

FOI ANNUAL REPORT 2018

An Annual Assessment of Freedom of Information Act Requests to Invest Northern Ireland

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1. Introduction

The Freedom of Information Act 2000 (FOI) confers two statutory rights on applicants:

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

The Environmental Information Regulations 2004 (EIR) promotes the release of environmental information by providing a regime similar to the FOI Act. Its aim is to enable increased public participation in environmental decision-making.

These rights are subject to a limited range of exemptions / exceptions.

This annual report provides information about the handling of all 'non-routine' information requests processed under the FOI Act or EIR, received by Invest Northern Ireland (Invest NI) over the period 1 January to 31 December 2018. Section 3 gives a definition of a non-routine request.

This annual report is compiled by Invest NI using statistical information gathered on each request during the reporting period. It is consistent with the reports issued by central and local government. This is to help increase accountability, transparency and performance of all bodies covered by the legislation.

The report provides a summary of the performance of Invest NI in its handling of requests made under the FOI Act, including those handled under EIR. Previous annual reports are available on the Invest NI website and can be found at the link below:

<http://www.investni.com/about-us/media-centre/publications-and-reports.html?FirstLetter=F>

2. Executive Summary

This report sets out Invest NI's performance during calendar year 2018 in handling requests for information under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

Key findings include:

- Invest Northern Ireland received a total number of 70 non-routine requests handled under the FOI Act and the EIRs.
- 51% of all requests received were submitted by members of the public, 19% were submitted by businesses, the media submitted 14% of requests, Public Representatives 7%, Solicitors 4% of requests and Campaigning Groups 4%.
- 100% of requests received a substantive response within the time frame permitted by the legislation. The average time for response was 12 days.
- 52% of “resolvable” requests (those where it was possible to give a substantive decision on whether to release the information being sought) were disclosed in full, while 11% resulted in the information requested being fully withheld.
- The most commonly used exemptions were applied to personal information (Section 40 / Regulation 13) and information relating to Commercial Interests (Section 43 / Regulation 12(5) (e)).
- A total of 8 internal reviews were requested on the grounds that some or all of the requested information was withheld or not held.
- The original decision was upheld in full for 50% of internal review cases and the complaint was upheld in part in 50% of cases.
- During this reporting period there were no appeals made to the Information Commissioners Office, of which Invest NI has been made aware, relating to the refusal of information requested. No formal decision notices have been issued to date.

3. Definitions

3.1 Defining the scope of Freedom of Information monitoring

Section 1 of the Freedom of Information Act 2000 states that (subject to certain exemptions):

'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 exceptions):

'A public authority that holds environmental information shall make it available on request.'

The above provisions apply to all relevant requests for information made to public authorities, no matter how routine and straightforward they may be. Invest NI supplies large amounts of information, both on request and proactively, as an established and routine part of its business. This includes information released in the form of leaflets, correspondence exchanges, reports and other published material, and through websites and its publication scheme.

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 Freedom of Information monitoring returns. The statistics in this report therefore relate only to the 'non-routine' information requests that Invest NI has received.

Essentially, this means that statistics recorded only include 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. The Information Governance Team was informed of the request and logged it in their case management system.

3.2 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 EIRs, it includes requests made in any form or context, including oral requests; **and**
2. (i) Which results in the release of information (in any media); **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 Invest NI 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 Invest NI is relying on the provisions of section 14 of the FOI Act (vexatious or repeated requests); or
- (v) Where a search is made for information sought in the request and it is found that none is held.

4. Responsibilities

4.1 Organisational Responsibilities

As the regional business development agency, Invest NI's role is to grow the local economy. We do this by helping new and existing businesses to compete internationally, and by attracting new investment to Northern Ireland.

We are part of the Department for the Economy and provide strong government support for business by effectively delivering the Government's economic development strategies.

Invest NI is designated as a separate public authority under the FOI Act. This means that it is independently responsible for handling requests for information.

As required by the FOI Act, Invest NI has produced a publication scheme. This is the vehicle that a public authority 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. Invest NI's publication scheme can be found on its website. This can be accessed via the following web addresses / links:

<http://www.investni.com/about-us/our-approach/freedom-of-information.html>

Invest NI also proactively releases information through the Open Data Portal for Northern Ireland:

<https://www.opendatani.gov.uk/dataset/open-data-up-to-17-18-csv-file-uploaded-csv-13-to-2016-17>

The Chief Executive is the designated 'qualified person' for the purposes of Section 36 of the FOI Act.

