

## **Access to Information Procedures**

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| <b>Approved On</b> | <b>30<sup>th</sup> October 2019</b> |
| <b>Review Date</b> | <b>October 2022</b>                 |

## **1. Responsibilities**

- 1.1 This procedure sets out our approach to dealing with requests for access to information received under the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (EISRs).
- 1.2 FOISA and the EISRs provide a general right to know to ensure greater openness and accountability in the operations of West of Scotland Housing Association (WSHA). All staff must be aware of the Access to Information Policy, and this procedure sets out their responsibilities under FOISA and the EISRs and all staff should be prepared to provide advice and assistance to prospective applicants and applicants. Any member of staff could be asked for information. Staff must handle any request for information they receive in accordance with this procedure.
- 1.3 This procedure does not apply to requests received by us from persons for access to their own personal data. Such requests must be handled in accordance with data protection legislation and the Response Procedures for Data Subject Requests.
- 1.4 In this procedure, reference to a “request” or “request for information” is to a request made to us under either FOISA or the EISRs and a reference to “information” includes environmental information, unless otherwise specified.
- 1.5 Our Data Protection Officer (DPO) has overall responsibility for 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 procedure.
- 1.6 Line managers are responsible for raising awareness of this procedure and ensuring that the staff they manage are aware of what to do if they receive a request for information directly.
- 1.7 All staff must be aware of and comply with this procedure when assisting the DPO in handling and responding to requests for information and must immediately forward any request for information received by them to the DPO to acknowledge and process. If staff have any questions or comments about the content of this procedure or if they need further information, they should contact the DPO.

## **2. Principles**

- 2.1 We 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).
- 2.2 Where possible, we will publicly demonstrate its commitment to access to information by regularly and proactively making information available via our publication scheme.
- 2.3 We will provide advice and assistance to prospective applicants and applicants throughout the lifecycle of handling and responding to requests for information.
- 2.4 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.
- 2.5 We 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.
- 2.6 We 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.
- 2.7 We 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.
- 2.8 All staff are responsible for recognising and responding to requests for information, to undertake full and proper documented searches for information relevant to requests and to assist the Data Protection Officer (DPO) in handling and responding to requests in all respects.
- 2.9 Staff will configure their "out of office" settings on their e-mail account and telephone voicemail messages to include an appropriate notification for making requests to an alternative member of staff in their absence from the office. This may be the DPO, although requests may be made to any member of staff.

2.10 The DPO will provide staff with regular and role-specific training on FOISA, the EISRs, this procedure and emerging best practice. All new staff will be provided with training on FOISA and the EISRs as part of the induction process.

### **3. Handling requests for information**

3.1 Staff, particularly those on the frontline (who are likely to be the initial recipients of the majority of requests for information made to us), are responsible in the first instance for deciding if a request is:

3.1.1 a “business as usual” request, for example, to find out the status of a housing application or repair, for a copy of a housing application form or to enquire about our office opening hours;

3.1.2 a complaint against us or a member of its staff; or

3.1.3 a FOISA or EISRs request.

3.2 All FOISA and EISRs requests must be sent to the DPO on receipt of the request, unless the information is available through the publication scheme – in which case, staff should direct the applicant to the publication scheme or provide the applicant with a copy of the published information, if the applicant does not have access to the Internet. If staff are uncertain of how to categorise a request, they should seek advice from the DPO.

3.3 The DPO will decide if a request is a FOISA or EISRs request and, if so, verify that it includes the necessary particulars to make the request valid. If it does not, the DPO will liaise with the applicant to validate the request by providing appropriate advice and assistance.

3.4 Once the request has been validated, the DPO will:

3.4.1 log the request and assign it a reference number;

3.4.2 issue an acknowledgement of the request to the applicant, including the reference number, details of the information requested (to allow the applicant to check and correct it if staff or the DPO have misinterpreted the request), whether the request will be processed as a FOISA or EISRs request and the deadline by which the applicant should expect to receive a response; and

3.4.3 direct staff to search for and collate information relevant to the request across our document management systems, e-mail accounts, mobile devices, social media accounts, website(s), paper files and loose-leaf papers, such as notebooks and papers within filing trays. The DPO

may also direct staff to search for and produce relevant information within personal devices, personal e-mail accounts and personal storage facilities (such as their personal iCloud, Dropbox and Microsoft OneDrive accounts), if staff have used these for the purposes of WSHA business. Where information relevant to the request is held on behalf of us by a third party, such as a contractor, consultant or professional adviser, then staff must contact the third party to retrieve the information.

