

# Contents

<b>Foreword</b>	<b>2</b>
<b>Abbreviations</b>	<b>4</b>
<b>1. Introduction</b>	<b>5</b>
<b>2. Executive Summary</b>	<b>6</b>
<b>3. Responsibilities</b>	<b>8</b>
3.1 Central FOI Team Responsibilities	8
3.2 Departmental Responsibilities	9
<b>4. Northern Ireland Departments' Performance</b>	<b>10</b>
4.1 Volume of Requests	10
4.2 Category of Requester	12
4.3 Timeliness of Responses	14
4.4 Outcome of Requests	15
4.5 Use of Exemptions/Exceptions	16
4.6 Internal Reviews	20
4.7 Appeals to the Information Commissioner	22
4.8 Appeals to the Information Tribunal	23
<b>5. FOI Developments in Northern Ireland in 2008</b>	<b>24</b>
5.1 New Model Publication Scheme	24
5.2 '30-Year Rule' Review	25
5.3 Code of Practice on Records Management	26
5.4 External Relations	27
<b>6. Northern Ireland Departments' Performance Tables</b>	<b>28</b>
 <b>Appendix A: Defining the scope of Freedom of Information monitoring</b>	 <b>34</b>

## Foreword

Welcome to our fourth Annual Report on compliance with the Freedom of Information Act 2000. A total of 3,015 requests were submitted to the NI Executive Departments in 2008, making up an overall total of 12,713 requests submitted, since the FOI Act was implemented fully on 1 January 2005. There is no doubt that the steady number of requests received by our Departments has required a significant investment of resources and, the fact that 93% of them were answered 'in time', reflects the diligent work of all officials.

Requests for information from members of the public continue to be predominant, a trend which reflects the public's need to engage with Government regularly. It also reflects the public's desire for decision making to be open and accountable. With this in mind we will strive to anticipate the public's interest in certain information and publish it proactively through the new model Publication Scheme adopted by our Departments.

Moreover, the availability of official information looks set to be extended through another initiative – the review of the '30-year rule'. The report (published in January 2009) of the independent review panel demonstrates that the weight of the evidence points overwhelmingly to a reduction from 30 years. We support the panel's chief recommendation of a substantial reduction.

The Freedom of Information Act 2000 is now an established feature of the public landscape, and we will work with its provisions to strengthen our engagement with the citizen.



**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 Act<sup>1</sup> 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 2008. The report also contains a review of FOI developments during 2008. It is the fourth such publication compiled by the Central Freedom of Information 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](http://www.ofmdfmi.gov.uk/index/improving-public-services/central-freedom-of-information/annual-reports-and-statistics)

---

<sup>1</sup> 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 2008 in handling requests for information under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Key findings include:

- In 2008, NI Departments received a total number of 3,015 non-routine requests handled under the FOI Act and the EIRs – a 4.7% reduction on the number received in 2007.
- In 2008, 69% of all requests received were submitted by members of the public, followed by the media with 9%.
- 92% of requests received a substantive response within the 20 working day limit (30 days for PRONI when dealing with requests for historical information).
- 73% of “resolvable” requests (those where it was possible to give a substantive decision on whether to release the information being sought) were granted in full in 2008. 8% of resolvable requests resulted in the information being fully withheld.
- 710 requests received during 2008 were refused, either in full or in part, where one or more exemption or exception was applied.
- The most commonly applied exemptions were under section 40 (personal information), section 43 (commercial interests) and section 35 (formulation of government policy).
- A total of 107 internal reviews were requested in relation to information requests received in 2008, on the grounds that some or all of the requested information was withheld.
- In almost one third of internal review cases the original decision was changed.
- There were 14 appeals made to the Information Commissioner's Office relating to the refusal of information requests in 2008.

The **second part** of the report documents FOI developments during 2008. The issues covered are:

- New Model Publication Scheme;
- '30-Year Rule' Review;
- Code of Practice on Records Management; and
- External Relations

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

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

## **3. Responsibilities**

### **3.1 Central Freedom of Information Team Responsibilities**

The CFOI 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.
- Managing a NICS FOI Request Tracking and Monitoring system on behalf of the NI Departments.
- Reporting on trends and significant FOI developments to Ministers, the Head of the Northern Ireland Civil Service and the Permanent Secretaries' Group on a regular basis.
- Publishing an Annual Report 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 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](http://www.dardni.gov.uk/index/strategies-reports-accounts/freedom-of-information)

**DCAL:** [www.dcalni.gov.uk/index/freedom\\_of\\_information](http://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](http://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.htm](http://www.delni.gov.uk/index/freedom-of-information/publication-scheme.htm)

**DETI:** [www.detini.gov.uk/cgi-bin/get\\_builder\\_page?page=4487&site=2&parent=58](http://www.detini.gov.uk/cgi-bin/get_builder_page?page=4487&site=2&parent=58)

**DFP:** [www.dfpni.gov.uk/index/about-us/content\\_publication\\_scheme\\_contents.htm](http://www.dfpni.gov.uk/index/about-us/content_publication_scheme_contents.htm)

**DHSSPS:** [www.dhsspsni.gov.uk/index/foi/publication-scheme](http://www.dhsspsni.gov.uk/index/foi/publication-scheme)

**DOE:** [www.doeni.gov.uk/index/information/foi.htm](http://www.doeni.gov.uk/index/information/foi.htm)

**DRD:** [www.drdni.gov.uk/index/freedom\\_of\\_information.htm](http://www.drdni.gov.uk/index/freedom_of_information.htm)

**DSD:** [www.dsdni.gov.uk/index/foi.htm#news\\_releases](http://www.dsdni.gov.uk/index/foi.htm#news_releases)

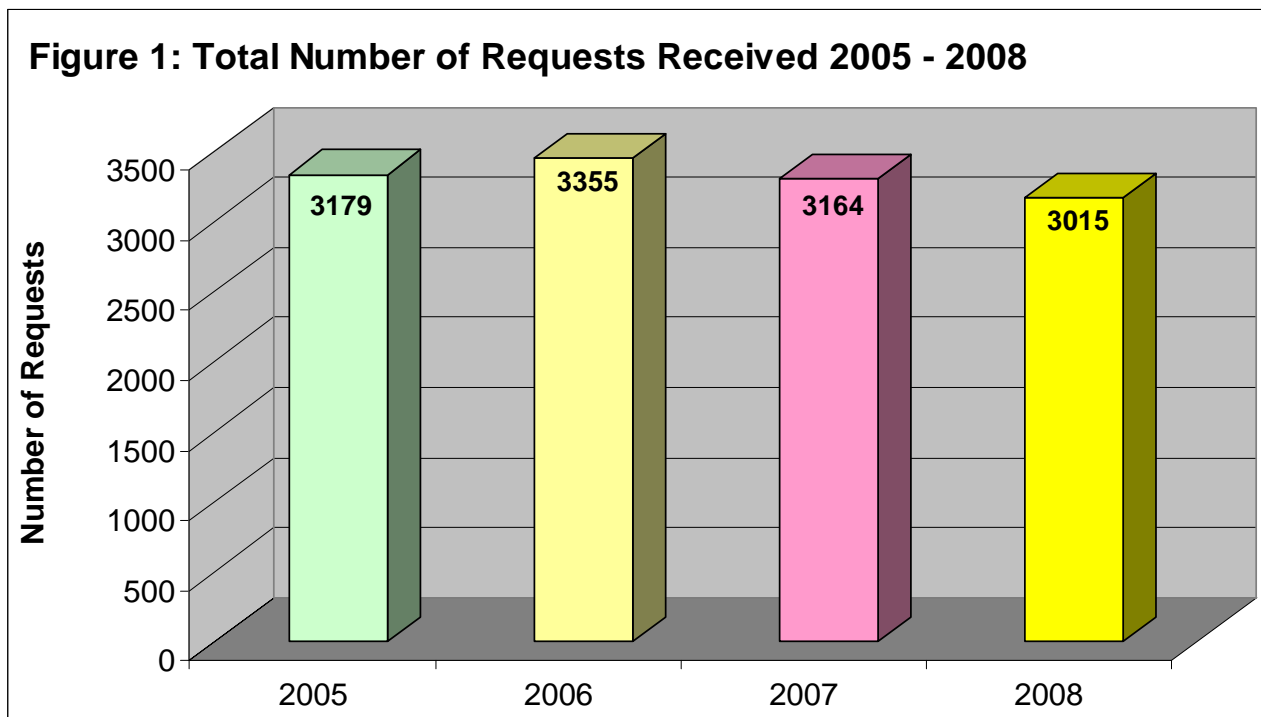
**OFMDFM:** [www.ofmdfmi.gov.uk/index/about-ofmdfm/freedom-of-information/ofmdfm-publication-scheme](http://www.ofmdfmi.gov.uk/index/about-ofmdfm/freedom-of-information/ofmdfm-publication-scheme)

