



**Rural Stirling**  
Housing Association



Quality property  
management services

## **GROUP**

# **ACCESS TO INFORMATION POLICY**

**Rural Stirling Housing Association, Registered as a Scottish Charity No. SC037849**  
**Venachar Limited, Incorporated under the Companies Act (Company Number SC447415)**  
**Registered Office: Stirling Road, Doune, FK16 6AA**

<b>Policy Name</b>	Group Access to Information Policy
<b>Policy Category</b>	Corporate
<b>Date first approved at Board</b>	3 <sup>rd</sup> October 2019
<b>Date policy reviewed</b>	11 August 2022
<b>Review Period</b>	3 years
<b>Review Due</b>	2025
<b>Equality Impact Assessment</b>	Yes

## **RURAL STIRLING HOUSING ASSOCIATION LIMITED**

### **ACCESS TO INFORMATION POLICY**

#### **1. Policy Statement**

- 1.1** The Association is fully committed to the aims and principles underlying Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2014 (EISRs) and to the disclosure of information of interest to its service users and the wider public. It will make every effort to promote greater openness and transparency and maximise public trust in its work as a Registered Social Landlord in Scotland.
- 1.2** In this policy, reference to a “request” or “request for information” is to a request made to the Association under either FOISA or the EISRs and a reference to “information” includes environmental information, unless otherwise specified.

#### **2. Responsibilities**

- 2.1** The Association’s Data Protection Officer (DPO) has overall responsibility for assisting the Association in co-ordinating the handling of and response to requests for information and advising, providing guidance to and training staff on complying with FOISA and the EISRs and this policy.
- 2.2** All staff are responsible for creating and maintaining a culture supportive of openness, transparency and accountability and promoting the right to know.

#### **3. Equality & Diversity Statement (Group Statement)**

- 3.1** We will ensure that this policy is applied fairly and consistently. In implementing this policy, we will not directly or indirectly discriminate against any person or group of people because of their race, religion or belief, gender, disability, age, sexual orientation, or any other grounds. Our commitment to equality and fairness will apply irrespective of factors such as age, disability, gender reassignment, marital or civil partnership status, pregnancy or maternity, race, religion or belief, sex, sexual orientation, or other personal attributes.

This policy and any other Rural Stirling Group (RSG) publication is available in other formats e.g., other languages, Braille, large print, audio.

#### **4. SHR Regulatory Standards**

- 4.1** The SHR’s regulatory framework sets out Regulatory Standards of Governance and Financial Management to be achieved by all Registered Social Landlords (RSLs). The

Board accepts that it is responsible for ensuring that the Association complies with these standards. The standards of direct relevance to this policy are noted below:

1. *The Governing Body leads and directs the RSL to achieve good outcomes for its tenants and other service users.*
2. *The RSL is open and accountable for what it does. It understands and takes account of the needs and priorities of its tenants, service users and stakeholders. And its primary focus is the sustainable achievement of these priorities.*
4. *The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose.*
5. *The RSL conducts its affairs with honesty and integrity.*

## **5. Relevant legislation (Scottish Government or UK Government)**

- 5.1** Freedom of Information (Scotland) Act 2002 (FOISA)  
Environmental Information (Scotland) Regulations 2014 (EISRs)

## **6. Principles**

- 6.1** The Association will handle requests for information in accordance with legal requirements and best practice, including the guidance contained within the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities issued under Section 60 of FOISA and the briefings and decisions issued by the Scottish Information Commissioner (SIC).
- 6.2** The Association will publicly demonstrate its commitment to access to information by regularly and proactively making information available via its publication scheme.
- 6.3** The Association will provide advice and assistance to prospective applicants and applicants throughout the lifecycle of handling and responding to requests for information.
- 6.4** All staff are responsible for providing prospective applicants and applicants with information about their right to know, to outline the key points of FOISA and the EISRs to them and inform them of how to request information.
- 6.5** The Association will handle all requests in an "applicant blind" manner i.e., in a way that does not take the identity of the person requesting the information into account when handling and responding to the request.
- 6.6** The Association will respond to requests as promptly as possible and will only use the maximum period for response and issue a fees notice to an applicant for access in circumstances where this is strictly necessary.

**6.7** The Association will interpret exemptions contained within FOISA and exceptions contained within the EISRs in a narrow manner with a view to favouring disclosure of information, where possible, and will not unduly restrict access to information and will fully explain to the applicant why an exemption or exception has been applied.

## **7. Scope**

**7.1** FOISA provides for a right of access to recorded information held by the Association and its subsidiary organisations in relation to housing activities. This covers any activities undertaken by the Association in relation to housing services as defined in Section 165 of the Housing (Scotland) Act 2010, including information in any format regarding the following:

7.1.1 the prevention and alleviation of homelessness;

7.1.2 the management of social housing accommodation where the Association has granted a Scottish secure tenancy or a short Scottish secure tenancy;

7.1.3 the provision and management of sites for gypsies and travellers; and

7.1.4 the supply of information to the Scottish Housing Regulator in relation to the Association's financial wellbeing and standards of governance.

**7.2** Examples of information held by the Association covered by FOISA include information on: housing applications submitted to the Association; allocations of property by the Association; general tenancy management (such as complaints, rent calculations and reviews, rent arrears and evictions); tenant participation and engagement activities; policies and procedures relating to the provision of housing services; tenders for the provision of core services, such as housing management system, rent payments / finance and information technology; and governance, performance and regulatory matters, such as notifications, returns and reports to the Scottish Housing Regulator and the Association's other regulators. Information about staff involved in the delivery of core housing services, for example, recruitment, remuneration, performance appraisals and conduct, is also covered by FOISA.

**7.3** The EISRs provide for a right of access to environmental information held by the Association. This includes information relating to the following:

7.3.1 the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

- 7.3.2 factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to above;
- 7.3.3 measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to above, as well as measures or activities designed to protect those elements;
- 7.3.4 reports on the implementation of environmental legislation;
- 7.3.5 costs benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to above; and
- 7.3.6 the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to above or, through those elements, by any of the matters referred to above.

**7.4** The definition of environmental information is very technical and complex. Examples of information covered by the EISRs include: repairs and maintenance; roof and property condition surveys; commercial arrangements between the Association and its maintenance and repair contractors; procurements undertaken by the Association for maintenance and repairs; the Association's planned and current development activities; adaptations to properties owned by the Association; permissions granted by the Association to its tenants to install, for example, CCTV at its properties; energy efficiency of the Association's properties; and reports produced by third parties on behalf of the Association, including environmental consultants, architects and surveyors.

## **8. The three duties**

**8.1** There are three core duties with which the Association will comply when providing access to information that it holds:

- 8.1.1 the duty to publish;
- 8.1.2 the duty to provide advice and assistance; and
- 8.1.3 the duty to respond to requests for information.

## **8.2 The duty to publish**

- 8.2.1 FOISA requires the Association to adopt and maintain a publication scheme, which sets out the information that the Association routinely publishes (or intends to publish), together with the manner in which that information is / will be published and whether the published information is available to the public free of, or subject to, a charge.
- 8.2.2 The EISRs do not require the Association to adopt and maintain a publication scheme, but the Association must actively disseminate environmental information. The Association does so by including environmental information within its publication scheme.
- 8.2.3 The Association has adopted the Scottish Information Commissioner's Model Publication Scheme tailored as appropriate to meet the needs of RSHA/the RSHA Group. The Association's publication scheme is available on its website (at: [www.rsha.org.uk](http://www.rsha.org.uk)) and is maintained with guidance and assistance from the DPO. Most information listed within the publication scheme is available online. Departments within the Association have a responsibility to ensure that information is regularly reviewed and actively contributed to the publication scheme. This will enhance the Association's openness and accountability and assist in reducing the number of requests made to the Association, as information contained within the publication scheme does not require a request for information to be made to the Association before it can be accessed.

## **8.3 The duty to provide advice and assistance**

- 8.3.1 The Association has a duty to provide reasonable advice and assistance to a person who proposes to make, or has made, a request for information to the Association. This duty applies to both prospective applicants and applicants and the duty exists throughout the lifecycle of the request.
- 8.3.2 Examples of reasonable advice and assistance that staff must provide include:
- providing guidance on how to make a request and associated fees;
  - helping an applicant understand the processes, procedures and legislation involved in making a request for information;
  - helping an applicant describe the information sought or to clarify their request;
  - helping to validate requests where all of the required particulars have not been provided by the applicant;

- providing outlines of relevant information held by the Association;
- maintaining dialogue with an applicant regarding who is handling the request, third parties being consulted and when the applicant should expect to receive a response;
- sending reminders to an applicant in relation to clarifications and payment of fees required;
- being sensitive to an applicant's circumstances, particularly in relation to disability and literacy;
- finding suitable alternatives if information cannot be provided in the format requested by an applicant;
- informing an applicant about what can be provided within the fees limit;
- if an applicant cannot afford to pay the fees, highlighting to an applicant what can be provided free of charge; and
- assisting an applicant to understand the application of exemptions and exceptions and what other information held by the Association (that is not exempt or except) might be useful and relevant to an applicant's request.

#### **8.4 The duty to respond to requests for information**

8.4.1 A request for information made to the Association must include the following particulars:

- the name of the applicant. If the identity of the applicant is not clear from the request or it appears that the request is being made on behalf of another person, then the Association is entitled to refuse the request, subject to first providing appropriate advice and assistance to try and validate the request;
- address for correspondence, which may consist of a postal or e-mail address; and
- a description of the information to which the applicant seeks access.

8.5 A FOISA request must be in writing or other permanent form, such as a letter, e-mail, social media message, voicemail message, audio recording or made to the Association via the website, [www.whatdotheyknow.com](http://www.whatdotheyknow.com) but it does not need to specifically refer to FOISA in order to be valid. An EISRs request does not need to be

in writing, can be made orally to the Association and does not need to specifically refer to the EISRs.

- 8.6** The Association will provide the applicant with appropriate advice and assistance to validate a request by, for example, assisting an applicant put a FOISA request in permanent form, if the applicant is unable to do so. In providing the applicant with advice and assistance, the Association must not, and is not entitled to, ask the applicant why the applicant seeks access to the requested information. This is irrelevant to the Association's handling of and response to the request.
- 8.7** The Association has a maximum of 20 working days to respond to requests. The deadline for responding to an EISRs requests may be extended by up to an additional 20 working days, if the request is complex or voluminous. The time period for response pauses when an applicant is asked for clarification on their request or a fees notice is issued by the Association, and resumes when the clarification has been provided or fee has been paid by the applicant.
- 8.8** The Association will handle and respond to requests for information received from anyone, irrespective of whether they are a service user of the Association or otherwise have an interest in the work of the Association. The applicant must, however, be at least 12 years of age and have sufficient maturity to understand what it means to make a request for information. The Association will assess this in all the circumstances, although it is unlikely that the Association will refuse a request based on age alone.
- 8.9** The Association is not obliged to create or acquire information from a third party to satisfy a request. The duty to respond to requests extends only to information held by the Association as at the date of receipt of the request.

## **9. Exemptions and exceptions from disclosure of information**

- 9.1** The Association aims to be as open as possible when carrying out its activities as a registered social landlord in Scotland. However, there may be circumstances in which the Association considers that information cannot be disclosed in response to a request.
- 9.2** FOISA and the EISRs contain two categories of exemption (or exception in the case of the EISRs) from disclosure of the requested information to the applicant.
- 9.3** The first category are the absolute exemptions, where a public interest test assessment does not require to be completed before the exemption can be relied upon.



**9.4** The second category are the non-absolute exemptions, where a public interest test assessment must be completed before the exemption can be relied upon. The public interest test involves considering whether in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

**9.5** Some of the exemptions are subject to a harm test, for example, whether disclosure of information would, or would be likely to, substantially prejudice a particular interest. In those cases, the Association must be able to identify the harm that would or would be likely to be caused as a result of disclosure. Specific advice must be sought from the DPO in each case.

## **10. Reviews and the SIC**

**10.1** If an applicant is in any way dissatisfied with the way in which their request for information has been handled and responded to by the Association (including where the Association failed to respond at first instance), the applicant may require the Association to review its handling and response to the request. An applicant may not require a review where the original request for information was vexatious or a repeat request or where the requirement for review is itself vexatious. The Association will issue a notice to this effect to an applicant requesting a review in these circumstances, setting out the applicant's rights to apply to the SIC and to thereafter appeal against a decision by the SIC to the Court of Session on a point of law.

**10.2** The applicant may require a review within 40 working days either after the end of the period for responding to the request (where the Association did not respond) or following receipt by the applicant of the Association's response. The applicant must explain the dissatisfaction with the Association's original handling and response, although the applicant does not specifically need to mention the requirement for a review.

**10.3** Where the applicant is requiring a review on the basis that the Association failed to respond to the applicant at first instance, the requirement for review will normally be regarded by the Association as a new request, with a separate entitlement to require a review following on from this.

## **11. Consequences of failure to comply**

**11.1** The Association takes compliance with this policy very seriously. Failure to comply with this policy:

11.1.1 is likely to significantly impact on the perception that the Association is an open and transparent organisation and affect the Association's reputation and trust in the Association and its work;

11.1.2 carries a risk of an application being made to the SIC against the Association; and

11.1.3 may amount to the commission of an offence by a member of staff where the member of staff alters, defaces, blocks, erases, destroys or conceals information with the intent of preventing disclosure where the applicant would otherwise have been entitled to receive the information in response to the request.

**11.2** Due to the importance of this policy, failure to comply with any requirement of it may lead to disciplinary action for a member of staff under the Association's procedures, and this action may result in dismissal for gross misconduct.

**11.3** Any questions or concerns about this policy should be directed to the DPO.

## **12. Related Documents**

Access to Information Procedure (Appendix 1)

Records Management Policy

Records Management Procedure

Data Retention Policy

Information Security Policy

Data Protection Policy

## **13. Monitoring and Review**

**13.1** We will review and update this policy every 3 years. More regular reviews will be considered where, for example, there is a need to respond to new legislation/policy or regulatory guidance.

**RURAL STIRLING HOUSING ASSOCIATION LIMITED**

**ACCESS TO INFORMATION PROCEDURE**

**1. Responsibilities**

- 1.1 This procedure sets out the Association's approach to dealing with requests for access to information received under the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2014 (EISRs).
- 1.2 FOISA and the EISRs provide a general right to know to ensure greater openness and accountability in the operations of the Association. All staff must be aware of the Access to Information Policy, and this procedure sets out their responsibilities under FOISA and the EISRs and all staff should be prepared to provide advice and assistance to prospective applicants and applicants. Any member of staff of the Association could be asked for information. Staff must handle any request for information they receive in accordance with this procedure.
- 1.3 This procedure does not apply to requests received by the Association from persons for access to their own personal data. Such requests must be handled in accordance with data protection legislation and the Response Procedures for Data Subject Requests.
- 1.4 In this procedure, reference to a "request" or "request for information" is to a request made to the Association under either FOISA or the EISRs and a reference to "information" includes environmental information, unless otherwise specified.
- 1.5 The Association's Data Protection Officer (DPO) has overall responsibility for assisting the Association in co-ordinating the handling of and response to requests for information and advising, providing guidance to and training staff on complying with FOISA and the EISRs and this procedure.
- 1.6 Line managers are responsible for raising awareness of this procedure and ensuring that the staff they manage are aware of what to do if they receive a request for information directly.
- 1.7 All staff must be aware of and comply with this procedure when assisting the DPO in handling and responding to requests for information and must immediately forward any request for information received by them to the DPO to acknowledge and process. If staff have any questions or comments about the content of this procedure or if they need further information, they should contact the DPO.

## **2. Principles**

- 2.1 The Association will handle requests for information in accordance with legal requirements and best practice, including the guidance contained within the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities issued under Section 60 of FOISA and the briefings and decisions issued by the Scottish Information Commissioner (SIC).
- 2.2 Where possible, the Association will publicly demonstrate its commitment to access to information by regularly and proactively making information available via its publication scheme.
- 2.3 The Association will provide advice and assistance to prospective applicants and applicants throughout the lifecycle of handling and responding to requests for information.
- 2.4 All staff are responsible for providing prospective applicants and applicants with information about their right to know, to outline the key points of FOISA and the EISRs to them and inform them of how to request information.
- 2.5 The Association will handle all requests in an "applicant blind" manner i.e., in a way that does not take the identity of the person requesting the information into account when handling and responding to the request.
- 2.6 The Association will respond to requests as promptly as possible and will only use the maximum period for response and issue a fees notice to an applicant for access in circumstances where this is strictly necessary.
- 2.7 The Association will interpret exemptions contained within FOISA and exceptions contained within the EISRs in a narrow manner with a view to favouring disclosure of information, where possible, and will not unduly restrict access to information and will fully explain to the applicant why an exemption or exception has been applied.
- 2.8 All staff are responsible for recognising and responding to requests for information, to undertake full and proper documented searches for information relevant to requests and to assist the Data Protection Officer (DPO) in handling and responding to requests in all respects.
- 2.9 Staff will configure their "out of office" settings on their e-mail account and telephone voicemail messages to include an appropriate notification for making requests to an alternative member of staff in their absence from the office. This may be the DPO, although requests may be made to any member of staff. Staff will check their colleagues' voicemail inboxes and post mail during their absence from the

office to ensure that a request for information is not overlooked and is handled and responded to timeously.

- 2.10 The DPO will provide staff with regular and role-specific training on FOISA, the EISRs, this procedure and emerging best practice. All new staff will be provided with training on FOISA and the EISRs as part of the induction process.

### **3. Handling requests for information**

- 3.1 Staff, particularly those on the frontline (who are likely to be the initial recipients of the majority of requests for information made to the Association), are responsible in the first instance for deciding if a request is:

- 3.1.1 a “business as usual” request, for example, to find out the status of a housing application or repair, for a copy of a housing application form or to enquire about the Association’s office opening hours;

- 3.1.2 a complaint against the Association or a member of its staff; or

- 3.1.3 a FOISA or EISRs request.

- 3.2 All FOISA and EISRs requests must be sent to the DPO on receipt of the request, unless the information is available through the publication scheme – in which case, staff should direct the applicant to the publication scheme or provide the applicant with a copy of the published information, if the applicant does not have access to the Internet. If staff are uncertain of how to categorise a request, they should seek advice from the DPO.

- 3.3 The DPO will decide if a request is a FOISA or EISRs request and, if so, verify that it includes the necessary particulars to make the request valid. If it does not, the DPO will liaise with the applicant to validate the request by providing appropriate advice and assistance.

- 3.4 Once the request has been validated, the DPO will:

- 3.4.1 log the request and assign it a reference number;

- 3.4.2 issue an acknowledgement of the request to the applicant, including the reference number, details of the information requested (to allow the applicant to check and correct it if staff or the DPO have misinterpreted the request), whether the request will be processed as a FOISA or EISRs request and the deadline by which the applicant should expect to receive a response; and

- 3.4.3 direct staff to search for and collate information relevant to the request across the Association's document management systems, e-mail accounts, mobile devices, social media accounts, website(s), paper files and loose-leaf papers, such as notebooks and papers within filing trays. The DPO may also direct staff to search for and produce relevant information within personal devices, personal e-mail accounts and personal storage facilities (such as their personal iCloud, Dropbox and Microsoft OneDrive accounts), if staff have used these for the purposes of the Association's business. Where information relevant to the request is held on behalf of the Association by a third party, such as a contractor, consultant, or professional adviser, then staff must contact the third party to retrieve the information.
- 3.5 Once any relevant information has been collated, staff must send it to the DPO within 10 working days of the DPO's request. Staff may highlight their comments, suggestions or concerns when providing the information to the DPO, for example, in relation to its sensitivity or confidentiality, but staff must not remove any information before providing it. Alternatively, if the Association does not hold information relevant to the request, staff must confirm this to the DPO. On receipt of the collated information, the DPO will review it and respond to the applicant's request for information.

#### **4. Responding to requests for information**

- 4.1 The DPO will respond to the applicant in one of the following ways:
- 4.1.1 issue a fees notice to the applicant, requiring payment of a fee before information will be disclosed to the applicant. The fees notice will include a detailed breakdown of the costs, with the fee charged to the applicant being calculated in accordance with the Access to Information Charging Statement. The DPO will, where possible and appropriate, provide the applicant with advice and assistance to help narrow the request and reduce the costs (and therefore the fee) associated with handling and responding to the request prior to issuing the fees notice. The Association is not required to disclose the information to the applicant, unless the fee is duly paid within 3 months, beginning with the day on which the fees notice is issued to the applicant. The DPO will issue regular payment reminders to the applicant but if the applicant does not pay the fees notices within this timescale, the DPO will cancel the request and the applicant will be required to make a new request to the Association after the 3-month period;
- 4.1.2 disclose a copy of the requested information in permanent form or other form acceptable to the applicant. The information disclosed must be the information as it existed as at the date of receipt of the request, although routine updates to the information may be included, if the updates would

have been made, irrespective of receipt of the request. If the applicant has expressed a preference as to the format in which the applicant wishes to receive the information, the Association must comply with the preference, unless it would not be reasonably practicable to do so in the circumstances. As part of this, the Association may take into consideration the cost of complying with the applicant's preference, for example, it is more cost effective for the Association to provide a large document in electronic format than hard copy;

- 4.1.3 provide a summary or digest of the requested information to the applicant;
- 4.1.4 provide the applicant with an opportunity to inspect the information at the Association's office or other location;
- 4.1.5 direct the applicant to the publication scheme, if the requested information is available through the scheme (and if the applicant has not already been directed to the scheme by staff at first instance);
- 4.1.6 confirm to the applicant that the Association does not hold the requested information. If the Association is aware that the information is held by another Scottish public authority, then the Association should direct the applicant to the other authority (in the case of a FOISA request only) or offer to transfer the request to the other authority (in the case of an EISRs request only);
- 4.1.7 neither confirm nor deny that the Association holds the information where to reveal that the information exists or is held would be contrary to the public interest;
- 4.1.8 partially or fully refuse the request on the basis that some or all of the requested information is exempt or except from disclosure under FOISA or the EISRs, respectively;
- 4.1.9 refuse the request on the basis that it is a vexatious request. The request, not the applicant, must be vexatious for it to be considered as such. A burdensome and time-consuming request that involves an unreasonable diversion of human and financial resources away from the Association's core activities towards handling the request, a request with no serious purpose or value or a request that is intended to cause distress or annoyance to a member of staff may be vexatious, however, staff must first seek advice from the DPO before deciding whether a request is vexatious;
- 4.1.10 refuse the request on the ground that it is a repeat request. A repeat request is where the Association has already complied with a request from the

applicant, the applicant has subsequently made a request which is identical or substantially similar to the previous request and a reasonable period of time has not elapsed between the making of the previous request and the subsequent request; or

4.1.11 refuse the request (in the case of a FOISA request only) on the grounds of excessive cost of compliance where the cost to the Association of handling and responding to the request would exceed the £600 threshold. The Association will provide what it can to the applicant within the threshold rather than refusing the request outright. If the request is an EISRs request, it cannot be refused by the Association on this basis. The Association will calculate the cost of complying with requests in accordance with the procedure outlined in the Access to Information Charging Statement.

4.2 In all of the above cases, the response to the applicant must include the following details:

4.2.1 the Association's procedure for dealing with complaints about the handling by it of requests for information;

4.2.2 the right of the applicant to require the Association to review the Association's decision on the handling of and response to the request; and

4.2.3 the right of the applicant to apply to the SIC for a decision on the Association's handling of and response to the request.

## **5. Exemptions and exceptions from disclosure of information**

5.1 The FOISA exemptions are listed in Appendix 1 to this procedure and the EISRs exceptions are listed in Appendix 2. In applying the exemptions, the Association will:

5.1.1 explain to the applicant that it holds the requested information, specify what exemption has been applied and detail the reasons as to why it has been applied. In the case of non-absolute exemptions, an analysis of the relevant public interest test considerations and why the Association considers that the public interest in maintaining the exemption outweighs that in the disclosure of the information, will also be provided. If the exemption incorporates a harm test, the Association will highlight how and why the harm is real or likely;

5.1.2 apply a presumption in favour of disclosure and any exemptions that the Association wishes to rely upon in partially or fully refusing a request for information will be interpreted narrowly. If an exemption applies, the



Association will redact only the exempt information and not withhold the full document in which the information is contained;

- 5.1.3 consider the content of the information instead of any markings that have been applied to the information in deciding whether it is exempt from disclosure. For example, the fact that information has been described or marked as “confidential” or otherwise similarly classified does not automatically render that information as such. Advice will be obtained from the DPO in each case;
- 5.1.4 have due regard to the requirements of data protection law where the information requested by the applicant includes the personal data of the staff or other third parties. In particular, the Association will seek to balance fairness towards the staff and third parties against the legitimate interests of the applicant in having access to the information. In the interests of transparency and openness, the Association may disclose personal data relating to the professional life of senior staff, such as qualifications and particulars of remuneration, but the personal data of other staff, who do not have the same level of seniority, responsibility or public accountability, may not be disclosed without first seeking their specific consent – which consent staff will be entitled to refuse. Advice on the interface between FOISA or the EISRs on the one hand and data protection on the other must be sought from the DPO in each case;
- 5.1.5 where the information requested by the applicant concerns a third party, such as the commercial information of a contractor provided as part of a tender submitted to the Association or available to the Association as part of its day-to-day interactions with the contractor, the Association may consult with the third party to seek its views on disclosure and any resultant harm that may arise. The Association will not disclose the identity of the applicant to the third party and will undertake the consultation as soon as possible following receipt of the request to allow the third party to submit its views and the Association to consider them and respond to the applicant in accordance with the relevant timescales. Ultimately, the decision as to whether information is to be disclosed to the applicant is for the Association and the views of any such third party will not be binding on the Association in any circumstances, although they may be instructive. The Association will take steps to inform contractors and prospective contractors of the possibility of the disclosure of their information in response to a request for information by, for example, including an appropriate provision in a commercial contract with them or as part of the tender documentation. The Association will not, however, include contract provisions which attempt to restrict the disclosure of information by the Association relating to the third party. The Association will be responsible for determining at its sole discretion whether the

information that it holds is exempt from disclosure under FOISA or the EISRs;  
and

- 5.1.6 inform the applicant that information disclosed by the Association in response to a request for information may be subject to copyright belonging either to the Association or a third party from whom the Association has obtained the information (such as a consultant or professional adviser) or from whom the Association has licensed use of the information. The applicant will also be informed that the information disclosed by the Association to the applicant may only be used by the applicant for personal use or for other uses permitted by copyright legislation, with all other uses being prohibited, unless the applicant first seeks the Association's or third party's express permission to the proposed use(s).

## **6. Reviews and the SIC**

- 6.1 If an applicant is in any way dissatisfied with the way in which their request for information has been handled and responded to by the Association (including where the Association failed to respond at first instance), the applicant may require the Association to review its handling and response to the request. An applicant may not require a review where the original request for information was vexatious or a repeat request or where the requirement for review is itself vexatious. The Association will issue a notice to this effect to an applicant requesting a review in these circumstances, setting out the applicant's rights to apply to the SIC and to thereafter appeal against a decision by the SIC to the Court of Session on a point of law.
- 6.2 The applicant may require a review within 40 working days either after the end of the period for responding to the request (where the Association did not respond) or following receipt by the applicant of the Association's response. The applicant must explain the dissatisfaction with the Association's original handling and response, although the applicant does not specifically need to mention the requirement for a review.
- 6.3 Where the applicant is requiring a review on the basis that the Association failed to respond to the applicant at first instance, the requirement for review will normally be regarded by the Association as a new request, with a separate entitlement to require a review following on from this.
- 6.4 The DPO will acknowledge the requirement for review and confirm the deadline for completing the review to the applicant. The DPO will also assign the review a reference number and log it and provide the applicant with the reference number.

- 6.5 The review will be undertaken by a member of staff (the reviewer) other than the DPO, who was involved in the handling of and response to the original request, to ensure that the review process is:
- 6.5.1 fair and impartial and a fresh opportunity for the Association to re-consider the request;
  - 6.5.2 able to arrive at a different decision on the request, if appropriate; and
  - 6.5.3 simple and able to reach an outcome promptly within 20 working days of receipt of the requirement for review.
- 6.6 The DPO may, however, provide advice, guidance and support to the reviewer if this is necessary to assist the reviewer in understanding the underlying reasons for the Association's response to the original request, including the sensitivity of, and any comments on, the information requested. The DPO may not seek to influence the reviewer or the decision to be reached by the reviewer. The reviewer will keep records of the discussions between the reviewer and the DPO to ensure the impartiality of the review for audit trail purposes.
- 6.7 The reviewer may undertake new searches for the requested information and may contact the applicant and provide advice and assistance to clarify the requirement for review.
- 6.8 The review may result in the Association:
- 6.8.1 confirming the Association's original decision on the request, with or without such modifications as it considers appropriate;
  - 6.8.2 substituting another decision for the Association's original decision by partially or fully releasing information to the applicant that was initially withheld from disclosure; or
  - 6.8.3 taking a decision on the request where the basis for the applicant's requirement for review is that the Association did not respond to the original request.
- 6.9 The reviewer will issue a notice to the applicant setting out the Association's decision on the requirement for review, the applicant's rights to apply to the SIC and to thereafter appeal against a decision by the SIC to the Court of Session on a point of law. The Association may also include an apology, if appropriate.

