

FOI and EIR Foundation Training Module 4:

Costs, fees, vexatious and
manifestly unreasonable requests
overview



Comparison between FOIA and EIR provisions

FOIA

Charging a fee:

Section 9 – fees notice

Limitations on the right of access:

Section 12 – cost limits
Section 14 – vexatious / repeated requests

ico.
Information Commission for Wales

EIR

Charging a fee:

Regulation 8 – may make reasonable charge except for public registers / lists or inspection

Limitations on the right of access:

Regulation 12(b) – manifestly unreasonable requests
No other provisions about costs

This module covers both the EIR and FOIA. Important to be clear about the terminology. This slide is a comparison between the provisions...

Charging a fee under s.9 FOIA

Set by regulations:

ONLY costs of communication (including s.11)

ONLY "disbursements" i.e. actual expenditure

- Can be applied whenever information is being disclosed
- Unlikely to be able to charge if sent by email
- No minimum or maximum fee

Issue a fees notice – time is 'paused' and starts again when fee received

ico.



For the fees, ONLY the costs of communication (e.g. printing) and ONLY the actual expenditure, not staff time. These costs are sometimes called disbursements, i.e. money taken out of the purse.

Charges should be the actual cost, but no max or min – you can charge for copying one sheet of paper or for copying a thousand, if that's what's been asked for.

Regulations are the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 – in the delegates' handouts.

Question on fees: if they start talking about costs or get the two things confused, correct the mistake (briefly) – don't allow people to sit there with misunderstandings. **It is very important to ensure that delegates clearly understand the difference between s9 fees and s12 charges (slides 32 and 33 will assist).**

[Note: one delegate asked if can charge fee AFTER sending info. We reckon if not made clear this would be charged then is not enforceable. We certainly can't be involved in enforcing fee

against requester.]

Charging a fee under r8 EIR

- "Reasonable" amount – charges must be published.
- The charge can include staff time spent locating information, and disbursement costs.
- Can't charge for access to inspection, but can charge for preparing the information for inspection.

ico.

Charges must be reasonable. Unlike FOIA it can include staff time spent locating and collating the information in addition to the costs of copying and posting the information. There are also provisions to allow for commercial charges in some limited circumstances (eg Ordnance Survey sell map data in a commercial context).

See next two slides for position on property searches

Property searches and the EIR

Official searches

Property searches: enquiries by buyer or their legal adviser to local authority (LA) when buying a property - usually use questions on CON29 form

eg about rights of way, planning proposals, whether land is contaminated > this is mostly environmental information

Official searches: CSPR charging regime applies

If LA completes and guarantees the content of CON29 form - this is more than providing access to environmental info

LA can charge under The Local authorities (England) (charges for property searches) regulations 2008 (CSPR)

(similar for Wales: Local authorities (charges for property searches) (Wales) regulations 2009)

ico.

Enquiries made by potential buyer or solicitor or conveyancer in relation to buying a property. Most of the information will be environmental.

So can local authorities charge for providing it?

The local authorities (England) (charges for property searches) regulations 2008 (CPSR) regulations (or The Local authorities (charges for property searches) (Wales) regulations 2009 for Wales) appeared to allow charges to be made for what is called a "CON29" enquiry. However, where the information is environmental - as much of it will be in these circumstances - the provisions of the EIR take precedence. See this and next slide for explanation of the position.

CON29 form is form devised by Law Society to facilitate the enquiries that need to be made.

(If asked in session: if the requested information is not environmental, FOIA applies rather than the EIR and LA can

Official

use CSPR to charge)

Official searches

When a local authority is asked to complete and guarantee the content of a CON29 form, this involves more than simply providing access to environmental information as required by the EIR. Therefore the charging provisions in the EIR will not apply and local authorities are able to charge under the CPSR regime.

Property searches and the EIR

Personal searches

Personal search: EIR charging applies

LA provides access to underlying environmental info so enquirer can answer questions themselves = free of charge
LA is not providing additional service so can only make any charge under EIR charging provisions
eg for photocopying; could in theory charge for staff time for locating the information but this is unlikely to be reasonable

Guidance: Property searches and the EIR
Charging for environmental information

ico.

Personal searches

When a local authority is merely asked to provide access to underlying environmental information, so that a third party can answer the questions on the CON29 form themselves, the charging provisions of the EIR will apply instead. The enquirer has the right to inspect the information under the EIR free of charge. Although under the EIR the authority may charge a reasonable amount for locating the information, it is unlikely to be reasonable for it to do so in these circumstances since it is the enquirer who is searching for the information.

If the enquirer requests photocopies the authority may charge for that.

Refusing a request on the basis of cost (s.12 FOIA)

Can refuse request if:

- estimated cost of dealing with it would exceed "cost limit" of £600 or £450
- no need for public interest test or consideration of content

Must still confirm whether information is held,
unless just determining this would exceed limit

ico.

The provision for dealing with requests which would impose too great a burden on public resources.

Distinguish between this – s12 charges – and the previous slide on s9 fees. Also see later slides.

NB guidance : several pieces of guidance on costs and fees

Refusing a request on the basis of cost (s.12 FOIA)

Can refuse request if:

- estimated cost of dealing with it would exceed "cost limit" of £600 or £450
- no need for public interest test or consideration of content

Must still confirm whether information is held,
unless just determining this would exceed limit

ico.
Information Commissioner's Office

The provision for dealing with requests which would impose too great a burden on public resources.

Distinguish between this – s12 charges – and the previous slide on s9 fees. Also see slides 32 and 33 later.

Estimating the cost of compliance (s.12 FOIA)

costs the authority "reasonably expects to incur" in:

- determining if the information is held
- locating it
- retrieving it, or a record containing it
- extracting requested information from the record

Mostly relates to staff time

Staff time rated at £25 per hour = 18 or 24 hours

ico.
Information Commissioner's Office

Take into account **ONLY** the activities of locating/extracting.

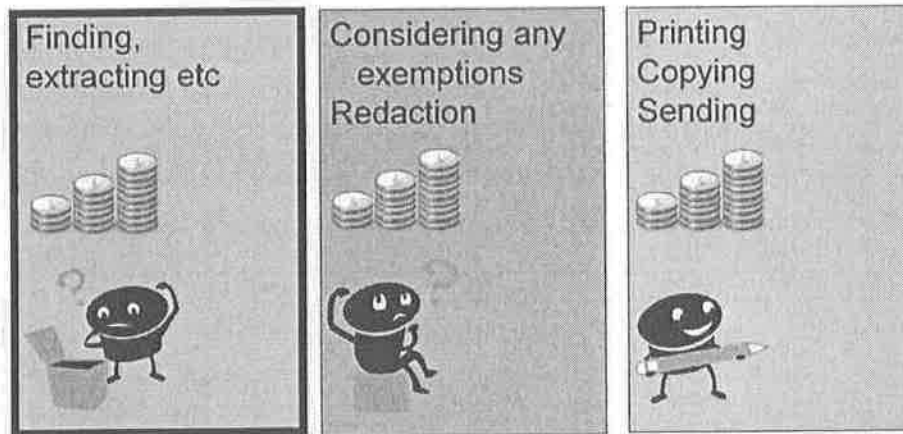
"It" is requested information – take into account time to find relevant information within a file but not the time for redaction. well-established [confirmed by High Court case *Chief Constable of South Yorkshire v ICO* CO/343/2010]

Cost limit is £450 or £600 depending on type of PA (covered in procedural basics module).