**Note:** For further information on Publication Schemes, see Chapter 5, 'FOI Developments in Northern Ireland in 2008'.

## 4. Northern Ireland Departments Performance

### 4.1 Volume of Requests

The eleven NI Departments received a total of 3,015 FOI and EIR requests for information during 2008, the fourth year of operation of the FOI Act, since it came into full effect on 1 January 2005. This represents a 4.7% reduction on the 3,164 requests received in 2007, continuing the slight downward trend in the last two years on the number of requests submitted. Figure 1 below details the annual total number of requests received by the Departments since the FOI Act and EIR came fully into force at the beginning of 2005.



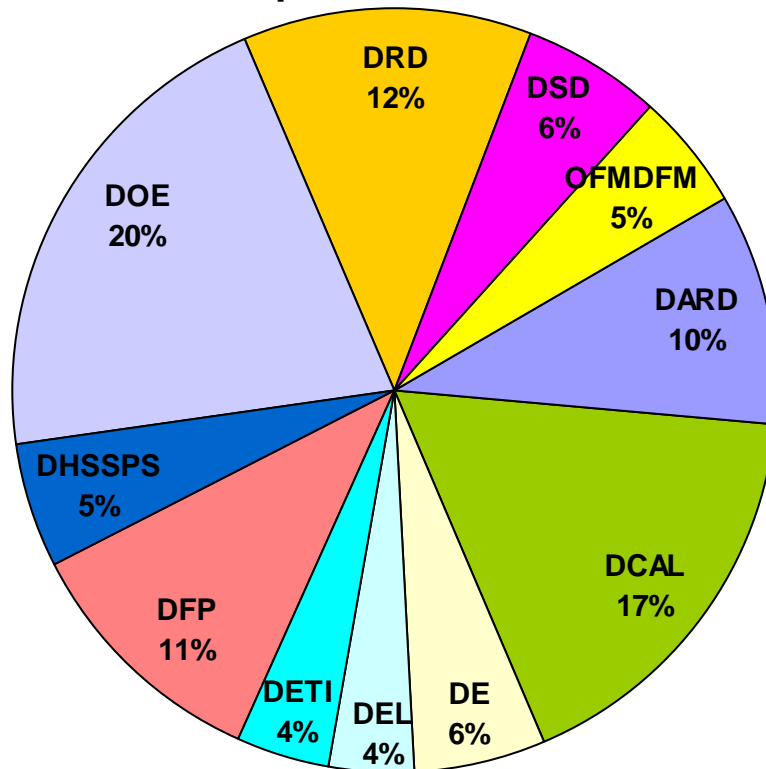
The number of requests received by each of the NI Departments varies considerably, generally as a consequence of their functions. DOE again received the largest number of requests for information, with 634 requests accounting for slightly over one-fifth of the total received by all NI Departments. A large proportion of DOE's requests centre on its Planning Service functions. However, the volume of requests are considerably down on the previous year, as DOE had received 1,009 requests, accounting for just under one-third of the total received in 2007. This is due to the decrease in Site History searches which are now treated as normal business by the Department.

Site History searches are now included in the Department's Publication Scheme and as such has had a major impact on the number of 'non-routine' information requests now being received.

DCAL received the next largest number of requests for information with 523 requests, accounting for 17% of the overall total received. This is an increase on the previous year when DCAL received 454 requests, accounting for 14% of the overall total. DCAL figures include those recorded by the Public Record Office of Northern Ireland, which received 78% of all requests received by DCAL. DRD with 12%, DFP with 11% and DARD with 10% of the overall total received, were next largest.

DEL and DETI again received the least number of requests for information with 111 and 113 requests respectively, accounting for a combined total of 8% 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 2008.

**Figure 2: Volume of Requests**



With the exception of DFP, DOE and DSD all Departments received more requests in 2008 than they received in 2007. DE and DRD had the greatest percentage increase on the previous year with 22%, followed by DARD (21%), DCAL (15%), DETI (12%), DEL (11%), OFMDFM (9%), and DHSSPS (3%). In terms of the actual total number of requests DCAL had the greatest increase with an extra 69 requests being received, followed by DRD (67), DARD (50), DE (30), OFMDFM (13), DETI (12) DEL (11) and DHSSPS (4).

DOE had the greatest percentage decrease in the total number of requests received in 2008 in comparison to 2007, receiving 37% less, followed by DSD (13%) and DFP (1%). In terms of the actual total number of requests DOE had the greatest decrease with 375 less requests than in the previous year, followed by DSD (26), and DFP (4).

