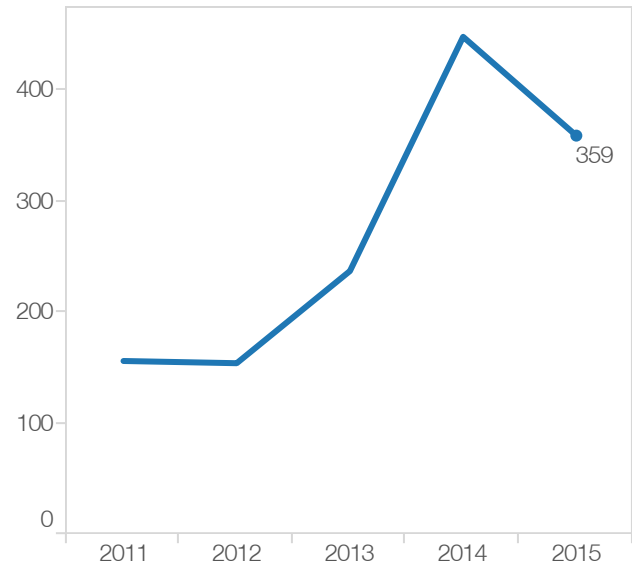
Using IPC data, there has been a rise in the number of external reviews conducted by the Information Commissioner since 2010/11 from 156 to 359 matters in 2014/15 (Figure 36).

Similarly, the 154 review applications reported by NCAT in its 2014/15 Annual Report is significantly higher than the 105 reviews reported by agencies. (http://www.ncat.nsw.gov.au/Documents/ncat_annual_report_2014_2015.pdf).

The IPC will work with agencies to continuously improve the reporting of GIPA data.

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. The best available data source is used to calculate the review rate for each review avenue. ▶

Figure 36: Number of external reviews conducted by the Information Commissioner, 2010/11 to 2014/15



Source: IPC data

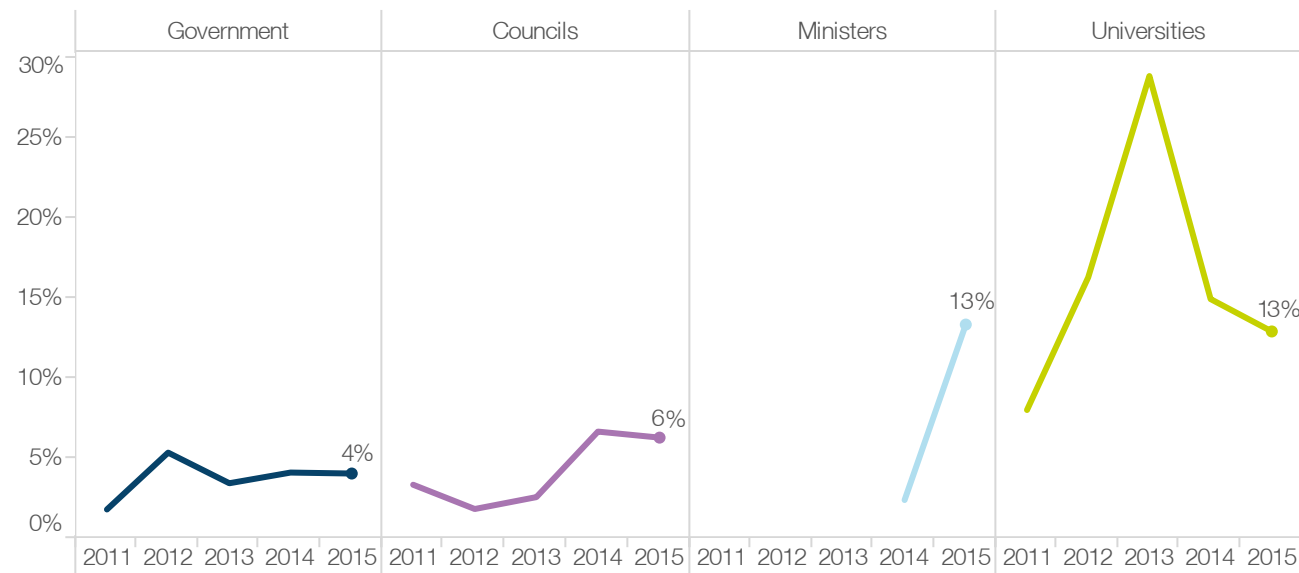
There were changes in the pattern of reviews across sectors

The council sector had more applications reviewed compared to previous years but the government sector still accounted for most reviews

The percentage of applications received by the council sector that were reviewed has increased from 3.3% in 2010/11 to 6% in 2014/15. (Figure 37). The total number of applications reviewed in 2014/15 for the government sector was equivalent to 4% of total valid applications received by the sector and was consistent with 2013/14 (Figure 37).

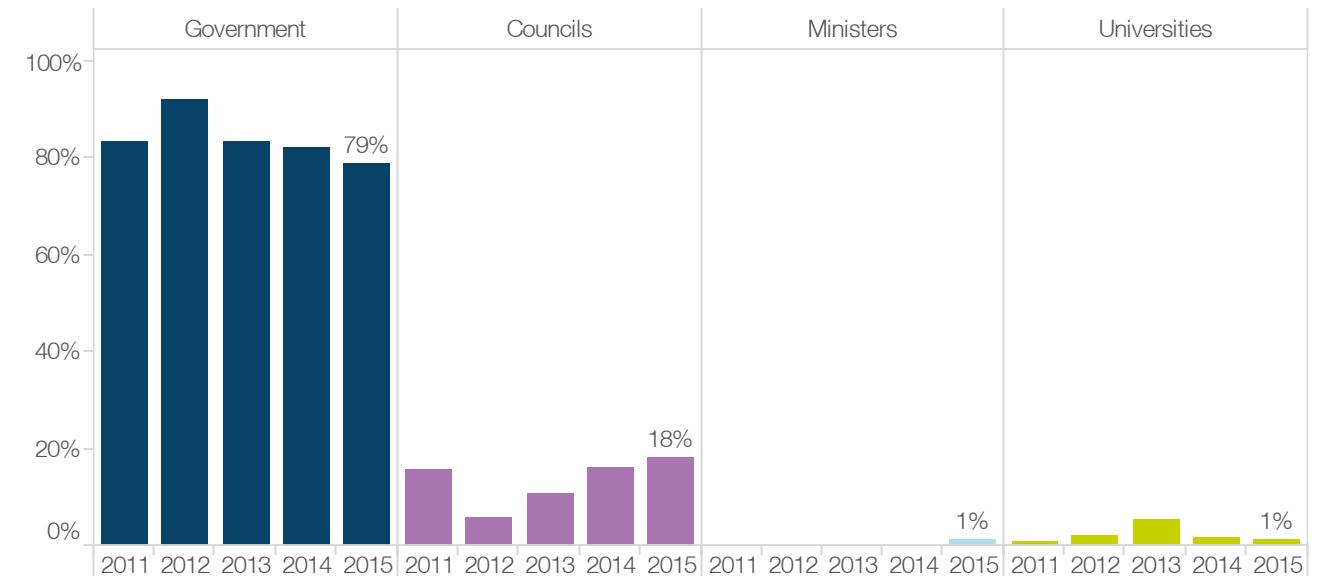
There was a steady increase since 2010/11 in reviews related to councils as a percentage of all reviews across all sectors, from 6% of all reviews to 18% in 2014/15 (Figure 38). Corresponding to the increase in the percentage of reviews related to the council sector, there was a decline in reviews related to the government sector as a percentage of all reviews across all sectors from 92% in 2011/12 to 79% in 2014/15.

Figure 37: Total number of reviews as a percentage of all applications received, by sector, 2010/11 to 2014/15



Source: Table G, Schedule 1, GIPA Regulation

Figure 38: Total number of reviews as a percentage of all reviews, by sector, 2010/11 to 2014/15



Source: Table G, Schedule 1, GIPA Regulation

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

In 2014/15, 379 (89%) applications for review were made by the original applicant. This was a decline from 2013/14 when 96% of applications were made by the original applicant. This was accompanied by a significant increase in applications made by third party objectors to the release of information, from 4% in 2013/14 to 11% in 2014/15. A case study with further information about an NCAT case on third party objectors is at page 45.

Applicants were using a different mix of review avenues

Internal reviews declined as a percentage of all reviews conducted

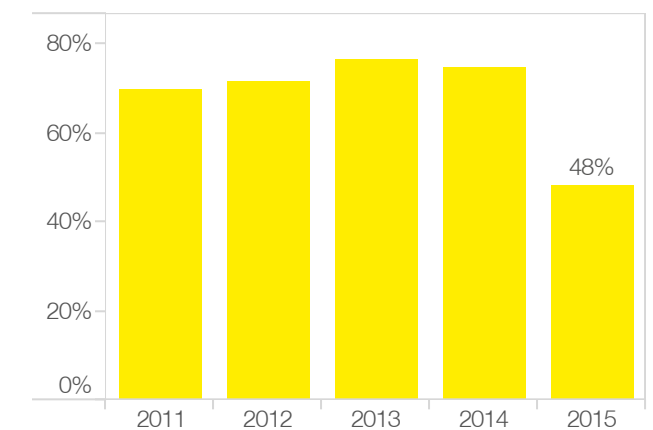
Internal reviews represented 48% of all reviews conducted in 2014/15 (Figure 39), compared to 2013/14 when internal reviews represented 75% of all reviews conducted. Internal reviews were equivalent to 2% of total valid applications received across all sectors in 2014/15.

