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Llywodraeth Cymru  
Welsh Government

## **Report on the Implementation of Open Government Legislation and Policies during 2013**

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**Introduction:**

This is the eighth 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 2013.

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 23 April 2014. 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 2013:

- The Welsh Government received 1102 requests for recorded information.
- The total number of requests received increased by 11.1% (from 992 in 2012).
- Of the 1102 requests the Welsh Government completed<sup>1</sup> 1099 (99.7%) with 3 still active at the time this report was generated.
- Of the 1099 completed requests, 951 (86.5%) were completed within 20 working days and 990 (90.1%) were completed within the statutory deadline<sup>2</sup>.
- Of the 1099 completed requests some or all of the information was provided in response to 669 (60.9%).
- The most commonly applied exemptions under FOIA were: section 21: Information accessible to applicant by other means (19.1%), section 43: commercial interests (13.4%), and section 35: Formulation of government policy (10.8%).
- The Welsh Government received a total of 51 complaints (4.6% of requests received) relating to its handling of requests for information.
- Of the 51 internal reviews, the complaint was upheld in 4 cases, partly upheld in 7 cases and the original decision was upheld in 36 cases. In addition 1 internal review was withdrawn by the complainant and 3 were investigated by the Information Commissioner before the internal investigation was completed.
- The Information Commissioner's Office investigated 13 complaints<sup>3</sup> (1.2% of requests) and issued a Decision Notice in relation to 12 of them.
- 3 ICO Decision Notices were appealed to the First-tier Tribunal.

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<sup>1</sup> A completed request is a request for recorded information that has been answered by the Welsh Government.

<sup>2</sup> The statutory deadline includes requests answered either within 20 working days or within a permitted extended deadline.

<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 1102 requests for recorded information in 2013. Since the commencement of the FOIA on 1 January 2005 the number of requests received each year has fluctuated. There was a 11.1% increase in the number of requests received in 2013 when compared to 2012.

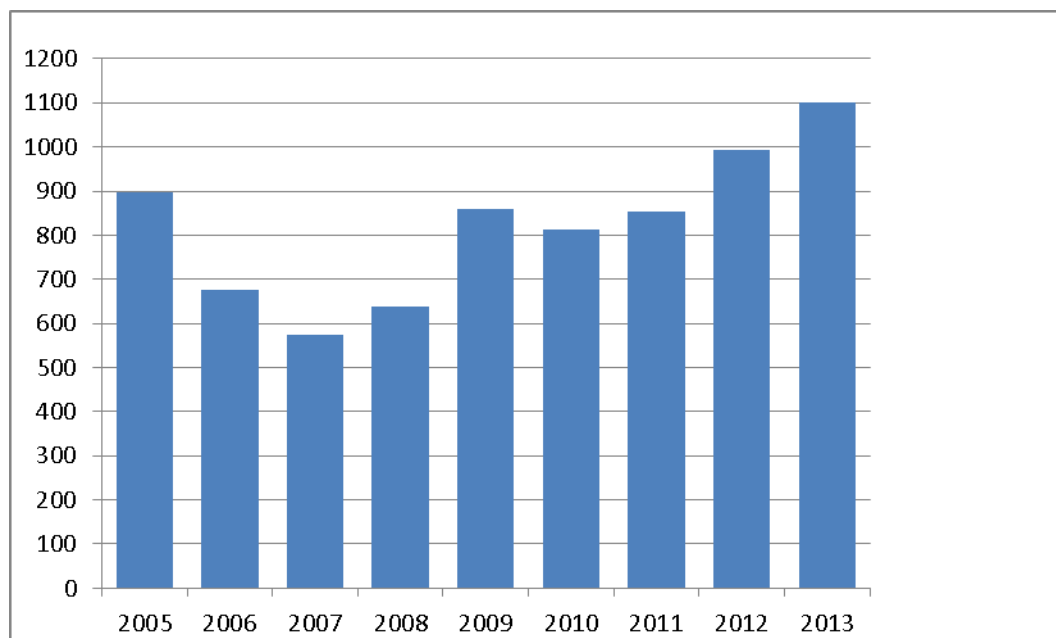
Table 1 and Figure 1 below detail the annual total number of requests for recorded information received by the Welsh Government since 2005.

Table 2 and Figure 2 compare the number of requests received on a month by month basis in 2012 and 2013.