## **4.2 Category of Requester**

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

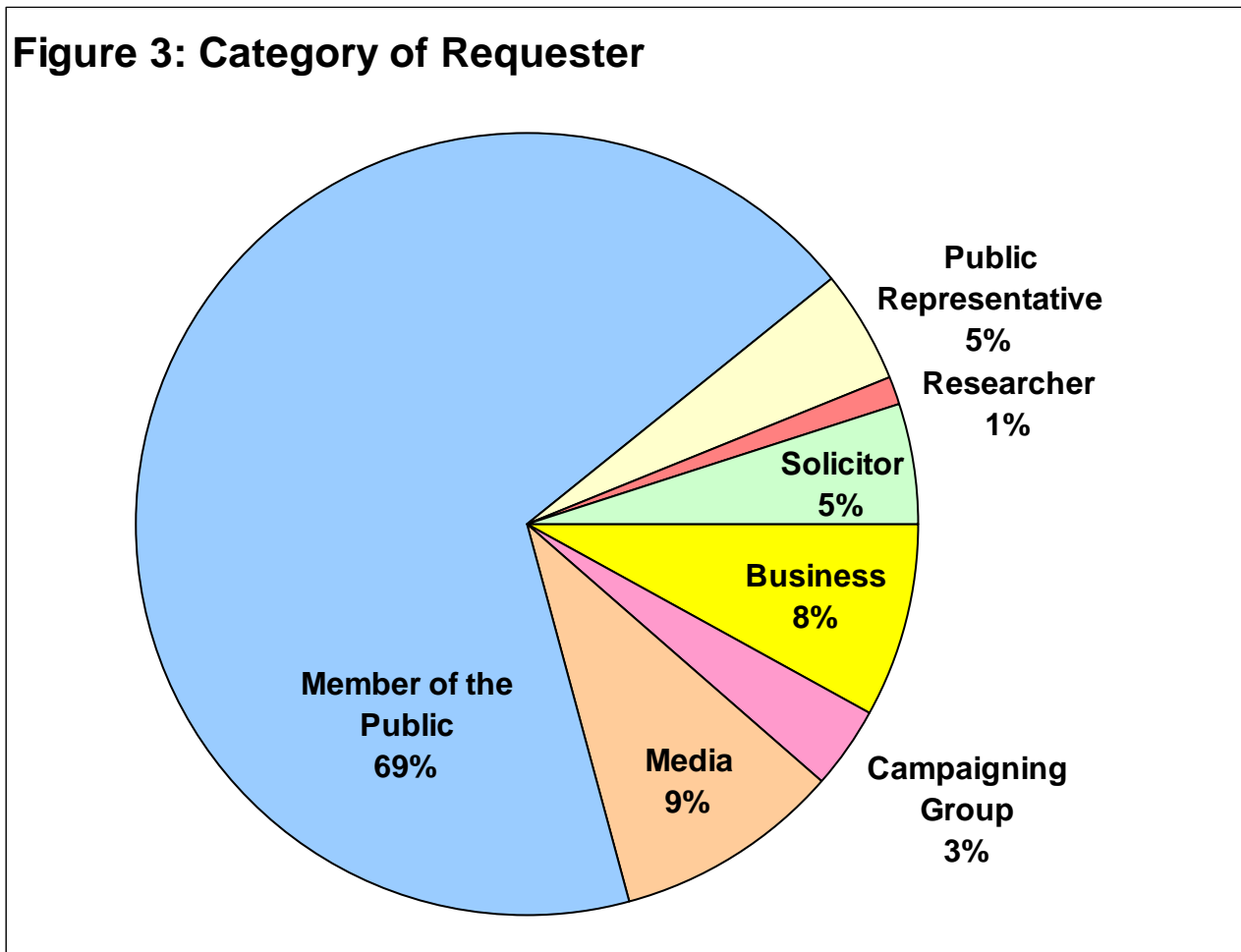
However, it is sometimes not possible for Departments to determine accurately the category of requester for every request, though these instances are rare. Using the information that has been provided, conclusions have been drawn regarding the origin of the requests submitted in 2008.

As Figure 3 below shows, the largest number of requests (69%) was received from Members of the Public and each of the NI Departments received their individual largest number of requests from this category.

The second largest number of requests was received from members of the Media (9%) and most Departments (DCAL; DEL; DETI; DHSSPS; DRD; DSD; and OFMDFM) received their second largest number of requests from this category.

The third largest number of requests came from Businesses (8%) and both DFP and DOE received their second largest number of requests from this category.

The remaining requests were received from Public Representatives and Solicitors (both 5%), and Campaigning Groups (3%), with the smallest number of requests being received from Researchers (1%). DARD received its second largest number of requests from Solicitors and DE received its second largest number of requests from Campaigning Groups.



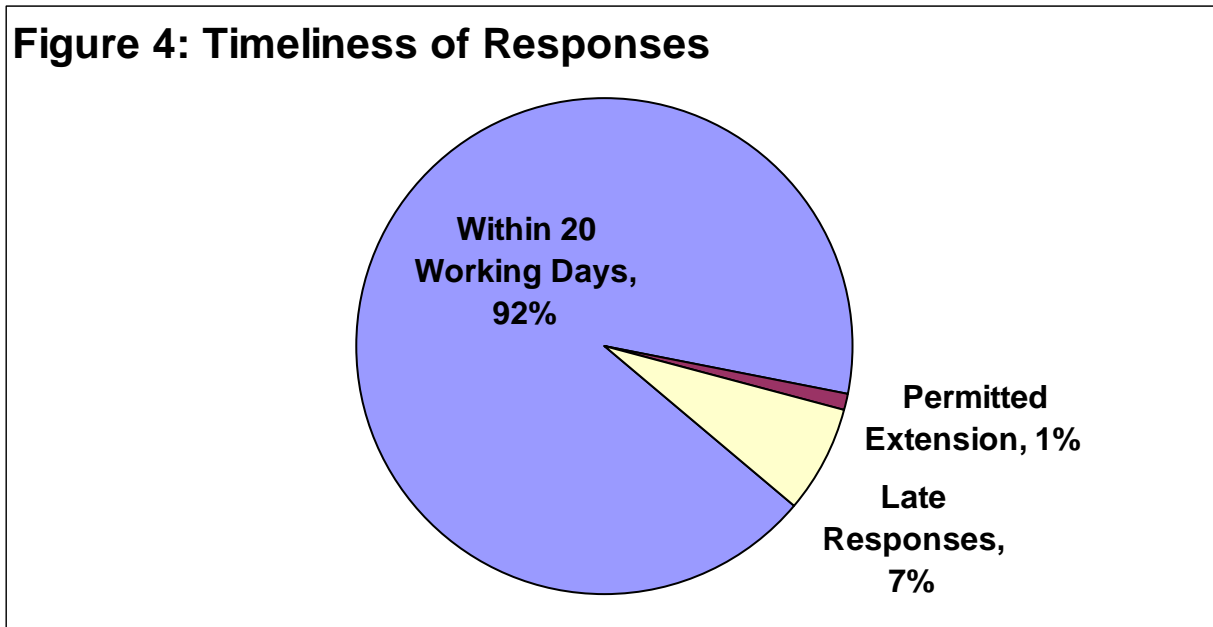
High profile requests – those received from Campaigning Groups, the Media, and Public Representatives - together account for 17% of all requests received in 2008. This was a slight decrease on the previous year (19%), though an increase on 2005 (11%); and 2006 (12%). In terms of actual figures, 523 high profile requests were received in 2008, compared with 607 in 2007. In 2008, there was an increase in the number of requests from Campaigning Groups (103 requests received, compared to 89 in 2007). There was a

decrease in the number of requests from the Media (279 requests received, compared to 364 in 2007), and from Public Representatives (with 141 requests received, compared to 154 in 2007).

### 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 4 below shows, in 2008 92% of requests received by NI Departments were answered within 20 working days<sup>2</sup>, and a further 1% answered following a permitted time extension, resulting in 93% of all requests being responded 'in time'. 7% of requests, representing 215 requests, were responded to beyond the 20 working days, without a permitted extension. The performance of NI Departments in 2008 in providing timely responses has improved on the previous year. In 2007, 9% of requests, representing 267 requests, received late responses.



<sup>2</sup> 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.

This compares favourably with the Whitehall Departments of State who answered 76% of requests within 20 working days; 84% of requests 'in time' and 16% of requests were responded to beyond the 20 working days, without a permitted extension.

