

FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION POLICY

Classification: Governance

Status: Approved

Policy Lead:	Chief Executive Officer
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REFERENCE PAGE

Document Title:	Freedom of Information & Environmental Information Request Policy
Aim:	The policy will: <ul style="list-style-type: none"> • provide a general understanding of FOISA and EIR; and • outline where responsibility lies for complying with the legal duties of Eildon under FOISA and EIR
Objective:	1 Governance: Ensure we continue to have strong leadership in the Association
Scope of Policy:	All stakeholders
Nominated Officer:	Chief Executive Officer
Approval Source:	Executive Team
Legal & Regulatory References:	Freedom of Information (Scotland) Act 2002 Environmental Information (Scotland) Regulations 2004
Procedural References:	N/A
Consultation Completed:	N/A
Risk Implications:	3- New policy
Equalities Assessment:	All Eildon policies and key documents are developed with the clear objective of ensuring that they do not discriminate against any person and have negative impacts for equality groups. We will always welcome comments on the impact of a policy on particular groups of people in respect of, but not limited to, age, disability, gender reassignment, race, religion, sex or sexual orientation, being pregnant or on maternity leave and children's rights and wellbeing.
Accessibility:	Accessible electronically/online and in print. All documents can be translated and made available in audio, braille and large print versions upon request.

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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 Eildon Housing Association (Eildon) will be designated as a 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 Eildon.

The policy will:

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

POLICY STATEMENT

Eildon 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 Eildon 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 Data and Information Officer (DIO) has lead management responsibility for FOISA and EIR within Eildon. This will include effective implementation and regular review of this Policy.

All requests should be directed to the DIO, through the email address: InfoRequests@Eildon.org.uk, who is also responsible for acknowledging and responding to requests under FOISA and EIR.

The Leadership Group will be responsible for providing information to be inserted in the 'Guide to Information', the Corporate Services Team will be responsible for ensuring the 'Guide to Information' has been updated with the provided information.

The Leadership Group are responsible for ensuring that requests received for their team are processed promptly and in line with FOI procedures.

The Corporate Service Administrator will conduct any internal reviews that may be required.

All employees are responsible for:

- familiarising themselves with this policy;
- forwarding information requests received to the DIO as quickly as possible. If you are unsure how to recognise an information request you should seek guidance from the DIO;
- seeking guidance from the DIO if they are unsure about any of the duties placed on Eildon by FOISA or EIR;

Employees should be aware that where an information request is received and an employee deletes or alters information held by Eildon, 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 DIO.

Compliance with this policy is compulsory for all employees of Eildon. 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 Eildon 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 Eildon.

This policy applies to all Eildon employees.

BACKGROUND

Why is Eildon subject to FOISA and EIR?

Eildon 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?

Not everything that Eildon does is subject to FOISA and EIR. Instead, Eildon 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 Eildon 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 Eildon 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 Eildon. 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

Eildon has a number of legal duties which it must comply with under FOISA and EIR.

These are set out in more detail below:

Duty to Respond:

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

Eildon 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 Eildon is entitled to extend the timescale for responding by an additional 20 working days).

Where Eildon 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 Eildon is refusing to provide information to individuals it will clearly explain to said individual what provision in FOISA or EIR allows Eildon to withhold that information and why Eildon believes that provision applies (including, where required, an explanation of how Eildon has carried out the Public Interest Test).

Where Eildon is asked to provide information which it does not hold, but Eildon knows that another Scottish Public Authority does hold the requested information – Eildon 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 Eildon shall offer to transfer the individual's request to the other Scottish Public Authority.

Eildon may choose to charge for fulfilling information requests received from individuals. Any charges made by Eildon for both FOISA and EIR requests shall be made in accordance with the Charging Schedule, available here:

<https://www.eildon.org.uk/library/65/company-information-performance/6291/charging-schedule.pdf>

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

Responding to Requests for Review

Where someone has requested information from Eildon and:

- Eildon 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 Eildon reviews the response to their request to determine whether or not the provisions of FOISA or EIR have been followed.

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

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

In any event Eildon 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 the SIC. If an appeal is made by the SIC and a decision handed down by them both Eildon and the individual in question have a right to appeal to the courts on a point of law.

Repeated requests will be looked at on an individual basis. Eildon will have the right to refuse the request under Section 14 (2) of the Act.

Duty to Provide Advice and Assistance

Eildon 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.

Eildon will comply with this duty by following the guidance contained in the [Section 60 Code of Practice](#) issued by Scottish Ministers.

Duty to Publish

Eildon shall publish information in accordance with its Publication Scheme through its Guide to Information. The Guide to Information of Eildon is available on the website and a paper format is available on request.

Our Guide to Information can be found here:

<https://www.eildon.org.uk/library/65/company-information-performance/6292/guide-to-information.pdf>

Data Protection

Eildon 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 Eildon holds about them. This and other rights that individuals have under data protection are not covered by this policy and you should refer to the Data Protection Policy when dealing with these rights.

This can be found here: <https://www.eildon.org.uk/library/72/policies/3986/privacy-policy.pdf>

DEFINITIONS

TERM:	EXPLANATION:
FOISA	<p>Freedom of Information (Scotland) Act 2002</p> <p>Places a duty on those organisation covered to proactively publish certain types of information; and to respond to requests for information; and to provide advice and assistance to those making requests for information.</p>
EIRs	<p>Environmental Information Regulations (Scotland) 2004</p> <p>Those organisations covered by EIRs have a duty to respond to requests for environmental information</p>
SIC	<p>Scottish Information Commissioner</p> <p>Who is responsible for ensuring that those bodies covered by FOISA and EIRs comply with the terms of the legislation</p>
MPS	<p>Model Publication Scheme</p> <p>Produced by the SIC – this details all of the information that those subject to FOISA should publish (if held)</p>
Guide to Information	<p>A guide that all organisations subject to FOISA and adopting the MPS must produce to help people access the information it makes available.</p>
Classes of information	<p>Nine broad categories describing the types of information authorities should publish (if held)</p>