

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 16 March 2011

**Public Authority:** Devon County Council  
**Address:** County Hall  
Topsham Road  
Exeter  
Devon  
EX2 4QD

### Summary

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The complainant made a request to the Council for information about a particular pedestrian bridge. The Council refused the request on the grounds that it considered the request to be vexatious under section 14(1) of the Act. It maintained its position following an internal review. The Commissioner concluded that the Council appropriately applied section 14(1) of the Act. However, the Commissioner found that by failing to inform the complainant that it was relying upon section 14(1) within 20 working days of receiving the request the Council breached section 17(5) of the Act. He requires no remedial steps to be taken

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

## Background

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2. This case involves the same parties as a previous complaint considered by the Commissioner under case reference number FS50252196<sup>1</sup>. In that case the Commissioner found that the complainant's requests were vexatious. The request in this case is for a similar class of information, with the focus being on information relating to health and safety matters, including lightning protection of buildings and built structures. The decision notice relating to the previous case was issued on 25 August 2010 and was appealed by the complainant to the First Tier Tribunal (Information Rights).

## The Request

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3. On 29 May 2010 the complainant wrote to the Council regarding the pedestrian bridge at Exeter Chiefs Rugby Ground ('ECRG'), and requested:  
  
"....the approved design drawings for the Pedestrian Bridge and the LPS [Lightning Protection System] test results since the Devon County Council adopted the Pedestrian Bridge"
4. The Council issued a refusal notice on 23 July 2010 in which it refused the request by virtue of the provisions of section 14(1) of the Act.
5. On 29 July 2010 the complainant requested an internal review of the Council's decision not to comply with his request. The complainant asserted that the Council had treated him as a vexatious person rather than considering whether the request itself was vexatious. The complainant also stated that his request related to serious and potentially life threatening dangers and, as such, the Council was wrong to deem the request to be vexatious.
6. The Council provided the outcome of its internal review on 19 August 2010 and upheld its decision to refuse the request on the basis that section 14(1) of the Act applied.

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<sup>1</sup> [http://www.ico.gov.uk/~media/documents/decisionnotices/2010/FS\\_50252196.ashx](http://www.ico.gov.uk/~media/documents/decisionnotices/2010/FS_50252196.ashx)

## The Investigation

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### Scope of the case

7. On 26 August 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the Council's application of section 14(1) of the Act to his request of 29 May 2010.

### Chronology

8. On 13 June 2010 the complainant contacted the Commissioner to complain about the delay in the Council responding to his request of 29 May 2010.
9. The Commissioner wrote to the complainant on 30 July 2010 advising that he had contacted the Council who confirmed that a response to the request had been issued on 23 July 2010. The Commissioner advised the complainant that, before accepting complaints, he expected complainants to allow a public authority the opportunity to review its own handling of a request. The Commissioner therefore recommended that, if the complainant was unhappy with the Council's response, he should ask the Council to reconsider his request.
10. The complainant contacted the Commissioner on 26 August 2010 and stated that he was dissatisfied with the outcome of the Council's internal review.
11. The Commissioner wrote to the complainant and the Council on the 16 November 2010 to confirm that his investigation would focus on the Council's application of section 14(1) to the request. The Commissioner asked the Council to provide further arguments to support its application of section 14(1).
12. On 19 November 2010 the complainant contacted the Commissioner and said that he wished to expand his original information request to include a request for a copy of the Operational Maintenance Manual for the pedestrian bridge.
13. The Commissioner wrote to the complainant on 23 November 2010 to clarify that he could only consider complaints about a specific request for information. The Commissioner advised the complainant that he did not consider a request for a copy of any maintenance manual for the bridge to fall within the scope of the original request. He therefore

advised the complainant that he would need to make a new request to the Council if he wished to pursue any new information.

14. On 1 December 2010 the Council provided the Commissioner with some background to this complaint and further representations in relation to its application of section 14(1). The Council also provided the Commissioner with a list of correspondence it had received from the complainant since 2005.
15. On 6 December 2010, the Commissioner sought further clarification from the Council in relation to its application of section 14(1).
16. The Council provided a partial response on 21 December 2010 and advised that a further response would be issued.
17. The Commissioner chased the Council for the outstanding information on a number of occasions in January 2011.
18. On 2 February 2011, the Council wrote to the Commissioner to advise that it had reviewed its position and was now minded to consider that the information requested was not held by the Council, nor by a third party on the Council's behalf.
19. The Commissioner wrote to the Council on 3 February 2011 to ask for further representations to support its view that the information was not held. On 11 February 2011 the Commissioner also advised the complainant of the Council's revised position.
20. On 17 February 2011 the Council responded to the Commissioner stating that, following a further review, it had identified that some information was held at the time the request was received and other information falling within the scope of the request had been received following receipt of the request. The Council stated that it was still minded to consider that section 14(1) applied to the request.
21. The Commissioner telephoned the Council on 23 February 2011 to clarify its position in relation to the request; ie whether it was claiming the information requested was not held or whether it was relying on section 14(1) in relation to all or part of the request.
22. On 28 February 2011 the Council confirmed that it was applying section 14(1) to the request in its entirety.

