

Information Commissioner's Office

Information Commissioner's Annual Report Summary 2011/12 In the Rights space – at the right time

ico.

Information Commissioner's Office

Our mission

The ICO's mission is to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

Our vision

To be recognised by our stakeholders as the authoritative arbiter of information rights, delivering high-quality, relevant and timely outcomes, responsive and outward-looking in our approach, and with committed and high performing staff – a model of good regulation, and a great place to work and develop.

Your information rights

The **Freedom of Information Act 2000** gives people a general right of access to information held by most public authorities. Aimed at promoting a culture of openness and accountability across the public sector, it enables a better understanding of how public authorities carry out their duties, why they make the decisions they do and how they spend public money.

The **Environmental Information Regulations 2004** provide an additional means of access to environmental information. The Regulations cover more organisations than the Freedom of Information Act, including some private sector bodies, and have fewer exceptions.

The **Data Protection Act 1998** gives citizens important rights including the right to know what information is held about them and the right to correct information that is wrong. The Data Protection Act helps to protect the interests of individuals by obliging organisations to manage the personal information they hold in an appropriate way.

The **Privacy and Electronic Communications Regulations 2003** support the Data Protection Act by regulating the use of electronic communications for the purpose of unsolicited marketing to individuals and organisations, including the use of cookies.

The **Infrastructure for Spatial Information in the European Community Regulations 2009** gives the Information Commissioner enforcement powers, in relation to the pro-active provision by public authorities, of geographical or location based information.

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Alan Turing
'Founder of computer science' in Enigma Code

Alan Turing 1912-1954

Based as we are in Wilmslow, near Manchester, the ICO honours the great Alan Turing whose centenary year this is. The Enigma Code breaker and "founder of computer science" lived in the town and taught at Manchester University. The story of Turing's life and work resonates with the ICO's contemporary concerns – computers and data; information and secrecy; technology and innovation; citizens' rights and privacy. The ICO is marking the Turing Year with a design competition for schools, to make the connection between Turing's work and the ICO, and in September, the first ICO Alan Turing Lecture.

Information Commissioner's foreword

The Information Commissioner's Office (ICO), it seems, has seldom been out of the headlines over the past year. The Right to Privacy and the Right to Know are of increasing practical concern to consumers and citizens. At the same time, government and business, assisted by technology, are forever pushing the boundaries of the possible and the permissible. So the business of holding both commercial interests at bay and politicians to account is high up both the political and the news agenda. We call this 'upholding information rights in the public interest'. It's what the ICO does. In the Rights space – at the right time.

A few examples. The Information Commissioner's ruling, under the Freedom of Information Act, that the Department of Health should, in the public interest, publish its 'transition risk register' setting out how the changes to NHS structures were being managed, was strongly resisted by the Government. The ICO's approach to enforcing the 'consent for cookies' provisions of the E-Privacy Directive provoked howls of anguish from internet businesses. The Leveson Inquiry put the spotlight on what the ICO had and had not done about Fleet Street's often cavalier approach to data protection.

The ICO can expect to remain in the news as we engage with two further Government initiatives that impact on information rights – the Communications Capability Development Programme and the drive for Open Data. We are working to secure necessary limitations and safeguards for personal information and we want to enable appropriate data sharing and encourage openness provided it complies with the law.

Aside from all the politics, the NHS risk register decision showed the Freedom of Information Act working as it should. The Tribunal supported the Commissioner's Decision Notice (while overturning a second and parallel decision about the Department's strategic risk register.) Together, the Commissioner and the Tribunal have a well-established record of applying the exemptions set out in the Act so as to respect the necessary 'safe space' for the development of policy. Much of the criticism of the current law that the episode provoked has ignored the public interest exemptions already in the Act. It was regrettable that, in the end, the Ministerial veto was deployed to block publication. But the existence of the veto is part of the current law.

The revised Privacy and Electronic Communications Regulations (PECR) came into force in May 2011. As the regulator, we gave websites a year's lead-in to adjust to the new 'consent for cookies' rule. We issued helpful guidance and will take appropriate and proportionate enforcement action in the coming months where businesses cannot demonstrate that they are taking reasonable steps to comply with what are, admittedly, challenging provisions. At the same time, the ICO is on the trail of some of the rogue operators whose unsolicited texts are a clear breach of the updated PECR rules.

On Leveson, the ICO has received precious little credit for having been the first to blow the whistle on Fleet Street practices in our 2006 publications 'What Price Privacy?' and 'What Price Privacy Now?'. We are still waiting for the stronger deterrent penalty to the section 55 offence of 'blagging' personal information from unsuspecting data controllers that was the key recommendation of those reports of six years ago. Meanwhile, we have been facilitating 'fast track' subject access from the so-called Motorman Files for any concerned citizen who wants to know whether or not journalists had,

for whatever reason, been commissioning potentially unlawful breaches of their privacy.

No cases more than a year old and the average much less and falling. More Decision Notices than ever before. More enforcement action. This against the background of more cases received – and fewer resources to devote to them. As the complaints backlogs shrink and the average age of the caseload reduces the Commissioner has less to say – except to thank the ICO's staff, more than 300 of them, who have got the job done, improved productivity, and delivered a first class service to our customers and stakeholders, coping all the time with increasing volumes of business – against a background of change and uncertainty, and in the second year of a wage freeze.

Major developments of ongoing significance for the ICO are the proposals from the European Commission for a revision of the legal framework for data protection in the EU and the post-legislative scrutiny of the Freedom of Information Act by the House of Commons Justice Committee. We are closely engaged in both processes. Our aim is to safeguard citizens' complementary rights to information and to privacy. We can leave the campaigning to others, but we shall contribute our detailed and increasingly expert perspective to ensure that the framework that emerges delivers real, and not just theoretical, benefits for consumers and citizens.

Following public consultation, we published our Information Rights Strategy, recognising the need for joined up approaches to the joined up world of information rights. We recognise that freedom of information can intrude on privacy and that data protection can limit freedom of information.

It is important to look at things in the round. It would be well for Parliament to adopt a similar approach and avoid piecemeal amendment to the twin pillars of information rights – the separate Data Protection and Freedom of Information Acts. The same integrated information rights perspective is needed when considering how to fund the ICO for the future.