Responsibility for Freedom of Information compliance rests with the Finance and Operations Group, namely the Information Governance Team within the Internal Operations Division.

4.2 Information Governance Team Responsibilities

The Information Governance Team has responsibility for the provision of advice and guidance to Invest NI in relation to access to information legislation (the FOI Act, the EIR, the UK Data Protection Act 2018 (DPA) and the EU General Data Protection Regulation (GDPR)).

Its main functions in relation to access to information are:

- Overseeing, coordinating, advising and supporting Invest NI in their compliance with access to information legislation.
- Allocating requests received centrally to the relevant Division within Invest NI to prepare a response.

- Issuing guidance and encouraging best practice in relation to request handling.
- Managing a FOI request tracking and monitoring system on behalf of the organisation.
- Overseeing compliance with the ICO model publication scheme contained on Invest NI's website.
- Publishing statistics on the performance of Invest NI in handling FOI requests.

5. Invest Northern Ireland Performance

5.1 Volume of Requests

Invest NI received a total of 70 requests for information under the FOI and EIR legislation during 2018.

Figure 1 below details the annual total number of requests received by Invest Northern Ireland in the last five previous years.

Figure 1: Total Number of Requests Received 2014-2018

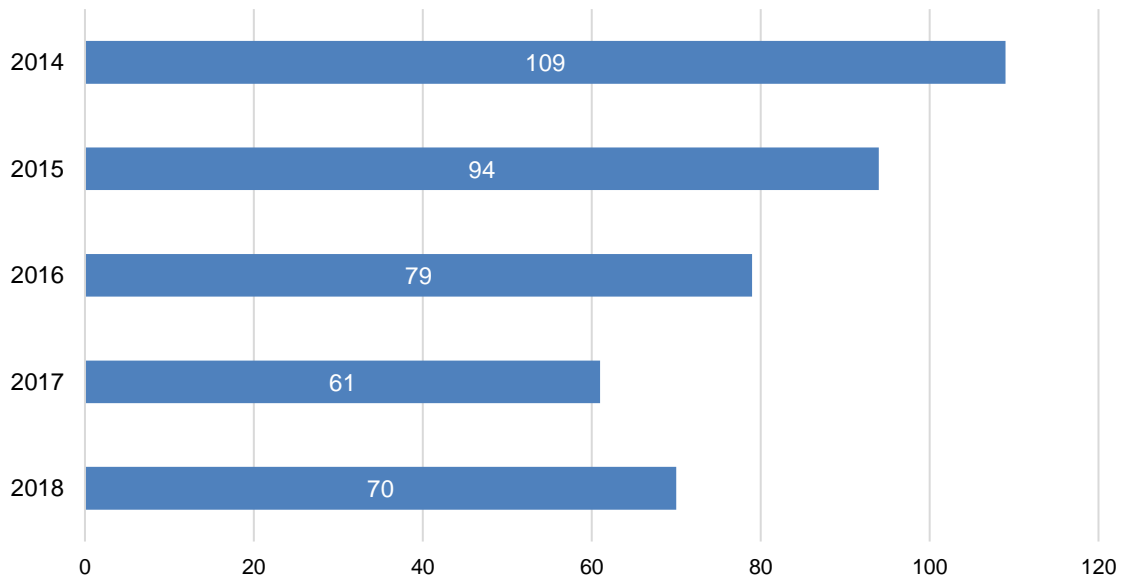
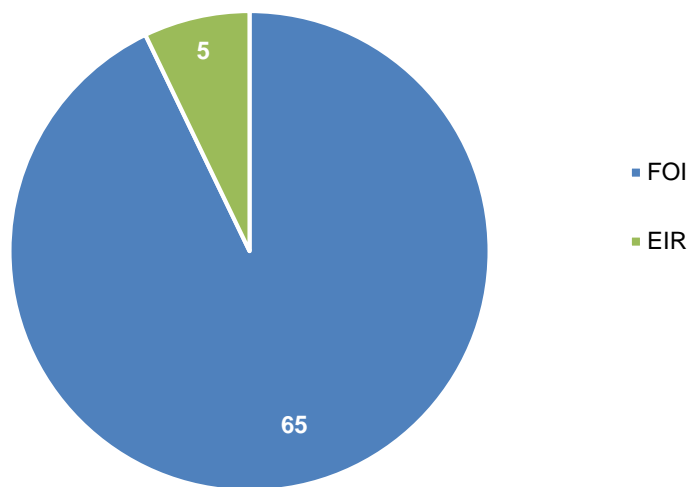


Figure 2 below shows the breakdown by regime under which the requests were handled.