Table 1: Total number of requests for recorded information received 2005-2013

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
2012	992	16.3
2013	1102	11.1

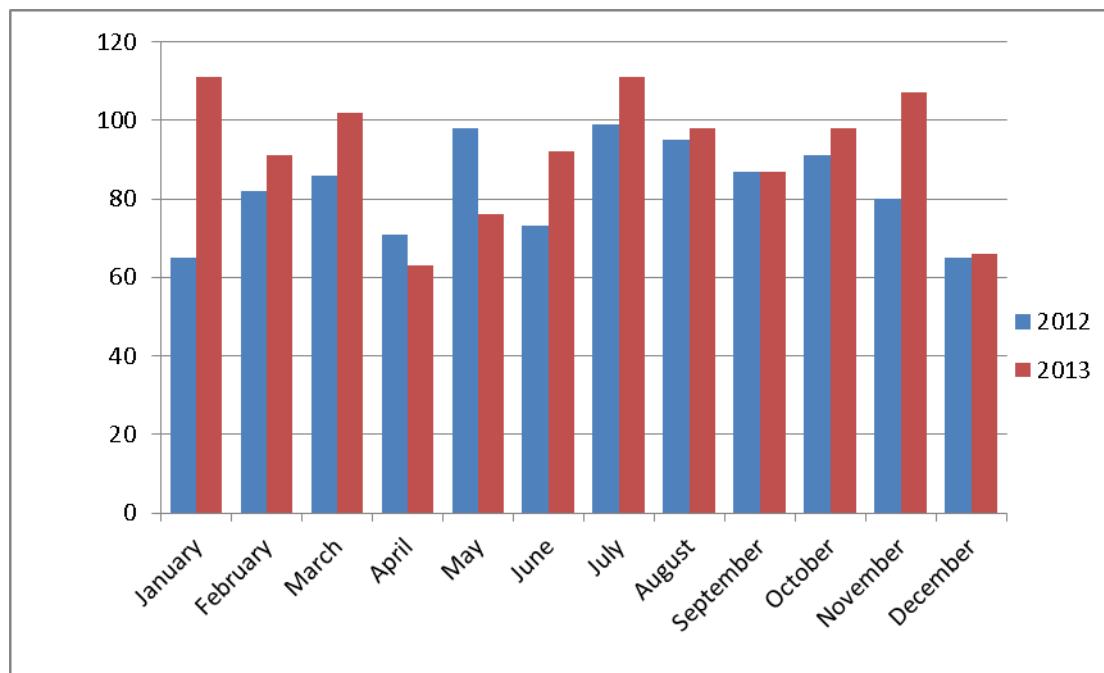
Figure 1: Total number of requests for recorded information received 2005-2013



**Table 2: Number of requests for recorded information received each month during 2012 and 2013**

Month	2012	% of Total	2013	% of Total
January	65	6.6%	111	10.1%
February	82	8.3%	91	8.3%
March	86	8.7%	102	9.3%
April	71	7.2%	63	5.7%
May	98	9.9%	76	6.9%
June	73	7.4%	92	8.3%
July	99	10.0%	111	10.1%
August	95	9.6%	98	8.9%
September	87	8.8%	87	7.9%
October	91	9.2%	98	8.9%
November	80	8.1%	107	9.7%
December	65	6.6%	66	6.0%
<b>Total</b>	<b>992</b>	<b>100%</b>	<b>1102</b>	<b>100%</b>

