



Govan Housing Association & Govan HOME Team

Freedom of Information and Environmental Information Policy

November 2019

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Govan Housing Association can provide this document on request, in different languages and formats, including Braille and audio formats.



Freedom of Information and Environmental Information Policy

1. Introduction

- 1.1 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”).
- 1.2 From 11 November 2019 Govan Housing Association will be designated as Scottish Public Authority and will need to make information available in accordance with FOISA and EIR.
- 1.3 This is the Freedom of Information and Environmental Information Policy of Govan Housing Association. The policy will:
 - provide a general understanding of FOISA and EIR; and
 - outline where responsibility lies for complying with the legal duties of Govan Housing Association under FOISA and EIR

2. Policy Aims

- 2.1 Govan 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. To this end Govan Housing Association 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. Legislation, Compliance and Good Practice

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

3.2 Responding to Information Requests

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

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

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

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

3.3 Responding to Requests for Review

Where someone has requested information from Govan Housing Association and:

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

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

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

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

3.4 Provision of Advice and Assistance to Individuals

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

3.5 Publication of Information

Govan Housing Association shall publish information in accordance with its Publication Scheme through its Guide to Information. The Guide to Information of Govan Housing Association will be available on our website and a paper format will also be available on request.

3.6 Data Protection

Govan Housing Association 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 Govan Housing Association holds about them. This and other rights that individuals have under data protection are not covered by this policy and you should refer to our data protection policy, when dealing with these rights.

4. Background

4.1 Why is Govan Housing Association subject to FOISA and EIR?

Govan Housing Association 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.

4.2 What is subject to FOISA and EIR?

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

4.3 What is the difference between FOISA and EIR?

EIR provides a right of access to 'Environmental Information' held by Govan Housing Association. 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.

- 4.4 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.

5. Responsibilities

- 5.1 The Chief Executive Officer has lead management responsibility for FOISA and EIR within Govan Housing Association. This will include ensuring the effective implementation and regular review of this Policy. The Director of Corporate Services will be responsible for the day to day management of all aspects of FOISA and EIR policy.

- 5.2 The Director of Corporate Services will delegate responsibility for the following aspects of policy compliance to the relevant staff member where appropriate:

- 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 YOUR PUBLICATION SCHEME
- DEALING WITH REQUESTS FOR REVIEW

- 5.3 All employees are responsible for:

- familiarising themselves with this policy;
- forwarding information requests received to Director of Corporate Services as quickly as possible. If you are unsure how to recognise an information request you should seek guidance from Director of Corporate Services.

- seeking guidance from Director of Corporate Services if they are unsure about any of the duties placed on Govan Housing Association by FOISA or EIR;
- Employees should be aware that where an information request is received and an employee deletes or alters information held by Govan Housing Association 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 of Corporate Services.
- Compliance with this policy is compulsory for all employees of Govan Housing Association. Any employee who fails to comply with this policy may be subject to disciplinary action.

6. Charges for information

6.1. Under both FOI and EIRs we may charge requesters a fee for complying with their requests. However, fees are dealt with differently under each regime.

6.2 Freedom of Information

Fees must be handled in accordance with the Freedom of Information (Fees Required for Disclosure) (Scotland) Regulations 2004 (the “Fees Regulations”).

In accordance with the Fees Regulations we may only charge for locating, retrieving and providing requested information (so for example, staff time spent searching files/computer systems and redacting documents).

When calculating charges we must consider: how many staff members will be required to deal with the request; how long will it take us to carry out the required tasks; and what is the hourly rate (capped at £15.00 per hour). Where it costs us less than £100.00 to comply with a request we will not charge the requester and where our costs amount to between £100.00 - £600.00 we will only charge 10% of your costs.

You should refer to the Fees Regulations and the SIC’s guidance, available [here](#), for more information on how we will deal with [charges](#) under FOI.

6.3 Environmental Information Request

As with Freedom of Information (FOI), it is possible to charge a fee for providing environmental information on request, although the specific charging rules are different. In particular, in marked contrast to FOI, there is no upper or lower limit to the fee which may be charged. Instead the

Regulations merely state that the fees shall not exceed “a reasonable amount” and must not exceed the actual costs of producing the information requested.

