

## **Freedom of Information and Environmental Information Policy**

### **1. Introduction**

- 1.1 The Freedom of Information (Scotland) Act 2002 (“FOISA”) and the Environmental Information (Scotland) Regulations 2004 (“EIR”) place a general obligation on Scottish Public Authorities to allow the public access to information that they hold. Both FOISA and EIR are overseen by the Scottish Information Commissioner (“SIC”).
- 1.2 From 11 November 2019 the Association was designated as Scottish Public Authority and therefore needs to make information available in accordance with FOISA and EIR.
- 1.3 This is the Freedom of Information and Environmental Information Policy of the Association. The policy will:
  - provide a general understanding of FOISA and EIR; and
  - outline where responsibility lies for complying with the legal duties of the Association under FOISA and EIR.

### **2. Policy**

- 2.1 The Association is committed to the underlying principles of openness and transparency underpinning FOISA and EIR and complying fully with the requirements of said legislation. To this end the Association will:
  - follow the relevant Scottish Ministers Codes of Practice relating to FOISA and EIR, as well as any relevant guidance issued by SIC;
  - take into account the needs of individuals when presenting information under FOISA and EIR;
  - make all employees aware of their responsibilities under FOISA and EIR and support them in fulfilling those responsibilities;
  - publish a wide range of information through our Publication Scheme;
  - monitor compliance with FOISA and EIR with a view to continuous improvement;
  - respect data protection in accordance with the UK GDPR and Data Protection Act 2018 when complying with FOISA and EIR;
  - only withhold information where entitled to do so under FOISA and EIR and explain why information is withheld; and
  - provide advice and assistance to individuals seeking to access information.

### **3. Responsibilities**

- 3.1 The Association’s Board has overall responsibility for this policy and is responsible for ensuring implementation and compliance with this policy.
- 3.2 The Corporate Services Director has lead management responsibility for FOISA and EIR within the Association. This will include effective implementation and regular review of this Policy.
- 3.3 The Corporate Services Director will be responsible for:
  - receiving requests under FOISA and EIR;
  - responding to requests under FOISA and EIR;
  - collating information to be sent out to requesters
  - making information available in accordance with the Association’s publication scheme; and
  - dealing with requests for review.

- 3.4 In the absence of the Corporate Services Director, the Corporate Services Officer will co-ordinate the responsibilities set out in 3.3.
- 3.5 All employees are responsible for:
- familiarising themselves with this policy;
  - forwarding information requests received to the Corporate Services Director as quickly as possible. If you are unsure how to recognise an information request you should seek guidance from the Corporate Services Director;
  - if requests are made verbally, staff must ask the applicant to put their request in writing; and
  - seeking guidance from the Corporate Services Director if they are unsure about any of the duties placed on the Association by FOISA or EIR;
- 3.6 Employees should be aware that where an information request is received and an employee deletes or alters information held by the Association with the intention of preventing disclosure of that information a criminal offence is committed. Where employees are unsure if deletion or alteration of information may result in an offence they should seek guidance from the Corporate Services Director.
- 3.7 Compliance with this policy is compulsory for all employees of the Association. Any employee who fails to comply with this policy may be subject to disciplinary action.

#### **4. Scope of the Policy**

- 4.1 This policy applies to any information held by the Association which relates to one or more of the functions set out below, regardless of format. This will include information created internally and information received from third parties. It will also relate to information which is held on behalf of the Association.
- 4.2 This policy applies to all the Association employees.

#### **5. Background**

##### *5.1 Why is the Association subject to FOISA and EIR?*

- 5.1.1 The Association is subject to both FOISA and EIR by virtue of the Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 (the "Order"). The Order came into effect on 11 November 2019 and brought all Registered Social Landlords ("RSLs") and certain RSL subsidiaries under the scope of FOISA and the EIR.

##### *5.2 What is subject to FOISA and EIR?*

- 5.2.1 In accordance with the terms of the Order, not everything that the Association does is subject to FOISA and EIR. Instead, the Association is only subject to these regimes in respect of certain functions, namely 'housing services' (as defined in s165 of the Housing (Scotland) Act 2010) which the Association carries out – subject to some restrictions. Looking at the definition of 'housing services' and the restrictions which are set out in the Order the following functions carried out by the Association are covered by FOISA and EIR:
- the prevention and alleviation of homelessness;
  - the management of social housing accommodation; and
  - the supply of information to the Scottish Housing Regulator (SHR) by an RSL or a connected body (i.e. a subsidiary) in relation to its financial wellbeing and standards of governance.

- 5.2.2 It is important to note that FOISA rights will only apply to information held by the Association in

relation to these functions.

5.3 *What is the difference between FOISA and EIR?*

5.3.1 EIR provides a right of access to 'Environmental Information' held by the Association. Environmental Information has a very wide definition which is set out in Regulations. Where a request under FOISA is received for Environmental Information it should be processed in accordance with EIR.

5.3.2 Whilst the obligations under FOISA and EIR are similar – there are some key differences that employees must be aware of when dealing with requests for information. Further guidance on the differences are available on SIC's website.

**6. Legal Duties**

6.1 The Association has a number of legal duties which it must comply with under FOISA and EIR. These are set out in more detail below.

6.2 Responding to Information Requests

6.2.1 People have the right to request information from the Association. Requests for information must be in writing and state the name and address of the person applying for the information and the required information. Where the information requested is within the scope of the Order and the Association holds that information it must release the information unless an exemption (under FOISA) or an exception (under EIR) applies. The Association shall, when responding to requests for information from individuals, follow the Section 60 Code of Practice and any relevant guidance produced by SIC.

