



## Access to Information Policy

V.1 – October 2019

<b>Policy Number</b>	<b>C.20</b>			
<b>Document Owner</b>	<b>Corporate</b>			
<b>Review Frequency</b>	<b>3 yearly</b>			
<b>Reviewed by</b>	<b>Information Law Solutions</b>			
<b>Date Approved</b>	<b>2<sup>nd</sup> October 2019</b>			
<b>Next Review Due</b>	<b>October 2022</b>			
<b>Version Number</b>	<b>1</b>			
<b>Consultation Required</b>	<b>Yes</b>		<b>No</b>	<b>x</b>
<b>Equalities Impact Assessment</b>	<b>Yes</b>		<b>No</b>	<b>x</b>
<b>Added to Website</b>	<b>Yes</b>	<b>y</b>	<b>No</b>	

<b>SSHC Reference</b>	
<b>SHR Reference</b>	

### Related Documents

- **Publication Scheme**
- **Records Management Policy**

## **Translation Statement**

If you have any difficulties reading this information or need further help understanding our processes please contact us. We can make this document available in a variety of formats. All you need to do is let us know what you need and we will try to assist.

## **Compliance**

This policy has been drafted to ensure that it complies with current legislation and industry good practice.

## **Equality & Diversity**

Fyne Homes is committed to providing services which embrace diversity and which promote equality of opportunity. As an employer we are also committed to equality and diversity within our workforce. Our goal is to ensure that these commitments, reinforced by our Values, are embedded in our day-to-day working practices.

## **Openness & Confidentiality**

Fyne Homes believes that its members, tenants and other interested parties should have access to information on how it conducts itself. This means that unless information requested is considered commercially sensitive or personally confidential it will be made available on request.

## **General Data Protection Regulations**

Fyne Homes recognises that the General Data Protection Regulations are an important piece of legislation to protect the rights of individuals in respect to any personal information that we may keep about them, whether on computer or in manual systems. We will treat your personal data in line with our obligations under the current data protection regulations and our own Data Protection Policy. Information regarding how your data will be used and the basis for processing your data is provided in our Transparency Statements

## **1. Introduction**

- 1.1 The Association is fully committed to the aims and principles underlying the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (EISRs) and to the disclosure of information of interest to its service users and the wider public. It will make every effort to promote greater openness and transparency and maximise public trust in its work as a registered social landlord in Scotland.
- 1.2 In this policy, reference to a “request” or “request for information” is to a request made to the Association under either FOISA or the EISRs and a reference to “information” includes environmental information, unless otherwise specified.

## **2. Legal framework**

- 2.1 Freedom of Information (Scotland) Act 2002 (FOISA)
- 2.2 Environmental Information (Scotland) Regulations 2004 (EISRs)

## **2. Responsibilities**

- 2.1 The Association’s Data Protection Officer (DPO) has overall responsibility for assisting the Association in co-ordinating the handling of and response to requests for information and advising, providing guidance to and training staff on complying with FOISA and the EISRs and this policy.
- 2.2 All staff are responsible for creating and maintaining a culture supportive of openness, transparency and accountability and promoting the right to know.

## **3. Principles**

- 3.1 The Association will handle requests for information in accordance with legal requirements and best practice, including the guidance contained within the Scottish Ministers’ Code of Practice on the Discharge of Functions by Public Authorities issued under Section 60 of FOISA and the briefings and decisions issued by the Scottish Information Commissioner (SIC).
- 3.2 The Association will publicly demonstrate its commitment to access to information by regularly and proactively making information available via its publication scheme.
- 3.3 The Association will provide advice and assistance to prospective applicants and applicants throughout the lifecycle of handling and responding to requests for information.
- 3.4 All staff are responsible for providing prospective applicants and applicants with information about their right to know, to outline the key points of FOISA and the EISRs to them and inform them of how to request information.

