

1.0 AIMS

1.1 This policy aims to:

1. Provide a general understanding of FOISA and EIR.
2. Confirm Glasgow West Housing Association Ltd's (GWHA) responsibility for complying with the legal duties required under FOISA and EIR.
3. Monitor and manage risk.

2.0 INTRODUCTION

2.1 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").

2.2 From 11 November 2019 RSLs are designated as a Scottish Public Authority and are required to make information available in accordance with FOISA and EIR.

3.0 POLICY STATEMENT

3.1 GWHA is committed to the underlying principles of openness and transparency underpinning FOISA and EIR and complying fully with the requirements of the legislation. GWHA will:

1. follow the relevant Scottish Ministers Codes of Practice relating to FOISA and EIR, as well as any relevant guidance issued by SIC;
2. take into account the needs of individuals when presenting information under FOISA and EIR.
3. make all employees aware of their responsibilities under the FOISA and EIR and support them in fulfilling those responsibilities;
4. publish a wide range of information through our Publication Scheme;
5. monitor compliance with FOISA and EIR with a view to continuous improvement;
6. respect data protection in accordance with the GDPR and Data Protection Act 2018 when complying with FOISA and EIR;
7. only withhold information where entitled to do so under FOISA and EIR and explain why information is withheld; and
8. provide advice and assistance to individuals seeking to access information.

4.0 SCOPE

4.1 This policy applies to any information held by GWHA that relates to one or more of the functions set out at 4.4, 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 GWHA. This policy applies to all GWHA employees.

4.2 GWHA 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 the EIR.

4.3 The current function and Business Plan initiatives do not fall within the scope of FOI, therefore Glasgow West Enterprises Ltd (GWEn) *is not subject to FOI*. It is subject to EIR

4.4 In accordance with the terms of the Order, not everything that GWHA does is subject to FOISA and EIR. Instead, GWHA is subject to these regimes in respect of certain functions, namely 'housing services' (as defined in s.165 of the Housing (Scotland) Act 2010) which GWHA carries out – subject to some restrictions. From a review of the definition of 'housing services' and the restrictions which are set out in the Order, the following functions carried out by GWHA are covered by FOISA and EIR:

1. the prevention and alleviation of homelessness;
2. the management of social housing accommodation;
3. the provision and management of sites for gypsies and travelers; and

4. the supply of information to the Scottish Housing Regulator (SHR) by an RSL in relation to its financial wellbeing and standards of governance.

4.5 **The Difference between FOISA and EIR**

- 4.5.1 EIR provides a right of access to 'Environmental Information' held by GWHA. 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.
- 4.5.2 Whilst the obligation 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 and within GWHA Data Management Manual.

5.0 **PUBLICATION OF INFORMATION**

- 5.1 GWHA shall publish information in accordance with its Publication Scheme through its Guide to Information. The Guide to Information of GWHA will be available on its website and a paper format will also be available on request. The Guide to Information will be reviewed on a monthly basis.
- 5.2 GWHA have adopted the model publication scheme by the Scottish Information Commissioner which commits an authority to make information available to the public as part of normal business activities. The information covered is included in the classes of information as follows:
 - Class 1 – About our organisation:** who we are, where to find us, how to contact us, how we are managed and our external relations.
 - Class 2 – How we deliver our functions and services:** Information about our work, our strategy and policies for delivering services and information for our service users.
 - Class 3 – How we take decisions and what we have decided:** Information about the decisions we take, how we make decisions and how we involve others.
 - Class 4 – What we spend and how we spend it:** Information about our strategy for, and management of, financial resources (in sufficient detail to explain how we plan to spend public money and what has actually been spent).
 - Class 5 – How we manage our resources:** Information about how we manage our human, physical and information resources
 - Class 6 - How we procure goods and services from external providers:** Information about how we procure works, goods and services, and our contracts with external providers.
 - Class 7 – How we are performing:** Information about how we perform as an organisation, and how well we deliver our functions and services
 - Class 8 - Commercial Publications (not applicable to GWHA)**
 - Class 9 - Open Data (not applicable to GWHA)**

5.3 **Data Protection**

- 5.3.1 GWHA 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 GWHA holds about them. This and other rights that individuals have under data protection are not covered by this policy and reference should be made to GWHA's [Data Protection Policy](#) when dealing with these rights.

6.0 **RESPONDING TO INFORMATION REQUESTS (LEGAL DUTY)**

- 6.1 The legislation gives people the right to request information from GWHA. Where the information requested is within the scope of the Order and GWHA holds that information it must release the information unless an exemption (under FOISA) or an exception (under EIR) applies. GWHA shall, when responding to requests for information from individuals, follow the Section 60 Code of Practice and any relevant guidance produced by SIC. Guidance on responding to a request for information can be found in GWHA Data Management Manual.
- 6.2 GWHA 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 GWHA is entitled to extend the

timescale for responding by an additional 20 working days if the volume and complexity of the request requires additional time).

