



## Freedom of Information & Environmental Information Policy

<b>Written by:</b>	<b>Head of Corporate Governance</b>	<b>Version:</b>	<b>2</b>
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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, Orkney Housing Association Ltd (the Association) is designated as a Scottish Public Authority and therefore required to make information available in accordance with both FOISA and EIR.
- 1.3 The Scottish Information Commissioner's, Model Publication Scheme specifies that this Policy should be published on the Association's website.

### 2. Purpose

- 2.1 This Policy provides a general understanding of both FOISA and EIR and outlines responsibilities to ensure compliance with the Association's legal duties.
- 2.2 Day to day processes detailing how FOI/EIR will be handled internally are described in the Freedom of Information & Environmental Information Procedures.

### 3. Policy Statement

- 3.1 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 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 UK GDPR and Data Protection Act 2018 when complying with FOISA and EIR;
- only withhold information where entitled to do so under FOISA and EIR explaining why information is withheld; and
- provide advice and assistance to individuals seeking to access information.

#### **4. Responsibilities**

4.1 Responsibilities to ensure compliance with the legal duties of the Association under both FOISA and EIR are as follows:

- Compliance with this Policy is compulsory for all employees of the Association and failure to comply may lead to disciplinary action.
- The Chief Executive (CE) and Head of Corporate Governance (HCG) have lead management responsibility for FOISA and EIR, including effective implementation and regular review of this Policy.
- The Corporate Officer (CO), registered as the Association's Data Protection Officer with the Information Commissioner's Office, will:
  - ensure that requests under FOISA and EIR are acknowledged;
  - request and collate information from other staff/sources as required;
  - monitor progress with any requests to ensure responses are made within set timescales determined by FOISA and EIR;
  - draft responses for final approval by the CE and/or HCG;
  - ensure information is available in accordance with the Association's Publication Scheme and Guide to Information; and
  - ensure any requests for review are acknowledged, dealt with and responded to within timescales.
- All employees are responsible for:
  - familiarising themselves with this Policy;
  - forwarding information requests received to the CO as quickly as possible.
  - If unsure how to recognise an information request, seek guidance from a member of the Corporate Governance team as soon as possible; and
  - seeking guidance from the CE, HCG or CO if they are unsure about any of the duties placed on the Association by FOISA or EIR.

4.2 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 CE or HCG.

#### **5. Scope of the Policy**

5.1 This Policy applies to any information held by the Association which relates to one or more of the functions set out at 6.2 below, regardless of format. This will include information created internally and information received from third parties. It also relates to information which is held on behalf of the Association.

5.2 This policy applies to all employees.

## **6. FOISA & EIR**

### 6.1 Why is the Association subject to FOISA and EIR?

It 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.

### 6.2 What is subject to FOISA and EIR?

In accordance with the terms of the Order, not everything that the Association does is subject to FOISA and EIR. It 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 it carries out, subject to some restrictions. The following functions 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 (ie a subsidiary) in relation to its financial wellbeing and standards of governance.

### 6.3 What is the difference between FOISA and EIR?

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.

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.

## **7. Legal Duties**

7.1 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:

### 7.2 Responding to Information Requests

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 SIC.

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).

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

Where the Association is asked to provide information which it does not hold, but knows that another Scottish Public Authority holds, it 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.

The Association may choose to charge for fulfilling information requests received from individuals. Any charges shall be made in accordance with:

- FOISA: the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004; or
- EIR: the Schedule of Charges as detailed in the Association's Guide to Information <https://www.ohal.org.uk/docs/id308-Guide%20to%20Information%20Oct%202024.pdf>.

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

### 7.3 Responding to Requests for Review

Where someone has requested information from the Association and:

- where it 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 (eg 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.

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

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

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

#### 7.4 Provision of Advice and Assistance to Individuals

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 Scottish Ministers.

#### 7.5 Publication of Information

The Association shall publish information in accordance with its Publication Scheme through its Guide to Information. The Association's Guide to Information is on its website <https://www.ohal.org.uk/docs/id308-Guide%20to%20Information%20Oct%202024.pdf>, a paper format is available on request.

#### 7.6 Data Protection

The Association is committed to upholding its data protection obligations set out in the UK GDPR and the Data Protection Act 2018. 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 Data Protection & Privacy Policy when dealing with these rights.

### **8. Review**

- 8.1 This Policy will normally be reviewed every 5 years and an entry will be maintained in the Association's Policy Review Schedule to indicate this.

### **9. Policy Agreement**

- 9.1 Selecting the tick beside the document in Breathe HR confirms that employees have read, understood and agree to abide by this Policy, which specifies their responsibilities as listed at Section 4 above.