## Analysis

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### Substantive Procedural Matters

#### Section 14(1) – ‘vexatious requests’

23. Section 14(1) of the Act provides that a public authority does not have a duty to comply with a request where it may be considered vexatious. The full text of section 14 is available in the Legal Annex at the end of this Notice. As a general principle, the Commissioner considers that this section of the Act is intended to serve as protection to public authorities against those who may abuse the right to seek information.

24. Although there is no rigid test or definition of vexatious requests the Commissioner has produced guidance to assist public authorities in this area. The Commissioner’s guidance states the following:

“Deciding whether a request is vexatious is a balancing exercise, taking into account the context and history of the request. The key question is whether the request is likely to cause unjustified distress, disruption or irritation. In particular, you should consider the following questions:

- Could the request fairly be seen as obsessive or manifestly unreasonable?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?”<sup>2</sup>

25. The guidance indicates that it is not necessary for all of the above criteria to be satisfied in order for a request to be deemed vexatious; indeed a strong argument in one may outweigh weaker arguments in the others. However it does state that to judge a request vexatious a public authority should usually be able to make persuasive arguments under more than one of the above bullet points. As the Information Tribunal commented in the case of *Coggins v the Information Commissioner* (EA/2007/0130):

*“a decision as to whether a request is vexatious within the meaning of section 14 is a complex matter requiring the weighing in the balance of many different factors. The Tribunal is of the view that the*

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<sup>2</sup>[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/awareness\\_guidance\\_22\\_vexatious\\_and\\_repeated\\_requests\\_final.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_22_vexatious_and_repeated_requests_final.pdf)

*determination whether a request was vexatious or not might not lend itself to an overly structured approach..."* (paragraph 20).

26. The Commissioner further notes that the Information Tribunal in *Hossack v Department for Work and Pensions* (EA/2007/0024) at paragraph 11 stated that the threshold for finding a request vexatious need not be set too high as the consequences are much less serious than the finding of vexatious conduct in other legal contexts.
27. The Commissioner also endorses the Tribunal's consideration of this point in *Mr J Welsh v the Information Commissioner* (EA/ 2007/0088) (paragraph 21) where it stated:

*'In most cases, the vexatious nature of a request will only emerge after considering the request in its context and background. As part of that context, the identity of the requester and past dealings with the public authority can be taken into account. When considering section 14, the general principles of FOIA that the identity of the requester is irrelevant, and that FOIA is purpose blind, cannot apply. Identity and purpose can be very relevant in determining whether a request is vexatious. It follows that it is possible for a request to be valid if made by one person, but vexatious if made by another; valid if made to one person, vexatious if made to another.'*

28. The Commissioner therefore views it as appropriate to consider the context and history of a request, in addition to the request itself, when determining whether one of more of the five bullet points listed in paragraph 24 can be satisfied.

### **Context and History**

29. In reaching his decision in this case, the Commissioner has considered the evidence provided by the Council and the complainant and the context and history of correspondence and contact between the complainant and the Council up until the date of the request.
30. The Commissioner has taken into account the complainant's previous interaction with the public authority when determining whether the request can be correctly characterised as vexatious. This means that even if the request appears reasonable in isolation, it may be vexatious when considered in context.
31. The Council advised that since 2005 it had received regular correspondence and information requests from the complainant, relating to Lafarge Cement and Private Finance Initiative (PFI) contracts in Devon. The Council is of the view that the complainant's

correspondence and requests since 2005 form part of a lengthy series of overlapping requests and show a wider pattern of vexatious behaviour centred round matters concerning health and safety issues.

32. The Council advised the Commissioner that the complainant's emails were so numerous and the accusations contained within the communications about Council staff were so "wild and defamatory" that in 2005 the Chief Executive took the unprecedented step of barring the complainant from sending any further emails to the Council and requiring that future communications from him were sent by post.

