

# GUIDANCE NOTE

## **Dealing with vexatious requests (Article 21)**

The Freedom of Information (Jersey) Law, 2011



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# INTRODUCTION

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1. The Freedom of Information (Jersey) Law, 2011 (“the **Law**”) gives the public a right of access to information held by Scheduled Public Authorities (“**SPAs**”).
2. An overview of the main provisions of the Law can be found in The Guide to Freedom of Information.
3. This is part of a series of guidance, which goes into more detail than the Guide, to help SPAs to fully understand their obligations and promote good practice.
4. This guidance will help SPAs understand when a request can be refused as vexatious under section Article 21(1) of the Law.



# OVERVIEW

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- Under Article 21(1) of the Law, SPAs do not have to comply with vexatious requests. There is no public interest test.
- Article 21(1) may be used in a variety of circumstances where a request, or its impact on a public authority, cannot be justified. Whilst SPAs should think carefully before refusing a request as vexatious they should not regard Article 21(1) as something which is only to be applied in the most extreme of circumstances.
- Article 21(1) can only be applied to the request itself and not the individual who submitted it.
- Sometimes a request may be so patently unreasonable or objectionable that it will obviously be vexatious.
- In cases where the issue is not clear-cut, the key question to ask is whether the request may include a desire to cause administrative difficulty or inconvenience.
- This will usually be a matter of objectively judging the evidence of the impact on the authority and weighing this against any evidence about the purpose and value of the request.
- The public authority may also take into account the context and history of the request, where this is relevant.
- Although not appropriate in every case, it may be worth considering whether a more conciliatory approach could help before refusing a request as vexatious.
- A public authority must still issue a refusal notice unless it has already given the same individual a refusal notice for a previous vexatious request, and it would be unreasonable to issue another one.
- If the cost of compliance is the only or main issue, we recommend that the authority should consider first whether Article 16(1) applies (there is no obligation to comply where the cost of finding and retrieving the information exceeds the appropriate limit).



# WHAT THE LAW SAYS

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5. Article 21(1) states:

**A scheduled public authority need not comply with a request for information if it considers the request to be vexatious.**

6. The Law was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable.
7. Whilst most people exercise this right responsibly, a few may misuse or abuse the Law by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.
8. The Information Commissioner recognises that dealing with unreasonable requests can place a strain on resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.
9. Article 21 is designed to protect SPAs by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress but only in circumstances where the applicant has:
  - a) No real interest in the information; and
  - b) The information is being sought for an illegitimate reason, which may include a desire to cause administrative difficulty or inconvenience.
10. Article 21 therefore provides an emphasis on protecting SPA resources from unreasonable requests where the purpose of the request is illegitimate. We would encourage SPAs to consider its use in any case where they believe the request is disproportionate or unjustified.



# APPLICATION OF ARTICLE 21

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11. It is important to remember that Article 21(1) can only be applied to the request itself, and not the individual who submits it. A SPA cannot, therefore, refuse a request on the grounds that the requester himself is vexatious. Similarly, a SPA cannot simply refuse a new request solely on the basis that it has classified previous requests from the same individual as vexatious.
12. Article 21(2) is concerned with the nature of the request rather than the consequences of releasing the requested information. If a SPA is concerned about any possible prejudice which might arise from disclosure, then it will need to consider whether any of the relevant exemptions listed in Part 5 of the Law apply.
13. SPAs need to take care to distinguish between requests under the Law and requests for the individual's own personal data. If an applicant has asked for information relating to themselves, the authority should deal with the request as a subject access request under the Data Protection (Jersey) Law, 2018 ("the **Data Protection Law**").



# THE MEANING OF VEXATIOUS

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14. The ordinary dictionary definition of the word vexatious is only of limited use in deciding whether a request is vexatious because the question also depends upon the circumstances surrounding the request.
15. In further exploring the role played by circumstances, emphasis can be placed on whether the request has adequate or proper justification. This can be seen within Article 21(2) above where it states that a request may be vexatious if *'the applicant has no real interest in the information sought.'* The article also prompts consideration of whether the information is being *'sought for an illegitimate reason, which may include a desire to cause administrative difficulty or inconvenience.'*
16. After taking these factors into account 'vexatious' could be defined as the manifestly unjustified, inappropriate or improper use of a formal procedure.
17. This being the case, we would suggest that the key question the SPA must ask itself is whether the purpose of the request is to cause a **disproportionate** or **unjustified** level of disruption, irritation or distress.



# IDENTIFYING POTENTIALLY VEXATIOUS REQUESTS

18. It may be helpful to use the indicators below as a point of reference as it is suggested that these are some of the typical key features of a vexatious request.
19. Please bear in mind that this is not a list of qualifying criteria nor is it an exhaustive list. These indicators should not be regarded as either definitive or limiting. SPAs remain free to refuse a request as vexatious based on their own assessment of all the relevant circumstances.
20. However, they should not simply try to fit the circumstances of a particular case to the examples in this guidance. The fact that a number of the indicators apply in a particular case will not necessarily mean that the SPA may refuse the request as vexatious.

