



Affordable homes.
Exceptional care.

Trust Housing Association

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Freedom of Information & Environmental Information Policy

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1. Introduction

- 1.1 Trust Housing Association aims to provide homes and services of the highest standard. In doing this the Association requires to hold information that relates to it's core social housing activities.
- 1.2 This document details the policy framework and the procedures and processes that Trust will follow to ensure compliance with the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (EIR).

2. Aims and objectives

- 2.1 Trust Housing Association is committed to the underlying principles of openness and transparency underpinning FOISA and EIR and complying fully with the requirements of said legislation.
- 2.2 This policy aims to set out the responsibilities of the Association and its staff in publishing and providing information that falls within FOISA & EIR.

3. Legislative framework

- 3.1 The Freedom of Information (Scotland) Act 2002 defines 3 duties that all public authorities must abide by in regards the information it makes available to the general public.
- 3.2 The Duty to Publish – All public authorities should pro-actively publish certain categories of information for public consumption.
- 3.3 The Duty to Respond to Requests – All public authorities should be prepared to provide information that is not pro-actively published, where there is no valid exemption, on request by any member of the public.
- 3.4 The Duty to Advise and Assist – All public authorities should provide support and advice to members of the public to assist them to exercise their rights to information.
- 3.5 Trust must dispense these duties whilst respecting data protection in accordance with the GDPR and Data Protection Act.
- 3.6 For the purpose of Freedom of Information, Trust Housing Association is classified as a public authority as of the 11th of November 2019, from which point Trust is required to apply the duties set out in the FOISA.

4. Notification

- 4.1 Trust Housing Association Ltd. and all subsidiaries are registered with the Scottish Information Commissioner (SIC).
- 4.2 Further information on Freedom of Information and Environmental Information Regulations is available from the Scottish Information Commissioner via telephone on 01334 464610 and from their website at www.itspublicknowledge.info

5. Responsibilities

- 5.1 All staff members are responsible for attaining a functional understanding of Freedom of Information & Environmental Information Regulations and should always follow the FOI & EIR policy and procedures when dealing with requests for information. Any failure to apply the policy and procedures that results in Trust's failure to comply with its legal obligations, may lead to disciplinary proceedings.
- 5.2 The Association's FOI Lead is the Data Protection Officer. The DPO has responsibility for co-ordinating the Freedom of Information & Environmental Information Policy within Trust Housing Association. Any information requests made to the Association should be initially referred to the DPO as the identified contact person and then channelled to the appropriate member/s of staff.
- 5.3 The DPO will be responsible for responding to all requests for information and may task Directors and Heads of Service with arranging for requested information to be made available.
- 5.4 The DPO will be responsible for maintaining Trust's Model Publication Scheme and ensuring that all new valid information is published on the Association's website. They will be responsible for archiving old information once it has been removed from the MPS.
- 5.5 The DPO will be responsible for all dealings with the Scottish Information Commissioner, including regular reporting on the requests for information received and consulting with them in the event of a complaint or investigation.
- 5.6 The DPO will be responsible for reviewing and updating the FOI & EIR policy and procedures. This will be done on a three-yearly basis.
- 5.7 The DPO will consult with the Director of Finance and People on any complex Freedom of Information or Environmental Information matters that require a greater degree of scrutiny. This may be escalated to the full directorate group for especially complex cases.
- 5.8 In the event of there being a request for a review of the outcome of a request, the Director of Finance & People will be responsible for carrying out the review and advising the requester of the outcome.

- 5.9 Each Director has overall responsibility for their own directorate and needs to ensure that staff members are cognisant of the FOI & EIR policy and procedures. They will be responsible for ensuring all applicable information generated is passed to the DPO so that it may be published for public consumption. On receipt of a request for unpublished information, for which there is no exemption, they will also be responsible for the provision of the information held by their department or section.

6. Model Publication Scheme

- 6.1 Trust is committed to transparency and in line with the Duty to Publish requirements of FOISA, has signed up to the Model Publication Scheme (MPS) created by the SIC. The MPS clarifies what information should be proactively published, and what information and guidance Trust must offer to the public to facilitate their access to information.
- 6.2 Trust will publish all relevant categories of information, as defined by the MPS, on our website, alongside a guide to information which offers the public guidance on what information is available, how to access information that is not published, what fees may be charged for accessing information and how to get in touch about any queries.
- 6.3 Trust will continue to update the MPS when new information is published and will retain information for the current and two prior financial years as standard. Older information will be removed from the MPS but retained for a period of seven financial years, to enable us to facilitate requests for information no longer on the MPS.

