



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. 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 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 Act. An Annex also gives some advice about the equivalent provision in the Environmental Information Regulations.

INTRODUCTION

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

The Freedom of Information Act (FOIA) and the parallel Environmental Information Regulations (EIR) gives new rights of access to official information, known as the right to know. The Act makes clear that, subject to certain safeguards, there is a public interest in allowing access to such information and, in particular, in the release of 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 Act also provides an exception to that duty for requests which are vexatious or repetitious. (In the case of the Environmental Information Regulations, 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 are exercising their new rights sensibly and responsibly. However, he recognises that there is a risk that some individuals and some organisations may seek to abuse these new rights with requests which are manifestly unreasonable and which would impose substantial burdens on the financial and human resources of public authorities. Such cases may well arise in connection with a grievance or complaint which an individual is pursuing against the authority.

The Commissioner considers that the exemption in the Act for vexatious and repeated requests is important, especially as no fee will be charged for most requests. His approach will be influenced by the desirability of keeping compliance costs to a minimum and to avoiding 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. An authority may well need to defend its decision.

While giving maximum support to individuals genuinely seeking to exercise the right to know, the Commissioner's general approach will be sympathetic towards authorities where a request, which may be the latest in a series of requests, would impose a significant burden and:

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

Although the Act states that a request can only be refused by a public authority where it is vexatious or repeated (section 14), public authorities will be aware that the Commissioner has slightly different grounds (section 50(2)) for refusing to deal with a complaint. In addition to removing the duty to consider complaints which are vexatious, the Commissioner is under no duty to consider complaints which are "frivolous". A complaint about a request that has been refused because it was vexatious will need good evidence in support. Otherwise the complaint itself may well be considered as vexatious and/or frivolous. The Commissioner would also 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 the authority's favour in other similar cases.

PART A: VEXATIOUS REQUESTS

1. What does the Act 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.

Section 50(2)(c) states that the Information Commissioner is not obliged to deal with complaints if the application appears to him to be frivolous or vexatious. His approach will be consistent with what is set out in this paper.

2. What is a vexatious request?

There is no definition of vexatious in the Act. Dictionary definitions refer to “causing annoyance or worry”.

In the different context of litigation, the term has been considered by the courts in cases where public authorities and others have sought 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 as vexatious a request which is designed to subject a public authority to inconvenience, harassment or expense.

But – although a request cannot be treated as vexatious simply because it causes inconvenience or expense - the Commissioner considers that a wider approach is necessary in the context of FOI requests made, without charge and with the minimum of formality, to public authorities. Effect will need to be considered as well as intention. Even though it may not have been the explicit intention of the applicant to cause inconvenience or expense, if a reasonable person would conclude that the main effect of the request would be disproportionate inconvenience or expense, 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 in which it may be possible to identify individual requests as being vexatious. The following list is not designed to be exhaustive, but rather to illustrate a general approach:

- **The applicant makes clear his or her intention:** If an applicant explicitly states that it is his or her 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 intention of the applicant:** Similarly, if an applicant (or an organisation to which the applicant belongs, 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 Act does not require the person making a request to disclose any reason or motivation, there may be cases which are so lacking in serious purpose or value that they can only be fairly treated as “vexatious”. Such cases are especially likely to arise where there has been a series of requests. Before reaching such a conclusion, however, a public authority should be careful to consider any explanation which the applicant gives as to the value in disclosing the information which may be made in the course of an appeal against refusal (see below).
- **The effect of redaction would be to render information worthless:** If much of the information requested falls within an exemption and requires extensive redaction and the remaining information would be meaningless or no real use to the applicant, the application may be reasonably considered to be vexatious. This will depend on what has been requested and whether the applicant is (or becomes) aware of the likely result. Again, in such cases it will be important to give proper consideration to any explanation which the applicant gives as to the value in disclosing the information, for example in the course of an appeal against the refusal.
- **The request is for information which is clearly exempt:** Requests may be received for information which the applicant clearly understands to be exempt even after the application of the public interest test. 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 such cases than define them. They will be exceptional – public authorities must not be judgemental without good cause. An apparently tedious 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 such requests when there has been frequent prior contact with requester or the request otherwise forms part of a pattern, for instance when the same individual submits successive requests for information. Although such requests may not be repeated in the sense that they are requests for the same information (see Section 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 taken 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 in determining whether to comply with a request for information in such 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 be provided as the public authority cannot discriminate between different requesters.

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

Although it may be wrong to judge a request to be vexatious simply because the same applicant has previously submitted such a request or because the authority has judged other behaviour of the applicant to be vexatious, equally 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.

5. 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 applicant's rights under FOI if the request is nevertheless clearly requesting information. The use of threatening, offensive or abusive language or behaviour may however be strongly indicative of a vexatious request.

In drawing inferences from the way in which a request is framed or pursued, public authorities should, of course, be aware of their general obligations as service providers, together with any specific obligations under the Disability Discrimination Act.

6. 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 categorisation cannot be automatically applied to the request for information. In other words, all information requests must be interpreted in line with the provisions of the FOI Act. In some cases, however, such a communication may be so rambling or impenetrable as to make vexatious any request which it may contain.

