



A Request Too Far

A study in mitigating burden of unduly burdensome public record requests without restricting the flow of civic information

FOIA Advisory Committee

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Question:

How do we mitigate disruption to government agencies from unduly burdensome requests while protecting the free flow of civic information?

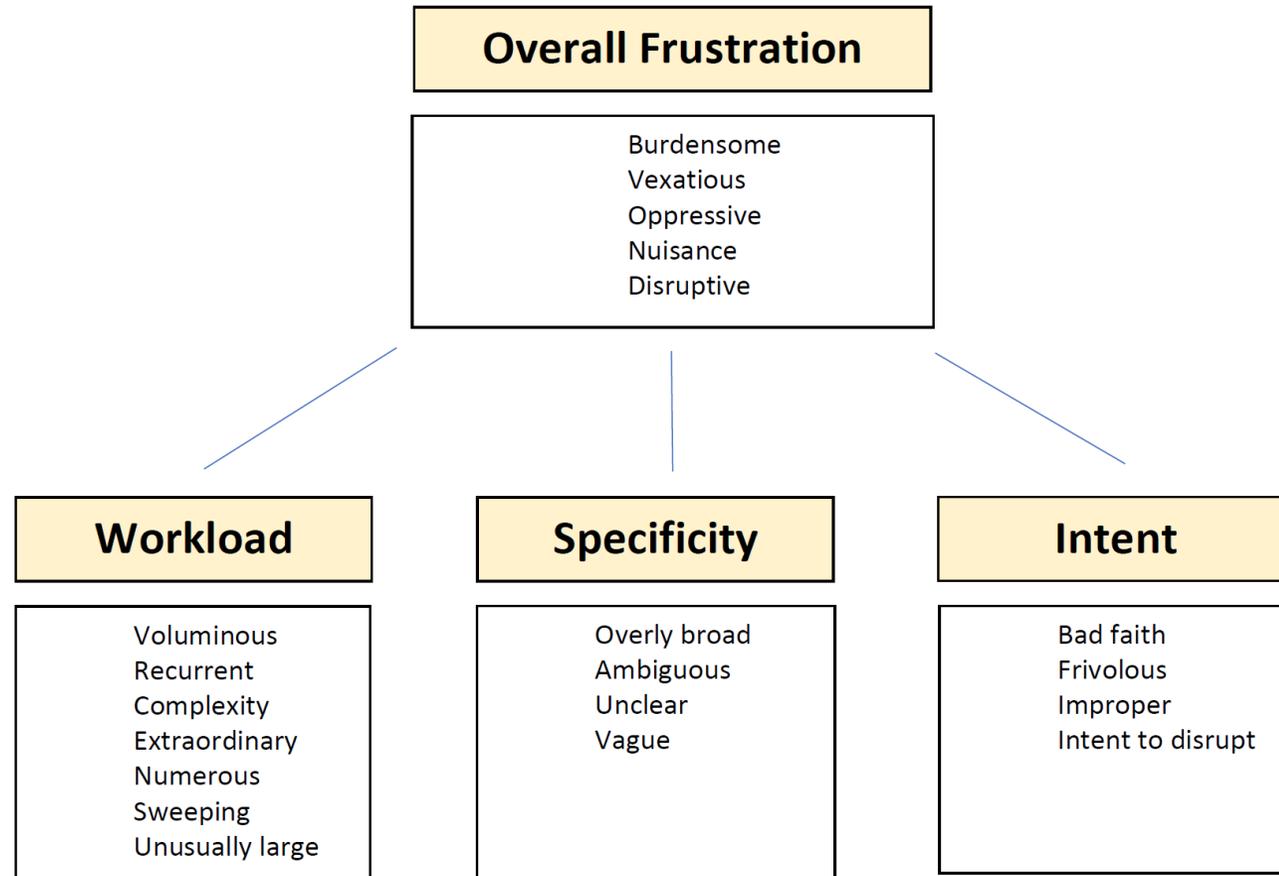
Project particulars

- **Four universities**
 - David Cuillier, University of Florida
 - Suzanne Piotrowski, Rutgers
 - Shelley Kimball, Johns Hopkins
 - Ben Worthy, University of London
- **April 2024 through June 2026**
- **Democracy Fund** support (\$250,000)
- **Report out this winter**

Methods

1. Global literature review
2. Legal inventory (50 states)
3. Analysis of public record request logs
4. Survey of election officials
5. Survey of UK record custodians
6. Interviews with custodians and requesters
7. Expert advisory panel

Legal inventory



Presented May 15, 2024,
Global Conference on
Transparency Research,
Brussels, Belgium

