



Llywodraeth Cymru
Welsh Government

Report on the Implementation of Open Government Legislation and Policies during 2012

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Introduction:

This is the seventh 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 2012.

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 17 April 2013. 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 2012:

- The Welsh Government received 992 requests for recorded information.
- The total number of requests received increased by 16.3% (from 853 in 2011).
- 983 (99%) of the total number of requests received were resolvable¹.
- Of the 983 resolvable requests the Welsh Government completed² 977 (99.4%) with 6 still active at the time this report was generated.
- Of the 977 completed requests, 837 (85.7%) were completed within 20 working days and 870 (89.0%) were completed within the statutory deadline³.
- Of the 977 completed requests some or all of the information was provided in response to 633 (64.8%).
- The most commonly applied exemptions under FOIA were: section 40: Personal Information (19.4%), section 43: commercial interests (15.1%), section 21: Information accessible to applicant by other means (12.8%), and section 36: effective conduct of public affairs (10.1%).
- The Welsh Government received a total of 45 complaints (4.5% of resolvable requests) relating to its handling of requests for information.
- Of the 42 internal reviews completed, the complaint was partly upheld in 6 cases and the original decision was upheld in 36 cases. In addition the need for an internal review was waived in 1 case, 1 has lapsed and 1 is yet to be concluded.
- The Information Commissioner's Office investigated 7 complaints⁴ (0.7% of resolvable requests) and issued a Decision Notice in relation to 3 of them.
- 2 ICO Decision Notices were appealed to the First-tier Tribunal.

¹ 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.

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

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

⁴ 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 992 requests for recorded information in 2012. Since the commencement of the FOIA on 1 January 2005 the number of requests received each year has fluctuated. There was a 16.3% increase in the number of requests received in 2012 when compared to 2011.

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 2011 and 2012.

Table 1: Total number of requests for recorded information received 2005-2012

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

Figure 1: Total number of requests for recorded information received 2005-2012

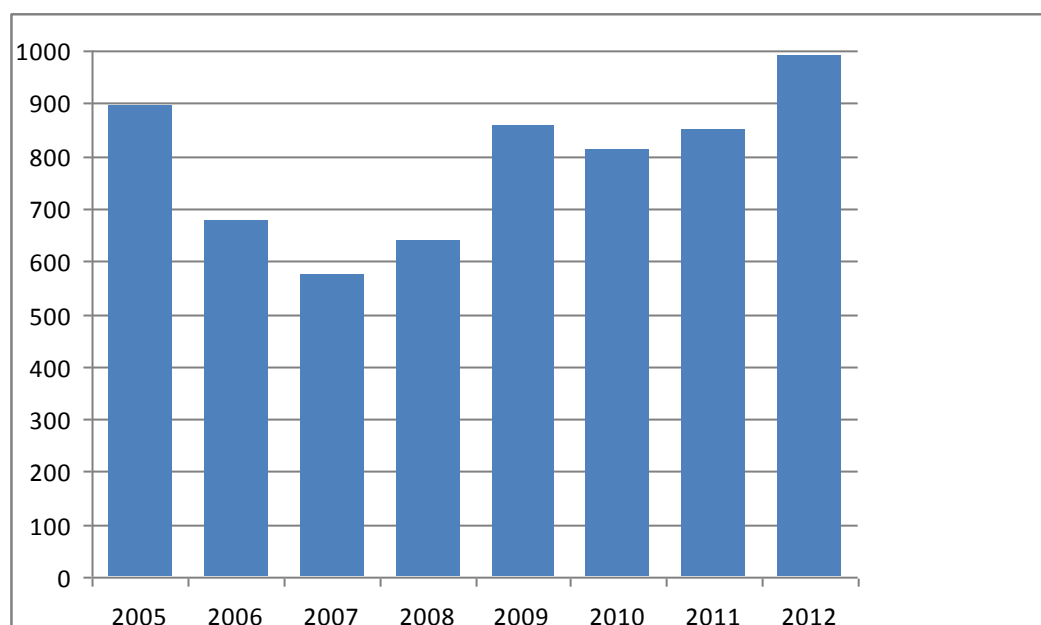
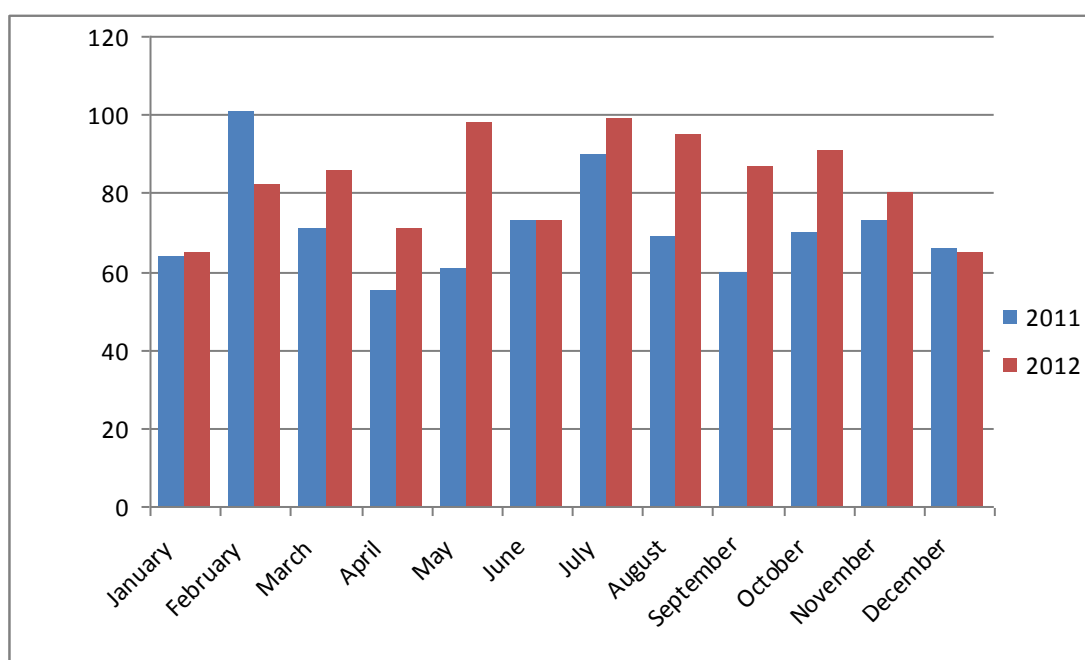


