



FOI ANNUAL REPORT 2007

*A Summary of the Third Year of the Freedom of Information Act
in Northern Ireland*

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Foreword

Welcome to our third Annual Report on compliance with the Freedom of Information Act 2000. A total of 3,164 requests were submitted to the Government Departments here in 2007, making up an overall total of 9,698 requests submitted, since the FOI Act was implemented fully on 1 January 2005. This reflects a steady demand for government information about issues that affect people's daily lives, such as planning. And, while most requests come from private individuals, there has been a noticeable increase in the proportion of requests from the media, public representatives and pressure/campaign groups, particularly in the past year – a trend stimulated undoubtedly by the restoration of devolved government.

Our performance in complying with the FOI Act remains comprehensive. The vast majority of information requested continues to be disclosed, and is only withheld where justified and necessary, to protect individuals' privacy or commercial interests, or to give Ministers and their officials space to develop policy options.

Beyond dealing with requests for information, our Departments continue to disclose information routinely and proactively, and an opportunity to review and broaden this method of disclosure presented itself with the launch of the Information Commissioner's Publication Scheme Development and Maintenance Initiative. Our Departments are adopting a new model scheme (effective from 1 January 2009, when the current schemes expire), which is being developed in conjunction with his Office (ICO). The aim is not only to encourage maximum disclosure but also to reduce the administrative burden.

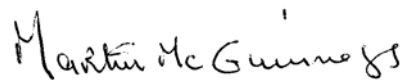
There have been rapid technological advances in the creation and management of electronic information, such as emails, in recent years. And, our Departments realise that they will not be well placed to deliver on their statutory obligations under the FOI Act, unless they possess robust information and records management systems. Indeed, all Departments have just implemented an electronic document and records management system, which will largely replace paper records and enhance the management of information.

They have also been contributing to the review - led by The National Archives of the United Kingdom - of the Code of Practice on Records Management under Section 46 of the Act, which requires updating to take account of the growth of electronic records. Furthermore, the '30-year rule', a phrase which denotes the point at which most official records are released to the public, is also in the process of being reviewed, with the intention of reducing the period. Again, we will play our part and contribute - balancing the desirability of increasing access to information and consistency of approach, with the significant resource implications that would undoubtedly be involved for the whole of the public sector.

Finally, we will encourage our Departments to maintain the progress they have made to date, and look forward to another busy year for Freedom of Information.



The Right Hon. Peter Robinson MP MLA
First Minister



Martin McGuinness MP MLA
deputy First Minister



Abbreviations

CFOI	Central Freedom of Information
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
DPA	Data Protection Act 1998
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
OFMDFM	Office of the First Minister and Deputy First Minister
NI	Northern Ireland
PRONI	Public Record Office of Northern Ireland
RFIs	Requests for Information

1. Introduction

The Freedom of Information Act¹ and the associated Environmental Information Regulations came fully into force on 1 January 2005.

Under the FOI Act, anyone, anywhere in the world may request information from a public authority which has functions in England, Wales and/or Northern Ireland. Scotland is covered by the Freedom of Information (Scotland) Act 2002. The FOI Act confers two statutory rights on applicants:

- 1) To be told whether the public authority holds the information requested; and if so,
- 2) To have that information communicated to them, subject to a limited range of exemptions.

This annual report provides information about the handling of all 'non-routine' information requests (Appendix A gives a definition of a non-routine request) - processed under the FOI Act or the EIR - received by the Northern Ireland Departments over the period 1 January to 31 December 2007. The report also contains a review of FOI developments during 2007. It is the third such publication compiled by the CFOI team in OFMDFM using statistical information supplied by each of the eleven NI Departments.

The report assesses the performance of the NI Departments in handling requests made under the FOI Act, including those handled under EIR. As part of the assessment process the CFOI team produces quarterly reports containing data on how requests have been handled during the period. These quarterly reports and previous annual reports are available on the OFMDFM website and can be found at: www.ofmdfmi.gov.uk/index/improving-public-services/central-freedom-of-information/annual-reports-and-statistics

¹ Freedom of Information is a 'transferred matter'. However, in 2000, the then Executive Committee of the Northern Ireland Assembly decided not to introduce separate FOI legislation. Therefore, Northern Ireland was covered by legislation passed by the UK Parliament.

2. Executive Summary

This report comprises three parts:

The **first part** sets out the NI Departments' performance during 2007 in handling requests for information under the Freedom of Information Act and the Environmental Information Regulations. Key findings include:

- The eleven NI Departments received a total of 3,164 FOI and EIR requests.
- DOE received the largest number of requests for information with 1,009 requests.
- Members of the public submitted the largest amount of requests to all NI Departments.
- The proportion of high profile requests has increased over the last three years. Public representatives, pressure groups and the media together have submitted: 11% of requests in 2005; 12% in 2006; and 19% in 2007.
- 91% of requests received by NI Departments were answered 'in time', and 9% of responses to requests were late.
- In 76% of resolvable cases the information requested was disclosed in full; in 17% of cases the information was partially disclosed; and in 5% of cases the information was fully withheld.
- Less than 1% of resolvable requests were refused due to cost; refused as they were considered repeated or vexatious; or refused, neither confirming nor denying whether the information was held.
- One or more exemptions/exceptions were applied to 22% of requests.
- In total, exemptions relied on under the FOI Act were engaged in 476 cases and exceptions under the EIR were applied on 364 occasions.
- The most commonly applied exemption was Section 40 (personal information). This was followed by Section 43 (commercial interests); and Section 38 (health and safety).

- The most commonly applied exceptions were Regulation 12(3) (exempt personal data). This was followed by Regulation 12(5)(b) (adverse effect on course of justice or conduct of inquiries); and Regulation 12(4)(e) (internal communications).
- Across the NI Departments a total of 95 internal reviews were reported as having been initiated on requests received, on the grounds that some, or all, of the information requested was withheld.
- Of the 79 internal reviews where the outcome is known, 72% had the original decision upheld; 22% had the original decision partially upheld; and in 6% of cases the complaint was upheld resulting in the original decision being overturned.
- There were five appeals to the ICO² relating to cases in which the NI Departments had refused information.
- Of the five appeals received by the ICO, two have been completed, with decision notices issued at the time of monitoring.
- There were two appeals to the Information Tribunal³ involving a NI Department.

