



## **FOI Procedure**

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77-83 Kilbowie Road, Clydebank G81 1BL

Telephone Number: 0141 941 1044

Fax Number: 0141 941 3448

E-mail: [info@clydebank-ha.org.uk](mailto:info@clydebank-ha.org.uk)

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## 1. **INTRODUCTION**

### **Aim of Procedure**

The aim of this procedure is to clarify for Clydebank Housing Association's (CHA) staff their role and responsibilities in relation to the Freedom of Information (Scotland) Act 2002 ("FOISA").

The Freedom of Information (Scotland) Act 2002 ("FOISA") demonstrates a commitment to greater openness in the public sector. It enables members of the public to find out more about the activities and the decisions of public authorities and to ensure that services are delivered properly and efficiently

From 11 November 2019 the Association will be designated as Scottish Public Authority and will need to make information available in accordance with FOISA and Environmental Information (Scotland) Regulations 2004 ("EIR").

FOISA gives the public the right to request any non-personal of information from Clydebank Housing Association, in particular:

- the right to be told whether the information exists; and
- the right to receive that information.

Only certain RSL and subsidiary functions are covered by FOI and EIR – these being:

- the prevention and alleviation of homelessness
- the management of social housing accommodation (for which an RSL has granted a Scottish secure tenancy or short Scottish secure tenancy)
- the provision and management of sites for gypsies and travellers
- the supply of information from an RSL to the Scottish Housing Regulator (SHR) in relation to its financial well-being and standards of governance

Where an information request does not relate to these functions although we are not obliged under FOI or EIR to provide the information, we always aim to disclose information requested where practical and appropriate to do so.

It is also important when considering whether to respond to such requests, to remember the general duty under the Scottish Social Housing Charter, under the Communications outcome:

Where you are providing information that is not subject to the Order you do not need to consider if any FOI or EIR exemptions or exceptions apply and should be particularly careful where any information requested relates to personal data.

This should also comply with CHA's Freedom of Information and Environmental Information Policy the requirements of the following regulations:

- the Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019
- Scottish Ministers' Code Of Practice on The Discharge Of Functions By Scottish Public Authorities under The Freedom Of Information (Scotland) Act 2002 and The Environmental Information (Scotland) Regulations 2004

- the General Data Protection Regulation (EU) 2016/679 (“the GDPR”);
- the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and
- any legislation that, in respect of the United Kingdom, replaces, or enacts into United Kingdom domestic law, the Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019, the General Data Protection Regulation (EU) 2016/679, the proposed Regulation on Privacy and Electronic Communications or any other law relating to the access of public information, data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union.
- The Environmental Information Regulations 2004

### **Responsibilities**

All staff is responsible for ensuring that Freedom of Information requests they receive are dealt with in accordance with the FOISA and in compliance with this policy. Staff should forward all requests for information received by CHA to the Data Protection and Compliance Officer. All requests must be dealt with promptly and as outlined in this policy. If requests are made verbally, staff must ask the applicant to put their request in writing (appropriate assistance will be provided to applicants with access requirements) to the Data Protection and Compliance Officer at the addresses given.

While the Association’s Management Committee has overall responsibility for this policy, the Chief Executive and Senior Staff are responsible for ensuring implementation and compliance with this policy.

The Data Protection and Compliance Officer are responsible for:

- Ensuring organisational compliance with the Act
- Carrying out internal reviews in liaison with the Head of Housing Services /Chief Executive, including reviewing the public interest test in cases of qualified exemptions.
- Acting as the Champion for FOI awareness throughout the organisation
- Ensuring that the general public and CHA staff have access to information about their rights under the Act
- Ensuring FOI applicants receive acknowledgement within 48 hours of submitting their request
- Ensuring that all requests for information are validated, recorded and co-ordinated in accordance with current procedures which allow responses to be sent to the applicant within legal timescales
- Advising and supporting staff responding to requests including the possible application of exemptions
- Providing advice and assistance to staff and those who propose to make, or have made, requests for information under the Act

- Devising and maintain standard documentation including response letters
- Creating and publish a Disclosure Log
- Development and maintenance of the Guide To information and Model Publication Scheme.
- Ensuring that the process outlined in this policy is carried out for all FOI requests.

