Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Freedom of Information Act Awareness Guidance No 22:

Vexatious and repeated requests

The Information Commissioner's Office (ICO) has produced this guidance as part of a series of good practice guidance designed to aid understanding and application of the Freedom of Information Act 2000 (FOIA). The aim is to introduce some of the key concepts in the Act and to suggest the approaches that may be taken in response to information requests.

The guidance will be further developed over time in the light of practical experience.

Awareness Guidance No 22 takes the form of frequently asked questions on a range of issues surrounding vexatious and repeated requests under the FOIA. The guidance provides:

- advice to public authorities on dealing with such requests and sets out the Commissioner's approach to dealing with appeals made to him by individuals whose requests have been judged vexatious or repeated by a public authority;
- advice about the 'manifestly unreasonable' provision in the Environmental Information Regulations 2004 (EIR);
- an indication of the Commissioner's approach to complaints to his Office which may themselves be vexatious or frivolous; and
- references to a selection of formal decisions made by the Commissioner in relation to requests judged by public authorities to be vexatious or repeated.

Introduction

1 What is the purpose of the provisions relating to vexatious and repeated requests for information?

The FOIA and the EIR give rights of access to official information, known as the 'right to know'. The FOIA makes clear that, subject to certain safeguards, there is a public interest in allowing access to such information and, in particular, in releasing information as to the reasons for decisions made by public authorities.

However, while placing a general duty on public authorities to give access to official information the FOIA also provides an exception to that duty for requests which are vexatious or repeated. In the case of the EIR, the equivalent provision is for requests which are manifestly unreasonable. These provisions are necessary to prevent abuse of the right to know.

2 What is the Information Commissioner's general approach?

The Commissioner is confident that most members of the public and other requesters are exercising their rights under the legislation sensibly and responsibly. However, he recognises that some individuals and some organisations may try to abuse these rights with requests which are unreasonable and which would impose substantial burdens on the financial and human resources of public authorities. These cases may well arise in connection with a past or current grievance or complaint involving the individual and the authority.

The Commissioner considers that the exception in the FOIA for vexatious and repeated requests is important, especially as no fee is charged for most requests. His approach is influenced by the desire to keep compliance costs to a minimum and to avoid damage to the credibility or reputation of the Freedom of Information framework. At the same time, the Commissioner emphasises that authorities should not conclude that a request is vexatious or repeated unless there are sound grounds for such a decision. This guidance must therefore be applied to the facts of each case.

While giving maximum support to individuals genuinely seeking to exercise the right to know**,** the Commissioner's general approach is that a request (which may be the latest in a series of requests) can be treated as vexatious where:

- it would impose a significant burden on the public authority in terms of expense or distraction;

and meets at least one of the following criteria.

- It clearly does not have any serious purpose or value
- It is designed to cause disruption or annoyance
- It has the effect of harassing the public authority
- It can otherwise fairly be characterised as obsessive or manifestly unreasonable.

To determine whether a request imposes a significant burden, a public authority should consider whether complying with the request would cause it to divert a disproportionate amount of resources from its core business. However, where the ***only*** concern of the public authority is the burden on resources of complying with a request, it should instead consider whether it would be more appropriate to apply section 12 (exemption where cost of compliance exceeds appropriate limit). The regulations made under section

12 also allow for certain types of requests to be aggregated for the purposes of the appropriate limit.

Part A: Vexatious requests

1 What does the FOIA say?

Section 14(1) states that the general right of access to information "does not oblige a public authority to comply with a request for information if the request is vexatious." An important point to note here is that it is the request rather than the requester which must be vexatious. However, although the overall scheme of the FOIA is clearly "blind" as to the identity and motive of the requester, the Commissioner accepts that both are valid considerations in deciding whether a request is vexatious.

2 How does the Commissioner's definition of vexatiousness compare to other contexts?

There is no definition of vexatious in the FOIA. Dictionary definitions refer to 'causing annoyance or worry'.

In the context of litigation, the term has been considered by the courts in cases where public authorities and others have tried to have particular individuals declared 'vexatious litigants'. The case of the Attorney General v Barker (2000), for instance, suggests that it may be reasonable to treat a request as vexatious if it is ***designed*** to subject a public authority to inconvenience, harassment or expense. The Commissioner believes this is also relevant when considering vexatious requests.

