Dealing with vexatious requests (section 14)

Freedom of Information Act

Contents

Introduction

1. The Freedom of Information Act 2000 (FOIA) gives the public a right of access to information held by public authorities.

2. An overview of the main provisions of FOIA can be found in The Guide to Freedom of Information.

3. This is part of a series of guidance, which goes into more detail than the Guide, to help public authorities to fully understand their obligations and promote good practice.

4. This guidance will help public authorities understand when a request can be refused as vexatious under section 14(1) of the FOIA.

Overview

- Under section 14(1) of the Act, public authorities do not have to comply with vexatious requests. There is no public interest test.
- Section 14(1) may be used in a variety of circumstances where a request, or its impact on a public authority, cannot be justified. Whilst public authorities should think carefully before refusing a request as vexatious they should not regard section 14(1) as something which is only to be applied in the most extreme of circumstances.
- Section 14(1) can only be applied to the request itself and not the individual who submitted it.
- Sometimes a request may be so patently unreasonable or objectionable that it will obviously be vexatious.
- In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a **disproportionate** or **unjustified** level of disruption, irritation or distress.
- This will usually be a matter of objectively judging the evidence of the impact on the authority and weighing this against any evidence about the purpose and value of the request.
- The public authority may also take into account the context and history of the request, where this is relevant.

- Although not appropriate in every case, it may be worth considering whether a more conciliatory approach could help before refusing a request as vexatious.
- A public authority must still issue a refusal notice unless it has already given the same individual a refusal notice for a previous vexatious request, and it would be unreasonable to issue another one.
- If the cost of compliance is the only or main issue, we recommend that the authority should consider first whether section 12 applies (there is no obligation to comply where the cost of finding and retrieving the information exceeds the appropriate limit).

What FOIA says

5. Section 14(1) states

> Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

6. The Freedom of Information Act was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.

7. Whilst most people exercise this right responsibly, a few may misuse or abuse the Act by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.

8. The Information Commissioner recognises that dealing with unreasonable requests can place a strain on resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.

9. Section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a **disproportionate** or **unjustified** level of disruption, irritation or distress.

10. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in the case of *Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013)* when it defined the purpose of section 14 as follows;

    'Section 14…is concerned with the nature of the request and has the effect of disapplying the citizen's right under Section 1(1)…The purpose of Section 14…must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA…' (paragraph 10).

11. This being the case, public authorities should not regard section 14(1) as something which is only to be applied in the most extreme circumstances, or as a last resort. Rather, we would encourage authorities to consider its use in any case where they believe the request is disproportionate or unjustified.

Application of section 14(1)

12. It is important to remember that section 14(1) can only be applied to the request itself, and not the individual who submits it. An authority cannot, therefore, refuse a request on the grounds that the requester himself is vexatious. Similarly, an authority cannot simply refuse a new request solely on the basis that it has classified previous requests from the same individual as vexatious.

13. Section 14(1) is concerned with the nature of the request rather than the consequences of releasing the requested information. If an authority is concerned about any possible prejudice which might arise from disclosure, then it will need to consider whether any of the exemptions listed in Part II of the Act apply.

14. Public authorities need to take care to distinguish between FOI requests and requests for the individual's own personal data. If a requester has asked for information relating to themselves, the authority should deal with the request as a subject access request under the Data Protection Act 1998.

15. You can read our guidance on how to handle a subject access request here.

The meaning of vexatious

16. In *Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013)* the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request.

17. In further exploring the role played by circumstances, the Tribunal placed particular emphasis on the issue of whether the request has adequate or proper justification. They also cited two previous section 14(1) decisions where the lack of proportionality in the requester's previous dealings with the authority was deemed to be a relevant consideration by the First Tier Tribunal.

18. After taking these factors into account, the Tribunal concluded that 'vexatious' could be defined as the *"…manifestly unjustified, inappropriate or improper use of a formal procedure.'* (paragraph 27).

19. The Tribunal's decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.

20. 20. At the subsequent Court of Appeal Case *(Dransfield v Information Commissioner and Devon County Council [2015]* EWCA Civ 454 (14 May 2015)), Lady Judge Arden observed that;

    "*…the emphasis should be on an objective standard and that the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester or to the public or any section of the public*." (Para 68)

21. Whilst, on face value, the Judge's ruling might appear to suggest a higher test for vexatiousness, with more of an emphasis on the value of the request, we don't regard it as a departure from the position taken by the Upper Tribunal. This is because she also went on to say;

    '*The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious.'*. (Para 68)'

22. This being the case, we would suggest that the key question the public authority must ask itself is whether the request is likely to cause a **disproportionate** or **unjustified** level of disruption, irritation or distress.

Identifying potentially vexatious requests

23. It may be helpful to use the indicators below as a point of reference, as our experience of dealing with section 14(1) complaints suggest that these are some of the typical key features of a vexatious request.

24. Please bear in mind that this is not a list of qualifying criteria. These indicators should not be regarded as either definitive or limiting. Public authorities remain free to refuse a request as vexatious based on their own assessment of all the relevant circumstances.

25. However, they should not simply try to fit the circumstances of a particular case to the examples in this guidance. The fact that a number of the indicators apply in a particular case will not necessarily mean that the authority may refuse the request as vexatious.

Indicators (not listed in any order of importance)

Abusive or aggressive language
The tone or language of the requester's correspondence goes beyond the level of criticism that a public authority or its employees should reasonably expect to receive.

Burden on the authority
The effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions of the requester.

Personal grudges
For whatever reason, the requester is targeting their correspondence towards a particular employee or office holder against whom they have some personal enmity.

Unreasonable persistence
The requester is attempting to reopen an issue which has already been comprehensively addressed by the public

authority, or otherwise subjected to some form of independent scrutiny.

Unfounded accusations
The request makes completely unsubstantiated accusations against the public authority or specific employees.

