

# Dealing with vexatious requests

Information Governance (IG) Services.

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## Dealing with vexatious requests

### Rationale

The Freedom of Information Act (FOIA) gives individuals a greater right of access to official information to make public bodies such as schools more transparent and accountable. As such it is an important constitutional right.

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

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

### What is Section 14?

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

Section 14(1) is concerned with the nature of the request rather than any damage releasing the requested information may have. If the school is concerned about any possible prejudice that might arise from disclosure, then it needs to consider whether any of the exemptions listed in Part II of FOIA apply.

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

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

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

### Clearly vexatious requests

In some cases it will be easy to recognise that a request is vexatious. For example, the tone or content of the request might be so objectionable that it would be unreasonable to expect a school to tolerate it, no matter how legitimate the purpose of the requester or substantial the value of the requested information. Such as where threats have been made against employees, or offensive language used.

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

Before doing so though, the ICO recommend that the school consider whether there are any viable alternatives to dealing with the request under section 14.

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

### What are the four broad themes?

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

#### **1. the burden (on the public authority and its staff);**

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

*Number* – The greater the number of requests received, the more likely it is that the request is vexatious. This is because of the collective burden of dealing with the previous requests, combined with the burden imposed by the latest request, may mean a tipping point has been reached, rendering the latest request vexatious. If the school has handled previous requests poorly then this will mitigate against the latest request being vexatious.

*Pattern* – The Upper Tribunal in Dransfield noted “A requester who consistently submits multiple FOIA requests or associated correspondence within days of each other, or relentlessly bombards the public authority with e-mail traffic, is more likely to be found to have made a vexatious request.”

*Duration* – The duration over which previous requests have been made may also be telling. Where requests have been submitted over a long period, possibly years, this may indicate that requests will continue to be made in the future. Therefore, even if the latest request appears entirely reasonable, when viewed in isolation, the school may consider the anticipated burden of any future requests when assessing the overall burden

*Breadth* – The Upper Tribunal in Dransfield commented that in the absence of any other factors that indicate a request is vexatious, a single well-focused request is less likely to be vexatious. But it does not necessarily follow that a broader request will impose a greater burden. Where a single request imposes a burden due to the breadth of information sought there are opportunities to deal with it more constructively

## **2. the motive (of the requester) and 3. the value or serious purpose (of the request):**

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

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

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

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

#### **4. any harassment or distress (of and to staff).**

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

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

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

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

- taking an unreasonably entrenched position;
- rejecting advice and attempts to assist out of hand; and
- showing no willingness to engage with the school.

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

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

#### **What is the key test?**

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

When considering this issue the Upper Tribunal in Dransfield asked itself,

“Does the request have a value or serious purpose in terms of there being an objective public interest in the information sought?” (paragraph 38). The public interest can encompass a wide range of values and principles relating to what is in the best interests of society, including, but not limited to:

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

Most requests will have some value and will therefore have a “reasonable foundation”. Requests can also serve a number of interests. Many will be prompted by the personal circumstances of the requester. For example, their wish to challenge a decision directly affecting them. Some requests may only serve the private interests of the requester, but there will often be an overlap between the private interests of the requester and a wider public interest.

Other requests may seek information that has no direct bearing on the requester but is of a wider public interest.

It is clear from the Upper Tribunal’s findings in Dransfield that when considering value and serious purpose they were concerned with assessing whether there is public interest in disclosure. This means that the requester’s private interests in the information carry little weight unless they coincide with a wider public interest. In many cases the value and purpose of the request is apparent from the:

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

If the value or purpose of the request is not immediately obvious the school may take account of any comments the requester might have made about the purpose behind their request or any evidence they are willing to volunteer. This will help the school decide whether there is a public interest in disclosing the information. However FOIA does not require a requester to give their reasons for making a request and the school cannot insist they do.

## Are round robin requests vexatious?

The fact that a requester has submitted identical or very similar requests to a number of other schools is not, in itself, enough to make the request vexatious. It is important to bear in mind that these 'round robin' requests often have a value and serious purpose.

For example, a request directed to several schools could have significant value if it has the potential to reveal important comparative information about that sector, once the information is combined.

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

The school can include evidence from other schools that received the round robin request. The school cannot cite the impact on the public sector as a whole as evidence that the request is vexatious.

## What if you refuse the request under section 14(1)?

If the school initially refuses a request under section 14(1), it is best practice to explain the reasoning in the refusal notice. If the refusal notice questions the value or purpose of the request, the requester will then be able to identify the value of their request, if they seek an internal review.

This will help inform the final decision on whether section 14(1) applies.

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

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

As part of this process, the school may also wish to explore whether there might be a viable alternative to refusing the request outright.



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

### Additional Guidance

This can be found via the following links:

[Dealing with vexatious requests \(section 14\)](#)