

Freedom of Information Act 2000



FOI Annual Report 2010

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

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Foreword

Welcome to our sixth Annual Report on compliance with the Freedom of Information (FOI) Act 2000. A total of 2,883 requests for information were submitted to the Northern Ireland Executive Departments in 2010, making up an overall total of 18,353 requests submitted, since the FOI Act was implemented fully on 1 January 2005.

Continuing the trend of previous years, the vast majority of requests to all Departments were submitted by members of the public, and a significant proportion (16%) were submitted by the media, public representatives and campaigning groups. And, while there was a 4.5% increase on the number received in 2009, Departments succeeded in answering 92% of all requests 'in time'.

Two important steps were taken to support our compliance with the legislation. A new workflow solution for tracking, monitoring and reporting on requests, which integrates with the existing electronic records management system, was put in place for the use of all Departments. It has facilitated the processing of requests more efficiently. Another significant development was the design and delivery of a range of access to information training courses by FOI Practitioners from all Departments. This has afforded many staff with the opportunity to improve on their FOI skills and knowledge, which reinforces our commitment to improve the quality and consistency of our services.

The Right Hon. Peter Robinson MLA
First Minister



Martin McGuinness MP MLA
deputy First Minister



Abbreviations

DARD	Department of Agriculture and Rural Development
DCAL	Department of Culture, Arts and Leisure
DE	Department of Education
DEFRA	Department for Environment, Food and Rural Affairs
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
NI	Northern Ireland
NICS	Northern Ireland Civil Service
OFMDFM	Office of the First Minister and Deputy First Minister
PRONI	Public Record Office of Northern Ireland
TRIM	Tower Records and Information Management (System)

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1. Introduction

The Freedom of Information (FOI) Act¹ and the Environmental Information Regulations² (EIR) 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 FOI (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.

The EIR provide an access to information regime very similar to that of the FOI Act. Requests for environmental information are exempt under section 39 of the FOI Act, which acts as a gateway to EIR, under which requests for environmental information must be handled.

As with the FOI Act, EIR apply to public authorities, but they also extend to public utilities and certain public-private partnerships, and private companies that have obvious 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 2010 - Appendix A gives a definition of a non-routine request.

The report also contains a review of FOI and EIR developments during 2010.

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 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.

It is the sixth such publication compiled by Information Management and Central Advisory Branch (formerly Central FOI Team) in OFMDFM using statistical information supplied by each of the NI Departments.

The report assesses the performance of the NI Departments in handling requests made under the FOI Act and EIR. As part of the assessment process IMCAB produces quarterly reports containing data on how requests have been handled during the year.

The reports are designed to:

- Allow Departments to compare and monitor their performance in handling FOI and EIR requests for information;
- Inform the development of access to information policy across the Northern Ireland Civil Service; and
- Facilitate public representatives campaigning groups, members of the public and others in holding the Departments to account.

The 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

2. Executive Summary

This report comprises three main parts:

The **first part** sets out the Northern Ireland Departments' performance during 2010 in handling requests for information under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Key findings include:

- NI Departments received a total number of 2,883 non-routine requests handled under the FOI Act and the EIR – a 4.5% increase on the number received in 2009.
- 65% of all requests received were submitted by members of the public, followed by the business sector with 11%.
- 'High profile' requests account for 16% (467) of all requests received in 2010.
- 92% of all requests were responded to 'in time'.
- 67% of 'resolvable' requests were granted in full. 7% of resolvable requests resulted in the information being fully withheld.
- 810 requests received were refused, either in full or in part, where one or more exemption (under the FOI Act) or exception (under the EIR) was applied.
- The most commonly applied exemptions were under section 40 (personal information), section 43 (commercial interests) and section 38 (health and safety).
- A total of 117 internal reviews were requested in relation to information requests received, on the grounds that some or all of the requested information was withheld.
- In 74% of internal review cases the original decision was upheld in full; in 17% of the original decision was upheld in part; and the complaint was upheld in 9% of cases.
- 72% of internal reviews were completed within 20 working days.
- There were 10 appeals made to the Information Commissioner's Office relating to the refusal of information requests.

The **second part** of the report documents FOI developments during 2010. The issues covered are:

- FOI Workflow for tracking, monitoring and reporting on requests;
- Access to Information training; and
- External Relations.

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

Appendix A outlines the context and the criteria that determine what constitutes a 'non-routine' request for information for reporting purposes.

3. Responsibilities

3.1 Information Management and Central Advisory Branch Responsibilities

IMCAB, OFMDFM has responsibility for the provision of advice and guidance to all NI Departments in relation to the Freedom of Information Act and Environmental Information Regulations.

Its main functions are:

- Leading, co-ordinating, 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.
- Managing a Northern Ireland Civil Service FOI Workflow (Request Tracking and Monitoring) system on behalf of the NI Departments.
- Reporting on trends and significant FOI developments to Ministers, the Head of the NICS and the Permanent Secretaries' Group on a regular basis.
- Publishing Annual and Quarterly Reports on the FOI performance of the NI Departments.
- Publishing various reports and information on the OFMDFM website about FOI developments for the benefit of the public.
- Meeting regularly with representatives from the Information Commissioner's NI Regional Office to discuss compliance with the FOI Act, as well as particular issues arising from FOI complaints.
- Meeting regularly with the FOI policy officers of the devolved administrations of Scotland and Wales, and the Ministry of Justice (the lead Whitehall Department for

FOI) to discuss casework issues of UK-wide significance and to agree on policy and procedures wherever practicable.

3.2 Departmental Responsibilities

Each of the twelve NI Departments is listed as 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. These can be accessed via the following web addresses:

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.htm

DEL: www.delni.gov.uk/index/publications/pubs-foi-search.htm

DETI: www.detini.gov.uk/deti_publication_scheme.pdf

DFP: www.dfpni.gov.uk/publications-foi.htm

DHSSPS: www.dhsspsni.gov.uk/index/foi/publication-scheme

DOE: www.doeni.gov.uk/index/information/foi.htm

DOJ: www.dojni.gov.uk/index/foi.htm

DRD: www.drdni.gov.uk/index/freedom_of_information/drdpublicationscheme.htm

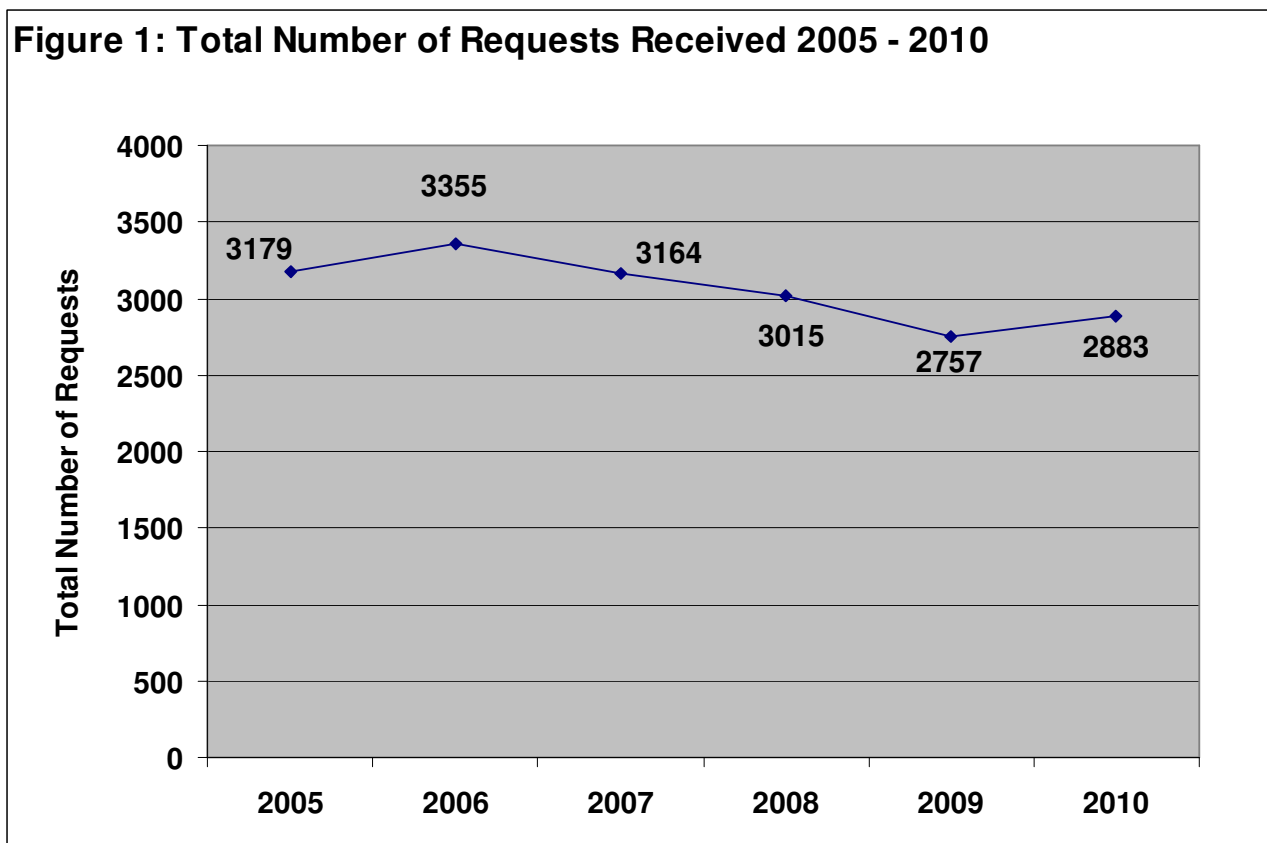
DSD: www.dsdni.gov.uk/publication_scheme.doc

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 twelve NI Departments received a total of 2,883 requests for information during 2010, under either the Freedom of Information Act or the Environmental Information Regulations. This is the second lowest number of requests received annually since the FOI Act and EIR came into effect on 1st January 2005 and represents a 4.5% increase on the 2,757 requests received in 2009, when the lowest annual number of requests was received. The addition of a new NI Department – DOJ – which came into existence on 12th April 2010, did not inflate the figures significantly – it received 59 requests. Figure 1 below details the annual total number of requests received by Departments (2005 – 2010).