Figure 2: Volume of Requests by Regime



65 of the requests for information were dealt with under the Freedom of Information legislation (93%). There were 5 requests handled under the Environmental Information Regulations.

5.2 Category of Requester

Invest NI assigns one of the following categories to each request: Business, Campaigning Group, Media, Member of the Public, Researcher, Public Representative, or Solicitor.

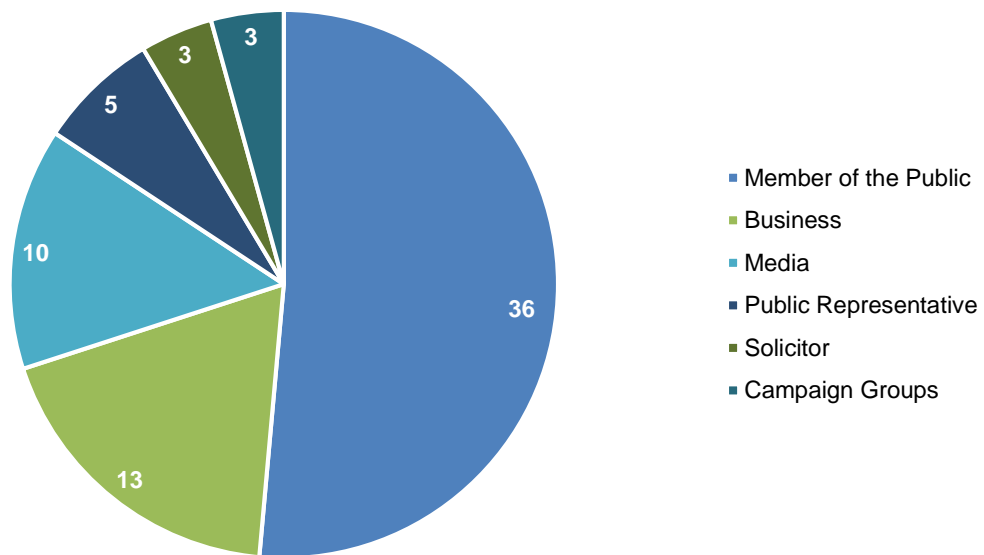
However, it is sometimes not possible to determine accurately the category of requester for every request, though these instances are rare. Using the information that has been provided, conclusions have been drawn regarding the source of the requests submitted.

As Figure 3 below shows, the largest number of requests to Invest NI continues to be received from Members of the Public (51%).

The second largest number of requests was received from Businesses (19%).

The remaining requests came from the Media (14%), Public Representative (7%), Solicitor (4%) and Campaign Groups (4%).

Figure 3: Category of Requester



High profile requests – those received from Campaigning Groups and the Media, - together accounted for 19% of all requests received in 2018.