The **second part** of the report documents key FOI developments in NI with a focus on legislative and policy development.

The **third part** of the report is comprised of seven performance tables. These show the performance of NI Departments with regard to:

- Number of requests received;
- Timeliness of response;
- Outcomes (original decision, internal review and appeal to ICO); and
- Exemptions/exceptions applied.

² The Information Commissioner's Office is the UK's independent authority set up to promote access to official information and to protect personal information. Requesters can complain or appeal to the ICO if they are unhappy with the way in which their request was processed, usually where information has been refused.

³ If a requester or a public authority is dissatisfied with the ICO's decision, they have a right to appeal to the Information Tribunal.

3. Responsibilities

3.1 CFI Team Responsibilities

The CFI Team has responsibility for the provision of advice and guidance to all NI Departments in relation to the FOI Act, DPA and EIR.

Its main functions are:

- Leading, coordinating, advising and supporting the NI Departments in their compliance with access to information legislation.
- Convening and chairing regular meetings of the FOI Practitioners' Group, composed mainly of the Departmental Information Managers.
- Co-ordinating (in liaison with the Ministry of Justice) the annual exercise to ensure that new public authorities are covered by the FOI Act.
- Facilitating the identification, nomination and authorisation of 'qualified persons' for the purposes of Section 36 of the FOI Act.
- Providing an enquiry service for NI Departments in relation to compliance with access to information legislation matters generally.
- Issuing guidance and encouraging best practice in relation to request handling.
- Maintaining central FOI Act/EIR statistics for the NI Departments, and reporting on trends and significant FOI developments to Ministers and the Permanent Secretaries' Group on a regular basis.
- Meeting regularly with representatives from the Information Commissioner's Northern Ireland Regional Office to discuss implementation of the FOI Act, as well as general issues arising from FOI complaints.

3.2 Departmental Responsibilities

Each of the eleven NI Departments is listed as a public authority under the FOI Act. This means that they are individually responsible for handling RFIs.

As required by the FOI Act, each Department has produced a publication scheme. A publication scheme is the vehicle that a Department uses to inform the public of the information it publishes or intends 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. These can be accessed via the following web addresses / links:

- DARD:** www.dardni.gov.uk/index/strategies-reports-accounts/freedom-of-information
- DCAL:** www.dcalni.gov.uk/index/freedom_of_information
- DE:** www.deni.gov.uk/index/85-about-the-dept/85-foi-information_pg/85-foi-publicationscheme_pg
- DEL:** www.delni.gov.uk/index/freedom-of-information/publication-scheme
- DETI:** www.detini.gov.uk/cgi-bin/moreutil?utilid=511
- DFP:** www.dfpni.gov.uk/index/about-us/publications
- DHSSPS:** www.dhsspsni.gov.uk/index/foi/publication-scheme
- DOE:** www.doeni.gov.uk/foi
- DRD:** www.drdni.gov.uk/index/freedom_of_information
- DSD:** www.ofmdfmni.gov.uk/index/about-ofmdfm/freedom-of-information/ofmdfm-publication-scheme
- OFMDFM:** www.ofmdfmni.gov.uk/index/about-ofmdfm/freedom-of-information/ofmdfm-publication-scheme

4. Northern Ireland Departments

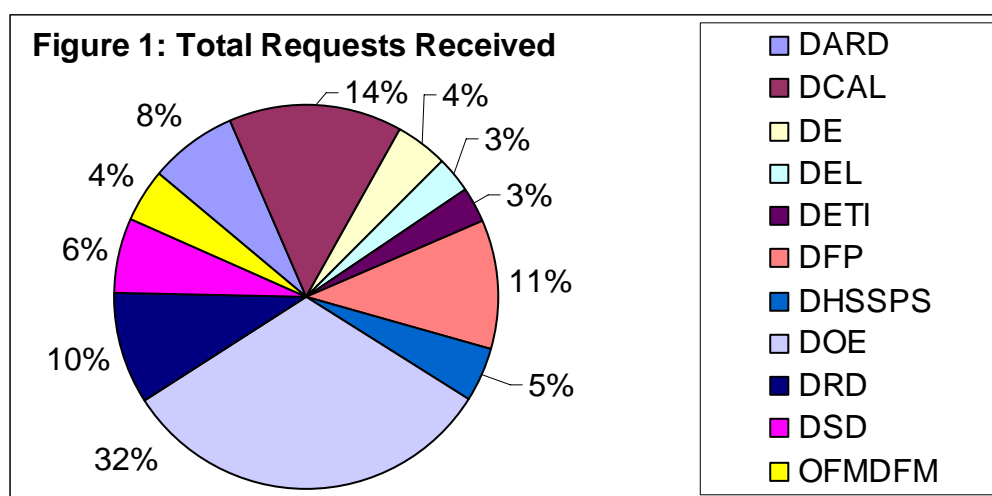
Performance

4.1 Volume of Requests

The eleven NI Departments received a total of 3,164 FOI and EIR requests during 2007, the third year of operation of the FOI Act, since it came into full effect on 1 January 2005. This is a 5.69% reduction on the 3,355 requests received in 2006, and a 0.47% reduction on the 3,179 requests received in 2005.

The number of requests received by each of the NI Departments varies considerably, generally as a consequence of their functions. DOE again received the largest number of requests for information, with 1,009 requests accounting for one-third of the total received by all NI Departments. A large proportion of DOE's requests centre on its Planning Service functions. DCAL, which includes figures for PRONI, received the next largest number of requests for information with 454 requests accounting for 14% of the total received. A large proportion of these requests sought historical information. Conversely, DEL and DETI received the least number of requests for information with 100 and 101 requests respectively, accounting for a combined total of 6% of the total received by all Departments.