The main costs are staff time related – rated at £25 per hour i.e. 18hours / 24hrs.

Can include other locating/extracting-related costs. (e.g. retrieving info from a salt mine, having it moved by courier)

Estimating the cost of compliance (s.12 FOIA)



ico.

Responding to a request has three stages: locating / extracting; considering exemptions; communicating [click] shown as the three boxes here

[click] Each may involve two types of cost – actual expenditure and staff time (rated at £25 per hour)
Shown by cash and person.

Example: request for these training materials.
Where would we have to look? Would there be any costs (other than time) in the first section? What about the communication costs?

[click] only the first activity can be counted in the cost estimate

FOIA cost limits: example

"All information ... relating to the investigation into Rampton hospital, including the number of police officers involved" (Notts Police, FS50170631)

Easy to find: a whole room full

Difficult: requires searching through and counting

Many redactions to be made:
cannot be refused because of time taken
to consider exemptions and redact

ico.

Consequence of this is that cost limits are not just about quantity of information; sometimes less / more specific info is more likely to go over cost limit.

We found in relation to the Notts Police request that "all information" could not be refused under s.12 because the police knew perfectly well where it all was. The difficulty had been in determining the number of officers involved as that would have required looking through all the files.

Estimating the cost of compliance (s.12 FOIA)

“costs it reasonably expects to incur”

- Should be a reasonable estimate
- BUT not invalidated by poor records management
- REMEMBER: may still need to confirm / deny
- Often use a “sampling” exercise

ico.
Information Commissioner's Office

PRACTICALITIES OF S.12...

Costs it *expects* to incur – estimate at beginning or becomes obvious. Don't have to provide estimate to claim s.12 but may be required for advice / assistance.

Estimate should be “reasonable” – based on common sense and a reasonable degree of ‘local knowledge’ (i.e. they ought to have some idea where to look) but where there are a number of different poss. approaches any reasonable one will do (even if turns out not to have been best). It isn't based on how long it “ought” to take if their systems were in order, but how long it is genuinely likely to take.

FOIA cost limits: example of sampling

Details of leisure craft accidents Aug – Oct 2005:

- read through all the daily reports from all bases:
64 days @ 30 mins each = £800
- call up further details of leisure craft accidents
1162 reports @ 10 mins each = £4842

(Marine Accident Investigation Branch, FS50125936)

ico.
Information Commissioner's Office

Often recommend a sampling exercise (it would take x minutes to find this and extract the info so for 100 records it would take 100x) – but check if this stands up (e.g. are all the records comparable? Do they need to do everything they say?)

MAIB shows steps. Would have to consider how plausible timings and also whether each step needed.

“Reality check” – does total seem reasonable? Check numbers which multiply up e.g. does it take 3 mins per page or 20 seconds?

If not reasonable can come to our own estimate.

Refusing a request on the basis of cost (s.12 FOIA)

Problem: the requester just splits the request into separate bits

Answer: the cost can be "aggregated"

"to any extent to the same or similar information"

- within 60 working days
- by the same person OR by persons who "appear to the public authority to be acting in concert or in pursuance of a campaign"

Apply same rules to multiple requests in one letter

ico.

Campaign: "appear to the public authority" – this can be very broad, does not need to be evidenced particularly

Refusing a request on the basis of cost (s.12 FOIA)

- Should confirm / deny if possible under limits
 - Refuse the request under s.12
 - Don't need to provide an estimate / breakdown but this is good practice
 - Should provide advice on reformulating the request
-
- OR charge as per s.13

ico.
Information Commissioner's Office

Advice on reformulating the request. Genuinely helpful – let them know what part of the information might be available within the cost limit OR advise none *and why*. Don't just tell them to "narrow it down" as this can lead to more specific questions which take just as much work to answer. DO NOT just give them part of it and not the rest, as they might have preferred a different part.

CARE with informal resolution – s.12 applies to *whole* req.

Alternative is to release the information (even though don't have to) but charge extra under s13: [click]

Providing advice and assistance where the request exceeds cost limits (s.12 FOIA)

Under Section 16 Public Authorities have a duty to provide advice and assistance where it is reasonable to do so. When applied to a request that exceeds the section 12 cost limits this could mean;

- Advising the requester that no information can be provided within the appropriate limit.
- Indicating what information can be provided within the appropriate limit.
- Providing advice and assistance to enable the requester to make a refined request.



The PA only has to provide advice and assistance if it would be reasonable to do so. Where it would be reasonable then the minimum it should do is:

- either indicate if it is not able to provide any information at all within the appropriate limit; or
- provide an indication of what information could be provided within the appropriate limit; and
- provide advice and assistance to enable the requestor to make a refined request.

Charging a fee for discretionary release (s.13 FOIA)

Fees in normal circumstances (s.9):

- disbursements only
- cost of communication only
- NOT staff time
- NOT finding/extracting
- NOT 'thinking time'
- NOT redaction

ico.
Information Commission for Wales

Fees under s.13:

- normal s.9 fee
- PLUS cost estimate as per s.12
- PLUS staff time for communication at £25/h (this can include staff time to redact exempt material – s.13 only)
- NOT 'thinking time'

Ask them to remember what can normally be charged for, then [click]

s.13: if the cost would exceed the limit, can *offer* the information at a cost. This is not compulsory – if the limit would be exceeded, can (and mostly do) simply refuse.

[click] again

at a cost including the staff time and disbursements for both finding / extracting and communication.

This is the only circumstance in which staff time in copying is relevant.

By its nature this will exceed £450 or £600 so is rarely going to be paid and most authorities don't offer.

Under section 13 there is the ability to charge for the time taken to redact exempt material but NOT thinking time to consider which exemptions apply.

See guidance 'Fees that may be charged when the cost of compliance exceeds the appropriate limit'.

Difference between cost limits and fees under FOIA

The Freedom of Information and Data Protection
(Appropriate Limit and Fees) Regulations 2004

s.9 fees a public authority can charge in normal circumstances (when cost limit not exceeded)
reg. 6

s.12 cost limits: when an authority can refuse a request which would be unduly expensive to it
reg. 3, 4 and 5

s.13: fees when cost limit exceeded reg. 7

ico.

Fees Regs cover two separate things – cost and fees. PAs may get confused between what they can include in their estimate of the cost and what can be charged for.

s.9: calculating fees in normal situations

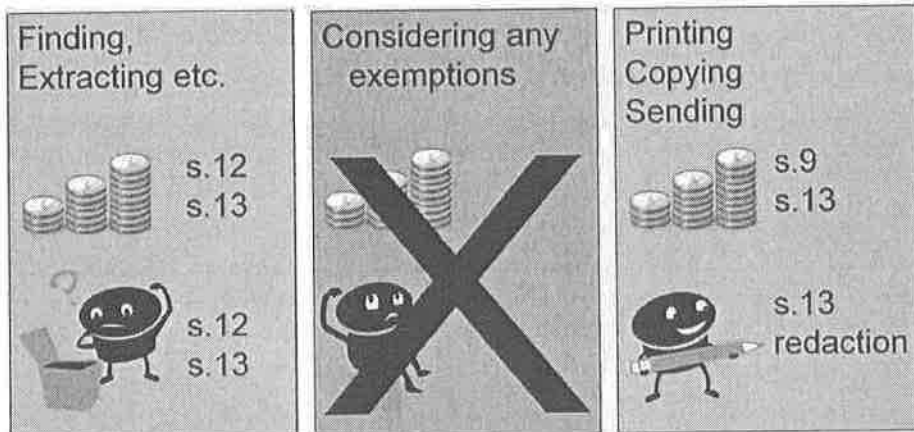
s.12: cost limits: refusing a request

s.13: calculating fees where the authority could in fact refuse due to cost limit (but is offering the requester the option of receiving information for a charge)

Fees regs and cross-referencing included in your packs

Important to prevent misconceptions: does NOT mean you can charge up to a certain amount then refuse, nor that it is free up to a certain amount and then charge. One is charging *in any case where information disclosed* in hard copy; the other is *when a request can be refused*.