Intransigence
The requester takes an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to engage with the authority.

Frequent or overlapping requests
The requester submits frequent correspondence about the same issue or sends in new requests before the public authority has had an opportunity to address their earlier enquiries.

Deliberate intention to cause annoyance
The requester has explicitly stated that it is their intention to cause disruption to the public authority, or is a member of a campaign group whose stated aim is to disrupt the authority.

Scattergun approach
The request appears to be part of a completely random approach, lacks any clear focus, or seems to have been solely designed for the purpose of 'fishing' for information without any idea of what might be revealed.

Disproportionate effort
The matter being pursued by the requester is relatively trivial and the authority would have to expend a disproportionate amount of resources in order to meet their request.

No obvious intent to obtain information
The requester is abusing their rights of access to information by using the legislation as a means to vent their anger at a particular decision, or to harass and annoy the authority, for example, by requesting information which the authority knows them to possess already.

Futile requests
The issue at hand individually affects the requester and has already been conclusively resolved by the authority or subjected to some form of independent investigation.

Frivolous requests
The subject matter is inane or extremely trivial and the request appears to lack any serious purpose. The request is made for the sole purpose of amusement.

26. As the Upper Tribunal in *Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013)* observed;

    'There is…no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA'.

27. Therefore, the fact that a request has one or more of the characteristics listed above does not necessarily mean it that it is vexatious. Some factors will be easier to evidence and support than others. It is also important that factors are considered on the circumstances of each individual case; the strength of the factors will vary in importance depending on the case.

28. For example, an individual who submits frequent requests may only be doing this in order to obtain further clarification because the public authority's previous responses have been unclear or ambiguous.

29. Similarly, if the requester has used an accusatory tone, but his request has a serious purpose and raises a matter of substantial public interest, then it will be more difficult to argue a case that the request is vexatious.

Dealing with requests that are patently vexatious

30. In some cases it will be readily apparent that a request is vexatious.

31. For instance, the tone or content of the request might be so objectionable that it would be unreasonable to expect the authority to tolerate it, no matter how legitimate the purpose of the requester, or substantial the value of the request.

32. Examples of this might be where threats have been made against employees, or racist language used.

33. We would not expect an authority to make allowances for the respective purpose or value of the request under these kinds of circumstances.

34. Therefore, an authority that is dealing with a request which it believes to be patently vexatious should not be afraid to quickly reach a decision that the request is vexatious under section 14(1).

35. However, we accept that in many cases, the authority is likely to find the question of whether section 14(1) applies to be less clear-cut.

Dealing with less clear cut cases

36. If the authority is unsure whether it has sufficient grounds to refuse the request, then the key question it should consider is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

37. This will usually mean weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. Where relevant the authority will also need to take into account wider factors such as the background and history of the request.

38. Guidance on how to carry out this exercise can be found in the next section.

39. However, the ICO recommends that before going on to assess whether the request is vexatious, public authorities should first consider whether there are any viable alternatives to dealing with the request under section 14. Some of the potential options are outlined in the 'Alternative approaches' section later in this guidance.

Determining whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress

40. Public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.

41. However, if a request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress then this will be a strong indicator that it is vexatious.

42. In *Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013)*, Judge Wikeley recognised that the Upper Tribunal in *Wise v The Information Commissioner (GIA/1871/2011)* had identified proportionality as the common theme underpinning section 14(1) and he made particular reference to its comment that;

    'Inherent in the policy behind section 14(1) is the idea of proportionality. There must be an appropriate relationship between such matters as the information sought, the purpose of the request, and the time and other resources that would be needed to provide it.'

43. A useful first step for an authority to take when assessing whether a request, or the impact of dealing with it, is justified and proportionate, is to consider any evidence about the serious purpose or value of that request.

Assessing purpose and value

44. The Act is generally considered to be applicant blind, and public authorities cannot insist on knowing why an applicant wants information before dealing with a request.

45. However, this doesn't mean that an authority can't take into account the wider context in which the request is made and any evidence the applicant is willing to volunteer about the purpose behind their request.

46. The authority should therefore consider any comments the applicant might have made about the purpose behind their request, and any wider value or public interest in making the requested information publicly available.

47. Most requesters will have some serious purpose behind their request, and it will be rare that a public authority will be able to produce evidence that their only motivation is to cause disruption or annoyance. As the Upper Tribunal in *Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013*) observed:

    "public authorities should be wary of jumping to conclusions about there being a lack of any value or serious purpose

behind a request simply because it is not immediately self-evident."

48. However, if the request does not obviously serve to further the requester's stated aims or if the information requested will be of little wider benefit to the public, then this will restrict its value, even where there is clearly a serious purpose behind it.

49. Some practical examples of scenarios where the value of a request might be limited are where the requester;

    - Submits a request for information that has no obvious relevance to their stated aims.
    - Argues points rather than asking for new information.
    - Raises repeat issues which have already been fully considered by the authority.
    - Refuses an offer to refer the matter for independent investigation, or ignores the findings of an independent investigation.
    - Continues to challenge the authority for alleged wrongdoing without any cogent basis for doing so.
    - Is pursuing a relatively trivial or highly personalised matter of little if any benefit to the wider public.

50. Once again, this is not intended to be an exhaustive list and public authorities can take into account any factors they consider to be relevant.

Example
Decision notice FS50324650 concerned a request sent to the Department for International Development (DfID) in April 2010 for information relating to the World Bank Group's (WBG) trust fund accounts. The requester was an ex-employee of WBG who was pursuing allegations that the organisation had committed fraud.

The requester first brought her allegations to DfID's attention in 2007, and the DfID's internal audit team carried out an investigation at the time. However, this found no basis for her claims. The allegations were also reviewed by an independent regulator, the Parliamentary and Health Service Ombudsman, but it elected not to pursue the complaint.

Despite this, the requester continued to raise the matter with DfID, making several FOIA requests between 2007 and 2010.