However, the Commissioner considers that a wider approach is also necessary in the context of FOI requests made to public authorities, without charge and with the minimum of formality. ***Effect*** will need to be considered as well as intention. Even though the requester may not have explicitly intended to cause inconvenience or expense, if it is reasonable to conclude that the main effect of the request would be to impose a significant burden and that one of the other criteria set out above is met, then it will be appropriate to treat the request as being vexatious.

3 How is it possible to identify a single request as vexatious?

There are a number of ways to identify individual requests which impose a significant burden as being vexatious. The following list is not designed to be exhaustive, but shows a general approach.

The requester makes their intentions clear: If a requester explicitly states that it is their intention to cause a public authority the maximum inconvenience through a request, it will almost certainly make that request vexatious.

The authority has independent knowledge of the requester's intention: Similarly, if a requester (or an organisation the requester belongs to, such as a campaign group) has previously indicated an intention to cause a public

authority the maximum inconvenience through making requests, it will usually be possible to regard that request as being vexatious.

The request clearly does not have any serious purpose or value: Although the FOIA does not require the person making a request to disclose any reason or motivation, there may be requests which clearly lack a serious purpose or value, and so can be fairly treated as vexatious. This is an objective test. These cases are especially likely to arise where there has been a series of requests. However, before reaching such a conclusion a public authority should be careful to consider any explanation from the requester as to the value of disclosing the information. This explanation may be made during an appeal against refusal (see below).

The effect of redaction would be to make the information worthless: If much of the information requested falls within an exemption and requires extensive redaction, and the remaining information would be meaningless or of no real use to the requester, the application may be reasonably considered to be vexatious. This will depend on what has been requested and whether the requester is (or becomes) aware of the likely result. Again, in these cases it will be important to give proper consideration to any explanation from the requester as to the value of disclosing the information, for example during an appeal against refusal.

The request is for information which is clearly exempt: Requests may be received for information which the requester clearly understands to be exempt, even after the public interest test is applied. It may be reasonable to consider these requests as vexatious.

The request can fairly be characterised as obsessive or manifestly unreasonable: It will usually be easier to recognise these requests than define them. They will not be common – public authorities must not be judgemental without good cause. An apparently tedious or spurious request, which in fact relates to a genuine concern, must not be dismissed. But a public authority is not obliged to comply with a request which a ***reasonable person would describe as obsessive or manifestly unreasonable***. It will obviously be easier to identify these requests when there has been frequent previous contact with the requester or the request forms part of a pattern, for instance, when the same individual submits successive requests for information. Although these requests may not be repeated in the sense that they are requests for the same information (see part C below), taken together they may form evidence of a pattern of obsessive requests so that an authority may reasonably regard the most recent as vexatious.

4 To what extent can a public authority take into account any knowledge it has of the applicant?

As stated, section 14 applies to requests received by a public authority, not to the person who has submitted the request. So a request cannot be judged vexatious ***purely*** on the basis that the person who submitted that request had previously submitted one or more vexatious, though unrelated, requests. The same applies where that requester has been judged vexatious by that public authority in areas unconnected to FOI, such as with regard to complaints to the organisation or any other previous conduct.

A public authority may have made the decision not to correspond with a person in respect of their complaints to the organisation, but they cannot simply adopt this stance with regard to that person's requests for information. A useful test which a public authority could apply to determine whether to comply with a request for information in these circumstances is to judge whether the information would be supplied if it were requested by another person, unknown to the authority. If this would be the case, the information must normally be provided as the public authority cannot discriminate between different requesters.

However, it may be reasonable for the authority to conclude that a particular request represents a ***continuation*** of behaviour which it has judged to be vexatious in another context, and therefore to refuse the request as being vexatious. Also, even if a request appears reasonable in isolation, the previous behaviour of the requester can be taken into account if placing the request in context will allow it to be justifiably judged as unreasonable.

A public authority may therefore take account of correspondence between the requester and itself (even on other matters) to demonstrate 'previous behaviour' to support a claim of vexatiousness. The purpose of this would be to make the case that the request itself meets the criteria of a vexatious request, as set out in the answer to question 2 (above).

While caution is needed before taking account of general information which a public authority may have about a particular requester, as made clear in the answer to question 3 (above), it will also be reasonable to take account of any information volunteered by the requester in connection with a ***particular*** request.

5 Can a public authority take account of previous grievances, disputes or complaints involving the requester?

Issues of vexatiousness may arise where a public authority receives requests from individuals who have previously registered a grievance, pursued a complaint or otherwise been involved in a dispute. It is not unusual for those who believe they have been unfairly treated by a public authority to pursue or attempt to re-open their grievance by using the FOIA.