- 3.5 The Association will handle all requests in an “applicant blind” manner i.e. in a way that does not take the identity of the person requesting the information into account when handling and responding to the request.
- 3.6 The Association will respond to requests as promptly as possible and will only use the maximum period for response and issue a fees notice to an applicant for access in circumstances where this is strictly necessary.
- 3.7 The Association will interpret exemptions contained within FOISA and exceptions contained within the EISRs in a narrow manner with a view to favouring disclosure of information, where possible, and will not unduly restrict access to information and will fully explain to the applicant why an exemption or exception has been applied.

#### **4. Scope**

- 4.1 FOISA provides for a right of access to recorded information held by the Association and its subsidiary organisations in relation to housing activities. This covers any activities undertaken by the Association in relation to housing services as defined in Section 165 of the Housing (Scotland) Act 2010, including information in any format regarding the following:
  - 4.1.1 the prevention and alleviation of homelessness;
  - 4.1.2 the management of social housing accommodation where the Association has granted a Scottish secure tenancy or a short Scottish secure tenancy;
  - 4.1.3 the provision and management of sites for gypsies and travellers; and
  - 4.1.4 the supply of information to the Scottish Housing Regulator in relation to the Association’s financial wellbeing and standards of governance.
- 4.2 Examples of information held by the Association covered by FOISA include information on: housing applications submitted to the Association; allocations of property by the Association; general tenancy management (such as complaints, rent calculations and reviews, rent arrears and evictions); tenant participation and engagement activities; policies and procedures relating to the provision of housing services; tenders for the provision of core services, such as housing management system, rent payments / finance and information technology; and governance, performance and regulatory matters, such as notifications, returns and reports to the Scottish Housing Regulator and the Association’s other regulators. Information about staff involved in the delivery of core housing services, for example, recruitment, remuneration, performance appraisals and conduct, is also covered by FOISA.
- 4.3 The EISRs provide for a right of access to environmental information held by the Association. This includes information relating to the following:

- 4.3.1 the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
  - 4.3.2 factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to above;
  - 4.3.3 measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to above, as well as measures or activities designed to protect those elements;
  - 4.3.4 reports on the implementation of environmental legislation;
  - 4.3.5 costs benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to above; and
  - 4.3.6 the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to above or, through those elements, by any of the matters referred to above.
- 4.4 The definition of environmental information is very technical and complex. Examples of information covered by the EISRs include: repairs and maintenance; roof and property condition surveys; commercial arrangements between the Association and its maintenance and repair contractors; procurements undertaken by the Association for maintenance and repairs; the Association's planned and current development activities; adaptations to properties owned by the Association; permissions granted by the Association to its tenants to install, for example, CCTV at its properties; energy efficiency of the Association's properties; and reports produced by third parties on behalf of the Association, including environmental consultants, architects and surveyors.

## **5. The three duties**

- 5.1 There are three core duties with which the Association will comply when providing access to information that it holds:
  - 5.1.1 the duty to publish;
  - 5.1.2 the duty to provide advice and assistance; and
  - 5.1.3 the duty to respond to requests for information.

## **5.2 The duty to publish**

- 5.3 FOISA requires the Association to adopt and maintain a publication scheme, which sets out the information that the Association routinely publishes (or intends to publish), together with the manner in which that information is / will be published and whether the published information is available to the public free of, or subject to, a charge.
- 5.4 The EISRs do not require the Association to adopt and maintain a publication scheme, but the Association must actively disseminate environmental information. The Association does so by including environmental information within its publication scheme.
- 5.5 The Association has adopted the Scottish Information Commissioner's Model Publication Scheme tailored as appropriate to meet the needs of the Association. The Association's publication scheme is available on its website (at: <https://www.fynehomes.org.uk/about-us/freedom-of-information/> and is maintained with guidance and assistance from the DPO. Most information listed within the publication scheme is available online.
- 5.6 Departments within the Association have a responsibility to ensure that information is regularly reviewed and actively contributed to the publication scheme. This will enhance the Association's openness and accountability and assist in reducing the number of requests made to the Association, as information contained within the publication scheme does not require a request for information to be made to the Association before it can be accessed.

