

# FOISA Guidance

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## Vexatious or repeated requests

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## Glossary and abbreviations

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<b>Term used</b>	<b>Explanation</b>
<b>The Commissioner</b>	The Scottish Information Commissioner
<b>EIRS</b>	Environmental Information (Scotland) Regulations 2004
<b>FOISA</b>	Freedom of Information (Scotland) Act 2002
<b>SIC</b>	The Scottish Information Commissioner, staff of SIC (depends on context)

# Introduction

1. This briefing summarises the Commissioner’s general approach to:
  - (i) **Vexatious requests**

Under section 14(1) of the Freedom of information (Scotland) Act 2002 (FOISA), Scottish public authorities do not have to comply with requests that are vexatious.
  - (ii) **Repeated requests**

Under section 14(2) of FOISA, Scottish public authorities do not have to comply with requests that are repeated.
2. Although public authorities do not have to comply with vexatious or repeated requests, they cannot simply ignore the requests. In most cases, the authority must notify the requester that their request is being treated as vexatious or repeated.
3. This briefing also looks at the Commissioner’s general approach to **frivolous or vexatious applications**. Under section 49(1) FOISA, the Commissioner is not required to reach a decision on an application which the Commissioner considers to be frivolous or vexatious.
4. The provisions in section 14 and 49(1) aim to protect the credibility and effectiveness of freedom of information laws. Most requesters exercise their rights to information responsibly, but there are rare occasions when this is not the case. These provisions provide a way of dealing with the few cases that: are unreasonable; would impose a significant burden on the financial and human resources of public authorities, or; are deemed to be vexatious because of other impacts on the authority.
5. Public authorities should not use the provisions in section 14 lightly. They should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious or repeated. Requesters must not be unjustly denied the opportunity to make a genuine information request. Requests may be inconvenient, and meeting them may at times stretch an authority’s resources, but these factors, on their own, are not sufficient grounds for an authority to deem a request vexatious or repeated.
6. There is no direct equivalent of vexatious or repeat requests under the Environmental Information (Scotland) Regulations 2004 (the EIRs). However, under regulation 10(4)(b) of the EIRs, a public authority may refuse to make environmental information available to the extent that the request for information is manifestly unreasonable. The Commissioner has issued separate guidance for public authorities on regulation 10(4)(b) of the EIRs. See **Appendix 1: Resources** for a link to the guidance.

# Vexatious requests: section 14(1) FOISA

## What does the law say?

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7. Section 14(1) of FOISA states that a Scottish public authority is not obliged to comply with a request for information if the request is vexatious. (See **Appendix 2** for the full text of section 14.)

## Section 14(1): interpretation

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8. There is no definition of “vexatious” in FOISA. The Scottish Parliament considered that the term “vexatious” was well-established in law and chose to give the Commissioner latitude to interpret the term in that context, so that the interpretation might evolve over time in light of experience and precedent.
9. Essentially, section 14(1) is concerned with the effect of a request on the authority and its staff. It should be interpreted in the context of the importance of the right of access to information provided by section 1(1) of FOISA and must not be used to undermine that right. In recognising that a request may be vexatious, Parliament has acknowledged the damage which may be done to the right by disproportionate use of the vexatious provision.
10. There is no single formula or definitive set of criteria that allow a formulaic approach to be taken to determining whether a request is vexatious. Each request must be considered on the merits of the case, supported by evidence, clear evaluation and reasoning. (See **Appendix 1: Resources** for a link to court decisions which have upheld this approach.)
11. The following factors will be relevant to a finding that a request (which may be the latest in a series of requests or other related correspondence) is vexatious:
  - (i) It would impose a significant burden on the public authority.
  - (ii) It does not have a serious purpose or value.
  - (iii) It is designed to cause disruption or annoyance to the public authority.
  - (iv) It has the effect of harassing the public authority.
  - (v) It would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
12. This is not an exhaustive list and must not be used as a check-list. Depending on the circumstances, and provided the impact on the authority can be supported by evidence, other factors may be relevant.

## Applying section 14(1)

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13. This section looks at:
  - (i) how to determine if a request is vexatious
  - (ii) what to take into account in determining whether a request is vexatious, and
  - (iii) how to respond to a vexatious request.

