

FREEDOM OF INFORMATION ANNUAL STATISTICS

Right to Know Week 2016

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Freedom of Information Annual Statistics

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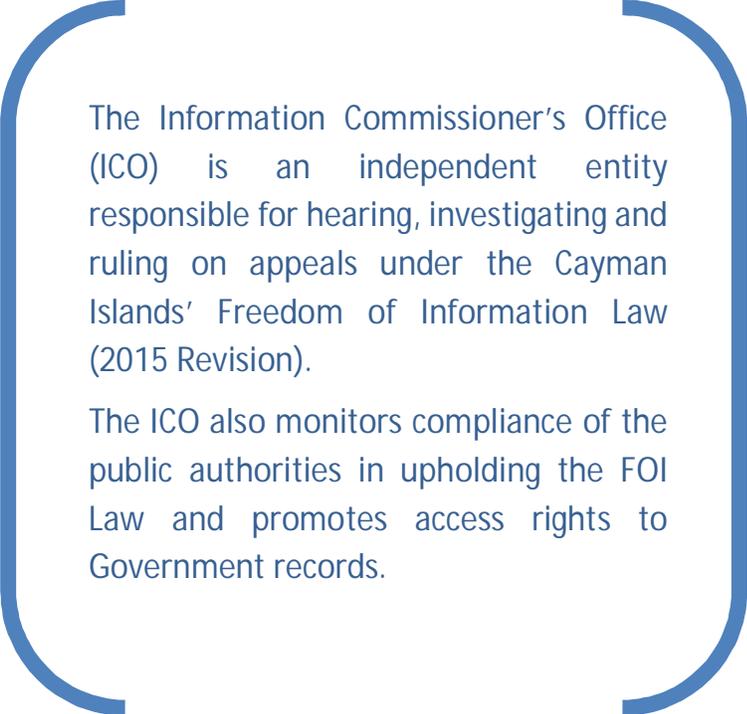
TABLE OF CONTENTS

Introduction	1
Methodology	2
Tables	3
Number of FOI requests per year (2009-2016)	3
Spread of FOI requests across the Public Sector (2015–2016)	4
Response times (2009–2016)	4
Resolution of FOI requests (2009-2016)	6
Breakdown of exemptions claimed (2015-2016)	7
Appeals and hearings (2009-2016)	9

INTRODUCTION

The Freedom of Information Law (FOI Law) came into effect over seven years ago, and this report provides part of the statistical background against which Freedom of Information (FOI) in the Cayman Islands can be assessed.

As intended, the FOI Law has resulted in greater governmental openness and transparency since its inception in January 2009. Across the Public Sector more information is being made available proactively or upon demand than before, and where necessary, the FOI Law continues to provide an important additional means of balancing the right to access with the legitimate need to withhold some records. In its balanced approach, the Law starts from an assumption of openness by creating a general right of access, but also restricts access for a number of specific, limited reasons consistent with the system of constitutional democracy in the Cayman Islands. Where access remains in dispute, requests can be internally reviewed and appealed to the Information Commissioner for a decision.



The Information Commissioner's Office (ICO) is an independent entity responsible for hearing, investigating and ruling on appeals under the Cayman Islands' Freedom of Information Law (2015 Revision).

The ICO also monitors compliance of the public authorities in upholding the FOI Law and promotes access rights to Government records.

METHODOLOGY

FOI requests are registered and tracked in a central tracking system which is used by the majority of information managers (IMs) in public authorities across the Public Sector. Thanks to the tracking system (known as JADE) and in accordance with the reporting requirements of the Information Commissioner in the FOI Law itself, important statistics are known, and the use of FOI can be tracked over time. This report contains such statistics for the period from January 2009 to the end of the last financial year 2015-16, with a particular focus on the last year.

Unfortunately, it is necessary to point out the limitations of the tracking system, and therefore also of this annual statistical report. Data entry is not an exact science, and although many IMs diligently enter data for each request that is made, there are also a number of public authorities that do not have access to the tracking system and do not use the system. The use of the government FOI tracking system is a requirement of the *Freedom of Information (General) Regulations, 2008* (regulation 24). The ICO has started a compliance investigation on this topic, the results of which are expected to be published shortly.