During the year, we took a further look at the way the ICO is organised. The Next Steps project aimed to address the need to achieve 'better for less', primarily in our support functions. We are currently engaged in re-procurement of our IT services and we are looking to find significant savings in third-party procurement generally. We are also working towards a more modern and user-friendly online notification system, to be followed by an upgrade of our finance systems. We were delighted to be able to recruit a Director of Corporate Services to a streamlined senior management team, providing focus and impetus to the efficient delivery of all support functions.

Three years ago, we developed a vision for an ICO that was fit for the challenges of the future. We said 'By 2012, we will be recognised by our stakeholders as the authoritative arbiter of information rights ...' that was our Olympic challenge – and I'm glad to say that the findings of our stakeholder research suggest that the ICO has not disappointed. But even our greatest fans want us to do better. Improvements to the ICO website will be a priority in the year ahead.

The reorganisation of our senior management team was prompted, at least in part, by the departure of two colleagues who had played key roles in the modernisation of the ICO. Director of Corporate Affairs Susan Fox, who has left to work for the Ombudsman Service, was responsible, among many

other achievements, for the ICO's smart new corporate look. Director of Organisational Development Vicky Blainey professionalised our HR function and also led the building project which established the bulk of our operation on a single site, with flexible, open plan accommodation.

I am grateful to all the Executive Team for their hard work and commitment over a challenging year. Our non-executive Management Board colleagues have also contributed greatly to the task of setting the strategy, assessing risk, and monitoring performance.

The next 42 pages tell the story of an organisation that, I believe, is performing effectively – ready to do more and better in the year ahead.

Christopher Graham

Christopher Graham
Information Commissioner



Our year at a glance

April 2011

New E-Privacy Directive (cookies) regulations published.
.....
Information Commissioner, Christopher Graham gives evidence to the Home Affairs Select Committee about Operation Motorman.

We launch our 'Data sharing code of practice' at the House of Commons.
.....
We issue a monetary penalty against law firm ACS Law, for failing to keep sensitive personal information relating to around 6,000 people secure.

We host data sharing events in Cardiff, Belfast and Glasgow for organisations from across the public, charity and voluntary sectors to discuss the importance of effective data sharing.
.....
We order the disclosure of the names of 24 public sector workers who earn more than £150,000.

We issue a reminder to the health service to keep patients' personal information secure following enforcement action taken against five health organisations in breach of the Data Protection Act.

May 2011

We publish advice on complying with EU law on the use of cookies - businesses running websites aimed at UK consumers are given 12 months to 'get their houses in order'.
.....

June 2011

We prosecute two former T-Mobile employees who illegally stole and sold customer data. They are ordered to pay a total of £73,700 in fines and confiscation costs by Chester Crown Court.
.....

July 2011

We welcome commitments from the government aimed at opening up public services and improving transparency in the health, education, criminal justice and transport sectors.
.....

August 2011

We remind students about their data protection right to access information about their exam marks.
.....
We launch a research project to explore ways of embedding information rights into the National Curriculum in the UK.

September 2011

We publish guidance on freedom of information legislation and research information, aimed specifically at public authorities in the higher education sector.

October 2011

We launch a project teaming up with students at 15 universities across the UK, aimed at raising young people’s awareness of information rights and promoting the ICO’s work on campus.

.....
We host a conference in Northern Ireland to discuss the business case for data protection. Over 100 delegates from all sectors attended.

November 2011

Oliver Letwin MP signs an undertaking, committing to ensuring that he keeps personal information secure or face formal enforcement action by the ICO.

.....
We launch the ICO blog.

.....
We launch a consultation – ‘Tell me more’ – asking the public to offer their views about what information public authorities should proactively release.

December 2011

We successfully prosecute an estate agent under the Data Protection Act for failing to notify with the ICO as a data controller.

We issue new guidance making it clear that information concerning official business held in private email accounts is subject to the Freedom of Information Act.

.....
We submit a business case to the Ministry of Justice to extend our assessment notice powers to secure consensual audits in the NHS and local government sector.

.....
We successfully prosecute a health sector employee who unlawfully obtained her sister-in-law’s medical records in order to find out about the medication she was taking – an offence under section 55 of the Data Protection Act.

We launch our Information Rights strategy.

January 2012

We welcome our new powers, enabling the ICO to impose monetary penalties of up to £500,000 for serious breaches of the Privacy and Electronic Communications Regulations.

.....
We launch our Plain English Guide to Freedom of Information.

.....
We mark European Data Protection Day launching a new ‘Personal information toolkit’ and promoting the ‘i in online’ project – reaching 6,000 young people across the UK.

We successfully prosecute a former health worker for unlawfully obtaining patient information by accessing the medical records of five members of her ex-husband's family in order to obtain their new telephone numbers.
.....

We issue a response to the European Commission's proposals for a new data protection legislative framework.
.....

Information Commissioner, Christopher Graham gives evidence to the Leveson Inquiry.
.....

We issue our first monetary penalty against an organisation in Scotland, and our largest to date (£140,000), to Midlothian Council for disclosing sensitive personal data relating to children and their carers to the wrong recipients on five separate occasions.
.....

Information Commissioner, Christopher Graham is elected Vice Chair of the Article 29 Working Party.
.....

February 2012

Working with the Serious Organised Crime Agency (SOCA), we secure convictions under the Fraud Act sentencing four private investigators for blagging.
.....

We present a Ministerial veto report to Parliament, setting out the Information Commissioner's response to Attorney General Dominic Grieve's freedom of information veto on Cabinet Committee minutes relating to devolution to Scotland, Wales and the English Regions.

March 2012

We host the Data Protection Officer conference in Manchester, with nearly 500 delegates attending the event.
.....

We issue a decision confirming that an email sent by the Secretary of State for Education on a private email account is subject to the Freedom of Information Act.
.....

We host an event in London on the revised EU data protection directive, attended by 145 delegates representing organisations across all sectors as well as other regulators, government representatives and MEPs.
.....

We give evidence to the Justice Committee as part of its post-legislative scrutiny of the Freedom of Information Act.

Providing advice, resolving complaints and taking action

Handling complaints and encouraging good practice

We achieved our challenging target of closing 90% of our complaints cases within six months of receipt. The figure for data protection complaints was 95% and for freedom of information it was 83%.

