



Llywodraeth Cymru
Welsh Government

Report on the Implementation of Open Government Legislation and Policies during 2018

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	10
Use of Exemptions and Exceptions	12
Internal Reviews	14
Timeliness of Internal Reviews	16
Appeals to the Information Commissioner	16
Appeals to the First-tier Tribunal (Information Rights)	16
Annex A: Use of Exemptions and Exceptions during 2018	17

Introduction:

This is the thirteenth 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 2018.

The statistics in this report relate to the handling of requests for recorded information under the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs). It also includes requests received under the Data Protection Act 1998 and requests received post May 25th which were received under the Data Protection Act 2018 (DPA2018) / General Data Protection Regulation (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 03 September 2019. 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 2018:

- The Welsh Government received 934 requests for recorded information.
- The total number of requests received increased by 18.7% (from 787 in 2017).
- Of the 934 requests the Welsh Government completed¹ 934 (100%) at the time this report was generated.
- Of the 934 completed requests, 807 (86.4%) were completed within 20 working days and 838 (89.7%) were completed within the statutory deadline².
- Of the 934 completed requests some or all of the information was provided in response to 536 (57.4%).
- The most commonly applied exemptions under FOIA and exceptions under EIR were: section 40(FOIA)/Regulation 13 (EIR): personal information (36.3%), section 21: information accessible to applicant by other means (14.2%), and section 43: commercial interests (7.9%).
- The Welsh Government received a total of 81 complaints (8.7% of requests received) relating to its handling of requests for information.
- Of the 81 internal reviews, the complaint was upheld in 13 cases, partly upheld in 7 cases, the original decision was upheld in 59 cases. 1 complaint was withdrawn by the complainant and 1 complaint was refused as it was received outside the timeframe for receipt of complaints.
- The Information Commissioner's Office investigated 25 complaints³ (2.7% of requests) and issued a Decision Notice in relation to 16 of them.
- 2 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 934 requests for recorded information in 2018. Since the commencement of the FOIA on 1 January 2005 the number of requests received each year has fluctuated. There was an 18.7% increase in the number of requests received in 2018 when compared to 2017.

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 2017 and 2018.