Difference between cost limits and fees under FOIA



ico.

[click] cost limit = anything to do with first stage; s.9 fees only the actual cost of communication; s.13 time *and* cost, first and last stages.

[click] Middle one can't be considered in either cost or fees.

Staff time for redaction of exempt material can be charged for with respect to section 13 only.



Time to check that you've understood so far. Group exercise. Activities you can charge for under FOIA.

[The exercise consists of putting the cards into three categories, as marked on a large piece of paper – all materials are in pack. One potentially grey area one: the time taken to photocopy documents could count either as communication (can't take into account) or extraction (can).]



ico.

Coffee break – 15 mins.

Vexatious requests (s.14(1) FOIA)

14 (1) "Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

17 (5) "A public authority which ... is relying on a claim that section 14 applies must ... give the applicant a notice stating that fact."

except where the authority has given the applicant a s.14 notice in relation to a previous request and it would be unreasonable to expect the authority to serve a further notice

ico.

PAs often see FOIA as a burden and particularly when individuals use FOIA to a disproportionate extent or with the intention of pursuing imagined grievances against the authority. So there's a provision for refusing vexatious requests.

It's not phrased as an exemption, it simply says that 1(1) doesn't apply. S.12 and s.14 – in Part I not Part II, relate to request rather than content of information.

Therefore also no public interest test. Also for s.14 no duty to confirm or deny.

[click]

However, there is still a provision for refusal notice. (except where reasonable not to) – [brief, no need to explain further]

See ICO guidance |: Dealing with vexatious requests


The meaning of vexatious

ICO vs Devon County Council & Dransfield [2012] UKUT 440 (AAC) defines 'vexatious' as constituting the...



'...manifestly unjustified, inappropriate or improper use of a formal procedure.'

establishes 'proportionality' and 'justification' as central to the question of whether a request is vexatious, so ICO uses the criteria...



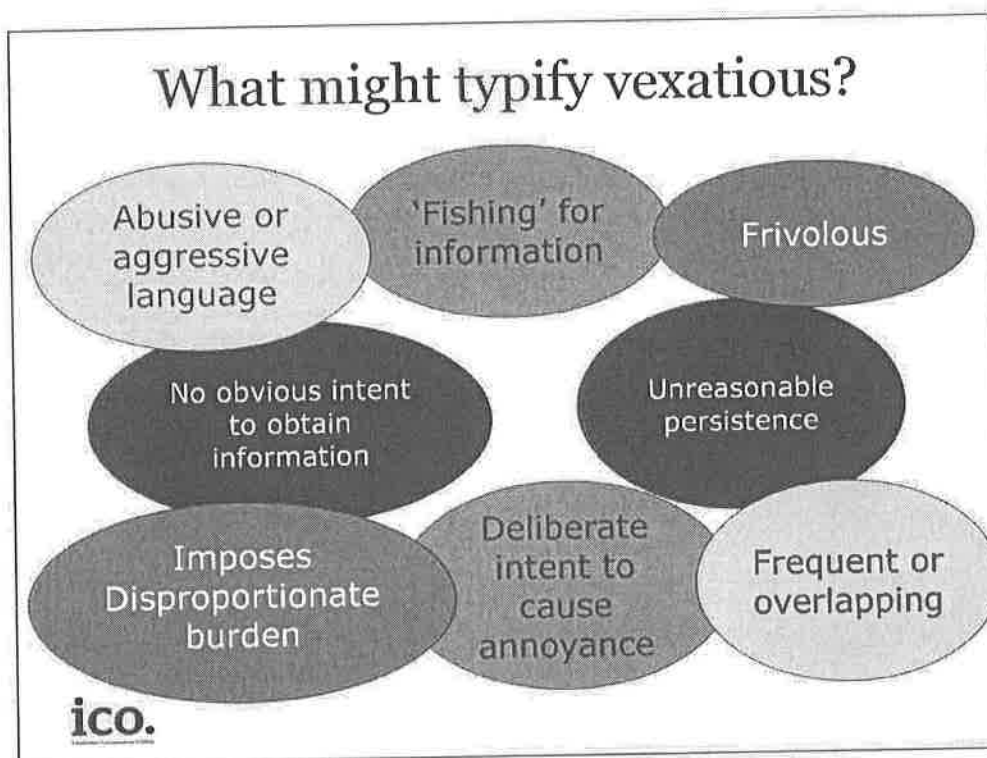
'Is the request likely to cause a disproportionate or unjustified level of disruption, irritation or distress?'

ico.
Information Commissioner's Office

Dransfield – Upper Tribunal provides a new definition of vexatious – they considered the ordinary dictionary definition, ('tending to cause distress, harassment annoyance..etc') to be inadequate because it made no provision for the circumstances surrounding the request. The tribunal judge concluded that vexatious meant a *'...manifestly unjustified, inappropriate or improper use of a formal procedure.'*

Vexatious applies to the request, not the requester. Doesn't mean have to consider a request in isolation, but does mean that you cant automatically treat a request as vexatious just because a previous request from the same requester was refused as

vexatious.



Our guidance lists these as some of the typical indicators of a vexatious request (from our experience of dealing with complaints) .

Aggressive or aggressive language – could be threatening tone or offensive language

Fishing – making random requests in the hope this will unearth something interesting

Frivolous – silly requests, or requests with no obvious value

No obvious intent to obtain info/deliberate intent to cause annoyance – using Section 1 rights as a means to harangue, argue with or disrupt the authority rather than get information

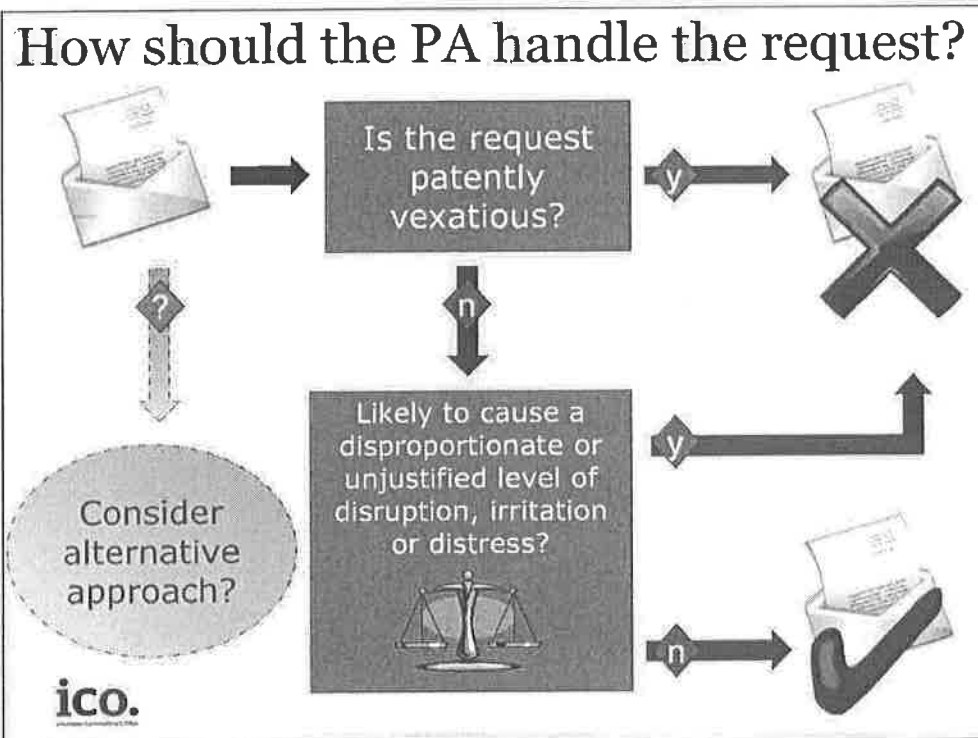
Unreasonable persistence – making a request about an issue that has already fully addressed by the authority or subject to independent investigation