Most of the change was due to a decline in the number of internal reviews conducted by the NSW Police Force. In 2014/15 the NSW Police Force conducted 123 internal reviews, a decline from 322 in 2013/14.

As outlined in *How quickly were decisions made?* (page 44) the NSW Police Force worked with the IPC improve its compliance with its GIPA Act obligations and internal processes which resulted in a reduction in a backlog of applications and the number of internal reviews conducted by the agency. The data reported by the NSW Police Force reflects these changes.

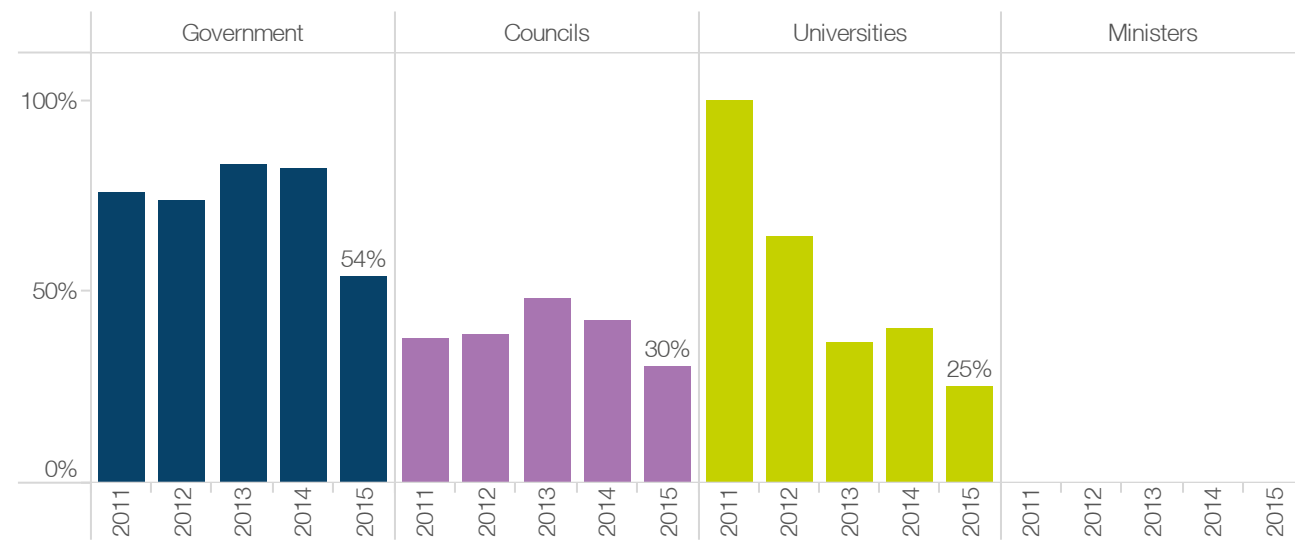
Internal reviews represented 54% of all reviews that related to the government sector in 2014/15, a significant decline from 82% in 2013/14 (Figure 40). ▶

Figure 39: Internal review as a percentage of all reviews 2010/11 to 2014/15



Source: Table G, Schedule 1, GIPA Regulation

Figure 40: Internal reviews as a percentage of all reviews, by sector, 2010/11 to 2014/15



Source: Table G, Schedule 1, GIPA Regulation

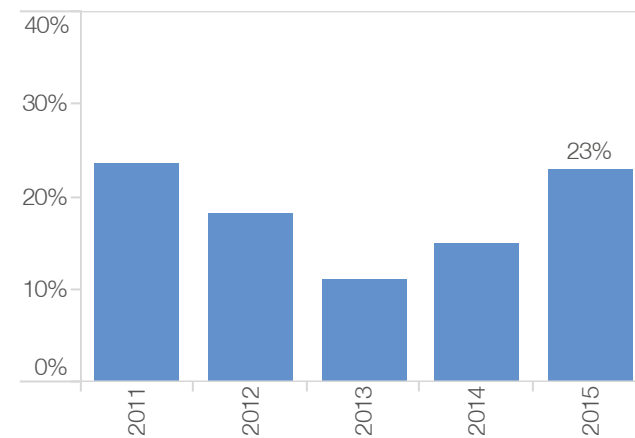
External reviews by the Information Commissioner increased

Using data reported by agencies, external reviews by the Information Commissioner represented 23% of all reviews conducted in 2014/15, an increase from 15% in 2013/14 (Figure 41). External reviews by the Information Commissioner were equivalent to 3% of total valid applications received by all sectors in 2014/15.

Agencies reported that external reviews by the Information Commissioner increased for the government sector. In 2014/15, reviews by the Information Commissioner represented 21% of all reviews relating to the government sector, an increase from 8% in 2013/14.

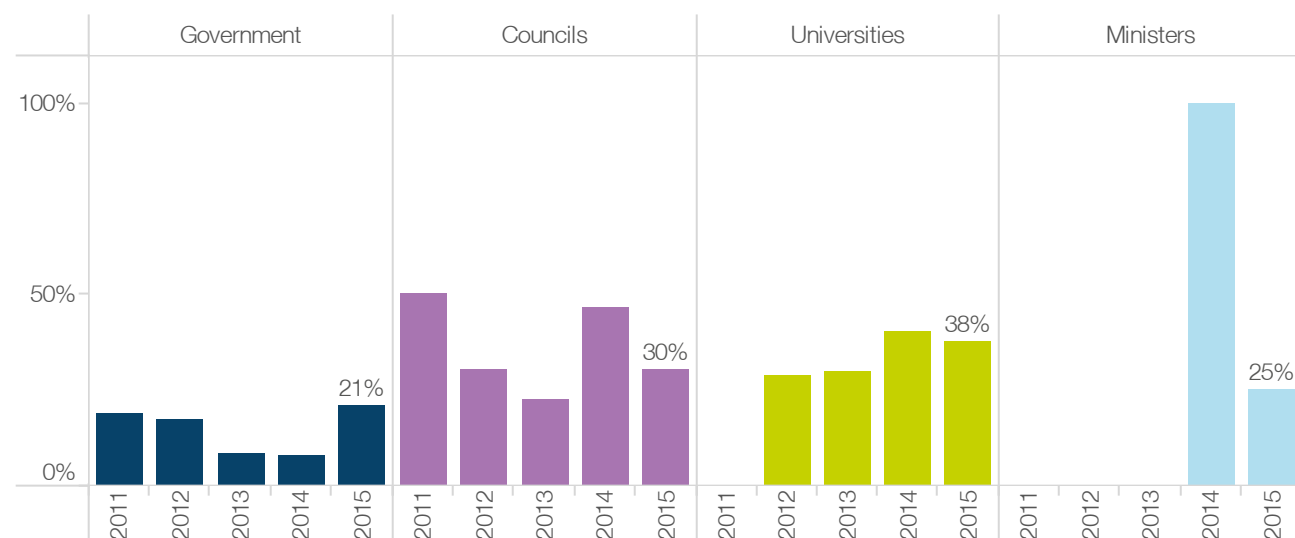
In 2014/15, reviews by the Information Commissioner represented 30% of all reviews relating to the council sector, a decline from 47% in 2013/14.

Figure 41: External reviews by the Information Commissioner as a percentage of all reviews, 2010/11 to 2014/15



Source: Table G, Schedule 1, GIPA Regulation

Figure 42: Reviews by the Information Commissioner as a percentage of all reviews by sector, 2010/11 to 2014/15



Source: Table G, Schedule 1, GIPA Regulation

Internal reviews conducted by agencies following a recommendation under section 93 of the GIPA Act made up a small percentage of all reviews

Section 93 of the GIPA Act enables the Information Commissioner to recommend that an agency reconsider a decision that is the subject of the Information Commissioner's review and make a new decision as if the reviewed decision had not been made.

Internal reviews of this type reported by agencies represented 11% of all reviews in 2014/15. This was a slight increase from previous years when it represented less than 10% of all reviews. This type of internal review was equivalent to less than 1% of total valid applications received across all sectors in 2014/15.

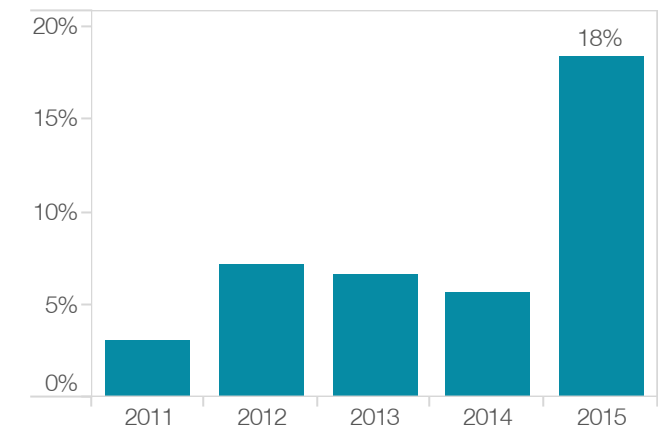
Most of these internal reviews were conducted by the government sector in 2014/15. This represented 9% of all reviews related to the government sector, an increase from previous years.

There was a marked increase in reviews by NCAT

Reviews by NCAT represented 18% of all reviews conducted in 2014/15 (Figure 43). This was a marked increase from previous years when NCAT reviews represented less than 10% of all reviews conducted. Reviews by NCAT were equivalent to 1% of total valid applications received across all sectors in 2014/15.