## *Indicators (not listed in any order of importance)*

<b>Abusive or aggressive language</b>	The tone or language of the applicant's correspondence goes beyond the level of criticism that a SPA or its employees should reasonably expect to receive.
<b>Burden on the SPA</b>	The effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that the SPA cannot reasonably be expected to comply. There must be some evidence that the request has been made with a desire to cause this administrative difficulty or inconvenience.
<b>Personal grudges</b>	For whatever reason, the applicant is targeting their correspondence towards a particular employee or office holder against whom they have some personal enmity.
<b>Unreasonable persistence</b>	The applicant is attempting to reopen an issue which has already been comprehensively addressed by the SPA, or otherwise subjected to some form of independent scrutiny.
<b>Unfounded accusations</b>	The request makes completely unsubstantiated accusations against the SPA or specific employees.
<b>Intransigence</b>	The applicant takes an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to engage with the SPA.
<b>Frequent or overlapping requests</b>	The applicant submits frequent correspondence about the same issue or sends in new requests before the SPA has had an opportunity to address their earlier enquiries.
<b>Deliberate intention to cause annoyance</b>	The applicant has explicitly stated that it is their intention to cause disruption to the SPA, or is a member of a campaign group whose stated aim is to disrupt the SPA.



<b>Scattergun approach</b>	The request appears to be part of a completely random approach, lacks any clear focus, or seems to have been solely designed for the purpose of 'fishing' for information without any idea of what might be revealed.
<b>Disproportionate effort</b>	The matter being pursued by the applicant is relatively trivial and the SPA would have to expend a disproportionate amount of resources in order to meet their request.
<b>No obvious intent to obtain information</b>	The applicant is abusing their rights of access to information by using the legislation as a means to vent their anger at a particular decision, or to harass and annoy the SPA, for example, by requesting information which the SPA knows them to possess already.
<b>Futile requests</b>	The issue at hand individually affects the applicant and has already been conclusively resolved by the SPA or subjected to some form of independent investigation.
<b>Frivolous requests</b>	The subject matter is inane or extremely trivial and the request appears to lack any serious purpose. The request is made for the sole purpose of amusement.

21. The following extract from the UK case of Information Commissioner v. Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013) is considered good advice in determining whether a request is vexatious:

*"There is...no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of Freedom of Information legislation".*

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

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

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

## Dealing with requests that are patently vexatious

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

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

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

28. We would not expect a SPA to make allowances for the respective purpose or value of the request under these kinds of circumstances.



29. Therefore, a SPA that is dealing with a request which it believes to be patently vexatious should not be afraid to quickly reach a decision that the request is vexatious under Article 21(1).

30. However, we accept that in many cases, the SPA is likely to find the question of whether Article 21(1) applies to be less clear-cut.

## Dealing with less clear cut cases

31. If the SPA is unsure whether it has sufficient grounds to refuse the request, then the key question it should consider is whether the request has been made in order to cause a disproportionate or unjustified level of disruption, irritation or distress.

32. This will usually mean weighing the evidence about the impact on the SPA and balancing this against the purpose, value and circumstances of the request. Where relevant the SPA will also need to take into account wider factors such as the background and history of the request.

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

34. However, the Information Commissioner recommends that before going on to assess whether the request is vexatious, SPAs should first consider whether there are any viable alternatives to dealing with the request under Article 21. Some of the potential options are outlined in the 'Alternative approaches' section later in this guidance.



# DETERMINING WHETHER THE REQUEST IS LIKELY TO CAUSE A DISPROPORTIONATE OR UNJUSTIFIED LEVEL OF DISRUPTION, IRRITATION OR DISTRESS

35. SPAs must keep in mind that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance.
36. However, if a request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress then this will be a strong indicator that it is vexatious and that the information has been sought for an illegitimate reason.
37. A useful first step for a SPA to take when assessing whether a request, or the impact of dealing with it, is justified and proportionate, is to consider any evidence about the serious purpose or value of that request and the circumstances surrounding the making of the request.

## **Assessing purpose and value**

38. The Law is generally considered to be applicant blind, and SPAs cannot insist on knowing why an applicant wants information before dealing with a request.
39. However, this doesn't mean that a SPA cannot take into account the wider context in which the request is made and any evidence the applicant is willing to volunteer about the purpose behind their request.



