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Llywodraeth Cymru  
Welsh Government

## **Report on the Implementation of Open Government Legislation and Policies during 2011**

**April 2012**

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**Introduction:**

This is the sixth report the Welsh Government has published on the implementation of open government legislation and policies. This is a retrospective report which describes our experiences during 2011.

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 Welsh 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 Welsh Government's experiences and performance.

Unless otherwise indicated the data presented in the tables and graphs throughout this report was obtained from the Welsh Government's Request for Information (RFI) Tracking System on 28 March 2012. Please note that percentages are rounded to 1 decimal place in areas which may lead to 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.

## Summary:

In 2011:

- The Welsh Government received 853 requests for recorded information.
- The total number of requests received increased from 813 in 2010 to 853 in 2011. This is an increase of 4.9%.
- 843 (98.8%) of the total number of requests received were resolvable<sup>1</sup>.
- Of the 843 resolvable requests, 676 (80.2%) were completed within 20 working days and 700 (83.0%) were completed within the statutory deadline
- Of the 843 resolvable requests the Welsh Government completed<sup>2</sup> 840 (99.6%).
- Of the 840 completed requests some or all of the information was provided in response to 552 (65.7%).
- The most commonly applied exemptions were under FOIA section 21: Information accessible to applicant by other means (9.5% of total), section 40: Personal Information (16.6% of total) and section 43: commercial interests (12.6% of total).
- The Welsh Government received a total of 33 complaints relating to its handling of requests for information, the same as in 2010.
- The Information Commissioner's Office investigated 6 complaints<sup>3</sup>, compared with 5 in 2010.
- The Information Commissioner's Office monitored the Welsh Government's timeliness when responding to requests for information and internal reviews for a three-month period (April – June 2011).
- The Welsh Government continued to routinely publish a considerable amount of information in line with its Publication Scheme:  
<http://wales.gov.uk/publications/publicationscheme/?lang=en>

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<sup>1</sup> Requests were deemed to be unresolvable either because they were insufficiently clear for the Welsh 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.

<sup>2</sup> A completed request is a request for recorded information that has been answered by the Welsh Government.

<sup>3</sup> A complaint to the ICO is defined as a formal investigation which has resulted in the ICO issuing a Decision Notice. Investigations that are resolved informally are not counted in these figures.

## Volume of Freedom of Information Requests:

The Welsh Government received 853 requests for recorded information in 2011. Since the commencement of the FOIA on 1 January 2005 the number of requests received each year has fluctuated. There was a 4.9% increase in the number of requests received in 2011 when compared to 2010.

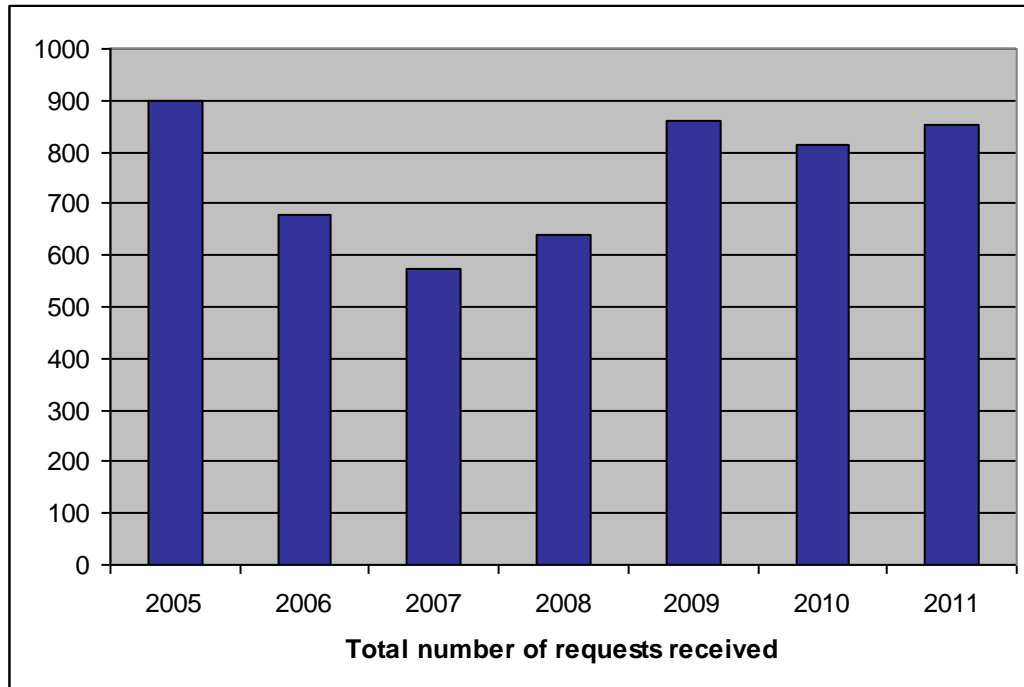
Table 1 and Figure 1 below detail the annual total number of requests for recorded information received by the Welsh Government since 2005.

