About this detailed guidance

Latest updates - last updated 1 August 2023

> **1 August 2023** - We have added the following Further reading resources:
>
> - FOI self-assessment toolkit – vexatious requests
> - FOI and EIR video training modules - vexatious, repeated and manifestly unreasonable requests

About this detailed guidance

This guidance discusses section 14(1) of FOIA, the provision for vexatious requests in detail and is written for use by public authorities. Read it if you have questions not answered in the Guide, or if you need a deeper understanding to help you apply section 14(1) in practice.

In detail

What does section 14(1) of FOIA say?

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.

FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.

Most people exercise their right of access responsibly. However, a few may misuse or abuse FOIA by submitting requests which are intended to be annoying, disruptive or have a disproportionate impact on a public authority.

The ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.

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

The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in the leading case on section 14(1), Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (ACC), (28 January 2013). It defined the purpose of section 14 as follows:

> "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).

Although satisfying section 14(1) is a high hurdle this does not mean that you can only apply it in the most extreme circumstances, or as a last resort. You should consider using it if, after taking account of all the circumstances, you believe the request is disproportionate or unjustified.

It is important to remember that you can only apply section 14(1) to the request itself, and not the individual who submits it. You cannot, therefore, refuse a request on the grounds that the requester themself is vexatious. Similarly, you cannot refuse a new request solely on the basis that you have classified previous requests from the same individual as vexatious.

Section 14(1) is concerned with the nature of the request rather than any damage releasing the requested information may have. If you are concerned about any possible prejudice that might arise from disclosure,

then you need to consider whether any of the exemptions listed in Part II of FOIA apply.

You also need to carefully distinguish between FOI requests and requests for the individual's own personal data. If a requester has asked for information relating to themselves, you should deal with the request as a subject access request under the Data Protection Act 2018 and the UK General Data Protection Regulation.

You can read more about how to handle a subject access request in our Guide to data protection, Right of access.

What does vexatious mean?

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

In further exploring the role played by circumstances, the Upper Tribunal placed particular emphasis on the issue of whether the request had adequate or proper justification. In doing so it approved a First-tier Tribunal's conclusion from an earlier case that "vexatious" could be defined as the:

> "….manifestly unjustified, inappropriate or improper use of a formal procedure."

(paragraph 27 of the Upper Tribunal's decision in Dransfield).

This clearly establishes that the concepts of "proportionality" and "justification" are central to any consideration of whether a request is vexatious.

On appeal, the Court of Appeal (Dransfield vs Information Commissioner and Devon County Council [2015] EWCA Civ 454 (14 May 2015)), stressed that there was no challenge to the Upper Tribunal's general guidance and the Court of Appeal cast no doubt upon it. The lead judgment, observed:

> "…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. …… The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious" (paragraph 68).

Therefore, we consider the key question you must ask yourself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

Clearly vexatious requests

In some cases it will be easy to recognise that a request is vexatious. For example, the tone or content of the request might be so objectionable that it would be unreasonable to expect your authority to tolerate it, no matter how legitimate the purpose of the requester or substantial the value of the requested information.

Such as where threats have been made against employees, or offensive language used.

We do not expect you to make allowances for the value or purpose of the request under these kinds of circumstances.

Therefore, if you are dealing with a request which you believe to be clearly vexatious, you should not be afraid to reach a decision that section 14(1) applies.

However, in most cases, the question of whether section 14(1) applies is likely to be less clear-cut. You need to carefully consider whether there are sufficient grounds for refusing the request under section 14(1).

Before doing so though, we recommend that you consider whether there are any viable alternatives to dealing with the request under section 14. Some of the potential options are outlined in the 'Are there alternative approaches?' section later in this guidance.

Where alternative approaches are not practical, this guidance will help you carry out your assessment of whether the request is vexatious. To show this, we will refer to four broad themes developed by the Upper Tribunal in Dransfield.

What are the four broad themes?

The four broad themes considered by the Upper Tribunal in Dransfield were:

1. the burden (on the public authority and its staff);
2. the motive (of the requester);
3. the value or serious purpose (of the request); and
4. any harassment or distress (of and to staff).

You should not use these four broad themes as a checklist, and they are not exhaustive. The Upper Tribunal emphasised that:

> “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” (paragraph 82).

At appeal, in upholding the Upper Tribunal’s decision, the Court of Appeal did not depart from the Upper Tribunal’s approach of using the four broad themes.

These themes provide a useful structure to start analysing whether a request is vexatious, but you should keep in mind that you need to adopt a holistic approach. You may identify other factors not mentioned here which are relevant to your circumstances and you should make sure you consider those as well.

How do we assess value or serious purpose?

The key test is to determine whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. A useful starting point is to assess the value or purpose of the request before you look at the impact handling the request would have on you.

When considering this issue the Upper Tribunal in Dransfield asked itself, "Does the request have a value or serious purpose in terms of there being an objective public interest in the information sought?" (paragraph 38). The public interest can encompass a wide range of values and principles relating to what is in the best interests of society, including, but not limited to:

- holding public authorities to account for their performance;
- understanding their decisions;
- transparency; and
- ensuring justice.

Most requests will have some value and will therefore have a "reasonable foundation". Requests can also serve a number of interests. Many will be prompted by the personal circumstances of the requester. For example, their wish to challenge a decision directly affecting them. Some requests may only serve the private interests of the requester, but there will often be an overlap between the private interests of the requester and a wider public interest. Other requests may seek information that has no direct bearing on the requester, but is of a wider public interest.

It is clear from the Upper Tribunal's findings in Dransfield that when considering value and serious purpose we are concerned with assessing whether there is public interest in disclosure. This means that the requester's private interests in the information carry little weight unless they coincide with a wider public interest.