## How to determine if a request is vexatious

14. These are the sorts of factors public authorities are likely to consider when determining if a request is vexatious. It's important to remember that there is no one "test" for vexatiousness. "Vexatious" should be interpreted by reference to the ordinary, natural meaning of the word, read in its legislative context. See **Appendix 1: Resources** for a link to a 2018 Court of Session judgment on this point.

### *Significant burden*

15. A request will impose a "significant burden" on a public authority where complying with it would require a disproportionate amount of time, and the diversion of an unreasonable proportion of its financial and human resources away from other statutory functions. The authority should be able to demonstrate why other statutory functions take priority over its statutory duties under FOISA. If the public authority does not perform statutory functions, it should demonstrate why its core functions are of a higher priority than the statutory requirement to respond to information requests.
16. Generally, the authority should consider the impact of the request on its whole resources, rather than simply the part of the organisation most immediately affected. It should also be able to quantify the impact of the request and identify the key functions and/or tasks from which resources would require to be diverted to deal with it.
17. If the expense involved in dealing with a request is the only consideration involved, the authority should consider the excessive costs provisions in section 12 of FOISA. See **Appendix 1: Resources** for a link to the Commissioner's briefing on "Fees and Excessive Cost of Compliance."

### *The request lacks serious purpose or value*

18. Public authorities should not reach this conclusion lightly. Even if a public authority thinks that a request lacks serious purpose or value, the requester might, from a subjective and reasonable point of view, have a genuine desire and/or need to obtain the information. The requester is not obliged to share his/her motives for seeking the information with the public authority. The inclusion of this criterion simply recognises that some requests may be so obviously lacking in serious purpose or value that they can only be seen as vexatious.

### *The request is designed to cause disruption or annoyance*

19. Again, this is not a conclusion an authority should reach lightly. Strictly speaking, a request is applicant blind (see "Request not requester" below) and the reasons for making the request are a matter for the requester. FOISA does not require the requester to state why they want information.
20. However, there are occasions where the intention behind a request cannot, in the whole circumstances of the case, be disregarded. For that reason, this factor considers the requester's intention in making a request. If the intention is evidently to cause disruption or annoyance to the authority, rather than to access the information, the request may be vexatious. It will be easiest to gauge a requester's intention where he/she has made it explicit. It may be possible for a public authority to gauge a requester's intention from prior knowledge of, and documented interactions with, the requester.

### *The request has the effect of harassing the public authority*

21. This takes into account the effect a request has on a public authority regardless of the requester's intentions. Even if a requester did not intend to cause inconvenience or

expense, if the request has the effect of harassing the public authority and/or its staff, it may be deemed vexatious when considered from the perspective of a reasonable person. The language and tone of a request may be relevant in assessing this (for further guidance see discussion under **Abusive or inappropriate language** below).

22. See **Appendix 1: Resources** for a link to a 2018 Court of Session judgment, where the Court agreed with the Commissioner that a request which was “important” to the requester could still be vexatious on the basis that it had the effect of harassing the public authority.

*The request is manifestly unreasonable or disproportionate*

23. Regardless of the apparent purpose or value of a request, or the intention of the requester, a request may be deemed vexatious if, in the opinion of a reasonable person, it would appear to be manifestly unreasonable or disproportionate.
24. The effect on a public authority of dealing with the request will be relevant in determining whether this is the case. Relevant factors to consider include the complexity of the request, the volume of information requested, the time and resources that would be required to process it, and the impact on the authority’s statutory and/or core operations (see above on “significant burden”). Balanced against these factors should be the wider value and (where known) purpose of the request, bearing in mind that FOISA is designed to give access to information and to promote transparency in public authorities.

**What to take into account when determining whether a request is vexatious**

25. There are a number of general principles that apply to all considerations about whether a request is vexatious. While they do not make requests vexatious in themselves, they may have a bearing on how authorities reach their conclusions about the factors set out above.