Table 1: Total number of requests for recorded information received 2005-2018

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%

Figure 1: Total number of requests for recorded information received 2005-2018

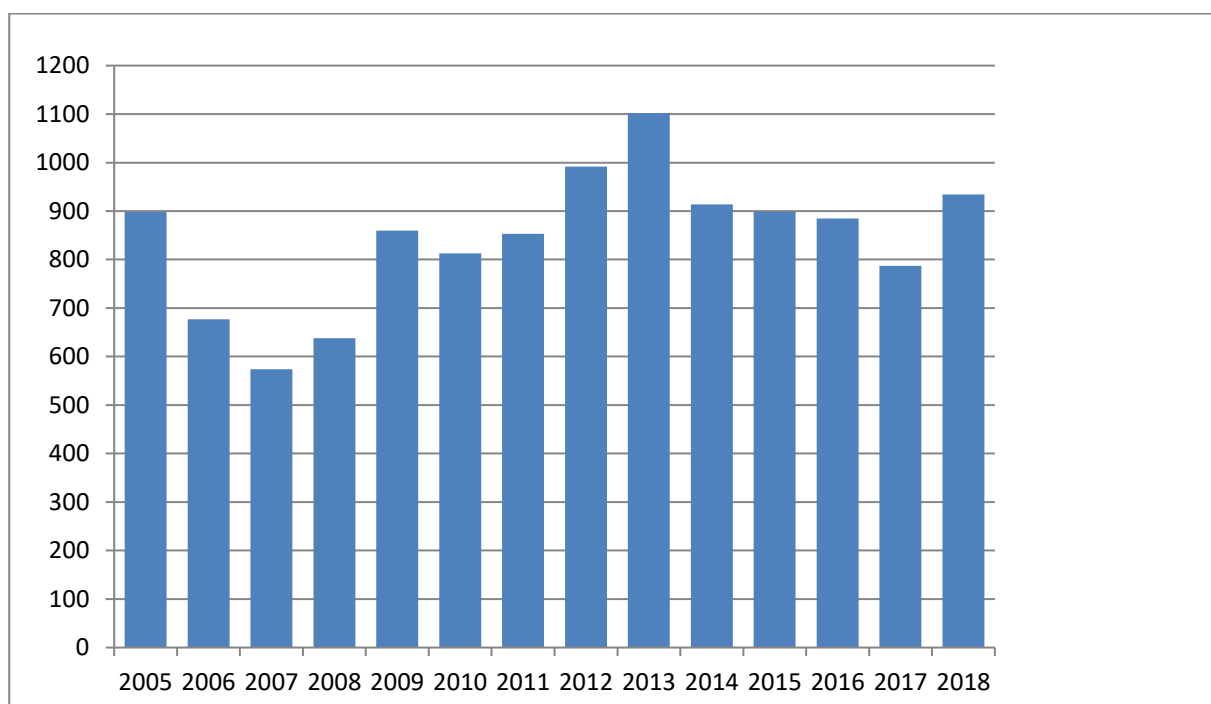
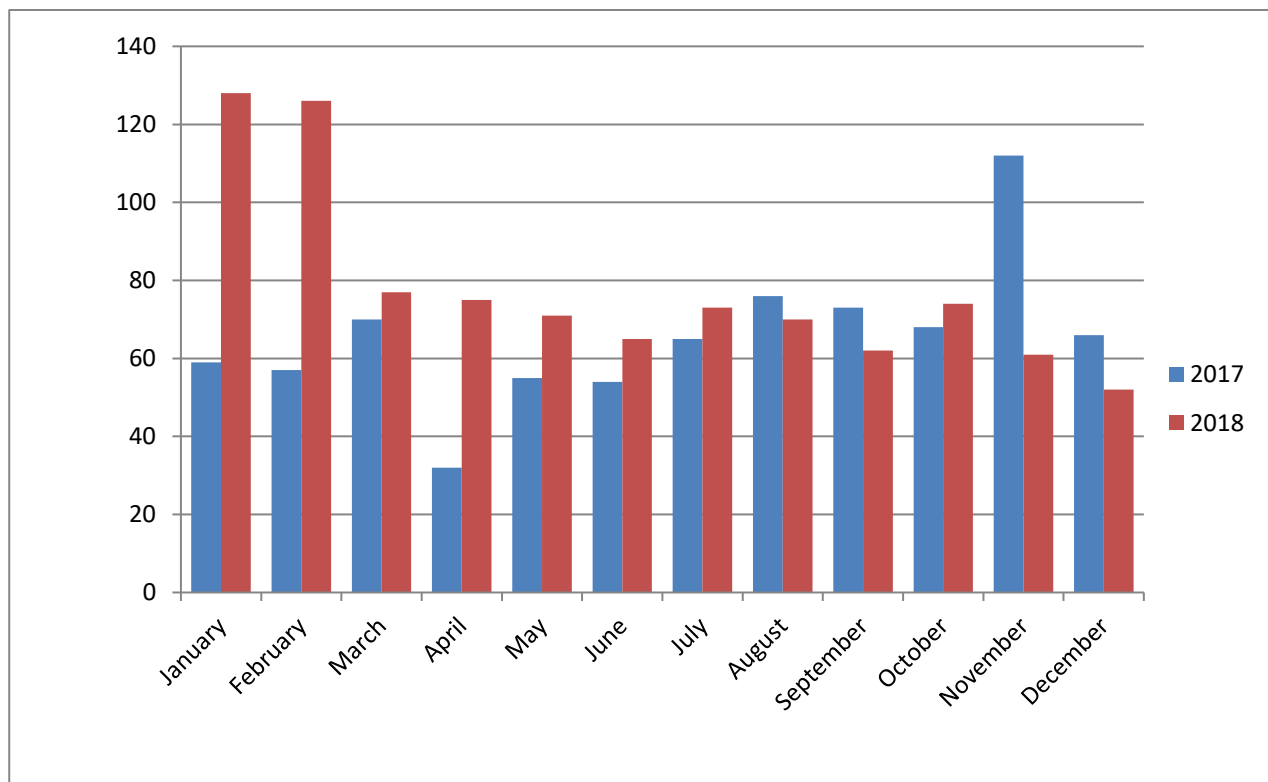


Table 2: Number of requests for recorded information received each month: 2017 & 2018

Month	2017	% of Total	2018	% of Total
January	59	7.5%	128	13.7%
February	57	7.2%	126	13.5%
March	70	8.9%	77	8.2%
April	32	4.1%	75	8.0%
May	55	7.0%	71	7.6%
June	54	6.9%	65	7.0%
July	65	8.3%	73	7.8%
August	76	9.7%	70	7.5%
September	73	9.3%	62	6.6%
October	68	8.6%	74	7.9%
November	112	14.2%	61	6.5%
December	66	8.4%	52	5.6%
Total	787	100%	934	100%

Figure 2: Number of requests for recorded information received each month: 2017 & 2018

