

Freedom of Information (FOI) Policy



Document Control

Responsible Person	Chief Executive			
Review Frequency	5 Yearly			
Reviewed by	Board			
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Consultation Required	Yes		No	✓
Equalities Impact Assessment	Yes		No	✓
Added to Company Website	Yes	✓	No	
Associated Documents Considered	Yes	✓	No	

1. Introduction

- 1.1. From 11 November 2019 The Freedom of Information (Scotland) Act 2002 (FOISA) is extended to include Registered Social Landlords (RSLs). The Act aims to increase openness and accountability by providing people with the right to access information held by Waverley Housing, for whatever purpose.
- 1.2. FOI law places three main duties on Waverley Housing:
 - Duty to Publish: It is Waverley Housing's intention to proactively publish information they hold, and which is contained in their Model Publication Scheme;
 - Duty to respond to requests: Waverley Housing will respond to requests for information within designated timescales, in an appropriate format, and where information is exempt, Waverley Housing will provide reasons and a right of appeal;
 - Duty to advise and assist: Waverley Housing will actively assist requesters to access information they hold, to ensure that customer service and customer engagement are central to Waverley Housing FOI practice.
- 1.3. The Environmental Information (Scotland) Regulations 2004 (EIRS) closely mirrors the access provisions of FOISA and provides a right of access to environmental information, covering areas such as energy use, pollution and waste disposal.
- 1.4. FOISA and EIRS together with the UK General Data Protection Regulations (UKGDPR) and The Data Protection Act (DPA) 2018, form part of a group of information disclosure laws which Waverley Housing is subject to.
- 1.5. FOISA and EIRS are enforced by the Scottish Information Commissioner (SIC) and UKGDPR/DPA by the Information Commissioner's Office (ICO).

2. Roles and Responsibilities

- 2.1. The Chief Executive has overall responsibility for ensuring compliance with FOISA and EIRS and their associated codes of practice within Waverley Housing.
- 2.2. Operational Managers have responsibility for ensuring compliance within their specific areas and for collating the information requested and forwarding to the Data Protection Officer (DPO) within designated timescales. Operational Managers are also responsible for promoting awareness of FOISA and EIRS within their sections.
- 2.3. Waverley Housing's DPO has responsibility for developing FOISA/EIRS compliance within Waverley Housing, including:
 - disseminating information and guidance;
 - reviewing and updating relevant policies, procedures and related documents in line with best practice;
 - logging and tracking all FOISA/EIRS requests received by Waverley Housing;
 - ensuring that relevant training and advice is provided to all employees and approves any decisions to withhold information;
 - the DPO also co-ordinates all requests for review;

- monitoring and reporting on performance.
- 2.4. Employees have responsibility for determining in the course of contact with our customers, if disclosure of information is being requested and supporting their line manager to respond to requests.

3. Identifying a Request for Information

- 3.1. Under FOISA and EIRS Waverley Housing may be asked for any information regardless of its age and format. The person requesting the information does not have to disclose why the information has been requested.
- 3.2. If the information is held by Waverley Housing, it will be provided unless an exemption (FOISA) or exception (EIRS) applies.
- 3.3. Individuals can make information requests on their own behalf, on behalf of a company, a community organisation or campaign group, or the media. Requests can also come from within Waverley Housing, from Board Members or from staff.
- 3.4. Information held by Waverley Housing includes hard copy and electronic copy, e.g. diaries, databases, document management systems, mailboxes etc.
- 3.5. The definition of 'held' also includes information received by Waverley Housing from a third party (e.g. a contractor). However, it does not include information held on behalf of other people and organisations.
- 3.6. Before processing an information request, it is important to consider which legislation applies, for example, it may be relevant to treat an information request as a Data Subject Access Request under UKGDPR, rather than FOI. Waverley Housing will assess each request to determine under which legislation the request will be processed.

4. Applicant's Right of Access

- 4.1. People requesting information have the right to receive it within 20 working days of the request being received by us, and in the applicant's preferred format.
- 4.2. Under FOISA, there is no charge to the applicant if the cost to locate, retrieve and provide the information is less than £100. A charge may apply if the estimated cost is higher.
- 4.3. Under EIRS, there is no upper or lower threshold for charging.
- 4.4. The DPO will advise on how to apply fees regulations.
- 4.5. In addition, the applicant could expect to receive information in community languages or disability formats on request e.g. in Braille, large print or translated if the applicant's first language is not English.