Current legal remedies

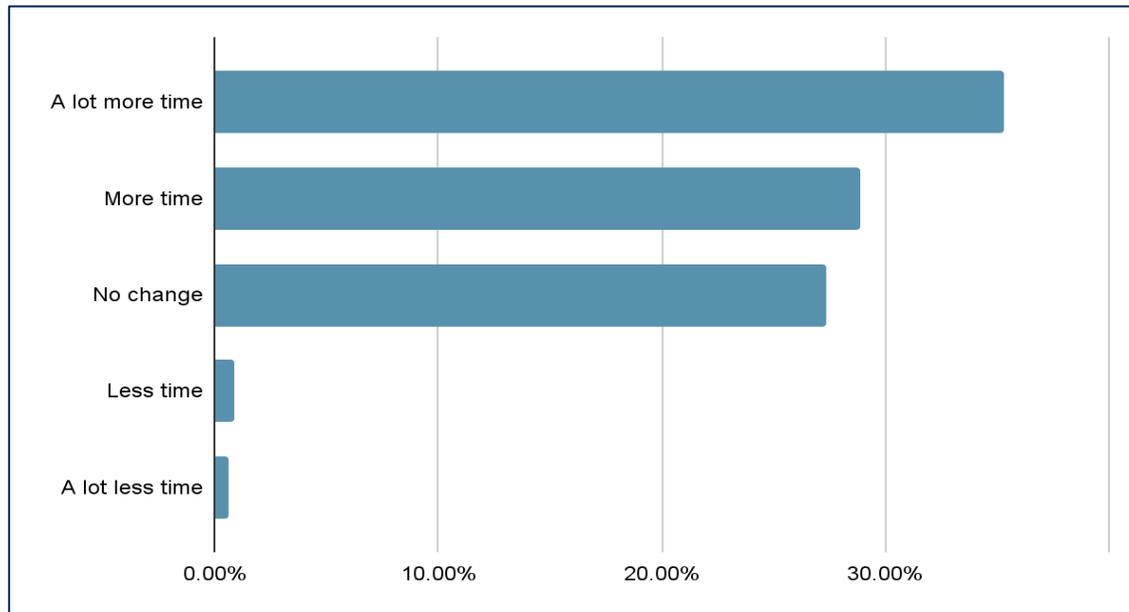
1. **Fees** (all states)
2. **Time extensions** (32 states)
3. **Deny or ignore** (23 states)
4. **Fines and bans** (Connecticut, Utah, Tennessee)



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Election official survey

Workload responding to records requests during past four years:

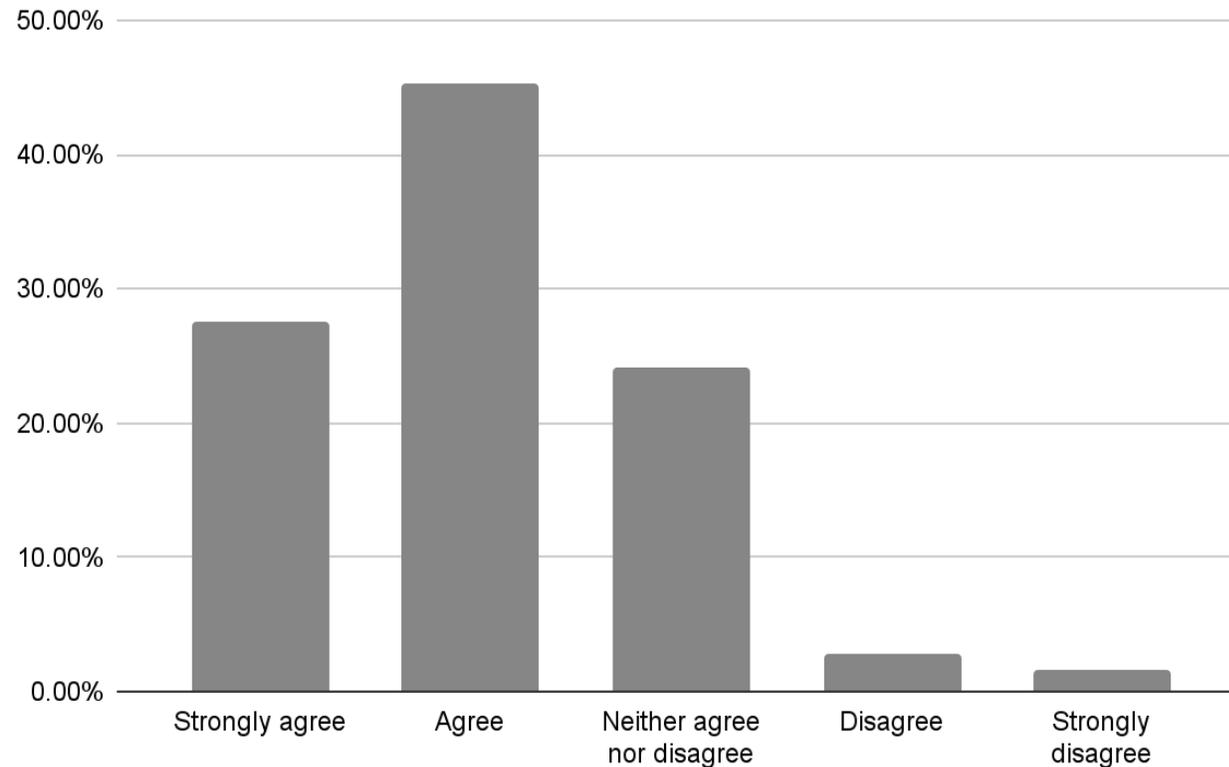


64% agreed that public records requests are taking more time than they did four years ago. (No change for 27%)



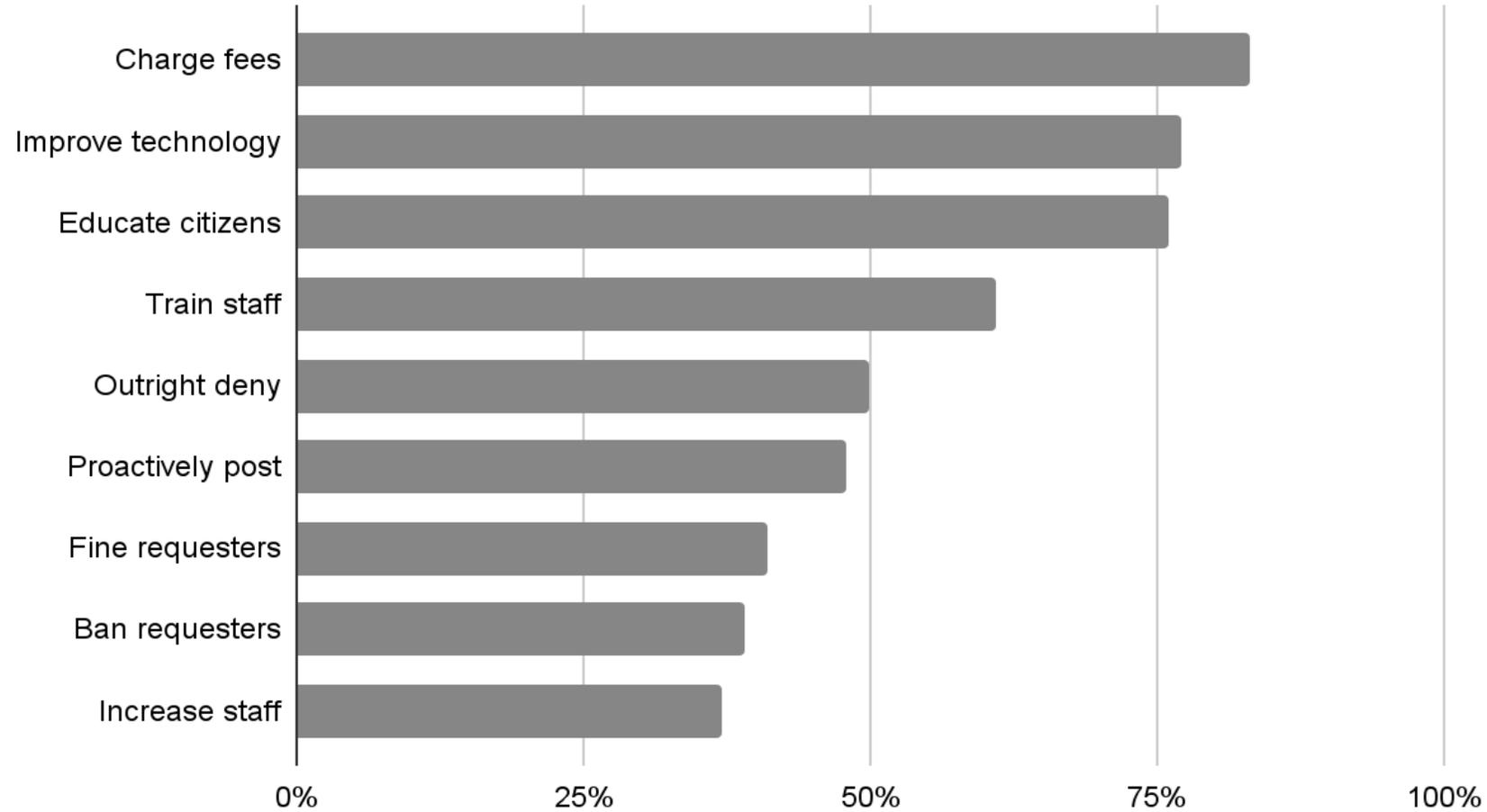
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The few time sinks



72% Strongly agreed that a few requests disproportionately consumed a significant amount of time. (Fewer than 5% disagreed.)