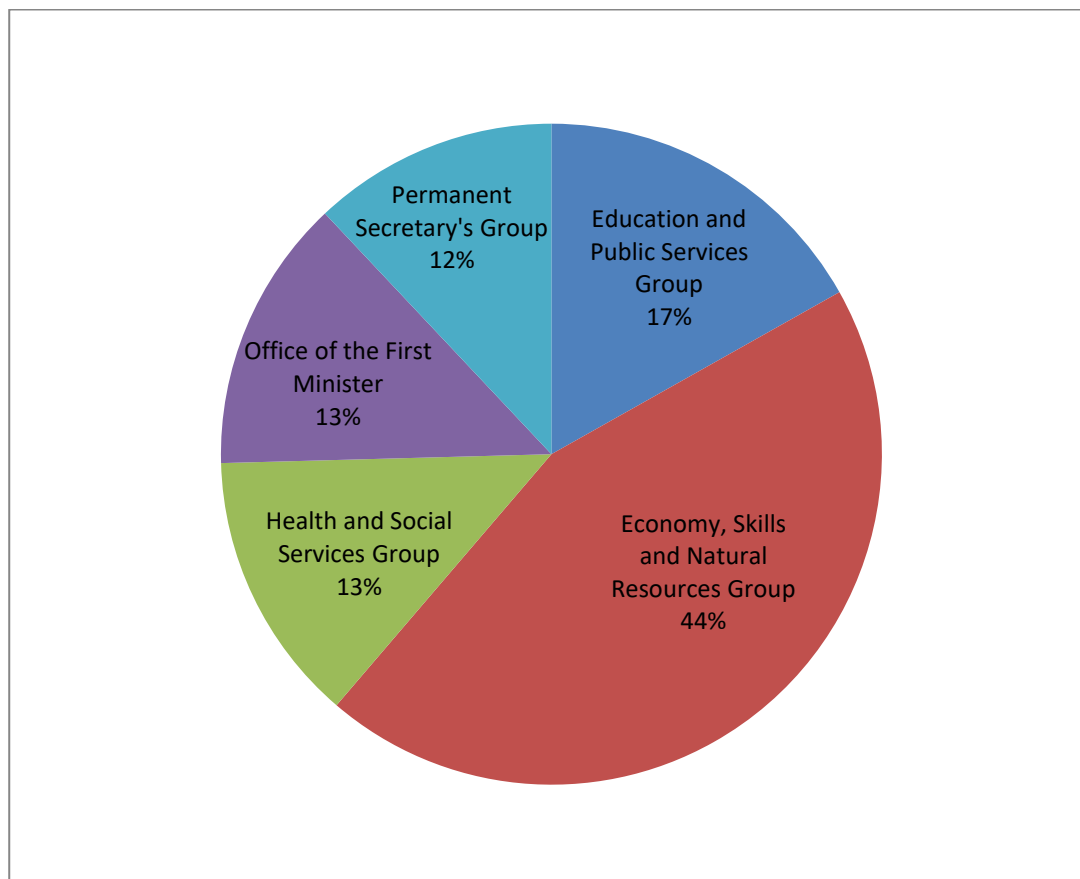


A breakdown by portfolio of the number of requests for recorded information received by the Welsh Government in 2018 is provided within Table 3.

Table 3: Number of requests received by Welsh Government portfolio areas during 2018

Director General Area / Group	2018 Number of Requests	% of Requests
Education and Public Services Group	157	16.8%
Economy, Skills and Natural Resources Group	414	44.3%
Health and Social Services Group	124	13.3%
Office of the First Minister	125	13.4%
Permanent Secretary's Group	112	12.0%
Total	934	100%

Figure 3: Number of requests received by Welsh Government portfolio areas during 2018



