



Llywodraeth Cymru
Welsh Government

Report on the Implementation of Open Government Legislation and Policies during 2021

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Introduction:

This is the sixteenth 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 2021.

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 11 August 2022. 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 2021:

- The Welsh Government received 1,131 requests for recorded information.
- The total number of requests received increased by 14.9% (from 984 in 2020). This is the highest number of requests received by the Welsh Government in a calendar year since the FOIA and EIRs were commenced on 1 January 2005.
- Of the 1,131 requests the Welsh Government completed¹ 1,130 (99.9%) at the time this report was generated.
- Of the 1,130 completed requests, 932 (82.5%) were completed within 20 working days and 941 (83.3%) were completed within the statutory deadline².
- Of the 1,130 completed requests some or all of the information was provided in response to 656 (58.1%).
- The most commonly applied exemptions / exceptions were: FOIA section 21: information accessible to applicant by other means (22.0%), FOIA section 40: personal information (20.9%), and EIRs regulation 13: personal data of third parties (9.1%).
- The Welsh Government received a total of 44 complaints (3.9% of requests received) relating to its handling of requests for information.
- Of the 44 internal reviews, the complaint was upheld in 8 cases, partly upheld in 6 cases, and the original decision upheld in 28 cases. 2 complaints were withdrawn by the complainant.
- The Information Commissioner's Office (ICO) investigated 11 complaints³ (1.0% of requests) and issued a Decision Notice in relation to 6 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 1,131 requests for recorded information in 2021. Since the commencement of the FOIA on 1 January 2005 the number of requests received each year has fluctuated. There was a 14.9% increase in the number of requests received in 2021 when compared to 2020. The total of 1,131 requests received is the highest number of requests received by the Welsh Government in a calendar year since the FOIA and EIRs were commenced on 1 January 2005.

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 2020 and 2021.

