



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Report on the implementation of open government legislation and policies during 2009

July 2010

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Introduction:

This is the fourth 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 2009.

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 28 July 2010. 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 2009:

- The Assembly Government received 860 requests for recorded information.
- The total number of requests received increased significantly from 638 in 2008 to 860. This is an increase of 34.8%.
- 840 (97.7%) of the total number of requests received were resolvable¹.
- The Assembly Government completed² 830 (98.8%) of the resolvable requests.
- Of the 830 completed requests some or all of the information was provided in response to 604 (72.8%).

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 43 (commercial interests) and 40 (personal information) of the FOIA.
- The Assembly Government received a total of 16 complaints relating to its handling of requests for information compared with 27 in 2008 - most of which have again been resolved internally to the satisfaction of complainants.
- One appeal was made to the Information Commissioner's Office, compared with two in 2008.
- 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 860 requests for recorded information in 2009. Since the commencement of the FOIA on 1 January 2005 the number of requests received each year has fluctuated. The 2009 figures show that the number of requests has returned to a similar level experienced when the FOIA was first introduced. There was a 34.8% increase in the number of requests received in 2009 when compared to 2008.

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 2008 and 2009.

Table 1: Total number of requests for recorded information received 2005-2009

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

Figure 1: Total number of requests for recorded information received 2005-2009

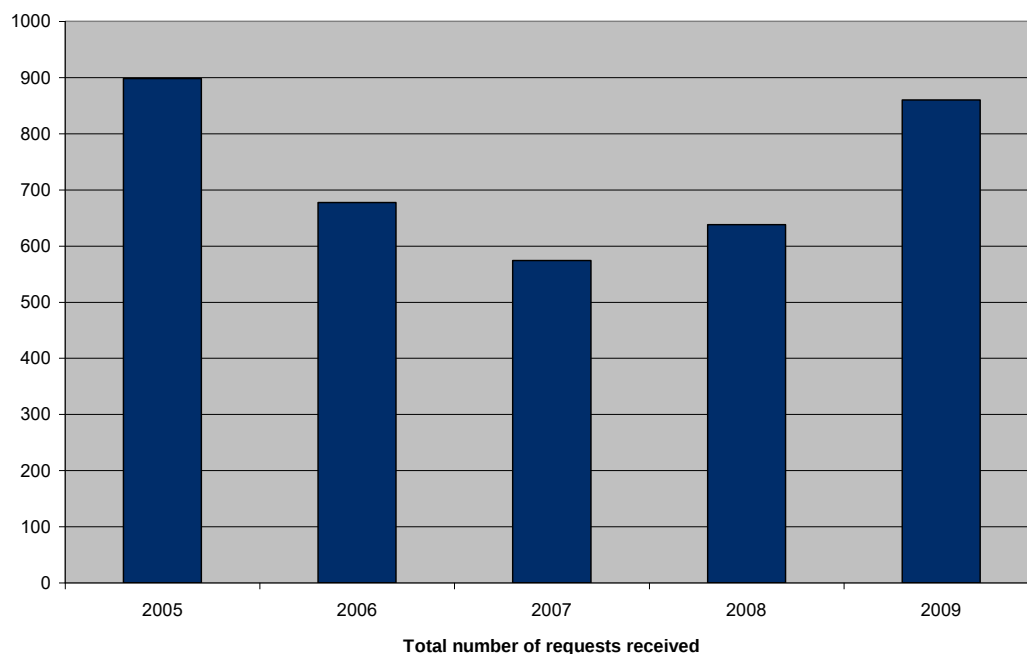
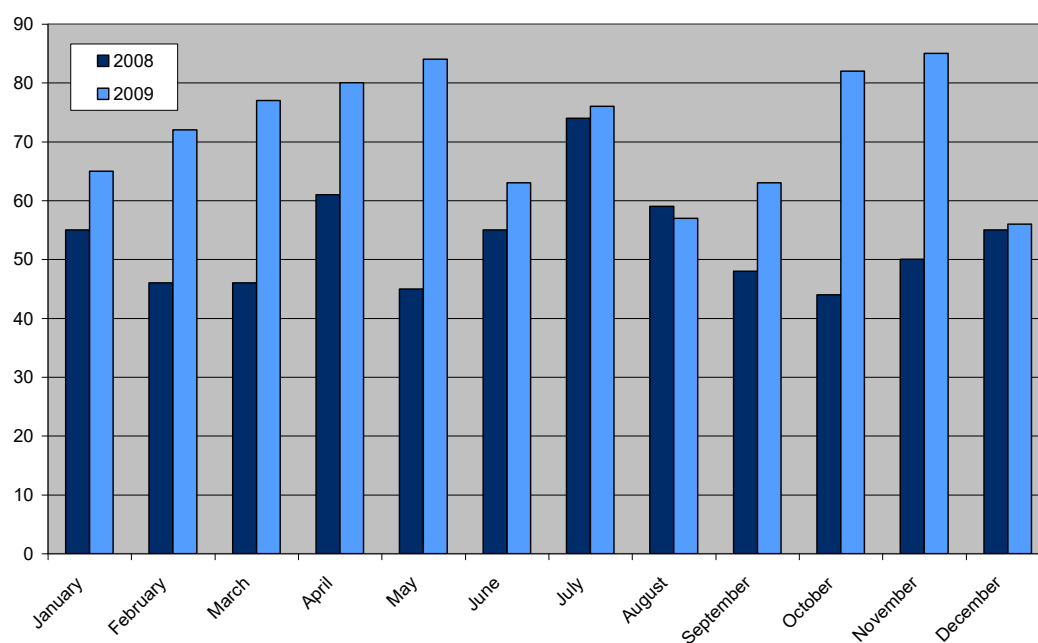


