

<b>KNOWES HOUSING ASSOCIATION LTD</b>	
<b>Policy Name</b>	Freedom of Information
<b>Policy Category</b>	Governance
<b>Policy Number</b>	G 34
<b>Date to Management Committee</b>	December 2022
<b>Previous Review</b>	N/A
<b>Next Review Date</b>	December 2025
<b>Links to other Policies</b>	
<b>Consultation</b>	Internal – staff and committee

## **Background**

The Freedom of Information (Scotland) Act came in to force in 2005. Housing Associations were exempt from this legislation up until 2019, but since November 2019 the Act has applied to all Housing Associations.

The Act places an obligation on Housing Associations to provide information relating to housing activities within specific timescales. Our factoring activities are exempt from this legislation.

The information that we are required to provide must be information that is already available. If the information is available from another source, such as the Scottish Housing Regulator's website, we can direct the request to that source.

## **Risk Assessment**

The risks of being non-compliant with the above legislation are that the Scottish Information Commissioner would take action against the Association which can include prosecution.

## **Key Features of the Legislation**

- Right of access to recorded information, but it is not a right to re-use accessed information
- Publication schemes
- Fees
- Exemptions
- Codes of practice
- Scottish Information Commissioner

## **FOI request**

- Must be in writing or some other permanent form which is capable of being used for subsequent reference

- Must have name of applicant and address for correspondence
- Must describe information requested
- Should have a preference as to how information to be provided

We can never ask why the information is requested. We however don't need to provide it in the format requested, for example we can invite the applicant into the office to view it.

### **FOI requests not in writing**

- Voicemail requests
  - Must include method for contacting applicant and describe information sought
  - Voicemail must be capable of being stored permanently
- Internet requests
 

For example via [www.whatdotheyknow.com](http://www.whatdotheyknow.com)  
If a request is published on website then the response can also be published on website

The clock starts once the request is valid, so for example if the request does not have the name and correspondence address, the clock does not start until this information is obtained.

### **Duty to advise and assist**

We must as far as it is reasonably practical, provide advice and assistance to a person who proposes to make, or has made, a request for information.

- We will publish guidance on how to make a request and associated fees
- We will help applicants understand the process and the legislation
- We will help make requests "valid"
- We will provide an outline of the relevant information we hold
- We will maintain a dialogue with the applicant
- We will send reminders about clarifications and fees
- We will be sensitive to applicant's circumstances, e.g. disabled, literacy
- Finding suitable alternatives if information cannot be provided in the format requested
- We will inform applicants what will be provided within fee limit
- If applicant cannot afford fee, consider what can be provided for free
- Assist applicant to understand application of exemptions

### **Fees**

We will charge fees for providing information based on the maximum allowable in legislation.

- We will publicise a fee notice
- Staff time will be charged at a maximum of £15 per hour
- First £100 of costs is free
- Charge will be based on 10% of cost between £100 and £600, with maximum fee of £50
- If cost will be over £600 we are not required to provide the information, we will contact the applicant to inform them of this
- Request lapses after 3 months if fee not paid
- Time spent by staff will be recorded by minute.

## **Response Deadline**

- We will respond promptly, and within 20 working days
- The clock starts as soon as a valid request is received
- If fees are applicable, the clock pauses once a fee notice is issued until the fee is paid, it is therefore important to issue the fee notice as soon as possible
- The applicant can express preference as to how the information will be provided, but the RSL can consider cost effectiveness
- Routine amendments to information can be made while processing request

## **Responding to a request**

When responding to a request we will do one of the following

- Comply with the request and disclose the information (copy, summary or inspection)
- Inform the applicant that we do not hold the information
- Refuse the request due to being repeat or vexatious
- Refuse request and exempt some / all information via a refusal notice
  - State why exemption applies
  - Provide details of review process (review within 40 working days of response) and right application to SIC within 6 months of review

## **Vexatious requests**

The following outlines when we would refuse a request on the grounds of being vexatious.

- Grossly oppressive diversion of unreasonable financial and human resources away from statutory functions
- Causes stress or annoyance, i.e. using sexist or racist language
- Unreasonable persistence where issue already dealt with
- Harassment of Knowes or staff, e.g. language, tone and or targeted at one employee
- Trivial matter requiring disproportionate effort
- Reasonable person would consider it manifestly unreasonable or disproportionate
- Made solely for purposes of amusement

Other considerations relating to vexatious requests

- It is the request not the requestor, is vexatious, but consider patterns of behaviour and obsessive extended campaigning
- The request, not the consequences of the request that is relevant
- A series or number of frequent or overlapping requests
- If an applicant becomes entrenched and refuses to receive assistance in narrowing down a request, then we will refuse the request

## **Exemptions from Disclosure**

There are two types of exemption.