- 3.5 Once any relevant information has been collated, staff must send it to the DPO within 10 working days of the DPO's request. Staff may highlight their comments, suggestions or concerns when providing the information to the DPO, for example, in relation to its sensitivity or confidentiality, but staff must not remove any information before providing it. Alternatively, if we do not hold information relevant to the request, staff must confirm this to the DPO. On receipt of the collated information, the DPO will review it and respond to the applicant's request for information.

#### **4. Responding to requests for information**

- 4.1 The DPO will respond to the applicant in one of the following ways:

- 4.1.1 issue a fees notice to the applicant, requiring payment of a fee before information will be disclosed to the applicant. The fees notice will include a detailed breakdown of the costs, with the fee charged to the applicant being calculated in accordance with the Access to Information Charging Statement. The DPO will, where possible and appropriate, provide the applicant with advice and assistance to help narrow the request and reduce the costs (and therefore the fee) associated with handling and responding to the request prior to issuing the fees notice. We are not required to disclose the information to the applicant, unless the fee is duly paid within 3 months, beginning with the day on which the fees notice is issued to the applicant. The DPO will issue regular payment reminders to the applicant but if the applicant does not pay the fees notices within this timescale, the DPO will cancel the request and the applicant will be required to make a new request to us after the 3 month period;

- 4.1.2 disclose a copy of the requested information in permanent form or other form acceptable to the applicant. The information disclosed must be the information as it existed as at the date of receipt of the request, although routine updates to the information may be included, if the updates would have been made, irrespective of receipt of the request. If the applicant has expressed a preference as to the format in which the applicant wishes to receive the information, we must comply with the preference, unless it would not be reasonably practicable to do so

in the circumstances. As part of this, we may take into consideration the cost of complying with the applicant's preference, for example, it is more cost effective for us to provide a large document in electronic format than hard copy;

- 4.1.3 provide a summary or digest of the requested information to the applicant;
- 4.1.4 provide the applicant with an opportunity to inspect the information at our office or other location;
- 4.1.5 direct the applicant to the publication scheme, if the requested information is available through the scheme (and if the applicant has not already been directed to the scheme by staff at first instance);
- 4.1.6 confirm to the applicant that we do not hold the requested information. If we are aware that the information is held by another Scottish public authority, then we should direct the applicant to the other authority (in the case of a FOISA request only) or offer to transfer the request to the other authority (in the case of an EISRs request only);
- 4.1.7 neither confirm nor deny that we hold the information where to reveal that the information exists or is held would be contrary to the public interest;
- 4.1.8 partially or fully refuse the request on the basis that some or all of the requested information is exempt or except from disclosure under FOISA or the EISRs, respectively;
- 4.1.9 refuse the request on the basis that it is a vexatious request. The request, not the applicant, must be vexatious for it to be considered as such. A burdensome and time-consuming request that involves an unreasonable diversion of human and financial resources away from our core activities towards handling the request, a request with no serious purpose or value or a request that is intended to cause distress or annoyance to a member of staff may be vexatious, however, staff must first seek advice from the DPO before deciding whether a request is vexatious;
- 4.1.10 refuse the request on the ground that it is a repeat request. A repeat request is where we have already complied with a request from the applicant, the applicant has subsequently made a request which is identical or substantially similar to the previous request and a reasonable period of time has not elapsed between the making of the previous request and the subsequent request; or

4.1.11 refuse the request (in the case of a FOISA request only) on the grounds of excessive cost of compliance where the cost to us of handling and responding to the request would exceed the £600 threshold. We will provide what it can to the applicant within the threshold rather than refusing the request outright. If the request is an EISRs request, it cannot be refused by us on this basis. We will calculate the cost of complying with requests in accordance with the procedure outlined in the Access to Information Charging Statement.

4.2 In all of the above cases, the response to the applicant must include the following details:

4.2.1 our procedure for dealing with complaints about the handling by it of requests for information;

4.2.2 the right of the applicant to require us to review our decision on the handling of and response to the request; and

4.2.3 the right of the applicant to apply to the SIC for a decision on our handling of and response to the request.

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

5.1 The FOISA exemptions are listed in Appendix 1 to this procedure and the EISRs exceptions are listed in Appendix 2. In applying the exemptions, we will:

5.1.1 explain to the applicant that it holds the requested information, specify what exemption has been applied and detail the reasons as to why it has been applied. In the case of non-absolute exemptions, an analysis of the relevant public interest test considerations and why we consider that the public interest in maintaining the exemption outweighs that in the disclosure of the information, will also be provided. If the exemption incorporates a harm test, we will highlight how and why the harm is real or likely;

5.1.2 apply a presumption in favour of disclosure and any exemptions that we wish to rely upon in partially or fully refusing a request for information will be interpreted narrowly. If an exemption applies, we will redact only the exempt information and not withhold the full document in which the information is contained;