*Request not requester*

26. The term “vexatious” must be applied to the request, NOT the requester.
27. It is not the identity of the requester that determines whether a request is vexatious, but the nature and effect of the request made in light of the surrounding circumstances. A request cannot be judged vexatious simply because a requester has been deemed vexatious in another context, for instance if they have made another complaint or because they may have submitted other requests that were vexatious.
28. However, a requester’s identity, and the history of their dealings with a public authority, may be relevant. An authority could reasonably conclude that a particular request represents the continuation of a pattern of behaviour which it has deemed vexatious in another context. It might, in those circumstances, decide the request can be refused as the continuation of the pattern of behaviour makes the latest request vexatious. This may arise, for example, where a requester has an on-going grievance against a public authority, or could reasonably be described as conducting an extended campaign to the point that their behaviour can be described as obsessive.
29. Campaigning in furtherance of legitimate concerns is appropriate activity in a democratic society, and public authorities should not deal with a campaign as potentially vexatious simply because it is a campaign. Considerations to take into account could include, for example, evidence (from the history of the matter) that:
  - (i) the campaign is either not well founded or has no reasonable prospect of success;
  - (ii) the requester has failed to take their concerns up with the relevant authorities; or

- (iii) they refuse to consider any alternative point of view on the matter.
30. There may also be cases where it is reasonable, on the basis of requester's previous dealings with the authority, to conclude that the requester's purpose is to pursue an argument and not actually to obtain information.
  31. This doesn't mean that requests for information should be refused automatically; the requester should be given reasons to help them understand the conclusions reached by an authority, and to be assured that proper processes have been followed.
  32. The request may also be vexatious if:
    - (i) there is no additional information that can be provided because all relevant information has already been disclosed; or
    - (ii) it is unlikely that the additional information would shed light on, or alter, the requester's situation (because the subject in question has already been thoroughly addressed through the relevant complaints or appeals procedure).
  33. A useful test is for the public authority to consider whether the information would be supplied if it were requested by another person, unknown to the authority. If it would, this might suggest that the request should not be treated as vexatious.

#### *The public authority's actions*

34. Where an authority intends to take account of prior dealings with a requester, it should consider whether its own actions may have contributed to the situation. For instance, if an authority has provided partial, ambiguous, or inconsistent responses to previous requests, this might have led to the requester making further requests in order to clarify the response.
35. The Commissioner is unlikely to conclude that a request is vexatious if the public authority's actions helped protract dealings between authority and requester, especially if there is no evidence that the authority has met its duties under section 15 (see below, **The duty to provide reasonable advice and assistance**). There would need to be a link, however, between the authority's actions and continued dealing on the requester's part: this should not be seen as a mechanism for sanctioning the public authority from a departure from good practice or some other failing.

#### *Series of requests or large numbers of requests*

36. Where a request is the latest in a series, or where a large number of requests are submitted at once, they can be considered collectively when assessing the burden they impose on the public authority. However, a large number of requests will not necessarily mean any or all of those requests are vexatious. Certain kinds of requester might reasonably be expected to make numerous requests to the authority.
37. If the number of requests made by one requester, at the same time or in close succession, is so great that no public authority could reasonably be expected to deal with them in accordance with the requirements of FOISA, the requests may be vexatious.

#### *Abusive or inappropriate language*

38. The use of abusive or inappropriate language will not, in itself, make a request for information vexatious. However, language a reasonable person would consider abusive or inappropriate in the circumstances may be a factor in deciding whether a request meets the criteria specified above.

### *The duty to provide reasonable advice and assistance*

39. Under section 15 of FOISA, authorities must provide reasonable advice and assistance to requesters. If processing a request is likely to impose a significant burden on an authority, a requester should be consulted to help them refine their request in order to make it more manageable. How this is done will depend on the circumstances of each case, but the Commissioner would expect to see evidence of the authority's actions. If an authority has taken reasonable steps to explain the difficulties involved in processing a request and offered assistance with refining the request, and the requester (without good cause) refuses to refine their request, it may be vexatious.
40. See **Appendix 1: Resources** for links to some of the Commissioner's decisions on section 14(1).