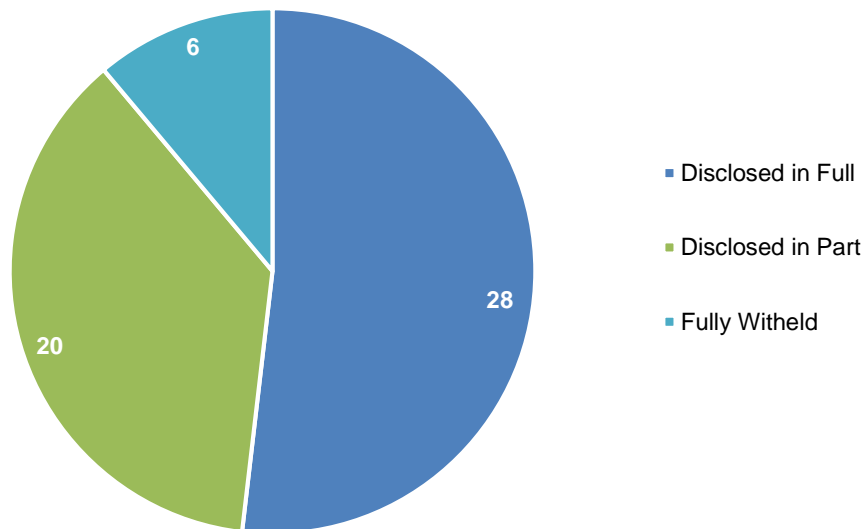
5.3 Outcome of Requests

Of the 70 requests for information processed in 2018 all were completed

Of the 70 requests processed, 2 were withdrawn, 14 sought information that was 'not held' by Invest NI. The remaining 54 requests were classed as 'resolvable', in that it was possible to give a substantive decision on whether to disclose the information sought.

As Figure 4 shows, in 52% of resolvable requests the information was disclosed in full and in 37% of cases the information was partially disclosed. In 2018, 11% of requests for information resulted in the information being fully withheld.

Figure 4: Outcome of Requests



The annual disclosure trend for Invest Northern Ireland over the last five years is shown in Figure 5 below:

Figure 5: Annual Disclosure Trend

	2014	2015	2016	2017	2018
Disclosed in Full	43%	43%	51%	53%	52%
Partially Disclosed	38%	46%	42%	38%	37%
Fully Withheld	19%	11%	7%	9%	11%

In 2018, 89% of resolvable requests resulted in all or some of the requested information being released.

5.4 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' (£450);
- 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.

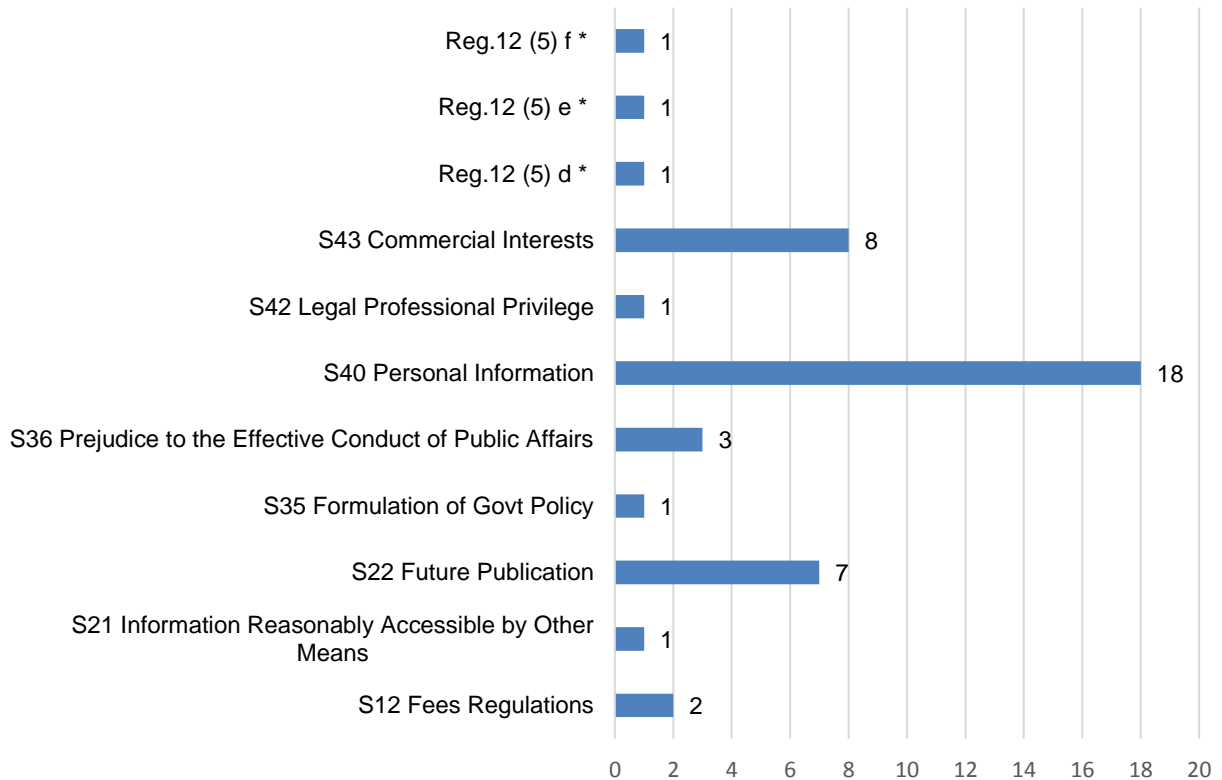
Similarly, the provisions of Part 3 of the EIR provide that a public authority may withhold environmental information if one or more ‘exceptions’ apply which are all subject to a public interest test. The EIR states explicitly that ‘a public authority shall apply a presumption in favour of disclosure’.

