

FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION POLICY

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Background

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Background

The Albyn Group Freedom of Information (Scotland) Act ("FOISA") and the Environmental Information Regulations ('EIR's") Policy is intended to provide guidance for the Albyn Housing Society and its subsidiaries (the 'Group') on the FOISA/EIR's Laws and our responsibilities under these Laws.

This Policy applies to all information held by the Group, including information stored on the Group's behalf by another organisation or authority, which relates to the Group's housing activities regulated by the Scottish Housing Regulator.

All Group employees, contractors, consultants, modern apprentices, and all visitors to Group business premises shall comply with this policy. Adherence to this policy is an individual responsibility; failure to comply may result in disciplinary action.

Section 1: Introduction

A strategic aim of the Group is to build our values into our policy and decision making on a daily basis. With that in mind, we aim to follow our current values, which can be located here: <https://www.albynhousing.org.uk/about-us/>

The FOISA Laws aim to increase openness and accountability in government and across the public sector by ensuring that people (anywhere in the world) have the right to access information held by bodies defined as "Scottish public authorities".

The FOISA Laws enable people to see and question how the Group functions and how decisions are made in relation to the Group's housing activities regulated by the Scottish Housing Regulator.

Under FOISA, the Group has to adopt and maintain a scheme relating to the publication of information (Publication Scheme) for the Group entities subject to FOISA, so that the public can see what types of information is held by the Group. Where information is not proactively made available in the Publication Scheme, individuals can make specific requests for information under either FOISA or the EIRs. There are strict time limits for making information available to individuals when they submit requests to the Group.

It does not matter how old the information is, why it was created or in what format it is held, if the Group holds the information, then it must be disclosed under the FOISA, unless it is specifically exempt.

Group employees have a responsibility to ensure that all requests for information are dealt with in conjunction with the applicable Group policies and procedures. Employees are responsible for:

- Familiarising themselves with this policy and related guidance procedures
- Providing advice and assistance to persons making requests for information
- Dealing with all requests as soon as practicable or within the time limits in the FOISA
- Where applicable, maintaining the integrity of the Publication Scheme
- Providing the Corporate Services Team with notice of any requests and providing information to the Corporate Services Team when requested
- Contacting the Corporate Services Team when assistance is required

It is the responsibility of managers to ensure that employees are made aware of the existence and contents of this policy.

Section 2: Publication Scheme

FOISA require all Scottish public authorities to adopt and maintain a Publication Scheme.

The primary purpose of the Group's Publications Scheme is to make it easier for the public to locate and access information published by the Group. The Publication Scheme tells the public what classes of information the Group routinely makes available, where it can be accessed, and whether access to it is free or if there is a charge.

The Group has adopted the Model Publication Scheme, which is a standard framework for Scottish public authorities to publish the information they hold.

A Guide to Information detailing what we publish can be found on our website: [Guide to the information we publish - Albyn \(albynhousing.org.uk\)](http://albynhousing.org.uk)

2.1 Structure

The following classes of information are published within the Group's Publication Scheme:

- Information about the Group— general information, how it is run and information on corporate planning and external relations
- How it delivers functions and services
- How it takes decisions and what decisions have been taken
- What it spends and spending information
- How it manages our human, physical and information resources
- How its entity procures goods and services externally
- How it is performing
- Commercial publications (not applicable)
- Open data (not applicable)

2.2 Charges

Information published by the Group in our Publications Scheme is available free of charge. Where additional copies of information require to be produced to satisfy a request, the Group reserves the right to apply a standard per page copy charge in line with the FOISA.

2.3 Maintenance

The Group Publication Scheme has been approved by the Scottish Information Commissioner and will be reviewed on a regular basis. It is important to maintain and review the Publication Schemes to ensure that up-to-date information is available to the public.

