



FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION POLICY AND PROCEDURES

1. 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 ng homes and its subsidiary ng2 are designated as a Scottish Public Authority and will make information available in accordance with FOISA and EIR.

- This is the Freedom of Information and Environmental Information Policy of ng homes. The policy covers all applicable services across the ng group and any reference to ng homes will also refer to the ng group. This policy applies to all Board, Committee and staff members.

The policy will:

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

2. Policy Statement

ng homes is committed to the underlying principles of openness and transparency underpinning FOISA and EIR and complying fully with the requirements of the legislation. To this end ng homes 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 the 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.

3. Responsibilities

- The Depute Director (Corporate Services) has lead management responsibility for FOISA and EIR within ng homes. This will include overseeing the effective implementation and regular review of this Policy.
- The members of the Executive Team are responsible for ensuring that staff adhere to this policy and the FOI procedure (See Appendix 1).
- The Senior Corporate Services Officer (or the Corporate Services Manager in times of absence/holidays etc.) will be responsible for:
 - responding to requests under FOISA and EIR and forwarding information requests to relevant Executive team members;
 - collating information for sending out to requesters as provided by Executive Team members;
 - making information provided by Executive Team members available in accordance with our Publication Scheme;
 - The Depute Director (Corporate Services) or Corporate Services Manager (in times of absence/holidays etc.) will be responsible for dealing with requests for review.
- All employees are responsible for:
 - familiarising themselves with this policy;
 - forwarding information requests received to the foi@nghomes.net inbox for the attention of the Senior Corporate Services Officer as quickly as possible. If you are unsure how to recognise an information request you should seek guidance from the Senior Corporate Services Officer (or Corporate Services Manager in times of absence/holidays);

- seeking guidance from the Senior Corporate Services Officer (or Corporate Services Manager in times of absence/holidays) if they are unsure about any of the duties placed on ng homes by FOISA or EIR;
- providing advice and assistance to those making a request for information
- Employees should be aware that a criminal offence is committed where an information request is received and an employee deletes or alters information held by ng homes with the intention of preventing disclosure of that information. Where employees are unsure if deletion or alteration of information may result in a criminal offence they should seek guidance from the Senior Corporate Services Officer (or Corporate Services Manager in times of absence/holidays).
- Compliance with this policy is compulsory for all employees of ng homes. Any employee who fails to comply with this policy may be subject to disciplinary action.

4. Scope of the Policy

This policy applies to any information held by ng homes 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 ng homes.

This policy applies to all ng homes employees.

5. Background

5.1 Why is ng homes subject to FOISA and EIR?

ng homes 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.

5.2 What is subject to FOISA and EIR?

However, in accordance with the terms of the Order, not everything that ng homes does is subject to FOISA and EIR. Instead, ng homes 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 ng homes 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 ng homes 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.

5.3 What is the difference between FOISA and EIR?

EIR provides a right of access to 'Environmental Information' held by ng homes. 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. Further guidance on the differences are available on SIC's website:

(<http://www.itspublicknowledge.info/home/ScottishInformationCommissioner.asp>)

6. Legal Duties

ng homes has a number of legal duties which it must comply with under FOISA and EIR. These are set out in more detail below:

6.1 Responding to Information Requests

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

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

Where ng homes 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 ng homes is refusing to provide information to individuals it will clearly explain to the individual what provision ng homes believes applies (including, where required, an explanation of how ng homes carried out the Public Interest Test).

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

ng homes may choose to charge for fulfilling information requests received from individuals. Any charges made by ng homes 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 ng homes

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

6.2 Responding to Requests for Review

Where someone has requested information from ng homes and:

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

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

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

In any event ng homes 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 ng homes and the individual in question have a right to appeal to the courts on a point of law.

6.3 Provision of Advice and Assistance to Individuals

ng homes must provide advice and assistance to individuals seeking to access information. 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. ng homes will comply with this duty by following the guidance contained in the Section 60 Code of Practice* issued by Scottish Ministers.

6.4 Publication of Information

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

6.5 Data Protection

ng homes 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 ng homes 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.

7. **Other Related Policies**

- Data Protection
- Openness, Accountability and Confidentiality
- Customer Care
- Equality and Diversity

8. **General Data Protection Regulation**

The organisation will treat your personal data in line with our obligations under the General Data Protection Regulation and our own Data Protection Policy. Information regarding how your data will be used and the basis for processing your data is provided in our Fair Processing Notices.