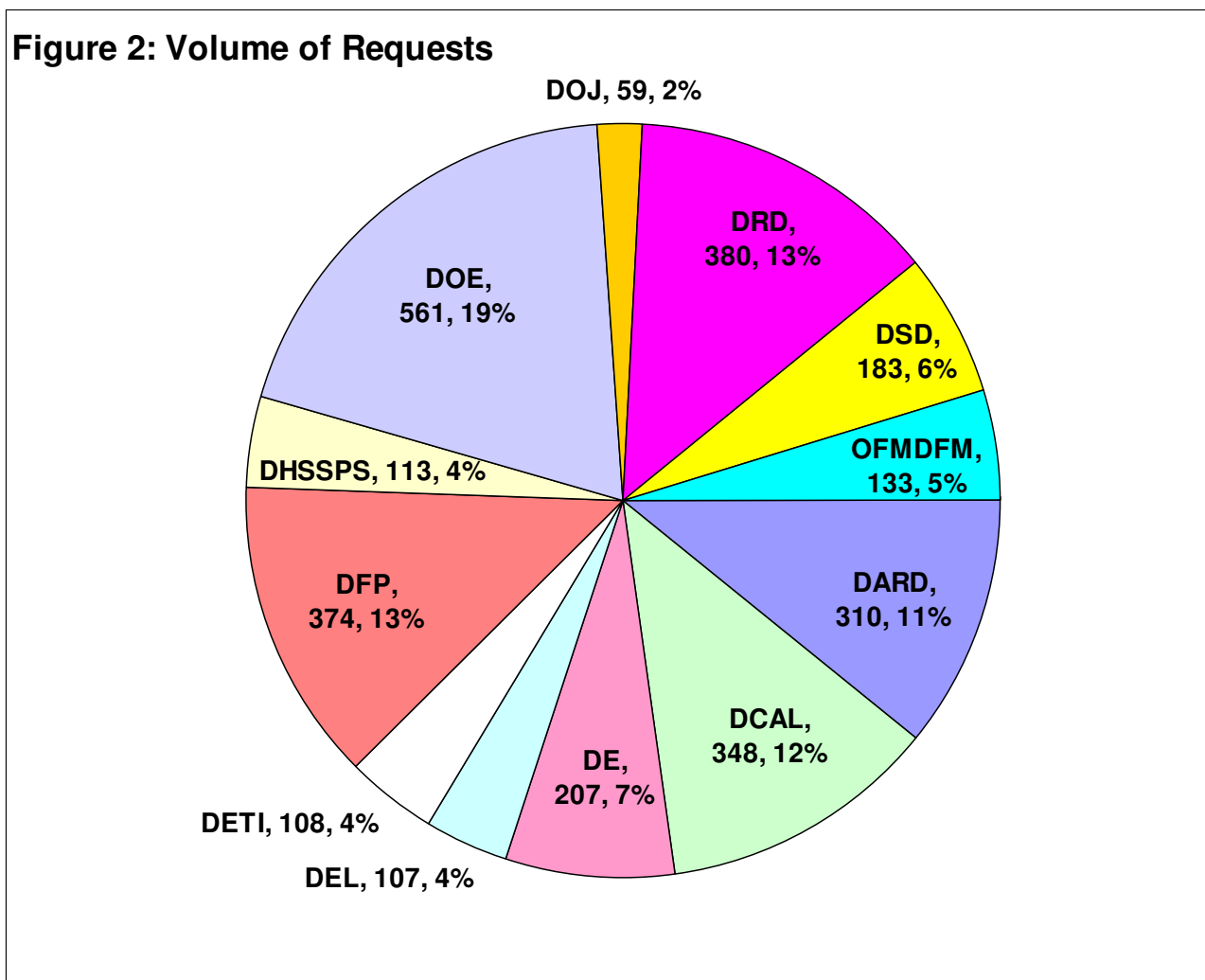


The number of requests received by each of the NI Departments varies considerably, generally, as a consequence of their functions. DOE again received the largest number of requests for information, with 561 requests, accounting for almost one-fifth (19%) of the overall total received by NI Departments.

DRD received the second largest number of requests for information with 380 requests, accounting for 13% of the overall total received and DFP received the third largest number of requests for information with 374 requests also accounting for 13% of the overall total received.

Thereafter, the percentage of requests received by Departments is as follows: DCAL with 12%; DARD with 11%; DE with 7%; DSD with 6%; OFMDFM with 5%; and DHSSPS, DETI and DEL, each with 4%. DOJ received the least number of requests for information with 2% of the total received by all Departments.

Figure 2 below shows the percentage totals of the overall number of requests for information received by NI Departments in 2010. Seven Departments received more requests in 2010 than they received the previous year.

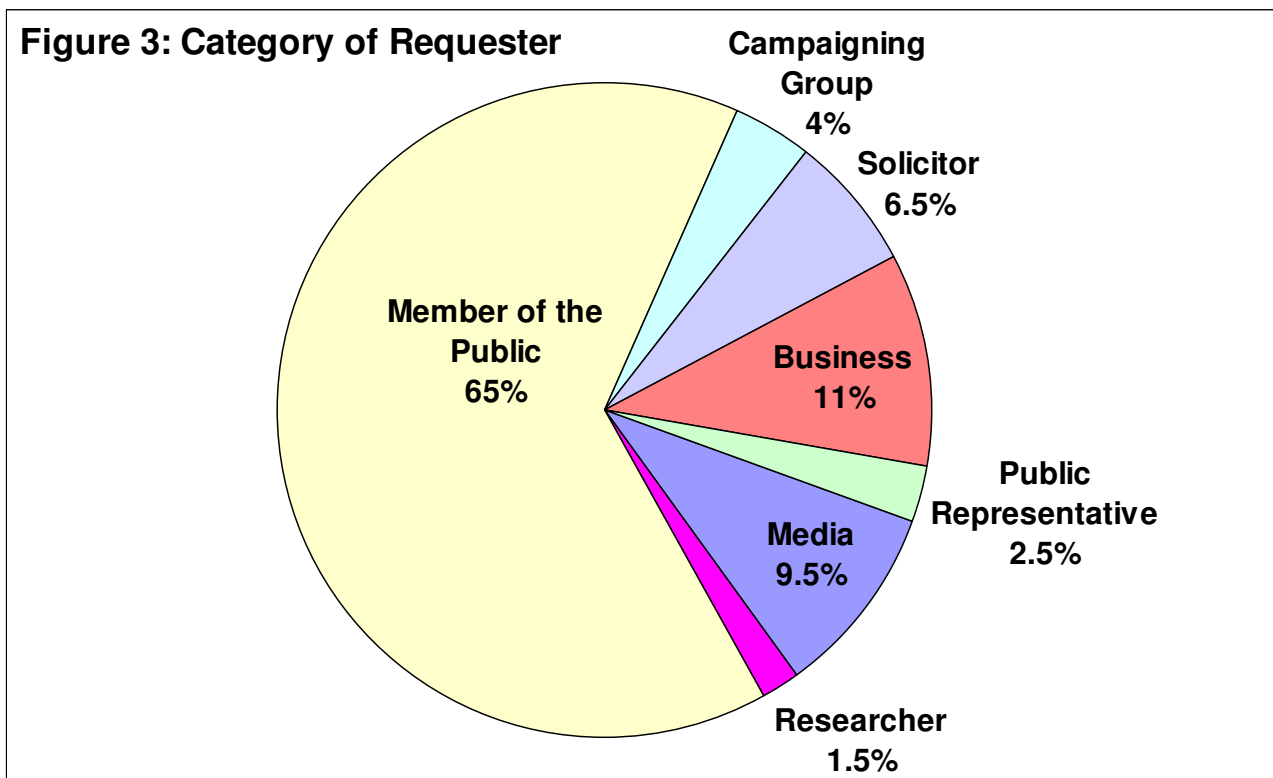


DE experienced the largest percentage increase, receiving 28% more requests in 2010 (207 requests) than in 2009 (162 requests). There does not appear to be a specific reason for the increase, as the requests covered a broad range of educational issues.

DRD received 24% more requests in 2010 (380 requests) than in 2009 (306 requests) as a result of several high profile issues, which featured prominently in the media. In terms of the total number of requests received, DRD had the greatest increase with 74 additional requests than in the previous year, compared with DE's 45 additional requests.

4.2 Source of Requests

For management information purposes NI Departments are asked to assign one of the following requester categories to each request: Business, Campaigning Group, Media, Member of the Public, Researcher, Public Representative, or Solicitor. However, it is sometimes not possible for Departments to determine accurately the source 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 2010.



As Figure 3 on page 14 shows, the largest number of requests was received from Members of the Public (65%) and each of the NI Departments received their largest number of requests from this category of requester.

The second largest category of requester was the Business category (11%) and was DFP; DOE and DRD's second largest category of requester. The third largest category of requester was the Media category (9.5%), and most Departments – DCAL, DE, DEL, DETI, DHSSPS, DOJ, DSD and OFMDFM - received their second largest number of requests from this category. The fourth largest number of requests was received from Solicitors (6.5%) and was DARD's second largest category of requester. This was followed by Campaigning Groups (4%) and Public Representatives (2.5%). Researchers submitted the least number of requests (1.5%).