In circumstances where requests are used solely for the purpose of going over the same ground raised in a previously closed complaint which has exhausted available procedures (and the request would impose a significant burden), there will be a strong suggestion that this is an inappropriate use of the FOIA and that the requests are vexatious.

However, this should not be used as an excuse to avoid awkward questions where there continue to be requests for information about an issue that has not been resolved satisfactorily (such as where completely new evidence comes to light or the complaints procedures were wholly inadequate). A public authority should therefore also take account of whether the information being requested would (objectively) make a material difference to the outcome of the closed matter. If disclosing the information would manifestly make the

authority's position untenable (for example contradicting previous conclusions) the request would not be vexatious.

It may also be the case that the requester wants to obtain information about the complaint process to verify whether their grievance was dealt with properly. Also, it should be recognised that, as the general right of access to information under the FOIA was not available before 2005, some information in relation to matters resolved before that date will only be available to requesters since that date.

Public authorities must also distinguish between the persistent requester who can demonstrate that an issue is still current and the information wanted is of value in taking this forward, and the vexatious request. Persistence should not be equated to vexatiousness. Persistence may, taken with other factors, demonstrate improper use of the FOIA, but where persistence is the only factor; the cost limit under section 12 is likely to be more relevant.

6 Can a public authority take account of the language used?

An FOI request which contains abusive or offensive language or is written in a threatening tone will not automatically be vexatious. Although unpleasant, it would not necessarily forfeit the requester's rights under FOIA if the request is nevertheless clearly requesting information. The use of threatening, offensive or abusive language or behaviour may however indicate the attitude of the requester and the nature of the request. This will especially be the case where the language used has the effect of harassing the authority or being manifestly unreasonable.

If a public authority makes assumptions from the way a request is framed or pursued, it should, of course, be aware of its general obligations as service providers, together with any specific obligations under the Disability Discrimination Act.

7 Can a public authority take account of the length of requests?

There may be cases where a public authority receives lengthy written correspondence containing a mixture of information requests and other content, such as complaints about non-FOI related issues. Even if a public authority has decided the correspondence is vexatious in respect of the other issues, this does not automatically mean the request for information is vexatious. In other words, all information requests must be interpreted in line with the provisions of the FOIA.

However, in some cases this kind of communication may be so rambling or impenetrable that any request it may contain may be considered vexatious. In these cases, the authority still has to give proper consideration to its duty to advise and assist.

8 Can a public authority take account of the volume and nature of requests made by a requester to other public authorities?

Yes, to determine the vexatiousness of a particular request. However, a public authority could not consider this alone, but a pattern of similar requests might be evidence to support a public authority's claim that the necessary factors existed.

However, public authorities should bear in mind the following.

- Whether the requests are for identical or very closely connected material.

- A requester may legitimately want to see:
    - what different public authorities hold on the same topic,; and
    - what information has passed between different public authorities.

- A requester may be more successful in getting information from one public authority than another, for example, if one public authority holds information that in its possession is exempt from release, but in the hands of another authority would not be subject to the same exemption.

- A requester may wish to see the different responses from public authorities to the same request to assess the culture of openness that exists in each.

9 Are requests submitted under obvious pseudonyms automatically vexatious?

The FOIA requires requesters to make requests for information in writing and to state their name and an address for correspondence. Technically, a request submitted using a pseudonym is not a proper request and could be refused on that ground. However, the FOIA does not allow public authorities to enquire into the circumstances of the requester or to ask for information to verify identities. Unless the public authority knows that the requester has used a pseudonym, it will be difficult to refuse a request on that ground.

A better starting point is the assumption built into the FOIA that public authorities must generally ignore the identity and circumstances of the requester and must consider any release of information as if it were a release to the world at large. This approach recognises that although requesters cannot gain any advantage by using a pseudonym, they may have reasons for not wishing to draw attention to themselves by using the names under which they are normally known.

Although a public authority may not consider a request as vexatious simply because the requester uses an obvious pseudonym, it may be prompted by the use of the pseudonym to consider whether the request is vexatious. For example, it may be appropriate for a public authority to take account of

whether it has good reason to suspect that a requester is using a pseudonym deliberately to avoid the link between the current request and previous behaviour or requests made to other authorities as **one** factor to determine whether the request is vexatious.

However, a public authority should not base any decisions as to disclosure on the name supplied by the requester (unless the requester is making a subject access request - a request for information about their own personal information under section 7 of the Data Protection Act 1998).

10 Can section 14 be applied in response to requests for information contained in a publication scheme?

A publication scheme establishes the types of information a public authority proactively makes available, as opposed to the general right of access to information held by public authorities under section 1 of the FOIA. If a public authority has committed to make information available through its scheme, it cannot be the case that a request to access it could possibly impose disproportionate inconvenience or expense.

As such, a public authority cannot apply section 14(1) of the FOIA to refuse to supply information that is contained in a publication scheme. By failing to make available information in accordance with its scheme – for whatever reason – public authorities will be in breach of section 19(1)(b) (Publication schemes). Instead, the exemption under section 21 (Information accessible to the applicant by other means) may be applied in response to a request for such information.

11 Can section 14 be applied in response to meta-requests?

Meta-requests can be defined as:

- requests in relation to an applicant's ongoing complaints about the public authority;
- requests which require public authorities to restructure their information, for example, in chronological or alphabetical order, to provide what is requested;
- requests which require some sort of subjective judgment to be made about the information requested (for example, 'your 10 most important contracts');
- requests which ask for information about other information (such as a schedule of documents in a particular file, or a list of 'exempt information');
- requests which ask for information in a way which involves the disclosure of some additional information, above and beyond the recorded information in question; and

- requests which use the FOIA to investigate the FOI process, outside the enforcement mechanisms in the FOIA.

Section 14 can only be used in response to meta-requests if the request meets the Commissioner's criteria, as set out in the answer to question 2 (above). In relation to a request about a requester's ongoing complaint, a public authority should consider whether the requester may have a right to the information requested to pursue their complaint.

Part B: Repeated requests

1 What does the Act say?

Section 14(2) states that: "where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request."

2 What is a 'reasonable interval'?

This term is not defined in the FOIA. This is, in the first instance, for the public authority to determine, depending on the type of information requested and any advice provided to the requester by the public authority in response to their previous request. Much will also depend on the nature of the public authority's business. For example, if it regularly updates records, it might be reasonable for a requester to make requests for information more often. If the requester disputes the public authority's definition of a 'reasonable interval' in respect of their request, they may complain to the Information Commissioner.

3 Can a request be classified as repeated simply on the basis of the content of the request?

No. Importantly, the request must be put into context. Many requests for information may appear to fit the criteria in section 14(2) due to identical or substantially similar content, but are not in fact repeated requests. This is because in certain cases information the public authority would disclose to comply with the application might not be the same as the information previously released.

Often, the information that will be released to comply with a request will be more significant than the description of the information found in the request. The following are examples of this:

> **The information held in relation to a request has changed since the request was last made:** Public authorities should be aware that information about a situation that is likely to change often might reasonably be requested more frequently than information about a situation that is static.

For example, two requests received from the same requester, a month apart, requesting a public authority's most recent monthly performance statistics would not be considered to be a repeated request. This is because the information held by the public authority in relation to the request has changed since the previous request. The fact that the content of the two requests are identical is of no consequence. Even if there were no new monthly statistics, the authority should still respond to the request (by informing the applicant of this fact under the duty to confirm or deny), unless in the response to the first request it informed the requester of when these figures are due to change.

An FOI request simply asks for any of the information held by a public authority that has changed since it was previously requested: These requests are designed to elicit different information and it is reasonable for public authorities to expect to receive them. If the information has changed, the request must be complied with. If it has not, this should still be classified as a new request for information as it is asking a specific question that has not previously been submitted to the public authority, even though the information referred to has previously been requested. This obligation would also apply if the content of the request is the same as the first request, but the requester genuinely thinks the information held has changed since then. This might be repetitious in nature, but it would still be a valid request.

The public authority should comply with any number of these requests, unless of course it informs the requester when the information is due to change and the requester then sends another request before that time. In this case, the subsequent request would be judged as repeated.

Although the information being requested may not have changed, the circumstances and public interest arguments may have changed: This may cause previously exempt information to be disclosed.

Thematic requests: Requests cannot be refused under section 14(2) on the basis that they relate to the same matter as a previous request, unless the information provided in response to the request would be identical or substantially similar to that previously provided.

4 Can requests be both repeated and vexatious?

Yes. In the answer to question 3 in part A, we looked at ways of identifying single vexatious requests. This may often be a difficult judgement to make. However, this judgement may become easier if there is a succession of requests, whether or not strictly 'identical or substantially similar', the effect of which is to harass the public authority. This is consistent with the case of the Attorney General v Barker (2000) referred to earlier, which suggests that it may be reasonable to treat a request as vexatious if it is designed to subject a public authority to inconvenience, harassment and expense.

5 Are there certain kinds of repeated requests a public authority should consider responding to as a matter of good practice?

Even though a request may be repeated, there will be cases where a positive response should be considered as a matter of good practice. The following are examples.

- In the request, the requester states that they lost the information but still want it.
- The requester states that they no longer have the information but has since discovered that it is still required.
- The requester reasonably requires another copy of the information previously sent to them, for instance, because they have been obliged to supply the original to another body.
- Cases where some of the information requested is new, but the rest has previously been supplied to the applicant. In these 'hybrid' cases it might be easier to comply with the request but only supply the information which has changed and classify the remainder of the request as repeated.

6 Can an authority refuse identical requests submitted by different applicants on the ground that they are repetitious?

No. Section 14 makes clear that the provision relating to repeated requests only applies to requests submitted by the same requester.

If a public authority has reason to believe that the requests have been submitted as part of a campaign aimed mainly at causing it inconvenience, it should consider whether to refuse them on the grounds that they are vexatious.

If it believes, on good grounds, that the requests have been submitted by the same applicant, it may refuse them either because they are vexatious or repeated.

If identical but non-vexatious requests are received, a sensible solution may be to publish the information in question, for instance, through its publication scheme. Where this is not reasonable, a public authority could consider whether the requests could instead be aggregated for the purposes of section 12 of the FOIA (Cost limit).

7 Can a public authority take account of requests made before 1 January 2005?

No. Public authorities must not use section 14(2) where the requester has previously asked for the information being requested, but did so before the general right of access under the FOIA came into force.

However, the public authority may consider using the vexatious provision in respect of these requests where it is clear that the complainant has already

been provided with the information requested. This is because the Commissioner's consideration of a complainant's previous behaviour under section 14(1) is not limited by time.

Part C: Practical considerations

1 Who should make the decision as to whether a request is vexatious?

Even where a staff member dealing with an FOI application is confident that it meets the vexatious criteria, it may be considered sensible to refer the decision for approval to a more senior level within the authority, given that such a judgement could be controversial.

2 What approach should be adopted where it is uncertain that a request is vexatious?

In some cases it may be difficult to be certain whether a request is vexatious or simply difficult to answer. Where an authority initially believes a request is vexatious, it may consider dealing with it by adopting one of the following alternatives.

- Contact the requester and ask them to clarify the request. (See also Awareness Guidance 23 which explains the duty to provide advice and assistance under the FOIA.)
- Comply with the request and reduce the chances of a more time consuming grievance developing between the requester and the public authority. Essentially this is a matter of judgement for the authority.
- Refuse the request but spell out the reasons and perhaps indicate the information which might lead to a different conclusion on appeal.

3 How can a public authority make it easier to deal with complaints about refusal?

Some public authorities may receive large volumes of vexatious or repeated requests as a result of the nature of their business. It may be helpful for them to identify the likely issues which may arise in their circumstances and develop publicly available criteria for categorising these requests. This will help show that vexatious applications will be dealt with fairly, against an objective method of assessment.

4 What should a public authority do when refusing a request?

After deciding that a request is vexatious or repeated, the public authority should inform the requester in a refusal notice and state why this is the case. However, in case of further such requests, section 17(6) of the FOIA states that a public authority does not need to provide a notice of refusal where:

(a) the public authority is relying on a claim that section 14 applies;

(b) the authority has given the requester a notice, in relation to a previous request for information, stating that it is relying on such a claim; and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice in relation to the current request.

Nevertheless, it is wise for a public authority to keep records of the case to show the request has been considered and to help if the requester appeals against the decision, or to identify identical requests in the future.

Records should contain details of the request and the requester, information as to why the request was judged to be vexatious or repeated, and how the public authority came to its decision. There may also be an operational need to keep this information as a public authority might want to know how many requests for information have been considered vexatious.

5 What are the key elements of an internal complaints procedure?

Making a decision based on section 14 is likely to be relatively controversial and may easily lead to further complaints. This is a strong reason why, as well as the recommendations of the section 45 code of practice, public authorities should adopt an internal complaints procedure for FOI complaints. It will give a public authority a chance to reconsider a case and reassure the requester that they have been fairly treated under the provisions of the FOIA. Apart from exceptional cases, the requester will have to go through this complaints procedure before they can refer a case to the Information Commissioner.