Disproportionate burden – the burden of the request(s) on the authority is out of all proportion to the importance of the issue at hand

Frequent or overlapping - The requester makes very frequent requests, and may send in new requests before the PA could realistically be expected to have dealt with their previous ones.

One , or any combination of these factors could make a request vexatious, but just because one or more of them is present doesn't necessarily mean the request *must* be vexatious.

Also important to emphasise that these are examples and as such are not intended to be limiting - a PA can refuse a request on *any* grounds it considers relevant.



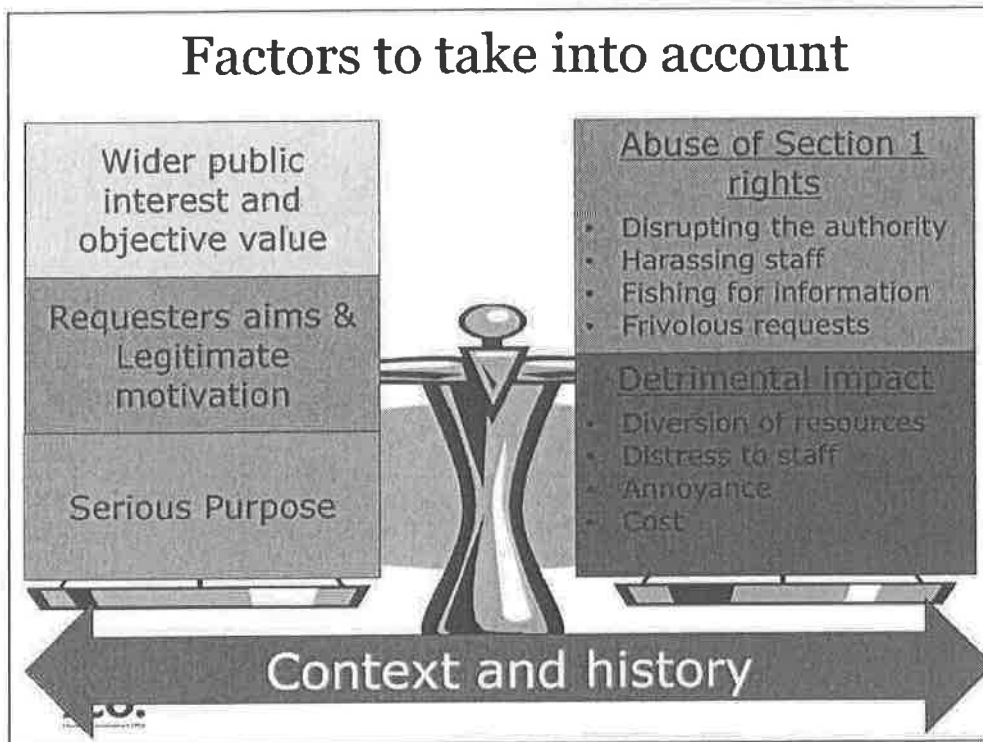
This diagram explains the process by which we expect PAs to deal with vexatious requests. This is not necessarily the same process used by the ICO when dealing with Section 14 complaints (at the time of writing we have only recently switched to dealing with s14 cases under our new vexatious guidance). Trainer may need to speak to Complaints Resolution if they want to check what our processes for handling Section 14 cases currently are.

Patently vexatious means a request so obviously vexatious that the PA can make a quick decision to refuse it - i.e where the content of the request is clearly unacceptable - examples might be requests containing threats against staff or racist language. This being the case we would anticipate that 'patently vexatious' is only likely to apply in a minority of cases. In vast majority of cases the request won't be patently vexatious and the PA will need to ask itself whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress – this involves carrying out a balancing exercise, weighing the purpose and value of the request against the impact on the authority – more details on next slide.

Alternative approaches – this is optional – the PA doesn't have to consider an alternative approach – however it may save them time

and further conflict in the long run. Alternative approaches could mean, for example, asking the requester to moderate their behaviour or offering advice and assistance instead of refusing their request outright.

They should be considered on a case by case basis and the PA may wish to look at its previous experience of dealing with the requester when deciding whether they are likely to be open to an alternative approach (there is a risk too that an alternative approach could make things worse – eg the requester may simply become even more aggrieved if the PA writes to advise them their letters are abusive and need to be toned down.



Not a PIT but a balancing exercise where the purpose and value of the request is measured against the impact on the authority. The lesser the purpose and value of the request, the lighter the side of the scales weighing in favour of complying with the request will be when balanced against the impact on the authority, and visa versa.

No set formula as to how much weight to give to each factor – each decision must be made on a case by case basis

The context and history may add weight to either side of the scales. E.g if history suggest that PA has provided inadequate responses to the individual's previous requests then this may strengthen case for disclosure by illustrating that they have a serious purpose for making a request. However, if context is that this is the latest in a long series of frequent requests then this might support the argument that the requester is diverting resources or harassing the authority.

Grossly oppressive burden

A PA may apply s14 if the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the organisation.

- Can take into account cost of considering exemptions and redaction.
- Should consider S.12 first.
- It is most likely a request could be considered under S.14 on cost grounds where:
 - The Request is for a large volume of information;
 - It contains exempt material;
 - The exempt material cannot easily be isolated.



ico.

PA can consider costs not covered by s12 – e.g time/cost of considering exemptions and redaction

However, the request must meet ALL three criteria listed in green. A high test – so we would only expect the PA to use s14 on these grounds in exceptional circumstances.

Not to be used as a substitute for S12 where cost is main issue, so PA should consider refusing under Section 12 first where possible. It is in their interests to do this as the test for applying s14 on cost grounds is much higher than for s12. PA should also consider whether it could provide any advice and assistance to help the requester refine their request.

Likely we would expect PA to be able to produce documentary evidence to back up its claims of a grossly oppressive burden e.g. sampling exercise.

Mr Anderson and the council (a fictional case) – see handouts

- Had already received much of the information
- Questions aimed at getting council to justify itself or admit fault, not obtaining information
- Making accusations in the form of questions
- Hurtful allegations against many individuals
- Believes answers false – will never be satisfied
- Obsessive – several years
- Using FOI to keep his complaint open
- Had already pursued all legal avenues

ico.

This case is loosely based on existing vexatious cases, but uses a safely anonymous example. Hand out / include in packs the request, complaint and question sheet. Give a few minutes to read and identify the key features and reach a conclusion as to where the balance lies in favour of refusing or complying with the request. Write them on a flip chart or whiteboard.