This means that, while the multi-year statistics do show actual trends, many of the precise figures relating to requests included in these tables and graphs are lower than the actual numbers of requests processed by IMs. As well, because data on internal reviews and appeals are not entered systematically, it is likely that actual average response times for initial requests (i.e. the time before an initial response is provided to an applicant) are slightly shorter than the ones reported in this report.

As in previous years, the ICO has attempted to correct any shortcomings or duplication by asking IMs to submit a separate compliance report on their requests and outcomes.

We hope that you will find this statistical report interesting and useful, and we encourage you to contact the ICO if you have any further questions.

JADE is owned and maintained by the Cabinet Office, and the Information Commissioner's Office (ICO) is grateful to the FOI Unit of the Cabinet Office for providing many of the raw data for this report.

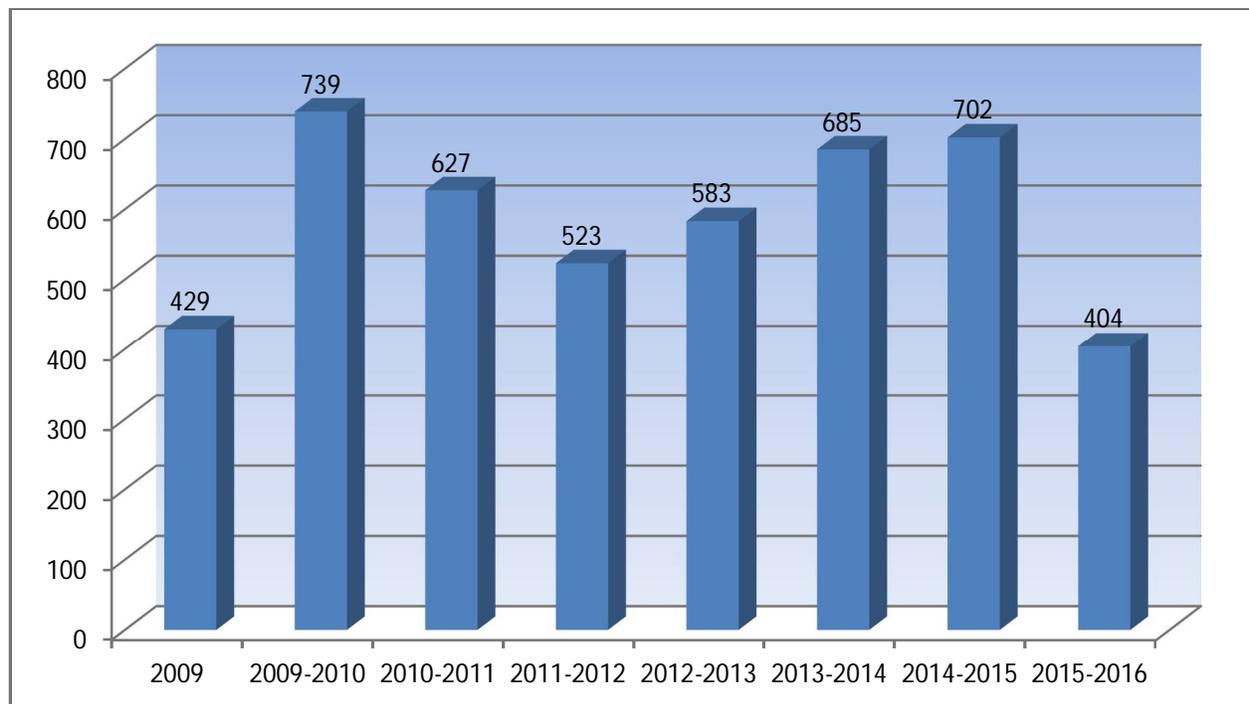
TABLES

Number of FOI requests per year (2009-2016)

Following an initial spike shortly after the FOI Law came into effect in 2009, the number of requests received by Government has varied from approximately 500 to 700. The overall trend was showing a steady rise of the use of FOI by applicants. However, this past year saw a 42% drop in the number of requests being made. This is a 37% drop from the average over the previous years and is obviously significant.

