

# FOISA Guidance

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**Vexatious or repeated requests**  
**Frivolous or vexatious applications**

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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

# 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 section 49(1) aim to protect the credibility and effectiveness of freedom of information law. 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 requests 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(1) lightly. They should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious. 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.
6. There is no direct equivalent of vexatious or repeated 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 on regulation 10\(4\)\(b\) of the EIRs.](#)

# 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 1](#) 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 so should not be used to undermine that right. While recognising that a request may be vexatious, the Parliament 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 2](#) for a link to court decisions that 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.
15. See a [2018 Court of Session judgment](#) for more information on this point.

### *Significant burden*

16. 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 or why its core functions are of a higher priority than the statutory requirement to respond to information requests.
17. 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.
18. 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 [the Commissioner's briefing on fees and excessive cost of compliance](#).

### **Example: Decision 036/2021 (for Authority)**

The Commissioner found in favour of the Trust on the basis that – intentionally or not – the Applicant had made a request that was so broad that responding to it would inevitably place a significant burden on the Trust. He commented that it was reasonable to expect a degree of thought and care by a requester in setting out what information they are seeking, if there is to be a reasonable expectation of the authority being able to respond without experiencing an undue burden.

### **Example: Decisions 032/2020 and 038/2020 (for Applicant)**

The Applicant had made a total of seven FOI requests in two years. Most of the Applicant's other engagement with the University were requests for their own personal data which they were entitled to ask for under data protection law, and course-related complaints. A number of the complaints raised by the Applicant were partially upheld by the University.

The Commissioner found that it was reasonable in the circumstances to expect a student to contact the University department they are studying at with questions about course materials, assessments, academic appeals and other aspects of the course which are specific to them. Furthermore, the Commissioner was not persuaded that the Applicant was only interested in pursuing an argumentative dialogue by using available rights and means of redress. He therefore concluded that the University was not entitled to refuse to comply with the request on the grounds that it was vexatious.

Although it suggested that it could have refused the request on the grounds of excessive costs, as the University had not actually relied on relevant provisions in FOISA to support this view, the Commissioner could not take it into consideration.

*The request lacks serious purpose or value*

19. Public authorities should not reach this conclusion lightly. Even if an 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 their 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.

**Example: Decision 093/2020 (for Authority)**

The Commissioner noted that the Applicant had repeatedly asked the University for “all and any information” pertaining to a building. Whilst he understood the eagerness to be able to access any potential planning information at the earliest opportunity, the broad nature of the request, in the context of a continuous pattern of similar requests, meant that it was likely to produce records of no serious value to the Applicant. The Commissioner therefore found that the request lacked serious purpose or value, but noted that a more specifically worded request might have led to a different decision.

**Example: Decision 074/2016 (for Applicant)**

The Applicant made three separate requests to the Council within a month for information relating to a specific exit package, and the annual remuneration package of its Chief Executive. The Council argued that the requests lacked serious purpose or value. It claimed that, although there was an inherent public interest in the issue of equal pay and the remuneration of senior officers, the information had already been provided to the Applicant. In addition, the Applicant was aware of some of the information sought, following responses to previous requests and publication of related information.

Rejecting this line of argument, the Commissioner found that the majority of the information requested had not already been provided to the Applicant, or that they were aware of the answers to some of their questions. It was not for the Council to assume what an Applicant may or may not know. Things that are obvious to a public authority may not be obvious to others including a relatively informed member of the public.

*The request is designed to cause disruption or annoyance*

20. 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.
21. 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.

**Example: Decision 068/2020 (for Authority)**

In the Commissioner's view, the evidence submitted by the Council during the investigation was sufficient to show that the Applicant was pursuing a campaign, unrelated to the receipt of information, with the purpose of harassing the Council into taking a particular course of action. Indeed, the Applicant had stated that if that action was taken they would withdraw the request. The Council also showed that it had made several previous attempts to address the Applicant's concerns. The Commissioner therefore found that the Council was entitled to refuse to comply with the request.

