



Llywodraeth Cymru
Welsh Government

Report on the Implementation of Open Government Legislation and Policies during 2016

Contents	Page
Introduction	3
Summary	4
Volume of Freedom of Information Requests	5
Category of Requestor	8
Timeliness of Responses	9
Outcomes of Completed Requests	9
Use of Exemptions and Exceptions	11
Internal Reviews	13
Timeliness of Internal Reviews	15
Appeals to the Information Commissioner	15
Appeals to the First-tier Tribunal (Information Rights)	15
Annex A: Use of Exemptions and Exceptions during 2016	16

Introduction:

This is the eleventh 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 2016.

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 02 May 2017. 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 2016:

- The Welsh Government received 885 requests for recorded information.
- The total number of requests received decreased by 1.6% (from 899 in 2015).
- Of the 885 requests the Welsh Government completed¹ 885 (100%) with 0 active at the time this report was generated.
- Of the 885 completed requests, 732 (82.7%) were completed within 20 working days and 750 (84.7%) were completed within the statutory deadline².
- Of the 885 completed requests some or all of the information was provided in response to 559 (63.2%).
- The most commonly applied exemptions under FOIA were: section 40: personal information (25.3%), section 21: information accessible to applicant by other means (23.0%), and section 43: commercial interests (21.9%).
- The Welsh Government received a total of 61 complaints (6.9% of requests received) relating to its handling of requests for information.
- Of the 59 internal reviews, the complaint was upheld in 4 cases, partly upheld in 11 cases and the original decision was upheld in 44 cases.
- The Information Commissioner's Office investigated 16 complaints³ (1.8% of requests) and issued a Decision Notice in relation to 8 of them.
- 0 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. Investigations that are resolved informally are not counted in these figures.

Volume of Freedom of Information Requests:

The Welsh Government received 885 requests for recorded information in 2016. Since the commencement of the FOIA on 1 January 2005 the number of requests received each year has fluctuated. There was a 1.6% decrease in the number of requests received in 2016 when compared to 2015.

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 2015 and 2016.

Table 1: Total number of requests for recorded information received 2005-2016

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%

Figure 1: Total number of requests for recorded information received 2005-2016

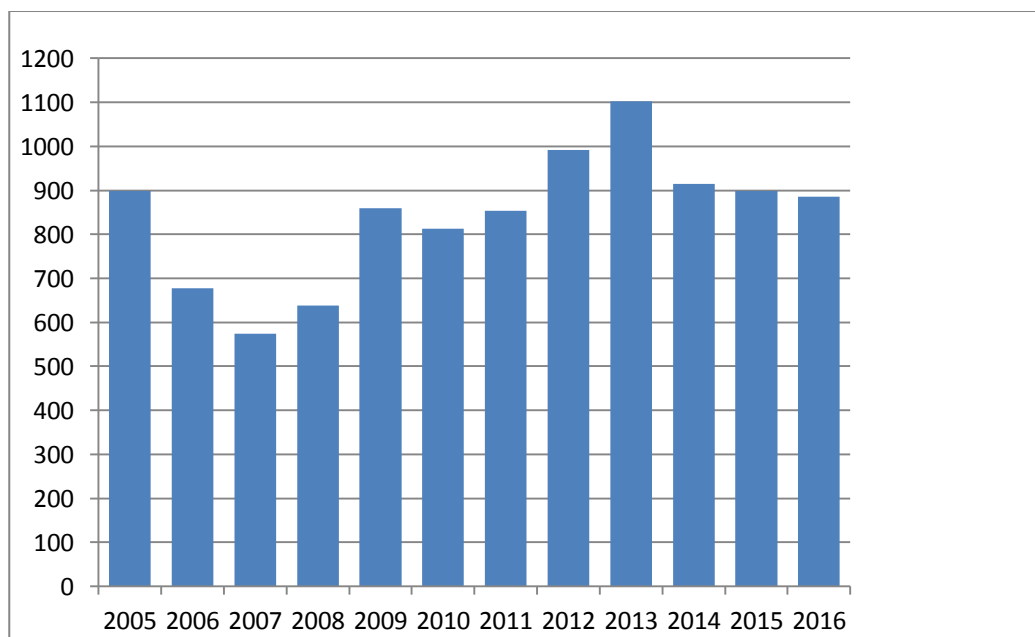
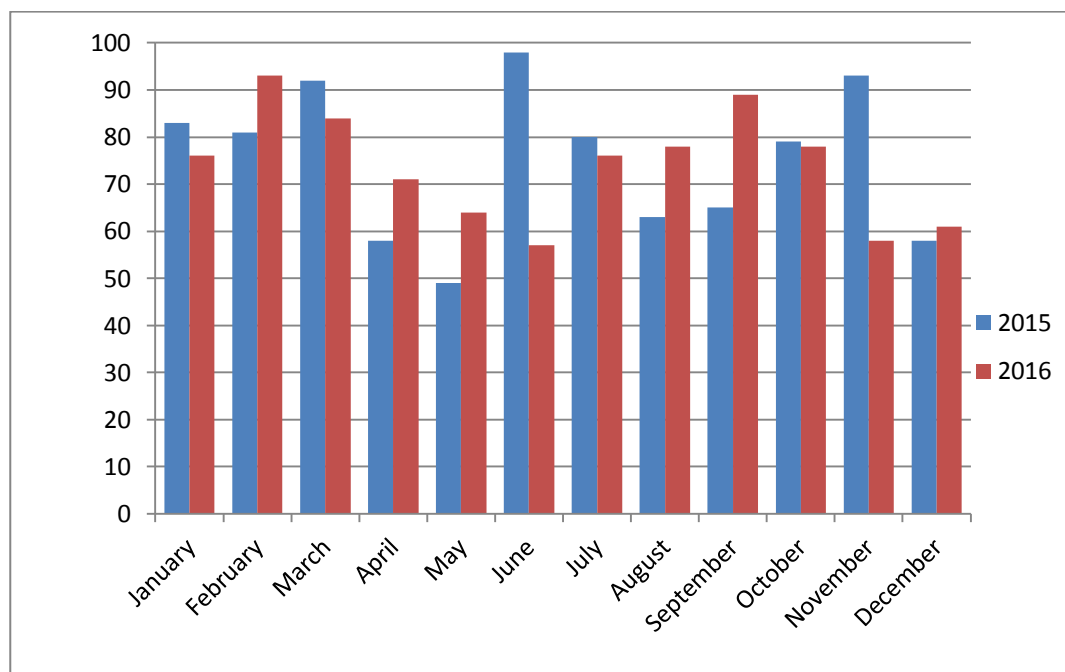


Table 2: Number of requests for recorded information received each month during 2015 and 2016

Month	2015	% of Total	2016	% of Total
January	83	9.2%	76	8.6%
February	81	9.0%	93	10.5%
March	92	10.2%	84	9.5%
April	58	6.5%	71	8.0%
May	49	5.5%	64	7.2%
June	98	10.9%	57	6.4%
July	80	8.9%	76	8.6%
August	63	7.0%	78	8.8%
September	65	7.2%	89	10.1%
October	79	8.8%	78	8.8%
November	93	10.3%	58	6.6%
December	58	6.5%	61	6.9%
Total	899	100%	885	100%

Figure 2: Number of requests for recorded information received each month during 2015 and 2016