Table 2: Number of requests for recorded information received each month during 2011 and 2012

Month	2011	% of Total	2012	% of Total
January	64	7.5%	65	6.6%
February	101	11.8%	82	8.3%
March	71	8.3%	86	8.7%
April	55	6.4%	71	7.2%
May	61	7.2%	98	9.9%
June	73	8.6%	73	7.4%
July	90	10.6%	99	10.0%
August	69	8.1%	95	9.6%
September	60	7.0%	87	8.8%
October	70	8.2%	91	9.2%
November	73	8.6%	80	8.1%
December	66	7.7%	65	6.6%
Total	853	100%	992	100%

Figure 2: Number of requests for recorded information received each month during 2011 and 2012

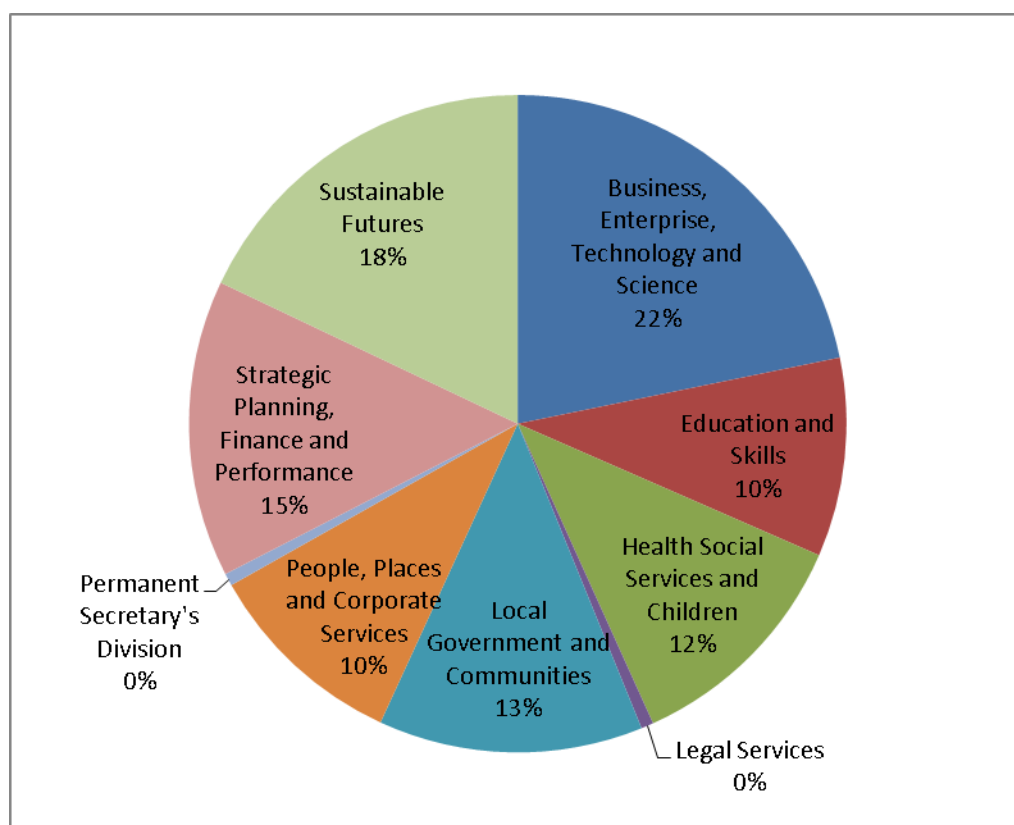


A breakdown by portfolio of the number of requests for recorded information received by the Welsh Government in 2012 is provided within Table 3.

Table 3: Number of requests received by Welsh Government portfolio areas during 2012

Director General Area	2012 Number of Requests	% of Requests
Business, Enterprise, Technology and Science	216	21.8%
Education and Skills	97	9.8%
Health, Social Services and Children	116	11.7%
Legal Services	6	0.6%
Local Government and Communities	129	13.0%
