

Freedom of Information Act 2000



Annual Report 2015

A Summary of the eleventh Year of the Freedom of Information Act in
Northern Ireland

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Foreword

We are pleased to present the eleventh Annual Report on the operation of the Freedom of Information (FOI) Act 2000.

Departments received 2,988 requests under the Act in 2015, the vast majority of which were submitted by members of the public (68%). A significant proportion (17%) was also submitted by the media, public representatives and campaigning groups. 74% of requests received were answered within the statutory time limits.


The number of requests received annually across all departments since the Act came into effect in 2005 continues to remain around the 3,000 mark, which demonstrates the continuing value which the public places on the legislation in providing access to information. This is also evidenced by the receipt of over 30,000 written responses to a call for evidence, including a contribution from the Northern Ireland Civil Service, from the independent Commission established to review the practical operation of the legislation in 2015.

Departments also released – through the Public Record Office of Northern Ireland – hundreds of historical files with terminal dates 1987 and 1988 in keeping with the provisions of the Protection of Freedoms Act 2012.

We hope you find the information in this report of interest and evidence of the resources which this administration continues to commit to meeting its obligations under the Act.



Arlene Foster MLA
First Minister



Martin McGuinness MLA
deputy First Minister

Abbreviations

DARD	Department of Agriculture and Rural Development
DCAL	Department of Culture, Arts and Leisure
DE	Department of Education
DEL	Department for Employment and Learning
DETI	Department of Enterprise, Trade and Investment
DFP	Department of Finance and Personnel
DHSSPS	Department of Health, Social Services and Public Safety
DOE	Department of the Environment
DOJ	Department of Justice
DRD	Department for Regional Development
DSD	Department for Social Development
EIR	Environmental Information Regulations 2004
FOI Act	Freedom of Information Act 2000
ICO	Information Commissioner's Office
IMCAB	Information Management and Central Advisory Branch
MOJ	Ministry of Justice
NICS	Northern Ireland Civil Service
OFMDFM	Office of the First Minister and Deputy First Minister
PRONI	Public Record Office of Northern Ireland

1. Introduction

The Freedom of Information (FOI) Act¹ and the Environmental Information Regulations² (EIR) came fully into force on 1 January 2005. The FOI Act confers two statutory responsibilities on public authorities:

- 1) The duty to confirm or deny whether the information requested exists; and if so,
- 2) The duty to communicate the information, subject to a limited range of exemptions.

The FOI Act covers any recorded information that is held by a Public Authority in England, Wales and Northern Ireland. Scottish Public Authorities are covered by the Freedom of Information (Scotland) Act 2002.

The EIR promote the release of as much environmental information as possible by providing an access regime very similar to the FOI Act. Its aim is to enable increased public participation in environmental decision-making. As with the FOI Act, the EIR apply to public authorities but they also extend to public utilities and certain public-private partnerships, and private companies that have environmental functions.

This annual report provides information about the handling of all 'non-routine' information requests processed under the FOI Act or the EIR received by the Northern Ireland Departments over the period 1 January to 31 December 2015 - **Appendix A** gives a definition of a non-routine request. It is the eleventh such publication compiled by the Central FOI Team (formerly of the Office of the First Minister and deputy First Minister and now the Executive Office) using statistical information supplied by each Department. The report assesses the performance of Departments in handling requests submitted under the FOI Act and EIR.

Quarterly reports and annual reports are available on the Executive Office website and can be found at: <https://www.executiveoffice-ni.gov.uk/articles/information-management-and-central-advisory-branch-imcab#toc-1>.³

The aforementioned Central FOI team provides the policy lead for all the Northern Ireland Departments. Each of the twelve Departments is a public authority under the FOI Act. This means that they are individually responsible for handling requests for information. As required by the FOI Act, each Department has produced a publication scheme. A publication scheme is the vehicle that authorities use to inform the public of the information they publish or intend to publish, where it can be accessed and whether the information will be available free of charge or at a specified cost. Departmental publication schemes can be found on Departmental websites.

¹ Freedom of Information is a 'transferred matter'. However, in 2000, the then Executive decided not to introduce separate FOI legislation. Therefore, all Departments are covered by legislation passed by the UK Parliament.

² The Environmental Information Regulations 2004 is a [UK Statutory Instrument](#) (SI 2004 No. 3391) that provides a statutory right of access to environmental information held by UK public authorities. The regulations were made by the [Secretary of State for Environment, Food and Rural Affairs](#) under the authority provided by the [European Communities Act 1972](#).

³ In March 2015 the Permanent Secretaries Group decided to cease the publication of quarterly performance reports (which had been produced since 2005), and to continue with the publication of annual performance reports in keeping with the practices of the other devolved administrations.

2. Executive Summary

This report comprises two main parts:

The **first part** sets out Departments' performance during 2015 in handling requests for information under the Freedom of Information (FOI) Act 2000 and the Environmental Information Regulations (EIR) 2004. Key findings include:

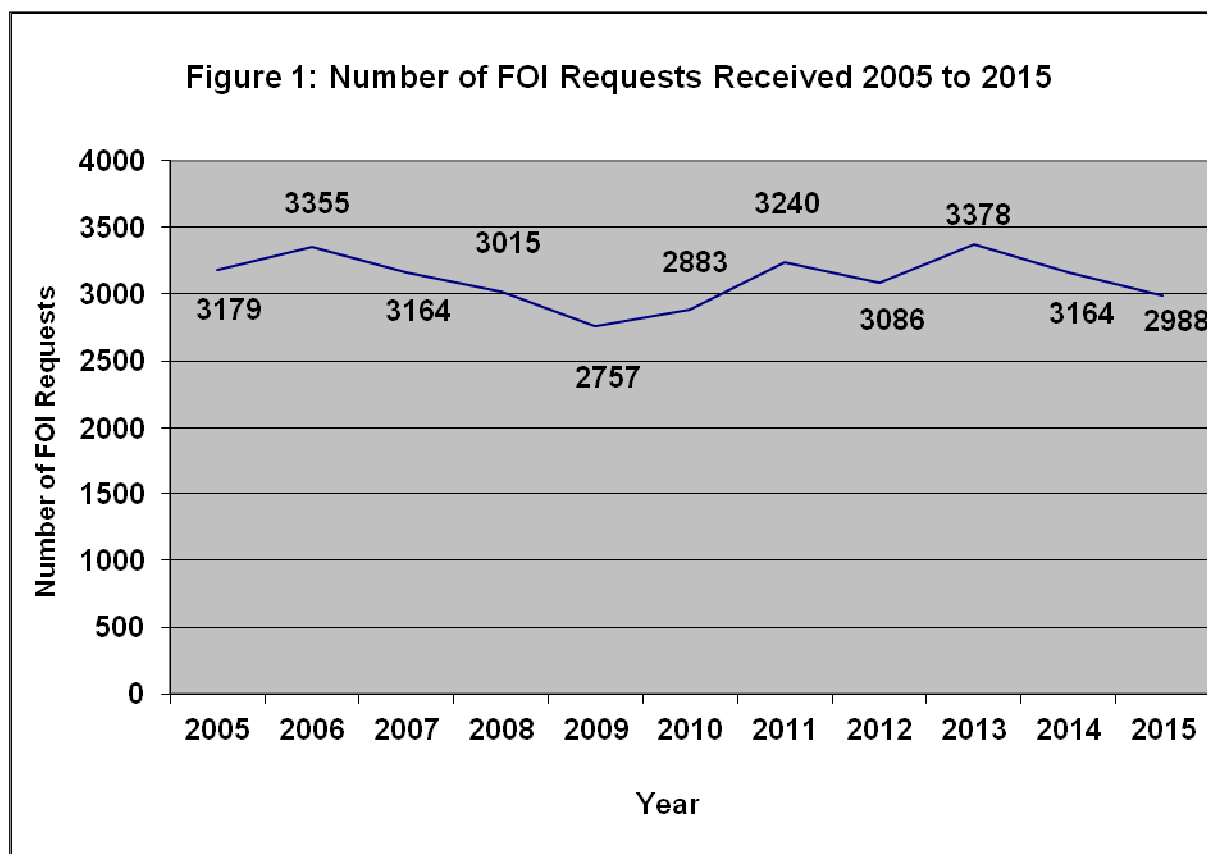
- Departments received a total number of 2,988 non-routine requests under the FOI Act and the EIR – a 6% decrease on the number received in 2014.
- 68% of all requests received were submitted by members of the public.
- 74% of all requests were responded to within statutory time limits.
- 62% of 'resolvable' requests were granted in full, while 10% of resolvable requests resulted in the information being fully withheld.
- The most frequently applied 'exemptions' were those under section 40 (personal information); section 22 (information intended for future publication); 21 (information accessible to public by other means); section 35 (formulation of government policy); and section 31 (law enforcement) of the FOI Act.
- The most commonly applied 'exception' under the EIR was regulation 12(3)(a) (personal data).
- A total of 130 internal reviews were requested in relation to information requests received, on the grounds that some or all of the requested information was withheld or no response was received within the 20-working day deadline.
- In 77% of internal review cases, where the outcome is known, the original decision was upheld in full; in 15% of cases the original decision was upheld in part; the complaint was upheld in 5% of cases; and 3% of cases were informally resolved.
- 82% of internal reviews, where the outcome is known, were completed within 20 working days.
- There were 43 complaints made to the Information Commissioner's Office.

The **second part** of the report comprises performance tables. These provide statistical information on the volume of requests received by Departments; the source of requests; response timeliness; request outcomes; exemptions and exceptions applied to requests when withholding information; internal review outcomes and timeliness; and outcomes of complaints to the Information Commissioner.