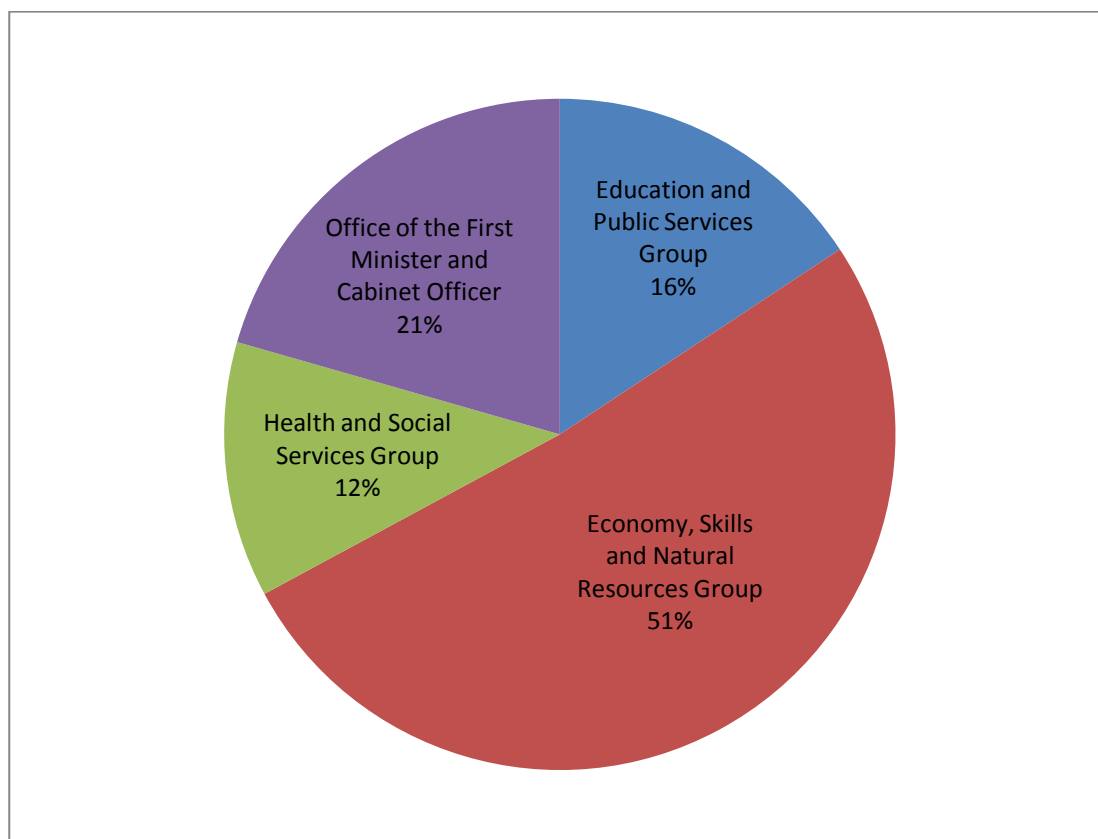


A breakdown by portfolio of the number of requests for recorded information received by the Welsh Government in 2016 is provided within Table 3.

Table 3: Number of requests received by Welsh Government portfolio areas during 2016

Director General Area / Group	2016 Number of Requests	% of Requests
Education and Public Services Group	139	15.7%
Economy, Skills and Natural Resources Group	455	51.4%
Health and Social Services Group	109	12.3%
Office of the First Minister and Cabinet Office	182	20.6%
Total	885	100%

Figure 3: Number of requests received by Welsh Government portfolio areas during 2016



