

Llywodraeth Cynulliad Cymru
Welsh Assembly Government

**Report on the implementation of open government
legislation and policies during 2005 and 2006**

February 2007

Introduction

This is the first report that the Assembly Government has published on its implementation of open government legislation and policies. Although access to information legislation is not a devolved matter, the Assembly Government has, since its inception, recognised that openness in government is an essential element of engaging with the people of Wales to secure interest and participation in the work it undertakes. The Assembly Government remains committed to routinely publishing as much information as possible through its Publication Scheme.¹

To formalise the Assembly Government's commitment to openness, a Code of Practice on Public Access to Information was first implemented in May 1999, with second and third editions being implemented in May 2001 and January 2005 respectively. Most significantly, the Code creates greater openness through the substantial harm test which it establishes and applies to the majority of exemptions to the requirement to release information which are subject to the public interest test in law.

Although a Code has been in place since May 1999, the Assembly Government has received a considerably higher volume of requests for information since the Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIRs) were commenced on 1 January 2005. The number of requests handled under the Data Protection Act 1998 has remained about the same.

Most significantly, the FOIA and EIRs require the Assembly Government in the vast majority of cases² to either release information or explain why information is considered to be exempt from release within 20 working days of a request being received. To provide staff with clear guidance ahead of the commencement of the

¹ Details of the Assembly Government's Publication Scheme can be viewed at: <http://new.wales.gov.uk/publications/?lang=en>

² The FOIA and EIRs set a standard deadline of 20 working days for responding to requests for information. The FOIA allows for a reasonable extension to the 20 working day deadline when a public interest tested exemption is being considered and the EIRs allow for an extension of a maximum of a further 20 working days if the request is complex and voluminous.

new laws, an Integrated Procedure for Handling Requests for Information³ was implemented and awareness-raising sessions were provided to staff.

This report describes experiences during 2005 and 2006. This report does not cover requests received by other public authorities in Wales as access to information legislation is not a devolved matter and it would, therefore, be outside of the Assembly Government's remit to collect detailed information from other public authorities.

The information in this report relates only to those requests which have been received by the Assembly Government and logged by the Access to Information Unit. As a result, some data may not be complete and the report should be seen only as an indication of the Assembly Government's experiences and performance. The report does not include information about requests dealt with by former Assembly Sponsored Public Bodies before they merged with the Assembly Government on 1 April 2006.

Summary

The Assembly Government received 898 requests for information in 2005 and 677 in 2006. The number of requests received has generally declined since a surge in early 2005 and levelled out at around 60 each month during the latter part of 2006.

The high volume of requests received in the early part of 2005 presented some challenges and, whilst the Assembly Government has responded to the majority within the standard 20 working day statutory timescale, it has not done so in all cases. In a number of cases, the deadline has not been met because the Assembly Government has been committed to applying exemptions to the smallest amount of information possible and has processed very large requests which the legislation would have allowed us to refuse or charge for.

The Assembly Government received a total of 17 complaints in 2005 from those who have requested information, and 36 in 2006, most of which have been resolved internally to the satisfaction of complainants. The Assembly Government is aware

³ The Assembly Government publishes all of its guidance on handling requests for information at: <http://new.wales.gov.uk/publications/accessinfo/?lang=en>

that the Information Commissioner’s Office has received 12 complaints which relate to it or Assembly Sponsored Public Bodies now merged with it. One complaint has been the subject of an appeal to the Information Tribunal.

The Assembly Government routinely published a considerable amount of information during 2005 and 2006 in line with its Publication Scheme.

Number of requests, their sources and subject areas

The Assembly Government received a high volume of requests during the early part of 2005 after the FOIA and EIRs were commenced on 1 January 2005 (212 in January 2005 alone). The number of requests has since declined overall and it is noticeable that volumes increase when there is media and political interest in issues and decrease during holiday periods. Figure 1 shows the number of requests received each month during 2005 and 2006 and Annex 1 provides the same information in a table.

