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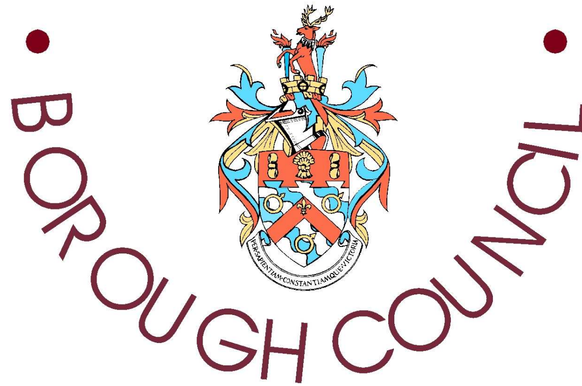

“Unreasonably Persistent” Complainants and “Unreasonable Complainant Behaviour” Policy

(Version 0.7 – June 2007)

“Unreasonably Persistent” Complainants and “Unreasonable Complainant Behaviour” Policy

1. Introduction

1.1 The Council recognises that they will receive a number of complaints. We are also accountable for the proper use of public money and must ensure that that money is spent wisely and achieves value for the wider public.

1.2 This Council is committed to dealing with all complaints and service requests fairly and impartially and to providing everyone with a high quality service. As part of this service we do not normally limit the contact citizens have with our offices.

1.3 However there are a small number of complainants who, because of the frequency and nature of their contact with the Council, unreasonably impact on our resources such that we are hindered in the delivery of services to others. We refer to such complainants as ‘unreasonably persistent complainants’ and, exceptionally, we may take action to limit their contact with our offices.

2. Definition

For the purpose of this policy the following definitions will be used:

“Unreasonable and unreasonably persistent complainants are those complainants who, because of the frequency or nature of their contacts with an authority, hinder the authority’s consideration of their, or other people’s, complaints and request for service”.

“The repeated and/or obsessive pursuit of unreasonable complaints and campaigns and/or unrealistic outcomes, and/or reasonable complaints and campaigns pursued in an unreasonable manner”.

3. Purpose

3.1 Having a policy on unreasonably persistent complainants and unreasonable complainant behaviour and corresponding guidance for staff on procedure should help authorities deal with complainants in ways which are demonstrably consistent and fair. It also helps staff to understand clearly what is expected of them, what options for action are available, and who can authorise these actions. In the absence of such guidance staff are likely to have greater problems with unreasonable and unreasonably persistent complainants. In addition, it provides a yardstick against which performance can be assessed for monitoring purposes.

4. Options for Action

4.1 Where complaints have been identified as unreasonably persistent in accordance with the criteria set out in the attached document (see Schedule A), the Head of Executive Office following discussions with relevant

Director/Heads of Service will take a report to the Corporate Management Team to seek agreement to treat the complainant as a unreasonably persistent complainant and for an appropriate course of action to be taken. The attached Schedule B details the options available for dealing with unreasonably persistent complaints.

4.2 Prior to taking action and determining whether the Policy should be applied the Council should be satisfied that:-

- the original complaint is being or has been investigated properly;
- any decision reached on it is the right one;
- communications with the complainant have been adequate; and
- the complainant is not now providing any significant new information that might affect the authority's view on the complaint.

4.3 Should the Corporate Management Team have any concerns whether the Policy should be applied, they may wish to consider the option of referring the matter for the views of Council's Scrutiny Committee. It is recognised that terminating or restricting communications with citizens is not a step to be taken without very careful consideration. **No use of this Policy shall commence without the authorisation of the Corporate Management Team.**

4.4 The Head of Executive Office will notify complainants, in writing, of the reasons why their complaint has been treated as unreasonably persistent and the action that will be taken. Notification should include:-

- Comprehensive details and description of the decision that has been taken;
- What it means for his or her contacts with the authority;
- How long any restrictions will last;
- What the complainant can do to have the decision reviewed;
- Provision of access to a copy of this Policy.

4.5 Heads of Service will need to inform and seek advice from the Head of Executive Office regarding potential unreasonably persistent complaints, which have not progressed onto stage two of the complaints process and as such fall outside the control (and therefore knowledge of) of the Executive Office.

4.6 Once a complainant has been determined to be unreasonably persistent, their status will be kept under review and monitored by the Head of Executive Office with reports being taken to the Corporate Management Team as

required. If a complainant subsequently demonstrates a more reasonable approach then their status will be reviewed.