Reviews by NCAT increased in the government and council sectors. In 2014/15, reviews by NCAT represented 16% of all reviews that related to the

Figure 43: NCAT reviews as a percentage of all reviews, 2010/11 to 2014/15

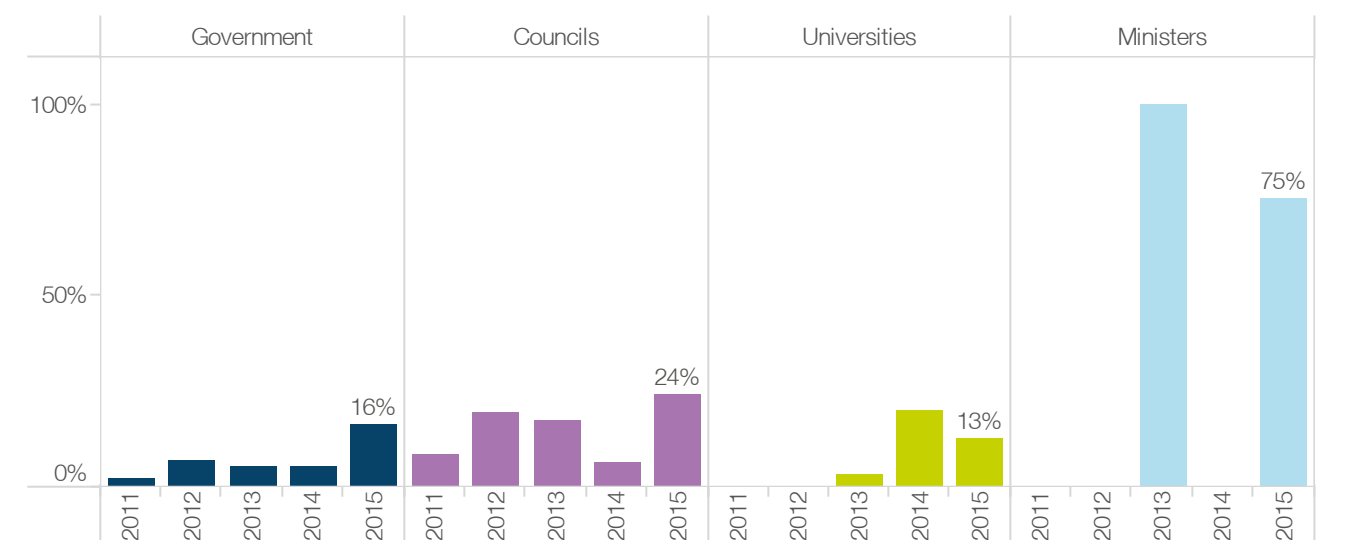


Source: Table G, Schedule 1, GIPA Regulation

government sector, an increase from 5% in 2013/14 (Figure 44). Reviews by NCAT represented 24% of all reviews that related to the council sector in 2014/15, an increase from 7% in 2013/14 (Figure 44).

This increase in reviews by NCAT may be an indication of the maturation of the GIPA Act regime, through greater awareness of review rights and the available avenues to exercise these rights. This trend also highlights the opportunity to consider an escalation model within the GIPA Act regime for external review and the models for resolving disputes in a timely, effective and efficient manner. ▶

Figure 44: NCAT review as a percentage of all reviews, by sector, 2010/11 to 2014/15



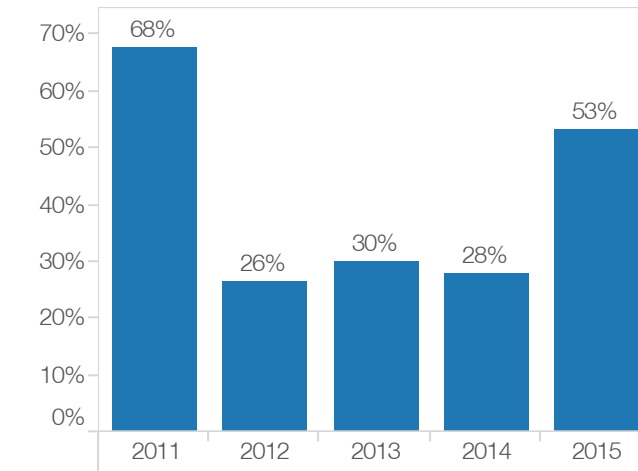
Source: Table G, Schedule 1, GIPA Regulation

In total, internal and external reviews increasingly upheld agencies' decisions

In 2014/15, 53% of all internal and external reviews conducted upheld agencies' decisions, an increase from 2013/14 when 28% of reviews upheld agencies' decisions (Figure 45).

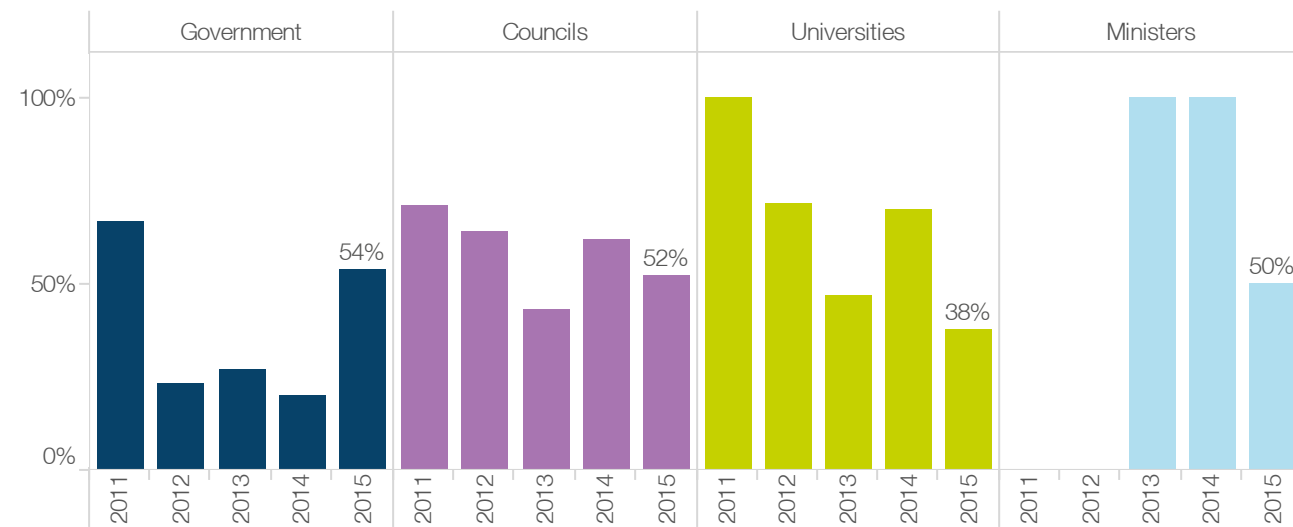
In 2014/15, 54% of all internal and external reviews relating to the government sector upheld agencies' decisions (Figure 46). This was a marked increase from 2013/14 when only around 20% of all reviews upheld the decisions. This is a positive sign and could potentially demonstrate a developing understanding of the GIPA Act by original decision-makers.

Figure 45: Reviews where the decision was upheld as a percentage of all reviews, 2010/11 to 2014/15



Source: Table G, Schedule 1, GIPA Regulation

Figure 46: Reviews where the decision was upheld as a percentage of all reviews, by sector, 2010/11 to 2014/15



Source: Table G, Schedule 1, GIPA Regulation

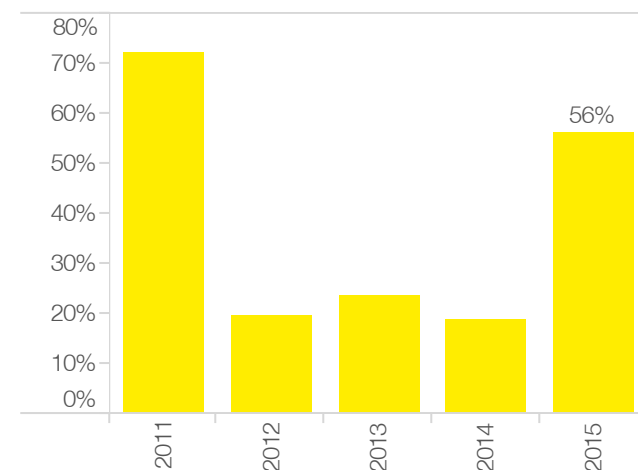
Individual review avenues followed different patterns of upholding or varying agencies' decisions

There was a marked increase in internal reviews upholding the decisions of agencies

In 2014/15, 56% of all internal reviews upheld agencies' decisions, an increase from previous years when 20% of internal reviews upheld the decisions (Figure 47).