**Figure 2: Number of requests for recorded information received each month during 2012 and 2013**

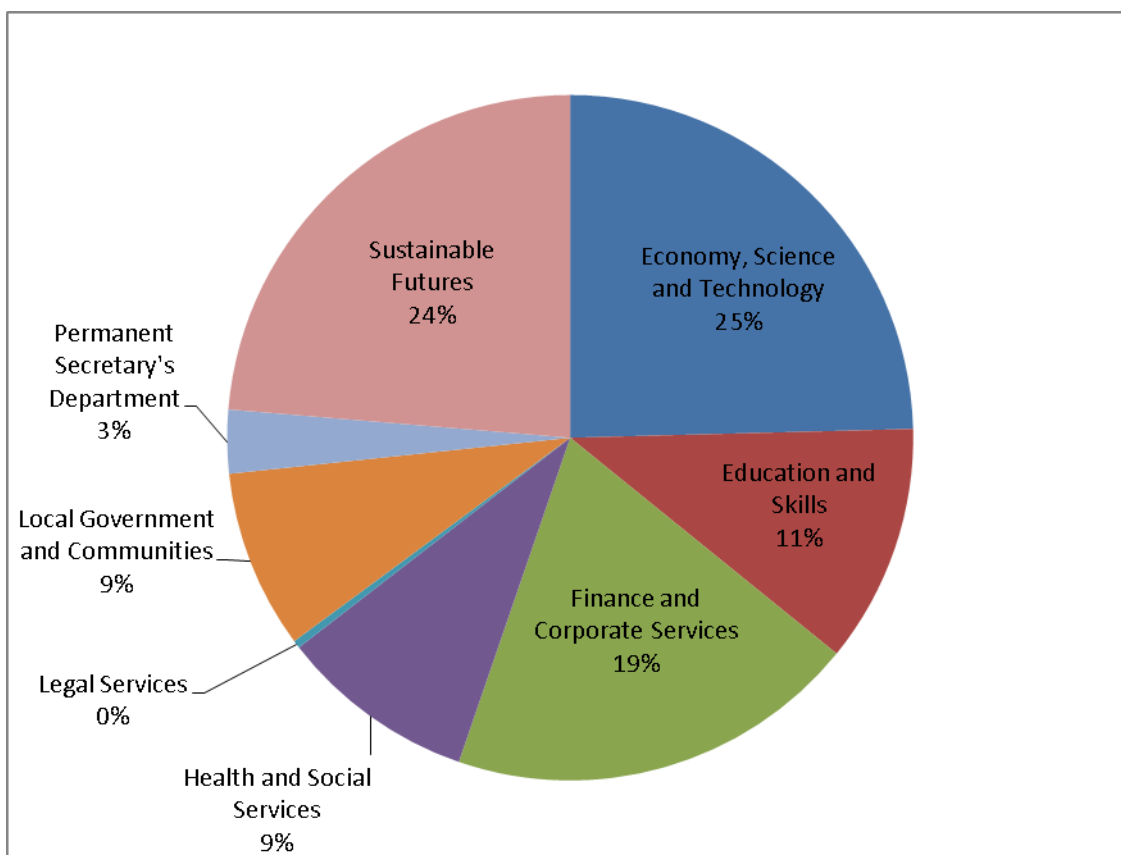


A breakdown by portfolio of the number of requests for recorded information received by the Welsh Government in 2013 is provided within Table 3.

**Table 3: Number of requests received by Welsh Government portfolio areas during 2013**

Director General Area	2013 Number of Requests	% of Requests
Economy, Science and Technology	271	24.6%
Education and Skills	124	11.3%
Finance and Corporate Services	214	19.4%
Health and Social Services	102	9.3%
Legal Services	4	0.4%
Local Government and Communities	93	8.4%
Permanent Secretary's Department	33	3.0%
Sustainable Futures	261	23.7%
<b>Total</b>	<b>1102</b>	<b>100%</b>

**Figure 3: Number of requests received by Welsh Government portfolio areas during 2013**



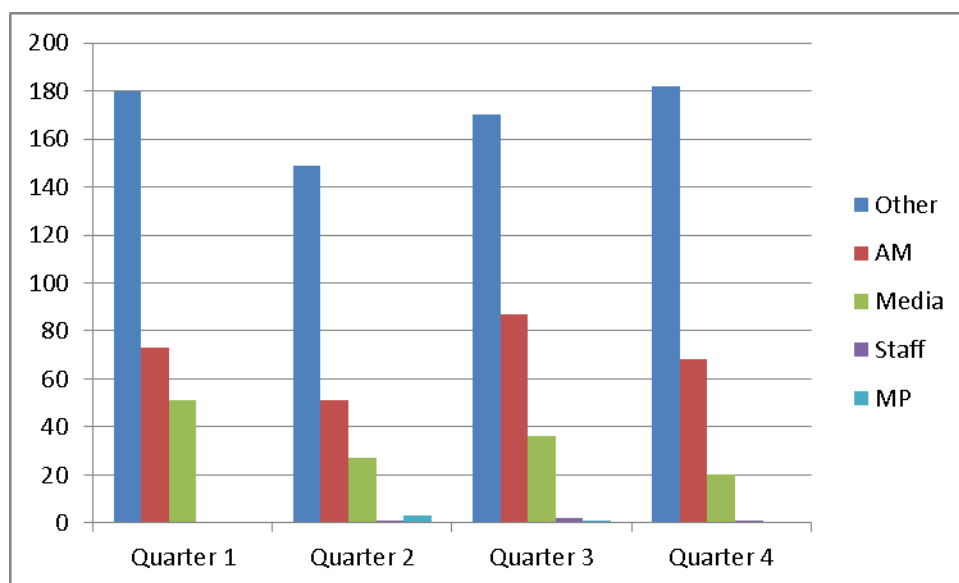
### Category of Requestor:

Over the year, requests from Assembly Members (AMs), the media, staff and Members of Parliament (MPs) accounted for 421 (38.2%) of the 1102 requests received. The remaining 681 requests (which amount to 61.8% of all requests) were recorded under the 'Other' category.

**Table 4: Requests received from each type of requester during each quarter of 2013**

	Other	AM	Media	Staff	MP
Quarter 1	180	73	51	0	0
Quarter 2	149	51	27	1	3
Quarter 3	170	87	36	2	1
Quarter 4	182	68	20	1	0
<b>2013 Total</b>	<b>681</b>	<b>279</b>	<b>134</b>	<b>4</b>	<b>4</b>

**Figure 4: Requests received from each type of requester during each quarter of 2013**





## Timeliness of Responses:

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 1102 requests, 1099 were completed (99.7%) with 3 still active at the time this report was generated. Of the 1099 completed requests, 951 (86.5%) were completed within 20 working days and 990 (90.1%) were completed within the statutory deadline<sup>4</sup>.

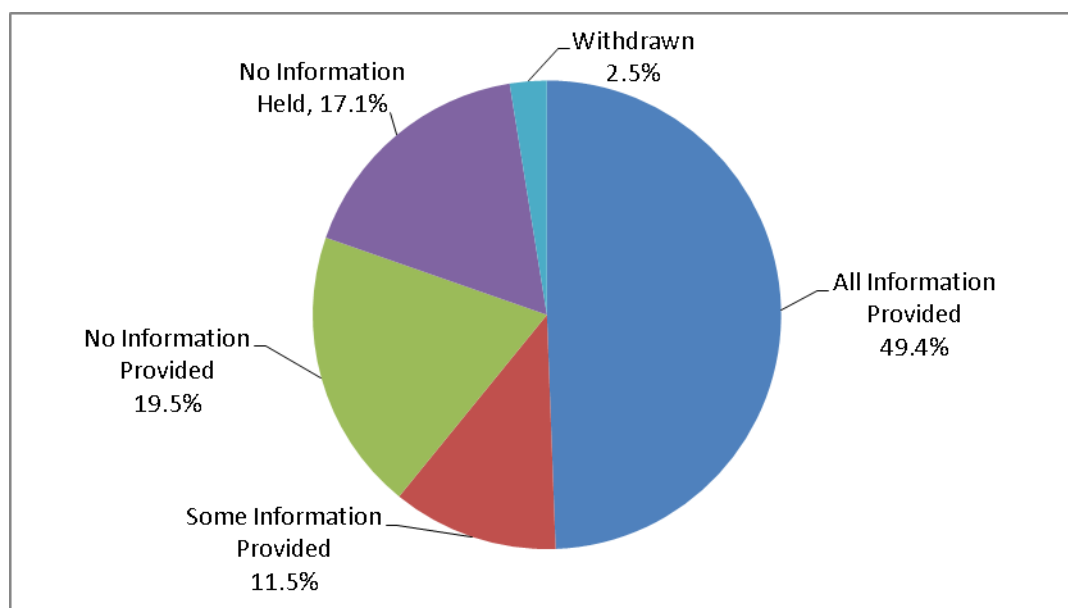
## Outcome of Completed Requests:

The number of completed requests received by the Welsh Government during 2012 and 2013 is shown by completion category in Tables 5a and 5b, and Figures 5a and 5b.