Data protection complaint casework

Complaint casework received

2010/11	13,034
2011/12	12,985

0.3%
decrease compared
to 2010/11

Complaint casework finished

2010/11

14,276

2011/12

12,725

10.8%

decrease compared
to 2010/11

Complaint casework caseload

2,627

Caseload at 1 April 2011

2,396

Caseload at 31 March 2012

Privacy and electronic communication complaint casework

Complaint casework received



43.2%
increase compared
to 2010/11

Complaint casework finished



35.6%
increase compared
to 2010/11

Complaint casework caseload

376 Caseload at 1 April 2011

223 Caseload at 31 March 2012

Freedom of information and environmental information complaint casework

Complaint casework received

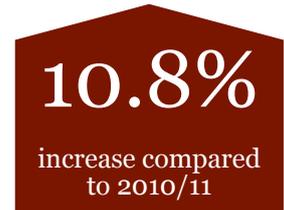
2010/11 4,298

2011/12 4,633

7.7%

increase compared
to 2010/11

Complaint casework finished



Complaint casework caseload



Freedom of information complaint casework

Received in year

4,633

Finished in year

4,763

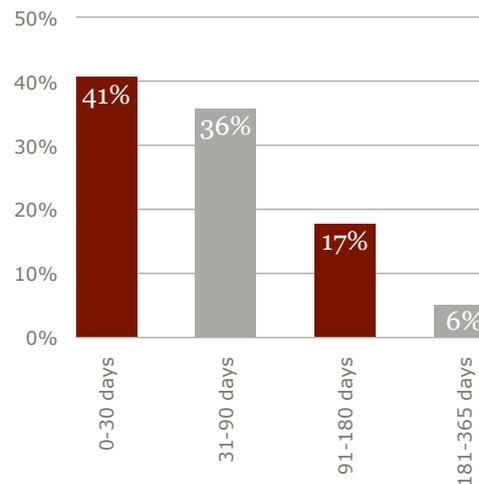
1,029

Caseload at 1 April 2011

958

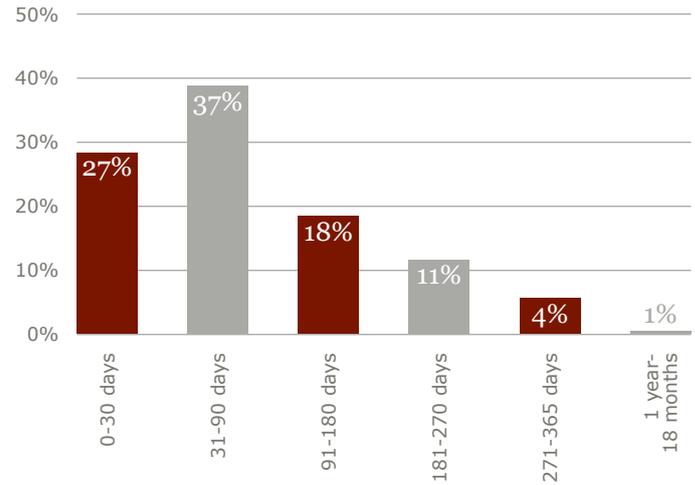
Caseload at 31 March 2012

Age distribution of complaint caseload



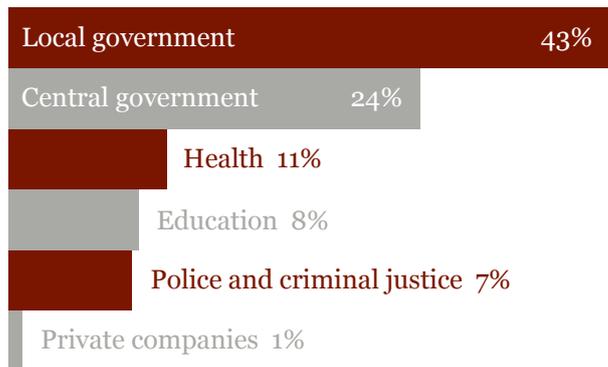
Age distribution of finished complaint casework	
30 days or less	27%
90 days or less	64%
180 days or less	83%
365 days or less	99%

Age distribution of finished complaint casework



Over 18 months - 2 complaints

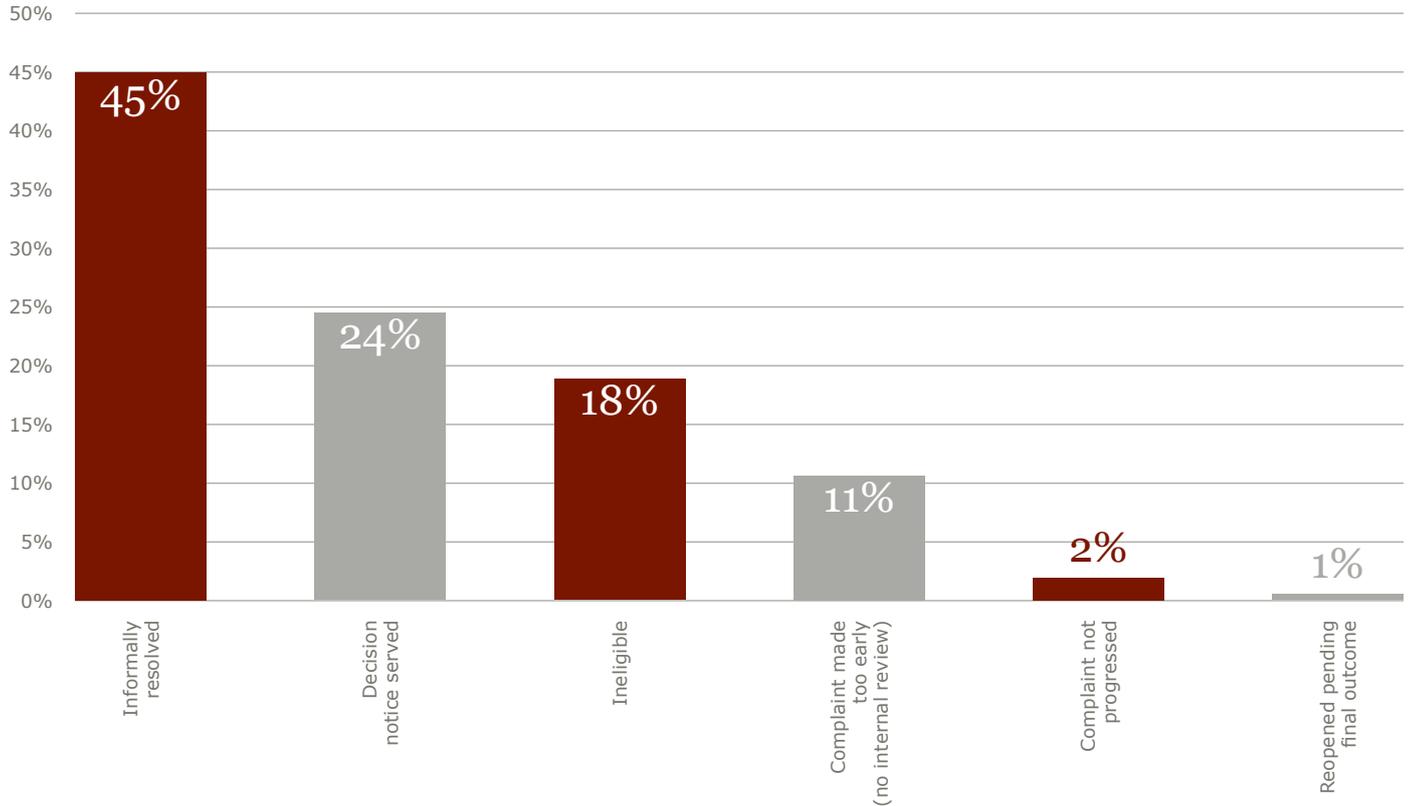
Areas generating most complaints where sector is specified



