



Llywodraeth Cymru
Welsh Government

Report on the Implementation of Open Government Legislation and Policies during 2020

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Introduction:

This is the fifteenth 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 2020.

The statistics in this report relate to the handling of requests for recorded information under the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 (EIRs) and the Data Protection Act 2018 (DPA2018) / UK General Data Protection Regulation (UK GDPR). 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 14 July 2021. 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 2020:

- The Welsh Government received 984 requests for recorded information.
- The total number of requests received increased by 34.1% (from 734 in 2019). This is more in keeping with the 934 requests received in 2018.
- Of the 984 requests the Welsh Government completed¹ 978 (99.4%) at the time this report was generated.
- Of the 978 completed requests, 774 (79.1%) were completed within 20 working days and 780 (79.8%) were completed within the statutory deadline².
- Of the 978 completed requests some or all of the information was provided in response to 622 (63.6%).
- The most commonly applied exemptions / exceptions were: FOIA section 40: personal information (26.9%), FOIA section 21: information accessible to applicant by other means (14.5%), and FOIA section 22: information intended for future publication (10.8%).
- The Welsh Government received a total of 48 complaints (4.9% of requests received) relating to its handling of requests for information.
- Of the 48 internal reviews, the complaint was upheld in 3 cases, partly upheld in 4 cases, the original decision was upheld in 40 cases. 1 complaint is still under review.
- The Information Commissioner's Office investigated 8 complaints³ (0.8% of requests) and issued a Decision Notice in relation to 4 of them.
- No ICO Decision Notices were appealed to the First-tier Tribunal.

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

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

³ A complaint to the ICO is defined as a formal investigation which has resulted in the ICO issuing a Decision Notice or is otherwise resolved by the ICO.

Volume of Freedom of Information Requests:

The Welsh Government received 984 requests for recorded information in 2020. Since the commencement of the FOIA on 1 January 2005 the number of requests received each year has fluctuated. There was a 34.1% increase in the number of requests received in 2020 when compared to 2019, though this figure is more in line with the 934 requests received in 2018.

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 2019 and 2020.

Table 1: Total number of requests for recorded information received 2005-2020

| 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 | 1,102 | 11.1% |
| 2014 | 914 | -17.1% |
| 2015 | 899 | -1.6% |
| 2016 | 885 | -1.6% |
| 2017 | 787 | -11.1% |
| 2018 | 934 | 18.7% |
| 2019 | 734 | -21.4% |
| 2020 | 984 | 34.1% |