Table 2: Number of requests for recorded information received each month during 2008 and 2009

Month	2008	% of Total	2009	% of Total
January	55	8.6	65	7.6
February	46	7.2	72	8.4
March	46	7.2	77	9.0
April	61	9.6	80	9.3
May	45	7.1	84	9.8
June	55	8.6	63	7.3
July	74	11.6	76	8.8
August	59	9.2	57	6.6
September	48	7.5	63	7.3
October	44	6.9	82	9.5
November	50	7.8	85	9.9
December	55	8.6	56	6.5
Total	638	100%	860	100%

Figure 2: Number of requests for recorded information received each month during 2008 and 2009

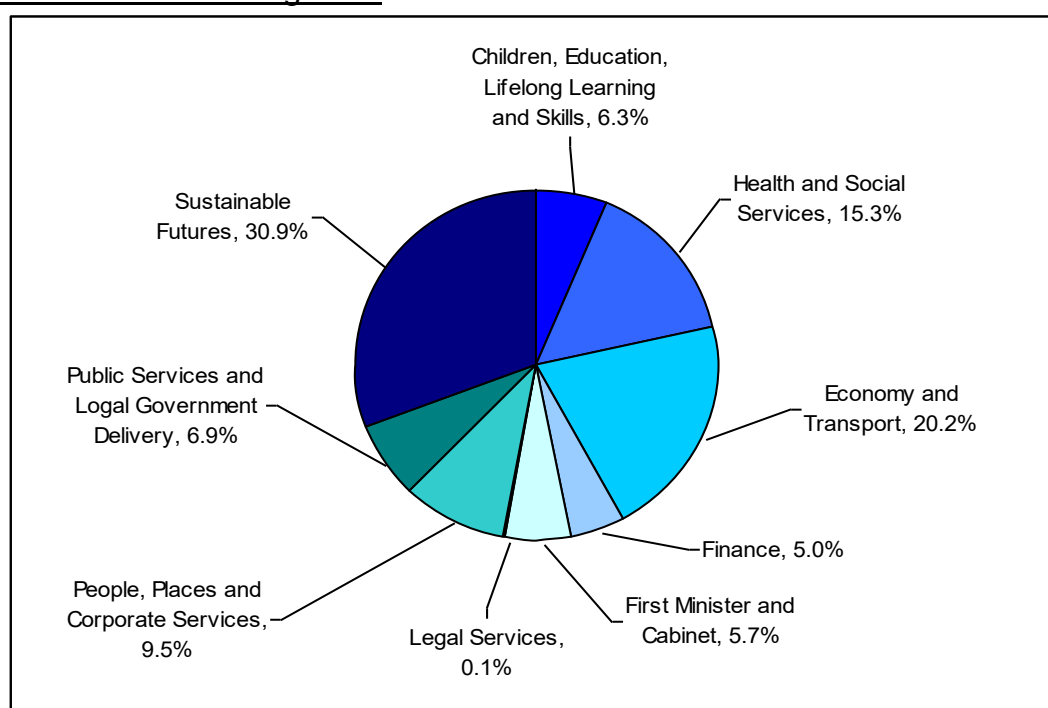


A breakdown by portfolio of the number of requests for recorded information received by the Assembly Government during 2009 is provided in Table 3. As in previous years, some areas received considerably more requests than others. Given the structural changes that took place during 2009 these figures cannot be compared with those from 2008.

Table 3: Number of requests received by Assembly Government Director General areas during 2009

Director General Area	Number of Requests	% of Requests
Children, Education, Lifelong Learning and Skills	54	6.3
Health and Social Services	132	15.3
Economy and Transport	174	20.2
Finance	43	5.0
First Minister and Cabinet	49	5.7
Legal Services	1	0.1
People, Places and Corporate Services	82	9.5
Public Services and Local Government Delivery	59	6.9
Sustainable Futures	266	30.9
Total	860	100%

Figure 3: Number of requests received by Assembly Government Director General areas during 2009



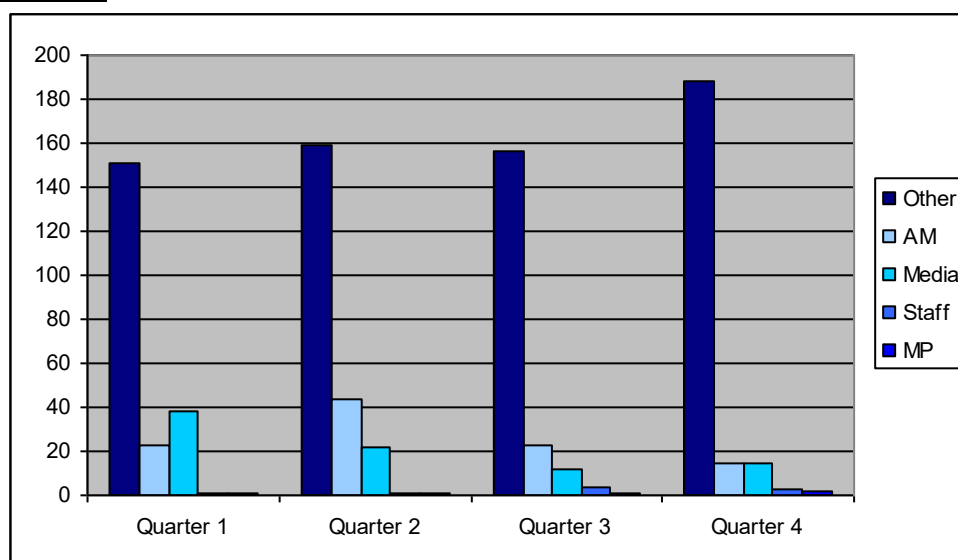
Category of Requestor:

Over the year requests from Assembly Members (AMs), the media, staff and Members of Parliament (MPs) accounted for approximately one quarter of all requests (206 requests or 24% of all requests). The remaining 654 requests (which amount to 76% of all requests) were recorded under the 'Other' category.

Table 4: Requests received from each type of requester during each quarter of 2009

	Other	AM	Media	Staff	MP
Quarter 1	151	23	38	1	1
Quarter 2	159	44	22	1	1
Quarter 3	156	23	12	4	1
Quarter 4	188	15	15	3	2
2009 Total	654	105	87	9	5

Figure 4: Requests received from each type of requester during each quarter of 2009



Timeliness of Responses:

In 2009, of the 860 requests received by the Assembly Government 840 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 840 resolvable requests 663 (78.9%) were completed within 20 working days and 690 (82.1%) 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).

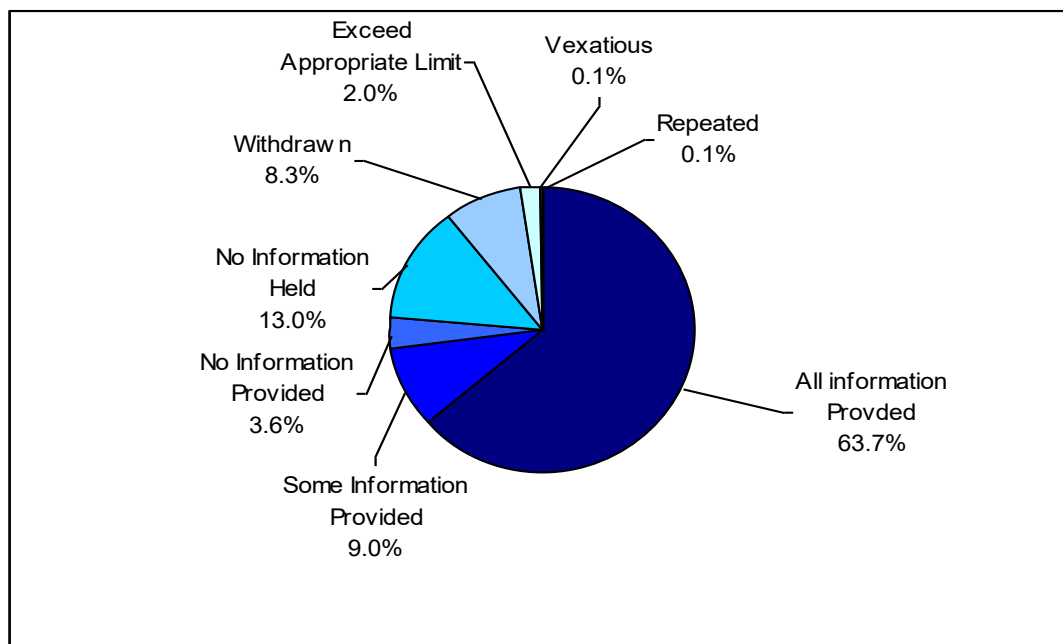
The number of completed resolvable requests received by the Assembly Government during 2009 is shown by completion category in Table 6.

Table 6: Number of completed resolvable requests shown by completion category

Completed Category	2008	% of Total	2009	% of Total
All Information Provided	357	58.6	529	63.7
Some Information Provided	70	11.5	75	9.0
No Information Provided	26	4.3	30	3.6
No Information Held	86	14.1	108	13.0
Withdrawn	53	8.7	69	8.3
Exceeded Appropriate Limit	15	2.5	17	2.0
Vexatious	0	0.0	1	0.1
Repeated	2	0.3	1	0.1
Total	609	100%	830	100%

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

Figure 6: Number of completed resolvable requests shown by completion category



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 7 details the exemptions and exceptions applied at least ten times by the Assembly Government during 2009. 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 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:

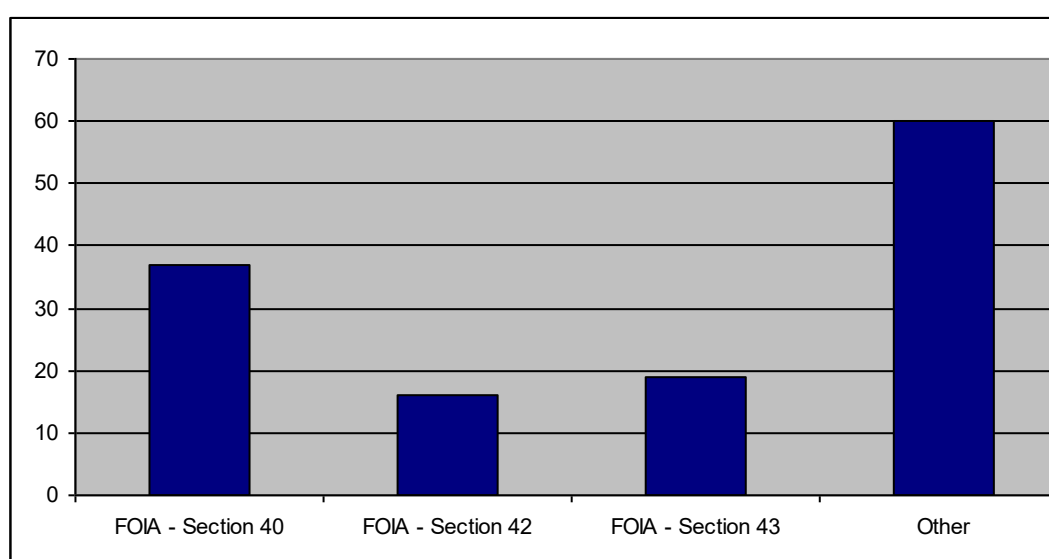
<http://wales.gov.uk/publications/accessinfo/disclosurelogs/?lang=en>

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

Table 7: Use of exemptions and exceptions during 2009

Act-Exemption ⁴	2009	% of Total
FOIA – Section 40 – personal Information	37	28.0
FOIA – Section 42 – legal professional privilege	16	12.1
FOIA – Section 43 – commercial interests	19	14.4
All other exemptions/exceptions	60	45.5
Total	132	100%

Figure 7: Use of exemptions and exceptions during 2009



Internal Reviews:

Requestors can ask the Assembly Government to undertake an internal review if they are not content with the initial decision on whether or not to release requested information, if their request was not dealt with within 20 working days or if they felt a fee was wrongly charged. The Assembly Government received requests to undertake 16 internal reviews in 2009, compared to 21 in 2008. This equates to 1.9% of total requests received during 2009.

The outcome of these internal reviews is outlined below. This indicates that a complaint was upheld in 1 case, the original decision was partly upheld in 3 cases, and the original decision was fully upheld in 12 cases. No complaints are still under review.

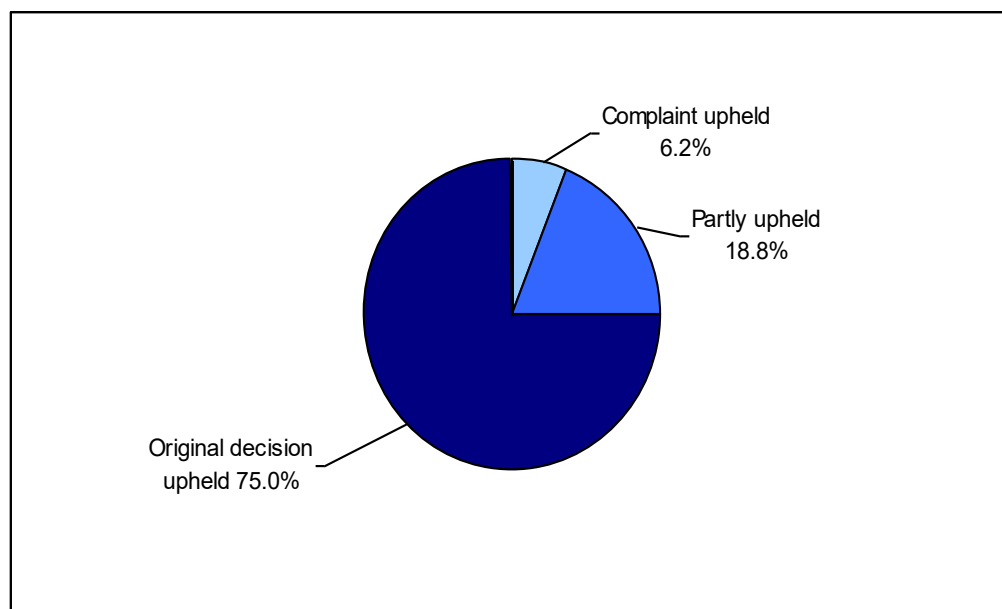
⁴ A description of the matter to which each exemption relates is provided in Annex A of the Assembly Government's Code of Practice on Access to Information which can be viewed at: <http://new.wales.gov.uk/publications/accessinfo/code/;jsessionid=VQ5GJIHN1MvJ7wwD62phL3y0XwhvCfvXBvQ9KVvLh0DhjYWR2vbT!-1414164158?lang=en>