### **How to respond to a vexatious request**

41. Once an authority has decided that a request is vexatious under section 14(1), it must notify the requester in writing within 20 working days **unless**:
  - (i) such a notice has already been given in relation to a previous identical or substantially similar request; and
  - (ii) in all the circumstances, it would be unreasonable to expect the authority to serve another notice (section 16(5) – see **Appendix 2**).
42. Where a notice is issued, it must include details of the requester's right to ask the public authority to review its decision and to apply to the Commissioner if they remain dissatisfied after that.
43. If the authority receives a request for review, it does not have to carry out a review if the original request (or the request for review itself) is vexatious (section 21(8)). If the public authority decides not to carry out a review, it must notify the requester, in writing, within 20 working days. This notice must include details of the requester's right to apply to the Commissioner if they remain dissatisfied, and of the further right of appeal to the Court of Session. It is good practice to explain, as far as possible, the reasons for this decision.
44. A requester can apply to the Commissioner for a decision in two cases:
  - (i) where they have received a notice telling them that the authority is not going to carry out a review; or
  - (ii) where no such notice has been issued.
45. See **Appendix 1: Resources** for examples of the Commissioner's decisions on sections 16(5) and 21(8) of FOISA.

### *Decision-making and record-keeping*

46. A decision to deem a request vexatious will often be contentious, and it is quite likely that the requester will exercise their right to request a review, and ultimately to make an application to the Commissioner. Such decisions should be taken at an appropriately senior level, and after careful thought.
47. It is important to keep records documenting the decision-making process, i.e. why the request was judged to be vexatious, and how the public authority came to this decision. The Commissioner will expect these decisions to be backed by detailed evidence and sound

reasoning. If the authority is arguing that complying with the request would be a significant burden, it should be able to quantify the effect of compliance.

### *Good practice*

48. If a public authority receives a high proportion of vexatious requests, it may be worth publishing the criteria which are used to determine if a request is vexatious. This will help staff members faced with making the decisions and also show requesters that an objective method of assessment is used.

## Repeated requests: section 14(2) FOISA

### What does the law say?

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49. Section 14(2) of FOISA states that, where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request. (See **Appendix 2** for the full text of section 14.)

### Applying section 14(2)

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#### Is a request repeated?

50. It should be relatively straightforward to establish whether a request is identical or substantially similar to a previous request, but it is a judgment call whether a reasonable period of time has elapsed between requests. There is no attempt to define a “reasonable period of time” in the legislation, because it will depend on the circumstances. Considering the following two questions will help public authorities to assess whether a reasonable period of time has elapsed:
- (i) Has the information changed?
  - (ii) Have the circumstances changed?

#### *Has the information changed?*

51. It is important to consider the actual information captured by a request at the time it is received, and not just the subject matter or precise wording. Requesters often submit more than one request on a subject, possibly even in the same terms as earlier requests. This does not automatically mean the requests will be “repeated” for the purpose of section 14(2).
52. If the information captured by the new request is different to the information captured by the earlier request (i.e. new/additional information, alteration to existing information), the Commissioner is likely to conclude that a “reasonable period of time” has elapsed. Repeat requests for information that is routinely updated are likely to be justified within shorter intervals than requests relating to a completed or static process.
53. Where a request captures both new information and information considered in relation to an earlier request (and the circumstances have not changed – see below), there is no difficulty in giving fresh consideration to the new information. It may be appropriate to refuse the request insofar as it relates to the old information on the basis that the request is, in part,

repeated. Alternatively, check with the requester, who may clarify that they did not intend to capture information they have already received.

#### *Have the circumstances changed?*

54. Authorities must consider whether circumstances have changed since the decision was taken about a previous request. If they have, a fresh decision on the new one is warranted. The passage of time may affect:
- (i) the risk of substantial prejudice arising from disclosure; and
  - (ii) whether the public interest lies in withholding or disclosing the information.
55. If circumstances have changed since the last request, and a fresh look at the information or issues might lead to a different outcome, the Commissioner is likely to conclude that a “reasonable period of time” has elapsed.
56. See **Appendix 1: Resources** for examples of the Commissioner’s decisions on section 14(2) of FOISA.

#### **Pro-active release**

57. If a public authority is receiving repeated requests for particular information, it should consider pro-actively publishing the information through its publication scheme.

#### **Complying with repeated requests**

58. Section 14(2) is discretionary, not mandatory. Even if this section applies, it might still be reasonable to comply with the request; for instance, where the requester has lost or failed to retain the information, but then realised they still need it. Public authorities should give due weight to such representations where they are made.

