

Policy on Vexatious and Unreasonable Information Requests

Tunbridge Wells Borough Council is committed to transparency in the interest of the public's "right to know." The Freedom of Information Act (FOIA) and Environmental Information Regulations (EIR) give everyone the right to request any recorded information held by the Council subject to defined statutory limits. Further information on these legislations is available at Freedom of Information Act 2000:

(<https://www.legislation.gov.uk/ukpga/2000/36/contents>) and The Environmental Information Regulations 2004 (<https://www.legislation.gov.uk/uksi/2004/3391/contents/made>.)

On occasions, the Council will receive requests that may be defined as **repeated, vexatious, or manifestly unreasonable**. The relevant legislation allows for requests to be classed under these headings to prevent abuse of the public's right to know. The Information Commissioner (ICO) has recognised that there may be a risk that some individuals and perhaps some organisations may seek to abuse the right of access with requests. This policy reflects the guidance issued by the Information Commissioner's Office (ICO) available here: <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/what-does-vexatious-mean/>.

In all requests that are considered to be potentially vexatious, repeated or manifestly unreasonable, the Council will undertake an assessment to determine if it is acceptable to define the request under one of those headings. Whilst we aim to respond to all information requests, section 14 FOIA relieves the Council from the obligation to comply with vexatious requests, and Regulation 12(4)(b) EIR allows us to refuse manifestly unreasonable ones. The Council will undertake the assessment of requests that are considered to be vexatious on a case by case basis. The assessment will follow ICO/Information Tribunal decisions and current ICO guidance.

Determining Vexatious Requests

The Council will undertake the assessment of requests that are considered to be vexatious on a case by case basis. The assessment will follow ICO/Information Tribunal decisions and current ICO guidance.

As the term vexatious implies a manifestly unjustified, inappropriate or improper use of a formal procedure under both the FOIA and EIR, the Council's judgement as to whether a request is vexatious will take into account all the circumstances in which a request is made. The Council must ask itself whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Accordingly, the context and history of all the Council's communications with the requestor as well as consideration of the following will assist the Council in its determination:

Any value or serious purpose of the request

In determining whether a request is vexatious, the starting point for the Council is deciding whether, objectively, there are reasonable grounds for thinking the information sought would be of value to the requestor, the public or any section of the public. If this test is not met, the request may be considered vexatious or unreasonable. Examples of requests without serious purposes include:

- Unreasonable persistence: for example repeat requests for information previously provided in substance. A long history of requests is more likely to indicate vexatiousness
- Sending catch-all requests for information (e.g. "please provide me with all document you hold about Council Tax.") Instead, requestors should ask the Council for some advice and assistance in framing their requests.
- Requests which include no obvious intent to obtain specific information (e.g. "Please provide us with the previous 3 years of receipts for where Council Tax funding is being spent.")

Other Factors

The Council will also consider burden, motive and harassment when determining if a request is vexatious. Factors we consider include (but are not limited to):

Burden

The burden the request places on the Council and its staff, for instance:

- Any request requiring disproportionate work in relation to its value – for example disrupting the Council by the sheer weight or requests or volume of information requested, whether you are acting alone or in concert with others
- Sending wall-to-wall requests for information when you aren't sure what specific documents to ask for (e.g. "We would like to inspect the Council's bank account statements of all transactions for the last 4 years including the counterparties' account details.") Instead, requestors should ask the Council for some advice and assistance in framing their requests
- Whether a request is buried in lengthy correspondence on other matters
- Submitting frivolous or trivial requests, including (but not limited to) for information that is publicly available (e.g. "What is the Council's registered D.U.N.S. number?" or "Under what legislation is the Council legally constituted?") Remember that processing any information or data request involves some cost to the public purse
- Frequent and/or overlapping requests

Our consideration of a request's burden may include any burden a requestor's future requests may be expected to place on the Council.

Motive

The express or apparent motive of the requestor, such as:

- Using FOI/EIR to reopen grievances which have already been either fully addressed by the Council, resolved under Court proceedings, or which have otherwise been investigated with no evidence of wrongdoing being found. Vexatiousness may be found when an original and entirely reasonable request leads to a series of further requests on allied topics where subsequent requests become increasingly distant from the requestor's starting point.
- Personal grudges
- Using requests as a way of 'scoring points' against the Council
- Deliberately fishing for information by submitting random request in the hope it will catch something noteworthy instead of requesting information on a particular issue (see also sections on Value/serious purpose and **Burden**, above.)
- Making repeated requests unless circumstances, or the information itself, has changed to the extent there are justifiable grounds to ask for the information again
- Any lack of proportionality between the request (particularly if there are repeated prior requests) and the information's evident Value/serious purpose

Harassment

Any harassment or distress of and to the Council's staff, including (but not limited to):

- Obsessive and/or unreasonable conduct – for example bombarding the Council with multiple requests
- Making personal attacks against employees
- Threatening or otherwise abusive language
- Making unfounded allegations against staff
- Requests made with the deliberate intention to cause annoyance.

Please note that the above are indicators only and not a checklist. The Council's judgement is required, which must take into proper account the wider public interest. Further ICO guidance on burden, motive and harassment factors is available here: <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/how-do-we-consider-burden-motive-and-harassment/>

In all cases, it is the **request** that must be vexatious or manifestly unreasonable, **not the requestor**. This can sometimes be a difficult distinction to draw, and a useful test is to consider whether the information would be supplied if another person who was unknown to Council had requested it. However, the Council is able to take into account both its previous communications with, and any known intentions of, the requestor in its assessment. The Council cannot refuse a request on the grounds that the requestor is personally vexatious, nor can it refuse a new request solely on the basis that previous requests from the same individual were vexatious. If there is uncertainty as to whether a request is vexatious the Council will consider taking one of the following actions:

- Asking the requestor for clarification of the request.
- Complying with the potentially vexatious request to reduce the chances of a more time-consuming grievance developing between the applicant and the Council, whilst explaining that future requests may be assessed under this policy.
- Refusing a request, providing reasons for that refusal and making reasonable endeavours to explain to the requestor what they should do differently in future to ensure their requests are not assessed as vexatious.

Where the Council considers it suitable, it will assess and take alternative approaches to assist the requestor prior to determining the request to be vexatious.

If the request is determined by the Council to be vexatious, the requestor will be issued with a refusal notice within the 20 working day deadline. They will be provided with an explanation of the factors that have led to the decision. Repeated requests will receive one such notice. In most cases, any repeated requests received after this notice has been issued will be acknowledged but the Council will undertake no further correspondence relating to the matter, unless the applicant wishes to appeal against our decision. In some cases repeated requests may cease to be acknowledged and an refusal not provided in accordance with s17(6) FOIA. As the use of S14 and S17(6) is subject to a high legal threshold, requests deemed to be vexatious should be logged properly with reasons and an evidence trail in accordance with ICO best practice.

Appeals

All requestors have the right in the first instance to request a review of any decision to refuse their requests, and the internal review process will be engaged accordingly. If the refusal is upheld, the requestor may appeal to the ICO.

Review and Revision

This policy will be reviewed as deemed appropriate, but no less frequently than every 3 years

For more information on Tunbridge Wells Borough Council's Freedom of Information Service and frequently asked information requests, please follow this link:

<https://tunbridgewells.gov.uk/council/freedom-of-information-and-transparency/freedom-of-information>

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