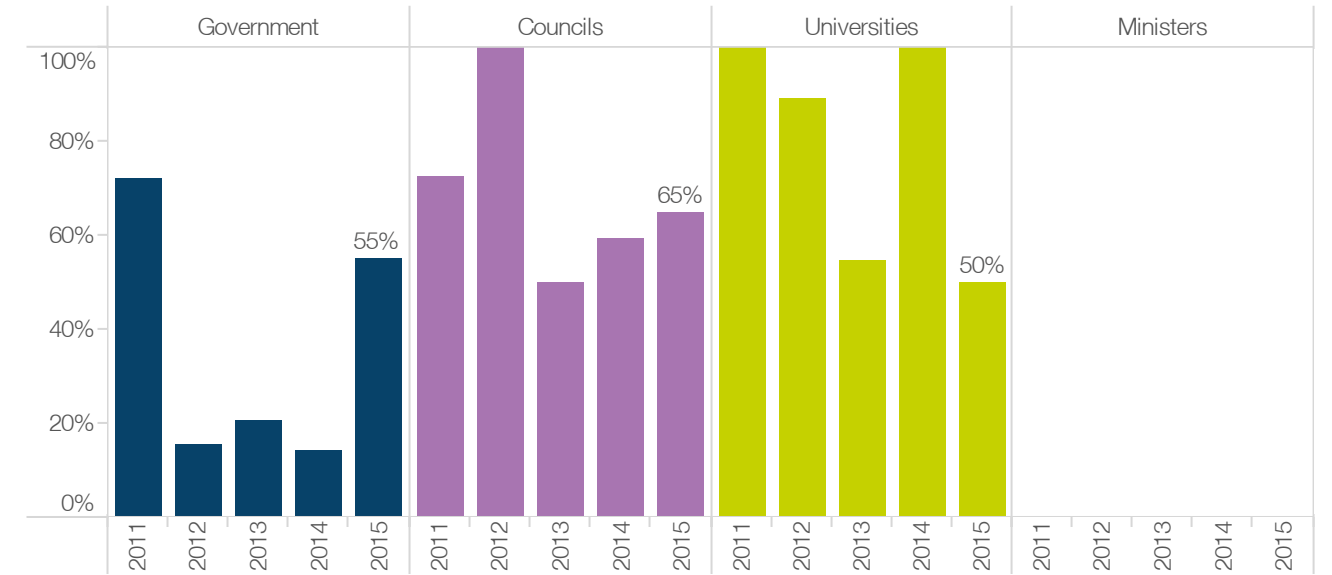
The government and council sectors followed a similar trend with increases between 2013/14 and 2014/15 in internal reviews upholding agencies' decisions (Figure 48).

Figure 47: Internal reviews where the decision was upheld as a percentage of all internal reviews, 2010/11 to 2014/15



Source: Table G, Schedule 1, GIPA Regulation

Figure 48: Internal reviews where the decision was upheld as a percentage of all internal reviews, by sector, 2010/11 to 2014/15



Source: Table G, Schedule 1, GIPA Regulation

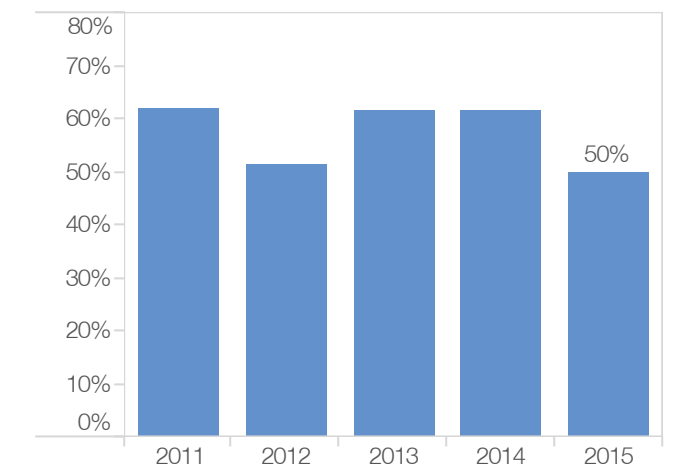
There is a significant increase in the number of recommendations to review the original decisions by the Information Commissioner

Agencies reported that 50% of reviews by the Information Commissioner did not result in a recommendation to agencies to reconsider their decisions in 2014/15, a decline from the 62% in 2013/14 (Figure 49).

Over half (54%) of reviews by the Information Commissioner that related to the government sector did not recommend that agencies reconsider their decisions in 2014/15. This was consistent with 2013/14 (Figure 50).

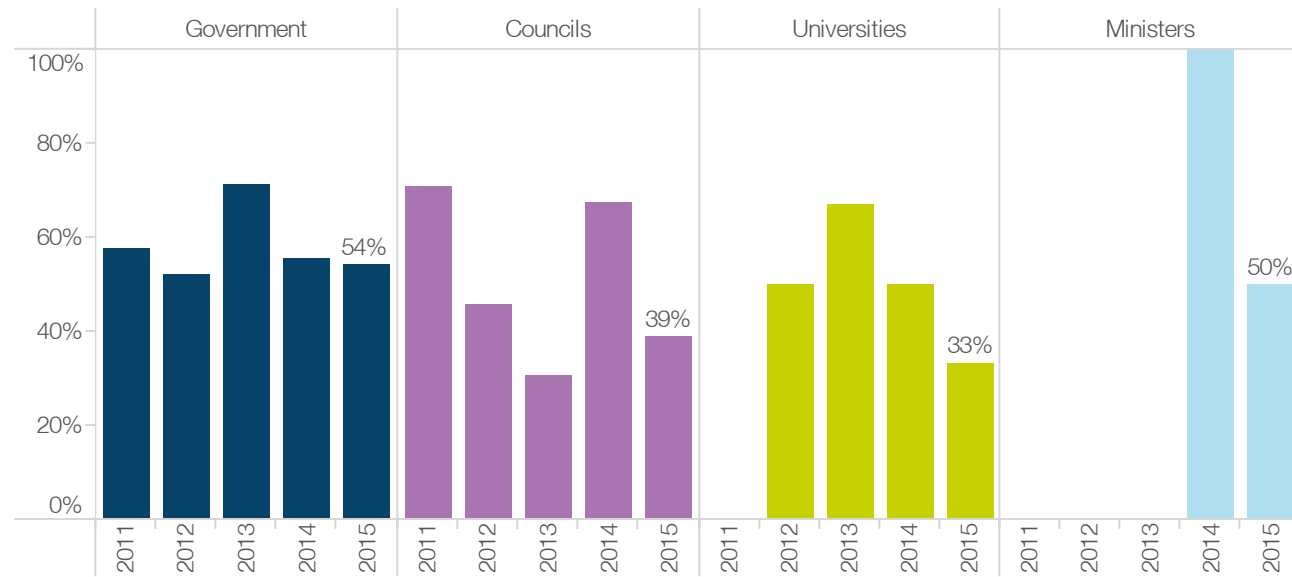
In 2014/15, 39% of reviews by the Information Commissioner that related to the council sector did not recommend that councils reconsider their decision. This was a decline from 67% in 2013/14 (Figure 50). ▶

Figure 49: 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 2014/15



Source: Table G, Schedule 1, GIPA Regulation

Figure 50: Reviews by Information Commissioner where there was no recommendation to reconsider the decision as a percentage of all reviews by the Information Commissioner, by sector, 2010/11 to 2014/15



Source: Table G, Schedule 1, GIPA Regulation

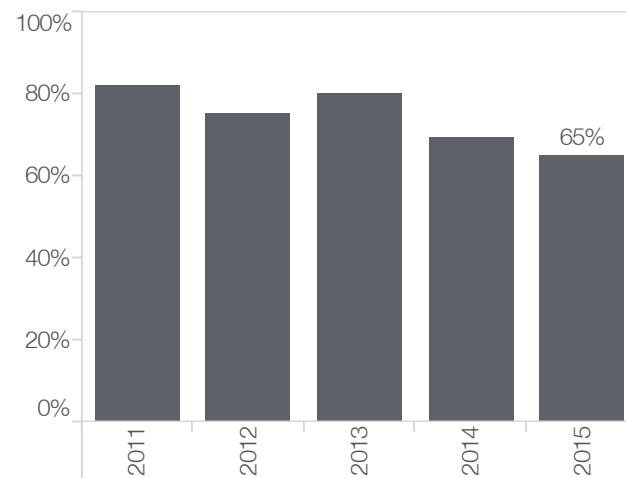
The majority of internal reviews that followed a section 93 recommendation varied the decisions of agencies

In 2014/15, 65% of internal reviews that followed a section 93 GIPA Act recommendation varied agencies' decisions (figure 51). This was consistent with 2013/14 (Figure 51).

For the government sector, 64% of internal reviews that followed a section 93 recommendation varied agencies' decisions in 2014/15, and was a decline from 73% in 2013/14 (Figure 52).

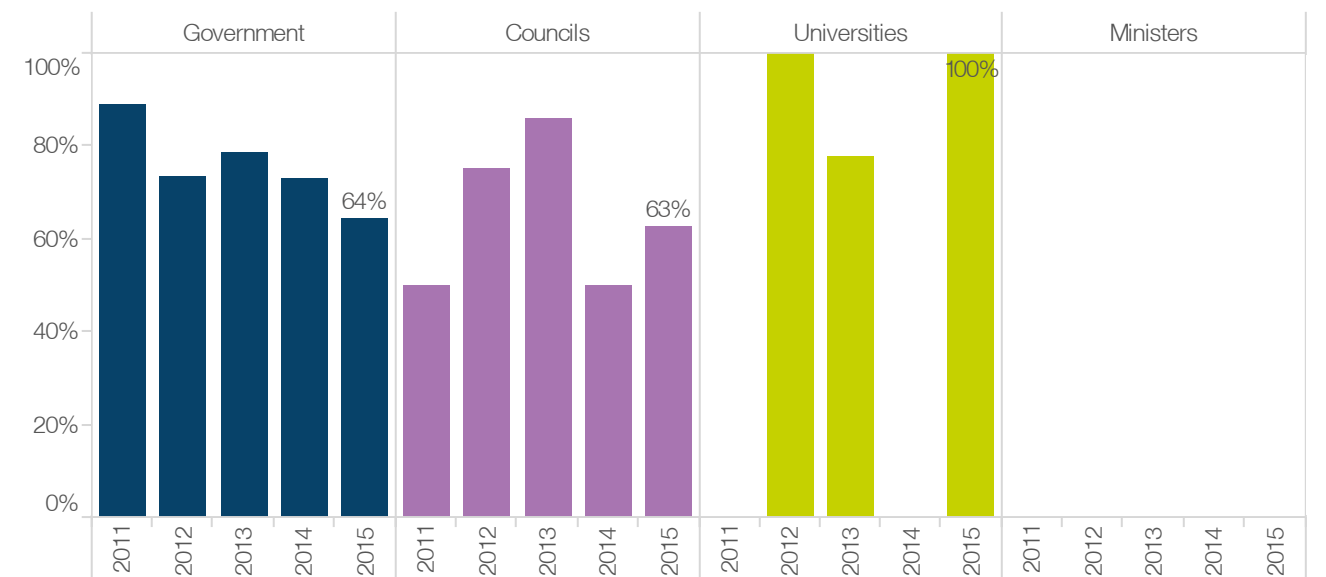
For the council sector, this was 63% in 2014/15 and represented an increase from 50% in 2013/14 (Figure 52).