[click]

One of the key points is the way in which FOI is being used – is it being used in accordance with its purpose (to obtain information) or as another 'weapon' in a complaint? In this case, he had already received much of the information, and the issues had been dealt with exhaustively. But he saw FOIA as a way to force the council to continue in the correspondence, and therefore phrased the points he wanted to make as questions.

>PTO for more notes

[click] the request was harassing because it was used as a way of making numerous allegations, some of which were patently

unreasonable. It is likely to be burdensome because he will never accept the answers given – he will simply claim they are lies and continue his correspondence.

It's clearly obsessive. Even if originally he had a point (which probably he didn't, but that isn't something we can necessarily tell) it has been dealt with exhaustively by the council, the courts, etc.

Balancing exercise

The request does seem to have a serious purpose, but does it have much objective value – is it likely it further his aims or reveal information in support of his grievance? And is there a legitimate aim/motivation behind the requests, i.e. obtaining information to help his cause, or are his requests more directed at attacking the institution itself and its staff? How much weight will these factors actually carry on the side of complying with the request?

Balance these factors against those in favour of refusing the request – impact in time and resources in dealing with his request, the way he is using his section 1 rights and the detrimental impact on the authority in terms of time, resources, annoyance and distress/stress to staff.

Not vexatious

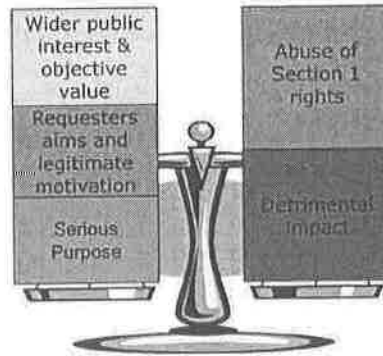
Example based on real s14 case

- 70+ pieces of correspondence
- some overlapping or repeated
- All on the subject of works at one building

BUT

- This was because the authority had not been dealing with the requests properly.
- The requester owns a flat in the building and is on the Works Committee.
- The works are on-going and there are unresolved issues around fire safety requirements.

ico.



Detriment to authority – burden of dealing with 70 requests – diversion of resources/burden/cost – annoyance frequent and overlapping requests

serious purpose – unresolved fire safety issues re works

Value/ furthers requesters aims – if needs clarification because authority not dealing with requests correctly then yes

Wider public interest value? – public safety could be at risk if building is fire hazard.

Repeated requests under FOIA

s14(2) “Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed”

A PA may only consider 14(2) if it has already provided the same (or substantially similar) information to the requester in response to a previous request . If the previous request was refused then a second request for the same information will not be a repeat request.

ico.

A PA may only consider 14(2) where it has already provided the same information to the requester in response to a previous FOIA request . If the original request was refused then any further request for the same information will not be a repeat request.

Although this is paired with vexatious, and some repeated requests will also be vexatious, they can be quite separate.

It's important not to get this muddled up with aggregating requests or with request for internal review (which may often take the form of a repeated request for the information which has been refused).

Identical or substantially similar refers to scope of request

'Reasonable interval' is concerned with how significant any changes or differences in the information are.

The information has to be identical or substantially similar for 14(2) to apply. A PA can't refuse a request simply because the *topic* of the request is identical or substantially similar. PTO>

[click] The relevant point is not the phraseology of the request or the topic but the actual information. A person may make several requests on the same topic asking for different information but this won't be a repeated request. Likewise, it won't be repeated if you phrase the question in the same way but the information has changed, e.g. "this year's figures for x".

So a "reasonable interval" is likely to be related to the nature of the information. For example "please give me your latest statistics on x", sent in monthly, may not be a repeat request if the statistics are indeed compiled monthly.

See ICO guidance : Dealing with repeat requests

Manifestly unreasonable requests under r12(4)(b) EIR

"Manifestly unreasonable"

- covers vexatious requests
- BUT ALSO
- Cases involving costs issues as no equivalent to s12 in EIR.
 - Cost is one factor but more flexible / case-by-case
 - (NB r7 time extension for complex and voluminous requests)
- subject to public interest test
- we wouldn't expect PA to confirm or deny

See ICO guidance: **Manifestly unreasonable requests (regulation 12(4)(b))**



ico.
Information Commissioner's Office

Manifestly unreasonable requests provision – r12(4)(b) -under the EIR covers those which are costly to comply with as well as vexatious requests.

Vexatious – follow guidance for FOIA but remember subject to PIT

Costs – no specific limitation. Aarhus guide: manifestly unreasonable must be more than complex / voluminous. (which is covered by r7)

DBERR case 2009: authority may be required "to accept a greater burden".

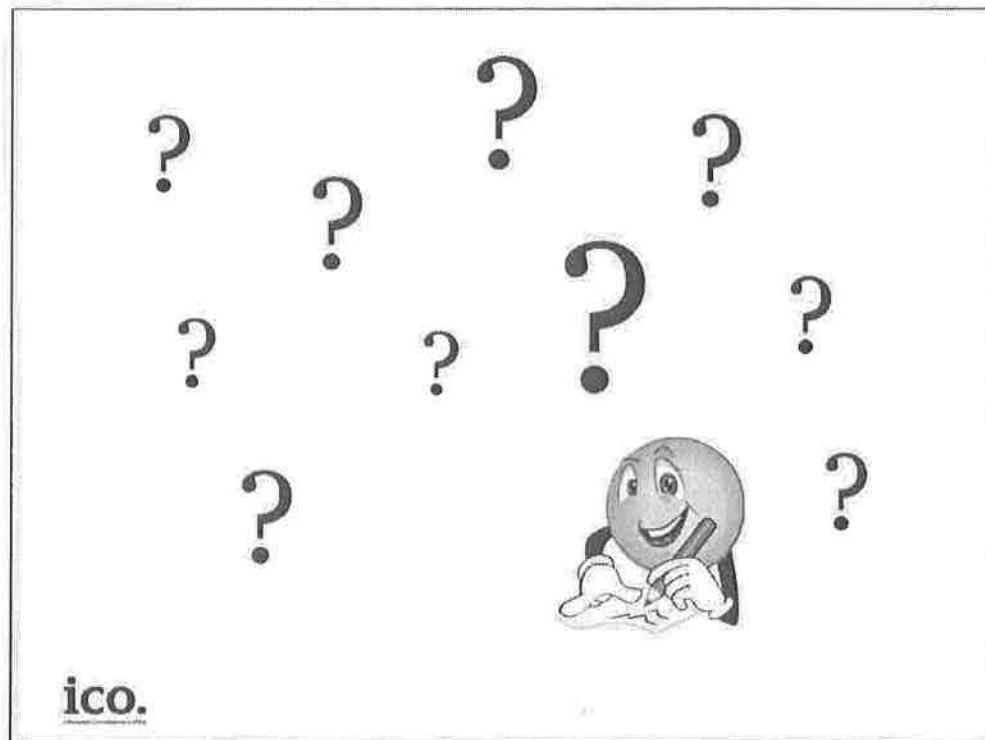
On other hand, no rules for cost estimates, so could take into account all factors if reasonable. Cost is one factor, and more flexible on what is considered inc re aggregation . But include other factors e.g. proportionate to size / resources of PA. Also subject to PIT

We don't generally expect PAs to confirm / deny when the request is manifestly unreasonable and it would be an unreasonable burden to determine whether the information is held.

