



**RIGHT TO INFORMATION ACT 2009,  
S 49(1)(B)**

**GUIDELINE IN RELATION TO REFUSAL OF  
AN APPLICATION FOR ASSESSED  
DISCLOSURE UNDER THE RIGHT TO  
INFORMATION ACT 2009, S 20**

**GUIDELINE NO. 2/2010**

***Right to Information Act 2009, s 49(1)(b)***

***GUIDELINE IN RELATION TO REFUSAL OF AN  
APPLICATION FOR ASSESSED DISCLOSURE  
UNDER THE RIGHT TO INFORMATION  
ACT 2009, s 20***

This Guideline is issued by the Ombudsman under s 49(1)(b) of the *Right to Information Act 2009*.

The Guideline relates to the factors to be considered when determining to refuse an application under s 20 of the Act.

**1. The subject of this Guideline**

Section 20 states that an application for the assessed disclosure of information may be refused on the basis that it is a repeat or vexatious application.

The section states that refusal on this basis may occur where the public authority or Minister (which has responsibility for making a decision on the application under the Act) is of the opinion -

1. that the information which is the subject of the application is the same or similar to information sought in a previous application to a public authority or Minister and the application does not on its face disclose any reasonable basis for again seeking access to the same or similar information - see s 20(a);
2. is vexatious - see s 20(b);
3. remains lacking in definition after negotiation entered into under s 13(7) - see s 20(b).

The factors which need to be considered when determining to refuse an application on grounds 1 and 3 readily appear from the section.

In relation to ground 1, it is first necessary to compare the current application with the former application, and to form an opinion on whether they are the same or significantly similar. If they are the same or similar, it is then necessary to consider whether the current application, on its face, discloses a reasonable basis for again seeking access to the same or similar information. There are no factors which might be usefully put forward to assist in determining these matters.

There are also no factors which might be usefully put forward in relation to ground 3. The only question that arises here is whether the public authority or Minister is of the opinion, following negotiation under s 13(7), that the terms of the application are sufficiently precise for them to know what information the applicant is seeking.

On this reasoning, this Guideline only deals with the factors to be considered when determining to refuse an application on the ground that it is considered to be vexatious.

## **2. S 20(b) - the factors to be considered**

It is to be noted that s 20(b) of the Act requires that the opinion be formed that the application is vexatious, not that the applicant is vexatious.

The notion of a "vexatious application" seems to be similar to that of vexatious proceedings, in litigation. The Macquarie Dictionary defines the word in that context as meaning "instituted without sufficient grounds, and serving only to cause annoyance". Guidance might also be obtained from definitions such as that in the *Vexatious Proceedings Act 2008* (NSW), s 6, where "vexatious proceedings" are defined as -

- "(a) proceedings that are an abuse of the process of a court or tribunal, and*
- (b) proceedings instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose, and*
- (c) proceedings instituted or pursued without reasonable ground, and*
- (d) proceedings conducted in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose."*

In considering whether an application is vexatious within the terms of s 20(b), all of the surrounding circumstances should be taken into account.

The following specific factors should be considered in this process -

- (a) the objects of the Act as stated in s 3; and
- (b) whether the application might be refused under another, more specific provision, for instance ss 19 and other elements of s 20 - in which case the more specific provision should be applied.

Depending on the circumstances, the factors for consideration may also include -

- (c) the wording of the application, and in particular whether it is -

- (i) intemperate;
- (ii) obscure;
- (iii) unreasonably long;
- (iv) unreasonably complex -

or otherwise inappropriate;

- (d) the stated or apparent purpose of the applicant in making the application, and in particular whether that purpose is consistent with the objects of the Act; and
- (e) whether the making of the application is part of a pattern or course of conduct by the applicant.

In view of the objects of the Act, the opinion that an application is vexatious should not be lightly reached.

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**Ombudsman**

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