Figure 1 shows the total requests for information by NI Departments for 2007.

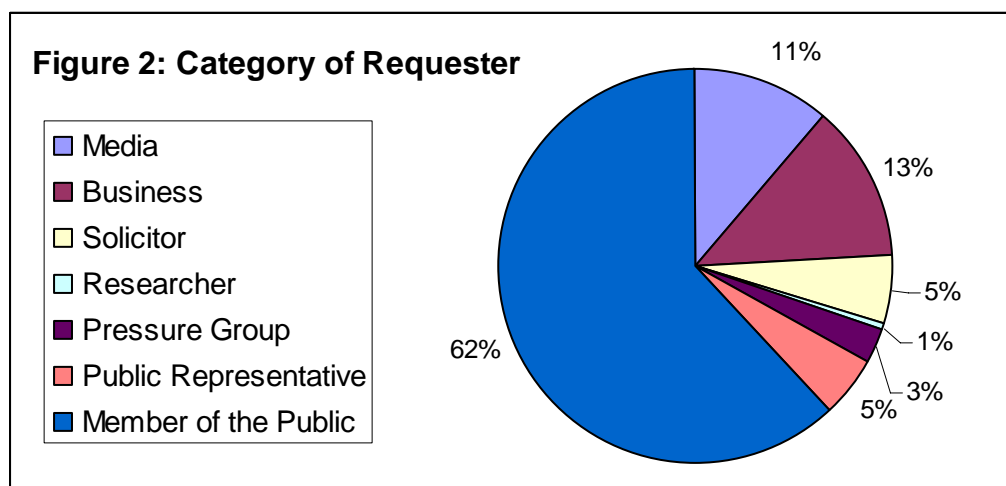


4.2 Category of Requester

Departments are asked to assign one of the following categories to each request: Media, Business, Solicitor, Researcher, Pressure Group, Public Representative, or Member of the Public.

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, conclusions have been drawn regarding the origin of the requests submitted in 2007.

As Figure 2 shows, the largest amount of requests (62%) were received from Members of the Public. This is followed by Businesses (13%); and Media (11%). The smallest category of requester was Researchers (1%).



Each of the NI Departments received the largest amount of requests from Members of the Public, and, although Business is the second largest category overall, all Departments with the exception of DFP and DOE, received more requests from the Media. Requests from Public Representatives accounted for the joint fourth highest requester category overall, though in both DE and OFMDFM it was their third highest requester category. Researchers submitted the least number of requests to all NI Departments with the exception of DETI which received fewer requests from Solicitors.

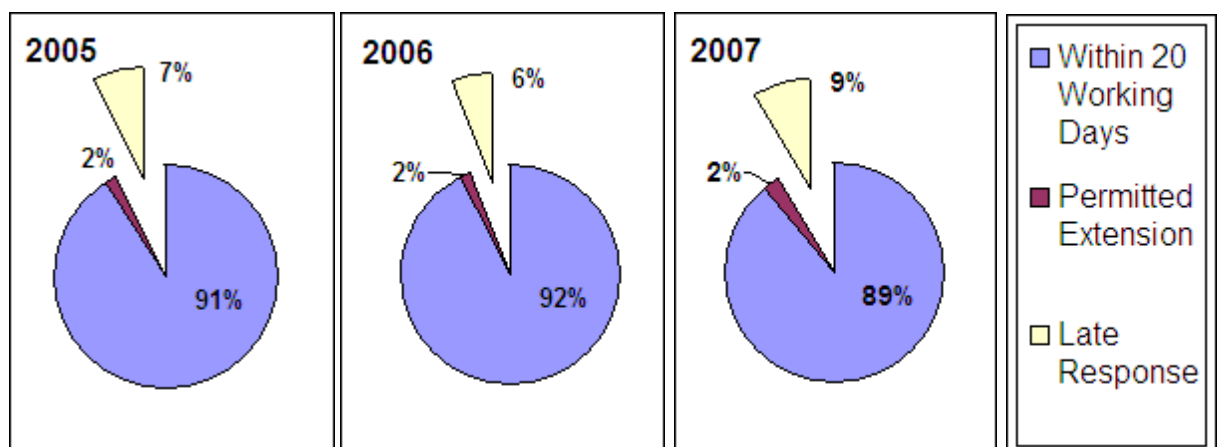
Perhaps the most significant trend over the last three years has been the increase in the proportion of high profile requests. The Media, Pressure Groups and Public Representatives together have submitted: 11% of all requests in 2005; 12% in 2006; and 19% in 2007. This may explain, to some extent, the slight downturn in performance on timeliness (see paragraph 4.3), and also outcomes (see paragraph 4.4) in relation to the percentage of information granted in full.

4.3 Timeliness of Response

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

In 2007, 91% of requests received by NI Departments were answered ‘in time’, in that they either received an answer within 20 working days⁴ or within a permitted time extension. 89% of requests received a substantive response within 20 working days. This compares favourably with the Whitehall Departments of State who answered 79% of requests within 20 working days and 89% of requests ‘in time’. However, the performance of NI Departments in 2007 in providing timely responses to FOI/EIR requests is down very slightly on the previous year – Figure 3 shows comparisons over the three years of FOI.

