

Date Issued October 2019

Last Review Date November 2024

Department Corporate

Title **Freedom of Information Policy**

Objective To describe our arrangements for complying with requests submitted under the Freedom of Information (Scotland) Act 2002 and Environment Information (Scotland) Regulations 2014

Responsible Chief Executive / Director of Housing

Next Review Date November 2029

1.0 Introduction

- 1.1 The Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2014 (EISR) enable the public to access information held by Scottish Public Authorities.
- 1.2 The purpose of this policy is to outline the principles and procedures for providing access to information held by East Lothian Housing Association in accordance with FOISA and EISRs.
- 1.3 All staff must be aware of the policy and the EISR responsibilities under FOISA and the EISR and should be prepared to provide advice and assistance to prospective customers.
- 1.4 Procedures are provided for staff in the handling of FOISA and EISR requests and reviews, and for ensuring that our Publication Framework is regularly reviewed and updated.
- 1.5 This Policy does not apply to requests received by the Association's from persons for access to their own personal data. Such requests must be handled in accordance with our Privacy Policy and Subject Access Request procedures.

2.0 Principles

- 2.1 We are committed to the underlying principles of openness and transparency underpinning FOISA and EISR and complying fully with the requirements of this legislation. We will:

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- Handle requests for information in accordance with legal requirements and best practice, including the guidance contained within the Scottish Ministers Codes of Practice relating to FOISA and EISR, as well as any relevant guidance issued by the Scottish Information Commissioner (SIC) – www.itspublicknowledge.info
- Respond to requests as promptly as possible and will only use the maximum period for response and issue a fees' notice for access to information in circumstances where this is strictly necessary
- Consider the needs of individuals when presenting information under FOISA and EISR
- Make all staff aware of thEISR responsibilities under FOISA and EISR and support them in fulfilling those responsibilities
- Publish a wide range of information through our Publication Scheme
- Monitor compliance with FOISA and EISR with a view to continuous improvement
- Respect data protection in accordance with the GDPR and Data Protection Act 2018 when complying with FOISA and EISR
- Only withhold information where we are entitled to do so under FOISA and EISR 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 and Director of Housing share lead management responsibility for FOISA and EISR 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 EISR 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 Line Managers are responsible for raising awareness of this policy and ensuring that the staff they manage are aware of what to do if they receive a request for information directly.
- 3.5 All staff must be aware of and comply with this policy and immediately forward any requests for information requests received by them to the Executive Support Team.

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- 3.6 If staff have any questions or comments about the content of this policy or if they need any further information, they can seek guidance from the EISR Line Manager or Executive Support Officer.
- 3.7 Staff should be aware that where an information request is received, a criminal offence is committed if an employee deletes or alters information held by us with the intention of preventing disclosure of that information. Where staff are unsure if deletion or alteration of information may result in an offence, they should seek guidance from the Director of Housing.

4.0 Scope of the Policy

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 us in relation to housing services as defined in Section 165 of the Housing (Scotland) Act 2010, including information in any format regarding the following:

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

4.2 Examples of information held by us covered by FOISA include information on housing applications submitted to the Association, allocations of a property, general tenancy management (such as complaints, rent calculations and reviews, rent arrears and evictions), tenant participation, policies and procedures relating to the provision of housing services, rent payments & service charges for Shared Owners, estate management and management of communal areas, performance and regulatory matters such as notifications, returns and reports to the Scottish Housing Regulator and the Association's other regulators.

4.3 EISR provides a right of access to 'Environmental Information' held by us. Environmental Information has a very wide definition which is set out in Regulations and is very technical and complex. We will always refer to SIC guidance, but examples of information covered by EISRs may include development, sale and purchase of property, major repairs, surveys or building inspections.

4.4 This policy applies to any information held by us which relates to one or more of the functions set out at Section 4.1, 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.

4.5 This policy applies to all staff. Compliance with this policy is compulsory and any staff member who fails to comply may be subject to disciplinary action.

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5.0 Legal Duties

5.1 We have three core duties which we must comply with under FOISA and EISR which are explained in Sections 6.0 - 8.0 below:

- Duty to respond to information requests
- Duty to provide assistance and advice
- Duty to publish

6.0 Duty to Respond to Information Requests

6.1 A request for information made to the Association must include the following particulars for it to be a valid request:

- The full name of the person making the request – using first or given names is not sufficient. If the name 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 staff first providing appropriate advice and assistance to try to validate the request
- Address for correspondence, which may consist of a post or e-mail address
- A description of the information to which the individual is seeking access to

6.2 A FOISA request must be in writing or other permanent form such as a letter, e-mail, social media message, audio recording or made to us via the website www.whatdotheyknow.com but it does not need to specifically refer to FOISA in order for it to be a valid request.