In many cases the value and purpose of the request is apparent from the:

- nature of the information requested;
- context of the request; or
- history of the requester's engagement with you.

In other cases it may be less clear what purpose would be served by disclosing the information, but as the Upper Tribunal in Dransfield 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."

If the value or purpose of the request is not immediately obvious you may take account of any comments the requester might have made about the purpose behind their request or any evidence they are willing to volunteer. This will help you decide whether there is a public interest in disclosing the information. However

FOIA does not require a requester to give their reasons for making a request and you cannot insist they do.

If you initially refuse a request under section 14(1), it is best practice to explain your reasoning in the refusal notice. If your refusal notice questions the value or purpose of the request, the requester will then be able to identify the value of their request, if they seek an internal review. This will help inform your final decision on whether section 14(1) applies. See What do we do once we've decided to refuse a request under section 14?.

It is possible that the subject of a request is so non-sensical or trivial that it lacks any serious purpose; having been made for the sole purpose of amusement. Although this is likely to be rare, it indicates that the request is vexatious. It also demonstrates how the broad themes can be interlinked, such as serious purpose and motive.

Factors which may reduce the value or serious purpose

If the request does have a value or serious purpose, there may be factors that reduce that value. For example, a request may seek greater transparency over the possible failings of a public authority, or a particularly controversial decision. However, if those matters have already been comprehensively investigated and reports of those investigations are in the public domain, the value in disclosing the requested information is diminished. The value may be decreased further if the matter has been the subject of some form of independent scrutiny.

In such cases the requester may be demonstrating unreasonable persistence by seeking to re-open the matter, or their request may have become futile in light of the matter having already been conclusively resolved.

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.

The requester had a clear belief that fraud had been committed and DfID accepted the request had a serious purpose. However, it also considered the request was a continuation of a campaign on an issue that had already been thoroughly investigated and on which nothing more could be done.

In upholding DfID's decision that the April 2010 request was vexatious, the ICO found that the

requester's reluctance to accept that no evidence of wrongdoing existed had limited the value and purpose of the request.

Some other practical examples of scenarios where the value of a request might be limited include where the requester:

- argues points rather than asking for new information;
- refuses an offer to refer the matter for independent investigation; or
- continues to challenge you for alleged wrongdoing without any clear and logical basis for doing so.

Once again, this is not intended to be an exhaustive list and you can take into account any factors you consider to be relevant. The scenarios above also demonstrate how the four broad themes are interrelated as some of them also raise issues relevant to the themes of motive or harassment.

A requester may consider the information sought would serve a particular purpose and that in doing so there is a public interest in its disclosure. However, if the information would not serve the intended purpose the value of the request would be reduced. But again, you need to be cautious. Just because the value of the request is not immediately obvious, this does not rule out the possibility of it having some value.

The Upper Tribunal in Dransfield used the term "vexatiousness by drift" to describe situations where, in the process of making a series of requests, the subject of those requests shifts. This means that the latest request has little relevance to the original subject matter. Such a pattern may mean that there is reduced value or purpose to the latest request. This is looked at in more detail under the section on 'Motive'.

Just because there is a value or serious purpose to the request, this does not rule out the possibility of it being vexatious. As the Upper Tribunal in CP vs Information Commissioner [2016] UKUT 0427 (ACC) 26 September 2016 explained:

> "It is clear from the Court of Appeal's decision [in Dransfield] that the public interest in the information which in the subject of the request cannot act as a trump card so as to tip the balance against a finding of vexatiousness" (paragraph 45).

You have to weigh that value or serious purpose against the factors which suggest that the request is vexatious. Those factors are discussed next.

How do we consider burden, motive and harassment?

Burden

When considering the amount of work that would be involved in dealing with a request and whether it would impose an unreasonable burden, you need to take account of the level of resources that your organisation has at its disposal. For example, a small public authority, such as parish council, only has very limited resources because a parish clerk may be employed for just a few hours a week. Therefore, the threshold at which the burden becomes grossly oppressive is lower than for a larger public authority.

If you are a larger public authority, it is not sufficient to argue that a request is burdensome because you have only allocated a small number of officers to handle requests.

Example

In Cabinet Office vs Information Commissioner and Ashton [2018] UKUT 208 (AAC) – 21 June 2018 the requested information consisted of the Prime Minister's Office's files on the UK's relations with Libya from 1998 to 2011. At the Upper Tribunal the Cabinet Office argued that it only had a limited number of officers with the requisite experience to consider the sensitivity of the requested information and that the disruption caused by taking those officers away from their main roles rendered the request vexatious.

The ICO opposed this ground countering that, "to the extent that the Cabinet Office seeks to contend that section 14(1) entitled a public authority to refuse to comply with a request for information on the general basis that it is struggling to meet a large number of obligations with limited resources", observing that, "the same is true for the majority of public authorities, and recognition of any such entitlement would deprive the right to information under section 1 FOIA of much of its effectiveness."

The Upper Tribunal accepted the ICO's position (see paragraph 50 and 51).

The Upper Tribunal in Dransfield advised that when assessing burden the following factors are relevant considerations:

- number;
- pattern;
- duration; and
- breadth.

Number of requests

It is common for a potentially vexatious request to be the latest in a series of requests submitted by an individual. The greater the number of requests received, the more likely it is that the latest request is

vexatious. This is because the collective burden of dealing with the previous requests, combined with the burden imposed by the latest request, may mean a tipping point has been reached, rendering the latest request vexatious.

However, simply counting up the number of previous requests will not reveal the full story. You also have to take into account how you dealt with those requests. It would mitigate against the latest request being vexatious, if you have dealt with previous requests:

- poorly;
- by not responding at all; or
- by providing conflicting or confusing responses which needed further requests for clarification.

If the ICO later receives a complaint, we will expect you to properly explain how you handled the previous requests when justifying how they support your application of section 14(1). See 'How does the ICO handle complaints?'.

Pattern of requests

You may become overwhelmed, if numerous requests are made in quick succession. This includes where similar requests are submitted before you've had the opportunity to respond to previous ones. As the Upper Tribunal in Dransfield said:

> "A requester who consistently submits multiple FOIA requests or associated correspondence within days of each other, or relentlessly bombards the public authority with e-mail traffic, is more likely to be found to have made a vexatious request" (paragraph 32).

Duration

The duration over which previous requests have been made may also be telling. Where requests have been submitted over a long period, possibly years, this may indicate that requests will continue to be made in the future. Therefore, even if the latest request appears entirely reasonable, when viewed in isolation, you may take into account the anticipated burden of those future requests when assessing burden.

Breadth

The Upper Tribunal in Dransfield commented that in the absence of any other factors that indicate a request is vexatious, a single well-focussed request is less likely to be vexatious. But it does not necessarily follow that a broader request will impose a greater burden.

Nevertheless there can, occasionally, be situations where a single request taken in isolation, imposes a "grossly oppressive burden". This is due to the breadth of information sought that it is vexatious when weighed against its value or purpose. However, refusing it under section 14, may alienate the requester

and simply lead to a complaint to the Commissioner. Where the burden such a request imposes is the sole ground for considering it vexatious, there are opportunities to deal with it more constructively. These are discussed later under 'How do we deal with a single burdensome request?'.

However, in most cases burden is only one of the factors that contributes to a request being vexatious.

Motive

Generally when handling requests under FOIA, the motive of the requester has no bearing on how you handle their request. However, it is relevant when you consider whether the request is vexatious under section 14(1).

As discussed earlier, some requests are clearly vexatious. For example, if a single request is made using offensive language. The motive is to attack the public authority rather than being a genuine attempt to obtain information. There is a clear link here between motive and the harassment of staff.

However, in other cases you may only be able to work out the motive of the requester by referring to your previous interactions with them.

When considered in the context of the full series of requests, it may become apparent that the requester has, gradually, strayed some distance from the purpose of their original request. The Upper Tribunal in Dransfield referred to this as "vexatiousness by drift".

Example

In Peter Shaw vs IC and Arts Council England EA/2019/0304 9 April 2020 the requester had been in correspondence with the Arts Council (and other bodies) for 15 months over the authenticity of a painting that had been accepted in lieu of inheritance tax.

Neither the Arts Council, nor the other bodies had agreed with the requester's concerns and declined to carry out the sort of investigation the requester thought necessary. The matter of the painting's authenticity had been exhaustively considered. Nevertheless the requester persisted with his concerns and the Arts Council argued that each response it provided simply lead to further requests.

The request that was ultimately refused under section 14(1) did not relate to the core issue of the authenticity of the painting, but was for all the information generated as a result of his emails on that subject. The Tribunal found at paragraph 49 that:

"In our view this is the kind of case referred to by the [Upper Tribunal]at paragraph 38 of Dransfield where "…the weight to be attached to th[e] value or serious purpose may diminish over time'. It is a case where '…the underlying grievance has been exhaustively considered and addressed' and where 'subsequent requests (especially where there is "vexatiousness by drift") may not have a continuing justification'. This is a case where, in our view, there is indeed 'vexatiousness by drift', as the Appellant moves from his original concern to the way his correspondence has been dealt with. In our view there is little public interest in this secondary issue."

This decision was based on the facts of the case and you should not take it to mean that you can refuse

as vexatious all requests about a request (sometimes referred to as meta requests) .

The example above demonstrates that where the requester has drifted away from their original reason for seeking information, there may come a point where the latest request has no, or a much reduced, value in meeting the original aim of the requester.

However, it is important to recognise that there can be legitimate reasons why the information targeted by a requester may change. For example, the responses to earlier requests may alert them to information which they were previously unaware about. Alternatively, they may be pursuing a particular line of enquiry and using the response to one request to establish the facts on which they base a subsequent request. This pattern of request making can often be adopted by journalists pursuing various leads in order to build up a complete picture of a particular event.

Harassment or distress (to your staff)

As well as unacceptable language, a request or series of requests, which make unsubstantiated allegations of criminal behaviour or wrong doing can be vexatious. Again, it is also possible that a request phrased in such terms will lack any serious purpose. Its intention being to cause offence, vent anger or otherwise attack the public authority, rather than access information.

Example
In Oxford Phoenix Innovation Ltd vs The Information Commissioner & The Medicines and Healthcare Products Regulatory Agency [2018] UKUT 192 (AAC) 11 June 2018 the requester had complained to the MHRA about the marketing of a rival clinical device to the one he had invented. When told that the file of the subsequent investigation into his complaint was no longer held he submitted three further multi-part requests.

The MHRA argued that over the course of his correspondence the requester had, amongst other things, likened their treatment of him to war crimes. It was also argued that he had made other unsubstantiated accusations of criminality and corruption against MHRA staff.

The Upper Tribunal upheld the First-tier Tribunal's decision that the request was vexatious.

Where the requester pursues personal grudges by targeting their correspondence towards a particular employee or office holder, this again may be evidence that their request is likely to harass staff.

A requester may seek information which you know they already possess. This may indicate their intention is simply to cause annoyance as a means of venting their anger at a particular decision. Such requests demonstrate a link between serious purpose, motive and harassment.

Other indications that the request is vexatious, may be if the requester demonstrates intransigence by:

- taking an unreasonably entrenched position;

- rejecting advice and attempts to assist out of hand; and
- showing no willingness to engage with you.

Such behaviour may also undermine a requester’s arguments that their request is a serious attempt to access information which will be of use to them.

We also recognise that a request which is the latest in a series demonstrating obsessive behaviour can have the effect of harassing staff due to the collective burden they place on staff.