## **5.7 The duty to provide advice and assistance**

- 5.8 The Association has a duty to provide reasonable advice and assistance to a person who proposes to make, or has made, a request for information to the Association. This duty applies to both prospective applicants and applicants and the duty exists throughout the lifecycle of the request.
- 5.9 Examples of reasonable advice and assistance that staff must provide include:
- 5.9.1 providing guidance on how to make a request and associated fees;
  - 5.9.2 helping an applicant understand the processes, procedures and legislation involved in making a request for information;
  - 5.9.3 helping an applicant describe the information sought or to clarify their request;
  - 5.9.4 helping to validate requests where all of the required particulars have not been provided by the applicant;
  - 5.9.5 providing outlines of relevant information held by the Association;

- 5.9.6 maintaining dialogue with an applicant regarding who is handling the request, third parties being consulted and when the applicant should expect to receive a response;
- 5.9.7 sending reminders to an applicant in relation to clarifications and payment of fees required;
- 5.9.8 being sensitive to an applicant's circumstances, particularly in relation to disability and literacy;
- 5.9.9 finding suitable alternatives if information cannot be provided in the format requested by an applicant;
- 5.9.10 informing an applicant about what can be provided within the fees limit;
- 5.9.11 if an applicant cannot afford to pay the fees, highlighting to an applicant what can be provided free of charge; and
- 5.9.12 assisting an applicant to understand the application of exemptions and exceptions and what other information held by the Association (that is not exempt or except) might be useful and relevant to an applicant's request.

## **5.10 The duty to respond to requests for information**

- 5.11 A request for information made to the Association must include the following particulars:
  - 5.11.1 the name of the applicant. If the identity of the applicant is not clear from the request or it appears that the request is being made on behalf of another person, then the Association is entitled to refuse the request, subject to first providing appropriate advice and assistance to try and validate the request;
  - 5.11.2 address for correspondence, which may consist of a postal or e-mail address; and
  - 5.11.3 a description of the information to which the applicant seeks access.
- 5.12 A FOISA request must be in writing or other permanent form, such as a letter, e-mail, social media message, voicemail message, audio recording or made to the Association via the website, [www.whatdotheyknow.com](http://www.whatdotheyknow.com) but it does not need to specifically refer to FOISA in order to be valid. An EISRs request does not need to be in writing, can be made orally to the Association and does not need to specifically refer to the EISRs.
- 5.13 The Association will provide the applicant with appropriate advice and assistance to validate a request by, for example, assisting an applicant put a FOISA request in permanent form, if the applicant is unable to do so. In providing the applicant with advice and assistance, the Association must not, and is not entitled to, ask the

applicant why the applicant seeks access to the requested information. This is irrelevant to the Association's handling of and response to the request.

- 5.14 The Association has a maximum of 20 working days to respond to requests. The deadline for responding to an EISRs requests may be extended by up to an additional 20 working days, if the request is complex or voluminous. The time period for response pauses when an applicant is asked for clarification on their request or a fees notice is issued by the Association, and resumes when the clarification has been provided or fee has been paid by the applicant.
- 5.15 The Association will handle and respond to requests for information received from anyone, irrespective of whether they are a service user of the Association or otherwise have an interest in the work of the Association. The applicant must, however, be at least 12 years of age and have sufficient maturity to understand what it means to make a request for information. The Association will assess this in all the circumstances, although it is unlikely that the Association will refuse a request based on age alone.
- 5.16 The Association is not obliged to create or acquire information from a third party to satisfy a request. The duty to respond to requests extends only to information held by the Association as at the date of receipt of the request.