Head of Housing Services as named contact for SIC, is responsible for all correspondence with SIC, and will share all communication with Data Protection and Compliance Officer and Chief Executive.

All staff of the Association is obliged to adhere to this procedure. They must also ensure they are aware of the implications of this policy, and of the process for the central handling of FOI requests.

FOI requests received by staff must be forwarded to the FOI Office immediately to the Freedom of Information mailbox ([foi@clydebank-ha.org.uk](mailto:foi@clydebank-ha.org.uk)).

Where a request is received by hard copy letter, the date of receipt by the Association should be clearly marked on the request letter and this should be either scanned and sent to the above email address or sent in the internal post and marked for the attention of the Data Protection and Compliance Officer for central handling.

The Association has 20 working days to respond to a request for information. Where staff are unsure of whether a request for information needs to be logged as a FOI request they must contact the Data Protection and Compliance Officer or Head of Housing Services for advice.

All staff should be aware that under the FOSIA Act it is a criminal offence to alter, deface, block, erase, destroy or conceal any record held by the public authority, with the intention of preventing the disclosure of any information held by The Association.

## **2. PROCEDURE**

The Association has three mandatory duties under FOI as follows:

- Duty to publish information
- Duty to respond to requests
- Duty to advise and assist

To be classed as a FOI request the request must:

- Be made in writing (this includes by electronic means such as e-mail)
- State the applicant's name and include an address for correspondence (this can be an e-mail address)
- Describe the information being requested to enable the Association to clearly identify the information required. Where this is not clear the Association must seek clarification from the applicant.

It should be noted that requests do not need to mention the FOI Act or contain a reason for requesting the information or be addressed to the Corporate Governance Manager.

A distinction must be made between requests for information and routine correspondence. Requests for information already available that can be provided immediately or without any question should be treated as business as usual.

## **2a) Duty to Respond to Requests (Appendix 1)**

### **Stage 1 - Receive, identify, log**

When a member of staff receives a request this should immediately be passed to Data Protection and Compliance Officer, who will:

- Evaluate the request and identify which legislation it will be processed under. Is it:
  - Freedom of Information (Scotland) Act (FOISA)
  - Environmental Information Regulations (EIRs)
  - Data Protection Act (DPA)
- Log the request in the Information Requests Register Spreadsheet found on the Association's shared network drive at <F:\users\FOI\Information Requests Register 2019-20>
- If the request is a complex/controversial case, inform Head of Housing Services
- Send an acknowledgement letter confirming receipt of the request, and the legislation under which it will be processed or proceed to Stage 2.

### **Stage 2 – Clarify**

Data Protection and Compliance Officer will ensure that the request is clear regarding what information is being asked for, contacting requester if necessary to seek further clarification if the request is unclear.

### **Stage 3 – Assess**

Assess Request to decide if: the information is covered by the Order

- If the request relates to functions covered by The Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 (the Order):
  - If information covered by the Order will proceed with next steps in Stage 3
  - If information not covered by the Order but we are willing to release some or all of the information proceed with next steps in stage 3
  - If information not covered by the Order and we are not willing to release any of the information a letter will be sent to the requestor informing them that we are not obliged to provide them with the information
- if we hold the information and if it is already accessible:
  - If we do not hold the information a letter will be sent to the requestor informing them the information is not held.
  - If the information is held but is already published then a Section 25 exemption letter will be sent to the requestor informing them of where to find this information. Where the information is not covered by the Order we

should simply write to the requester and inform them where to find the information.

- If the information is held and has not been published then the request process will proceed to stage 4.

#### **Stage 4 - Assign Request to department/individual – inform and consult**

Data Protection and Compliance Officer will then send request to appropriate department to request information held via email copying in relevant departmental manager. This will also include specified date for information to be returned by. Relevant staff member will respond to Data Protection and Compliance Office when information has been collected or to inform that department does not hold information, copying in their departmental manager.

The Data Protection and Compliance Officer would then consult with Head of Housing Services/Chief Executive to determine if fees are applicable, referring to charging schedule. The Data Protection and Compliance Officer will then advise the requester on applying fees.

