



Llywodraeth Cymru
Welsh Government

Report on the Implementation of Open Government Legislation and Policies during 2023

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Introduction:

This is the eighteenth 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 2023.

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 13 June 2024. 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 2023:

- The Welsh Government received 1,342 requests for recorded information.
- The total number of requests received increased by 30.2% (from 1,031 in 2022). 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 1,342 requests the Welsh Government completed¹ 1,342 (100.0%) at the time this report was generated.
- Of the 1,342 completed requests, 1,138 (84.8%) were completed within 20 working days and 1,143 (85.2%) were completed within the statutory deadline².
- Of the 1,342 completed requests some or all of the information was provided in response to 903 (67.3%).
- The most commonly applied exemptions / exceptions were: FOIA section 40: personal information (23.9%), EIR Regulation 13: Personal data of third parties (9.8%) and DPA2018 Schedule 2 Paragraph 16: Protection of the rights of others (9.4%).
- The Welsh Government received a total of 52 complaints (3.9% of requests received) relating to its handling of requests for information.
- Of the 52 internal reviews, the complaint was upheld in 12 cases, partly upheld in 5 cases, and the original decision upheld in 35 cases.
- The Information Commissioner's Office (ICO) investigated 9 complaints³ (0.7% of requests) and issued a Decision Notice in relation to 5 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 1,342 requests for recorded information in 2023. Since the commencement of the FOIA on 1 January 2005 the number of requests received each year has fluctuated. There was a 30.2% increase in the number of requests received in 2023 when compared to 2022. The total of 1,342 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 2022 and 2023.

Table 1: Total number of requests for recorded information received 2005-2023

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%
2022	1,031	-8.8%
2023	1,342	30.2%

