



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Report on the implementation of open government legislation and policies during 2010

April 2011

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Introduction:

This is the fifth report the Assembly Government has published on the implementation of open government legislation and policies. This is a retrospective report which describes our experiences during 2010.

The statistics in this report relate to the handling of requests for recorded information under the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs). The statistics cover only requests logged by the Assembly Government's Information Rights Unit and exclude "routine" requests and information given out during the normal course of business. As a result, the data is only an indication of the Assembly Government's experiences and performance.

Unless otherwise indicated the data presented in the tables and graphs throughout this report were obtained from the Assembly Governments Request for Information (RFI) Tracking System on 06 April 2011. Please note that percentages are rounded to 1 decimal place and there may be apparent slight discrepancies between the sum of the constituent items and the total.

This report does not cover requests received by other public authorities in Wales. Access to information legislation is not a devolved matter and it is outside of the Assembly Government's remit to collect detailed information from other public authorities.

Summary:

In 2010:

- The Assembly Government received 813 requests for recorded information.
- The total number of requests received decreased from 860 in 2009 to 813 in 2010. This is a decrease of 5.5%.
- 786 (96.7%) of the total number of requests received were resolvable¹.
- The Assembly Government completed² 784 (96.4%) of the resolvable requests.
- Of the 784 completed requests some or all of the information was provided in response to 589 (75.1%).

¹ Requests were deemed to be unresolvable either because they were insufficiently clear for the Assembly Government to search for information or, in relation to Subject Access Requests under the DPA, the requester failed to provide the required proof or identity and/or pay the required fee.

² A completed request is a request for recorded information that has been answered by the Assembly Government.

- The most commonly applied exemptions were under sections 40 (Personal Information) s42 (Legal Professional Privilege) and s43 (commercial interests).
- The Assembly Government received a total of 33 complaints relating to its handling of requests for information compared with 16 in 2009.
- The Information Commissioner's Office investigated 5 complaints, compared with 1 in 2009.
- The Assembly Government were joint respondents to one referral during 2010 to the First-tier Tribunal (Information Rights).
- The Assembly Government continued to routinely publish a considerable amount of information in line with its Publication Scheme: <http://wales.gov.uk/publications/publicationscheme/?lang=en>

Volume of Freedom of Information Requests:

The Assembly Government received 813 requests for recorded information in 2010. Since the commencement of the FOIA on 1 January 2005 the number of requests received each year has fluctuated. There was a 5.5% decrease in the number of requests received in 2010 when compared to 2009.

Table 1 and Figure 1 below detail the annual total number of requests for recorded information received by the Assembly Government since 2005. Table 2 and Figure 2 compare the number of requests received on a month by month basis in 2009 and 2010.

Table 1: Total number of requests for recorded information received 2005-2010

Year	Total number of requests received
2010	813
2009	860
2008	638
2007	574
2006	677
2005	898