Absolute: where we do not need to consider the public interest.

Non-absolute: where we need to balance public interest in disclosure v public interest in non-disclosure.

We will provide reasons for non-disclosure to applicants.

### **Absolute exemptions**

**Section 25.** Information is reasonably accessible to the applicant by another means.

- E.g. another Scottish public authority required to make it available
- Information may be accessible, even if payment required to another Scottish public authority
- Information available on our publication scheme on our web site

**Section 38.** Personal information

### **Non absolute exemptions**

**Section 27.** Information intended for future publication.

This includes information we intend to publish within 12 weeks of the request, i.e. the ARC data. It must be reasonable not to give access prior to publication.

**Section 30.** Prejudice to the effective conduct of public affairs.

Information exempt if disclosure would **substantially** inhibit free and frank provision of advice or exchange of views or otherwise substantially prejudice effective conduct of public affairs. For example, we may provide redacted meeting minutes.

**Section 33.** Commercial interests and the economy.

Information exempt if it is a trade secret or disclosure would substantially prejudice commercial interests of any person.

**Section 35.** Law enforcement. Information exempt if disclosure would prejudice prevention or detection of crime or prosecution of offenders.

**Section 36(1)** Confidentiality.

Information exempt if information is subject to legal professional privilege. For example advice or information obtained from a solicitor.

**Section 38** Personal information

We will not disclose personal information. GDPR takes precedent over FOI at all times.

**Section 39** Health Safety and the Environment

Information is exempt if disclosure would endanger physical or mental health or safety of an individual.

Information is exempt if it consists of environmental information. This would be covered by the Environmental Information Scotland Regulation (EISR). In this situation we would inform the applicant and proceed under the EIR regulations.

It is likely that most requests will be for Environmental Information

### **Definition of EI in relation to the EISR**

Any information in written, visual, electronic or any other material form on

- The state of the elements. This could include stock condition information, maintenance information, photos of housing stock, void information.
- Factors affecting the elements, including living things, this could include infestations
- Measures affecting the elements
- Reports on implementation of environmental legislation
- Cost benefit and other economic analyses
- The state of human health and safety

### **The difference between EISR and FOISA**

- Narrower categories of information
- Format of request, can be oral
- Charging, no upper cost limit, charge actual cost
- Extension of response period

### **Appeals**

Appeals against withholding information are described as reviews in terms of FOISA. If an applicant requests a review of a decision to withhold information, the decision must be reviewed within 40 working days.

The review cannot be undertaken by anyone who was involved in the decision to withhold the information.

The review must be undertaken by someone who has the authority to uphold or overturn the initial decision. The initial decision will need to be made by a member of staff who has adequate knowledge of the legislation and therefore has justified the decision by referring to the appropriate section of the legislation in the response.

To facilitate this the Senior Management Team will undertake appropriate training.

### **Information retention**

Corporate Services will be responsible for retaining all information relating to a request for information. It is important that all information is retained as applicants have up to 6 months to complain to the Scottish Information Commissioner. It is therefore important that we have an accurate record of what was provided to an applicant.

Each application will be given a unique reference number in order that it can be tracked.

### **Publication Scheme**

FOISA requires us to have a publication scheme, and strongly recommends that we adopt the Model Publication Scheme.

To adopt the Model Publication Scheme (MPS) there are 5 steps

- Make a corporate decision to adopt the MPS without amendment
- Identify the information held by Knowes that is covered by the MPS classes of information and any additional information in which there is a public interest in publication.

The classes of information we will publish are:

- Class 1 : About the Authority

- Class 2 : How we deliver our functions and services
  - Class 3 : How we take decisions and what we have decided
  - Class 4 : What we spend and how we spend it
  - Class 5 : How we manage our human, physical and information resources
  - Class 6 : How we procure goods and services from external providers
  - Class 7 : How we are performing
- Produce and publish a **Guide to Information**, ensuring that the arrangements for publication meet the **6 MPS principles**. These can be found in the Scottish Information Commissioner's (SIC) Guide for Scottish Public Authorities.
  - Inform the SIC that we have adopted the MPS
  - Make arrangements to maintain and update our Guide to Information. This includes adjusting the guide in response to any future changes to the MPS

### **Ongoing requirements**

- FOISA performance reports. Similar to complaints, we will report to the committee quarterly detailing the number of requests and whether they were dealt with on time or not.
- Quarterly statistical reporting to SIC via online portal

### **Staff training**

All staff will receive appropriate training on FOISA and our policy and procedures.