Table 1: Total number of requests for recorded information received 2005-2021

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%
2021	1,131	14.9%

Figure 1: Total number of requests for recorded information received 2005-2021

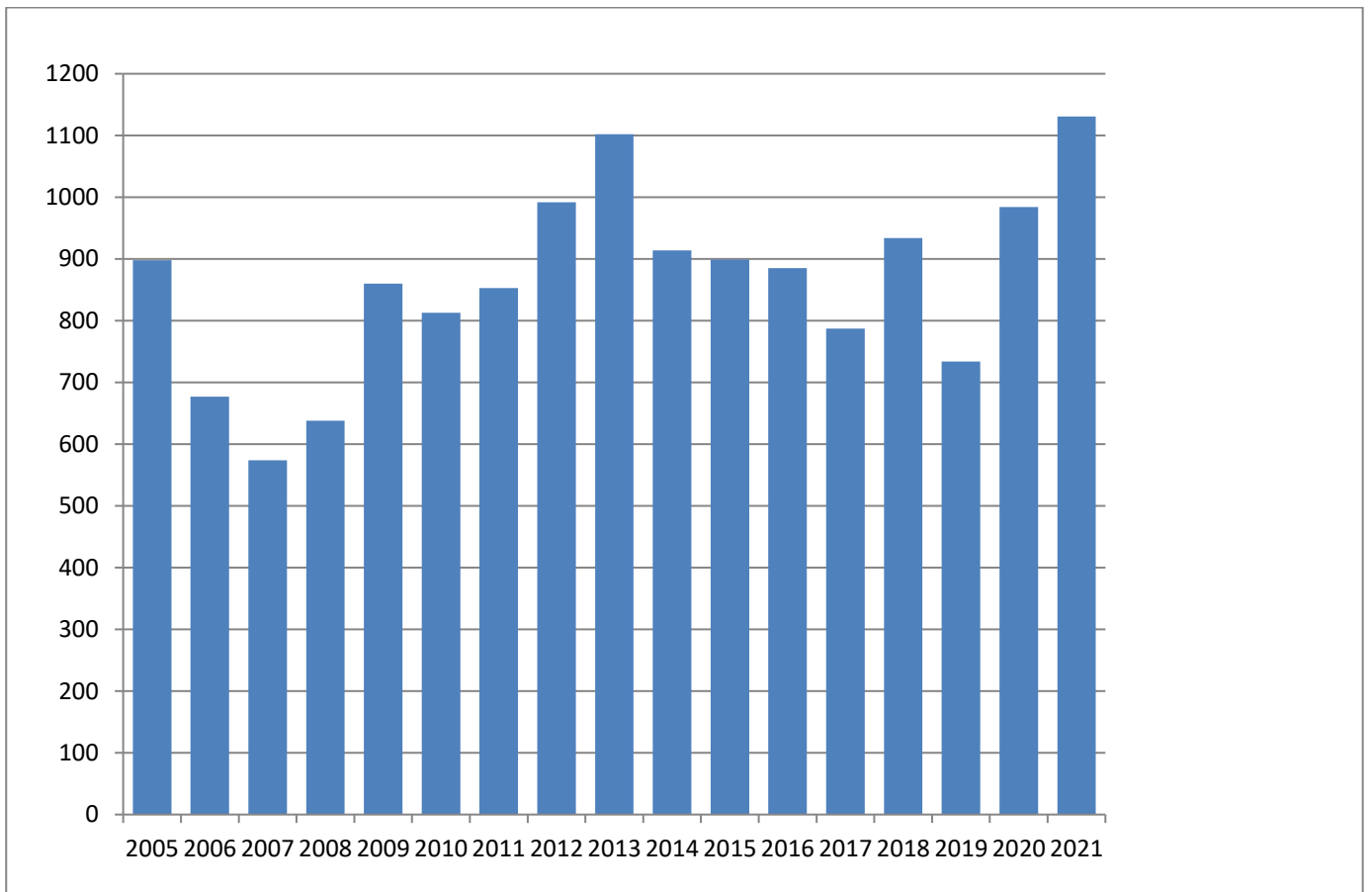
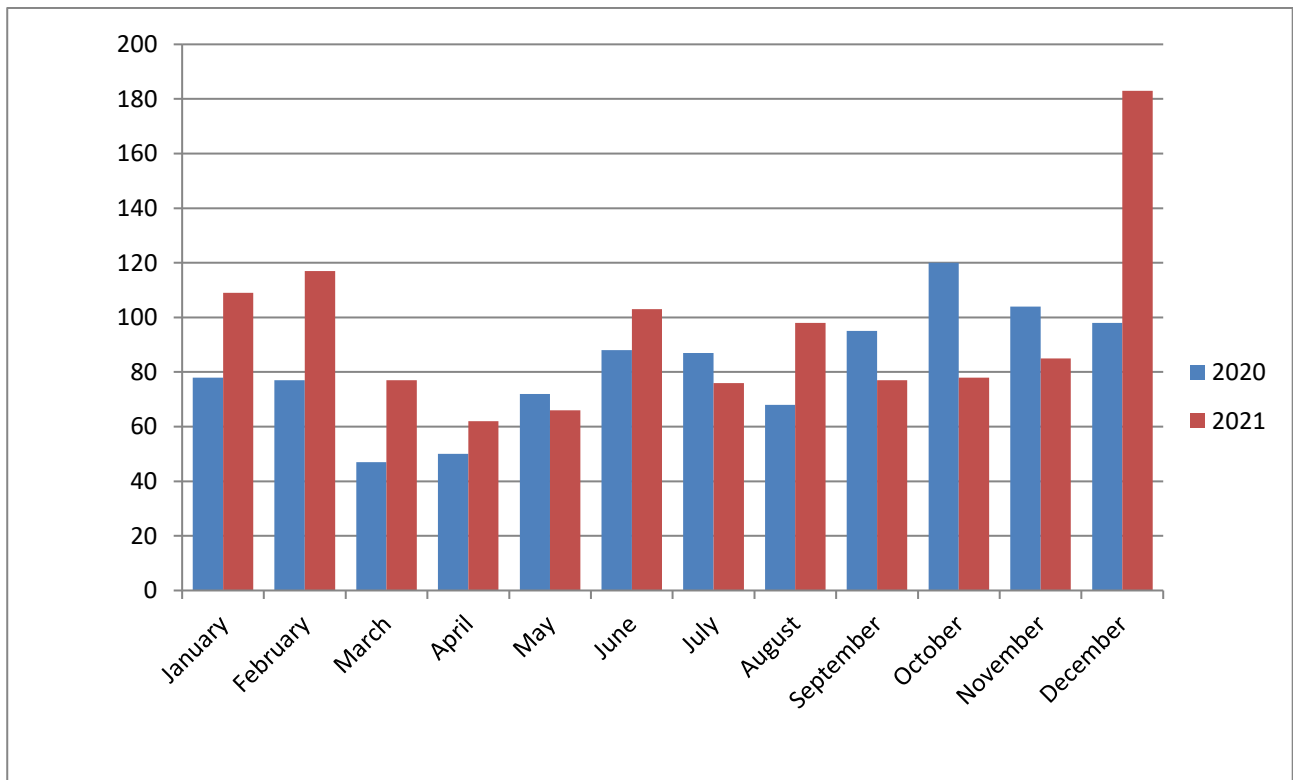


Table 2: Number of requests for recorded information received each month: 2020 & 2021

Month	2020	% of Total	2021	% of Total
January	78	7.9%	109	9.6%
February	77	7.8%	117	10.3%
March	47	4.8%	77	6.8%
April	50	5.1%	62	5.5%
May	72	7.3%	66	5.8%
June	88	8.9%	103	9.1%
July	87	8.8%	76	6.7%
August	68	6.9%	98	8.7%
September	95	9.7%	77	6.8%
October	120	12.2%	78	6.9%
November	104	10.6%	85	7.5%
December	98	10.0%	183	16.2%
Total	984	100%	1131	100%