Table 2 and Figure 2 compare the number of requests received on a month by month basis in 2010 and 2011.

Table 1: Total number of requests for recorded information received 2005-2011

Year	Total number of requests received	Year on year difference (%)
2005	898	-
2006	677	-24.6
2007	574	-15.2
2008	638	11.1
2009	860	34.8
2010	813	-5.5
2011	853	4.9

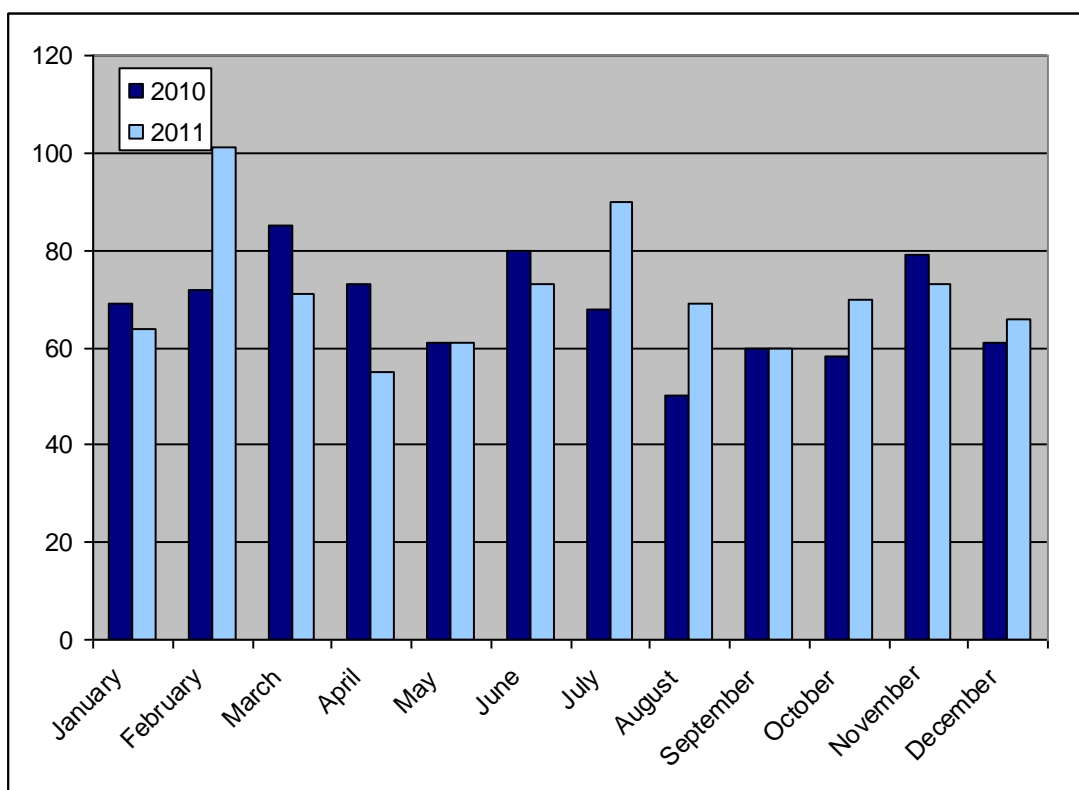
Figure 1: Total number of requests for recorded information received 2005-2011



**Table 2: Number of requests for recorded information received each month during 2010 and 2011**

Month	2010	% of Total	2011	% of Total
January	69	8.5	64	7.5
February	72	8.9	101	11.8
March	82	10.1	71	8.3
April	73	9.0	55	6.4
May	61	7.5	61	7.2
June	80	9.8	73	8.6
July	68	8.4	90	10.6
August	50	6.2	69	8.1
September	60	7.4	60	7.0
October	58	7.1	70	8.2
November	79	9.7	73	8.6
December	61	7.5	66	7.7
<b>Total</b>	<b>813</b>	<b>100%</b>	<b>853</b>	<b>100%</b>