Figure 1: Total number of requests for recorded information received 2005-2020

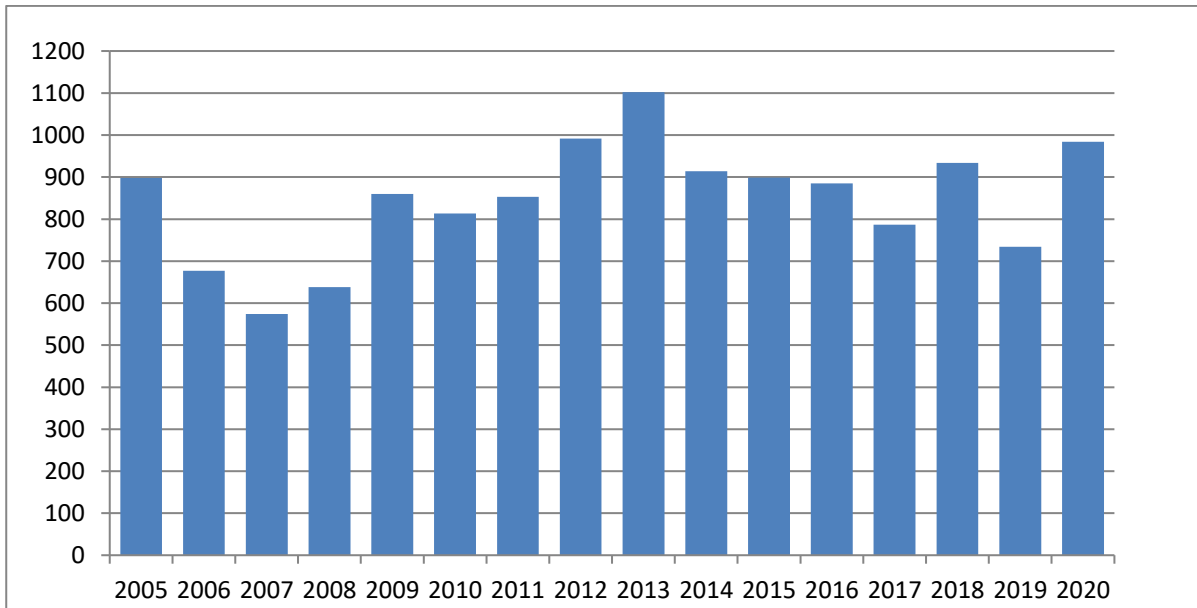
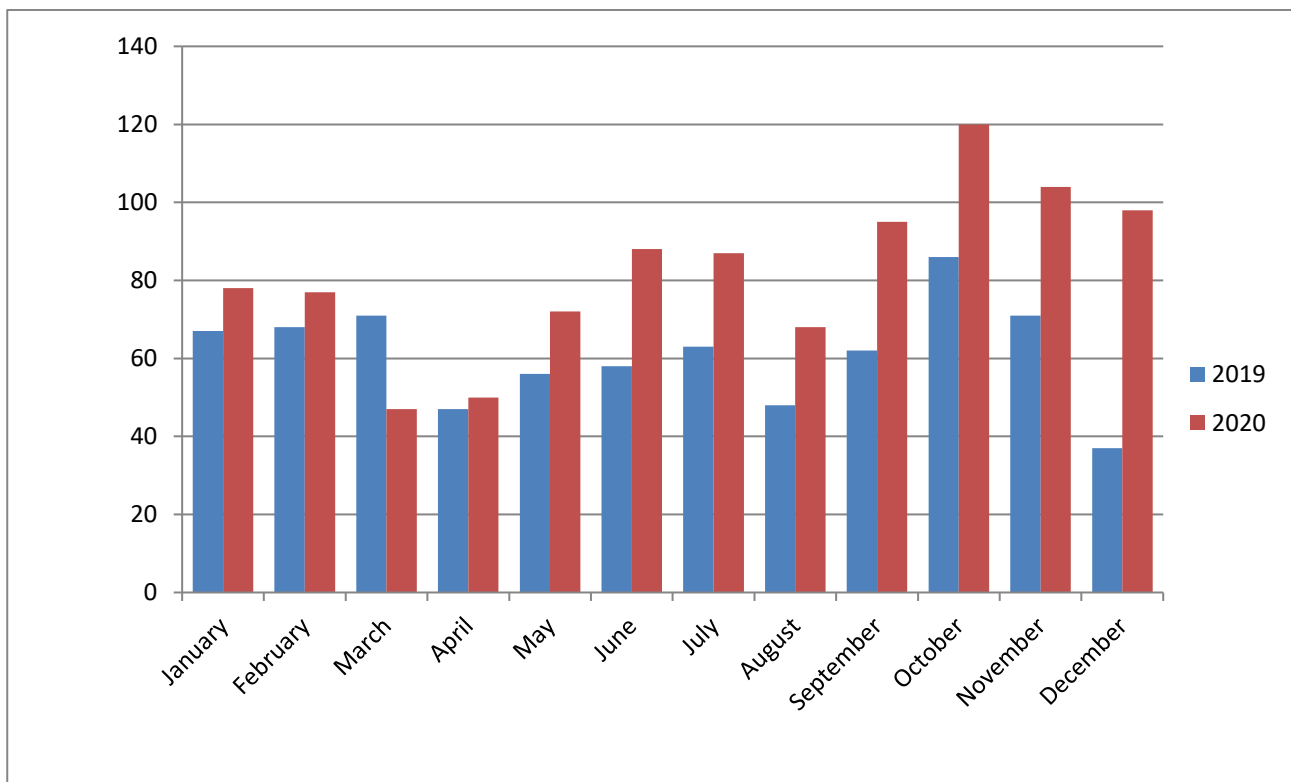


Table 2: Number of requests for recorded information received each month: 2019 & 2020

| Month | 2019 | % of Total | 2020 | % of Total |
|--------------|------------|-------------|------------|-------------|
| January | 67 | 9.1% | 78 | 7.9% |
| February | 68 | 9.3% | 77 | 7.8% |
| March | 71 | 9.7% | 47 | 4.8% |
| April | 47 | 6.4% | 50 | 5.1% |
| May | 56 | 7.6% | 72 | 7.3% |
| June | 58 | 7.9% | 88 | 8.9% |
| July | 63 | 8.6% | 87 | 8.8% |
| August | 48 | 6.5% | 68 | 6.9% |
| September | 62 | 8.4% | 95 | 9.7% |
| October | 86 | 11.7% | 120 | 12.2% |
| November | 71 | 9.7% | 104 | 10.6% |
| December | 37 | 5.0% | 98 | 10.0% |
| Total | 734 | 100% | 984 | 100% |

Figure 2: Number of requests for recorded information received each month: 2019 & 2020