Figure 51: Internal reviews following a section 93 recommendation that varied agencies' decisions as a percentage of all internal reviews, 2010/11 to 2014/15



Source: Table G, Schedule 1, GIPA Regulation

Figure 52: Internal reviews following a section 93 recommendation that varied agencies' decisions as a percentage of all internal reviews following a section 93 recommendation, by sector, 2010/11 to 2014/15



Source: Table G, Schedule 1, GIPA Regulation

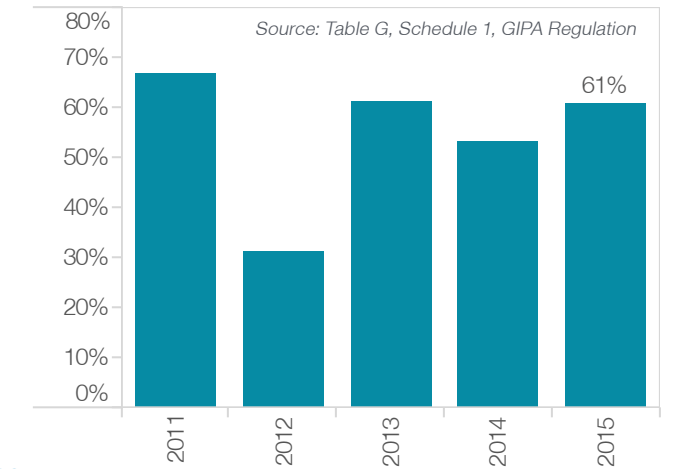
There was an increase in reviews by NCAT that upheld agencies' decisions

Agencies reported that 61% of reviews by NCAT upheld agencies' decisions in 2014/15, an increase from 53% in 2013/14 (Figure 53).

In 2014/15, 60% of reviews by NCAT related to the government sector upheld agencies' decisions. This was an increase from 54% in 2013/14 (Figure 54).

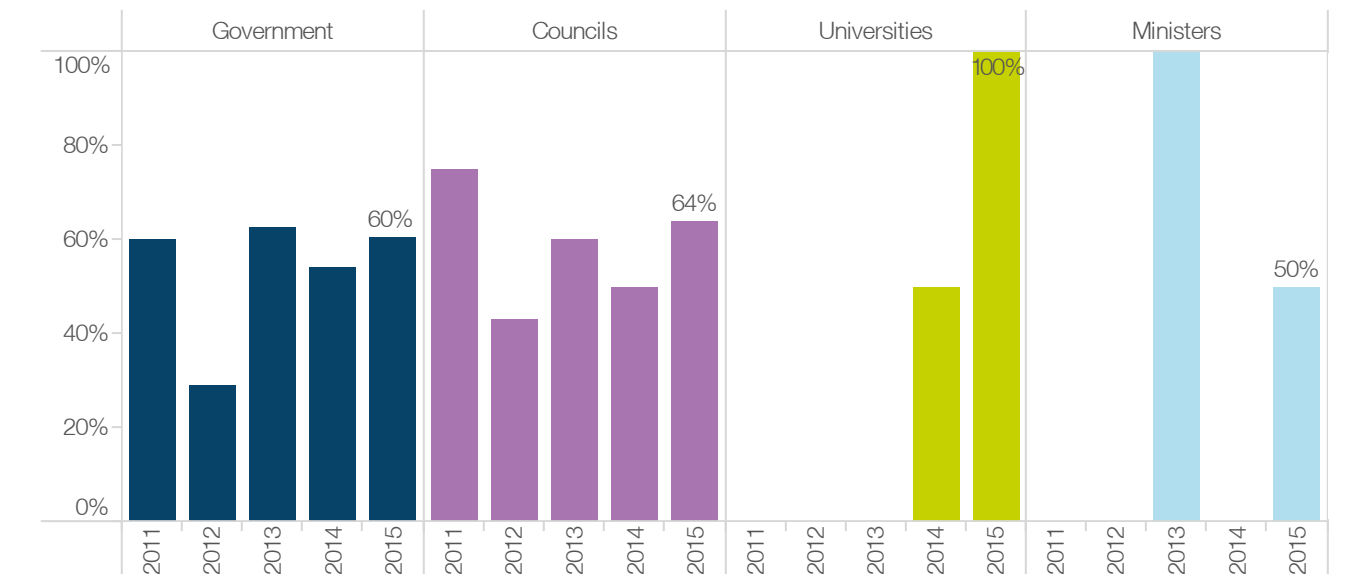
For the council sector, 64% of reviews by NCAT upheld agencies' decisions. This was an increase from 50% in 2013/14 (Figure 54).

Figure 53: Reviews by NCAT where the decision was upheld as a percentage of all reviews by NCAT, 2010/11 to 2014/15



Source: Table G, Schedule 1, GIPA Regulation

Figure 54: Reviews by NCAT where the decision was upheld as a percentage of all reviews by NCAT, by sector, 2010/11 to 2014/15



Source: Table G, Schedule 1, GIPA Regulation

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. This section draws on the IPC's internal data to examine these issues.

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 access or to refuse access to information, including the application of the public interest test.

In 2014/15, 8% of all reviews by the Information Commissioner related to CPOPIADs and 33% related to OPIADs.

Other issues that were the subject of review by the Information Commissioner included reasonable searches conducted by agencies, fees and charges that were applied, the invalidity of applications, decisions that the information was not held, 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.

In 2014/15, of the external reviews conducted by the Information Commissioner CPOPIADs and OPIADs, 20% related to CPOPIADs and 80% related to OPIADs. This was a change from 2013/14 when 13% related to CPOPIADs and 87% related to OPIADs.

CPOPIADs: Legal Professional Privilege was the main CPOPIAD that was the 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 (49%);
- Cabinet Information (23%); and
- Excluded Information (9%).

The Care and Protection of Children consideration, which was identified as a top CPOPIAD for the government sector in *How were decisions reviewed?*, page 50, represented 6% of external reviews by the Information Commissioner that related to CPOPIADs.

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

In 2014/15, 66% 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.

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

- for reviews of the Legal Professional Privilege consideration, 41% did not result in a recommendation that agencies reconsider the decision compared to 36% in 2013/14;
- for reviews of the Cabinet Information consideration, 100% did not result in a recommendation that agencies reconsider the decision; and
- for reviews of the Excluded Information consideration, 100% did not result in a recommendation that agencies reconsider the decision compared to 60% in 2013/14.

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 (41%);
- Responsible and Effective Government (39%); and
- Business Interests of Agencies and Other Person (14%).

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

In 2014/15, 56% of all the OPIADs that were the subject of review by the Information Commissioner resulted in a recommendation to agencies to reconsider the decision. The Information Commissioner's findings following a review of the top three OPIADs were:

- for reviews of the Individual Rights, Judicial Processes and Natural Justice consideration, 57% resulted in a recommendation to agencies to reconsider the decision compared to 40% in 2013/14;
- for reviews of the Responsible and Effective Government consideration, 53% resulted in a recommendation to agencies to reconsider the decision compared to 65% in 2013/14; and
- for reviews of the Business Interests of Agencies and Other Persons consideration, 59% resulted in a recommendation to agencies to reconsider the decision compared to 50% in 2013/14.

These figures demonstrate that agencies' understanding and application of CPOPIADs may be improving over time, while there is an opportunity for the IPC to continue to work with agencies to improve their understanding and use of OPIADs.

ISSUE HIGHLIGHT: IPC analysis of NCAT cases found that NCAT affirmed or partly affirmed the majority of agencies' decisions

To provide further insight into the use of NCAT as a review avenue for decisions made by agencies under the GIPA Act, the IPC examined 42 NCAT cases that were decided in 2014/15. Of these cases, 29 related to the government sector, 8 to local councils, 3 to Ministers and 2 to universities.

The grounds of review for the NCAT cases included the following:

- 16 cases (38%) included issues relating to CPOPIADs, of which 10 (24%) related to Legal Professional Privilege;
- 23 (55%) cases included issues relating to OPIADs, of which 11 (26%) related to confidential information and 10 (24%) related to personal information; and
- other grounds of review related to more operational matters in 16 cases (38%), including reasonable searches for information conducted by agencies, the adequacy of reasons given by agencies about their decisions, deemed refusals due to late decisions, processing charges and the unreasonable and substantial diversion of resources.

In 79% of the cases, NCAT affirmed or partly affirmed the agencies' decisions – 50% of cases affirmed the decisions of the agencies and 29% partly affirmed the decisions of the agencies.

There were three Appeal Panel cases:

- one related to the Cabinet CPOPIAD and the Appeal Panel dismissed the appeal;
- one related to adequacy of searches and the Appeal Panel dismissed the appeal; and
- one related to requirement to provide reasons for a refusal to confirm or deny that the agency held the requested information and the Appeal Panel allowed the appeal.