Their recommendations



The UK experience

What does section 14(1) of FOIA say?

Search this document

Dealing with vexatious requests (section 14)

What does section 14(1) of FOIA say?

What does vexatious mean?

What are the four broad themes?

How do we assess value or serious purpose?

How do we consider burden, motive and harassment?

Does the value and purpose of the request justify its impact?

How do we deal with a single burdensome request?

How do we deal with round robin requests which are vexatious?

Section 14(1) states

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

FOIA gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.

Most people exercise their right of access responsibly. However, a few may misuse or abuse FOIA by submitting requests which are intended to be annoying, disruptive or have a disproportionate impact on a public authority.

The ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.

Section 14(1) is designed to protect public authorities by allowing you to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.

The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in the leading case on section 14(1),

<https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/what-does-section-14-1-of-foia-say/>

Vexatious request exemption

- The UK's official definition is that 'the request...is vexatious in the sense of being a **disproportionate, manifestly unjustified, inappropriate or improper use of FOIA**' (ICO 2023, para 82).
- The key Information Tribunal case in 2013 (Dransfield) concluded that any vexatious decision should consider four areas:
 - the **burden** (on the public authority and its staff);
 - the **motive** (of the requester);
 - the **value** or serious purpose (of the request); and
 - any **harassment** or distress (of and to staff).

Vexatious requests rare

- Central government: **3.0%**
- Local government: **0.16%**

mySociety

Making FOI requests
Rejections and exemptions

10: Section 14 (vexatious requests)

https://research.mysociety.org/media/outputs/mysociety-local-government-foi_lFa9d6X.pdf

More UK analysis:



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High hurdle

- Proving vexatious is **burdensome** ‘FOIA gives individuals a greater right of access to official information...Therefore, engaging section 14(1) is a high hurdle’.
- Can be complex, as involves **‘motive’**
- Accusing a requester of being **vexatious** is itself daunting

Yet, still a burden (2025 survey)

- 91% say FOIA now requires “more” time.
- 79% agree that a few requests “disproportionally” consume a “significant portion of my time.”
- Estimates vary as to what proportion of requests are “unduly burdensome,” but the largest group put it at 20%, followed by 10% then 30%.
Average % of burdensome requests was 22%.
- Impact upon (i) police forces (ii) universities (over climate data and tobacco research).

Study under
peer review

Possible solutions

Solutions	% Agree or Strongly Agree
Proactive disclosure	87%
Better use of technology	81%
Strengthening vexatious exemption	74%
Increased staffing	70%
Increased training	69%
Fees for requests	61%

Artificial intelligence

Have you received any FOI requests that you believe have been written by, or drawn upon, artificial intelligence (such as Chat GPT)?

Yes	26	33%
No	31	39%
Unsure	17	21%

FOI and AI: A wave?

- **Signs of AI:** They point to identical or similarly worded requests, or arrival in a short space of time and timing of requests or similar style and language.
- **Waves?** In terms of patterns, there were no signs of constant AI use. Officials spoke of “150 in 24 hours,” “20 in a few hours” or “18 in day.”
- **Volume?** As a proportion of overall requests, those that answered offered from 0.1% to 5% with the highest being 10%
- **Solution?** A number of FOI officers had already used section 8 (1) (B) over requester identity.

Connecticut FOI Commission

- Law amended in 2017 (borrowed from Ontario, Canada).
- Can ban for up to a year and fine.
- Criteria does not include “motive” or “distress.”
- Instead, agency must demonstrate history of vexatiousness, accounting for number of requests, scope, language, language in agency communications, and “pattern of conduct that amounts to an abuse of the right to access information...”
- A few dozen petitions filed, but only a few pursued by commission staff so far.

<https://portal.ct.gov/foi/regulations/the-foi-act/section-1206-formerly-sec-121i--denial-of-access-to-public-records-or-meetings--appeals--notice--ord>

Preferable solutions (draft)

1. **Training** (for staff and public)
2. **Technology/resources** (e.g., line-item budget)
3. **Proactive posting**
4. **Front-end discussions**
5. **Express lanes and “zippering”**
6. **Staggered dissemination**
7. **Differential copy fees**
8. **Independent commission**(e.g., Connecticut)

Less favorable approaches

- 1. Search/redaction fees**
- 2. Vague laws to allow denial**
- 3. Time extensions**
- 4. Quotas/caps**
- 5. Fines and jail time**
- 6. Signed promises to be good**
- 7. Prohibitions on anonymous requests**
- 8. Bans on AI**

Report out this winter

Legal inventory



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Research, Brussels, Belgium

Election official survey



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UK record log analysis



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