Example

In Rod Cooke vs IC EA/2018/0028 23 July 2018 the Tribunal considered requests made to Kirby Cane and Ellingham Parish Council regarding a dispute over the ownership of a certain piece of land.

The Tribunal was satisfied that the requests had a serious purpose and:

"that transparency in the operation of parish councils is an important principle in the public interest, as is ensuring that such councils operate within the law. ….. However, ….., this is a long-running matter which has already been considered in detail between the parties over a number of years." (paragraph 24).

Although responding to the latest requests would not have imposed a significant burden on the parish council, the Tribunal took account of volume of correspondence generated between 2014 and October 2017 on this issue. The parish council claimed this included 215 emails from the appellant. Dealing with this level of correspondence took five hours a month. This may not on the face of it seem a great deal, however that burden fell on one part-time parish clerk and a small number of parish councillors. Therefore when considering the burden imposed by the requests the Tribunal found that:

"Taking into account the history of this matter, including the small size of the Council which is run by part-time volunteers, we find that a significant burden would be imposed on the public authority by the requests". (paragraph 20)

And when looking at any harassment or distress caused to the parish council the Tribunal stated that:

"We do not find that the appellant has deliberately harassed or caused distress to the Council members or clerk. Nonetheless, we note that there has been a considerable volume of correspondence over a number of years directed at a single issue. In the context of a small council run by volunteers and a part time clerk, we find that the burden of dealing with this matter would potentially cause a feeling of harassment and distress to the individuals involved." (paragraph 26).

This again demonstrates how the four broad themes from Dransfield are often interlinked. As well as demonstrating the need to take a holistic approach and account of the overall resources available to a public authority when considering the impact of a request.

This decision contrasts with the situation in Cabinet Office vs Information Commissioner and Ashton [2018] UKUT 208 (AAC) where the Upper Tribunal considered the resources available to a much larger public authority.

Does the value and purpose of the request justify its impact?

The key question to consider is whether the value and purpose of the request justifies the distress, disruption or irritation that would be incurred by complying with it. You should judge this as objectively as possible. In other words, would a reasonable person think that the value and purpose of the request are enough to justify the impact on the authority?
This balancing exercise can be represented as follows:

Value of the requested information to the public

V

Evidence that dealing with request will cause disruption, irritation or distress

Context and history

The context and history of the request is often a major factor in determining whether the request is vexatious and may support the view that section 14(1) applies.

Equally, the context and history may weaken an argument that a request is vexatious. You need to take into account any oversights on the part of your own organisation which may have led to the request.

Sometimes the value or serious purpose of a request is enough to justify the impact on the public authority and sometimes it isn't.

Example

In decision notice FS50900107 the ICO considered multiple requests made to Leicestershire Police (LP) about the policing of the Hunting Act 2004 and the conduct of officers from its Rural Crime Team.

The ICO acknowledged the seriousness of the complainant's purpose and that there was a public interest in preventing cruelty being inflicted on foxes. However, the ICO went on to consider the wider context of the requests.

In total, nine requests were made over a relatively short period in 2019, some of which were themselves lengthy. The ICO accepted that the due to the volume of information requested, complying with them would take a significant amount time. As well as the burden this would impose, the ICO found that the requests:

"…, when viewed in conjunction with the robust and obsessive nature of her contacts with, and public statements about LP and individual officers amounted to an abuse of the FOIA process and could

reasonably be characterised as having been vexatious.

… the Commissioner found that the value and purpose of the requests was not justified and a manifestly inappropriate or improper use of the formal FOIA procedure. As such these requests did not justify the burden of disruption, irritation and distress they placed on LP and its staff." (paragraphs 39 and 40)

The ICO concluded that LP was entitled to refuse the request under section 14(1).

Example

In decision notice FS50430286 the requested information concerned the use of a charity account by a school academy. The requests were 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 ICO concluded that whilst the requests imposed a significant burden, this was outweighed by their value and serious purpose and therefore it would be wrong to find the requests vexatious.

In many cases where there is a history of contact between your organisation and the requester, it is easy to see a direct link between your previous dealings with them, their previous requests and the current request.

However in other cases, the extent to which either the burden their previous requests and associated correspondence have imposed, or any other evidence of vexatiousness these interactions demonstrate, may not be so obvious.

Where a requester has made a number of requests over the years, there are different scenarios to consider. The requests may have been on a wide range of very different issues. Alternatively, they may all have a common theme, and sometimes they may all stem from a specific concern or grievance of the requester.

Example

In Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (ACC), (28 January 2013) the request was, when considered in isolation, a perfectly reasonable one relating to the lighting protection system for a particular pedestrian bridge.

The council accepted there was a serious value to the request. But argued that when considered in the context of its previous dealings with the requester, the request was vexatious due to:

- burden;

- the potential for any response to generate further correspondence and requests; and
- the harassment caused by the accumulative effect of those requests.

In brief, the requester had made 11 requests (together with a significant amount of follow-up correspondence) over a five year period about four subjects. Three of which were on safety issues of lightning protection systems for built structures and the other, although of a different nature, was deemed to be still on the broad subject of health and safety.

The ICO upheld the council's application of section 14(1). But, on appeal, the First-tier Tribunal found that the current request was not a continuation of previous dealings and therefore the current request was not "infected" by those earlier requests. It's approach was that:

"there had to be 'underlying grievance', not simply a 'similarity of subject matter' in order for section 14 to bite." (paragraph 58).

However when overturning the First-tier Tribunal's decision, the Upper Tribunal found that it was not necessary for there to be a single underlying grievance linking the past requests with the current one, nor was it necessary for the requests to be on more than the same broad subject for them to be relevant to the consideration of vexatiousness.

