

<b>Date Issued</b>	October 2019
<b>Last Review Date</b>	n/a
<b>Department</b>	Corporate
<b>Title</b>	<b>Freedom of Information Policy</b>
<b>Objective</b>	To describe our arrangements for complying with requests submitted under the Freedom of Information (Scotland) Act and Environment Information (Scotland) Regulations
<b>Responsible</b>	Chief Executive
<b>Next Review Date</b>	October 2024

## **1.0 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 we will be designated as Scottish Public Authority and will need to make information available in accordance with FOISA and EIR.
- 1.3 This is our Freedom of Information and Environmental Information Policy. This policy will:
  - Provide a general understanding of FOISA and EIR
  - Outline where responsibility lies for complying with our legal duties under FOISA and EIR

## **2.0 Policy Statement**

- 2.1 We are committed to the underlying principles of openness and transparency underpinning FOISA and EIR and complying fully with the requirements of this legislation. To this end, we 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 GDPR and Data Protection Act 2018 when complying with FOISA and EIR
- Only withhold information where we are entitled to do so under FOISA and EIR and explain why any information is withheld
- Provide advice and assistance to individuals seeking to access information

### **3.0 Responsibilities**

- 3.1 The Chief Executive has lead management responsibility for FOISA and EIR within ELHA (this will include effective implementation and regular review of this Policy).
- 3.2 Our Executive Support team will receive and process requests made under FOISA and EIR and will ensure requests are passed to the appropriate staff member to action. Our Chief Executive will review and quality check the final response before it is issued by the Executive Support Team.
- 3.3 The Executive Support team will also deal with any requests for a review, and ensure that links within our Guide to Information are kept up to date.
- 3.4 All employees are responsible for:
- Familiarising themselves with this policy
  - Forwarding information requests received to the Executive Support team as quickly as possible
  - Seeking guidance from their Line Manager or Executive Support Officer if they are unsure about any of the duties placed on us by FOISA or EIR
- 3.5 Employees should be aware that where an information request is received and an employee deletes or alters information held by us 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 their Director.
- 3.6 Compliance with this policy is compulsory for all our employees. Any employee who fails to comply with this policy may be subject to disciplinary action.

## **4.0 Scope of the Policy**

4.1 This policy applies to any information held by us 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 our behalf.

4.2 This policy applies to all ELHA employees.

## **5.0 Background**

### **5.1 Why are we subject to FOISA and EIR?**

5.1.1 We are 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").

5.1.2 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 we do is subject to FOISA and EIR. Instead, we are only subject to these regimes in respect of certain functions, namely 'housing services' (as defined in s.165 of the Housing (Scotland) Act 2010) which ELHA 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 us are covered by FOISA and EIR:

- The prevention and alleviation of homelessness
- The management of social housing accommodation
- The supply of information to the Scottish Housing Regulator (SHR) by us in relation to our financial wellbeing and standards of governance

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

5.3.1 EIR provides a right of access to 'Environmental Information' held by us. 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.

## 6.0 Legal Duties

6.1 We have a number of legal duties which we must comply with under FOISA and EIR. These are set out in more detail in Sections 7.0 to 9.0 below:

## 7.0 Responding to Information Requests

7.1 People have the right to request information from us. Where the information requested is within the scope of the Order and we hold that information we must release the information unless an exemption (under FOISA) or an exception (under EIR) applies. We shall, when responding to requests for information from individuals, follow the Section 60 Code of Practice and any relevant guidance produced by SIC. The procedure for responding to a request is set out in **Appendix 1**.

7.2 We 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 we are entitled to extend the timescale for responding by an additional 20 working days).

7.3 Where we are 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. Where we are refusing to provide information to individuals we will clearly explain to the individual what provision in FOISA or EIR allows us to withhold that information and why we believe that provision applies (including, where required, an explanation of how we have carried out the Public Interest Test).

7.4 Where we are asked to provide information which we do not hold, but we know that another Scottish Public Authority does hold the requested information, we will provide contact details of that 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, we will offer to transfer the individual's request to the other Scottish Public Authority.

7.5 We may choose to charge for fulfilling information requests received from individuals. Any charges made by us will be made in accordance with:

- For requests being handled under FOISA: the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004
- For requests being handled under EIR: the Schedule of Charges set out in our Guide to Information

7.6 Any fee charged by us will be reasonable and will not exceed the costs of providing the requested information.

7.7 The Scottish Federation of Housing Associations has published a range of template letters to be used for responding to requests for information under FOISA and EIR. Rather than reproducing copies of this guidance, we will refer to and use the template letters wherever possible, depending on the nature of the individual enquiry.

## **8.0 Responding to Requests for Review**

8.1 Where someone has requested information from us and:

- We have 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 we review the response to their request to determine whether or not the provisions of FOISA or EIR have been followed.

8.2 Where we perform a review and determine that a response to a request is not in accordance with FOISA or EIR, we will take immediate steps to rectify this (which could, for example, include releasing information which was previously withheld).

8.3 Where we perform a review and determine that a response to a request is in accordance with FOISA or EIR then we will notify the individual who asked for a review as quickly as possible.

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

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

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

9.1 We 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. We will comply with this duty by following the guidance contained in the Section 60 Code of Practice issued by Scottish Ministers.