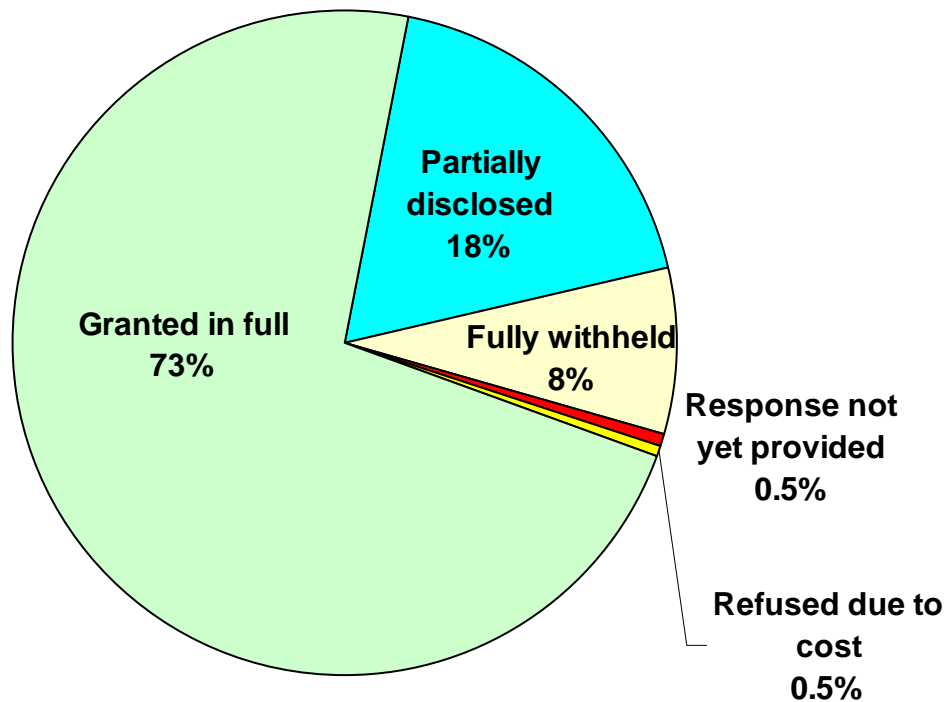
#### **4.4 Outcome of Requests**

Of the 3,015 requests for information reported in 2008, 97.5% (2,944) were processed. 2% (57) of requests were either 'on hold or lapsed' at the time of reporting and less than 0.5% (14) of requests were 'still being processed'. Requests may be 'on hold or lapsed' if the request needed further clarification in order to identify the information being sought, or a fee has been charged but not paid. Requests 'still being processed' may be going through the public interest test process.

Of the 2,944 requests processed or still to be processed, 9% (275) sought information that was 'not held' by the NI Departments from which it was requested. The remaining 2,669 requests were classed as 'resolvable', in that it was possible to give a substantive decision on whether to disclose the information sought.

As Figure 5 below shows, in 73% (1,946) of resolvable requests the information was disclosed in full, in 18% (494) of cases the information was partially disclosed; and in 8% (216) of cases the information was fully withheld. In 0.5% (13) of resolvable requests the information was refused due to cost, and in 0.5%, the response had yet to be provided.

**Figure 5: Outcome of Requests**



This compares favourably with the Whitehall Departments of State where, in 60% of resolvable requests, the information was disclosed in full; in 11% of cases information was partially disclosed; in 21% of cases the information was fully withheld; and in 7% of cases the response had yet to be provided.

The annual disclosure trend for NI Departments, as shown in Figure 6 below, has not changed significantly over the last four years as shown below:

**Figure 6**

	2005	2006	2007	2008
<b>Disclosed in Full</b>	77%	79%	76%	73%
<b>Partially Disclosed</b>	13%	14%	17%	18%
<b>Fully Withheld</b>	9%	5%	5%	8%

#### **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 26% (710) of the total number of requests. This is an increase on the previous year when 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 551 cases and exceptions under the EIR applied on 339 occasions. This represents an increase in the application of exemptions, as 476 were applied in 2007, and a decrease in the application of exceptions, as 364 were applied in 2007.

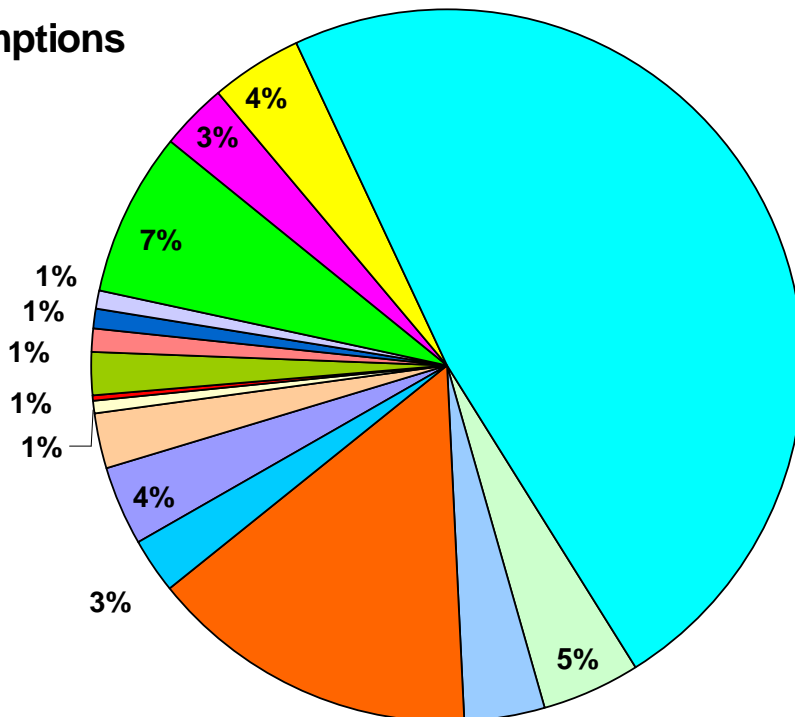
The most commonly applied exemption, as Figure 7 below shows, was Section 40 (personal information) in 48% of requests (264) where exemptions were applied. This was followed by Section 43 (commercial interests) in 15% of requests (83); and Section 35 (formulation of government policy) in 7% of requests (40), where exemptions were applied. The 'personal information' and 'commercial interests' exemptions were also the top two exemptions applied the previous year.

In all but one of the NI Departments, the Section 40 (personal information) exemption was the most commonly applied exemption. DOE relied upon this exemption in 82% of occasions that exemptions were applied; DARD in 71%; and DEL in 53%. Whilst OFMDFM relied on this exemption in 34% of occasions that exemptions were applied, it also relied on Section 35 (formulation of government policy) on an equal number of occasions. Section 43 (commercial interests) was DFP's most commonly used exemption; it was applied in 41% of cases where exemptions were used. DFP's second most commonly used exemption was Section 40 (personal information); it was applied in 32% of cases where exemptions were used.

In keeping with the trend set in previous years DFP's reliance on the 'commercial interests' exemption reflects its central procurement role, and OFMDFM's reliance on the 'formulation of government policy' exemption reflects its pivotal government policy-making role.

Overall, eighteen of the Section 21 to 44 exemptions were used at least once in 2008 compared to nineteen in 2007. Section 34 (parliamentary privilege) was used in 2008 (six times) but not relied on at all the previous year, and Sections 27 (international relations) and 33 (audit functions) were used the previous year, but not in 2008.