Figure 2: Number of requests for recorded information received each month: 2020 & 2021

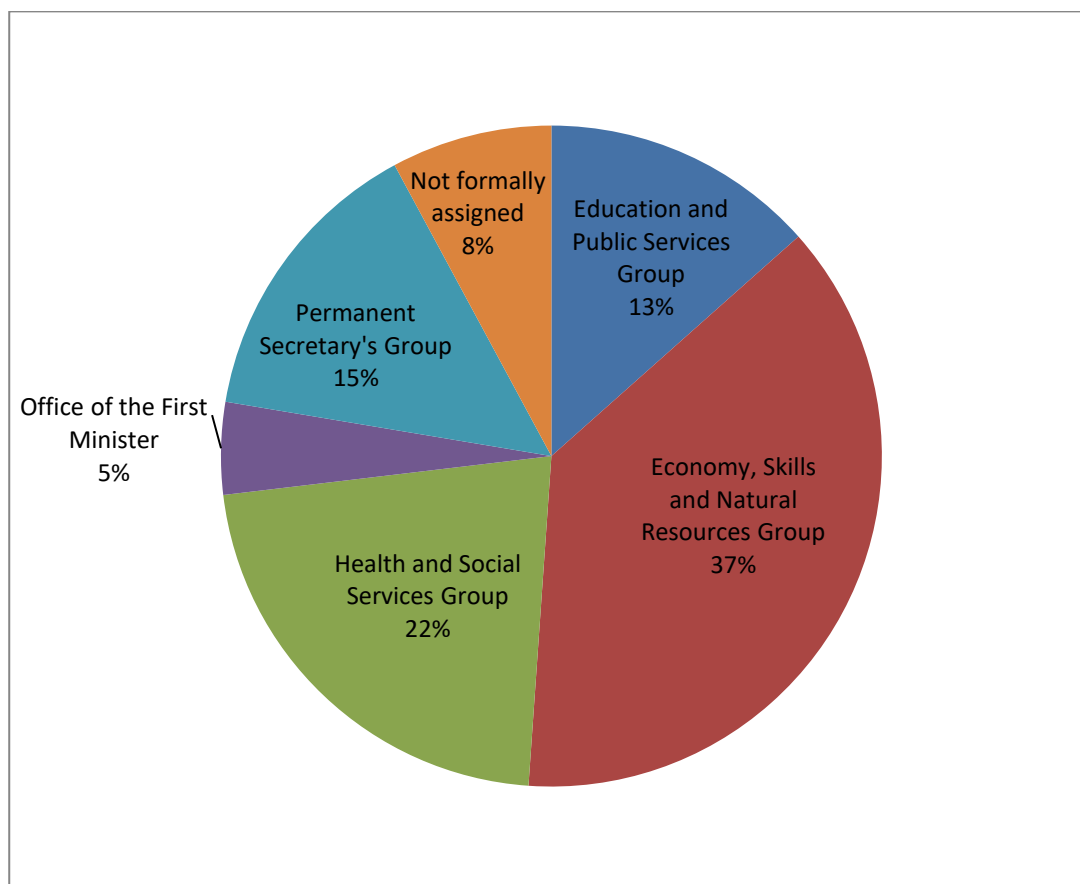


A breakdown by portfolio of the number of requests for recorded information received by the Welsh Government in 2021 is provided within Table 3.

Table 3: Number of requests received by Welsh Government portfolio areas during 2021

Director General Area / Group	2021 Number of Requests	% of Requests
Education and Public Services Group	152	13.4%
Economy, Skills and Natural Resources Group	426	37.7%
Health and Social Services Group	249	22.0%
Office of the First Minister	51	4.5%
Permanent Secretary's Group	164	14.5%
Not formally assigned ⁴	89	7.9%
Total	1,131	100%

Figure 3: Number of requests received by Welsh Government portfolio areas during 2021



⁴ These requests did not fall under any specific group area and were dealt with centrally by the Information Rights Unit