**Figure 2: Number of requests for recorded information received each month during 2010 and 2011**

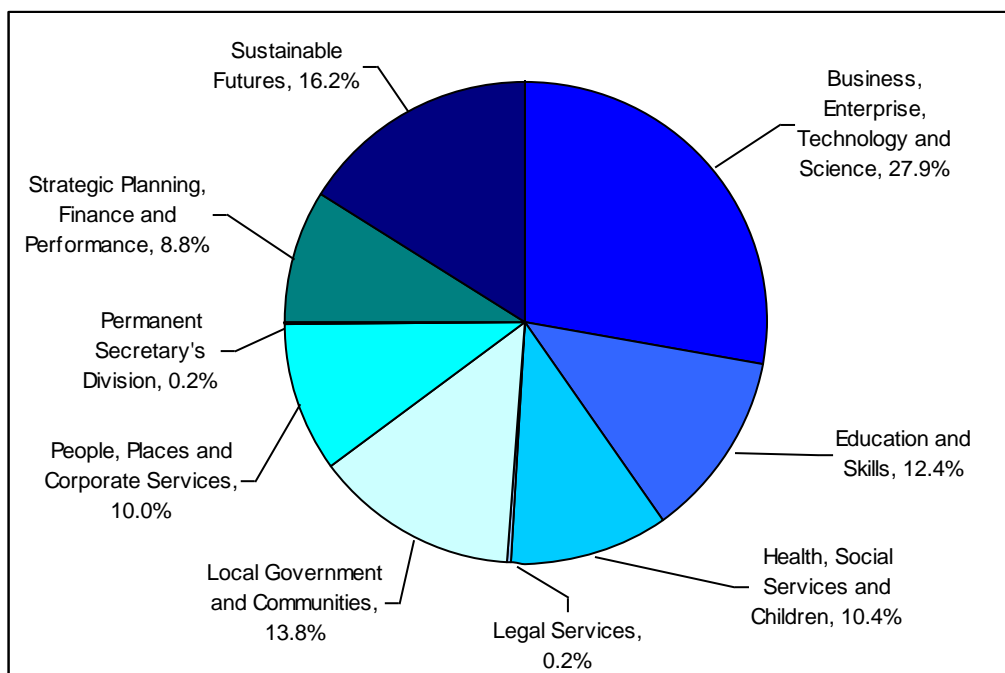


A breakdown by portfolio of the number of requests for recorded information received by the Welsh Government in 2011 is provided within Table 3. As in previous years, some areas received considerably more requests than others.

**Table 3: Number of requests received by Welsh Government portfolio areas during 2011**

Director General Area	2011 Number of Requests	% of Requests
Business, Enterprise, Technology and Science	238	27.9
Education and Skills	106	12.4
Health, Social Services and Children	89	10.4
Legal Services	2	0.2
Local Government and Communities	118	13.8
People, Places and Corporate Services	85	10.0
Permanent Secretary's Division	2	0.2
Strategic Planning, Finance and Performance	75	8.8
Sustainable Futures	138	16.2
<b>Total</b>	<b>853</b>	<b>100%</b>