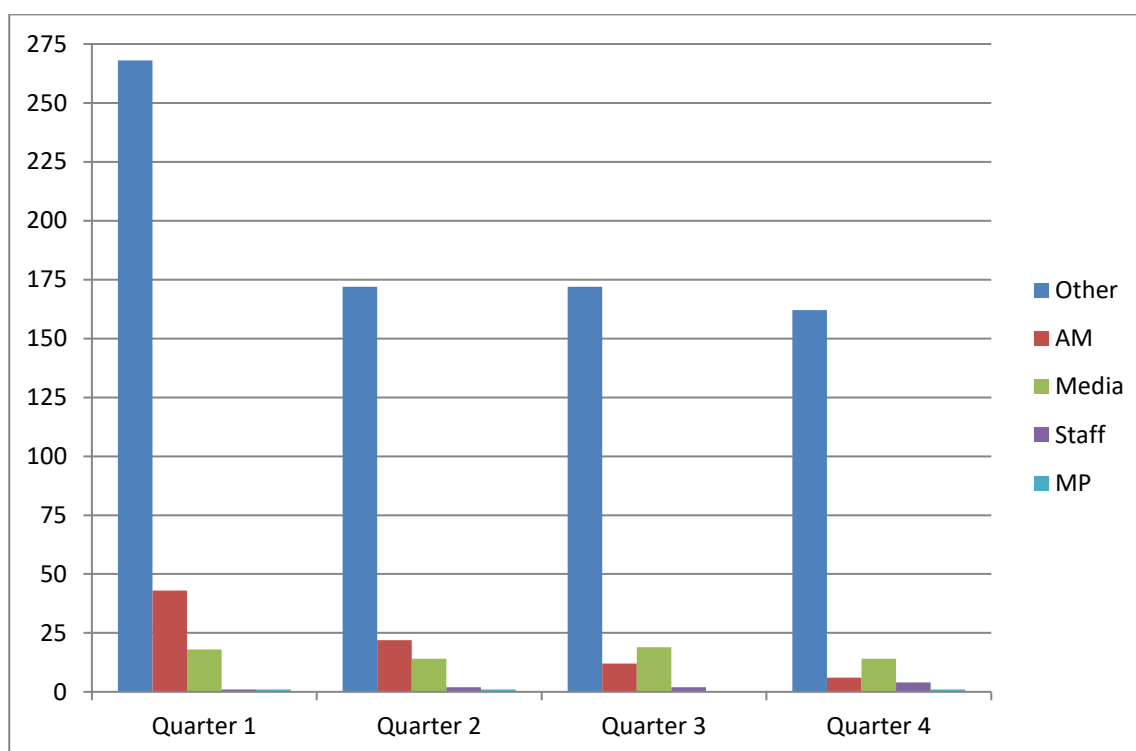
Category of Requestor:

Over the year, requests from Assembly Members (AMs), the media, staff and Members of Parliament (MPs) accounted for 160 (17.1%) of the 934 requests received. The remaining 774 requests (which amount to 82.9% of all requests) were recorded under the 'Other' category.

Table 4: Requests received from each type of requester during each quarter of 2018

	Other	AM	Media	Staff	MP
Quarter 1	268	43	18	1	1
Quarter 2	172	22	14	2	1
Quarter 3	172	12	19	2	0
Quarter 4	162	6	14	4	1
2018 Total	774	83	65	9	3

Figure 4: Requests received from each type of requester during each quarter of 2018



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 934 requests, 934 were complete (100.0%) at the time the report was compiled. Of the 934 completed requests, 807 (86.4%) were completed within 20 working days and 838 (89.7%) 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 2005-2018

Year	% completed within statutory deadline
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%

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.

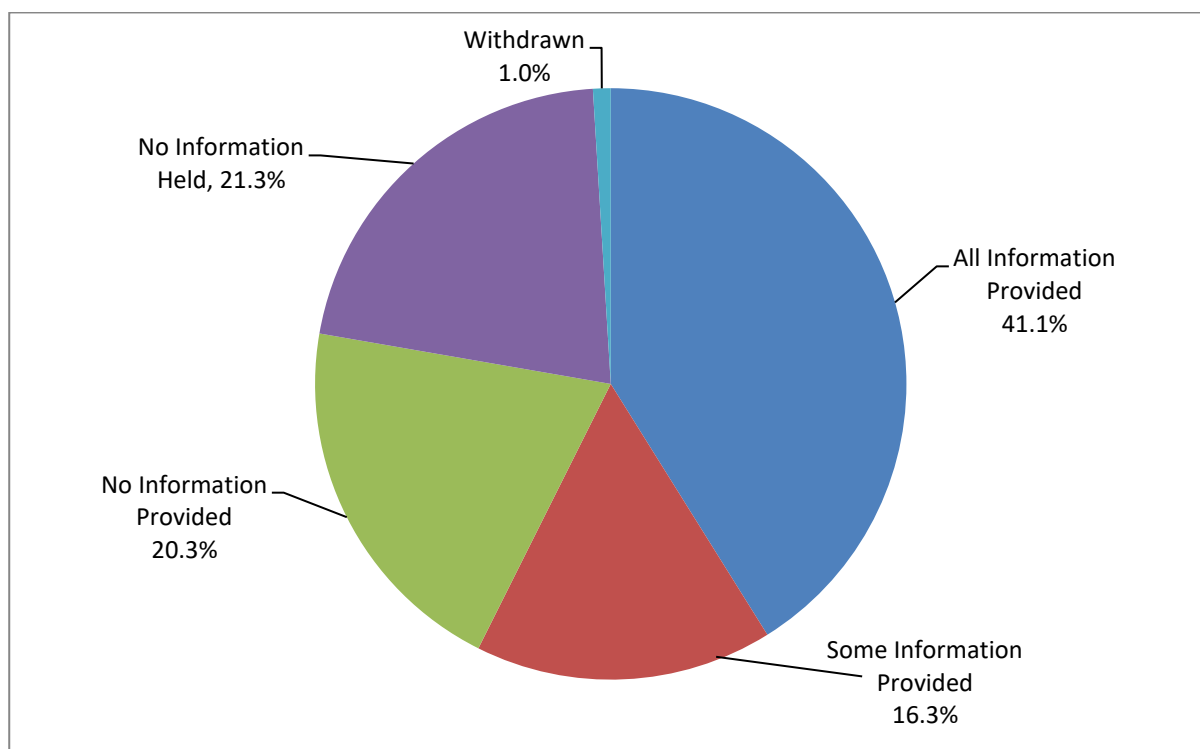
Outcome of Completed Requests:

The number of completed requests received by the Welsh Government during 2017 and 2018 is shown by completion category in Tables 6a and 6b, and Figures 6a and 6b.

Table 6a: Number of completed requests shown by completion category during 2017 and 2018

Completed Category	2017	% of Total	2018	% of Total
All Information Provided	354	45.0%	384	41.1%
Some Information Provided	139	17.7%	152	16.3%
No Information Provided ⁶	113	14.4%	190	20.3%
No Information Held	168	21.3%	199	21.3%
Withdrawn	13	1.7%	9	1.0%
Total	787	100%	934	100%

Figure 6a: Number of completed requests shown by completion category during 2018

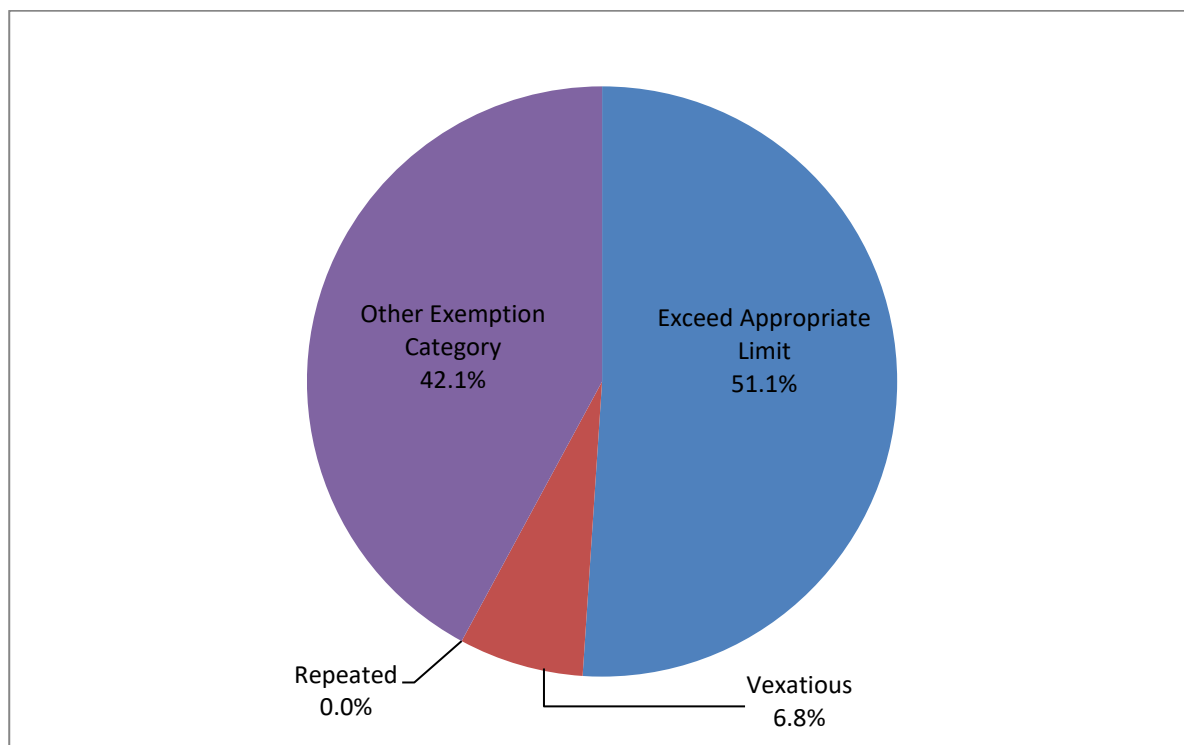


⁶ The 'No Information Provided' category includes information withheld in full using one or more exemptions, and those rejected for exceeding the appropriate limit, and being vexatious or repeated requests.