People, Places and Corporate Services	99	10.0%
Permanent Secretary's Division	6	0.6%
Strategic Planning, Finance and Performance	145	14.6%
Sustainable Futures	178	17.9%
Total	992	100%

Figure 3: Number of requests received by Welsh Government portfolio areas during 2012



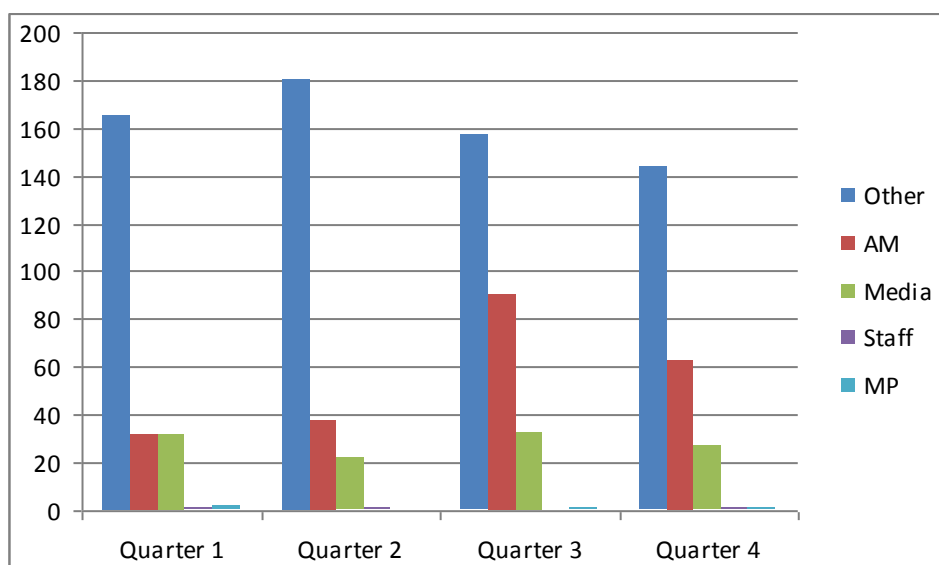
Category of Requestor:

Over the year, requests from Assembly Members (AMs), the media, staff and Members of Parliament (MPs) accounted for 344 (34.7%) of the 992 requests received. The remaining 648 requests (which amounts to 65.3% of all requests) were recorded under the 'Other' category.

Table 4: Requests received from each type of requester during each quarter of 2012

	Other	AM	Media	Staff	MP
Quarter 1	166	32	32	1	2
Quarter 2	181	38	22	1	0
Quarter 3	157	90	33	0	1
Quarter 4	144	63	27	1	1
2012 Total	648	223	114	3	4

Figure 4: Requests received from each type of requester during each quarter of 2012



Timeliness of Responses:

In 2012, 983 of the 992 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.

Of the 983 resolvable requests, 977 were completed (99.4%) with 6 still active at the time this report was generated. Of the 977 completed requests, 837 (85.7%) were completed within 20 working days and 870 (89.0%) were completed within the statutory deadline⁵.

Outcome of Completed Requests:

The number of completed requests received by the Welsh Government during 2011 and 2012 is shown by completion category in Table 5 and Figure 5.

Table 5a: Number of completed requests shown by completion category during 2011 and 2012

Completed Category	2011	% of Total	2012	% of Total
All Information Provided	458	54.5%	508	52.0%
Some Information Provided	94	11.2%	125	12.8%
No Information Provided ⁶	142	16.9%	161	16.5%
No Information Held	126	15.0%	160	16.4%
Withdrawn	20	2.4%	23	2.4%
Total	840	100%	977	100%

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

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

Figure 5a: Number of completed requests shown by completion category during 2012

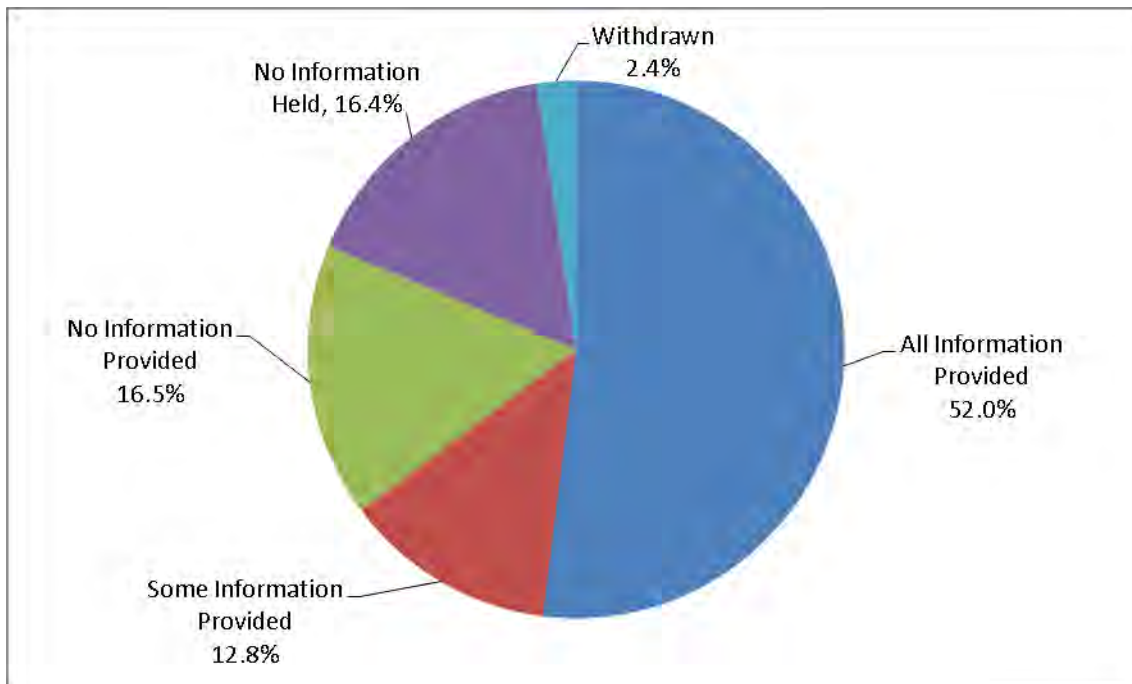
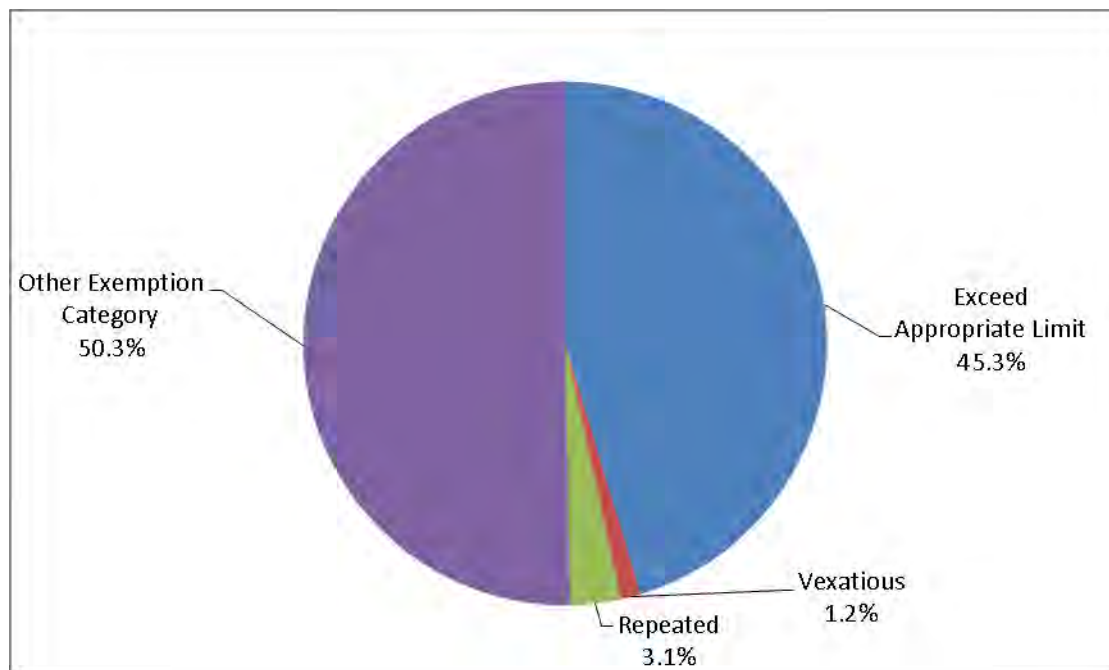


