The Report of the Standards Committee

The Standards Committee met on 15th October 2013. Present:- County Councillors Caroline Patmore (Chairman), Andrew Goss, Helen Grant, David Jeffels and Peter Sowray; together with Independent Persons Hilary Gilbertson MBE and Louise Holroyd

1. **Code of Conduct – alteration:** The Standards Committee agreed to change the current Code of Conduct and form for registering Members interests at the County Council, allowing Members to treat trade union membership as a personal, non-pecuniary interest, as required under new guidance, and to authorise the Monitoring Officer to contact all Members of the Council asking them to register such interests, where these are held.

The Standards Committee RECOMMENDS:-

That the current Code of Conduct and form for registering Members interests be altered, allowing Members to treat trade union membership as a personal, non-pecuniary interest, as required under new guidance, and to authorise the Monitoring Officer to contact all Members of the Council asking them to register such interests, where these are held

2. **Protocol on Unreasonably Persistent/Vexatious Complaints:**
The Standards Committee agreed to submit the Protocol on Unreasonably Persistent/Vexatious Complaints (Appendix 1) to the County Council for formal approval.

The Standards Committee RECOMMENDS:-

That the Protocol on Vexatiousness (Appendix 1) be approved

3. **Arrangements for dealing with allegations of a breach of the Members' Code of Conduct:** The Standards Committee agreed that the following alterations be made to the timescales in relation to the arrangements for dealing with allegations of the breach of the Members' Code of Conduct.:-

5 – Assessment for investigation or other action – the assessment will take place where possible within 20 working days of receipt of the complaint or as soon as possible thereafter.

7 – Investigation – if the Monitoring Officer concludes that a matter merits investigation, the complainant will be invited to submit all information they wish to submit in support of their allegation within ten working days of request. Once the information is received it will be sent to the Member who is subject to the complaint, who would

also be invited to submit all information they wished to be considered in response within ten working days.

12 – What happens at the end of the hearing? – The Monitoring Officer will prepare a decision notice which will be given to the subject Member and the complainant within ten working days.

A copy of the amended procedure is attached as Appendix 2.

The Standards Committee RECOMMENDS:-

That the amendments to the arrangements for dealing with allegations of a breach of the Members' Code of Conduct, as detailed in Appendix 2 to the report, be approved.

Caroline Patmore
Chairman

County Hall,
NORTHALLERTON.

5 November, 2013

Appendix 1

NORTH YORKSHIRE COUNTY COUNCIL
STANDARDS COMMITTEE
PROTOCOL FOR DEALING WITH UNREASONABLY PERSISTENT/VEXATIOUS COMPLAINANTS

The County Council has published a Policy on Unreasonably Persistent Complainants, with supporting Procedure and Checklist. Copies are attached in **Appendix 1** to this Protocol. Helpful general guidance on unreasonable persistence/vexatiousness is also given by the Information Commissioner's Office in its Guide "When can a request be considered vexatious or repeated?" in the context of Freedom of Information, a copy of which is attached at **Appendix 2**.

In adopting a new local ethical framework for the Council under the Localism Act 2011, the Council agreed that it would be appropriate for the Standards Committee to have a role in dealing with persistent and/or vexatious complainants and the handling of the complaints raised by them, in order to provide increased support to Officers and Members who are the subject of such complaints and who are dealing with such complaints, and to minimise the administrative and financial burden such complaints can impose upon the Council.

Whilst decisions in relation to imposing restrictions in relation to unreasonably persistent/vexatious complainants are taken by officers at senior level, the Standards Committee is the appropriate body for Member-level consultation and support (where deemed appropriate and requested by the relevant senior officer) for the designation of a complainant as unreasonably persistent or vexatious, in accordance with the Council's Policy and procedure: the Committee has a key role in relation to conduct and propriety matters and the Council's statutory Independent Persons for standards are invited to all meetings of the Committee and provide an independent viewpoint on all key standards issues.

The Standards Committee may also be consulted upon and be asked to consider whether any restrictive action needs to be taken in each particular case presented to it for designation, in accordance with the Council's Policy and procedure.

The Standards Committee will review any matters in which it has been involved at the end of the time period allocated or after six months, whichever is earliest.

The fact that a complainant has been identified as an unreasonably persistent/vexatious complainant, may be taken into account in determining the action taken in response to a complaint.

Where a matter is proposed to be referred to the Standards Committee under this Protocol, the local Member shall be informed and shall be kept updated as to the progress of the matter and the outcome of the Standards Committee's consideration of it under this Protocol and all future developments in the matter.

This Protocol has been instigated by the Council in good faith and aims to address issues with, and relating to, such complainants in a manner which is fair to all concerned.
North Yorkshire County Council

11 February 2013

North Yorkshire County Council

Policy on Unreasonably Persistent Complainants

Status of Policy

Implemented July 2009

North Yorkshire County Council is committed to dealing with all complaints fairly and impartially and to providing a high quality service to those who make them.

We are accountable for the proper use of public money and must ensure that that money is spent wisely and achieves value for complainants and the wider public.

As part of the complaints service we do not normally limit the contact complainants have with our offices. However, there are a small number of complainants who, because of the frequency of their contact with our offices, hinder our consideration of their or other people's complaints, or delivery of services. We refer to such complainants as 'unreasonably persistent complainants' and, exceptionally, we will take action to limit their contact with our offices.

The decision to restrict access to our offices will be taken at a senior level and will normally follow a warning to the complainant. Any restrictions imposed will be appropriate and proportionate. The options we are most likely to consider are:

- requesting contact in a particular form (for example, in writing only);
- requiring contact to take place with a named officer;
- restricting telephone calls to specified days and times; and/or
- asking the complainant to enter into an agreement about their future contacts with us.

In all cases where we decide to treat someone as an unreasonably persistent complainant we will write to tell the complainant why we believe his or her behaviour falls into that category, what action we are taking and the duration of that action. We will also tell them how they can appeal against that decision if they disagree with it. If we decide to carry on treating someone as an unreasonably persistent complainant and we are still investigating their complaint six months later, we will carry out a review and decide if restrictions will continue.

Where a complainant whose case is closed persists in communicating with us about it, we may decide to terminate contact with that complainant. In such cases we will read all correspondence from that complainant, but unless there is fresh evidence which affects our decision on the complaint we will simply acknowledge it or place it on the file with no acknowledgement. The complainant will be informed that we will do this.

New complaints from people who have been identified as unreasonably persistent complainants in the past will be treated on their merits.

North Yorkshire County Council

Complaints Procedure:
Dealing with Unacceptable Behaviour Towards Staff and Unreasonably Persistent Complainants

Status of Procedure

Implemented July 2009

Contents

Introduction

North Yorkshire County Council is committed to dealing with all complaints fairly and impartially and to providing a high quality service to those who make them.

Some complainants may be angry and upset, sometimes with good cause. However, we do not expect staff to tolerate unacceptable behaviour, for example that which is abusive offensive or threatening, and will take action to protect staff from such behaviour.

We will also address any persistent behaviour which may impede the investigation of complaints or have significant resource issues for the authority. This may be during the course of the investigation or following its conclusion.

Unreasonable behaviour may relate to one or two isolated incidents as well as an accumulation of incidents or behaviour over a period of time.

Complainants exhibiting this type of behaviour may sometimes also be referred to as vexatious complainants, where a person is not seeking to resolve a dispute between themselves and the Council, but is seeking to cause unnecessary aggravation or annoyance to the Council.

In reading this document is it important to note that its purpose in relation to persistent complainants is to address instances where the same complaint is continually raised by an individual in an unreasonable manner. If new issues or complaints arise these will be evaluated in the proper way and dealt with appropriately.

Definitions

Unacceptable Behaviour Towards Staff

North Yorkshire County Council is committed to a working environment throughout the organisation where harassment and threatening or abusive behaviour is deemed both unacceptable and intolerable.

The legal definition of harassment is “Unwanted conduct that violates a person’s dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment, having regard to all the circumstances and the perception of the victim.” (Employment Equality [Religion or Belief] Regulations December 2003)

Personal harassment is more difficult to describe, but can be defined as uninvited and unwanted actions or behaviour, by one or more individuals, which causes others offence or embarrassment.

Unreasonably Persistent Complainants

Unreasonably persistent complainants are those complainants who, because of the frequency or nature of their contacts with us, hinder our consideration of their or other people’s complaints.

Safeguarding the Council's Resources

It is important not to spend large amounts of time dealing with unacceptable behaviour or unreasonably persistent complainants. Inflaming an already difficult situation should be avoided. It may be worth spending some time defusing a situation, rather than taking a hard line and then spending much more time defending that position. Judgement and common sense are called for.

It is not necessary to meet a complainant's unreasonable demands, or to answer every single point in an unreasonable complaint. Again, judgement will be required to separate a complainant's legitimate queries from those that are unreasonable. Advice can be found with your Directorate Complaints Coordinator.