5.1.3 consider the content of the information instead of any markings that have been applied to the information in deciding whether it is exempt from disclosure. For example, the fact that information has been described or marked as “confidential” or otherwise similarly classified

does not automatically render that information as such. Advice will be obtained from the DPO in each case;

5.1.4 have due regard to the requirements of data protection law where the information requested by the applicant includes the personal data of the staff or other third parties. In particular, we will seek to balance fairness towards the staff and third parties against the legitimate interests of the applicant in having access to the information. In the interests of transparency and openness, we may disclose personal data relating to the professional life of senior staff, such as qualifications and particulars of remuneration, but the personal data of other staff, who do not have the same level of seniority, responsibility or public accountability, may not be disclosed without first seeking their specific consent – which consent staff will be entitled to refuse. Advice on the interface between FOISA or the EISRs on the one hand and data protection on the other must be sought from the DPO in each case;

5.1.5 where the information requested by the applicant concerns a third party, such as the commercial information of a contractor provided as part of a tender submitted to us or available to us as part of its day-to-day interactions with the contractor, we may consult with the third party to seek its views on disclosure and any resultant harm that may arise. We will not disclose the identity of the applicant 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 its views and us to consider them and respond to the applicant in accordance with the relevant timescales. Ultimately, the decision as to whether information is to be disclosed to the applicant is for us and the views of any such third party will not be binding on us in any circumstances, although they may be instructive. We will take steps to inform contractors and prospective contractors of the possibility of the disclosure of their information in response to a request for information by, for example, including an appropriate provision in a commercial contract with them or as part of the tender documentation. We will not, however, include contract provisions which attempt to restrict the disclosure of information by us relating to the third party. We will be responsible for determining at its sole discretion whether the information that it holds is exempt from disclosure under FOISA or the EISRs; and

5.1.6 inform the applicant that information disclosed by us in response to a request for information may be subject to copyright belonging either to WSHA or a third party from whom we have obtained the information (such as a consultant or professional adviser) or from whom we have licensed use of the information. The applicant will also be informed that the information disclosed by us to the applicant may only be used by



the applicant for personal use or for other uses permitted by copyright legislation, with all other uses being prohibited, unless the applicant first seeks our or third party's express permission to the proposed use(s).

## **6. Reviews and the SIC**

- 6.1 If an applicant is in any way dissatisfied with the way in which their request for information has been handled and responded to by us (including where we failed to respond at first instance), the applicant may require us to review our 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. We 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.
- 6.2 The applicant may require a review within 40 working days either after the end of the period for responding to the request (where we did not respond) or following receipt by the applicant of our response. The applicant must explain the dissatisfaction with our original handling and response, although the applicant does not specifically need to mention the requirement for a review.
- 6.3 Where the applicant is requiring a review on the basis that we failed to respond to the applicant at first instance, the requirement for review will normally be regarded by us as a new request, with a separate entitlement to require a review following on from this.
- 6.4 The DPO will acknowledge the requirement for review and confirm the deadline for completing the review to the applicant. The DPO will also assign the review a reference number and log it and provide the applicant with the reference number.
- 6.5 The review will be undertaken by a member of staff (the reviewer) other than the DPO, who was involved in the handling of and response to the original request, to ensure that the review process is:
  - 6.5.1 fair and impartial and a fresh opportunity for us to re-consider the request;
  - 6.5.2 able to arrive at a different decision on the request, if appropriate; and
  - 6.5.3 simple and able to reach an outcome promptly within 20 working days of receipt of the requirement for review.
- 6.6 The DPO may, however, provide advice, guidance and support to the reviewer if this is necessary to assist the reviewer in understanding the

underlying reasons for our response to the original request, including the sensitivity of, and any comments on, the information requested. The DPO may not seek to influence the reviewer or the decision to be reached by the reviewer. The reviewer will keep records of the discussions between the reviewer and the DPO to ensure the impartiality of the review for audit trail purposes.

- 6.7 The reviewer may undertake new searches for the requested information and may contact the applicant and provide advice and assistance to clarify the requirement for review.
- 6.8 The review may result in us:
  - 6.8.1 confirming our original decision on the request, with or without such modifications as it considers appropriate;
  - 6.8.2 substituting another decision for our original decision by partially or fully releasing information to the applicant that was initially withheld from disclosure; or
  - 6.8.3 taking a decision on the request where the basis for the applicant's requirement for review is that we did not respond to the original request.
- 6.9 The reviewer will issue a notice to the applicant setting out our decision on the requirement for review, 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. We may also include an apology, if appropriate.