Outcome of a complaint where a decision notice is served

Total served	1,131
Upheld	308 27%
Not upheld	569 50%
Partially upheld	254 23%

Outcomes of complaint casework finished



*All percentages are rounded to nearest whole figure

Freedom of information complaints

In 2011/12 we closed 4,763 **freedom of information** complaints. This allowed us to reduce our caseload to 958 with only 6% over six months old. We believe that a caseload of two to three months intake (800 to 900 cases) will allow us to consistently meet our closure targets.

Total receipts increased to 4,633, with the final quarter seeing the biggest rise.

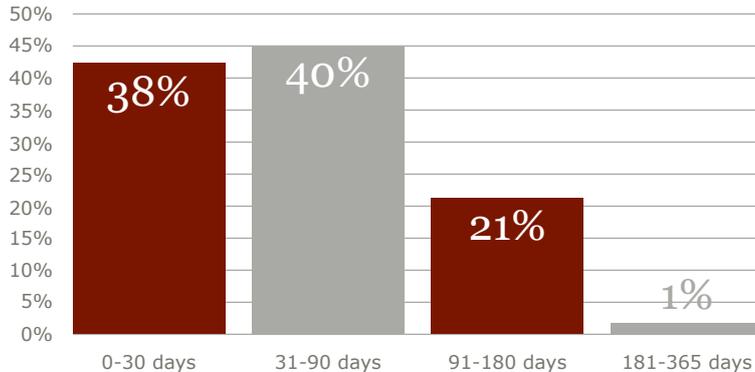
We closed 1,131 freedom of information complaints with a decision notice, nearly 40% more than last year. All decision notices are published on our website. We either fully or partially upheld the complaint in 562 (50%) cases. This is more than the equivalent figure for last year (448) but a similar proportion. We will continue to monitor this figure for any indication that request handling is either improving or getting worse. On this year's evidence, there was no significant change.

We continue to monitor public authorities with a poor record for dealing with freedom information requests and this year 14 of them signed formal undertakings to improve.

Data protection complaint casework

Received in year	12,985
Finished in year	12,725
2,627	Caseload at 1 April 2011
2,396	Caseload at 31 March 2012

Age distribution of complaint caseload

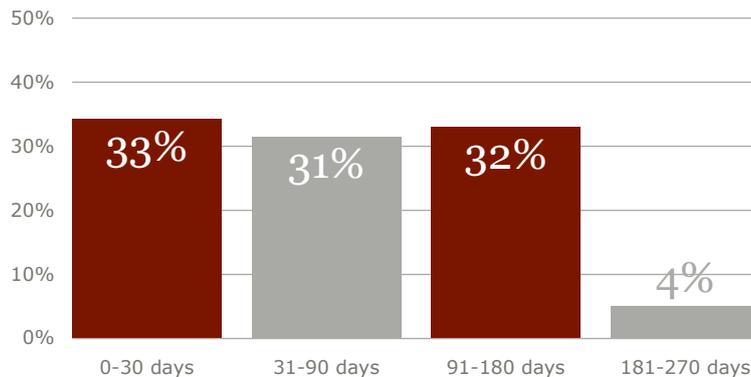


Age distribution of finished complaint casework

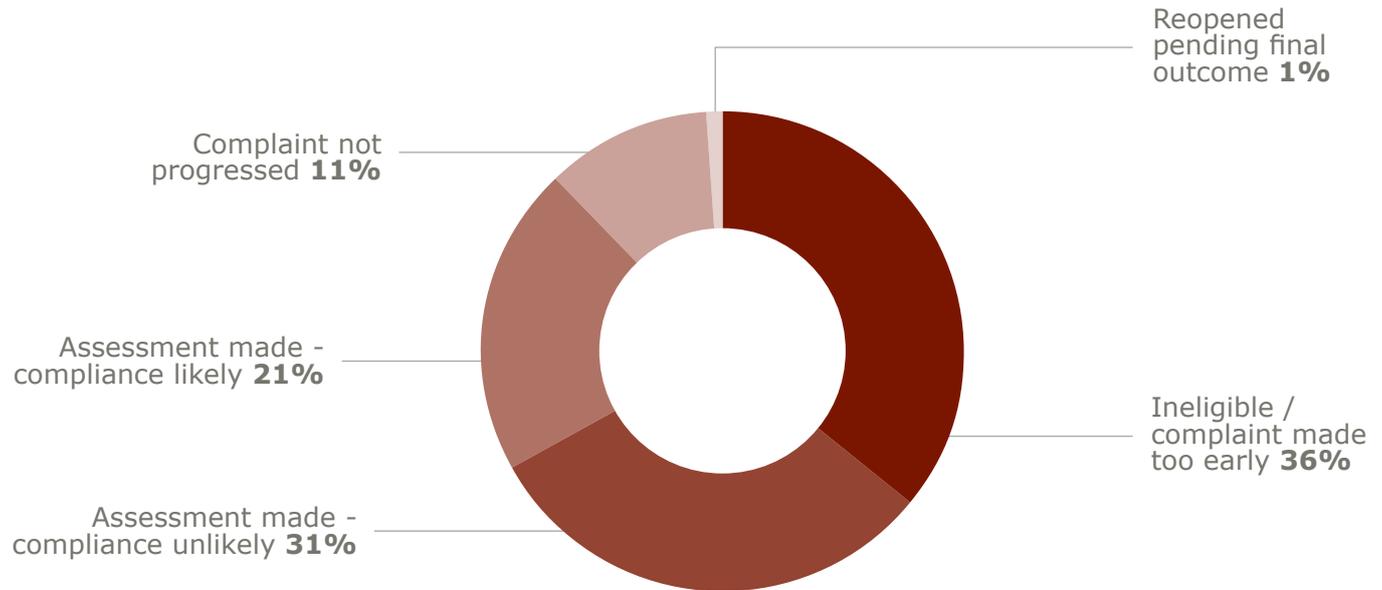
30 days or less	33%
90 days or less	63%
180 days or less	95%

