



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Report on the implementation of open government legislation and policies during 2008

April 2009

Introduction

This is the third report which the Assembly Government has published on its implementation of open government legislation and policies. As well as continuing to routinely publish as much information as possible through its Publication Scheme¹, during 2008 the Assembly Government saw the first year-on-year increase in the number of requests made since the Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIRs) were commenced on 1 January 2005. The number of requests made under the Data Protection Access 1998 (DPA) continued to be about the same.

The Code of Practice on Access to Information which the Assembly Government implemented in November 2007 saw its first year of operation during 2008. It has been proven to provide a robust framework for continuing to create greater openness through the substantial harm test which it establishes and applies to the majority of exemptions subject to the public interest test in law. In addition, the new guidance for staff handling requests for recorded information² - which was also implemented in November 2007 - has been found to provide a much clearer framework for staff to process requests within. This has been supported by ongoing staff training and our Access to Information Community of Practice³.

As has been explained in the Assembly Government's previous reports, the FOIA and EIRs require the Assembly Government in the vast majority of cases⁴ to either release information it holds or explain why information is considered to be exempt from release within 20 working days of a request being received.

¹ Details of the Assembly Government's Publication Scheme can be viewed at:

<http://new.wales.gov.uk/publications/?lang=en>

² The Assembly Government publishes its Code of Practice on Access to Information and all of its guidance on handling requests for recorded information at:

<http://new.wales.gov.uk/publications/accessinfo/?lang=en>

³ A Community of Practice is a group of people which meets to share what they know and to learn from each other.

⁴ The FOIA and EIRs set a standard deadline of 20 working days for responding to requests for information. The FOIA allows for a reasonable extension to the 20 working day deadline when a public interest tested exemption is being considered and the EIRs allow for an extension of a maximum of a further 20 working days if the request is complex and voluminous.

This report describes experiences during 2008. As before, this report does not cover requests received by other public authorities in Wales as access to information legislation is not a devolved matter and it would, therefore, be outside of the Assembly Government's remit to collect detailed information from other public authorities.

The information in this report relates only to those requests which have been received by the Assembly Government and logged by the Access to Information Unit. As a result, some data may not be complete and the report should be seen only as an indication of the Assembly Government's experiences and performance.

As a result of work done during 2007 and 2008 to enhance the Assembly Government's system for monitoring requests for recorded information, this report contains more detailed information on the Assembly Government's timeliness of responses to requests for information and its use of exemptions to the requirement to release information.

Summary

The Assembly Government received 638 requests for information in 2008, of which 613 were resolvable⁵. The total number received (638) compares with 574 in 2007.

As previously, those work areas which have received relatively high volumes of requests have experienced some challenges due to the need to divert resources but the Assembly Government is pleased that, having completed 87% of requests within statutory deadlines during 2008, it again made a year-on-year improvement in the proportion of requests completed within the statutory timescales.

The Assembly Government received a total of 27 complaints relating to its handling of requests for information in 2008, compared with 35 in 2007, most of which have again been resolved internally to the satisfaction of

⁵ Requests were deemed to be unresolvable either because they were insufficiently clear for the Assembly Government to search for information or, in relation to Subject Access Requests under the DPA, the requester failed to provide the required proof or identity and/or pay the required fee.

complainants. The Assembly Government is aware that the Information Commissioner's Office (ICO) has commenced investigations of two complaints in 2008, compared with one in 2007.

During 2008, the Assembly Government also continued to routinely publish a considerable amount of information in line with its Publication Scheme.

Number of requests, their sources and subject areas

The number of requests which the Assembly Government received during 2008 was higher than in 2007 and varied in number each month. It was again noticeable that the volumes increased when there was media and political interest in issues but, unlike in previous years, the number received increased during some holiday periods. Figure 1 shows the number of requests received each month during 2008 and Annex 1 provides the same information in a table.