**Figure 3: Number of requests received by Welsh Government portfolio areas during 2011**



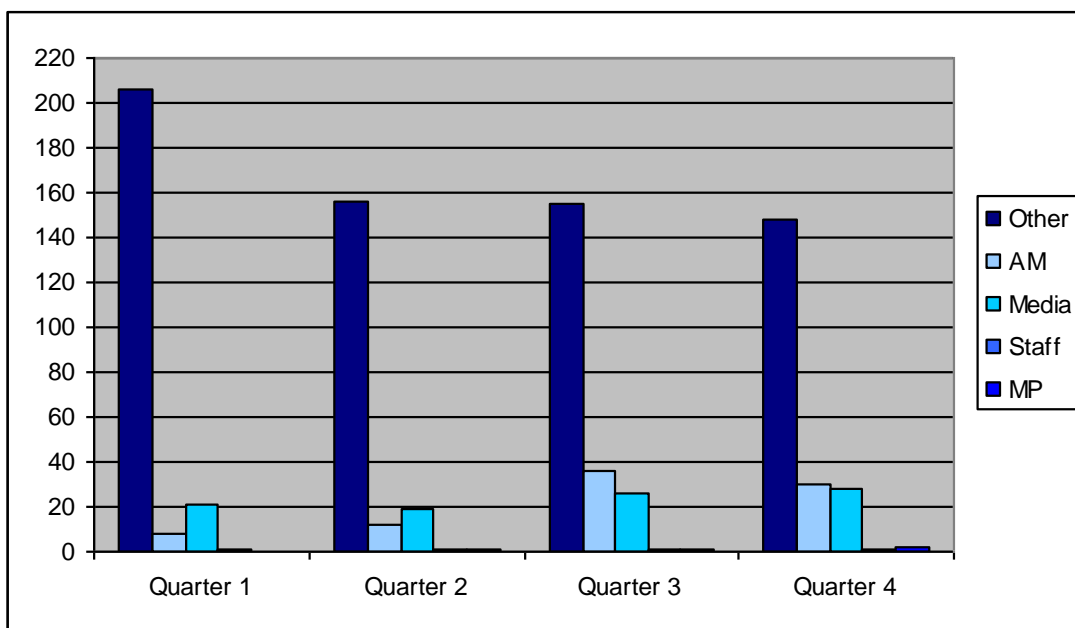
### Category of Requestor:

Over the year requests from Assembly Members (AMs), the media, staff and Members of Parliament (MPs) accounted for 188 (22.0%) of all requests. The remaining 665 requests (which amounts to 78.0% of all requests) were recorded under the 'Other' category. The number of requests from AMs has increased from 51 in 2010 to 86 in 2011.

**Table 4: Requests received from each type of requester during each quarter of 2011**

	Other	AM	Media	Staff	MP
Quarter 1	206	8	21	1	0
Quarter 2	156	12	19	1	1
Quarter 3	155	36	26	1	1
Quarter 4	148	30	28	1	2
<b>2011 Total</b>	<b>665</b>	<b>86</b>	<b>94</b>	<b>4</b>	<b>4</b>

**Figure 4: Requests received from each type of requester during each quarter of 2011**





## **Timeliness of Responses:**

In 2011, 843 of the 853 requests received by the Welsh Government were resolvable. Requests were deemed to be unresolvable either because they were insufficiently clear for the Welsh 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.

Overall, of the 843 resolvable requests, 676 (80.2%) were completed within 20 working days and 700 (83.0%) were completed within the statutory deadline<sup>4</sup>.

## **ICO Monitoring:**

The Information Commissioner's Office monitored the Welsh Government's timeliness when responding to requests for information and internal reviews for a three-month period (April – June 2011). In January 2012, the Welsh Government signed an Undertaking formalising our commitment to compliance with the Freedom of Information Act.

The Undertaking requires that:

- (1) The Welsh Government will ensure that sufficient resources are allocated to request and internal review handling and it will endeavour to consistently provide responses to requests within the statutory timescale;
- (2) The Welsh Government will ensure that all employees who deal with correspondence, or who otherwise may be required to provide information, are familiar with the requirements of the FOI Act, the Environmental Information Regulations and associated Codes of Practice. The Welsh Government will also ensure that appropriate training is provided.

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<sup>4</sup> The statutory deadline includes requests answered either within 20 working days or within a permitted extended deadline.

## Outcome of Completed Requests:

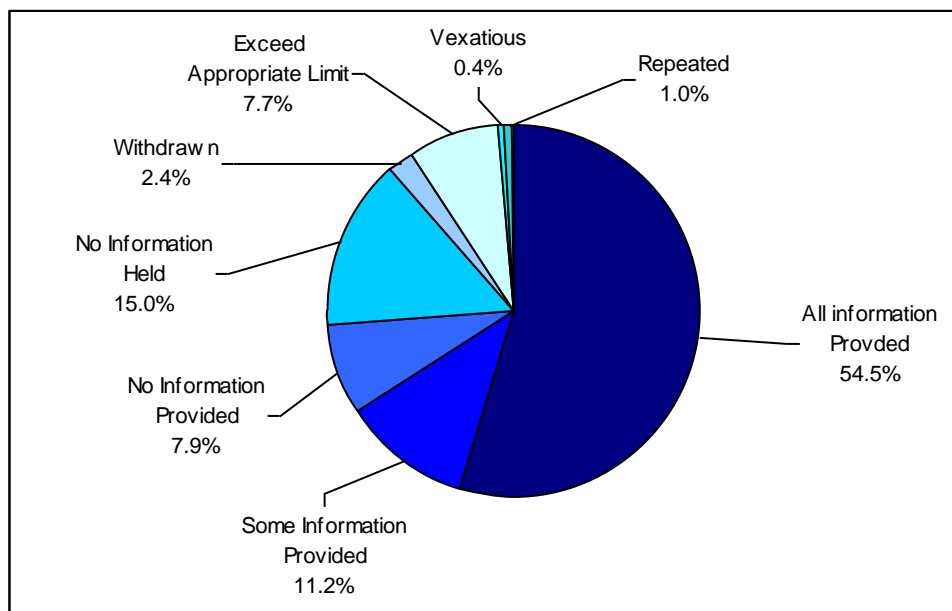
Since 1 January 2008 additional data on the outcome of requests for recorded information has been collected by the Welsh Government. This is as a result of improvements to the Request for Information (RFI) Tracking System (which is used to log and monitor each request).