## **6. Exemptions and exceptions from disclosure of information**

- 6.1 The Association aims to be as open as possible when carrying out its activities as a registered social landlord in Scotland. However, there may be circumstances in which the Association considers that information cannot be disclosed in response to a request.
- 6.2 FOISA and the EISRs contain two categories of exemption (or exception in the case of the EISRs) from disclosure of the requested information to the applicant.
- 6.3 The first category is the absolute exemptions, where a public interest test assessment does not require to be completed before the exemption can be relied upon.
- 6.4 The second category is the non-absolute exemptions, where a public interest test assessment must be completed before the exemption can be relied upon. The public interest test involves considering whether in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.
- 6.5 Some of the exemptions are subject to a harm test, for example, whether disclosure of information would, or would be likely to, substantially prejudice a particular interest. In those cases, the Association must be able to identify the harm that would or would be likely to be caused as a result of disclosure. Specific advice must be sought from the DPO in each case.



## **7. Reviews and the SIC<sup>1</sup>**

- 7.1 If an applicant is in any way dissatisfied with the way in which their request for information has been handled and responded to by the Association (including where the Association failed to respond at first instance), the applicant may require the Association to review its handling and response to the request. An applicant may not require a review where the original request for information was vexatious or a repeat request or where the requirement for review is itself vexatious. The Association will issue a notice to this effect to an applicant requesting a review in these circumstances, setting out the applicant's rights to apply to the SIC and to thereafter appeal against a decision by the SIC to the Court of Session on a point of law.
- 7.2 The applicant may require a review within 40 working days either after the end of the period for responding to the request (where the Association did not respond) or following receipt by the applicant of the Association's response. The applicant must explain the dissatisfaction with the Association's original handling and response, although the applicant does not specifically need to mention the requirement for a review.
- 7.3 Where the applicant is requiring a review on the basis that the Association failed to respond to the applicant at first instance, the requirement for review will normally be regarded by the Association as a new request, with a separate entitlement to require a review following on from this.

## **8. Equalities**

- 8.1 The Association is committed to ensuring that all people are given full and equal opportunity to make a request for information.
- 8.2 Where necessary, staff will assist and advise the applicant by helping to validate the request for them and read it back to them to ensure that an accurate record of the request has been taken.
- 8.3 The Association will arrange to provide:
- 8.3.1 assistance to applicants who have difficulty with spoken English or whose first language is not English by providing the information in a minority language;
  - 8.3.2 support for visually impaired customers by providing information in large print, Braille or audio recording, if appropriate; and
  - 8.3.3 sign language interpretation, if appropriate.
- 8.4 Where an applicant is unable to make a request on their own, the Association may accept requests made on the applicant's behalf by a third party where the applicant

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<sup>1</sup> Scottish Information Commissioner

has authorised the third party to make the request. The applicant on whose behalf the request is being made must be named in the request. If not, the Association is entitled to refuse the request on the ground that it is not valid.

## 9. Consequences of failure to comply

9.1 The Association takes compliance with this policy very seriously. Failure to comply with this policy:

9.1.1 is likely to significantly impact on the perception that the Association is an open and transparent organisation and affect the Association's reputation and trust in the Association and its work;

9.1.2 carries a risk of an application being made to the SIC against the Association; and

9.1.3 may amount to the commission of an offence by a member of staff where the member of staff alters, defaces, blocks, erases, destroys or conceals information with the intent of preventing disclosure where the applicant would otherwise have been entitled to receive the information in response to the request.

9.2 Due to the importance of this policy, failure to comply with any requirement of it may lead to disciplinary action for a member of staff under the Association's procedures, and this action may result in dismissal for gross misconduct.

9.3 Any questions or concerns about this policy should be directed to the DPO.

## 10. Review and updates to this policy

10.1 The Association will review and update this policy and may amend, update or supplement it from time to time and at least every 3 years or earlier, if required by changes in legislation.

10.2 If there is a procedural delay in the policy revision then the relative legislation in force at the time will prevail.

Version number	Revision Date	Part of doc revised	Reason for revision	Approved by
1	Oct 2019		New Policy	Mgt Comm