

# **Southside**

## **HOUSING ASSOCIATION**

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

**Approved: 31 October 2019**

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## **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, Southside Housing Association (“The Association”) will be designated as a Scottish Public Authority and will need 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 for complying with the legal duties of the Association under FOISA and EIR

## **2. POLICY STATEMENT**

- 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 Minister’s Codes of Practice relating to FOISA and EIR, as well as any relevant guidance issued by the 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 entitled to do so under FOISA and EIR and explain why information is withheld; and
  - Provide advice and assistance to individuals seeking access to information.

## **3. RESPONSIBILITIES**

- 3.1** The Director has lead management responsibility for FOISA and EIR within the Association. This will include effective implementation and regular review of this Policy.

- 3.2** The Corporate Compliance Officer has operational responsibility for ensuring that Individual requests are handled and processed according to the appropriate regime and in line with legislative requirements.
- 3.3** The Corporate Compliance Officer is responsible for collating information and responding to requests in line with FOISA and/or EIR.
- 3.4** Senior Management Team are responsible for dealing with requests for a review in line with FOISA and/or EIR
- 3.5** The Corporate Compliance Officer is responsible for ensuring that information is proactively made available in accordance with the Association's Publication Scheme, and that the Publication Scheme is kept up to date.
- 3.6** All employees of the Association are responsible for:
- maintaining accurate records and ensuring that documents are retained in line with the Association's Document Retention Schedule;
  - forwarding information requests to the Corporate Compliance Officer as soon as they are received. If you are unsure how to recognise an information request you should seek guidance from the Corporate Compliance Officer;
  - assisting in the collation of information for use in a response to a request or for proactive publication as part of the Association's Publication Scheme;
  - seeking guidance from the Corporate Compliance Officer if they are unsure about any of the duties placed on the Association by FOISA or EIR; and,
  - familiarising themselves with and adhering to this policy.
- 3.7** 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 Compliance Officer.
- 3.8** 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 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").

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 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 section 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 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.

### **5.3 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 the Regulations. Where a request under FOISA is received for Environmental Information it should be processed in accordance with EIR.

5.3.2 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. Further guidance on the differences are available on the 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. 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.
- 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, 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.
- 6.2.6 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.
  - For requests being handled under EIR: the Schedule of Charges published by the Association on its website.

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

## **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. A requester has forty working days following the receipt of a response (or the date at which they expected to be issued a response to request a review.

- 6.3.2 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).
- 6.3.3 Where the Association performs a review and determines that a response is in accordance with FOISA or EIR then the Association will notify the individual who asked for a review as quickly as possible.
- 6.3.4 In any event the Association will handle all requests for review in accordance with the timescales set out in FOISA and EIR.
- 6.3.5 Where an individual is unhappy with the response to their review request they may appeal to the SIC for an independent review. A request should be made in writing to:

Scottish Information Commissioner  
 Kinburn Castle  
 Doubledykes Road  
 St. Andrews  
 Fife  
 KY16 9DS  
[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

- 6.3.6 If an appeal is made by the SIC and a decision handed down by them both, the Association and the individual in question have a right to appeal 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 the Scottish Ministers.

## **6.5 Publication of Information**

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

## **6.5 Data Protection**

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

6.5.2 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 Policy when dealing with these rights.

## **7. CHARGES FOR PROVIDING INFORMATION**

7.1 Any information made available through the Association's Publication Scheme will be provided free of charge unless otherwise specified.

7.2 The Association may however charge an appropriate fee for dealing with a specific request. Any charge will be in accordance with the charging schedule set out in our Guide to Information.

7.3 The Association can charge direct and indirect costs incurred in locating, retrieving and providing information. We will not charge for employee time spent in determining whether the information requested is held by the Association.

7.4 **FOISA** - If the costs involved in processing and responding to a request exceed £600.00, the Association does not have to comply with the request as set out in section 12 of FOISA.

7.5 The Association can charge for staff resources involved in processing a request up to a maximum of £15.00 per hour. FOISA fees regulations limit the amount that public authorities can charge as below:

- Up to £100.00:- Information must be provided without charge;
- £100.00 to £600.00:- The initial £100.00 is deducted, the Association may charge 10% of the remaining cost;
- Over £600.00:- No obligation to provide information.

7.5.1 **EIR** - Under EIR there is no upper or lower limit placed upon public authorities with regard to charging for providing environmental information. The EIR provide only that any fee charged should not exceed a "reasonable amount", and must not exceed the actual cost of producing the information required.