3. Departments' Performance

3.1 Volume of Requests

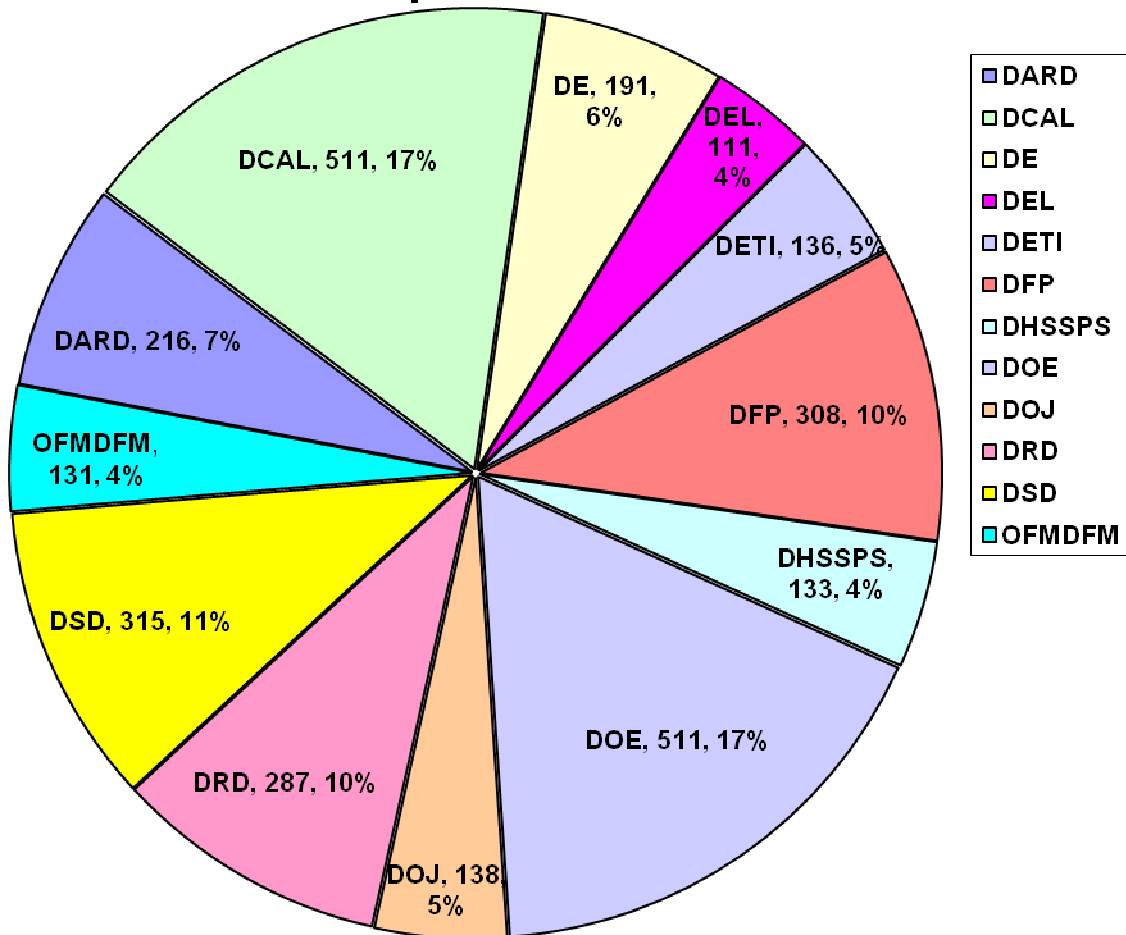
In 2015, the twelve Departments received a total of 2,988 requests for information under the Freedom of Information Act and the Environmental Information Regulations. This is slightly below the average number of requests received annually since the FOI Act and EIR came into effect on 1st January 2005. It represents a 6% decrease on the 3,164 requests received in 2014. Figure 1 below details the annual total number of requests received by Departments (2005 – 2015).



The number of requests received by each of the Departments varies considerably, generally as a consequence of their functions. DCAL and DOE received the largest number of requests for information, with 511 requests each, accounting for 34% of the overall total received by Departments. DSD received the second largest number of requests for information with 315 requests, accounting for 11% of the overall total received, and DFP received the third largest number with 308 requests, accounting for 10% of the overall total received. Figure 2 on page 10 shows the percentage totals of the overall number of requests for information received by Departments in 2015. Four Departments, DOE, DRD, DSD and OFMDFM received a higher number of requests in 2015 than they received the previous year.

DETI experienced the largest percentage decrease, receiving 38% less requests in 2015 (136 requests) than in 2014 (218 requests). DSD experienced the largest percentage increase, receiving 9% more requests in 2015 (315 requests) than in 2014 (289 requests).

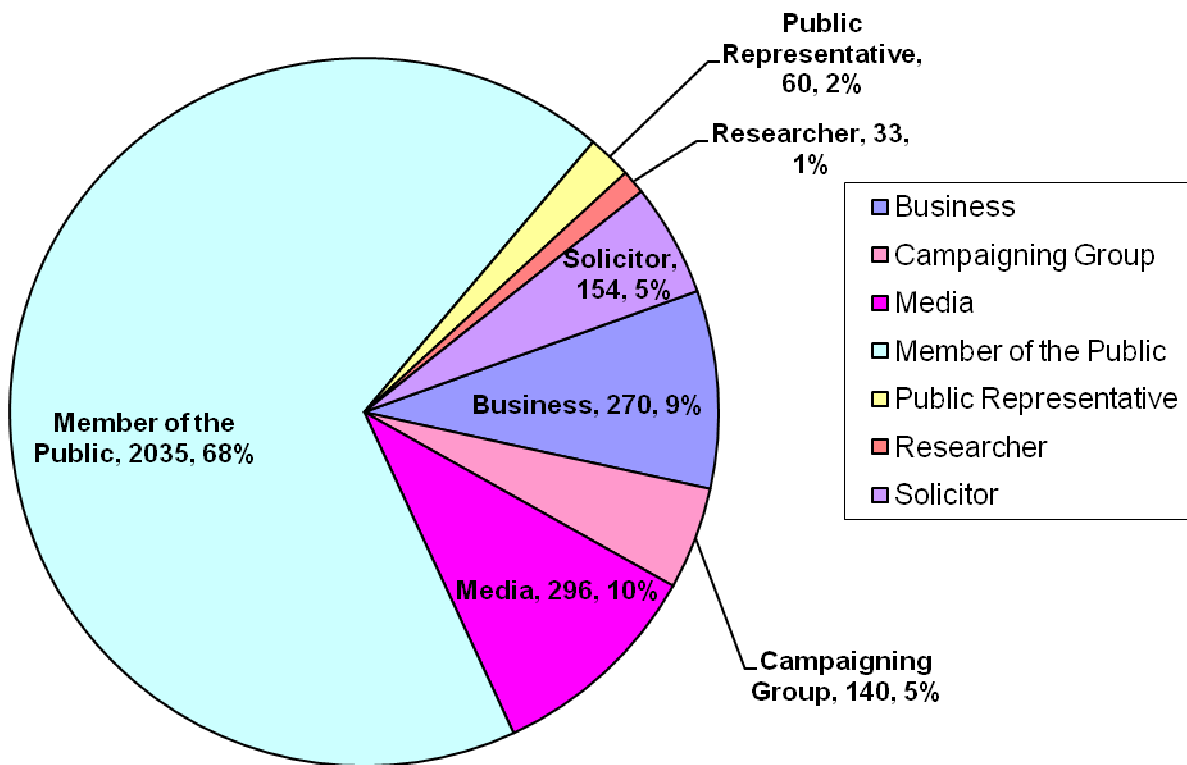
Figure 2: Volume of Requests



3.2 Source of Requests

For management information purposes, Departments are asked to assign one of the following requester categories to each request: Business, Campaigning Group, Media, Member of the Public, Public Representative, Researcher, or Solicitor. However, it is sometimes not possible for Departments to determine accurately the category of requester for every request, though these instances are rare. Using the information that has been provided by the requester, conclusions have been drawn regarding the origin of the requests submitted in 2015. As Figure 3 on page 11 shows, the largest number of requests was received from Members of the Public (68%), and each of the Departments received their largest number of requests from this category of requester. The second largest category was the Media (10%) and the third largest category was Business (9%).