Figure 1: Total number of requests for recorded information received 2005-2010

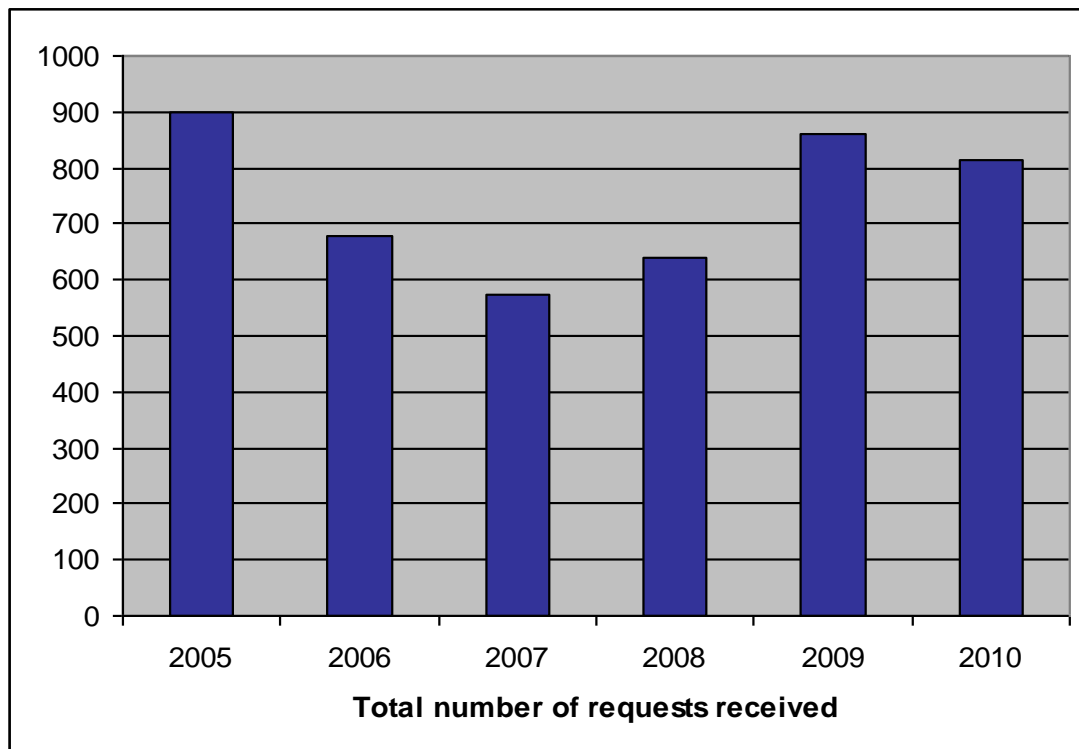
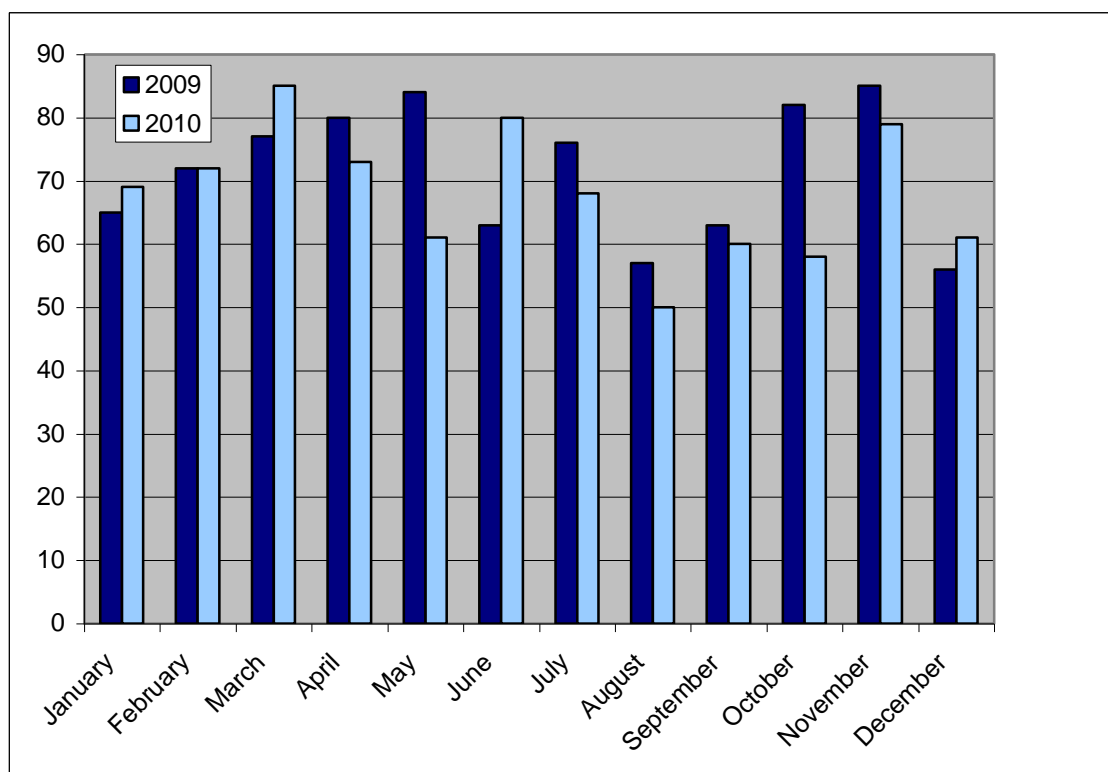


Table 2: Number of requests for recorded information received each month during 2009 and 2010