In any event, in this particular case, the Upper Tribunal found that there was a common link between the requests (ie in broad terms, issues around health and safety).

However, there may be a limited extent to which a request made several years ago, on a completely unrelated subject, provides grounds for arguing that the combined burden of dealing with that and the current request makes the current one vexatious. Similarly, the extent to which the earlier request could be taken as evidence that responding to the current request would simply generate further correspondence may also be limited. You need to consider all the circumstances objectively. The closer the link between the previous and current requests, the stronger the evidence is likely to be.

In considering these issues, it is important not to fall into the trap of deeming the requester as vexatious rather than the request.

How do we deal with a single burdensome request?

A single request taken in isolation, for example the first and only request received from an individual, may be vexatious solely on the grounds of burden. That is, where complying with the request would place a grossly oppressive burden on your resources which outweighs any value or serious purpose the request may have.

The issue was considered in Independent Police Complaints Commissioner vs The Information Commissioner (EA/2011/0222, 29 March 2012). The ICO argued that if the burden imposed by a voluminous request was the public authority's primary concern it should first look at the application of section 12 and determine whether dealing with the request would exceed the appropriate cost limit. However the Tribunal found 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).

Therefore, it is clear that you can apply section 14 where the sole ground for considering a single request vexatious is the burden it imposes. This was confirmed in Cabinet Office vs Information Commissioner and Ashton [2018] UKUT 208 (AAC) in which, at paragraph 27, the Upper Tribunal agreed with the ICO that:

> "In some cases, the burden of complying with the request will be sufficient, in itself, to justify characterising that request as vexatious, and such a conclusion is not precluded if there is a clear public interest in the information requested. Rather, the public interest in the subject matter of a request is a consideration that itself needs to be balanced against the resource implications of the request, and any other relevant factors, in a holistic determination of whether a request is vexatious."

You need to take account of the public interest in the subject of the request. This means that there is no predetermined cost above which any request becomes vexatious. This is quite different to the position under section 12 (which is discussed in more detail shortly), where regardless of the importance of the issues raised, you can refuse the request if the cost of compliance exceeds a set cost limit. This was spelt out in the following case.

Example

In the case of Home Office vs IC and Cruelty Free International [2019] UKUT 299 (AAC) (30 September 2019), Cruelty Free International had requested information from the Home Office relating to two cases of animal cruelty which had been referred to the Crown Prosecution Service. The Home Office relied on section 14 of FOIA to refuse the request based on how long it would take to read through the large amount of documentation and redact information, and that this would impose an

unreasonable burden on the department.

At paragraph 19 the Upper Tribunal explained its approach to the balancing exercise by way of an hypothetical example as follows:

"It would, for example, take a much higher burden to render vexatious a request pursuing allegations of ministerial corruption than a request asking for the number of paperclips used in the minister's private office."

The Upper Tribunal went on to find that the burden was such that the request was vexatious, even though there was high value in the disclosure of the requested information.

Requests where collating the requested information will impose a significant burden

Despite the Information Tribunal's findings in the IPCC case, we strongly recommend that if your main concern is the cost of finding and extracting the information, you should consider the request under section 12 of the Act, where possible.

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).

Furthermore, the Code of Practice issued by the Cabinet Office under section 45 of FOIA makes it clear that you should always consider section 12 first in these circumstances (see paragraph 7.14 of the code).

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 your own interests to apply section 12, rather than section 14, if a request would exceed the cost limit.

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

Under section 12, you may also combine the total cost for all requests you receive from one person (or several people acting in concert) over 60 days, as long as they are requests for similar information. Please see our guidance on Requests where the cost of compliance exceeds the appropriate limit for more details. When refusing a request under section 12, you are also obliged to provide advice and assistance in

accordance with section 16 of FOIA.

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

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

Nonetheless, you may apply section 14(1) where you 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 your organisation.

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

- the requester has asked for a substantial volume of information; **and**
- you have real concerns about potentially exempt information, which you are able to substantiate, if asked to do so by the ICO; **and**
- you cannot easily isolate any potentially exempt information because it is scattered throughout the requested material.

If a refusal leads the requester to complaining to the ICO, we expect you to provide us with clear evidence to substantiate your claim that the request is grossly oppressive. We will consider any requests which are referred to us on the individual circumstances of each case.

Example

The case of Salford City Council vs ICO and Tiekey Accounts Ltd (EA/2012/0047, 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 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).

The Salford City Council decision demonstrates how you need to balance the impact of handling the request against its value and purpose in order to determine whether the effect on the authority is disproportionate.

Advice and assistance

There will be situations where you believe that complying with the request imposes a grossly oppressive burden, whether due to the cost of finding and extracting the information, or for tasks not covered by the section 12 cost limit. In these cases, you should consider contacting the requester before claiming section 14(1), to see if they are willing to submit a less burdensome request. Certainly, where burden is the sole ground for considering an otherwise reasonable request to be vexatious, we expect you to do so, as a matter of good practice.

It is notable that in Dransfield, the Upper Tribunal suggested that where the request is broad and captures a large volume of information, it is more appropriate for a public authority to provide advice and assistance with a view to encouraging the requester to refine their request, rather than relying on section 14(1).

Where you decide it is appropriate to provide advice and assistance, you should do so as soon as possible. This means that the complainant has the opportunity to withdraw their original request within the time limit for complying with it. This may only be practicable if it is obvious from an early stage that the request is burdensome. In other cases, the extent of the burden may only become apparent once you have started to process the request. In these cases, it may only be possible to provide advice and assistance as part of the refusal notice.

We consider that there are real benefits in providing advice and assistance where the sole concern is burden. This is because refusing a request under section 14(1), without providing an opportunity for the request to be refined, is likely to result in a request for an internal review and, potentially, a complaint to the ICO. Therefore, if there is a more constructive way for you to overcome the problem of burden, it makes sense to explore that possibility.