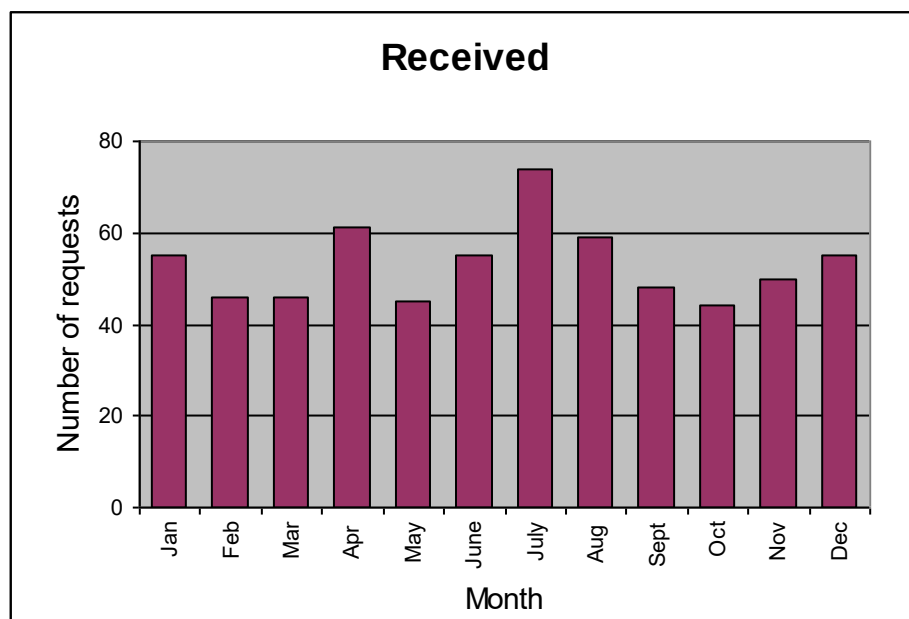


Figure 1: Requests received each month during 2008

As in 2007, the vast majority of requests (around 80%) in each quarter of 2008 were from members of the public. In the first two quarters of 2008, a larger proportion (8-9%) of requests were from Assembly Members - compared with the remaining quarters when the proportion reduced to 4-6%.

The proportion from the media remained fairly consistent throughout the year at 9-10% of all requests, with a slight decrease in the second quarter to under 8%. Figure 2 shows the number of requests received from each type of requester during each quarter of 2008, and Annex 2 provides the same information in tabular form.

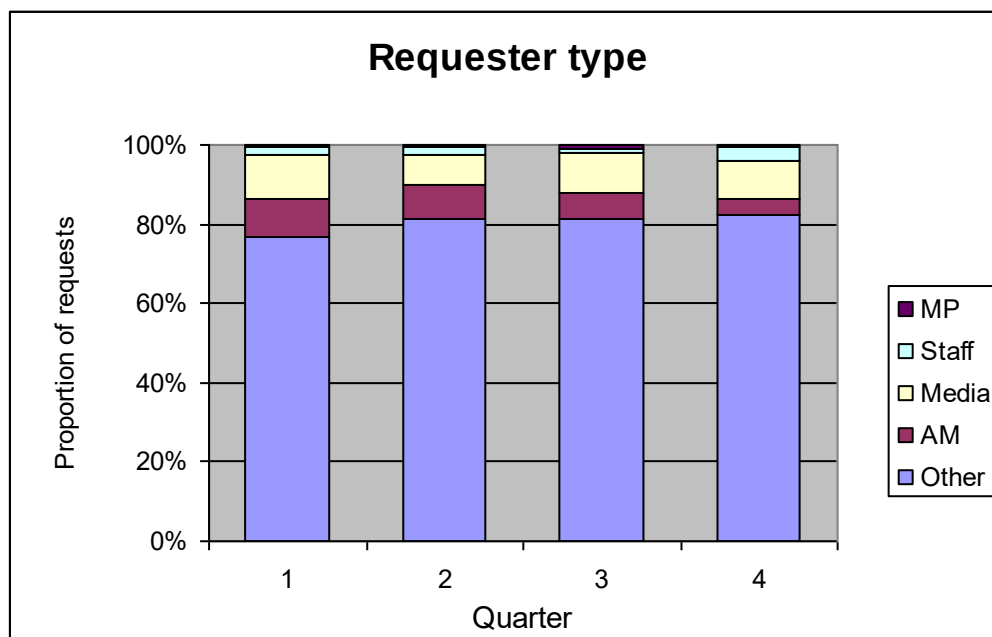


Figure 2: Requests received from each type of requester during each quarter of 2008

Most departments within the Assembly Government received some requests but, as in previous years, some received considerably more than others. The numbers of requests received by Assembly Government departments is provided in Annex 3.