**Example: Decision 060/2020 (for Applicant)**

On reviewing correspondence submitted by the Council during the investigation, the Commissioner was not satisfied that responses to previous requests had fully answered the Applicant's questions. Therefore, the Council's view that the Applicant's intention was to cause disruption or annoyance by prolonging a matter about which they had already received all of the information was not persuasive. Rather, as a consequence of those responses, the Applicant had submitted further requests seeking information or details that had not been included previously. It was clear to the Commissioner that the Applicant had a genuine concern about the school and the Council's policy and decision-making on the matter, and wanted to understand the reasoning behind it. Therefore, the Council was not entitled to refuse to comply with the request.

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

22. 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).
23. See 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.

**Example: Decisions 094/2018 and 113/2018 (for Authority)**

Considering the tone of the request and the evident impact on a number of the Council's staff, the Commissioner took the view that any reasonable person would regard the Applicant's request, in the context of previous requests, as having the effect of harassing the Council and its staff. The request appeared to focus on prolonging an argument with the Council - in an accusatory and at times abusive manner - rather than extracting information.

**Example: Decision 158/2019 (for Applicant)**

The Applicant made a 36-point request for information relating to the use of a particular system in University assessments. The University refused the request as vexatious, claiming (among other things) that the repeated correspondence

was causing staff distress. However, the Commissioner was not satisfied that the request would have the effect of harassing the University.

The Applicant's correspondence was not abusive, aggressive or excessive (50 items in two years, some of which had been submitted as a student with concerns about the course) – and the staff members whom the University claimed were suffering distress had not had any recent direct contact with the Applicant. In the absence of sufficient evidence to the contrary, the Commissioner found that the University was not entitled to refuse to comply with the request.

*The request is manifestly unreasonable or disproportionate*

24. Regardless of the apparent purpose or value of a request, or the intention of the requester, a request may be vexatious if, in the opinion of a reasonable person, it would appear to be manifestly unreasonable or disproportionate.
25. 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.

**Example: Decision 028/2018 (for Authority)**

Highlands and Islands Enterprise (HIE) refused a request for minutes of meetings on a specific issue as vexatious, stating that it had already investigated the Applicant's complaints and provided "extensive" information in response to their "voluminous and persistent" requests.

The Commissioner did not accept that the request would impose a significant burden, as it specified individuals and a limited time period – information HIE was aware of and which would not be difficult to identify. However, he was satisfied that the request was manifestly unreasonable, as it appeared to be intended to force HIE to revisit the Applicant's concerns about alleged wrongdoing – despite those concerns having already been fully investigated including by the police – and to provide information that had been requested before.

**Example: Decision 109/2016 (for Applicant)**

The Applicant asked the Council for copies of risk assessments by its Environment Department and site rules for all sites it operated. The Council refused the request as vexatious. However, it failed to fully explain what would be involved in providing all of the requested information and so how it would – as it claimed – cause a significant burden and obstruct its enforcement functions. It also made general, unsupported assertions about the request's value, while the Applicant had rational concerns about health and safety compliance. The Commissioner therefore found the Council was not entitled to treat the request as vexatious.

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

26. 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*

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. Matters to consider 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.

### **Example: Decision 090/2018 (for Authority)**

Scottish Enterprise was asked about its arrangements for addressing new evidence of financial irregularities. It refused the request as vexatious, claiming it was a continuation of previous complaints. The Commissioner agreed.

The Applicant had continually contacted individuals in Scottish Enterprise, other public bodies and MSPs to raise concerns about alleged financial irregularities. On its own, the latest request may not have appeared vexatious, but considered in light of previous correspondence over 10 years, and investigations – including by the police – which had found no evidence of fraud or wrongdoing, the request could be regarded as lacking serious purpose.

The request was inextricably linked to previous correspondence about alleged fraud, and the Applicant's belief that earlier investigations had not reached the correct conclusion. It was therefore reasonable to assume that the Applicant was

seeking to press for another investigation and that responding would have the effect of re-opening and prolonging matters which had been dealt with.

31. A 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).

**Example: Decision 162/2018 (for Authority)**

The Applicant sought information about the handling of their previous requests, particularly in relation to an apparent discrepancy in figures previously provided. The Commissioner accepted the Council's position that the request was designed to cause disruption, noting that the request was focused on the Council's previous actions and that the Applicant's submissions to the Commissioner centred largely on the discrepancy they had identified.

The Commissioner was satisfied that the Applicant was seeking to continue to press the Council on the underlying issue, and that providing a response would not resolve the Applicant's concerns, but merely prolong a matter on which all appropriate processes had been exhausted.