'High profile' requests – those received from Campaigning Groups, the Media, and Public Representatives - together account for 16% of all requests received in 2010, which is identical to the previous year. However, in numerical terms, 467 high profile requests were received in 2010, compared with 444 in 2009.

There was a significant increase in 2010 in the number of requests received from the Campaigning Groups - 113 requests - compared to 75 in 2009. There was also a small increase in the number of requests from the Media – 286 requests received – compared to 275 the previous year. However, there was a slight decrease in the number of requests from Public Representatives - 79 requests received - compared to 83 in 2009.

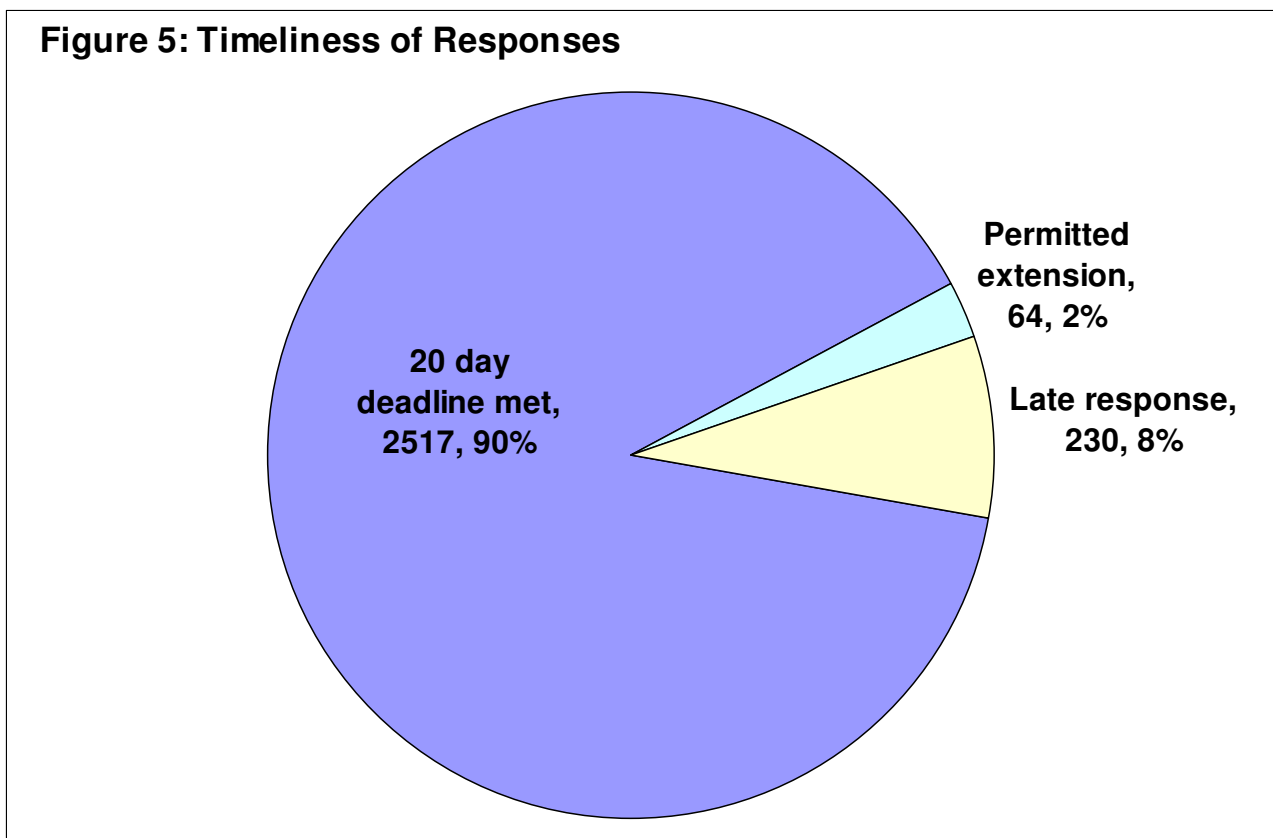
Figure 4 below shows the percentage of each Department's total number of requests that were classed as 'high profile' requests in 2010.

Figure 4: Percentage 'High Profile' Requests Received in 2010											
DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DOJ	DRD	DSD	OFMDFM
15%	13%	14%	15%	35%	15%	29%	9%	20%	15%	22%	28%

4.3 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 5 below shows, in 2010, 90% of requests received by NI Departments were answered within 20 working days³, and a further 2% answered following a permitted time extension, resulting in 92% of all requests being responded to 'in time' – the corresponding percentage in 2009 was 95%. 8% of requests, representing 230 requests, were responded to beyond the 20 working days, without a permitted extension – the corresponding figure in 2009 was 5%.



This compares favourably with the Whitehall Departments of State, which answered 83% of requests within 20 working days; 88% of requests 'in time'; and 12% of requests late.

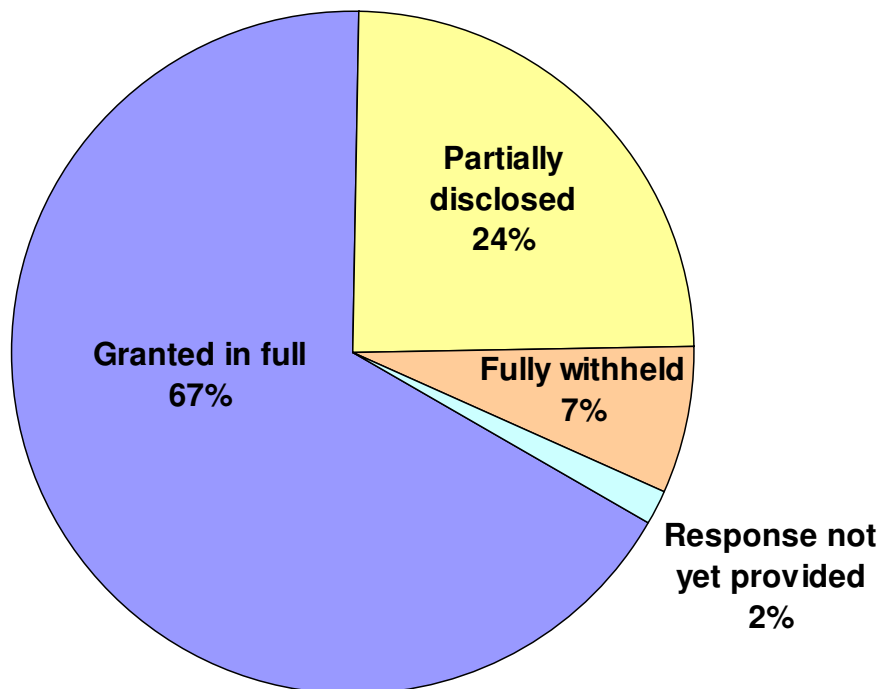
³ When dealing with requests relating to historical public records, i.e., those more than 30 years old, PRONI is allowed 30 working days to respond. This additional time is to allow for consultation with the functionally-responsible authority in order to decide whether the information should be disclosed.

4.4 Outcome of Requests

Of the 2,883 requests for information reported in 2010, 2,811 were processed. The remaining requests were either 'on hold' (3 requests) or 'lapsed' (28 requests); or 'still being processed' (41 requests) at the time of reporting. Requests may be 'on hold' if the request needed further clarification to identify the information being sought, or a fee has been charged. Requests have 'lapsed' if the clarification was not received within two months of its being asked for, or the fee was not paid. Requests 'still being processed' may be going through the public interest test process; if not, then they will be late responses.

Of the 2,852 requests processed or still being processed, 7% (206 requests) sought information that was 'not held' by the NI Departments and 2% (63 requests) were 'closed'. 'Closed' requests may be requests: withdrawn when clarification or a fee was sought; refused, as the cost to comply was above the 'appropriate limit' (£600); and/or deemed 'repeated' or 'vexatious'. The remaining 2,583 requests were classed as 'resolvable', in that it was possible to give a substantive decision on whether or not to disclose the information sought.

Figure 6: Outcome of Requests



As Figure 6 on page 17 shows, in 67% (1,732) of resolvable requests the information was disclosed in full; in 24% (632) of cases the information was partially disclosed; and in 7% (178) of cases the information was fully withheld. In 2% of cases (41 requests) the response had yet to be provided.

This compares favourably with figures in respect of the Whitehall Departments of State. In 59% of resolvable requests, the information was disclosed in full; in 13% of cases information was partially disclosed; in 24% of cases the information was fully withheld; and in 4% of cases the response had yet to be provided.

Figure 7 below shows the annual disclosure trend for the NI Departments over the last six years.

Figure 7: Annual Disclosure Trend 2005 – 2010						
	2005	2006	2007	2008	2009	2010⁴
Disclosed in Full	77%	79%	76%	73%	69%	67%
Partially Disclosed	13%	14%	17%	18%	22%	24%
Fully Withheld	9%	5%	5%	8%	9%	7%

⁴ In 2% of cases the response had yet to be provided

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 into one or more of the categories of exempt information listed in Part II of the Act.