**Could the request fairly be seen as obsessive or manifestly unreasonable?**

33. An obsessive request or a request that is manifestly unreasonable is often a strong indication of vexatiousness. Contributory factors can include the volume and frequency of correspondence and whether there is a clear intention to use the request to reopen issues that have already been debated.
34. In assessing whether a request can be deemed obsessive or manifestly unreasonable, a public authority may take into account previous knowledge it has of the requestor as well as previous grievances, disputes or complaints involving the requestor. In this case, the Council stated that, since 2005, it had received from the complainant a large amount of correspondence relating to health and safety matters, including lightning protection. The Council said that, given the volume, frequency and nature of the requests and correspondence, it believes this request to be indicative of obsessive behaviour.
35. The Commissioner notes that the complainant first submitted his complaint nine working days after sending his request to the Council. It is clear that the complainant is familiar with the Act (and relevant timescales) and the role of the Commissioner, having submitted previous complaints about the same public authority. The Commissioner considers that this action might be considered to suggest an unwillingness to allow the Council sufficient time to respond to any concerns or requests.
36. Based on the evidence the Council provided to the Commissioner, there is clearly a long history of correspondence between the parties in relation to the health and safety matters, including lightning protection. The Council provided the Commissioner with a schedule highlighting dates of correspondence and information requests it had received from the complainant since 2005. This comprised of:

- 16 items of correspondence in 2005, including one information request relating to health and safety issues concerning Lafarge Concrete.
  - 6 items of correspondence between 2005 and 2007, including three information requests about health and safety and lightning protection at a pedestrian bridge at a PFI school.
  - 18 items of correspondence between 2008 and 2009, including six information requests about health and safety files and lightning protection concerning PFI schools.
37. The requests and correspondence listed above do not directly relate to the request that is the subject of this notice – ie they are not about the pedestrian bridge at ECRG. However, the Council argued that the correspondence and requests relate to the same broad theme of health and safety and lightning protection. The Council is of the view that this request is a continuation of previous correspondence and requests and is indicative of an obsession on the part of the complainant to uncover failings in the Council's health and safety standards. The Council believes that the request forms part of a pattern of behaviour that could be deemed obsessive.
38. The Commissioner is prepared to accept that the correspondence and requests submitted by the complainant to the Council since 2005 share, or have developed from, a common subject, namely health and safety matters including lightning protection.
39. The Commissioner's view is that, when considered in isolation, this request may be viewed as reasonable, particularly as it appears to be the first piece of correspondence relating to the pedestrian bridge at ECRG. However, when taking into account previous correspondence and information requests submitted by the complainant since 2005, the emerging picture supports the view that the request could be seen as obsessive. Additionally, taking the history of the previous contacts into consideration only strengthens this view and the Commissioner is satisfied the Council has demonstrated that this request represents a continuation of a pattern of behaviour that has resulted in the large body of linked correspondence to which the Council has referred, and that it could fairly be seen as obsessive.

**Is the request harassing the authority or causing distress to staff?**

40. The Commissioner's guidance on vexatious requests states that when considering this issue, "the focus should be on the likely effect of the request (seen in context), not on the requester's intention. It is an objective test – a reasonable person must be likely to regard the request as harassing or distressing. Relevant factors under this



heading could include the volume and frequency of correspondence, the use of hostile, abusive or offensive language, an unreasonable fixation on an individual member of staff, or mingling requests with accusations and complaints."

41. The Council consider that the complainant's approaches and the requests he has made constitutes an unreasonable level of harassment. The Council advise that, in previous correspondence, the complainant has made accusations and complaints about the Council and has also singled out individual members of staff. In the Council's view, the complainant has displayed an aggressive, accusatory and harassing tone in this correspondence and has accused the Council and named members of staff as being "corrupt, dishonest and covering up criminal behaviour".
42. The Council provided the Commissioner with examples of the comments which the complainant has made to various members of staff in correspondence since 2005, which are detailed below:

"...your actions and inactions have brought the Devon County Council into disrepute by supplying false and misleading information to the FOI Commissioner Office" (letter dated 26 May 2009).

"...I fervently believe that the Devon County Council and you in particular are concocting false information about ISCA and other PFI school data to cover up serious crimes" (letter dated 7 July 2008).

"...the Fire Protection and Fire Certificate has been fraudulently approved" (letter to ISCA college dated 11 Mar 2007).

"Further to my recent request to investigate the Devon County Council Officials for fraud and theft of public funds and malfeasance, I now wish to add culpable negligence and conspiracy to cover-up serious crimes" (letter to the Serious Fraud Office dated 27 Feb 2006).