The number of completed requests received by the Welsh Government during 2010 and 2011 is shown by completion category in Table 5 and Figure 5.

**Table 5: Number of completed requests shown by completion category during 2010 and 2011**

Completed Category	2010	% of Total	2011	% of Total
All Information Provided	504	64.3	458	54.5
Some Information Provided	85	10.8	94	11.2
No Information Provided	30	3.8	66	7.9
No Information Held	78	9.9	126	15.0
Withdrawn	60	7.7	20	2.4
Exceeded Appropriate Limit	26	3.3	65	7.7
Vexatious	1	0.1	3	0.4
Repeated	0	0.0	8	1.0
<b>Total</b>	<b>784</b>	<b>100%</b>	<b>840</b>	<b>100%</b>

**Figure 5: Number of completed requests shown by completion category during 2011**



## 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 and Figure 6 details the exemptions and exceptions applied at least ten times by the Welsh Government during 2011. 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 Welsh 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 Welsh Government internet site:

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

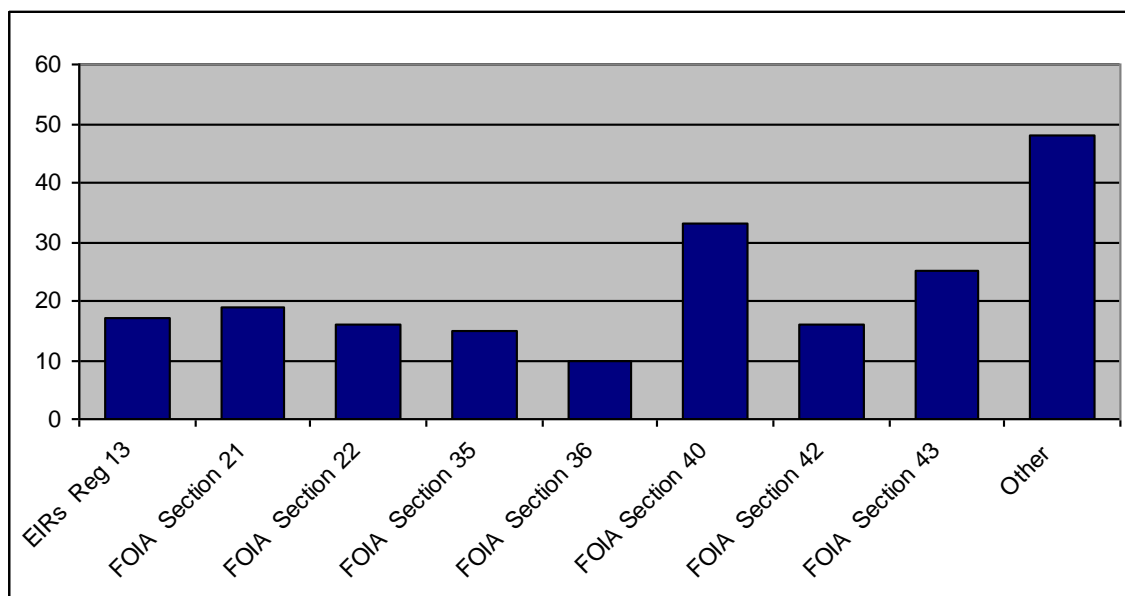
The exemptions most commonly applied were to protect personal information (section 40 FOIA), important commercial interests (section 43 FOIA) or the information was accessible to the applicant by other means (Section 21 FOIA).