40. The SPA should therefore consider any comments the applicant might have made about the purpose behind their request, and any wider value or public interest in making the requested information publicly available.
41. Most applicants will have some serious purpose behind their request, and it will be rare that a SPA will be able to produce evidence that their only motivation is to cause disruption or annoyance. It is considered good advice that:
- “SPAs should be wary of jumping to conclusions about there being a lack of any value or serious purpose behind a request simply because it is not immediately self-evident.”*
42. However, if the request does not obviously serve to further the applicant’s stated aims or if the information requested will be of little wider benefit to the public, then this will restrict its value, even where there is clearly a serious purpose behind it.
43. Some practical examples of scenarios where the value of a request might be limited are where the applicant;
- a) Submits a request for information that has no obvious relevance to their stated aims.
  - b) Argues points rather than asking for new information.
  - c) Raises repeat issues which have already been fully considered by the SPA.
  - d) Refuses an offer to refer the matter for independent investigation, or ignores the findings of an independent investigation.
  - e) Continues to challenge the SPA for alleged wrongdoing without any cogent basis for doing so.
  - f) Is pursuing a relatively trivial or highly personalised matter of little if any benefit to the wider public.
44. Once again, this is not intended to be an exhaustive list and SPAs can take into account any factors they consider to be relevant.

## Considering the purpose of the request.

45. Serious purpose will often be the strongest argument in favour of the applicant when a SPA is deliberating whether to refuse a request under Article 21(1).
46. The key question to consider is whether the purpose of the request is, for example, a desire to cause administrative difficulty or inconvenience to the SPA. This should be judged as objectively as possible but bearing mind all the circumstances surrounding the request.
47. When considering the purpose of the request it may be helpful to do so with the assistance of the table below:

<b>Non-vexatious</b>		<b>Potentially vexatious</b>
<b>Serious purpose.</b>		<b>Detrimental impact on the SPA</b>
<b>Applicant’s aims and legitimate motivation.</b>		<b>Evidence that the applicant is abusing the right of access to information.</b>

48. The weight placed on each of these factors will be dependent on both the context and individual circumstances of the case.



## Taking into account context and history

49. The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the SPA will need to consider the wider circumstances surrounding the request before making a decision as to whether Article 21(1) applies.

50. In practice this means taking into account indicators such as:

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

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

51. A request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. An example of this would be where an individual is placing a significant strain on the resources of a SPA by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, may contribute to the suggestion that the purpose of the request is illegitimate.

52. The applicant's past pattern of behaviour may also be a relevant consideration. For instance, if the SPA's experience of dealing with his previous requests suggests that he/she won't be satisfied with any response and will submit numerous follow up enquiries no matter what information is supplied, then this evidence could strengthen any argument that the purpose of the request is illegitimate.

53. However, the context and history may equally weaken the argument that a request is vexatious. For example, it might indicate that the applicant had a reasonable justification for their making their request.

54. Some examples of this might be where:

- a) The SPA's response to a previous request was unclear and the applicant has had to submit a follow up request to obtain clarification.
- b) Responses to previous requests contained contradictory or inconsistent information which itself raised further questions, and the applicant is now following up these lines of enquiry.
- c) The applicant is pursuing a legitimate grievance against the SPA and reasonably needs the requested information to do so.
- d) Serious failings at the SPA have been widely publicised by the media, giving the applicant genuine grounds for concern about the organisation's actions.

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

56. If the problems which the SPA now faces in dealing with the request have, to some degree, resulted from deficiencies in its handling of previous enquiries by the same applicant, then this will weaken the argument that the request, or its impact upon the SPA, is illegitimate.



# REQUESTS WHICH MAY INCLUDE A DESIRE TO CAUSE ADMINISTRATIVE DIFFICULTY OR INCONVENIENCE OR TO BE UNDULY BURDENSOME ON THE SPA

57. We would strongly recommend any SPA whose main concern is the cost of finding and extracting the information to consider the request under Article 16(1) Cost Limit, where possible, absent any indication that the intention of the applicant in making a request for information includes a desire to cause administrative difficulty or inconvenience or be unduly burdensome on the SPA.
58. Where a SPA's principal reason (and especially where it is the sole reason) for wishing to reject a request concerns the projected cost of compliance, then it should apply Article 16(1) rather than Article 21(1). In order to engage the exemption at Article 21(1), the SPA would need to show that the information is being sought for an illegitimate reason, namely to cause administrative difficulty or inconvenience for the SPA. That is to say that the SPA would need to have some evidence of this and any reliance on the Article 21(1) exemption is very likely to raise the 'temperature' in any dispute under the Law.
59. It is also important to bear in mind that any bar for refusing a request under Article 21(1) is likely to be much higher, and less straightforward, than for an Article 16(1) refusal. It is therefore in a SPA's own interests to apply Article 16 rather than Article 21, in any case where a request would exceed the cost limit.
60. Under Article 16(1) a SPA can refuse a request if it would cost more than a set limit of £500.00 (12.5 hours @ £40.00 per hour) to find and extract the requested information.
61. The SPA may also combine the total cost for all requests received from one person (or several people acting in concert) during a period of 60 days so long as they are requests for similar information. Please see the 'Guide to Freedom of Information' and also guidance on 'Requests where the cost of compliance with a request exceeds the appropriate limit' for more details.



