

## WEST HILL PARISH COUNCIL (WHPC)

### Vexatious, Unreasonable and Unreasonably Persistent Requests Policy

ADOPTED at WHPC Meeting 7<sup>th</sup> May 2024 24/144 (New policy)

#### 1. Introduction

Members of the public have a right to request information from the Parish Council. The requests may be in the form of a Freedom of Information request (FOI) or a Subject Access Request (SAR). FOIs are governed under the Freedom of Information Act (FOIA) which is designed to get rid of unnecessary secrecy in public bodies. SARs are governed under the General Data Protection Regulations (GDPR) and the Data Protection Act (DPA) which are designed to protect people's privacy. The Council should respond to a FOI request within 20 working days and to a SAR request within one month. Further information is available from the [Information Commissioner's Office \(ICO\)](#).

It is the policy of West Hill Parish Council to meet its obligations under the respective laws and regulations and to comply with the spirit and intent of those laws whilst ensuring that this does not detract from our primary duty of serving the people of West Hill and does not incur unacceptable costs. West Hill Parish Council has 7 members supported by a sole employee, a part-time Clerk.

#### 2. Defining a Vexatious, Unreasonable and Unreasonably Persistent Request

In legislation, a request may be considered vexatious. It is not a finding that a particular individual is vexatious and that any other request from them can automatically be refused - it is about the particular request.

##### 2.1 Subject Access Request (SAR)

An individual has the right to ask the Council whether or not they are using or storing the individual's personal information. They can ask for copies of their personal information, verbally or in writing. The Council is the data controller and not individual employees or office holders.

An authority may refuse to provide some or all of the requested information if an exemption or restriction applies, or if the request is manifestly unfounded or excessive.

Examples of when an authority may withhold some or all of the information requested in a SAR are:

- Manifestly unfounded requests including where the request is being used to harass the Council or cause disruption.
- Information about other people or where other people's data may be included in documents that have been requested. The Council may choose to redact the information or not provide it at all.
- Legal professional privilege where personal information has been discussed or included in confidential communication with the Council's legal advisers and is considered privileged.
- Excessive requests.

The ICO provides guidance to assist authorities when considering whether a request is clearly or obviously unreasonable: such as whether the request is proportionate when balanced with the burden or costs involved in dealing with the request.

A request is not necessarily excessive just because the individual requests a large amount of information or because they have previously made a similar request. This will mean taking into account all the circumstances of the request including:

- the nature of the information the request is about;
- the context of the request and the circumstances of the relationship between the Council and the person;
- whether a refusal to carry out the request or even acknowledge that the Council holds relevant information may cause substantive damage to the person, such as an adverse impact on their rights.
- the Council's available resources;
- whether the request largely repeats previous requests and there has not been a reasonable interval since the last request;
- whether it largely overlaps with other requests (although if it is about a separate set of information, it is unlikely to be excessive); or
- where the Council has already provided a copy of the information to the person by alternative means.

## 2.2 FOI

The purpose of the FOIA is to give members of the public the right to see information. With that right comes a responsibility not to submit requests which are intended to be annoying, disruptive or have a disproportionate impact on a public authority in terms of time or cost.

There are a variety of exemptions which a public authority may apply to a FOI request. For example, Section 12(1) FOIA – the provision which allows a public authority to refuse to comply with a request for information where the cost of compliance is estimated to exceed a set limit known as the appropriate limit. In these circumstances, the Council has an obligation to respond to the request and explain the reasons why the Council is refusing the request.

Section 14(1) FOIA is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress and removes the obligation for the Council to respond where certain criteria are met.

A public authority should not take into account the identity or intentions of a requester when considering whether to comply with a request for information. A public authority cannot refuse a request simply because it does not seem to be of much value. A minority of requesters however may sometimes abuse their rights under the Freedom of Information Act, which can threaten to undermine the credibility of the freedom of information system and divert resources away from more deserving requests and other public business.

Patently unreasonable or objectionable requests will sometimes obviously be vexatious. Where the issue is less clear-cut, the guiding principles are summarised in the judgment below:

“The starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester or to the public or any section of the public. The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious”.