The IPC will work with NCAT and agencies to identify regulatory guidance to improve first instance decision-making with a specific focus on operational matters.

ISSUE HIGHLIGHT: Public interest disclosures and the GIPA Act offence provisions

The Information Commissioner has an important role under the *Public Interest Disclosures Act 1994* (PID Act) and the system to encourage public officials to report wrongdoings. The Information Commissioner is defined as an investigating authority under section 4(1) of the PID Act. This allows public officials to make public interest disclosures to the Information Commissioner about government information contraventions in terms of section 12D of the PID Act. Public interest disclosures often involve allegations in relation to the five offences contained in the GIPA Act. For example:

- destroying, concealing or altering records to prevent them from being released;
- knowingly making decisions that are contrary to the legislation; or
- directing another person to make a decision that is contrary to the legislation.

The offence provisions in the GIPA Act are relatively untested and involve complexity requiring expertise in applying the GIPA Act, and considering jurisdictional and evidentiary matters. In 2014/15, the Information Commissioner received two and closed five complaints involving public interest disclosures. With the benefit of this most recent experience, the IPC has commenced a process of refreshing procedures and developing internal and external guidance to provide greater transparency and assistance to IPC officers, parties to public interest disclosures, and the public more generally. In leading this work, the Information Commissioner will work closely with the NSW Ombudsman, State Records Authority and NCAT to ensure close and supportive alignment of jurisdictions.

Were applications transferred between agencies?

During 2014/15, agencies reported that 75 applications were transferred

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

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.

Figure 55: Number of applications that were transferred, by sector, by agency or applicant initiated, 2014/15

	Agency initiated transfers	Applicant initiated transfers	Grant total
Government	64	7	71
Councils	3	1	4
Ministers	0	0	0
Universities	0	0	0
Grand total	67	8	75

“Were applications transferred between agencies?” is reported and measured by the requirement for agencies to report on transfers (Table 1 of Schedule 2 of the GIPA Regulation). This means that 2014/15 is the first year that agencies reported on transfers.

Appendices

Appendix 1

Financial Year 2014 – 2015 Total aggregation of all sectors

Clause 7(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

	Reviews carried out by agency	Information made publicly available by the agency
7(a)	166	119

Clause 7(b): the total number of access applications received by the agency during the reporting year (including withdrawn applications but not including invalid applications)

	Total number of applications received
7(b)	12,914

Clause 7(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)

	Total number of applications received
Partly	584
Wholly	271
Grand total	855

Table A: number of applications by type of applicant and outcome

Type of applicant	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 or deny whether information is held	Application withdrawn	Grand total
Media	113	95	33	36	4	16	0	28	325
Members of Parliament	58	39	7	22	6	9	1	5	147
Private sector business	786	653	307	160	20	23	3	102	2,054
Not for profit organisations or community groups	49	100	61	63	7	11	1	26	318
Members of the public (legal representative)	975	2,766	589	739	178	47	9	205	5,508
Members of the public (other)	1,529	1,836	453	475	106	79	28	226	4,732
Grand total	3,510	5,489	1,450	1,495	321	185	42	592	13,084

Table B: number of applications by type of application and outcome

Type of application	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 or deny whether information is held	Application withdrawn	Grand total
Personal information applications	1,311	3,604	831	857	204	50	29	247	7,133
Access application (other than personal information applications)	2,022	1,327	603	469	102	132	11	304	4,970
Access applications that are partly personal information applications and partly other	187	562	20	158	8	5	1	40	981
Grand total	3,520	5,493	1,454	1,484	314	187	41	591	13,084

Table C: invalid applications

Reason for invalidity	Number of Applications
Application does not comply with formal requirements (section 41)	1,088
Application is for excluded information of the agency (section 43)	56
Application contravenes restraint order (section 110)	0
Total number of invalid applications received	1,095
Invalid applications that subsequently become valid applications	437

Table D: conclusive presumption of overriding public interest against disclosure – matters listed in Schedule 1 to Act

Schedule 1 reasons	Number of times consideration used
Overriding secrecy laws	43
Cabinet information	53
Executive council information	7
Contempt	24
Legal professional privilege	227
Excluded information	116
Documents affecting law enforcement and public safety	39
Transport safety	0
Adoption	0
Care and protection of children	211
Ministerial code of conduct	0
Aboriginal and environmental heritage	0
Grand total	720

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

Other public interest reasons	Number of occasions when application not successful
Responsible and effective government	1,286
Law enforcement and security	688
Individual rights, judicial processes and natural justice	5,883
Business interests of agencies and other persons	502
Environment, culture, economy and general matters	15
Secrecy provisions	540
Exempt documents under interstate Freedom of Information legislation	6
Grand total	8,920

Table F: timeliness

Timeliness	Number of applications
Decided within the statutory time frame (20 days plus any extensions)	11,804
Decided after 35 days (by agreement with applicant)	418
Not decided within time (deemed refusal)	805
Grand total	13,027

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

Review type	Decision varied	Decision upheld	Grand total
Internal review	121	153	274
Review by Information Commissioner	65	65	130
Internal review following recommendation under section 93 of Act	39	21	60
Review by NCAT	41	64	105
Grand total	266	303	569

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

Review requested by	Number of applications
Applications by access applicants	379
Applications by persons to whom information the subject of access application relates (see section 54 of the Act)	49
Grand total	428

Table I: applications transferred to other agencies under Division 2, Part 4 of the Act (by type of transfer)

Applications transferred	Number of applications
Agency initiated transfers	67
Applicant initiated transfers	8
Grand total	75

Appendix 2

Financial Year 2014 – 2015

Total aggregation of Government sector

Clause 7(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

	Reviews carried out by agency	Information made publicly available by the agency
7(a)	57	40

Clause 7(b): the total number of access applications received by the agency during the reporting year (including withdrawn applications but not including invalid applications)

	Total number of applications received
7(b)	11,151

Clause 7(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)

	Total number of applications received
Partly	378
Wholly	194
Grand total	572

Table A: number of applications by type of applicant and outcome

Type of applicant	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 or deny whether information is held	Application withdrawn	Grand total
Media	98	85	32	31	3	15	0	26	290
Members of Parliament	50	34	7	14	4	8	0	5	122
Private sector business	648	593	293	140	9	18	3	47	1,751
Not for profit organisations or community groups	41	88	57	58	6	7	1	21	279
Members of the public (legal representative)	780	2,618	578	705	159	35	9	168	5,052
Members of the public (other)	1,110	1,568	388	417	79	56	26	129	3,773
Grand total	2,727	4,986	1,355	1,365	260	139	39	396	11,267

Table B: number of applications by type of application and outcome

Type of application	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 or deny whether information is held	Application withdrawn	Grand total
Personal information applications	1,255	3,559	817	843	198	47	29	222	6,970
Access application (other than personal information applications)	1,329	936	531	352	53	90	9	142	3,442
Access applications that are partly personal information applications and partly other	147	501	11	156	4	2	1	33	855
Grand total	2,731	4,996	1,359	1,351	255	139	39	397	11,267

Table C: invalid applications

Reason for invalidity	Number of Applications
Application does not comply with formal requirements (section 41)	1,018
Application is for excluded information of the agency (section 43)	53
Application contravenes restraint order (section 110)	0
Total number of invalid applications received	1,036
Invalid applications that subsequently become valid applications	403

Table D: conclusive presumption of overriding public interest against disclosure – matters listed in Schedule 1 to Act

Schedule 1 reasons	Number of times consideration used
Overriding secrecy laws	40
Cabinet information	52
Executive council information	7
Contempt	22
Legal professional privilege	161
Excluded information	111
Documents affecting law enforcement and public safety	30
Transport safety	0
Adoption	0
Care and protection of children	211
Ministerial code of conduct	0
Aboriginal and environmental heritage	0
Grand total	634

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

Other public interest reasons	Number of occasions when application not successful
Responsible and effective government	1,202
Law enforcement and security	646
Individual rights, judicial processes and natural justice	5,484
Business interests of agencies and other persons	412
Environment, culture, economy and general matters	13
Secrecy provisions	528
Exempt documents under interstate Freedom of Information legislation	6
Grand total	8,291

Table F: timeliness

Timeliness	Number of applications
Decided within the statutory time frame (20 days plus any extensions)	10,349
Decided after 35 days (by agreement with applicant)	328
Not decided within time (deemed refusal)	709
Grand total	11,386

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

Review type	Decision varied	Decision upheld	Grand total
Internal review	109	132	241
Review by Information Commissioner	43	51	94
Internal review following recommendation under section 93 of Act	27	15	42
Review by NCAT	29	44	73
Grand total	208	242	450

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

Review requested by	Number of applications
Applications by access applicants	319
Applications by persons to whom information the subject of access application relates (see section 54 of the Act)	45
Grand total	364

Table I: applications transferred to other agencies under Division 2, Part 4 of the Act (by type of transfer)

Applications transferred	Number of applications
Agency initiated transfers	64
Applicant initiated transfers	7
Grand total	71

Appendix 3

Financial Year 2014 – 2015

Total aggregation of Council sector

Clause 7(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

	Reviews carried out by agency	Information made publicly available by the agency
7(a)	101	75

Clause 7(b): the total number of access applications received by the agency during the reporting year (including withdrawn applications but not including invalid applications)

	Total number of applications received
7(b)	1,641

Clause 7(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)