Figure 1: Total number of requests for recorded information received 2005-2023

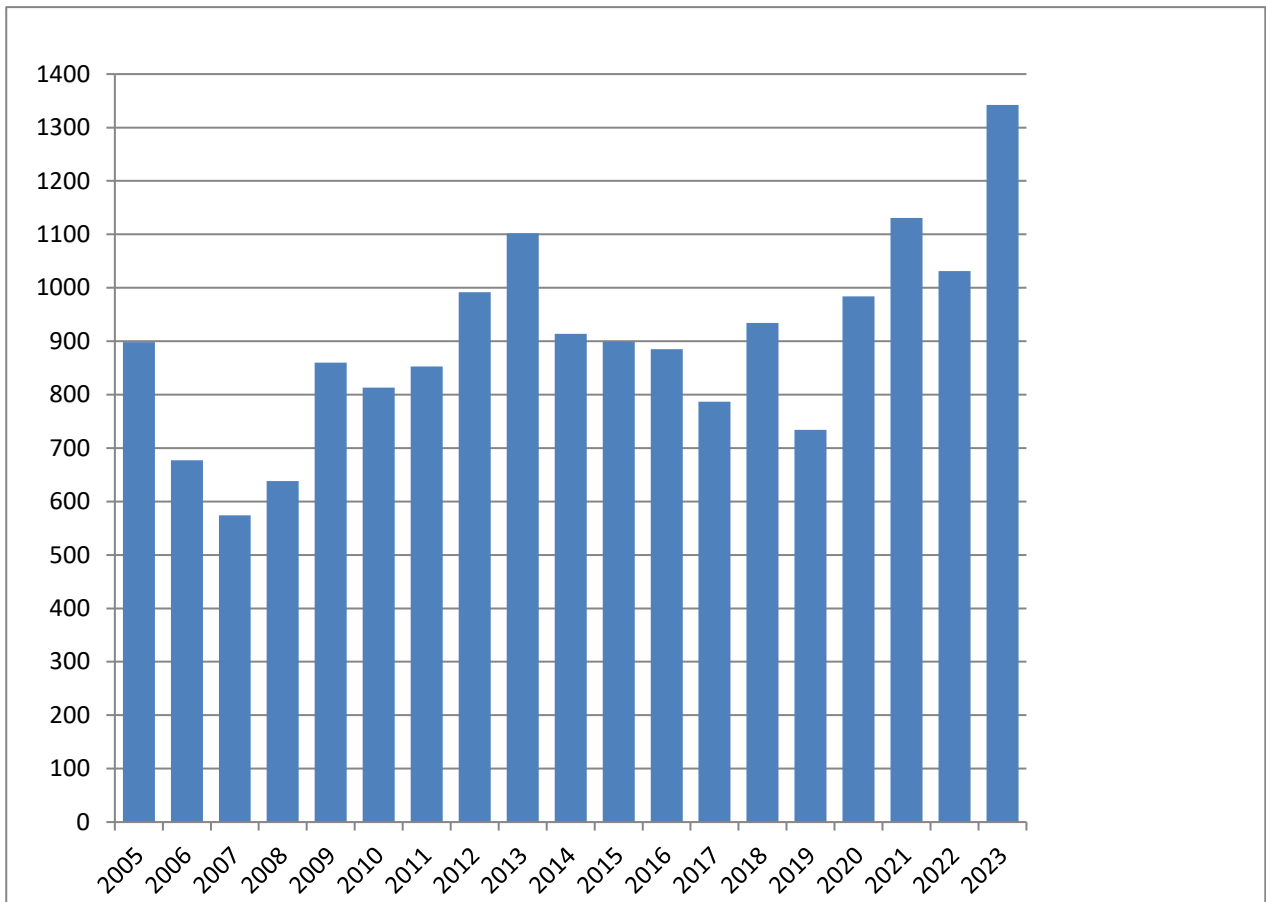
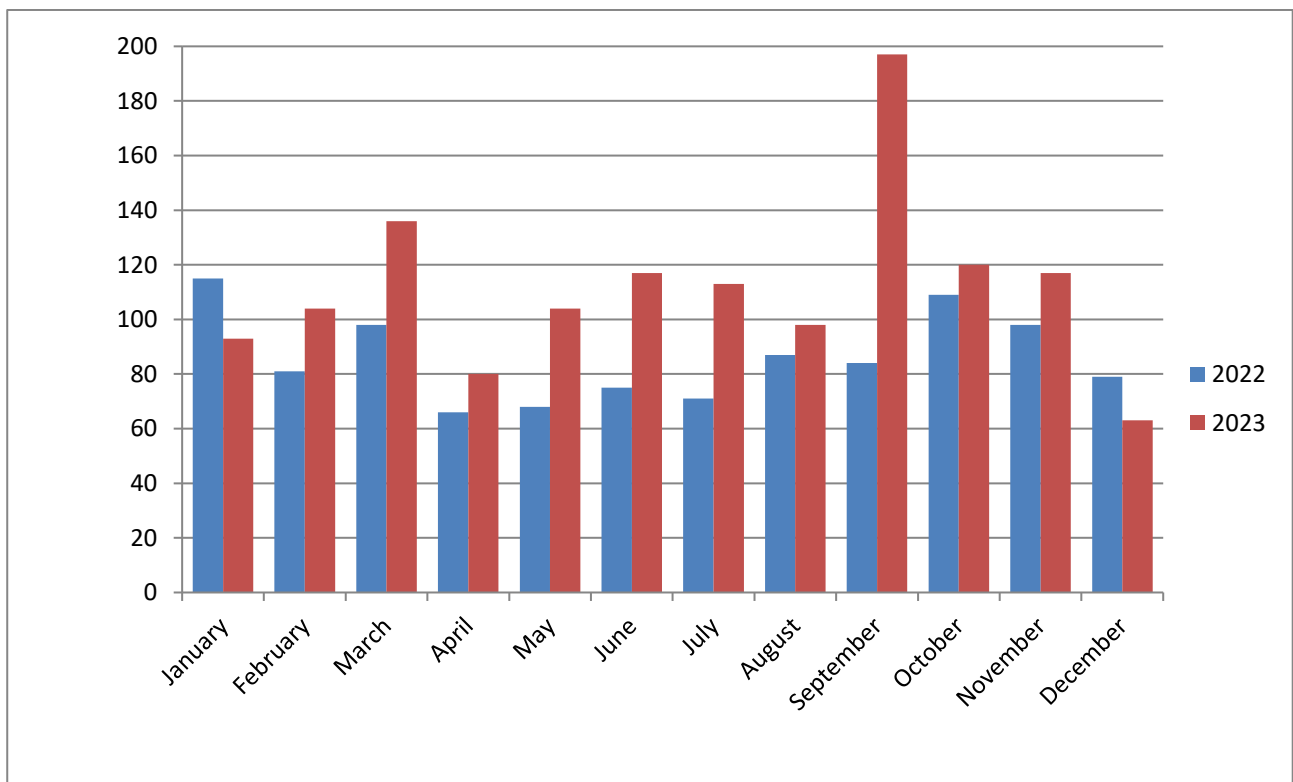


Table 2: Number of requests for recorded information received each month: 2022 & 2023

Month	2022	% of Total	2023	% of Total
January	115	11.2%	93	6.9%
February	81	7.9%	104	7.7%
March	98	9.5%	136	10.1%
April	66	6.4%	80	6.0%
May	68	6.6%	104	7.7%
June	75	7.3%	117	8.7%
July	71	6.9%	113	8.4%
August	87	8.4%	98	7.3%
September	84	8.1%	197	14.7%
October	109	10.6%	120	8.9%
November	98	9.5%	117	8.7%
December	79	7.7%	63	4.7%
Total	1031	100%	1342	100%