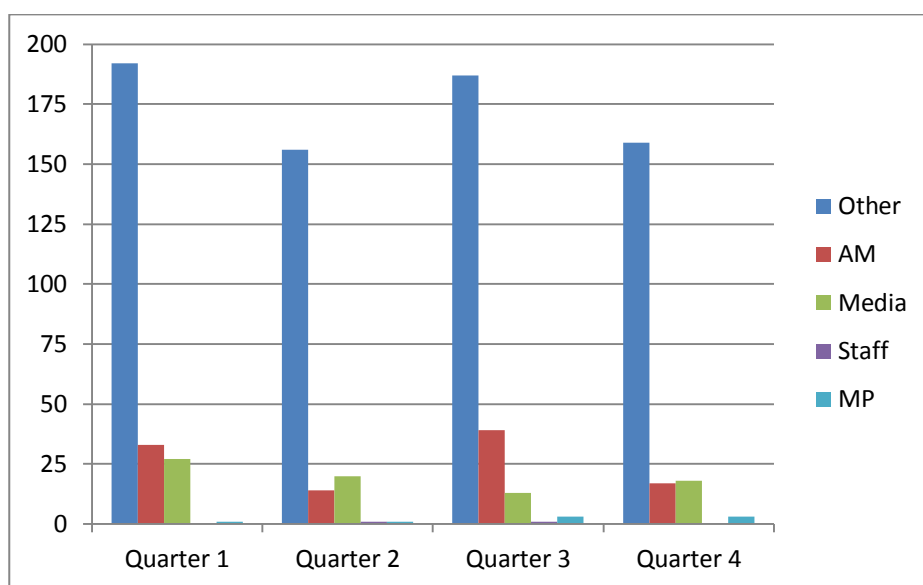
Category of Requestor:

Over the year, requests from Assembly Members (AMs), the media, staff and Members of Parliament (MPs) accounted for 191 (21.6%) of the 885 requests received. The remaining 694 requests (which amount to 78.4% of all requests) were recorded under the 'Other' category.

Table 4: Requests received from each type of requester during each quarter of 2016

	Other	AM	Media	Staff	MP
Quarter 1	192	33	27	0	1
Quarter 2	156	14	20	1	1
Quarter 3	187	39	13	1	3
Quarter 4	159	17	18	0	3
2015 Total	694	103	78	2	8

Figure 4: Requests received from each type of requester during each quarter of 2016



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 885 requests, 885 were complete (100.0%) at the time the report was compiled. Of the 885 completed requests, 732 (82.7%) were completed within 20 working days and 750 (84.7%) were completed within the statutory deadline⁴.

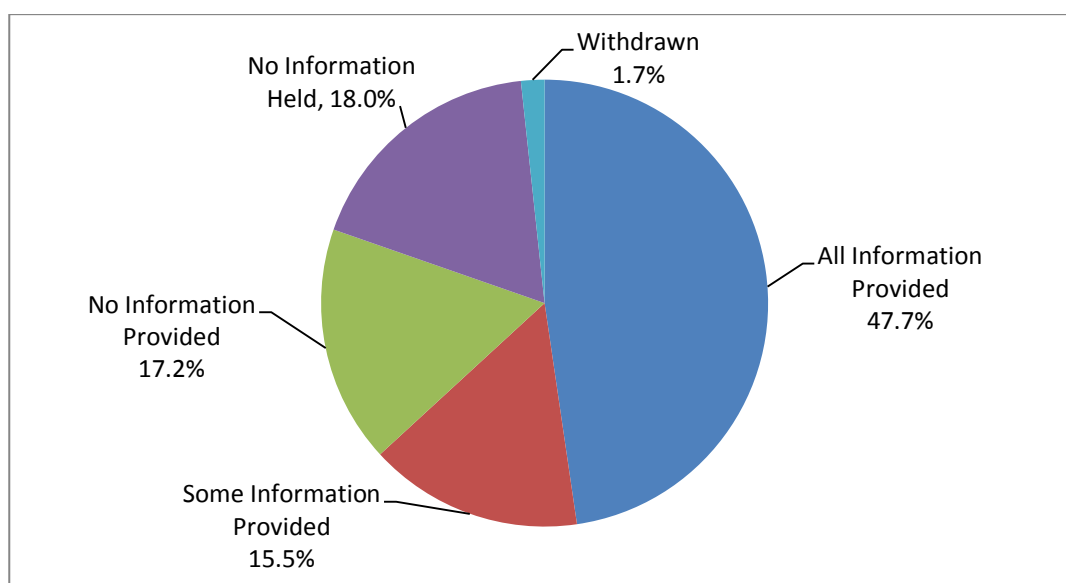
Outcome of Completed Requests:

The number of completed requests received by the Welsh Government during 2015 and 2016 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 2015 and 2016

Completed Category	2015	% of Total	2016	% of Total
All Information Provided	449	50.0%	422	47.7%
Some Information Provided	131	14.6%	137	15.5%
No Information Provided ⁵	151	16.8%	152	17.2%
No Information Held	152	16.9%	159	18.0%
Withdrawn	15	1.7%	15	1.7%
Total	898	100%	885	100%

Figure 5a: Number of completed requests shown by completion category during 2016



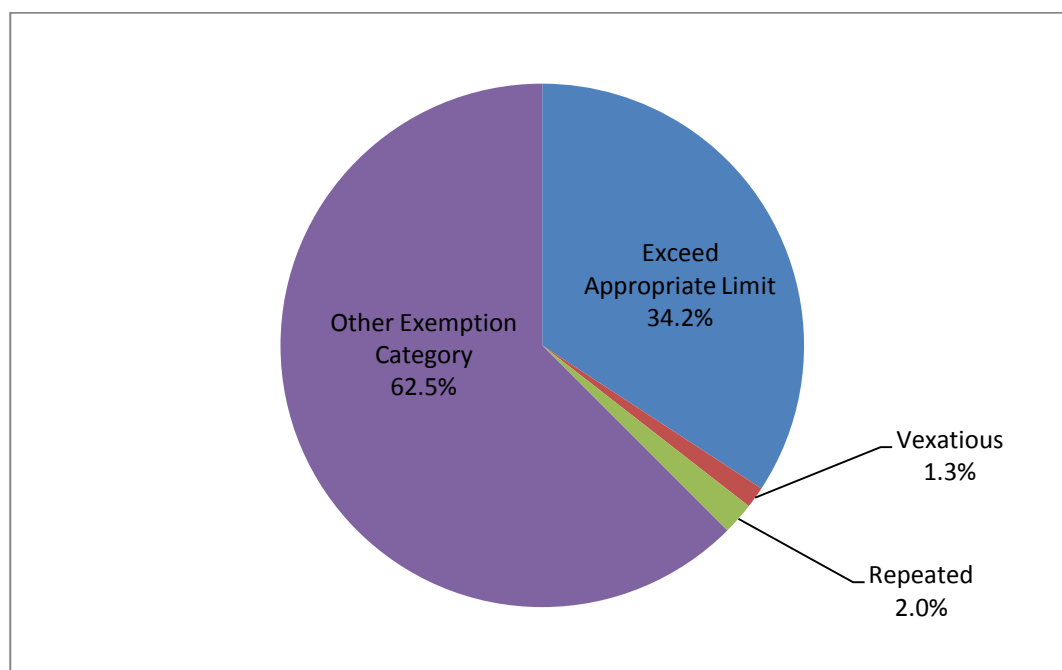
⁴ The statutory deadline includes requests answered either within 20 working days or within a permitted extended deadline.

⁵ 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 during 2015 and 2016

No Information Provided Completed Category	2015	% of Total	2016	% of Total
S12 Exceeded Appropriate Limit	65	43.0%	52	34.2%
S14 Vexatious	0	0.0%	2	1.3%
S14 Repeated	3	2.0%	3	2.0%
Information falls into another exemption category ⁶	83	55.0%	95	62.5%
Total	151	100%	152	100%

Figure 5b: Number of 'No Information Provided' requests broken down by exemption category during 2016



⁶ 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 2016. 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>