	Total number of applications received
Partly	205
Wholly	67
Grand total	272

Table A: number of applications by type of applicant and outcome

Type of applicant	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 or deny whether information is held	Application withdrawn	Grand total
Media	14	7	0	2	1	1	0	2	27
Members of Parliament	4	2	0	1	0	0	0	0	7
Private sector business	133	59	14	8	10	5	0	55	284
Not for profit organisations or community groups	6	10	4	0	1	1	0	3	25
Members of the public (legal representative)	194	147	10	33	19	12	0	35	450
Members of the public (other)	393	252	57	46	17	21	1	94	881
Grand total	744	477	85	90	48	40	1	189	1,674

Table B: number of applications by type of application and outcome

Type of application	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 or deny whether information is held	Application withdrawn	Grand total
Personal information applications	41	35	11	9	1	2	0	21	120
Access application (other than personal information applications)	672	380	67	82	44	37	1	159	1,442
Access applications that are partly personal information applications and partly other	38	56	5	1	3	2	0	7	112
Grand total	751	471	83	92	48	41	1	187	1,674

Table C: invalid applications

Reason for invalidity	Number of Applications
Application does not comply with formal requirements (section 41)	58
Application is for excluded information of the agency (section 43)	1
Application contravenes restraint order (section 110)	0
Total number of invalid applications received	50
Invalid applications that subsequently become valid applications	31

Table D: conclusive presumption of overriding public interest against disclosure – matters listed in Schedule 1 to Act

Schedule 1 reasons	Number of times consideration used
Overriding secrecy laws	3
Cabinet information	0
Executive council information	0
Contempt	1
Legal professional privilege	59
Excluded information	4
Documents affecting law enforcement and public safety	9
Transport safety	0
Adoption	0
Care and protection of children	0
Ministerial code of conduct	0
Aboriginal and environmental heritage	0
Grand total	76

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

Other public interest reasons	Number of occasions when application not successful
Responsible and effective government	67
Law enforcement and security	41
Individual rights, judicial processes and natural justice	381
Business interests of agencies and other persons	80
Environment, culture, economy and general matters	2
Secrecy provisions	11
Exempt documents under interstate Freedom of Information legislation	0
Grand total	582

Table F: timeliness

Timeliness	Number of applications
Decided within the statutory time frame (20 days plus any extensions)	1,385
Decided after 35 days (by agreement with applicant)	67
Not decided within time (deemed refusal)	73
Grand total	1,525

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

Review type	Decision varied	Decision upheld	Grand total
Internal review	11	20	31
Review by Information Commissioner	19	12	31
Internal review following recommendation under section 93 of Act	10	6	16
Review by NCAT	9	16	25
Grand total	49	54	103

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

Review requested by	Number of applications
Applications by access applicants	52
Applications by persons to whom information the subject of access application relates (see section 54 of the Act)	3
Grand total	55

Table I: applications transferred to other agencies under Division 2, Part 4 of the Act (by type of transfer)

Applications transferred	Number of applications
Agency initiated transfers	3
Applicant initiated transfers	1
Grand total	4

Appendix 4

Financial Year 2014 – 2015

Total aggregation of Ministerial sector

Clause 7(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

	Reviews carried out by agency	Information made publicly available by the agency
7(a)	N/A	N/A

Clause 7(b): the total number of access applications received by the agency during the reporting year (including withdrawn applications but not including invalid applications)

	Total number of applications received
7(b)	60

Clause 7(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)

	Total number of applications received
Partly	1
Wholly	0
Grand total	1

* Ministers only reported on the total number of wholly or partly refused applications received.

Table A: number of applications by type of applicant and outcome

Type of applicant	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 or deny whether information is held	Application withdrawn	Grand total
Media	1	2	0	2	0	0	0	0	5
Members of Parliament	4	3	0	7	2	1	1	0	18
Private sector business	4	1	0	11	1	0	0	0	17
Not for profit organisations or community groups	1	0	0	5	0	0	0	2	8
Members of the public (legal representative)	0	1	0	1	0	0	0	0	2
Members of the public (other)	3	0	0	3	0	0	1	1	8
Grand total	13	7	0	29	3	1	2	3	58

Table B: number of applications by type of application and outcome

Type of application	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 or deny whether information is held	Application withdrawn	Grand total
Personal information applications	0	0	0	0	0	0	0	0	0
Access application (other than personal information applications)	12	6	1	31	1	2	1	3	57
Access applications that are partly personal information applications and partly other	0	1	0	0	0	0	0	0	1
Grand total	12	7	1	31	1	2	1	3	58

Table C: invalid applications

Reason for invalidity	Number of Applications
Application does not comply with formal requirements (section 41)	8
Application is for excluded information of the agency (section 43)	1
Application contravenes restraint order (section 110)	0
Total number of invalid applications received	7
Invalid applications that subsequently become valid applications	3

Table D: conclusive presumption of overriding public interest against disclosure – matters listed in Schedule 1 to Act

Schedule 1 reasons	Number of times consideration used
Overriding secrecy laws	0
Cabinet information	1
Executive council information	0
Contempt	0
Legal professional privilege	0
Excluded information	0
Documents affecting law enforcement and public safety	0
Transport safety	0
Adoption	0
Care and protection of children	0
Ministerial code of conduct	0
Aboriginal and environmental heritage	0
Grand total	1

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

Other public interest reasons	Number of occasions when application not successful
Responsible and effective government	1
Law enforcement and security	0
Individual rights, judicial processes and natural justice	1
Business interests of agencies and other persons	1
Environment, culture, economy and general matters	0
Secrecy provisions	0
Exempt documents under interstate Freedom of Information legislation	0
Grand total	3

Table F: timeliness

Timeliness	Number of applications
Decided within the statutory time frame (20 days plus any extensions)	34
Decided after 35 days (by agreement with applicant)	11
Not decided within time (deemed refusal)	13
Grand total	58

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

Review type	Decision varied	Decision upheld	Grand total
Internal review	0	0	0
Review by Information Commissioner	1	1	2
Internal review following recommendation under section 93 of Act	0	0	0
Review by NCAT	3	3	6
Grand total	4	4	8

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

Review requested by	Number of applications
Applications by access applicants	4
Applications by persons to whom information the subject of access application relates (see section 54 of the Act)	0
Grand total	4

Table I: applications transferred to other agencies under Division 2, Part 4 of the Act (by type of transfer)

Applications transferred	Number of applications
Agency initiated transfers	0
Applicant initiated transfers	0
Grand total	0

Appendix 5

Financial Year 2014 – 2015

Total aggregation of University sector

Clause 7(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

	Reviews carried out by agency	Information made publicly available by the agency
7(a)	8	4

Clause 7(b): the total number of access applications received by the agency during the reporting year (including withdrawn applications but not including invalid applications)

	Total number of applications received
7(b)	62

Clause 7(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)

	Total number of applications received
Partly	0
Wholly	10
Grand total	10

Table A: number of applications by type of applicant and outcome

Type of applicant	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 or deny whether information is held	Application withdrawn	Grand total
Media	0	1	1	1	0	0	0	0	3
Members of Parliament	0	0	0	0	0	0	0	0	0
Private sector business	1	0	0	1	0	0	0	0	2
Not for profit organisations or community groups	1	2	0	0	0	3	0	0	6
Members of the public (legal representative)	1	0	1	0	0	0	0	2	4
Members of the public (other)	23	16	8	9	10	2	0	2	70
Grand total	26	19	10	11	10	5	0	4	85

Table B: number of applications by type of application and outcome

Type of application	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 or deny whether information is held	Application withdrawn	Grand total
Personal information applications	15	10	3	5	5	1	0	4	43
Access application (other than personal information applications)	9	5	4	4	4	3	0	0	29
Access applications that are partly personal information applications and partly other	2	4	4	1	1	1	0	0	13
Grand total	26	19	11	10	10	5	0	4	85

Table C: invalid applications

Reason for invalidity	Number of Applications
Application does not comply with formal requirements (section 41)	4
Application is for excluded information of the agency (section 43)	1
Application contravenes restraint order (section 110)	0
Total number of invalid applications received	2
Invalid applications that subsequently become valid applications	0

Table D: conclusive presumption of overriding public interest against disclosure – matters listed in Schedule 1 to Act

Schedule 1 reasons	Number of times consideration used
Overriding secrecy laws	0
Cabinet information	0
Executive council information	0
Contempt	1
Legal professional privilege	7
Excluded information	1
Documents affecting law enforcement and public safety	0
Transport safety	0
Adoption	0
Care and protection of children	0
Ministerial code of conduct	0
Aboriginal and environmental heritage	0
Grand total	9

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

Other public interest reasons	Number of occasions when application not successful
Responsible and effective government	16
Law enforcement and security	1
Individual rights, judicial processes and natural justice	17
Business interests of agencies and other persons	9
Environment, culture, economy and general matters	0
Secrecy provisions	1
Exempt documents under interstate Freedom of Information legislation	0
Grand total	44

Table F: timeliness

Timeliness	Number of applications
Decided within the statutory time frame (20 days plus any extensions)	36
Decided after 35 days (by agreement with applicant)	12
Not decided within time (deemed refusal)	10
Grand total	58

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

Review type	Decision varied	Decision upheld	Grand total
Internal review	1	1	2
Review by Information Commissioner	2	1	3
Internal review following recommendation under section 93 of Act	2	0	2
Review by NCAT	0	1	1
Grand total	5	3	8

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

Review requested by	Number of applications
Applications by access applicants	4
Applications by persons to whom information the subject of access application relates (see section 54 of the Act)	1
Grand total	5

Table I: applications transferred to other agencies under Division 2, Part 4 of the Act (by type of transfer)

Applications transferred	Number of applications
Agency initiated transfers	0
Applicant initiated transfers	0
Grand total	0

Appendix 6

Note on data sources and previous reports

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

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

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

As part of migrating previously collected data to the online GIPA Tool and using the Tool to verify the data, the IPC identified a number of errors and made some corrections to the historical data. The impact of these specific corrections on particular sections of this Report and previous reports are listed in the table on page 95.

