

# Dealing with repeat requests (section 14(2))

## Freedom of Information Act

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## Introduction

1. The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities.
2. An overview of the main provisions of FOIA can be found in [The Guide to Freedom of Information](#).
3. This is part of a series of guidance, which goes into more detail than the Guide, to help public authorities to fully understand their obligations and promote good practice.
4. This guidance explains when a request may be regarded as repeated under section 14(2), and provides advice on how to use that section.

## Overview

- Under Section 14(2) of the Act, a public authority does not have to comply with a request which is identical, or substantially similar to a previous request submitted by the same individual, unless a reasonable period has elapsed between those requests. There is no public interest test.
- A public authority may only apply Section 14(2) where it has either;
  - previously provided the same requester with the information in response to an earlier FOIA request; **or**
  - previously confirmed the information is not held in response to an earlier FOIA request from the same requester.

If neither of these conditions applies then the public authority must deal with the request in the normal manner.

- A request will be identical if both its scope and its wording precisely matches that of a previous request.
- It will be substantially similar if;
  - (a) The wording is different but the scope of the request is the same; **or**
  - (b) The scope does not differ significantly from that of the

previous request.

- The reasonable interval is largely dependent upon the likelihood of any of the information caught within the scope of the request differing or having changed from that previously provided.
- If the information is unlikely to be different then the authority will need to consider the amount of time between requests and decide whether this is enough to make it reasonable to provide the same information again.
- The Public Authority must issue a refusal notice unless it has already served the requester with a notice under Section 14(2) in response to a previous request for the same information, and it would be unreasonable to issue another one.

## What FOIA says

5. Section 14(2) states:

14.—(2) 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.

6. This means that Section 14(2) may only be applied when all three of the following criteria have been fulfilled;

- the request is identical or substantially similar to a previous request from the same requester;
- the authority has previously provided the information to the requester or confirmed that it is not held in response to the earlier FOIA request; and
- a reasonable interval has not elapsed between the new request and the previous request.

7. If the authority has not already provided the information to the requester, then it must deal with the request in the normal manner.

8. As the scope of Section 14(2) is fairly narrow, the circumstances in which it may be applied are unlikely to arise very often because;
- it will be rare that a requester will ever need to ask for the same information twice;
  - unless the information caught by the requests is identical, or the differences or changes are insignificant, it is likely to be reasonable for the authority to provide an updated version of the information.

Public authorities cannot use Section 14(2) to refuse identical or substantially similar requests that were submitted by different requesters. If an authority receives numerous requests from different requesters, for information that it has already disclosed, then we recommend that it considers making the information available on its website or via its publication scheme. For more information about publication schemes please see our [Guide to Freedom of Information](#).

### Is the request identical or substantially similar?

9. If the public authority is satisfied that the requests do originate from the same requester then the next step will be to determine whether they are identical or substantially similar.
10. A request will be identical if both its wording and its scope precisely matches that of a previous request.
11. If the wording is identical but the scope of the request is different (for example a recurring request asking for “any new or amended information” on a particular subject, or for “last month’s figures”) the request will not be identical.

#### **Example**

On the last day of April an individual submits an FOIA request to his local fire brigade in which he asks;

*“How many emergency call outs have you responded to this month?”*

The fire brigade provides him with the requested information.

At the end of June he sends them a further request with exactly the same wording.

Although the phrasing of these requests is exactly the same the request will not be identical because the information being sought, (the call out figures for April and June respectively) is entirely different.

12. A request will be substantially similar if it meets either of the following criteria;
- The wording is different but the scope of the request (the criteria, limits or parameters which define the information being sought) is the same as for a previous request.
  - The scope of the request does not differ significantly from that of the previous request (regardless of how the request is phrased).
13. The following is an example of a substantially similar request which, although differently worded, has the same scope as an earlier request.

#### **Example 1**

A local council decides to outsource its street cleaning services and invites private companies to tender for the contract.

Following this decision, a local resident sends the council the following FOIA request;

*"Can you please provide me with a summary of the factors that influenced the Council's decision to outsource local street cleaning services?"*

The council provides him with the requested information.

Two months later he sends another FOIA request in which he asks;

*"I would like to know why the Council has decided to outsource local street cleaning services to a private company"*

In this case, the requests are phrased differently but the scope is the same, as in both instances the requester is asking the Council to explain the reasons for outsourcing the service. The second request can therefore be regarded as substantially similar to the first.

14. If there is an overlap in the scope of the requests then the question as to whether they are substantially similar will be dependent upon the significance of those differences in scope.
15. If the area in which the requests differ is insignificant, as in the example below, then the second request may be considered substantially similar.

### **Example 2**

In January 2013 a requester sends a request to a secondary school in which she asks;

*'Please provide me with a breakdown of the number of pupils suspended, excluded or otherwise subjected to disciplinary action in the period between September 2011 and July 2012?'*

The school provides supplies the requested information.

Several weeks later the same requester later submits a substantially similar request which is phrased as follows;

*'I would like to know how many pupils were suspended, excluded or otherwise subjected to disciplinary action in the academic year 2011 - 2012'*

The school recognises that the scope of the second request is wider than the first because the 'academic year' also includes August. However, as the pupils were on their summer holidays during that month, it concludes that little, if any, disciplinary action would have taken place during that additional period.