Figure 2: Number of requests for recorded information received each month: 2022 & 2023

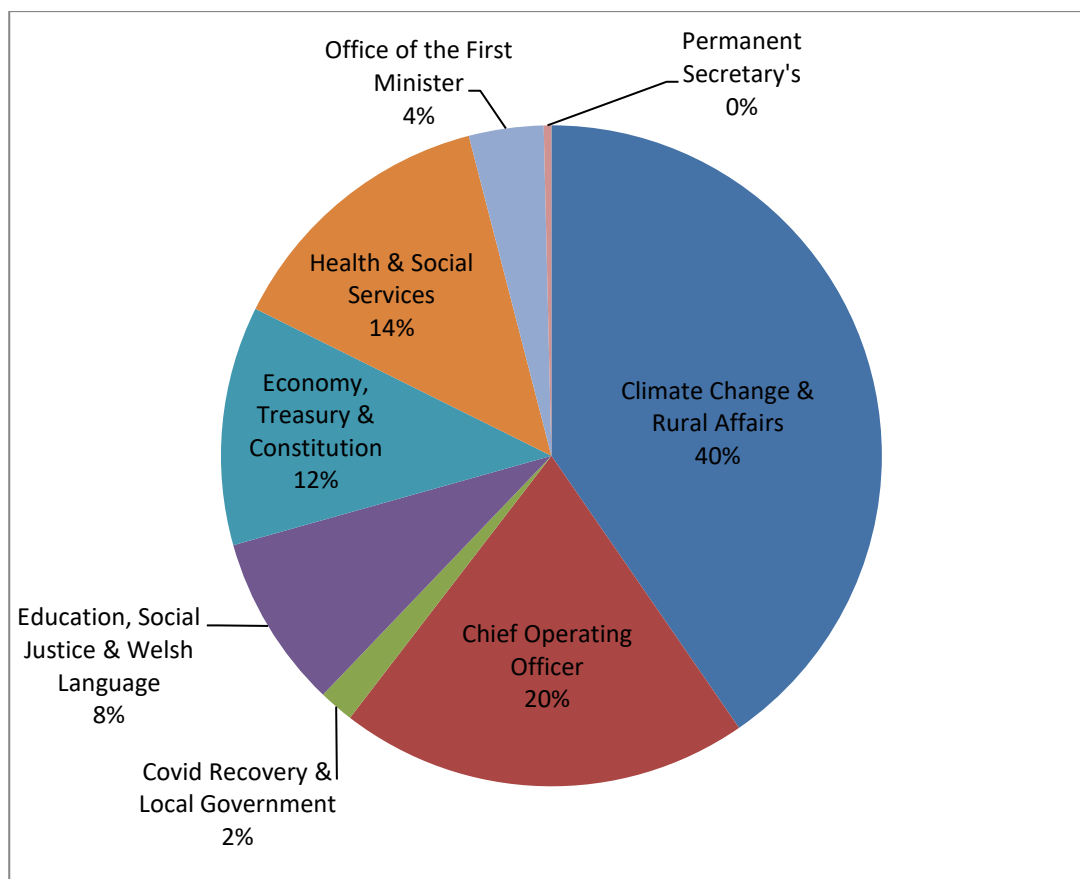


A breakdown by portfolio of the number of requests for recorded information received by the Welsh Government in 2023 is provided within Table 3.

Table 3: Number of requests received by Welsh Government portfolio areas during 2023

Director General Area / Group	2023 Number of Requests	% of Requests
Climate Change & Rural Affairs Group	542	40.4%
Chief Operating Officer Group	269	20.0%
Covid Recovery & Local Government Group	23	1.7%
Education, Social Justice & Welsh Language Group	114	8.5%
Economy, Treasury & Constitution Group	157	11.7%
Health & Social Services Group	183	13.6%
Office of the First Minister Group	49	3.7%
Permanent Secretary's Group	5	0.4%
Total	1342	100%

Figure 3: Number of requests received by Welsh Government portfolio areas during 2023



