

Guidance on handling persistent requestors and frivolous requests



Type of Request

1. This guidance covers a range of requests which create disproportionate resource burdens for public authorities, without any individual request necessarily engaging the “appropriate limit”. Requests covered in this guidance are: -
 - Requests for file lists followed by requests for large numbers of entire files
 - Requests for information of a frivolous nature
 - Persistent requests which have the effect of harassing a public authority.
2. All requests must be treated on case by case basis but this toolkit recommends a number of approaches that can be used to handle such requests.
3. For detailed guidance on vexatiousness please refer to the [DCA's Procedural Guidance](#)

The resource burden

A) Requests for entire files

4. Request for files can be particularly burdensome for Departments. Applicants may use file lists disclosed from previous FOI requests to then request large numbers of files on the list without specifying the information which is of interest to them. These requests must still be handled in accordance with the Act despite the Act entitling applicants to information not documents. Requests for files must be interpreted as requests for information contained within the files i.e. the information is described by reference to its documentary location.
5. Although it can often be very time consuming for public authorities to deal with file requests, the “appropriate limit” of £600 may not be engaged because the fact that the information is identified by reference to such a precise documentary location means that, more often than not files are easy to identify, locate and retrieve. The time is spent reading through voluminous files to determine whether they contain information that may be subject to exemptions, which public authorities must do in order to ensure that information is not disclosed where this would be unlawful or contrary to the public interest. Whilst requests must **not** be refused simply because they are resource intensive to deal with (unless they engage the appropriate limit), requests for hundreds of files can place a massive resource burden on Departments.
6. Applicants may also break down their requests and put in requests for smaller numbers of files at regular intervals, but this ultimately creates the same resource problem.

B) Requests of a “frivolous nature” and persistent requestors

7. Public authorities will sometimes receive requests that could be categorised as “frivolous” i.e. they request information of a frivolous nature, without any serious purpose or value but which relate to information which may be held.
8. There are also cases where a request forms part of a pattern where the same individual submits successive requests for information. Sometimes, in doing this the requestor may be trying to vindicate a long-standing grievance against an authority.
9. Handling such requests, although completely different from requests for multiple files, can again be very resource intensive, in particular where the request is accompanied by a stream of correspondence, detailed representations and comments which the applicant seeks to get the public authority to respond to. Although the Act does not explicitly limit the sort of information which can be requested, or those people who can make requests, it is important to bear in mind that it is not in the public interest for resources to be devoted to answering requests imposing disproportionate burdens on public authorities. The Act acknowledges the balance between “the right to know” and the need to ensure that the FOI Act does not inhibit governmental efficiency i.e. - in providing that there is only an obligation to comply with requests where the cost of doing so would not exceed the appropriate limit.

Handling these requests

10. Whilst requests for entire files, requests for information of a frivolous nature and more general persistent requests are different, all have the effect of placing a disproportionate burden on Departments, and the approaches that can be taken to handling these requests are similar.

Is the information held?

11. Many persistent requests made under the heading of the FOI Act seek to get public authorities to generate information or express an opinion on exempt information, rather than seeking to access recorded information. For example, “why did the Department adopt policy x”, “why did your Department tell the PM not to reply to my letters”. Applicants who seek to engage public authorities in a lengthy course of correspondence on a particular policy or event with which they feel aggrieved may submit requests in this way. Very often the information will not be held by the Department or a question is asked which is not in fact a **FOI** request. However, public authorities should offer advice and assistance to guide the applicant in formulating a request which the public authority can constructively answer.

Advice and Assistance

12. The Act creates a duty on public authorities to advise and assist applicants. By engaging with the applicant it should be possible to clarify what information is being sought and therefore narrow the scope of the request so that the public authority is in a position constructively to answer it.
13. For **large file requests** it is recommended that public authorities explain to applicants the burden created by requests for multiple files or persistent requests for files because they may be unaware of the disproportionate burden they are

causing in submitting such requests. By discussing requests with applicants, public authorities may find that they would be willing to agree to select a smaller number of priority files, or categories of information within those files.

14. Similarly, if a request is unclear or appears to be **for information of a frivolous nature**, it may be possible to establish what the applicant seeks through advice and assistance. If the request is so unclear that the public authority requires further information in order to identify and locate what is sought, and informs the applicant of this, the public authority is not obliged to comply with the request until it receives the additional information – s1(3)(a). However it is also important to note that public authorities must provide advice and assistance *so far as it would be reasonable* to expect them to do so. When applicants submit persistent requests that are unclear, and are aware of the requirements of the Act, the onus is on the applicant to state clearly what information they seek. Discussing requests with applicants allows public authorities to explain what type of information is “not held”, and the sorts of request which the FOI Act does not cover. This is helpful for applicants and also encourages responsible and educated use of the Act.
15. If an internal review is requested, public authorities are not obliged by the Act to continue in dialogue with the applicant about the basis in which the original decision was taken or the refused information. The Act provides applicants with a specific entitlement to information about FOI decisions (s17) and specific enforcement mechanisms. Public authorities need not engage in endless dialogue which seeks to or has the effect of circumventing the enforcement processes. Departments should keep a robust audit trail of all correspondence with applicants and the steps it has taken to deal with requests.