Table 6b: Number of 'No Information Provided' requests broken down by exemption category during 2017 and 2018

No Information Provided Completed Category	2017	% of Total	2018	% of Total
S12 Exceeded Appropriate Limit	40	35.4%	97	51.1%
S14 Vexatious	1	0.9%	13	6.8%
S14 Repeated	1	0.9%	0	0.0%
Information falls into another exemption category ⁷	71	62.8%	80	42.1%
Total	113	100%	190	100%

Figure 6b: Number of 'No Information Provided' requests broken down by exemption category during 2018



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 DPA.

Table 7 and Figure 7 details the exemptions and exceptions applied at least ten times by the Welsh Government during 2018. 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>

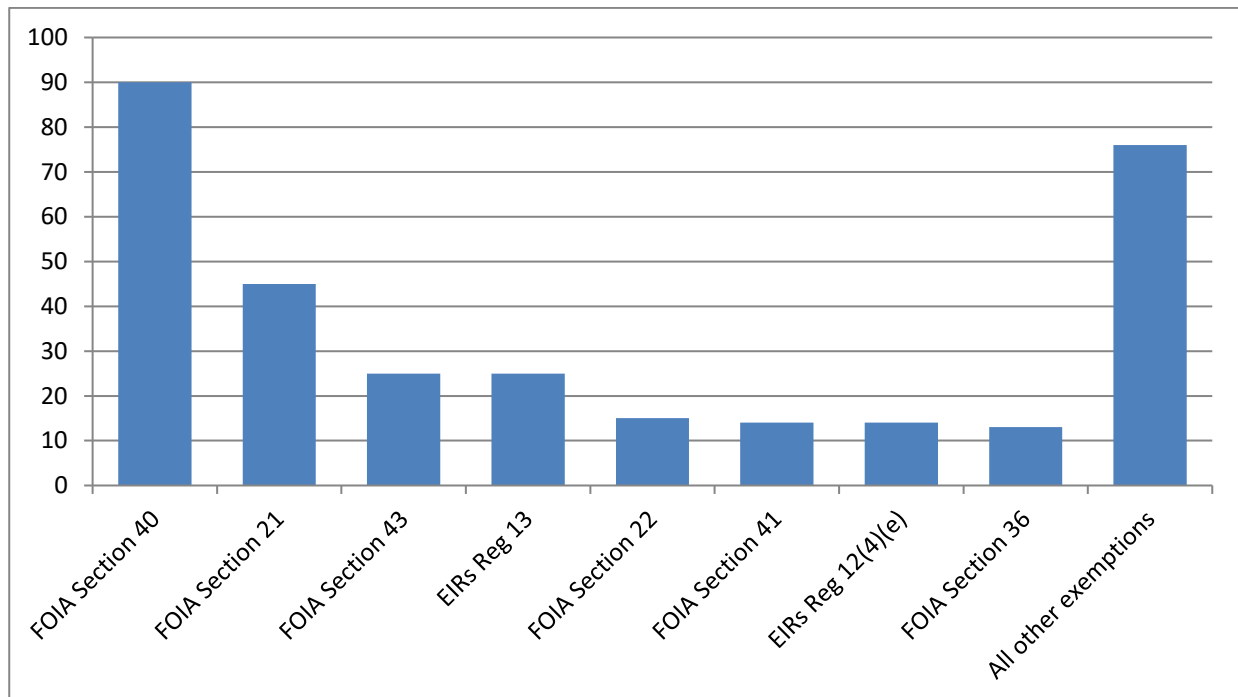
The exemptions most commonly applied were to protect personal information (section 40 FOIA; regulation 13 EIR), where the information was accessible to the applicant by other means (section 21 FOIA) and to protect important commercial interests (section 43 FOIA).

Table 7: Use of exemptions and exceptions during 2018

Act-Exemption ⁸	2018	% of Total
EIRs Regulation 12(4)(e)	14	4.4%
EIRs Regulation 13	25	7.9%
FOIA Section 21	45	14.2%
FOIA Section 22	15	4.7%
FOIA Section 36	13	4.1%
FOIA Section 40	90	28.4%
FOIA Section 41	14	4.4%
FOIA Section 43	25	7.9%
All other exemptions	76	24.0%
Total	317	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 7: Use of exemptions and exceptions during 2018



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 81 complaints in 2018 which equates to 8.7% of requests. This was an increase compared with 2017 of 44.6%. The Welsh Government has completed an internal review in relation to all 81 complaints.