Figure 3: Response Timeliness 2005 – 2007



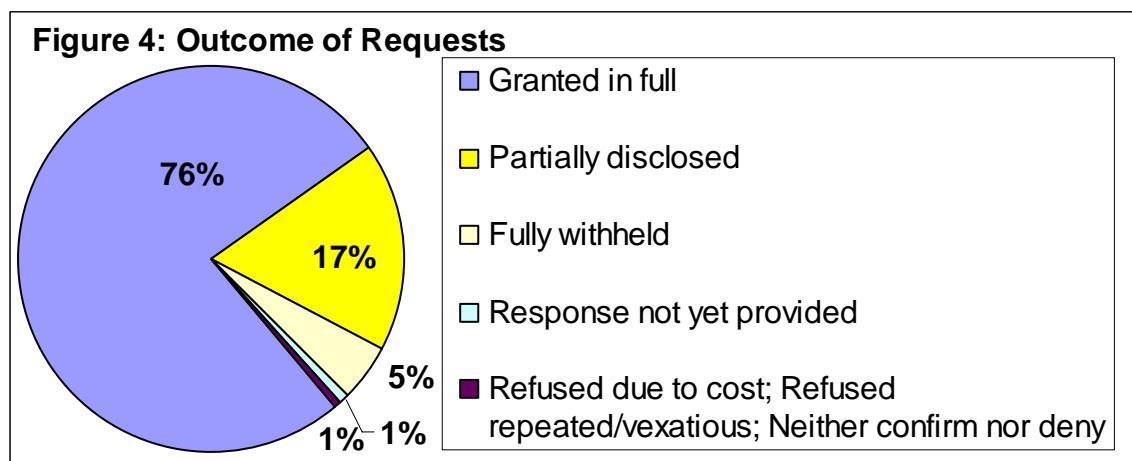
⁴ When dealing with requests relating to historical public records ie, those more than 30 years old, PRONI is allowed 30 working days to respond. This additional time is to allow for consultation with the functionally-responsible authority in order to decide whether the information should be disclosed.

4.4 Outcome of Requests

Of the 3,164 requests for information reported in 2007, 98% (3,108) were processed. 1% (45) of requests were either 'on hold or lapsed' and less than 1% (11) of requests were 'still being processed'. Requests may be 'on hold or lapsed' if a fee has been charged but not paid, or the request needed further clarification in order to identify the information being sought. Requests 'still being processed' may be going through the public interest test process.

Of the 3,119 requests eligible for processing, 243 (8%) sought information that was not held by the NI Departments from which it was requested. The remaining 2,876 requests were classed as 'resolvable', in that it was possible to give a substantive decision on whether to disclose the information sought.

As Figure 4 shows, in 76% (2,195) of resolvable requests the information was disclosed in full; in 17% (502) of cases the information was partially disclosed; and in 5% (136) of cases the information was fully withheld. Less than 1% of resolvable requests were refused due to cost (14); refused as they were considered repeated or vexatious (2); or refused, neither confirming nor denying that the information was held (2). In 1% of resolvable requests the response had yet to be provided.



This compares favourably with the Whitehall Departments of State where, in 62% of resolvable requests, the information was disclosed in full; in 11% of cases information was partially disclosed; in 22% of cases the information was fully withheld; and in 5% of cases the response had yet to be provided.

The annual disclosure trend for NI Departments has not changed significantly over the last three years as shown below:

2007: Granted in Full - 76%;
Partially disclosed - 17%; and
Fully withheld - 5%.

2006: Granted in Full - 79%;
Partially disclosed - 14%; and
Fully withheld - 5%.

2005: Granted in Full - 77%;
Partially disclosed - 13%; and
Fully withheld - 9%.

4.5 Use of Exemptions/Exceptions

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

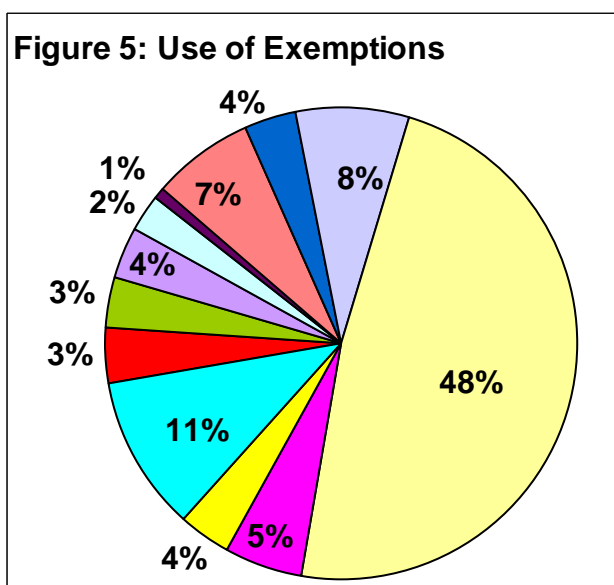
- The request is considered vexatious or repeated;
- The cost of compliance would exceed the 'appropriate limit' (£600);
- A fee is not paid;
- The information falls in one or more of the categories of exempt information listed in Part II of the Act.

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.

One or more of the exemptions/exceptions were applied to 22% (638) of the total number of requests. In total, exemptions relied on under the FOI Act were engaged in 476 cases and exceptions under the EIR were applied on 364 occasions.



The most commonly applied exemption, as Figure 5 shows, was Section 40 (personal information) in 48% of requests (229), where exemptions were applied. This was followed by Section 43 (commercial interests) in 11% of requests (50); and Section 38 (health and safety) in 8% of requests (37), where exemptions were applied.

