

## Freedom of Information and Environmental Information Policy

AS WITH ALL OF THE ASSOCIATION'S POLICIES and PROCEDURES, THIS GUIDE, IN FULL AND IN PART, CAN BE MADE AVAILABLE IN SUMMARY, ON TAPE, IN BRAILLE, AND IN TRANSLATION INTO MOST OTHER LANGUAGES –

PLEASE ASK A MEMBER OF STAFF IF YOU WOULD LIKE  
A VERSION IN A DIFFERENT FORMAT

Relevant Regulatory Standards	Standard 2: The RSL is open and accountable for what it does. Standard 4: The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose. Standard 5: The RSL conduct its affairs with honesty and integrity.
Approved by	Committee of Management at the meeting on 6 <sup>th</sup> November 2019
Next Review	November 2024

### 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 Whiteinch & Scotstoun Housing Association Ltd (WSHA), and by association its trading subsidiaries, will be designated as Scottish Public Authority and will need to make information available in accordance with FOISA and EIR.

This is the Freedom of Information and Environmental Information Policy of WSHA. The policy will:

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

### 2. Policy Statement

WSHA 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 WSHA 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.

### **3. Responsibilities**

The Deputy Chief Executive has lead management responsibility for FOISA and EIR within WSHA. This will include effective implementation and regular review of this Policy. The Property Services Manager will take the lead in providing information under EIR and the Housing Manager will undertake to ensure the FOI process is followed when the Deputy Chief Executive is absent during the 20 working day response period. The Chief Executive will be responsible for provision of information reviews.

Primary responsibility for the following tasks will lie with the Deputy Chief Executive:-

- Responding to requests under FOISA and EIR and who information requests should be forwarded to
- Collating information for sending out to requesters
- Making information available in accordance with WSHA's publication scheme
- Ensuring requests for review are passed to the Chief Executive.
- All employees are responsible for:
  - familiarising themselves with this policy;
  - forwarding information requests received to the Deputy Chief Executive, as quickly as possible. If you are unsure how to recognise an information request you should seek guidance from a member of the Executive Team.
  - seeking guidance from the Deputy Chief Executive if they are unsure about any of the duties placed on WSHA by FOISA or EIR;
  - ensuring that any request for supporting information is provided timeously to the Deputy Chief Executive.
  - advising immediately if there is a perceived problem or difficulty in providing the information.

- Employees should be aware that where an information request is received and an employee deletes or alters information held by WSHA 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 a member of the Executive Team.
- Compliance with this policy is compulsory for all employees of Whiteinch & Scotstoun Housing Association Limited, WS Property Management Limited (WSPM) and WS Estate Services Limited (WSES). 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 WSHA, WSPM and WSES 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 WSHA.

This policy applies to all employees of the aforementioned companies.

#### 5. Background

##### ***Why are we subject to FOISA and EIR?***

WSHA 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 will come 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.

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

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

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

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

EIR provides a right of access to 'Environmental Information' held by WSHA. 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.

## **6. Legal Duties**

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

### ***Responding to Information Requests***

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

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

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

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

WSHA may choose to charge for fulfilling information requests received from individuals. Any charges made by WSHA 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 **[INSERT LINK TO PUBLISHED SCHEDULE HERE (still being developed)]** of WSHA

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

### ***Responding to Requests for Review***

Where someone has requested information from WSHA and:

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

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

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

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

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

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

### ***Publication of Information***

WSHA shall publish information in accordance with its Publication Scheme through its Guide to Information. The Guide to Information of WSHA will be available on its website at (to be set up) and a paper format will also be available on request.

### ***Data Protection***

WSHA 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 WSHA holds about them. This and other rights that individuals have under data protection are not covered by this policy and you should refer to WSHA's Data Protection Policy when dealing with these rights.

## **8. Equality Opportunities Testing**

In accordance with the Association's Equality & Diversity Policy, this Policy has been consciously considered to judge whether there is any likelihood that its presentation or operation could in any way lead, no matter how inadvertently, to discrimination. The conclusion of this exercise is that it is believed that the Policy should operate in a non-discriminatory way.

## **9. Policy Review**

This policy will be reviewed in five years' time, or sooner if legislative, regulatory or best practice changes require this.