Section 3: Handling requests for information

Business areas should continue to handle routine enquiries which form part of their day-to-day activities as they do just now, unless any requests have been identified as requests for information under FOISA or EIR. Nevertheless, it is important that the Group recognises that FOISA imposes further obligations on the Group to handle requests for information in line with specific requirements.

All requests under FOISA must be in 'permanent form' (i.e. letter, email, etc.) but requests under the EIRs do not need to be in 'permanent form' and can also be made verbally. Individuals do not need to specifically refer to the legislation for a request to be valid.

3.1 Duty to provide advice and assistance

Under FOISA, the Group needs to provide individuals with advice and assistance in relation to their rights. This is to help individuals who have made a request for information or who want to make a request for information.

This duty could involve employees assisting individuals to make a valid request. Under FOISA, for a request to be valid it must:

- Be in writing or another permanent form, including email or audio recording
- Include the name of the individual and an address
- Include a description of the information requested.

There are no similar provisions under the EIRs and requests for environmental information can be made in any format (including verbally) and do not need to include the name of the individual requesting the information.

The Group is able to ask individuals for more details to clarify their request where it is not clear what information has been requested. If you think that someone wants information under FOISA, you should clarify this with them before sending the request to the Corporate Services Team. Employees can check with the Corporate Services Team if you are unsure.

If an individual is requesting their own personal information, this should be treated as a subject access request under UK Data Protection legislation and dealt with under the Group's Subject Access Request guidance.

3.2 Time limits

The Group must respond to requests for information under FOISA within 20 working days of receiving the request – this time limit starts when any employee receives the request, including where that employee is out of the office. It is therefore important that all employees forward requests to the Corporate Services Team as soon as possible.

There is no time extension for requests under FOISA, but it is possible to extend the time for responding to requests under EIR by another 20 working days (40 working days

in total). The extension only applies to requests that are complex and for a large volume of information. The Group needs to tell the individual within the initial 20 working days of the decision to extend and the reasons for the extension.

3.3 Procedures for handling requests

The procedures for handling information requests are detailed within the Group Information Request Procedure included as Appendix 1.

3.4 Locating information

It is important that all Group employees across business areas co-operate with the Corporate Services Team by ensuring that requests for information are immediately sent to it once received. In addition, the Corporate Services Team will require assistance from the business areas to locate and retrieve the requested information. The Corporate Services Team will require assistance within specific timescales to ensure that the Group complies with the time limits under FOISA.

Section 4: Fees

FOISA contains specific Fees Regulations that govern when Scottish public authorities can charge for information provided to the public through Publication Schemes or in response to requests for information. The Fees Regulations also set out what can and cannot be charged for. The Group must ensure that certain procedures are followed where we want to charge for information.

The Group has published separate guidance on charging for information under the FOISA Laws and has also produced a charging schedule for providing information under the EIRs. If an individual is required to pay a fee, a Fees Notice will be issued by the Corporate Services Team as soon as possible after the initial request is received.

The Fees Regulations state that requests for information which cost the Group up to £100 to deal with must be responded to for free. Where a request for information will cost the Group more than £100, the Group is entitled to recover 10% of costs up to a maximum limit of £600. Where a request will cost the Group more than £600, the Group is entitled to refuse the request for information, unless the individual is willing to pay the Group for the full cost of providing the information.

The costs for providing information will be calculated in line with the Group's guidance on charging for FOISA and EIRs requests available on the website: [Access to information - Albyn \(albynhousing.org.uk\)](https://albynhousing.org.uk).

Section 5: Withholding information

FOISA allows exemptions and EIR allow exceptions that can be applied by the Group to withhold information from disclosure, either within our Publication Scheme or when responding to requests for information.

5.1 Exemptions under FOISA

FOISA provides that certain information can be withheld by the Group from disclosure, although in most cases the information should only be withheld if the public interest in withholding it is greater than the public interest in disclosing it.