In upholding DfID's decision that the April 2010 request was vexatious, the Information Commissioner found that the requester's reluctance to accept that no evidence of wrongdoing existed had limited the purpose and value of the request;

'…The complainant has a clear belief that a fraud has been committed, and as stated by her, believes this to be a legitimate pursuit to uncover this fraud. The DfID itself has noted that they consider the request to have a serious purpose, explaining that if this had been her first request on the subject, it would have been handled as normal. However, it considers this request the continuation of a vexatious campaign, the results of which have already been provided, and on which nothing further can be done.

40. The Commissioner supports the DfID's stance. Furthermore, even with the acceptance of the request's serious purpose, it has reached a point, in light of contrary evidence, where the serious purpose of the request has been mitigated by the complainant's unwillingness to accept such evidence.' (paragraphs 39 and 40).

Considering whether the purpose and value justifies the impact on the public authority

51. Serious purpose and value will often be the strongest argument in favour of the requester when a public authority is deliberating whether to refuse a request under section 14(1).

52. The key question to consider is whether the purpose and value of the request provides sufficient grounds to justify the distress, disruption or irritation that would be incurred by complying with that request. This should be judged as objectively as possible. In other words, would a reasonable person think that the purpose and value are enough to justify the impact on the authority.

53. Although section 14(1) is not subject to a traditional public interest test it was confirmed by the Upper Tribunal in the Dransfield case that it may be appropriate to ask the question:

"Does the request have a value or serious purpose in terms of the objective public interest in the information sought?"

54. It may be helpful to view this as a balancing exercise where the serious purpose and value of the request are weighed against the detrimental effect on the authority, as summarised below.

Serious purpose. **Requester's aims and legitimate motivation.** **Wider public interest and objective value.**	v	**Detrimental impact on the public authority.** **Evidence that the requester is abusing the right of access to information.**

55. The weight placed on each of these factors will be dependent on both the context and individual circumstances of the case. This means that sometimes the serious purpose and value of a request will be enough to justify the impact on the public authority and sometimes it won't.

Example 1
In decision notice FS50423035 the requester had made 25 requests to Transport for London (TFL) between July and August 2011 in an attempt to challenge the validity of a parking ticket.

The Commissioner acknowledged that these requests had a serious purpose and value, and singled out one particular enquiry (for information about TFL's staff conduct and payments) as having a public interest weight.

However, he also found that the requests were imposing a significant burden in terms of expense and distraction, and were designed to disrupt and annoy the authority as a means of pressuring it into revoking the ticket.

In ruling that section 14(1) had been correctly engaged, he stated;

'…the Commissioner must go on to consider whether the serious purpose of the requests is such as to render the requests not vexatious. This is where, for example, there might be a circumstance in which a request might be said to create a significant burden and yet, given its serious and

proper purpose, ought not to be deemed as vexatious.

In this case the Commissioner does not consider that sufficient weight can be placed on the serious purpose identified to make it inappropriate to deem the request vexatious. This is in view of the overall burden of the requests and the way that they were framed so that they can be reasonably seen as an example of inappropriate pressure on TfL. In addition, the Commissioner considers that the complainant's refusal to use the appropriate channels available to her to lodge an appeal against the fine substantially reduces the seriousness of the purpose.' (paragraphs 53 and 54).

Example 2
In decision notice FS50430286 the request was for information concerning the use of a charity account by a school academy. It was prompted by an audit report which had concluded that there had been a significant breakdown in appropriate standards of governance and accountability at the school.

In this case the Commissioner concluded that whilst the requests imposed a significant burden, this was outweighed by the serious purpose and value of the requests and therefore it would be wrong to find the requests vexatious.

Taking into account context and history

56. The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies.

57. In practice this means taking into account factors such as:

- Other requests made by the requester to that public authority (whether complied with or refused).

- The number and subject matter of those requests.

- Any other previous dealings between the authority and the requester.

And, assessing whether these weaken or support the argument that the request is vexatious.

58. A request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. An example of this would be where an individual is placing a significant strain on an authority's resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden.

59. The requester's past pattern of behaviour may also be a relevant consideration. For instance, if the authority's experience of dealing with his previous requests suggests that he won't be satisfied with any response and will submit numerous follow up enquiries no matter what information is supplied, then this evidence could strengthen any argument that responding to the current request will impose a disproportionate burden on the authority.

60. However, the context and history may equally weaken the argument that a request is vexatious. For example, it might indicate that the requester had a reasonable justification for their making their request, and that because of this the public authority should accept more of a burden or detrimental impact than might otherwise be the case.

61. Some examples of this might be where:

- The public authority's response to a previous request was unclear and the requester has had to submit a follow up request to obtain clarification.

- Responses to previous requests contained contradictory or inconsistent information which itself raised further questions, and the requester is now following up these lines of enquiry.

- The requester is pursuing a legitimate grievance against the authority and reasonably needs the requested information to do so.

- Serious failings at the authority have been widely publicised by the media, giving the requester genuine grounds for concern about the organisation's actions.

62. The authority should be mindful to take into account the extent to which oversights on its own part might have contributed to that request being generated.

63. If the problems which the authority now faces in dealing with the request have, to some degree, resulted from deficiencies in its handling of previous enquiries by the same requester, then this will weaken the argument that the request, or its impact upon the public authority, is disproportionate or unjustified.

Burdensome requests

Example 1
The case of *Independent Police Complaints Commissioner vs The Information Commissioner (EA/2011/0222, 29 March 2012)*, concerned two requests for information sent to the Independent Police Complaints Commissioner (IPCC) in March and April 2011, both of which were refused as vexatious. The first of these, made on March 17 2011, was for copies of the IPCC's managed investigation reports for 2008, 2009 and 2010.