# ROUND ROBINS

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62. The fact that a requester has submitted identical or very similar requests to a number of other SPAs is not, in itself, enough to make the request vexatious, and it is important to bear in mind that these 'round robin' requests may sometimes have a serious purpose and value.
63. For example, a request directed to several SPAs in the same sector could have significant value if it has the potential to reveal important comparative statistical information about that sector once the information is combined.
64. Nevertheless, as with any other request, if the SPA believes that the round robin has been made for an illegitimate purpose for example to cause a disproportionate or unjustified level disruption, irritation, or distress (administrative difficulty or inconvenience) then it may take this into account in any determination as to whether that request is vexatious.
65. A SPA can include, by way of background information only, evidence from other SPAs that received the round robin when considering the overall context and history of the request.
66. However, any administrative difficulty or inconvenience must only be on the SPA which received the request. Therefore, when determining the impact of a round robin, the SPA may only take into account any disruption, etc, it would suffer itself. It cannot cite the impact on the public sector as a whole as evidence that the request is vexatious.



# RANDOM REQUESTS AND ‘FISHING’ EXPEDITIONS

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67. SPAs sometimes express concern about the apparent tendency of some applicants, most notably journalists, to use their FOI rights where they have no idea what information, if any, will be caught by the request. These requests can appear to take a random approach.
68. These requests are often called ‘fishing expeditions’ because the applicants cast their net widely in the hope that this will catch information that is noteworthy or otherwise useful to them. It is a categorisation that SPAs should consider very carefully as regular use could easily result in the refusal of legitimate requests.
69. Whilst fishing for information is not, in itself, enough to make a request vexatious, some requests may:
- Impose a burden by obliging the SPA to sift through a substantial volume of information to isolate and extract the relevant details;
  - Encompass information which is only of limited value because of the wide scope of the request;
  - Create a burden by requiring the SPA to spend a considerable amount of time considering any exemptions and redactions;
  - Be part of a pattern of persistent fishing expeditions by the same applicant.
70. If the request has any of these characteristics then the SPA may take this into consideration when weighing the impact of that request against its purpose as detailed in the section entitled ‘Requests which may include a desire to cause administrative difficulty or inconvenience or to be unduly burdensome on the SPA’.
71. However, SPAs must take care to differentiate between broad requests which rely upon pot luck to reveal something of interest and those where the requester is following a genuine line of enquiry.
72. It is also very important to remember that applicants do not have a detailed knowledge of how a SPA’s records are stored. It therefore follows that some applicants will submit broad requests because they do not know where or how the specific information they want is recorded.
73. Whilst these requests may appear unfocused, they cannot be categorised as ‘fishing expeditions’ if the applicant is genuinely trying to obtain information about a particular issue. In this situation the applicant may well be open to some assistance to help them to reframe or refocus their request.
74. SPAs should also look out for those requests where the lack of focus is the result of ambiguous or unclear wording. Where there is an issue over clarity, the SPA should consider what advice and assistance it can provide to help the applicant clarify the focus of their request. However, if the applicant persistently ignores reasonable advice and assistance provided by the SPA, then it may be more likely that a request with these characteristics could be refused as vexatious.

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# VEXATIOUS REQUESTS FOR PUBLISHED INFORMATION

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75. If a SPA considers a request for information to apply to something which has already been published to the public at large then it can apply Article 21(1) provided it meets the criteria for doing so within the article.
76. Nonetheless, in such circumstances we would generally expect these requests to be refused under Article 23, on the grounds that the information is accessible to the applicant by other means.

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# CAMPAIGNS

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77. Bearing in mind the general principle that all requests are “applicant blind”, if a SPA has reason to believe that several different applicants are acting in concert as part of a campaign to disrupt the SPA by virtue of the sheer weight of requests being submitted, then it may take these circumstances into account when determining whether any of those requests are vexatious.
78. The SPA will need to have sufficient evidence to substantiate any claim of a link between the requests before it can go on to consider whether Article 21(1) applies on these grounds. Some examples of the types of evidence a SPA might cite in support of its case are:
- a) The requests are identical or substantially similar.
  - b) They have received email correspondence in which other applicants have been copied in or mentioned.
  - c) There is an unusual pattern of requests, for example a large number have been submitted within a relatively short space of time.
  - d) A group’s website makes an explicit reference to a campaign against the SPA.
79. SPAs must be careful to differentiate between cases where the applicants are abusing their information rights to engage in a campaign of disruption, and those instances where the applicants are using the Law as a channel to obtain information that will assist their campaign on an underlying issue.
80. If the available evidence suggests that the requests are genuinely directed at gathering information about an underlying issue, then the SPA will only be able to apply Article 21(1) where it can show that the aggregated impact of dealing with the requests would cause disproportionate ‘administrative difficulty or inconvenience’.
81. This will involve weighing the evidence about the impact caused by the requests submitted as part of the campaign against the serious purpose and value of the campaign and the extent to which the requests further that purpose. Guidance on how to carry out this exercise can be found in the section of this guidance entitled ‘Considering whether the purpose and value justifies the impact on the public authority.’
82. If the SPA concludes that the requests are vexatious then it should proceed to issue refusal notices in the normal manner.
83. It is also important to bear in mind that sometimes a large number of individuals will independently ask for information on the same subject because an issue is of media or local interest. SPAs should therefore ensure that they have ruled this explanation out before arriving at the conclusion that the applicants are acting in concert or as part of a campaign.