Table 5b: Number of 'No Information Provided' requests broken down by exemption category

No Information Provided Completed Category	2011	% of Total	2012	% of Total
S12 Exceeded Appropriate Limit	65	45.8%	73	45.3%
S14 Vexatious	3	2.1%	2	1.2%
S14 Repeated	8	5.6%	5	3.1%
Information falls into another exemption category ⁷	66	46.5%	81	50.3%
Total	142	100%	161	100%

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'.

Figure 5b: Number of 'No Information Provided' requests broken down by exemption 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 6 and Figure 6 details the exemptions and exceptions applied at least ten times by the Welsh Government during 2012. 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:

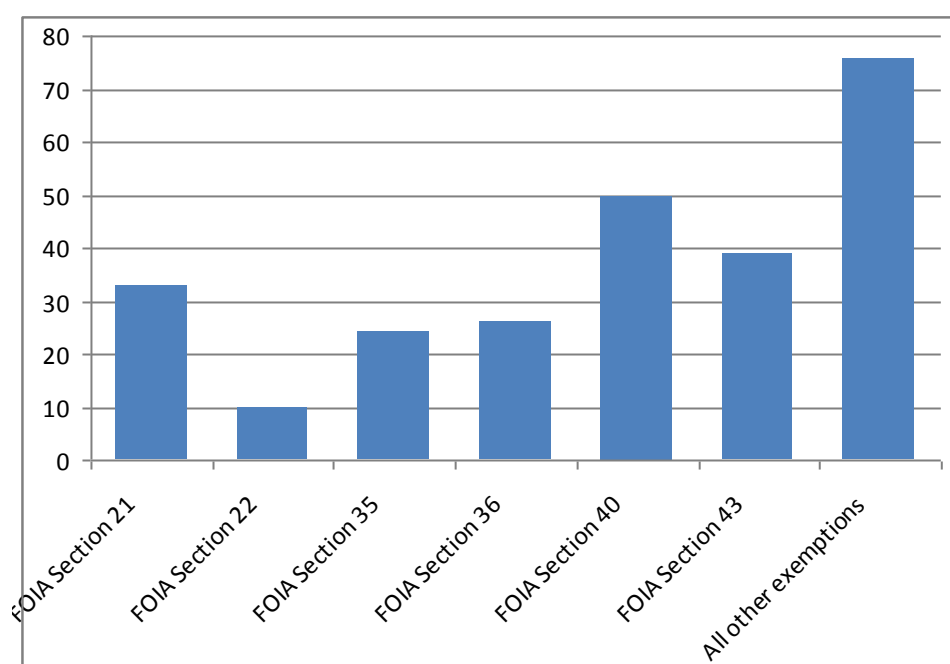
<http://wales.gov.uk/publications/accessinfo/disclosurelogs/?lang=en>

The exemptions most commonly applied were to protect important commercial interests (section 43 FOIA), personal information (section 40 FOIA), to protect the conduct of public affairs (section 36 FOIA) or the information was accessible to the applicant by other means (Section 21 FOIA).