Table 8: Number of Complaints (2005-2018)

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

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

Figure 8: Number of Complaints (2005-2018)

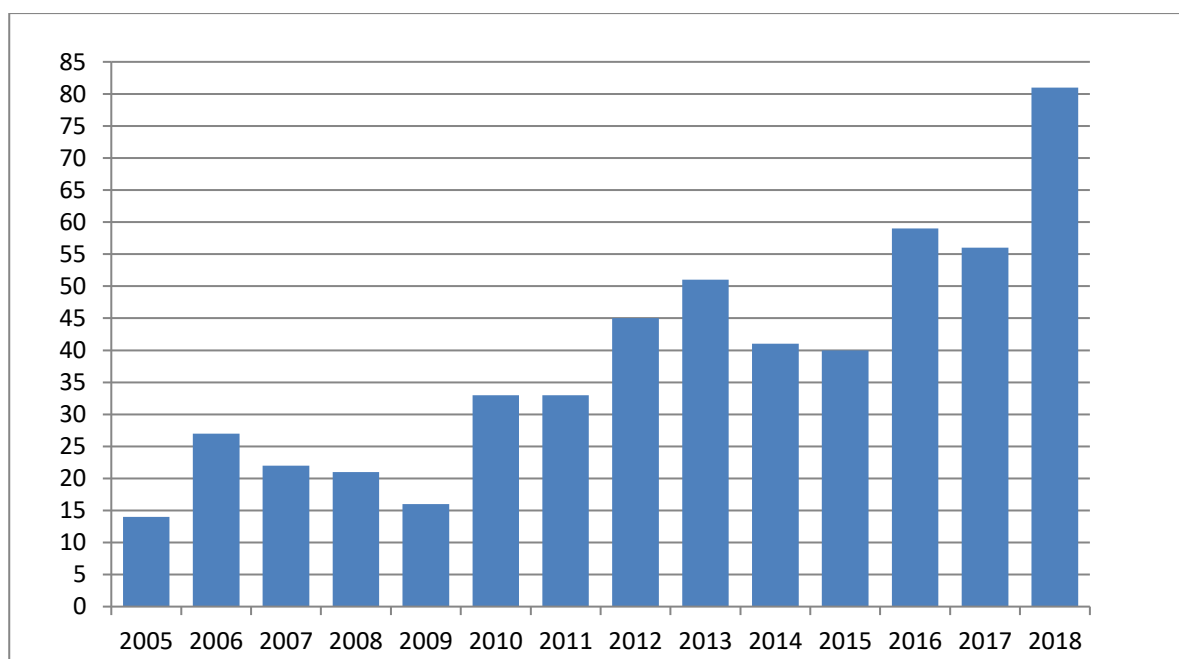


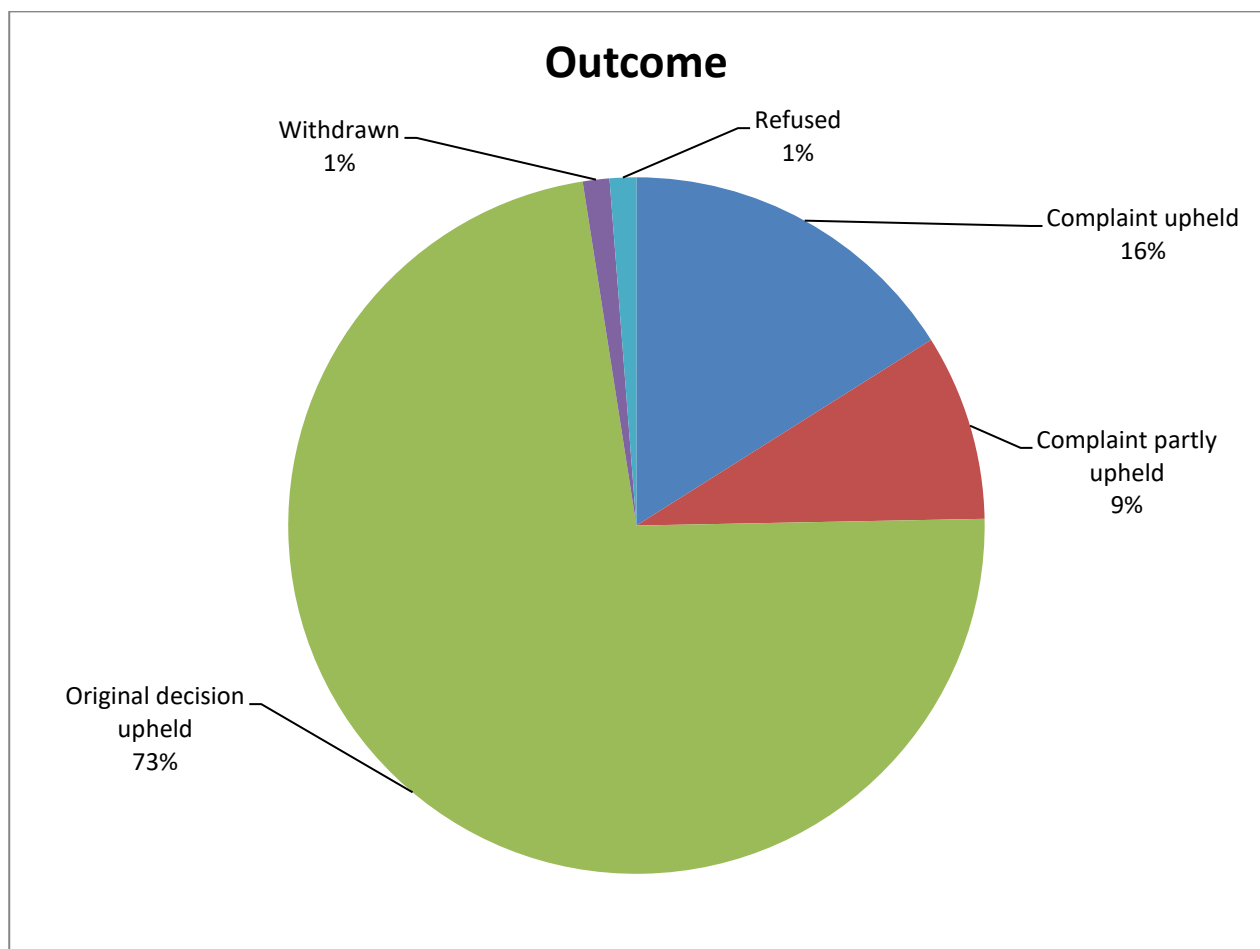
Table 9: Internal review outcomes for 2018