Unacceptable behaviour

The Council will not tolerate unacceptable behaviour towards its staff, for example that which is abusive, offensive or threatening. Examples of such behaviour include:

- Offensive sexual or racial remarks or offensive remarks about a person's disability
- Inappropriate personal remarks
- Unwanted physical contact or assault
- Intimidation
- Threats
- Excessive swearing or foul language

This list is not exhaustive, but gives an indication of the type of behaviour which can cause distress to someone through offence, embarrassment or fear.

What to do about unacceptable behaviour

Complaints on the telephone or in person

If a complainant is rude or abusive it is perfectly acceptable to terminate the conversation. Staff should bring to the complainant's attention that their behaviour is unacceptable and why that is so, and that if the behaviour persists then the conversation will be terminated. If after being advised twice the behaviour continues then the conversation should be terminated.

A note of what has happened and what was said should be made and forwarded to your line manager and the Directorate Complaints Coordinator who may decide in consultation with their Director that, for a set period of time, the Council will not accept telephone calls from the complainant, or meet with them and will only deal with them in writing. If appropriate the Directorate Complaints Coordinator may also decide to involve the Police.

It is advisable not to meet a complainant alone, but to have at least two officers present at all times. This is not only a safeguard against abuse or even violence, but having a witness to the conversation can be very useful and the second officer could also take notes of the meeting. If you must meet someone alone ensure that the room is safe and appropriate and identify an 'escape route' (for example, sit near the door).

Written complaints

If a written complaint is threatening or abusive it should be referred, via the Directorate Complaints Coordinator, to the Director for consideration. The Director may inform the complainant that the Council will not consider complaints that are threatening or abusive in tone and that the matter will be given no further consideration.

Conduct agreement

If it is felt that poor behaviour can be stopped without restricting access, but with a formal document, you can ask the complainant to enter into an agreement about their conduct. This must be agreed and signed by both the complainant and a relevant senior officer of the directorate. If other directorates or agencies are involved include them too.

Extreme behaviour

If a complainant's behaviour is so extreme it threatens the immediate safety and welfare of our staff other options will be considered, for example reporting the matter to the police or taking legal action. In such cases the complainant may not be given prior warning of this action.

Is a complainant unreasonably persistent?

It is important to differentiate between persistent and unreasonably persistent complainants. It could be argued that the majority of complainants are persistent as they want their complaint dealt with properly and are intent on achieving this.

However, unreasonably persistent complainants may have justified complaints, but are pursuing them in inappropriate ways, or may be pursuing complaints which have no substance, or have already been investigated and determined. Their contacts may be amicable, but place very heavy demands on staff time, or may be very emotionally charged and distressing for all involved.

Raising legitimate queries or criticisms of a complaints procedure as it progresses, for example if agreed timescales are not met, should not in itself lead to someone being regarded as an unreasonably persistent complainant. Similarly, the fact that a complainant is unhappy with the outcome of a complaint and seeks to challenge it once, or more than once, should not necessarily cause him or her to be labelled unreasonably persistent.

Actions and behaviours of unreasonably persistent complainants

These are some of the actions and behaviours of unreasonably persistent complainants. It is by no means an exhaustive list.

- Refusing to specify the grounds of a complaint, despite offers of assistance with this from Council staff.
- Refusing to cooperate with the complaints investigation process while still wishing their complaint to be resolved.
- Refusing to accept that issues are not within the remit of the Council's complaints procedure despite having been provided with information about the procedure's scope.
- Insisting on the complaint being dealt with in ways which are incompatible with the Council's procedure.

- Refusing to communicate with the officer allocated to deal with their complaint unless there is a genuine and acceptable reason.
- Making what appear to be groundless complaints about the staff dealing with the complaint, and seeking to have them replaced.
- Changing the basis of the complaint as the investigation proceeds and/or denying statements he or she made at an earlier stage.
- Introducing trivial or irrelevant new information which the complainant expects to be taken into account and commented on, or raising large numbers of detailed but unimportant questions and insisting they are all fully answered.
- Electronically recording meetings and conversations without the prior knowledge and consent of the other persons involved.
- Adopting a 'scattergun' approach: pursuing a complaint or complaints with the authority and, at the same time, with a Member of Parliament/a councillor/our independent auditor/the Standards Committee/local police/solicitors/the Ombudsman; or a number of different officers/departments.
- Making unnecessarily excessive demands on the time and resources of staff whilst a complaint is being looked into, by for example excessive telephoning or sending emails to numerous council staff, writing lengthy complex letters every few days and expecting immediate responses.
- Submitting repeat complaints after complaints processes have been completed, essentially about the same issues, with additions/variations which the complainant insists make these 'new' complaints which should be put through our full complaints procedure.
- Refusing to accept the decision – repeatedly arguing the point and complaining about the decision.
- Combinations of some or all of these.

Before designating someone as an unreasonably persistent complainant

Different considerations will apply depending on whether the investigation of the complaint is ongoing or whether it has been concluded.

The decision to designate someone as an unreasonably persistent complainant is onerous and could have serious consequences for the individual. Before deciding whether the policy should be applied you should be satisfied that:

- the complaint is being or has been investigated properly;
- any decision reached on it is the right one;
- communications with the complainant have been adequate;
- the complainant is not now providing any significant new information that might affect the authority's view on the complaint; and
- no one will be put at risk of neglect or significant harm if it is decided to stop contact with the complainant.

If the authority is satisfied on these points it should consider whether further action is necessary prior to taking the decision to designate the complainant as unreasonably persistent. For example:

- A meeting with an officer of appropriate seniority may dispel misunderstandings and move matters towards a resolution. This should only be considered where a meeting has not already taken place with an officer/officers and providing that the Council knows nothing about the complainant which would make this unadvisable.
- If the complainant has special needs, an advocate might be helpful to both parties. Consider offering to help the complainant find an independent one.

Before applying any restrictions you must give the complainant a warning that if his/her actions continue then we may decide to treat him/her as an unreasonably persistent complainant and explain why.

What options for action are available?

The nature of the action decided to take should be appropriate and proportionate to the nature and frequency of the complainant's contacts with the Council at that time. The following list is of possible options from which one or more might be chosen and applied, if warranted. This is not exhaustive and other factors may result in other actions being taken.

- Placing time limits on telephone conversations and personal contacts.
- Restricting the number of telephone calls that will be taken (for example, one call on one specified morning/afternoon of any week).
- Limiting the complainant to one medium of contact (telephone, letter, email etc) and/or requiring the complainant to communicate only with one named member of staff. This is effective, for example, where a complainant telephones one or many members of staff on many occasions, or where they repeatedly give a different account of past conversations.
- Requiring any personal contacts to take place in the presence of a witness.
- Refusing to register and process further complaints about the same matter.
- Where a decision has been made, providing the complainant with acknowledgements only of letters, faxes or emails, or ultimately informing the complainant that future correspondence will be read and placed on file, but not acknowledged. An officer should be designated to read future correspondence for any significant new information or new complaints.

The decision to take any of the above action must be taken by an appropriately senior officer in consultation with the Directorate Complaints Coordinator. A letter should be sent to the complainant to inform them of:

- The decision that has been made and the reason for it
- Details of what restrictions will be placed on their contacts with us
- How long these restrictions will last
- How the complainant can appeal this decision

A copy of the Unreasonably Persistent Complainants policy should be enclosed with the letter.

There must never be any restriction of contact (of the complainant to us) for an unspecified period of time.

If the complainant continues to behave in an unacceptable way it may be decided to terminate all contact with them and to discontinue any investigations into their complaints.

Right to Appeal

Complainants must be given the right to appeal any decision to take any of the above actions. They should contact the relevant Directorate Complaints Coordinator who will consult a senior officer (other than the one who made the initial decision) to review the decision. The complainant must then be advised of the outcome of this review. If restrictions are still to be made, reasons must be given and the date when it will be reviewed.

Review

Whatever action is taken, this must be for a limited time. At the end of this period a review of the decision must be carried out. It should be carried out by a different and senior officer to that which made the initial decision. When it has been completed the complainant must be informed of the outcome and if restrictions are to continue the date when this will next be reviewed.

If the period the restrictions apply to is longer than six months, arrangements should be made for a check to be made every six months whether there has been any further contact from the complainant. If there has been no contact then the position should be reviewed and a decision taken on whether any restrictions should be lifted. The outcome should be noted on the records and if changes are to be made the complainant must be notified. If restrictions are lifted and the behaviour which led to the original decision recommences urgent consideration should be given to reintroduce the restrictions.

Coordinating Contacts Across the Council

Unreasonably persistent complainants often contact many different people in the Council and can try to take advantage of the differing responses they may receive. It is helpful to provide one key officer (with perhaps a second name only for when they are not available) for the complainant to contact.