Month	2009	% of Total	2010	% of Total
January	65	7.6	69	8.5
February	72	8.4	72	8.9
March	77	9.0	82	10.1
April	80	9.3	73	8.9
May	84	9.8	61	7.5
June	63	7.3	80	9.8
July	76	8.8	68	8.4
August	57	6.6	50	6.1
September	63	7.3	60	7.4
October	82	9.5	58	7.1
November	85	9.9	79	9.7
December	56	6.5	61	7.5
Total	860	100%	813	100%

Figure 2: Number of requests for recorded information received each month during 2009 and 2010

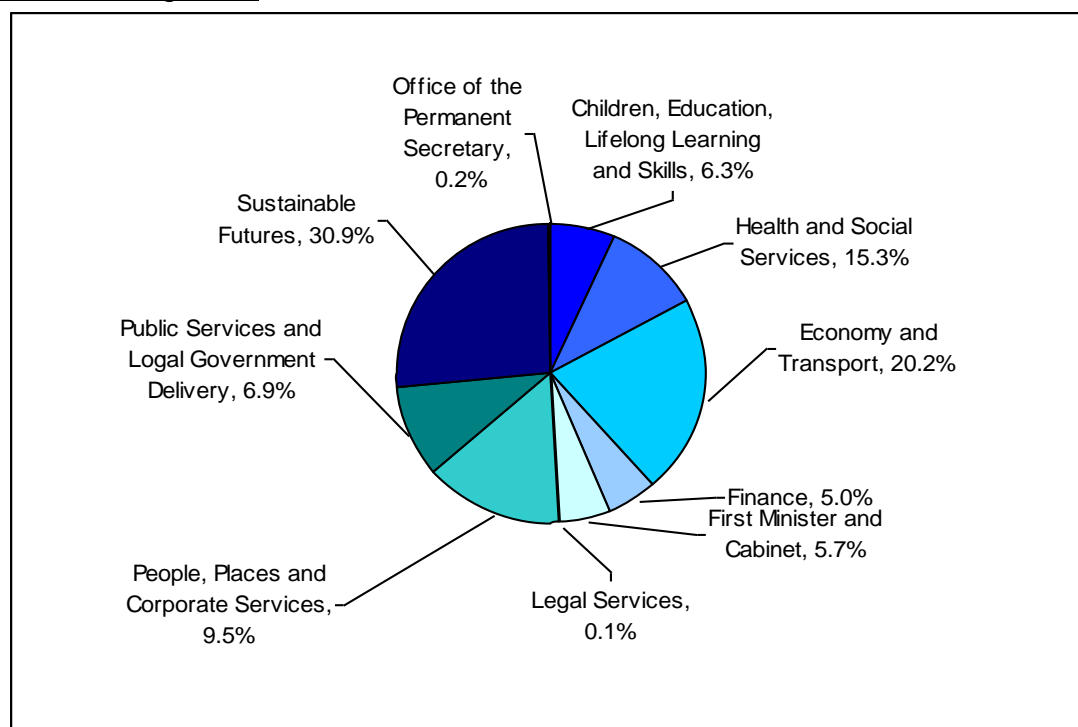


A breakdown by portfolio of the number of requests for recorded information received by the Assembly Government during 2009 and 2010 is provided in Table 3. As in previous years, some areas received considerably more requests than others.

Table 3: Number of requests received by Assembly Government portfolio areas during 2009 and 2010

Director General Area	2009 Number of Requests	% of Requests	2010 Number of Requests	% of Requests
Children, Education, Lifelong Learning and Skills	54	6.3	56	6.9
Health and Social Services	132	15.3	83	10.2
Economy and Transport	174	20.2	173	21.3
Finance	43	5.0	42	5.2
First Minister and Cabinet	49	5.7	45	5.5
Legal Services	1	0.1	0	0
People, Places and Corporate Services	82	9.5	115	14.1
Public Services and Local Government Delivery	59	6.9	83	10.2
Sustainable Futures	266	30.9	214	26.3
Office of the Permanent Secretary	0	0	2	0.2
Total	860	100%	813	100%

Figure 3: Number of requests received by Assembly Government portfolio areas during 2010



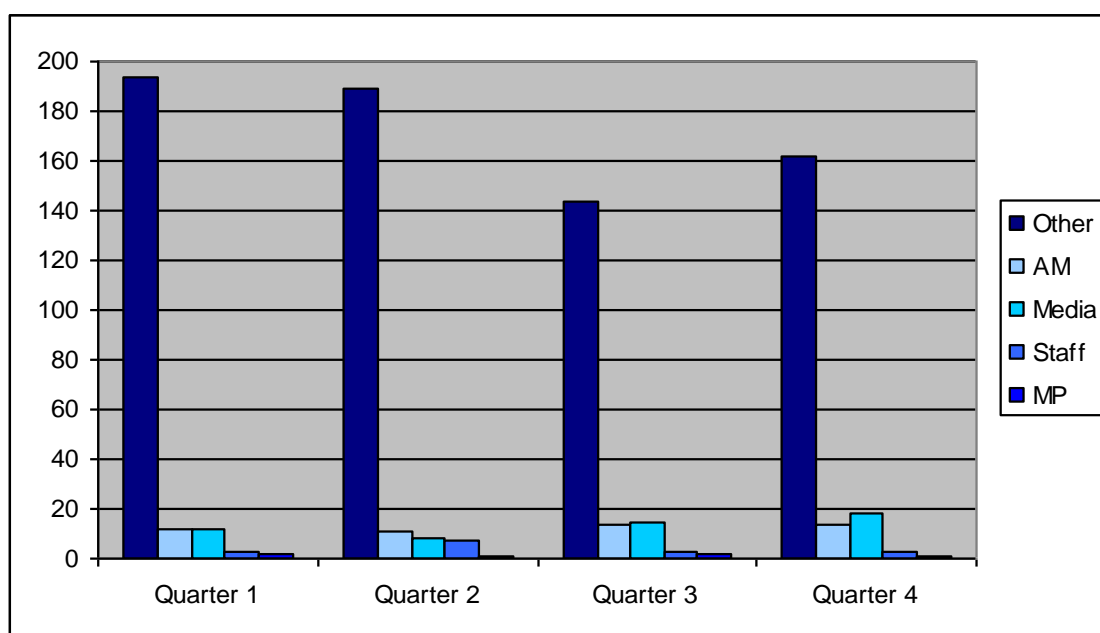
Category of Requestor:

Over the year requests from Assembly Members (AMs), the media, staff and Members of Parliament (MPs) accounted for 126 (15.5%) of all requests. The remaining 687 requests (which amounts to 84.5% of all requests) were recorded under the 'Other' category. The number of requests from AMs has dropped from 105 in 2009 to 51 in 2010.

Table 4: Requests received from each type of requester during each quarter of 2010

	Other	AM	Media	Staff	MP
Quarter 1	194	12	12	3	2
Quarter 2	189	11	8	7	1
Quarter 3	144	14	15	3	2
Quarter 4	162	14	18	3	1
2010 Total	687	51	53	16	6

Figure 4: Requests received from each type of requester during each quarter of 2010



Timeliness of Responses:

In 2010, of the 813 requests received by the Assembly Government 786 were resolvable. Requests were deemed to be unresolvable either because they were insufficiently clear for the Assembly Government to search for information or, in relation to Subject Access Requests under the DPA, the requester failed to provide the required proof of identity and/or pay the required fee.

The FOIA and EIRs both require public bodies to normally respond to written requests for information within 20 working days of receipt, with limited exceptions. 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 days if the request is complex and voluminous.

Of the 786 resolvable requests 541 (68.8%) were completed within 20 working days and 586 (74.6%) were completed within the statutory deadline³.

Outcome of Completed Requests:

Since 1 January 2008 additional data on the outcome of requests for recorded information has been collected by the Assembly Government. This is as a result of improvements to the Request For Information (RFI) Tracking System (which is used to log and monitor each request).