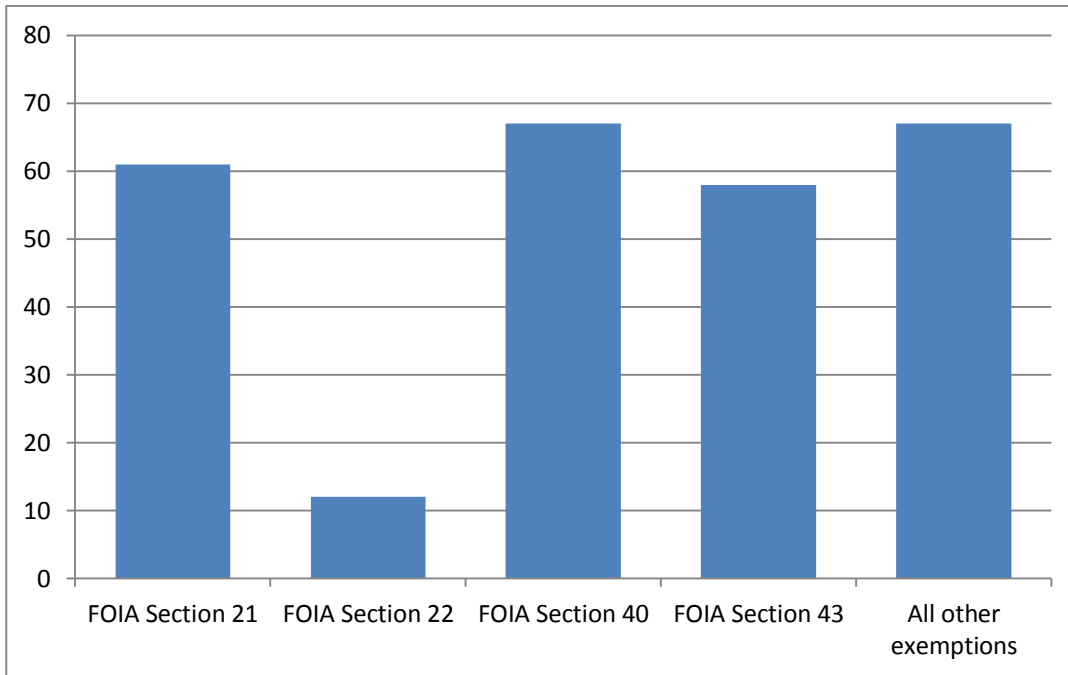
The exemptions most commonly applied were to protect personal information (section 40 FOIA), where the information was accessible to the applicant by other means (section 21 FOIA) and to protect important commercial interests (section 43 FOIA).

Table 6: Use of exemptions and exceptions during 2016

Act-Exemption ⁷	2016	% of Total
FOIA Section 21	61	23.0%
FOIA Section 22	12	4.5%
FOIA Section 40	67	25.3%
FOIA Section 43	58	21.9%
All other exemptions	67	25.3%
Total	265	100%

⁷ 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 2016



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 59 complaints in 2016 which equates to 6.7% of requests. This was an increase compared with 2015 of 47.5%. The Welsh Government has completed an internal review in relation to all 59 complaints.

Table 7: Number of Complaints (2005-2016)

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

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

Figure 7: Number of Complaints (2005-2016)