Informing Relevant Officers

If restrictions are put in place any relevant officers should be informed. These should include:

- The Directorate Complaints Coordinator for any service involved, if they have not initiated the process themselves;

- The Corporate Complaints Coordinator if they have not initiated the process themselves;
- Customer Services Centre Manager; and
- Any officers involved in the complaint.

Record Keeping

Records of all contacts with the complainant should be kept. Other records that should be kept include:

- when a decision is taken not to apply the policy when a member of staff asks for this to be done, or to make an exception to the policy once it has been applied;
- when a decision is taken not to put a further complaint from such a complainant through its complaints procedure for any reason;
- Key members of staff; and
- Records of reviews and decisions made.

Future Contacts

Bearing in mind any restrictions still in place each further contact should be considered and assessed on its own merits. This need not be time consuming, but it must be done.

Complaints about the same issue

1. No new information

    - If the complaint has not already exhausted the Council's complaints procedure the complaint can be escalated in the normal way. Contact your Directorate Complaints Coordinator; or
    - If the Council's complaints procedure has been exhausted, but the matter has not been to the Local Government Ombudsman (LGO), refer it there; or
    - If it has been to the LGO and the complainant does not agree with the LGO's decision they should be referred back to the LGO

If the complainant persists in corresponding with no significant new information and declines to follow the complaints procedure, they should be warned that the Council will not enter into further correspondence on that issue as the matter has been dealt with appropriately. If they continue to contact the Council write to the complainant to say that any further correspondence that does not raise any significant new information will only be filed with no acknowledgement sent.

2. New information

If new information is supplied this must be evaluated by the investigating officer dealing with the complaint. A response should be sent to the complainant informing them of what will happen next.

Complaints about similar matters

Each complaint should be considered in the usual way and judged on its own merits. If the new complaints are about entirely trivial matters or matters that have clearly not caused the complainant any injustice it may be appropriate to close down the complaint. This must only be done by the Directorate Complaints Coordinator in agreement with their Director. The complainant needs to be informed and there is no right of appeal other than to the Ombudsman.

New complaints

New complaints should be assessed in the usual way and dealt with as appropriate following Council procedures.

Premature Referral to the Local Government Ombudsman

In some cases relations between the Council and unreasonably persistent complainants break down badly while complaints are under investigation and there is little prospect of achieving a satisfactory outcome. In such circumstances there is often little purpose in following through all stages of the complaints procedure and where this occurs the LGO may be prepared to consider complaints before the complaints procedure is exhausted. Contact your Directorate Complaints Coordinator for advice.

Further Help and Information

For more help or information please contact your Directorate Complaints Coordinator. Details can be found on the intranet.

North Yorkshire County Council

Checklist for how to deal with Unreasonably Persistent Complainants

The following gives a brief outline of what should be done when considering how to deal with unreasonably persistent complainants.

- Identify whether the complainant is unreasonably persistent or not.
- Identify if there are any actions that can be taken to stop this, for example a conduct agreement.
- Designate the complainant as being unreasonably persistent. This must be decided by an appropriately senior officer and the Directorate Complaints Coordinator must be informed.
- Identify if any restrictive action needs to be taken and if so what this should be. This must be decided by an appropriately senior officer and the Directorate Complaints Coordinator must be informed.
- The complainant must be written to advising them of: the decision; the reasons for that decision; the length of time the restrictions will apply; and how they can appeal against that decision. A copy of the Policy on Unreasonably Persistent Complainants must be enclosed with this letter.
- Inform relevant officers of the decision.
- Review the decision at the end of the time period allocated or after six months, whichever is earliest. Keep the complainant informed of any decisions.
- Keep records of all contacts and decisions made.
- If relations become unworkable a complaint can be prematurely referred to the Local Government Ombudsman with their agreement.
- Even where contact is severely restricted all correspondence must be monitored for any relevant content. Any new complaints should be considered on its own merits.

For further advice please contact your Directorate Complaints Coordinator. Details can be found on the intranet.

Dealing with vexatious requests (section 14)

Freedom of Information Act

Contents

Introduction

1. The Freedom of Information Act 2000 (FOIA) gives the public a right of access to information held by public authorities.

2. An overview of the main provisions of FOIA can be found in The Guide to Freedom of Information.

3. This is part of a series of guidance, which goes into more detail than the Guide, to help public authorities to fully understand their obligations and promote good practice.

4. This guidance will help public authorities understand when a request can be refused as vexatious under section 14(1) of the FOIA.

Overview

- Under section 14(1) of the Act, public authorities do not have to comply with vexatious requests. There is no public interest test.

- Section 14(1) may be used in a variety of circumstances where a request, or its impact on a public authority, cannot be justified. Whilst public authorities should think carefully before refusing a request as vexatious they should not regard section 14(1) as something which is only to be applied in the most extreme of circumstances.

- Section 14(1) can only be applied to the request itself and not the individual who submitted it.

- Sometimes a request may be so patently unreasonable or objectionable that it will obviously be vexatious.

- In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a **disproportionate** or **unjustified** level of disruption, irritation or distress.

- This will usually be a matter of objectively judging the evidence of the impact on the authority and weighing this against any evidence about the purpose and value of the request.

- The public authority may also take into account the context and history of the request, where this is relevant.

- Although not appropriate in every case, it may be worth considering whether a more conciliatory approach could help before refusing a request as vexatious.
- A public authority must still issue a refusal notice unless it has already given the same individual a refusal notice for a previous vexatious request, and it would be unreasonable to issue another one.
- If the cost of compliance is the only or main issue, we recommend that the authority should consider first whether section 12 applies (there is no obligation to comply where the cost of finding and retrieving the information exceeds the appropriate limit).

What FOIA says

5. 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.

6. The Freedom of Information Act was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.

7. Whilst most people exercise this right responsibly, a few may misuse or abuse the Act by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.

8. The Information Commissioner recognises that dealing with unreasonable requests can place a strain on resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.

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

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

    'Section 14…is concerned with the nature of the request and has the effect of disapplying the citizen's right under Section 1(1)…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).

11. This being the case, public authorities should not regard section 14(1) as something which is only to be applied in the most extreme circumstances, or as a last resort. Rather, we would encourage authorities to consider its use in any case where they believe the request is disproportionate or unjustified.

Application of section 14(1)

12. It is important to remember that section 14(1) can only be applied to the request itself, and not the individual who submits it. An authority cannot, therefore, refuse a request on the grounds that the requester himself is vexatious. Similarly, an authority cannot simply refuse a new request solely on the basis that it has classified previous requests from the same individual as vexatious.

13. Section 14(1) is concerned with the nature of the request rather than the consequences of releasing the requested information. If an authority is concerned about any possible prejudice which might arise from disclosure, then it will need to consider whether any of the exemptions listed in Part II of the Act apply.

14. Public authorities need to take care to distinguish between FOI requests and requests for the individual's own personal data. If a requester has asked for information relating to themselves, the authority should deal with the request as a subject access request under the Data Protection Act 1998.

15. You can read our guidance on how to handle a subject access request here.

The meaning of vexatious

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

17. In further exploring the role played by circumstances, the Tribunal placed particular emphasis on the issue of whether the request has adequate or proper justification. They also cited two previous section 14(1) decisions where the lack of proportionality in the requester's previous dealings with the authority was deemed to be a relevant consideration by the First Tier Tribunal.

18. After taking these factors into account, the Tribunal concluded that 'vexatious' could be defined as the *"…manifestly unjustified, inappropriate or improper use of a formal procedure.'* (paragraph 27).

19. The Tribunal's decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.

20. This being the case, we would suggest that the key question the public authority must ask itself is whether the request is likely to cause a **disproportionate** or **unjustified** level of disruption, irritation or distress.

Identifying potentially vexatious requests

21. It may be helpful to use the indicators below as a point of reference, as our experience of dealing with section 14(1) complaints suggest that these are some of the typical key features of a vexatious request.

22. Please bear in mind that this is not a list of qualifying criteria. These indicators should not be regarded as either definitive or limiting. Public authorities remain free to refuse a request as vexatious based on their own assessment of all the relevant circumstances.

23. However, they should not simply try to fit the circumstances of a particular case to the examples in this guidance. The fact that

a number of the indicators apply in a particular case will not necessarily mean that the authority may refuse the request as vexatious.

Indicators (not listed in any order of importance)

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.

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.

24. As the Upper Tribunal in *Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013)* observed;

    'There is…no magic formula – 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'.

25. Therefore, the fact that a request has one or more of the characteristics listed above does not necessarily mean it that it is vexatious. Some factors will be easier to evidence and support than others. It is also important that factors are considered on the circumstances of each individual case; the

strength of the factors will vary in importance depending on the case.

26. For example, an individual who submits frequent requests may only be doing this in order to obtain further clarification because the public authority's previous responses have been unclear or ambiguous.

27. Similarly, if the requester has used an accusatory tone, but his request has a serious purpose and raises a matter of substantial public interest, then it will be more difficult to argue a case that the request is vexatious.

Dealing with requests that are patently vexatious

28. In some cases it will be readily apparent that a request is vexatious.

29. For instance, the tone or content of the request might be so objectionable that it would be unreasonable to expect the authority to tolerate it, no matter how legitimate the purpose of the requester, or substantial the value of the request.

30. Examples of this might be where threats have been made against employees, or racist language used.

31. We would not expect an authority to make allowances for the respective purpose or value of the request under these kinds of circumstances.

32. Therefore, an authority that is dealing with a request which it believes to be patently vexatious should not be afraid to quickly reach a decision that the request is vexatious under section 14(1).

33. However, we accept that in many cases, the authority is likely to find the question of whether section 14(1) applies to be less clear-cut.

Dealing with less clear cut cases

34. If the authority is unsure whether it has sufficient grounds to refuse the request, then the key question it should consider is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

35. This will usually mean weighing the evidence about the impact on the authority and balancing this against the purpose and

value of the request. Where relevant the authority will also need to take into account wider factors such as the background and history of the request.

36. Guidance on how to carry out this exercise can be found in the next section.

37. However, the ICO recommends that before going on to assess whether the request is vexatious, public authorities should first consider whether there are any viable alternatives to dealing with the request under section 14. Some of the potential options are outlined in the 'Alternative approaches' section later in this guidance.

Determining whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress

38. Public authorities must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.

39. However, if a request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress then this will be a strong indicator that it is vexatious.

40. In *Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013)*, Judge Wikeley recognised that the Upper Tribunal in *Wise v The Information Commissioner (GIA/1871/2011)* had identified proportionality as the common theme underpinning section 14(1) and he made particular reference to its comment that;

    'Inherent in the policy behind section 14(1) is the idea 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.'

41. A useful first step for an authority to take when assessing whether a request, or the impact of dealing with it, is justified and proportionate, is to consider any evidence about the serious purpose or value of that request.

Assessing purpose and value

42. The Act is generally considered to be applicant blind, and public authorities cannot insist on knowing why an applicant wants information before dealing with a request.

43. However, this doesn't mean that an authority can't take into account the wider context in which the request is made and any evidence the applicant is willing to volunteer about the purpose behind their request.

44. The authority should therefore consider any comments the applicant might have made about the purpose behind their request, and any wider value or public interest in making the requested information publicly available.

45. Most requesters will have some serious purpose behind their request, and it will be rare that a public authority will be able to produce evidence that their only motivation is to cause disruption or annoyance. As the Upper Tribunal in *Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013*) 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."*

46. However, if the request does not obviously serve to further the requester's stated aims or if the information requested will be of little wider benefit to the public, then this will restrict its value, even where there is clearly a serious purpose behind it.

47. Some practical examples of scenarios where the value of a request might be limited are where the requester;

    - Submits a request for information that has no obvious relevance to their stated aims.
    - Argues points rather than asking for new information.
    - Raises repeat issues which have already been fully considered by the authority.
    - Refuses an offer to refer the matter for independent investigation, or ignores the findings of an independent investigation.

- Continues to challenge the authority for alleged wrongdoing without any cogent basis for doing so.

- Is pursuing a relatively trivial or highly personalised matter of little if any benefit to the wider public.

48. Once again, this is not intended to be an exhaustive list and public authorities can take into account any factors they consider to be relevant.

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.

In upholding DfID's decision that the April 2010 request was vexatious, the Information Commissioner found that the requester's reluctance to accept that no evidence of wrongdoing existed had limited the purpose and value of the request;

'…The complainant has a clear belief that a fraud has been committed, and as stated by her, believes this to be a legitimate pursuit to uncover this fraud. The DfID itself has noted that they consider the request to have a serious purpose, explaining that if this had been her first request on the subject, it would have been handled as normal. However, it considers this request the continuation of a vexatious campaign, the results of which have already been provided, and on which nothing further can be done.

40. The Commissioner supports the DfID's stance. Furthermore, even with the acceptance of the request's serious purpose, it has reached a point, in light of contrary

evidence, where the serious purpose of the request has been mitigated by the complainant's unwillingness to accept such evidence.' (paragraphs 39 and 40).

Considering whether the purpose and value justifies the impact on the public authority

49. Serious purpose and value will often be the strongest argument in favour of the requester when a public authority is deliberating whether to refuse a request under section 14(1).

50. The key question to consider is whether the purpose and value of the request provides sufficient grounds to justify the distress, disruption or irritation that would be incurred by complying with that request. This should be judged as objectively as possible. In other words, would a reasonable person think that the purpose and value are enough to justify the impact on the authority.

51. Although section 14(1) is not subject to a traditional public interest test it was confirmed by the Upper Tribunal in the Dransfield case that it may be appropriate to ask the question:

    "Does the request have a value or serious purpose in terms of the objective public interest in the information sought?"

52. It may be helpful to view this as a balancing exercise where the serious purpose and value of the request are weighed against the detrimental effect on the authority, as summarised below.

Serious purpose. **Requester's aims and legitimate motivation.** **Wider public interest and objective value.**	v	**Detrimental impact on the public authority.** **Evidence that the requester is abusing the right of access to information.**

53. The weight placed on each of these factors will be dependent on both the context and individual circumstances of the case. This means that sometimes the serious purpose and value of a request will be enough to justify the impact on the public authority and sometimes it won't.

Example 1
In decision notice FS50423035 the requester had made 25 requests to Transport for London (TFL) between July and August 2011 in an attempt to challenge the validity of a parking ticket.

The Commissioner acknowledged that these requests had a serious purpose and value, and singled out one particular enquiry (for information about TFL's staff conduct and payments) as having a public interest weight.

However, he also found that the requests were imposing a significant burden in terms of expense and distraction, and were designed to disrupt and annoy the authority as a means of pressuring it into revoking the ticket.

In ruling that section 14(1) had been correctly engaged, he stated;

'…the Commissioner must go on to consider whether the serious purpose of the requests is such as to render the requests not vexatious. This is where, for example, there might be a circumstance in which a request might be said to create a significant burden and yet, given its serious and proper purpose, ought not to be deemed as vexatious.

In this case the Commissioner does not consider that sufficient weight can be placed on the serious purpose identified to make it inappropriate to deem the request vexatious. This is in view of the overall burden of the requests and the way that they were framed so that they can be reasonably seen as an example of inappropriate pressure on TfL. In addition, the Commissioner considers that the complainant's refusal to use the appropriate channels available to her to lodge an appeal against the fine substantially reduces the seriousness of the purpose.' (paragraphs 53 and 54).

Example 2
In decision notice FS50430286 the request was for information concerning the use of a charity account by a school academy. It was 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 Commissioner concluded that whilst the requests imposed a significant burden, this was outweighed by the serious purpose and value of the requests and therefore it would be wrong to find the requests vexatious.

Taking into account context and history

54. The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies.

55. In practice this means taking into account factors such as:

- Other requests made by the requester to that public authority (whether complied with or refused).
- The number and subject matter of those requests.
- Any other previous dealings between the authority and the requester.

And, assessing whether these weaken or support the argument that the request is vexatious.

56. A request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. An example of this would be where an individual is placing a significant strain on an authority's resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden.

57. The requester's past pattern of behaviour may also be a relevant consideration. For instance, if the authority's experience of dealing with his previous requests suggests that he won't be satisfied with any response and will submit numerous follow up enquiries no matter what information is supplied, then this evidence could strengthen any argument that responding to the current request will impose a disproportionate burden on the authority.

58. However, the context and history may equally weaken the argument that a request is vexatious. For example, it might indicate that the requester had a reasonable justification for their making their request, and that because of this the public authority should accept more of a burden or detrimental impact than might otherwise be the case.

59. Some examples of this might be where:

- The public authority's response to a previous request was unclear and the requester has had to submit a follow up request to obtain clarification.

- Responses to previous requests contained contradictory or inconsistent information which itself raised further questions, and the requester is now following up these lines of enquiry.

- The requester is pursuing a legitimate grievance against the authority and reasonably needs the requested information to do so.

- Serious failings at the authority have been widely publicised by the media, giving the requester genuine grounds for concern about the organisation's actions.

60. The authority should be mindful to take into account the extent to which oversights on its own part might have contributed to that request being generated.

61. If the problems which the authority now faces in dealing with the request have, to some degree, resulted from deficiencies in its handling of previous enquiries by the same requester, then this will weaken the argument that the request, or its impact upon the public authority, is disproportionate or unjustified.

Burdensome requests

Example 1
The case of *Independent Police Complaints Commissioner vs The Information Commissioner (EA/2011/0222, 29 March 2012)*, concerned two requests for information sent to the Independent Police Complaints Commissioner (IPCC) in March and April 2011, both of which were refused as vexatious. The first of these, made on March 17 2011, was for copies of the

IPCC's managed investigation reports for 2008, 2009 and 2010.

During the ICO's investigation, the IPCC argued that reviewing the 438 reports concerned would require it to divert staff away from its core functions for a considerable period of time. The IPCC also cited the past behaviour of the complainant as further evidence of vexatiousness, pointing out that he had submitted 25 FOIA requests in the space of two years.

The ICO accepted that the March 17 request would impose a significant burden, but was not satisfied that the volume of requests had reached the point where any particular one could be characterised as vexatious, especially as it considered the requests to have a serious purpose. The ICO also advised that in cases where the significant burden imposed by the volume of information requested is the primary concern, it might be more appropriate to consider the request under section 12(1).

However, the Tribunal found that the March 17 request was vexatious and suggested that, under certain circumstances, it would be appropriate to refuse a burdensome request under section 14, even if the information was also covered by section 12.

In allowing the IPCC's appeal the Tribunal observed 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).

Requests where collating the requested information will impose a significant burden

62. Despite the Information Tribunal's findings in the IPCC case, we would strongly recommend any public authority whose main concern is the cost of finding and extracting the information to consider the request under section 12 of the Act, where possible.

63. 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*)

64. 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 a public authority's own interests to apply section 12 rather than section 14, in any case where a request would exceed the cost limit.

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

66. The authority may also combine the total cost for all requests received from one person (or several people acting in concert) during a period of 60 days so long as they are requests for similar information. Please see the Guide to Freedom of Information for more details.

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

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

68. Nonetheless, it may apply section 14(1) where it 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 the organisation.

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

    - The requester has asked for a substantial volume of information **AND**

- The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO **AND**

- Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

70. In the event that a refusal should lead the requester to complain to the ICO, we would expect the authority to provide us with clear evidence to substantiate its claim that the request is grossly oppressive. Any requests which are referred to the Commissioner will be considered on the individual circumstances of each case.

71. Where an authority believes that complying with the request will impose a grossly oppressive burden, it is good practice to talk to the requester before claiming section 14(1), to see if they are willing to submit a less burdensome request.

Example 2
The case of *Salford City Council vs ICO and Tiekey Accounts Ltd (EA2012/0047, 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 the 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).

72. The Salford City Council decision demonstrates how balancing the impact of a request against its purpose and value can help to determine whether the effect on the authority would be disproportionate.

Round robins

73. 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, and it is important to bear in mind that these 'round robin' requests may sometimes have a serious purpose and value.

74. 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 statistical information about that sector once the information is combined.

75. Nevertheless, as with any other request, if the authority believes the round robin to have little discernible value and purpose, or considers that it would be likely to cause a disproportionate or unjustified level disruption, irritation, or distress then it may take this into account in any determination as to whether that request is vexatious.

76. A public authority can include evidence from other authorities that received the round robin when considering the overall context and history of the request.

77. However, any burden must only be on the authority which received the request. Therefore, when determining the impact

of a round robin, the authority may only take into account any disruption, irritation or distress it would suffer itself. It cannot cite the impact on the public sector as a whole as evidence that the request is vexatious.

Random requests and 'fishing' expeditions

78. Public authorities sometimes express concern about the apparent tendency of some requesters, most notably journalists, to use their FOIA rights where they have no idea what information, if any, will be caught by the request. These requests can appear to take a random approach.

79. These requests are often called 'fishing expeditions' because the requester casts their net widely in the hope that this will catch information that is noteworthy or otherwise useful to them. It is a categorisation that public authorities should consider very carefully as regular use could easily result in the refusal of legitimate requests.

80. Whilst fishing for information is not, in itself, enough to make a request vexatious, some requests may:

    - Impose a burden by obliging the authority 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 the authority to spend a considerable amount of time considering any exemptions and redactions;

    - Be part of a pattern of persistent fishing expeditions by the same requester.

81. If the request has any of these characteristics then the authority may take this into consideration when weighing the impact of that request against its purpose and value as detailed in the section entitled 'Determining whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress'.

82. However, authorities must take care to differentiate between broad requests which rely upon pot luck to reveal something of

interest and those where the requester is following a genuine line of enquiry.

83. It is also very important to remember that requesters do not have a detailed knowledge of how an authority's records are stored. It therefore follows that some requesters will submit broad requests because they do not know where or how the specific information they want is recorded.

84. Whilst these requests may appear unfocused, they cannot be categorised as '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.

85. Public authorities should also look out for those requests where the lack of focus is the result of ambiguous or unclear wording. Where there is an issue over clarity, the authority should consider what advice and assistance it can provide to help the requester clarify the focus of their request. However, if the requester persistently ignores reasonable advice and assistance provided by the public authority, then it is more likely that a request with these characteristics could be refused as vexatious.

Campaigns

86. If a public authority has reason to believe that several different requesters are acting in concert as part of a campaign to disrupt the organisation by virtue of the sheer weight of FOIA requests being submitted, then it may 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 being received in the period from October 2009 to February 2010 and 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).

87. The authority will need to have sufficient evidence to substantiate any claim of a link between the requests before it can go on to consider whether section 14(1) applies on these grounds. Some examples of the types of evidence an authority might cite in support of its case are:

    - The requests are identical or similar.

    - They 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.

    - A group's website makes an explicit reference to a campaign against the authority.

88. Authorities must be careful to differentiate between cases where the requesters are abusing their information rights to engage in a campaign of disruption, and those instances where

the requesters are using the Act as a channel to obtain information that will assist their campaign on an underlying issue.

89. If the available evidence suggests that the requests are genuinely directed at gathering information about an underlying issue, then the authority will only be able to apply section 14(1) where it can show that the aggregated impact of dealing with the requests would cause a disproportionate and unjustified level of disruption, irritation or distress.

90. This will involve weighing the evidence about the impact caused by the requests submitted as part of the campaign against the serious purpose and value of the campaign and the extent to which the requests further that purpose. Guidance on how to carry out this exercise can be found in the section of this guidance entitled 'Considering whether the purpose and value justifies the impact on the public authority.'

91. If the authority concludes that the requests are vexatious then it should proceed to issue refusal notices in the normal manner.

92. 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. Public authorities should therefore ensure that that they have ruled this explanation out before arriving at the conclusion that the requesters are acting in concert or as part of a campaign.

Recommended actions before making a final decision

93. We would advise any public authority that is considering the application of section 14(1) to take a step back and review the situation before making a final decision. This is because refusing a request as vexatious is particularly likely to elicit a complaint from the requester and may serve to escalate any pre-existing disputes between the respective parties.

94. Primarily, this will mean ensuring that the relevant people have been consulted about the matter before making a final decision.

95. There is little point in making a decision without understanding its implications for other departments within the public authority, or without the backing of a decision maker at an appropriate level. At the very least, we recommend that when

the request handler has been very involved in previous correspondence with the requester they ask someone else, preferably at a more senior level, to take a look and give their objective view.

96. As part of this process, the authority 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.

97. Finally, where a request is refused and the requester does decide to complain, then the public authority should recognise the importance of the internal review stage, as this will be its last remaining opportunity to thoroughly re-evaluate, and, if appropriate, reverse the decision without the involvement of the ICO.

Alternative approaches

98. A requester may be confused or aggrieved if an authority suddenly switches from complying with their requests to refusing them as vexatious without any prior warning. This, in turn, increases the likelihood that they will complain about the manner in which their request has been handled.

99. For this reason it is good practice to consider whether a more conciliatory approach would practically address the problem before choosing to refuse the request, as this may help to prevent any unnecessary disputes from arising. A conciliatory approach should focus on trying to get the requester to understand the need to moderate their approach and understand the consequences of their request(s). An approach which clearly looks like a threat is unlikely to succeed.

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

101. Therefore, before deciding whether to take a conciliatory approach, an authority may find it instructive to look back at its

past dealings with the requester to try and gauge how they might respond.

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

103. Similarly, if the authority believes it has already reached the stage where it has gone as far as it can to accommodate the requester, and those efforts have been to no avail, then there would seem to be little value in attempting any further conciliation.

Allow the requester an opportunity to change their behaviour

104. The authority could try writing to the requester to outline its concerns about the way his previous requests have been framed, and to set out what he should do differently to ensure that further requests are dealt with.

105. For example, if an authority is unhappy about the tone of previous requests then it might advise the requester that it is still prepared to accept further requests, but only on condition that he moderates his language in future.

106. When outlining its concerns, the authority should, whenever possible, focus on the impact of the requests, rather than the behaviour of the requester himself. Labelling a requester with terms such as 'obsessive', 'unreasonable' or 'aggressive' may only serve to worsen relations between the respective parties and cause further disputes.

107. This can also serve as a 'final warning' with the authority having effectively given the requester notice that any future requests framed in a similar vein may be refused as vexatious.

Refer the requestor to the ICO's 'For the public' webpages.