During the ICO's investigation, the IPCC argued that reviewing the 438 reports concerned would require it to divert staff away from its core functions for a considerable period of time. The IPCC also cited the past behaviour of the complainant as further evidence of vexatiousness, pointing out that he had submitted 25 FOIA requests in the space of two years.

The ICO accepted that the March 17 request would impose a significant burden, but was not satisfied that the volume of requests had reached the point where any particular one could be characterised as vexatious, especially as it considered the requests to have a serious purpose. The ICO also advised that in cases where the significant burden imposed by the volume of information requested is the primary concern, it might be more appropriate to consider the request under section 12(1).

However, the Tribunal found that the March 17 request was vexatious and suggested that, under certain circumstances, it would be appropriate to refuse a burdensome request under

section 14, even if the information was also covered by section 12.

In allowing the IPCC's appeal the Tribunal observed that: "*A request may be so grossly oppressive in terms of the resources and time demanded by compliance as to be vexatious, regardless of the intentions or bona fides of the requester. If so, it is not prevented from being vexatious just because the authority could have relied instead on s.12 [section 12 of the FOIA].*'(paragraph 15).

Requests where collating the requested information will impose a significant burden

64. Despite the Information Tribunal's findings in the IPCC case, we would strongly recommend any public authority whose main concern is the cost of finding and extracting the information to consider the request under section 12 of the Act, where possible.

65. This is consistent with the views expressed by the Upper Tribunal in *Craven vs The Information Commissioner and The Department of Energy and Climate Change [2012] UKUT 442 (AAC), (28 January 2013)*

    '…if the public authority's principal reason (and especially where it is the sole reason) for wishing to reject the request concerns the projected costs of compliance, then as a matter of good practice serious consideration should be given to applying section 12 rather than section 14 in the FOIA context. Unnecessary resort to section 14 can be guaranteed to raise the temperature in FOIA disputes…' (*paragraph 31*)

66. It is also important to bear in mind that the bar for refusing a request as 'grossly oppressive' under section 14(1) is likely to be much higher than for a section 12 refusal. It is therefore in a public authority's own interests to apply section 12 rather than section 14, in any case where a request would exceed the cost limit.

67. Under section 12 public authorities can refuse a request if it would cost more than a set limit (£600 for central government and £450 for all other authorities) to find and extract the requested information.

68. The authority may also combine the total cost for all requests received from one person (or several people acting in concert) during a period of 60 days so long as they are requests for similar information. Please see the Guide to Freedom of Information for more details.

Requests which would impose a grossly oppressive burden but are not covered by the section 12 cost limits

69. An authority cannot claim section 12 for the cost and effort associated with considering exemptions or redacting exempt information.

70. Nonetheless, it may apply section 14(1) where it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the organisation.

71. However, we consider there to be a high threshold for refusing a request on such grounds. This means that an authority is most likely to have a viable case where:

- The requester has asked for a substantial volume of information **AND**
- The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO **AND**
- Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

72. In the event that a refusal should lead the requester to complain to the ICO, we would expect the authority to provide us with clear evidence to substantiate its claim that the request is grossly oppressive. Any requests which are referred to the Commissioner will be considered on the individual circumstances of each case.

73. Where an authority believes that complying with the request will impose a grossly oppressive burden, it is good practice to talk to the requester before claiming section 14(1), to see if they are willing to submit a less burdensome request.

Example 2

The case of *Salford City Council vs ICO and Tiekey Accounts Ltd (EA2012/0047, 30 November 2012)* concerned a request for documentation relating to the administration of council tax and housing benefits. The council maintained that these documents included information which was exempt under the FOIA and estimated that given their bulk and complexity, it would take 31 days to locate and redact the exempt information. They argued that this burden was sufficient to make the request vexatious.

Tiekey argued that disclosure was in the public interest because the documents would illustrate how erroneous benefits decisions were made and help to prevent future mistakes. However, the Tribunal were not persuaded by this reasoning, noting that information to help claimants obtain the correct benefits was available from other sources, and that remedy for any mistakes could be sought through the local authorities themselves or the Tribunals Service.

In allowing the appeal, the Tribunal commented that;
"…There was likely to be very little new information of any value coming into the public domain as a result of the disclosure of the material sought. In order to ensure that it did not disclose information of value to those seeking to defraud the system, or disclose personal information, or commercially confidential material, the council would need to divert scarce resources to the detailed examination of the material."
(paragraph 18).

"The Tribunal was satisfied that the Appellant Council had established that a disproportionately high cost would be incurred for any minimal public benefit flowing from the disclosure. It was therefore satisfied that the First Respondent had erred in his Decision Notice and that the Appellant Council was entitled to rely on section14(1) and not disclose the material since the request for information was vexatious..."
(paragraph 19).

74. The Salford City Council decision demonstrates how balancing the impact of a request against its purpose and value can help to determine whether the effect on the authority would be disproportionate.

Round robins

75. The fact that a requester has submitted identical or very similar requests to a number of other public authorities is not, in itself, enough to make the request vexatious, and it is important to bear in mind that these 'round robin' requests may sometimes have a serious purpose and value.

76. For example, a request directed to several public authorities in the same sector could have significant value if it has the potential to reveal important comparative statistical information about that sector once the information is combined.

77. Nevertheless, as with any other request, if the authority believes the round robin to have little discernible value and purpose, or considers that it would be likely to cause a disproportionate or unjustified level disruption, irritation, or distress then it may take this into account in any determination as to whether that request is vexatious.

78. A public authority can include evidence from other authorities that received the round robin when considering the overall context and history of the request.

79. However, any burden must only be on the authority which received the request. Therefore, when determining the impact of a round robin, the authority may only take into account any disruption, irritation or distress it would suffer itself. It cannot cite the impact on the public sector as a whole as evidence that the request is vexatious.

Random requests and 'fishing' expeditions

80. Public authorities sometimes express concern about the apparent tendency of some requesters, most notably journalists, to use their FOIA rights where they have no idea what information, if any, will be caught by the request. These requests can appear to take a random approach.