5. Links to other Duties, Policies and Procedures

5.1. It is recognised that there are legislative proposals on Community Call for Action (CCfA) which will provide opportunities for citizens to make representation and to draw matters to the Council's attention. The White Paper "Strong and Prosperous Communities" states that "Councils have an important role to ensure that frivolous or vexatious complaints are not taken forward" (Chapter 2 para 2.30 – CCfA) and goes on to state that CCfA should not be "a charter for mischief making" and that legislative safeguards be proposed to ensure that Scrutiny is not forced to waste time dealing with vexatious complaints.

At this stage it is the intention that anything that comes to Council through Community Call for Action will be considered separately outside this Policy, but may reference decisions taken under this Policy.

5.2. The Council has a separate policy on Violence & Abuse at Work. It is recognised that there are certain aspects relevant to this Policy which should be referenced where there is a risk of threatened or used physical violence towards employees, particularly in reference to **Schedule A - Section 8** of this Policy.

5.3 Complaints and Freedom of Information/Environmental Information Regulations/ Data Protection – Statutory rights to information do limit the authority's ability to apply the above principles. All members of the public do have a right to information as determined and described in the relevant legislation. The Council must respond to such requests unless exemptions apply or the request can be demonstrably identified as Repeated and Vexatious as described in the legislation. It is only when a response has been given to a particular information request that the principles of this Policy may be then applied. The Council must respond to all requests for information within the terms described in the relevant legislation but this Policy may be applied if the subsequent response meets the above definition. The Information Commissioner's "Freedom of Information Act Awareness Guidance Note 22 – Vexatious and Repeated Requests" may be referred to in Appendix 1.

5.3 It is recognised that the role of Elected Members and other elected officials (MP's, MEP's) place a duty on them to pursue matters on behalf of their constituents and others. Nothing in this Policy is intended to constrain the role of such elected persons in relations to such duties and responsibilities.

Schedule A - Criteria for Determining Unreasonably Persistent Complainants
<u>(No use of this Policy shall commence without the authorisation of the Council's Corporate Management Team).</u>

Complainants (and/or anyone acting on their behalf) may be deemed to be unreasonably persistent where previous or current contact with them shows that they meet two or more of the following criteria:

Where complainants:

1. Persist in pursuing a complaint where the Council's complaints process has been fully and properly implemented and exhausted.

2. Refusing to accept the decision – repeatedly arguing the point and complaining about the decision.

3. Persistently change the substance of a complaint or continually raise new issues or seek to prolong contact by continually raising further concerns or questions whilst the complaint is being addressed. (Care must be taken, however, not to disregard new issues which are significantly different from the original complaint as they need to be addressed as separate complaints.)

4. Are repeatedly unwilling to accept documented evidence given as being factual or deny receipt of an adequate response in spite of correspondence specifically answering their questions or do not accept that facts can sometimes be difficult to verify when a long period of time has elapsed.

5. Repeatedly do not clearly identify the precise issues which they wish to be investigated, despite reasonable efforts of the Council to help them specify their concerns, and/or where the concerns identified are not within the remit of the Council to investigate.

6. Regularly focus on a trivial matter to an extent which is out of proportion to its significance and continue to focus on this point. It is recognised that determining what a 'trivial matter' is can be subjective and careful judgement will need to be used in applying this criteria.

7. Introducing trivial or irrelevant new information which the complainant expects to be taken into account and commented on, or raising large numbers of detailed but unimportant questions and insisting they are all fully answered.

8. Have threatened or used physical violence towards employees at any time. This will, in itself, cause personal contact with the complainant and/or their representative to be discontinued and the complaint will, thereafter, only be continued through written communication. The Council has determined that any complainant who threatens or uses actual physical violence towards employees will be regarded as a vexatious complainant. The complainant will be informed of this in writing together with notification of how future contact with the Council is to be made.

9. Have, in the course of addressing a registered complaint, had an excessive number of contacts with the Council – placing unreasonable demands on employees. A contact may be in person, by telephone, letter, email or fax. Judgement will be used to determine excessive contact taking into account the specific circumstances of each individual case.

10. Have harassed or been verbally abusive on more than one occasion towards employees dealing with the complaint. Employees recognise that complainants may sometimes act out of character in times of stress, anxiety or distress and will make reasonable allowances for this.