108. 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. An authority which is concerned that an individual's requests may become vexatious could try referring them to these webpages, and

advising that future requests are less likely to be refused if framed in accordance with these guidelines.

109. 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.

Provide advice and assistance for requests which are unclear

110. A public authority is not under any obligation to provide advice and assistance in response to a request which is vexatious. However, if part of the problem is that the requester's correspondence is hard to follow and the authority is therefore unsure what (if any) information has been requested, then it might want to consider whether the problem could more appropriately be resolved by providing the requester with guidance on how to reframe his request.

111. 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.

112. More information about the duty to provide advice and assistance can be found via our guidance index.

Refusing a request

113. Public authorities do not have to comply with vexatious requests. There is also no requirement to carry out a public interest test or to confirm or deny whether the requested information is held.

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

115. There is no obligation to explain why the request is vexatious. Nonetheless, authorities should aim to be as helpful as possible. The ICO considers it good practice to include the reasoning for the decision in the refusal notice.

116. However, we also appreciate that it may not be appropriate to provide a full explanation in every case. An example might be

where the evidence of the requester's past behaviour suggests that a detailed response would only serve to encourage follow up requests.

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

118. 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.

119. The ICO will usually only accept that it would be unreasonable to issue a further refusal notice if the authority has already warned the complainant that further requests on the same or similar topics will not receive any response.

120. Refusing a request as vexatious is particularly likely to lead to an internal review or an appeal to the ICO. Whether or not the authority issues a refusal notice or explains why it considers the request to be vexatious, it should keep written records clearly setting out the procedure it followed and its reasons for judging the request as vexatious. This should make it easier to evidence the reasoning behind the decision should the requester decide to take the matter further.

121. For more information on refusals, please visit our Guide to Freedom of Information.

What the ICO will expect from an authority?

Gathering evidence

122. When an authority is dealing with a series of requests and developing pattern of behaviour, it will often arrive at a tipping point when it decides that, whilst it was appropriate to deal with a requester's previous requests, the continuation of that behaviour has made the latest request vexatious.

123. An authority which sees this tipping point approaching would be advised to maintain an ongoing 'evidence log' to record any relevant correspondence and behaviour, as we would expect it

to be able to produce documentary evidence in support of its decision, should the requester complain to us.

124. The 'evidence log' should be proportionate to the nature of the request. The focus should be on key milestones in the chronology, and cross referencing existing information rather than gathering or developing new information.

The cut off point for evidence that a request is vexatious

125. The authority may take into account any evidence it has about the events and correspondence which proceeded or led up to the request being made.

126. An authority has a set time limit (normally 20 working days) in which it must respond to a request. As long as the authority keeps to this time limit then it may also take into account anything that happens within the period in which it is dealing with the request (for example if the requester sends in further requests).

127. However, an authority cannot take into account anything that happens after this cut off point. This means that if a public authority breaches the Act and takes longer than 20 working days to deal with a request, or if it makes a late claim of section 14(1) after a complaint has been made to the ICO, then it will need to be very careful to disregard anything that only happened after the time limit for responding had expired.

Making a case to the ICO

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

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

130. Where the authority believes that the context or history strengthens their argument that the request is vexatious, then we would also expect them to provide any relevant documentary evidence or background information to support this claim.

More information

131. This guidance has been developed drawing on ICO experience. Because of this it may provide more detail on issues that are often referred to the Information Commissioner than on those we rarely see. The guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.

132. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.

133. If you need any more information about this or any other aspect of freedom of information, please contact us: see our website www.ico.org.uk.

Annex of example tribunal decisions

Disproportionate burden

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 section14 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).

Reopening issues that have been resolved

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 (Data Protection Registrar as he was then), 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 section14.

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).

Unjustified persistence

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.

By a number of letters and emails, the complainant sought inspection records, policies and assessments and the council provided this information under the 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 section14 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).

Volume of requests harassing to member of staff

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).

Campaign taken too far

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

Justified persistence

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 manner in which 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).

Vexatious when viewed in context

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.

Dealing with repeat requests (section 14(2))

Freedom of Information Act

Contents

Introduction

1. The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities.

2. An overview of the main provisions of FOIA can be found in The Guide to Freedom of Information.

3. This is part of a series of guidance, which goes into more detail than the Guide, to help public authorities to fully understand their obligations and promote good practice.

4. This guidance explains when a request may be regarded as repeated under section 14(2), and provides advice on how to use that section.

Overview

- Under Section 14(2) of the Act, a public authority does not have to comply with a request which is identical, or substantially similar to a previous request submitted by the same individual, unless a reasonable period has elapsed between those requests. There is no public interest test.

- A public authority may only apply Section 14(2) where it has either;

    - previously provided the same requester with the information in response to an earlier FOIA request; **or**

    - previously confirmed the information is not held in response to an earlier FOIA request from the same requester.

  If neither of these conditions applies then the public authority must deal with the request in the normal manner.

- A request will be identical if both its scope and its wording precisely matches that of a previous request.

- It will be substantially similar if;

  (a) The wording is different but the scope of the request is the same; **or**

  (b) The scope does not differ significantly from that of the

previous request.

- The reasonable interval is largely dependent upon the likelihood of any of the information caught within the scope of the request differing or having changed from that previously provided.

- If the information is unlikely to be different then the authority will need to consider the amount of time between requests and decide whether this is enough to make it reasonable to provide the same information again.

- The Public Authority must issue a refusal notice unless it has already served the requester with a notice under Section 14(2) in response to a previous request for the same information, and it would be unreasonable to issue another one.

What FOIA says

5. Section 14(2) states:

> 14.—(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

6. This means that Section 14(2) may only be applied when all three of the following criteria have been fulfilled;

    - the request is identical or substantially similar to a previous request from the same requester;

    - the authority has previously provided the information to the requester or confirmed that it is not held in response to the earlier FOIA request; and

    - a reasonable interval has not elapsed between the new request and the previous request.

7. If the authority has not already provided the information to the requester, then it must deal with the request in the normal manner.

8. As the scope of Section 14(2) is fairly narrow, the circumstances in which it may be applied are unlikely to arise very often because;

   - it will be rare that a requester will ever need to ask for the same information twice;

   - unless the information caught by the requests is identical, or the differences or changes are insignificant, it is likely to be reasonable for the authority to provide an updated version of the information.

   Public authorities cannot use Section 14(2) to refuse identical or substantially similar requests that were submitted by different requesters. If an authority receives numerous requests from different requesters, for information that it has already disclosed, then we recommend that it considers making the information available on its website or via its publication scheme. For more information about publication schemes please see our Guide to Freedom of Information.

Is the request identical or substantially similar?

9. If the public authority is satisfied that the requests do originate from the same requester then the next step will be to determine whether they are identical or substantially similar.

10. A request will be identical if both its wording and its scope precisely matches that of a previous request.

11. If the wording is identical but the scope of the request is different (for example a recurring request asking for "any new or amended information" on a particular subject, or for "last month's figures") the request will not be identical.

Example

On the last day of April an individual submits an FOIA request to his local fire brigade in which he asks;

"How many emergency call outs have you responded to this month?"

The fire brigade provides him with the requested information.

At the end of June he sends them a further request with exactly the same wording.

Although the phrasing of these requests is exactly the same the request will not be identical because the information being sought, (the call out figures for April and June respectively) is entirely different.

12. A request will be substantially similar if it meets either of the following criteria;

    - The wording is different but the scope of the request (the criteria, limits or parameters which define the information being sought) is the same as for a previous request.

    - The scope of the request does not differ significantly from that of the previous request (regardless of how the request is phrased).

13. The following is an example of a substantially similar request which, although differently worded, has the same scope as an earlier request.

Example 1

A local council decides to outsource its street cleaning services and invites private companies to tender for the contract.

Following this decision, a local resident sends the council the following FOIA request;

"Can you please provide me with a summary of the factors that influenced the Council's decision to outsource local street cleaning services?"

The council provides him with the requested information.

Two months later he sends another FOIA request in which he asks;

"I would like to know why the Council has decided to outsource local street cleaning services to a private company"

In this case, the requests are phrased differently but the scope is the same, as in both instances the requester is asking the Council to explain the reasons for outsourcing the service. The second request can therefore be regarded as substantially similar to the first.

14. If there is an overlap in the scope of the requests then the question as to whether they are substantially similar will be dependent upon the significance of those differences in scope.

15. If the area in which the requests differ is insignificant, as in the example below, then the second request may be considered substantially similar.

Example 2

In January 2013 a requester sends a request to a secondary school in which she asks;

'Please provide me with a breakdown of the number of pupils suspended, excluded or otherwise subjected to disciplinary action in the period between September 2011 and July 2012?'

The school provides supplies the requested information.