One or more of the exemptions/exceptions were applied to 48% of the total number of resolvable requests.

The most commonly applied exemption, as Figure 6 below shows, was in relation to personal information which was used in 33% of resolvable requests, with FOI Section 40(2) being applied to 18 requests.

This was followed by FOI Section 43 (commercial detriment) which was used in 15% of resolvable requests with FOI Section 22 (information intended for future publication) being applied to 8 requests.

Figure 6: Use of Exemptions and Exceptions



- *Reg.12 (5) (f) – Interests of the Person who Provided the Information
- *Reg.12 (5) (e) - Confidentiality of Commercial or Industrial Information, when Protected by Law to Cover Legitimate Economic Interest
- *Reg.12 (5) (d) – Confidentiality of Public Authority Proceedings when Covered by Law

2 requests were initially refused as the cost to provide the information would have exceeded the ‘appropriate limit’.

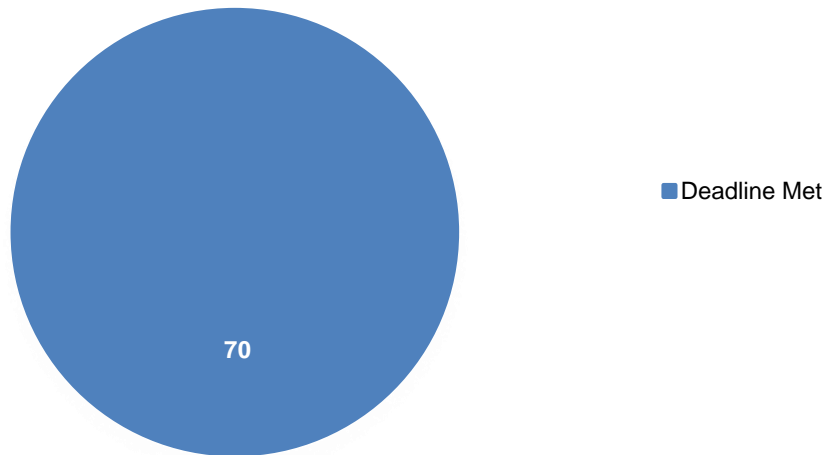
A total of 44 exemptions/exceptions were applied to 26 requests.

5.5 Timeliness of Responses

The FOI Act & EIR require public authorities to respond to 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 or dealing with complex and voluminous requests under EIR.

As Figure 7 below shows, in 2018, 100% of requests received by Invest NI were answered within the statutory timeframe of 20 working days. The average time for response was 12 days.

