



MOD FOI/EIR Compliance Notes

Initial Handling of Requests for Information

CN9: Vexatious & Repeated Requests

Document history

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What this is about:

This note provides an overview of when a request might legitimately attract the use of the section 14 exemption (vexatious (s14(1)) and repeated requests (s14(2))) and the criteria that should be considered in making decisions about the application of section 14(1).

Detail:

Under Section 14 of the FOI Act an authority is not obliged to comply with a request for information if it is deemed to be vexatious and/or the request ask for the same or similar information requested in an earlier request (unless a reasonable time has passed since the earlier request was made). The exemption is not intended to avoid compliance with valid requests in which the applicant happens to take an opportunity to vent his frustration at the Department's handling of earlier requests).

Section 14(2) states that where an authority has previously complied with a request for information, 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.

Note, the two parts of this exemption may be used independently or jointly and section 14(2) can be engaged even if the request is not considered to be vexatious under section 14(1).

It is important to note that under the FOIA, **the individual cannot be declared vexatious** – section 14(1) applies to the subject matter of the information requested, not to the person who has submitted them. Thus, for example, a request for information related to the subject of army recruitment, depending on its nature and the history of earlier requests on the same subject may be eligible for the use of both parts of the Section 14 exemption. However another one-off request from the same requester, on the subject of, for example, army pay would not and the department would be obliged to comply.

- Each request must be judged for on its own merits - it cannot be deemed vexatious purely on the basis that the person who submitted that request had previously submitted one or more vexatious, though unrelated, requests or that they were **previously** declared vexatious correspondents under another regime.
- All requests for information must be judged on a case-by case basis no matter how many a person makes, although there are provisions to aggregate the costs of requests made within a sixty day time period under section 12(4) where they meet specific criteria. These criteria are set out in the CN relation to the use of the s12(4) exemption.
- Never state in a response that the MOD may apply section 14(1) to future requests on the same or similar subject. The exemption should only be cited if it is being used as a reason for not complying with the current request.



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- Abusive, offensive or threatening language does not automatically make a request vexatious, although it may be an indicator.

The use of section 14(1) is the one occasion under the Act when public authorities are permitted to take into account the motive of the person requesting the information. In doing so it is useful to consider issues of proportionality. There must be an appropriate relationship between such matters as the information sought, the purpose of the request, and the time and other resources that would be needed to provide it. Where it is considered that the burden arising to a public authority have become disproportionate to the aims of a requester in receiving the requested information, it is an indicator that a request should attract the use of the section 14 exemption. But there are numerous other indicators of a vexatious request and it may be helpful to use the indicators below to identify potentially vexatious requests, since these are some of the typical key features of a vexatious request.

- **Abusive or aggressive language**
The tone or language of the requester's correspondence goes beyond the level of criticism that a public authority or its employees should reasonably expect to receive.
- **Burden on the authority**
The effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions of the requester.
- **Personal grudges**
For whatever reason, the requester is targeting their correspondence towards a particular employee or office holder against whom they have some personal enmity.
- **Unreasonable persistence**
The requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority or otherwise subjected to some form of independent scrutiny.
- **Unfounded accusations**
The request makes completely unsubstantiated accusations against the public authority or specific employees.
- **Intransigence**
The requester takes an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to engage with the authority.
- **Frequent or overlapping requests**
The requester submits frequent correspondence about the same issue or sends in new requests before the public authority has had an opportunity to address their earlier enquiries.
- **Deliberate intention to cause annoyance**
The requester has explicitly stated that it is their intention to cause disruption to the public authority, or is a member of a campaign group whose stated aim is to disrupt the authority.
- **Scattergun approach**
The request appears to be part of a completely random approach, lacks any clear focus, or seems to have been solely designed for the purpose of 'fishing' for information without any idea of what might be revealed.
- **Disproportionate effort**
The matter being pursued by the requester is relatively trivial and the authority would have to expend a disproportionate amount of resources in order to meet their request.



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- **No obvious intent to obtain information**
The requester is abusing their rights of access to information by using the legislation as a means to vent their anger at a particular decision, or to harass and annoy the authority, for example, by requesting information which the authority knows them to possess already.
- **Futile requests**
The issue at hand individually affects the requester and has already been conclusively resolved by the authority or subjected to some form of independent investigation.
- **Frivolous requests**
The subject matter is inane or extremely trivial and the request appears to lack any serious purpose. The request is made for the sole purpose of amusement.

This is by no means a definitive or limiting list, but it does give an indication of the factors the ICO would take into account in deciding whether the section 14 exemption has been legitimately applied. It is important to not to view the consideration of the criteria as a “box-ticking” exercise where a request **automatically** qualifies for the use of a the section 14 exemption because a number of indicators apply. Instead the request and history of earlier requests should be considered “in the round” taking these guiding indicators into account.

Repeated requests (section 14(2))

Section 14(2) states that where an authority has previously complied with a request for information, 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. However, the term “a reasonable interval” is not defined in the FOI Act. This is for the MOD to determine, depending on the type of information sought and any advice provided to the applicant in response to their previous request. The applicant may dispute the MOD’s definition of a “reasonable interval” and complain to the Information Commissioner.

A request **cannot** be judged to be repeated if:

- The information held in relation to a request has changed since the request was last made or it would be reasonable to have expected it to have changed even if, in fact, it has not because of delays in its production. For example it would be reasonable to have expected information held to have changed because a further quarter’s worth of financial data ought to have become available or because a policy is still in the process of being developed and one would reasonably have expected new policy or briefing papers to have been produced.
- It is worded identically to a previous request and this is the sole consideration. A key test will be regarding the information itself. You need to audit the previous handling of requests so there is a clear record of the repeat request(s) and the responses provided.
- It simply asks if any of the information held by a public authority has changed since it was previously requested.
- The applicant states that he or she lost the information but still requires it, or disposed of the information but has subsequently discovered that it is still required or requires another copy of the information previously sent to them, for instance because they have been obliged to supply the original to another body.



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- There may be cases where some of the information requested is new, but the rest has previously been supplied to the applicant and it creates an undue burden on the Department to provide it again. In such “hybrid” cases, it might be easier to only supply the information (subject to any exemptions) which has changed and classify the remainder of the request as S21 (Information accessible to the applicant through other means) However, where any information falling into the scope of a new request has been withheld in response to an earlier request, consideration of the application of the exemptions should be considered afresh, including the conduct of a new public interest test in respect of any qualified exemptions.
- The request is identical to that sent by another applicant, although this, in certain circumstances, may constitute a vexatious request under s14(1) for example where there are reasonable grounds for believing that numerous requesters are submitting identical requests in concert in order to place an unnecessary burden on the Department.

Process for Dealing with Vexatious or Repeated Requests

Declaring a request vexatious or repeated (or both) should not be undertaken without full consideration of all factors listed and consulting CIO-SPP-Information Rights. If you are satisfied that the request is vexatious or repeated, you should record this on the Access to Information Toolkit (AIT) and the refusal to consider the request again should be authorised at band B level.

You must issue a notice to the applicant informing them of your decision to refuse their request for information because you consider it vexatious or repeated, and inform them why this is the case (unless it is a repeated request where a similar notice has been given previously) and provide details of the MOD’s complaints procedure and right of appeal to the Information Commissioner.

For further information

[See Section 5 - Template Letters](#)

The ICO guidance on the use of Section 14 provides advice on how to determine which categories a request may come under and gives examples based on previous judgements. See ICO Guidance on vexatious requests:

http://www.ico.org.uk/news/blog/2013/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx