

The ten things FOI practitioners hate most

Following on from his ‘ten things requesters hate’ piece, Paul Gibbons aka FOIMan, turns the tables and details the top peeves of the FOI Officer

In my last piece, I listed ten things that FOI requesters hate about dealing with public authorities. Now I’m going to consider ten ways that those requesting information cause annoyance to FOI practitioners.

Many of the sources I used last time are not available to me for this exercise. After all, any FOI Officer that gives into the temptation to resort to social media to express their frustrations with a specific request might well find themselves at the wrong end of a disciplinary procedure.

However, I do have the advantage of having been a practitioner myself. For almost ten years, I was required in my role to coordinate and answer FOI requests. Therefore, much of what follows is based on my own experience. In addition, many FOI Officers have confided in me over the last decade. So with all this — admittedly anecdotal — evidence, I have drawn up my list of the ten habits of requesters that cause most frustration for those answering requests.

1. Firing off requests without any research

It is fairly straightforward writing an email requesting information; a moment’s work from thought to hitting ‘send’. One moment’s kneejerk FOI request can result in significant cost to the public purse, and anxiety out of all proportion to the value of the information requested.

Every request is required to be logged and responded to, even if the answer is straightforward. If the answer isn’t easy to come by, it can involve many hours of work.

If it is clear that the person asking the question hasn’t given much thought to their missive, let alone spent a few minutes researching the subject to inform their enquiry, it can feel like a waste of everybody’s time — and there’s often nothing the FOI Officer can do about it.

Research can help requesters to target their enquiries effectively. The journalist whose request asked a humanities-focussed University for

details of its animal experimentation clearly has not taken the time to edit their distribution list to fit the request. Research can also remove the need for requests at all — why should practitioners spend time updating their publication schemes and disclosure logs if requesters ignore them because its quicker just to fire off an email and let the FOI Officer take the strain?

2. Requests made via Twitter (or other unusual routes)

Just because it is possible to do something, does not mean that it should be done. The Information Commissioner has made it clear in his guidance that requests made via social media can be valid — they are, after all, made in writing. It is not an unreasonable interpretation of the Act’s requirements, and the ICO has suffered more than most from individuals taking advantage of this novel and convenient method of submitting a question.

As it is normally impossible to be clear about what you want in 140 characters, such requests increase the likelihood of further correspondence and dissatisfaction on both sides. This is the case even if the individuals managing the corporate social media accounts for the organisation — usually in a different department with few sympathies for FOI — spot the requests in the first place, and alert the FOI Officer.

What is perhaps most bothersome about the use of unusual media to submit a request is that some people appear less interested in getting information than they are in trying to catch the public body out. Rather than using a route that will guarantee that their request will be seen and answered, they prefer to use an esoteric approach so that they can then turn round and complain loudly when the public authority fails to answer it.

3. Quoting the deadline

“I understand that you must respond to this request within 20 working days.”

There are few sentences guaranteed to irritate an FOI Officer more than this

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one. Do requesters think that we aren't aware of such a central requirement of the legislation? Their response I'm sure would be to argue that too often, public bodies fail to meet it.

There may be many reasons why an authority fails to meet that deadline, but I'm certain that lack of awareness of the statutory limit is not one of them.

4. "Promptly."

Section 10 of the Act sets out the aforementioned deadline for responding to FOI requests. As some applicants will never tire of telling us, it actually says 'promptly and in any event not later than the twentieth working day following the date of receipt.'

The assumption of many is that practitioners have a Google-style search field on their computers accompanied by a big red button. All that has to be done is to press that big red button and the answers to the latest request will spill out disclosure-ready within moments. The only reason why requests take longer than this to answer is that public authorities deliberately wait until the last working day to press the button.

This, of course, is far from the truth. Availability of colleagues, debate over interpretation of the request, retrieval of data from numerous systems — all of these and more take time. In the recent case of *John v Information Commissioner and Ofsted* [2014] UKUT 444 (AAC), Judge Jacobs outlined the factors that affect when a public authority can respond:

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"There are three factors that control the time that a public authority needs to respond. First, there are the resources available to deal with requests. This requires a balance between FOIA applications and the core business of the authority. Second, it may take time to discover whether the authority holds the information requested and, if it does, to extract it and present it in the appropriate form. Third, it may take time to be sure that the information gathered is complete. Time spent doing so, is not time wasted."

