

The National Archives – guidance on vexatious or repeated requests made under the Freedom of Information Act 2000

Purpose of this document

This document provides a tool for both the Freedom of Information (FOI) Centre when recommending requests as vexatious, and for The National Archives (TNA) senior managers (Directors) when considering whether to declare a request or requests as vexatious. No request for information should be treated as vexatious without consulting the FOI Centre and responsible Director/s.

TNA handles an average of 2,300 FOI requests per year. While it will only be in exceptional cases that requests are declared vexatious it is desirable for robust audit purposes to have established guidance in this area before the organisation reaches that stage. This guidance may also assist other business areas in assessing how they handle requests from members of the public that make frequent and persistent demands on them.

Where this document refers to a single ‘request’ in the context of the Freedom of Information Act 2000 it is considered that this will take into account the context and history of a requester’s communications with TNA – i.e. not only those requests which declare themselves to be FOI requests, but all enquiries and communications with any part of the organisation. It may be that the sum total of these transactions is the cause of an individual request being treated as vexatious.

Background

This guidance reflects that issued by the Information Commissioner’s Office (ICO) in December 2008:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_special_guides/vexatious_and_repeated_requests.pdf

Section 14 of the Freedom of Information Act states:

14 Vexatious or repeated requests.

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

(2)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.

Requests judged by The National Archives to be vexatious, as set out at section 14 of the Act, will not be dealt with and the requester will be informed as such in a refusal

notice (unless one has previously been issued and it would be unreasonable to issue another).

In order to determine whether a request for information is vexatious under the Act, it is necessary to look at both the context and the history of the communications between The National Archives and the requester as well as the particular request(s) itself. This may include correspondence the requester has had with other business areas on the same subject (i.e. not restricted to communications which were handled under the FOI Act). It is likely that a pattern of behaviour over a period of time may trigger an assessment as much as the wording of a particular request.

Determining vexatious requests

Deciding whether a request is vexatious is a balancing exercise that requires judgment, taking into account all the circumstances of the case. There is no definition of a vexatious request, however, the Information Commissioner's Office have produced the following criteria which are designed to help the organisation identify such requests:

1. Could the request fairly be seen as obsessive?
2. Is the request harassing the organisation or causing distress to staff?
3. Would complying with the request impose a significant burden in terms of expense and distraction?
4. Is the request designed to cause disruption or annoyance?
5. Does the request lack any serious purpose or value?

The organisation must be able to make relatively strong arguments under several of the following headings but it is not necessary to demonstrate that each criteria has been met. The weight of each will depend on the individual circumstances and there is a strong likelihood that some factors will overlap.

An individual request may not be vexatious in isolation but in context it may form part of a wider pattern of vexatious behaviour e.g. a wider dispute or the latest in a lengthy series of overlapping requests or other correspondence.

The key question for The National Archives: is the request likely to cause unjustified distress, disruption or irritation to either staff or the organisation?

1. Can the request fairly be seen as obsessive?

This is a strong indicator that a request is vexatious. Factors include:

- A high volume and frequency of correspondence with the organisation
- Requests for information which the requester has already seen or has already been provided
- Or, a clear intention to use the request to reopen issues that have already been considered (particularly if there has been an independent investigation)

As previously stated, The National Archives will take into account the wider context and/or history of a request here.

2. Is the request harassing the organisation or causing distress to staff?

The test here is that the request must be likely to harass a *reasonable person*.

The request in itself must be harassing – not the effect of any disclosure of information resulting from the request.

Relevant factors:

- High volume and frequency of correspondence
- The use of hostile abusive or offensive language
- Unreasonable fixation on an individual member of staff
- Mingling requests with accusations and complaints

3. Would complying with the request impose a significant burden in terms of expense and distraction?

This must be more than just the cost of compliance with a request. Would responding to the request divert or distract staff in business areas from their usual work. This must apply to business area staff specifically and not just the resource of FOI co-ordination staff.

If resource is the only area of concern then the request should be considered for exemption under section 12 of the FOI Act (cost limit) in the first instance.

4. Is the request designed to cause disruption or annoyance?

The intention of a requester is difficult to prove. Cases where this argument is strong will be rare, however, it is appropriate to use other independent evidence, where it exists, to prove that a requester's intention is to disrupt or deliberately annoy the organisation. For example, threats to disrupt the organisation during a previous complaint or dispute, or involvement with a campaign group who has stated publicly that it intends disruption as part of its campaign.

5. Does the request lack any serious purpose or value?

The FOI Act is not generally concerned with the motives for a request. Lack of perceived value does not make a request vexatious on its own, however, it may add weight to some of the other factors mentioned above e.g. if the request is also obsessive, harassing or burdensome.