81. These requests are often called 'fishing expeditions' because the requester casts their net widely in the hope that this will catch information that is noteworthy or otherwise useful to them. It is a categorisation that public authorities should consider very carefully as regular use could easily result in the refusal of legitimate requests.

82. Whilst fishing for information is not, in itself, enough to make a request vexatious, some requests may:

    - Impose a burden by obliging the authority to sift through a substantial volume of information to isolate and extract the relevant details;

    - Encompass information which is only of limited value because of the wide scope of the request;

    - Create a burden by requiring the authority to spend a considerable amount of time considering any exemptions and redactions;

    - Be part of a pattern of persistent fishing expeditions by the same requester.

83. If the request has any of these characteristics then the authority may take this into consideration when weighing the impact of that request against its purpose and value as detailed in the section entitled 'Determining whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress'.

84. However, authorities must take care to differentiate between broad requests which rely upon pot luck to reveal something of interest and those where the requester is following a genuine line of enquiry.

85. It is also very important to remember that requesters do not have a detailed knowledge of how an authority's records are stored. It therefore follows that some requesters will submit broad requests because they do not know where or how the specific information they want is recorded.

86. Whilst these requests may appear unfocused, they cannot be categorised as 'fishing expeditions' if the requester is genuinely trying to obtain information about a particular issue. In this situation the requester may well be open to some assistance to help them to reframe or refocus their request.

87. Public authorities should also look out for those requests where the lack of focus is the result of ambiguous or unclear wording. Where there is an issue over clarity, the authority should consider what advice and assistance it can provide to help the requester clarify the focus of their request. However, if the requester persistently ignores reasonable advice and assistance

provided by the public authority, then it is more likely that a request with these characteristics could be refused as vexatious.

Vexatious requests for published information

88. If an authority considers a request for information included in its publication scheme to be vexatious, then it can apply Section 14 to the request, provided it meets the criteria for causing an unjustified or disproportionate level of disruption, irritation or distress.

89. Nonetheless, we would generally expect requests for information in a publication scheme to be refused under Section 21, on the grounds that the information is reasonably accessible to the applicant by other means.

90. For further information please read our guidance Information reasonably accessible to the applicant by other means (section 21).

Campaigns

91. If a public authority has reason to believe that several different requesters are acting in concert as part of a campaign to disrupt the organisation by virtue of the sheer weight of FOIA requests being submitted, then it may take this into account when determining whether any of those requests are vexatious.

> **Example**
> *Dr Gary Duke vs ICO and the University of Salford, (EA/2011/0060, 26 July 2011)* concerned a case where the appellant had made 13 requests for information to the university in November 2009 following his dismissal from the post of part time lecturer.
>
> The university had seen a significant increase in the rate and number of freedom of information requests being received in the period from October 2009 to February 2010 and noted that these were similar in subject matter to the appellant's requests. It had also observed that these originated from a comparatively small number of individuals who it believed to have connections to Dr Duke.

The university therefore refused Dr Duke's requests as vexatious on the grounds that they were part of a deliberate campaign to disrupt the institution's activities.

The Tribunal unanimously rejected Dr Duke's appeal, commenting that:
'The Tribunal had no difficulty in concluding that the Appellant had, together with others, mounted a campaign in the stream of requests for information that amounted to an abuse of the process.

Those requests originated from a comparatively small number of individuals and the Tribunal finds that the University and the ICO were correct to conclude that the requesters had connections with the Appellant who was a former member of staff who had recently been dismissed. It is a fair characterisation that this was a concerted attempt to disrupt the University's activities by a group of activists undertaking a campaign.' (paragraphs 47 and 50).

92. The authority will need to have sufficient evidence to substantiate any claim of a link between the requests before it can go on to consider whether section 14(1) applies on these grounds. Some examples of the types of evidence an authority might cite in support of its case are:

    - The requests are identical or similar.
    - They have received email correspondence in which other requesters have been copied in or mentioned.
    - There is an unusual pattern of requests, for example a large number have been submitted within a relatively short space of time.
    - A group's website makes an explicit reference to a campaign against the authority.

93. Authorities must be careful to differentiate between cases where the requesters are abusing their information rights to engage in a campaign of disruption, and those instances where the requesters are using the Act as a channel to obtain information that will assist their campaign on an underlying issue.

94. If the available evidence suggests that the requests are genuinely directed at gathering information about an underlying issue, then the authority will only be able to apply section 14(1) where it can show that the aggregated impact of dealing with the requests would cause a disproportionate and unjustified level of disruption, irritation or distress.

95. This will involve weighing the evidence about the impact caused by the requests submitted as part of the campaign against the serious purpose and value of the campaign and the extent to which the requests further that purpose. Guidance on how to carry out this exercise can be found in the section of this guidance entitled 'Considering whether the purpose and value justifies the impact on the public authority.'

96. If the authority concludes that the requests are vexatious then it should proceed to issue refusal notices in the normal manner.

97. It is also important to bear in mind that sometimes a large number of individuals will independently ask for information on the same subject because an issue is of media or local interest. Public authorities should therefore ensure that that they have ruled this explanation out before arriving at the conclusion that the requesters are acting in concert or as part of a campaign.

Recommended actions before making a final decision

98. We would advise any public authority that is considering the application of section 14(1) to take a step back and review the situation before making a final decision. This is because refusing a request as vexatious is particularly likely to elicit a complaint from the requester and may serve to escalate any pre-existing disputes between the respective parties.

99. Primarily, this will mean ensuring that the relevant people have been consulted about the matter before making a final decision.

100. There is little point in making a decision without understanding its implications for other departments within the public authority, or without the backing of a decision maker at an appropriate level. At the very least, we recommend that when the request handler has been very involved in previous correspondence with the requester they ask someone else, preferably at a more senior level, to take a look and give their objective view.