# RECOMMENDED ACTIONS

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## BEFORE MAKING A FINAL

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## DECISION

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84. We would advise any SPA that is considering the application of Article 21(1) to take a step back and review the situation before making a final decision to refuse a request on the grounds that it is vexatious. This is because refusing a request as vexatious is particularly likely to elicit a complaint from the applicant and may serve to exacerbate any pre-existing issues/difficulties between the respective parties.
85. Primarily, this will mean ensuring that the relevant people have been consulted about the matter before making a final decision.
86. There is little point in making a decision without understanding its implications for other departments within the SPA, or without the backing of a decision maker at an appropriate level. At the very least, we recommend that when the request handler has been very involved in previous correspondence with the applicant they ask someone else, preferably at a more senior level, to take a look and give their objective view.
87. As part of this process, the SPA may also wish to explore whether there might be a viable alternative to refusing the request outright. Some potential options are discussed in the next section.
88. Finally, where a request is refused and the applicant does decide to complain, then the SPA should recognise the importance of the internal review stage, as this will be its last remaining opportunity to thoroughly re-evaluate, and, if appropriate, reverse the decision without the involvement of the Information Commissioner.



# ALTERNATIVE APPROACHES

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89. An applicant may be confused or aggrieved if a SPA suddenly switches from complying with their requests to refusing them as vexatious without any prior warning. This, in turn, increases the likelihood that they will complain about the manner in which their request has been handled.
90. For this reason it is good practice to consider whether a more conciliatory approach would practically address the problem before choosing to refuse the request, as this may help to prevent any unnecessary disputes from arising. A conciliatory approach should focus on trying to get the applicant to understand the need to moderate their approach and understand the consequences of their request(s). An approach which clearly looks like a threat is unlikely to succeed.
91. However, we accept that SPAs will need to use their judgement when deciding whether to engage with a particular applicant in this way. Some applicants will be prepared to enter into some form of dialogue with the SPA. However, others may be aggrieved to learn that the SPA is even considering refusing their request under Article 21(1) or the implication that they are. Indeed, approaching these applicants and asking them to moderate their requests could provoke the very reaction that the SPA was trying to avoid.
92. Therefore, before deciding whether to take a conciliatory approach, a SPA may find it instructive to look back at its past dealings with the applicant to try and gauge how they might respond.
93. If past history suggests that the applicant is likely to escalate the matter whether or not the SPA takes a conciliatory approach, then it is difficult to see what, if anything would be gained by engaging with that applicant further.
94. Similarly, if the SPA believes it has already reached the stage where it has gone as far as it can to accommodate the applicant, and those efforts have been to no avail, then there would seem to be little value in attempting any further conciliation.

## **Allow the applicant an opportunity to change their behaviour**

95. The SPA could try writing to the applicant to outline its concerns about the way his previous requests have been framed, and to set out what he should do differently to ensure that further requests are dealt with.
96. For example, if a SPA is unhappy about the tone of previous requests then it might advise the applicant that it is still prepared to accept further requests, but only on condition that he/she moderates their language in future.
97. When outlining its concerns, the SPA should, whenever possible, focus on the impact of the requests, rather than the behaviour of the applicant himself. Labelling an applicant with terms such as 'obsessive', 'unreasonable' or 'aggressive' may only serve to worsen relations between the respective parties and cause further disputes.
98. This can also serve as a 'final warning' with the SPA having effectively given the applicant notice that any future requests framed in a similar vein may be refused as vexatious.



## **Refer the applicant to the Information Commissioner's 'For the public' webpages.**

99. Our webpages for the public include some advice for applicants on how to word their requests to get the best result. They are aimed at the general public and provide guidance on how to use their rights responsibly and effectively. A SPA which is concerned that an individual's requests may become vexatious could try referring them to these webpages, and advising that future requests are less likely to be refused if framed in accordance with these guidelines.

## **Provide advice and assistance for requests which are unclear**

100. A SPA is not under any obligation to provide advice and assistance in response to a request which is vexatious. However, if part of the problem is that the applicant's correspondence is hard to follow and the SPA is therefore unsure what (if any) information has been requested, then it might want to consider whether the problem could more appropriately be resolved by providing the applicant with guidance on how to reframe his request.
101. This approach may be particularly helpful for lengthy correspondence that contains a confusing mixture of questions, complaints and other content, or is otherwise incoherent or illegible.