There are two types of exemptions under FOISA: absolute exemptions and non-absolute exemptions. If an absolute exemption applies, the Group will not be required to release the information. Absolute exemptions apply to the following categories of information:

- Information which is otherwise accessible – for example, information which is contained in the Group's Publication Scheme
- Information which is prohibited by law from disclosure – for example, information which cannot be disclosed by virtue of another Act of Parliament
- Confidential information – information obtained from a third party which is subject to a duty of confidentiality
- Court records
- Personal data – information which, if disclosed, would constitute a breach of the Group's obligations under the GDPR.

If a non-absolute exemption applies, the Group will have to apply a two-step test to establish whether the information should be released. The first of these is to establish whether disclosure of the information would, or would be likely to, result in "substantial prejudice" – for example, substantial prejudice to a person's commercial interests or to the effective conduct of public affairs.

The second test to be applied is referred to as the "public interest test". The Group must carefully consider the nature of the information being requested and decide whether the public interest in disclosure of the information outweighs the public interest in withholding the information.

If the Group considers that the public interest is in favour of disclosure then the information must be disclosed, even if such disclosure would result in substantial prejudice to, for example, a person's commercial interests.

Non-absolute exemptions apply to the following categories of information:

- Information intended for future publication – information which the Group intends to publish within 12 weeks of the request being made need not be disclosed
- Information relative to formulation of Scottish Administration policy
- Information relative to relations within the United Kingdom
- Information which, if disclosed, may prejudice the effective conduct of public affairs
- Information which, if disclosed, may prejudice national security and defence
- Information which, if disclosed, may prejudice international relations
- Information which, if disclosed, may prejudice commercial interests or the economy

Where the Group decides to refuse to provide information in response to a request under the FOISA Laws, we must issue a refusal notice. Refusal notices must contain specific information and the Group has template responses that are used by the Corporate Services Team to comply with the FOISA Laws.

5.2 Exceptions under EIR

EIR allow the Group to refuse to make environmental information available if an exception applies, although in all cases the environmental information should only be withheld if the public interest in withholding it is greater than the public interest in disclosing it.

There are two types of exceptions under EIR: class exceptions and substantial prejudice exceptions. Class exceptions are based on the type of information held or the nature of the request and apply in the following circumstances:

- Information is not held – if the Group does not hold the information but believes that another Scottish public authority does, we must either transfer the request or give the individual the details for the other authority
- Request is manifestly unreasonable – for example, it would impose a significant burden on the Group to comply with the request for information
- Request is too general – this can only be applied after asking the individual to clarify their request
- Information is still being completed – for example, unfinished documents or incomplete data
- Internal communications – for example, internal Group correspondence

Substantial prejudice exceptions only apply where providing the information would, or would be likely to, cause substantial prejudice by asking the following questions:

- Would disclosure of the information cause, or be likely to cause, substantial harm?
- Have circumstances changed since the information was created?
- Is the information publicly available? If so, disclosure is less likely to cause substantial prejudice.

Substantial prejudice exceptions apply where disclosure would, or would be likely to prejudice substantially:

- International relations, defence, national security or public safety
- The course of justice (including law enforcement), ability of a person to receive a fair trial or ability of any public authority to conduct an inquiry of a criminal or disciplinary nature
- Intellectual property rights – such as, copyright, database rights, copyright in databases, etc
- The confidentiality of proceedings of any public authority where such confidentiality is provided for by law
- The confidentiality of commercial or industrial information – for example, information supplied by contractors and as part of a tendering or procurement

process

- Third party interests – where information was supplied on a voluntary basis in the expectation that it would not be disclosed, and the supplier has not consented to the disclosure
- Protection of the environment

As all exceptions under EIR are subject to the "public interest test". The Group must carefully consider the nature of the information being requested and decide whether the public interest in disclosure of the information outweighs the public interest in withholding the information.

If the Group considers that the public interest is in favour of disclosure then the information must be disclosed, even if such disclosure would result in substantial prejudice to, for example, a third party's interests.