270-365 days - 48 complaints
1yr-18 months - 14 complaints

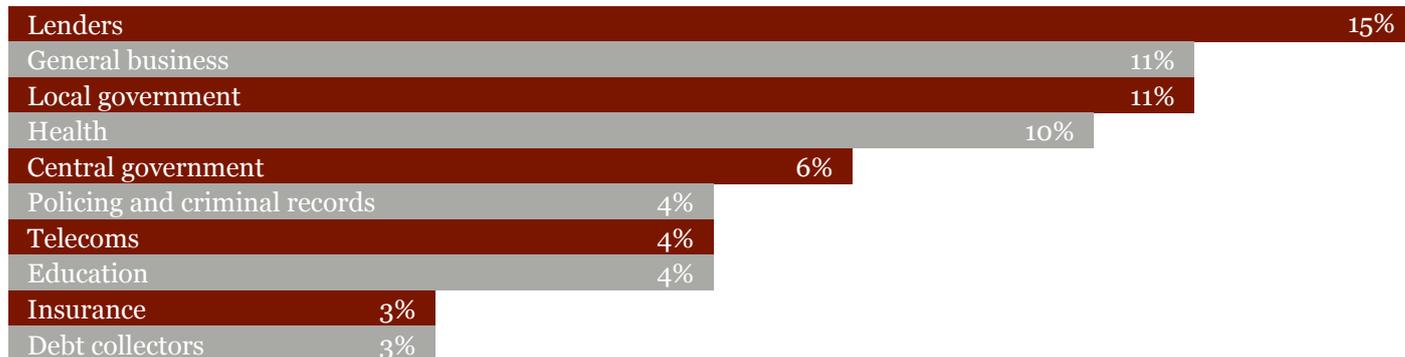
Age distribution of finished complaint casework



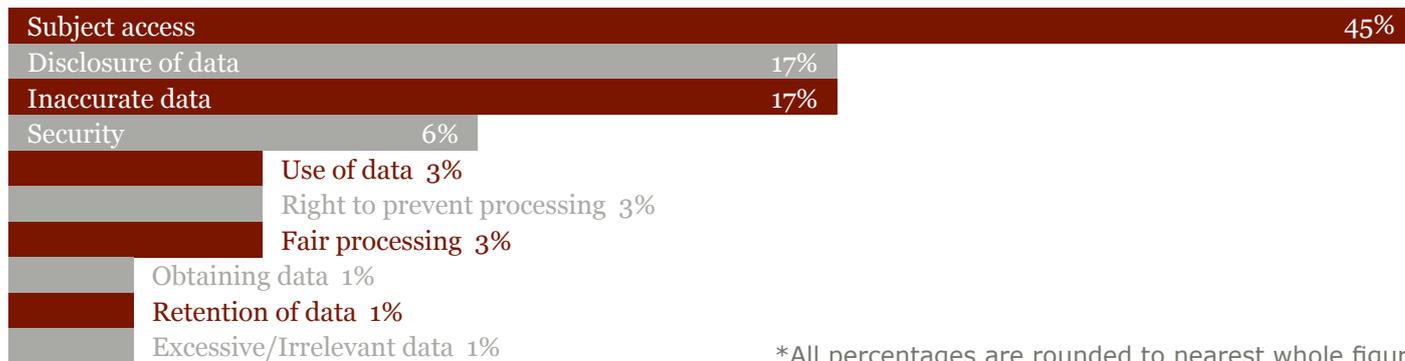
Outcomes of complaint casework finished



Top 10 areas generating most complaints where sector is specified



Top 10 reasons for complaining



*All percentages are rounded to nearest whole figure

We received **12,985 data protection complaints** and closed 12,725. These are very similar numbers to last year. 33% of completed complaints took less than 30 days.

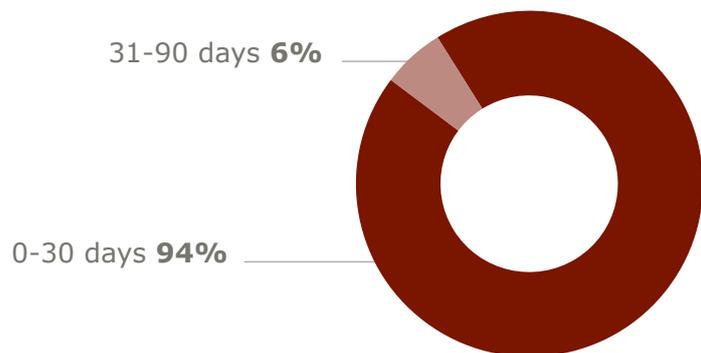
Complaints about subject access requests made up 45% of these cases with complaints about lenders and debt collectors accounting for 18%.

We found that a breach of the data protection legislation was likely in 31% of complaints.