7.6 **FOISA** – The Association has a duty to advise and assist under FOISA, and where a request will exceed £600.00 the Association will liaise with the requester to assess if

the scope of the request may be narrowed to allow it to be processed below the £600.00 threshold

- 7.6.1 **EIR** – The EIR require the Association to provide advice and assistance to someone who has made or wishes to make a request for environmental information. The Association will liaise with a requester where a request may exceed a “reasonable amount” to assess if the scope of the request may be narrowed to allow it to be processed.
- 7.7 If the Association intends to charge before providing information under either FOISA or EIR, a fees notification will be provided to the requester. Information will not be released until the fee has been received by the Association. The twenty working day timescale for responding to a request will be stalled until payment has been received by the Association.
- 7.8 **FOISA** – A requester has three months from the issue of the fees notice to make payment. If the payment is not received within this timescale then the request will not be processed.
- 7.8.1 **EIR** – A requester has sixty working days from the issue of the fees notice to make payment. If the payment is not received within this timescale then the request will not be processed.

## **8. EXEMPTIONS AND EXCEPTIONS**

- 8.1 As outlined at section 6.2.4 of this policy there may be instances where the Association may not provide information to a requester in response to their information request under FOISA or EIR
- 8.2 **FOISA** – Sections 25-41 of FOISA set out a number of Exemptions which may be applied where appropriate by public authorities. Exemptions may be applied to an entire request or part of a request. A full list of FOISA Exemptions is included at Appendix1.
- 8.2.1 A ‘public interest’ test will be used in situations where certain exemptions are applied by the Association. Where the public interest in disclosing the information outweighs the public interest in withholding information then disclosure of the information will be made.
- 8.3 **EIR** – Regulations 10-11 of the EIR allow public authorities to refuse to make information available in some cases. These are called the Exceptions and may be applied to an entire request or to part of a request. A full list of EIR Exceptions is included at Appendix 2.
- 8.3.1 A ‘public interest’ applies when using certain exceptions. Where the public interest in disclosing the information outweighs the public interest in withholding information then disclosure of the information will be made.

## **9. EQUALITIES AND HUMAN RIGHTS**

- 9.1 This policy reflects the Association's commitment to meeting our Equality obligations in advancing equality, promoting good relations and eliminating discrimination in the way we provide our services.
- 9.2 It also aims to reflect our commitment to considering the Equality and Human Rights impacts of what we do as a registered social landlord, including how we communicate and provide access to information to tenants and other service users

## **10. REVIEW**

- 10.1 This policy will be subject to review every three years, or sooner in the case of significant legislative or regulatory changes.

# Southside

## HOUSING ASSOCIATION

### Appendix 1.

#### Freedom of Information (Scotland) Act 2002 - Exemptions

FOISA	EXEMPTION	DETAILS	PUBLIC INTEREST TEST
Section 25	Information Otherwise Accessible	Exempts information from disclosure where the requester can reasonably obtain the information without making a request for it.	
Section 26	Prohibitions on Disclosure	Where disclosure is prohibited by or under an enactment; is incompatible with an EU regulation; or would constitute, or be punishable as, contempt of court.	No
Section 27	Information Intended for Future Publication	Refusal to disclose if public authority already plans to publish it within it within the next 12 weeks, but only if it reasonable to delay disclosing the information until the planned date of publication.	Yes
Section 28	Relations Within the United Kingdom	Where disclosure would, or would be likely to, prejudice substantially relations between administrations in the UK (e.g. between Westminster and Holyrood)	Yes
Section 29	Formulation of Scottish Administration Policy	Exempts information from disclosure where it relates to the formulation or development of Government policy; Ministerial communications; the provision of advice from any of the Law Officers; or the operation of any private Ministerial office.	Yes
Section 30	Prejudice to the Effective Conduct of Public Affairs	Exempts information where disclosure would, or would be likely to harm the maintenance of the convention of the collective responsibility of the Scottish Ministers; the free and frank provision of advice; the free and frank exchange of views for the purposes of deliberation; or the effective conduct of public affairs	Yes
Section 31	National Security and Defence	Information is exempt from disclosure if required for the purpose of safeguarding national security; or if disclosure would, or would be likely	Yes

		to, prejudice substantially the defence of the British islands or of any colony, or the capability, effectiveness or security of the armed forces co-operating with them.	
Section 32	International Relations	Information is exempt from disclosure if required for the purpose of safeguarding national security; or if disclosure would, or would be likely to, prejudice substantially relations between the UK and another state; relations between the UK and any international organisation or court; the interests of the UK abroad; or the promotion or protection by the UK of its interests abroad.	Yes
Section 33	Commercial Interests and the Economy	Information may be withheld if it is a Trade Secret; disclosure would, or would be likely to prejudice substantially the commercial interest of any person or organisation; the economic interests of the whole or part of the UK; the financial interests of any administration in the UK.	Yes
Section 34	Investigations by Scottish Public Authorities		Yes
Section 35	Law Enforcement	Exempts if disclosure would, or would be likely to prejudice substantially the prevention or detection of crime; the apprehension or prosecution of offenders; the administration of justice; the assessment or collection of any tax or duty; the operation of immigration controls; the maintenance of security and good order in prisons, etc.; the exercise by a public authority of one or more of the functions listed in section 35(2), such as ascertaining whether conduct is improper or securing the health, safety and welfare of people at work; or civil proceeding brought and arising out of an investigation conducted for any of the purposes listed in section 35(2).	Yes
Section 36	Confidentiality	Information may be withheld if it is information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings (section 36(1)); or the information was obtained by a Scottish public authority and disclosing it would constitute and	Section 36(1) – Yes  Section 36(2) - No