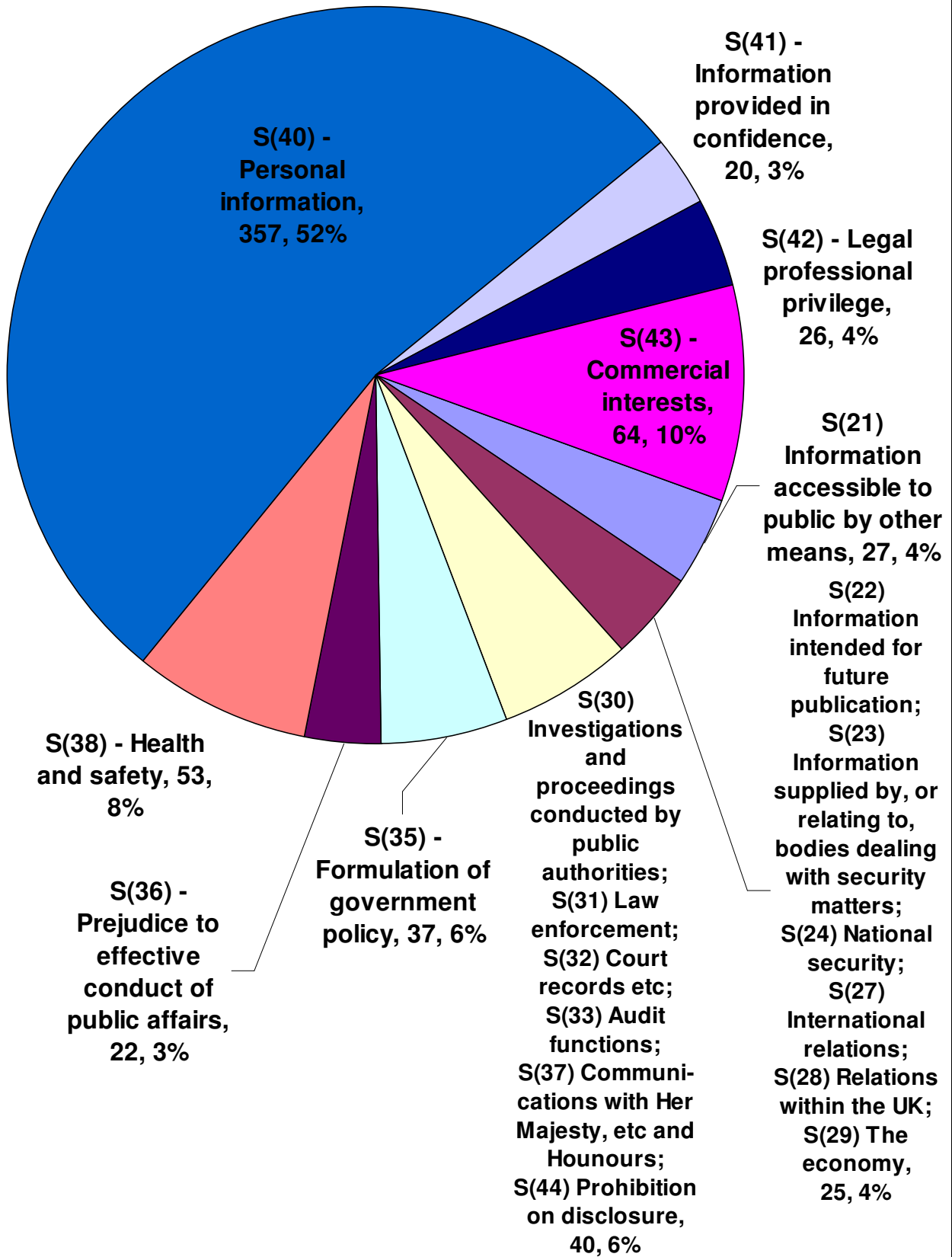
Exemptions are either 'absolute', i.e., no obligation exists under the FOI Act to consider the request for information further, or 'qualified', i.e., the use of the exemption is subject to a public interest test. Similarly, the provisions of Part 3 of the EIR provide that a public authority may withhold 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.

There were 63 cases where the request was closed, 23 requests were refused as the cost to provide the information would have exceeded the appropriate limit; 11 were refused due to requests being considered either 'vexatious' or 'repeated' under section 14 of the FOI Act; and 29 requests were withdrawn.

At least one exemption/exception was applied to 31% (810 requests) of the total number of resolvable requests. This is a slight increase on the previous year when exemptions/exceptions were applied to 30% (749) of the total number of requests. In total, exemptions relied on under the FOI Act were engaged on 671 occasions and exceptions under the EIR applied on 299 occasions. This represents an increase in the application of exemptions and a decrease in the application of exceptions, as 570 exemptions and 340 exceptions were applied in 2009.

The most commonly applied exemption, as Figure 8 on page 20 shows, was section 40 (personal information) in 52% of requests (357) where exemptions were applied.

Figure 8: Use of Exemptions



This was followed by section 43 (commercial interests) in 10% of requests (59); and section 38 (health and safety) in 8% of requests (53), where exemptions were applied.

The 'personal information' and 'commercial interests' exemptions were also the top two exemptions applied the previous year. The third most commonly applied exemption in 2009 was 'formulation of government policy', which is the fourth most common in 2010 (6%, 37 requests).

In all of the twelve NI Departments, the section 40 (personal information) exemption was the most commonly applied exemption. DARD relied upon this particular exemption in 83% of occasions where exemptions were applied by the Department. The percentage figures for the other Departments are as follows: DOE - 72%; DE - 62%; DEL - 60%; OFMDFM – 56%; DHSSPS - 55%; DOJ - 53%; DCAL - 44%; DFP - 39%; DRD - 34%; DSD - 29% and DETI – 28%.

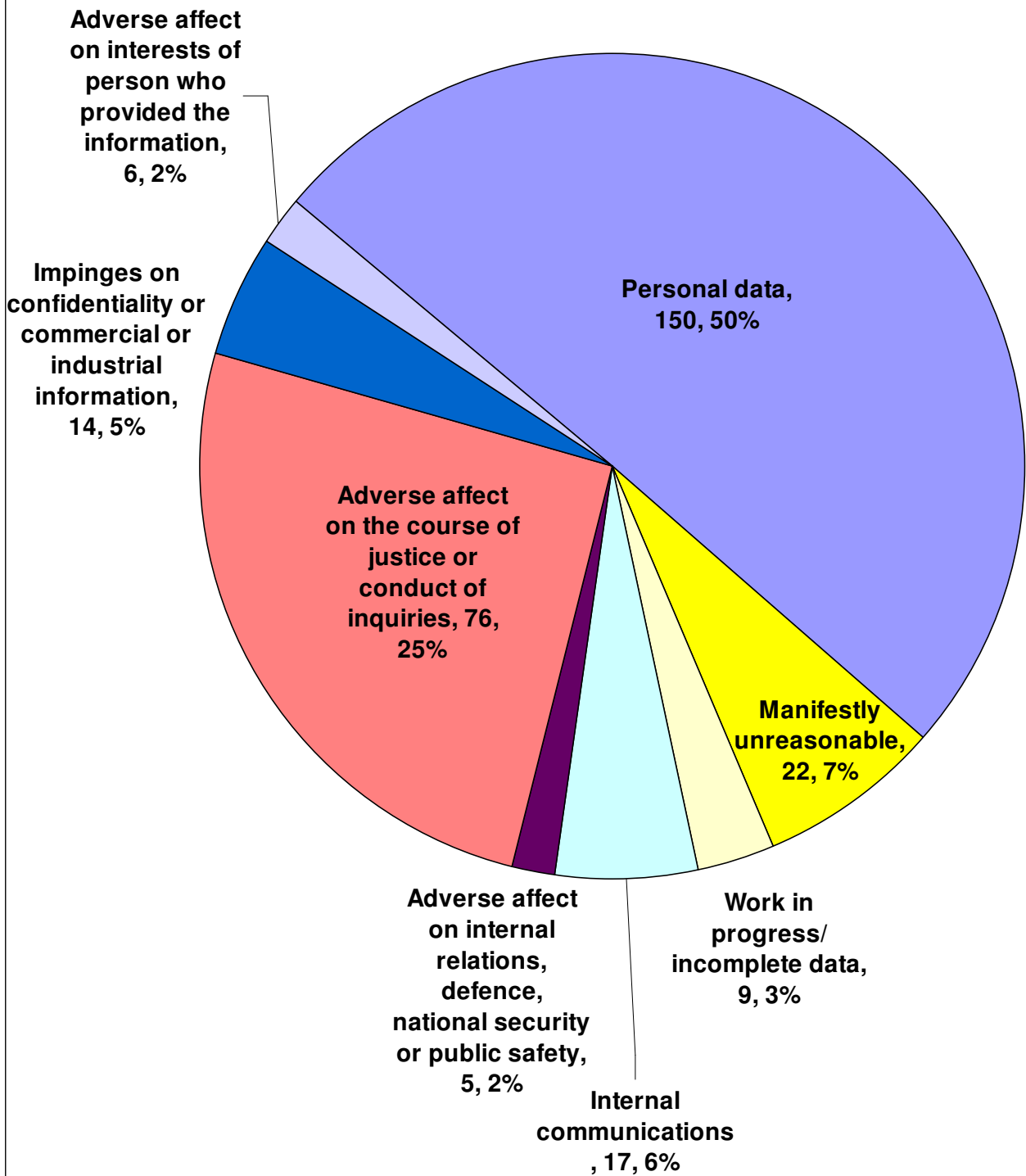
In keeping with the trend set in previous years, DFP's reliance on the 'commercial interests' exemption, which was its second most used exemption (22%), reflects its central procurement role; while OFMDFM's reliance on the 'formulation of government policy' exemption, which was its second most used exemption (22%), reflects its pivotal central government policy-making role.

The exemptions most commonly applied by the Whitehall Departments of State during 2010 were section 40 (personal information), followed by section 30 (investigations and proceedings conducted by public authorities), section 35 (formulation of government policy) and section 43 (commercial interests).

Figure 9 on page 22 shows details of the exceptions applied. The most common exception engaged was regulation 12(3) (personal data), which was relied upon in 50% of requests (150), where exceptions were applied.