## **10.0 Publication of Information**

10.1 We will publish information in accordance with our Publication Scheme through our Guide to Information. Our Guide to Information is available at [elha.com](http://elha.com) and a paper format will also be available on request.

## **11.0 Data Protection**

11.1 We are committed to upholding our data protection obligations set out in the GDPR and the Data Protection Act 2018.

11.2 Under data protection laws, individuals have the right to request access to all of the information that we hold about them. This and other rights that individuals have under data protection are not covered by this policy. We have a separate Data Protection Policy which sets out how we respond to these requests.

## **12.0 Policy Review**

12.1 This policy will be reviewed at least every five years, with any changes approved by our Management Committee

## Freedom of Information Request Handling Procedure

We have identified an 8-stage process to ensure that we respond appropriately to FOI requests within 20 working days:

1. Receive, identify, log
2. Clarify
3. Assess
4. Assign Request to department/individual – inform and consult
5. Locate and consider information to be disclosed
6. Consider response
7. Clearing response
8. Issue response

The process accounts for situations where we are asked for information which is covered by the terms of the Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 (the Order).

Only certain RSL and subsidiary functions are covered by FOI and EIR – these being:

- the prevention and alleviation of homelessness
- the management of social housing accommodation (for which an RSL has granted a Scottish secure tenancy or short Scottish secure tenancy)
- the provision and management of sites for gypsies and travellers
- the supply of information from an RSL to the Scottish Housing Regulator (SHR) in relation to its financial well-being and standards of governance

Where an information request does not relate to these functions we are not obliged under FOI or EIR to provide the information. However, there may be circumstances in which we are happy to disclose information requested even though we are not legally obliged to do so.

It is also important when considering whether to respond to such requests, to remember the general duty under the Scottish Social Housing Charter, under the Communications outcome:

*Social landlords manage their business so that:*

*tenants and other customers find it easy to communicate with their landlord and get the information they need about their landlord, how and why it makes decisions and the services it provides.*

Where we are providing information that is not subject to the Order we do not need to consider if any FOI or EIR exemptions or exceptions apply and we will always be particularly careful where any information requested relates to personal data.

## Stage 1 – Receive, Identify & Log

**Request Received (days 1-2)** Pass to **Executive Support**, who will Log details, validate request, ID Legislation & send acknowledgement

Pass the Request to the Executive Support team. They will:

- Evaluate the request and identify which legislation it will be processed under; is it:
  - Freedom of Information (Scotland) Act (FOISA)
  - Environmental Information Regulations (EIRs)
  - Data Protection Act (DPA)
- Log the request in the FOISA Information Request spreadsheet
- If the request is a complex / controversial case, inform the Senior Management Team
- Send an acknowledgement letter confirming receipt of the request, and the legislation under which it will be processed or proceed to Stage 2

## Stage 2 – Clarify

**Clarify Request (days 1-2)** **Executive Support** to contact requester if necessary to seek further clarification

The Executive Support staff will ensure that the request is clear regarding what information is being asked for. If the request is unclear clarification will be sought.

## Stage 3 - Assess

**Assess Request (days 3-5)** **Executive Support** to decide if: the information is covered by the Order; we hold the information & if it is already accessible

The Executive Support staff will assess:

- If the request relates to functions covered by The Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 (the Order):
  - If the information is covered by the Order we will proceed with next steps in Stage 3
  - If the information is not covered by the Order but we are willing to release some or all of the information proceed with next steps in stage 3
  - If the information is not covered by the Order and we are not willing to release any of the information a letter will be sent to the requestor informing them that we are not obliged to provide them with the information



- if we hold the information and if it is already accessible:
  - If we do not hold the information a letter will be sent to the requestor informing them the information is not held
  - If the information is held but is already published then a Section 25 exemption letter will be sent to the requestor informing them of where to find this information. Where the information is not covered by the Order we should simply write to the requester and inform them where to find the information
  - If the information is held and has not been published then the request process will proceed to stage 4

**Stage 4 - Assign Request to Site/Section - Inform & Consult**

Assign/Inform/Consult  
(days 3-5)

Executive Support will send request to appropriate department to request information held.

Relevant department will respond to Executive Support when information has been collected or to inform Executive Support that department does not hold information.

Consult with Executive Support to determine if fees are applicable. The Chief Executive will advise on applying fees.

**Stage 5 - Locate & Consider Information to be Disclosed**

Locate Information (days 3-5) Appropriate department collate information. The Senior Management Team will assist, support & advise

Appropriate department and Executive Support consider if the information can be supplied or whether any exemptions apply. Where the information requested is not covered by the Order you do not need to determine whether or not exemptions apply and can instead choose what information you are prepared to release.

The Senior Management Team will advise and assist in applying exemptions.

Appropriate department obtains information from all sources and collates. Appropriate department completes information request documents as appropriate.

**Stage 6 - Consider Response**

Consider Response (days 6-10) Executive Support review & draft response

Executive Support will review documents and prepare response letter

**Stage 7 - Clearing Response**

Clearing Response (days 11-15)

In cases of complex/controversial requests Executive Support staff will seek clearance and consult with the Senior Management Team and Chief Executive, who will liaise with the Association's solicitors and other legal advisors as necessary.

**Stage 8 - Issue Response**

Issue Response (days 16-20) Executive Support issue response after quality check by Chief Executive

The Chief Executive quality checks and passes back to Executive Support to issue information requested, stating any exemptions as appropriate.