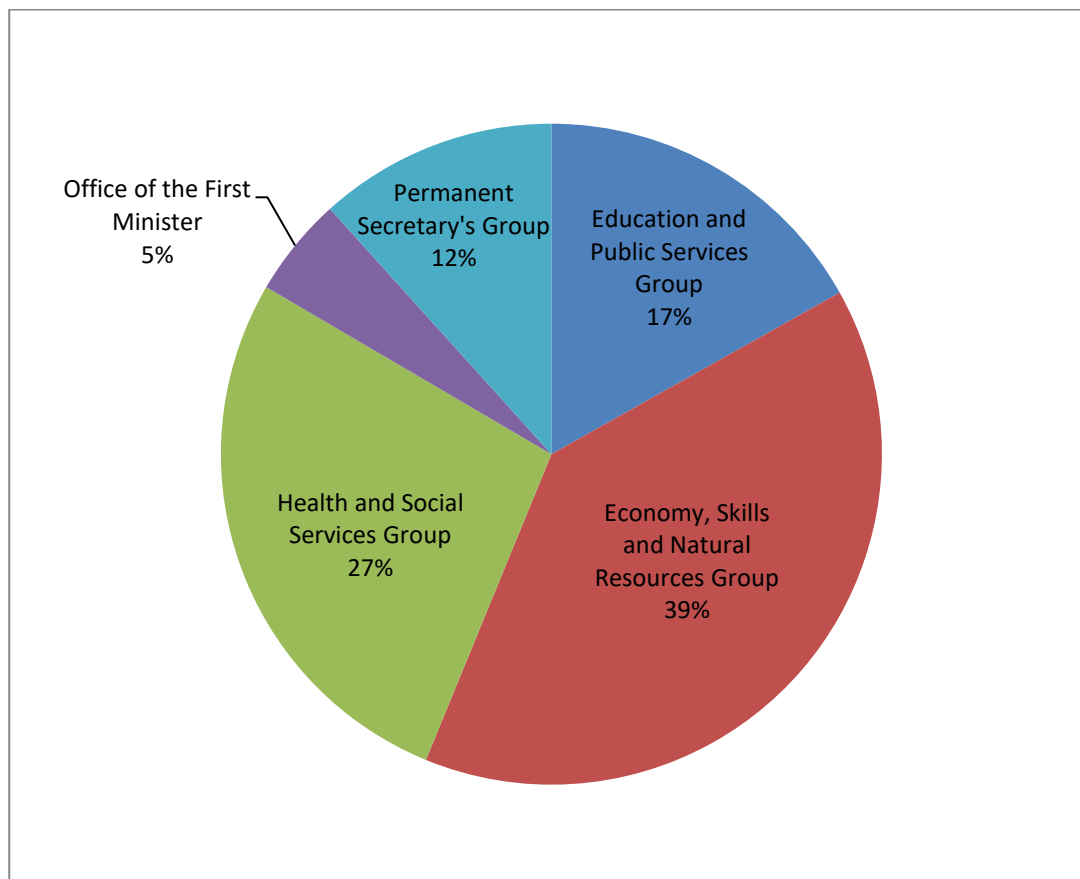


A breakdown by portfolio of the number of requests for recorded information received by the Welsh Government in 2020 is provided within Table 3.

Table 3: Number of requests received by Welsh Government portfolio areas during 2020

| Director General Area / Group | 2020 Number of Requests | % of Requests |
|---|----------------------------------|------------------|
| Education and Public Services Group | 166 | 16.9% |
| Economy, Skills and Natural Resources Group | 387 | 39.3% |
| Health and Social Services Group | 268 | 27.2% |
| Office of the First Minister | 48 | 4.9% |
| Permanent Secretary's Group | 115 | 11.7% |
| Total | 984 | 100% |

Figure 3: Number of requests received by Welsh Government portfolio areas during 2020



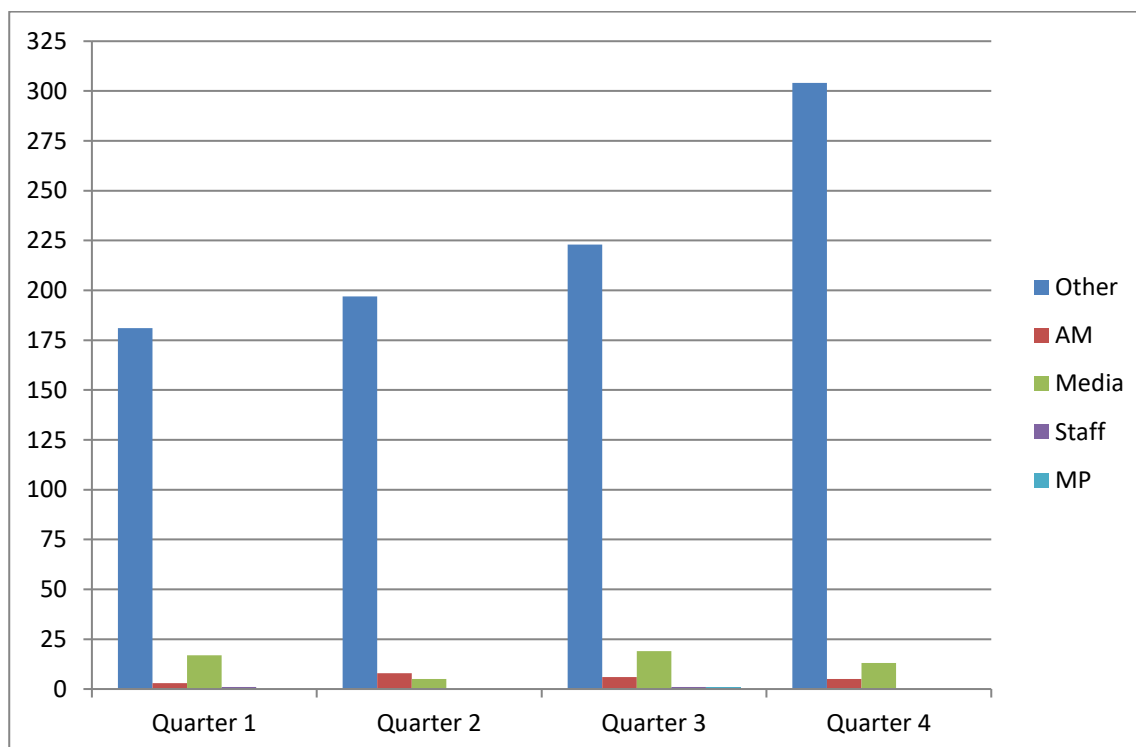
Category of Requestor:

Over the year, requests from Members of the Senedd, the media, staff and Members of Parliament (MPs) accounted for 79 (8.0%) of the 984 requests received. The remaining 905 requests (which amount to 92.0% of all requests) were recorded under the 'Other' category.

Table 4: Requests received from each type of requester during each quarter of 2020

| | Other | MS | Media | Staff | MP |
|-------------------|------------|-----------|-----------|----------|----------|
| Quarter 1 | 181 | 3 | 17 | 1 | 0 |
| Quarter 2 | 197 | 8 | 5 | 0 | 0 |
| Quarter 3 | 223 | 6 | 19 | 1 | 1 |
| Quarter 4 | 304 | 5 | 13 | 0 | 0 |
| 2020 Total | 905 | 22 | 54 | 2 | 1 |

Figure 4: Requests received from each type of requester during each quarter of 2020



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 984 requests, 978 were complete (99.4%) at the time the report was compiled. Of the 978 completed requests, 774 (79.1%) were completed within 20 working days and 780 (79.8%) were completed within the statutory deadline⁴.

Table 5 below details the percentage of requests completed within statutory deadline by the Welsh Government since 2005⁵.

Table 5: Percentage of requests completed within statutory deadline 2005-2020

| <u>Year</u> | <u>% completed within statutory deadline</u> |
|-------------|--|
| 2005 | 63.3% |
| 2006 | 64.2% |
| 2007 | 81.0% |
| 2008 | 86.2% |
| 2009 | 82.1% |
| 2010 | 74.6% |
| 2011 | 83.0% |
| 2012 | 89.0% |
| 2013 | 90.1% |
| 2014 | 91.0% |
| 2015 | 86.6% |
| 2016 | 84.7% |
| 2017 | 83.5% |
| 2018 | 89.7% |
| 2019 | 89.2% |
| 2020 | 79.8% |

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

⁵ The figures for 2005-2008 differ slightly to those published in earlier reports due to open requests subsequently being completed after publication.

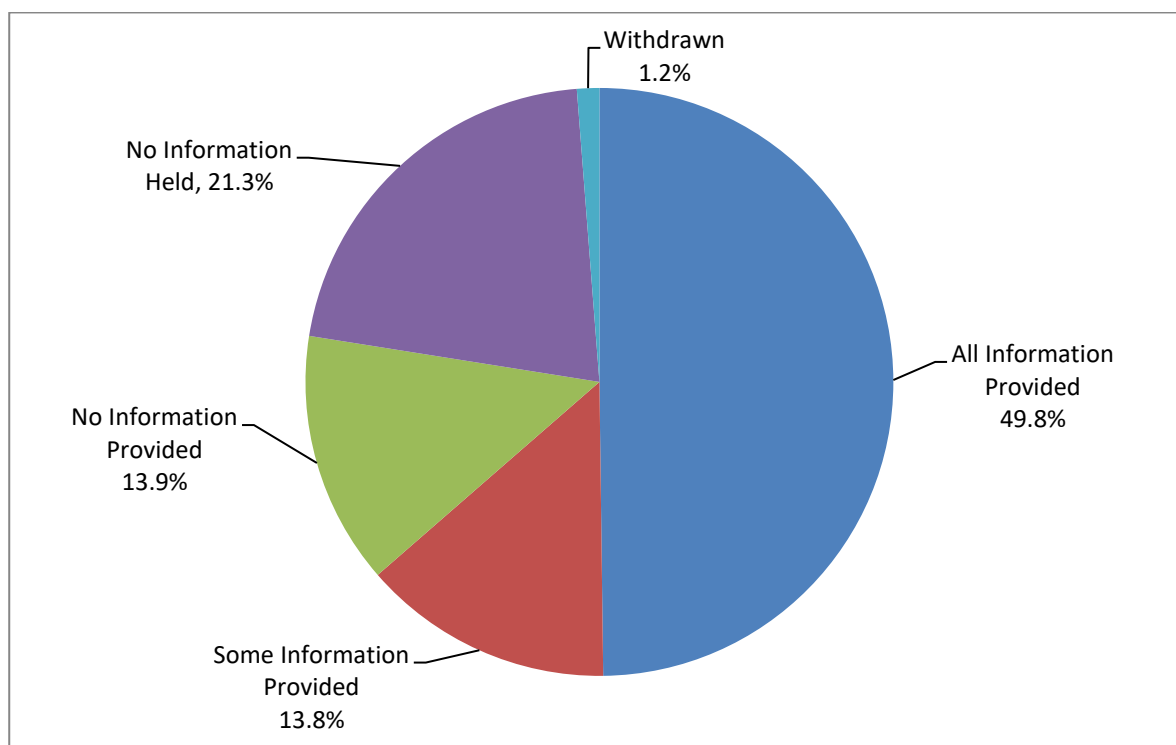
Outcome of Completed Requests:

The number of completed requests received by the Welsh Government during 2019 and 2020 is shown by completion category in Tables 6a and 6b, and Figures 5a and 5b.

Table 6a: Number of completed requests shown by completion category during 2019 and 2020

| Completed Category | 2019 | % of Total | 2020 | % of Total |
|--------------------------------------|------------|-------------|------------|-------------|
| All Information Provided | 363 | 49.5% | 487 | 49.8% |
| Some Information Provided | 114 | 15.5% | 135 | 13.8% |
| No Information Provided ⁶ | 105 | 14.3% | 136 | 13.9% |
| No Information Held | 142 | 19.3% | 208 | 21.3% |
| Withdrawn | 10 | 1.4% | 12 | 1.2% |
| Total | 734 | 100% | 978 | 100% |

Figure 5a: Number of completed requests shown by completion category during 2020

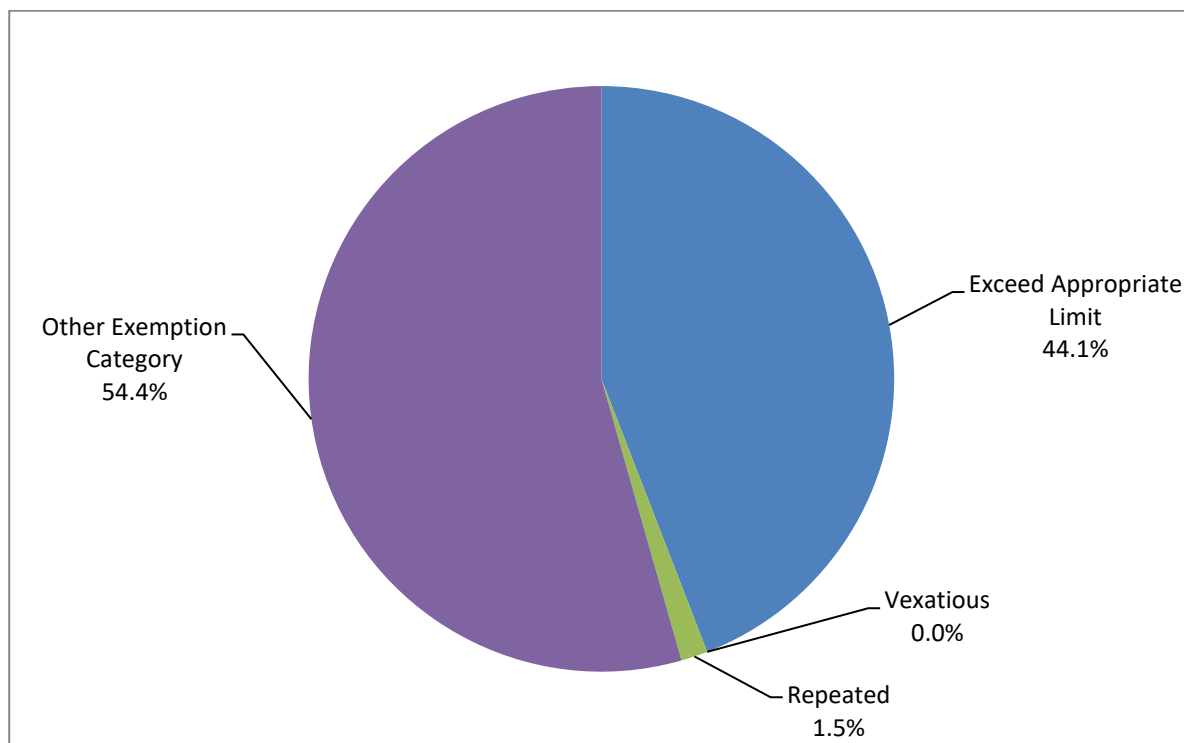


⁶ The 'No Information Provided' category includes information withheld in full using one or more exemptions, and those rejected for exceeding the appropriate limit, and being vexatious or repeated requests.

Table 6b: Number of 'No Information Provided' requests broken down by exemption category during 2019 and 2020

| No Information Provided Completed Category | 2019 | % of Total | 2020 | % of Total |
|--|------------|-------------|------------|-------------|
| S12 Exceeded Appropriate Limit | 31 | 29.5% | 60 | 44.1% |
| S14 Vexatious | 1 | 1.0% | 0 | 0.0% |
| S14 Repeated | 1 | 1.0% | 2 | 1.5% |
| Information falls into another exemption category ⁷ | 72 | 68.6% | 74 | 54.4% |
| Total | 105 | 100% | 136 | 100% |

Figure 5b: Number of 'No Information Provided' requests broken down by exemption category during 2020



⁷ 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 DPA2018.