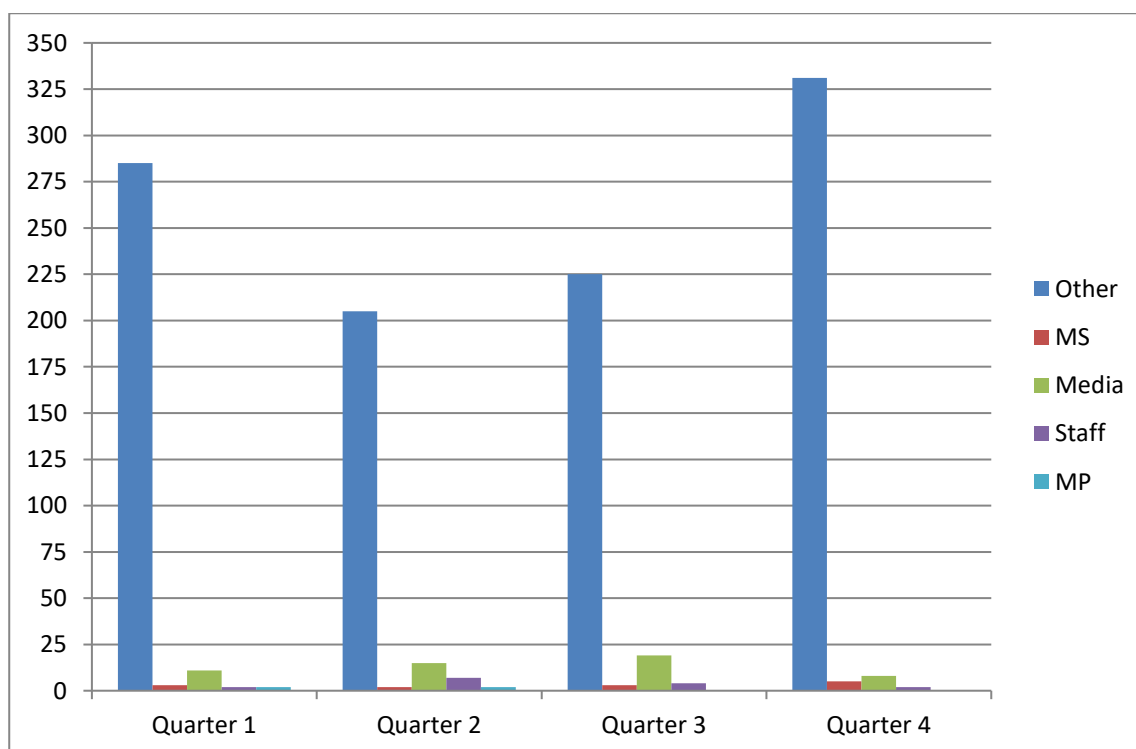
Category of Requestor:

Over the year, requests from Members of the Senedd, the media, staff and Members of Parliament (MPs) accounted for 85 (7.5%) of the 1,131 requests received. The remaining 1,046 requests (which amount to 92.5% of all requests) were recorded under the 'Other' category.

Table 4: Requests received from each type of requester during each quarter of 2021

	Other	MS	Media	Staff	MP
Quarter 1	285	3	11	2	2
Quarter 2	205	2	15	7	2
Quarter 3	225	3	19	4	0
Quarter 4	331	5	8	2	0
2021 Total	1,046	13	53	15	4

Figure 4: Requests received from each type of requester during each quarter of 2021



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 1,131 requests, 1,130 were complete (99.9%) at the time the report was compiled. Of the 1,130 completed requests, 932 (82.5%) were completed within 20 working days and 941 (83.3%) were completed within the statutory deadline⁵.

Table 5 below details the percentage of requests completed within statutory deadline by the Welsh Government since 2005⁶.

Table 5: Percentage of requests completed within statutory deadline 2005-2021

<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%
2021	83.3%

⁵ The statutory deadline includes requests answered either within 20 working days or within a permitted extended deadline.

⁶ The figures for 2005-2008 differ slightly to those published in earlier reports due to open requests subsequently being completed after publication.

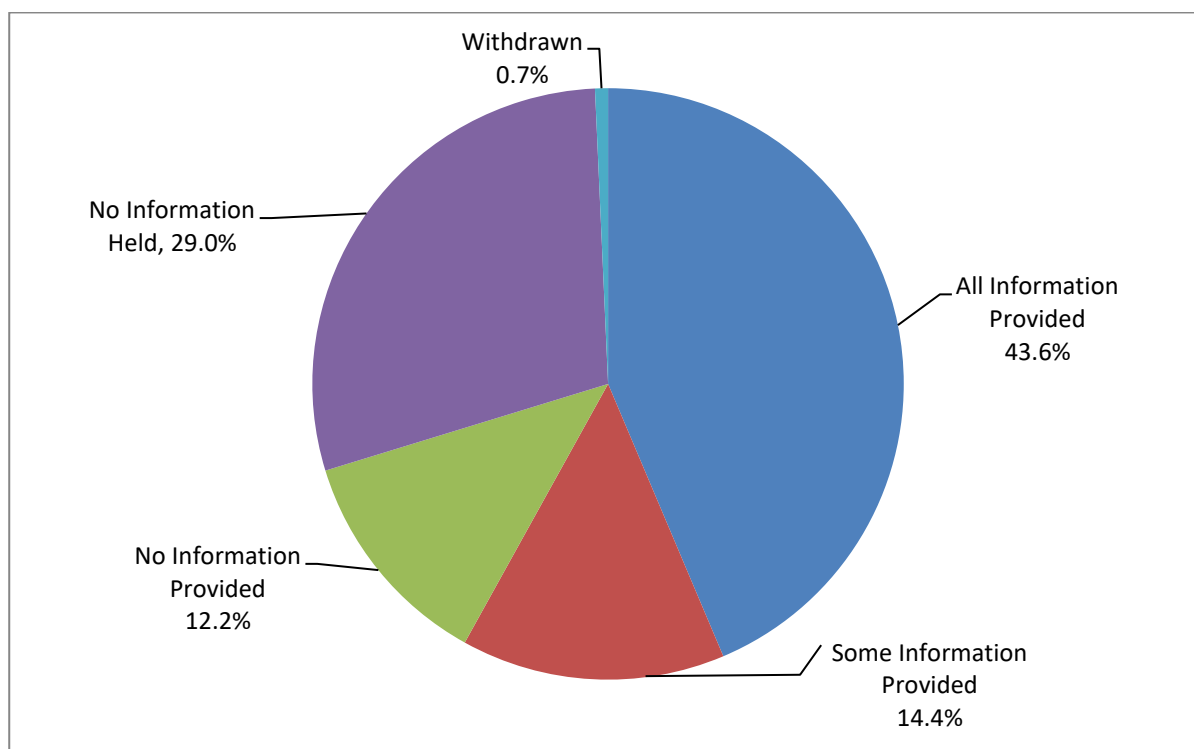
Outcome of Completed Requests:

The number of completed requests received by the Welsh Government during 2020 and 2021 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 2020 and 2021

Completed Category	2020	% of Total	2021	% of Total
All Information Provided	487	49.8%	493	43.6%
Some Information Provided	135	13.8%	163	14.4%
No Information Provided ⁷	136	13.9%	138	12.2%
No Information Held	208	21.3%	328	29.0%
Withdrawn	12	1.2%	8	0.7%
Total	978	100%	1,130	100%

Figure 5a: Number of completed requests shown by completion category during 2021

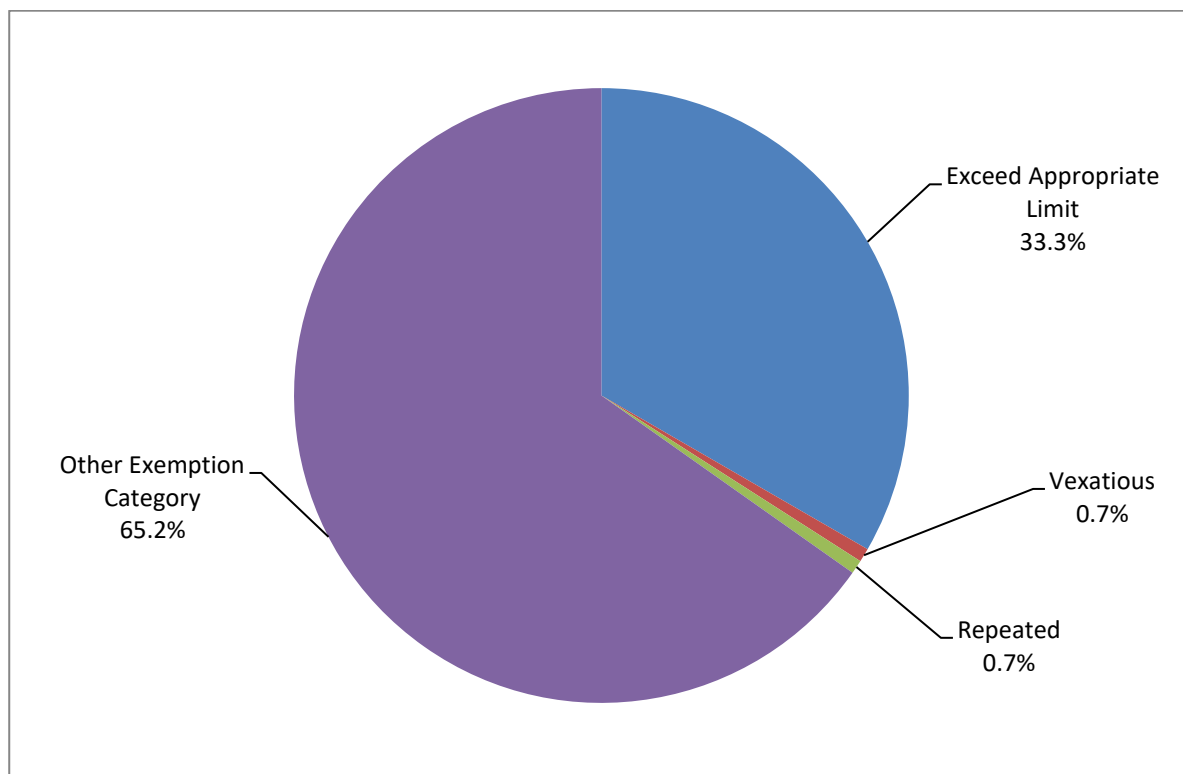


⁷ The 'No Information Provided' category includes information withheld in full using one or more exemptions, and those rejected for exceeding the appropriate limit, and being vexatious or repeated requests.

