

<b>KNOWES HOUSING ASSOCIATION LTD</b>	
<b>Policy Name</b>	Environmental Information (Scotland Regulations) EIRs
<b>Policy Category</b>	Governance
<b>Policy Number</b>	G 35
<b>Date to Management Committee</b>	November 2022
<b>Previous Review</b>	November 2019
<b>Next Review Date</b>	November 2025
<b>Links to other Policies</b>	G10 Openness and confidentiality
<b>Consultation</b>	Internal – staff and committee

## **Background**

The Environmental Information (Scotland) Regulations (2004)( EIRs) came in to force in 2005.

The Act places an obligation on Housing Associations to provide information relating to Environmental Information within specific timescales.

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

## **EIRs request**

- The request need not be in writing, however we should write it down and confirm with the requester that they agree with what we understand their request to be
- 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.

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 this policy
- We will help applicants understand the process and the legislation
- We will help making 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, eg disabled, literacy
- Finding suitable alternatives if information cannot be provided in the format requested
- We will inform applicants what will be provided within fee quoted
- Assist applicant to understand application of exemptions

### **Fees**

We will charge fees for providing information, however if a reasonable person would consider the time involved in complying with the request unreasonable, we will refuse the request.

The legislation relating to fees for EIRs is different to FOISA and is noted below

Regulation 8 of the EIRs allows public authorities to charge a "reasonable amount" for making environmental information available. Any fee charged must not exceed the costs to the authority of making that information available.

A charge can be made for providing a relatively small amount of information because there is no lower fees limit under the EIRs. This is different to FOISA. However, given that the charge must be reasonable and must not exceed the actual costs to the authority of providing the information, the charge for a small amount of information is likely to be low. There is no upper fees limit under the EIRs. A public authority can, however, refuse to comply with a request if the request is [manifestly unreasonable](#) (regulation 10(4)(b)).

- Staff time will be charged at cost
- 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, this can be extended to 40 working days if the request is complex (Regulation 7)
- 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
- Applicant can express preference as to how information to be provided, but 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 manifestly unreasonable
- 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

### **Manifestly unreasonable requests**

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

This is similar to the vexatious request in FOIs

- 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 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

### **Exemptions from Disclosure**

.—(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—

(a) an exception to disclosure applies under paragraphs (4) or (5); and  
 (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—

(a) it does not hold that information when an applicant's request is received;

(b) the request for information is manifestly unreasonable;

(c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;

(d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or

- (e) the request involves the disclosure of internal communications.
- (5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—
- (a) international relations, defence, national security or public safety;
  - (b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
  - (c) intellectual property rights;
  - (d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
  - (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
  - (f) the interests of the person who provided the information where that person—
    - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
    - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
    - (iii) has not consented to its disclosure; or
  - (g) the protection of the environment to which the information relates.

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

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
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- 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
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- Quarterly statistical reporting to SIC via online portal

## Staff training

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