Table 6: Use of exemptions and exceptions during 2011

Act-Exemption <sup>5</sup>	2011	% of Total
EIRs – Reg 13 – Personal Data of 3 <sup>rd</sup> Parties	17	8.5
FOIA – Section 21 – Info. accessible to applicant by other means	19	9.5
FOIA – Section 22 – Info. intended for future publication	16	8.0
FOIA – Section 35 – Formulation of Government policy etc	15	7.5
FOIA – Section 36 – Effective conduct of public affairs	10	5.0
FOIA – Section 40 – Personal information	33	16.6
FOIA – Section 42 – Legal professional privilege	16	8.0
FOIA – Section 43 – Commercial interests	25	12.6
All other exemptions/exceptions	48	24.1
<b>Total</b>	<b>199</b>	<b>100%</b>

<sup>5</sup> A description of the matter to which each exemption relates is provided in Annex A of the Welsh 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>

**Figure 6: Use of exemptions and exceptions during 2011**



### Internal Reviews:

In August 2010, the Welsh Government's complaints process was amended to bring it in line with the Information Commissioner's 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 Welsh 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.

The Welsh Government undertook 33 internal reviews in 2011. This equates to 3.9% of all completed requests. Of the 33 internal reviews the original decision was upheld in full or in part in 25 cases (75.8%).

**Table 7: Number of Internal Reviews (2005-2011)**

Year	Total number of internal reviews
2005	14
2006	27
2007	22
2008	21
2009	16
2010	33
2011	33

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

Figure 7: Number of Internal Reviews (2005-2011)

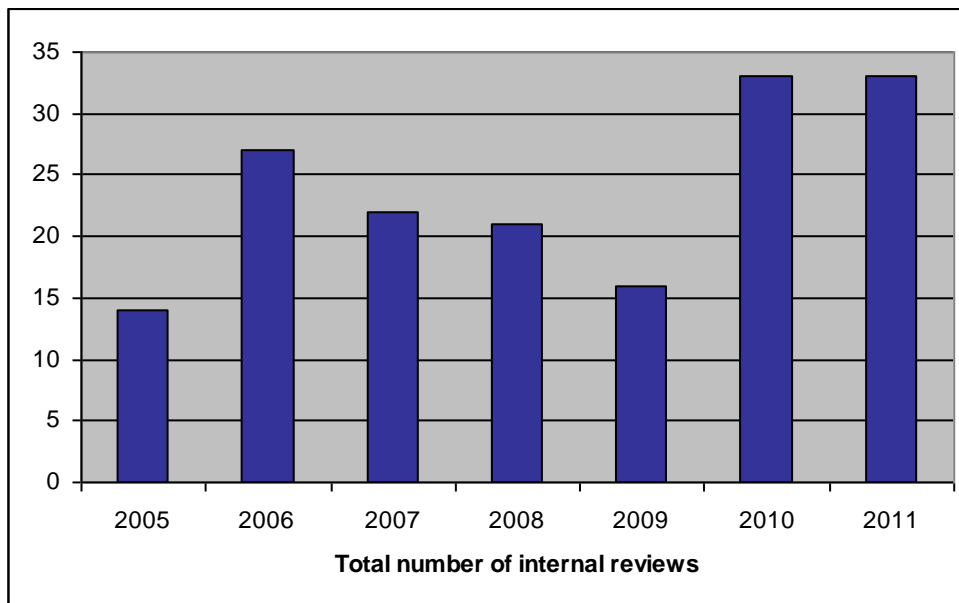
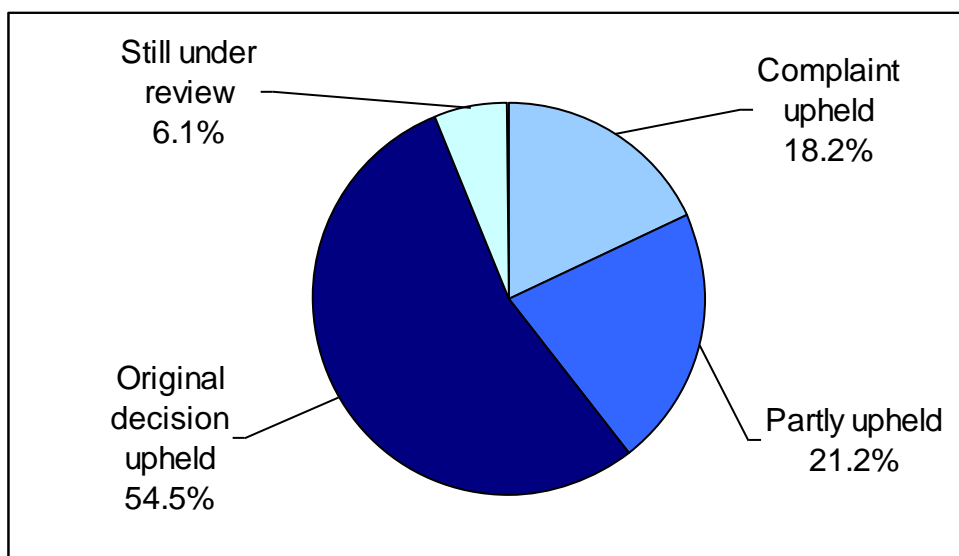


Table 8: Internal review outcomes for 2011

	Number	% of Total
Complaint upheld	6	18.2
Partly upheld	7	21.2
Original decision upheld	18	54.5
Still under review	2	6.1
<b>Total</b>	<b>33</b>	<b>100%</b>

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

Figure 8: Internal review outcomes for 2011



## **Appeals to the Information Commissioner:**

If a requestor is not satisfied with the Welsh Government's response, then they can complain 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 will decide whether to investigate and may 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. Not all investigations will result in a Decision Notice. Some investigations are resolved informally.

In 2011 the ICO investigated 6 complaints<sup>6</sup>, 3 of which are still under investigation. In 2011 the ICO issued 3 Decision Notices. Two Decision Notices upheld the Welsh Government's decision and the third partly upheld the Welsh Government's decision.

## **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 Welsh Government received no appeals during 2011.

## **Information Routinely Published:**

During 2011, the Welsh 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;
- monthly expenditure over £25k
- 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>

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<sup>6</sup> A complaint to the ICO is defined as a formal investigation which will result/has resulted in the ICO issuing a Decision Notice. Investigations that are resolved informally are not counted in these figures.

## Annex A: Use of exemptions and exceptions during 2011

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	2011	% of Total
DPA Schedule 7, Paragraph 10 – Legal Professional Privilege	1	0.5
DPA Schedule 7, Paragraph 3 – Judicial appointments and honours	1	0.5
DPA Section 30 – Health, Education and Social Work	4	2.0
EIRs Reg 12(4)(a) – Information not held when request received	2	1.0
EIRs Reg 12(4)(b) – Request is manifestly unreasonable	3	1.5
EIRs Reg 12(4)(c) – Formulated in too general a manner	1	0.5
EIRs Reg 12(4)(d) – Material is still in course of completion, unfinished documents or incomplete data	1	0.5
EIRs Reg 12(4)(e) – Internal communications	8	4.0
EIRs Reg 12(5)(e) – Confidentiality of commercial or industrial information where confidentiality is provided by law to protect a legitimate economic interest	1	0.5
EIRs Reg 12(5)(f) – Interests of person who provided information where that person: (i) not under legal obligation to have supplied the information (ii) did not supply it in circumstances where the public authority is entitled to disclose the information apart from these regulations (iii) has not consented to disclosure	1	0.5
EIRs Reg 13 – Personal data of third parties.	17	8.5
FOIA Section 1(3) – Description of information does not allow us to locate and identify the information	5	2.5
FOIA Section 12 – Cost of compliance exceeds the appropriate limit	5	2.5
FOIA Section 21 – Information accessible to applicant by other means	19	9.5
FOIA Section 22 – Information intended for future publication	16	8.0
FOIA Section 27 – International relations	1	0.5

FOIA Section 28 – Relations within the United Kingdom	1	0.5
FOIA Section 29 – The economy	5	2.5
FOIA Section 31 – Law enforcement	3	1.5
FOIA Section 33 – Audit functions	1	0.5
FOIA Section 35 – Formulation of government policy, etc	15	7.5
FOIA Section 36 – Effective conduct of public affairs	10	5.0
FOIA Section 38 – Health and safety	1	0.5
FOIA Section 40 – Personal information	33	16.6
FOIA Section 41 – Information provided in confidence	3	1.5
FOIA Section 42 – Legal professional privilege	16	8.0
FOIA Section 43 – Commercial interests	25	12.6
<b>Total</b>	<b>199</b>	<b>100%</b>

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