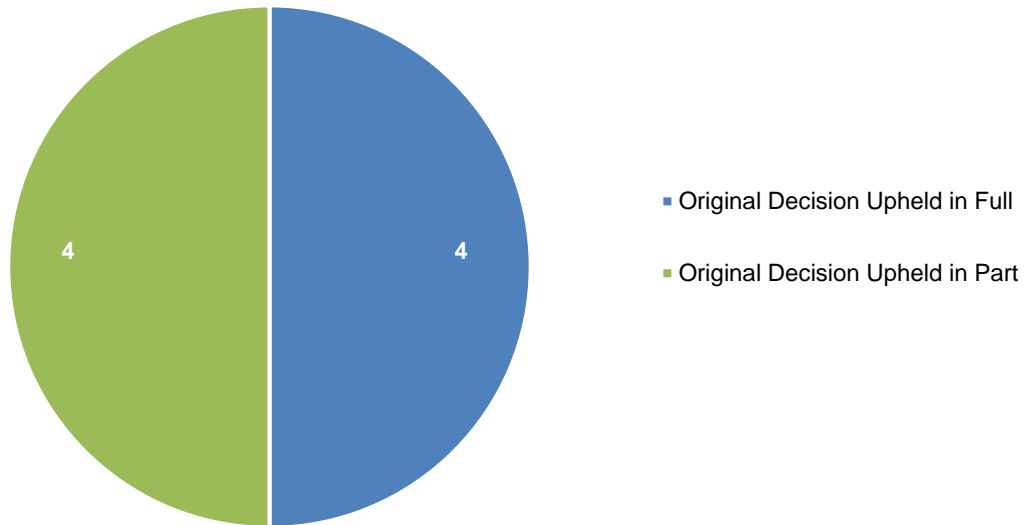
Figure 7: Timeliness of Responses



5.6 Internal Reviews

Requesters can ask Invest NI for an internal review if they are not content with its initial decision to withhold requested information. This review involves a fresh examination of the initial decision.

Figure 8: Internal Review Outcomes



A total of 8 internal reviews were requested by applicants on the grounds that some, or all, of the information requested was withheld. This represents a total of 15% of all resolvable requests where some or all of the information was withheld.

The outcome is known in all cases as Figure 8 above shows, with 50% upholding the original decision and 50% overturning the original decision in part.

Figure 9 below shows the five-year (2014 – 2018) trend.

Figure 9: Comparison of Internal Reviews per Number of Resolvable Requests

Year	No. of Internal Reviews	No. of Resolvable Requests	Internal Reviews as a % of Resolvable Requests
2014	10	92	11%
2015	10	89	11%
2016	6	69	15%
2017	4	58	7%
2018	8	54	15%

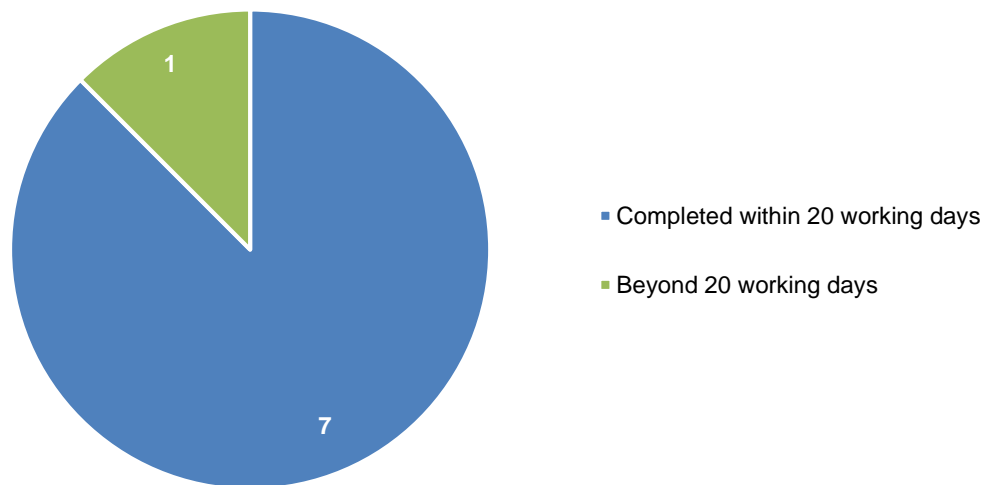
Figure 10 below shows the trend in outcomes:

Figure 10: Internal Review Outcomes 2014-2018

Year	OD Upheld	OD Partially Upheld	OD Overturned
2014	9	0	1
2015	7	3	0
2016	4	2	0
2017	1	3	0
2018	4	4	0

The FOI Code of Practice issued under section 45 of the FOI Act states that internal review procedures should ‘encourage a prompt determination of the complaint’. As Figure 11 shows 7 of the 8 reviews were completed within 20 working days. One review was granted a 14 day extension due to exceptional circumstances; it was completed within 29 days. The average time to complete an internal review was 13 days.

Figure 11: Timeliness of Internal Reviews



5.7 Appeals to the Information Commissioner

If a requester has obtained an internal review of a response by Invest Northern Ireland 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 (ICO).

The ICO is the independent regulator of public authorities in their handling of information requests. Upon receipt of a complaint, it may investigate and may then issue a Decision Notice. A Decision Notice is the Commissioner's final view on whether or not the public authority has complied with the FOI Act or EIR, and on what action it needs to take.

Invest NI had not been contacted regarding any appeals to the Information Commissioner's Office during this reporting period.

5.8 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 the EIRs.

There were no appeals involving Invest Northern Ireland in 2018.

6. Invest Northern Irelands Performance Tables

Within the following tables please note:

A single refusal can encompass more than one specific exemption/exception

Table 1: Number of requests for information received

Table 2: Category of requests received

Table 3: Timeliness of responses to requests

Table 4: Outcome of requests

Table 5: FOI exemptions & EIR exceptions applied

Table 6: Outcomes of Internal reviews

Table 7: Known Appeals to Information Commissioner's Office

Table 1: Number of requests for information received

Quarter	1	2	3	4	Annual TOTAL
Total number of requests received	12	20	20	18	70
Processed (includes withdrawn requests)	12	17	21	20	70
On hold or lapsed	0	0	0	0	0

Table 2: Category of requests received

Quarter	1	2	3	4	Annual TOTAL
Category					
Business	2	1	6	4	13
Campaigning Group	0	0	0	3	3
Media	4	2	1	3	10
Member of the Public	4	14	13	5	36
Public Representative	1	1	0	3	5
Solicitor	1	2	0	0	3

Table 3: Timeliness of responses to requests

Quarter	1	2	3	4	Annual TOTAL
Total received (excluding on hold or lapsed and withdrawn)	12	18	20	18	68
Deadline met	12	18	20	18	68
Permitted extension	0	0	0	0	0
Late response	0	0	0	0	0

Table 4: Outcome of requests

Quarter	1	2	3	4	Annual TOTAL
Total number of requests received	12	20	20	18	70
On hold or lapsed	0	0	0	0	0
Withdrawn	0	0	2	0	2
Total number of requests (excluding on hold or lapsed and withdrawn)	12	20	18	18	68
Number where information not held	1	8	4	1	14
Total resolvable requests	11	12	14	17	54
Information disclosed in full	6	4	11	7	28
Partially disclosed	4	5	2	9	20
Fully withheld	1	0	2	3	6

Table 5: FOI exemptions & EIR exceptions applied

Quarter	1	2	3	4	Annual TOTAL
Freedom of Information Exemptions/ Environmental Information Exceptions					
The number of times each of the exemptions in sections 12 to 44 or the exceptions in Regulation 12 were cited as the reason for refusal*					
Reg.12 (5) (d) – Confidentiality of Public Authority Proceedings when Covered by Law	0	0	0	1	1
Reg.12 (5) (e) - Confidentiality of Commercial or Industrial Information, when Protected by Law to Cover Legitimate Economic Interest	0	0	1	0	1
Reg.12 (5) (f) – Interests of the Person Who Provided the Information	0	0	1	0	1
s12 (1) Fees Regulations (exceeds Appropriate Limit)	1	0	0	1	2
s22 (1) Intended for future publication	2	3	0	2	7
S35 (1) (a) Government Policy	1	0	0	0	1
S36 (2) Prejudice to the Effective Conduct of Public Affairs	1	1	0	1	3
s40 (2) Personal Information	4	4	3	7	18
S42 (1) Legal Advice	0	1	0	0	1
s43 (2) Commercial Interests	2	1	0	5	8

* It should be noted that a single refusal can encompass more than one specific exemption / exception

Table 6: Outcomes of Internal reviews

Quarter	1	2	3	4	Annual TOTAL
Internal Reviews					
Total number of reviews	1	1	1	5	8
Number where outcome known	1	1	1	5	8
Original decision upheld in full	1	0	1	2	4
Original decision upheld in part	0	1	0	3	4
Original decision overturned	0	0	0	0	0

Table 7: Known Appeals to Information Commissioner's Office

Quarter	1	2	3	4	Annual TOTAL
Total number of known appeals (calendar year to date)	0	0	0	0	0
Number where outcome known	0	0	0	0	0
Original decision upheld in full	0	0	0	0	0
Original decision upheld in part	0	0	0	0	0
Complaint upheld	0	0	0	0	0
Informal resolution	0	0	0	0	0



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