Table 6b: Number of 'No Information Provided' requests broken down by exemption category during 2020 and 2021

No Information Provided Completed Category	2020	% of Total	2021	% of Total
S12 Exceeded Appropriate Limit	60	44.1%	46	33.3%
S14 Vexatious	0	0.0%	1	0.7%
S14 Repeated	2	1.5%	1	0.7%
Information falls into another exemption category ⁸	74	54.4%	90	65.2%
Total	136	100%	138	100%

Figure 5b: Number of 'No Information Provided' requests broken down by exemption category during 2021



⁸ 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 / UK GDPR.

Table 7 and Figure 6 details the exemptions and exceptions applied at least ten times by the Welsh Government during 2021. 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>

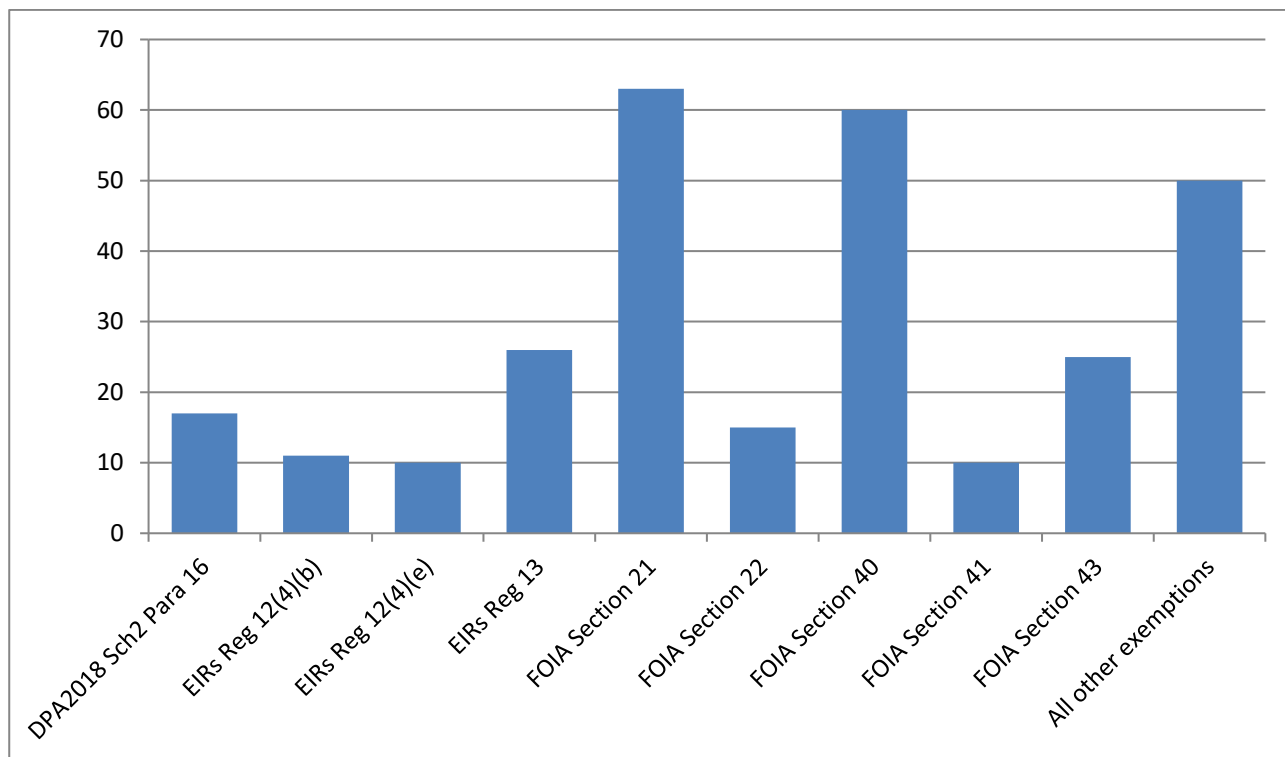
The exemptions most commonly applied were where the information was accessible to the applicant by other means (section 21 FOIA), to protect personal information (section 40 FOIA) and to protect personal data of third parties (regulation 13 EIRs).

Table 7: Use of exemptions and exceptions during 2021

Act-Exemption ⁹	2021	% of Total
DPA2018 Schedule 2 Paragraph 16	17	5.9%
EIR Regulation 12(4)(b)	11	3.8%
EIR Regulation 12(4)(e)	10	3.5%
EIR Regulation 13	26	9.1%
FOIA Section 21	63	22.0%
FOIA Section 22	15	5.2%
FOIA Section 40	60	20.9%
FOIA Section 41	10	3.5%
FOIA Section 43	25	8.7%
All other exemptions	50	17.4%
Total	287	100%

⁹ 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 2021



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 44 complaints in 2021 which equates to 3.9% of requests. This was a decrease compared with 2020 of 8.3%.