#### **How to respond to a repeated request**

59. Once an authority has decided that a request is repeated under section 14(2), it must notify the requester in writing within 20 working days **unless**:
- (i) such a notice has already been given in relation to a previous identical or substantially similar request and
  - (ii) in all the circumstances, it would be unreasonable to expect the authority to serve another notice (section 16(5) – see **Appendix 2**).
60. Where a notice is issued, it must include details of the requester’s right to ask the public authority to review its decision and to apply to the Commissioner if they remain dissatisfied after that.
61. If the authority receives a request for review, it does not have to carry out a review if the original request was repeated or the request for review is vexatious (section 21(8)). If the public authority decides not to carry out a review, it must notify the requester, in writing, within 20 working days. This notice must include details of the requester’s right to apply to the Commissioner if they remain dissatisfied, and of the further right of appeal to the Court of Session. It is good practice to explain, as far as possible, the reasons for this decision.
62. A requester can apply to the Commissioner for a decision in two cases:

- (i) where they have received a notice telling them that the authority is not going to carry out a review; or
- (ii) where no such notice has been issued.

63. See **Appendix 1: Resources** for examples of the Commissioner's decisions on sections 16(5) and 21(8) of FOISA.

# Frivolous or vexatious applications

## What does the law say?

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64. Under section 49(1) of FOISA, the Commissioner can decide that an application for a decision is frivolous or vexatious. If this happens, the Commissioner does not have to issue a decision on the application. The Commissioner must give the applicant and the public authority notice in writing within one month of receiving the application, or within such other period as is reasonable in the circumstances. The notice must set out why, in the Commissioner's view, the application is frivolous or vexatious. The applicant can appeal this to the Court of Session on a point of law.

## Applying section 49(1)

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### Vexatious applications

65. The Commissioner will take into account the same criteria as if considering whether a request is vexatious for the purpose of section 14(1) of FOISA (see above).

### Frivolous applications

66. There is no definition of a "frivolous" application in FOISA. The term does not appear in section 14, meaning the Commissioner has greater discretion than a public authority has when deciding whether to comply with a request under section 14. The term "frivolous" may be applied where an application is so clearly trivial or lacking in merit that it would serve no useful purpose for the Commissioner to investigate it, and it would not be an appropriate use of the Commissioner's limited investigative resources.

## Section 49(1) in practice

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67. The Commissioner does not deem applications to be vexatious or frivolous lightly.
68. In one case, the applicant was dissatisfied because a request for his own personal data had been declined under section 38(1)(a) of FOISA (which provides an absolute exemption for personal data where the applicant is the data subject). The Commissioner had previously issued four separate decisions on the same issue to the same applicant, upholding the use of the exemption on each occasion. Four more investigations were on-going. The Commissioner deemed this new application to be frivolous as further investigation would have served no useful purpose.
69. In a further example, the Commissioner deemed an application frivolous where it sought a subset of information which had already been found to be exempt in a decision issued a few days before the application was made. The applicant in the later application had acted as agent for the applicant in the first, so was aware that the Commissioner had just issued a decision on the matter. Without a change in circumstances, a further investigation would have served no useful purpose.

# Appendices

## Appendix 1: Resources

### SIC Decisions

Reference	Decision Number	Parties	Summary
Section 14(1): vexatious requests Paragraph 40	078/2012	David Rule and the Scottish Ministers	The Commissioner was not persuaded by arguments relating to the perceived impact of requests on the Scottish Government. The Ministers argued that Mr Rule's requests were "targeted" at the First Minister's Office, which was small and extremely busy. Given their broad and unfocussed nature, the Ministers believed the requests represented a significant burden. The Commissioner took the view that the First Minister's Office, by its very nature, should expect to receive a considerable number of requests and prepare itself for that eventuality.
Section 14(1): vexatious requests Paragraph 40	020/2011	Garry Calder and East Lothian Council	The Commissioner accepted that the requester expressed himself strongly, and not always accurately. However, it was not reasonable to interpret this, in the context of the communications the Commissioner had seen, as indicating an intention to cause disruption or annoyance.
Section 14(1): vexatious requests Paragraph 40	133/2012	Mr A and the Chief Constable of Dumfries and Galloway	The Commissioner accepted that Mr A's pattern of behaviour had the effect of harassing the public authority. The authority had repeatedly explained to Mr A that it no longer held the information he was asking for. Retention periods had expired and the files in question had been destroyed. Underlying the request were historic investigations by the authority which Mr A was dissatisfied with. It was reasonable to conclude that the requests were being used primarily to extend the dialogue about those long-standing concerns. It appeared highly unlikely that resolution would be brought any closer by responding to the requests.
Section 14(1): vexatious requests Paragraph 40	145/2012	Mr B and Aberdeenshire Council	The Commissioner found that it was reasonable for the Council to conclude that FOISA was being used by the requester primarily to continue extended dialogue about his complaints. The requester had exhausted the complaints process with the Council, the Law Society of Scotland, and various Ombudsmen and Commissioners. The Council had informed him in 2004 that there was nothing more it could do on these issues and it appeared unlikely that their resolution would be brought any closer