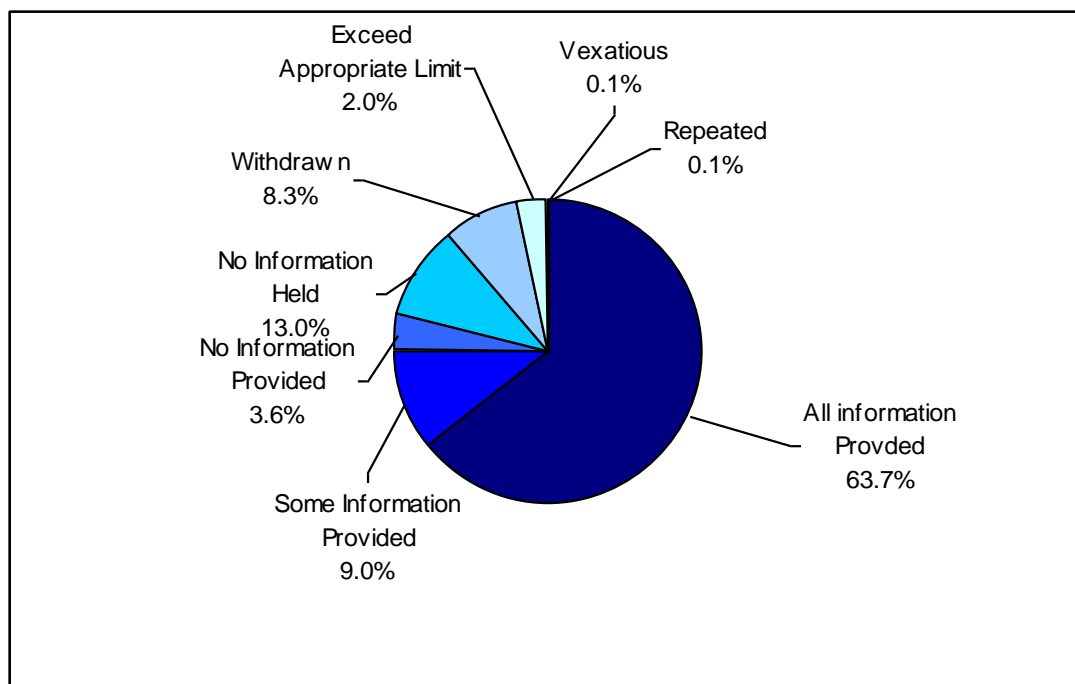
The number of completed requests received by the Assembly Government during 2009 and 2010 is shown by completion category in Table 6.

Table 5: Number of completed requests shown by completion category during 2009 and 2010

Completed Category	2009	% of Total	2010	% of Total
All Information Provided	529	63.7	504	64.3
Some Information Provided	75	9.0	85	10.8
No Information Provided	30	3.6	30	3.8
No Information Held	108	13.0	78	9.9
Withdrawn	69	8.3	60	7.7
Exceeded Appropriate Limit	17	2.0	26	3.3
Vexatious	1	0.1	1	0.1
Repeated	1	0.1	0	0
Total	830	100%	784	100%

³ The statutory deadline includes requests answered either within 20 working days or within a permitted extended deadline.

Figure 5: Number of completed requests shown by completion category during 2010



Use of Exemptions and Exceptions:

Under the FOIA, a public authority can only refuse to provide requested information that it holds if the:

- request is considered to be vexatious or repeated;
- cost of compliance would exceed the 'appropriate limit' (£600);
- fee is not paid;
- information falls into one or more of the categories of exemptions/exceptions listed in the FOIA, EIRs 2004 or DPA.

Table 6 details the exemptions and exceptions applied at least ten times by the Assembly Government during 2010. A full list of the exemptions and exceptions can be viewed at Annex A (the figures in Table 6 do not show the number of requests that have had an exemption and/or exception applied to it because it is possible for more than one exemption and/or exception to be applied in relation to individual requests).

Where the Assembly Government has used exemptions and/or exceptions available to withhold information, full explanations have been provided and published in the Disclosure Log which can be viewed on the Assembly Government internet site:

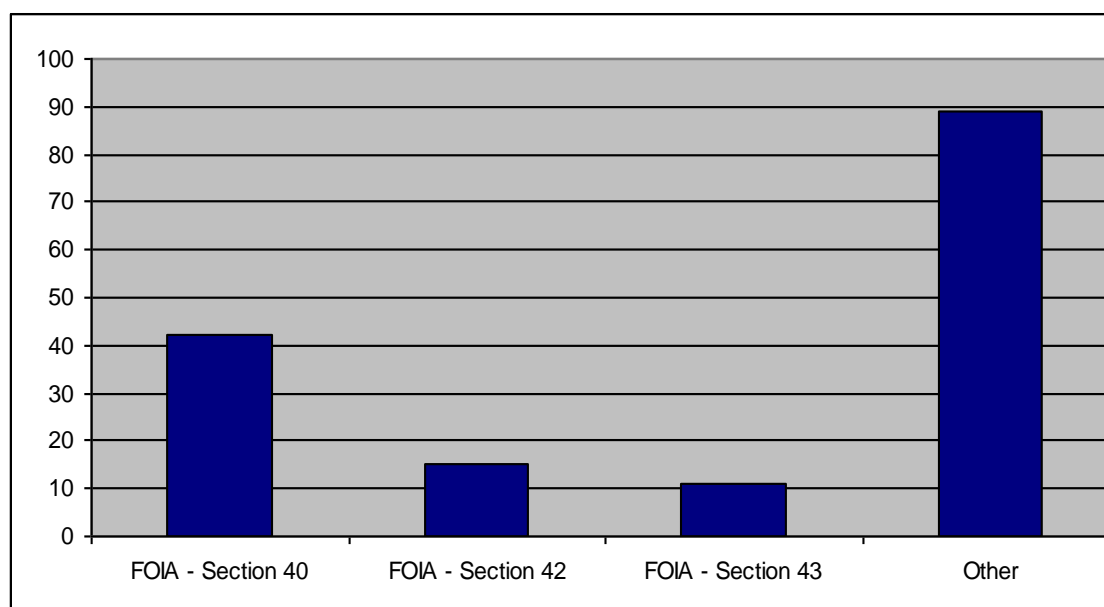
<http://wales.gov.uk/publications/accessinfo/disclosurelogs/?lang=en>

The exemptions most commonly applied were to protect personal information (section 40 FOIA), legal advice (section 42 FOIA), or important commercial interests (section 43 FOIA).

Table 6: Use of exemptions and exceptions during 2010

Act-Exemption ⁴	2010	% of Total
FOIA – Section 40 – personal Information	42	26.8
FOIA – Section 42 – legal professional privilege	15	9.6
FOIA – Section 43 – commercial interests	11	7.0
All other exemptions/exceptions	89	56.7
Total		100%

Figure 6: Use of exemptions and exceptions during 2010



Internal Reviews:

In August 2010 the Assembly Governments complaints process was amended to bring it in line with the Information Commissioners process for handling access to information-related complaints. In effect the process was amended from a three stage to a one stage process.

Requestors can ask the Assembly Government to undertake an internal review if: i) they do not agree with the decision to withhold some or all of the requested information; ii) the request was not dealt with within 20 working days; or iii) they feel that a fee was wrongly charged.

⁴ A description of the matter to which each exemption relates is provided in Annex A of the Assembly Government's Code of Practice on Access to Information which can be viewed at: <http://new.wales.gov.uk/publications/accessinfo/code/;jsessionid=VQ5GJIHN1MvJ7wwD62phL3y0XwhvCfvXBvQ9KVvLh0DhjYWR2vbT!-1414164158?lang=en>

The Assembly Government undertook 33 internal reviews in 2010. This equates to 4.1% of all completed requests. Of the 33 internal reviews the original decision was upheld in full or in part in 27 cases (81.9%).

Table 7: Internal review outcomes for 2005-2010

Year	Total number of internal reviews
2010	33
2009	16
2008	21
2007	22
2006	27
2005	14