11. Are known to have recorded meetings or face-to-face/telephone conversations without the prior knowledge and consent of other parties involved.

12. Make unreasonable demands on the Council and its employees and fail to accept that these may be unreasonable, for example, insist on responses to complaints or enquiries being provided more urgently than is reasonable or within the Council's complaints procedure or normal recognised practice.

13. Insisting on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or with good practice.

14. Making what appear to be groundless complaints about the staff dealing with the complaints, and seeking to have them replaced.

15. Adopting a 'scattergun' approach: pursuing a complaint or complaints with the authority and, at the same time, with a Member of Parliament/a councillor/the authority's independent auditor/the Standards Board/local police/solicitors/the Ombudsman.

16. Making unnecessarily excessive demands on the time and resources of staff whilst a complaint is being looked into, by for example excessive telephoning or sending emails to numerous council staff, writing lengthy complex letters every few days and expecting immediate responses.

17. Combinations of some or all of these.

Schedule B - Options for Dealing with Unreasonbly Persistent Complainants
(No use of this Policy shall commence without the authorisation of the Council's Corporate Management Team).

The options below can be used singularly or in combination depending on the circumstances of the case and whether the complaint process is ongoing or completed.

1. A letter to the complainant setting out responsibilities for the parties involved if the Council is to continue processing the complaint. If terms are contravened, consideration will then be given to implementing other action as indicated below.

2. Decline contact with the complainant, either in person, by telephone, by fax, by letter, by e-mail or any combination of these, provided that one form of contact is maintained. This may also mean that only one named officer will be nominated to maintain contact (and a named deputy in their absence). The complainant will be notified of this person.

3. Notify the complainant, in writing, that the Council has responded fully to the points raised and has tried to resolve the complaint but there is nothing more to add and continuing contact on the matter will serve no useful purpose. The complainant will also be notified that the correspondence is at an end, advising the complainant that they are being treated as an unreasonably persistent complainant and as such the Council does not intend to engage in further correspondence dealing with the complaint.

4. Inform the complainant that in extreme circumstances the Council will seek legal advice on unreasonably persistent complaints.

5. Temporarily suspend all contact with the complainant, in connection with the issues relating to the complaint being considered unreasonably persistent, while seeking advice or guidance from its solicitor or other relevant agencies, such as the Local Government Ombudsman, Information Commissioner or External Auditor.

6. Once the appropriate internal procedures have been exhausted and the Council's reasonable approach has been established in accordance with this Policy, there should be little problem should the complainant choose to escalate the matter for external determination (either the Ombudsman or the Information Commissioner). Indeed the escalation may, in some instances, be the most effective means of resolving and/or preventing protracted debate.

7. Referring to unreasonable and unreasonably persistent complainants the Local Government Ombudsmen states *(extracted from the Local Government*

Ombudsman's "Guidance Note on unreasonably persistent complainant and unreasonable complainant behaviour" - January 2007)

"In some cases, relations between authorities and unreasonable and unreasonably persistent complainants break down badly while complaints are under investigation and there is little prospect of achieving a satisfactory outcome. In such circumstances there is often little purpose in following through all stages of the council's complaints procedure and where this occurs the Ombudsmen may be prepared to consider complaints before complaints procedures have been exhausted. This is the case even in respect of statutory complaints procedures.

A complainant who has been designated an unreasonably persistent complainant may make a complaint to the Ombudsman about the way in which he or she has been treated. The Ombudsman is unlikely to be critical of the council's action if it can show that its policy has been operated properly and fairly".

Appendix 1

Freedom of Information Act Awareness Guidance No 22:

Vexatious and Repeated Requests

The Information Commissioner's Office (ICO) has produced this guidance as part of a series of good practice guidance designed to aid understanding and application of the Freedom of Information Act 2000. The aim is to introduce some of the key concepts in the Act and to suggest the approaches that may be taken in response to information requests.

The guidance will be developed over time in the light of practical experience.

Awareness Guidance No 22 takes the form of Frequently Asked Questions on a range of issues surrounding Vexatious and Repeated requests under the Act. An Annex also gives some advice about the equivalent provision in the Environmental Information Regulations.

INTRODUCTION

1. What is the purpose of the provisions relating to vexatious and repeated requests for information?

The Freedom of Information Act (FOIA) and the parallel Environmental Information Regulations (EIR) gives new rights of access to official information, known as the right to know. The Act makes clear that, subject to certain safeguards, there is a public interest in allowing access to such information and, in particular, in the release of information as to the reasons for decisions made by public authorities.