6.3 An EISR request does not need to be in writing, can be made verbally and does not need to specifically refer to the EISR.

6.4 We will provide an individual with appropriate advice and assistance to validate a request by, for example, assisting the person to put a FOISA request in writing if they are unable to do so. We must not ask the person why they seek access to the information requested; we are not entitled to know this.

6.5 We will accept requests made by a third party on behalf of a person. The request must contain the full name of the person on whose behalf the request is being made.

6.6 If we reject a request on the basis that it is invalid, we must advise the person of their right to request a review, and if they remain dissatisfied, we must advise of their right to make an application to the SIC for a decision on the handling of their request.

Approved by Management Committee 27/11/24

- 6.7 We will acknowledge receipt of a request, explaining who will handle the response and when it will be provided. 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 EISR where we are entitled to extend the timescale for responding by an additional 20 working days where the request is complex or voluminous). The timescale for response can be paused when an individual is asked for clarification on their request or a fees notice is issued by the Association (see 6.8 & 6.9 below), and resumes when the clarification has been provided or fee has been paid by the person.
- 6.8 Where we are providing an individual with information they have requested we will, where reasonable, 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 EISR 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).
- 6.9 We are not obliged to create or acquire information from a third party to satisfy a request. The duty to respond to requests extends to information held by the Association as at the date of receipt of the request. 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 EISR and these circumstances apply, we will offer to transfer the individual's request to the other Scottish Public Authority.
- 6.10 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 EISR: the Schedule of Charges set out in our Guide to Information
- 6.11 Any fee charged by us will be reasonable and will not exceed the costs of providing the requested information. Fees are published on elha.com, in our Guide to Information.
- 6.12 We aim to be as open as possible when carrying out our activities, however there may be circumstances when we cannot disclose information. FOISA and EISR contain two categories of exemption (or exception in the case of EISR) from disclosure of the requested information. These exemptions are set out in Section 39(2)(a) of FOISA ([SIC Guidance Notes](#)).

Approved by Management Committee 27/11/24

- 6.13 In applying the exemptions, we will explain to the individual that we hold the requested information and specify which exemption has been applied and the reasons why we have applied this. However, dependent upon the information requested we may partially respond by redacting only the exempt information and not withhold the full document in which the information is contained.
- 6.14 Where the information requested concerns a third party, we may consult the third party to seek their views on disclosure and any resultant harm that may arise. We will not disclose the identity of the individual making the request to the third party and will undertake the consultation as soon as possible following receipt of the request to allow the third party to submit their views, and for us to consider them and respond to the individual in accordance with the relative timescales. We will notify the third party when the information has been published.

7.0 The Duty to Provide Advice and Assistance

- 7.1 We have a duty to provide reasonable advice and assistance to a person who proposes to make, or has made, a request for information at all stages of the request.
- 7.2 The aim of providing advice and assistance is to give the individual an opportunity to discuss their application with us, with a view to helping them to describe what is being sought reasonably clearly, so that we can identify and locate it. Staff must not give individuals the impression that they are obliged to disclose the intent behind their request or that they will be treated differently if they do so.
- 7.3 We will provide the advice and assistance to ensure 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. [Section 60 Code of Practice](#)
- 7.4 Examples of reasonable advice and assistance that staff must provide include:
- Providing guidance on how to make a request and associated fees
 - Helping a person to understand the processes, procedures and legislation involved in making a request for information
 - Helping an applicant describe the information sought or to clarify their request
 - Helping to validate requests where all of the required particulars have not been provided by the person
 - Providing outlines of relevant information held by us
 - Maintaining dialogue with an applicant regarding who is handling the request (third parties being consulted and when the person should expect to receive a response)

Approved by Management Committee 27/11/24

- Sending reminders to the individual in relation to clarifications and fees required
- Being sensitive to an applicant's circumstances, particularly in relation to disability and literacy
- Finding suitable alternatives if information cannot be provided in the format requested by the individual
- Informing an individual about what can be provided within the fees limit
- If an individual cannot afford to pay the fees, highlighting to them what can be provided free of charge
- Assisting an individual to understand the application of exemptions and exceptions and what other information held by the Association (that is not exempt or except) may be useful and relevant to an individual's request

8.0 Duty to Publish

8.1 FOISA requires us to adopt and maintain a Model Publication Scheme which sets out the information that we routinely publish or intend to publish.

8.2 We have adopted the Model Publication Framework promoted by the Scottish Information Commissioner, which is known as our Guide to Information. The Guide is regularly reviewed and kept up to date by our Executive Support team and is available at elha.com - [Guide to Information](#). A paper format is available on request but there may be an administrative charge for this.