Source: Records held centrally by Information Rights Unit, Welsh Government

Figure 7: Internal review outcomes for 2005-2010

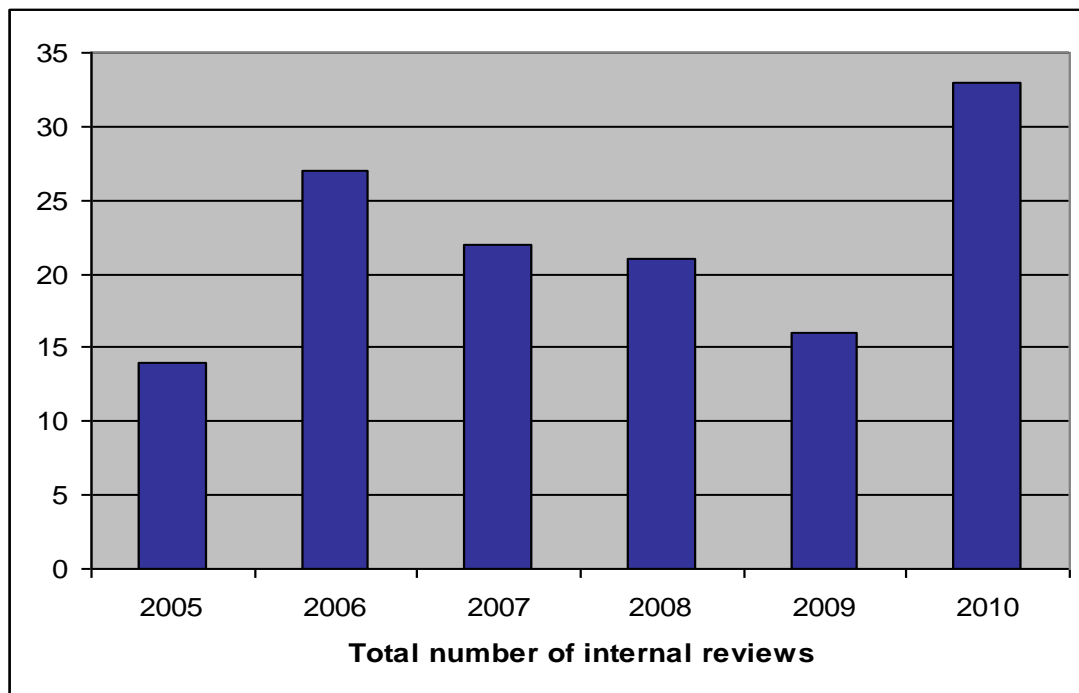
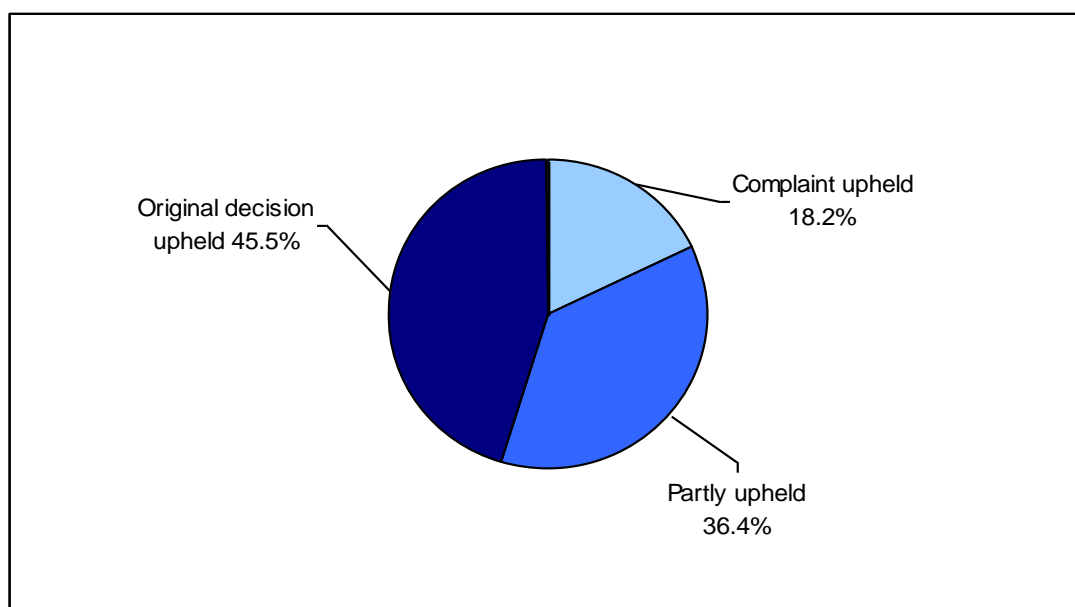


Table 8: Internal review outcomes for 2010

	Number	% of Total
Complaint upheld	6	18.2
Partly upheld	12	36.4
Original decision upheld	15	45.5
Still under review	0	0.0
Total	33	100%

Source: Records held centrally by Information Rights Unit, Welsh Government

Figure 8: Internal review outcomes for 2010



Appeals to the Information Commissioner:

If a requestor is not satisfied with the Assembly Government's response, then they can make a formal appeal to the Information Commissioner's Office (ICO), which is the independent regulator of public authorities in relation to the handling of information requests. Upon receipt of a complaint, the ICO may investigate and subsequently issue a Decision Notice. A Decision Notice is the ICO's final view on whether or not the public authority has complied with the FOIA or EIRs, and what remedial action (if any) needs to be taken.