7. Environmental Information

- 7.1 All requests for information will be reviewed to determine if the information being requested meets the definition of Environmental Information. In such a case the request will be processed in keeping with the Environmental Information (Scotland) Regulations 2004 (EIR).
- 7.2 Environmental Information is defined in the regulations as information relating to the following:
- the state of elements of the environment and their interaction (air, water, soil, land and landscape, natural sites, flora and fauna)
 - discharges, emissions, noise, radiation, waste
 - measures and activities affecting the environment (such as policies, legislation, plans, activities)
 - reports on implementation of environmental legislation
 - cost benefit and economic analysis
 - effects of the environment on conditions of human life (including floods and buildings)

- 7.3 EIR is largely similar to the Freedom of Information (Scotland) Act 2002, but differs in that: it allows for requests to be made verbally; introduces an option to extend the initial 20 working day period for responding to requests; has exceptions for certain types of information; and has different rules regarding the fees that can be charged for the provision of unpublished information.

8. Requests for Information

- 8.1 Trust will treat all requests for information fairly and without prejudice. There will be no consideration given to previous interactions with the requester save for cases of persistent requests for information previously provided. Similarly, no consideration will be given towards the perceived motivations for the request for information, excepting instances where it is necessary to carry out a public interest test regarding the release of a third party's personal information.
- 8.2 Once a request for information has been received, Trust has 20 working days in which to reply. The 20-working day period does not start until a valid request is received, so any period of waiting for a response or clarification will not count towards the period we have to respond.
- 8.3 There is also a provision that allows us to 'stop the clock' in any instance where it is necessary to go back to the requester to ask that they clarify something about their request. This should not be used as a stalling tactic or as a means of avoiding missing the original 20 working day deadline.
- 8.4 If it is determined that a fee should be charged for the provision of the information, it is permitted to 'stop the clock' until the payment has been received.
- 8.5 All requests will be passed to the DPO who will review the request, determine whether the information is already published, determine if there are any applicable exemptions on the requested information, determine if there is an applicable fee for providing the information and communicate the result of that review to the requester.
- 8.6 In cases where the information is not currently published, no exemption or exception applies, and any charge has been paid, the DPO will contact the relevant Director or Head of Service to ask them to provide the information. Once provided the DPO will forward the information to the requester.
- 8.7 The DPO will retain a record of all information requests in order to complete the quarterly return to the Information Commissioner's Office.

9. Exemptions

- 9.1 There are some exemptions to Freedom of Information legislation, where access to information can be denied. Those exemptions are broken in to two categories: Absolute Exemptions and Qualified Exemptions. If any exemption is

applied and information withheld, this must be communicated to the requester, providing an explanation of the basis of the decision.

Absolute Exemptions

9.2 Are instances where you can deny any FOI request without any further consideration. Absolute exemptions include the following instances:

- Where the requested information is already publicly available.
- Where disclosure would be in breach of a court order.
- Where disclosure would constitute an actionable breach of a confidentiality agreement.
- Where the requested information is part of court records.
- Where a requester has asked for their own personal data (while the basis of denying a FOI request, this would need to be treated instead as a Data Subject Access Request under UK GDPR legislation).
- Where disclosure would be in violation of UK GDPR regulations.
- Where the requested information is personal census information.

Qualified Exemptions

9.3 Can be the basis of denying a FOI request but before coming to that decision we must carry out a Public Interest Test where it is determined if the public interest is best served by releasing the information. Qualified exemptions include the following instances:

- Where the requested information is intended for future publication (within 12 weeks of the receipt of FOI request).
- Where disclosure would substantially prejudice the commercial interests of any person.
- Where the requested information is in relation to investigation by Scottish public authorities and proceedings arising out of such investigations.
- Where disclosure would prejudice substantially any ongoing law enforcement proceedings.
- Where the requested information could be subject to a claim of confidentiality in legal proceedings
- Where disclosure would endanger physical or mental health of an individual.

Vexatious or repeated requests

9.4 There is no compulsion to comply with a FOI request if it is deemed to be vexatious in nature. There is no set test in place to determine what is and what is not vexatious but some factors to consider are:

- Would the request cause a significant burden?
- Is there no genuine purpose to making the request?
- Is the request designed to cause disruption?
- Is the request intended to harass staff?
- Is the request inherently unreasonable?