Table 8: Number of Complaints (2005-2021)

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
2021	44

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

Figure 7: Number of Complaints (2005-2021)

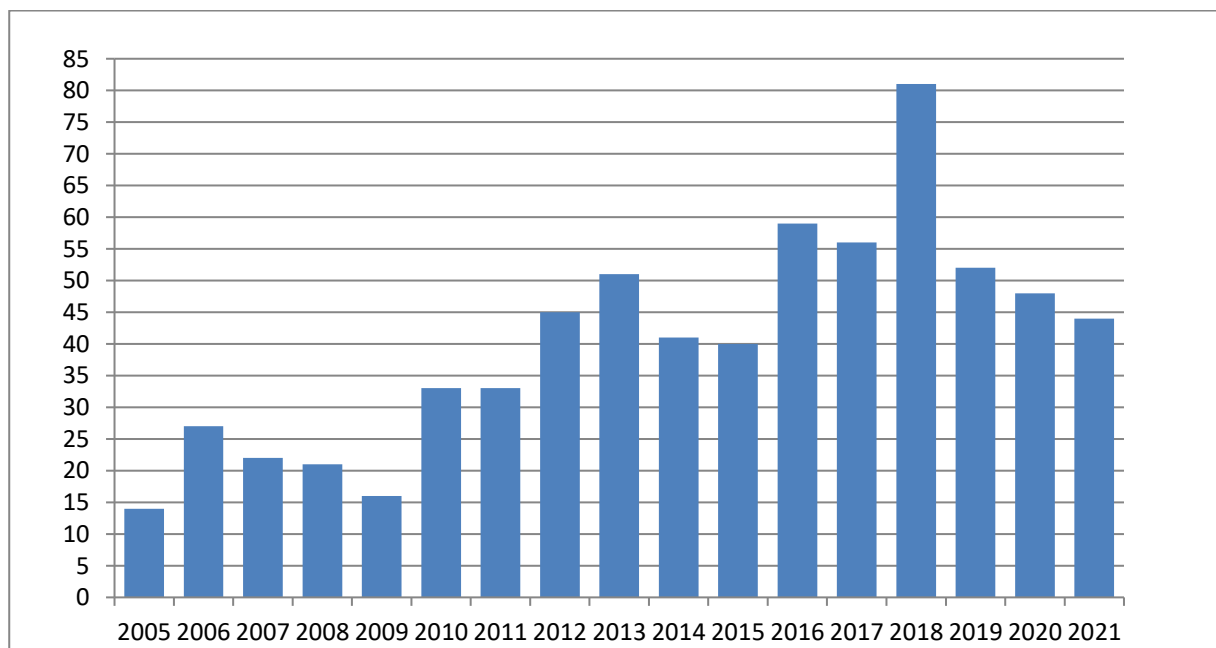


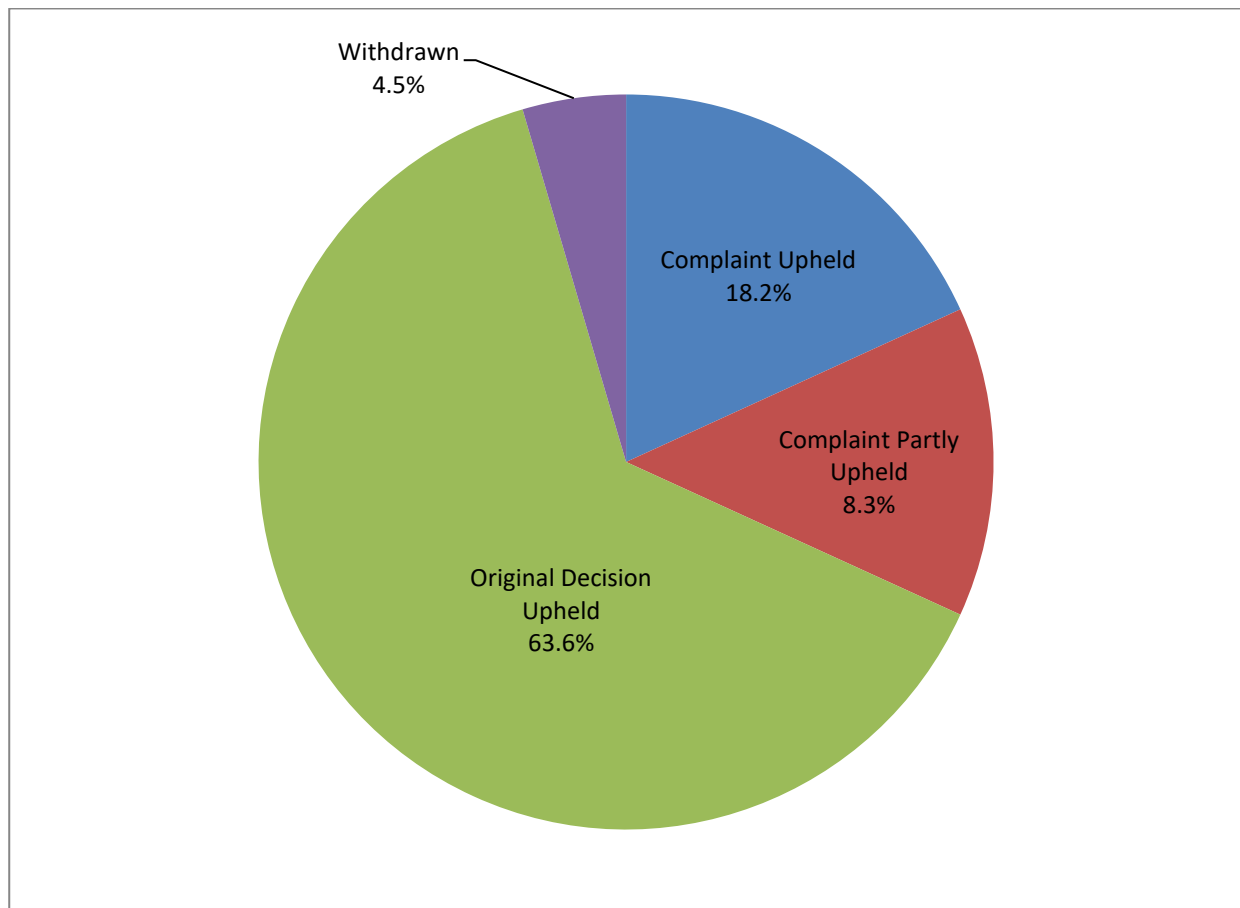
Table 9: Internal review outcomes for 2021

	Number	% of Total
Complaint upheld	8	18.2%
Complaint partly upheld	6	13.6%
Original decision upheld	28	63.6%
Withdrawn	2	4.5%
Total	44	100%

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

Of the 44 internal reviews, the complaint was upheld in 8 cases, partly upheld in 6 cases and the original decision was upheld in 28 cases. 2 complaints were withdrawn by the complainant.

Figure 8: Internal review outcomes for 2021



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 44 completed internal reviews 31 (70.5%) were completed within 20 working days, 11 (25.0%) were completed within 21 to 40 working days and 2 (4.5%) 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 2021 the ICO investigated 11 complaints¹⁰ (1.0% of requests). Of the 11 completed investigations 6 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 2021, no ICO Decision Notices were appealed to the First-tier Tribunal.

¹⁰ 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 2021

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	2021	% of Total
DPA2018 Schedule 2 Paragraph 2 – Crime and taxation	1	0.3%
DPA2018 Schedule 2 Paragraph 16 – Protection of the rights of others	17	5.9%