The requester should be told about the complaints procedure when they are informed of the outcome of a request. The Access Code of Practice under section 45 of the FOIA recommends that complaints handling is carried out by someone not involved in the initial decision.

An effective internal complaints procedure will allow front-line decision makers to make more confident decisions about requests for information, including requests that result in considering section 14.

6 Should requests from journalists be treated any differently?

Legally, under the FOIA, journalists are in the same position as any other person requesting information. From the nature of their work, as a group, they do send many requests for information to public authorities and, practically, public authorities are unlikely to ignore the fact that a request has been received from the media. However, journalists are expected to act responsibly in this regard. The Commissioner's 'Responsible Requester's Charter' provides more advice on this.

Ultimately it would be open to an authority to consider the application of section 14, for example, where a journalist sends or circulates many requests without considering the resource implications for public authorities. Public authorities will recognise this as a sensitive area and no doubt will give careful consideration to contact with the media.

7 When is it likely to be more appropriate to rely on section 12 of the FOIA (cost limit) to refuse a request?

If the public authority is clear that complying with a request would exceed the cost limit under the FOIA, it would be more appropriate to refuse the request on the basis of section 12 of the FOIA (exemption where cost of compliance exceeds appropriate limit). We have separate guidance on the interpretation of section 12.

However, if a requester then continues to make requests over the appropriate limit, it would be reasonable to take account of this in considering section 14. In these circumstances, the public authority would be able to show that they have told the requester of the burden caused by their requests.

Part D: The Environmental Information Regulations 2004 (EIR)

Environmental information held by public authorities falls within a separate access to information regime, called the Environmental Information Regulations 2004. Public authorities should be aware that unlike the FOIA, verbal requests for environmental information are also valid requests.

1 Where is the provision for dealing with vexatious and repeated requests in the EIR?

Vexatious and repeated requests are also exempt from the duty to disclose under EIR, and are under regulation 12(4)(b). This states that "a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable."

This means that if a request for environmental information would be considered vexatious or repeated under the terms of section 14 of the FOIA, it would be equivalent to manifestly unreasonable under the EIR and so exempt from the duty to disclose.

However, the manifestly unreasonable provision of the EIR is subject to the public interest test. As such, a manifestly unreasonable request may only be refused if the public interest in maintaining the exception outweighs the public interest in disclosing it. For example, in cases where it is important not to undermine the legislation and to encourage the responsible use of the legislation. However, these decisions must be based on the circumstances of each case.

2 Are there cases where the 'manifestly unreasonable' provision in the EIR is not equivalent to the 'vexatious' provision in the FOIA?

Yes. As there is no cost limit for compliance under the EIR, a request may be judged to be manifestly unreasonable simply due to the cost and work needed to comply with the request.

However, as part of the duty to provide advice and assistance in these circumstances, the public authority should ask the requester to rephrase their request to reduce the cost involved to a reasonable level. If the requester refuses, the request can then be judged to be manifestly unreasonable due to the work and cost needed to comply with it. It will be for the public authority to make the case that complying with the request would be unreasonable. However, public authorities should be aware that under regulation 7, they can extend the time to respond to requests that are both complex and voluminous.

Annex A: Complaints to the Commissioner which may come under section 50(2)(C)

1 What does section 50(2)(c) state?

Although the FOIA states that a request can be refused by a public authority where it is vexatious or repeated, public authorities will be aware that the Commissioner has slightly different grounds (section 50(2)) for refusing to deal with a complaint. As well as not considering complaints which are vexatious (the same criteria will be used as that set out for requests to public authorities), the Commissioner does not have to consider complaints which are 'frivolous'.

2 Can a public authority make representations to the Commissioner under section 50(2)(c)?

Yes when an authority considers a complaint should be judged by him as vexatious **or** frivolous. The Commissioner would be likely to reject any complaint as frivolous where the public authority had clearly shown that the Commissioner, the Tribunal or the courts had ruled in an authority's favour in other similar and relevant cases.

3 Under what circumstances will the Commissioner agree that a request is vexatious or consider a complaint to him to be vexatious or frivolous?

The Commissioner will judge this to be the case where:

- the public authority can demonstrate actual evidence which meets the Commissioner's criteria; and

- the complainant produces little or no new material to point the Commissioner in a different direction.