**Table 5a: Number of completed requests shown by completion category during 2012 and 2013**

Completed Category	2012	% of Total	2013	% of Total
All Information Provided	508	52.0%	543	49.4%
Some Information Provided	125	12.8%	126	11.5%
No Information Provided <sup>5</sup>	161	16.5%	214	19.5%
No Information Held	160	16.4%	188	17.1%
Withdrawn	23	2.4%	28	2.5%
<b>Total</b>	<b>977</b>	<b>100%</b>	<b>1099</b>	<b>100%</b>

**Figure 5a: Number of completed requests shown by completion category during 2013**



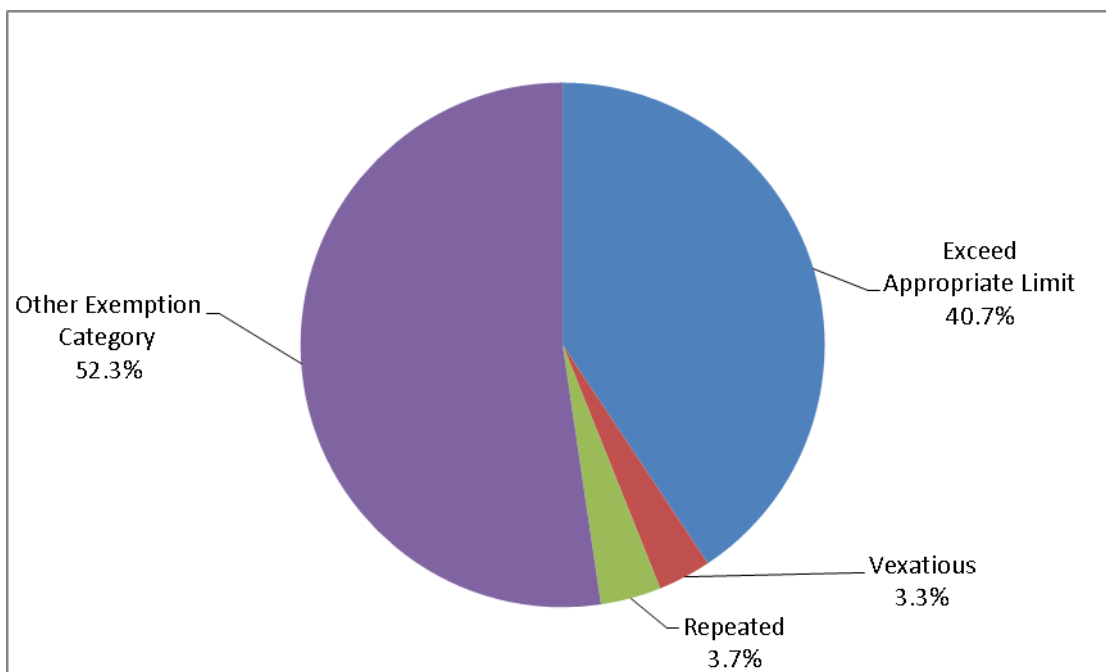
<sup>4</sup> The statutory deadline includes requests answered either within 20 working days or within a permitted extended deadline.

<sup>5</sup> The 'No Information Provided' category includes information withheld in full using one or more exemptions, and those rejected for exceeding the appropriate limit, and being vexatious or repeated requests.

Table 5b: Number of 'No Information Provided' requests broken down by exemption category

No Information Provided Completed Category	2012	% of Total	2013	% of Total
S12 Exceeded Appropriate Limit	73	45.3%	87	40.7%
S14 Vexatious	2	1.2%	7	3.3%
S14 Repeated	5	3.1%	8	3.7%
Information falls into another exemption category <sup>6</sup>	81	50.3%	112	52.3%
<b>Total</b>	<b>161</b>	<b>100%</b>	<b>214</b>	<b>100%</b>

Figure 5b: Number of 'No Information Provided' requests broken down by exemption category



<sup>6</sup> This includes requests where the information was withheld in full using one or more exemptions/ exceptions listed in the FOIA, EIRs 2004 or DPA other than s12 'cost of compliance exceeds the appropriate limit' and s14 'vexatious or repeated'.

## 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 2013. 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/about/foi/responses/?lang=en>