Timeliness of responses

The FOIA allows for a reasonable extension to the 20 working day deadline when considering a public interest tested exemption and the EIRs allow for an extension of a maximum of a further 20 working days if the request is complex and voluminous. Our records show that 87% of requests were completed within statutory deadlines during 2008. This represents a further year-on-year improvement, being higher than in 2007 when 80% of requests were

completed within statutory deadlines. Following the enhancements made to the Assembly Government's system for monitoring requests for recorded information, it is possible to identify that 80% of requests were completed with the standard 20 working day deadline.

Level of disclosure and use of exemptions

The enhancements which have been made to the Assembly Government's tracking system also make it possible for the first time to provide details of the Assembly Government's level of disclosure and its use of exemptions to the requirement to release information.

In the majority of cases (59%), requests were recorded as completed because all of the requested information was provided. Some information was provided in a further 12% of cases. No information was held in relation to 14% of requests. Requesters were not provided with any of the information they requested, which was held by the Assembly Government, in only 5% of cases. A breakdown of the categories used for recording requests as completed and the number of instances that requests fell into those categories is provided in Annex 4.

The reasons why any requested information held by the Assembly Government was not disclosed are set out in Annex 5. Under the FOIA and EIRs, public authorities can refuse to provide requested information which they hold if the information falls within one or more of the categories of exempt information which are listed in the legislation.

Where the Assembly Government has used exemptions available to withhold information, full explanations for the decisions have been provided and published on the Disclosure Log⁶. In almost half of the instances where exemptions were applied, this was either to protect personal data or important commercial interests.

⁶ The Disclosure Log can be viewed at:
<http://new.wales.gov.uk/publications/accessinfo/disclosurelogs/?jsessionid=qZ7yJyFTWdMqJLb1dXT9045qdWPpq6Syjw2dJxrPGxQyFgvBnT9c!-1414164158?lang=en>

Complaints

Following requesters expressing dissatisfaction with a decision to withhold some or all of the requested information, the Assembly Government initiated internal reviews in 21 cases during 2008, compared with 22 cases in 2007. This equates to just over 3% of all requests received during 2008.

The Assembly Government also received 6 complaints in 2008 – compared with 13 in 2007 - which raised concerns about the timeliness of its response to a request, alleged that a request had not been properly administered or alleged that information had been released inappropriately.

The Assembly Government issued apologies in response to complaints which raised legitimate concerns about the timeliness of its response or an administrative issue, and has so far released further information in 9 of the 21 cases which were subject to an internal review of decisions to withhold information.

Appeals to the Information Commissioner and Information Tribunal

The ICO's Case Reception Team notified the Assembly Government of 4 complaints which it received during 2008. The ICO only considered it necessary to fully investigate 2 of these complaints and neither of these investigations have yet been concluded. In 2007, the ICO investigated only one complaint relating to the Assembly Government.

As in 2007, in 2008 no case involving the Assembly Government was appealed to the Information Tribunal.

Information routinely published

During 2008, the Assembly Government continued to routinely publish a considerable amount of information through its Publication Scheme and worked to implement a new Model Publication Scheme developed by the ICO.

The information published includes:

- ministerial decisions covering the background facts and analyses;
- agendas, papers and minutes of Cabinet meetings;

- agendas, papers and minutes of Management Board meetings;
- our internal guidance for handling requests for recorded information; and
- information disclosed in response to requests handled under the FOIA and EIRs, regardless of the subject matter.

Enhancements to improve search functionality were made during 2008 to the areas of the Assembly Government's internet site where ministerial decisions and information disclosed in response to requests for information are published.

Conclusion

The year-on-year improvements made by the Assembly Government in its compliance with the statutory deadlines for responding to requests were in previous years made against a background of year-on-year reductions in the number of requests received. In 2008, the Assembly Government was - therefore - pleased to have achieved a further improvement in its compliance levels when there was a year-on-year increase in the number of requests received. The Assembly Government believes that this was at least in part facilitated by the revisions made to its Code of Practice on Access to Information in 2007, and the new staff guidance and training module which were put in place to support its implementation. The Assembly Government will continue to strive for further improvements in the future.

The Assembly Government is also satisfied that the enhancements made to its system for monitoring requests for recorded information has made it possible to now provide information in relation to request completion categories and the use of exemptions to the requirement to release information. The Assembly Government is encouraged that this new information shows that in 2008 the majority of requestors were provided with all of the information they requested and that only a very small proportion (5%) received none of the information they requested where it was held by the Assembly Government.