However, while placing a general duty on public authorities to give access to official information the Act also provides an exception to that duty for requests which are vexatious or repetitious. (In the case of the Environmental Information Regulations, the equivalent provision is for requests which are manifestly unreasonable.) These provisions are necessary to prevent abuse of the right to know.

2. What is the Information Commissioner's general approach?

The Commissioner is confident that most members of the public are exercising their new rights sensibly and responsibly. However, he recognises that there is a risk that some individuals and some organisations may seek to abuse these new rights with requests which are manifestly unreasonable and which would impose substantial burdens on the financial and human resources of public authorities. Such cases may well arise in connection with a grievance or complaint which an individual is pursuing against the authority.

The Commissioner considers that the exemption in the Act for vexatious and repeated requests is important, especially as no fee will be charged for most requests. His approach will be influenced by the desirability of keeping compliance costs to a minimum and to avoiding damage to the credibility or reputation of the Freedom of Information framework.

At the same time, the Commissioner emphasises that authorities should not conclude that a request is vexatious or repeated unless there are sound grounds for such a decision. An authority may well need to defend its decision.

While giving maximum support to individuals genuinely seeking to exercise the right to know**,** the Commissioner's general approach will be sympathetic towards authorities where a request, which may be the latest in a series of requests, would impose a significant burden and:

- clearly does not have any serious purpose or value;
- is designed to cause disruption or annoyance;
- has the effect of harassing the public authority; or
- can otherwise fairly be characterised as obsessive or manifestly unreasonable.

Although the Act states that a request can only be refused by a public authority where it is vexatious or repeated (section14), public authorities will be aware that the Commissioner has slightly different grounds (section 50(2)) for refusing to deal with a complaint. In addition to removing the duty to consider complaints which are vexatious, the Commissioner is under no duty to consider complaints which are "frivolous". A complaint about a request that has been refused because it was vexatious will need good evidence in support. Otherwise the complaint itself may well be considered as vexatious and/or frivolous. The Commissioner would also be likely to reject any complaint as frivolous where the public authority had clearly shown that the Commissioner, the Tribunal or the courts had ruled in the authority's favour in other similar cases.

PART A: VEXATIOUS REQUESTS

1. What does the Act say?

Section 14(1) states that the general right of access to information "does not oblige a public authority to comply with a request for information if the request is vexatious." An important point to note here is that it is the request rather than the requester which must be vexatious.

Section 50(2)(c) states that the Information Commissioner is not obliged to deal with complaints if the application appears to him to be frivolous or vexatious. His approach will be consistent with what is set out in this paper.

2. What is a vexatious request?

There is no definition of vexatious in the Act. Dictionary definitions refer to "causing annoyance or worry".

In the different context of litigation, the term has been considered by the courts in cases where public authorities and others have sought to have particular individuals declared "vexatious litigants." The case of the Attorney General v Barker (2000), for instance, suggests that it may be reasonable to treat as vexatious a request which is designed to subject a public authority to inconvenience, harassment or expense.

But – although a request cannot be treated as vexatious simply because it causes inconvenience or expense - the Commissioner considers that a wider approach is necessary in the context of FOI requests made, without charge and with the minimum of formality, to public authorities. Effect will need to be considered as well as intention. Even though it may not have been the explicit intention of the applicant to cause inconvenience or expense, if a reasonable person would conclude that the main effect of the request would be disproportionate inconvenience or expense, then it will be appropriate to treat the request as being vexatious.

3. How is it possible to identify a single request as vexatious?

There are a number of ways in which it may be possible to identify individual requests as being vexatious. The following list is not designed to be exhaustive, but rather to illustrate a general approach:

- **The applicant makes clear his or her intention:** If an applicant explicitly states that it is his or her intention to cause a public authority the maximum inconvenience through a request, it will almost certainly make that request vexatious.
- **The authority has independent knowledge of the intention of the applicant:** Similarly, if an applicant (or an organisation to which the applicant belongs, such as a campaign group) has previously indicated an intention to cause a public authority the maximum inconvenience through making requests, it will usually be possible to regard that request as being vexatious.
- **The request clearly does not have any serious purpose or value.** Although the Act does not require the person making a request to disclose any reason or motivation, there may be cases which are so lacking in serious purpose or value that they can only be fairly treated as "vexatious". Such cases are especially likely to arise where there has been a series of requests. Before reaching such a conclusion, however, a public authority should be careful to consider any explanation which the applicant gives as to the value in disclosing the information which may be made in the course of an appeal against refusal (see below).
- **The effect of redaction would be to render information worthless:** If much of the information requested falls within an exemption and requires extensive redaction and the remaining information would be meaningless or no real use to the applicant, the

application may be reasonably considered to be vexatious. This will depend on what has been requested and whether the applicant is (or becomes) aware of the likely result. Again, in such cases it will be important to give proper consideration to any explanation which the applicant gives as to the value in disclosing the information, for example in the course of an appeal against the refusal.

- **The request is for information which is clearly exempt:** Requests may be received for information which the applicant clearly understands to be exempt even after the application of the public interest test. It may be reasonable to consider these requests as vexatious.
- **The request can fairly be characterised as obsessive or manifestly unreasonable.** It will usually be easier to recognise such cases than define them. They will be exceptional – public authorities must not be judgemental without good cause. An apparently tedious request, which in fact relates to a genuine concern, must not be dismissed. But a public authority is not obliged to comply with a request which a reasonable person would describe as obsessive or manifestly unreasonable. It will obviously be easier to identify such requests when there has been frequent prior contact with requester or the request otherwise forms part of a pattern, for instance when the same individual submits successive requests for information. Although such requests may not be repeated in the sense that they are requests for the same information (see Section C below), taken together they may form evidence of a pattern of obsessive requests so that an authority may reasonably regard the most recent as vexatious.

4. To what extent can a public authority take into account any knowledge it has of the applicant?

As stated, section 14 applies to requests received by a public authority, not to the person who has submitted the request. So a request cannot be judged vexatious purely on the basis that the person who submitted that request had previously submitted one or more vexatious, though unrelated, requests. The same applies where that requester has been judged vexatious by that public authority in areas unconnected to FOI, such as with regard to complaints to the organisation or any other previous conduct.

A public authority may have taken the decision not to correspond with a person in respect of their complaints to the organisation, but they cannot simply adopt this stance with regard to that person's requests for information. A useful test which a public authority could apply in determining whether to comply with a request for information in such circumstances is to judge whether the information would be supplied if it were requested by another person, unknown to the authority. If this would be the case, the information must be provided as the public authority cannot discriminate between different requesters.

While caution is needed before taking into account general information which a public authority may have about a particular applicant, as made clear in the answer to Question 3 (above) it will be reasonable to take into account any information volunteered by the applicant in connection with a particular request.

Although it may be wrong to judge a request to be vexatious simply because the same applicant has previously submitted such a request or because the authority has judged other behaviour of the applicant to be vexatious, equally it may be reasonable for the authority to conclude that a particular request represents a continuation of behaviour which it has judged to be vexatious in another context and therefore to refuse the request as being vexatious.

5. Can a public authority take account of the language used?

An FOI request which contains abusive or offensive language or is written in a threatening tone will not automatically be vexatious. Although unpleasant, it would not necessarily forfeit the applicant's rights under FOI if the request is nevertheless clearly requesting information. The use of threatening, offensive or abusive language or behaviour may however be strongly indicative of a vexatious request.

In drawing inferences from the way in which a request is framed or pursued, public authorities should, of course, be aware of their general obligations as service providers, together with any specific obligations under the Disability Discrimination Act.

6. Can a public authority take account of the length of requests?

There may be cases where a public authority receives lengthy written correspondence containing a mixture of information requests and other content, such as complaints about non-FOI related issues. Even if a public authority has decided the correspondence is vexatious in respect of the other issues, this categorisation cannot be automatically applied to the request for information. In other words, all information requests must be interpreted in line with the provisions of the FOI Act. In some cases, however, such a communication may be so rambling or impenetrable as to make vexatious any request which it may contain.

7. Are requests submitted under obvious pseudonyms automatically vexatious?

The Act requires applicants to make requests for information in writing and to state his or her name and an address for correspondence. Technically, therefore a request submitted using a pseudonym is not a proper request and could be refused on that ground. However, the Act does not allow public authorities to enquire into the circumstances of the applicant or to ask for information in order to verify identities. Unless the public authority knows that the applicant has used a pseudonym, it will be difficult to refuse a request on that ground.