(See guidance : **Manifestly unreasonable requests (reg 12(4)(b))**

– formerly LTTs147 and 182 which have been withdrawn)

NB also **Charging for environmental information**



Quiz time – need to amend quiz to reflect new content
You can confer, you can look it up – it's to make you think
about it and we'll talk it through after

For more information, see our
guidance page on www.ico.org.uk

and the FOI Policy knowledge base
on ICON

ico.
Information Commissioner's Office

FOI Module 4: costs, fees, vexatious and manifestly unreasonable requests overview

Checklist for trainer(s) and for Learning and Development

This is a two and a half hour module

Learning and Development:

Please print off a handout pack for each attendee, containing one copy each of the following documents, which are all on Meridio 1.17.04.03:

- Objectives and timetable.
- Slides. When printing, select the 3 slides per sheet handouts option.
- Quiz.
- Appropriate Limit and Fees Regulations 2004.
- Vexatious letters
- Vexatious letters exercise
- Feedback forms

Each delegate will also need a feedback form– provided by Learning and Development (and/or to be emailed after the session).

Please ask delegates to bring with them a copy of FOIA and the EIR – their own, borrowed or printed off from legislation.gov.uk.

Trainer(s):

Each trainer will need for him/herself:

- Signature sheet – provided by Learning and Development
- Lesson plan
- Slides with notes– print out a copy with the speaker notes on using the “Notes pages” option. These are also the slides to show on the screen.
- Costs limit exercise with note.
- Vexatious requests exercise (revised) – handout and notes
- The cards for the exercise which can be found in the training cupboard.
- Quiz with answers.
- Flipchart – these come as standard in training suites.

Materials in training cupboard

The training materials are in a labelled folder, in cupboard PD2. This is situated in Policy Delivery on the First Floor West Wing, behind Lisa Atkinson and Viv Adams.

If you need to make new copies of these materials the cards for the cost limit exercise can be re-created based on the details in "cost limit exercise with note".

Content	Objectives (what learner should be able to do)	Approximate timings
Introduction – comparison between FOIA and EIR	Understand how each works differently	5 minutes
Charging a fee		
s.9 FOIA	Be aware that an authority can charge for providing information Identify when a fee has been calculated incorrectly Distinguish this from cost limit provisions	15 minutes
r8 EIR	Can charge reasonable amount (Markinson)– but NB property searches.	
Cost limits - FOIA		
s.12	Explain the purpose and operation of s.12 Distinguish which activities can and cannot be taken into account in the estimate Begin to investigate whether an estimate is 'reasonable' Identify when it may or may not be appropriate to aggregate requests	20 minutes
s.13	Be aware that authorities can charge for a discretionary release of information over the cost limit	5 minutes
s.9, s.12, s.13	Distinguish clearly between fees and cost limits	5 minutes
Exercise: simple exercise to distinguish between activities which can be charged for and those which can be taken into account for the cost estimate (FOIA). 15 minutes.		
Tea / coffee break 15 minutes		

Vexatious and repeated requests		
s.14(1) FOIA	Explain the notion of "vexatious" in the context of a purpose- and applicant-blind regime	5 minutes
	Advise of the key indicators for vexatious request	5 mins
	Explain process for determining whether a complaint is vexatious	10 mins
	Explain conditions under which PA may refuse on burden grounds alone.	5 mins
Case study: Delegates discuss the fictional vexatious complaints example (see handouts containing vexatious letters and discussion questions) and feedback the main features / factors. 20 minutes		
s.14(2) FOIA	Identify when a request is genuinely repeated, rather than vexatious / aggregated / request for internal review etc.	5 minutes
r12(4)(b) EIR	Understand the exception for manifestly unreasonable requests – may be applied to requests which are "vexatious" or where there are costs issues.	5 minutes
Quiz – 10-15 minutes		

FOI Module 4: Costs, fees, vexatious and manifestly unreasonable requests overview

Objectives and timetable

This session covers the above procedural provisions of the Freedom of Information Act 2000 (FOIA) which can be found in Part 1, together with fees under the EIR and the exception for manifestly unreasonable requests in the EIR. Before attending this session, you should have attended the Introduction to FOI training, module 1 procedural basics, Module 2 EIR overview and Module 3 s40/r13- the personal data provisions.

By the end of this session, you should be able to:

- explain when and how an authority can charge a fee for disclosing information;
- explain when an authority can refuse a request on cost grounds and recall what can be taken into account in estimating cost;
- describe the factors relevant to refusing a request as vexatious or repeated; and
- recall the meaning of the exception for "manifestly unreasonable" requests under the EIR.

Schedule for today

Introduction

Charging a fee – s9 FOIA, r8 EIR

Refusing a request on grounds of cost- s12 FOIA

Charging a fee – s13 FOIA (where costs limit exceeded)

Break – 15 minutes

Vexatious and repeated requests – s14 FOIA

Manifestly unreasonable requests under the EIR

Quiz – 10-15 minutes

Resources

The key documents which will be referred to today are:

FOIA The Freedom of Information Act 2000

EIR The Environmental Information Regulations 2004

Fees regs The Freedom of Information and Data Protection
(Appropriate Limit and Fees) Regulations 2004
(SI 2004/3244)

You can also follow up today's points on the **Policy Knowledge Base** and in
the ICO's **external guidance on the website**.

FOI Module 4: costs, fees, vexatious and manifestly unreasonable requests overview

Quiz

1. Link the sections of FOIA to the topics

Fees	12
	9
Vexatious requests	14(1)
Cost limits	14(2)
Repeated requests	

2. Which EIR regulation concerns fees?

3. Which of the following circumstances in FOIA may affect the time by which the final response should be sent?

- ☐ The cost limits
- ☐ Charging a fee

4. True or false?

Under FOIA an authority may charge for the time taken to photocopy information

- ☐ True
- ☐ False
- ☐ Sometimes

An authority may always refuse a request if it has dealt with a similar request previously.

- ☐ True
- ☐ False

An authority may ignore correspondence from a requester who is vexatious

- ☐ True
- ☐ False
- ☐ Sometimes

An authority does not have to issue a refusal notice for a vexatious request.

- ☐ True
- ☐ False
- ☐ Sometimes

If an authority refuses a request because it would exceed the cost limit, it should where possible help the requester to rephrase their request to obtain information within the cost limit.

- ☐ True
- ☐ False
- ☐ Sometimes

An authority may not refuse a request as repeated if a reasonable period has elapsed since the previous request.

- ☐ True
- ☐ False
- ☐ Sometimes

The EIR exception for manifestly unreasonable requests may apply to requests where costs are an issue as well as vexatious requests.

- ☐ True
- ☐ False
- ☐ Sometimes

An authority may refuse a request as vexatious if it would have to divert staff away from their core duties in order to comply.

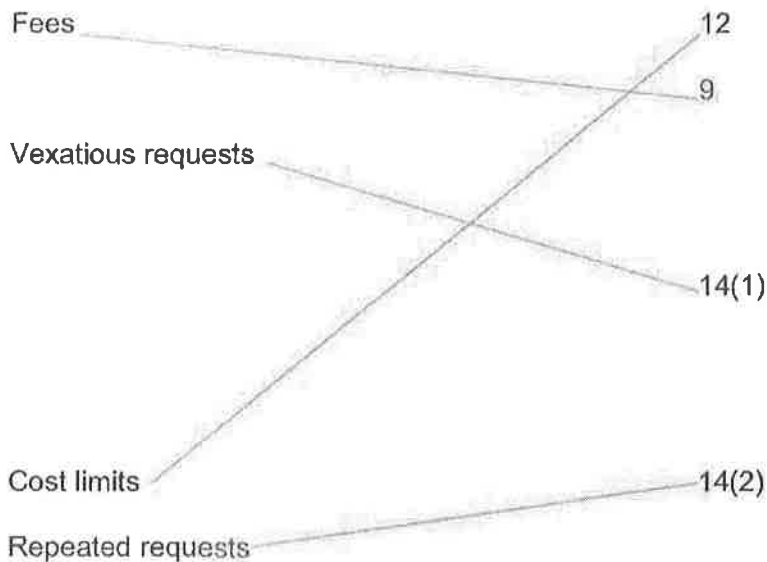
- ☐ True
- ☐ False

FOI Module 4

Costs, fees, vexatious and manifestly unreasonable requests overview

Quiz with ANSWERS

1. Link the sections of FOIA to the topics



2. Which EIR regulation concerns fees?

Regulation 8.