Table 6: Use of exemptions and exceptions during 2012

Act-Exemption ⁸	2012	% of Total
FOIA Section 21	33	12.8%
FOIA Section 22	10	3.9%
FOIA Section 35	24	9.3%
FOIA Section 36	26	10.1%
FOIA Section 40	50	19.4%
FOIA Section 43	39	15.1%
All other exemptions	76	29.5%
Total	258	100%

Figure 6: Use of exemptions and exceptions during 2012



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 45 complaints in 2012 which equates to 4.5% of resolvable requests. This was an increase compared with 2011 of 36.4%. The Welsh Government has completed an internal review in relation to 42 of 45 complaints.

⁸ 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=VQ5GJIHN1MvJ7wwD62phL3y0XwhvCfvXBvQ9KVvLh0DhjYWR2vbTl-1414164158?lang=en>

Table 7: Number of Complaints (2005-2012)

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

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

Figure 7: Number of Complaints (2005-2012)

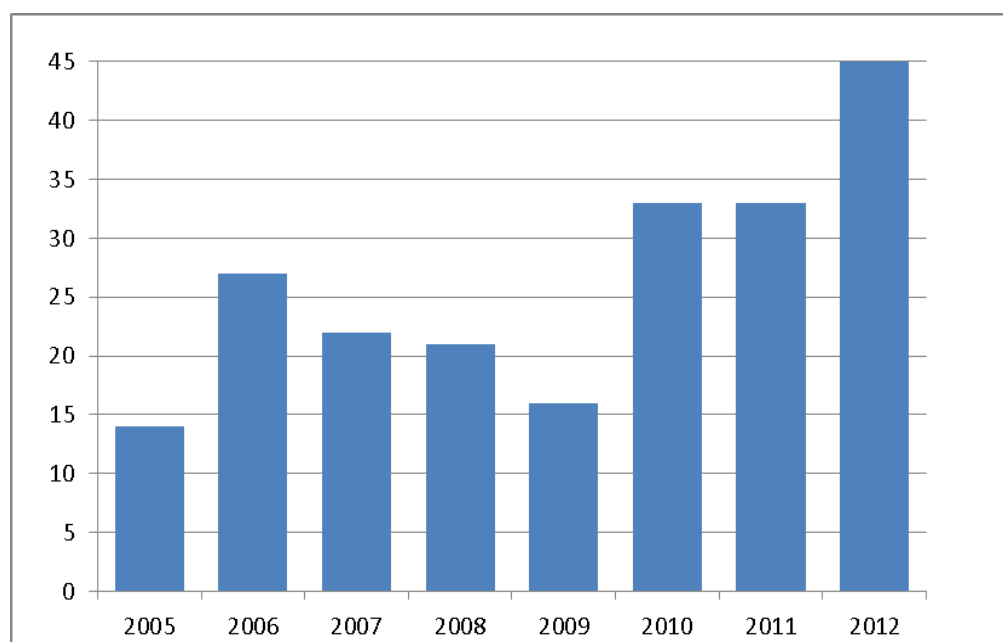


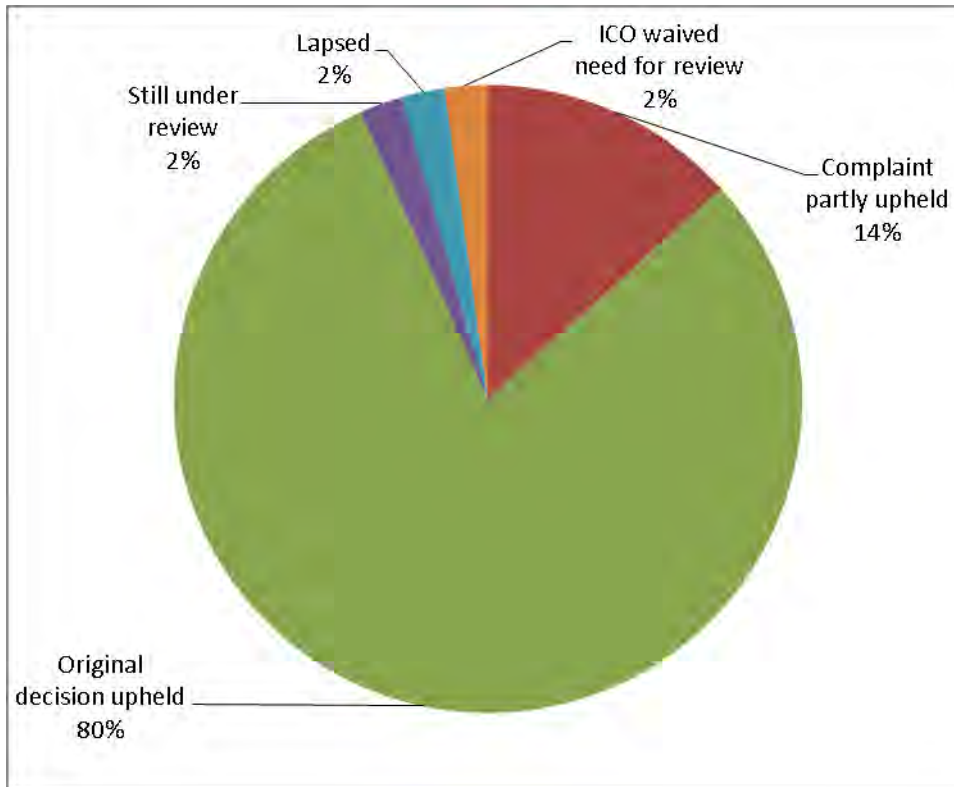
Table 8: Internal review outcomes for 2012

	Number	% of Total
Partly upheld	6	13.3%
Original decision upheld	36	80.0%
Still under review	1	2.2%
ICO waived the need for review	1	2.2%
Lapsed	1	2.2%
Total	45	100%

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

Of the 45 complaints 42 internal reviews were completed. Of the 42 internal reviews, the complaint was partly upheld in 6 cases and the original decision was upheld in 36 cases. In addition the need for an internal review was waived in 1 case, 1 has lapsed and 1 is yet to be concluded.

Figure 8: Internal review outcomes for 2012