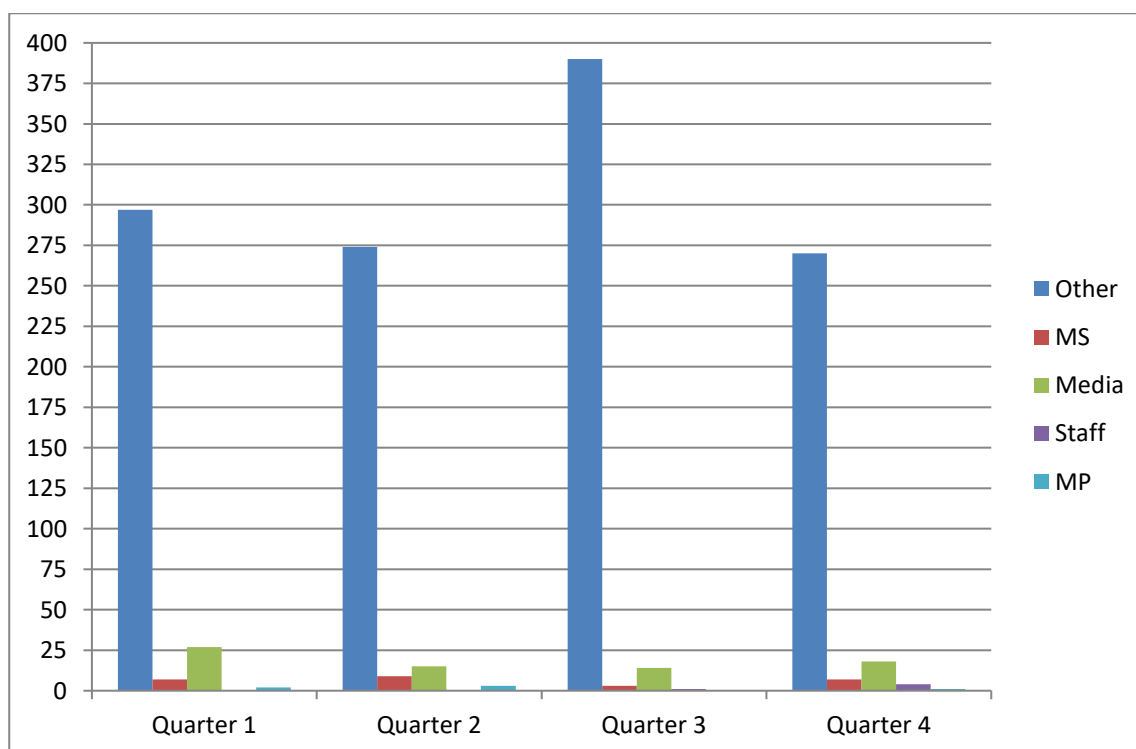
Category of Requestor:

Over the year, requests from Members of the Senedd, the media, staff and Members of Parliament (MPs) accounted for 111 (8.3%) of the 1,342 requests received. The remaining 1,231 requests (which amount to 91.7% of all requests) were recorded under the 'Other' category.

Table 4: Requests received from each type of requester during each quarter of 2023

	Other	MS	Media	Staff	MP
Quarter 1	297	7	27	0	2
Quarter 2	274	9	15	0	3
Quarter 3	390	3	14	1	0
Quarter 4	270	7	18	4	1
2023 Total	1,231	26	74	5	6

Figure 4: Requests received from each type of requester during each quarter of 2023



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 1,342 requests, 1,342 were complete (100.0%) at the time the report was compiled. Of the 1,342 completed requests, 1,138 (84.8%) were completed within 20 working days and 1,143 (85.2%) 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 2005-2023

<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	83.2%
2022	86.8%
2023	85.2%

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.

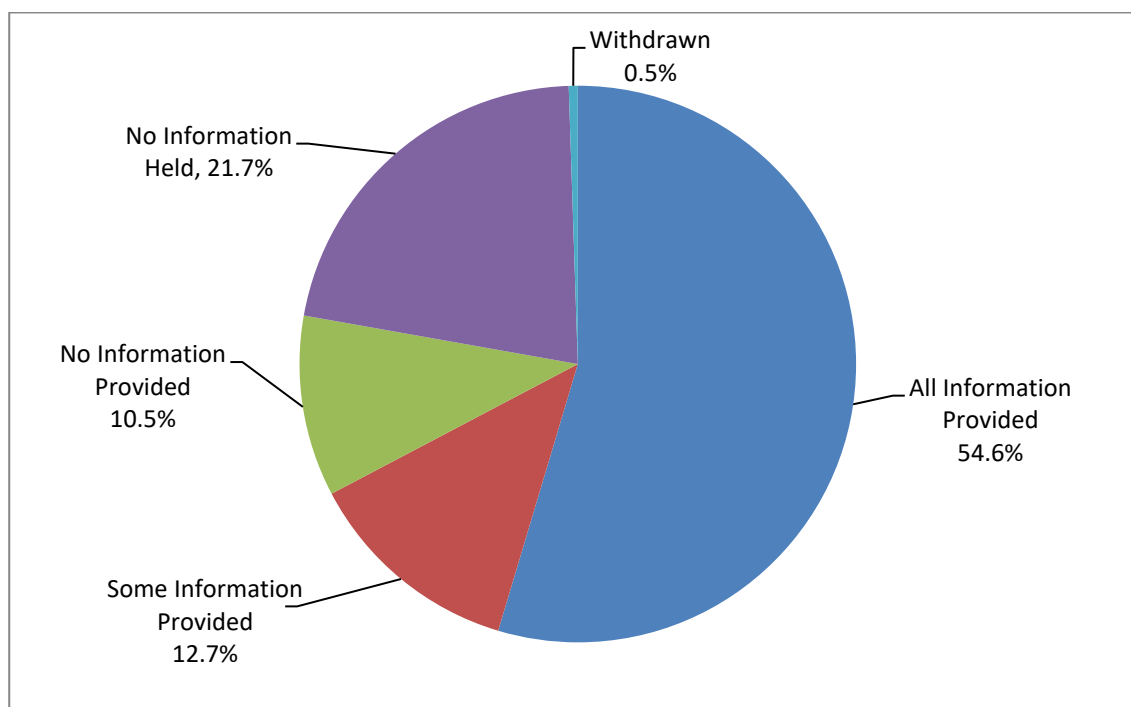
Outcome of Completed Requests:

The number of completed requests received by the Welsh Government during 2022 and 2023 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 2022 and 2023

Completed Category	2022	% of Total	2023	% of Total
All Information Provided	496	48.2%	733	54.6%
Some Information Provided	153	14.9%	170	12.7%
No Information Provided ⁶	118	11.5%	141	10.5%
No Information Held	261	25.3%	291	21.7%
Withdrawn	2	0.2%	7	0.5%
Total	1,030	100%	1,342	100%

Figure 5a: Number of completed requests shown by completion category during 2023

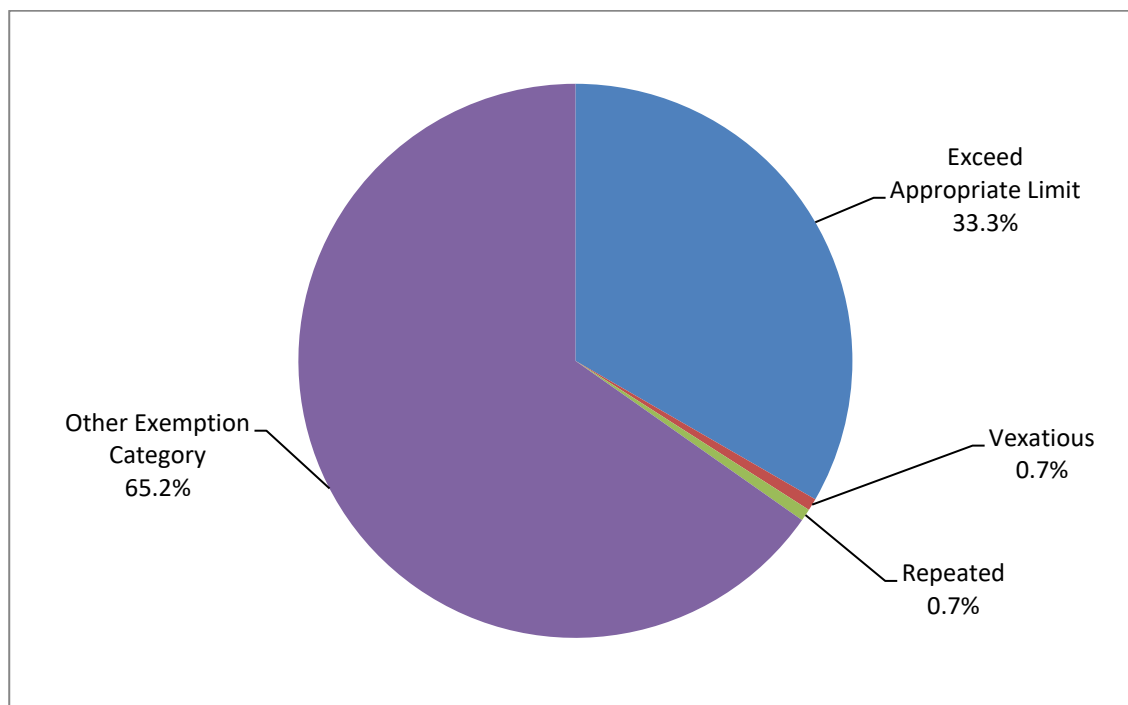


⁶ The 'No Information Provided' category includes information withheld in full using one or more exemptions, and those rejected for exceeding the appropriate limit, and being vexatious or repeated requests.