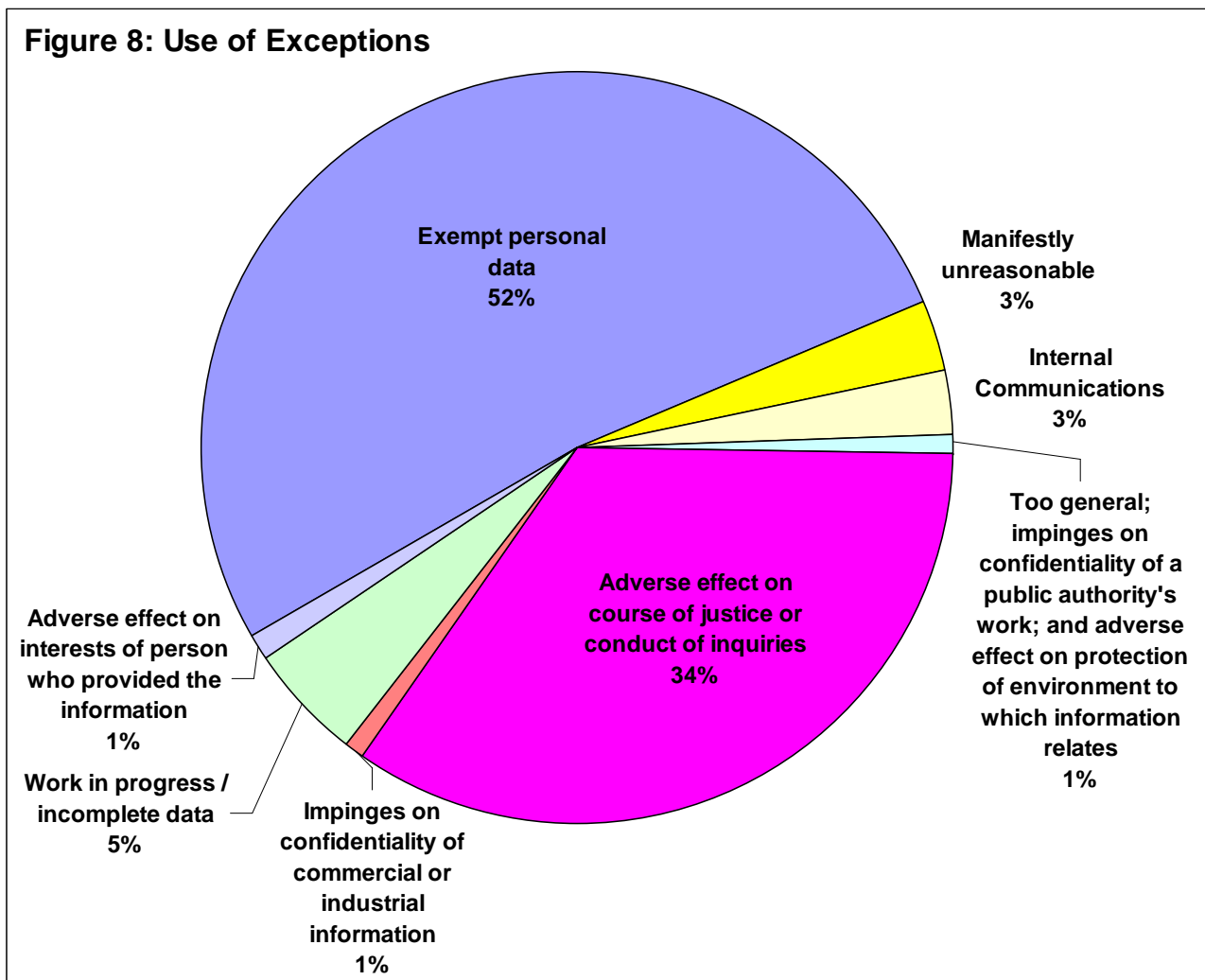
**Figure 7: Use of Exemptions**



- S(21) – Information accessible to public by other means
- S(22) – Information intended for future publication
- S(23) – Information supplied by, or relating to, bodies dealing with security matters
- S(24) – National Security; S(28) Relations within the UK; S(37) Communications with Her Majesty, etc and honours
- S(30) - Investigations and proceedings conducted by public authorities
- S(31) - Law enforcement
- S(32) - Court records, etc
- S(34) – Parliamentary privilege
- 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
- S(44) - Prohibition on disclosure

Similarly, the exemptions most commonly applied by the Whitehall Departments of State, during 2008, were Section 40 (personal information); followed by Section 35 (formulation of government policy); and Section 43 (commercial interests).

The most common exception engaged was Regulation 12(3) (personal data) which was relied upon in 52% of requests (176) where exceptions were applied. This was followed by Regulation 12(5)(b) (adverse effect on course of justice or conduct of inquiries) in 34% of requests (116); and Regulation 12(4)(d) (work in progress/incomplete data) in 5% of requests (17) where exceptions were applied. Figure 8 below shows full details of the exceptions applied. The 'personal data' and 'course of justice or conduct of inquiries' exceptions, were also the top two exceptions applied the previous year.



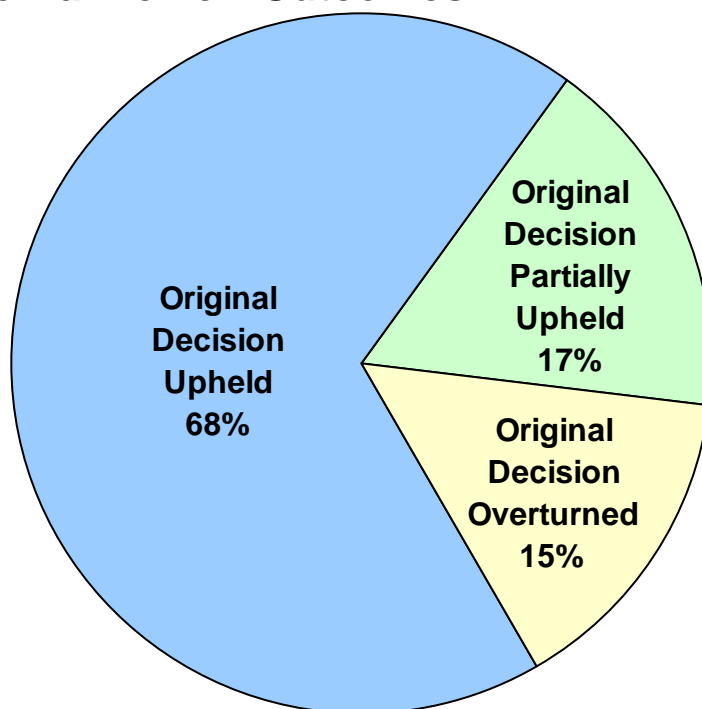
In 2008 only two of the eleven NI Departments (DARD and DOE) relied on exceptions. The same was the case in 2007. Three Departments relied on exceptions in both 2006 and 2005. DARD and DOE featured again plus DSD in 2006 and DETI in 2005.

In 2008, DARD and DOE used the exception under Regulation 12(3) (personal data) more than any other exception, accounting for 52% (176) of the overall total of exceptions applied. DARD applied this exception in two-thirds (10) of the requests where it relied on exceptions, and DOE in slightly over half (166) of the requests where it relied on exceptions. Only DOE applied the exception under Regulation 12(5)(b) (adverse effect on course of justice or conduct of inquiries) which accounts for slightly over one-third (116) of the overall total of exceptions applied.

