

Note: The Blue text in the document below is intended for internal use only to aid officials. The public policy will remove this text.

FREEDOM OF INFORMATION VEXATIOUSNESS TEST PROCEDURE

1. The Freedom of Information (Jersey) Law 2011 is designed to make government more accountable and transparent in the way we operate and make decisions. It gives the public the right to access information held.
2. However, the Law also enables a Scheduled Public Authority to refuse a request on the grounds it is vexatious. This is important, as time spent dealing with vexatious requests means that legitimate requests for information are not processed in a timely manner and the burden on the taxpayer overall is higher than it otherwise should be.
3. A test for vexatiousness should be applied to all FOI requests.
4. Article 21(2) of the Freedom of Information (Jersey) Law 2011, states that a request is not vexatious simply because the intention of the applicant is to obtain information –
 - (a) to embarrass the scheduled public authority or some other public authority or person; or
 - (b) for a political purpose.
5. Article 20(3) of the Freedom of Information (Jersey) Law 2011, states that a request may be vexatious if –
 - (a) the applicant has no real interest in the information sought; and
 - (b) the information is being sought for an illegitimate reason, which may include a desire to cause administrative difficulty or inconvenience.
6. To assist with this in a transparent and consistent way, this guidance has been developed, in line with guidance published by the Jersey Office of the Information Commissioner (JOIC).
7. The decision as to whether to treat a request as vexatious will be taken by the individual Department, in consultation with the central FOI unit.
8. If, following review, the request is deemed to be vexatious, the reasons for this will be explained to the requestor, including the grounds on which that decision was taken with reference to the table below.

9. If the request is not agreed to be vexatious following review, then it should be handled as any normal FOI request, the information sought, and appropriate exemptions applied.
10. In the circumstances that the request is considered vexatious, and the requester seeks an Internal Review of that decision, the Internal Review panel should be provided with the reasoning behind the decision and appropriate context surrounding the request to make their adjudication.
11. The Jersey Office of the Information Commissioner have issued guidance on vexatiousness¹, including the below factors, which are some of the typical key features of a vexatious request. It should be noted that the list is not exhaustive or requiring an unnecessarily high threshold.

Table showing factors considered when determining vexatiousness with examples:

Abusive or aggressive language	The tone or language of the requester's correspondence goes beyond the level of criticism that a public authority or its employees should reasonably expect to receive.
	Example: The request includes foul language (swearing) or accuses named or unnamed officers of corruption or incompetence.
Burden on the authority	The effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions of the requester.
	Example: The number of questions (including sub-questions), or the amount of data that the requester seeks, is so substantial that it would take a disproportionate amount of officer time to review; especially where the matter may be considered to be trivial.
Personal grudges	For whatever reason, the requester is targeting their correspondence towards a particular employee or office holder against whom they have some personal enmity.
	Example: A requester targets a named member of senior leadership, health or HR staff and accuses them of corruption or incompetence e.g. in relation to staff appointments or the spending of Government funds.
Unreasonable persistence	The requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority or otherwise subjected to some form of independent scrutiny.
	Example: Where published internal or external reviews (including by Scrutiny) exist and have settled a matter which

¹ [joic-21a-dealing-with-vexatious-requests.pdf](https://www.joic-21a-dealing-with-vexatious-requests.pdf) (jerseyoic.org)

	has had a formal Government response, e.g. in relation to the location of the new hospital.
Unfounded accusations	The request makes completely unsubstantiated accusations against the public authority or specific employees.
	Example: The requester may be part of political campaign group or have fringe views (e.g. in relation to gender assignment) and are seeking to make unsubstantiated claims against the Government or individual officers on matters of policy.
Intransigence	The requester takes an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to engage with the authority.
	Example: Where the individual has made multiple requests about similar or connected issues seeking more detailed information with the anticipation of disclosure of information that has been rightly considered exempt.
Frequent or overlapping requests	The requester submits frequent correspondence about the same issue or sends in new requests before the public authority has had an opportunity to address their earlier enquiries
	Example: The requester, especially where a repeat requester, is acting disproportionately to the purposes of the FOI Law and is fixated on a particular staff member or issue and will not allow previous requests (which may contain the answer sought) to be completed.
Deliberate intention to cause annoyance	The requester has explicitly stated that it is their intention to cause disruption to the public authority, or is a member of a campaign group whose stated aim is to disrupt the authority.
	Example: The requester may be opposed to a particular Government decision around taxation changes, healthcare appointments, or a planning decision and is seeking to disrupt the work of the Department by flooding it with FOI requests.
Scattergun approach	The request appears to be part of a completely random approach, lacks any clear focus, or seems to have been solely designed for the purpose of 'fishing' for information without any idea of what might be revealed.
	Example: The requester is seeking information about general administrative, operational or financial matter without having clarity on a precise issue they wish to pursue and is asking a broad 'fishing' question.

Disproportionate effort	The matter being pursued by the requester is relatively trivial and the authority would have to expend a disproportionate amount of resources in order to meet their request.
	Example: Where the Government is asked to provide detail about the makeup of historic recruitment panels for junior staff members, or the details of minor expenses on stationery across a significant time period.
No obvious intent to obtain information	No obvious intent to obtain information The requester is abusing their rights of access to information by using the legislation as a means to vent their anger at a particular decision, or to harass and annoy the authority, for example, by requesting information which the authority knows them to possess already.
	Example: Where the requester already has access to existing planning information and is using the FOI Law to make their complaint public, without seeking any new information.
Futile requests	The issue at hand individually affects the requester and has already been conclusively resolved by the authority or subjected to some form of independent investigation.
	Example: Where published internal or external reviews (including by Scrutiny) exist and have settled a matter which has had a formal Government response.
Frivolous requests	The subject matter is inane or extremely trivial and the request appears to lack any serious purpose. The request is made for the sole purpose of amusement.
	Example: Where the Government is asked about the cost of biscuits used in meetings, or the plans for a zombie apocalypse.