"...DCC Legal Advisor and your goodself are conniving and colluding to pervert the Course of Justice for personal and political gain" (letter dated 6 April 2005).

"...DCC are disseminating false and misleading information...The DCC CE has abused his power of office SOLELY to cover up his own gross incompetence, neglect and fiduciary failure" (letter dated 11 Mar 2005).

43. The Council believe that the comments quoted above demonstrate a patten of aggressive and accusatory behaviour against the Council itself and individual officers and it considers the approach to be both obsessive and vexatious in nature.

44. When considered in isolation, the request of 29 May 2010 may not be considered to be harassing the Council or causing distress to staff. However, the complainant's request for an internal review of the Council's handling of his request included the following excerpts:

"I now request the DCC should review my FOI request because I believe the DCC have acted in bad faith by stating my FOI is vexatious. I also believe that the DCC have identified me as a vexatious person and I remind the DCC that it is the FOI request which should be vexatious NOT the requestor"

"No person applying a right and proper mind could say my FOI is/was vexatious, on the contrary, my FOI is serious and involves life threatening dangers which the DCC do not wish to take seriously"

"Your above statement is made with the sole attempt to mislead the FOI Commissioner and to mislead a member of the public, i.e. myself. It is a further attempt by the DCC to circumvent the FOI Act 2000 and to suppress public information"

45. The correspondence the Commissioner has received directly from the complainant regarding this request contains similar comments and accusations about the Council and its handling of his requests under the Act. The complainant has repeatedly made references to his belief that the Council are "knowingly" and "wilfully circumventing the FOI Act" and are "criminally motivated to circumvent the FOI Act".

46. The Commissioner considers that of the use of such hostile language towards the Council and its employees is likely to have the effect of causing harassment to the authority and distress to its staff. Whether this was the intention of the complainant is not the issue that the Commissioner must consider – rather he must consider the effect of the language. The Commissioner considers that such accusations as those referred to above can cause distress, particularly when they are targeted at specific individuals.

**Would complying with the request impose a significant burden in terms of expense and distraction?**

47. The Council advised the Commissioner that it has continued to receive correspondence from the complainant about the same subject matter as the request related to a previous complaint case; reference FS50252196 (see paragraph 2, above). The Council stated that, despite the outstanding appeal to the Information Tribunal, the complainant has continued to make repeated requests relating to the same subject matter. The Council is of the opinion that the complainant's intention is to cause disruption in continuing to request information that he has previously been refused.
48. The Council also considers that the request in this case is a continuation of previous requests regarding health and safety matters and providing the information requested would be likely to fuel further requests of a similar nature. The Council believes that the level of correspondence it has received from the complainant since 2005 represents an unjustified distraction from the Council's core functions and imposes a burden on its staff.
49. In the case of *Coggins v the Information Commissioner* (EA/2007/0130), the Tribunal found that a "significant administrative burden" (para. 28) was caused by the complainant's correspondence with the public authority, which started in March 2005 and continued until the public authority applied section 14 in May 2007. The complainant's contact with the public authority ran to 20 information requests, 73 letters and 17 postcards. The Tribunal said this contact 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..." (para 28).
50. In the context of the current case the Commissioner considers that a response from the Council to this latest request is unlikely to satisfy the complainant's continued requests and pursuance to uncover failings in health and safety standards. Based on the previous pattern of behaviour, the Commissioner agrees that responding to this request could lead to further correspondence and additional related requests from the complainant. This is also supported by the fact that, following the Commissioner's initial involvement in this case, the complainant asked whether he could expand his original information request to include a copy of the Operational Maintenance Manual for the pedestrian bridge. The Commissioner believes this supports the view that the complainant is likely to continue with correspondence and

information requests regarding this matter, regardless of the Council's response.

51. As noted at paragraph 36 of this notice, the Council has provided the Commissioner with details of the correspondence and information requests the complainant has made on similar topics since 2005. The Commissioner considers it appropriate for the Council to consider the aggregated effect of dealing with the complainant's correspondence and requests.
52. In conclusion, the Commissioner accepts that, taking into account the potential for further correspondence and follow-on requests from the complainant, the burden in terms of expense and distraction created by the requests has been significant and is likely to continue regardless of the Council's response.

**Is the request designed to cause disruption or annoyance?**

53. Other than the disruption referred to in the above section in relation to compliance fuelling further correspondence, the Council has not suggested that the complainant's request is designed to cause any additional disruption or annoyance and the Commissioner has not considered this aspect further.