The Assembly Government also welcomes the fact that the numbers of complaints received internally and by the ICO has remained low. Again, every effort to influence improvements will be made.

A further report will be published early in 2010 on activity during 2009.

Access to Information Unit

Knowledge and Information Management Division

People, Places and Corporate Services

Annex 1: Requests received each month during 2008

<u>Month</u>	<u>2008</u>	<u>% of Total</u>
January	55	8.6
February	46	7.2
March	46	7.2
April	61	9.6
May	45	7.1
June	55	8.6
July	74	11.6
August	59	9.2
September	48	7.5
October	44	6.9
November	50	7.8
December	55	8.6
Total	638	

Annex 2: Requests received from each type of requester during each quarter of 2008

	<u>Other</u>	<u>AM</u>	<u>Media</u>	<u>Staff</u>	<u>MP</u>
Quarter 1	113	14	16	3	1
Quarter 2	131	14	12	3	1
Quarter 3	147	12	18	2	2
Quarter 4	123	6	14	5	1

Annex 3: Number of requests received by Assembly Government departments during 2008

<u>Department</u> ⁷	<u>2008</u>	<u>% of Total</u>
Business Development	0	0
Constitutional Affairs, Equality & Communication	17	2.7
Corporate Information & Services	32	5.0
Children, Education, Lifelong Learning & Skills	43	6.7
Environment, Sustainability & Housing	69	10.8
Health & Social Services	73	11.4
Public Health & Health Professions	9	1.4
Public Services & Performance	31	4.9
Department for Rural Affairs & Heritage	99	15.5
Social Justice & Local Government	23	3.6
Economy & Transport	161	25.2
Department of the First Minister	14	2.2
Finance	9	1.4
Human Resources	56	8.8
Legal Services Department	2	0.3
Office of the Permanent Secretary	0	0
Other	0	0
Total	638	

⁷ The departments listed are those formed during the organisational restructure which took place in mid 2007.

**Annex 4: Number of instances of requests received by the Assembly
Government during 2008 falling into completion categories**

<u>Completed Category</u>	<u>2008</u>	<u>% of Total</u>
All Information Provided	357	58.6
Some Information Provided	70	11.5
No Information Provided	26	4.3
No Information Held	86	14.1
Withdrawn	53	8.7
Exceeded Appropriate Limit	15	2.5
Vexatious	0	0
Repeated	2	0.3
Total	609	

Annex 5: Use of exemptions to the requirement to release information during 2008

<u>Act-Exemption⁸</u>	<u>2008</u>	<u>% of Total</u>
DPA – Schedule 7, Paragraph 10	2	1.4
EIRs – Reg 12(4)(b)	2	1.4
EIRs – Reg 12(4)(d)	5	3.6
EIRs – Reg 12(4)(e)	7	5
EIRs – Reg 12(5)(a)	3	2.2
EIRs – Reg 12(5)(b)	1	0.7
EIRs – Reg 12(5)(e)	1	0.7
EIRs – Reg 12(5)(f)	2	1.4
EIRs – Reg 13	10	7.2
FOIA – Section 1(3)	10	7.2
FOIA – Section 14	1	0.7
FOIA – Section 21	5	3.6
FOIA – Section 22	5	3.6
FOIA – Section 27	1	0.7
FOIA – Section 28	2	1.4
FOIA – Section 29	4	2.9
FOIA – Section 35	5	3.6
FOIA – Section 36	2	1.4
FOIA – Section 38	3	2.2
FOIA – Section 40	39	28.06
FOIA – Section 41	2	1.4
FOIA – Section 42	8	5.8
FOIA – Section 43	19	13.7
Total⁹	139	

⁸ The exemptions listed are all those that have been applied by the Assembly Government during 2008. Exemptions not listed have not been used. A description of the matter to which each exemption relates is provided in Annex A of the Assembly Government's Code of Practice on Access to Information which can be viewed at:

<http://new.wales.gov.uk/publications/accessinfo/code/;jsessionid=VQ5GJIHN1MvJ7wwD62phL3y0XwhvCfvXBvQ9KVvLh0DhjYWR2vbT!-1414164158?lang=en>

⁹ As more than one exemption would have been used in relation to some individual requests, the total figure does not indicate the number of requests that have had an exemption applied to them.