It is possible (as with FOI) to require payment in advance of providing the information, but written notice of this fact (equivalent to an FOI fees notice) must be given to the applicant, who then has 60 working days to pay. The compliance timescale clock is stopped during this time. The Association is obliged to publish a Schedule of Fees and information on circumstances in which a fee may be charged, waived or required to be paid in advance.

We are not permitted to charge for allowing access to registers of environmental information, or for allowing an applicant to examine information at the Association’s offices (as opposed to being given a copy of it).

The following is Govan Housing Association’s Schedule of Fees for purposes of the Environmental Information (Scotland) Regulations 2004:

Costs of locating, retrieving and assembling information: - Chargeable elements will be included in the calculation in accordance with the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004, but without any disregard for the first £100 and without any discount on the elements above £100; - Staff costs will be charged on the basis of the actual cost to the Association of employing the staff in question for the time spent.

This means the Association will calculate the fee for an environmental information request on the basis of the same elements as can be included in the fees for compliance with FOI requests. However in contrast to mainstream FOI fees, actual staff time is not capped at a maximum of £15 per hour but is charged at the actual cost. The lowest grade member(s) of staff available to carry out the task (being of an appropriate grade to be dealing with the information in question and having the requisite skills and knowledge) will be used.

6.4 Formats other than on-line and charging Schedule

In addition the fee will include any costs associated with putting the information into a particular format, copying and postage costs, as set out below.

FORMAT	CHARGE
Online	Free
View at our office	Free

Print in black and white	10p per sheet – A4 20p per sheet – A3
Print in colour	20p per sheet – A4 40p per sheet - A3
CD rom	50p
Posted document	Cost of postage

Situations requiring payment in advance: - all fees for environmental information requests require to be paid in advance.

This is to maintain consistency with the FOI rules.

6.5 Situations where the fee may be waived

The Association may elect to waive the fee if satisfied that there is a genuine and widespread public interest in the publication of the information in question. This is unlikely to be the case where a request appears to be driven by commercial interests or is highly specific in terms of focus or geographical area.

The Association may elect to waive the fee if satisfied that it would be uneconomical to issue a fees notice and process payment.

The Association may elect to waive the fee where information is requested which consists of a mixture of environmental and non-environmental information, and the non-environmental information would not be subject to a fee in terms of the FOI legislation.

The Association may elect to apply a disregard of the first £100 of any fee and charge only 10% of the marginal costs between £100 and £550 if it has processed environmental information request as a mainstream FOI request. This should not be taken as an indication that the same disregard will be applied to any similar requests in future. A fee may be charged in all other cases based on the full chargeable elements.

We may charge a 'reasonable amount' for complying with requests under the EIR – however the charge will not exceed our costs for producing the information requested. We cannot charge for allowing people to access Environmental Information via public registers or at a place where we keep said information available for inspection (for example at our office).

If we estimate the cost of dealing with the request to be over £100, we will issue a 'Fee Notice' informing the applicant of the required fee before processing the request for information and as soon as possible within the 20 working day deadline following receipt of the request. Once we issue a Fee Notice, the 20 working day time limit for responding stops and will start again only when we receive payment.

7. Statistics

- 7.1. Govan Housing Association must submit statistical reports to the Scottish Information Commissioner on a quarterly basis. The reports include the numbers of requests received under FOISA, EIR and GDPR legislation, whether any exemptions were used and whether any reviews were carried out.

8. Exemptions

- 8.1 The FOISA does not entitle applicants to be given all information held by Govan Housing Association. The FOISA sets out exemptions from the right of access to information, there are two kinds of exemptions:

- Absolute exemptions – the right to information is completely over-ridden by the exemption
- Non-absolute exemptions – where an exemption may be applied, but Govan Housing Association must decide whether it serves the interests of the public better to disclose the information than to withhold it. This is known as the public interest test. Although there might be occasions when it is appropriate to rely on an exemption, provision of information is an integral part of Govan Housing Association's work. Therefore, we aim to disclose as much information as possible and rely on exemptions only in limited circumstances. Where a request is refused, a refusal notice must be issued setting out the section of FOISA being relied upon and in most instances explaining the reasons for the refusal, including the details of any public interest and prejudice tests that have been applied. The refusal notice will also outline the review procedure with relevant details and inform the requester of their right to complain to the Information Commissioner.