Table 8: Internal review outcomes for 2009

	Number	% of Total
Complaint upheld	1	6.2
Partly upheld	3	18.8
Original decision upheld	12	75.0
Still under review	0	0.0
Total	16	100%

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

Figure 8: Internal review outcomes for 2009



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 Commissioners 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.

The ICO's case reception team notified the Assembly Government of 4 complaints that it received during 2009. The ICO only considered it necessary to fully investigate 1 of these complaints. In 2009, the ICO issued 1 Decision Notice relating to the Assembly Government which upheld our decision to withhold information but noted some procedural shortcomings in the way the request was handled.

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

The First-tier Tribunal (Information Rights) hears appeals against Decision Notices issued by the ICO. There were no appeals involving the Assembly Government in 2009.

Information Routinely Published:

During 2009, 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 Assembly Government's Publication Scheme can be accessed at:
<http://wales.gov.uk/publications/publicationscheme/?lang=en>

Annex A: Use of exemptions and exceptions during 2009

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	2009	% of Total
DPA – Schedule 7, Paragraph 2 – armed forces	1	0.8
DPA – Schedule 7, Paragraph 4 – crown employment and crown or ministerial appointments	1	0.8
DPA – Schedule 7, Paragraph 6 – corporate finance	1	0.8
DPA – Schedule 7, Paragraph 10– legal professional privilege	2	1.5
EIRs – Reg 12(4)(a) – information not held when request received	3	2.3
EIRs – Reg 12(4)(d) – material is still in course of completion, unfinished documents or incomplete data	1	0.8
EIRs – Reg 12(4)(e) – internal communications	4	3.0
EIRs – Reg 12(5)(b) – course of justice, fair trial, criminal or disciplinary inquiry	2	1.5
EIRs – Reg 12(5)(e) – confidentiality of commercial or industrial information where confidentiality is provided by law to protect a legitimate economic interest	1	0.8
EIRs – Reg 13 – personal data of third parties. We will apply this exception as it appears in the legislation	8	6.1
FOIA – Section 9(2) – fee not paid within 3 months	2	1.5
FOIA – Section 12 – cost of compliance exceeds the appropriate limit	2	1.5
FOIA – Section 21 – information accessible to applicant by other means	9	6.8
FOIA – Section 22 – information intended for future publication	6	4.5
FOIA – Section 29 – the economy	4	3.0
FOIA – Section 32 – court records, etc.	1	0.8
FOIA – Section 33 – audit functions	2	1.5
FOIA – Section 35 – formulation of government policy, etc.	7	5.3
FOIA – Section 36 – effective conduct of public affairs	3	2.3

FOIA – Section 40 – personal information	37	28.0
FOIA – Section 42 – legal professional privilege	16	12.1
FOIA – Section 43 – commercial interests	19	14.4
Total	132	100%