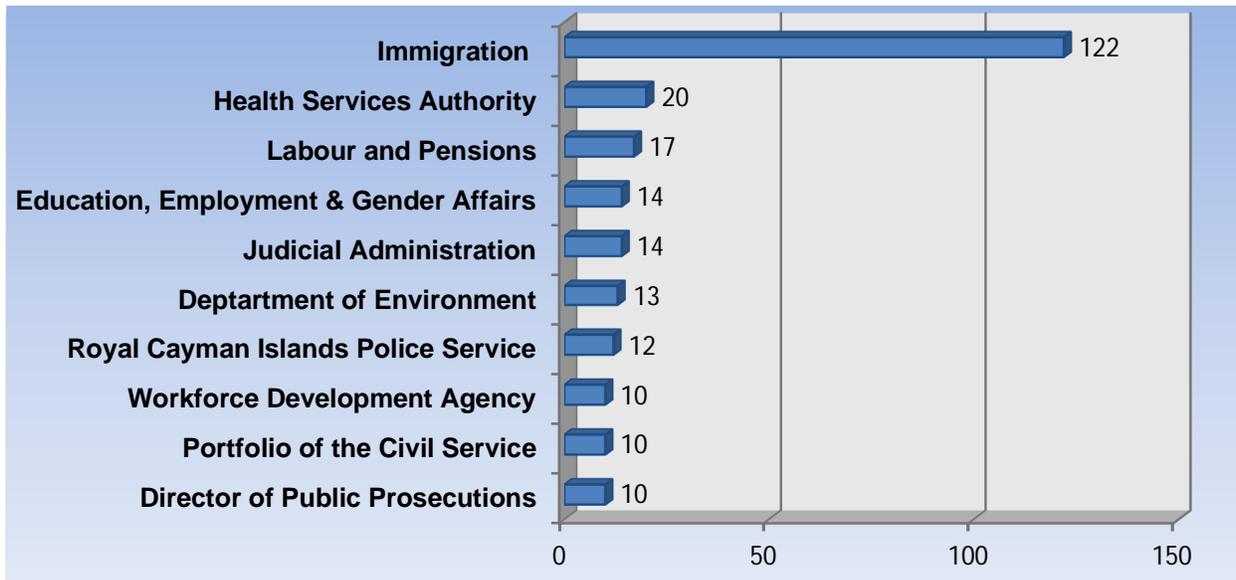
The ICO is not able to explain this drop, which could have both positive and negative reasons and connotations. Potentially, relevant factors may include a greater emphasis on answering requests outside the FOI Law by IMs, increased proactive publication of information on government websites, a stricter use of the central tracking system, and the uncertainties surrounding the creation of the Ombudsman’s Office. However, it is not clear what the impact, if any, of these and other factors on the overall number of requests may have been in the past year.

Since the FOI Law came into effect in 2009 until 30 June 2016 a total of 4,692 requests have been registered in the government’s central tracking system.



Spread of FOI requests across the Public Sector (2015 – 2016)

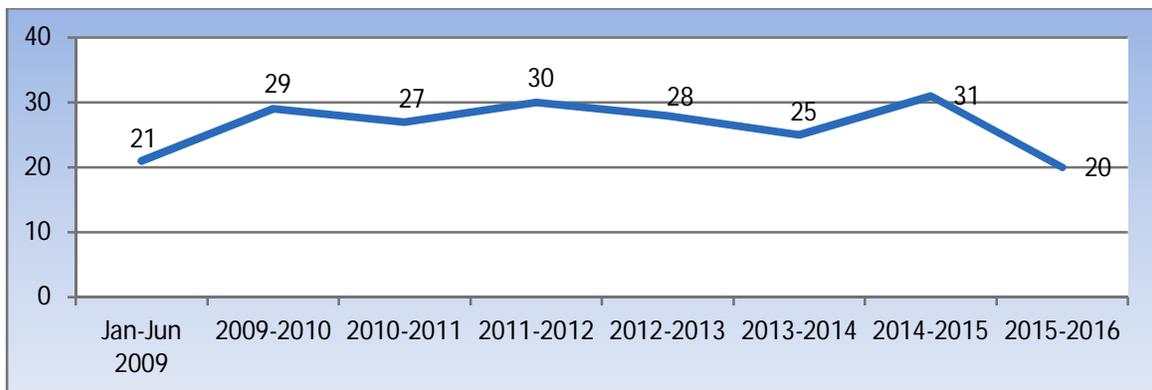
As in previous years, most FOI requests were directed towards those public authorities which hold information that interests applicants most, and whose decisions impact individuals the greatest.