7. Are requests submitted under obvious pseudonyms automatically vexatious?

The Act requires applicants to make requests for information in writing and to state his or her name and an address for correspondence. Technically, therefore a request submitted using a pseudonym is not a proper request and could be refused on that ground. However, the Act does not allow public authorities to enquire into the circumstances of the applicant or to ask for information in order to verify identities. Unless the public authority knows that the applicant 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 Act that public authorities must generally discount the identity and circumstances of the applicant and must regard any release of information as if it were a release to the world at large. This approach recognises that although applicants 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 designate a request as vexatious simply because the applicant uses an obvious pseudonym, it may be prompted by the use of the pseudonym to consider whether the request is vexatious. It should not, however, base any decisions as to disclosure upon the name supplied by the applicant, (unless the applicant is making a subject access request - a request for information about him/herself under section 7 of the Data Protection Act 1998).

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”?

The term “a reasonable interval” is not defined in the Act and in the first instance this is for the public authority to determine, depending on the type of information sought and any advice provided to the applicant 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 an applicant to make requests for information more often. If the applicant disputes the public authority’s definition of a “reasonable interval” in respect of their application, 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/substantially similar content, but are not in fact repeated requests. This is because in certain cases information that the public authority would disclose if complying with the application might not be the same as the information previously released.

Often, the information that will be released in complying with a request will be of greater significance 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 sought more frequently than information about a situation that is static.

For example, two requests received from the same applicant, 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 request would still merit a response (by informing the applicant of this fact under the duty to deny), unless in the response to the first request the applicant was informed of when these figures are due to change.

- **An FOI request simply asks if any of the information held by a public authority 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 to which it refers has previously been requested. This obligation would also apply if the content of the application is the same as the first request but the applicant genuinely thinks that the information held has changed since then. This might be repetitious in nature, but it would still constitute a valid request.

Any number of such requests should be complied with, unless of course the public authority informs the applicant when the information is due to change and the applicant then sends another request before that time. In this case, the subsequent request would be judged as repeated.

4. Can requests be both repeated and vexatious?

Yes. In the answer to question 3 in Section B, we looked at ways of identifying single vexatious requests. This may often be a difficult judgement to make. Such a judgement may become easier however, 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 as vexatious a request which is designed to subject a public authority to inconvenience, **harassment** and expense.

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

Even though a request may be repeated, there will be cases where a positive response should be considered. The following are examples:

- In the request, the applicant states that he or she lost the information but still requires it;
- The applicant states that he or she disposed of the information but has subsequently discovered that it was still required;
- The applicant 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 such “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 applicant.

If a public authority has reason to believe that the requests have been submitted as part of a campaign designed primarily to cause it inconvenience, it may be able to refuse them because they are vexatious.

If, however, it believes 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, by way of a disclosure log under a publication scheme.

PART C: PRACTICAL CONSIDERATIONS

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

In most cases the process of identifying a genuinely vexatious request will be straightforward as long as the public authority understands what is meant by a vexatious application. However, 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 certain cases it may be difficult to determine whether a request is vexatious or simply difficult to answer. Here, it might be easiest for a public authority to deal with the request as best it can by adopting one of the following alternatives

- Contact the applicant and ask him or her to clarify the request. (See also Awareness Guidance 23 which explains the duty to provide Advice and Assistance under the Act.)
- Comply with the request and reduce the chances of a more time consuming grievance developing between the applicant and the public authority. Essentially this is a matter of judgement for the authority.
- Refuse a 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 draw up 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 receiving a request that is subsequently deemed to be vexatious or repeated, the public authority should notify the applicant accordingly and inform them why this is the case. It need not, however, provide a notice of refusal in the case of repeated requests if a similar notice has been given previously. It is wise for a public authority to retain records of the case in order to assist should the applicant appeal against the decision or in order to identify identical requests in the future.

Records should consist of details of the request and the applicant, information as to why the application was judged to be vexatious or repeated, and the way in which 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 deemed as vexatious.

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

Reliance on section 14 is likely to be relatively controversial and may easily lead to further complaint. This is in itself a strong reason why public authorities should adopt an internal complaints procedure in respect of FOI complaints. It will give a public authority a chance to reconsider a case and provide assurance to the applicant that they have been fairly treated under the provisions of the Act. Except in exceptional cases, such a complaints procedure will have to be exhausted by the applicant before he or she is able to refer a case to the Information Commissioner.

The applicant should be advised about the complaints procedure when informing him or her of the outcome of a request. The Access Code of Practice under Section 45 of the Act recommends that complaints handling is conducted by someone not involved in the initial decision.

The existence of a robust internal complaints procedure may allow front line decision makers to make more confident decisions about refusals of requests which appear at first sight to be for information of little value but entailing significant costs for the authority in its retrieval or redaction.

ANNEX: THE ENVIRONMENTAL INFORMATION REGULATIONS 2004

Environmental Information held by public authorities falls within a separate Access to Information regime, entitled the Environmental Information Regulations (EIR) 2004.

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, but fall within the scope of 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 judged to be vexatious or repeated under the terms of Section 14 of the Freedom of Information Act, it would be equivalent to manifestly unreasonable under the EIR and therefore exempt from the duty to disclose.

2. Are there cases where the “manifestly unreasonable” provision in the EIR is not equivalent to the “vexatious” provision in the Act?

Yes. As there is no cost limit for compliance under the EIR, a request may be judged to be manifestly unreasonable due to the cost and work needed to comply with the request. As part of the duty to provide advice and assistance, the public authority should ask the applicant to reformulate their request in order to reduce the cost involved to a reasonable level. If the applicant refuses, the request can then be judged to be manifestly unreasonable by virtue of it being voluminous. It will be for the public authority to make the case that complying with the request would be unreasonable.