8.2 Vexatious requests

While we are committed to providing information, we sometimes receive requests which can be deemed 'vexatious'. In determining whether a request may be vexatious we will consider whether meeting the request is likely to cause a disproportionate or unjustifiable level of distress, disruption or irritation. Where we believe the request to be vexatious, we will issue a refusal notice unless we have already done so in response to an earlier

vexatious or repeated request from the same individual, and it would be unreasonable to issue another one.

- 8.3 Repeated requests - Govan Housing Association can refuse requests if they are repeated within a reasonable timescale from the previous request, whether or not they are also vexatious.
- 8.4 Cost Limit is Exceeded - Govan Housing Association reserves the right to refuse requests where the cost of providing the information would exceed the statutory cost limit. This limit is currently £600. The requester cannot be charged for the first £100 it costs to find and provide the information. Therefore, if the cost of providing the information is less than £100, the requester will receive it free of any charges. If the cost is over £100 and up to and including £600, we can charge the requester 10% of the cost of providing the information (bearing in mind, the first £100 is free) so the maximum we could charge would be £50, i.e. 10% of the remaining £500 if the cost to us was £600. If the total cost to us is going to be over £600, we can refuse the request. However, we will advise on how the cost could be reduced so that the request could be fulfilled. The fees regulations allow us to charge for "projected costs", "whether direct or indirect, which Govan Housing Association reasonably estimates we are likely to incur in locating, retrieving and providing the information". Costs which might be charged include estimates of the staff time to collect information from our archive, the cost of postage to deliver the information to the requester or the cost of photocopying in order to provide it. We cannot, however, charge for the time and resources used to determine whether we actually hold the information e.g., through searches of catalogues and records holdings. We also cannot charge for any costs incurred in deciding whether the information can be released.
- 8.5 Other Exemptions - there are other exemptions that Govan Housing Association might apply to information being released and these include:
- Information otherwise accessible
 - Prohibitions on disclosure
 - Information intended for future publication
 - Relations within the United Kingdom
 - Formulation of Scottish Administration policy etc.
 - Prejudice to effective conduct of public affairs
 - National security and defence
 - International relations

- Commercial interests and the economy
- Investigations by Scottish public authorities and proceedings arising out of such investigations
- Law enforcement
- Confidentiality
- Court records, etc.
- Personal information (as defined in GDPR and DPA 2018)
- Health, safety and the environment
- Audit functions
- Communications with Her Majesty etc. and honours

9. Complaints

- 9.1 Anyone who has made a request for information to Govan Housing Association under the FOISA is entitled to request an internal review if they are unhappy with the way their request has been handled. Internal reviews will be carried out by a senior member of staff who was not involved with the original decision. A request for review may be about:
- a decision not to give them some or all of the information
 - how an exemption has been applied
 - how the request was handled (eg failing to reply to them within the time limit allowed)
 - a complaint about our Publication Scheme,
 - failing to give them advice about, and help with, making their request
 - asking them to pay a fee that they might feel is unreasonable
- 9.2 Govan Housing Association may ask the applicant for clarification of the grounds of their complaint if the grounds are not clear. A request for an internal review should be sent to the contact details set out in Section 6 above. An internal review will consider whether or not the request was handled appropriately, in line with the requirements of the FOISA. Applicants wishing to ask for an internal review must do so within 40

working days of the date of Govan Housing Association 's final response to their request.

- 9.3 Govan Housing Association will acknowledge the request for an internal review within five working days and aims to respond within 20 working days of receipt. In a small number of cases, the response may take longer. In these circumstances, Govan Housing Association will notify the requester, explain why more time is needed and give an estimate of the completion date.
- 9.4 Anyone who is unhappy with the outcome of an internal review is entitled to complain to the Scottish Information Commissioner.

10. Scope of the Policy

- 10.1 This policy applies to any information held by Govan Housing Association 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 Govan Housing Association.
- 10.2 This policy applies to all Govan Housing Association employees.

11. Equality Screening

- 11.1 This policy is subject to an equality screening process and the outcome dictates that a full Equality Impact Assessment is not required.

12. Policy Review

- 12.1 This policy will be subject to a 3 yearly review cycle or when legislation dictates.

Appendix 1 – Fees Notice



Govan Housing Association Group Freedom of Information and Environmental Information Fees Notice

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