*The public authority's actions*

32. 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.
33. The Commissioner is less likely to find 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 [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.

*Series of requests or large numbers of requests*

34. 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 automatically mean any or all of those requests are vexatious.
35. 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.

**Example: Decision 062/2005 (for authority)**

Although this is an old – and relatively extreme – case, it's still relevant. The Applicant made 720 requests on the same day. The Commissioner was satisfied that, even if each individual request was not vexatious, the requests could be considered collectively. Complying with the requests would impose a significant

burden on the authority, particularly given the limited number of staff capable of dealing with the specialist subject matter. The Commissioner therefore concluded that, collectively, the requests were vexatious.

#### *Abusive or inappropriate language*

36. 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*

37. Under section 15 of FOISA, authorities must provide reasonable advice and assistance to requesters. If complying with 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.

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

38. Once an authority has decided that a request is vexatious under section 14(1), it must notify the requester of its decision **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 in relation to the current request, in accordance with section 16(5).
39. 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.
40. 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. 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.
41. A requester can therefore 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.

#### **Example: Decision 070/2017 (for Authority)**

The University was asked about its handling of a complaint and about matters related to the complaint. It refused to comply with the request on the grounds that it was vexatious, and subsequently refused to carry out a review, on the basis

that it was not required to carry out a review of a request considered to be vexatious.

After an investigation, the Commissioner agreed that the request was vexatious in that, whatever the Applicant's motivation, its effect was to harass the University as it related to matters that had already been considered in detail. Having found the University was entitled to treat the request as vexatious, the Commissioner accepted that it was not obliged to comply with the request for review.

**Example: Decision 055/2015 (for Applicant)**

The Applicant asked about parking restrictions in a specified area. The Council did not respond to the request and informed the Applicant that it was not obliged to comply with their subsequent requirement for review. This was on the basis that the Council had previously found other similar requests to be vexatious (and informed the Applicant accordingly) and took the same view here.

However, the Commissioner was not satisfied that this particular request was vexatious, and therefore concluded that the Council was not entitled to refuse to give notice to this effect. The Commissioner advised the Council that it could not simply treat any request from the Applicant on parking-related matters as vexatious, but must consider each request on its own merits.

*Decision-making and record-keeping*

42. A decision to refuse to comply with a request because it is vexatious will often be contentious, and it is possible that the requester will exercise their right to request a review, and ultimately to make an application to the Commissioner.
43. It is important for public authorities to keep records documenting the decision-making process, i.e. why the request was judged to be vexatious, and how it came to its decision. The Commissioner will expect decisions to be backed by 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*

44. 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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45. Section 14(2) of FOISA states that, where a Scottish public authority has complied with a request for information, it is not obliged to comply with a subsequent request from the same 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 1](#) for the full text of section 14.)

## Applying section 14(2)

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### Is a request repeated?

46. 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?*

47. 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).
48. If the information captured by the new request is different to the information captured by the earlier request (e.g. if it asks for new or additional information), the Commissioner is likely to conclude that a “reasonable period of time” has elapsed. Repeat requests for information which is routinely updated are likely to be justified within shorter intervals than requests relating to a completed or static process.
49. Where a request captures both new information and information considered in relation to an earlier request (and the circumstances have not changed – see below), 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.

### **Example: Decision 047/2018 (for Authority)**

The Applicant made a four-part request, each part of which sought information that was essentially the same as information which had been the subject of previous requests. Police Scotland stated that they had nothing new to add, and that the current request rehearsed the same issues as before, which had not changed. In respect of each part, the Commissioner concluded that, given that the information had not changed, the passage of time had had no effect.

Therefore, Police Scotland was entitled to refuse to comply with the request on the basis that it was repeated.

**Example: Decision 039/2020 (for Applicant)**

Over time, informed by successive responses to requests, the Applicant had narrowed their requests – from “all information” on the subject, to descriptions of information held in specific locations, to specific subsets of information stored in a particular location. On that basis, the Commissioner concluded that the current request was not substantially similar to earlier requests – it was reasonable for the Applicant to use information obtained from the Council to inform further requests, especially where previous requests had been refused on cost grounds.