Reference	Decision Number	Parties	Summary
			by providing a response to the request. The Commissioner accepted that responding would have the effect of prolonging yet further correspondence on matters which had been addressed exhaustively. She was also satisfied that the requester did not require the information to pursue his intention of submitting a new complaint to the Council.
Section 14(1): vexatious requests Paragraph 40	062/2005 063/2005	Macroberts and the Scottish Executive Macroberts and Caledonian Macbrayne Ltd	The requester made 720 requests on the same day to two public authorities. The Commissioner concluded that each request alone would not be vexatious, but that the requests could be considered collectively when deciding whether each was vexatious. The issue was whether the 720 requests would impose a significant burden on the public authorities and were manifestly unreasonable. The specialist subject matter limited the number of staff capable of dealing with them. The Commissioner concluded this would impose a significant burden on the authorities and that the requests collectively were vexatious.
Section 14(1): vexatious requests Paragraph 40	128/2007	Mr C and James Watt College of Further & Higher Education	The Commissioner ruled that all but two of the 4,895 requests would, collectively, involve a diversion of resources which would be a disproportionate inconvenience and expense.  All 4,895 requests for information related to lunch expenses and other matters. The college refused the requests as being vexatious, explaining that only two staff members could deal with them, and that the records were held manually and processing them would place a significant burden on the administration and operations of the college. The Commissioner's ruling took note of the volume and subject matter in accepting the majority of the requests imposed, collectively, a disproportionate inconvenience and expense. The other two requests were for information on a separate topic that would not impose a significant burden on the authority.
Section 14(1): vexatious requests Paragraph 40	080/2005	David Emslie and the Scottish Executive	The Commissioner agreed that the allegations and language used by the requester were inappropriate, and that the request was vexatious. The Commissioner noted that the use of abusive language in a request will not automatically mean that it will be vexatious, but here the language used and the manner in which the request was expressed was both inappropriate and made it almost impossible to work out what information the requester wanted.

Reference	Decision Number	Parties	Summary
Section 14(1): vexatious requests Paragraph 40	204/2013	Mr N and the Scottish Prison Service	The Commissioner was not satisfied that Mr N's request was vexatious. In reaching this conclusion, she considered each of the heads of argument identified by the Scottish Prison Service carefully, on the basis of the evidence and other submissions presented to her. Having done this, although she acknowledged some of the authority's concerns, she did not find that it had identified behaviour (in the context of the request under consideration) which could reasonably be described as vexatious.
Responding to vexatious requests Paragraph 40	055/2015	James Milligan and Glasgow City Council	Mr Milligan asked about parking restrictions in a specified area. The Council had previously found that other requests about parking restrictions were vexatious and took the same view here. However, we found that the circumstances were different in this case and required the Council to respond.
Section 14(2): repeated requests Paragraph 56	098/2011	Ian Benson and Glasgow Caledonian University	The Commissioner accepted that Mr Benson's requests were identical and that the information requested had not changed. The earlier request had been responded to in full.  Mr Benson argued that the University's response to his previous request had not supplied all the information requested, with the result (in his view) that section 14(2) could not apply. He also believed evidence of other universities' disclosures in response to similar requests demonstrated that the circumstances surrounding the particular information held by the University had changed. The Commissioner did not accept these arguments.  Mr Benson did not challenge the previous decision within FOISA time limits, so the Commissioner was unable to conclude that the previous response did not comply with his request. In any case, it was evident that the University had dealt with Mr Benson's previous request in full, even if information had been withheld.
Section 14(2): repeated requests Paragraph 56	191/2012	James Milligan and Glasgow City Council	The Commissioner accepted that Mr Milligan's request was repeated. There had been a year between the first and second request. However, the information was relatively static in nature and nothing had changed between the two requests apart from the passage of time. Mr Milligan had not challenged the Council's previous decision, so the Commissioner could not conclude that it had failed to comply with the request.