	Number	% of Total
Complaint upheld	13	16.0%
Complaint partly upheld	7	8.6%
Original decision upheld	59	72.8%
Withdrawn	1	1.2%
Refused	1	1.2%
Total	81	100%

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

Of the 81 internal reviews, the complaint was upheld in 13 cases, partly upheld in 7 cases and the original decision was upheld in 59 cases. 1 complaint was withdrawn by the complainant and 1 complaint was refused as being outside the deadline.

Figure 9: Internal review outcomes for 2018



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 81 internal reviews 59 (72.8%) were completed within 20 working days, 18 (22.2%) were completed within 21 to 40 working days and 4 (4.9%) 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 2018 the ICO investigated 25 complaints⁹ (2.7% of requests). Of the 25 completed investigations 16 decision notices were issued. None of the Decision Notices required any further action by 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 2018, 2 ICO Decision Notices were appealed to the First-tier Tribunal. One of the appeals was upheld on the grounds that Welsh Government had interpreted the request too narrowly. The other appeal was dismissed.

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 2018

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	2018	% of Total
DPA Schedule 7 Paragraph 10 – Legal professional privilege	3	0.9%
DPA Section 30 – Health, education and social work	1	0.3%
EIRs 12(4)(b) – Request is manifestly unreasonable	2	0.6%
EIRs 12(4)(c) – Request is formulated in too general a manner	3	0.9%
EIRs 12(4)(d) – Material still in the course of completion	3	0.9%
EIRs Reg 12(4)(e) – Internal communications	14	4.4%
EIRs Reg 12(5)(a) – International relations, defence, national security or public safety	5	1.6%
EIRs Reg 12(5)(b) – Course of justice, fair trial, criminal or disciplinary inquiry	2	0.6%
EIRs Reg 12(5)(e) – Confidentiality of commercial or industrial information where confidentiality is provided by law to protect a legitimate commercial interest	8	2.5%
EIRs Reg 12(5)(f) – Interests of the person who provided information to the public authority	1	0.3%
EIRs Reg 12(5)(g) – Protection of the environment to which the information relates	3	0.9%
EIRs Reg 13 – Personal data of third parties	25	7.9%
FOIA Section 21 – Information accessible to the applicant by other means	45	14.2%
FOIA Section 22 – Information intended for future publication	15	4.7%
FOIA Section 27 – International relations	1	0.3%
FOIA Section 28 – Relations within the United Kingdom	3	0.9%
FOIA Section 29 – The economy	6	1.9%
FOIA Section 31 – Law enforcement	9	2.8%
FOIA Section 32 – Court records, etc	6	1.9%
FOIA Section 35 – Formation of government policy	7	2.2%
FOIA Section 36 – Effective conduct of public affairs	13	4.1%
FOIA Section 37 – Communications with Her Majesty, etc and honours	1	0.3%
FOIA Section 38 – Health and safety	4	1.3%
FOIA Section 40 – Personal Information	90	28.4%
FOIA Section 41 – Information provided in confidence	14	4.4%
FOIA Section 42 – Legal professional privilege	8	2.5%
FOIA Section 43 – Commercial interests	25	7.9%
Total	317	100%