When providing advice and assistance, you should make it clear to the requester that even if they submit a refined request, this does not necessarily mean that you will be able to comply with it. There may be other exemptions that apply. The objective when providing advice and assistance is simply to enable them to submit a request that you could consider, without it being too burdensome. Where it is obvious that the information may attract a particular exemption, you may choose to alert the requester to that possibility. However, you need to avoid creating the suspicion that you are either trying to direct the requester away from sensitive information, or that you have pre-judged whether to apply an exemption.

If you refuse a request due to the burden imposed by activities that are not covered by the section 12 cost limits, there may be less opportunity to provide meaningful advice.

Example

In McInerney vs IC and Department for Education [2015] UKUT 0047 (ACC) GIA/4267/2014 (29.01.2015) the Upper Tribunal considered a request for application forms from Free School applicants and the DfE's responses. This represented a total of 25,000 pages of information which would have to be scrutinised for information exempt under section 40, personal data. Having found that a request was vexatious on the basis of burden, the Upper Tribunal commented at para 56 that:

"This does not mean that a public authority is entitled to ignore section 16 [the duty to provide advice and assistance]. It is possible that, even in what appears to be a most vexatious request, the circumstances might allow a public authority to extract one part to create a non-vexatious request."

It went on to acknowledge that:

"Such cases may well be exceptional, as the duty imposed by that section only applies 'so far as it would be reasonable to expect the authority to do so'."

Are round robin requests vexatious?

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. It is important to bear in mind that these 'round robin' requests often have a value and serious purpose.

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 information about that sector, once the information is combined.

Nevertheless, if you believe the round robin to have little discernible value and purpose, or that it would be likely to cause a disproportionate or unjustified level disruption, irritation, or distress, then you may take this into account when considering if the request is vexatious.

You can include evidence from other authorities that received the round robin when considering the overall context and history of the request. However, any burden must only be on the authority which received the request. Therefore, when determining the impact of a round robin, you may only take into account any disruption, irritation or distress your organisation would suffer itself. You cannot cite the impact on the public sector as a whole as evidence that the request is vexatious.

Are random and speculative requests vexatious?

Public authorities sometimes express concern about the apparent tendency of some requesters, most notably journalists, to make random requests on the off chance they may capture some interesting information. These are sometimes called ‘fishing expeditions’.

Such requests are quite different to those where a requester is trying to access specific information, or information on a particular subject. In those cases, they might make the request in very broad terms because they are either unaware of how and where the information they seek is held, or they want to make sure their request captures all the relevant information.

Whilst these requests may appear unfocused, they cannot be categorised as speculative requests or ‘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.

Even where a request is speculative, fishing for information is not, in itself, enough to make a request vexatious. However, some requests might:

- impose a burden by obliging you 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 you to spend a considerable amount of time considering any exemptions and redactions; or
- be part of a pattern of persistent fishing expeditions by the same requester.

Then, you may take this into consideration when weighing the impact of that request against its value and purpose as explained earlier.

Can a request for published information be vexatious?

If you consider a request for information included in your publication scheme to be vexatious, you can apply section 14 to the request. This is provided it meets the criteria for causing an unjustified or disproportionate level of disruption, irritation or distress.

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

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

Are requests made as part of a campaign vexatious?

In some cases, you may believe that several different requesters are acting together as part of a campaign to disrupt your organisation by the sheer weight of FOIA requests they are submitting. Then, you can 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 it received from October 2009 to February 2010. It 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).

You need to have sufficient evidence to substantiate any claim of a link between the requests before you can go on to consider whether section 14(1) applies on these grounds. Some examples of the types of evidence that could support your case are:

- the requests are identical or very similar;
- you 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; or
- a group's website makes an explicit reference to a campaign against your authority.

Example

In Scott vs IC and Kirby Muxloe Parish Council EA/2018/0054 10 October 2018, the Tribunal considered a request made to the parish council by the appellant, a solicitor. The appellant had previously acted on behalf of parishioners in disputes with the parish council. His request was on related matters. A small number of parishioners, including his clients, had made a total of 49 requests on similar matters between 2014 and 2017. A number of those requests had been refused under section 14, decisions later upheld following complaints to the ICO.

The appellant's request referred to an earlier letter of his which appeared to be written in his professional capacity and in which he did refer, if not by name, to parishioners who were his clients. This initially led the council to think his request was made on behalf of such clients. At the Tribunal two of the parishioners gave evidence to support the appellant's contention that his request had a serious value.

Although the Tribunal accepted the appellant was not acting professionally on behalf of the parishioners, it was satisfied that he was acting in concert with them, finding at paragraph 48 that:

" …, we cannot avoid the fact that the Appellant's request in his own name continue[s] the theme of a number of requests by other parishioners with whom he has worked closely and/or acted as a solicitor in the past, and concern broadly the same subject matter as these other requests which have been held to be vexatious by the Commissioner".

Although it was not evidence available to the council when initially refusing the request, the Tribunal also found that:

"The support given by [the two parishioners] to the current appeal underlines the link between them and the Appellant, especially as their witness statements rehearse much of the background of the dispute between the small group of parishioners and the Council."

Given the subject of the request, the Tribunal found it should have been dealt with under the Environmental Information Regulations and refused under regulation 12(4)(b) – manifestly unreasonable; the equivalent to s14(1) in such situations. Despite the different access regime, the rationale for finding the requester was acting in concert with others is relevant to the application of section 14(1).

You must differentiate between cases where the requesters are abusing their information rights to engage in a campaign of disruption, and those where the requesters are using FOIA as a channel to obtain information that will assist their campaign.