A request which may appear spurious or tedious to the organisation may have genuine value to the individual.

Furthermore, a request with a very serious purpose or value may be enough to prevent it being vexatious, even if it imposes a significant burden and is harassing or distressing to staff. The serious and proper purpose must justify both the request itself and the lengths to which the campaign or pattern of behaviour has been taken.

The question of whether the purpose justifies the request and/or pattern of behaviour will overlap with the question of whether the latest request can fairly be seen as obsessive. If a request is obsessive (e.g. if the issue has already been fully considered and debated with the applicant) then it is unlikely that there can be any continuing justification for that request.

Repeated requests (information already provided)

Section 14(2) of the FOI Act states that a request can be refused as repeated if:

- It is made by the same person as a previous request;
- It is identical or substantially similar to the previous request; and
- No reasonable interval has elapsed since the previous request.

Identical or substantially similar

The wording of the request itself and the information that would be provided in response are relevant here.

Where the wording of the request is identical to a previous request and it is asking for the same information (i.e. information already provided or refused), the request will be regarded as repeated.

However, if the wording is identical but the request is asking for different information (e.g. a recurring request asking for “any new or amended information” on a particular subject, or for “last month’s figures”), the request cannot be refused as vexatious.

Similarly, a request will be substantially similar to a previous request only if the organisation would need to disclose substantially similar information to respond to both requests (i.e. with no meaningful differences). The organisation cannot refuse a request simply because it relates to the same subject or theme as a previous request, unless the organisation would have to provide the same information in response.

If only some of the information the organisation must disclose is different then we will comply with the request but only supply the new information and class the rest of the request as repeated.

If the request is for information recently refused, the organisation will treat the request as a request for internal review of the original decision¹.

Reasonable interval

A request can only be refused as repeated if a reasonable interval has passed. What this is will largely depend on individual circumstances, including:

- How likely the information is to change;
- How often records are updated; and

¹ This is also in accordance with the Ministry of Justice Section 45 Code of Practice, Complaints Procedures paragraph 38 <http://www.justice.gov.uk/guidance/docs/foi-section45-code-of-practice.pdf>

- Any advice previously given to the requester (e.g. on when new information is likely to be available)

It may be reasonable for a requester to resubmit a request after a relatively short period of time for statistics or similar information that would be expected to be updated often, but not for purely historical records. On the other hand, if a requester has been told when information is due to change, it would not generally be reasonable for them to resubmit a request before that time.

If a request was previously refused under a qualified exemption the organisation will consider whether the passage of time could possibly affect the public interest test for that exemption. If there is any possibility that previously exempt information may no longer be exempt, the request cannot be refused as repeated. Disclosure will be reconsidered in the usual way.

Refusing a request

In some circumstances it may be appropriate for the FOI Centre to draw a requester's attention to the existence of this policy before any vexatious declaration is made. It may be necessary to explain that their request/s and/or continued correspondence on a particular subject matter may be declared vexatious and to explore with the requester whether a satisfactory agreement can be reached.

It will be the responsibility of the FOI Centre to bring to the attention of the responsible Director/s where it is considered a request may be repeated or vexatious. If appropriate the issue may be escalated to the full Executive Team if appropriate.

When a request has been determined to be vexatious or repeated a refusal notice will be issued to the requester within 20 working days.

The refusal notice will explain whether the organisation is relying on section 14(1) or 14(2) and give details of our internal review procedures and the right of appeal to the ICO.

Under section 17(6) the organisation will not need to issue a new refusal notice if:

- The organisation 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.

Accurate and timely written records must be kept by the organisation when issuing a refusal notice under section 14 of the Act as it is very likely to lead to an internal review or an appeal to the ICO. The organisation must be able to point to a clear decision making procedure and the reasons for judging the request to be vexatious or repeated, and be able to justify the decision to the ICO if necessary.

This policy in relation to the Data Protection Act 1998

If a requester has asked for information relating to themselves, this will be dealt with as a subject access request under the DPA 1998. A subject access request cannot be vexatious (although there is an exception for repeated requests)².

This policy in relation to the Environmental Information Regulations 2004

Requests for environmental information must be considered under the EIR 2004. Requests cannot be refused as vexatious under the EIR 2004 but the organisation can refuse a request that is “manifestly unreasonable, subject to a public interest test”³.

² See the Data Protection Act 1998 <http://www.legislation.gov.uk/ukpga/1998/29/contents>

³ See the Environmental Information Regulations 2004
<http://www.legislation.gov.uk/uksi/2004/3391/contents/made>