DPA2018 Schedule 2 Paragraph 19 – Legal professional privilege	7	2.4%
EIRs 12(4)(b) – Request is manifestly unreasonable	11	3.8%
EIRs 12(4)(c) – Request is formulated in too general a manner	1	0.3%
EIRs 12(4)(d) – Material still in the course of completion	7	2.4%
EIRs Reg 12(4)(e) – Internal communications	10	3.5%
EIRs Reg 12(5)(a) – international relations	1	0.3%
EIRs Reg 12(5)(b) – Course of justice, fair trial, criminal or disciplinary inquiry	4	1.4%
EIRs 12(5)(c) – Intellectual property rights	1	0.3%
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 12(5)(f) – Interests of the person who provided information to the public authority	1	0.3%
EIRs Reg 13 – Personal data of third parties	26	9.1%
FOIA Section 21 – Information accessible to the applicant by other means	63	22.0%
FOIA Section 22 – Information intended for future publication	15	5.2%
FOIA Section 28 – Relations within the United Kingdom	3	1.0%
FOIA Section 29 – The economy	5	1.7%
FOIA Section 31 – Law enforcement	1	0.3%
FOIA Section 35 – Formation of government policy	6	2.1%
FOIA Section 36 – Effective conduct of public affairs	3	1.0%
FOIA Section 37 – Communications with Her Majesty	1	0.3%
FOIA Section 38 – Health and safety	1	0.3%
FOIA Section 40 – Personal Information	60	20.9%
FOIA Section 41 – Information provided in confidence	10	3.5%
FOIA Section 42 – Legal professional privilege	3	1.0%
FOIA Section 43 – Commercial interests	25	8.7%
UK GDPR Article 12(5)(b) – Manifestly unfounded or excessive	2	0.7%
Total	287	100%