Figure 3: Category of Requester

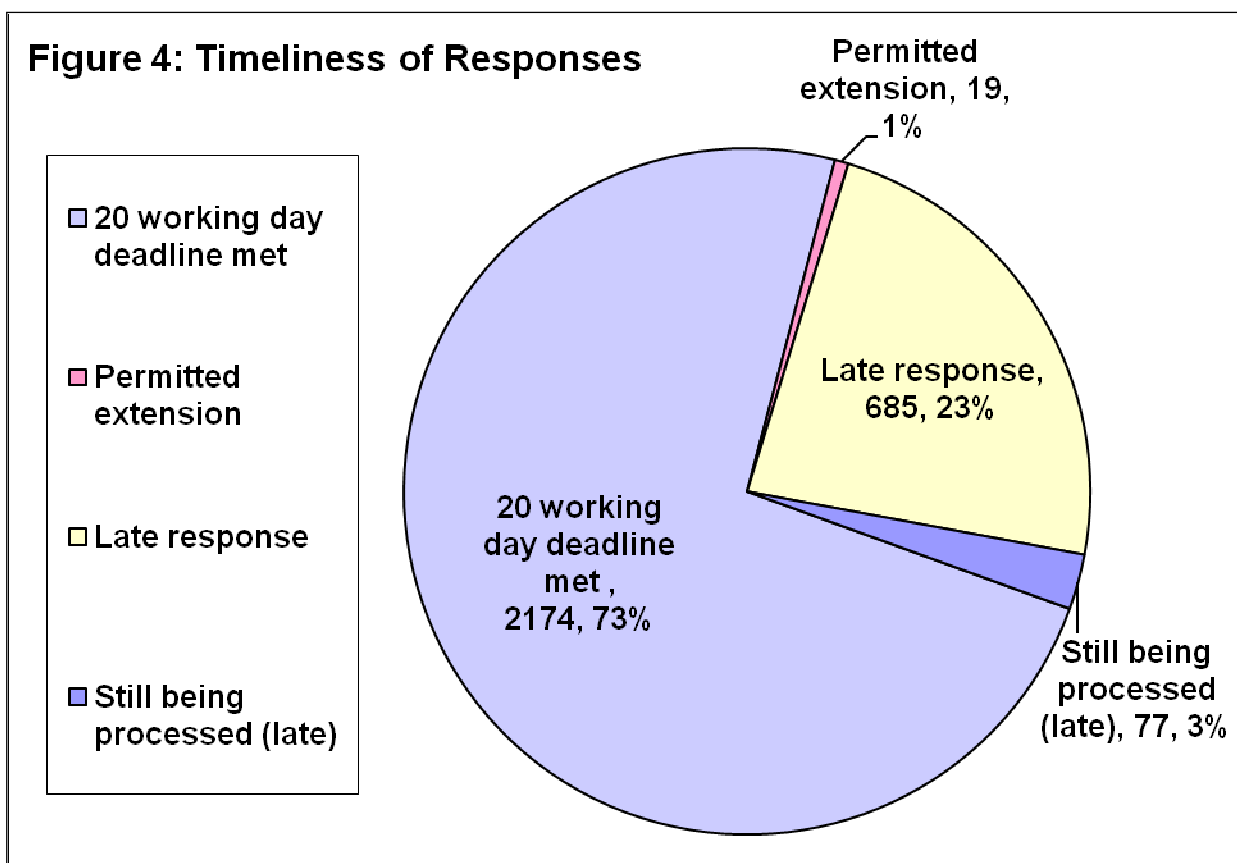


3.3 Timeliness of Responses

The FOI Act requires public authorities to respond to written requests for information promptly and in any event within 20 working days of receipt, with limited exceptions such as allowing additional time for the consideration of the public interest.

As Figure 4 shows, in 2015, 73% of requests received by Departments were answered within 20 working days⁴, and a further 1% were answered following a permitted time extension. Overall, 74% of all requests were responded to 'in time' – the corresponding percentage in 2014 was 73%.

⁴ When dealing with requests relating to historical public records, i.e., those more than 30 years old, the Public Records Office of Northern Ireland (PRONI) (A Division within the Department of Culture, Arts and Leisure (DCAL) until 7 May 2016) is allowed 30 working days to respond. This additional time is to allow for consultation with the functionally-responsible public authority in order to decide whether the information should be disclosed.



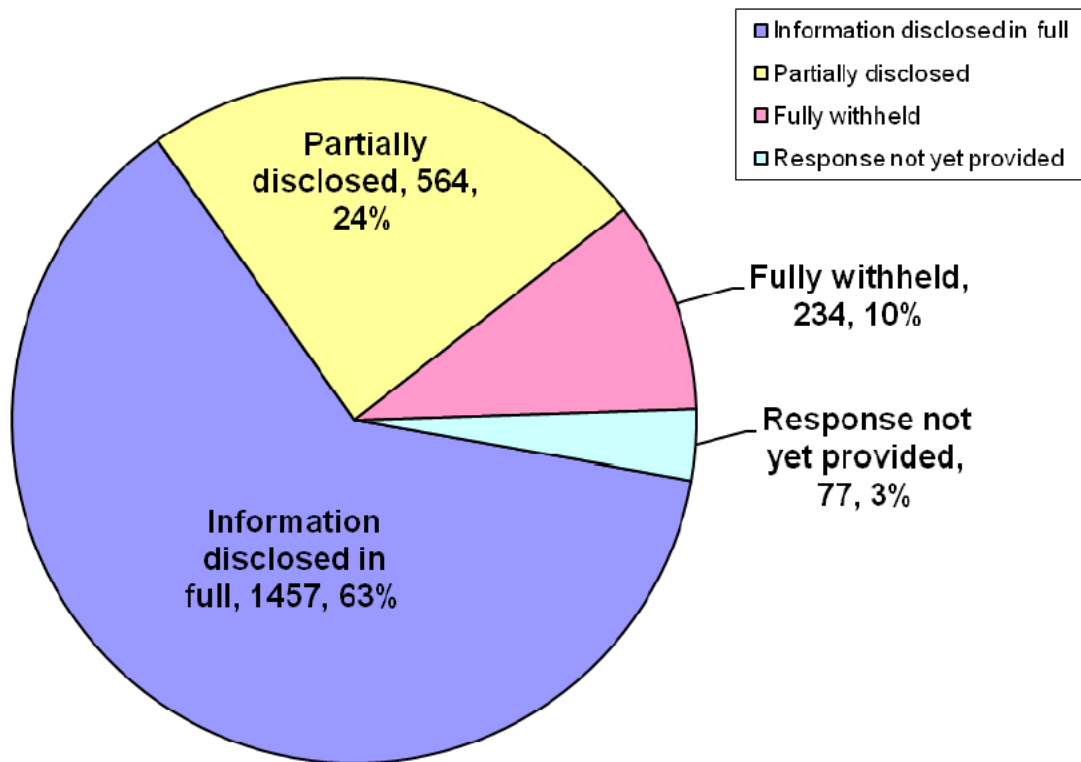
3.4 Outcome of Requests

1% (33 requests) of the total number of valid requests received were either ‘lapsed’ or ‘on hold’. Generally, requests may be categorised as ‘on hold’ if the request needs further clarification to identify the information being sought, or a fee is chargeable. Requests have ‘lapsed’ if the Department’s request for clarification was not received within two months or the appropriate fee was not paid.

Of the 2,955 requests processed or ‘still being processed’, 15% (429 requests) sought information that was ‘not held’ by the Departments and 7% (194 requests) were ‘closed’. ‘Closed’ requests are requests which were withdrawn when clarification or a fee was sought; or refused, as the cost to comply was above the ‘appropriate limit’ (£600); or deemed ‘repeated’ or ‘vexatious’. The remaining 2,332 requests were classed as ‘resolvable’, in that it was possible to give a substantive decision on whether or not to disclose the information sought. In 87% of ‘resolvable cases’, Departments disclosed what was requested either in full or in part; information was fully withheld in 10% of cases (234 requests).

The remaining 3% (77 requests) were ‘still being processed’ at the end of 2015. Requests ‘still being processed’ may be going through the public interest test process; if not, then responses to them are deemed late. The 77 requests were all late.

Figure 5: Outcome of Requests



As Figure 5 above shows, in 63% (1,457) of resolvable cases the information was disclosed in full; in 24% (564) of cases the information was partially disclosed; and, in 10% (234) of cases the information was fully withheld. In 3% of cases (77 requests) the response had still to be provided.

Figure 6 below shows the annual disclosure trend for Departments since 2005.

	Figure 6: Annual Disclosure Trend 2005 – 2015										
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015 ⁵
Disclosed in Full	77%	79%	76%	73%	69%	67%	70%	71%	67%	64%	63%
Partially Disclosed	13%	14%	17%	18%	22%	24%	22%	21%	18%	23%	24%
Fully Withheld	9%	5%	5%	8%	9%	7%	7%	7%	9%	10%	10%

⁵ In each of the years 2005 to 2015 a very small percentage of requests still had to be answered.

3.5 Use of Exemptions/Exceptions

Under the FOI Act, a public authority can only refuse to provide requested information that it holds if:

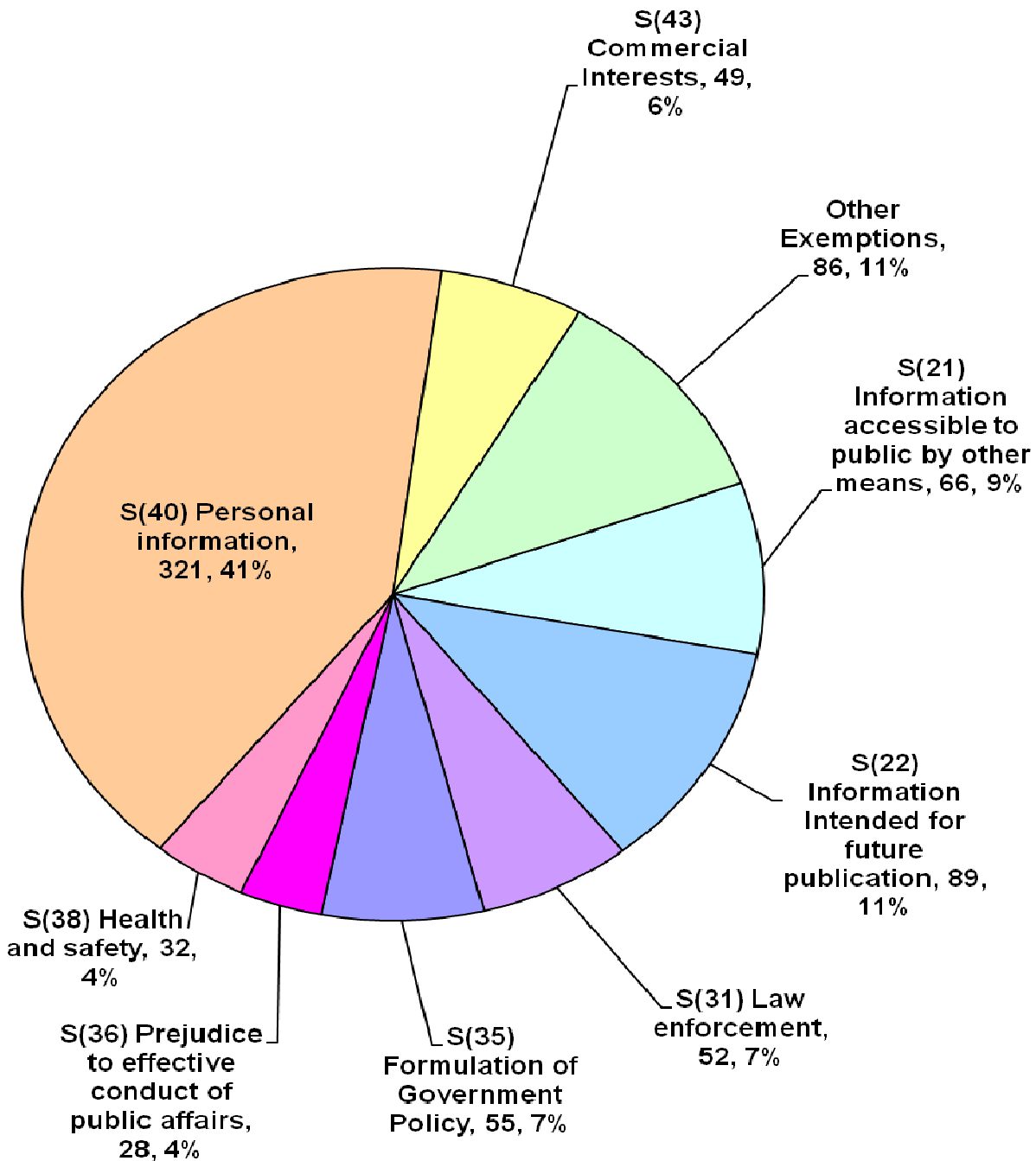
- The request is considered vexatious or repeated (or 'manifestly unreasonable' under the EIR);
- The cost of compliance would exceed the 'appropriate limit' (£600);
- A requested fee is not paid;
- The information falls into one or more of the categories of exempt information listed in Part II of the Act.

There were 194 cases where a request was 'closed' by Departments. Of these, 59 requests were refused, as the cost of providing the information would have exceeded the 'appropriate limit'; 66 were refused due to requests being considered either 'vexatious' or 'repeated' under section 14 of the FOI Act; and 69 requests were withdrawn.

Exemptions are either 'absolute', i.e., no obligation exists under the FOI Act to consider the request for information further, or 'qualified', i.e., the use of the exemption is subject to a public interest test. Similarly, the provisions of Part 3 of the EIR provide that a public authority may withhold environmental information if one or more 'exceptions' apply. However, the EIR differs from the FOI Act in that Regulation 12(2) states explicitly that 'a public authority shall apply a presumption in favour of disclosure'. And, if an exception applies to requested information, a public interest test must be carried out which applies the aforementioned presumption throughout the test process.

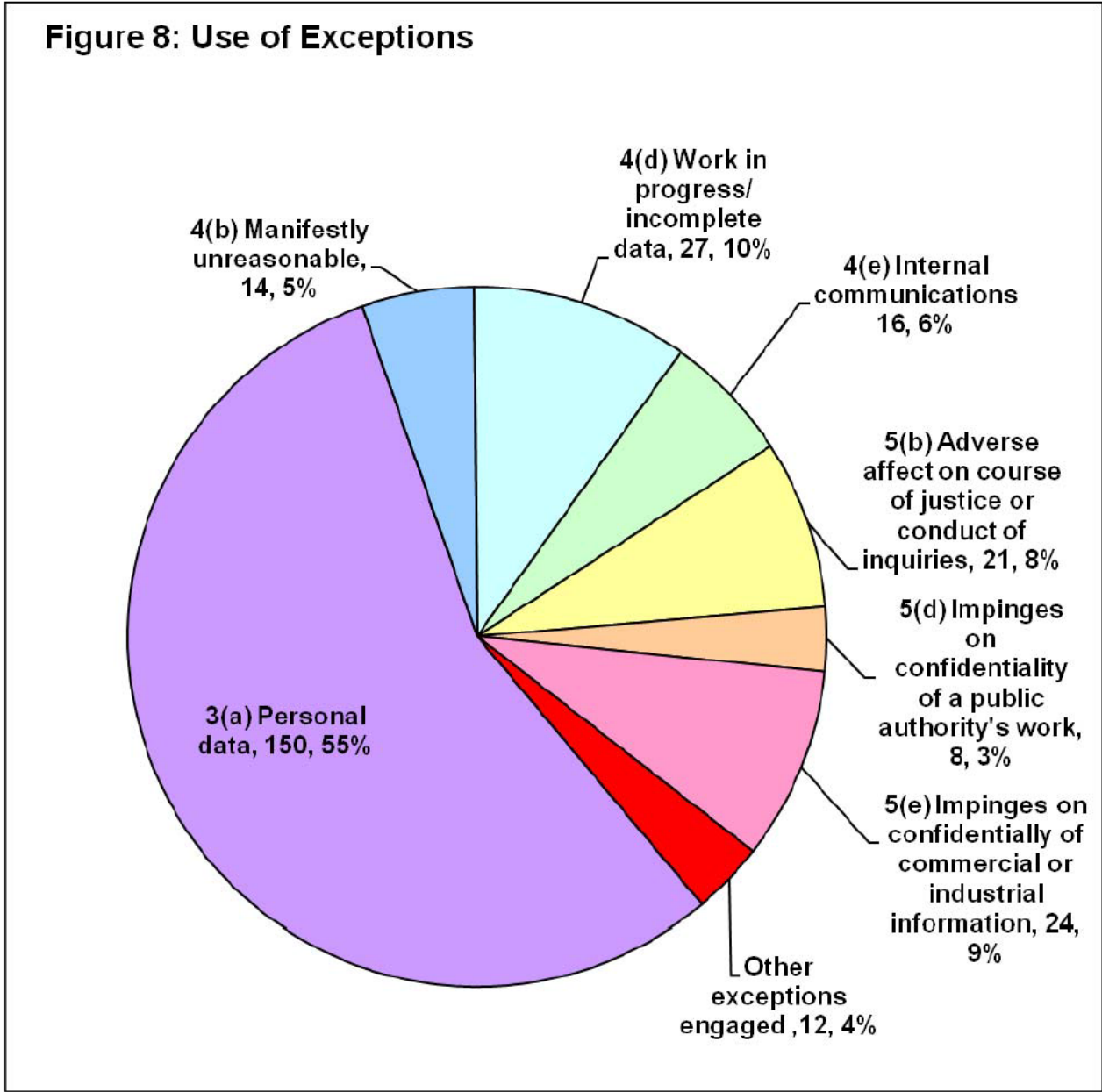
At least one exemption/exception was applied to 34% (798 requests) of the total number of resolvable requests. This is a slight increase on the previous year when exemptions/exceptions were applied to 33% (827) of the total number of requests. In total, exemptions relied on under the FOI Act were engaged on 778 occasions and exceptions under the EIR applied on 272 occasions.

Figure 7: Use of Exemptions



This represents an increase in the application of exemptions but a decrease in the application of exceptions, as 687 exemptions and 409 exceptions were applied in 2014. The most commonly applied exemption, as Figure 7 above shows, was section 40 (personal information) in 41% of requests (321 cases). This was followed by section 22 (Information intended for future publication) in 11% of requests (89) and section 21 (information accessible by other means) in 9% of requests (66), where exemptions were applied.

Figure 8 below shows details of the exceptions applied. The most common exception engaged was regulation 12(3) (personal data), which was used in 56% of requests (150).



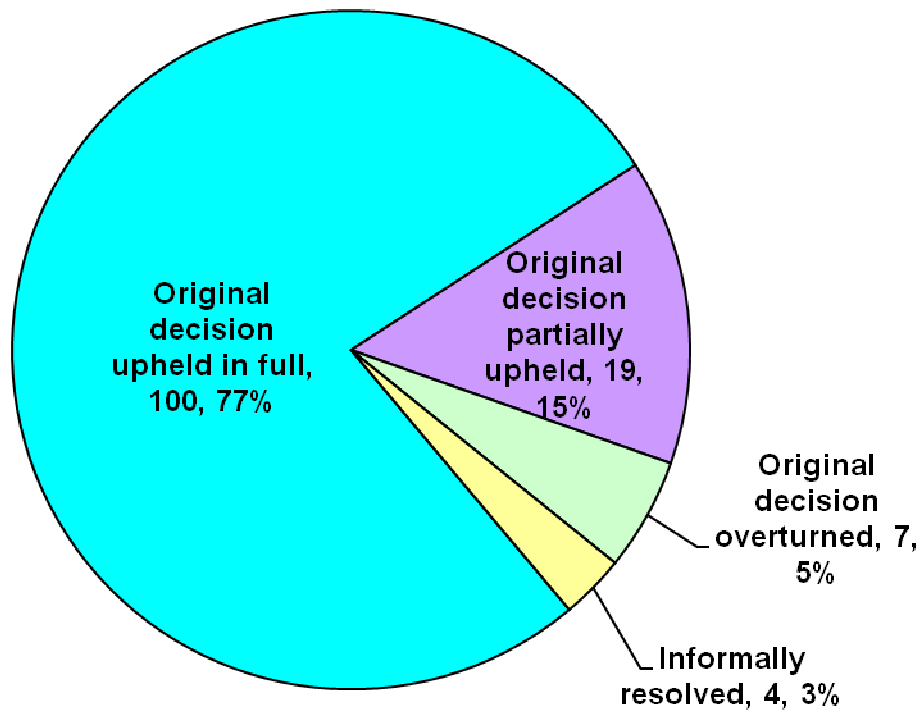
While exemptions (under the FOI Act) have been commonly applied by all Departments since 2005, exceptions (under the EIR) have been used only by some – much depends on the responsibilities of the Department and the nature and scope of the information requested. However, the number of Departments using exceptions has grown over the past decade. In 2005 only three Departments (DARD, DETI and DOE) used exceptions, and this has increased to six Departments (DARD, DCAL, DETI, DFP, DOE, and DRD) in 2015. DARD and DOE have used exceptions each year since 2005. 2015 also marks the third year in which DFP used an exception; the sixth consecutive year in which DCAL used exceptions; DRD's fifth year in which they used exceptions; and the seventh year in which DETI used exceptions.

DARD, DCAL, DOE and DRD used the exception under regulation 12(3) (a) (personal data) more than any other exception. DARD applied this exception in 81% (62) of requests, and DOE in 50% (58) of requests. DARD, DCAL, DFP and DRD have used more exceptions this year than in 2014; however, DETI and DOE used fewer exceptions than in 2014.

3.6 Internal Reviews

Requesters can ask Departments for an internal review for various reasons. For example, if information was withheld and they believe that the exemptions have been wrongly applied; or, they felt a fee was wrongly charged. This review involves a fresh and thorough examination of the initial decision by a person other than the original decision maker. Across the Departments a total of 130 internal reviews were reported as having been requested during 2015. The outcome is known in all of these cases as shown in Figure 9 below. In 77% of cases the original decision was upheld; in 15% of cases the decision was upheld partially; in 5% of cases the decision was overturned; and in 3% of cases an informal resolution was reached.

Figure 9: Internal Review Outcomes



The number of internal reviews requested in 2015 (130) has decreased by 8% in comparison with the previous year, when a total of 141 internal reviews were reported. Figure 10 on page 18 shows the eleven-year (2005 – 2015) trend.

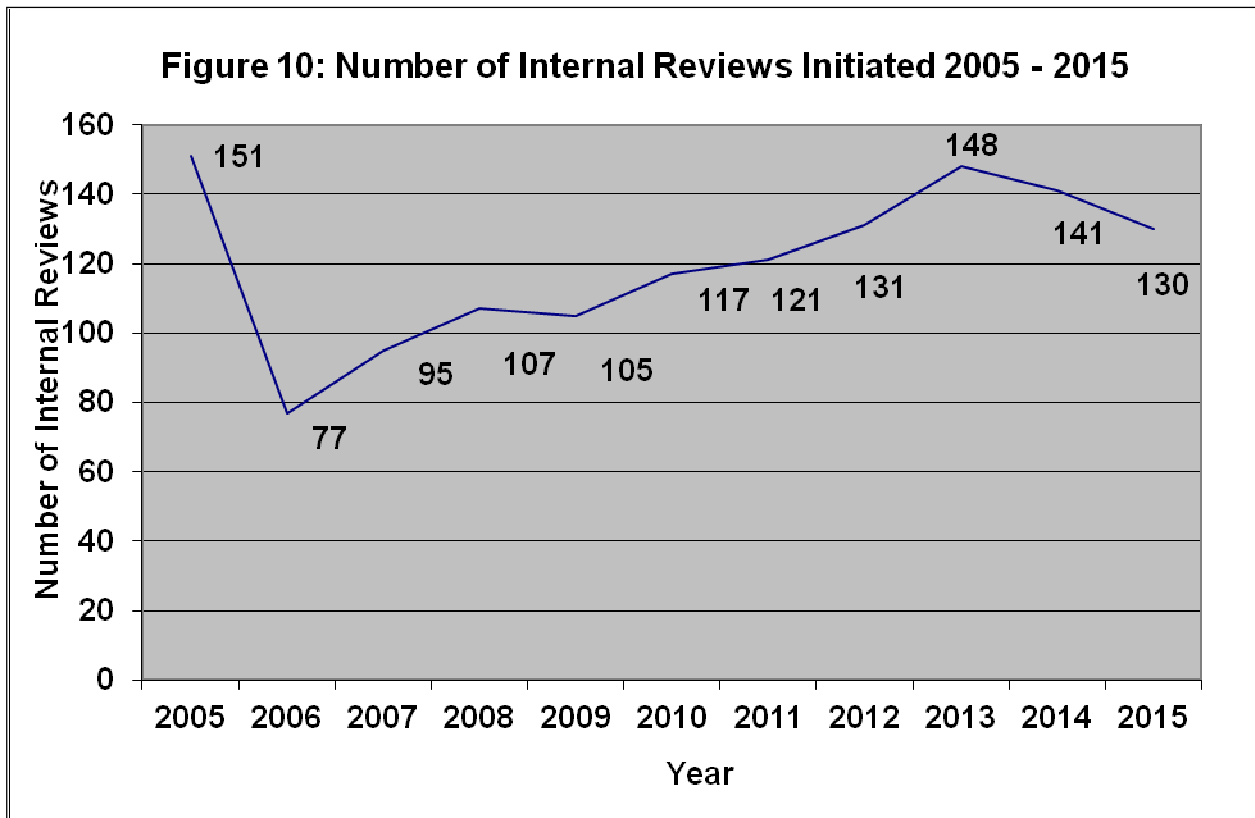
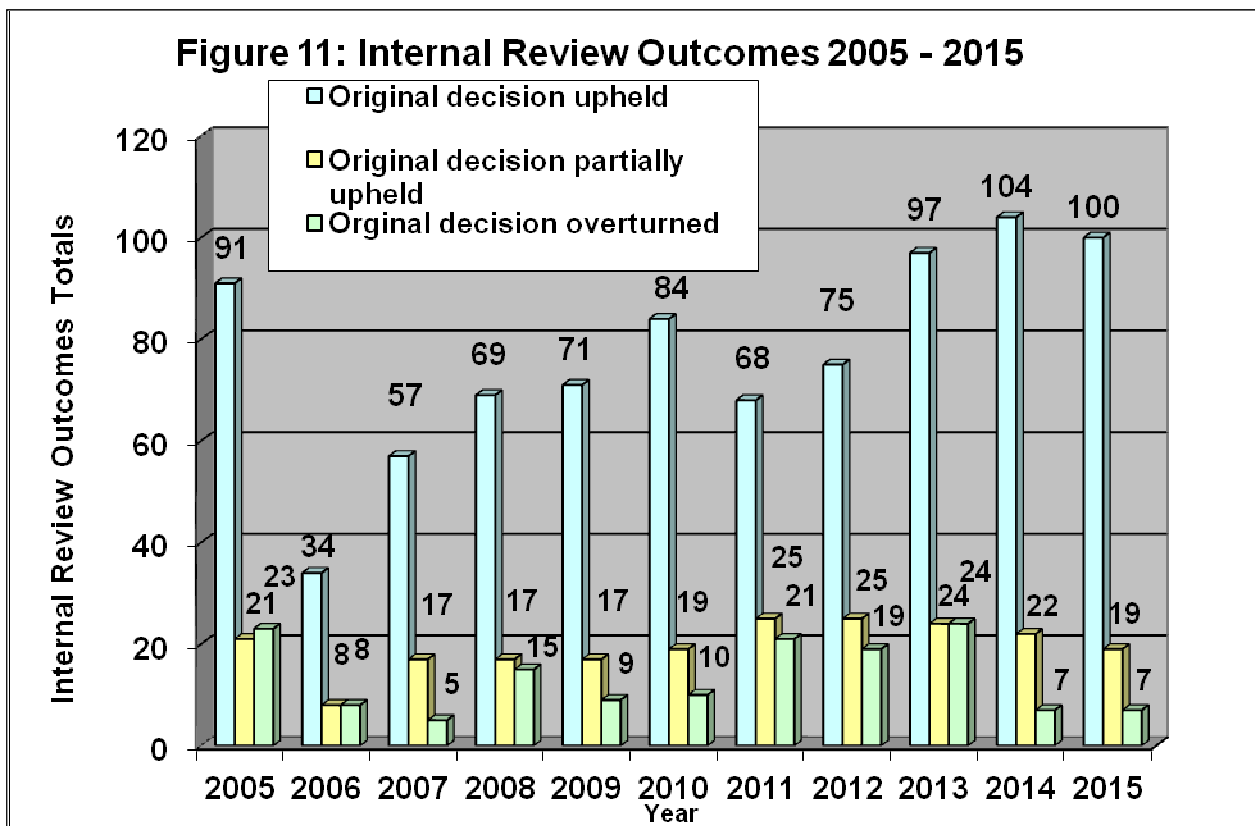


Figure 11 shows, in numerical terms, the last eleven years of internal review outcomes⁶.



⁶ An informal resolution was reached in 3% of cases in 2015 and 2% of cases in 2014.