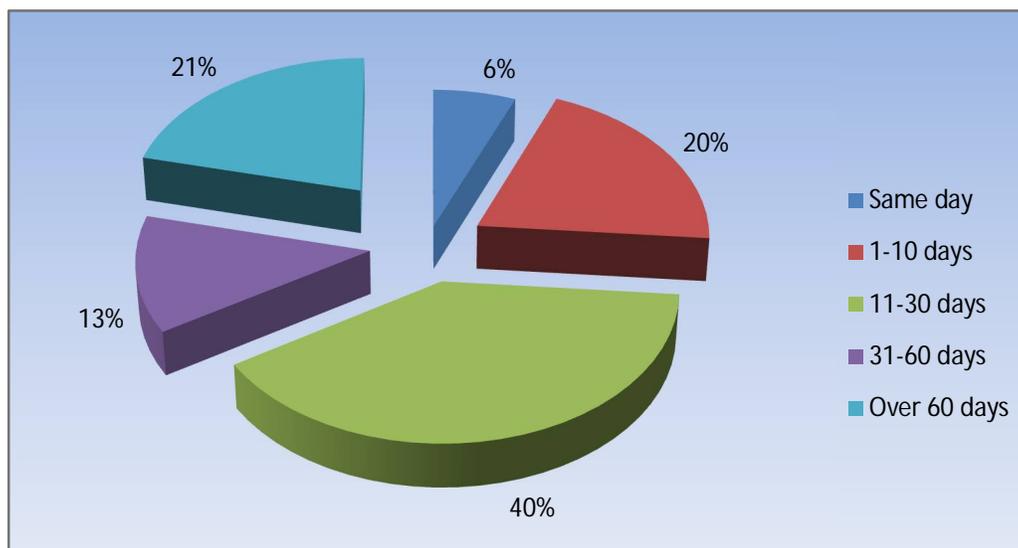
The ten public authorities receiving most FOI requests accounted for a little more than half of all requests in 2015-15 - this proportion has remained fairly consistent since 2009.

Response times

The FOI Law requires that public authorities give their initial response "as soon as practicable" but not later than 30 calendar days after receiving a request. Response times went from the worst median response time to date, during 2014-15, to the best median time ever, 20 days.



As well, only 34% of requests were responded to outside the initial 30 day time limit compared to 51% in 2014-2015. The following table shows the results for 2015-16.



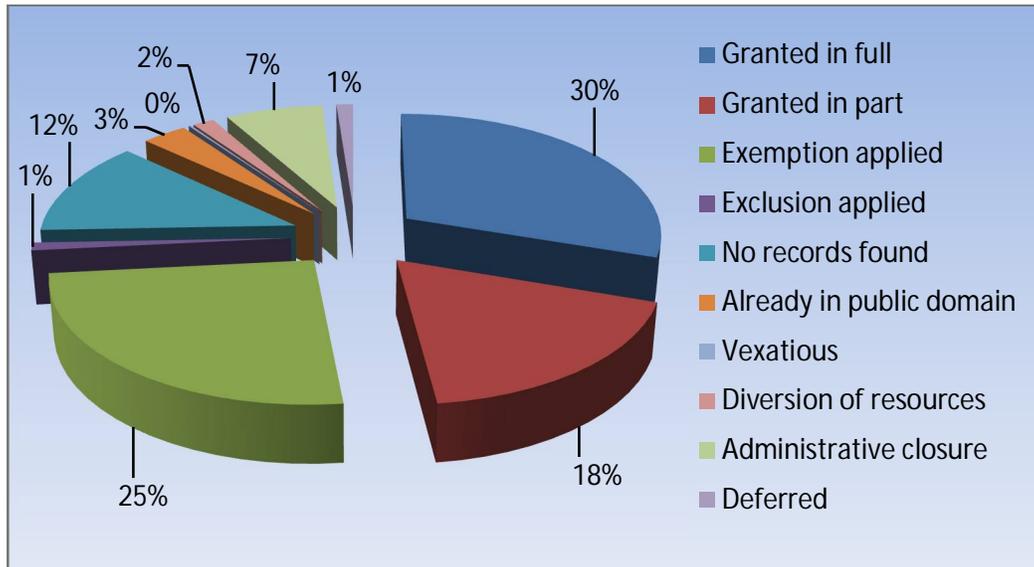
One possible reason for these improvements could be the dramatic drop in FOI requests (see above). This decrease will have meant less FOI-related work for Information Managers thus allowing responses to be given faster. Another reason could be a positive response by civil servants to the Deputy Governor's Administrative Circular 5 of 2015, in which Mr. Manderson expressed his expectation that requests for assistance from IMs be treated as urgent by other civil servants. The DG also emphasized that reducing response times (after last year's poor results) was a priority for him.