6.2.2 The Association will aim to respond to information requests promptly, and in any event within 20 working days of receiving the request (except in some circumstances under EIR where the Association is entitled to extend the timescale for responding by an additional 20 working days).

6.2.3 Where the Association is providing an individual with the information they have requested they will, in so far as is reasonable to do so, provide information in the format that the individual has requested and will adhere to any duties under the Equality Act 2010.

6.2.4 Where the Association is refusing to provide information to individuals it will clearly explain to said individual what provision in FOISA or EIR allows the Association to withhold that information and why the Association believes that provision applies (including, where required, an explanation of how the Association has carried out the Public Interest Test).

6.2.5 Where the Association is asked to provide information which it does not hold, the Association will inform the applicant of this.

6.2.6 Where the Association is asked to provide information which it does not hold, but the Association knows that another Scottish Public Authority does hold the requested information, the Association shall provide contact details of said Authority to the individual requesting the information and explain that the individual may wish to request the information from that Scottish Public Authority. Where a request is being handled under EIR and these circumstances apply the Association shall offer to transfer the individual's request to the other Scottish Public Authority.

- 6.2.7 Where a request is unclear, the Association will ask for clarification as soon as possible to enable us to proceed with considering the request.
- 6.2.8 The Association may choose to charge for fulfilling information requests received from individuals. Any charges made by the Association shall be made in accordance with:
- for requests being handled under FOISA, the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004; and
  - for requests being handled under EIR: the Schedule of Charges published on the Association's website.
- 6.2.9 Any fee charged by the Association will be reasonable and will not exceed the costs to the Association of providing requested information.
- 6.2.10 While the Association is committed to providing information, we sometimes receive requests which can be deemed "vexatious". In determining whether a request may be vexatious, we will consider whether meeting the request is likely to cause a disproportionate level of distress, disruption or irritation. Where we believe a request to be vexatious, we will issue a refusal notice unless we have already done so in response to an earlier vexatious or repeated request from the same individual and it would be unreasonable to issue another one.
- 6.2.11 The Association can refuse requests if they are repeated within a reasonable timescale from the previous request, whether or not they are also vexatious.
- 6.2.12 The Association reserves the right to refuse requests where the cost of providing the information would exceed the statutory cost limit. This limit is currently £600.

### 6.3 *Responding to Requests for Review*

- 6.3.1 Where someone has requested information from the Association and:
- The Association has failed to respond to the request within the 20 working day deadline (or extended deadline in respect of certain requests made under EIR); or
  - the person requesting the information is unhappy with the response to the request (for example where information has been withheld under one of the exemptions or exceptions available under FOISA / EIR)
- then they have the right to request that the Association reviews the response to their request to determine whether or not the provisions of FOISA or EIR have been followed. This request must be made within forty working days of the date of the Association's final response to their request.
- 6.3.2 Internal reviews will be carried out by a senior member of staff who was not involved with the original decision.
- 6.3.3 Where the Association performs a review and determines that a response to a request is not in accordance with FOISA or EIR, the Association will take immediate steps to rectify this (which could, for example, include releasing information which was previously withheld).
- 6.3.4 Where the Association performs a review and determines that a response to a request is in accordance with FOISA or EIR then the Association will notify the individual who asked for a review as quickly as possible.

6.3.5 In any event, the Association will handle all requests for review in accordance with the timescales set out in FOISA and EIR.

6.3.6 Where an individual is unhappy with the response to their review request they may appeal to SIC. If an appeal is made by SIC and a decision handed down by them both the Association and the individual in question have a right to appeal to the courts on a point of law.

#### 6.4 *Provision of Advice and Assistance to Individuals*

6.4.1 The Association must provide individuals seeking to access information with advice and assistance. This advice and assistance will be provided with a view to ensuring that all barriers which may potentially prevent an individual from accessing information are removed. The Association will comply with this duty by following the guidance contained in the Section 60 Code of Practice issued by Scottish Ministers.

#### 6.5 *Publication of Information*

6.5.1 The Association has adopted SFHA's "Open All Hours" Publication Scheme. The Scheme sets out what information the Association will make available, classified by information type and how this information can be accessed.

6.5.2 The Association shall publish information in accordance with its Publication Scheme through its Guide to Information. The Association's Guide to Information is available on its website and a paper format is also available on request.

#### 6.6 *Data Protection*

6.6.1 The Association is committed to upholding its data protection obligations set out in the UK GDPR and the Data Protection Act 2018.

6.6.2 Under data protection laws, individuals have the right to request access to all of the information that the Association holds about them. This and other rights that individuals have under data protection are not covered by this policy and you should refer to The Association's Privacy and Data Protection Policy when dealing with these rights.

#### 6.7 *Statistics*

6.7.1 The Association must submit statistical reports to the SIC on a quarterly basis. The reports include the numbers of requests received under FOISA, EIR and GDPR legislation, whether any exemptions were used and whether any reviews were carried out.

### 7. **Risk Management**

7.1 The risks associated with Freedom of Information and Environmental Information are incorporated within the Association's Risk Management Framework.

### 8. **Equal Opportunities**

8.1 The protected characteristics enshrined in the Equality Act 2010 are respected when ensuring compliance with the Association's obligations in relation to Freedom of Information and Environmental Information.

### 9. **Policy Monitoring and Review**

9.1 The Corporate Services Director will monitor the implementation and operational effectiveness of the Freedom of Information and Environmental Information Policy.

- 9.2 The Freedom of Information and Environmental Information Policy will be reviewed every four years or as and when deemed necessary.