Reference	Decision Number	Parties	Summary
Section 14(2): repeated requests Paragraph 56	130/2014	Christopher Quinn and the Assessor for Lanarkshire Valuation Joint Board	In this case, the Assessor argued that he was not required to respond to the request on the basis that it was substantially similar to a previous request. We disagreed that the request was substantially similar. While the general subject matter was the same, insofar as the requests related to the functions of the Assessor, the previous requests related to the regulation/oversight of the Joint Board. The new requests related to the Assessor's functions in relation to Council Tax banding and the payment of Assessors' salaries.
Section 14(2): repeated requests Paragraph 56	159/2007	Campbell Martin and North Ayrshire Council	The Commissioner did not accept the Council's conclusion that Mr Martin's June 2007 request was identical or substantially similar to a request he had made in June 2005.  Documents had been created after the first request, which involved different Government departments or agencies, and which should have been considered for disclosure in response to the second request. The Commissioner was also concerned that the Council deemed the request 'repeated' when 18 months had elapsed since the first request, during which time the Council had corresponded with the Government about the project. The requester had made clear that he was only seeking copies of correspondence not previously supplied. The scope of the request should have been clarified before deeming it repeated.
Responding to repeat requests Paragraph 63	221/2014	Allan Milligan and Glasgow City Council	The Council did not respond to the request on the basis that it was identical or substantially similar to a previous request. We concluded that the request was not identical or substantially similar and that the Council should have responded.

All of the Commissioner's decisions are available on the Commissioner's website. To view a decision, go to [www.itspublicknowledge.info/decisions](http://www.itspublicknowledge.info/decisions) and enter the relevant decision number (e.g. 032/2014).

If you do not have access to the internet, contact our office to request a copy of any of the Commissioner's briefings or decisions. Our contact details are on the final page.

## Other Resources

Paragraph	Resource	Link
6	Commissioner's Guidance: EIRs Guidance: Regulation 10(4)(b) Manifestly unreasonable requests	TBA
10	Dransfield v Information Commissioner and Devon County Council; Craven v Information Commissioner and the Department for Energy and Climate Change [2015] EWCA Civ 454	<a href="http://www.bailii.org/ew/cases/EWCA/Civ/2015/454.html">http://www.bailii.org/ew/cases/EWCA/Civ/2015/454.html</a>
14, 22	Beggs v Scottish Information Commissioner [2018] CSIH 80	<a href="https://www.scotcourts.gov.uk/docs/default-source/default-document-library/2018csih80.pdf?sfvrsn=0">https://www.scotcourts.gov.uk/docs/default-source/default-document-library/2018csih80.pdf?sfvrsn=0</a>
17	Commissioner's guidance: Charging a fee or refusing to comply with a request on excessive costs grounds	<a href="http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Fees/ChargingFOISA.aspx">http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Fees/ChargingFOISA.aspx</a>

## Appendix 2

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### *Section 14 Vexatious or repeated requests*

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.
- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.

### *Section 16 Refusal of request*

- (5) A Scottish public authority which, in relation to such a request, claims that section 14 applies must, within that time, give the applicant a notice which states that it so claims; except that the notice need not be given if –
  - (a) the authority has, in relation to a previous identical or substantially similar such request, given the applicant a notice under this subsection; and
  - (b) it would in all the circumstances be unreasonable to expect it to serve a further such notice in relation to the current request.

### *Section 21 Review by Scottish public authority*

- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if -
  - (a) the requirement is vexatious; or
  - (b) the request for information to which the requirement for review relates was one which, by virtue of section 14, the authority was not obliged to comply.
- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.



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