Annex B: Decisions on section 14

1 Vexatious requests

The Information Commissioner has made a number of decisions on section 14(1), which may help public authorities to decide how to respond to their own requests for information. In particular, his decisions highlight the importance of referring to the criteria set out as part of the general approach, and may help to clarify how requests might meet them. Although the Commissioner has considered all the criteria in his decisions, public authorities should remember that they must only show that the request in question would impose a significant burden, and that just one, or more, of the remaining criteria also apply.

Significant burden

In general, the Commissioner considers that public authorities have suffered a significant burden if dealing with the request would cause disproportionate time, inconvenience or expense. Often a vexatious request will be the last in a series, and may be seen as the culmination of a pattern of requests. His first decision notice on section 14, FS50078594, involving Birmingham City Council, found that the fact that the Council had received around 70 previous requests from the complainant meant that the final request – itself consisting of multiple questions – could be judged to impose a significant burden. It noted that although the requests were not so related that the cost of dealing with them could be aggregated, had it been, it would have exceeded £3,500.

Other cases in which the amount of correspondence received by the public authority has been highlighted as a relevant factor in determining a significant burden include FS50086298 (BBC), where 90 requests were sent and FS50125496 (DWP), in which over 50 letters on the same matter had been received. In case FS500110741, West Midland Transport Executive estimated that it spent 175 hours responding to information requests from the same complainant and, in case FS50090632, the complainant sent so much correspondence that Transport for London had to devise an internal strategy to manage it.

In many cases, such as FS50063995 (Warwickshire County Council), the fact that correspondence is thematically similar has been emphasised. This alone, however, has not been judged to be sufficient. The decision notice in case FS500125496 states that, "That a request is part of a theme does not in itself designate a request as vexatious. The overall nature of that theme must be taken into account."

In considering the burden on Sussex Police in case FS50099691 and the Cabinet Office in case FS50099755, the Commissioner took account of the volume of requests made across the public sector. Noting that the complainant in these cases had made 347 requests to police forces, 412 to the MOD and 22 to the Cabinet Office, the decision notice stated, “It is entirely appropriate to consider the aggregated effect of dealing with all the requests known to have been made across the public sector.”

In case FS50109184, the Commissioner rejected Bretforton Parish Council’s submissions that responding to a request would impose a significant burden because, as a parish council, it had limited resources and other commitments.

No serious purpose or value

The Commissioner considers that it will be difficult – but not impossible - for public authorities to demonstrate that a request does not have a serious purpose or value. In cases FS500125496 (DWP) and FS50086298 (BBC) in which the requests were found to be vexatious, the Commissioner was nevertheless clear that although the public authority may have believed the request to have no purpose, it was evident that the complainant did.

In case FS50085398, involving London Metropolitan University, the Commissioner found that the request concerned an issue which had already been thoroughly investigated, and that the complainant had been provided with all information relevant to it. The decision notice concludes that the request has no serious purpose or value, stating that, “The purpose of the complaint’s requests appear to have been to reopen an investigation that had already been completed by the University and been the subject of legal action.” In determining this case on appeal (the only s14 case so far heard), the Information Tribunal also took account of the fact that the issue had already been debated and disputed, and the request could therefore be seen as an attempt to reopen the case.

Public authorities may wish to note that cases of this kind may also be deemed to be obsessive or manifestly unreasonable. This is discussed further below.

Designed to cause disruption or annoyance

As above, the Commissioner is of the view that it will be difficult – but again not impossible - to prove that a request is designed to cause disruption or annoyance, as a judgement on this point depends on knowledge of the motivation and intent of the complainant. The decision notice in case FS50086598 summarises this view: “Although annoyance could have been caused by the request, it is not clear that this was the intention of the complainant.”

In just one case to date, has the Commissioner decided that a complainant did have this intention. In this case, the complainant was involved in an

ongoing dispute with the Treasury Solicitors over an order against him declaring him a vexatious litigant. The complainant had been advised on many occasions of his right to seek leave to appeal, and had repeatedly refused to do so. On these grounds the Commissioner accepted the public authority's assertion that, "the complainant's request is in effect "no more than a collateral challenge to the order" and as such is designed to cause disruption and annoyance."

Effect of harassing the public authority

In cases FS50090632 (TfL), FS50086298 (BBC) and FS50078594 (Birmingham City Council), the frequency and volume of previous requests and correspondence were such that the requests were considered to have the effect of harassing the public authority. However, it should be noted that in these cases, other criteria were also met, and it will not be sufficient for a public authority to argue only that this fact means both that the request will impose a significant burden and that it has the effect of harassment.