This was followed by regulation 12(5)(b) (adverse affect on the course of justice or conduct of inquiries) in 25% of requests (76); regulation 12(4)(b) (manifestly unreasonable) in 7% of requests (22); and regulation 12 (4)(e) (internal communications) in 6% of requests (17), where exceptions were applied.

Figure 9: Use of Exceptions



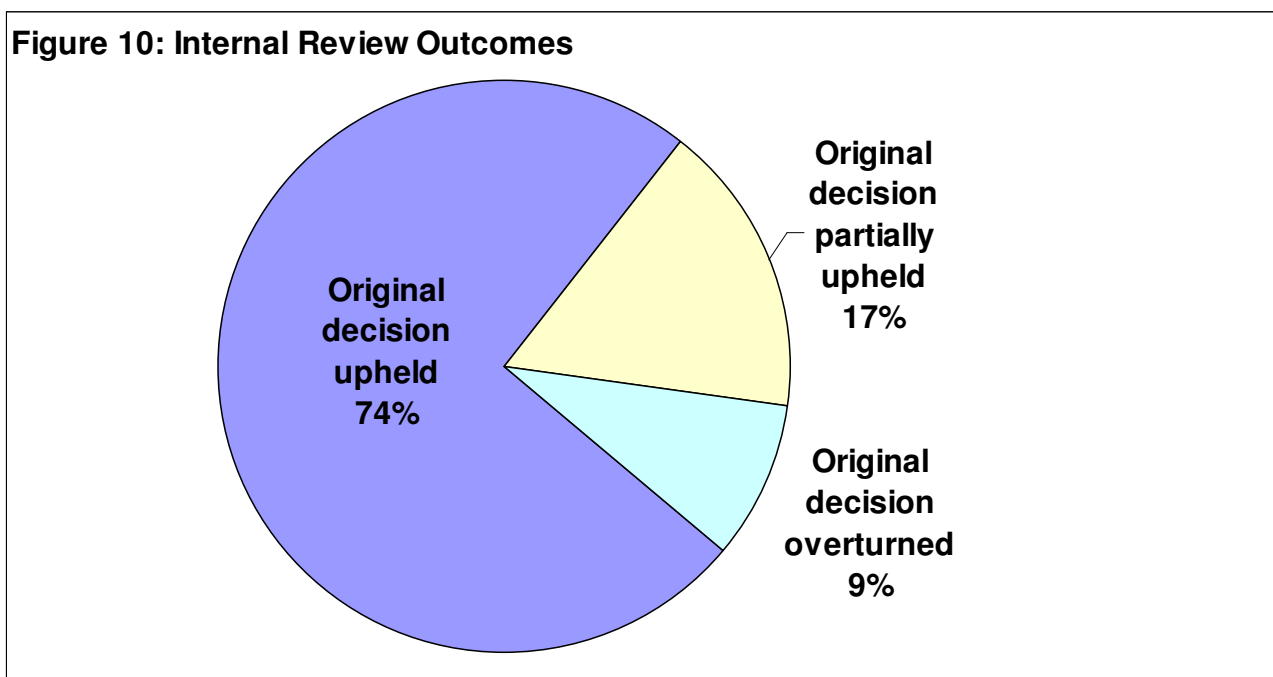
The 'personal data', and the 'course of justice or conduct of inquiries' exceptions were also the top two exceptions applied the previous year.

In 2010, only four of the twelve NI Departments (DARD, DCAL, DOE and OFMDFM) relied on exceptions. DARD and DOE have continued to apply exceptions each year since the introduction of the EIR in 2005, whereas this is DCAL and OFMDFM's first applications of exceptions.

DARD and DOE used the exception under regulation 12(3) (personal data) more than any other exception. DARD applied this exception in 45% (10) of the requests where it relied on exceptions and DOE in 51% (140) of the requests where it relied on exceptions. DCAL and OFMDFM only applied an exception once each and these were other less frequently used exceptions.

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, if their request was not dealt with within 20 working days (or within a permitted time extension) or if they felt a fee was wrongly charged. This review involves a fresh and thorough examination of the initial decision.

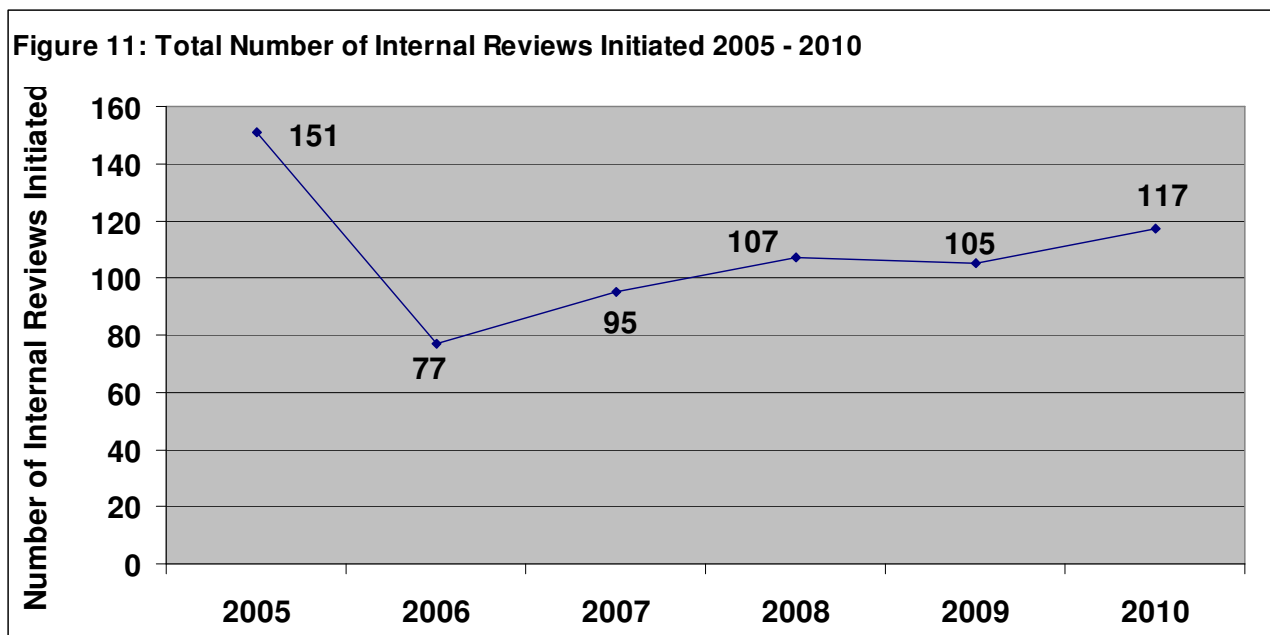


Across the NI Departments a total of 117 internal reviews were reported as having been requested during 2010, on the grounds that some, or all, of the information sought was withheld. The outcome is known in 113 of these cases as Figure 10 on page 24 shows. In 74% of cases the original decision was upheld; in 17% of cases the decision was upheld partially; and in 9% of cases the decision was overturned.

In comparison, Whitehall Departments of State upheld the original decision in 77% of internal reviews; upheld the original decision partially in 15% of cases, and in the remaining 8% of cases, the original decision was overturned.

The number of internal reviews requested in 2010 (117) has increased by 10% in comparison to the previous year, when a total of 105 internal reviews were reported.

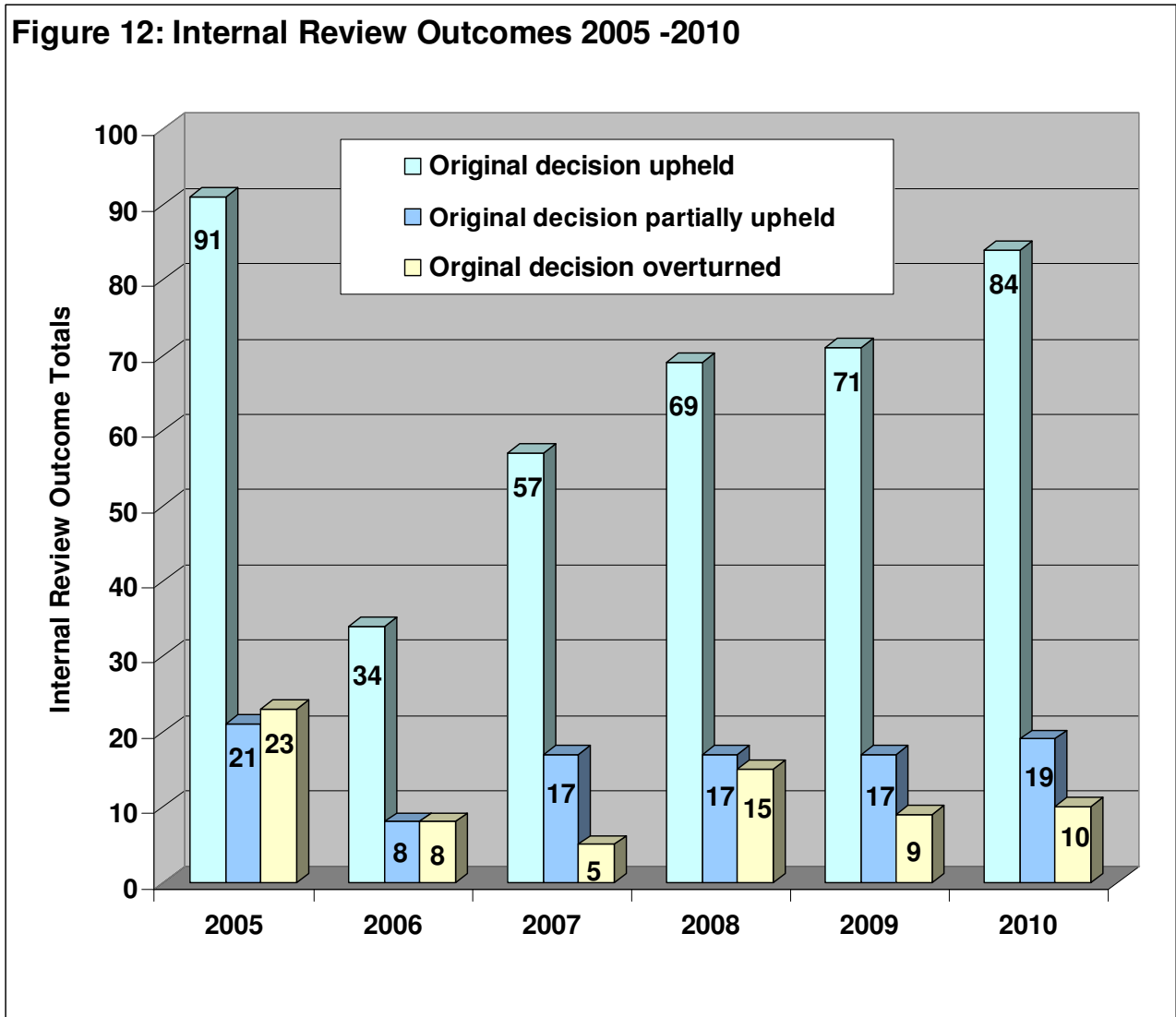
Figure 11 below shows the six-year (2005 – 2010) trend.