#### 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.

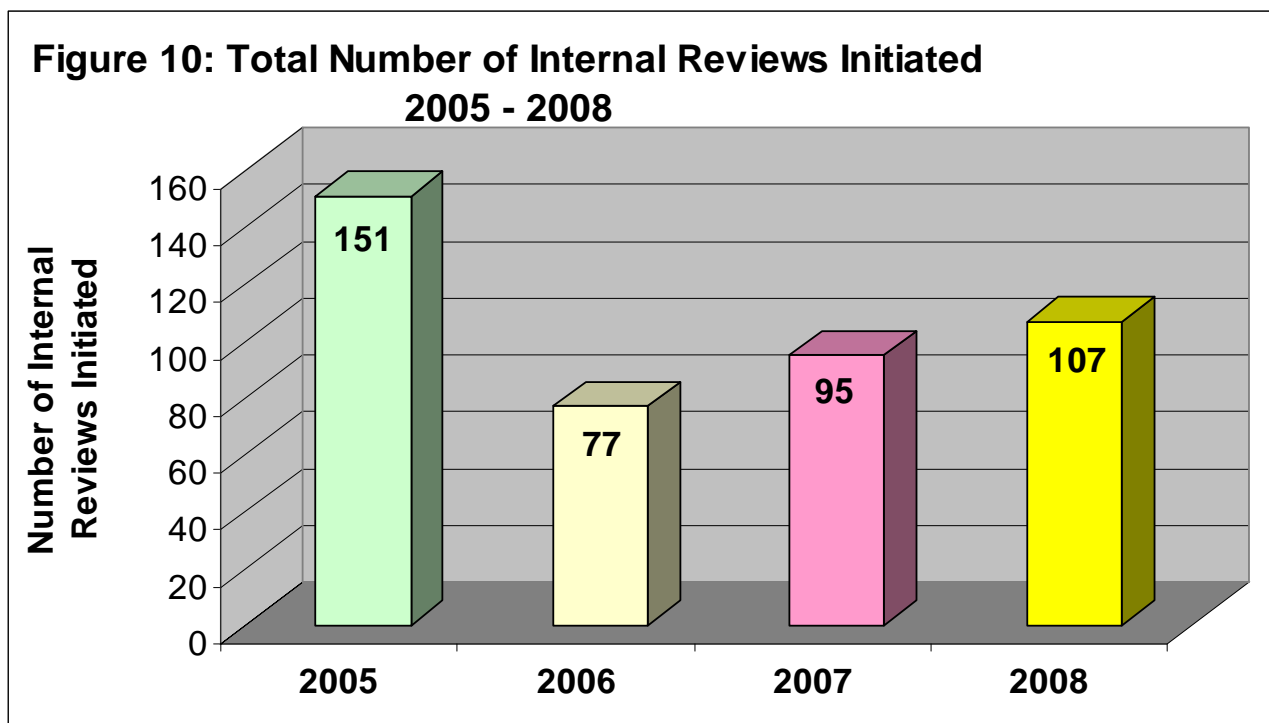
**Figure 9: Internal Review Outcomes**



Across the NI Departments a total of 107 internal reviews were reported as having been initiated on requests received during 2008, on the grounds that some, or all, of the information requested was withheld. The outcome is known in 101 of these cases as Figure 9 above shows, with 68% upholding the original decision; 17% partially upholding the original decision; and 15% upholding the complaint resulting in the original decision being overturned.

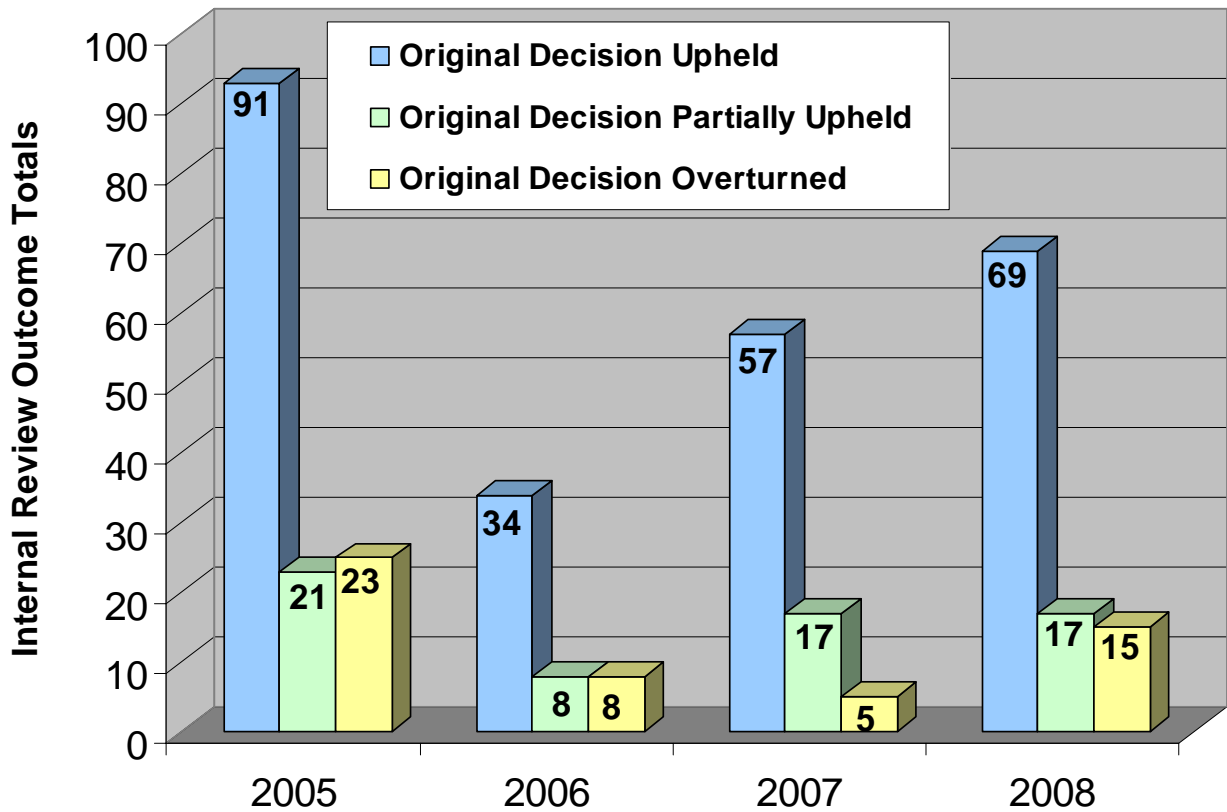
In comparison, Whitehall Departments of State had the original decision upheld in 75% of internal reviews; had the original decision partially upheld in 15% of cases, and in the remaining 10% of cases, the requester's complaint was upheld.

The number of internal reviews (107) initiated in 2008 has increased slightly in comparison to the previous year when a total of 95 internal reviews were reported. Figure 10 below shows the four-year (2005 – 2008) trend.



The percentage of internal reviews resulting in the original decision being upheld has ranged from 67% to 72%: 67% in 2005; 68% in 2006; 72% in 2007; and 68% in 2008. Figure 11 below shows this particular trend in outcomes and others.

**Figure 11: Internal Review Outcomes 2005 - 2008**



In percentage terms, DFP (10%) received the most requests for internal reviews (per number of resolvable requests) of all the NI Departments, with DARD (6%) and OFMDFM (5%) next. DFP had the fourth highest total number of resolvable requests, DARD had the fifth highest and OFMDFM had the third lowest. DCAL, DEL and DRD had the lowest percentage of requests for internal reviews (1%) per resolvable requests received in 2008.