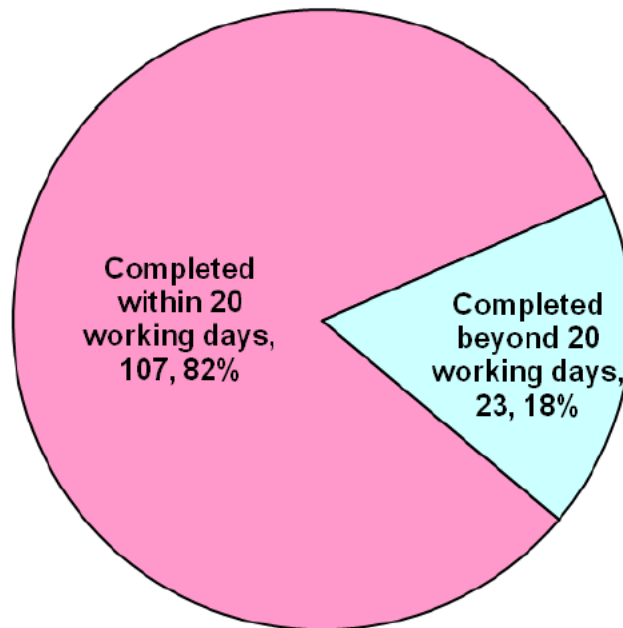
Figure 12 below compares the number of internal reviews in percentage terms per number of resolvable requests.

Figure 12: Comparison of Internal Reviews per Number of Resolvable Requests			
Department	Internal Reviews as % of Requests Received	Number of Internal Reviews	Number of Resolvable Requests
OFMDFM	13%	13	98
DETI	9%	9	104
DFP	9%	24	262
DSD	8%	18	224
DEL	7%	6	85
DHSSPS	5%	6	124
DOJ	5%	5	93
DRD	5%	12	248
DOE	4%	19	426
DCAL	3%	11	330
DARD	2%	4	177
DE	2%	3	161

The FOI Code of Practice issued under section 45 of the FOI Act states that internal review procedures should ‘encourage a prompt determination of the complaint’. This is the fifth consecutive year that statistics have been collected on the time taken to conduct internal reviews.

As Figure 13 below shows, 82% (107) of internal reviews were completed within 20 working days as recommended by the Information Commissioner; 18% (23) were completed beyond 20 working days. The figures for 2014 are 64% (87), and 36% (48) respectively.

Figure 13: Timeliness of Internal Reviews



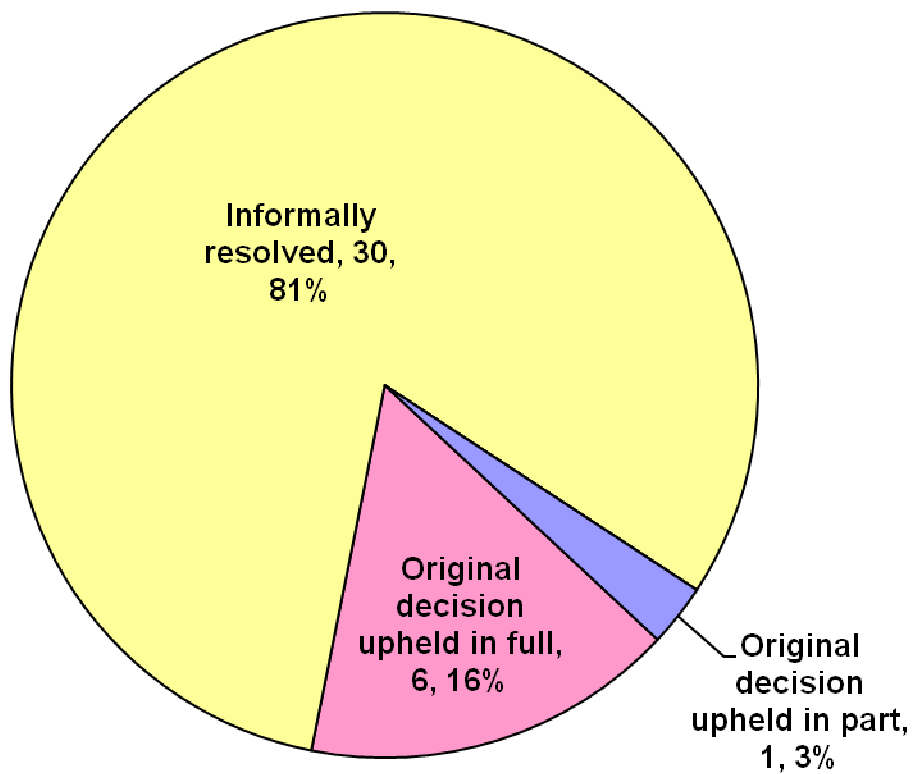
3.7 Appeals to the Information Commissioner

If a requester has obtained an internal review of a response by a Department to a FOI request but is still not satisfied with the outcome, he or she can make a formal appeal (or complaint) to the Information Commissioner's Office (ICO). ICO is the independent regulator of public authorities in their handling of information requests. Upon receipt of a complaint, it may investigate and may then issue a Decision Notice. A Decision Notice is the Commissioner's final view on whether or not the public authority has complied with the FOI Act or EIR, and on what action it needs to take.

In 2015, there were 43 appeals to the ICO relating to cases in which Departments refused information. This is an increase (16%) on the 37 appeals of the previous year. Of these 43 appeals, 49% of them related to requests received by DFP; a combined total of 35% to requests received by DCAL, DE, DETI, DOJ, DSD and OFMDFM; and 14% concerned DOE. One Department (DHSSPS) had only one request that progressed to the appeal stage in 2015.

Outcomes are known in 37 appeal cases and, as Figure 14 below shows, in 6 cases (16%) the original decision was upheld in full. Whereas the previous year, there were 10 cases (32%) in which the complaint was informally resolved out of a total of 31 cases; in 2015, the complaint was informally resolved in 30 cases (81%). In the one remaining case (3%), the complaint was upheld in part.

Figure 14: ICO Appeals Outcomes



3.8 Decision Notices of the Information Commissioner

The ICO issued sixteen Decision Notices to Departments in 2015. A number of these cases concern complaints the ICO received in earlier years.

The Decision Notices are summarised below.

ICO Case Reference: <u>FS50561462</u>	DFP	Decision Date: 13 January 2015
<p>Summary: The complainant requested correspondence relating to the extension of the TaxSmart scheme to rail travel in Northern Ireland. The Department of Finance and Personnel failed to respond to the request. At the time the decision notice was issued the Department had not provided the complainant with a substantive response. The Commissioner decided that the Department failed to respond to the complainant's request within the statutory timescale. He required the Department to provide the complainant with a substantive response to his information request. If the Department decided to refuse to confirm or deny that the requested information was held, or to withhold any information, then a refusal notice that complies with the requirements of section 17 of the FOIA should issue.</p>		

ICO Case Reference: <u>FS50565333</u>	DFP	Decision Date: 22 January 2015
<p>Summary: The complainant requested information relating to NICS Live 2015. At the time the decision notice was issued the Department of Finance and Personnel had not provided the complainant with a substantive response. The Commissioner decided that the public authority failed to respond to the complainant's request within the statutory timescale. He required the Department to provide the complainant with a substantive response to his information request. If the Department decided to refuse to confirm or deny that the requested information was held, or to withhold any information, then a refusal notice should be issued that complies with the requirements of section 17 of the FOIA.</p>		

ICO Case Reference: <u>FS50550409</u>	DCAL	Decision Date: 16 February 2015
<p>Summary: The complainant requested information transferred to the Public Record Office of Northern Ireland (PRONI), part of the Department for Culture, Arts and Leisure. PRONI confirmed that it held the requested information but, at the time decision notice was issued, had not provided the complainant with a substantive response. The Commissioner decided that the Department failed to respond to the complainant's request within the statutory timescale. He required the Department to provide the complainant with a substantive response to his information request. If the Department decided to withhold any information, then the complainant was to be provided with a refusal notice giving a full explanation as to why the information was refused, including details of any public interest test considerations.</p>		

ICO Case Reference: FER0553087	DOE	Decision Date: 16 February 2015
<p>Summary: The complainant requested documents submitted by a company in connection with its request to carry out exploratory drilling at Woodburn Forest, Carrickfergus. The Department failed to provide the complainant with all the relevant information it held until the Commissioner intervened. His decision was that the Department failed to comply with regulations 5(1) and 5(2), 11(3) and 11(4) of the EIR. As the Department eventually complied with the request no further action was required.</p>		

ICO Case Reference: FS50548738	OFMDFM	Decision Date: 3 March 2015
<p>Summary: The complainant requested details of the salaries paid to special advisers in the Office of the First Minister and deputy First Minister (OFMDFM). OFMDFM refused the request under section 40(2) of the FOIA. The Commissioner decided that OFMDFM was entitled to withhold some of the requested information under section 40(2) but that some information ought to be disclosed. He required the Department to disclose the current salary (as at the date of the request) paid to each special adviser in OFMDFM, and the point on the salary scale that each person was on when they were appointed to their role.</p>		

ICO Case Reference: FER0565436	DOE	Decision Date: 12 March 2015
<p>Summary: The complainant requested information relating to planning policies concerning wind energy. The Department of the Environment stated that it had already provided all the relevant information it held in response to a previous request made by the complainant. The complainant disagreed and requested an internal review. The Department failed to provide the complainant with the outcome of the internal review until the Commissioner intervened. The Commissioner decided that the Department had failed to comply with regulation 11(4) of the EIR. No further action was required.</p>		