In perspective, in 2013-14 public authorities received 281 more requests than this last year, and they still managed to limit the percentage of requests responded to outside of 30 days to 34%, which is the exact same percentage as this past financial year. Also, during the first 6 months of the FOI Law being in effect public authorities received 429 requests and yet they managed a median processing time of 21 days, compared to 20 days in the current report, which relates to 404 requests over a 12-month period.

Nonetheless, the ICO commends the government, and in particular IMs, for the improvements in this area over the last year, and thanks the DG for his positive engagement. We hope to see a continued trend of shorter response times because, as is quoted in many FOI jurisdictions worldwide, "access delayed is access denied".

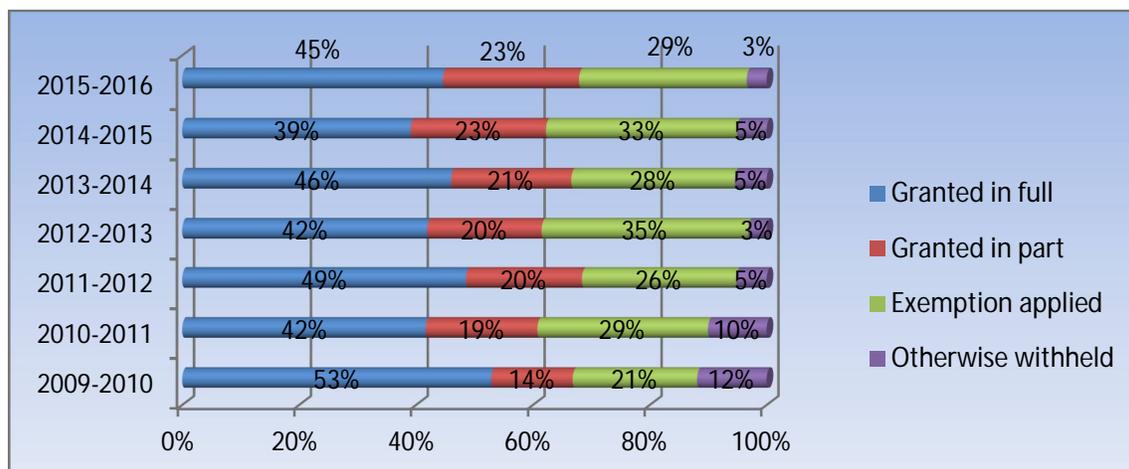
Resolution of FOI requests (2009-2016)

In responding to an FOI request, public authorities can grant access to the requested records in full or in part. Alternatively, they can apply a number of exemptions or other reasons for withholding the records.



Over the years, the proportion of requests granted in full or in part varied between a low of 44% in the first half of 2009, and a high of 55% in 2011-12. As the table above shows, since 2009 about half of requests were either granted in full or in part.

The actual proportion of requests granted in full or in part is larger when certain cases are discounted i.e. where no records were found, where records were already in the public domain, or where the request was a duplicate or withdrawn by the applicant, as shown in the graph below. It is positive to note that the number of requests granted in full in 2015-16 was 6% higher than the all-time low of 39% in the 2014-15 year, and is more in line with the average since 2009.



