FOI Exemptions: Cost, Burden and Vexatious Requests

Sections 12 and 14 of the Freedom of Information Act 2000 are not exemptions in the strict sense. They are grounds for refusing a request outright, either because finding the information would cost more than the appropriate limit, or because the request itself is vexatious or repeated. There is no public interest test, but there are procedural steps that you must follow, and they are where authorities most often go wrong.

AT A GLANCE

Section	Sections 12, 14 and 16 FOIA. Sections 12, 14 and 15 FOISA in Scotland. Regulation 12(4)(b) for environmental information
Type	Not exemptions. No public interest test
Section 12 limit	£600 for the authorities listed in Part I of Schedule 1 to the Act (central government and similar bodies). £450 for all other authorities
Rate	£25 per person per hour, which is 24 hours or 18 hours
Section 14	Vexatious requests, and repeated identical or substantially similar requests
Refusal notice	Must state that you rely on section 12 or 14 within the time limit, with details of your complaints procedure and the right to complain

1. How does the section 12 cost limit work?

Section 12(1) says you do not have to comply with a request if you estimate that doing so would exceed the appropriate limit. The limit is set by regulations. Under the 2004 Fees Regulations it is £600 for authorities listed in Part I of Schedule 1 to the Act, and £450 for every other authority. At £25 per person per hour that is 24 hours and 18 hours respectively.

Only four activities count towards the estimate.

1. Establishing whether you hold the information.
2. Finding the information, or a document that may contain it.
3. Retrieving the information, or a document that may contain it.
4. Extracting the information from a document that contains it.

Time spent reading, considering, consulting, redacting or applying exemptions does not count. This is why the limit is often misapplied. A request that takes a long time to answer is not necessarily over the limit.

Your estimate must be reasonable and supported by evidence. Record how you reached it, for example a sample search and how long it took.

2. Can you combine requests?

Section 12(4) allows regulations to treat the cost of several requests as the cost of all of them, in prescribed circumstances, where they come from one person or from people who appear to be acting in concert or as part of a campaign. Check the current regulations for the conditions before aggregating.

3. What must you do before refusing under section 12?

Section 16 imposes a duty to provide advice and assistance as far as is reasonable, and following the code of practice issued under section 45 is treated as compliance. For a section 12 refusal, that normally means telling the requester what information could be provided within the limit and how they could refine the request. A bare refusal with no help is a common reason for complaints.

Section 12(2) also matters. You can only refuse to confirm or deny that you hold the information if the cost of that step alone would exceed the limit.

4. What makes a request vexatious?

Section 14(1) says you do not have to comply with a vexatious request. The Act does not define the word. The leading authority is the Dransfield case, which treats it as a question of whether the request is an inappropriate or improper use of the right of access. Look at the whole picture, including the burden on the authority, the motive, the value of the request and whether it is harassing or distressing to staff.

Points to weigh:

- **The burden.** It must be disproportionate to the value of the request, not just large.
- **The history.** A pattern of unrelated requests, or an ongoing dispute, can be relevant, but the current request must be considered on its own facts.
- **The value.** A request with a genuine serious purpose is less likely to be vexatious, even if the requester is difficult.

Vexatious is a judgement about the request, not the person. Do not label a requester vexatious and then refuse everything they send.

5. What about repeated requests?

Section 14(2) applies where you have already complied with a request from the same person, and they make an identical or substantially similar one, unless a reasonable interval has passed. It does not apply if you refused the first request.

6. How do you refuse properly?

Section 17(5) requires you to state that you rely on section 12 or 14, within the 20 working day time limit. Section 17(7) requires details of your complaints procedure and the right to complain to the Commissioner. There is one exception under section 17(6): if you have already told the requester you rely on section 14 for an earlier request, it may be unreasonable to send another notice. Use that exception carefully, and record why.

WORKED EXAMPLE (ILLUSTRATIVE)

A district council receives a request asking for every email sent or received by any officer in the planning department over the last five years that mentions a named developer.

