

FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REQUEST POLICY

Classification: Governance

Status: Approved

Policy Lead:	Director of Business Support
Date Approved:	May 2023
Last Review Date:	May 2023
Review Due Date:	May 2026
Review Period:	3 years unless required earlier due to changes in the law, regulation, best practice or requirement of the Association

REFERENCE PAGE

Document Title:	Freedom of Information & Environmental Information Request Policy
Aim:	The policy will outline the responsibilities of Eildon and its staff for publishing and providing information that falls within the Freedom of Information legislation & Environmental Information guidance.
Objective:	1 Governance: Ensure we continue to have strong leadership in the Association
Scope of Policy:	All stakeholders
Nominated Officer:	Data Protection and Information Officer
Approval Source:	Executive Team
Legal & Regulatory References:	Freedom of Information (Scotland) Act 2002 Environmental Information (Scotland) Regulations 2004
Procedural References:	FOI procedure Guide to Information Charging Schedule Complaints Policy & Procedure
Consultation Completed:	N/A
Risk Implications:	1- Existing policy, minimal change
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.
Publish on Website:	Yes

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INTRODUCTION

Following an order made by the Scottish Parliament, registered social landlords (and qualifying subsidiaries) are now subject to the Freedom of Information (Scotland) Act 2002 (FOISA) and, for the purposes of Freedom of Information are deemed to be a Scottish Public Authority. This came into effect on 11 November 2019.

FOISA and Environmental Information (Scotland) Regulations 2004 (EIRs) – together referred to within this policy as ‘FOI legislation’ provide a right of access to recorded information held by public authorities.

FOI legislation places three lawful duties on public authorities which must be met to comply with FOI responsibilities.

- **The Duty to Respond:** We must respond to all requests for information within designated timescales; where information is exempt or unavailable, we will respond setting out why within these timescales.
- **The Duty to Publish:** We must pro-actively maintain a publication scheme setting out the information we publish and how it can be accessed.
- **The Duty to Advise and Assist:** We must aid and support members of the public to help them to exercise their rights to information held.

FOI legislation and our compliance with it is overseen by the Scottish Information Commissioner (SIC).

POLICY STATEMENT

We are committed to the underlying principles of openness and transparency underpinning FOI legislation and will comply fully with its requirements. To this end we will:

- Follow the relevant Scottish Ministers Codes of Practice relating to FOI legislation, as well as any relevant guidance issued by SIC;
- Consider the needs of individuals when presenting information under FOI legislation;
- Make all employees aware of their responsibilities under FOI legislation and support them in fulfilling those responsibilities;
- Publish a wide range of information through our Publication Scheme;
- Monitor compliance with FOI legislation with a view to continuous improvement;
- Respect data protection in accordance with the UK General Data Protection Regulation (UK GDPR) and Data Protection Act 2018 when complying with FOI legislation;
- Only withhold information where entitled to do so under FOI legislation and explain why information is withheld or unavailable; and
- Provide advice and assistance to individuals seeking to access information.

SCOPE OF THE POLICY

This policy applies to any information held by Eildon, 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 and Board Members.

RESPONSIBILITIES

The **Board** has delegated overall responsibility for this policy to the Executive Team.

The **Audit & Risk Committee** will obtain assurances relating to the adequacy and effectiveness of risk, control and governance processes relating to the compliance with FOI legislation in Eildon. The committee will do this by instigating and receiving reports on Eildon's compliance with the principles of this policy.

The Data Protection and Information Officer (DPIO) has a direct reporting and escalation relationship with the **Director of Business Support (DBS)** who has responsibility for the monitoring of compliance and ensuring that the policy is reviewed.

The **Executive Team** have responsibility for supporting appeals and complaints, as well as decision making around the application of exemption or exceptions where applicable.

Operational Managers have responsibility for ensuring compliance within their business areas. They need to ensure that team members are aware of and comply with the FOI policy and procedures when dealing with requests for information and for ensuring all applicable information generated is passed to DPIO for publication.

The **DPIO** is Eildon's FOI Co-ordinator and is responsible for the following:

- Informing and advising Eildon about their obligations to comply with FOI legislation;
- Monitoring compliance with FOI legislation, including managing internal FOI legislation activities, training and conducting compliance audits;
- To be the first point of contact for supervisory authorities (i.e. SIC) and for individuals who submit requests;
- Quarterly and annual reporting on FOI legislation activities to the Executive Team, SIC and Board, respectively;
- Logging, co-ordinating and tracking FOI legislation requests;
- Co-ordinating responses and any internal reviews that might be requested, together with ensuring that all actioned FOI requests are published on the website;
- Maintaining the Publication Scheme and Guide to Information, ensuring that valid information is published on the website;
- Informing and supporting the development, delivery and maintenance of policy, procedures and training to support Eildon's FOI compliance; and
- Ensuring availability of appropriate procedures and guidance to the Board, Operational Managers and employees.