ICO Case Reference: FS50573317	OFMDFM	Decision Date: 22 April 2015
<p>Summary: The complainant requested information relating to the Central Good Relations Funding Programme administered by the Office of the First Minister and deputy First Minister (OFMDFM). OFMDFM failed to respond to the request; therefore, the Commissioner decided that OFMDFM had failed to comply with section 10(1) of the FOIA. The Commissioner required the Department to first, confirm or deny that the requested information was held (or, if the Department decided to refuse to confirm or deny that any of the requested information was held, issue a refusal notice that complied with the requirements of section 17 of the FOIA). Secondly, and subject to the above, if the information was held the Department must either disclose the requested information or, if it wished to withhold any information, issue a refusal notice in relation to the information it wished to withhold and disclose the remainder.</p>		

<u>ICO Case Reference: FS50550293</u>	DCAL	Decision Date: 22 July 2015
<p>Summary: The complainant made a number of requests to the Department of Culture, Arts and Leisure (DCAL) broadly relating to the Libraries NI Board Member appointment competition or other public appointments. DCAL answered a number of the requests to the complainant's satisfaction but the complainant remained concerned about DCAL's decision to withhold parts of the requested information. These concerns have been separately considered by the Commissioner under three complaint references: FS50550293, FS50556269 and FS50554634. The Commissioner's findings are as follows. FS50550293 - he found that DCAL was correct to withhold some but not all of the requested box marking information under section 40(2) (third party personal data) of FOIA. FS50556269 – for information relating to an appointment process, he decided that DCAL correctly applied sections 36(2)(b)(i) and (ii) (prejudice to the effective conduct of public affairs) and section 40(2) and, with regard to the application of the 36(2)(b) exemptions, found the public interest favoured maintaining the exemption. FS50554634 - he determined that advice given to a Minister about the filling of vacant roles engaged section 42(1) (legal professional privilege) and the public interest favoured withholding the information. The effect of these findings is that the Commissioner required DCAL to disclose the requested information considered under case FS50550293, with the exception of the information captured by requests 9(e) and 10(e) which is exempt under section 40(2). For cases FS50556269 and FS50554634, DCAL was not obliged to take any further action as a result of this notice. Information Tribunal appeal EA/2015/0179 was withdrawn.</p>		

<u>ICO Case Reference: FS50554634</u>	DCAL	Decision Date: 22 July 2015
<p>Summary: The same summary details as ICO Case Reference FS50550293 apply.</p>		

<u>ICO Case Reference: FS50556269</u>	DCAL	Decision Date: 22 July 2015
<p>Summary: The same summary details as ICO Case Reference FS50550293 apply.</p>		

<u>ICO Case Reference: FS50587064</u>	OFMDFM	Decision Date: 11 August 2015
<p>Summary: The complainant requested information relating to special advisers' pay. The Office of the First Minister and deputy First Minister (OFMDFM) failed to respond; therefore, the Commissioner decided that OFMDFM had failed to comply with section 10(1) of the FOIA. The Commissioner required the Department to respond to the complainant's request: first, to confirm or deny that the requested information was held (or, if the Department decided to refuse to confirm or deny that any of the requested information was held, then to issue a refusal notice that complied with section 17 of the FOIA, which should include the outcome of any public interest considerations); secondly, and subject to the above, if the information was held, to either disclose the requested information or, if it wished to withhold any information, issue a refusal notice in relation to the information it wished to withhold (which should include the outcome of any public interest considerations) and disclose the remainder.</p>		

ICO Case Reference: FS50586155	OFMDFM	Decision Date: 11 August 2015
<p>Summary: The complainant requested information relating to expenses claimed by special advisers in the Office of the First Minister and deputy First Minister (OFMDFM). OFMDFM failed to respond to the request; therefore, the Commissioner decided that OFMDFM had failed to comply with section 10(1) of the FOIA. He required the Department to respond: first, to confirm or deny that the requested information was held (or, if the Department decided to refuse to confirm or deny that any of the requested information was held, issue a refusal notice that complied with the requirements of section 17 of the FOIA, which should include the outcome of any public interest considerations); secondly, and subject to the above, if the information was held the Department to either disclose the requested information or, if it wished to withhold any information, issue a refusal notice in relation to the information it wished to withhold (which should include the outcome of any public interest considerations) and disclose the remainder.</p>		

ICO Case Reference: FS50578842	DETI	Decision Date: 7 September 2015
<p>Summary: The complainant requested information relating to the Department for Enterprise, Trade and Investment's legal authority to conduct interviews under caution. The Commissioner decided that the Department did not hold any recorded information that had not been provided to the complainant.</p>		

ICO Case Reference: FS50576864	OFMDFM	Decision Date: 29 September 2015
<p>Summary: The complainant requested information held by the Office of the First Minister and deputy First Minister (OFMDFM) relating to its policy on Female Genital Mutilation (FGM). OFMDFM disclosed some of the requested information but withheld the remainder, citing sections 35(1)(a), 35(1)(b) and 40(2) of the FOIA. The Commissioner decided that OFMDFM was entitled to rely on the exemptions claimed.</p>		

ICO Case Reference: FER0569788	DCAL	Decision Date: 29 September 2015
<p>Summary: The complainant requested information relating to a bid made by the Department for Culture, Arts and Leisure in respect of its sports stadia programme. The Department provided some information but refused the remainder under regulations 12(4)(d), 12(4)(e) and 12(5)(e) of the EIR. The Commissioner decided that the Department was entitled to rely on the exceptions cited but that the public interest lay in favour of disclosing some of the withheld information. He also found that the Department had failed to respond to the request within the statutory time for compliance. He required the Department to disclose the information specified in a schedule associated with the notice.</p>		

ICO Case Reference: FS50596754	OFMDFM	Decision Date: 16 November 2015
<p>Summary: The complainant requested information relating to meetings attended by Ministers or departmental officials with two named individuals. The Office of the First Minister and deputy First Minister (OFMDFM) failed to respond; therefore, the Commissioner decided that OFMDFM had failed to comply with section 10(1) of the FOIA. He required the Department to respond to the complainant's request: first, to confirm or deny that the requested information was held (or, if the Department decided to refuse to confirm or deny that any of the requested information was held, then issue a refusal notice that complied with section 17 of the FOIA, which should include the outcome of any public interest considerations); secondly, and subject to the above, if the information was held the Department to either disclose the information or, if it wished to withhold any information, issue a refusal notice in relation to the information it wished to withhold (which should include the outcome of any public interest considerations) and disclose the remainder.</p>		

3.9 Enforcement Notice

On 2 June 2015 the Information Commissioner issued an Enforcement Notice to the Department of Finance and Personnel ordering that department to answer all outstanding freedom of information requests over six months old.

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

The Tribunal hears appeals as a result of contested decision notices issued by the Information Commissioner under the FOI Act or the EIR. In 2015, three related decision notices were appealed by the Department of Culture, Arts and Leisure to the Tribunal. However, the collective appeal (EA/2015/0179) in respect of these was later withdrawn. One decision notice involving the Department for Regional Development (EA/2015/0051) was also appealed. The Tribunal ordered the Department to provide such information as it held in accordance with the Environmental Information Regulations 2004.

3.11 Appeals to the Upper Tribunal (Administrative Appeals Chamber)

In 2015 the Department of the Environment (DOE) appealed two cases to the Upper Tribunal. In one case (GIA/607/2012), the Upper Tribunal overturned the decision of the First-tier Tribunal given on 20 December 2011 on the basis that its decision involved the making of an error of law. The Upper Tribunal re-made (on 7 December 2015) the decision to the effect that the DOE was entitled to refuse to disclose the information requested on the basis that the exception to disclosure under regulation 12(4)(e) of the Environmental Information Regulations 2004 applied. In the second case (GIA/4319/2014), the decision of the First-tier Tribunal given on 6 June 2014 was upheld by the Upper Tribunal in its decision of 2 December 2015. The Upper Tribunal found that the First-tier Tribunal did not make an error in law in reaching its decision, and disallowed DOE's appeal.

4. Departments' Performance Tables

Within the following tables please note that (1) the DCAL totals include figures for the Public Record Office; and (2) a single refusal can encompass more than one specific exemption/exception.

Table 1: Volume of Requests (for information received by Departments during 2015)

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DOJ	DRD	DSD	OFMDFM	TOTALS
Total number of valid requests received	216	511	191	111	136	308	133	511	138	287	315	131	2988
Processed	212	447	191	110	134	307	127	499	134	283	311	123	2878
Lapsed or on hold	4	6	0	1	0	1	0	3	4	4	4	6	33
Still being processed	0	58	0	0	2	0	6	9	0	0	0	2	77

Table 2: Source of Requests (received by Departments during 2015)

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DOJ	DRD	DSD	OFMDFM	TOTALS
Total number of valid requests received	216	511	191	111	136	308	133	511	138	287	315	131	2988
Business	23	5	4	7	11	54	3	116	4	26	11	6	270
Campaigning Group	13	9	1	2	12	7	5	46	0	14	23	8	140
Media	12	22	18	5	18	31	13	51	27	38	34	27	296
Member of the Public	129	426	163	90	85	199	104	256	100	167	235	81	2035
Public Representative	6	6	2	2	4	2	2	11	0	18	4	3	60
Researcher	2	8	0	3	1	2	4	1	4	4	2	2	33
Solicitor	31	35	3	2	5	13	2	30	3	20	6	4	154

Table 3: Timeliness of Responses (to requests for information received by Departments during 2015)

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DOJ	DRD	DSD	OFMDFM	TOTALS
Total valid requests received excluding lapsed and on hold	212	505	191	110	136	307	133	508	134	283	311	125	2955
20 Working Day deadline met ⁷	199	303	187	106	77	133	116	398	128	201	275	51	2174
Permitted extension ⁸	5	3	2	0	3	1	0	0	4	1	0	0	19
Late response	8	141	2	4	54	173	11	101	2	81	36	72	685
Still being processed	0	58	0	0	2	0	6	9	0	0	0	2	77

⁷ Permitted extensions occur when the 20 working day deadline for response under the FOI Act is extended to allow for consideration of the balance of the public interest, or under the EIR because of the complexity or volume of the request.