A better starting point is the assumption built into the Act that public authorities must generally discount the identity and circumstances of the applicant and must regard any release of information as if it were a release to the world at large. This approach recognises that although applicants cannot gain any advantage by using a pseudonym, they may have reasons for not wishing to draw attention to themselves by using the names under which they are normally known.

Although a public authority may not designate a request as vexatious simply because the applicant uses an obvious pseudonym, it may be prompted by the use of the pseudonym to consider whether the request is vexatious. It should not, however, base any decisions as to disclosure upon the name supplied by the applicant, (unless the applicant is making a subject access request - a request for information about him/herself under section 7 of the Data Protection Act 1998).

PART B: REPEATED REQUESTS

1. What does the Act say?

Section 14(2) states that: "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 between compliance with the previous request and the making of the current request."

2. What is a "reasonable interval"?

The term "a reasonable interval" is not defined in the Act and in the first instance this is for the public authority to determine, depending on the type of information sought and any advice provided to the applicant by the public authority in response to their previous request. Much will also depend on the nature of the public authority's business. For example, if it regularly updates records, it might be reasonable for an applicant to make requests for information more often. If the applicant disputes the public authority's definition of a "reasonable interval" in respect of their application, they may complain to the Information Commissioner.

3. Can a request be classified as repeated simply on the basis of the content of the request?

No. Importantly, the request must be put into context. Many requests for information may appear to fit the criteria in section 14(2) due to identical/substantially similar content, but are not in fact repeated requests. This is because in certain cases information that the public authority would disclose if complying with the application might not be the same as the information previously released.

Often, the information that will be released in complying with a request will be of greater significance than the description of the information found in the request. The following are examples of this:

- **The information held in relation to a request has changed since the request was last made:** Public authorities should be aware that information about a situation that is likely to change often might reasonably be sought more frequently than information about a situation that is static.

  For example, two requests received from the same applicant, a month apart, requesting a public authority's most recent monthly performance statistics would not be considered to be a repeated request. This is because the information held by the public authority in relation to the request has changed since the previous request. The fact that the content of the two requests are identical is of no consequence. Even if there were no new monthly statistics, the request would still merit a response (by informing the applicant of this fact under the duty to deny), unless in the response to the first request the applicant was informed of when these figures are due to change.

- **An FOI request simply asks if any of the information held by a public authority has changed since it was previously requested:** These requests are designed to elicit different information and it is reasonable for public authorities to expect to receive them. If the information has changed, the request must be complied with. If it has not, this should still be classified as a new request for information as it is asking a specific question that has not previously been submitted to the public authority, even though the information to which it refers has previously been requested. This obligation would also apply if the content of the application is the same as the first request but the applicant genuinely thinks that the information held has changed since then. This might be repetitious in nature, but it would still constitute a valid request.

  Any number of such requests should be complied with, unless of course the public authority informs the applicant when the information is due to change and the applicant then sends another request before that time. In this case, the subsequent request would be judged as repeated.

4. Can requests be both repeated and vexatious?

Yes. In the answer to question 3 in Section B, we looked at ways of identifying single vexatious requests. This may often be a difficult judgement to make. Such a judgement may become easier however, if there is a succession of requests, whether or not strictly "identical or substantially similar," the effect of which is to harass the public authority. This is consistent with the case of the Attorney General v Barker (2000) referred to earlier, which suggests that it may be reasonable to treat as vexatious a request which is designed to subject a public authority to inconvenience, **harassment** and expense.

5. Are there certain kinds of repeated requests to which a public authority should consider responding as a matter of best practice?

Even though a request may be repeated, there will be cases where a positive response should be considered. The following are examples:

- In the request, the applicant states that he or she lost the information but still requires it;
- The applicant states that he or she disposed of the information but has subsequently discovered that it was still required;
- The applicant reasonably requires another copy of the information previously sent to them, for instance because they have been obliged to supply the original to another body;
- Cases where some of the information requested is new, but the rest has previously been supplied to the applicant. In such "hybrid" cases, it might be easier to comply with the request but only supply the information which has changed and classify the remainder of the request as repeated.

6. Can an authority refuse identical requests submitted by different applicants on the ground that they are repetitious?

No. Section 14 makes clear that the provision relating to repeated requests only applies to requests submitted by the same applicant.

If a public authority has reason to believe that the requests have been submitted as part of a campaign designed primarily to cause it inconvenience, it may be able to refuse them because they are vexatious.