According to Judge Jacobs, 'promptly' should be interpreted as 'without delay' rather than 'immediately', which is what the requester in this case appeared to expect. Ofsted had answered well within the 20 working day limit, which was 'prompt within the meaning and intendment of the legislation'. In other words, requesters have to get real about when they can expect a response to their request.

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If requesters can't be bothered to run spelling or grammar checks, or to write meaningful sentences, what does that say about their respect for the individuals who will have to read and answer their questions? Perhaps it says nothing, except that the applicant is (let's say) eccentric, but it is nonetheless irritating. FOI Officers will treat such enquiries professionally — but it doesn't inspire much enthusiasm to help their author.

6. Rudeness and aggression

Thankfully, this is not a common trait of requesters, but it does happen.

FOI requests have become a tool for those seeking to further their complaints against public authorities. Sometimes, what begins as a justifiable frustration over poor service boils over into unfair and unpleasant attacks on individuals with no involvement in the original matter. FOI Officers sometimes just happen to be in the way.

Often they have to grin and bear it — be professional and let it go, especially if the circumstances provide some explanation for the behaviour. However, if a request is overtly aggressive or abusive, the Information Commissioner is quite clear that such requests can be refused as vexatious.

7. Greed

We have all received emails or letters containing 20 to 30 questions, perhaps over several pages. On other occasions, requests are written in such a way that they encompass a huge volume of material.

Sometimes, it may be that the person requesting the information hasn't appreciated the work involved in providing what they are asking for. Other times, they don't care. Whatever the underlying thinking (or lack of), requesting a lot of material can cause a huge headache for practitioners.

The obvious answer is that section 12 allows requests to be refused if compliance would exceed the appropriate limit. However, there are times when this won't fit the bill. Increasingly, the Commissioner and the Tribunals are sympathetic to the use of section 14 to refuse requests that impose a significant burden.

8. Second-guessing the response

The best example of this is: "If you estimate that it will cost more than £450 to provide this information,

please provide all the information that you can up to this limit.” The risk of complying with this demand is that the requester may well disagree with where the line is drawn. For this reason, the Tribunal in *Fitzsimmons v IC & BBC* (EA/2008/0043) ruled that public bodies should refuse requests of this kind and insist that the applicant narrow the scope of their enquiry. The point is that whilst the requester sees this as saving time, it most often complicates matters for the FOI Officer.

9. Tricky definitions

It’s often not the requester’s fault, but there are times when the nature of a request requires careful wording.

Requests about complaints are a classic example. ‘How many complaints have you received in the last year?’ sounds like a simple question, however, it begs a number of follow-up questions. For example, what should be counted as ‘complaints’? Formally recorded complaints? Informal expressions of dissatisfaction? Does it include staff disciplinarys? And is this the financial year or the calendar year? And so on.

It is important for the requester as well as the public body that there is clarity — if they are making ‘round-robin’ requests, there is a significant risk that the data they receive will be unusable if every authority interprets their questions differently.

The trouble is that when the FOI Officer goes back to the applicant, they often fail to understand these complexities and instead see it as game-playing. Practitioners should try picking up the phone in these situations — sometimes more email just gets in the way of communication.

10. What happens next

One common complaint of FOI Officers is that information that they provide is never used. This is particularly the case when journalists have made requests. The public authority has gone to great lengths to answer an enquiry, the practitioner scans the headlines for the next few weeks for signs of the information being put to good use...and it never materialises.

Perhaps surprisingly, one of my personal grievances was the failure of requesters to complain. There are occasions when information is withheld against the advice of the practitioner, and they wait to receive a request for internal review — which might ultimately result in the Information Commissioner validating their opinion.

Almost without exception though, the complaint never comes and the matter is forgotten about — except by the deeply frustrated FOI Officer.

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There are many things that I loved about being an FOI Officer, and I had a lot of respect for those who wanted to utilise their right to know. However, like many other practitioners, requesters caused me many frustrations. At least as many as I caused them.

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