3. Which of the following circumstances may affect the time by which the final response should be sent?

- ☐ The cost limits
- ☒ Charging a fee

4. True or false?

Under FOIA an authority may charge for the time taken to photocopy information

- ☐ True
- ☐ False
- ☒ Sometimes – where the cost limit is exceeded. Under EIR they can make a reasonable charge

An authority may always refuse a request if it has dealt with a similar request previously.

- ☐ True
- ☒ False – it can only refuse if it complied with the previous request AND that request was from the same person AND a reasonable interval has not elapsed between the requests

An authority may ignore correspondence from a requester who is vexatious

- ☐ True
- ☒ False – it needs to consider whether each individual request is vexatious.
- ☐ Sometimes

An authority does not have to issue a refusal notice for a vexatious request.

- ☐ True
- ☐ False
- ☒ Sometimes - it does not have to issue a refusal notice where it has already done so in response to a previous vexatious request from the same requester and it would be unreasonable to issue another one.

If an authority refuses a request because it would exceed the cost limit, it should where possible help the requester to rephrase their request to obtain information within the cost limit.

- ☒ True
- ☐ False
- ☐ Sometimes

An authority may not refuse a request as repeated if a reasonable period has elapsed since the previous request.

- ☒ True
- ☐ False
- ☐ Sometimes

The EIR exception for manifestly unreasonable requests may apply to requests where costs are an issue as well as vexatious requests.

- ☒ True
- ☐ False
- ☐ Sometimes

An authority may refuse a request as vexatious if it would have to divert staff away from their core duties in order to comply.

- ☐ True

☒ False – the diversion of staff away from their core duties is evidence that the request is having a detrimental effect on the authority, but the PA has to show that this impact is unjustified, or disproportionate when balanced against the purpose and value of the request, to apply Section 14.

FOI Module 4

Costs limit exercise with note

Important note: make clear that this is only applicable to FOIA not EIR

For the exercise, mix the cards up, prepare a large sheet of paper (from the flipchart) with different headings, and the trainees have to put the cards into the correct categories.

Can be included in the estimate

Time taken to find the information

Time taken looking through catalogues to work out whether you hold the information

Time taken searching a database for the information

Time taken identifying the relevant information within the document

Also (not included in the exercise but useful to know) has now been confirmed that the *actual cost* of having information retrieved from storage and / or sent by courier, if necessary, can be included in the estimate. You don't have to work out the length of time and calculate it by £25 per hour, you can use the actual cost charged to the public authority.

Can be charged for

Cost of photocopying

Cost of postage

Cannot be either included in the estimate or charged for

Time taken deciding whether any exemptions apply

Time taken by senior staff carrying out the public interest test

Time taken photocopying documents [note – is debatable as could count as 'extraction']

Time taken blacking out exempt material

Vexatious requests training exercise

Would Mr Anderson's request be likely to cause the council an unjustified or disproportionate level of distress, disruption or irritation?

Factors to consider (Candidates aren't expected to answer these questions; they are designed to get them thinking about the relevant issues)

1. Does the request have a serious purpose?
2. Will it further Mr Anderson's aims?
3. Is the authority likely to suffer any detrimental impact?
4. Is there any wider public interest value?
5. Is Mr Anderson abusing his right to information in any way?
6. Does the context and history weigh in favour or against the request being vexatious?

Cllr Lydia Smith
Leader of Boroughfordshire Council
Boroughfordshire Town Hall

4 February 2015

Dear Cllr Smith,

WITHOUT PREJUDICE

Why am I still banned from the local art gallery, it has been TWLEVE YEARS and I still have got nowhere.

Using the FOI tell me the answers to these questions:

- 1) Why am I banned from the gallery?
- 2) Where are the minutes of the meetings to ban me, held in 2003, 2005, 2008, 2010.
- 3) What authority has BRIAN JAMES Head of Galleries got to ban me from the gallery?
- 4) Cite the law I have broken.
- 5) Why did you not invite me to attend the meetings?
- 6) Who provided quotes to the local paper in 2003 for the story headlined "Local man scribbles on paintings"??

I DID NOT CONSENT to you giving the quotes.

7. What are the qualifications of idiot BRIAN JAMES.

8. Are you a freemason?

NINE. What action did you take against the staff who assaulted me in the gallery in 2003???

10. When will you compensate me for loss of earnings as an artist?

11. Give me all correspondence you have had about this case with:

- My solicitor
- The county council
- The department of culture media and sport
- The local news
- My landlord

12. I sent you several letters about this case, please provide copies of all the letters.

13. It was not even right to throw me out of the gallery for performing my own RIGHT TO FREEDOM OF EXPRESSION yet you still threw me out and I cannot even be told why. At the meetings you have discussed my case and not even let me speak. Why do your IDIOT STAFF keep telling me there is no information held?

14. Why did a judge throw out my case against the council on the say so of your own LYING solicitors? If they had told the truth this would never have happened.

14.b YOU had meetings about me where you officers LIED, where are the transcripts?

15. What action does the council take against lying solicitors?

16. How does your action comply with the Consumer Credit Act 1974?
HUMAN RIGHTS??!!!!? The Fraud Act.

17. I demand an apology from

- 1) CLLR Lydia Smith
- 2) Brian James
- 3) Willam Melly
- 4) Georgina Parkinson

If you do not reply I will complain to the Information Commissioner
AGAIN

Kind regards,

Andrew Anderson

Cllr Lydia Smith
Leader of Boroughfordshire Council
Boroughfordshire Town Hall

14 March 2015

Dear Cllr Smith,

WITHOUT PREJUDICE

WHAT DO I HAVE TO DO TO MAKE YOU LISTEN. Do I have to come to your office and take action?

You have refused to answer my questions so here are some more questions:

- 1) Why won't you answer my questions?
- 2) Why am I banned from the gallery?
- 3) You know that I was doing nothing wrong, and you have held secret meetings to have me banned from the gallery. This is out of order. It is unlawful. Under the law I am allowed to express myself and I am allowed the freedom to be an artist.. You have ruined my livelihood. How would you like it if I ruined yours? You say that it takes so much time to answer my questions but I don't care, it's worthless time and my taxes pay for it.
- 4) When I took the case to court the judge was taking secret advice from you, which is a miscarriage of justice.
- 5) You say I am still a danger but what is the evidence?
- 6) CCTV footage is NOT EVIDENCE...I DID NOT CONSENT TO BEING FILMED.
- 7) Give me an authenticated copy of the letter banning me from the gallery.
- 8) Provide a copy of my council tax payments.
- 9) In 2003 I was assaulted by gallery staff and banned from the gallery. In 2004 I was assaulted again trying to enter the gallery yet the police took no action. You invited me to a meeting but refused to change your position and accused me of aggressive behaviour. In 2005 I wrote to you to appeal and you ignored me. I took the case to court but you LIED to the judge. In 2008 and 2010 I appealed but you refuse to listen to my case. Every time I come near the gallery I am attacked or insulted by your staff.