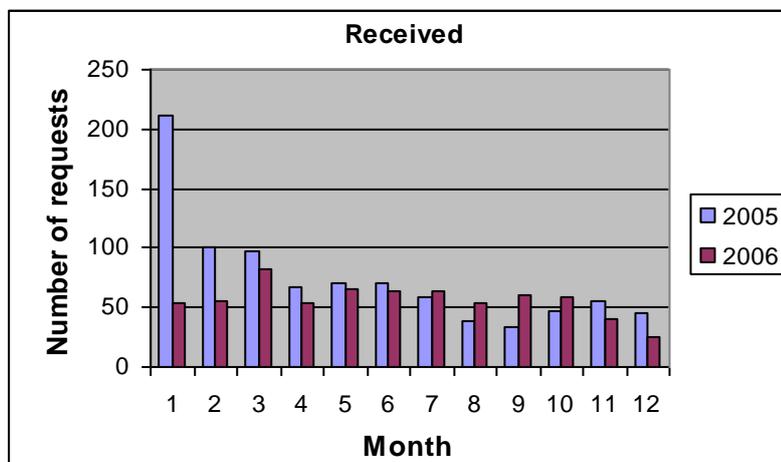


Figure 1: Requests received each month during 2005 and 2006

During January 2005, around one-quarter of requests were from journalists, around one-third from Assembly Members (AMs) and the remainder from members of the public. The proportion of requests received from members of the public, rather than AMs or journalists, has since increased to over three-quarters (76%) of the total.

Figure 2 shows the number of requests received from each type of requester during

each quarter in 2005 and 2006, and Annex 2 provides the same information in a table.

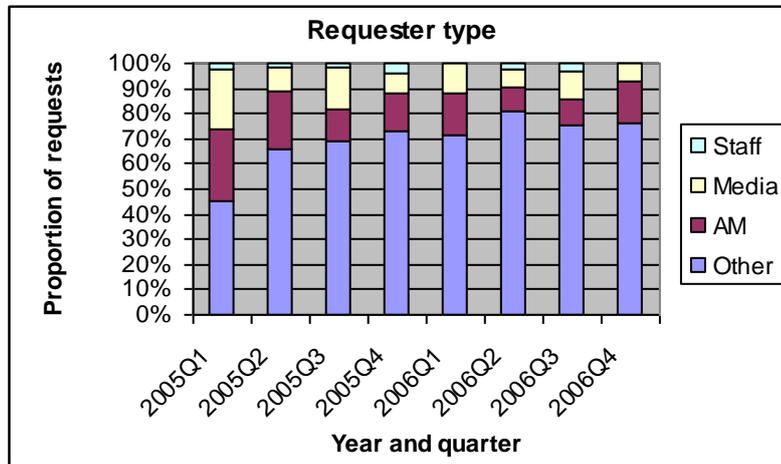


Figure 2: Requests received from each type of requester during each quarter of 2005 and 2006

All departments within the Assembly Government have received a proportion of the requests but some have received considerably more than others. The numbers of requests received by Assembly Government departments is provided in Annex 3.

Timeliness of responses

It took some time for the high volume of requests received during the early part of 2005 to work through the system. The department holding the relevant information deals with requests received by the Assembly Government and awareness-raising sessions were made available to all staff before 1 January 2005 to prepare them for the new legal requirements. Knowledge among staff has increased through experience, on-going training and participation in our Access to Information Community of Practice.⁴

Our records show that the majority of requests, 67% in 2005 and 65% in 2006, have been completed within statutory deadlines. The FOIA allows for a reasonable extension to the 20 working day deadline when considering a public interest tested exemption and the EIRs allow for an extension of a maximum of a further 20 working

⁴ A Community of Practice is a group of people which meets to share what they know and to learn from one another.

days if the request is complex and voluminous. Our system monitors performance against the target date for completion which is amended by staff handling requests when the deadline is extended. Staff have extended the target date for completion beyond 20 working days in 12% of cases.

Use of exemptions

Under the FOIA and EIRs, public authorities can refuse to provide requested information which they hold if the information falls within one or more of the categories of exempt information which are listed in the legislation. The Assembly Government has used some of the exemptions available to withhold information in certain instances and, where it has, full explanations for the decisions have been provided. Aggregate information on the use of exemptions is not presently available but the intention is that this will be collected as soon as possible in the future.

Complaints

In 2005 and 2006, the Assembly Government initiated internal reviews in 14 and 27 cases respectively following requesters expressing dissatisfaction with a decision to withhold some or all of the requested information. This equates to 2.5% of all requests received during 2005 and 2006.

The Assembly Government also received 3 complaints in 2005 and 9 complaints in 2006 which either raised concerns about the timeliness of our response to a request or alleged that we had released information inappropriately.

The Assembly Government has issued apologies in response to complaints which raised legitimate concerns about the timeliness of our response and has so far released further information in 18 cases after internally reviewing decisions to withhold information.