The percentage of internal reviews resulting in the original decision being upheld in full has ranged from 67% to 74% over the past six years: 67% in 2005; 68% in 2006; 72% in 2007; 68% in 2008; 73% in 2009; and 74% in 2010. Over the same period, the percentage of internal reviews resulting in the complaint being upheld in full has ranged from 6% to 17%: 17% in 2005; 16% in 2006; 6% in 2007; 15% in 2008; and 9% in both 2009 and 2010.

Figure 12 on page 25 shows, in numerical terms, the last six years of internal review outcomes.

Figure 12: Internal Review Outcomes 2005 -2010



In percentage terms (per number of resolvable requests), DOJ received the most requests (31%) for internal reviews but had the lowest total number of resolvable requests. OFMDFM had the second highest percentage (11%) and had the third lowest total of resolvable requests. DETI, with the second lowest number of resolvable requests, followed with 7%.

DEL had the fourth lowest number of resolvable requests and the lowest percentage of requests for internal reviews (1%) per resolvable requests received in 2010.

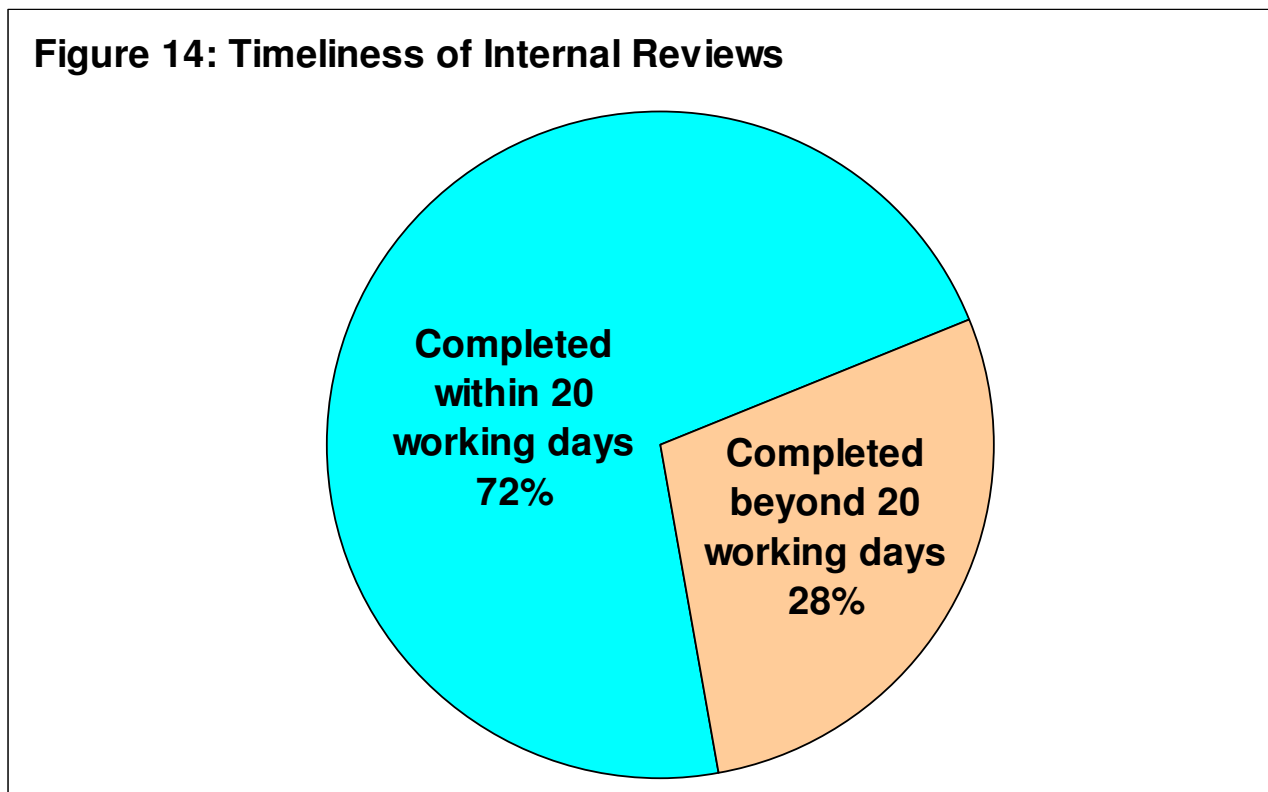
Figure 13 on page 26 compares the number of internal reviews in percentage terms per number of resolvable requests.

Figure 13: Comparison of Internal Reviews per Number of Resolvable Requests

Department	Internal Reviews as % of Requests Received	Number of Internal Reviews	Number of Resolvable Requests
DOJ	31%	11	35
OFMDFM	11%	10	91
DETI	7%	6	85
DFP	7%	23	334
DE	6%	11	182
DRD	4%	14	356
DSD	4%	6	162
DOE	3%	17	548
DHSSPS	3%	3	101
DARD	3%	8	276
DCAL	2%	7	275
DEL	1%	1	97

The 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 first occasion that statistics were collected on the time taken to conduct internal reviews.

As Figure 14 below shows, 72% (81) of internal reviews were completed within 20 working days; 28% (32) were beyond 20 working days.



4.7 Appeals to the Information Commissioner

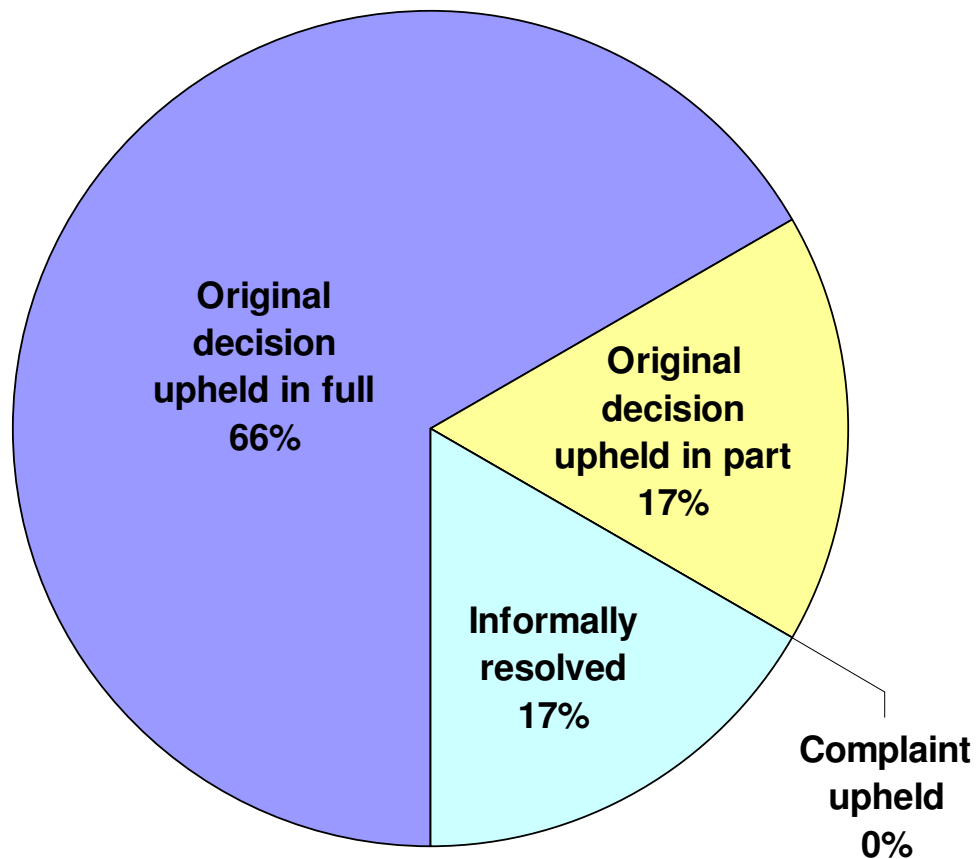
If a requester has obtained an internal review of a response by a NI Department to a FOI request, but is still not satisfied with the outcome, he or she can make a formal appeal (or complaint) to the Information Commissioner's Office.

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 2010, there were 10 appeals to the ICO relating to cases in which the NI Departments refused information. This is a slight decrease on the 12 appeals received the previous year. DCAL, DEL, DHSSPS, DOJ and DRD did not have a request that progressed to the appeal stage in 2010.