Language and tone are relevant factors in considering this criterion. The request (and previous correspondence) from the complainant in case FS500639395 (Warwickshire County Council) contained negative personal comments and threats, and this as well as the general tone was considered by the Commissioner to be tantamount to harassment. In case FS50130467, it was decided that the request contained numerous complaints about members of staff who had been dealing with the ongoing issue and so supported the view that it had the effect of harassing the CPS. Similarly in case FS50125496, the complainant's threats and allegations supported this conclusion. Also relevant to this particular case was a consideration of the complainant's previous behaviour – the decision notice argued that, "this request represents a continuation of behaviour previously considered vexatious."

It should be noted that the language and tone used in the above cases was considered to be extreme. The Commissioner has continued to emphasise, as in case FS50109184 (Bretforton Parish Council) that, "Unpleasant tone [alone] is insufficient to elevate a particular request to the level of harassment." In case FS50086598 (Staffordshire Police), the decision notice comments that the requests could not be judged to be vexatious simply because they were pejoratively phrased.

In case FS50110741, the Commissioner considered the fact that West Midland Passenger Transport Executive had responded fully to numerous requests on the same issue before advising the complainant that it was not in a position to respond further. The complainant then ignored this advice and submitted a number of other linked requests, and this was judged to have the effect of harassing the authority.

Obsessive or manifestly unreasonable

Where public authorities cannot show any of the above three criteria, it may be possible to deem a request vexatious if it can otherwise be fairly characterised as being obsessive or manifestly unreasonable. The Commissioner's decisions indicate ways in which this criterion might be met.

As stated above, where a request concerns an issue or dispute which has already been fully addressed or investigated by the public authority (and in some cases a regulatory body or court) and is therefore closed, it may be seen to be obsessive. In case FS50125496 (DWP), the Commissioner agreed that, "it is clear that the steps taken by the public authority and the Parliamentary Ombudsman to investigate [the issue] have been thorough. Despite the steps taken to resolve this matter, the complainant does not accept that this matter is closed and wishes to continue his dispute with the public authority. This behaviour and the information request that stems from it could fairly be characterised as obsessive." Cases FS50090632 (TfL) and FS5010513 (Treasury Solicitors) also concern ongoing disputes with the public authority in question.

The Commissioner has also found requests to be obsessive where, as in case FS50110741 (West Midland Passenger Transport Executive), there is, "a clear pattern of the complainant using the answer to one request as a starting point for a further request." Taking this further, the Commissioner found that the request in case FS50086298 (BBC) could be characterised as obsessive because, although the requests were not linked to a dispute, after 90 previous requests "It appears that there is no outcome within the realms of realistic possibility that is likely to satisfy the complainant."

Public authorities should remember that it will not be reasonable to characterise a request concerning an ongoing dispute as obsessive or manifestly unreasonable if the public authority has failed to adequately address the issue or provide an appropriate response. In case FS50120313 (Maidstone and Tunbridge Wells NHS Trust), the Commissioner found that earlier responses had been misleading and did not accept that it is obsessive, "to seek clarification of earlier responses which were unclear."

2 Repeated requests

The Information Commissioner receives far fewer complaints about the application of section 14(2) than about section 14(1), and the issues raised are usually fairly straightforward. By mid 2007, he had served just five decision notices.

In three decision notices issued, the Commissioner found that the public authority should not have claimed that the request in question was repeated. In case FS50087366, the Metropolitan Police Service was found to have wrongly taken account of requests for information made before the FOIA came into force. In case FS50135471, the Commissioner decided that a second request for information already requested previously was not repeated

because Brockhampton Group Parish Council had not provided a proper response to the first request. In case FS50144286, the same public authority was found to have wrongly applied s14(2) on both the above grounds.

The Commissioner has decided in two cases that the request in question was repeated. In case FS50134560 he decided that that the Cabinet Office was correct to refuse to respond to the 9th substantially similar request from the same complainant for information concerning the provision of social security benefit, housing and legal aid to a named individual, having already informed them that no such information was held. In case FS50102437, in which a complainant made 637 separate requests to the National Archives to view individual closed files which they believed contained information relating to a particular subject, the Commissioner also found that the public authority correctly refused the last piece of related correspondence on the grounds that it was repeated. In this case the National Archives may also have been justified in relying on s14(1).

More information

If you need any more information about this or any other aspect of freedom of information, please contact us.

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