Table 6b: Number of 'No Information Provided' requests broken down by exemption category during 2022 and 2023

No Information Provided Completed Category	2022	% of Total	2023	% of Total
S12 Exceeded Appropriate Limit	25	21.2%	47	33.3%
S14 Vexatious	1	0.8%	1	0.7%
S14 Repeated	0	0.0%	1	0.7%
Information falls into another exemption category ⁷	92	78.0%	92	65.2%
Total	118	100%	141	100%

Figure 5b: Number of 'No Information Provided' requests broken down by exemption category during 2023



⁷ This includes requests where the information was withheld in full using one or more exemptions/ exceptions listed in the FOIA, EIRs or DPA2018 / UK GDPR 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 or DPA2018 / UK GDPR.

Table 7 and Figure 6 details the exemptions and exceptions applied at least ten times by the Welsh Government during 2023. 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>

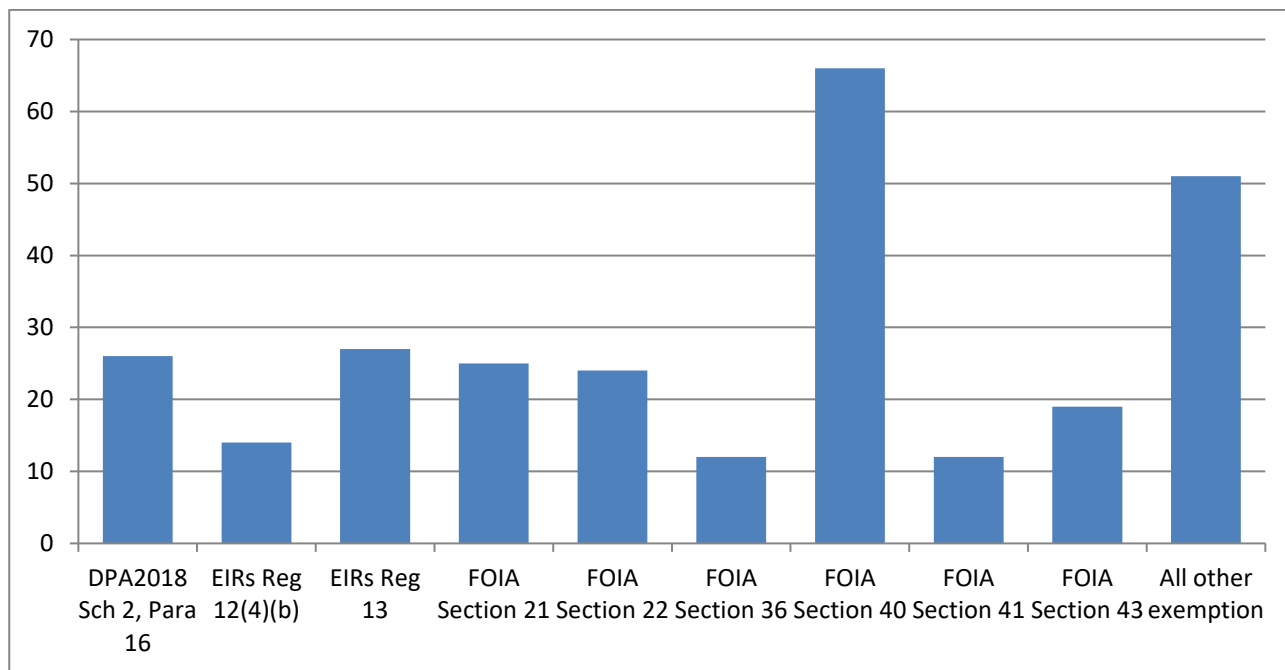
The exemptions most commonly applied were to protect personal information (Section 40 FOIA); to protect personal data of third parties (Regulation 13 EIRs) and to protect the rights of others (Schedule 2 Paragraph 16 DPA2018).

Table 7: Use of exemptions and exceptions during 2023

Act-Exemption ⁸	2023	% of Total
DPA2018 Schedule 2 Paragraph 16	26	9.4%
EIR Regulation 12(4)(b)	14	5.1%
EIR Regulation 13	27	9.8%
FOIA Section 21	25	9.1%
FOIA Section 22	24	8.7%
FOIA Section 36	12	4.3%
FOIA Section 40	66	23.9%
FOIA Section 41	12	4.3%
FOIA Section 43	19	6.9%
All other exemptions	51	18.5%
Total	276	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 6: Use of exemptions and exceptions during 2023



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 52 complaints in 2023 which equates to 3.9% of requests. This was a decrease compared with 2022, where 56 complaints were received which represented 7.1% of the total.