Appeals to the Information Commissioner and Information Tribunal

The Information Commissioner has received 10 complaints during 2005 and 2006 which relate to the Assembly Government. Three of these complaints relate to the same information.

Of these 10 cases, the Information Commissioner has so far issued two formal Decision Notices and resolved two cases informally. One of the Decision Notices upheld our conclusions that the information concerned should be withheld. The other one recorded that the Assembly Government was right to withhold the vast majority of the information which it did but recorded some procedural shortcomings. Our published Integrated Procedure for Handling Requests for Information is being reviewed to ensure that staff are clear about how such shortcomings can be avoided in the future.

Only one case involving the Assembly Government has been appealed to the Information Tribunal. The Tribunal has recently issued its decision which records that the Assembly Government was correct to withhold the information in question.

Information routinely published

During 2005 and 2006 the Assembly Government routinely published a considerable amount of information through its Publication Scheme. In particular:

- approximately 3,700 reports on ministerial decisions have been published which cover the background facts and analyses;
- agendas, papers and minutes of Cabinet meetings have been published;
- agendas, papers and minutes of Management Board meetings have been published;
- internal guidance for handling requests for information has been published on our Internet site; and
- information disclosed in response to requests handled under the FOIA and EIRs has been published, regardless of the subject matter.

Conclusion

The considerable increase in the number of requests received since 1 January 2005 and our Publication Scheme have led to an increase in the amount of Assembly Government information in the public domain. The Assembly Government remains committed to achieving the high standards which are established in our Code of

Practice on Public Access to Information and has released a vast amount of information during 2005 and 2006. The Assembly Government committed to ensuring that best practice is achieved throughout the organisation through on-going staff training and our Access to Information Community of Practice (see Footnote 4). In particular, the Assembly Government is committed to improving compliance with the standard 20 working days deadline for dealing with requests. Whilst completion times have sometimes exceeded the standard 20 working day deadline, this has often been because the Assembly Government has aimed to deal with requests, regardless of the volume or complexity of the information involved.

To date, the Assembly Government has not refused any requests or imposed a charge as allowed for in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. However, the effect of not refusing to deal with or charging for requests which exceed the “appropriate limit” established in the regulations on our ability to comply with statutory timescales is being monitored.

The future

Whilst the Government and Parliamentary Service arms of the National Assembly already deal with requests for information separately, the Government of Wales Act 2006 (GOWA 2006) will have the effect of establishing the legislature and the executive as separate legal entities. Work is underway to make modifications to the FOIA as a consequence of GOWA 2006 and Assembly Government officials are reviewing the impact which this change might have on policies and procedures presently being operated.

The Assembly Government will continue to monitor the requests for information which it receives and its handling of them. We will produce a further report early in 2008 on activity during 2007.

Access to Information Unit

Information and Knowledge Management Division

Corporate Information and Services Department

Annex 1: Requests received each month during 2005 and 2006

Requests received

<u>Month</u>	<u>2005</u>	<u>2006</u>
January	212	53
February	100	56
March	98	82
April	67	54
May	71	65
June	71	64
July	58	64
August	39	54
September	34	61
October	47	58
November	56	40
December	45	26
Annual total	898	677

Annex 2: Requests received from each type of requester during each quarter of 2005 and 2006

	<u>Other</u>	<u>AM</u>	<u>Media</u>	<u>Staff</u>
2005 Q1	183	117	99	9
2005 Q2	137	48	21	3
2005 Q3	90	17	22	2
2005 Q4	107	22	12	6
2006 Q1	133	31	22	0
2006 Q2	148	17	13	5
2006 Q3	134	18	19	6
2006 Q4	93	20	9	0

We record five types of requester: AM and AM researcher, MP, Media, Staff and Other. The number of requests from MPs and where no requester type was recorded is less than 10.

Annex 3: Number of requests received by Assembly Government departments

<u>Department</u>	<u>Requests received</u>		
	<u>2005</u>	<u>2006</u>	<u>Total</u>
Enterprise, Innovation and Networks	175	165	340
Environment, Planning and Countryside	206	132	338
Health and Social Services	136	76	212
Local Government, Public Services and Culture	78	75	153
Education and Lifelong learning	64	46	110
Corporate Information and Services	62	35	97
Public Services and Performance	47	36	83
Social Justice and Regeneration	29	45	74
Human Resources	26	32	58
Office of the First Minister	40	10	50
Others	35	25	60
Total	898	667	1575