Fees

16. The cost of processing requests for **multiple files** rarely meets the “appropriate limit” because, by identifying the information by reference to its documentary location, the costs of identifying, locating and retrieving the information are minimal. It is possible however that the cost of locating and retrieving multiple files, particularly if they are kept in storage, would be over £600 and charges could legitimately be levied on a Department by file retrievers. If it is clear that a proportion of the information will need to be redacted in order to extract and provide the information to which the applicant is entitled, the estimated time that this would take can be counted towards the appropriate limit.

Aggregation

17. It is also possible to aggregate costs where more than one request has been made within 60 consecutive working days relating to the same or similar information and the requests have been made by the same person or by persons who appear to be acting in concert or in pursuance of a campaign (see reg. 5 of the 2004 Regulations). This includes adding to the estimated costs of complying with a later request, the cost of complying with a request that has already been answered. Aggregation may be useful for **persistent file requests** and repeated requests, including for **information of a frivolous nature**. If an applicant has submitted numerous such requests it may be possible that by aggregating them they exceed the “appropriate” limit.

Disbursements

18. The 2004 Regulations allow public authorities to charge for the cost of certain disbursements when supplying the information in response to an FOI request. If significant redactions or extractions are likely to be necessary, public authorities may consider charging for the disbursements involved in communicating the information to the applicant. The actual charge should be based on a reasonable estimate of the cost of producing and sending the information (for example, the cost of photocopying, scanning if required and postage and packaging). Public authorities may also charge for the costs of complying with an applicants preference as to the form of communication, including the costs of complying with (for example, the cost of preparing a file for inspection). Public authorities must comply with the requirement to issue the applicant with a fees notice and, if the fee is not received within three months, the request will be void.
19. Disbursement costs are charged on the basis of the costs that the public authority *“reasonably expects to incur in relation to the request”*. Consequently, disbursements can be charged on the basis of a reasonable estimate, before undertaking a full analysis. Indeed, as the applicant may not be willing to pay the fee, it will usually be advisable to issue a fees notice in advance of undertaking extensive work on the request. Should the actual costs be less than the estimate, there is no express obligation for the Department to reimburse the applicant for the difference so long as the initial estimate was reasonable.

Repeated Requests - Section 14(2)

20. Public authorities should consider whether the request is repeated. Public authorities may sometimes be faced with a requestor who sends in request after request, often slightly differently worded, but essentially asking the same question and refusing to take no for an answer.
21. s14(2) exempts public authorities from complying where they have “previously complied” with a request.

Vexatious requests - Section 14(1)

22. Under s14(1) of the Act public authorities are not obliged to comply with vexatious requests.
23. The ICO takes a broad view of what constitutes a vexatious request. His guidance states –

“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.”

The guidance further states that:

“... 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....**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.”

24. The effect of requests on a public authority may not on its own be sufficient to justify reliance on s14(1). However where the applicant has been made aware that the effect of a voluminous request is to prejudice the work of the public authority, it may be easier to treat it as vexatious. For example there may be a case for vexatiousness in situations where the public authority has refused a request for **multiple files**, spoken with the applicant to explain the resource implications and sought to assist the applicant in identifying more specifically the information that he is interested in. If the applicant persists in making more and more large requests for access to entire files and refuses to help the public authority to identify the information being sought, these requests may well be categorised as vexatious if the public authority is faced with the task of reading through large numbers of files simply to deal with one request.
25. Requests for information of a “frivolous” nature may also be vexatious where the request would impose a significant burden but does not have any serious purpose or value. The ICO guidance on vexatious requests notes that:

“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”.

It is unlikely that public authorities would be able to treat individual requests of this kind as vexatious, unless they form part of a wider pattern of requests that have the cumulative effect of harassing the public authority. Again, it may be easier to apply s14 where the public authority has been in dialogue with the applicant explaining the prejudicial effect of such requests to its work.

26. Determining which requests are considered to be so frivolous as to be vexatious is an area each Department needs to consider carefully. Concluding that a request is vexatious must be done on a case by case basis. A line can be drawn between providing information in the public interest such as information on government spending and the way it conducts its business (which are usually released as a matter of course through Parliamentary questions or Ministerial statements) and requests for snippets of trivial information where there is no apparent public interest in release. Where exactly this line is to be drawn in an individual case will depend on the circumstances.
27. In addition to the use of s14, the ICO is able to refuse to decide an appeal if under s50(2)(b) the application is frivolous or vexatious – See Awareness Guidance 22 on www.informationcommissioner.gov.uk

Pro-active publication

28. Where Departments have received numerous requests for particular *files*, they should consider whether any of the content can proactively be disclosed - subject to removal of exempt material. Once Departments have decided to publish information, they will be unlikely to be obliged to respond to individual requests on the basis of S22 (material intended for future publication) and the other exemptions which apply to any information which is not going to be published. The process of redaction can be very resource intensive but undertaking this exercise will minimise the burden of individual FOI requests for those files. Once information is published Departments will be able to cite s21 (information accessible by other means).
29. The public interest balance can however change. If a department subsequently receives a request for information which it redacted or did not publish because of a qualified exemption, it will have to consider the balance of the public interest again at the time of dealing with the request.
30. Departments should also consider establishing contact with academics who are often the most frequent requestors of multiple files, and determine whether it would be possible to arrange a certain number of file inspections on an annual basis, outside the FOI legislative framework.
31. More generally the routine provision of certain pieces of information which are frequently requested would diminish the demand for similar material and allow Departments to publish such information at a time of their choosing and to deploy - s21 (information already in the public domain) and s22 (information intended for future publication.)