5. Publication Scheme

- 5.1. Under FOISA Waverley Housing must maintain a Publication Scheme detailing the classes of information which Waverley Housing are committed to making available, and they will do this through their website. The Scheme also details how that information can be accessed and whether any charges apply.
- 5.2. There is no requirement to maintain a Publication Scheme under EIRS but Waverley Housing will publish as much as possible of the environmental information they hold.
- 5.3. Waverley Housing have adopted the Scottish Information Commissioner's Model Publication Scheme. The Scheme is available on the Waverley Housing website and a hard copy can be provided on request.
- 5.4. The Publication Scheme outlines classes of information under which Waverley Housing proactively publish information through the Guide to Information on the website.
- 5.5. Waverley Housing Guide to Information has been developed to:
 - allow the public to see what information is available for Waverley Housing in relation to each class in the Model Publication Scheme;
 - state what charges may be applied;
 - explain how you can find the information easily;
 - provide contact details for enquiries and to get help with access to the information;
 - explain how to request information that Waverley Housing hold which has not been published.
- 5.6. Whenever possible, applicants will be directed to use the Scheme to access information. If applicants cannot find the information they need, they can contact Waverley Housing directly to request the information.

6. Making a Request

- 6.1. A FOISA request must be in writing, email or other permanent form. It must include a legible correspondence address, applicant name and description of the information requested, sufficient to enable us to identify, locate and retrieve it.
- 6.2. Requests on behalf of someone else must name the third party and have their signed Consent - see paragraph 3.3 above.
- 6.3. Verbal requests are not valid under FOISA but are valid under EIRS.
- 6.4. Applicants making requests by telephone or in person will be advised on how to submit a request in writing. The applicant will be informed of the online FOI form which can be found on Waverley's Housing's website at: <https://www.waverley-housing.co.uk/freedom-of-information/foi-request-form/>

7. Refusing a Request

7.1. Under FOISA information can be withheld if:

- the cost of locating, retrieving and providing it is excessive (Fees Regulations define this as more than £600);
- Waverley Housing does not hold it;
- one or more of the exemptions detailed in Part 2 of the Act applies and the public interest in disclosing the information is not outweighed by that in maintaining the exemption;
- the request is identical to, or substantially similar to, a previous request; or
- the request is vexatious (malicious, harassing, distressing, trivial or intended to disrupt the work of Waverley Housing).

Further information on refusals and the Fee Regulations can be found on the *Scottish Information Commissioner's website*: <http://www.itspublicknowledge.info/Law/FOISA.aspx>

7.2. The DPO will advise/assist/approve applying exemptions and issuing a refusal notice, but Waverley Housing cannot refuse a request because of:

- possible embarrassment to Waverley Housing or Waverley Housing staff;
- possible loss of confidence in Waverley Housing;
- the seniority of persons involved in the subject matter; or
- the risk of the applicant misinterpreting the information either accidentally or wilfully.

It is a criminal offence for Waverley Housing staff to alter, deface, destroy or conceal a record held by Waverley Housing with the intention of preventing its disclosure under law. Either Waverley Housing or individual employees or both can be prosecuted. The offence carries a penalty of up to £5000. Staff acting in such a manner will be dealt with in terms of the Company's disciplinary policy.

8. Exemptions and Exceptions

8.1. FOISA and EIRS recognise that not all information can be disclosed on request.

8.2. There are "exemptions" in FOISA and "exceptions" in EIRS.

8.3. FOISA lists a series of exemptions that can be categorised as "absolute" or "non-absolute". There is a full list attached in Appendix 1.

8.4. Non-absolute exemptions are subject to a public interest test. This means that if Waverley Housing refuses to disclose information it must demonstrate that the public interest in withholding the information outweighs the public interest in releasing it.

8.5. "Public interest" is not defined in legislation but is generally considered as something which is of serious concern and benefit to the public; not merely

something of individual interest. Something which is 'in the interest of the public' not merely 'of interest to the public'. In applying the public interest test each case will be judged on its own merits and a balance struck, although the presumption is always in favour of disclosure. It is also accepted that what is held to be in the public interest will change over time.

- 8.6. With an absolute exemption there is no public interest test.
- 8.7. EIRS lists several "exceptions" to disclosure, all of which are subject to a public interest test (see Appendix 2).
- 8.8. Before a request is refused, advice/approval on applying exemptions or exceptions must be sought from the DPO, who may in addition engage external advice.
- 8.9. After discussion regarding exemptions/exceptions Waverley Housing must complete an Information Request Exemptions/Exceptions form providing the justification for refusal.
- 8.10. Waverley Housing require this in case the requester asks for an internal review. The DPO will issue a refusal notice to the requester outlining the reason for withholding/refusing information.

9. Dissatisfied Applicants

- 9.1. Under both FOISA and EIRS, applicants have a right of review to Waverley Housing if they are dissatisfied with the response they have received or the way their enquiry has been handled.
- 9.2. Requests for review must be received within 40 working days of a response being provided to the initial request.
- 9.3. If the applicant remains dissatisfied after the review, they have a right of appeal to the Scottish Information Commissioner. The applicant has 6 months from receipt of the review response in which to make an application to the Commissioner.
- 9.4. The Commissioner can investigate a complaint and may require Waverley Housing to release information or to improve their procedures as a result of the investigation. If Waverley Housing fails to comply with their Notices, the Commissioner can pursue them in the Court of Session as 'contempt of court'.
- 9.5. All requests for review will be co-ordinated by the DPO. To ensure fairness and partiality, reviews will not be carried out by staff involved in the original decision. The Executive Team has overall responsibility for the review process within Waverley Housing.