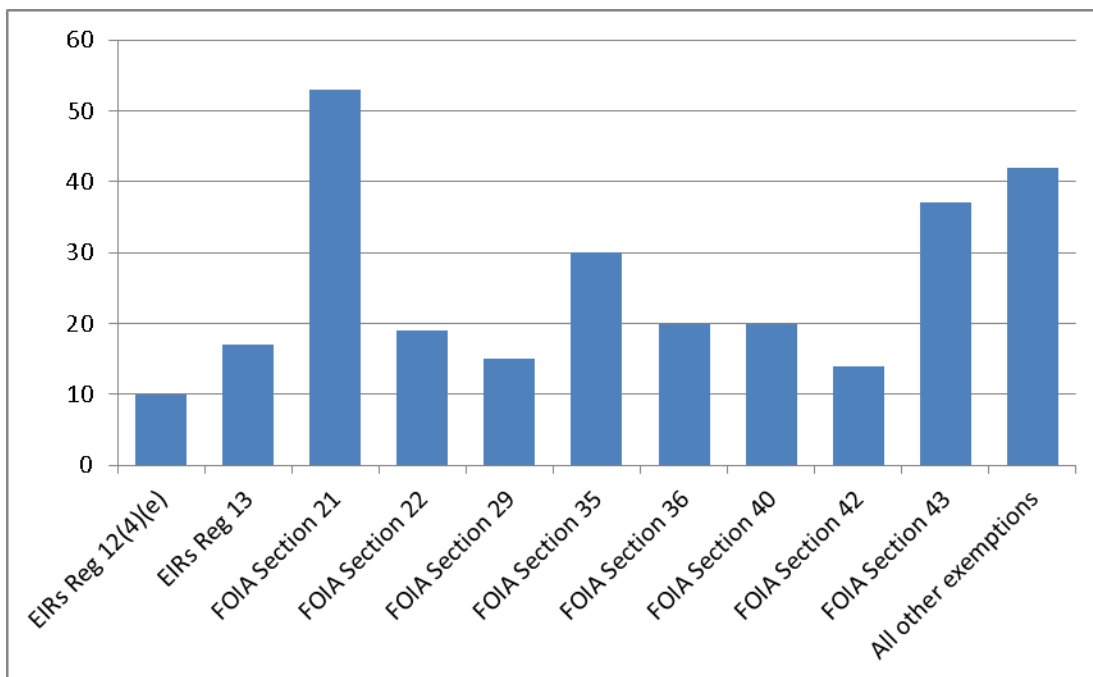
The exemptions most commonly applied were where the information was accessible to the applicant by other means (section 21 FOIA), to protect important commercial interests (section 43 FOIA) and to protect the formulation of government policy (section 35 FOIA).

**Table 6: Use of exemptions and exceptions during 2013**

Act-Exemption <sup>7</sup>	2013	% of Total
EIRs Reg 12(4)(e)	10	3.6%
EIRs Reg 13	17	6.1%
FOIA Section 21	53	19.1%
FOIA Section 22	19	6.9%
FOIA Section 29	15	5.4%
FOIA Section 35	30	10.8%
FOIA Section 36	20	7.2%
FOIA Section 40	20	7.2%
FOIA Section 42	14	5.1%
FOIA Section 43	37	13.4%
All other exemptions	42	15.2%
<b>Total</b>	<b>277</b>	<b>100%</b>

<sup>7</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://wales.gov.uk/about/foi/policies/code/?lang=en>

**Figure 6: Use of exemptions and exceptions during 2013**



## Internal Reviews:

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.

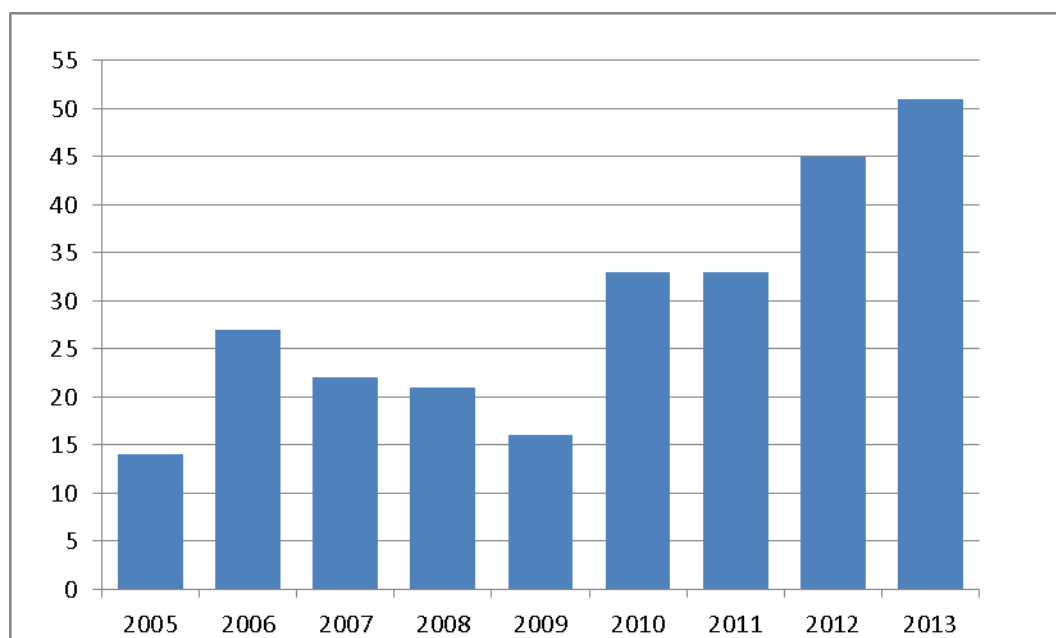
The Welsh Government received 51 complaints in 2013 which equates to 4.6% of requests. This was an increase compared with 2012 of 13.3%. The Welsh Government has completed an internal review in relation to 47 of 51 complaints.