Table 8: Number of Complaints (2005-2023)

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
2022	56
2023	52

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

Figure 7: Number of Complaints (2005-2023)

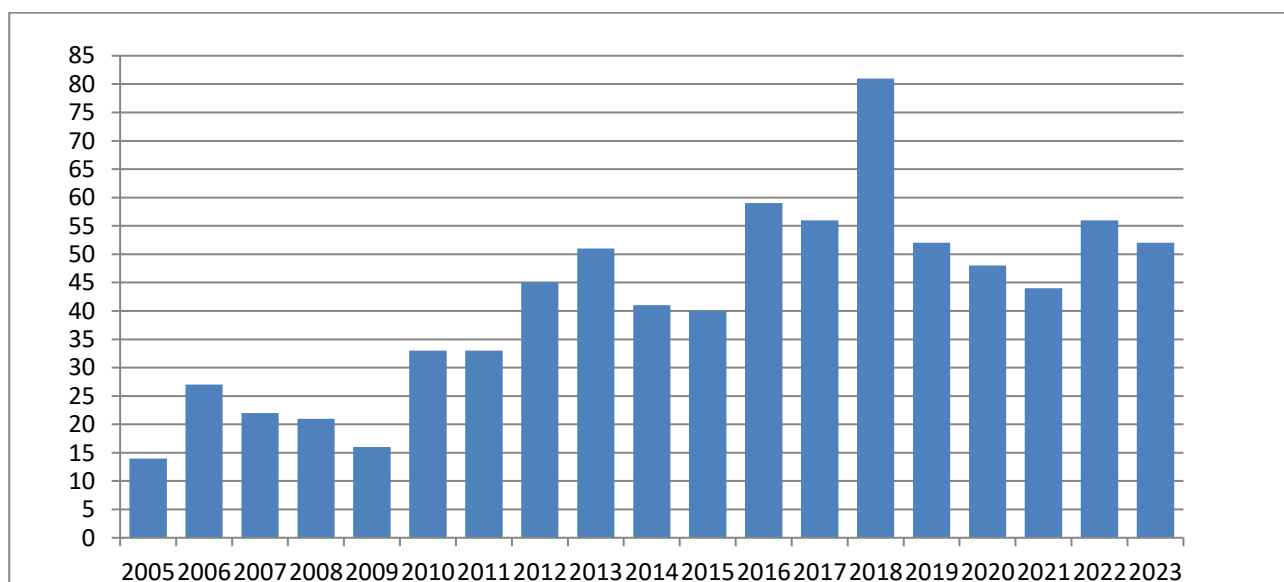


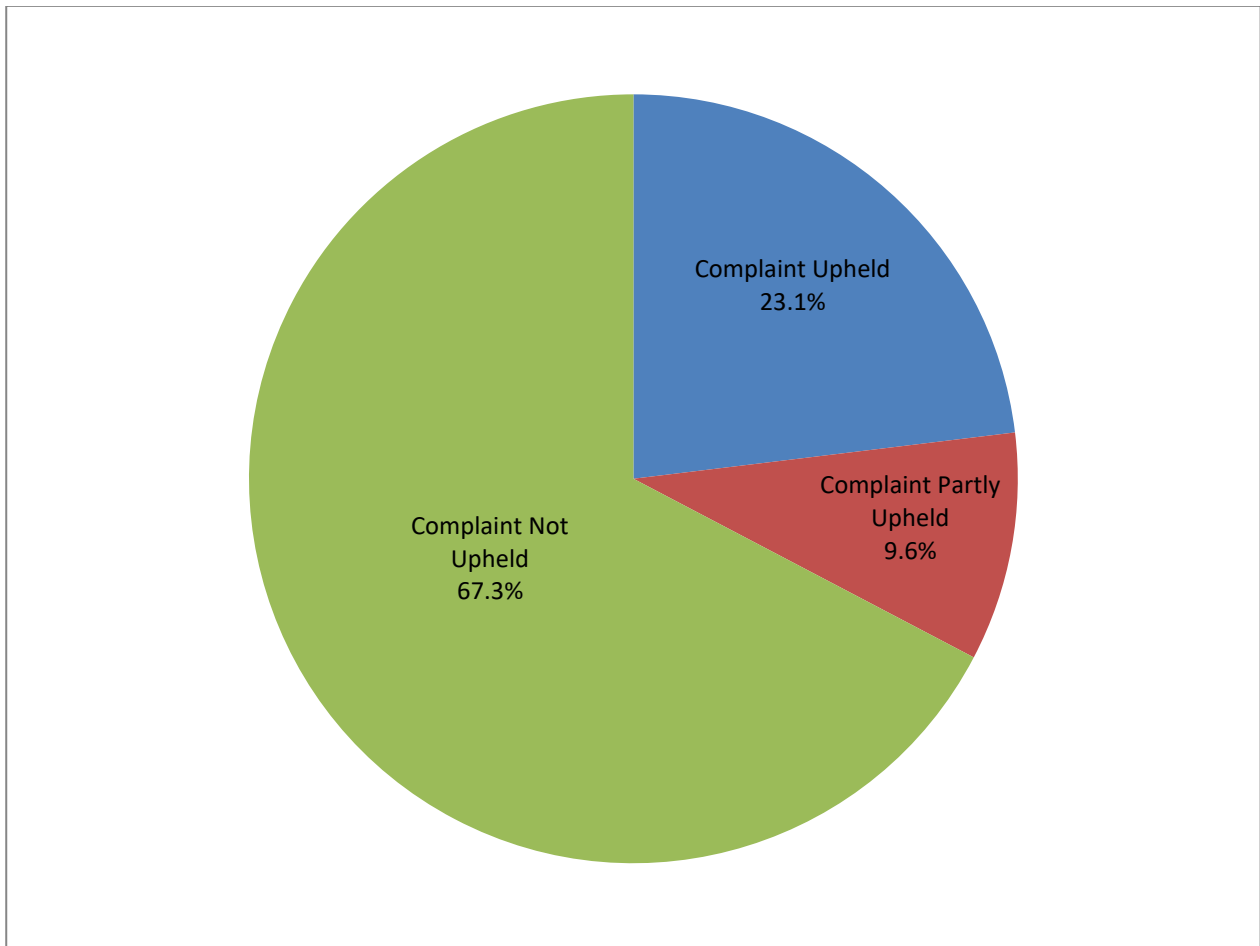
Table 9: Internal review outcomes for 2023