The only generally "absolute" exception under EIR is where the environmental information contains personal data. However, there are two specific situations where the Group does need to apply the public interest test before withholding personal data under EIR.

Section 6: Reviews and investigations

There are two stages for individuals to have the Group response to their request for information reviewed under the FOISA Laws. The first is an internal review by the Group and the second is to make an application to the Scottish Information Commissioner.

6.1 Reviews by the Group

If any individual is unhappy about how we have handled their request for information under FOISA they can ask for the response to be reviewed. Individuals must request a review within 40 working days of receiving the Group response and we must comply with the review and respond within 20 working days.

The Director of Governance & Business Improvement will be responsible for handling any reviews. The Group's response templates contain contact details for requesting reviews, which need to be included in every response.

The nature of internal reviews will depend on the response and there is no set structure. For example, if the Group has refused to provide information under an exemption or exception then the review would consider the initial request and whether the exemption or exception was correctly applied.

6.2 Applications to the Scottish Information Commissioner

The Scottish Information Commissioner has a wide variety of powers under FOISA to ensure compliance. Individuals who are unhappy with how the Group has dealt with a request for information under FOISA may refer the matter to the Commissioner who will investigate the matter and make a determination as to the action which the Group

should take. This may include a determination as to whether information should be disclosed. If the Commissioner considers that the Group is not complying with our duties under FOISA, the Commissioner can issue an enforcement notice informing the Group which part of FOISA we are failing to comply with, and the remedial action required. The Group could be found in contempt of court if we fail to comply with an enforcement notice issued by the Commissioner.

Although primary responsibility for regulation of FOISA lies with the Commissioner, there are instances where the courts may become involved. It is a criminal offence for the Group or its employees to destroy or erase information after a request for information has been received and such offence carries a fine of up to £5000.

Section 7: Policy review

This policy shall be reviewed five yearly; however, regular reviews will be considered where, for example, there is a need to respond to new legislation/policy guidance. Reviews will consider legislative, performance standard and good practice changes.

APPENDIX 1: FREEDOM OF INFORMATION & ENVIRONMENTAL INFORMATION PROCEDURES

Stage 1 – Receive, Identify & Log

Request Received (days 1-2)

Pass to **Corporate Services Team**, who will Log details, validate request, ID Legislation & send acknowledgement

Pass the Request to the **Corporate Officer**. They 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 FOI, EIR, & SAR Log
- 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

Clarify Request (days 1-2)

Corporate Officer to contact requester if necessary to seek further clarification

The **Corporate Officer** will ensure that the request is clear regarding what information is being asked for. If the request is unclear clarification will be sought.

Stage 3 - Assess

Assess Request (days 3-5)

Corporate Officer to decide if: the information is covered by the Order; we hold the information & if it is already accessible

Corporate Officer will assess:

- 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 Site/Section - Inform & Consult

Assign/Inform/Consult
(days 3-5)

The **Corporate Officer** will send request to appropriate department to request information held.

Relevant department will respond when information has been collected or to inform that department does not hold information.

Corporate Officer to determine if fees are applicable.

Stage 5 - Locate & Consider Information to be Disclosed

Locate Information
(days 3-5)

Appropriate department collate information.
Corporate Officer will assist, support & advise

Appropriate department and **Corporate Officer** 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.

Corporate Officer will advise and assist in applying exemption and seek legal advice as needed.

Appropriate department obtains information from all sources and collates.

Appropriate department completes information request documents as appropriate.

Stage 6 - Consider Response

Consider Response
(days 6-10)

Corporate Officer to review & draft response

Corporate Officer will review documents and prepare response letter

Stage 7 - Clearing Response

Clearing Response
(days 11-15)

In cases of complex/controversial requests **Corporate Officer** will seek clearance and consult with **Director of Governance & Business Improvement**, and legal advice as necessary.

Stage 8 - Issue Response

Issue Response (days 16-20)
Corporate Officer]
issues response

[INSERT] quality checks and issues information requested, stating any exemptions as appropriate.