In actual figures DFP received the most requests for internal review with 30, and DEL the least having only received one.

#### **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 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 2008, there were 14 appeals to the ICO relating to cases in which the NI Departments had refused information. This is an increase on the 5 appeals received the previous year. Only DHSSPS did not have a request that progressed to the appeal stage.

Of the 14 appeals received by the ICO, none have been completed.

#### **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 no appeals involving a NI Department in 2008.

## **5. FOI Developments in Northern Ireland in 2008**

### **5.1 New Model Publication Scheme**

Flowing from its Publication Scheme Development and Maintenance Initiative<sup>3</sup>, the Information Commissioner's Office introduced a model publication scheme for all *central government departments* to adopt and operate from 1 January 2009 (as existing schemes were due to expire on 31 December 2008). One of the main drivers behind this initiative was the desire to transfer responsibility for proactively publishing information from the FOI practitioner to business areas across organisations, thus embedding the principles of early and voluntary publication.

On 3 July the then Head of the Civil Service (Sir Nigel Hamilton) wrote to the Information Commissioner (Richard Thomas) confirming that the NI Departments would be adopting the new Model Scheme, and that arrangements were being put in place to publish information in line with it and the associated Definition Document, so that the Departments would be in a position to operate this service from 1 January 2009.

In order to give the preparations some direction and momentum, CFOI team organised and led a Model Publication Scheme workshop, which was held on 24 July. It was attended by representatives from all the Departments, the Northern Ireland Office and the Northern Ireland Assembly – 40 attendees in all. The assistance of the ICO (working in association with 'Public Partners') was appreciated, as Departments considered what needed to be done to populate the new scheme, and produce a guide to the specific information they hold.

---

<sup>3</sup> The Head of the CFOI Team sits on the Information Commissioner's UK-wide Advisory Board on Publication Schemes, and has been involved in the Development and Maintenance Initiative from the beginning.

An Action Plan was produced for Departments to follow, with a view to successfully implementing the new scheme by the end of the year; and, a follow-up workshop was scheduled for January 2009.

### **Publication Scheme Workshop – 24 July 2008**



**Some of the attendees from the NI Departments**

## **5.2 ‘30-Year Rule’ Review**

In 2007 the Prime Minister commissioned an independent review of the ‘30-year rule’, under which most government records are transferred to The National Archives<sup>4</sup> and made available to the public by the time they are 30 years old. An extended public consultation exercise was held during 2008, and OFMDFM provided evidence by means of a letter to the Chairman of the review team, Paul Dacre (an Executive Director of the Daily Mail and General Trust plc). While supporting a reduction of the ‘rule’, which would increase access to public sector information, OFMDFM also pointed out that any reduction would have significant resource implications.

The review team published its report in January 2009, and reference is made to the impact of the FOI Act in the Chairman’s ‘Foreword’:

---

<sup>4</sup> The transfer takes place at the 20-year point in Northern Ireland under the terms of the Public Records Act (NI), 1923.

‘Above all this Act recognised that the relationship between government and citizen has changed. In a modern democracy, citizens’ trust in those who hold power is not unquestioning. Increasingly they expect to know how public bodies spend taxpayers’ money, why they take particular decisions, and what are their policies for the future.’

The most important recommendation flowing from the report is that the government should replace the current 30-year rule with a 15-year rule. Complementing this recommendation are others which state that the 15-year rule should be applied fully retrospectively, and that the transition to a 15-year rule be managed by releasing one additional year’s worth of records every year until the backlog has been processed.

Since the publication of the report, the Prime Minister has announced in the UK Parliament that his government will amend public records and FOI legislation to reduce the ‘rule’ to 20 years. Further consultation between the UK government and OFMDFM is anticipated.

### **5.3 Code of Practice on Records Management**

Freedom of information legislation is only as good as the quality of the records and other information to which it provides access. Access rights are of limited value if information cannot be found when requested or, when found, cannot be relied upon as authoritative.

To encourage good information and records management in public authorities, the FOI Act provided for a Code of Practice on Records Management under section 46. The current Code – first issued in 2002 – is in the process of being revised following a public consultation. The views and suggestions of a wide range of Information and Records Managers and FOI Practitioners have also been considered. As the revision process is being led by The National Archives of the United Kingdom, the next stage is to obtain the approval of UK Ministers. And, since the provisions of the Code extend to public authorities in Northern Ireland and concerns the Public Records Act (NI), 1923, there will be appropriate consultation with Ministers here.

The Code is in two parts. In Part 1, the Code provides guidance to all relevant authorities regarding practices, which would be desirable for them to follow in connection with the keeping, management and destruction of their records. Part 2 deals with the procedure to be followed for timely and effective review and transfer of public records to The National Archives or to places of deposit (as defined in section 4 of the Public Records Act, 1958) or to the Public Record Office of Northern Ireland under the Public Records Act, 1958 or the Public Records Act (NI), 1923.

## **5.4 External Relations**

### **(i) The devolved administrations**

The FOI policy officers of the devolved administrations maintained the contact they had established the previous year, and the Ministry of Justice (the lead Whitehall Department on FOI) accepted the invitation to participate in meetings. Three were held over the course of the year: in Edinburgh (January); in Cardiff (June), and in London (November). Issues concerning UK-wide policies and procedures were discussed: for example, the review of the '30-year rule'; revision of the Code of Practice on Records Management under section 46 of the FOI Act; and, extending FOI provisions to additional public bodies.

### **(ii) Information Commissioner's Office**

There was regular contact with the ICO throughout the year. As in previous years, quarterly meetings were held between the Assistant Information Commissioner for NI and the Head of the Central FOI team to discuss: (a) the FOI performance of the Departments; and (b) compliance issues arising from complaints casework. Furthermore, a seminar (January) on the use of the exemptions under sections 30 (investigations and proceedings conducted by public authorities), 31 (law enforcement) and 38 (health and safety) of the FOI Act, was organised by the Central FOI Team in collaboration with the ICO's Northern Ireland Regional Office. This was one of Marie Anderson's last engagements as Assistant Information Commissioner for NI. Her contribution over the previous five years to briefings and promotional events for Departmental staff was significant and acknowledged upon her departure from that post. Later in the year she was replaced by Aubrey McCrory, and meetings between him and the outgoing Head of the NI Civil Service (Sir Nigel Hamilton),

and also his successor, Bruce Robinson, followed to ensure that good working relations continued.

In September, Bruce Robinson accepted an invitation to speak at the launch of the Annual Report 2007/08 of the ICO's Regional Office, which was held at its new headquarters in Belfast city centre. The event provided him with an opportunity to meet informally with Richard Thomas (then Information Commissioner). Finally, in December, Aubrey McCrory attended a meeting of the FOI Practitioners' Group to provide an update on the ICO's current activities and future plans.

## **6. NI Departments' Performance Tables**

**Table 1:** Number of requests for information received by NI Departments during 2008.

**Table 2:** Category of requests received by NI Departments during 2008.

**Table 3:** Timeliness of responses to requests for information received by NI Departments during 2008.

**Table 4:** Outcome of requests for information received by NI Departments during 2008.

**Table 5:** FOI exemptions applied by NI Departments when withholding information during 2008.

**Table 6:** EIR exceptions applied by NI Departments when withholding information during 2008.

**Table 7:** Internal reviews concerning requests for information received by NI Departments during 2008, where the requested information was initially withheld.