In 2010 the ICO investigated 5 complaints, 2 of which are still under investigation. Of the 3 completed investigations the ICO upheld the Assembly Government's decision in 2 cases. In the remaining case they instructed the Assembly Government to complete an internal review within a specified time period.

Appeals to the First-tier Tribunal (Information Rights):

The First-tier Tribunal (Information Rights) hears appeals against Decision Notices issued by the ICO. The ICO and Assembly Government were joint respondents to one referral during 2010 to the Tribunal. The Tribunal upheld the Decision Notice (which had found in the Assembly Government's favour) and dismissed the appeal.

Information Routinely Published:

During 2010, the Assembly Government continued to routinely publish a considerable amount of information which included:

- ministerial decisions covering the background facts and analyses;
- agendas, papers and minutes of Cabinet meetings;
- agendas, papers and minutes of Strategic Performance and Delivery Board meetings;
- our internal guidance for handling requests for recorded information; and
- information disclosed in response to requests handled under the FOIA and EIRs, regardless of the subject matter.

The Welsh Government's Publication Scheme can be accessed at:
<http://wales.gov.uk/publications/publicationscheme/?lang=en>

Annex A: Use of exemptions and exceptions during 2010

As outlined in the report the figures below do not show the number of requests that have had an exemption and/or exception applied because it is possible for more than one exemption and/or exception to be applied in relation to individual requests.

Act-Exemption	2010	% of Total
DPA – Schedule 7, Paragraph 1 – Confidential references given by the data controller	1	0.6
DPA Schedule 7, Paragraph 10 – legal professional privilege	2	1.3
DPA Schedule 7, Paragraph 2 – armed forces	1	0.6
DPA Schedule 7, Paragraph 4 - crown employment and crown or ministerial appointments	1	0.6
EIRs Reg 12(4)(d) – material is still in course of completion, unfinished documents or incomplete data	1	0.6
EIRs Reg 12(4)(e) – internal communications	5	3.2
EIRs Reg 12(5)(a) – international relations, defence, national security or public safety	5	3.2
EIRs Reg 12(5)(b) – course of justice, fair trial, criminal or disciplinary inquiry	3	1.9
EIRs Reg 12(5)(d) – confidentiality of proceedings of a public authority where confidentiality is provided by the law	1	0.6
EIRs Reg 12(5)(e) – confidentiality of commercial or industrial information where confidentiality is provided by law to protect a legitimate economic interest	5	3.2
EIRs Reg 12(5)(g) – protection of the environment to which the information relates	3	1.9
EIRs Reg 13 – personal data of third parties. We will apply this exception as it appears in the legislation	6	3.8
FOIA Section 1(3) – description of information does not allow us to locate and identify the information	1	0.6
FOIA Section 12 – cost of compliance exceeds the appropriate limit	8	5.1
FOIA Section 21 – information accessible to applicant by other means	9	5.7

FOIA Section 22 – information intended for future publication	5	3.2
FOIA Section 24 – national security	1	0.6
FOIA Section 27 – international relations	2	1.3
FOIA Section 29 – the economy	1	0.6
FOIA Section 30 – investigations and proceedings conducted by public authorities	1	0.6
FOIA Section 31 – law enforcement	7	4.5
FOIA Section 33 – audit functions	1	0.6
FOIA Section 35 – formulation of government policy, etc.	4	2.5
FOIA Section 36 – effective conduct of public affairs	8	5.1
FOIA Section 38 – health and safety	3	1.9
FOIA Section 40 – personal information	42	26.8
FOIA Section 41 – information provided in confidence	3	1.9
FOIA Section 42 – legal professional privilege	15	9.6
FOIA Section 43 – commercial interests	11	7.0
FOIA Section 44 – Prohibitions on disclosure	1	0.6
Total	157	100%