The data analysed for this Report should be considered a snapshot of agencies' compliance as at 1 December 2015 (this is the date when agencies' reported data was downloaded by the IPC from the GIPA Tool). It should be noted that not all agencies had submitted their annual reports to the IPC by this time.

Data updates by agencies may affect historical data and future reports. The IPC will continue to work with agencies to improve data quality.

The annual reporting period for universities is a calendar year. For this Report, universities' data is included in the relevant financial year to assist with cross-sector comparability. For example, GIPA data from universities' 2014 annual reporting has been treated as for the 2014/15 financial year.

A set of appendices containing all revised data for previous years is available on the IPC's website at <http://www.ipc.nsw.gov.au/report-operation-government-information-public-access-act-2009-2013-2014>.

Table: Effect of changes made to previous years' data

Report section	Changes made to previous years' data
Mandatory proactive release	No significant changes.
Authorised proactive release	The IPC has revised its methodology for calculating agency compliance with this measure. In previous reports the number of agencies conducting reviews was compared with the total number of agencies that are subject to the GIPA Act. Material changes to the number of agencies reporting via cluster departments or other agencies have necessitated a revised approach which compares the number of agencies conducting reviews with the number of agencies actually reporting in a particular year.
Informal release	No significant changes.
How many applications were lodged?	Reduction in the number of formal applications lodged in earlier years.
Invalid applications	Reduction in the percentage of applications that were found invalid and in the percentage of invalid applications that subsequently become valid.
Who applied?	The main effect of the corrections has been to reduce the number of applications reported from not for profit organisations and increase the numbers from members of the public (including by a legal representative).
What was asked for?	No significant changes.
Did applicants get what they asked for?	The main effect of the corrections has been to reduce the number of applications reported from not for profit organisations and increase the numbers from members of the public (including by a legal representative).
How quickly were decisions made?	No significant changes.
How was the public interest test applied?	Small reductions in the number of times that CPOPIADs and OPIADs were applied in 2010/11, 2011/12 and 2012/13.
How were decisions reviewed?	No significant changes.
Were applications transferred between agencies?	None. This is the first year that this data has been reported.

Appendix 7

The Legislative Framework

The *Government Information (Public Access) Act 2009* (GIPA Act) embodies the principle of proactive disclosure of information, a presumption in favour of disclosure and an enforceable right of access to information.

The GIPA Act provides a powerful vehicle to deliver information to the citizens of NSW across four information release pathways.

The *Government Information (Public Access) Act 2009* replaced the *Freedom of Information Act 1989* and commenced on 1 July 2010

The object of the Act is to maintain and advance a system of responsible and representative government that is open, accountable, fair and effective by:

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

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

Four sectors have been adopted for this report:

- Government (government departments and agencies, and state-owned corporations);
- Councils (including county councils);
- Universities; and
- Ministers and their offices.

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

The Act outlines four information release pathways (see right for an overview and Appendix 8 for further details):

- Mandatory proactive release;
- Authorised proactive release;
- Informal release; and
- Access applications.

Agencies are encouraged to proactively release as much information as possible and the Act provides two out of the four pathways to facilitate this objective.

The Act also prescribes the processes that applicants and agencies must follow in dealing with access applications and the options for the review of these access decisions.

Section 125 of the Act requires agencies to report to Parliament annually on their obligations under the GIPA Act, including reporting on GIPA data.

This mandated information is set out in clause 7 (a), (b), (c) and (d) of the *Government Information (Public Access) Regulation 2009* (the Regulation). Schedule 2 of the Regulation sets out the prescribed form for Clause 7(d) reporting through Tables A – I.

The *Government Information (Information Commissioner) Act 2009*

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

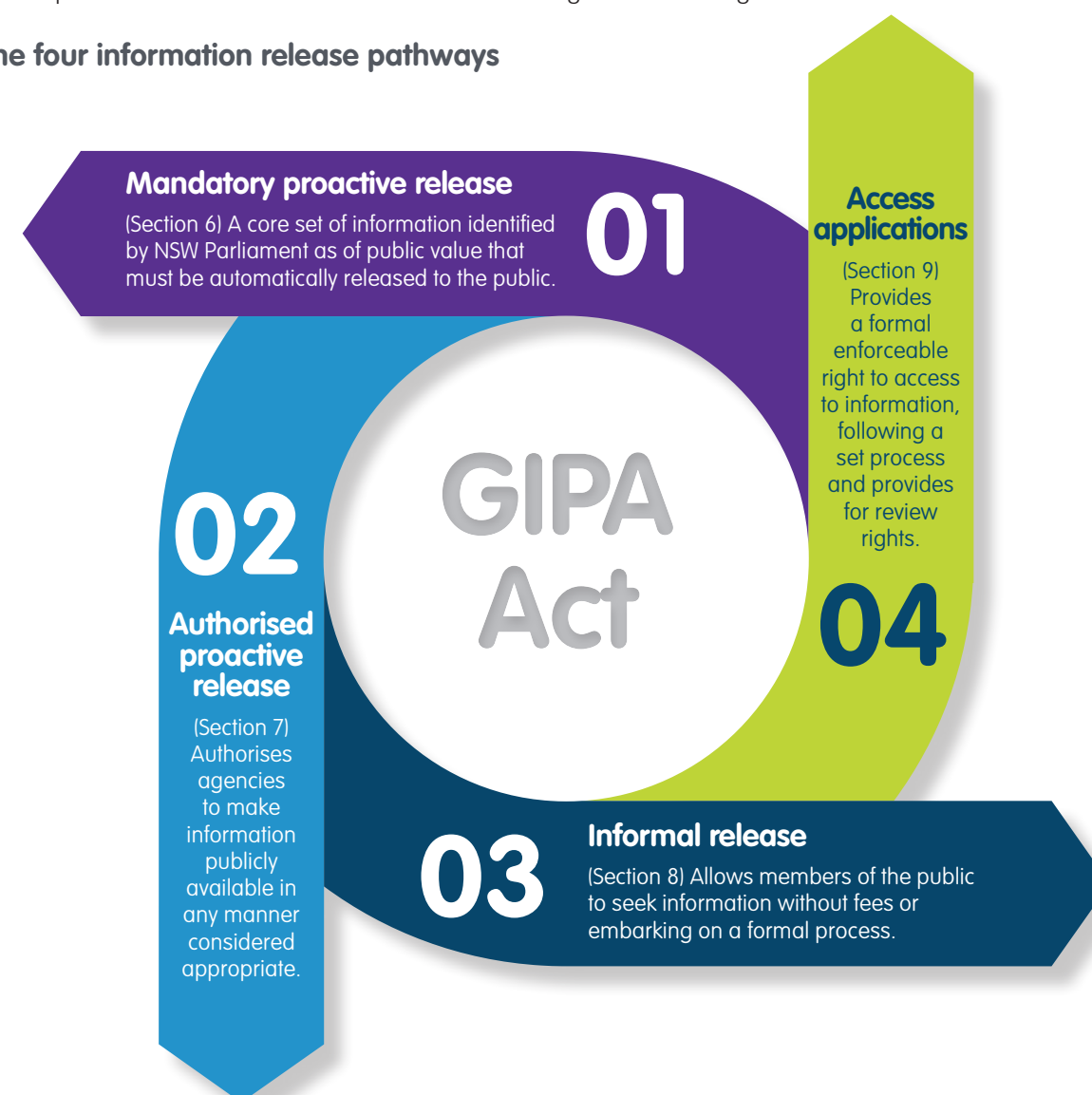
Under this Act the Information Commissioner's role includes:

- promoting public awareness and understanding of the Act;
- providing information, advice, assistance and training to agencies and the public;
- dealing with complaints about agencies;
- investigating agencies' systems, policies and practices; and
- reporting on compliance with the Act.

Under Section 37 of the *Government Information (Information Commissioner) Act 2009*, the Information Commissioner is required to provide an annual report to Parliament on "the operation of the *Government Information (Public Access) Act 2009*, generally, across all agencies".

This Report fulfils the Information Commissioner's obligation in this regard.

The four information release pathways



Appendix 8

Overview of the Legislation

The following provides an overview of the four information release pathways available under *Government Information (Public Access) Act 2009* (GIPA Act).

1. Mandatory proactive release

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

The benefit of mandatory proactive release is that the pathway ensures that a minimum, consistent set of information is freely available to the public, which is regularly reviewed and updated to maintain relevance and currency.

Open access information for NSW public sector agencies are:

- current agency information guide (except for Ministers);
- documents about the agency tabled in Parliament;
- policy documents;
- disclosure log of access applications;
- register of government contracts;
- record of the open access information that it does not make publicly available due to an overriding public interest against disclosure; and
- other information prescribed by the GIPA Regulations.

These documents are important vehicles to achieve better service delivery through information access, transparency and increased citizen input to government policy and service delivery.

2. Authorised proactive release

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

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

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

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

3. Informal release

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

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

4. Formal access applications

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

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

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

The main benefits of the formal access pathway 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; and
- applicants have a right to seek review of an agency's decision about the application through an internal review by the agency, an external review by the Information Commissioner or an external review by NCAT.



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