In this case therefore, given that the differences in the information caught by the requests are likely to be insignificant, the second request may be considered substantially similar to the first.

16. However, if the difference in scope is clearly of more than minor significance, as in the next example, then the requests will not be substantially similar for the purposes of the Act, and the authority will need to deal with the new request in the normal manner.

### **Example 3**

An individual makes the following request to his local parish council.

*'I would like copies of all minutes of all the parish council's monthly meetings from October 2007 to September 2008'*

The Council provides the information.

Six weeks later he submits another request worded as below;

*'I require you to send me copies of all your monthly meeting minutes from July 2007 to May 2009'*

Whilst there is a clear an overlap between these requests, in that they both cover the council minutes from October 2007 and September 2008, the area where they do not overlap is significant as it encompasses an extra eight month period, and consequently, an additional eight sets of meeting minutes.

In this case, therefore, the differences in scope are sufficiently meaningful that the second request cannot be regarded as substantially similar to the first.

17. Public authorities will need to make a judgement about the significance of any difference in scope, taking into account what they know about their own records and practice and the context in which the request is made. If a complaint is made to the ICO then we would expect a public authority to be able to explain why it has decided that any differences in scope are insignificant.
18. It also is important to keep in mind that Section 14(2) cannot be applied to requests where only the subject or theme is identical or substantially similar. This principle was established in the Tribunal decision of *Robert Brown vs ICO* (EA/2006/0088, 2nd October 2007).

#### **Example 4**

In the case of *Robert Brown vs ICO* (EA/2006/0088, 2 October 2007) the appellant had made a substantial number of separate requests to The National Archives, each referring to a particular document and asking for any information it contained relating to the Princess Margaret Townsend affair, and any illegitimate child born to the Princess in 1955. The National Archives refused these requests as repeated. However, the Tribunal did not accept that 14(2) was engaged. In allowing the appeal they commented that;  
*'TNA relies on section 14(2) to assert that all the Appellant's individual requests were identical or substantially similar requests, and that therefore, it was not obliged to comply with them. In our view this misconstrues section 14(2). The*

*Appellant's requests were for information about "Princess Margaret Townsend Affair; and or any illegitimate child born on or about 05/01/55 to Princess Margaret" from specific records. If TNA had complied with the request in relation to one specific record and the Appellant had then repeated the request for the information from the same record, section 14(2) would apply.'* (para 85)

*'There is nothing on the evidence to suggest that except in rare cases, the content of different records would be identical or substantially similar. That being the case, we find that a request for information relating to the same subject from another record is not an identical or substantially similar request for the purposes of section 14(2). If it were, it would lead to the surprising result that applicants wishing to search for information about a particular subject in TNA's archives, could find themselves only able to make that request in relation to a single record.'* (para 86)

## Has the authority previously provided the information or confirmed it is not held?

19. An authority can only apply Section 14(2) to a request where it has either;
- already provided the information to the same requester in response to a previous FOIA request; **or**
  - previously confirmed that the information is not held in response to an earlier FOIA request from the same requester.

If neither of the above criteria applies, then the request is not repeated and the authority must process it in the usual manner.

## Has a reasonable interval elapsed?

20. A request which is identical or substantially similar to a previous request by the same individual cannot be refused as repeated unless a reasonable interval has elapsed between the respective requests.

21. The Act does not define what is meant by a 'reasonable interval' but it is our view that this should be determined by taking the following into account;
- The likelihood that the information will differ significantly from that provided in response to the previous request.
  - The amount of time that has passed (where it is unlikely that the information will differ in any significant way).

**The likelihood that the information covered will differ significantly from that previously provided.**

22. If the authority is satisfied that the scope of the request is identical or substantially similar, then its next step should be to assess the likelihood of the information covered being different from that caught by the previous request.
23. If the authority does consider it likely that the information will differ significantly, then we would normally expect it to conclude that a reasonable interval has elapsed since the last request was answered and not refuse the request as repeated.
24. If an authority is concerned about the costs of answering multiple requests from the same requester, for information that changes frequently then it should consider the aggregation provisions under section 12 of FOIA (the appropriate costs limit).
25. If an authority thinks the information is likely to be the same, or that any differences are likely to be insubstantial then it should go on to consider the amount of time that has passed since the information was last provided.

**The amount of time between requests**

26. If the authority is confident that the information will not differ to any significant degree, perhaps because it has produced no further material on the subject or the request is for a historical document (such as a report or letter), then the only remaining consideration is the amount of time between requests
27. Often, it will be obvious that a reasonable interval has not elapsed because the requests have been submitted within a relatively short time of each other, as in the example below.

**Example 2**

In May 2012 an individual makes the following request to his local police authority;

*'I would like to know how much you charged our two local football clubs for policing their grounds at each individual fixture this season.'*

The police provide the information which includes a breakdown of the charges for each of the 58 fixtures played so far.

