



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

**Date of Approval**  
**29 October 2019**

**Review Date**  
**29 October 2022**

## Executive Summary

<b>Brief Overview:</b>
Introduction of FOI and EIR policy which is reviewed every three years
<b>Risks:</b>
Medium
<b>Relevance to Business Plan:</b>
Maintaining sound governance and transparency
<b>Financial Implications:</b>
Dependent on uptake of requests
<b>Equalities:</b>
N/A
<b>Regulatory Impact:</b>
New regulator applicable to EHA - Scottish Information Commissioner
<b>Recommendations:</b>
Adopt policy

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

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 Elderpark Housing Association (EHA) will be designated as 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 Elderpark Housing Association.

The policy will:

- provide a general understanding of FOISA and EIR; and
- outline where responsibility lies for complying with the legal duties of EHA under FOISA and EIR

### **Policy Statement**

EHA 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 EHA 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 entitled to do so under FOISA and EIR and explain why information is withheld; and
- provide advice and assistance to individuals seeking to access information

## **Responsibilities**

- The Finance & Corporate Services Manager (FCS) has lead management responsibility for FOISA and EIR within EHA. This will include effective implementation and regular review of this Policy.
- While FOI , EIR and GDPR are responsibilities of all staff, the FCS will be assisted by the Corporate Services Officer (CS) who will be responsible for:
  - RESPONDING TO REQUESTS UNDER FOISA AND EIR AND WHO INFORMATION REQUESTS SHOULD BE FORWARDED TO
  - COLLATING INFORMATION FOR SENDING OUT TO REQUESTERS
  - MAKING INFORMATION AVAILABLE IN ACCORDANCE WITH YOUR PUBLICATION SCHEME
  - DEALING WITH REQUESTS FOR REVIEW
- All employees are responsible for:
  - familiarising themselves with this policy;
  - forwarding information requests received to CS as quickly as possible. If you are unsure how to recognise an information request you should seek guidance from FCS or CS;
  - seeking guidance from FCS or CS if they are unsure about any of the duties placed on EHA by FOISA or EIR;
- Employees should be aware that where an information request is received and an employee deletes or alters information held by EHA 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 FCS or CS
- Compliance with this policy is compulsory for all employees of EHA. 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 EHA 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 EHA.

This policy applies to all EHA employees.

## **Background**

### **Why are Housing Associations subject to FOISA and EIR?**

EHA 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 EHA does is subject to FOISA and EIR. Instead, EHA 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 EHA 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 EHA 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 travelers; 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 EHA. 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 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.

## **Legal Duties**

EHA 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 EHA. Where the information requested is within the scope of the Order and EHA holds that information it must release the information unless an exemption (under FOISA) or an exception (under EIR) applies. EHA shall, when responding to requests for information from individuals, follow the Section 60 Code of Practice and any relevant guidance produced by SIC.

EHA 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 EHA is entitled to extend the timescale for responding by an additional 20 working days).

Where EHA 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 EHA is refusing to provide information to individuals it will clearly explain to said individual what provision in FOISA or EIR allows EHA to withhold that information and why EHA believes that provision applies (including, where required, an explanation of how EHA has carried out the Public Interest Test).

Where EHA is asked to provide information which it does not hold, but EHA knows that another Scottish Public Authority does hold the requested information – EHA 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 EHA shall offer to transfer the individual's request to the other Scottish Public Authority.

EHA may choose to charge for fulfilling information requests received from individuals. Any charges made by EHA 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 of EHA
- EHA charges <\\server2016\UserData\Laura\Freedom of Information\Model Publication Guide.docx>

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

## **Responding to Requests for Review**

Where someone has requested information from EHA and:

- EHA 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 EHA reviews the response to their request to determine whether or not the provisions of FOISA or EIR have been followed.

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

Where EHA performs a review and determines that a response to a request is in accordance with FOISA or EIR then EHA will notify the individual who asked for a review as quickly as possible.

In any event EHA 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 EHA 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**

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

## **Publication of Information**

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

## **Data Protection**

EHA 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 EHA 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 Privacy Policy when dealing with these rights.

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