Of the 10 appeals received by the ICO in 2010, six outcomes are known and as Figure 15 below shows, in 66% (4) of cases the original decision was upheld in full. In the other two cases the outcomes were: original decision upheld in part; and complaint informally resolved. In no cases were the complaints upheld.

Figure 15: ICO Appeals Outcomes



There were eleven Decision Notices issued in 2010 by the ICO, which involve NI Departments. Many of the cases concern complaints the ICO received in earlier years. The Decision Notices are summarised below:

ICO Case Reference: FER50159319

Received by ICO: 24 April 2007

Decision Date: 2 February 2010

Summary: The complainant made a verbal request to inspect information held by the Planning Service. The Planning Service permitted the complainant to view the Planning Application file but withheld some of the information contained within it on the basis that the exception in Regulation 12(5)(b) applied.

The Commissioner decided that the Planning Service failed to explain or demonstrate why the exception in Regulation 12(5)(b) applied to the withheld information and therefore had breached Regulations 5(1) and (2) in failing to make that information available to the complainant within twenty working days of the request.

The Commissioner ordered the Planning Service to make the withheld information available for inspection by the complainant.

ICO Case Reference: FER0174998

Received by ICO: 11 September 2007

Decision Date: 29 March 2010

Summary: The complainant requested information in respect of an application for planning permission for a housing development. The Commissioner was satisfied that the requested information was environmental information.

The Commissioner's decision was that DOE correctly applied the exception under regulation 12(4)(e) of the EIR to withhold the requested information.

ICO Case Reference: FS50184503

Received by ICO: 3 November 2007

Decision Date: 25 March 2010

Summary: The complainant requested information relating to an application for planning permission for a housing development adjacent to ancient woodland. DOE provided the complainant with access to its planning file, but the complainant was not satisfied that it contained all the information relevant to the request and requested that the Department conduct an internal review. Despite the Commissioner's intervention DOE failed to conduct an internal review.

Therefore the Commissioner's decision was that DOE failed to comply with the requirements of regulations 5(1), 11(3) and 11(4) of the EIR and required DOE to conduct an internal review which would meet the requirements of the EIR.

ICO Case Reference: FS50232207

Received by ICO: 29 January 2008

Decision Date: 8 June 2010

Summary: The complainant requested information relating to DSD's Strategic Business Review team. DSD provided the complainant with most of the requested information, however it refused to disclose legal advice in reliance upon the exemptions as set out in section 35(1)(a) and section 42(1) of the FOI Act.

The Commissioner found that the section 42(1) exemption was engaged in relation to the entirety of the withheld information within the scope of the requests. He also found that the public interest in maintaining the section 42(1) exemption outweighed that in the disclosure of the withheld information. He therefore did not consider section 35(1)(a). The Commissioner also found that DSD breached sections 17(1)(b), 17(1)(c) and 17(3)(b) of the FOI Act.

ICO Case Reference: FER0212345

Received by ICO: 28 August 2008

Decision Date: 26 January 2010

Summary: The complainant requested a legal opinion regarding a planning application, which DOE withheld under regulation 12(5)(f) of the EIR. During the course of the Commissioner's investigation, DOE also sought to rely on the exception at regulation 12(5)(b).

The Commissioner was satisfied that that the information requested was environmental information and found that regulation 12(5)(b) was engaged. The Commissioner considered the public interest in relation to this exception and was of the opinion that the public interest in maintaining the exception outweighed the public interest in disclosing the information.

The Commissioner found that the DOE breached regulation 14(2) in that it failed to provide the complainants with an adequate refusal notice within the time period specified in the EIR.

ICO Case Reference: FER0214141

Received by ICO: 11 September 2008

Decision Date: 10 February 2010

Summary: The complainants requested information relating to legal advice obtained regarding a planning application. DOE disclosed some information but withheld the actual legal advice under regulation 12(5)(b) of the EIR.

The Commissioner was satisfied that the information requested was environmental information and also found that regulation 12(5)(b) was engaged. He found that the public interest in maintaining the exception outweighed the public interest in the disclosure of the information.

The Commissioner also found that DOE was in breach of regulation (5)(2) by failing to release the non-exempt information within 20 working days.

ICO Case Reference: FS50227038

Received by ICO: 10 December 2008

Decision Date: 21 June 2010

Summary: The complainant requested a copy of the Amendments to the Regional Development Strategy (RDS) for Northern Ireland 2025 – First Five Year Review, which was approved by the Executive Committee of the NI Assembly in April 2008, or a list of the 157 changes which were made to the document when it was published in June 2008. OFMDFM confirmed that whilst it did not hold a list of the changes, it did hold a copy of the RDS document approved by the Executive but refused to provide it citing section 35(1)(b) of the Act.

The Commissioner indicated that the withheld information fell within the definition of environmental information under the EIR. However, whilst OFMDFM appreciated the environmental nature of the information contained within the RDS document, it did not regard the focus of the complainant's request to be environmental. OFMDFM was therefore content to continue to rely upon the exemption under s35 of the FOI Act to refuse the information.

The Commissioner found that the information requested was environmental information and in failing to consider it so, OFMDFM had breached regulation 5(2) of the EIR. The

Commissioner required OFMDFM to either provide the information or issue a valid refusal notice that complied with regulation 14 of the EIR.

ICO Case Reference: FS50242593

Received by ICO: 26 March 2009 **Decision Date:** 26 August 2010

Summary: The complainant requested a summary of the relevant experience of each applicant who had been short-listed for a specific post within DFP. The Department refused to disclose the information under sections 40(2) and 40(3)(a)(i) of the FOI Act, as it comprised personal data, and considered disclosure would be unfair.

The Commissioner considered that section 40(2) by virtue of 40(3)(a)(i) was correctly applied in this case and required no steps to be taken.

ICO Case Reference: FS50243084

Received by ICO: 8 April 2009 **Decision Date:** 11 August 2010

Summary: The complainant requested information in relation to previously released abortion statistics for hospitals in Northern Ireland for the years 2003-2007. DHSSPS refused to disclose some of this information, citing sections 38(1) (a) and (b) (endangerment to health and safety), and 40(2) and (3)(i)(a) (personal data of third parties) as a basis for non-disclosure.

The Commissioner found that these exemptions were not engaged, and DHSSPS was required to disclose the information in question. The Commissioner also found that the DHSSPS had breached sections 1(1)(a), 1(1)(b), 10(1) and 17(1)(c) of the FOI Act.

ICO Case Reference: FS50297770

Received by ICO: 22 February 2010 **Decision Date:** 16 December 2010

Summary: The complainant requested the Administrator's reports into the Presbyterian Mutual Society, which was placed in administration in November 2008. DETI refused to disclose the information, relying upon the exemptions set out in sections 31(1)(g) and (h) and 40(2) of the FOI Act.

The Commissioner found that the exemption in section 31(1)(g) was engaged in relation to the entirety of the withheld information, and that the public interest in maintaining the

exemption outweighed the public interest in disclosing the information and therefore required no steps to be taken.

ICO Case Reference: FER0311833

Received by ICO: 24 April 2010

Decision Date: 13 December 2010

Summary: The complainant requested minutes of meetings relating to two planning applications. DOE advised that it did not hold this information as minutes were not taken, but the complainant was not satisfied with this response and requested that DOE conduct an internal review. Despite the Commissioner's intervention the DOE failed to conduct an internal review.

Therefore, the Commissioner's decision was that the Department failed to comply with the requirements of regulations 11(3) and 11(4) of the EIR and required DOE to conduct an internal review which meets the requirements of the EIR.

4.8 Appeals to the Information Tribunal (now the First-tier Tribunal (Information Rights))

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

There were no appeals to the Information Tribunal involving a NI Department in 2010.

5. FOI Developments in Northern Ireland in 2010

5.1 FOI Workflow

A collaborative working partnership which included Departmental Information Management Branches; Information Management and Central Advisory Branch, OFMDFM; IT Assist; and Steria produced a TRIM-integrated corporate workflow solution for the tracking, monitoring and reporting of access to information (Freedom of Information, Data Protection (subject access), and Environmental Information Regulations) requests. The System went 'live' in eleven Departments on 22nd March 2010 and by 31st December 2010; the details of 2,635 requests had been inputted.



Pictured with the Head of the Civil Service (Sir Bruce Robinson) are the FOI Workflow Project Board members:

Back Row - Left to Right - John Gault, Steria; David Lammey, Project Manager, OFMDFM; Dave Brittain, DOE; Gabrielle Kelly, DFP; Bernard McCaughan, Project Board Secretary, OFMDFM.

Middle Row Left to Right - Imelda Mc Connell, DSD; Tom Clyde, DOJ; Jan Davoll, Project Manager, Steria; Colin Mc Whirter, DARD; and Tom Kennedy, Senior Responsible Owner, DFP.

5.2 Access to Information Training – Practitioner-Based Approach

Following discussion at a Permanent Secretary Group meeting, Information Management and Central Advisory Branch (IMCAB) liaised with Departments and gained agreement to introduce a practitioner-based approach to the delivery of access to information training courses within the NICS.

A Working Group which was chaired by OFMDFM and which was composed of the Departmental Information Managers from DFP and DRD, and representatives from PRONI, DCAL, and the Centre for Applied Learning, DFP, took forward the concept to develop the following courses:

- Access to Information – Foundation Course;
- Handling Requests for Information;
- An Introduction to Records and Information Management; and
- Internal Reviews and ICO Complaints (delivered by OFMDFM and the ICO).

The courses, delivered by FOI practitioners from DARD; PRONI, DCAL; DETI; DFP; DHSSPS; DRD; and OFMDFM, commenced in November 2010 and by the end of December well over 100 staff had attended the courses.