Several weeks later the same requester later submits a substantially similar request which is phrased as follows;

'I would like to know how many pupils were suspended, excluded or otherwise subjected to disciplinary action in the academic year 2011 – 2012'

The school recognises that the scope of the second request is wider than the first because the 'academic year' also includes August. However, as the pupils were on their summer holidays during that month, it concludes that little, if any, disciplinary action would have taken place during that additional period.

In this case therefore, given that the differences in the information caught by the requests are likely to be insignificant, the second request may be considered substantially similar to the first.

16. However, if the difference in scope is clearly of more than minor significance, as in the next example, then the requests will not be substantially similar for the purposes of the Act, and the authority will need to deal with the new request in the normal manner.

Example 3

An individual makes the following request to his local parish council.

'I would like copies of all minutes of all the parish council's monthly meetings from October 2007 to September 2008'

The Council provides the information.

Six weeks later he submits another request worded as below;

'I require you to send me copies of all your monthly meeting minutes from July 2007 to May 2009'

Whilst there is a clear an overlap between these requests, in that they both cover the council minutes from October 2007 and September 2008, the area where they do not overlap is significant as it encompasses an extra eight month period, and consequently, an additional eight sets of meeting minutes.

In this case, therefore, the differences in scope are sufficiently meaningful that the second request cannot be regarded as substantially similar to the first.

17. Public authorities will need to make a judgement about the significance of any difference in scope, taking into account what they know about their own records and practice and the context in which the request is made. If a complaint is made to the ICO then we would expect a public authority to be able to explain why it has decided that any differences in scope are insignificant.

18. It also is important to keep in mind that Section 14(2) cannot be applied to requests where only the subject or theme is identical or substantially similar. This principle was established in the Tribunal decision of Robert Brown vs ICO (EA/2006/0088, 2nd October 2007).

Example 4
In the case of *Robert Brown vs ICO (EA/2006/0088, 2 October 2007)* the appellant had made a substantial number of separate requests to The National Archives, each referring to a particular document and asking for any information it contained relating to the Princess Margaret Townsend affair, and any illegitimate child born to the Princess in 1955. The National Archives refused these requests as repeated. However, the Tribunal did not accept that 14(2) was engaged. In allowing the appeal they commented that;
'TNA relies on section 14(2) to assert that all the Appellant's individual requests were identical or substantially similar requests, and that therefore, it was not obliged to comply with them. In our view this misconstrues section 14(2). The

Appellant's requests were for information about "Princess Margaret Townsend Affair; and or any illegitimate child born on or about 05/01/55 to Princess Margaret" from specific records. If TNA had complied with the request in relation to one specific record and the Appellant had then repeated the request for the information from the same record, section 14(2) would apply.' (para 85)

'There is nothing on the evidence to suggest that except in rare cases, the content of different records would be identical or substantially similar. That being the case, we find that a request for information relating to the same subject from another record is not an identical or substantially similar request for the purposes of section 14(2). If it were, it would lead to the surprising result that applicants wishing to search for information about a particular subject in TNA's archives, could find themselves only able to make that request in relation to a single record.' (para 86)

Has the authority previously provided the information or confirmed it is not held?

19. An authority can only apply Section 14(2) to a request where it has either;

    - already provided the information to the same requester in response to a previous FOIA request; **or**

    - previously confirmed that the information is not held in response to an earlier FOIA request from the same requester.

    If neither of the above criteria applies, then the request is not repeated and the authority must process it in the usual manner.

Has a reasonable interval elapsed?

20. A request which is identical or substantially similar to a previous request by the same individual cannot be refused as repeated unless a reasonable interval has elapsed between the respective requests.

21. The Act does not define what is meant by a 'reasonable interval' but it is our view that this should be determined by taking the following into account;

    - The likelihood that the information will differ significantly from that provided in response to the previous request.

    - The amount of time that has passed (where it is unlikely that the information will differ in any significant way).

The likelihood that the information covered will differ significantly from that previously provided.

22. If the authority is satisfied that the scope of the request is identical or substantially similar, then its next step should be to assess the likelihood of the information covered being different from that caught by the previous request.

23. If the authority does consider it likely that the information will differ significantly, then we would normally expect it to conclude that a reasonable interval has elapsed since the last request was answered and not refuse the request as repeated.

24. If an authority is concerned about the costs of answering multiple requests from the same requester, for information that changes frequently then it should consider the aggregation provisions under section 12 of FOIA (the appropriate costs limit).

25. If an authority thinks the information is likely to be the same, or that any differences are likely to be insubstantial then it should go on to consider the amount of time that has passed since the information was last provided.

The amount of time between requests

26. If the authority is confident that the information will not differ to any significant degree, perhaps because it has produced no further material on the subject or the request is for a historical document (such as a report or letter), then the only remaining consideration is the amount of time between requests

27. Often, it will be obvious that a reasonable interval has not elapsed because the requests have been submitted within a relatively short time of each other, as in the example below.

Example 2

In May 2012 an individual makes the following request to his local police authority;

'I would like to know how much you charged our two local football clubs for policing their grounds at each individual fixture this season.'

The police provide the information which includes a breakdown of the charges for each of the 58 fixtures played so far.

Two weeks later he submits a substantially similar request in which he states;

'*Please advise me of the amounts charged for policing our two local football clubs at each of their individual games this season'*

As each club only plays at their stadium every other week the police know that only two further matches took place in the period between the first and second requests. They are thereby confident that the information caught by the second request would not differ significantly from that already provided.

In this case, as only two weeks have elapsed since the original request, the authority would have justifiable grounds to conclude that the relatively short interval between the requests was not a reasonable period.

28. In other cases the length of time between requests may be so great that it would be reasonable for the requester to no longer have a copy of the original response. If this is the case then the interval between requests will be reasonable.

29. We cannot give a definitive answer to the question of when the interval between requests changes from being unreasonable to reasonable. This will depend on all the circumstances of the case. However, we do encourage public authorities to be sensible about this. It will often be easier, and certainly good practice, to just provide a second copy of the information rather than refuse a request that can be easily answered as repeated.

30. We recommend that the use of section 14(2) is reserved for those situations when it is really needed. For example, when

the requester submits another identical or substantially similar request, despite still having the original information and being given a clear indication that no new information is likely to be available for the foreseeable future, as in the case below.

Example 2

In Lampert vs ICO and the Financial Services Authority (FSA) (EA/2010/0203, 7 June 2011) an MP had asked the FSA to investigate a bank's decision to call in Mr Lampert's loan guarantee. On 6^{t} August 2007 the FSA wrote back to the MP to advise him that the bank had not acted improperly and the matter was therefore closed.

On 4 March 2008 Mr Lampert asked the FSA for copies of the files relating to its investigation into the loan guarantee. On 17 January 2009 he made another request for all information held by the FSA in regard to his dispute with the bank. The FSA complied with both these requests. However, on 13 January 2010 Mr Lampert made a further request for the outcome of any investigations the FSA had carried out into the loan guarantee issue. The FSA refused this request on the grounds that it was both repeated and vexatious.

The Tribunal found that Section 14(2) was engaged and commented:

'…As we record at paragraphs 5 and 6 above, the FSA supplied various documents to Mr Lampert following his request of 4 March 2008 and 17 January 2009. In the light of our findings of fact at paragraphs 13 and 14 above it is clear that the provision of those documents represented full compliance with the earlier requests. It is also clear that the request we are concerned with is a "substantially similar request" to those of 4 March 2008 and 17 January 2009. Again, given our finding of fact that there was no investigation going beyond the limited inquiry culminating in the letter dated 6 August 2007 and that Mr Lampert had been informed of that fact by the FSA, it is clear that a reasonable interval had not elapsed before the subsequent request. In these circumstances, we consider that the FSA were entitled to rely on section 14(2) in relation to the request we are concerned with…' (para18)

31. Whatever conclusion the authority reaches it should be sure to make its decision objectively, taking into account the specific circumstances surrounding each particular request.

Multi-parted requests

32. Sometimes requesters submit multi-parted requests. Public authorities will need to treat each element of a multipart request as a separate request and can only refuse any repeated elements under section 14(2).

Example 5

An individual makes the following requests to his local parish council.

'I would like copies of your policies in place in June 2011 on the following matters:

i) Health and safety

ii) Equality and diversity

iii) Whistleblowing'

The Council provides the information.

Six weeks later he submits another request worded as below.

'Please could you send me:

a) your equality and diversity policy in use in June 2011

b) your whistleblowing policy in use in June 2011

c) your recruitment policy in use in June 2011'

In this case parts a) and b) of the later request are repeated, but part c) is treated separately and is not a repeated request.

Refusing a repeated request

33. There is no requirement under section 14(2) to carry out a public interest test or confirm or deny whether the information is held.

34. In most cases the authority will need to issue a refusal notice stating that it is relying on section 14(2).

35. If the authority has an internal review procedure then it should include the relevant details in the refusal notice. The notice must also inform the requester of their right to appeal to the ICO.

