



**Freedom of
Information and
Environmental
Information Policy**

Organisational

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Freedom of Information and Environmental Information Policy

Introduction

The Freedom of Information (Scotland) Act 2002 (“FOISA”) and the Environmental Information (Scotland) Regulations 2004 (“EIR”) place a general obligation on Scottish Public Authorities to allow the public access to information that they hold. Both FOISA and EIR are overseen by the Scottish Information Commissioner (“SIC”).

From 11 November 2019 Provanhall HA will be designated as Scottish Public Authority and will need to make information available in accordance with FOISA and EIR.

This is the Freedom of Information and Environmental Information Policy of Provanhall HA. The policy will:

- provide a general understanding of FOISA and EIR; and
- outline where responsibility lies for complying with the legal duties of Provanhall HA under FOISA and EIR

Policy Statement

Provanhall HA is committed to the underlying principles of openness and transparency underpinning FOISA and EIR and complying fully with the requirements of said legislation. To this end Provanhall HA will:

- follow the relevant Scottish Ministers Codes of Practice relating to FOISA and EIR, as well as any relevant guidance issued by SIC;
- take into account the needs of individuals when presenting information under FOISA and EIR;
- make all employees aware of their responsibilities under FOISA and EIR and support them in fulfilling those responsibilities;
- publish a wide range of information through our Publication Scheme;
- monitor compliance with FOISA and EIR with a view to continuous improvement;
- respect data protection in accordance with the GDPR and Data Protection Act 2018 when complying with FOISA and EIR;
- only withhold information where entitled to do so under FOISA and EIR and explain why information is withheld; and
- provide advice and assistance to individuals seeking to access information

Responsibilities

- The Director has lead management responsibility for FOISA and EIR within Provanhall HA. This will include effective implementation and regular review of this Policy.
- **Other Staff responsibilities are as detailed below:**
 - **Responding To Requests Under Foisa And Eir** – Director, Housing Services Manager and Technical Services Manager, as appropriate
 - **Information Requests Should Be Forwarded To** - Property Services Assistant and copied in to the Director.
 - **Collating Information For Sending Out To Requesters** – Property Services Assistant
 - **Making Information Available In Accordance With Your Publication Scheme** – Director
 - **Dealing With Requests For Review** – Director, where she has not been involved in the original request, Technical Services Manager in all other situations.
- All employees are responsible for:
 - familiarising themselves with this policy;
 - forwarding information requests received to **the** Property Services Assistant as quickly as possible. If you are unsure how to recognise an information request you should seek guidance from any member of the Management team;
 - seeking guidance from the Director if they are unsure about any of the duties placed on Provanhall HA by FOISA or EIR;
- Employees should be aware that where an information request is received and an employee deletes or alters information held by Provanhall HA with the intention of preventing disclosure of that information a criminal offence is committed. Where employees are unsure if deletion or alteration of information may result in an offence they should seek guidance from the Director.
- Compliance with this policy is compulsory for all employees of Provanhall HA. Any employee who fails to comply with this policy may be subject to disciplinary action.

Scope of the Policy

This policy applies to any information held by Provanhall HA which relates to one or more of the functions set out below, regardless of format. This will include information created internally and information received from third parties. It will also relate to information which is held on behalf of Provanhall HA.

This policy applies to all Provanhall HA employees.

Background

Why is Provanhall HA subject to FOISA and EIR?

Provanhall HA is subject to both FOISA and EIR by virtue of the: Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 (the "Order").

The Order came into effect on 11 November 2019 and brought all Registered Social Landlords ("RSLs") and certain RSL subsidiaries under the scope of FOISA and the EIR.

What is subject to FOISA and EIR?

However, in accordance with the terms of the Order, not everything that Provanhall HA does is subject to FOISA and EIR. Instead, Provanhall HA is only subject to these regimes in respect of certain functions, namely 'housing services' (as defined in s.165 of the Housing (Scotland) Act 2010) which Provanhall HA carries out – subject to some restrictions. Looking at the definition of 'housing services' and the restrictions which are set out in the Order the following functions carried out by Provanhall HA are covered by FOISA and EIR:

- the prevention and alleviation of homelessness
- the management of social housing accommodation
- the provision and management of sites for gypsies and travelers; and
- the supply of information to the Scottish Housing Regulator (SHR) by an RSL or a connected body (i.e. a subsidiary) in relation to its financial wellbeing and standards of governance.

What is the difference between FOISA and EIR?

EIR provides a right of access to 'Environmental Information' held by Provanhall HA. Environmental Information has a very wide definition which is set out in Regulations. Where a request under FOISA is received for Environmental Information it should be processed in accordance with EIR.

Whilst the obligations under FOISA and EIR are similar – there are some key differences that employees must be aware of when dealing with requests for information. Further guidance on the differences are available on SIC's website.

Legal Duties

Provanhall HA has a number of legal duties which it must comply with under FOISA and EIR. These are set out in more detail below:

Responding to Information Requests

People have the right to request information from Provanhall HA. Where the information requested is within the scope of the Order and Provanhall HA holds that information it must release the information unless an exemption (under FOISA) or an exception (under EIR) applies. Provanhall HA shall, when responding to requests for information from individuals, follow the Section 60 Code of Practice and any relevant guidance produced by SIC.

Provanhall HA will aim to respond to information requests promptly, and in any event within 20 working days of receiving the request (except in some circumstances under EIR where Provanhall HA is entitled to extend the timescale for responding by an additional 20 working days).

Where Provanhall HA is providing an individual with the information they have requested they will, in so far as is reasonable to do so, provide information in the format that the individual has requested and will adhere to any duties under the Equality Act 2010. Where Provanhall HA is refusing to provide information to individuals it will clearly explain to said individual what provision in FOISA or EIR allows Provanhall HA to withhold that information and why Provanhall HA believes that provision applies (including, where required, an explanation of how Provanhall HA has carried out the Public Interest Test).

Where Provanhall HA is asked to provide information which it does not hold, but Provanhall HA knows that another Scottish Public Authority does hold the requested information – Provanhall HA shall provide contact details of said Authority to the individual requesting the information and explain that the individual may wish to request the information from that Scottish Public Authority. Where a request is being handled under EIR and these circumstances apply Provanhall HA shall offer to transfer the individual's request to the other Scottish Public Authority.

Provanhall HA may choose to charge for fulfilling information requests received from individuals. Any charges made by Provanhall HA shall be made in accordance with:

- for requests being handled under FOISA: the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

- for requests being handled under EIR: the Schedule of Charges of Provanhall HA

Any fee charged by Provanhall HA will be reasonable and will not exceed the costs to Provanhall HA of providing requested information.

Responding to Requests for Review

Where someone has requested information from Provanhall HA and:

- Provanhall HA has failed to respond to the request within the 20 working day deadline (or extended deadline in respect of certain requests made under EIR); or
- the person requesting the information is unhappy with the response to the request (for example where information has been withheld under one of the exemptions or exceptions available under FOISA/EIR)

then they have the right to request that Provanhall HA reviews the response to their request to determine whether or not the provisions of FOISA or EIR have been followed.

Where Provanhall HA performs a review and determines that a response to a request is not in accordance with FOISA or EIR Provanhall HA will take immediate steps to rectify this (which could, for example, include releasing information which was previously withheld).

Where Provanhall HA performs a review and determines that a response to a request is in accordance with FOISA or EIR then Provanhall HA will notify the individual who asked for a review as quickly as possible.

In any event Provanhall HA will handle all requests for review in accordance with the timescales set out in FOISA and EIR.

Where an individual is unhappy with the response to their review request they may appeal to SIC. If an appeal is made by SIC and a decision handed down by them both Provanhall HA and the individual in question have a right to appeal to the courts on a point of law.

Provision of Advice and Assistance to Individuals

Provanhall HA must provide individuals seeking to access information with advice and assistance. This advice and assistance will be provided with a view to ensuring that all barriers which may potentially prevent an individual from accessing information are removed. Provanhall HA will comply with this duty by following the guidance contained in the Section 60 Code of Practice issued by Scottish Ministers.

Publication of Information

Provanhall HA shall publish information in accordance with its Publication Scheme through its Guide to Information. The Guide to Information of Provanhall HA will be available on its website and a paper format will also be available on request.

Link:

https://www.provanhallha.org.uk/data/Guide_to_information_2019_2019_10_29_1056_14.pdf

Data Protection

Provanhall HA is committed to upholding its data protection obligations set out in the GDPR and the Data Protection Act 2018.

Under data protection laws, individuals have the right to request access to all of the information that Provanhall HA holds about them. This and other rights that individuals have under data protection are not covered by this policy and you should refer to our Privacy Policy when dealing with these rights.

Link: <https://www.provanhallha.org.uk/data-protection/>

Equalities

All Staff will have regard to the Associations Equality and Diversity Policy when dealing with any FOI or EIR requests, to ensure the elimination of any discrimination.

Notifiable Events

If any FOI or EIR requests results in a notifiable event, notification will be made to the Scottish housing regulator. It is the responsibility of the Director to make this notification, or the Chairperson, where the complaint is about the Director.