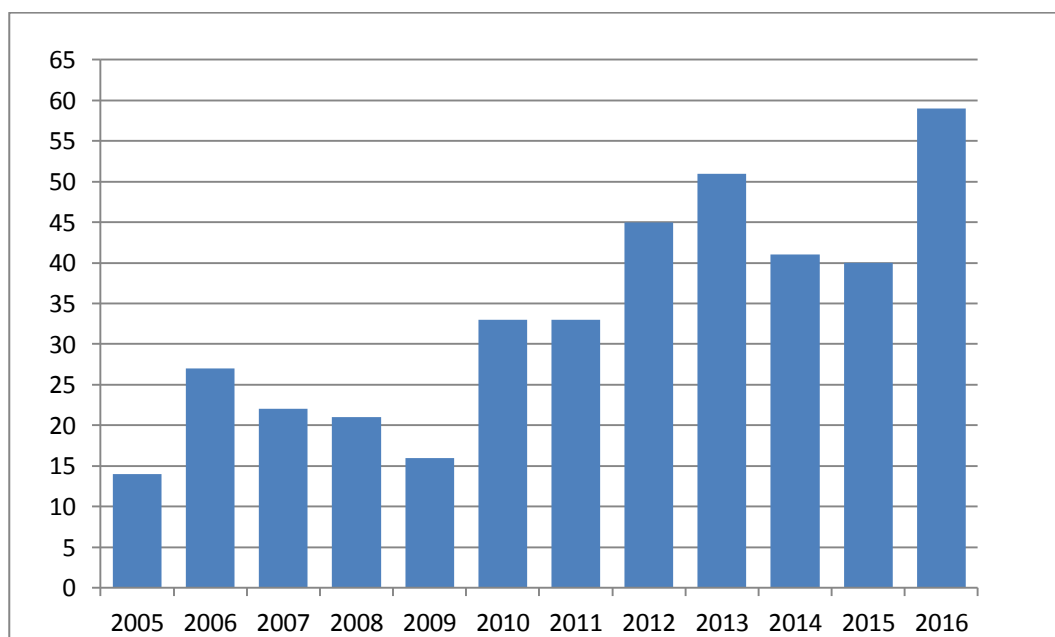


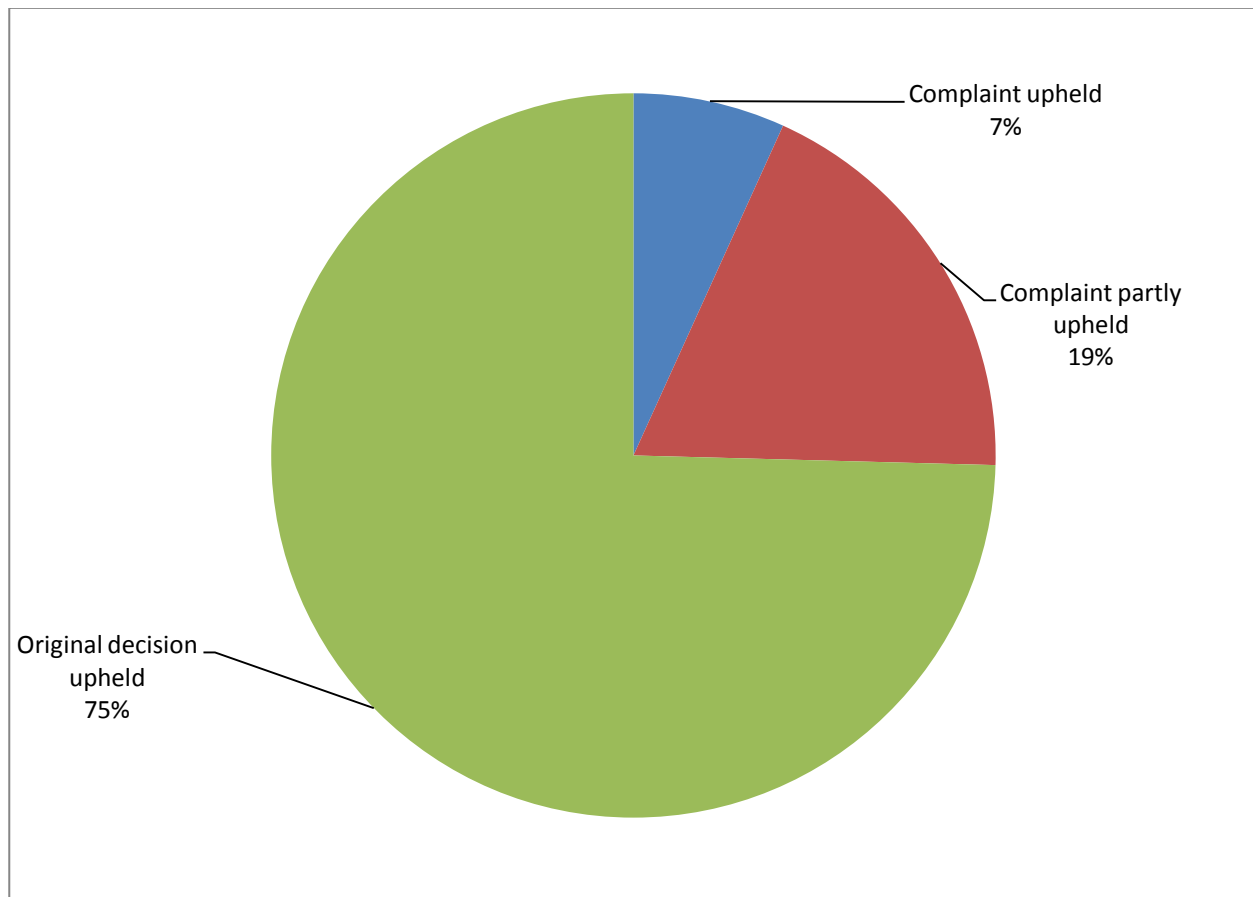
Table 8: Internal review outcomes for 2016