# REFUSING A REQUEST

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102. SPAs do not have to comply with vexatious requests. There is also no requirement to carry out a public interest test or to confirm or deny whether the requested information is held.
103. In most circumstances the SPA must still issue a refusal notice within 20 working days. This should state that they are relying on Article 21(1) and include details of their internal review procedures and the right to appeal to the Information Commissioner.
104. There is no obligation to explain why the request is vexatious. Nonetheless, authorities should aim to be as helpful as possible. The Information Commissioner considers it good practice to include the reasoning for the decision in the refusal notice.
105. However, we also appreciate that it may not be appropriate to provide a full explanation in every case. An example might be where the evidence of the applicant's past behaviour suggests that a detailed response would only serve to encourage follow up requests.
106. Therefore, the question of what level of detail, if any, to include in a refusal notice will depend on the specific circumstances surrounding the request.
107. Paragraph 18(b) of the Article 44 Code of Practice states:
- 'A SPA relying on a claim that Article 21 or 22 applies must issue a refusal notice unless it has already done so in response to an earlier vexatious or repeated request from the same individual, and it would be unreasonable to issue another one.'*
108. The Information Commissioner will usually only accept that it would be unreasonable to issue a further refusal notice if the SPA has already warned the complainant that further requests on the same or similar topics will not receive any response.
109. Refusing a request as vexatious is particularly likely to lead to an internal review or an appeal to the Information Commissioner. Whether or not the SPA issues a refusal notice or explains why it considers the request to be vexatious, it should keep written records clearly setting out the procedure it followed and its reasons for judging the request as vexatious. This should make it easier to evidence the reasoning behind the decision should the applicant decide to take the matter further.
110. For more information on refusals, please visit our [Guide to Freedom of Information](#).



# WHAT THE INFORMATION COMMISSIONER WILL EXPECT FROM AN AUTHORITY?

## Gathering evidence

111. When a SPA is dealing with a series of requests and a developing pattern of behaviour, it will often arrive at a tipping point when it decides that, whilst it was appropriate to deal with an applicant's previous requests, the continuation of that behaviour and the circumstances surrounding the latest request, has made the latest request vexatious.
112. A SPA which sees this tipping point approaching would be advised to maintain a full and contemporaneous 'chronology' to record any relevant correspondence and behaviour, as we would expect it to be able to produce documentary evidence in support of its decision, should the applicant complain to us.
113. The 'chronology' should be proportionate to the nature of the request. The focus should be on key milestones in the chronology, and cross referencing existing information rather than gathering or developing new information.

## The cut off point for evidence that a request is vexatious

114. The SPA may take into account any evidence it has about the events and correspondence which preceded or led up to the request being made if it thinks that it is reasonable to do so.
115. A SPA has a set time limit (normally 20 working days) in which it must respond to a request. As long as the SPA keeps to this time limit then it may also take into account anything that happens within the period in which it is dealing with the request (for example if the applicant sends in further requests).
116. However, a SPA cannot take into account anything that happens after this cut off point. This means that if a SPA breaches the Law and takes longer than 20 working days to deal with a request, or if it makes a late claim of Article 21 after a complaint has been made to the Information Commissioner, then it will need to be very careful to disregard anything that only happened after the time limit for responding had expired.



## Making a case to the Information Commissioner

117. When building a case to support any decision to refuse a request on the grounds that it is vexatious, a SPA must bear in mind that we will be primarily looking for evidence that the -applicant has, for example, no real interest in the information sought and /or that the information is being sought for an illegitimate reason (such as to include a desire to cause administrative difficulty or inconvenience).
118. The SPA should therefore be able to evidence the reasonableness of its decision making process and explain in the circumstances, the SPA believes the request to be vexatious.
119. Where the authority believes that any relevant chronology or history of previous dealings with the applicant strengthens their argument that the latest request is vexatious, then we would also expect them to provide any relevant documentary evidence or background information to support this claim.

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# MORE INFORMATION

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120. This guidance has been developed with assistance of the Office of the Information Commissioner in the United Kingdom. The guidance will be reviewed and considered from time to time in line with new decisions of the Jersey Information Commissioner and the Royal Court.

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

122. If you need any more information about this or any other aspect of freedom of information, please contact us:

**Jersey Office of the Information Commissioner**  
**2nd Floor**  
**5 Castle Street**  
**St Helier**  
**Jersey JE2 3BT**

**Telephone number:** +44 (0) 1534 716530

**Email:** [enquiries@jerseyoic.org](mailto:enquiries@jerseyoic.org)

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# ANNEX OF EXAMPLES OF UK INFORMATION TRIBUNAL DECISIONS

We set out below a number of references to cases and decisions linked to operation of the Freedom of Information Act 2000 (the **U.K. Act**) as a means of providing additional context to some areas subject of this guidance and given the lack of case law in Jersey. It should be noted, however, that judgments from the Courts of England and Wales are not binding in Jersey (albeit that they may be viewed by the Royal Court as being persuasive) and that there are differences between the Law and the UK Act and so the judgments which have flowed following an interpretation of the UK Act may not be directly applicable in this jurisdiction.

## Pattern of behaviour



### Example 1

*In the case of [Coggins vs ICO](#) (EA/2007/0130, 13 May 2008), the Information Tribunal found that the applicant's correspondence with the public authority which started in March 2005 and continued until the public authority cited section 14 in May 2007 was*

*"...long, detailed and overlapping in the sense that he wrote on the same matters to a number of different officers, repeating requests before a response to the preceding one was received....the Tribunal was of the view that dealing with this correspondence would have been a significant distraction from its core functions..."*  
(paragraph 28).