If the requests are motivated by a genuine desire to gather information about an underlying issue, section 14(1) may still apply. This is if the aggregated burden of dealing with all the requests has become disproportionate to their value.

However, it is important to recognise that campaigns are not in themselves vexatious. The existence of a campaign may be the result of a legitimate public concern about an issue and so reflect a weighty public interest in the disclosure of the information.

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. You should therefore rule this explanation out before arriving at the conclusion that the requesters are acting in concert or as part of a campaign.

If you do conclude that the requests are vexatious, then you should issue refusal notices in the normal manner. It is also useful to record your grounds for concluding the request was part of a campaign, in case a complaint is later made to the ICO. See 'What will the ICO expect from an authority?'.

What actions are recommended before making a final decision?

If you are considering applying section 14(1), you should review the situation before making a final decision. This is because refusing a request as vexatious is likely to elicit a complaint from the requester and may serve to escalate any pre-existing disputes between you.

Primarily, this means ensuring you have consulted the relevant people before making a final decision.

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

As part of this process, you 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.

Finally, if you refuse a request and the requester complains, then you should recognise the importance of the internal review stage. This is your last opportunity to thoroughly re-evaluate, and, if appropriate, reverse the decision without the involvement of the ICO.

Are there alternative approaches?

A requester may be confused or aggrieved if you suddenly switch from complying with their requests to refusing them as vexatious without any warning. This, in turn, increases the likelihood that they will complain about how you have handled their request.

For this reason, it is good practice to consider whether a more conciliatory approach would practically address the problem, before you choose to refuse the request. You should focus on trying to get the requester to understand the need to moderate their approach and appreciate the consequences of their request(s). An approach which looks like a threat is unlikely to succeed.

However, we accept that you need to use your 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 you. However, others may be aggrieved to learn that you are even considering refusing their request under section 14(1) or the implication that they are vexatious. Indeed, approaching these requesters and asking them to moderate their requests could provoke the very reaction that you are trying to avoid.

Therefore, before deciding whether to take a conciliatory approach, you may find it helpful to look back at your organisation's past dealings with the requester to try and gauge how they might respond.

If past history suggests that the requester is likely to escalate the matter whether or not you take a conciliatory approach, then it is difficult to see what would be gained by engaging with that requester further.

Similarly, if you believe you have already reached the stage where you have gone as far as is practical to accommodate the requester, and those efforts have been to no avail, then there seems to be little value in attempting any further conciliation.

Allow the requester an opportunity to change their behaviour

You could try writing to the requester to outline your concerns about the way they have framed their previous requests, and set out what they should do differently to ensure that you can deal with further requests.

For example, if you are unhappy about the tone of previous requests, then you might advise the requester that you are still prepared to accept further requests, but only on condition that they moderate their language.

When outlining your concerns, you should focus on the impact of the requests, rather than the behaviour of the requester himself, whenever possible. Labelling a requester as 'obsessive', 'unreasonable' or 'aggressive' may only worsen relations and cause further disputes.

This can also serve as a 'final warning'. In effect, you have given the requester notice that you may refuse as vexatious any future requests that are framed in a similar way.

Refer the requester to the ICO's 'Your Data Matters' webpages

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. If you are concerned that an individual's requests may become vexatious it may be worth referring them to these webpages, and advising that future requests are less likely to be refused if framed in accordance with these guidelines.

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.

How to handle unclear requests

As discussed earlier, you are not under any obligation to provide advice and assistance in response to a request which is vexatious. However, sometimes part of the problem is that the requester's correspondence is hard to follow and you are therefore unsure what, if any, information they are requesting. Then, you might want to consider whether you could more appropriately resolve the problem by providing the requester with guidance on how to reframe their request.

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.

If the problem is that you are genuinely unable to determine what information the requester is seeking because of how the request is phrased, you should consider the provisions of section 1(3). Under that section, where you reasonably require further information in order identify or locate the requested information, you are required to inform the requester of the problem so that they have the opportunity to provide further details. In these circumstances, it makes sense to also consider what advice and assistance you could provide to overcome the problem. If the requester fails to provide the necessary clarification, you are not required to deal with the request.

What do we do once we've decided to refuse a request under section 14?

You do not have to comply with vexatious requests. There is also no requirement for you to carry out a public interest test or to confirm or deny whether you hold the requested information.

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

There is no obligation to explain why the request is vexatious. The code of practice issued by the Cabinet Office under section 45 states that when refusing a request under s14(1), a public authority is not required to explain why the request is vexatious, but comments that a public authority may wish to do so as part of its duty under section 16. Therefore, although you are not legally obliged to provide advice and assistance where a request is vexatious, you may choose to do so and should aim to be as helpful as is practical.

Where you have not been able to identify a value or serious purpose to the request, explaining this will provide the requester with the opportunity to provide more details that you can consider at internal review. We consider it good practice to include the reasoning for your decision in your refusal notice.

However, we appreciate that it may not be appropriate to provide a full explanation in every case. For example, if the evidence of the requester's past behaviour suggests that a detailed response would only serve to encourage follow-up requests or correspondence.

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

Section 17(6) and refusal notices

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.

We will usually only accept that it is unreasonable to issue a further refusal notice if you have already warned the complainant that they will not receive any response to further requests on the same or similar topics, as in the case above.

When relying on section 17(6), you should keep written records clearly setting out the procedure you followed and your reasons for judging the request as vexatious. This should make it easier to evidence the reasoning behind your decision, if the requester decides to take the matter further.

What will the ICO expect from an authority?

Gathering evidence

When you are dealing with a series of requests and developing pattern of behaviour, you may arrive at a tipping point. This is when you decide that, whilst it was appropriate to deal with a requester's previous requests, the continuation of that behaviour has made the latest request vexatious.