Privacy and Electronic Communications Regulations complaint casework

Received in year	7,095
Finished in year	7,381
376	Caseload at 1 April 2011
223	Caseload at 31 March 2012

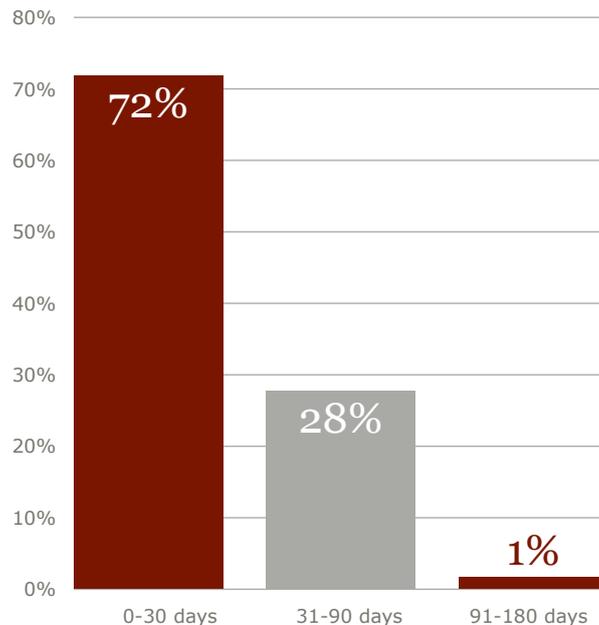
Age distribution of complaint caseload



Age distribution of finished complaint casework

30 days or less	72%
90 days or less	99%
180 days or less	100%

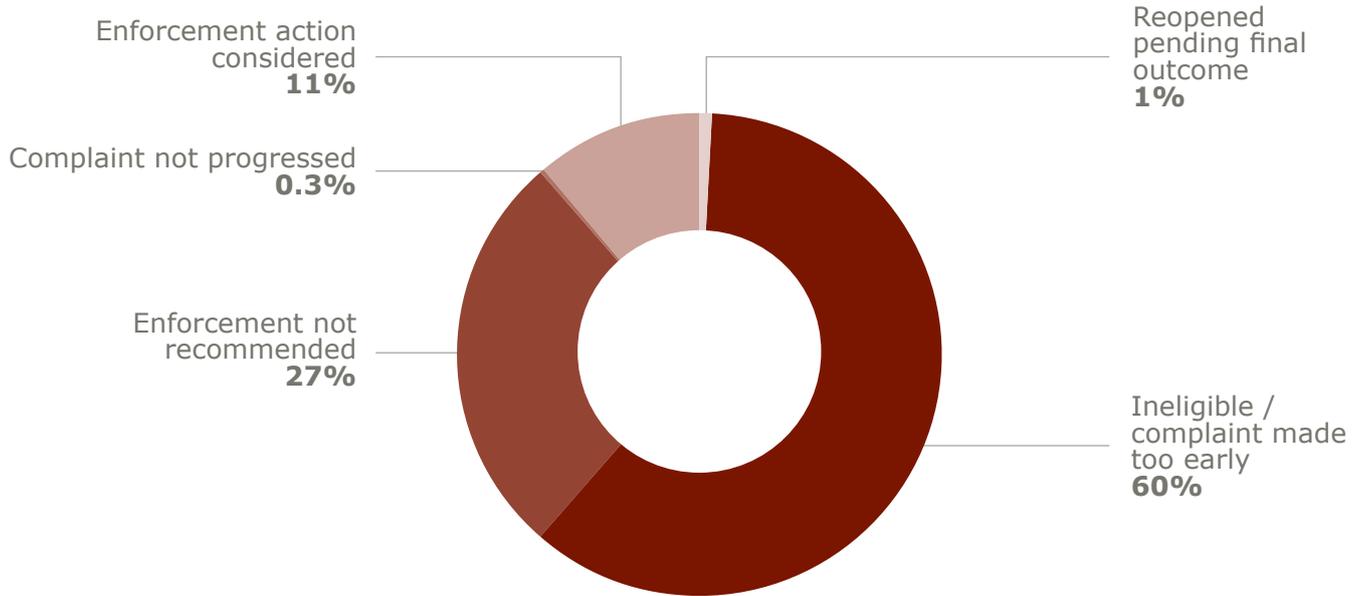
Age distribution of finished complaint casework



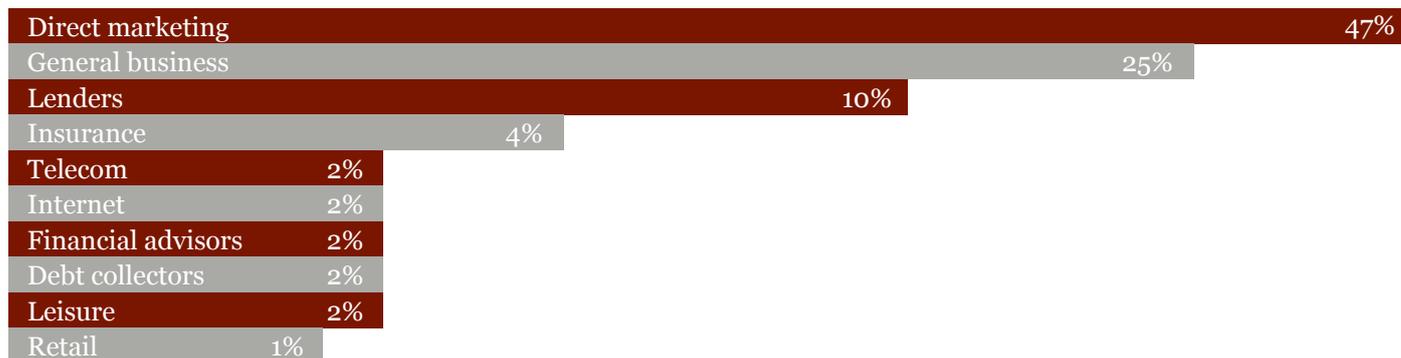
270-365 days
1yr-18 months

8 complaints
3 complaints

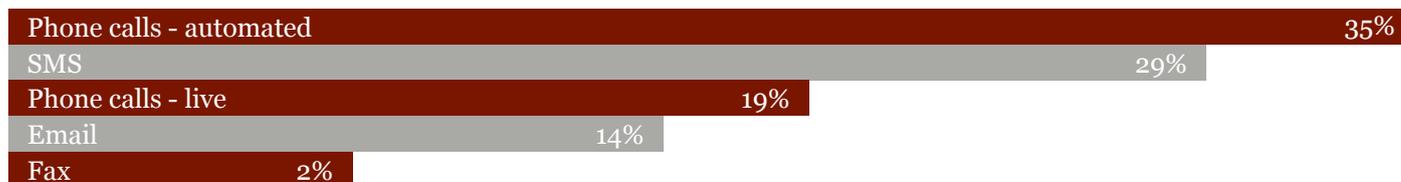
Outcomes of complaint casework finished



Top 10 areas generating most complaints where sector is specified



Top 10 reasons for complaining



*All percentages are rounded to nearest whole figure

May 2011 saw the introduction of some significant amendments to the

Privacy and Electronic Communications Regulations (PECR).