9.5 Questions of whether a request is vexatious in nature should always be applicant blind, and not take into account past behaviours. Only the specific request should ever be considered vexatious, not the requester in general. It is generally wise to err on the side of not considering a request to be vexatious.

9.6 Repeated requests can be denied if the information previously provided, or circumstances justifying the denial of a previous request, have not changed.

Protecting commercial interests

- 9.7 One of the Qualified Exemptions that can be the basis of denying a FOI request is where disclosure of information would prejudice the commercial interests of any person. One example of this would be in the case where we have engaged in a tendering process and have selected a contractor to carry out the job we were tendering for. If in this case one of the unsuccessful contractors (or any other contractor working in the same field) were to make a FOI request for information on the tender made by the successful contractor, we would need to consider the commercial interests of the contractor. Getting this information may allow the requester to structure future tenders in such a way as to 'undercut' their competitors, giving a competitive advantage in future bids.
- 9.8 In such an instance we are advised to contact the successful contractor and ask them what aspects of their tender they would consider to be commercially sensitive and would be against their commercial interest to provide to a competitor. We would then have to determine whether the public interest in releasing the information outweighed the commercial interests of the winning contractor.

10 Exceptions

- 10.1 The Environmental Information Regulations list exceptions where information can be withheld from disclosure. Those exceptions include:
- Where the information isn't held
 - Where the request is for personal data of a third party
 - Where the request is manifestly unreasonable due to the costs incurred
 - Where the request is manifestly unreasonable due to being vexatious in nature
 - Where the request is for unfinished documents
 - Where the request is for internal communications
 - Where disclosure could adversely affect public safety
 - Where disclosure would adversely affect formal legal proceedings
 - Where disclosure would adversely affect the confidentiality of proceedings
- 10.2 In cases where one or more of these exceptions apply it may be necessary to carry out a public interest test to determine whether to release the information.

11 The Public Interest Test

- 11.1 Neither FOISA nor EIR give a black and white answer of when to release information and when not to. There are a number of instances where it is necessary to weigh the public interest of releasing the information and comparing it to the public interest in withholding the information. A decision must then be made about where, on balance, the public interest lies.

- 11.2 The public interest does not refer to any information that the public might find interesting, it refers to where the public would benefit from having access to the information.
- 11.3 It would be necessary to consider who may be affected by the release of the information, and what kind of impact the release of that information could have on those individuals.
- 11.4 If the public interest in withholding the information is considered to outweigh the interest of releasing it the request would be denied. If however it is judged that the public interest is best served by releasing the information, we should provide the information to the requester.
- 11.5 The Information Commissioners Office publish a decision log on their website where they detail the results of their appeals process. Many of these decisions will include a determination of whether or not the public interest has been correctly identified, and by reviewing the log it may be possible to see where the ICO have come down on cases similar to those Trust is dealing with. This may provide valuable guidance when carrying out the Public Interest Test.

https://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/Decision_Listing.aspx

12 Fees

- 12.1 FOISA and EIR allow for the charging of a fee for providing access to information in specific circumstances, though there are strict controls on how much can be charged.

Accessing published information

- 12.2 The Model Publication Scheme requires us to make certain categories of information available on our website. If a request is made for information that is published as part of our MPS but the requester does not want to, or is unable to, access the information on the website, and is unable or unwilling to travel to our offices to view the information in person, we can charge a fee to provide the information in hard copy format.
- 12.3 In such a circumstance Trust is entitled to recoup the cost of providing the hard copies of information. This will include charging for the cost of printing/photocopying and the cost of postage. It is not permissible to charge any more than it actually costs Trust to provide the information in this format.

Accessing unpublished information

- 12.4 When a request is made for information that is not included in the Model Publication Scheme, Trust is entitled to charge a fee for the work that goes in to gathering and providing the information.
- 12.5 There are no set fees, instead the fee should be based on the costs incurred in the gathering of the data. Costs will include photocopying/printing, postage and staff's time. Charges for staff time should be calculated per member of staff per

hour they have spent based on their hourly salaried rate (this is capped at £15 per hour).

