



## Freedom of Information and Environmental Information Policy

## **Introduction**

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”).

From 11 November 2019 Yorkhill Housing Association will be designated as a Scottish Public Authority and will need to make information available in accordance with FOISA and EIR.

This is the Freedom of Information and Environmental Information Policy of Yorkhill Housing Association (the Association). The policy:

- provides 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

## **Policy Statement**

The Association is committed to the underlying principles of openness, and transparency underpinning FOISA and EIR and complying fully with the requirements of legislation. The Association will meet these requirements by:

- following the relevant Scottish Ministers Codes of Practice relating to FOISA and EIR, as well as any relevant guidance issued by SIC;
- taking into account the needs of individuals when presenting information under FOISA and EIR;
- making all employees aware of their responsibilities under the FOISA and EIR and support them in fulfilling those responsibilities;
- publishing a wide range of information through our Publication Scheme;
- monitoring compliance with FOISA and EIR with a view to continuous improvement;

- respecting data protection in accordance with the General Data Protection Regulation (GDPR) and Data Protection Act 2018 when complying with FOISA and EIR;
- only withholding information where entitled to do so under FOISA and EIR and explain why information is withheld; and
- providing advice and assistance to individuals seeking to access information.

### **Responsibilities**

- The Chief Executive has lead management responsibility for FOISA and EIR within the Association. This will include effective implementation and regular review of this Policy.
- The Association's Compliance Manager is the designated Data Protection Officer and will :
  - Coordinate the collation of information for sending out to requesters.
  - Respond to requests under FOISA and EIR.
  - Keep the Association's Publications Scheme up to date.
- The Chief Executive and Director of Property Services will:
  - Deal with requests for reviews.
- All employees are responsible for:
  - familiarising themselves with this policy;
  - forwarding information requests received to the Data Protection Officer as quickly as possible. If staff are unsure how to recognise an information request they should seek guidance from the Data Protection Officer; and
  - seeking guidance from the Data Protection Officer if they are unsure about any of the duties placed on the Association by FOISA or EIR.

- 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 Data Protection Officer.
- 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.

### **Scope of the Policy**

This policy applies to any information held by the Association which relates to one or more of the functions set out above, 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.

This policy applies to all Yorkhill Housing Association employees.

### **Background**

#### **Why is Yorkhill Housing Association subject to FOISA and EIR?**

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.

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

However, 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 s.165 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;
- the provision and management of sites for gypsies and travellers; 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.

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

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.

Whilst the obligation under FOISA and EIR are similar – there are some key differences that employees must be aware of when dealing with requests for information. For example, there are differences in:

- the categories of information;
- the format of requests; and
- applicable fees.

Freedom of Information, except where exemptions apply; provides for the disclosure of any recorded information in writing or other permanent form which is capable of being used for subsequent reference.

This will include:

- paper; computer files, including emails; videos; Microfiche.

FOI requests must be in writing or any other format capable of having some permanency. Formats include e-mail, letter, facsimile, audio or video tape.

For EIRs any information in writing, visual, aural, electronic or any other material form on:

- the state of the environment;
- factors affecting the elements; including living things;
- measures affecting the elements;
- reports on the implementation of environmental legislation;
- cost benefit and other economic analysis; and
- the state of human health and safety.

EIR requests can be made in any format: verbal requests for environmental information are valid under the EIRs.

Further guidance on the differences are available on SIC's website.

### **Legal Duties**

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:

#### **Responding to Information Requests**

People have the right to request information from the Association. 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 the SIC.

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).

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. 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). 'FOISA does not define the public interest. It has been described elsewhere as "something which is of serious concern and benefit to the public" not merely something of individual interest. It has also been described as "something that is "in the interest of the public", not merely "of interest to the public." In other words, it serves the interests of the public.' (*Scottish Information Commissioner briefing*).

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.

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 the Schedule of Charges will be posted on the Association's website; and
- for requests being handled under EIR: the Schedule of Charges will be posted on the Association's website.

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

### Responding to Requests for Review

Where someone has requested information from the Association and:

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- 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.

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).

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.

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

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.

### Provision of Advice and Assistance to Individuals

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.

### Publication of Information



The Association shall publish information in accordance with its Publication Scheme through its Guide to Information. The Guide to Information of the Association will be available on our website and a paper format will also be available on request.

### Data Protection

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

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 our Data Protection Policy when dealing with these rights.