101. As part of this process, the authority may also wish to explore whether there might be a viable alternative to refusing the request outright. Some potential options are discussed in the next section.

102. Finally, where a request is refused and the requester does decide to complain, then the public authority should recognise the importance of the internal review stage, as this will be its last remaining opportunity to thoroughly re-evaluate, and, if appropriate, reverse the decision without the involvement of the ICO.

Alternative approaches

103. A requester may be confused or aggrieved if an authority suddenly switches from complying with their requests to refusing them as vexatious without any prior warning. This, in turn, increases the likelihood that they will complain about the manner in which their request has been handled.

104. For this reason it is good practice to consider whether a more conciliatory approach would practically address the problem before choosing to refuse the request, as this may help to prevent any unnecessary disputes from arising. A conciliatory approach should focus on trying to get the requester to understand the need to moderate their approach and understand the consequences of their request(s). An approach which clearly looks like a threat is unlikely to succeed.

105. However, we accept that authorities will need to use their judgement when deciding whether to engage with a particular requester in this way. Some requesters will be prepared to enter into some form of dialogue with the authority. However, others may be aggrieved to learn that the authority is even considering refusing their request under section 14(1) or the implication that they are. Indeed, approaching these requesters and asking them to moderate their requests could provoke the very reaction that the authority was trying to avoid.

106. Therefore, before deciding whether to take a conciliatory approach, an authority may find it instructive to look back at its past dealings with the requester to try and gauge how they might respond.

107. If past history suggests that the requester is likely to escalate the matter whether or not the authority takes a conciliatory

approach, then it is difficult to see what, if anything would be gained by engaging with that requester further.

108. Similarly, if the authority believes it has already reached the stage where it has gone as far as it can to accommodate the requester, and those efforts have been to no avail, then there would seem to be little value in attempting any further conciliation.

Allow the requester an opportunity to change their behaviour

109. The authority could try writing to the requester to outline its concerns about the way his previous requests have been framed, and to set out what he should do differently to ensure that further requests are dealt with.

110. For example, if an authority is unhappy about the tone of previous requests then it might advise the requester that it is still prepared to accept further requests, but only on condition that he moderates his language in future.

111. When outlining its concerns, the authority should, whenever possible, focus on the impact of the requests, rather than the behaviour of the requester himself. Labelling a requester with terms such as 'obsessive', 'unreasonable' or 'aggressive' may only serve to worsen relations between the respective parties and cause further disputes.

112. This can also serve as a 'final warning' with the authority having effectively given the requester notice that any future requests framed in a similar vein may be refused as vexatious.

Refer the requestor to the ICO's 'For the public' webpages.

113. Our webpages for the public include some advice for requesters on how to word their requests to get the best result. They are aimed at the general public and provide guidance on how to use section 1 rights responsibly and effectively. An authority which is concerned that an individual's requests may become vexatious could try referring them to these webpages, and advising that future requests are less likely to be refused if framed in accordance with these guidelines.

114. You can view the relevant section, 'How should I word my request to get the best result?', on the How to access information from a public body page of our site.

Provide advice and assistance for requests which are unclear

115. A public authority is not under any obligation to provide advice and assistance in response to a request which is vexatious. However, if part of the problem is that the requester's correspondence is hard to follow and the authority is therefore unsure what (if any) information has been requested, then it might want to consider whether the problem could more appropriately be resolved by providing the requester with guidance on how to reframe his request.

116. This approach may be particularly helpful for lengthy correspondence that contains a confusing mixture of questions, complaints and other content, or is otherwise incoherent or illegible.

117. More information about the duty to provide advice and assistance can be found via our guidance index.

Refusing a request

118. Public authorities do not have to comply with vexatious requests. There is also no requirement to carry out a public interest test or to confirm or deny whether the requested information is held.

119. In most circumstances the authority must still issue a refusal notice within 20 working days. This should state that they are relying on section 14(1) and include details of their internal review procedures and the right to appeal to the ICO.

120. There is no obligation to explain why the request is vexatious. Nonetheless, authorities should aim to be as helpful as possible. The ICO considers it good practice to include the reasoning for the decision in the refusal notice.

121. However, we also appreciate that it may not be appropriate to provide a full explanation in every case. An example might be where the evidence of the requester's past behaviour suggests that a detailed response would only serve to encourage follow up requests.

122. Therefore, the question of what level of detail, if any, to include in a refusal notice will depend on the specific circumstances surrounding the request.

123. Section 17(6) of the Act states that there is no need to issue a refusal notice if:

- The authority has already given the same person a refusal notice for a previous vexatious or repeated request; and
- It would be unreasonable to issue another one.

124. The ICO will usually only accept that it would be unreasonable to issue a further refusal notice if the authority has already warned the complainant that further requests on the same or similar topics will not receive any response.

125. Refusing a request as vexatious is particularly likely to lead to an internal review or an appeal to the ICO. Whether or not the authority issues a refusal notice or explains why it considers the request to be vexatious, it should keep written records clearly setting out the procedure it followed and its reasons for judging the request as vexatious. This should make it easier to evidence the reasoning behind the decision should the requester decide to take the matter further.

126. For more information on refusals, please visit our Guide to Freedom of Information.

What the ICO will expect from an authority?

Gathering evidence

127. When an authority is dealing with a series of requests and developing pattern of behaviour, it will often arrive at a tipping point when it decides that, whilst it was appropriate to deal with a requester's previous requests, the continuation of that behaviour has made the latest request vexatious.

128. An authority which sees this tipping point approaching would be advised to maintain an ongoing 'evidence log' to record any relevant correspondence and behaviour, as we would expect it to be able to produce documentary evidence in support of its decision, should the requester complain to us.

129. The 'evidence log' should be proportionate to the nature of the request. The focus should be on key milestones in the

chronology, and cross referencing existing information rather than gathering or developing new information.