36. Section 17(6) of the Act states that there is no need to issue a new refusal notice if:

    - the authority has already given the same person a refusal notice for a previous repeated request; and

    - it would be unreasonable to issue another one.

37. Whether or not the authority issues a refusal notice or explains why it considers the request to be repeated, it should keep written records clearly setting out the procedures it followed and its rationale for concluding that Section 14(2) applied.

38. This should make it easier to evidence the reasoning behind the decision, should the requester decide to take the matter further.

39. If the requester submits a repeat of request which has recently been refused in which they express clear dissatisfaction about the handling of their previous request, then it is good practice to ask them if they would like their latest request to be treated as a request for an internal review of the original decision.

Advice and assistance

40. There is no obligation to provide advice and assistance in response to a repeated request. However, if the requested information is liable to change in future, and the authority can reasonably predict when this will happen, then it is good practice to advise the requester of the likely timeframe in the refusal notice.

More information

41. This guidance has been developed drawing on ICO experience. Because of this it may provide more detail on issues that are often referred to the Information Commissioner than on those we rarely see. The guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.

42. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.

43. If you need any more information about this or any other aspect of freedom of information, please contact us: see our website www.ico.gov.uk.

NORTH YORKSHIRE COUNTY COUNCIL

ARRANGEMENTS FOR DEALING WITH ALLEGATIONS OF BREACH OF THE MEMBERS' CODE OF CONDUCT

These arrangements set out how a complaint can be made to North Yorkshire County Council that an elected or voting co-opted Member has failed to comply with the Council's Code of Conduct for Members. These arrangements are made under Sections 28(6) and (7) Localism Act 2011.

1 Independent Person

The Council has appointed an Independent Person whose views must be sought by the Council before it takes any decision on an allegation which has been decided should be investigated. The Independent Person's views can also be sought by the Council at any other stage or by a Member against whom an allegation has been made. In practice complaints are dealt with by the Monitoring Officer, and by the Standards Committee.

2 Members' Code of Conduct

The Council has adopted a Code of Conduct for Members, attached as an Appendix to these arrangements. It is also published on the Authority's website.

3 Making a Complaint

If someone considers there has been a breach of the Code of Conduct by a Member, and wants to make a complaint, they should write or send an email to:

Carole Dunn
Monitoring Officer
North Yorkshire County Council
County Hall
NORTHALLERTON
North Yorkshire
DL7 8AD

email: carole.dunn@northyorks.gov.uk

Where possible, the standard complaint form should be used. It can be downloaded from the Council's website, or is available from the Monitoring Officer at the above address.

It is important to provide a name and contact address. Please note that the Council will not investigate anonymous complaints unless there is a significant public interest in doing so.

4 Timescales

We aim to deal with any complaint, so far as possible, within 3 months of receipt, or as soon as possible thereafter.

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days and will keep you informed of progress.

5 Assessment for Investigation or Other Action

Every complaint relating to the Code of Conduct will be received by the Monitoring Officer.

The Member who is the subject of a complaint ('the subject Member') will be advised of the complaint and copied into any relevant correspondence or complaint form received from the Complainant. The Monitoring Officer will review complaints and consult with the Independent Person in doing so, and will decide whether a complaint merits formal investigation. Where there is a difference of opinion between the Monitoring Officer and the Independent Person, then the allegation will be investigated.

This assessment will take place, where possible, within 20 working days of receipt of the complaint or as soon as possible thereafter. The Monitoring Officer may request more information to assist the decision as to whether investigation is appropriate.

The subject Member may also be requested to provide information about the matter.

The Monitoring Officer will advise you, in writing, of his/her decision about whether or not the matter should be investigated.

If the complaint identifies criminal conduct or breach of other regulation, the Monitoring Officer will consult the Police and/or such other regulatory agencies as he/she considers appropriate.

The Monitoring Officer will not refer for investigation matters which are, in his/her opinion, and after consultation with the Independent Person, vexatious, offensive, trivial or politically motivated.

If the Monitoring Officer has a conflict of interest or does not for any other reason consider it appropriate that s/he undertakes initial assessment of a complaint, it will be referred to the Standards Committee.

The Standards Committee will be informed of the outcome of all complaints received.

6 Informal Resolution

Wherever possible the Monitoring Officer will seek to resolve a complaint informally without the need for formal investigation or referral to the Standards Committee.

This may involve trying to mediate between the parties, aiming to clarify misunderstandings, or encouraging discussion between the Complainant and subject Member to enable a resolution between them, or where appropriate, an apology. It may also involve other remedial action by the Council.

If the Member or the Council make a reasonable offer of local resolution but the Complainant is not willing to accept the offer, the Monitoring Officer will take this into account in deciding whether a complaint merits formal investigation.

7 Investigation

If the Monitoring Officer concludes that a matter merits investigation, the Complainant will be invited to submit all information they wish to submit in support of their allegation within 10 working days of request.

Once the information is received it will be sent to the Member who is subject to the complaint, who would also be invited to submit all information they wish to be considered in response within 10 working days.

Throughout the process the Monitoring Officer will ensure the subject Member and Complainant receive appropriate support and assistance.

The Monitoring Officer may also appoint a member of his/her staff to oversee the gathering of information relating to the matter which will comprise the investigation ('the Nominated Officer'). The Nominated Officer will consider whether any further information is needed and take steps so far as possible to secure its production.

A report containing the information provided by the Complainant and subject Member will be prepared by the Nominated Officer, and copied to both parties and sent to the Monitoring Officer. The report will conclude with a recommendation as to whether it is considered that there has been a breach of the Code.

8 Conclusion of no evidence of failure to comply with the Code of Conduct

The Monitoring Officer will receive and review the report and consult the Independent Person upon it. Subsequently, if satisfied that the report is sufficient, the Monitoring Officer will write to the Complainant and the subject Member notifying them that s/he is satisfied that no further action is required.

9 Conclusion that there is evidence of failure to comply with the Code of Conduct

The Monitoring Officer will review the report and consult the Independent Person as to whether local resolution may be possible. If any suggested resolution is not agreed, the matter will be referred to the Standards Committee for consideration.

If the matter can reasonably be resolved in the Monitoring Officer's opinion without the need for a hearing he/she will consult the Independent Person, with the Complainant and subject Member, to seek to agree a fair resolution which will also ensure higher standards of conduct for the future.

As with initial assessment this can include the Member accepting that conduct was unacceptable and offering an apology, and/or other remedial action by the Council. If the Member complies with the suggested resolution the matter will be reported to the Standards Committee but no further action will be taken.

10 Hearing

If local resolution is not appropriate, or the Complainant or subject Member are not satisfied with the proposed resolution, or the subject Member is not prepared to undertake any proposed remedial action, the report will be reported to a Hearings Panel ('the Panel') of 3 Members from the Standards Committee. The Independent Person will attend all Panel meetings and will be consulted by the Panel in making its decision about whether there has been a breach of the Code and any action to be taken.

The Panel will meet to decide whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action.

The report will be presented to the Panel. The Complainant and the subject Member will be invited to attend the Panel to present information and make representations in relation to the allegations that there has been a failure to comply with the Code of Conduct. The Independent Person will be present. The Panel can proceed in the absence of either the subject Member or the Complainant where it deems this to be appropriate.

The Panel shall consult with the Independent Person and be advised by the Monitoring Officer. It may conclude:

(a) that the Member did not fail to comply with the Code of Conduct;

(b) that the Member did fail to comply with the Code of Conduct; and, if it so concludes, the Panel may determine whether any action is necessary and, if so, what sanction is appropriate.

11 What action can the Panel take if there has been a breach of the Code of Conduct?

The Panel may:

(a) issue a letter of censure to the Member and where appropriate require an apology to be given to the Complainant;

(b) recommend to the Member's Group Leader that he/she be removed from any or all committees or sub-committees of the Council;

(c) instruct the Monitoring Officer to arrange training for the Member.

The Panel has no power to suspend or disqualify the Member or to withdraw allowances.

The Panel shall consult the Independent Person and decide what, if any, publicity should be undertaken regarding the outcome of the matter. Options for such publicity include a notice on the Council's website or a press release.

12 What happens at the end of the hearing?

The Chair of the Panel will announce the decision of the Panel as to whether the Member has failed to comply with the Code of Conduct and as to any action it deems necessary. The Monitoring Officer will prepare a Decision Notice which will be given to the subject Member and the Complainant within 10 working days. The outcome will be reported to the next meeting of the Standards Committee.

13 Revision of these arrangements

The Council may by resolution agree to amend these arrangements and delegates to the Chair of the Panel the right to depart from these arrangements where he/she considers it expedient to do so to secure the effective and fair consideration of any matter.

14 Appeals

There is no right of appeal for the Complainant or the subject Member against a decision of the Monitoring Officer or Panel.

If the Complainant feels that the Council has failed to deal with the complaint properly they may make a complaint to the Local Government Ombudsman.

15 October 2013