Following Parliamentary approval of the ICO's guidance on how we intend to use this power, the ICO can now issue monetary penalties for significant breaches of these regulations of up to £500,000.

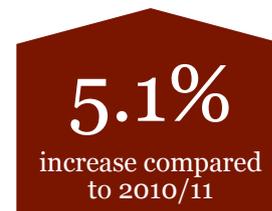
There was a 43% increase in complaints under PECR. By carefully managing our staff resources, we met this increased demand and have a caseload that allows us to deal with 94% of these complaints within 30 days. On average, each complaint took 16 days.

We also looked at other ways of dealing with these complaints and now use our website to allow the public to raise their concerns without making a formal complaint. We use this information to help us take enforcement action. The public are particularly concerned about unsolicited texts and phone calls (which together accounted for 83% of our complaints). Nearly half of all concerns are about direct marketing.

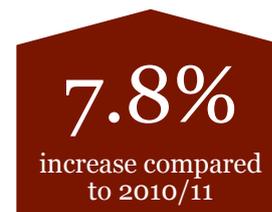
Help and advice

We provide advice to, and answer enquiries from both the public and from organisations. We received over 217,000 calls to our helpline this year, 10,000 more than the year before. Despite the increase we reduced the average wait time to below our 60 second target.

Helpline advice calls received



Helpline advice calls answered



Call answer rates

Percentage answered	95%
Average wait time	45 seconds

Breakdown of helpline advice

Notification	88,266
General helpline advice	118,848

Audit – an integral part of the ICO’s work

Our data protection audit programme continued to grow, with 42 audits completed, compared to 26 in the prior year, a 60% increase. We continued to publish the summaries of these reports on our website to promote the sharing of good practice.

By providing practical and pragmatic recommendations, these audits have made a difference to the way organisations handle personal information. When we have gone back to check on progress, 90% of our high risk recommendations had been acted on. When asked for feedback, all organisations audited agreed that the recommendations were constructive and appropriate. In addition, 90% also felt the process raised awareness of the importance of data protection in their organisation.

We encouraged a wider range of organisations to participate in the audit programme. This resulted in over one quarter of our audits being undertaken with private sector organisations this year, as well as 24% with central government departments and 38% with NHS trusts and local authorities.

One of our key focuses has been to develop new services for smaller organisations. In order to promote data protection in schools we have started a programme of self assessment. This programme was successfully piloted and is now being rolled out across councils in the UK. In addition, we have developed and delivered a new advisory visit process to enable smaller organisations to access good practice advice. 15 advisory visits have been undertaken this year.

We have also developed a manual for the conduct of audits under our new compulsory audit powers granted in the amendments to the Privacy and Electronic Communications Regulations.

Monetary penalties and enforcement action

This year we have regulated data security breaches more firmly, focusing more on the use of our civil monetary powers and reducing the number of undertakings issued. We received over 600 self reported data protection breaches.

We issued 10 civil monetary penalty notices totalling £1,171,000.

We issued two enforcement notices and 76 undertakings. We have reviewed the effectiveness of the new self-reported security breach form and process and expect to conclude these cases more quickly in the future.

We secured eight convictions for criminal offences relating to unlawfully obtaining personal data. We also administered seven cautions for this type of offence. We took prosecution action against one data controller for non-notification offences under the Data Protection Act.

We applied for search warrants in respect of eight premises during the last year and two of these related to breaches of the Privacy and Electronics Communications Regulations and sending of mass unsolicited text messages linked to claims management.



Case study – Unscrubbed hard drives

An investigation commissioned by the ICO found that one in ten second-hand hard drives sold online contained personal information. An ICO survey also found that 65% of people hand on their old phones, hard drives and memory sticks to another user. One in five of these people sell the device online, usually to a stranger.

The research found that, while 52% of the hard drives investigated were unreadable or had been wiped of data, 48% contained information and 11% of that information was personal data. The amount of personal data found on the mobile phones and memory sticks was negligible.

In total 34,000 files containing personal or corporate information were recovered from the devices. At least two of the hard drives contained enough information to enable someone to steal the former owner's identity. The documents included scanned bank statements, passports, information on previous driving offences, and some medical details. A further four hard drives contained information about the employees and clients of four organisations, including individuals' health and financial details.

All four organisations were contacted and have now taken action to ensure people's information is securely deleted from redundant equipment, or the equipment is destroyed as necessary. One company signed an undertaking to introduce further improvements.

Educating and influencing

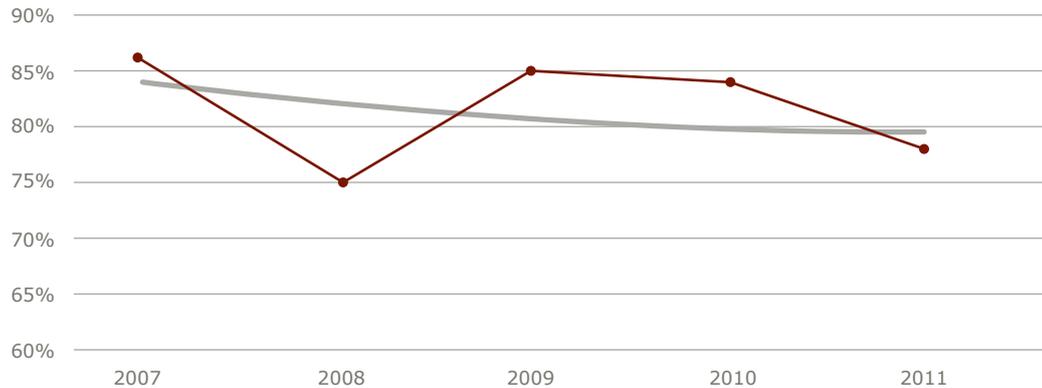
The past year has seen the launch of our new Information Rights strategy. This replaces our separate data protection and freedom of information strategies, and cements our commitment to the integration of these twin strands of our work. The strategy focuses on the information rights outcomes we are seeking to achieve and what our stakeholders can expect of us as we seek to maximise the long term and sustained impact our effort has on movement towards these outcomes. Education, the provision of advice and the influence we can bring to bear from our expertise and experience remain key to our success.

Awareness of information rights

Awareness of information rights remained high this year.