## **7. Record keeping**

- 7.1 We will keep detailed records related to requests for information made to it, including:
  - 7.1.1 information about the applicant;
  - 7.1.2 nature of the request for information, including whether the request was a FOISA or EISRs request;
  - 7.1.3 steps taken to retrieve information relevant to the request, including searches undertaken in electronic and paper files and consultations with third parties (including the outcome of such consultations);
  - 7.1.4 concerns and other issues highlighted by staff and third parties regarding the disclosure of information;

- 7.1.5 notes on decisions on the application of exemptions;
- 7.1.6 procedure followed at review stage, including the outcome of the review;
- 7.1.7 whether the request for information and requirement for review were responded to within the relevant timescales;
- 7.1.8 whether a fee was charged and the level of the fee; and
- 7.1.9 if there was an application to the SIC and any action taken by the SIC. If the outcome of an application to the SIC was that we were required to take steps to comply with FOISA or the EISRs, the steps taken by us and when they were taken will also be recorded.

## **8. Records management**

- 8.1 We may not refuse a request for information on the ground that it is unable to locate the information that is the subject of the request because of a lack of appropriate records management within WSHA.
- 8.2 Staff must comply with the Records Management Procedure in creating and maintaining complete, accurate, up-to-date and accessible records of the information relevant to their work. Staff must also comply with the Data Retention Policy and destroy or dispose of information when it is no longer required to be held by us.
- 8.3 We will complete regular information audits on a functional basis to catalogue the information that it holds, 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.

## **9. Reporting**

- 9.1 The DPO is responsible for compiling statistics on our performance under FOISA and the EISRs and reporting them to the Senior Management Team and the Committee upon request.
- 9.2 The DPO will also submit quarterly reports to the SIC.

## **10. Review and updates to this procedure**

- 10.1 We will review and update this procedure 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.

| <b>APPENDIX 1: FOISA EXEMPTIONS</b>  | <b>Absolute</b> | <b>Non-absolute</b> | <b>Substantial prejudice</b> |
|--|-----------------|---------------------|------------------------------|
| Information otherwise reasonably accessible to the applicant by other means  | Y               |                     |                              |
| Prohibition on disclosure by law   | Y               |                     |                              |
| Confidential information obtained from a third person                        | Y               |                     |                              |
| Information contained within certain court records                           | Y               |                     |                              |
| Personal data  | Y               | Y <sup>1</sup>      |                              |
| Information intended for future publication (within 12 weeks of the request) |                 | Y                   |                              |
| Relations within the United Kingdom  |                 | Y                   | Y                            |
| Formulation of Scottish Administration policy                                |                 | Y                   |                              |
| Effective conduct of public affairs  |                 | Y                   | Y                            |
| National security and defence  |                 | Y                   | Y                            |
| International relations  |                 | Y                   | Y                            |
| Commercial interests and the economy   |                 | Y                   | Y                            |
| Investigations by Scottish public authorities                                |                 | Y                   |                              |
| Law enforcement  |                 | Y                   | Y                            |
| Legal professional privilege   |                 | Y                   |                              |
| Health, safety and the environment   |                 | Y                   |                              |
| Audit functions  |                 | Y                   | Y                            |
| Communications with the Royal  |                 | Y                   |                              |

<sup>1</sup> The exemption for personal data is very complex, containing some absolute and non-absolute elements. Staff must always seek advice from the DPO before applying this exemption.

|  |                 |                     |                              |
|--|-----------------|---------------------|------------------------------|
| household and the granting of honours  |                 |                     |                              |
| <b>APPENDIX 2: EISRS EXCEPTIONS</b>  | <b>Absolute</b> | <b>Non-absolute</b> | <b>Substantial prejudice</b> |
| Information not held   |                 | Y                   |                              |
| Request is manifestly unreasonable   |                 | Y                   |                              |
| Request formulated in too general a manner and advice and assistance has been provided   |                 | Y                   |                              |
| Information still in the course of completion, contained within unfinished documents or incomplete   |                 | Y                   |                              |
| Internal communications  |                 | Y                   |                              |
| International relations, defence, national security or public safety   |                 | Y                   | Y                            |
| Course of justice, 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 |                 | Y                   | Y                            |
| Intellectual property rights   |                 | Y                   | Y                            |
| Confidentiality of the proceedings of any public authority   |                 | Y                   | Y                            |
| Confidentiality of commercial or industrial information  |                 | Y                   | Y                            |
| Interests of person who provided the information   |                 | Y                   | Y                            |
| Protection of the environment  |                 | Y                   | Y                            |
| Personal data  | Y               | Y <sup>2</sup>      |                              |

<sup>2</sup> The exception for personal data is very complex, containing some absolute and non-absolute elements. Staff must always seek advice from the DPO before applying this exception.