Breakdown of exemptions claimed (2015-16)

Section	Description	# of times applied
3(1)(c)	Records are outside the FOI Law as per section 50 of the Monetary Authority Law.	1
3(5)(a)(i)	Judicial functions of a court.	1
3(5)(d)	Records that belong to the Government of the United Kingdom of Great Britain and Northern Ireland whether they are created or held in the Cayman Islands or elsewhere.	1
6(4)(a)	Record already open to public pursuant to another enactment as part of a public register or otherwise	1
6(4)(b)	Available for purchase by the public in accordance with administrative procedures established for that purpose.	2
9(c)	Compliance with the request would unreasonably divert the Public Authority's resources.	4
9(d)	Information requested is already in the public domain	9
11(2)(a)	Publication of the record within a particular period is required under the provisions of any enactment, until the expiration of that period	1
11(2)(b)	Access deferred, as record was prepared for presentation to the Legislative Assembly or a particular person or body; and will be deferred until a reasonable period after it is presented	2
11(2)(c)	Access deferred until the cost incurred by the authority in granting access, has been paid by the applicant	2
15 (a)	Record exempt as disclosure would prejudice the security, defence or international relations of the Islands	3
15 (b)	Records exempt as they contain information communicated in confidence to the Government by or on behalf of a foreign government, or international organization.	1
16(a)	Law enforcement - endanger any person's life or safety.	1
16(b)(i)	Records exempt as they relate to law enforcement and disclosure would or could reasonably be expected to affect the conduct of an investigation or prosecution of a breach or possible breach of the law.	3
16(b)(ii)	Records exempt as they relate to law enforcement and disclosure would or could reasonably be expected to affect the trial of any person or adjudication of a particular case.	6
16(c)	Records exempt as they relate to law enforcement and disclosure would or could reasonably be expected to disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, in relation to law enforcement	1

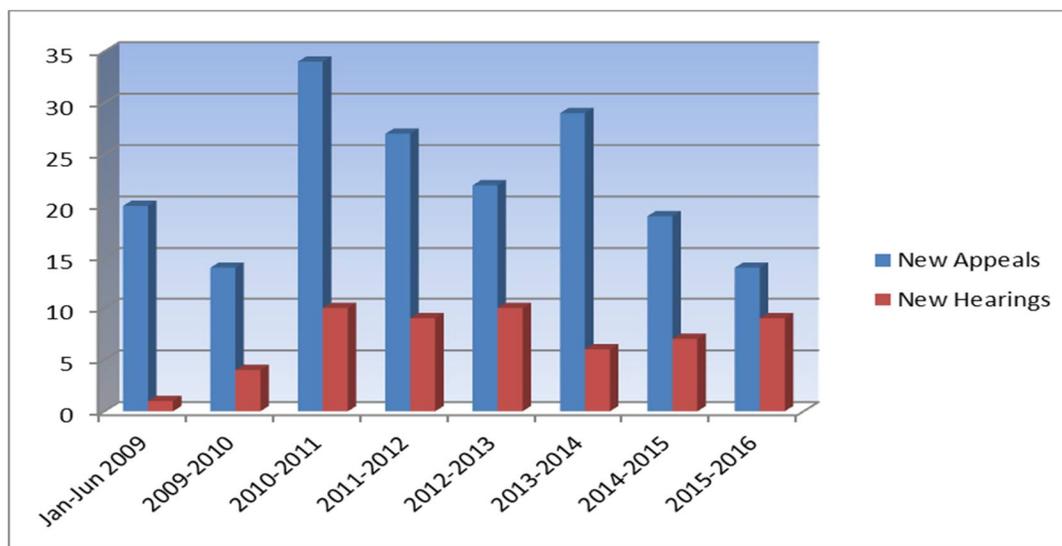
16(d)	Records exempt as they relate to law enforcement and disclosure would or could reasonably be expected to reveal lawful methods or procedures for preventing, detecting investigating or dealing with matters arising out of breaches or evasions of the law, where such revelation would, or could be reasonably likely to, prejudice the effectiveness of those methods or procedures.	1
16(f)	Record exempt as disclosure would jeopardize the security of prison	1
17(a)	Record exempt as it would be privileged from production in legal proceedings on the ground of legal professional privilege	6
17(b)(i)	Record exempt as disclosure would constitute and actionable breach of confidence.	7
18(1)	Substantial adverse effect on the Caymanian economy.	1
19(1)(a)	Record exempt as it contains opinions, advice or recommendations prepared for proceedings of the Cabinet or of a committee thereof	2
19(1)(b)	Record exempt as it would reveal consultations or deliberations arising in the course of proceedings of the Cabinet or of a committee thereof.	1
20(1)(a)	Record exempt as its disclosure would or would be likely to, prejudice the maintenance of the convention of collective responsibility of Ministers	1
20(1)(b)	Record exempt as its disclosure would, or would be likely to, inhibit the free and frank exchange of views for the purpose of deliberation.	2
20(1)(c)	Record exempt as it is legal advice given by or on behalf of the Attorney-General	4
20(1)(d)	Record exempt as its disclosure would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs.	3
21(1)(a)(i)	Record exempt as its disclosure would reveal trade secrets.	1
21(1)(a)(ii)	Record exempt as disclosure would reveal information of commercial value, which value would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.	7
21(1)(b)	Record exempt as it contains information concerning the commercial interest of a person or organization, where disclosure would prejudice those interests.	4
23(1)	Record exempt as disclosure would involve the unreasonable disclosure of personal information, of any person, living or dead.	44
24(b)	Record exempt as disclosure would, or would be likely to endanger the safety of any individual.	2
	TOTAL	146