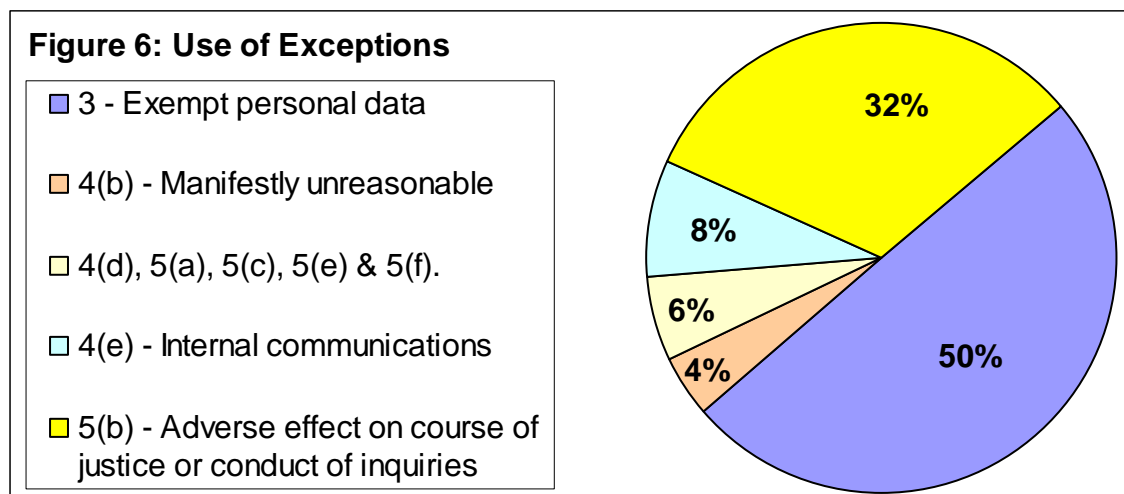
- S(21) - Information accessible to public by other means
- S(22) - Information intended for future publication
- S(23); S(24); S(27); S(28); S(31); S(33); S(37); and S(44)
- S(30) - Investigations and proceedings conducted by public authorities
- S(32) - Court records, etc
- S(35) - Formulation of government policy, etc
- S(36) - Prejudice to effective conduct of public affairs
- S(38) - Health and safety
- S(40) - Personal information
- S(41) - Information provided in confidence
- S(42) - Legal professional privilege
- S(43) - Commercial interests

In most NI Departments the Section 40 (personal information) exemption was the most likely exemption to be applied. Three NI Departments used an exemption more frequently than Section 40. These were: DETI, which relied on Section 30 (investigations and proceedings conducted by public authorities) 32% (6 cases) of the time where exemptions were applied; DFP, which relied on Section 43 (commercial interests) 42% (22 cases) of the time where exemptions were applied; and OFMDFM, which relied on Section 35 (formulation of government policy) 31% (5 cases) of the time where exemptions were applied.

The reliance of DETI (for investigative purposes); DFP (for procurement purposes); and OFMDFM (for government policy-making purposes) on these particular exemptions reflects the central role these Departments play on behalf of the NI Civil Service.

Similarly, the exemptions most commonly applied by the Whitehall Departments of State, during 2007, were Section 40 (personal information); followed by Section 35 (formulation of government policy); and Section 43 (commercial interests).

The most common exception engaged - in 50% of requests (181) where exceptions were applied - was Regulation 12(3) (exempt personal data). This was followed by Regulation 12(5)(b) (adverse effect on course of justice or conduct of inquiries) in 32% of requests (117); and Regulation 12(4)(e) (internal communications) in 8% of requests (30) where exceptions were applied. See Figure 6:



Only two of the eleven NI Departments applied exceptions and these were DARD and DOE. Both Departments used the exception under Regulation 12(3) (exempt personal data) more than any other exception, and both applied this exception in half the requests where exceptions were applied. Only DOE applied the exception under Regulation 12(5)(b) (adverse effect on course of justice or conduct of inquiries) accounting for almost one-third of exceptions applied. The reliance of DOE on this exception reflects the nature of some requests it received, which were targeted at information relating to evidence collected for the Department's enforcement activities.

4.6 Internal Reviews

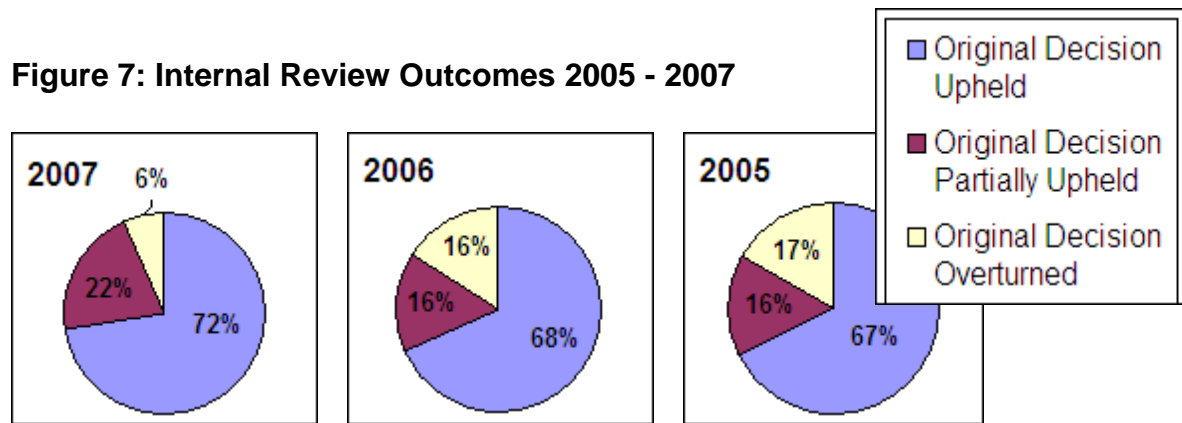
Requesters can ask NI Departments for an internal review if they are not content with the public authority's initial decision to withhold requested information. This review involves a fresh and thorough examination of the initial decision.

Across the NI Departments a total of 95 internal reviews were reported as having been initiated on requests received during 2007, on the grounds that some, or all, of the information requested was withheld. The outcome is known in 79 of these cases, with 72% upholding the original decision; 22% partially upholding the original decision; and 6% upholding the complaint resulting in the original decision being overturned. In comparison, Whitehall Departments of State had the original decision upheld in 74% of internal reviews; 15% had the original decision partially upheld, and in the remaining 11%, the requester's complaint was upheld.

Although the number of internal reviews (95) initiated in 2007 is down on the 151 initiated in 2005; it has increased on the total of 77 initiated in 2006.

The percentage of internal reviews resulting in the original decision being upheld has increased over the last three years from 67% in 2005; and 68% in 2006; to 72% in 2007. Conversely, the percentage of internal reviews resulting in the original decision being overturned has decreased in the three years of FOI as follows: 17% in 2005; 16% in 2006; and 6% for 2007. These figures suggest that NI Departments are making better decisions at the outset. Figure 7 illustrates this trend.