#### **Stage 5 - Locate and consider information to be disclosed**

Appropriate department consider if the information can be supplied or whether any exemptions apply. Where the information requested is not covered by the Order you do not need to determine whether or not exemptions apply and can instead choose what information you are prepared to release.

Data Protection and Compliance Officer will advise and assist in applying exemptions. Appropriate department obtains information from all sources and collates.

#### **Stage 6 - Consider response**

Data Protection and Compliance Officer will review documents and prepare response letter.

#### **Stage 7 - Clearing response**

In cases of complex/controversial requests Data Protection and Compliance Officer will seek clearance and consult with Head of Housing Services/Chief Executive as necessary. Legal Advice will be sought where required.

#### **Stage 8 - Issue response**

Data Protection and Compliance Officer will carry out final quality checks with advice from Senior Staff and issue information requested, stating any exemptions as appropriate.

Standard letters for each of the above 8 stages are found in the Association's shared network drive <F:\FOI\FOI Standard Letters>

#### **2b) Duty to Advise and Assist**

All information kept by the Association will be accurate and be retained as per retention schedule held within the Association's Data Protection/Management of Information Policy.

The Association's Data Protection and Compliance Officer, can be contacted to for advice on the FOI process or the rights of members of the public have on the information held by CHA, and will offer support in order to help members of promise

Scott Graham, Data Protection & Compliance Officer, [scott@clydebank-ha.org.uk](mailto:scott@clydebank-ha.org.uk), 0141 941 1044, 77-83 Kilbowie Road, Clydebank G81 1BL.

Requests can be made for any recorded information, in any form and of any age, under FOISA. Requesters only have to do is ask for the information; they do not have to say why they want it, or what it will be used for. We must respond to all information requests we receive. We will advise and assist in making requests and provide the information within 20 working days.

FOI requests can be made in writing at the Association's main address, or sent to [foi@clydebank-ha.org.uk](mailto:foi@clydebank-ha.org.uk) which will be dealt with in accordance with this procedure.

## **2c) Duty to Publish**

In accordance with FOISA, the Association is also required to publish information as well as respond to requests. This is called the "publication scheme" duty. The Association must make information available to the public so that it can be accessed without having to ask for it.

The Association has adopted SFHA's Open All Hours Guide, which is available online <http://gwsf.org.uk/wp-content/uploads/Template-Guide-to-Information-published-by-GWSF-and-SFHA-Aug-2019.pdf> or in hardcopy from the Association.

All Scottish authorities have adopted the Commissioner's own Model Publication Scheme. This requires publishing our Guide to Information <http://clydebank-ha.org.uk/uploads/2019-10-29-10-59-44-CLYDEBANKHOUSINGASSOCIATI-64140.pdf>. The Association aims to make as much information available as possible free of charge on our website. If any information is found not to be available, individuals can under FOISA make a request by contacting the Association in writing, detailing the information required, along with the requesters name and contact address to return the information to. All information provided via FOISA requests will subsequently be made available on the Associations website.

The Association make all reports and minutes from Management Committee and Sub-Committee meetings available on our website. This will be done within 7 days of being ratified at quarterly Management Committee meeting by minute taker, who will also ensure that all exempt information has been redacted.

The Data Protection and Compliance Officer will monitor the relevant links and information on the website on a monthly basis to ensure all information is published and accessible in accordance with the FOI Policy and related legislation, and only exempt information has been redacted. Information retuned following FOI requests will also be uploaded to the website within 30 days after the completion of FOI request process.

## **2d) Procurement**

The Association also has an obligation to share information about contracts held with third party contractors. A contract register containing details of the existing formal agreements can be found online at <https://clydebank-ha.org.uk/about-us/who-we-are-what-we-do/procurement/> and will be updated on an ongoing basis.

The Data Protection and Compliance Officer will ensure all;

- current and future contracted suppliers are informed of the FOISA responsibility of the Association, and the implications upon the relevant contract
- new contracts have FOI provisions included as standard
- information requests and responses are shared with relevant contractors
- exempt and sensitive information

## **Appendix 1 FOI Request Flow Chart**