10. Handling Requests

- 10.1. Waverley's Data Protection Officer (DPO) is the primary contact for FOISA and EIRS requests.
- 10.2. The DPO's role is to assess and log the request and allocate it to the relevant person to identify and collate information.

- 10.3. The DPO will process the request and identify which information regime it should be processed under, i.e. FOISA/EIRs/DPA).
- 10.4. The DPO will not be involved in collecting the requested information, but will record all requests, monitor their progress and respond to the requester on receipt of the information from the relevant person.
- 10.5. The DPO will also advise and assist in the use of exemptions/exceptions and applying the public interest test.
- 10.6. The DPO will use the Disclosures Register to manage and track FOISA and EIRS requests.

11. Training

- 11.1. For Waverley Housing to effectively comply with requests for information, all staff will receive regular awareness training on their duties and responsibilities under FOISA and EIRS legislation.
- 11.2. Awareness and training will be provided by the DPO which will include:
 - Raising awareness of the legislation and what staff need to know and do;
 - Providing information of our obligations under the Act and ensuring staff are aware of what they must do when an information request comes in;
 - Covering the procedures to be followed for responding to information requests;
 - Covering the key exemptions and exceptions that Waverley Housing will be applying to informal requests;
 - Preparing Managers for making decisions on withholding information or providing full disclosure.

12. Monitoring Performance

- 12.1. Waverley Housing will report to the Management Team and Board on all requests for disclosure of information, including average timescales for responding to requests for information.

FOI/EIR - INFORMATION REQUEST EXEMPTIONS/EXCEPTIONS FORM

REGISTER REFERENCE:

Please indicate which exemption/exception is applicable to the request received and provide justification for this.

FOISA EXEMPTIONS			
FOISA	Absolute Exemptions	Please Tick as Appropriate ✓	Justification
Section 25	Information Otherwise Accessible and available e.g. published, on a website, information regularly issued – a report (check the publication scheme).		
Section 26	Prohibitions on Disclosure e.g. would constitute a contempt of court to disclose.		
Section 36 (2)	Confidentiality e.g. constitutes a breach of confidence actionable by a third party.		
Section 37	Court Records		
Section 38	(1a-d) Personal Information – where e.g. the applicant is the subject of the information requested (because they can request information under the Data Protection Act), personal census information, deceased person's health record. Consideration must be given to "legitimate interests" when applying section 38(1)(b).		
	Non Absolute Exemptions		
	Non absolute exemptions are subject to a public interest test, which means the information can only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosing the information.		
Section 27	Information intended for future publication within 12 weeks of the request.		

Section 28	Relations within the UK – prejudice relations between the UK, including the Scottish Administration, and any other such administration.		
Section 29	Formulation of Scottish Administrative Policy – e.g. government policy.		
Section 30	Prejudice to the effective conduct of public affairs, e.g. prejudicial to the collective responsibility of Scottish Ministers.		
Section 31	National security and defence		
Section 32	International Relations		
Section 33	Commercial interests and the economy e.g. a trade secret, is likely to prejudice substantially the commercial interest of the person (including a Scottish Public Authority).		
Section 34	Investigations by Scottish Public Authorities and proceedings arising out of such investigations e.g. report to the procurator fiscal concerning possible prosecution.		
Section 35	Law enforcement		
Section 36 (2)	Confidentiality		
Section 38 (1) (b)	Personal Information		
Section 39	Health, safety and the environment e.g. likely to endanger the physical or mental health and safety of an individual.		
Section 40	Audit functions e.g. prejudice the examination of the economy, efficiency and effectiveness with which such local authorities use their resources in discharging their functions.		
Section 41	Communications with her Majesty etc. and Honours e.g. communications with Her Majesty, with other members of the Royal Family or with the Royal Household.		

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As with non-absolute exemptions under FOISA, the public interest test must be applied for all exceptions under EIRS.		PLEASE TICK AS APPROPRIATE ✓	JUSTIFICATION
Regulation 10(4) (a)	Information not held		
Regulation 10(4) (b)	Manifestly unreasonable requests		
Regulation 10(4) (c)	Formulated in too general a manner		
Regulation 10(4) (d)	Material is still in the course of completion		
Regulation 10(4) (e)	Internal Communications		
Regulation 10(5) (a)	Internal relations, defence, national security or public safety		
Regulation 10(5) (b)	The Course of Justice		
Regulation 10(5) (c)	Intellectual property rights		
Regulation 10(5) (d)	The confidentiality of proceedings of any public authority where such confidentiality is provided by law		
Regulation 10(5) (e)	Confidentiality of commercial or industrial information		
Regulation 10(5) (f)	Interests of the individual providing the information		
Regulation 10(5) (g)	Protection of the environment		

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