⁸ When dealing with requests relating to historical public records, i.e., those more than 30 years old, the Public Records Office of Northern Ireland (PRONI) (A Division within the Department of Culture, Arts and Leisure (DCAL) until 7 May 2016 is allowed 30 working days to respond. This additional time is to allow for consultation with the functionally-responsible public authority in order to decide whether the information should be disclosed.

Table 4: Outcome of Requests (for information received by Departments during 2015)

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DOJ	DRD	DSD	OFMDFM	TOTALS
Total number of valid requests received	216	511	191	111	136	308	133	511	138	287	315	131	2988
Lapsed / on hold	4	6	0	1	0	1	0	3	4	4	4	6	33
Information not held	16	148	29	12	21	24	7	52	35	34	29	22	429
Request closed	19	27	1	13	11	21	2	30	6	1	58	5	194
Total resolvable requests	177	330	161	85	104	262	124	426	93	248	224	98	2332
Information disclosed in full	79	155	118	60	53	144	76	286	65	206	172	43	1457
Partially disclosed	72	100	32	18	25	68	34	97	20	33	34	31	564
Fully withheld	26	17	11	7	24	50	8	34	8	9	18	22	234
Response not yet provided (still being processed)	0	58	0	0	2	0	6	9	0	0	0	2	77

Table 5: Reasons for Refusal of Requests (other than the application of exemptions/exceptions applied by Departments during 2015)

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DOJ	DRD	DSD	OFMDFM	TOTALS
Refused as cost would exceed 'appropriate (£600) limit'	4	4	1	8	9	10	1	1	7	0	12	2	59
Refused as request considered vexatious and / or repeated	0	8	0	5	0	3	0	12	0	0	38	0	66
Request withdrawn	15	15	0	0	1	8	1	17	0	1	8	3	69

Table 6: FOI Exemptions Applied (by Departments when withholding information during 2015)

The number of times each of the exemptions were cited as the reason for refusal Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DOJ	DRD	DSD	OFMDFM	TOTALS
S(21) – Information accessible to public by other means	3	2	1	1	4	15	9	1	3	0	6	21	66
S(22) – Information intended for future publication	7	4	4	7	6	30	0	5	2	2	17	5	89
S(23) – Information supplied by, or relating to, bodies dealing with security matters	0	1	0	0	0	0	0	0	0	0	0	0	1
S(27) – International relations	0	1	0	0	0	0	0	2	0	0	0	1	4
S(28) – Relations within the United Kingdom	0	0	0	0	0	2	0	0	0	0	0	2	4
S(30) – Investigations and proceedings conducted by public authorities	2	1	1	0	7	0	0	2	0	0	0	1	14
S(31) – Law enforcement	1	5	3	0	5	2	1	33	1	1	0	0	52
S(32) – Court records	0	8	0	1	0	1	1	0	0	0	0	0	11
S(33) – Audit Functions	0	1	5	0	0	1	0	0	0	0	0	0	7
S(35) – Formulation of Government policy, etc	1	3	2	1	6	3	3	0	7	0	6	23	55
S(36) – Prejudice to effective conduct of public affairs	1	1	3	0	0	12	4	3	2	0	0	2	28
S(37) – Communications with Her Majesty, etc. and honours	0	0	0	0	0	0	3	0	0	0	0	3	6
S(38) – Health and safety	1	13	0	0	1	5	0	0	9	0	1	2	32
S(39) – Environmental information	0	0	0	0	0	0	0	2	0	0	0	0	2
S(40) – Personal information	22	82	23	10	27	56	24	9	14	11	22	21	321
S(41) – Information provided in confidence	0	1	0	0	0	2	0	0	1	0	1	0	5
S(42) – Legal professional privilege	2	1	2	2	4	8	1	1	3	0	1	2	27
S(43) – Commercial interests	4	0	0	4	10	22	0	3	0	1	3	2	49
S(44) – Prohibition on disclosure	0	1	0	0	0	1	0	3	0	0	0	0	5

Table 7: EIR Exceptions Applied (by Departments when withholding information during 2015)

The number of times each of the exceptions to the right to disclosure in regulation 12 were cited as the reason for refusal Department	DARD	DCAL	DETI	DFP	DOE	DRD	TOTALS
3(a) – Personal data	62	10	5	1	58	14	150
4(a) – Information not held when request received	3	1	0	0	1	0	5
4(b) – Manifestly unreasonable	0	0	0	0	8	6	14
4(d) – Work in progress/incomplete data	3	7	2	1	12	2	27
4(e) – Internal communications	4	3	1	0	5	3	16
5 (a) – Adverse affect on international relations, defence, national security or public safety	1	0	0	0	2	0	3
5(b) – Adverse affect on course of justice or conduct of inquiries	0	0	0	0	17	4	21
5 (d) – Impinges on confidentiality of a public authority’s work	0	0	0	0	6	2	8
5(e) – Impinges on confidentiality of commercial or industrial information	3	1	7	0	5	8	24
5(f) – Adverse affect on interests of person who provided the information	1	0	0	0	2	1	4

Note: Seven Departments ‘excepted’ information under the EIR in 2014.

Table 8: Internal Reviews (concerning requests for information received by Departments during 2015, where the requested information was initially withheld)

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DOJ	DRD	DSD	OFMDFM	TOTALS
Total number of reviews (in calendar year)	4	11	3	6	9	24	6	19	5	12	18	13	130
Number where outcome known	4	11	3	6	9	24	6	19	5	12	18	13	130
Original decision upheld in full	3	8	2	5	4	20	4	15	5	9	14	11	100
Original decision upheld in part	1	1	1	1	4	4	2	1	0	2	1	1	19
Complaint upheld	0	1	0	0	1	0	0	3	0	1	1	0	7
Informally resolved	0	1	0	0	0	0	0	0	0	0	2	1	4

Table 9: Timeliness of Internal Reviews completed during 2015

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DOJ	DRD	DSD	OFMDFM	TOTALS
Total number of reviews (in calendar year)⁹	4	11	3	6	9	24	6	19	5	12	18	13	130
Number where outcome known	4	11	3	6	9	24	6	19	5	12	18	13	130
Completed within 20 working days	4	1	3	6	9	23	6	15	5	7	15	13	107
Completed beyond 20 working days	0	10	0	0	0	1	0	4	0	5	3	0	23

⁹ These figures include internal reviews conducted under the EIRs where a statutory 40 working day period is permitted.

Table 10 Appeals to the Information Commissioner (concerning the handling of requests for information received by NI Departments during 2015)

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DOJ	DRD	DSD	OFMDFM	TOTALS
Total number of appeals (in calendar year)	0	3	2	0	2	21	1	6	2	0	3	3	43
Number where outcome known	0	3	0	0	2	18	1	4	2	1	3	3	37
Original decision upheld in full	0	1	0	0	1	0	1	0	0	1	1	1	6
Original decision upheld in part	0	1	0	0	0	0	0	0	0	0	0	0	1
Complaint upheld	0	0	0	0	0	0	0	0	0	0	0	0	0
Informally resolved	0	1	0	0	1	18	0	4	2	0	2	2	30

Defining the scope of Freedom of Information monitoring

Section 1 of the Freedom of Information Act 2000 states that (subject to certain conditions):

*‘Any person making a request for information to a public authority is entitled
(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
(b) if that is the case, to have that information communicated to him’*

Regulation 5 of the Environmental Information Regulations 2004 states that (subject to certain conditions):

‘A public authority that holds environmental information shall make it available on request.’

Following their introduction on 1 January 2005, the above provisions apply to all relevant requests for information made to public authorities, no matter how routine and straightforward they may be. Departments supply large amounts of information, both on request and proactively, as an established and routine part of their business. This includes information released in the form of leaflets, correspondence exchanges, reports and other published material, and through websites and departmental Publication Schemes. All information released on request is covered by the FOI Act. However, it would be both uninformative and fundamentally unfeasible to count all such activity in departmental Freedom of Information monitoring returns. The statistics in this report therefore relate only to the ‘non-routine’ information requests that Departments have received. Essentially, this means that Departments’ statistics should only count those requests where:

1. It was necessary to take a considered view on how to handle the request under the terms of the FOI Act, and
2. Departmental Information Managers were informed of the request and logged it in their case management systems.

Defining a request

An information request for monitoring purposes is one:

1. Which meets the criteria in section 8 of the FOI Act and, if the request falls under the EIR, it includes requests made in any form or context, including oral requests; **and**
2. Which is a request for information that is not already reasonably accessible to the applicant by other means; **and**
3. (i) Which results in the release of one or more documents (in any media) or inclusion of extracts of documents in the information released; **or**
(ii) Results in information being withheld under an exemption or exception from the right of access (either the FOI Act or the EIR); **or**
(iii) The request is not processed because the department estimates that the cost of complying would exceed the appropriate limit in accordance with section 12 of the FOI Act; **or**
(iv) The request is not processed because the department is relying on the provisions of section 14 of the FOI Act; **or**
(v) Where a search is made for information sought in the request and it is found that none is held.