

## Freedom of Information and Environmental Information Policy

<b>Purpose:</b>	To establish DPHA's policy and set out our position on Freedom of Information and Environmental Information
<b>Review Date:</b>	November 2022
<b>Guidance:</b>	Information Commissioners Office Scottish Information Commissioner Scottish Ministers Code of Practice Lord Chancellors Code of Practice on the management of records and documents National Archives Managing Emails, SFHA & TC Young Freedom of Information template documentation and guidance notes
<b>Regulatory Standards:</b>	Standard 2: The RSL is open about and accountable for what it does. It understands and takes account of the needs and priorities of its tenants, service users and stakeholders. And its primary focus is the sustainable achievement of these priorities.  Standard 5: The RSL conducts its affairs with honesty and integrity.
<b>Other Relevant Policies</b>	Privacy Policy
<b>Date reviewed by Policy Review Working Group (PRWG):</b>	NA
<b>Date approved by Management Committee (or PRWG if delegated):</b>	16 October 2019
<b>Amendments</b>	N/A

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## **1.0 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 DPHA will be designated as Scottish Public Authority and will need to make information available in accordance with FOISA and EIR.

## **2.0 AIMS OF THE POLICY**

- 2.1 Provide a general understanding of FOISA and EIR; and
- 2.2 Outline where responsibility lies for complying with the legal duties of DPHA under FOISA and EIR

## **3.0 POLICY STATEMENT**

- 3.1 DPHA 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 DPHA 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

## **4.0 BACKGROUND**

4.1 DPHA 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”).

4.2 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.

### **4.3 Information subject to FOISA and EIR**

4.3.1 In accordance with the terms of the Order, not everything that DPHA does is subject to FOISA and EIR. Instead, DPHA 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 DPHA 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 DPHA are covered by FOISA and EIR:

- the management of social housing accommodation
- the prevention and alleviation of homelessness
- 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.

### **4.4 Differences between FOISA and EIR**

EIR provides a right of access to ‘Environmental Information’ held by DPHA. 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.

## **5.0 SCOPE OF THE POLICY**

5.1 This policy applies to any information held by DPHA 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 DPHA.

5.2 This policy applies to all DPHA employees.

## **6.0 LEGAL REQUIREMENTS**

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

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

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

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

6.2.5 DPHA may choose to charge for fulfilling information requests received from individuals. Any charges made by DPHA 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 (see Guide to Information page on our website [www.dpha.org](http://www.dpha.org) )

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

### 6.3 Responding to Requests for Review

6.3.1 Where someone has requested information from DPHA and:

- DPHA 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)

6.3.2 Then they have the right to request that DPHA reviews the response to their request to determine whether or not the provisions of FOISA or EIR have been followed.

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

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

6.3.5 In any event DPHA will handle all requests for review in accordance with the timescales set out in FOISA and EIR.

6.3.6 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 DPHA and the individual in question have a right to appeal to the courts on a point of law.

### 6.4 Provision of Advice and Assistance to Individuals

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

### 6.5 Publication of Information

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

6.5.2 Our Publication Scheme can be found on our 'Guide to Information' page on our website [www.dpha.org](http://www.dpha.org).

## 6.6 Data Protection

- 6.6.1 DPHA is committed to upholding its data protection obligations set out in the GDPR and the Data Protection Act 2018.
- 6.6.2 Under data protection laws, individuals have the right to request access to all of the information that DPHA 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. Information regarding how data will be used and the basis for processing data is provided in our Customer Fair Processing Notice.

## 7.0 RESPONSIBILITIES

- 7.1 The Senior Corporate Services Officer has lead management responsibility for FOISA and EIR within DPHA. This will include effective implementation and regular review of this Policy. Cover will be provided by the Corporate HR Advisor and both will be expected to:
- Respond to requests under FOISA and EIR and be aware of who information requests should be forwarded to
  - Collate information for sending out to requesters
  - Make information available in accordance with our publication scheme
  - Deal with requests for review
  - Participate in relevant FOISA and EIR training
- All employees are responsible for:
    - familiarising themselves with this policy;
    - forwarding information requests received to Senior Corporate Services Officer as quickly as possible. If you are unsure how to recognise an information request, you should seek guidance from your team leader.
    - seeking guidance from Senior Corporate Services Officer if they are unsure about any of the duties placed on DPHA by FOISA or EIR;
    - Participate in all FOISA and EIR training for staff
  - Employees should be aware that where an information request is received, and an employee deletes or alters information held by DPHA 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 Senior Corporate Services Officer.

- Compliance with this policy is compulsory for all employees of DPHA. Any employee who fails to comply with this policy may be subject to disciplinary action.

## **8.0 PERFORMANCE MONITORING**

8.1 As we will required to report our FOI performance quarterly to the SIC, we will record and monitor all requests for information, and these will also be included in our quarterly performance reports to Committee. To comply with good practice guidelines, we will also proactively publish our FOI monitoring data online.

## **9.0 EQUALITY AND DIVERSITY**

9.1 We are committed to promoting an environment of respect, understanding, encouraging diversity and eliminating discrimination by providing equality of opportunity for all. This is reflected in our Equality and Diversity Policy.

## **10.0 COMPLAINTS**

10.1 Although we are committed to providing high levels of service, we accept that there may occasions where you may not be not satisfied with the service you have received from us. We value all complaints and use this information to help us improve our services. Our Complaints Policy describes our complaints procedure and how to make a complaint.