Figure 7: Internal Review Outcomes 2005 - 2007



In percentage terms, DFP (8%, 26) and OFMDFM (6%, 6) received the most requests for internal reviews (per number of resolvable requests) of all the NI Departments. Both had less resolvable requests (309 and 105 respectively) than the highest receiver of (resolvable) requests: DOE with 994. DCAL (1%), DE, DETI and DOE (all 2%) had the lowest percentages for requests for internal reviews (per number of resolvable requests) of all the NI Departments.

4.7 Appeals to the Information Commissioner

If a requester has obtained an internal review of a response by a NI Department to a FOI request, but is still not satisfied with the outcome, he or she can make a formal appeal to the ICO. The 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 2007, there were five appeals to the ICO relating to cases in which the NI Departments had refused information. This represents a steady decrease in the number of appeals to the ICO over the last three years: 23 in 2005; and 13 in 2006. The appeals were lodged against the following NI Departments: DARD, DOE, DRD (1 each); and OFMDFM (2). Of the five appeals received by the ICO, two have been completed, with decision notices issued at the time of reporting.

The first decision notice (Case Ref: FS50154484) involved a request to DRD for:

- (i) Statistics for the last 10 years regarding problems with annual reports; and
- (ii) Strategies developed for clearing backlogs of annual reports and for preventing their recurrence.

In this case the complainant had made numerous previous requests relating to the same theme since the FOI Act came into force on 1 January 2005. DRD replied to the complainant's request stating that - in light of the previous requests - it considered the current request to be vexatious and was therefore applying section 14(1) of the Act. The complaint was not upheld.

To view the PDF of the ICO decision notice access:

www.ico.gov.uk/upload/documents/decisionnotices/2007/fs_50154484.pdf

The second decision notice (Case Ref: FER0082261) involved a request to the DOE for a copy of a planning enforcement file relating to the complainant's planning application. DOE allowed the complainant to view the file but withheld some information contained in the file. In responding to the complainant's request, DOE subsequently applied the exemptions under sections 40, 42 and 30(1) of the FOI Act to parts of the file, some of which the complainant had already viewed. And DOE subsequently upheld its reliance on these aforementioned exemptions following a request for an internal review of its decision.

However, as a result of the intervention of the Information Commissioner, DOE reconsidered its decision and then dealt with the request under EIR, relying on Regulations 12(5)(b) and 13(1) to withhold the information sought. The Commissioner was satisfied that:

- (i) Information withheld in correspondence with the Departmental Solicitor's Office was exempt by virtue of Regulation 12(5)(b) of the EIR, and
- (ii) Disclosure of third party personal data contained in the enforcement file would be unfair to the individuals involved and was therefore exempt under Regulation 13 of the EIR.

However, the Commissioner ruled that in relation to the correspondence between DOE and its external legal advisors the exception under Regulation 12(5)(b) was not engaged and, in any event, the privilege in this information had been waived due to the complainant being privy to its content. Therefore, the Commissioner ordered DOE to release that information to the complainant. An appeal was made to the Information Tribunal by the requester regarding the remaining withheld information, but it was dismissed.

To view the PDF of the ICO decision notice access:

www.ico.gov.uk/upload/documents/decisionnotices/2007/fer_0082261.pdf

4.8 Appeals to the Information Tribunal

The Information Tribunal hears appeals as a result of decision notices issued by the Information Commissioner under the FOI Act or EIR.

There were two appeals involving a NI Department in 2007.

The first appeal involved DCAL and the ICO (Information Tribunal Appeal Number: EA/2006/0084). It involved a request for disclosure of a report into bullying and harassment at Waterways Ireland⁵. The Department had provided a redacted copy of the report to the requester, withholding some information under the exemptions 40(2) (personal information), and 41 (information provided in confidence). The Tribunal decided that both exemptions were engaged in relation to most of the information withheld, but also found that some additional information could be released and issued a substitute decision notice.

To view the PDF of the Information Tribunal decision notice access:

www.informationtribunal.gov.uk/Documents/decisions/mrbmcteggartvinfocomm_departforculturearts_leisure_4Jun07.pdf

⁵ Waterways Ireland is one of the six North-South Implementation Bodies and is responsible for Ireland's inland navigations. DCAL is the body's sponsor Department in Northern Ireland.

The second appeal involved DOE and the ICO (Information Tribunal Appeal Number: EA/2007/0048; Information Commissioner's Ref: FER0082261). The Tribunal upheld the decision notice and dismissed the appeal.

To view the PDF of the Information Tribunal decision notice access:

www.informationtribunal.gov.uk/Documents/decisions/WilliamYoung_Judgment1.pdf

5. FOI Developments in Northern Ireland in 2007

5.1 Legislation

(i) Coverage

The following bodies are now covered by the provisions of the FOI Act:

Agri-Food and Biosciences Institute⁶

The Northern Ireland Fire and Rescue Service Board⁷

Northern Ireland Water Limited⁸

Belfast Health and Social Care Trust

Northern Health and Social Care Trust

South Eastern Health and Social Care Trust

Southern Health and Social Care Trust

Western Health and Social Care Trust⁹

(ii) Fees

On 14 December 2006, the UK Government published a consultation paper to seek views on changes to the FOI fees regulations (which cover England, Wales and Northern Ireland). The consultation period concluded on 21 June 2007, following the publication of a supplementary paper. On 25 October 2007 the Government announced¹⁰ that it had decided to make no changes to the existing fees regulations.

⁶ The Agri-Food and Biosciences Institute was established on 1 April 2006, and is subject to the FOI Act by virtue of paragraph 21 of Schedule 1 to the Agriculture (NI) Order 2004.

⁷ The Northern Ireland Fire and Rescue Service Board was established on 1 July 2006 under the Fire and Rescue Services (NI) Order 2006. The Order also removed the Fire Authority for Northern Ireland from Schedule 1 of the FOI Act.

⁸ Northern Ireland Water Limited was established on 1 April 2007 under the Water and Sewerage Services (NI) Order 2006, and is subject to the FOI Act by virtue of section 6 of that Act, which covers 'publicly-owned companies'.