- **Estimate.** A sample search of three officers' mailboxes takes forty minutes. Extrapolating across the department, the council estimates well over 18 hours of searching and extraction, which is the limit for an authority outside Part I of Schedule 1. It records the sample and the calculation.
- **Section 16.** The council tells the requester that it could answer a narrower request, for example the correspondence on one named application in the last twelve months, and offers a call to discuss it.
- **Refusal notice.** The council states that it relies on section 12, gives the complaints procedure and explains the right to complain.

Nothing in the case record says the requester is vexatious, because the council has no reason to think so.

7. Estimating and refusing: spreadsheet or structured case workflow

Task	Spreadsheet and email	Structured case workflow
Recording the cost estimate	A figure in an email	Estimate and sample notes held against the case
Splitting a broad request	A new thread	A multi part request split into separately managed cases
Meeting the 20 working day deadline	Bank holidays counted by hand	Deadline tracking that accounts for bank holidays
Closing a refused request	Manual letter and file note	Streamlined closure for requests that are not disclosed

Frequently asked questions

Does the cost of redaction count towards the limit?

No. Only the four activities above count.

Can we refuse under section 12 and then answer a narrower request?

Yes, and that is what advice and assistance is for. A refined request is a new request.

Is a request vexatious because it is long or annoying?

Not on its own. The test is whether it is an inappropriate or improper use of the right, judged on the facts.

Do we have to carry out a public interest test?

No. Neither section 12 nor section 14 is subject to one.

THE PITFALL

Counting reading, consulting and redaction time towards the section 12 cost limit.

THE REMEDY

Count only establishing, finding, retrieving and extracting time, evidence the estimate, and offer advice and assistance.

KEY TAKEAWAYS

- Neither section is an exemption, and neither has a public interest test.
- Only four activities count towards the cost limit: establishing whether you hold the information, finding it, retrieving it and extracting it.
- Evidence your estimate, and offer advice and assistance when you refuse under section 12.
- Judge vexatiousness on the request and its context, not on a label for the person.
- State the section in the refusal notice within the 20 working day limit, with complaints details.

Conclusion: prioritise a sound estimate, advice and assistance and a proper notice

Before you refuse, sample the search and write down the time it took. Then tell the requester what you could provide within the limit, and send the notice within the 20 working days.

HOW PROVEPRIVACY HELPS

ProvePrivacy DSAR & FOI (Lite) records fee and public interest delay management for FOIA and FOISA requests and lets you split a multi part request into separately managed cases, which makes a narrowed request easy to handle after a section 12 conversation. There is a streamlined closure process for requests that are not disclosed, and the Disclosure tab and audit log keep the evidence of your estimate and reasoning.

Where this fits in the FOI process

Cost and vexatiousness are assessed early, before you gather the information in full. See our FOI process hub for where they sit in the sequence.

SCOTLAND AND ENVIRONMENTAL INFORMATION

Sections 12, 14 and 15 of the Freedom of Information (Scotland) Act 2002 follow a similar pattern, with the cost limit and fee rules set by Scottish regulations rather than the 2004 Fees Regulations. Environmental information uses regulation 12(4)(b), where a request that is manifestly unreasonable can be refused, but only after the public interest test, and regulation 12(4)(c) for requests that are too general, after offering help to the requester. See our guides on EIR exceptions and on FOISA and the EIRs in Scotland.

Related guides

- FOI Exemptions: Commercial Interests and Trade Secrets
- FOI Exemptions: Personal Information
- EIR Exceptions: How They Differ from FOI Exemptions

Sources

- Freedom of Information Act 2000, sections 10, 12, 14, 16 and 17 (legislation.gov.uk)
- Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, regulations 3 and 4
- Freedom of Information (Scotland) Act 2002, sections 12 and 14
- Environmental Information Regulations 2004, regulation 12(4)
- ICO guidance: Requests where the cost of compliance exceeds the appropriate limit, and Dealing with vexatious requests

Talk to someone who has handled FOI

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