If, however, it believes that the requests have been submitted by the same applicant, it may refuse them either because they are vexatious or repeated. If identical but non-vexatious requests are received a sensible solution may be to publish the information in question, for instance, by way of a disclosure log under a publication scheme.

PART C: PRACTICAL CONSIDERATIONS

1. Who should make the decision as to whether a request is vexatious?

In most cases the process of identifying a genuinely vexatious request will be straightforward as long as the public authority understands what is meant by a vexatious application. However, even where a staff member dealing with an FOI application is confident that it meets the vexatious criteria, it may be considered sensible to refer the decision for approval to a more senior level within the authority, given that such a judgement could be controversial.

2. What approach should be adopted where it is uncertain that a request is vexatious?

In certain cases it may be difficult to determine whether a request is vexatious or simply difficult to answer. Here, it might be easiest for a public authority to deal with the request as best it can by adopting one of the following alternatives

- Contact the applicant and ask him or her to clarify the request. (See also Awareness Guidance 23 which explains the duty to provide Advice and Assistance under the Act.)
- Comply with the request and reduce the chances of a more time consuming grievance developing between the applicant and the public authority. Essentially this is a matter of judgement for the authority.
- Refuse a request but spell out the reasons and perhaps indicate the information which might lead to a different conclusion on appeal.

3. How can a public authority make it easier to deal with complaints about refusal?

Some public authorities may receive large volumes of vexatious or repeated requests as a result of the nature of their business. It may be helpful for them to identify the likely issues which may arise in their circumstances and draw up publicly available criteria for categorising these requests. This will help show that vexatious applications will be dealt with fairly, against an objective method of assessment.

4. What should a public authority do when refusing a request?

After receiving a request that is subsequently deemed to be vexatious or repeated, the public authority should notify the applicant accordingly and inform them why this is the case. It need not, however, provide a notice of refusal in the case of repeated requests if a similar notice has been given previously. It is wise for a public authority to retain records of the case in order to assist should the applicant appeal against the decision or in order to identify identical requests in the future.

Records should consist of details of the request and the applicant, information as to why the application was judged to be vexatious or repeated, and the way in which the public authority came to its decision. There may also be an operational need to keep this information as a public authority might want to know how many requests for information have been deemed as vexatious.

5. What are the key elements of an internal complaints procedure?

Reliance on section 14 is likely to be relatively controversial and may easily lead to further complaint. This is in itself a strong reason why public authorities should adopt an internal complaints procedure in respect of FOI complaints. It will give a public authority a chance to reconsider a case and

provide assurance to the applicant that they have been fairly treated under the provisions of the Act. Except in exceptional cases, such a complaints procedure will have to be exhausted by the applicant before he or she is able to refer a case to the Information Commissioner.

The applicant should be advised about the complaints procedure when informing him or her of the outcome of a request. The Access Code of Practice under Section 45 of the Act recommends that complaints handling is conducted by someone not involved in the initial decision.

The existence of a robust internal complaints procedure may allow front line decision makers to make more confident decisions about refusals of requests which appear at first sight to be for information of little value but entailing significant costs for the authority in its retrieval or redaction.

ANNEX: THE ENVIRONMENTAL INFORMATION REGULATIONS 2004

Environmental Information held by public authorities falls within a separate Access to Information regime, entitled the Environmental Information Regulations (EIR) 2004.

1. Where is the provision for dealing with vexatious and repeated requests in the EIR?

Vexatious and repeated requests are also exempt from the duty to disclose, but fall within the scope of regulation 12(4)(b). This states that “a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.”

This means that if a request for environmental information would be judged to be vexatious or repeated under the terms of Section 14 of the Freedom of Information Act, it would be equivalent to manifestly unreasonable under the EIR and therefore exempt from the duty to disclose.

2. Are there cases where the “manifestly unreasonable” provision in the EIR is not equivalent to the “vexatious” provision in the Act?

Yes. As there is no cost limit for compliance under the EIR, a request may be judged to be manifestly unreasonable due to the cost and work needed to comply with the request. As part of the duty to provide advice and assistance, the public authority should ask the applicant to reformulate their request in order to reduce the cost involved to a reasonable level. If the applicant refuses, the request can then be judged to be manifestly unreasonable by virtue of it being voluminous. It will be for the public authority to make the case that complying with the request would be unreasonable.