⁹ The Trusts were established on 1 April 2007, and fall under Schedule 1, Part III, paragraph 48 of the FOI Act, as they are set up under Article 10 of the Health and Personal Social Services (NI) Order 1991.

¹⁰ The announcement came through a Written Ministerial Statement by Michael Wills MP, Minister of State, Ministry of Justice.

Instead, it planned to deliver ‘a package of positive administrative measures’ to make better use of the existing FOI provisions, including working with The National Archives of the United Kingdom to revise the Code of Practice on Records Management under section 46 of the FOI Act; a public consultation on extending the application of the FOI Act; and a review of the ‘30-year rule’.

5.2 Code of Practice on Records Management

When the current Code was issued in November 2002, it was on the understanding that it would be reviewed and, if necessary, revised five years after publication. This was in contrast to the companion code under section 45, which was to be (and was) reviewed and revised before 1 January 2005. There were additional reasons for undertaking the section 46 review:

- The content relating to electronic records (now more widespread) needed updating.
- There was scope to streamline the Code: to clarify and simplify its provisions by strengthening the focus on principles and outcomes and reducing process-level detail.
- The Code’s relevance to compliance with other information legislation and policy areas, such as data protection, data sharing and re-use of public sector information, needed to be made clearer.
- The Constitutional Affairs Select Committee highlighted the need to give more attention to the management and preservation of digital records in its 2006 report on implementation of FOI. Reviewing and revising the Code formed part of the UK Government’s response to this report.

In leading the review, The National Archives was assisted by two working groups - responsible for Parts One (Records Management) and Two (Review and Transfer of Public Records) of the Code respectively. The DETI (Part One) and DFP (Part Two) Information Managers represented the NI Departments on the groups. Consultation with the First Minister and deputy First Minister on a draft revision of the Code will precede a public consultation in 2008.

5.3 Extending Coverage of FOI

The FOI Act currently applies to over 100,000 public authorities. These include central government departments, local authorities, schools, colleges and universities, the health service, the police and a range of other public bodies. Furthermore, the Act includes provision to extend its coverage to organisations that carry out functions of a public nature, and to contractors who provide services which are a function of a public authority. This can be done through making an order under section 5 of the Act, whereby such organisations would be designated as public authorities for specified functions for the purposes of the Act.

The aim of the consultation document – entitled, ‘Freedom of Information Act 2000: Designation of additional public authorities’ – is to seek views, as to whether the Government should look to use the powers under section 5 and extend the coverage of the FOI Act and, if so, which organisations it should consider. Views have been sought from: public authorities working with organisations that are not covered by the Act; organisations carrying out public functions that are not currently covered; and, the general public and others interested in access to public information in England, Wales and Northern Ireland. The consultation closed on 1 February 2008 and responses are currently being analysed. No organisation will be designated on the basis of this consultation alone. Any proposals to extend coverage of the Act - to organisations that carry out functions of a public nature, and to contractors, who provide services which are a function of a public authority - under a section 5 Order, would be made on a case-by-case basis in the context of the overall policy objectives. The potential impact would be discussed in a further consultation with the proposed organisations or their representatives, and analysed in an Impact Assessment.

5.4 ‘30-Year Rule’ Review

The ‘30-year rule’ is a commonly used phrase to describe the point at which records created by government departments are transferred to official archive repositories,¹¹ and at which most of these records are released to the public.

¹¹ The transfer takes place at the 20-year point in Northern Ireland under the terms of the Public Records Act (NI), 1923.

Thirty years is also the date at which public records become 'historical' for FOI purposes (i.e. a number of exemptions cannot be applied to records 30 years old or more).

An independent review team is looking at whether 'historical records' can be made available for public inspection much more swiftly than under the current – '30-year rule' – arrangements. In December 2007, the review team wrote to the First Minister and deputy First Minister for their views, which was to be provided following consultation with the Minister for Culture, Arts and Leisure, the statutory Keeper of the Records for Northern Ireland. Following a public consultation - running from mid-January to mid-April 2008 - the review team is expected to report to the Prime Minister and the Lord Chancellor by summer 2008.

5.5 External Relations

(i) The Devolved Administrations

At the invitation of the National Assembly for Wales, the Head of Central FOI team, OFMDFM, delivered a presentation entitled, 'What is special about FOI in Northern Ireland', at the Access to Information Community of Practice meeting held in Cardiff on 22 January 2007. The Scottish Government was also represented at this meeting and subsequent contact on policy issues of mutual concern led to closer relations between the FOI teams of the devolved administrations. On 1 May 2007 the Scottish Government's FOI team visited Belfast for bilateral discussions. This was followed up with the first formal meeting, on 16 October 2007 in Belfast, of a newly-constituted group composed of the FOI Policy Officers of the devolved administrations. Further meetings were planned for 2008, and an invitation to attend was extended to the Ministry of Justice, the lead Whitehall Department on FOI.

(ii) Information Commissioner's Office (ICO)

As in previous years, quarterly meetings were held between the Assistant Information Commissioner for NI and the Head of Central FOI team to discuss (a) the FOI performance of the NI Departments, and (b) compliance issues arising from complaints casework. The meetings continued to provide a useful forum for highlighting emerging trends and the implications for Northern Ireland.

The Departments were represented at a number of workshops run by the ICO, as part of its Publication Scheme Development and Maintenance Initiative. These workshops informed representatives about how to get the best out of a model scheme, what information should be included and how it should be presented to the public. ICO also established an Advisory Panel - made up of experts and interested parties - to provide a 'sounding board' for ideas and bring a user perspective to the work as it develops and provide feedback when appropriate. The Head of Central FOI team represents Northern Ireland on the panel. This representation ensures that any regional divergence is taken into account as the new model scheme for Central Government Departments unfolds.

The panel's terms of reference are:

- To provide opinions and ideas regarding publication schemes from a user or practitioner viewpoint, and
- To consider ICO proposals for publication schemes and provide feedback on them.