8.3 EISRs do not require us to adopt and maintain a publication scheme but do require us to publish a schedule of charges and we must actively disseminate environmental information. We do this by including relevant information within our Guide to Information.

8.4 We will notify the SIC if we remove any information from our Guide to Information or make changes to our charging regime as this may affect the Commissioners approval of the scheme.

9.0 Handling Reviews and the SIC

9.1 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 EISR), 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/EISR)

Approved by Management Committee 27/11/24

Then they have the right to request that we review the response to their request within 40 working days of receiving the response to determine whether the provisions of FOISA or EISR have been followed. An individual does not specifically have to ask for a review, but they do have to specify why they are dissatisfied with the original response for the review request to be valid. Where possible or practicable, the staff member carrying out the review will not be the person who responded to or advised on the original request.

- 9.2 Where we perform a review and determine that a response to a request is not in accordance with FOISA or EISR, we will take immediate steps to rectify this (which could, for example, include releasing information which was previously withheld).
- 9.3 Where we perform a review and determine that a response to a request is in accordance with FOISA or EISR, the statutory timescale for response will begin and we will notify the individual who asked for a review as quickly as possible. The notice will set out an individual's rights to apply to the SIC and thereafter appeal against a decision by the SIC to the Court of Session on a point of law.
- 9.4 In any event, we will handle and respond to all requests for review within 20 working days.
- 9.5 When we respond to a review request, and an individual is unhappy with the response we will advise in writing that they may appeal to the SIC within six months of the response along with details of the Commissioner's office. 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.
- 9.6 Procedures will be provided for staff handling reviews in accordance with the [Code of Practice](#).

10.0 Record Keeping

- 10.1 We will keep detailed records related to requests for information made to us, including:
 - Information about the individual making the request
 - Nature of the request for information, including whether the request was a FOISA or EISR request
 - Steps taken to retrieve the information relevant to the request, including searches undertaken in electronic and paper files and consultations with third parties (including the outcome of such consultations)
 - Concerns and other issues highlighted by staff and third parties regarding the disclosure of information
 - Notes on the decisions on the application of exemptions
 - Procedure followed at review stage including the outcome of review

Approved by Management Committee 27/11/24

- Whether the request for information and the requirement for review were responded to within the relevant timescales
- If there was an application to the SIC and any action taken by the SIC. If the outcome of any application to the SIC was that the Association was required to take steps to comply with FOISA or the EISRs, the steps taken and where they were taken will also be recorded

11.0 Records Management

- 11.1 We may not refuse a request for information on the ground that we are unable to locate the information that is the subject of the request because of a lack of appropriate record management within the Association.
- 11.2 Staff must create and maintain complete, accurate, up to date and accessible records of the information relevant to their work at the Association. Staff must also comply with the Data Retention Schedule and destroy or dispose of information when it is no longer required to be held by the Association.
- 11.3 We will complete regular information audits on a functional basis to catalogue the information we hold, why that information is held and where it is located. This will assist in ensuring that requests for information are processed efficiently and that all available information is disclosed to the applicant.

12.0 Reporting

- 11.1 The Executive Support team are responsible for compiling statistics on the Association's performance under FOISA and the EISRs and reporting them to the Senior Management Team and the Management Committee upon request.
- 11.2 The Executive Support team will also submit quarterly reports to the SIC.

13.0 Data Protection

- 13.1 We are committed to upholding our data protection obligations set out in the GDPR and the Data Protection Act 2018.
- 13.2 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 Privacy Policy which sets out how we respond to these requests.

14.0 Equal Opportunities

- 14.1 We are committed to ensuring that all people are given full and equal opportunity to make a request for information.

Approved by Management Committee 27/11/24

- 14.2 We will not discriminate in the operation of this policy on the basis of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation. We aim to promote equal opportunities and comply with the requirements of the Equality Act 2010.
- 14.3 Where necessary, staff will assist and advise the applicant by helping to validate a request for them and read it back to them to ensure that an accurate record of the request has been taken.
- 14.4 We are members of Happy to Translate and will provide appropriate assistance to individuals who has difficulty with spoken English or whose first language is not English.
- 14.5 We will support visually impaired individuals by providing information in large print or an audio recording, and sign language interpretation for the hard of hearing, if appropriate.
- 14.6 Where an individual is unable to make a request on their own, we may accept requests made on their behalf by a third party where an individual has authorised the third party to make the request. The person on whose behalf is being made must be named in the request, if not, we are entitled to refuse the request on the ground that it is not valid.

15.0 Policy Review

- 15.1 This policy will be reviewed by the Chief Executive or Director of Housing every five years, or sooner if there are any changes in legislation, with any material changes submitted to the Management Committee for approval.