**Does the request lack any serious purpose or value?**

54. The Council accepts that the complainant believes his request has a serious purpose; to uncover failings in health and safety issues which he believes to be potentially life threatening. However, the Council does not consider that the level of contact with the complainant to be proportionate to the purpose or value he places on this campaign.
55. The Council believes the allegations made by the complainant about health and safety issues relating to the pedestrian bridge to be unfounded. The Council confirmed that the pedestrian bridge was signed off in accordance with the relevant national standard that outlines the process for technical approval of highway structure – BD02/05<sup>3</sup>. The Council advised that part of this approval process involved the pedestrian bridge being subject to a category 3 health and safety check. This involved inspection of the structure by independent parties including the bridge designers and a separate independent construction company.

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<sup>3</sup> <http://www.dft.gov.uk/ha/standards/dmrb/vol1/section1/bd205.pdf>

56. The Council has provided the Commissioner with copies of correspondence with the contractor responsible for the pedestrian bridge and a report commissioned by the contractor which highlights the measures in place at the pedestrian bridge to ensure public safety.
57. The complainant believes that the pedestrian bridge has not been provided with minimum lightning protection system, which in turn compromises public safety. The complainant has not provided any specific arguments or evidence to support his view beyond this statement, which would give weight to his argument.
58. The Commissioner accepts that the request in this case clearly holds significance for the complainant and it could be argued that there is a serious purpose, as the concerns relate to public safety issues. However, the Commissioner has seen no evidence to suggest that the complainant's concerns have any real substance. Whilst the Commissioner is not a technical expert in the field of health and safety and lightning protection systems relating to built structures, the supporting evidence provided by the Council does not suggest that there are any particular health and safety issues relating to the pedestrian bridge.
59. The Commissioner would agree that, to an extent, the serious purpose the request holds has been undermined by other factors, in particular the obsessive nature of the requests. Although the request in this case relates to a different built structure than previous correspondence and requests to the Council, the Commissioner is satisfied that the context and history of the complainant's communications indicates an underlying concern relating to health and safety matters, including lightning protection. The Commissioner therefore accepts that this request can be fairly considered to be a continuation of a dispute between the complainant and the Council.
60. However, taken into account all the relevant factors, the Commissioner is not convinced that the request in this case lacks serious purpose or value.

## **Conclusions**

61. In light of the above arguments, the Commissioner's decision is that the Council was correct to refuse this request under section 14(1) of the Act.
62. As explained earlier in this notice it is not necessary for every factor relevant to vexatious requests to be satisfied in order to refuse a request on the basis of section 14(1). In this case the Commissioner

considers that there are sufficient grounds to justify upholding the application of section 14(1). The Commissioner accepts that, although the complainant had a serious purpose in making this request, it is outweighed by the fact that his previous requests have had the effect of harassing the public authority. The Commissioner considers that the volume and frequency of correspondence, in the wider context of this request and earlier related correspondence are relevant in determining whether the request can be fairly characterised as obsessive. The Commissioner also considers that the Council's compliance with this request will not be the end of the matter and, in line with the complainant's previous behaviour, would likely lead to further correspondence and requests. The Commissioner is satisfied that, when taken in the context of previous correspondence and requests, this request could reasonably be considered to be vexatious.

## **Procedural Requirements**

### **Section 17(5)**

63. The request for information was made on 29 May 2010 but the Council did not issue a refusal notice citing section 14(1) until 23 July 2010. Section 17(5) of the Act provides that when a public authority is relying on a claim that section 14 applies it must give the applicant a notice stating that fact within 20 working days. As the notice relying on section 14 was issued outside of 20 working days, the Council therefore breached section 17(5) of the Act.

## **The Decision**

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64. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act by correctly applying section 14(1).
65. However, the Commissioner has also decided that the Council breached section 17(5) of the Act in failing to issue a refusal notice citing section 14(1) within 20 working days.

## **Steps Required**

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66. The Commissioner requires no steps to be taken.

## Right of Appeal

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67. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 16th day of March 2011**

**Signed .....**

**Anne Jones  
Assistant Commissioner  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### General Right of Access

**Section 1(1)** provides that -

"Any person making a request for information to a public authority is entitled

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- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

### Vexatious or Repeated Requests

**Section 14(1)** provides that –

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

**Section 14(2)** provides 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 a previous request and the making of the current request."

### Refusal of Request

**Section 17(1)** provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies."

**Section 17(2)** states –

"Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-



- (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
  - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached."

**Section 17(3)** provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

**Section 17(4)** provides that -

"A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

**Section 17(5)** provides that -

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

**Section 17(6)** provides that –

“Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

**Section 17(7)** provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”