	Number	% of Total
Complaint upheld	12	23.1%
Complaint partly upheld	5	9.6%
Original decision upheld	35	67.3%
Total	52	100%

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

Of the 52 internal reviews, the complaint was upheld in 12 cases, partly upheld in 5 cases and the original decision was upheld in 35 cases.

Figure 8: Internal review outcomes for 2023



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 52 completed internal reviews 43 (82.7%) were completed within 20 working days, 6 (11.5%) were completed within 21 to 40 working days and 3 (5.8%) 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 2023 the ICO investigated 9 complaints⁹ (0.7% of requests). Of the 9 completed investigations 5 decision notices were issued. 1 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 2023, no ICO Decision Notices were appealed to the First-tier Tribunal.

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 2023

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	number	%
DPA2018 Schedule 2 Paragraph 16 – Protection of the rights of others	26	9.4%
DPA2018 Schedule 2 Paragraph 19 – Legal professional privilege	3	1.1%
DPA2018 Schedule 3 Paragraph 9 – Data processed by a court	2	0.7%
DPA2018 Schedule 3 Paragraph 10 – Data subject’s expectations and wishes	1	0.4%
EIRs Reg 12(4)(b) – Request is manifestly unreasonable	14	5.1%
EIRs Reg 12(4)(c) – Request is formulated in too general a manner	3	1.1%
EIRs Reg 12(4)(d) – Material still in the course of completion	2	0.7%
EIRs Reg 12(4)(e) – Internal communications	5	1.8%
EIRs Reg 12(5)(a) – International relations	2	0.7%
EIRs Reg 12(5)(b) – Course of justice	3	1.1%
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 12(5)(g) – Protection of the environment to which the information relates	2	0.7%
EIRs Reg 13 – Personal data of third parties	27	9.8%
FOIA Section 21 – Information accessible to the applicant by other means	25	9.1%
FOIA Section 22 – Information intended for future publication	24	8.7%
FOIA Section 24 – National security	1	0.4%
FOIA Section 27 – International relations	1	0.4%
FOIA Section 28 – Relations within the United Kingdom	1	0.4%
FOIA Section 30 – Investigations and proceedings conducted by public authorities	1	0.4%
FOIA Section 31 – Law enforcement	3	1.1%
FOIA Section 32 – Court records	2	0.7%
FOIA Section 33 – Audit functions	1	0.4%
FOIA Section 35 – Formation of government policy	7	2.5%
FOIA Section 36 – Effective conduct of public affairs	12	4.3%
FOIA Section 38 – Health and safety	3	1.1%
FOIA Section 40 – Personal Information	66	23.9%
FOIA Section 41 – Information provided in confidence	12	4.3%
FOIA Section 42 – Legal professional privilege	6	2.2%
FOIA Section 43 – Commercial interests	19	6.9%
UK GDPR Article 12(5)(b) – Manifestly unfounded or excessive	1	0.4%
Total	276	100%