Table 7 and Figure 6 details the exemptions and exceptions applied at least ten times by the Welsh Government during 2020. A full list of the exemptions and exceptions can be viewed at Annex A (the figures in Table 7 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:

<https://gov.wales/freedom-of-information-responses>

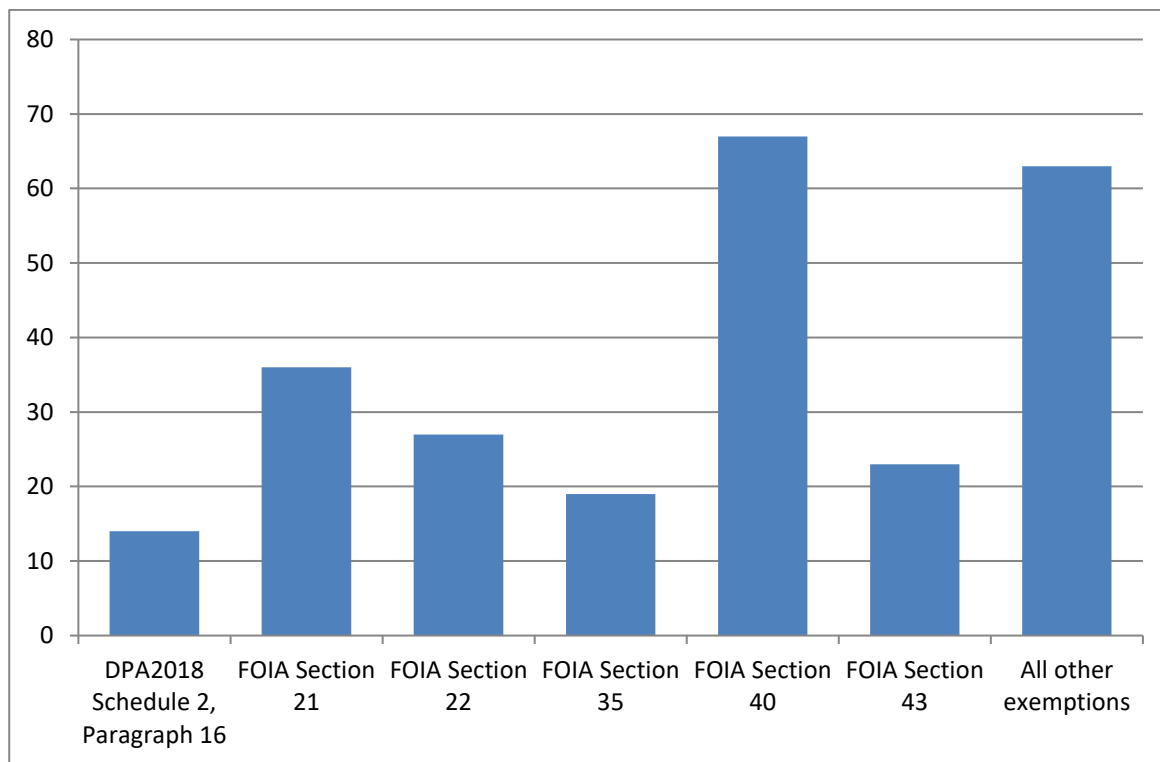
The exemptions most commonly applied were to protect personal information (section 40 FOIA), where the information was accessible to the applicant by other means (section 21 FOIA) and where the information was intended for future publication (section 22 FOIA).

Table 7: Use of exemptions and exceptions during 2020

| Act-Exemption ⁸ | 2020 | % of Total |
|---------------------------------|------------|-------------|
| DPA2018 Schedule 2 Paragraph 16 | 14 | 5.6% |
| FOIA Section 21 | 36 | 14.5% |
| FOIA Section 22 | 27 | 10.8% |
| FOIA Section 35 | 19 | 7.6% |
| FOIA Section 40 | 67 | 26.9% |
| FOIA Section 43 | 23 | 9.2% |
| All other exemptions | 63 | 25.3% |
| Total | 249 | 100% |

⁸ A description of the matter to which each exemption relates is provided on the Information Commissioner's website at: <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/>

Figure 6: Use of exemptions and exceptions during 2020



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 48 complaints in 2020 which equates to 4.9% of requests. This was a decrease compared with 2019 of 7.7%.