*The complainant's contact with the public authority ran to 20 FOIA requests, 73 letters and 17 postcards.*



## Reopening issues that have been resolved



### Example 2

*In the UK case of Ahilathirunayagam Vs ICO & London Metropolitan University (EA/2006/0070, 20 June 2007), the applicant had been in correspondence with the London Metropolitan University since 1992 as a result of him not being awarded a law degree. The complainant exhausted the University's appeal procedure, complained to the UK Information Commissioner (Data Protection Registrar as he was then), instructed two firms of solicitors to correspond with the University, and unsuccessfully issued County Court proceedings. He also complained to his MP and to the Lord Chancellor's Department.*

*In February 2005, the complainant made an FOI request for information on the same issue. The University cited section 14 of the UK Act.*

*The Information Tribunal found the request to be vexatious by taking into account the following matters:*

*"...(ii) The fact that several of the questions purported to seek information which the Appellant clearly already possessed and the detailed content of which had previously been debated with the University*

*(iii) The tendentious language adopted in several of the questions demonstrating that the Appellant's purpose was to argue and even harangue the University and certain of its employees and not really to obtain information that he did not already possess*

*(iv) The background history between the Appellant and the University...and the fact that the request, viewed as a whole, appeared to us to be intended simply to reopen issues which had been disputed several times before..." (paragraph 32).*

## Unjustified persistence



### Example 3

*In the UK case of Welsh v. ICO (EA/2007/0088, 16 April 2008), the applicant attended his GP with a swollen lip. A month later, he saw a different doctor who diagnosed skin cancer. Mr Welsh believed the first doctor should have recognised the skin cancer and subsequently made a number of complaints although these were not upheld by the practice's own internal investigation, the GMC, the Primary Care Trust or the Healthcare Commission.*

*Nonetheless, the complainant addressed a 4 page letter to the GP's practice, headed 'FOIA 2000 & DPA 1998 & European Court of Human Rights' which contained one FOI request to know whether the first doctor had received training on face cancer recognition. The GP cited section 14.*

*The Tribunal said:*

*"...Mr Welsh simply ignores the results of 3 separate clinical investigations into his allegation. He advances no medical evidence of his own to challenge their findings....that unwillingness to accept or engage with contrary evidence is an indicator of someone obsessed with his particular viewpoint, to the exclusion of any other...it is the persistence of Mr Welsh's complaints, in the teeth of the findings of independent and external investigations, that makes this request, against that background and context, vexatious..." (paragraphs 24 and 25).*



#### Example 4

In the UK case of *Hossack v. ICO and the Department of Work and Pensions* (EA/2007/0024, 18 December 2007), the DWP had inadvertently revealed to the applicant's wife that he was in receipt of benefits in breach of the Data Protection Act. The DWP initially suggested they were unable to identify the employee who committed the breach although they later were able to identify the individual.

The DWP went on to accept responsibility for the breach, apologised and paid compensation but the applicant twice complained to the Parliamentary Commissioner for Administration whose recommendations the DWP accepted and acted upon. However, applicant continued to believe that the DWP's initial misleading reply justified his campaign to prove a cover-up at the DWP. He accused the DWP staff of fraud and corruption and he publicised his allegations by setting up his own website and towing a trailer with posters detailing his allegations around the town.

The Information Tribunal said

"...whatever cause or justification Mr Hossack may have had for his campaign initially, cannot begin to justify pursuing it to the lengths he has now gone to. To continue the campaign beyond the Ombudsman's second report...is completely unjustified and disproportionate" (paragraph 26) and "...seen in context, we have no hesitation in declaring Mr Hossack's request, vexatious" (paragraph 27).



#### Example 5

In *Betts v. ICO* (EA/2007/0109, 19 May 2008) the applicant's car was damaged in 2004 by what he argued was an inadequately maintained council road. He stated that the council were responsible and as such should refund the £99.87 charge for the car repair. The council stated that they had taken all reasonable care to ensure the road was not dangerous to traffic.

By a number of letters and emails, the applicant sought inspection records, policies and assessments and the council provided this information under the UK Act but when in January 2007 the applicant made a further request for information on health and safety policies and procedures, the council claimed an exemption under section 14.

The majority Information Tribunal found section 14 was engaged and commented: "...the Appellant's refusal to let the matter drop and the dogged persistence with which he pursued his requests, despite disclosure by the council and explanations as to its practices, indicated that the latter part of the request was part of an obsession. The Tribunal accepted that in early 2005 the Appellant could not be criticised for seeking the information that he did. Two years on, however, and the public interest in openness had been outweighed by the drain on resources and diversion from necessary public functions that were a result of his repeated requests..." (paragraph 38).