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 42 completed internal reviews 29 (69%) were completed within 20 working days, 9 (21.4%) were completed within 21 to 40 working days and 4 (9.5%) 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 2012 the ICO investigated 7 complaints⁹ (0.7% of resolvable requests). Of the 5 completed investigations 3 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 2012, two ICO Decision Notices were appealed to the First-tier Tribunal.

⁹ 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 2012

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	2012	% of Total
DPA Schedule 7, Paragraph 10 – Legal Professional Privilege	2	0.8%
DPA Schedule 7, Paragraph 4 – Judicial appointments and honours	2	0.8%
DPA Schedule 7, Paragraph 9 – Judicial appointments and honours	1	0.4%
DPA Section 30 – Health, Education and Social Work	6	2.3%
EIRs Reg 12(4)(e) – Internal communications	4	1.6%
EIRs Reg 13 – Personal data of third parties	8	3.1%
FOIA Section 1(3) – Description of the information does not allow us to locate and identify the information	8	3.1%
FOIA Section 12 – Cost of compliance exceeds the appropriate limit	9	3.5%
FOIA Section 13 – Fees lawfully requested for disclosure not paid	2	0.8%
FOIA Section 14 – vexatious or repeated	1	0.4%
FOIA Section 21 – Information accessible to the applicant by other means	33	12.8%
FOIA Section 22 – Information intended for future publication	10	3.9%
FOIA Section 26 – Defence	1	0.4%
FOIA Section 28 – Relations within the United Kingdom	1	0.4%
FOIA Section 29 – The economy	5	1.9%
FOIA Section 30 – Investigations and proceedings conducted by public authorities	3	1.2%
FOIA Section 31 – Law enforcement	8	3.1%
FOIA Section 33 – Audit functions	5	1.9%
FOIA Section 35 – Formation of government policy	24	9.3%
FOIA Section 36 – Effective conduct of public affairs	26	10.1%
FOIA Section 40 – Personal Information	50	19.4%
FOIA Section 41 – Information provided in confidence	4	1.6%
FOIA Section 42 – Legal professional privilege	6	2.3%
FOIA Section 43 – Commercial interests	39	15.1%
Total	258	100%