The question of vexatiousness should be considered in the round, taking into account the past requests and the number of requests made. Further guidance is available from the ICO.

### 3. **Determining whether a Request is Vexatious, Unreasonable or Unreasonably Persistent**

WHPC has a checklist drawn up by our solicitors to help the Council identify requests:

- under the FOIA as vexatious
- or Data SARs as manifestly unfounded or manifestly excessive under the General Data Protection Regulations (GDPR) and the Data Protection Act (DPA)

A copy of the checklist is shown at Appendix A.

The checklist will be used to assess all FOI and SAR requests that are received by the Council in order to ensure consistency of treatment for all requests. The Chairman, one other Councillor and the Clerk use the checklist to consider the request. The checklist should be signed by the assessor(s) and kept on file. Most requests may be straightforward and not require detailed assessment but the checklist is designed to identify requests that are vexatious, unreasonable or unreasonably persistent in order to avoid expending excessive Council time and cost or subjecting Council employees or councillors to harassment or stress.

### 4. **Responding to Vexatious, Unreasonable or Unreasonably Persistent Requests**

#### 4.1 **Subject Access Request (SAR)**

If the Council decides to refuse a SAR we will write to the Requester to inform them and provide reason(s) for the refusal. The Council is also obliged to provide details of how to make a complaint to the ICO.

#### 4.2 **FOI**

If an FOI request is identified as Vexatious, Unreasonable or Unreasonably Persistent, the Council is not obliged to provide the information requested. WHPC will issue a refusal notice. If the request is vexatious or repeated, WHPC will inform the requester of its decision however the Council is not obliged to explain it further. The Council is also obliged to provide details of how to make a complaint to the ICO.

When the Council is dealing with a series of requests and the requester is developing a pattern of behaviour, it may arrive at a tipping point where it decides that, whilst it was appropriate to deal with a requester's previous requests, the continuation of that behaviour has made the latest request(s) vexatious.

When the Council sees this tipping point approaching it must record any relevant correspondence and behaviour. The 'evidence' log should be proportionate to the nature of the request(s). The focus should be on key milestones in the chronology, and cross referencing existing information rather than gathering or developing new information. The checklist will form part of the evidence and should be saved as part of the evidence file.

The ICO accepts that a public authority needs to use judgment when deciding whether to engage with a particular requester regarding this behaviour. Some requesters may be prepared to enter into some form of dialogue with the Council. Others however, may be aggrieved to learn that the Council is considering refusing their request under section 14(1) FOIA or the implications that the request is vexatious. Indeed, approaching these requesters and asking them to moderate their requests could provoke the very reaction that the Council is trying to avoid.

If the Council considers, based on the evidence in the evidence file, that there is no likelihood of satisfactory conciliation over the matter then it may decide to impose restrictions on the requestor's future correspondence with the Council.

If this is the case the requestor will be informed that:-

- The Council will only accept correspondence from that requestor by e-mail to the e-mail address [correspondence@westhillparishcouncil.gov.uk](mailto:correspondence@westhillparishcouncil.gov.uk). This inbox will be monitored by the Clerk or their substitute from time to time. E-mails from that requestor will not be received by other office holders or employees and will be automatically deleted without being read.
- The Council will refuse to register and process any further requests from that requestor about the same matters, ending all communication on the matters the requestor has raised and in respect of which the Council has responded. Future correspondence will be read and stored in accordance with the Council's normal retention procedure but not acknowledged unless the Council is under a legal obligation to do so.

The requestor will be notified of the period over which the restriction will remain in force upon which date the Council will review the restriction. The Council will lift the restriction unless it considers it has grounds to extend it.

## **5. Review**

This policy will be reviewed at least annually at the Council's annual meeting.