9. Policy Review

This Policy will be reviewed every two years or earlier in line with regulatory or legislative guidance/changes or good practice guidelines.

10. Equality Impact Assessment

This Policy is equally applicable to all and has no impact on protected characteristic groups.

*Scottish Ministers' Code of Practice Section 60 Code of Practice: <https://bit.ly/33BU4Ts>

FREEDOM OF INFORMATION PROCEDURES

Stage 1 – Receive, Identify & Log

Request Received (days 1-2) Pass to **SCSO**, who will Log details, validate request, ID legislation and send acknowledgement

Pass the Request to foi@nghomes.net for the attention of the **Senior Corporate Services Officer (SCSO)** (Corporate Services Manager in times of holiday/absence). They will:

- Evaluate the request and identify which legislation it will be processed under i.e. whether it is:
 - Freedom of Information (Scotland) Act (FOISA)
 - Environmental Information Regulations (EIRs)
 - Data Protection Act (DPA)
- Log the request in the **Freedom of Information Request Register** held by the **Corporate Services Department**.
- If the request is a complex/controversial case, inform the **Deputy Director (Corporate Services)/Relevant Director**.
- Send an acknowledgement letter confirming receipt of the request, and the legislation under which it will be processed or proceed to Stage 2.

Stage 2 – Clarify

Clarify Request (days 1-2) **SCSO** to contact requester if necessary to seek further clarification

The **Senior Corporate Services Officer** in consultation with the **relevant Executive Team member** will ensure that the request is clear regarding what information is being asked for. If the request is unclear clarification will be sought from the requester.

Stage 3 - Assess

Assess Request (days 3-5) **SCSO** to decide if: the information is covered by the Order; we hold the information and if it is already accessible

The **Senior Corporate Services Officer** will assess:

- If the request relates to functions covered by The Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 (the Order):
 - If information covered by the Order will proceed with next

steps in Stage 3.

- If information not covered by the Order but we are willing to release some or all of the information will proceed with next steps in Stage 3.
- If information is not covered by the Order and we are not willing to release any of the information, a letter will be sent to the requestor informing them that we are not obliged to provide them with the information.
- if we hold the information and if it is already accessible:
 - If the information is held and covered by the Order but is already published then a Section 25 exemption letter will be sent to the requestor informing them of where to find this information. Where the information is not covered by the Order we should simply write to the requester and inform them where to find the information.
 - If the information is held and has not been published then the process will proceed to Stage 4.
 - If we do not hold the information a letter will be sent to the requestor informing them the information is not held.

Stage 4 - Assign Request Department - Inform & Consult

**Assign
request/Inform/
Consult (days 3-5)**

The **Senior Corporate Services Officer** will send a request to the appropriate department to request the information held.

The relevant **Executive Team member** will respond to the **Senior Corporate Services Officer** when information has been collected or to inform the **Senior Corporate Services Officer** that the department does not hold the information.

Consult with the **Senior Corporate Services Officer** to determine if fees are applicable. The **Senior Corporate Services Officer** will advise on applying fees.

Stage 5 - Locate & Consider Information to be Disclosed

Locate Information (days 3-5) Appropriate department collate information. SCSO will assist, support and advise

The relevant **Executive Team member** and the **Senior Corporate Services Officer** will consider if the information can be supplied or whether any exemptions apply. Where the information requested is not covered by the Order you do not need to determine whether or not exemptions apply and can instead choose what information you are prepared to release.

The **Senior Corporate Services Officer** will advise and assist in applying exemptions.

The relevant **Executive Team member** of the appropriate department obtains information from all sources and collates.

The relevant **Executive Team member** of the appropriate department completes the information request documents as appropriate.

Stage 6 - Consider Response

Consider Response (days 6-10) SCSO review and draft

The **Senior Corporate Services Officer** will review documents and prepare the response letter.

Stage 7 - Clearing Response

Clearing Response (days 11-15)

In cases of complex/controversial requests the **Senior Corporate Services Officer** will seek clearance and consult with the relevant **Executive Team member/Legal Advisors** as necessary.

Stage 8 - Issue Response

Issue Response (days 16-20) SCSO issue response

The **Senior Corporate Services Officer** quality checks and issues information requested, stating any exemptions as appropriate.