Appeals and hearings (2009-2016)

An applicant may appeal any perceived infringement of the FOI Law by a public authority to the Information Commissioner, as long as the other means of redress have been exhausted. The most common reason for appealing is the denial of a request for access by government, but appeals may also be raised for timeline violations or other procedural infringements.

In the 2015-16 year, the ICO introduced new procedures for expedited hearings, designed to deal efficiently with procedural issues.¹

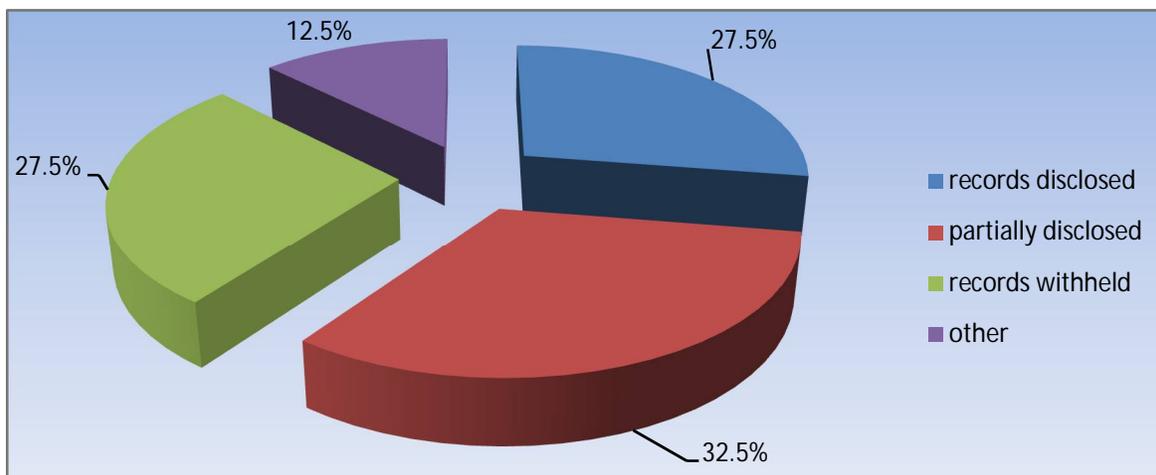
From 2009 to the end of June 2016 the ICO received some 185 appeals, of which 53 progressed to a formal hearing before the Commissioner. Of these, respectively 14 and 9 were initiated in the last financial year. Therefore, while the number of appeals in the last year was below average, the number of hearings was higher than average. In this regard, it is worth noting that appeals may vary significantly in complexity and resource-intensity.



As of 30 June 2016, the Information Commissioner had concluded 53 formal Hearing Decisions, some of which were decided in two parts. Previously the outcomes of these decisions were evenly balanced between disclosure and non-disclosure, while about one in three decisions resulted in partial access being provided. This year those numbers have shifted slightly, with more decisions

¹ See: <http://www.infocomm.ky/images/ICO%20Appeals%20Policy%20and%20Procedures%202016-02-22.pdf>

resulting in partial access being ordered. There were also more decisions unrelated to the release of records, such as decisions regarding fees or whether an adequate search for records was made by the public authority.



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