The cut off point for evidence that a request is vexatious

130. The authority may take into account any evidence it has about the events and correspondence which proceeded or led up to the request being made.

131. An authority has a set time limit (normally 20 working days) in which it must respond to a request. As long as the authority keeps to this time limit then it may also take into account anything that happens within the period in which it is dealing with the request (for example if the requester sends in further requests).

132. However, an authority cannot take into account anything that happens after this cut off point. This means that if a public authority breaches the Act and takes longer than 20 working days to deal with a request, or if it makes a late claim of section 14(1) after a complaint has been made to the ICO, then it will need to be very careful to disregard anything that only happened after the time limit for responding had expired.

Making a case to the ICO

133. When building a case to support its decision, an authority must bear in mind that we will be primarily looking for evidence that the request would have an unjustified or disproportionate effect on the authority.

134. The authority should therefore be able to outline the detrimental impact of compliance and also explain why this would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value.

135. Where the authority believes that the context or history strengthens their argument that the request is vexatious, then we would also expect them to provide any relevant documentary evidence or background information to support this claim.

136. If the authority will be providing a sample of the vexatious material as supporting evidence, then it should ensure that this sample is representative.

More information

137. This guidance has been developed drawing on ICO experience. Because of this it may provide more detail on issues that are often referred to the Information Commissioner than on those we rarely see. The guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.

138. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.

139. If you need any more information about this or any other aspect of freedom of information, please contact us: see our website www.ico.org.uk.

Annex of example tribunal decisions

Disproportionate burden

Example
In the case of *Coggins vs ICO (EA/2007/0130, 13 May 2008)*, the Tribunal found that a "significant administrative burden" (paragraph 28) was caused by the complainant's correspondence with the public authority which started in March 2005 and continued until the public authority cited section14 in May 2007. The complainant's contact with the public authority ran to 20 FOIA requests, 73 letters and 17 postcards.

The Tribunal said this contact was "…*long, detailed and overlapping in the sense that he wrote on the same matters to a number of different officers, repeating requests before a response to the preceding one was received….the Tribunal was of the view that dealing with this correspondence would have been a significant distraction from its core functions*…" (paragraph 28).

Reopening issues that have been resolved

Example
In the case of *Ahilathirunayagam Vs ICO & London Metropolitan University (EA/2006/0070, 20 June 2007)*, the complainant had been in correspondence with the London Metropolitan University since 1992 as a result of him not being awarded a law degree. The complainant exhausted the University's appeal procedure, complained to the Commissioner (Data Protection Registrar as he was then), instructed two firms of solicitors to correspond with the University, and unsuccessfully issued County Court proceedings. He also complained to his MP and to the Lord Chancellor's Department.

In February 2005, the complainant made an FOI request for information on the same issue. The University cited section14.

The Tribunal found the request to be vexatious by taking into account the following matters:

"…(ii) The fact that several of the questions purported to seek information which the Appellant clearly already possessed and the detailed content of which had previously been debated with the University

(iii) The tendentious language adopted in several of the questions demonstrating that the Appellant's purpose was to argue and even harangue the University and certain of its employees and not really to obtain information that he did not already possess

(iv) The background history between the Appellant and the University…and the fact that the request, viewed as a whole, appeared to us to be intended simply to reopen issues which had been disputed several times before…" (paragraph 32).

Unjustified persistence

Example
In the case of Welsh Vs ICO *(EA/2007/0088, 16 April 2008)*, the complainant attended his GP with a swollen lip. A month later, he saw a different doctor who diagnosed skin cancer. Mr Welsh believed the first doctor should have recognised the skin cancer and subsequently made a number of complaints

although these were not upheld by the practice's own internal investigation, the GMC, the Primary Care Trust or the Healthcare Commission.

Nonetheless, the complainant addressed a 4 page letter to the GP's practice, headed 'FOIA 2000 & DPA 1998 & European Court of Human Rights" which contained one FOI request to know whether the first doctor had received training on face cancer recognition. The GP cited section14.

The Tribunal said:
"…Mr Welsh simply ignores the results of 3 separate clinical investigations into his allegation. He advances no medical evidence of his own to challenge their findings…..that unwillingness to accept or engage with contrary evidence is an indicator of someone obsessed with his particular viewpoint, to the exclusion of any other…it is the persistence of Mr Welsh's complaints, in the teeth of the findings of independent and external investigations, that makes this request, against that background and context, vexatious…." (paragraphs 24 and25).

Example
In the case *of Hossack vs ICO and the Department of Work and Pensions (EA/2007/0024, 18 December 2007)*, the DWP had inadvertently revealed to the complainant's wife that he was in receipt of benefits in breach of the Data Protection Act. The DWP initially suggested they were unable to identify the employee who committed the breach although they later were able to identify the individual.

The DWP went onto accept responsibility for the breach, apologised and paid compensation but Mr Hossack twice complained to the Parliamentary Commissioner for Administration whose recommendations the DWP accepted and acted upon.

However, Mr Hossack continued to believe that the DWP's initial misleading reply justified his campaign to prove a cover-up at the DWP. He accused the DWP staff of fraud and corruption and he publicised his allegations by setting up his own website and towing a trailer with posters detailing his allegations around the town.

The Tribunal said *"….whatever cause or justification Mr Hossack may have had for his campaign initially, cannot begin to justify pursuing it to the lengths he has now gone to. To continue the campaign beyond the Ombudsman's second report….is completely unjustified and disproportionate"* (paragraph 26) and *"…seen in context, we have no hesitation in declaring Mr Hossack's request, vexatious"* (paragraph 27).

Example
In *Betts vs ICO (EA/2007/0109, 19 May 2008)* the complainant's car was damaged in 2004 by what he argued was an inadequately maintained council road. He stated that the council were responsible and as such should refund the £99.87 charge for the car repair. The council stated that they had taken all reasonable care to ensure the road was not dangerous to traffic.