- 12.6 If the total costs come to less than £100, we are not entitled to charge a fee. If the total costs are between £100 and £600, we can charge 10% of the cost (minus the initial £100 cost which is exempt). If the total costs are greater than £600 then that would constitute a basis to deny the FOI request. However rather than flatly saying no, we should advise the requester of the costs involved and see if it's possible for them to amend their request to reduce the costs incurred.

Environmental Information

- 12.7 Similar to FOI, Environmental Information Regulations permit the charging of a fee for providing information that is not part of the Model Publication Scheme. This fee must also be based on the cost incurred in providing the information. Where EIR differs from FOI is that:
- 12.7.1 There is no £15 per hour limit on the amount you can charge for staff's time to gather the information.
- 12.7.2 There is no £600 cap on what is considered a reasonable fee, above which the request would be considered unreasonable. It is left to our own discretion to determine what a reasonable fee is, taking in to account things like who is asking for the information as it's reasonable to expect a corporate entity to pay a larger fee than a member of the public.
- 12.7.3 There is no 10% rule applied to the total cost incurred to determine the fee, the fee will be 100% of the cost incurred.

13. Reporting to the SIC

- 13.1 The SIC requires Trust to report to them on a quarterly basis, with details of the number of requests for information we receive. This is done by responding to the SIC's invitation to complete their quarterly survey online which is distributed by email by the SIC to our Freedom of Information mailbox along with the password we require to log in and complete the survey.
- 13.2 Trust will report the number of requests received in the quarter, the timescales for our responses to requests and any exemptions we have applied in denying requests for information.

14. Appeals & Complaints

- 14.1 Requesters have the right to appeal if they are unhappy with the response to their request. In such an instance the request would need to be reviewed by someone other than the DPO who reviewed and responded in the first instance.
- 14.2 If the requester is still not satisfied with the response to their appeal, they should be advised of their right to take their appeal to the SIC, who on review may issue a 'decision notice' which would require Trust to act within a given

timeframe. Failure to comply with this 'decision notice' could result in the matter being escalated to the Court of Sessions.

- 14.3 If an information requester has a complaint regarding any element of the FOI & EIR Policy or Procedures this should be dealt with under the appropriate section of the Complaints process. (See Complaints Policy and Procedure).

15. Training

- 15.1 The Association will provide all its staff with appropriate training and guidance on the Freedom of Information (Scotland) Act 2002 & Environmental Information (Scotland) Regulations 2004, its importance and their responsibilities in complying with the legislation. This training will be provided via Trust's LearnPro portal.

16. Data Protection

- 16.1 We will comply with the provisions of the Data Protection Act 2018, which gives individuals the right to see and receive a copy of any personal information that is held about them by the Association and to have any inaccuracies corrected.

17. Anti-Bribery

- 17.1 The Association is committed to the highest standards of ethical conduct and integrity in all its activities and, to ensure compliance with the Bribery Act 2010, it has introduced an Anti-Bribery policy and procedures. These must be adhered to by all employees, Board Members and associated persons or organisations acting for or on behalf of Trust when undertaking any actions referred to in this policy.

18. Statement Equality, Diversity & Inclusion (EDI)

- 18.1 As leaders of EDI, the Association aims to promote equality and diversity and operate equal opportunities policies which inform all aspects of its business. It will ensure that it adheres to the Equality Act 2010 by being committed to equal and fair treatment for all and opposed to any form of unlawful discrimination. As such, in considering this policy, no one will be treated differently or less favourably than others because of any of the protected characteristics as listed in the Equality Act 2010:

- disability;
- gender;
- gender reassignment;
- pregnancy and maternity;
- race, colour or nationality;
- sexual orientation; or
- religion or belief;
- marriage and civil partnership;
- age.

18.3 Or because of any other condition or characteristic which could place someone at a disadvantage were it to be taken into account, unless this can be objectively justified in terms of the legislation.

18.4 Trust will make reasonable adjustments for disabled people where necessary and possible to do so and will use Happy to Translate tools and procedures to help overcome a language barrier.

19. Policy Review

19.1 This Policy will be reviewed on a three-yearly basis. The purpose of the review is to assess the policy's effectiveness and adherence to current legislation and good practice and identify any changes which may be required.

20. Documentary References

20.1 In all of the Association's official documents, where references are made to specific job titles, roles, groups or committees, such references shall be deemed to include any changes or amendments to these job titles, roles, groups or committees resulting from any restructuring or organisational changes made within the Association (or, where this policy also applies to another member of the Trust group, made within that group member) between policy reviews.