		actionable breach of confidence.(Section 36(2))	
Section 37	Court Records	Information is exempt from disclosure if it is contained in a document that has been: lodged with a court for the purposes of court proceedings; served on, or by a Scottish public authority for the purposes of court proceedings; or created by a court for the purposes of court proceedings; lodged with a person conducting an inquiry or arbitration, for the purposes of that inquiry or arbitration.	No
Section 38	Personal Information	Information is exempt from disclosure if it is: the personal data of the person requesting the information; the personal data of a third party if conditions apply; personal census information; or a deceased person's health record.	No (except in relation to the personal data of a third party)
Section 39	Health, Safety and the Environment	Information may be withheld if: disclosure would, or would be likely to, endanger the physical or mental health and safety of an individual; or it is environmental information and the public authority is obliged to make it available under the EIR	Yes
Section 40	Audit Functions	Information may be withheld if: disclosure would, or would be likely to prejudice substantially a Scottish public authority's functions in relation to: the audit of accounts of other Scottish public authorities; or the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.	Yes
Section 41	Communications with Her Majesty etc. and Honours	Exempts disclosure if information relates to: communications with the Queen, with other members of the Royal family or with the Royal Household; or the awarding of honours by the Queen.	Yes

# Southside

## HOUSING ASSOCIATION

### Appendix 2.

#### Environmental Information (Scotland) Regulations 2004 – Exceptions

EIR	EXCEPTION	DETAILS	PUBLIC INTEREST TEST
Regulation 10(4)(a)	Information Not Held	Exception applies if the public authority does not hold the information being requested	Yes
Regulation 10(4)(b)	Manifestly Unreasonable Requests	Exception MAY apply if complying would impose a significant burden on the public authority; the request does not have serious value or purpose; or the request is designed to cause disruption or annoyance to the public authority; or the request would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.	Yes
Regulation 10(4)(c)	Formulated in Too General a Manner	The public authority may refuse a request for information if it is formulated in too general manner and the Public authority has met its duty to provide advice and assistance to a requester.	Yes
Regulation 10(4)(d)	Material in the Course of Completion etc.	Covers material which is still in the course of completion, unfinished documents and incomplete data	The public authority must tell the requester when it thinks the information will be finished or completed
Regulation 10(4)(e)	Internal Communications	Exception is potentially very wide and includes any correspondence between officials in the same authority and its agencies.	Yes
Regulation 10(5)(a)	International Relations, Defence etc.	Allows a public authority to withhold information where	Yes

		disclosure would, or would likely to, prejudice substantially international relations, defence, national security or public safety	
Regulation 10(5)(b)	The Course of Justice etc.	Exception applies where disclosure of the information would, or would be likely to, substantially prejudice: the course of justice (including law enforcement); the ability of a person to receive a fair trial; or the ability of any public authority to conduct an inquiry of a criminal or disciplinary nature.	Yes
Regulation 10(5)(c)	Intellectual Property Rights	Exception applies where disclosure would, or would likely to, cause substantial prejudice to intellectual property rights e.g. Copyright; Database Rights; or Copyright in databases.	Yes
Regulation 10(5)(d)	Confidentiality of Proceedings	Exception applies where disclosure would harm the confidentiality of the proceedings of any public authority where such confidentiality is provided for by law.	Yes
Regulation 10(5)(e)	Confidentiality of Commercial or Industrial Information	Exception may potentially apply to a range of commercially sensitive information such as trade secrets, information supplied by contractors, information supplied as part of a tendering or procurement process and information held by regulators.	Yes
Regulation 10(5)(f)	Third Party Interests	Exception applies where the information was supplied on a voluntary basis in the expectation that it would not be disclosed and where the supplier has not consented to disclosure. An example of what may potentially be covered include information collected from members of the public in research or surveys.	Yes
Regulation 10(5)(g)	Protection of the Environment	Exception applies to protect information in order to protect the environment to which it relates, e.g. the nesting of rare birds.	Yes

Regulation 11(1)	Personal Data	Information is exempt from disclosure if it is: the personal data of the person requesting the information; the personal data of a third party if conditions apply	No (except in relation to the personal data of a third party)
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