By a number of letters and emails, the complainant sought inspection records, policies and assessments and the council provided this information under the FOIA but when in January 2007 the complainant made a further request for information on health and safety policies and procedures, the council claimed section 14.

The majority Tribunal found section14 was engaged and commented:
"…the Appellant's refusal to let the matter drop and the dogged persistence with which he pursued his requests, despite disclosure by the council and explanations as to its practices, indicated that the latter part of the request was part of an obsession. The Tribunal accepted that in early 2005 the Appellant could not be criticised for seeking the information that he did. Two years on, however, and the public interest in openness had been outweighed by the drain on resources and diversion from necessary public functions that were a result of his repeated requests…" (paragraph 38).

Volume of requests harassing to member of staff

Example
In *Dadswell vs ICO, (EA/2012/0033 29 May 2012)*, the

complainant had written an 11 page letter to a local authority which comprised of 122 separate questions, 93 of which were directed at a specific member of staff. The Tribunal struck out the complainant's appeal, commenting that:

"…A single request comprising 122 separate questions – 93 of which were aimed at one named member of staff and 29 of which were directed at another named member of staff – inevitably creates a significant burden in terms of expense and distraction and raises issues in relation to be vexatious…" (paragraph 18).

"…anyone being required to answer a series of 93 questions of an interrogatory nature is likely to feel harassed by the sheer volume of what is requested…The Appellant may not like being characterised as vexatious but that has been the effect of the way in which he has sought information from the Metropolitan District Council..." (paragraphs 20 and 21).

Campaign taken too far

Example
In the case of *Poulton and Ann Wheelwright vs ICO, (EA/2011/0302, EA/2012/0059, & EA/2012/0060, 8 August 2012)* the complainant had made three requests for information relating to a dispute with the council over planning issues and the properties he owned. The council estimated that it would cost in excess of £1300 to search the records for this information.

This dispute in question spanned 20 years, during which time the complainant had made allegations of 'serious irregularities' in the planning department and pursued the matter through independent bodies such as the courts, the Local Government Ombudsman, the police, and the Valuation Tribunal's Service. The Information Tribunal unanimously rejected the complainant's appeals, commenting that:

'…Viewed in the round it is clear that these applications for information are part of a relentless challenge to the council which has gone on for many years, at great expense and disruption to the council, some distress to its staff, with negligible tangible results and little prospect of ever attaining

them. It is simply pointless and a waste. It is manifestly unreasonable for a citizen to use information legislation in this way.' (paragraph 18).

Justified persistence

Example
In *Thackeray vs ICO, (EA/2011/0082 18 May 2012)*, the complainant had made a number of requests to the City of London Corporation (COLC) concerning its dealings with scientology organisations. These mainly centred around COLC's decision to award mandatory rate relief to the Church of Scientology Religious Education College.

Often these requests would follow on closely from each other or be refined versions of previous requests. COLC refused two of the later requests, citing in one refusal notice that this was on the grounds that the request was obsessive, harassing the authority and imposing a significant burden. However, the Tribunal unanimously upheld the complainant's appeal and observed that:

"…The dogged pursuit of an investigation should not lightly be characterised as an obsessive campaign of harassment. It is inevitable that, in some circumstances, information disclosed in response to one request will generate a further request, designed to pursue a particular aspect of the matter in which the requester in interested…We would not like to see section 14 being used to prevent a requester, who has submitted a general request, then narrowing the focus of a second request in order to pursue a particular line of enquiry suggested by the disclosure made under the first request" (paragraph 26).

Example
In the case of Marsh vs ICO *(EA/2012/0064, 1 October 2012)* the appellant had asked Southwark council for information about the outcome of a review into the methodology for an increase in court costs. This request followed on from previous enquiries about manner in which court costs were calculated. The council had refused the request as vexatious on the grounds that it was part of a long series of related,

overlapping correspondence which was both obsessive and having the effect of harassing the council.

The Tribunal considered the history of Mr Marsh's contact with the council from his first request about the calculation of court costs in 2006, through to 2008 when the council broke off further discussions and on to 2011 and the refusal of his most recent request. They also took account of an Audit Commission investigation, instigated by Mr Marsh, which had found that there was scope for the council to improve its arrangements for managing court costs and liability orders.

In allowing the appeal they commented that:
"We think it appropriate, and indeed necessary, for us to take into account this evidence because it reinforces our own view…that the Central Enquiry was not vexatious. We have demonstrated…how Mr Marsh pursued a legitimate concern on an issue of some significance, at first with a degree of co-operation from the council and, when that was removed, by dogged, forensic investigation of the information the council provided to him or to the public. It was a campaign that led the council's own Overview and Security Committee to investigate in 2008 and some of its members to express concern about the way in which cost claims appeared to have been assessed.

There is also some suggestion that, having provided the public with a budgeted £0.5 million increase in costs recovery, which it was then unwilling or unable to justify when challenged by Mr Marsh, it simply refused to engage with him on the subject and issued a refusal notice…The issue under consideration was also a relatively complex one…This provides further justification for different strands of enquiry having been pursued in parallel and investigated in some depth."
(paragraph 30).

Vexatious when viewed in context

Example
In *Betts vs ICO, (EA/2007/0109 19 May 2008)*, the request concerned health and safety policies and risk assessments. There was nothing vexatious in the content of the request itself. However, there had been a dispute between the council

and the requester which had resulted in ongoing FOIA requests and persistent correspondence over two years. These continued despite the council's disclosures and explanations.

Although the latest request was not vexatious in isolation, the Tribunal considered that it was vexatious when viewed in context. It was a continuation of a pattern of behaviour and part of an ongoing campaign to pressure the council. The request on its own may have been simple, but experience showed it was very likely to lead to further correspondence, requests and complaints. Given the wider context and history, the request was harassing, likely to impose a significant burden, and obsessive.