Following peaks in awareness in 2009 (85%) and 2010 (84%), individuals' prompted awareness of the freedom of information right to see information held by government and other public authorities remains high, but has decreased to 77% in 2011.

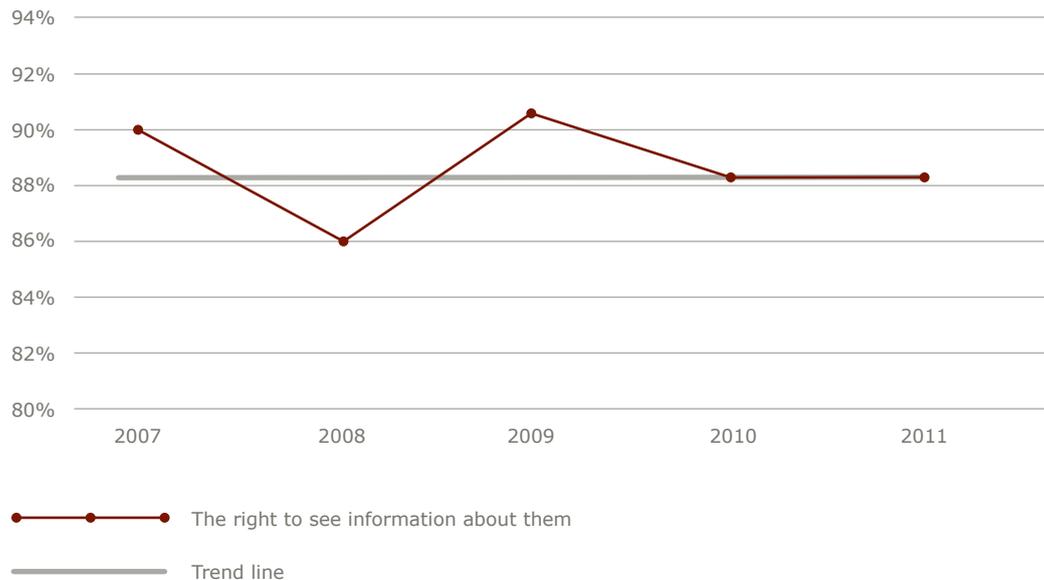
Individuals are more aware of their specific rights under the Freedom of Information Act – finding out what money is being spent on (84%), the type of information that is available (84%) and requesting information on the environment (83%).



●—●—● The right to request information held by the government and other public authorities

— Trend line

Individuals' prompted awareness of the right to see information held about them under the Data Protection Act remains consistently high at 89%; the same level of awareness as in 2010.

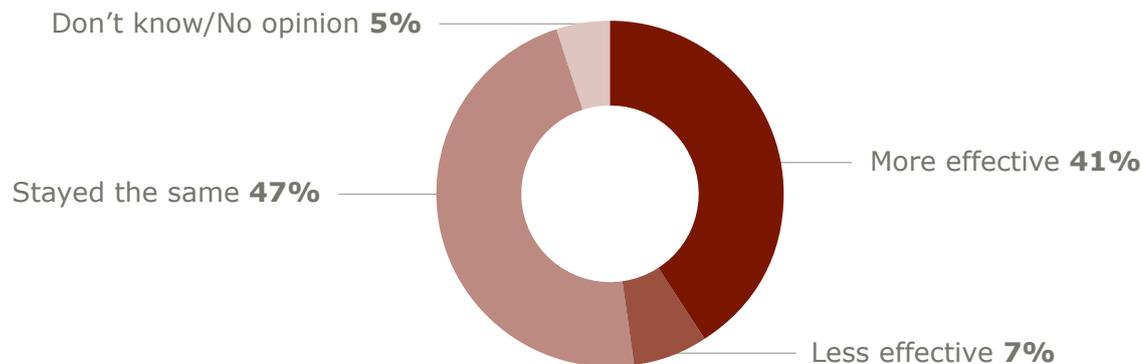


Successfully working with our stakeholders

In December, we commissioned market research company Ipsos Mori to conduct a stakeholder perception study among 71 key stakeholders drawn from the public and private sectors and civil society groups. Those contacted held policy development, implementation and complaint handling roles.

The research, conducted between December 2011 and February 2012, found that 81% of our stakeholders have a favourable view of the ICO, which compares well to the public sector norm of 66%. 41% of ICO stakeholders rated the ICO as more effective than we were this time last year.

Compared to one year ago, do you think the ICO is more effective or less effective in its role now or has it stayed the same?



Targeted communications

The number of subscribers to our e-newsletter continues to rise steadily, and stood at over 13,000 by the year end.

During the course of the year, 320 updates and additions were made to the website, the 'Plain English Guide to Freedom of Information' was published and 13 'How the ICO has helped' (data protection) case stories were launched.

Our Twitter followers increased by 175%, and forums established on networks such as LinkedIn saw a 600% increase in membership. In November we launched an ICO blog.

The data protection principles postcard continues to lead the top five most popular publications with the Data Sharing checklist in second.

We took 2,300 calls from journalists and carried out 137 media interviews. Proactively, we issued 92 news releases that generated extensive and generally positive press coverage; in particular around the enforcement action we took, our information rights awareness raising campaigns, the guidance we issued and our good practice audit programme.

Developing and improving

We have updated our performance and development review process which has helped to clarify expected performance standards.

Our staff survey showed very high levels of appreciation of the benefits of working at the ICO, but also that there is more we can do to engage with staff. We have worked with our staff to produce action plans to improve levels of engagement.

Our Executive Team, Heads of Department and Group Managers have been through a process of 360 degree feedback to help create and implement personal development plans to improve their effectiveness and ability to deliver business objectives.

We have continued to progress our equality and diversity action plan, including: the publication of equality information in compliance with our specific duty under the Equality Act, the appointment of a new equality adviser, and have introduced new helpline facilities for the hearing impaired and people who need translation services.

Information governance

This year has seen a record number of information requests to the ICO (1,301) - an 18% increase compared with the number received last year. 99% of information requests were responded to within the statutory timescales.

There has been considerable interest in the information held relating to Operation Motorman. Following an investigation in 2005 Steve Whittamore pleaded guilty to breaching the Data Protection Act. A number of notebooks were recovered during the investigation. These notebooks contained personal details relating to some 4,000 people. A fast track service was introduced to allow people to find out whether anything is recorded about them in these notebooks. 98 individuals have used this service.

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