## Volume of requests harassing to member of staff



### Example 6

In *Dadswell v. ICO*, (EA/2012/0033 29 May 2012), the applicant had written an 11 page letter to a local authority which comprised of 122 separate questions, 93 of which were directed at a specific member of staff. The Information Tribunal struck out the applicant's appeal, commenting that:

*"...A single request comprising 122 separate questions – 93 of which were aimed at one named member of staff and 29 of which were directed at another named member of staff – inevitably creates a significant burden in terms of expense and distraction and raises issues in relation to be vexatious..."* (paragraph 18).

*"...anyone being required to answer a series of 93 questions of an interrogatory nature is likely to feel harassed by the sheer volume of what is requested...The Appellant may not like being characterised as vexatious but that has been the effect of the way in which he has sought information from the Metropolitan District Council..."* (paragraphs 20 and 21).

## Campaign taken too far



### Example 7

In the case of *Poulton and Ann Wheelwright v. ICO*, (EA/2011/0302, EA/2012/0059, & EA/2012/0060, 8 August 2012) the applicant had made three requests for information relating to a dispute with the council over planning issues and the properties he owned. The council estimated that it would cost in excess of £1300 to search the records for this information.

This dispute in question spanned 20 years, during which time the applicant had made allegations of 'serious irregularities' in the planning department and pursued the matter through independent bodies such as the courts, the Local Government Ombudsman, the police, and the Valuation Tribunal's Service. The Information Tribunal unanimously rejected the complainant's appeals, commenting that:

*'...Viewed in the round it is clear that these applications for information are part of a relentless challenge to the council which has gone on for many years, at great expense and disruption to the council, some distress to its staff, with negligible tangible results and little prospect of ever attaining them. It is simply pointless and a waste. It is manifestly unreasonable for a citizen to use information legislation in this way.'* (paragraph 18).



## Justified persistence



### Example 8

In *Thackeray v. ICO*, (EA/2011/0082 18 May 2012), the applicant had made a number of requests to the City of London Corporation (COLC) concerning its dealings with scientology organisations. These mainly centred around COLC's decision to award mandatory rate relief to the Church of Scientology Religious Education College.

Often these requests would follow on closely from each other or be refined versions of previous requests. COLC refused two of the later requests, citing in one refusal notice that this was on the grounds, amongst other things, that the request was obsessive, harassing the authority. However, the Information Tribunal unanimously upheld the complainant's appeal and observed that:

"...The dogged pursuit of an investigation should not lightly be characterised as an obsessive campaign of harassment. It is inevitable that, in some circumstances, information disclosed in response to one request will generate a further request, designed to pursue a particular aspect of the matter in which the requester is interested...We would not like to see section 14 being used to prevent a requester, who has submitted a general request, then narrowing the focus of a second request in order to pursue a particular line of enquiry suggested by the disclosure made under the first request" (paragraph 26).



### Example 9

In the case of *Marsh v. ICO* (EA/2012/0064, 1 October 2012) the applicant had asked Southwark council for information about the outcome of a review into the methodology for an increase in court costs. This request followed on from previous enquiries about manner in which court costs were calculated. The council had refused the request as vexatious on the grounds that it was part of a long series of related, overlapping correspondence which was both obsessive and having the effect of harassing the council.

The Information Tribunal considered the history of the applicant's contact with the council from his first request about the calculation of court costs in 2006, through to 2008 when the council broke off further discussions and on to 2011 and the refusal of his most recent request. They also took account of an Audit Commission investigation, instigated by the applicant, which had found that there was scope for the council to improve its arrangements for managing court costs and liability orders.

In allowing the appeal the Information Tribunal commented that:

"We think it appropriate, and indeed necessary, for us to take into account this evidence because it reinforces our own view...that the Central Enquiry was not vexatious. We have demonstrated...how Mr Marsh pursued a legitimate concern on an issue of some significance, at first with a degree of co-operation from the council and, when that was removed, by dogged, forensic investigation of the information the council provided to him or to the public. It was a campaign that led the council's own Overview and Security Committee to investigate in 2008 and some of its members to express concern about the way in which cost claims appeared to have been assessed.

There is also some suggestion that, having provided the public with a budgeted £0.5 million increase in costs recovery, which it was then unwilling or unable to justify when challenged by Mr Marsh, it simply refused to engage with him on the subject and issued a refusal notice...The issue under consideration was also a relatively complex one...This provides further justification for different strands of enquiry having been pursued in parallel and investigated in some depth." (paragraph 30).



## Vexatious when viewed in context



### Example 10

*In Betts v. ICO, (EA/2007/0109 19 May 2008), the request concerned health and safety policies and risk assessments. There was nothing vexatious in the content of the request itself. However, there had been a dispute between the council and the requester which had resulted in on-going requests under the UK Act and persistent correspondence over two years. These continued despite the council's disclosures and explanations.*

*Although the latest request was not vexatious in isolation, the Information Tribunal considered that it was vexatious when viewed in context. It was a continuation of a pattern of behaviour and part of an on-going campaign to pressure the council. The request on its own may have been simple, but experience showed it was very likely to lead to further correspondence, requests and complaints. Given the wider context and history, the request was harassing, likely to impose a significant burden, and obsessive.*