6.3 Where GWHA is providing an individual with the information they have requested they will, in so far as it 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.

6.4 Where GWHA is refusing to provide information to individuals it will clearly explain what provision in FOISA or EIR allows GWHA to withhold that information and why GWHA believes that provision applies (including, where required, an explanation of how GWHA has carried out the Public Interest Test which considers the risks of potential harm to GWHA by disclosing information). Reasons for refusing a request and applying an exemption under FOISA include information which may be commercially sensitive, information relating to law enforcement, confidential records, personal data or court records.

6.5 Where GWHA is asked to provide information which it does not hold, but GWHA knows that another Scottish Public Authority does hold the requested information – GWHA shall provide contact details of said Authority to the individual requesting the information and will 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, GWHA shall offer to transfer the individual's request to the other Scottish Public Authority.

6.6 GWHA may choose to charge (Appendix 1) for fulfilling information requests received from individuals. Any charges made by GWHA shall be made in accordance with:

1. for requests being handled under FOISA: the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004.
2. for requests being handled under EIR: the Schedule of Charges of GWHA.

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

6.7 GWHA reserves the right to refuse requests where the cost of responding will cost more than the upper limit as defined in the Act which is currently £600. However as a matter of good practice and in complying with our duty to assist, GWHA will seek to discuss such a request with an individual to find a way of narrowing the request in order to respond.

7.0 VEXATIOUS OR REPEATED REQUESTS

7.1 Whilst most people exercise their FOI rights responsibly, a few may misuse or abuse the Act by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on services. These are considered vexatious/ repeated requests.

7.2 When assessing whether a request is vexatious, the Act permits GWHA to take into account the context and history of a request, including the identity of the requester and previous contact with them. The decision to refuse a request often follows a long series of requests and correspondence.

7.3 It is the request that is considered vexatious, not the requester. If after refusing a request as vexatious a subsequent request is received from the same person, it can only be refused if it also meets the criteria for being vexatious.

7.4 Further details on how to deal with vexatious/ repeated requests are detailed in GWHA's Unacceptable Actions Policy.

8.0 RESPONDING TO REQUESTS FOR REVIEW (APPEALS)

8.1 Where someone has requested information from GWHA and

1. GWHA 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
2. 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 that person has the right to request that GWHA reviews the response to their request to determine whether or not the provisions of FOISA or EIR have been followed. Requests for reviews will be carried out by the Governance and HR Manager or Corporate Director.

- 8.2 Where GWHA performs a review and determines that a response to a request is not in accordance with FOISA or EIR, GW will take immediate steps to rectify this (which could, for example, include releasing information which was previously withheld).
- 8.3 Where GWHA performs a review and determines that a response to a request is in accordance with FOISA or EIR then GW will notify the individual who asked for a review as quickly as possible. In any event GWHA will handle all requests for review in accordance with the timescales set out in FOISA and EIR.
- 8.4 Where an individual is unhappy with the response to their review request they may appeal to SIC. If an appeal is made to SIC and a decision handed down by them, both GWHA and the individual in question have a right to appeal to the courts on a point of law in the event they disagree with a decision from SIC.
- 8.5 GWHA will always endeavour to comply with any decision made by SIC. However, in the event GWHA disagree with the decision and wish to appeal, legal advice will be sought and the decision to appeal will be presented to MC for a final decision.

9.0 PROVISION OF ADVICE AND ASSISTANCE

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

10.0 REPORTING TO THE SCOTTISH INFORMATION COMMISSIONER

- 10.1 All requests for information are recorded by GWHA and reported to the Scottish Information Commissioner on a quarterly basis by Corporate Officer.
- 10.2 A summary report will also be presented to Management Committee.

11.0 RESPONSIBILITIES

- 11.1 The Corporate Director has lead management responsibility for FOISA and EIR within GWHA. This will include effective implementation and regular review of this Policy.
- 11.2 Compliance will be monitored and reported by the Policy and Performance Coordinator to Audit Sub Committee annually.
- 11.3 Corporate Officer (Governance) will be the first point of contact and responsible for: responding to requests; organising the collation of information for responses from the relevant team; making information available in accordance with the publication scheme and updating Guide to Information (GTI).
- 11.4 Governance and HR Manager will be responsible for requests for review unless there has been prior involvement in the case. In that instance the Corporate Director will lead on the request for review.
- 11.5 All employees are responsible for familiarising themselves with this policy and forwarding information requests received to Corporate Officer (Governance) as quickly as possible and within 24 hours of receiving a request. If an employee is unsure how to recognise an information request or any of the duties placed on GWHA by FOISA or EIR, guidance should be sought from GWHA Data Management Manual or by contacting Corporate Officer (Governance), Policy and Performance Coordinator or Governance and HR Manager.
- 11.6 Employees should be aware that where an information request is received and an employee deletes or alters information held by GWHA 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 guidance should be sought from the Corporate Officer (Governance) in the first instance.
- 11.7 Compliance with this policy is compulsory for all employees of GWHA. Any employee who fails to comply with this policy may be subject to disciplinary action.

12.0 REVIEW

- 12.1 This Policy will be reviewed every 3 years, or sooner, subject to a change in legislation or circumstance.
- 12.2 The Policy, in parts, attempts to summarise current legislation. In any case of conflict between the two, legislation will always preside.

13.0 DELEGATED AUTHORITY

- 13.1 Delegated authority is granted by the Management Committee to the Chief Executive and Staff to implement this Policy and the associated procedures.

INFORMATION CHARGING SCHEDULE

This schedule details when we may make a charge for our publications and how any charge will be calculated. There is no charge to view information on our website or at our premises. We may charge for providing information to you, but we will charge you no more than it costs us to do so. We will always tell you what the cost is before providing the information to you. We will require payment before collating the information requested.

Freedom of Information

Our photocopying charge per side of paper is shown in the tables below:

Black and White Photocopying

| Size of Paper | Pence per sheet |
|---------------|-----------------|
| A4 | 10p |
| A3 | 20p |

Colour Photocopying

| Size of Paper | Pence per sheet |
|---------------|-----------------|
| A4 | 20p |
| A3 | 40p |

Alternative Formats

| Format | Charge |
|----------------|--------|
| Computer Discs | 50p |

Postage Costs

Postage costs may be recharged at the rate we paid to send the information to you. Our charge is for sending information by Royal Mail First Class.

When providing copies of pre-printed publications, we will charge no more than the cost per copy of the total print run. We do not pass on any other costs to you in relation to our published information.

Charges for information which is not available under the scheme

If you submit a request to us for information which is not available in this Guide, the charges will be based on the following calculations:

General Information Requests

1. There will be no charge for information requests which cost us £100 or less to process.
2. Where information costs between £100 and £600 to provide, you may be asked to pay 10% of the cost. That is, if you were to ask for information that cost us £600 to provide, you would be asked to pay £50 calculated on the basis of a waiver for the first £100 and 10% of the remaining £500.
3. We are not obliged to respond to requests which will cost us over £600 to process.
4. In calculating any fee, staff time will be calculated at actual cost per staff member hourly salary rate to a maximum of £15 per person per hour.
5. We do not charge for the time to determine whether we hold the information requested, nor for the time it takes to decide whether the information can be released. Charges may be made for locating, retrieving and providing information to you.

POLICY: Freedom of Information and Environmental Information (App. 1)

6. In the event that we decide to impose a charge we will issue you with notification of the charge (a fees notice) and how it has been calculated. You will have three months from the date of issue of the fees notice in which to decide whether to pay the charge. The information will be provided to you on payment of the charge. If you decide not to proceed with the request there will be no charge to you.

Charges for Environmental Information Environmental information

The rules for charging for environmental information are slightly different as it is provided under the EIRs rather than FOISA.

We do not charge for the time to determine whether we hold the environmental information requested or deciding whether the information can be released. Charges may be made for locating, retrieving and providing information to you e.g. photocopying and postage.

If we decide to impose a charge, we will issue you with notification of the charge and how it has been calculated. The information will be provided to you on payment of the charge.

If you decide not to proceed with the request there will be no charge to you. Charges are calculated based on the actual cost to GWHA of providing the information:

1. Photocopying is charged at 10p per A4 sheet for black and white copying, 20p per A4 sheet for colour copying.
2. Postage is charged at actual rate for Royal Mail First Class.
3. Staff time is calculated at actual cost per staff member hourly salary rate to a maximum of £15 per person per hour.
4. The first £100 worth of information will be provided to you without charge.
5. Where information costs between £100 and £600 to provide, you will be asked to pay 10% of the cost. That is, if you were to ask for information that cost us £600 to provide, you would be asked to pay £50, calculated on the basis of a waiver for the first £100 and 10% of the remaining £500.
6. Where it would cost more than £600 to provide the information to you, we will ask you to pay the full cost of providing the information, with no waiver for any portion of the cost.

Charges for requesting your own personal data

There is no charge for requesting your own personal data under the General Data Protection Regulation (GDPR) Subject Access Request. We must provide a copy of the information free of charge.

However, we can charge a 'reasonable fee' when a request is manifestly unfounded or excessive, particularly if it is repetitive. We may also charge a reasonable fee to comply with requests for further copies of the same information. This does not mean that we can charge for all subsequent access requests. The fee must be based on the administrative cost of providing the information.

Further information on GDPR can be found on the Information Commissioner's Office website. Click [here](#) to access.