**Table 8:** Appeals to Information Commissioner's Office concerning the handling of requests for information received by NI Departments during 2008.

**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 2008**

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DRD	DSD	OFMDFM	TOTALS
<b>Total number of requests received</b>	289	523	168	111	113	332	152	634	367	174	152	3015
Processed	275	519	157	109	112	321	150	633	360	164	144	2944
On hold or lapsed	14	1	8	2	1	10	2	0	7	10	2	57
Still being processed	0	3	3	0	0	1	0	1	0	0	6	14

**Table 2: Category of requesters received by NI Departments during 2008**

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DRD	DSD	OFMDFM	TOTALS
<b>Total number of requests received</b>	289	523	168	111	113	332	152	634	367	174	152	3015
<b>Business</b>	21	5	12	0	6	45	6	119	22	5	3	244
<b>Campaigning Group</b>	15	14	21	4	3	5	6	6	2	16	11	103
<b>Media</b>	27	26	19	16	23	27	19	39	24	22	37	279
<b>Member of the Public</b>	179	450	95	88	69	228	102	386	277	115	75	2064
<b>Public Representative</b>	14	11	14	1	7	16	8	21	22	9	18	141
<b>Researcher</b>	2	9	2	1	1	2	5	0	4	4	6	36
<b>Solicitor</b>	31	8	5	1	4	9	6	63	16	3	2	148

**Table 3: Timeliness of responses to requests for information received by NI Departments during 2008**

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DRD	DSD	OFMDFM	TOTALS
<b>Total received excluding on hold or lapsed</b>	275	522	160	109	112	322	150	634	360	164	150	2958
Deadline met	257	454	146	106	103	283	127	591	358	157	124	2706
Permitted extension	4	1	1	0	7	8	0	5	2	3	6	37
Late response	14	67	13	3	2	31	23	38	0	4	20	215

**Table 4: Outcome of requests for information received by NI Departments during 2008**

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DRD	DSD	OFMDFM	TOTALS
<b>Total number of requests received</b>	289	523	168	111	113	332	152	634	367	174	152	3015
On hold or lapsed	14	1	8	2	1	10	2	0	7	10	2	57
Still being processed	0	3	3	0	0	1	0	1	0	0	6	14
<b>Total number of requests excluding on hold or lapsed / still being processed</b>	275	519	157	109	112	321	150	633	360	164	144	2944
Number where information not held	16	117	20	16	15	25	13	17	0	11	25	275
<b>Total resolvable requests</b>	259	405	140	93	97	297	137	617	360	153	125	2669
Information disclosed in full	126	357	116	80	78	187	117	336	330	124	95	1946
Partially disclosed	84	31	7	11	11	65	13	218	20	21	13	494
Fully withheld	49	14	11	2	7	41	7	58	10	6	11	216
Refused due to cost	0	0	3	0	1	3	0	4	0	2	0	13

**Table 5: FOI exemptions applied by NI Departments when withholding information during 2008**

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DRD	DSD	OFMD/WM	TOTALS
<b>The number of times each of the exemptions in sections 21 to 44 were cited as the reason for refusal</b>												
S(21) – Information accessible to public by other means	0	1	1	0	0	9	0	1	2	5	1	20
S(22) – Information intended for future publication	2	4	0	0	1	2	1	0	2	0	1	13
S(23) – Information supplied by, or relating to, bodies dealing with security matters	0	3	0	0	0	0	0	0	0	0	0	3
S(24) – National Security	0	1	0	0	0	0	0	0	0	0	0	1
S(28) - Relations within the United Kingdom	0	0	0	0	0	0	0	0	0	0	1	1
S(30) - Investigations and proceedings conducted by public authorities	5	0	0	0	5	0	0	0	0	0	0	10
S(31) - Law enforcement	2	0	0	0	0	1	0	0	3	0	0	6
S(32) - Court records, etc	0	2	0	1	1	0	0	0	0	0	0	4
S(34) – Parliamentary privilege	0	0	6	0	0	0	0	0	0	0	0	6
S(35) – Formulation of Government policy, etc	8	3	2	0	2	2	5	1	2	4	11	40
S(36) - Prejudice to effective conduct of public affairs	0	0	0	0	0	5	3	1	7	1	1	18
S(37) - Communications with Her Majesty, etc. and honours	0	0	0	0	0	0	0	0	0	0	1	1
S(38) - Health and safety	2	15	0	0	0	1	0	3	1	0	1	23
S(40) - Personal information	98	30	7	8	7	37	6	32	16	12	11	264
S(41) – Information provided in confidence	10	1	2	2	2	3	1	0	3	1	0	25
S(42) - Legal professional privilege	4	0	1	2	0	4	2	0	1	4	1	19
S(43) - Commercial interests	7	0	1	2	6	48	3	1	7	5	3	83
S(44) - Prohibition on disclosure	0	5	0	0	3	4	2	0	0	0	0	14

**Table 6: EIR exceptions applied by NI Departments when withholding information during 2008**

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DRD	DSD	OFMDFM	TOTALS
<b>Environmental Information Regulations Exceptions</b>												
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	10	0	0	0	0	0	0	166	0	0	0	176
4(b) - Manifestly unreasonable	0	0	0	0	0	0	0	10	0	0	0	10
4(c) – Too general	1	0	0	0	0	0	0	0	0	0	0	1
4(d) - Work in progress/incomplete data	1	0	0	0	0	0	0	16	0	0	0	17
4(e) - Internal communications	0	0	0	0	0	0	0	10	0	0	0	10
5(b) - Adverse effect on course of justice or conduct of inquiries	0	0	0	0	0	0	0	116	0	0	0	116
5(d) – Impinges on confidentiality of a public authority’s work	1	0	0	0	0	0	0	0	0	0	0	1
5(e) - Impinges on confidentiality of commercial or industrial information	1	0	0	0	0	0	0	2	0	0	0	3
5(f) - Adverse effect on interests of person who provided the information	1	0	0	0	0	0	0	3	0	0	0	4
5(g) - Adverse effect on protection of environment to which information relates	0	0	0	0	0	0	0	1	0	0	0	1

**Table 7: Internal reviews concerning requests for information received by NI Departments during 2008, where the requested information was initially withheld**

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DRD	DSD	OFMDFM	TOTALS
<b>Total number of reviews (in calendar year)</b>	16	6	4	1	4	30	3	26	8	3	6	107
Number where outcome known	16	6	4	1	4	30	3	24	4	3	6	101
Original decision upheld in full	10	4	3	0	4	20	3	16	2	2	5	69
Original decision upheld in part	2	0	0	1	0	7	0	4	2	1	0	17
Compliant upheld	4	2	1	0	0	3	0	4	0	0	1	15

**Table 8: Appeals to Information Commissioner's Office concerning the handling of requests for information received by NI Departments during 2008**

Department	DARD	DCAL	DE	DEL	DETI	DFP	DHSSPS	DOE	DRD	DSD	OFMDFM	TOTALS
<b>Total number of appeals (in calendar year)</b>	1	1	1	1	1	4	0	1	1	2	1	14
Number where outcome known	0	0	0	0	0	0	0	0	0	0	0	0
Original decision upheld in full	0	0	0	0	0	0	0	0	0	0	0	0
Original decision upheld in part	0	0	0	0	0	0	0	0	0	0	0	0
Complaint upheld	0	0	0	0	0	0	0	0	0	0	0	0

## 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.*