If you see this tipping point approaching, it is helpful to maintain an 'evidence log' to record any relevant correspondence and behaviour. We expect you to be able to produce documentary evidence in support of your decision, if the requester complains to the ICO.

The evidence log should be proportionate to the nature of the request. It should set out the key milestones in the chronology and cross-reference existing information.

The cut off point for evidence that a request is vexatious

You may take into account any evidence you have about the events and correspondence which proceeded or led-up to the request being made.

You have a set time limit (normally 20 working days) in which you must respond to a request. As long as you keep to this time limit, then you may also take into account anything that happens within the period in which you are dealing with the request (eg if the requester sends in further requests).

However, you cannot take into account anything that happens after this cut-off point. This means that if you breach FOIA by taking longer than 20 working days to deal with a request, or if you make a late claim of section 14(1) after a complaint has been made to the ICO, then you need to disregard anything that happened after the time limit for responding had expired.

How does the ICO handle complaints?

Where the ICO receives a complaint, it is your responsibility to demonstrate that you have applied the provisions of FOIA correctly and the request is vexatious.

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

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

Where you believe that the context or history strengthens the argument that the request is vexatious, then we also expect you to provide any relevant documentary evidence or background information to support this claim. You need to make sure that the evidence provides sufficient detail to contextualise the history of the request.

For example, it is not sufficient to simply count the number of associated pieces of correspondence and

complaints made by the requester. This does not, in itself, reveal the nature of those interactions, or whether the issues raised were adequately dealt with by your organisation.

Example

In CP vs The Information Commissioner [2016] UKUT 0427 (ACC) 26 September 2016 the Upper Tribunal stated that:

"The high hurdle for satisfaction of the section 14(1) test requires an appropriately detailed evidential foundation before the tribunal which addresses the course of dealings between the requester and the public authority. This need not be compendious or exhaustive but must explain those dealings in sufficient detail and put them into context." (para 2)

In support of the application of section 14(1), evidence had been provided about the requester's past dealings with the public authority which included a number of complaints lodged against the public authority relating to the issue at the heart of the request. This included a number of complaints made to the ICO about requests he had submitted to the public authority on that subject. The Upper Tribunal was critical of this evidence as it did not reveal the outcome of those complaints. If their complaints had been upheld, they could be evidence that the requester was pursuing a legitimate matter of public concern rather than demonstrating vexatiousness.

Similarly, if a requester has made multiple requests, it is conceivable that the requester found it necessary to do so because you had failed to respond properly, or at all, to some of those requests.

If you provide a sample of the vexatious material as supporting evidence, then you should ensure that this sample is representative.

Further reading

For more information on some of the issues raised in this guidance you may wish to read the following:

- Guide to Freedom of Information
- Requests about previous information requests (meta requests)
- Requests where the cost of compliance exceeds the appropriate limit
- Section 45 Code of Practice
- Guidance on circular (or round robin) requests
- Information reasonably accessible to the applicant by other means (section 21)
- Interpreting and clarifying requests
- Duty to provide advice and assistance (section 16)
- FOI self-assessment toolkit - vexatious requests
- FOI and EIR video training modules - vexatious, repeated and manifestly unreasonable requests

Annex of example tribunal decisions

Burden - pattern of request making

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 section 14 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).

Lack of value and purpose of the request (reopening issues that have been conclusively resolved) and motive

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, 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 section 14.

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).

Lack of value and purpose of the request (reopening issues that have been conclusively resolved)

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.

The complainant sent a number of letters and emails seeking inspection records, policies and assessments. The council provided this information under 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 section 14 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).

Harassment of member of staff (due to volume of requests)

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).

Burden and harassment of staff

Example

In the case of Poulton and Ann Wheelwright vs ICO, (EA/2011/0302, EA/2012/0059, & EA/2012/0060, 8 August 2012) the complainants had made three requests for information relating to a dispute with the council over planning issues and the properties owned by Mr Poulton. 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 Mr Poluton had made allegations of "serious irregularities" in the planning department. He 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).

Value and purpose justifies the burden

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 how 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).

Burden when seen in context of previous requests

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.

Not vexatious when viewed in context

Example

In John McGoldrick (obo Mersey Tunnels Users Association) vs Information Commissioner (EA/2017/0103 - 20 Nov 2017) the Tribunal considered a request about certain loans referred to by the Liverpool City Region Combined Authority's auditors in response to a formal objection to their published accounts.

The request had been refused under section 14(1), but it was accepted by the Tribunal that it was possible that some of the requested information may be environmental information. In which case, those elements of the request should have been considered under the Environmental Information Regulations to determine whether the information was exemption under regulation 12(4)(b) – manifestly unreasonable.

The public authority had argued that the requester had been submitting requests since the right to do so had come into force in 2005 and that since 2015 had made 22 requests, 14 of which had resulted in follow-up requests. The public authority had also relied on other communications, meetings, correspondence and challenges to accounts made by the requester as evidence of the totality of the burden imposed on it. As well as the fact that the requester often submitted comments on the information he had been provided with.

In considering these arguments the Tribunal took into account the role of the Mersey Tunnel Users Association as a
campaign group against tolls, toll increases and the use made of money from the tolls for purposes not relating to the tunnels. It considered the level of scrutiny the public authority could expect in light of the large sums of money involved, the large number of users of the tunnels and multiple issues management of the tunnels raised.

The Tribunal also found that the reasons for many of the follow-up requests for clarification were apparent when viewed in context. For example, the information originally provided may have not have been final figures so the requester sought final figures when these became available. In respect of the requester commenting on the information he had received, the Tribunal found this was simply part of the wider dialogue one could expect of a user group trying to hold the public authority to account.

The Tribunal concluded that the request was not vexatious. To the extent that some of the information might fall under the EIR, the Tribunal found that the request was not manifestly unreasonable under regulation 12(4)(b) for the same reasons.