6. NI Departments' Performance Tables

Table 1: Number of requests for information received by NI Departments during 2007.

Table 2: Timeliness of responses to requests for information received by NI Departments during 2007.

Table 3: Outcome of requests for information received by NI Departments during 2007.

Table 4: FOI exemptions applied by NI Departments when withholding information during 2007.

Table 5: EIR exceptions applied by NI Departments when withholding information during 2007.

Table 6: Internal reviews concerning requests for information received by NI Departments during 2007, where the requested information was initially withheld.

Table 7: Appeals to Information Commissioner's Office concerning the handling of requests for information received by NI Departments during 2007.

Within the following tables please note:

- (i) The DCAL totals include figures for PRONI.
- (ii) A single refusal can encompass more than one specific exemption/exception.

Table 1: Number of requests for information received by NI Departments during 2007.

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DRD	DSD	OFMDFM	TOTALS
Total Number of requests received	239	454	138	100	101	336	148	1009	300	200	139	3164
Processed	232	425	135	100	101	335	143	1009	300	194	134	3108
On hold or lapsed	6	27	2				5			5		45
Still being processed	1	2	1			1				1	5	11

Table 2: Timeliness of responses to requests for information received by NI Departments during 2007.

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DRD	DSD	OFMDFM	TOTALS
Total received excluding on hold or lapsed	233	427	136	100	101	336	143	1009	300	195	139	3119
Deadline met	209	306	126	99	94	270	123	961	300	161	123	2772
Permitted extension	6	30	3		6	17		2		7	9	80
Late response	18	91	7	1	1	49	20	46		27	7	267

Table 3: Outcome of requests for information received by NI Departments during 2007.

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DRD	DSD	OFMDFM	TOTALS
Total received excluding on hold or lapsed	233	427	136	100	101	336	143	1009	300	195	139	3119
Number where information not held	17	101	13	7	10	27	13	15		6	34	243
Total resolvable requests	216	326	123	93	91	309	130	994	300	189	105	2876
Information disclosed in full	122	261	105	75	75	242	114	694	266	153	88	2195
Partially disclosed	72	49	10	14	5	37	10	255	16	26	8	502
Fully withheld	19	9	6	4	11	10	6	40	18	9	4	136
Response not yet provided	1	6	1			11				1	5	25
Refused due to cost		1	1			9		3				14
Refused repeated/vexatious	2											2
Neither confirm or deny								2				2

Table 4: FOI exemptions applied by NI Departments when withholding information during 2007.

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DRD	DSD	OFMDFM	TOTALS
Freedom of Information Exemptions												
The number of times each of the exemptions in sections 21 to 44 were cited as the reason for refusal												
S(21) – Information accessible to public by other means	4	1	1	2	1	4		1	1	4		19
S(22) – Information intended for future publication	3	1	1	1	2	1	1	1	4		1	16
S(23) – Information supplied by, or relating to, bodies dealing with security matters									1			1
S(24) - National security		1									1	2
S(27) - International relations	1	1									1	3
S(28) - Relations within the United Kingdom											2	2
S(30) - Investigations and proceedings conducted by public authorities	2		3		6							11
S(31) - Law enforcement	1			2		1						4
S(32) - Court records, etc	1	1		1			2					5
S(33) - Audit functions									1			1
S(35) – Formulation of Government policy, etc	2	2			2	4	3	2	4	8	5	32
S(36) - Prejudice to effective conduct of public affairs	7	1				1			3	3	3	18
S(37) - Communications with Her Majesty, etc. and honours								1				1
S(38) - Health and safety		36					1					37

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DRD	DSD	OFMDFM	TOTALS
S(40) - Personal informatio	59	51	12	12	4	16	5	41	12	14	3	229
S(41) – Information provided in confidence	7	3	3	4	1	1	1	1	2	2		25
S(42) - Legal professional privilege	2	3	1	2			1		3	5		17
S(43) - Commercial interests	4			1	3	22	2	2	3	13		50
S(44) - Prohibition on disclosure						3						3

Table 5: EIR exceptions applied by NI Departments when withholding information during 2007.

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DRD	DSD	OFMDFM	TOTALS
Environmental Information Regulations Exceptions												
The number of times each of the exceptions to the right to disclosure in regulation 12 were cited as the reason for refusal												
3 - Exempt personal data	11							170				181
4(b) - Manifestly unreasonable	2							13				15
4(d) - Work in progress/incomplete data								9				9
4(e) - Internal communications	2							28				30
5(a) - Adverse effect on international relations, defence, national security or public safety								1				1
5(b) - Adverse effect on course of justice or conduct of inquiries								117				117
5(c) - Adverse effect on intellectual property rights	1							1				2
5(e) - Impinges on confidentiality of commercial or industrial information	6											6
5(f) - Adverse effect on interests of person who provided the information								3				3

Table 6: Internal reviews concerning requests for information received by NI Departments during 2007, where the requested information was initially withheld.

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DRD	DSD	OFMDFM	TOTALS
Total number of reviews (in calendar year)	9	4	2	3	2	26	6	21	11	5	6	95
Number where outcome known	9	4	1	3	2	26	5	13	5	5	6	79
Original decision upheld in full	6	4		1		18	5	11	4	4	4	57
Original decision upheld in part	2			2	2	6		1	1	1	2	17
Compliant upheld	1		1			2		1				5

Table 7: Appeals to Information Commissioner’s Office concerning the handling of requests for information received by NI Departments during 2007.

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DRD	DSD	OFMDFM	TOTALS
Total number of appeals (in calendar year)	1 ¹²							1	1		2	5
Number where outcome known								1	1			2
Original decision upheld in full									1			1
Original decision upheld in part								1				1
Complaint upheld												0
Informal resolution												0

¹² Case closed by ICO without recourse to informal resolution or a Decision Notice

Appendix A

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.

NI 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 NI 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 the EIR); **or***
(iii) *The request is not processed because the department estimates 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.*