Table 7: Number of Complaints (2005-2013)

Year	Total number of complaints
2005	14
2006	27
2007	22
2008	21
2009	16
2010	33
2011	33
2012	45
2013	51

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

Figure 7: Number of Complaints (2005-2013)



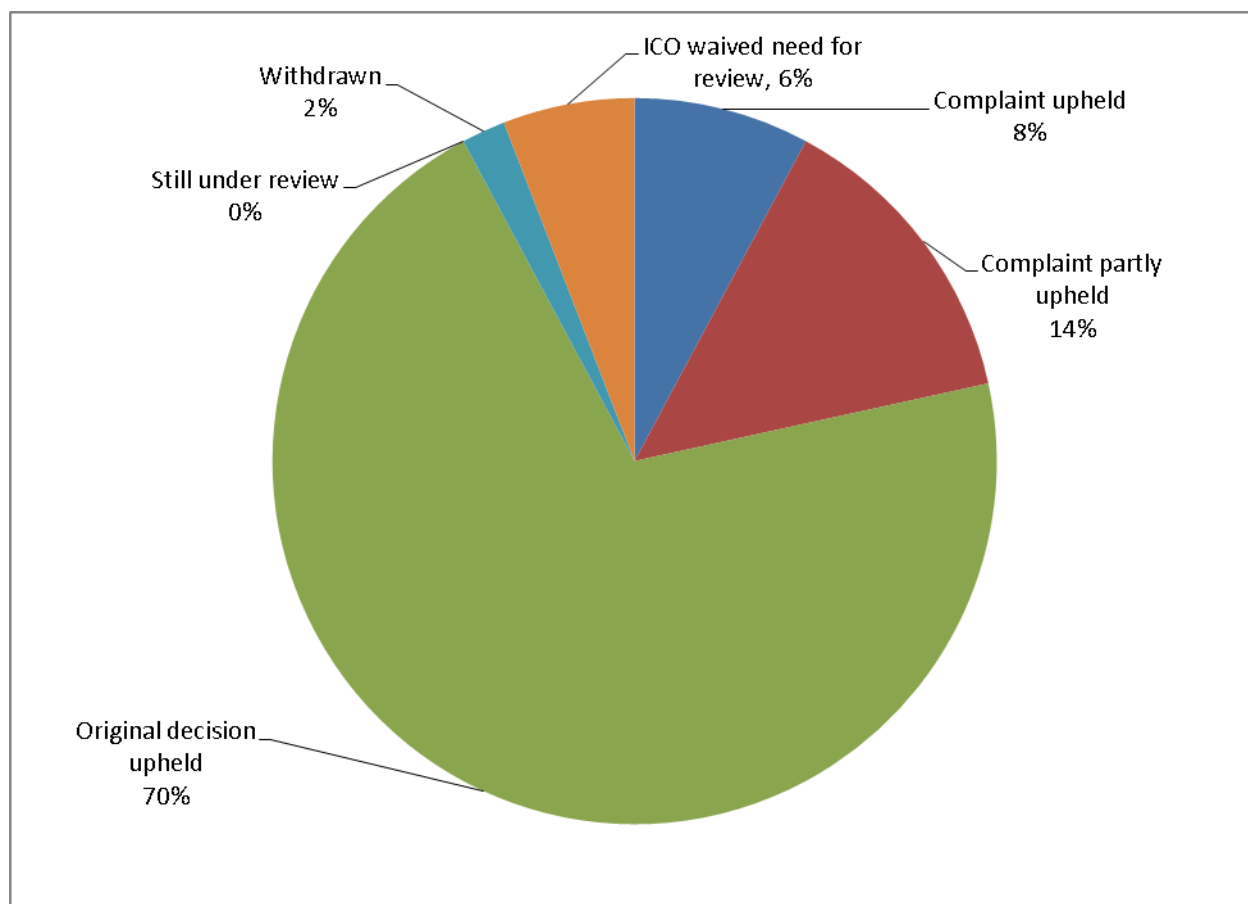
**Table 8: Internal review outcomes for 2013**