	Number	% of Total
Complaint upheld	4	6.8%
Complaint partly upheld	11	18.6%
Original decision upheld	44	74.6%
Total	59	100%

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

Of the 59 internal reviews, the complaint was upheld in 4 cases, partly upheld in 11 cases and the original decision was upheld in 44 cases.

Figure 8: Internal review outcomes for 2016



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 59 internal reviews 41 (69.5%) were completed within 20 working days, 16 (27.1%) were completed within 21 to 40 working days and 2 (3.4%) 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 2016 the ICO investigated 16 complaints⁸ (1.8% of requests). Of the 14 completed investigations 8 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 2016, 0 ICO Decision Notices were appealed to the First-tier Tribunal.

⁸ 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 2016

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	2016	% of Total
DPA Schedule 7, Paragraph 4 – Crown employment and crown or ministerial appointments	2	0.8%
EIRs 12(4)(b) – Request is manifestly unreasonable	1	0.4%
EIRs 12(4)(c) – Information formulated in too general manner	1	0.4%
EIRs 12(4)(d) – Material is still in the course of completion, unfinished documents or incomplete data	3	1.1%
EIRs Reg 12(4)(e) – Internal communications	3	1.1%
EIRs Reg 12(5)(b) – Course of justice, fair trial, criminal or disciplinary inquiry	2	0.8%
EIRs Reg 12(5)(e) – Confidentiality of commercial or industrial information where confidentiality is provided by law to protect a legitimate commercial interest	1	0.4%
EIRs Reg 13 – Personal data of third parties	5	1.9%
FOIA Section 21 – Information accessible to the applicant by other means	61	23.0%
FOIA Section 22 – Information intended for future publication	12	4.5%
FOIA Section 23 – Information supplied by, or relating to, bodies dealing with security matters	1	0.4%
FOIA Section 24 – National security	1	0.4%
FOIA Section 26 – Defence	1	0.4%
FOIA Section 27 – International relations	1	0.4%
FOIA Section 28 – Relations within the United Kingdom	1	0.4%
FOIA Section 29 – The economy	6	2.3%
FOIA Section 31 – Law enforcement	7	2.6%
FOIA Section 35 – Formation of government policy	8	3.0%
FOIA Section 36 – Effective conduct of public affairs	4	1.5%
FOIA Section 37 – Communications with Her majesty, etc and honours	1	0.4%
FOIA Section 38 – Health and safety	5	1.9%
FOIA Section 40 – Personal Information	67	25.3%
FOIA Section 41 – Information provided in confidence	4	1.5%
FOIA Section 42 – Legal professional privilege	9	3.4%
FOIA Section 43 – Commercial interests	58	21.9%
Total	265	100%