Two weeks later he submits a substantially similar request in which he states;

*'Please advise me of the amounts charged for policing our two local football clubs at each of their individual games this season'*

As each club only plays at their stadium every other week the police know that only two further matches took place in the period between the first and second requests. They are thereby confident that the information caught by the second request would not differ significantly from that already provided.

In this case, as only two weeks have elapsed since the original request, the authority would have justifiable grounds to conclude that the relatively short interval between the requests was not a reasonable period.

28. In other cases the length of time between requests may be so great that it would be reasonable for the requester to no longer have a copy of the original response. If this is the case then the interval between requests will be reasonable.
29. We cannot give a definitive answer to the question of when the interval between requests changes from being unreasonable to reasonable. This will depend on all the circumstances of the case. However, we do encourage public authorities to be sensible about this. It will often be easier, and certainly good practice, to just provide a second copy of the information rather than refuse a request that can be easily answered as repeated.
30. We recommend that the use of section 14(2) is reserved for those situations when it is really needed. For example, when

the requester submits another identical or substantially similar request, despite still having the original information and being given a clear indication that no new information is likely to be available for the foreseeable future, as in the case below.

**Example 2**

In Lampert vs ICO and the Financial Services Authority (FSA) (EA/2010/0203, 7 June 2011) an MP had asked the FSA to investigate a bank's decision to call in Mr Lampert's loan guarantee. On 6<sup>t</sup> August 2007 the FSA wrote back to the MP to advise him that the bank had not acted improperly and the matter was therefore closed.

On 4 March 2008 Mr Lampert asked the FSA for copies of the files relating to its investigation into the loan guarantee. On 17 January 2009 he made another request for all information held by the FSA in regard to his dispute with the bank. The FSA complied with both these requests. However, on 13 January 2010 Mr Lampert made a further request for the outcome of any investigations the FSA had carried out into the loan guarantee issue. The FSA refused this request on the grounds that it was both repeated and vexatious.

The Tribunal found that Section 14(2) was engaged and commented:

*'...As we record at paragraphs 5 and 6 above, the FSA supplied various documents to Mr Lampert following his request of 4 March 2008 and 17 January 2009. In the light of our findings of fact at paragraphs 13 and 14 above it is clear that the provision of those documents represented full compliance with the earlier requests. It is also clear that the request we are concerned with is a "substantially similar request" to those of 4 March 2008 and 17 January 2009. Again, given our finding of fact that there was no investigation going beyond the limited inquiry culminating in the letter dated 6 August 2007 and that Mr Lampert had been informed of that fact by the FSA, it is clear that a reasonable interval had not elapsed before the subsequent request. In these circumstances, we consider that the FSA were entitled to rely on section 14(2) in relation to the request we are concerned with...' (para18)*

31. Whatever conclusion the authority reaches it should be sure to make its decision objectively, taking into account the specific circumstances surrounding each particular request.

### **Multi-parted requests**

32. Sometimes requesters submit multi-parted requests. Public authorities will need to treat each element of a multipart request as a separate request and can only refuse any repeated elements under section 14(2).

#### **Example 5**

An individual makes the following requests to his local parish council.

*'I would like copies of your policies in place in June 2011 on the following matters:*

- i) Health and safety*
- ii) Equality and diversity*
- iii) Whistleblowing'*

The Council provides the information.

Six weeks later he submits another request worded as below.

*'Please could you send me:*

- a) your equality and diversity policy in use in June 2011*
- b) your whistleblowing policy in use in June 2011*
- c) your recruitment policy in use in June 2011'*

In this case parts a) and b) of the later request are repeated, but part c) is treated separately and is not a repeated request.

## **Refusing a repeated request**

33. There is no requirement under section 14(2) to carry out a public interest test or confirm or deny whether the information is held.
34. In most cases the authority will need to issue a refusal notice stating that it is relying on section 14(2).

35. If the authority has an internal review procedure then it should include the relevant details in the refusal notice. The notice must also inform the requester of their right to appeal to the ICO.
36. Section 17(6) of the Act states that there is no need to issue a new refusal notice if:
  - the authority has already given the same person a refusal notice for a previous repeated request; and
  - it would be unreasonable to issue another one.
37. Whether or not the authority issues a refusal notice or explains why it considers the request to be repeated, it should keep written records clearly setting out the procedures it followed and its rationale for concluding that Section 14(2) applied.
38. This should make it easier to evidence the reasoning behind the decision, should the requester decide to take the matter further.
39. If the requester submits a repeat of request which has recently been refused in which they express clear dissatisfaction about the handling of their previous request, then it is good practice to ask them if they would like their latest request to be treated as a request for an internal review of the original decision.

### **Advice and assistance**

40. There is no obligation to provide advice and assistance in response to a repeated request. However, if the requested information is liable to change in future, and the authority can reasonably predict when this will happen, then it is good practice to advise the requester of the likely timeframe in the refusal notice.

### **More information**

41. This guidance has been developed drawing on ICO experience. Because of this it may provide more detail on issues that are often referred to the Information Commissioner than on those we rarely see. The guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.

42. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
43. If you need any more information about this or any other aspect of freedom of information, please contact us: see our website [www.ico.org.uk](http://www.ico.org.uk).