

FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION POLICY

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).

Since 11 November 2019 Ayrshire Housing has been designated a Scottish Public Authority that needs to make information available in accordance with FOISA and EIR.

This is the Freedom of Information and Environmental Information Policy of Ayrshire Housing.

The Policy:

- provides a general understanding of FOISA and EIR; and
- outlines where responsibility lies for complying with the legal duties of Ayrshire Housing under FOISA and EIR.

POLICY STATEMENT

Ayrshire Housing 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 we will:

- follow the relevant Scottish Ministers' Codes of Practice relating to FOISA and EIR, as well as any relevant guidance issued by the SIC;
- Adopt the SIC's Model Publications scheme as our Publications Scheme.
- take into account the needs of individuals when presenting information under the 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 GDPR and the 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.

RESPONSIBILITIES

- The Director (CEO):
 - has lead management responsibility for FOISA and EIR within Ayrshire Housing. This includes effective implementation and regular review of this Policy;
 - will be responsible for undertaking any requests for review;
 - in conjunction with the Performance & Quality Manager will make information available in accordance with Ayrshire Housing's Publication Scheme.

- The Head of Finance, or in their absence, the Performance & Quality Manager:
 - will receive and record all information requests;
 - will collate information for sending out to requesters; and
 - will have responsibility for responding to requests under FOISA and EIR;
 - will update the decision log on completion of each request.

- All employees are responsible for:
 - familiarising themselves with this Policy;
 - forwarding information requests received to the Head of Finance, or in their absence the Performance & Quality Manager as quickly as possible. If they are unsure how to recognise an information request, they must seek guidance from the Head of Finance, Director or Performance & Quality Manager;
 - seeking guidance from the Head of Finance, Director or Performance & Quality Manager if they are unsure about any of the duties placed on Ayrshire Housing by FOISA or EIR;
 - providing reasonable assistance and advice to people who have made, or are planning to make, a request for information.

- Employees should be aware that where an information request is received, and an employee deletes or alters information held by Ayrshire Housing 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 Director or Head of Finance.

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

SCOPE OF THE POLICY

This Policy applies to all information held by Ayrshire Housing 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 also relates to information which is held on behalf of Ayrshire Housing.

This Policy applies to all Ayrshire Housing employees.

BACKGROUND

Why is Ayrshire Housing subject to FOISA and EIR?

Ayrshire Housing 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 EIR.

What is subject to FOISA and EIR?

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

What is the difference between the FOISA and the EIR?

EIR provides a right of access to ‘environmental information’ held by Ayrshire Housing. Environmental Information has a very wide definition which is set out in Regulations. Where a request under the 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 is available on the SIC’s website.

LEGAL DUTIES

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

Responding to information requests

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

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Issue Date: 6th November 2019

Review Date: Annually

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

Where Ayrshire Housing is providing an individual with the information they have requested it 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 obligations under the Equality Act 2010. Where Ayrshire Housing declines to provide information to an individual it will clearly explain what provision in FOISA or EIR allows Ayrshire Housing to withhold that information and why Ayrshire Housing believes that provision applies (including, where required, an explanation of how Ayrshire Housing has carried out the Public Interest Test).

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

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

- for requests being handled under FOISA, the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004; or
- for requests being handled under the EIR: our schedule of charges.

Charges by Ayrshire Housing will be reasonable and will not exceed the costs to Ayrshire Housing of providing the requested information.

Responding to requests for review

Where someone has requested information from Ayrshire Housing and:

- Ayrshire Housing has failed to respond to the request within the 20 working days 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 and EIR).

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

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

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

In any event Ayrshire Housing 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 the SIC. If an appeal is made to the SIC and a decision is handed down by them both Ayrshire Housing 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

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

Publication of information

Ayrshire Housing will publish information in accordance with its Publication Scheme through its Guide to Information. This Guide to Information will be available on its website and a paper format will also be available on request. It will give users details of how to contact us and of our charging policy.

The Guide to Information can be found on Ayrshire Housing's website at:

<https://www.ayrshirehousing.org.uk/about/freedom-of-information/>

Data Protection

Ayrshire Housing is committed to upholding its data protection obligations set out in GDPR and the Data Protection Act 2018. Individuals have the right to request access to all of the information that Ayrshire Housing holds about them. This and other rights that individuals have under data protection are not covered by this policy and you should refer to Ayrshire Housing's Privacy Policy when dealing with these rights:

<http://www.ayrshirehousing.org.uk/contact/privacy-policy/>