The Commissioner reminded the Council that the Section 60 Code of Practice recognises that requesters may not know exactly what records the authority holds and recommends that authorities provide clear advice on narrowing the scope of a request when refusing it on cost grounds.

*Have the circumstances changed?*

50. 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, for example, affect:
  - (i) the risk of substantial prejudice arising from disclosure; and
  - (ii) whether the public interest lies in withholding or disclosing the information.
51. 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.

**Example: Decision 113/2020 (for Authority)**

Part of the time period covered by the current request was almost identical to an earlier request. However, the Applicant claimed that the overall time period covered by the current request involved intense activity and changing circumstances, and that it was obvious from the information provided by the Council that some information was missing.

The Commissioner did not accept that the time that had passed between the previous and current request was reasonable or that the circumstances for the part-period in question had changed. The Applicant could have requested a review of the Council's response to the previous request if they believed information was missing, but appeared to have chosen not to do so; no valid reason had been identified as to why they should resurrect the matter now.

**Example: Decision 083/2020 (for Applicant)**

The Commissioner agreed that each of the two parts of the current request was identical to a previous request, the latest of which was the subject of an appeal at the time of the current request. The Applicant argued that a different version of the requested report, with different conclusions, was now held by the Council.

The Commissioner was satisfied that a reasonable period of time had passed, during which the circumstances had changed (the Council had located

information it had previously said it did not hold). That the Council was not aware of that information at the time of the current request did not alter the fact that, in terms of FOI, the Council held that information when it was requested.

The Commissioner did not accept that the existence of an appeal regarding a previous request was relevant to deciding if the current request was repeated. He found that the Council was not entitled to refuse to comply with the request.

### **Pro-active disclosure**

52. 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**

53. Section 14(2) is discretionary, not mandatory. Even if a request is repeat, it might still be good practice 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.

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

54. Once an authority has decided that a request is repeated under section 14(2), it must notify the requester of its decision in writing **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, in accordance with section 16(5).
55. 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.
56. 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. 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.
57. A requester can therefore 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.
58. See [How to respond to a vexatious request](#) above 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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59. Under section 49(1) of FOISA, the Commissioner can determine 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

60. 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

61. There is no definition of a "frivolous" application in FOISA, but it 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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62. The Commissioner does not deem applications to be vexatious or frivolous lightly.
63. In one case, an applicant was dissatisfied because their request for their 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.
64. 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: Relevant statutory provisions

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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.

### *Section 49 Commissioner's decisions*

- (1) The Commissioner must make a decision in relation to an application made in accordance with section 47(1) which is not excluded by section 48 unless -
  - (a) in the opinion of the Commissioner, the application is frivolous or vexatious; or
  - ...
- (2) In a case where the Commissioner determines that subsection (1) does not require a decision to be made, that officer must give the applicant and the Scottish public authority in question notice in writing within one month of receipt of the application, or within such other period as is reasonable in the circumstances, specifying –
  - (a) that no decision falls to be made in relation to the application; and
  - (b) the reasons why that is the case.

## Appendix 2: Other Resources

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Commissioner's Guidance: EIRs Guidance: Regulation 10(4)(b) Manifestly unreasonable requests

Commissioner's Guidance: Charging a fee or refusing to comply with a request on excessive cost grounds

*Both available via [www.itspublicknowledge.info/briefings](http://www.itspublicknowledge.info/briefings)*

Dransfield v Information Commissioner and Devon County Council; Craven v Information Commissioner and the Department for Energy and Climate Change [2015] EWCA Civ 454  
[www.bailii.org/ew/cases/EWCA/Civ/2015/454.html](http://www.bailii.org/ew/cases/EWCA/Civ/2015/454.html)

Beggs v Scottish Information Commissioner [2018] CSIH 80  
[www.scotcourts.gov.uk/docs/default-source/default-document-library/2018csih80.pdf](http://www.scotcourts.gov.uk/docs/default-source/default-document-library/2018csih80.pdf)

All of the Commissioner's decisions are available via [www.itspublicknowledge.info/decisions](http://www.itspublicknowledge.info/decisions). You can search for a particular decision using the relevant decision number (e.g. 001/2021), or for all decisions relating to a particular FOISA section (e.g. 14(1)).

If you require a copy of any of the Commissioner's briefings or decisions, including in an alternative format, contact us – our contact details are on the final page.



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