## **7. Record keeping**

- 7.1 The Association will keep detailed records related to requests for information made to it, including:
- 7.1.1 information about the applicant;

- 7.1.2 nature of the request for information, including whether the request was a FOISA or EISRs request;
- 7.1.3 steps taken to retrieve information relevant to the request, including searches undertaken in electronic and paper files and consultations with third parties (including the outcome of such consultations);
- 7.1.4 concerns and other issues highlighted by staff and third parties regarding the disclosure of information;
- 7.1.5 notes on decisions on the application of exemptions;
- 7.1.6 procedure followed at review stage, including the outcome of the review;
- 7.1.7 whether the request for information and requirement for review were responded to within the relevant timescales;
- 7.1.8 whether a fee was charged and the level of the fee; and
- 7.1.9 if there was an application to the SIC and any action taken by the SIC. If the outcome of an application to the SIC was that the Association was required to take steps to comply with FOISA or the EISRs, the steps taken by the Association and when they were taken will also be recorded.

## **8. Records management**

- 8.1 The Association may not refuse a request for information on the ground that it is unable to locate the information that is the subject of the request because of a lack of appropriate records management within the Association.
- 8.2 Staff must comply with the Records Management Policy in creating and maintaining complete, accurate, up-to-date and accessible records of the information relevant to their work at the Association. Staff must also comply with the Data Retention Policy and destroy or dispose of information when it is no longer required to be held by the Association.
- 8.3 The Association will complete regular information audits on a functional basis to catalogue the information that it holds, why that information is held and where it is located. This will assist in ensuring that requests for information are processed efficiently and that all available information is disclosed to the applicant.

## **9. Reporting**

9.1 The DPO is responsible for compiling statistics on the Association's performance under FOISA and the EISRs and reporting them to the Senior Management Team and the Board upon request.

9.2 The DPO will also submit quarterly reports to the SIC.

## **10. Review and updates to this procedure**

10.1 The Association will review and update this procedure and may amend, update or supplement it from time to time and at least every 3 years or earlier, if required by changes in legislation.

<b>APPENDIX 1: FOISA EXEMPTIONS</b>	<b>Absolute</b>	<b>Non-absolute</b>	<b>Substantial prejudice</b>
Information otherwise reasonably accessible to the applicant by other means	Y		
Prohibition on disclosure by law	Y		
Confidential information obtained from a third person	Y		
Information contained within certain court records	Y		
Personal data	Y	Y <sup>1</sup>	
Information intended for future publication (within 12 weeks of the request)		Y	
Relations within the United Kingdom		Y	Y
Formulation of Scottish Administration policy		Y	
Effective conduct of public affairs		Y	Y
National security and defence		Y	Y
International relations		Y	Y
Commercial interests and the economy		Y	Y
Investigations by Scottish public authorities		Y	
Law enforcement		Y	Y
Legal professional privilege		Y	
Health, safety and the environment		Y	
Audit functions		Y	Y
Communications with the Royal household and the granting of honours		Y	

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<sup>1</sup> The exemption for personal data is very complex, containing some absolute and non-absolute elements. Staff must always seek advice from the DPO before applying this exemption.

<b>APPENDIX 2: EISRS EXCEPTIONS</b>	<b>Absolute</b>	<b>Non-absolute</b>	<b>Substantial prejudice</b>
Information not held		Y	
Request is manifestly unreasonable		Y	
Request formulated in too general a manner and advice and assistance has been provided		Y	
Information still in the course of completion, contained within unfinished documents or incomplete		Y	
Internal communications		Y	
International relations, defence, national security or public safety		Y	Y
Course of justice, the ability of a person to receive a fair trial or the ability of any public authority to conduct an inquiry of a criminal or disciplinary nature		Y	Y
Intellectual property rights		Y	Y
Confidentiality of the proceedings of any public authority		Y	Y
Confidentiality of commercial or industrial information		Y	Y
Interests of person who provided the information		Y	Y
Protection of the environment		Y	Y
Personal data	Y	Y <sup>2</sup>	

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<sup>2</sup> The exception for personal data is very complex, containing some absolute and non-absolute elements. Staff must always seek advice from the DPO before applying this exception.