Table 8: Number of Complaints (2005-2020)

| Year | Total number of complaints |
|------|----------------------------|
| 2005 | 14 |
| 2006 | 27 |
| 2007 | 22 |
| 2008 | 21 |
| 2009 | 16 |
| 2010 | 33 |
| 2011 | 33 |
| 2012 | 45 |
| 2013 | 51 |
| 2014 | 41 |
| 2015 | 40 |
| 2016 | 59 |
| 2017 | 56 |
| 2018 | 81 |
| 2019 | 52 |
| 2020 | 48 |

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

Figure 7: Number of Complaints (2005-2020)

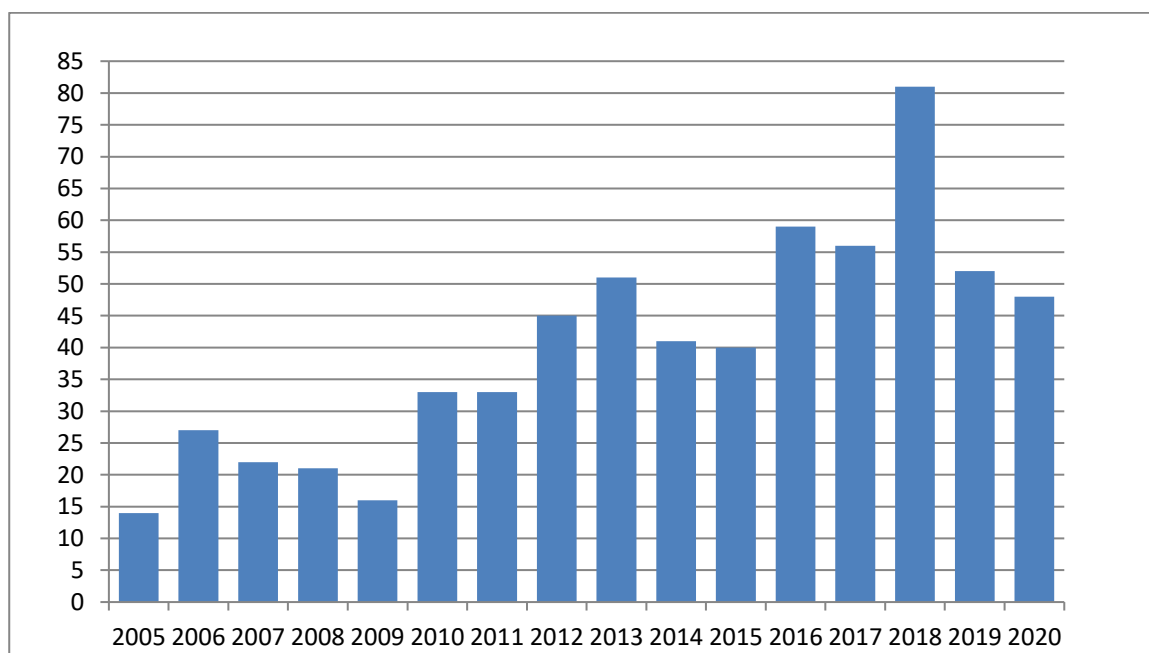


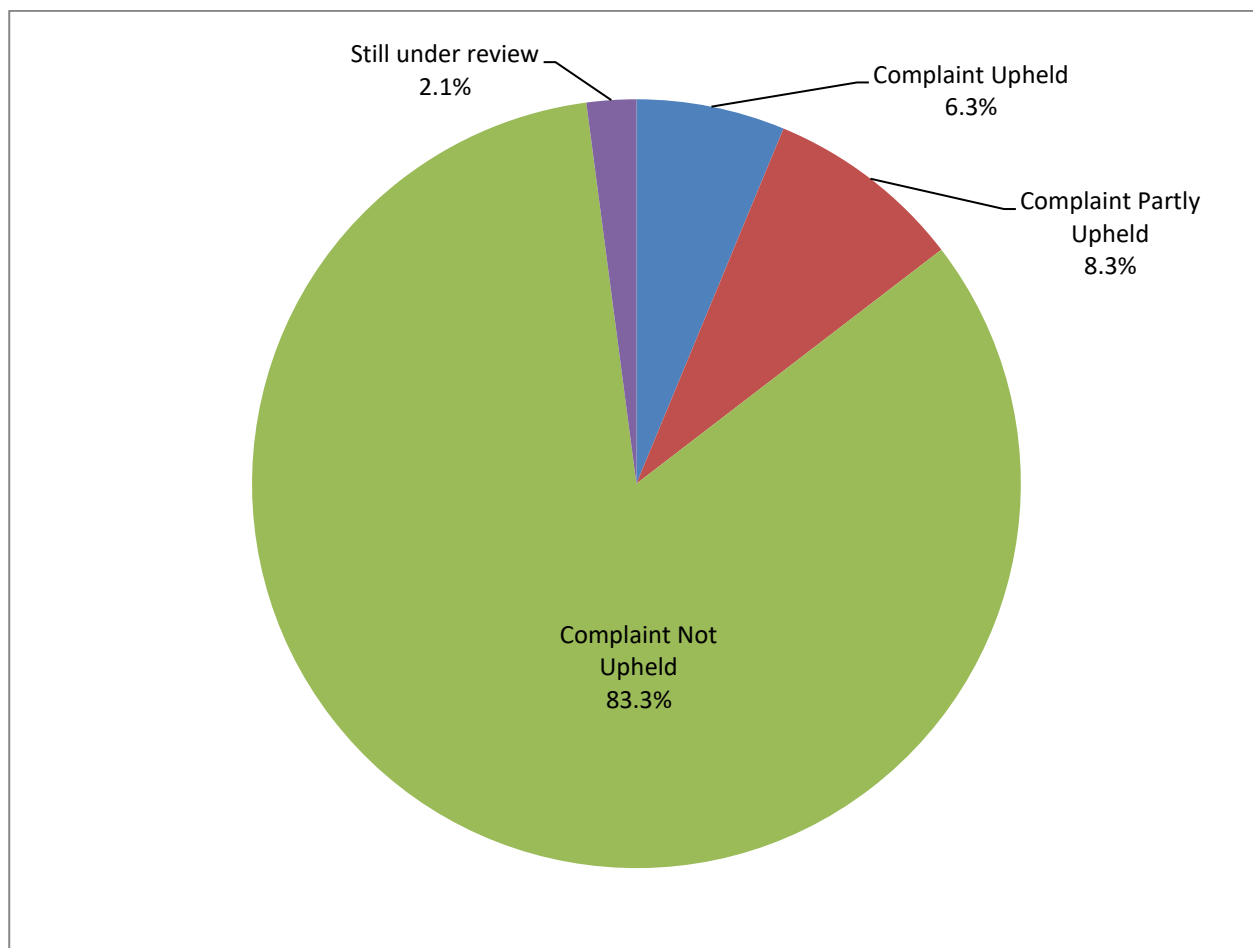
Table 9: Internal review outcomes for 2020