The aforementioned courses will run regularly throughout 2011.

5.3 External Relations

5.3.1 Devolved Administrations

The FOI policy officers of the devolved administrations and the Ministry of Justice (the lead Whitehall Department for FOI) continued to meet during 2010, building on the network established in 2007. Issues concerning UK-wide FOI policies and procedures were discussed.

The Welsh Assembly Government hosted a meeting in Cardiff in April. The following chief issues were discussed: the handling of FOI requests during the UK General Election period; proactive disclosure initiatives; and the Information Commissioner's revised approach to complaints casework. In September, the Office of the First Minister and

Deputy First Minister hosted a meeting in Belfast, where the following chief issues were discussed: legislative plans to reduce the '30-year rule' to 20 years; the Information Commissioner's new enforcement policy; and new approaches to Access to Information training and awareness.

5.3.2 Information Commissioner's Office (ICO)

Quarterly meetings with the Assistant Commissioner (NI) and his staff were restored after a long gap. The meeting held in July was the first since February 2009. A number of items featured on the agenda: the FOI performance of the Departments; compliance issues arising from complaints casework; access to information training; and the newly-appointed Information Commissioner's first visit to Northern Ireland. Another meeting was held in September to follow up on some of the proposals discussed.

In October, a meeting focussed on the ICO's involvement with access to information training for the Departments proved to be a watershed event. ICO agreed to participate in the delivery of FOI (and Data Protection) training; in particular, ICO staff agreed to deliver an 'Internal Reviews and ICO Complaints' course jointly (with the OFMDFM's Head of Information Management and Central Advisory Branch). The course would be aimed at senior staff carrying out Internal Reviews and assisting the ICO with its complaints investigations.

The newly-appointed Information Commissioner, Christopher Graham, briefed a meeting of the Permanent Secretary Group (PSG) on 22 October. He informed PSG that he was putting Ken Macdonald (the Head of the Commissioner's Office in Scotland) in charge of the Northern Ireland Regional Office in Belfast.

6. NI Departments' Performance Tables

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: Volume of Requests (for information received by NI Departments during 2010)

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DOJ	DRD	DSD	OFMDFM	TOTALS
Total number of requests received	310	348	207	107	108	374	113	561	59	380	183	133	2883
Processed	301	341	207	103	100	360	112	558	59	377	182	111	2811
On hold or lapsed	9	4	0	4	4	4	0	2	0	3	0	1	31
Still being processed	0	3	0	0	4	10	1	1	0	0	1	21	41

Table 2: Source of Requests (received by NI Departments during 2010)

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DOJ	DRD	DSD	OFMDFM	TOTALS
Total number of requests received	310	348	207	107	108	374	113	561	59	380	183	133	2883
Business	28	13	7	6	3	43	2	127	6	55	12	4	306
Campaigning Group	12	9	3	5	6	20	5	18	0	16	11	8	113
Media	22	28	20	11	30	28	26	24	10	24	25	27	275
Member of the Public	180	250	163	84	65	256	71	309	40	241	121	87	1867
Public Representative	14	8	7	0	2	9	2	11	2	18	4	2	79
Researcher	2	24	0	1	0	10	2	2	1	4	2	3	51
Solicitor	52	16	7	0	2	8	5	70	0	22	8	2	192

Table 3: Timeliness of Responses (to requests for information received by NI Departments during 2010)

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DOJ	DRD	DSD	OFMDFM	TOTALS
Total received excluding on hold or lapsed and still being processed	301	341	207	103	100	360	112	558	59	377	182	111	2811
20 Working Day deadline met	285	260	190	102	96	336	102	503	46	356	176	65	2517
Permitted extension ⁵	8	23	1	0	3	8	1	3	5	7	2	3	64
Late response	8	58	16	1	1	16	9	52	8	14	4	43	230

⁵ Requests where 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.

Table 4: Outcome of Requests (for information received by NI Departments during 2010)

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DOJ	DRD	DSD	OFMDFM	TOTALS
Total number of requests received	310	348	207	107	108	374	113	561	59	380	183	133	2883
On hold	0	0	0	0	0	1	0	2	0	0	0	0	3
Lapsed	9	4	0	4	4	3	0	0	0	3	0	1	28
Information not held	11	57	11	6	14	22	11	7	23	16	14	14	206
Request closed	14	9	14	0	1	4	0	3	1	5	6	6	63
Total resolvable requests	276	275	182	97	85	334	101	548	35	356	162	91	2583
Information disclosed in full	125	165	143	83	67	237	84	301	21	310	128	68	1732
Partially disclosed	120	91	36	9	11	63	10	195	11	36	31	19	632
Fully withheld	31	19	3	5	7	34	7	52	3	10	3	4	178
Response not yet provided (still being processed)	0	3	0	0	4	10	1	1	0	0	1	21	41

Table 5: Reasons for Refusal of Requests (other than the application of exemptions/exceptions applied by NI Departments during 2010)

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DOJ	DRD	DSD	OFMDFM	TOTALS
Refused as cost would exceed 'appropriate (£600) limit'	0	4	13	0	0	0	0	3	0	0	3	0	23
Refused as request considered vexatious and / or repeated	0	1	1	0	1	0	0	0	0	3	0	5	11
Request withdrawn	14	4	0	0	0	4	0	0	1	2	3	1	29

Table 6: FOI Exemptions Applied (by NI Departments when withholding information during 2010)

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	3	6	1	0	3	0	0	0	3	8	0	27
S(22) – Information intended for future publication	0	0	1	0	0	2	0	1	0	3	1	3	11
S(23) – Information supplied by, or relating to, bodies dealing with security matters	0	0	0	0	0	0	0	0	1	0	0	0	1
S(24) – National Security	0	2	0	0	0	0	0	0	1	0	0	0	3
S(27) – International relations	0	3	0	0	2	2	0	0	0	0	0	0	7
S(28) – Relations within the United Kingdom	0	0	0	0	1	1	0	0	0	0	0	0	2
S(29) – The economy	0	0	0	0	0	1	0	0	0	0	0	0	1
S(30) – Investigations and proceedings conducted by public authorities	1	0	0	0	2	0	1	1	0	0	1	0	6
S(31) – Law enforcement	0	4	0	0	5	0	0	3	0	7	1	0	20
S(32) – Court records, etc	0	0	0	3	0	0	0	0	0	0	1	0	4
S(33) – Audit functions	0	0	0	0	3	0	0	0	0	0	0	0	3
S(35) – Formulation of Government policy, etc	2	7	5	1	2	5	2	0	0	5	3	5	37
S(36) – Prejudice to effective conduct of public affairs	0	4	0	0	0	13	1	1	0	2	0	1	22
S(37) – Communications with Her Majesty, etc and honours	0	0	0	0	0	0	0	1	0	0	0	0	1
S(38) – Health and safety	1	45	0	0	0	0	1	0	6	0	0	0	53
S(40) – Personal information	124	69	24	9	7	38	10	21	10	20	12	13	357
S(41) – Information provided in confidence	5	8	0	0	1	1	1	0	0	1	3	0	20
S(42) – Legal professional privilege	5	3	2	0	0	9	0	0	0	2	5	0	26
S(43) – Commercial interests	9	6	1	1	2	21	1	0	1	15	6	1	64
S(44) – Prohibition on disclosure	0	3	0	0	0	1	1	1	0	0	0	0	6

Table 7: EIR Exceptions Applied (by NI Departments when withholding information during 2010)

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	DOE	OFMDFM	TOTALS
3 – Personal data	10	0	140	0	150
4(b) – Manifestly unreasonable	0	0	22	0	22
4(d) – Work in progress/incomplete data	1	1	7	0	9
4(e) – Internal communications	3	0	13	1	17
5(a) – Adverse affect on international relations, defence, national security or public safety	5	0	0	0	5
5(b) – Adverse affect on course of justice or conduct of inquiries	0	0	76	0	76
5(e) – Impinges on confidentiality of commercial or industrial information	3	0	11	0	14
5(f) – Adverse affect on interests of person who provided the information	0	0	6	0	6

Only four Departments ‘excepted’ information under the EIR in 2010.

Table 8: Internal Reviews (concerning requests for information received by NI Departments during 2010, 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)	8	7	11	1	6	23	3	17	11	14	6	10	117
Number where outcome known	8	7	11	1	6	23	3	15	11	14	6	8	113
Original decision upheld in full	8	5	9	1	5	13	3	12	9	8	5	6	84
Original decision upheld in part	0	1	2	0	1	6	0	1	0	6	1	1	19
Complaint upheld	0	1	0	0	0	4	0	2	2	0	0	1	10

Table 9: Timeliness of Internal Reviews completed during 2010

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DOJ	DRD	DSD	OFMDFM	TOTALS
Total number of reviews (in calendar year)	8	7	11	1	6	23	3	17	11	14	6	10	117
Number where outcome known	8	7	11	1	6	23	3	15	11	14	6	8	113
Completed within 20 working days	8	6	11	1	6	22	3	3	11	1	6	5	81
Completed beyond 20 working days	0	1	0	0	0	1	0	12	0	13	0	5	32

Table 10 Appeals to Information Commissioner (concerning the handling of requests for information received by NI Departments during 2010)

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DOJ	DRD	DSD	OFMDFM	TOTALS
Total number of appeals (in calendar year)	1	0	2	0	1	2	0	1	0	0	2	1	10
Number where outcome known	0	0	2	0	1	2	0	1	0	0	0	0	6
Original decision upheld in full	0	0	0	0	1	2	0	1	0	0	0	0	4
Original decision upheld in part	0	0	1	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	0	1	0	0	0	0	0	0	0	0	0	1

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 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.*