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### Version History

ADOPTED WHPC Meeting 7<sup>th</sup> May 2024 24/144

# Vexatious Request Checklist Form

ADOPTED WHPC Meeting 2<sup>nd</sup> April 2024 24/127

A. Requestor details

Name:

B. Request details – Freedom of Information Act

Date of request(s):

**1. Do any of the following factors apply?**

- The request(s) is identical or substantially similar to a previous request for the same information (this goes to both the wording of the request and the scope of the information sought). **Y/N**
- The Council has previously complied with the request(s), or confirmed that the information is not held (even if the request(s) has been re-worded). **Y/N**
- A reasonable interval has not elapsed between the two requests. **Y/N**

**Comment:**

**2. Does the Council consider that the request(s) is likely to cause a disproportionate or unjustified level of disruption, irritation or distress? Y/N**

**If yes, please indicate why:**

- Nature of the information requested **Y/N**
- Context of the request(s) **Y/N**
- History of the requestor's engagement with the Council **Y/N**
- There exists long, detailed and overlapping contact with the Council **Y/N**
- Part of a large volume of sustained correspondence **Y/N**
- Part of a campaign by a number of requesters that is calculated to disrupt the Councils activities **Y/N**
- Contains obsessiveness, intemperate, abusive or confrontational language, unsubstantiated criminal allegations or offensiveness **Y/N**
- Argues points rather than asking for new information **Y/N**
- Refuses an offer to refer the matter for independent investigation **Y/N**
- Continues to challenge you for alleged wrongdoing without any clear and logical basis for doing so **Y/N**
- Other additional factor(s) – **please specify:**

**Comment:**

**3. Are any of these factors present?**

- Unreasonably targeting requests to a particular employee or office holder **Y/N**
- Taking an unreasonably entrenched position **Y/N**
- Rejecting advice and attempts to assist out of hand **Y/N**
- Showing no willingness to engage with you **Y/N**

**Comment:**

**4. Does the Council consider there to be an unreasonable present or future burden caused by the request, taking into account the context and history of the request(s)?**

- Number **Y/N**
- Pattern **Y/N**
- Duration **Y/N**
- Breadth **Y/N**

**Comment:**

**5. If the request(s) form part of a series of requests, does the Council consider a tipping point has been reached? Y/N**

Classification by the Council

**6. Does the Council classify the request(s) as vexatious considering its answers to questions 2-5? Y/N**

**Comment:**

C. Responding to the requester

**7. With regard to the above and the Council's responses in Section A, does the Council think that it will be productive to enter into a dialogue with the requester and ask them to moderate their behaviour? Y/N**

**Reason if the Council has responded "no":**

**8. Has the Council already given the requester a refusal notice for a previous vexatious or repeated request; and Has the Council already warned the requester that they will not receive a response to further requests on the same or similar topics; and Does the Council think it would be unreasonable to issue another one (including where the Council has issued a restriction on communication)?**

**Y/N**

Request details – Subject Access Request (SAR)

**Date:**

1. **Does the request(s) ask whether the Council is using/storing their personal data and/or ask for copies of it? Y/N**
  
2. **Has the Council placed a restriction on the requester's correspondence? Y/N**
  
3. **Does the request(s) fall into any of the below categories?**
  - The individual clearly has no genuine intention to exercise their right of access. **Y/N**  
*For example they make a request, but then offer to withdraw it in return for some form of benefit for the Council?*
  - The request is malicious in intent and is being used to harass the Council with no real purpose other than to cause disruption. **Y/N**
  - The request makes unsubstantiated accusations against the Council or specific employees/office holders which are clearly prompted by malice. **Y/N**
  - Targets a particular employee against whom they have some personal grudge. **Y/N**
  - Forms part of a systematic request to the Council as part of a campaign. **Y/N**  
*For example once a week with the intention of causing disruption.*
  - Other additional factor(s) – **please specify:**

**Comment:**

4. **Does the council consider that the request is manifestly excessive? Y/N**

If yes, please indicate why:

- the nature of the requested information **Y/N**
- the context of the request, and the relationship between you and the individual **Y/N**
- whether a refusal to provide the information or even acknowledge if you hold it may cause substantive damage to the individual **Y/N**
- your available resources **Y/N**
- whether the request largely repeats previous requests and a reasonable interval hasn't elapsed **Y/N**
- whether it overlaps with other requests (although if it relates to a completely separate set of information it is unlikely to be excessive) **Y/N**
- your available resources **Y/N**
- Other additional factor(s) – **please specify:**

**Comment:**

D. Authorisation

Signed:

Date:

*[Parish Clerk]*

Approved by:

Date:

*[Name and title]*