| | Number | % of Total |
|--------------------------|-----------|-------------|
| Complaint upheld | 3 | 6.3% |
| Complaint partly upheld | 4 | 8.3% |
| Original decision upheld | 40 | 83.3% |
| Still under review | 1 | 2.1% |
| Total | 48 | 100% |

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

Of the 48 internal reviews, the complaint was upheld in 3 cases, partly upheld in 4 cases and the original decision was upheld in 40 cases. 1 complaint is still under review.

Figure 8: Internal review outcomes for 2020



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 39 (83.0%) were completed within 20 working days, 6 (12.8%) were completed within 21 to 40 working days and 2 (4.3%) took longer than 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 2020 the ICO investigated 8 complaints⁹ (0.8% of requests). Of the 8 completed investigations 4 decision notices were issued. 2 of the Decision Notices required further action by the Welsh Government.

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

The First-tier Tribunal (Information Rights) hears appeals against Decision Notices issued by the ICO. In 2020, no ICO Decision Notices were appealed to the First-tier Tribunal.

⁹ A complaint to the ICO is defined as a formal investigation which has resulted in the ICO issuing a Decision Notice or is otherwise resolved by the ICO.

Annex A: Use of exemptions and exceptions during 2020

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 | 2020 | % of Total |
|--|-------------|-------------------|
| DPA2018 Schedule 2 Paragraph 16 – Protection of the rights of others | 14 | 5.6% |
| DPA2018 Schedule 2 Paragraph 19 – Legal professional privilege | 3 | 1.2% |
| DPA2018 Schedule 3 Paragraph 11 – Serious harm | 1 | 0.4% |
| DPA2018 Schedule 3 Paragraph 21 – Child abuse data | 1 | 0.4% |
| EIRs 12(4)(b) – Request is manifestly unreasonable | 1 | 0.4% |
| EIRs 12(4)(d) – Material still in the course of completion | 3 | 1.2% |
| EIRs Reg 12(4)(e) – Internal communications | 4 | 1.6% |
| EIRs Reg 12(5)(b) – Course of justice, fair trial, criminal or disciplinary inquiry | 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 | 3 | 1.2% |
| EIRs Reg 12(5)(f) – Interests of the person who provided information to the public authority | 1 | 0.4% |
| EIRs Reg 13 – Personal data of third parties | 8 | 3.2% |
| FOIA Section 21 – Information accessible to the applicant by other means | 36 | 14.5% |
| FOIA Section 22 – Information intended for future publication | 27 | 10.8% |
| FOIA Section 28 – Relations within the United Kingdom | 6 | 2.4% |
| FOIA Section 29 – The economy | 2 | 0.8% |
| FOIA Section 31 – Law enforcement | 7 | 2.8% |
| FOIA Section 32 – Court records, etc. | 2 | 0.8% |
| FOIA Section 35 – Formation of government policy | 19 | 7.6% |
| FOIA Section 36 – Effective conduct of public affairs | 5 | 2.0% |
| FOIA Section 38 – Health and safety | 8 | 3.2% |
| FOIA Section 40 – Personal Information | 67 | 26.9% |
| FOIA Section 41 – Information provided in confidence | 1 | 0.4% |
| FOIA Section 42 – Legal professional privilege | 4 | 1.6% |
| FOIA Section 43 – Commercial interests | 23 | 9.2% |
| UK GDPR Article 12(5)(b) – Manifestly unfounded or excessive | 2 | 0.8% |
| Total | 249 | 100% |