Kind regards

Andrew Anderson

Cost of photocopying

Cost of postage

Time taken identifying the relevant information within the document

Time taken blacking out exempt material

Time taken deciding whether any exemptions apply

Time taken by senior staff carrying out the public interest test

Time taken to find the information

Time taken photocopying documents

Time taken looking through catalogues to work out whether you hold the information

Time taken searching a database for the information

STATUTORY INSTRUMENTS

2004 No. 3244

**FREEDOM OF INFORMATION
DATA PROTECTION**

**The Freedom of Information and Data Protection (Appropriate
Limit and Fees) Regulations 2004**

<i>Made</i> - - - -	<i>7th December 2004</i>
<i>Laid before Parliament</i>	<i>9th December 2004</i>
<i>Coming into force</i> - -	<i>1st January 2005</i>

The Secretary of State, in exercise of the powers conferred upon him by sections 9(3) and (4), 12(3), (4) and (5), and 13(1) and (2) of the Freedom of Information Act 2000^(a), and by sections 9A(5) and 67(2) of the Data Protection Act 1998^(b), and having consulted the Information Commissioner in accordance with section 67(3) of the Data Protection Act 1998, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 and come into force on 1st January 2005.

Interpretation

2. In these Regulations—

“the 2000 Act” means the Freedom of Information Act 2000;

“the 1998 Act” means the Data Protection Act 1998; and

“the appropriate limit” is to be construed in accordance with the provision made in regulation 3.

The appropriate limit

3.—(1) This regulation has effect to prescribe the appropriate limit referred to in section 9A(3) and (4) of the 1998 Act and the appropriate limit referred to in section 12(1) and (2) of the 2000 Act.

(2) In the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, the appropriate limit is £600.

(3) In the case of any other public authority, the appropriate limit is £450.

^(a) 2000 c. 36.

^(b) 1998 c. 29. Section 9A of the Data Protection Act 1998 was inserted by section 69(2) of the Freedom of Information Act 2000.

Estimating the cost of complying with a request – general

4.—(1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request—

- (a) for unstructured personal data within the meaning of section 9A(1) of the 1998 Act^(a), and to which section 7(1) of that Act would, apart from the appropriate limit, to any extent apply, or
- (b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in—

- (a) determining whether it holds the information,
- (b) locating the information, or a document which may contain the information,
- (c) retrieving the information, or a document which may contain the information, and
- (d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.

Estimating the cost of complying with a request – aggregation of related requests

5.—(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority—

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which—

- (a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and
- (b) those requests are received by the public authority within any period of sixty consecutive working days.

(3) In this regulation, “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971^(b) in any part of the United Kingdom.

Maximum fee for complying with section 1(1) of the 2000 Act

6.—(1) Any fee to be charged under section 9 of the 2000 Act by a public authority to whom a request for information is made is not to exceed the maximum determined by the public authority in accordance with this regulation.

(2) Subject to paragraph (4), the maximum fee is a sum equivalent to the total costs the public authority reasonably expects to incur in relation to the request in—

(a) Section 9A(6) of the Data Protection Act 1998 provides that any estimate of the appropriate limit for the purposes of that section must be made in accordance with regulations made under section 12(5) of the Freedom of Information Act 2000.
(b) 1971 c.80.

- (a) informing the person making the request whether it holds the information, and
 - (b) communicating the information to the person making the request.
- (3) Costs which may be taken into account by a public authority for the purposes of this regulation include, but are not limited to, the costs of—
- (a) complying with any obligation under section 11(1) of the 2000 Act as to the means or form of communicating the information,
 - (b) reproducing any document containing the information, and
 - (c) postage and other forms of transmitting the information.
- (4) But a public authority may not take into account for the purposes of this regulation any costs which are attributable to the time which persons undertaking activities mentioned in paragraph (2) on behalf of the authority are expected to spend on those activities.

Maximum fee for communication of information under section 13 of the 2000 Act

7.—(1) Any fee to be charged under section 13 of the 2000 Act by a public authority to whom a request for information is made is not to exceed the maximum determined by a public authority in accordance with this regulation.

- (2) The maximum fee is a sum equivalent to the total of—
- (a) the costs which the public authority may take into account under regulation 4 in relation to that request, and
 - (b) the costs it reasonably expects to incur in relation to the request in—
 - (i) informing the person making the request whether it holds the information, and
 - (ii) communicating the information to the person making the request.
- (3) But a public authority is to disregard, for the purposes of paragraph(2)(a), any costs which it may take into account under regulation 4 solely by virtue of the provision made by regulation 5.
- (4) Costs which may be taken into account by a public authority for the purposes of paragraph (2)(b) include, but are not limited to, the costs of—
- (a) giving effect to any preference expressed by the person making the request as to the means or form of communicating the information,
 - (b) reproducing any document containing the information, and
 - (c) postage and other forms of transmitting the information.
- (5) For the purposes of this regulation, the provision for the estimation of costs made by regulation 4(4) is to be taken to apply to the costs mentioned in paragraph (2)(b) as it does to the costs mentioned in regulation 4(3).
- Signatory text

Date 7th December 2004

Baroness C Ashton
Parliamentary Under Secretary of State
Department for Constitutional Affairs

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations prescribe “the appropriate amount” for the purposes of section 9A of the Data Protection Act 1998 and section 12 of the Freedom of Information Act 2000. If a public authority estimates that the cost of complying with a request for the information to which either of those provisions applies would exceed the appropriate amount, then the obligations which would otherwise be imposed by section 7 of the 1998 Act and section 1 of the 2000 Act in respect of such requests for information do not apply.

Regulation 3 prescribes an appropriate limit of £600 in the case of the public bodies listed in Part I of Schedule 1 to the 2000 Act (including government departments). An appropriate limit of £450 is prescribed in relation to all other public authorities.

Regulation 4 makes provision as to the costs to be estimated, and as to the manner in which they are to be estimated, for the purpose of estimating whether the cost of complying with a request would exceed the appropriate limit. The costs which may be taken into account are limited to those which the public authority reasonably expects to incur in undertaking certain specified activities in response to the request. Regulation 5 makes supplementary provision as to the estimation of costs in cases to which the 2000 Act applies. It provides that in relation to multiple requests which are related in specified ways by reference to those making the requests, the information to which the requests relate, and the timing of the requests, the estimated costs of complying with any single request is to be taken to be the aggregate estimated costs of complying with them all.

Regulation 6 makes provision as to the maximum fee that a public authority may specify in a fees notice under section 9 of the 2000 Act as a charge for complying with its duty under section 1(1) of the Act. The maximum is to be calculated by reference to specified limited aspects of the costs of informing the requester whether it holds the information and, if so, of communicating it to the requester.

Section 13 of the 2000 Act makes new provision for public authorities to be able to charge for the communication of information whose communication is not required because of the effect of the appropriate limit and is not otherwise required by law. Regulation 7 makes provision as to the maximum fee that a public authority may charge for the communication of information in the exercise of that power. The maximum is to be calculated by reference to the total costs which may be taken into account in estimating whether the cost of complying with the request would exceed the appropriate limit (excluding any costs “aggregated” from other requests), together with the full costs of informing the requester whether the information is held, and, if so, of communicating it to the requester.

£3.00

© Crown copyright 2004

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.
E1663 12/2004 1416631 19585

ISBN 0-11-050906-4