	Number	% of Total
Complaint upheld	4	7.8%
Complaint partly upheld	7	13.7%
Original decision upheld	36	70.6%
Still under review	0	0%
ICO waived the need for review	3	5.9%
Withdrawn	1	2.0%
<b>Total</b>	<b>51</b>	<b>100%</b>

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

Of the 51 internal reviews, the complaint was upheld in 4 cases, partly upheld in 7 cases and the original decision was upheld in 36 cases. In addition 1 internal review was withdrawn by the complainant and 3 were investigated by the Information Commissioner before the internal investigation was completed.

**Figure 8: Internal review outcomes for 2013**



### **Timeliness of Internal Reviews:**

There is no statutory deadline for completing an internal review. However, the Information Commissioner has issued guidance which states that an internal review should be completed within 20 working days and that in exceptional cases the deadline for completing can be extended to 40 working days.

Of the 47 completed internal reviews 38 (80.9%) were completed within 20 working days, 9 (19.1%) were completed within 21 to 40 working days.

### **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 2013 the ICO investigated 13 complaints<sup>8</sup> (1.2% of requests). Of the 12 completed investigations 12 decision notices were issued.

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

The First-tier Tribunal (Information Rights) hears appeals against Decision Notices issued by the ICO. In 2013, 3 ICO Decision Notices were appealed to the First-tier Tribunal.

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<sup>8</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 2013

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.

<b>Act - Exemption</b>	<b>2013</b>	<b>% of Total</b>
DPA Schedule 7, Paragraph 9 – Judicial appointments and honours	1	0.4%
DPA Schedule 29 – Crime and taxation	1	0.4%
DPA Section 30 – Health, Education and Social Work	2	0.7%
EIRs Reg 12(4)(b) – Request is manifestly unreasonable	3	1.1%
EIRs 12(4)(d) – Material is still in the course of completion, unfinished documents or incomplete data	2	0.7%
EIRs Reg 12(4)(e) – Internal communications	10	3.6%
EIRs Reg 12(5)(a) – International relations, defence, national security or public safety	2	0.7%
EIRs Reg 12(5)(b) – Course of justice, fair trial, criminal or disciplinary inquiry	6	2.2%
EIRS Reg 12(5)(c) – Intellectual property rights	1	0.4%
EIRs Reg 12(5)(e) – Confidentiality of commercial or industrial information where confidentiality is provided by law to protect a legitimate commercial interest	2	0.7%
EIRs Reg 13 – Personal data of third parties	17	6.1%
FOIA Section 21 – Information accessible to the applicant by other means	53	19.1%
FOIA Section 22 – Information intended for future publication	19	6.9%
FOIA Section 23 – Information supplied by, or relating to, bodies dealing with security matters	2	0.7%
FOIA Section 24 – National security	1	0.4%
FOIA Section 28 – Relations within the United Kingdom	2	0.7%
FOIA Section 29 – The economy	15	5.4%
FOIA Section 31 – Law enforcement	6	2.2%
FOIA Section 33 – Audit functions	3	1.1%
FOIA Section 35 – Formation of government policy	30	10.8%
FOIA Section 36 – Effective conduct of public affairs	20	7.2%
FOIA Section 37 – Communications with Her majesty, etc and honours	2	0.7%
FOIA Section 38 – Health and safety	2	0.7%
FOIA Section 40 – Personal Information	20	7.2%
FOIA Section 41 – Information provided in confidence	3	1.1%
FOIA Section 42 – Legal professional privilege	14	5.1%
FOIA Section 43 – Commercial interests	37	13.4%
FOIA Section 44 – Prohibitions on disclosure	1	0.4%
<b>Total</b>	<b>277</b>	<b>100%</b>