All employees and Board Members are responsible for freedom of information and should follow the guidance set out in this policy and the operational procedure when dealing with requests for information.

For specific responsibilities of each job role read Freedom of Information and Environmental Information Procedure.

Compliance with this policy and its associated procedures is compulsory for all employees of Eildon in line with our Code of Conduct. Any failure to apply the policy and procedures that results in Eildon's failure to comply with its legal obligations may result in disciplinary action.

FREEDOM OF INFORMATION REQUESTS

We will treat all requests for information fairly and without prejudice. There will be no consideration given to previous interactions with the requester save for cases of persistent or vexatious requests for information. Similarly, no consideration will be given towards the perceived motivations for the request for information.

Once a request for information has been received, we will ensure it is responded to within the 20-working day legal deadline. The 20-working day period does not start until a valid request is received, so any period of waiting for a response or clarification from the requester will not count towards the period we have to respond.

There is also a provision that allows Eildon to 'stop the clock' in any instance where it is necessary to go back to the requester to ask that they clarify something about their request. This will not be used as a stalling tactic or as a means of avoiding missing the original 20 working day deadline.

If it is determined that a fee should be charged for the provision of the information, it is permitted to 'stop the clock' until the payment has been received. See 'Charging Schedule' for more information on when a fee may be charged.

In some circumstances for EIRs a 20-working day extension may be permitted, this will be communicated to the requester as soon as possible.

Exemptions and Exceptions

There are some exemptions and exceptions to FOI legislation, where access to information can be denied. The categories of exemptions are as follows:

- **Absolute exemptions** – situations where a request can be denied without further consideration, for example: a disclosure would breach a court order or be in violation of GDPR.
- **Qualified Exemptions** – situations where we need to weigh up the business interest vs the public interest in coming to a decision as to whether to disclose, for example: where a disclosure may prejudice substantially any ongoing law enforcement proceedings.
- **Vexatious or repeated requests** – there is no compulsion to comply with a FOI request that is vexatious in nature and/or repeated requests where information has previously been provided or circumstances around the decision to deny a previous request has not changed.

Although there might be occasions when it is appropriate to rely on an exemption, provision of information is an integral part of our work. Therefore, we will aim to disclose as much information as is reasonable and rely on exemptions only in limited circumstances. Further information on exemption and exception are available within the FOI & EIR procedures.

FEES

Under FOI legislation a fee can be charged in some limited circumstances; we will only seek to recover costs in line with the legislation and where deemed appropriate by a member of the Executive Team. Information on where fees may be applied is available within the Charging Schedule.

PUBLICATION SCHEME GUIDE TO INFORMATION

We have fully adopted the SIC's Model Publication Scheme (MPS). Our Publication Scheme clarifies what information should be proactively published within our Guide to Information and what information and guidance Eildon must offer to the general public to facilitate their access to information.

We will publish all categories of information, as defined by the Publication Scheme, on our website, alongside our Guide to Information which offers the public guidance on what information is available; how to access information that is not published; what fees may be charged for accessing information; and how to get in touch with any queries.

We will continue to update the Guide to Information when new information is published and will retain information for the current and two prior financial years as standard. Older information will be removed from the Guide to Information but retained in line with our Information Retention and Disposal Policy, to enable us to facilitate requests for information no longer on the Guide to Information.

REPORTING TO THE SCOTTISH INFORMATION COMMISSIONER

The SIC requires us to report to them on a quarterly basis, with details of the number of requests for information we receive. The DPIO will report the number of requests received in the quarter and any exemptions / exceptions we have applied in denying requests for information.

APPEALS AND COMPLAINTS

Requesters have the right to appeal to us if they are unhappy with the response to their request. In such an instance the request will be reviewed by a member of the Executive Team.

If the requester is still not satisfied with the response to their appeal, they have the right to appeal to the SIC. We will ensure that this advice is contained in any appeal response.

If an information requester has a complaint regarding any element of the Freedom of Information Policy or Procedure this should be dealt with under the appropriate section of the Complaints process (See Complaints Policy and Procedure).

TRAINING

Eildon will provide all employees with appropriate annual training and guidance on the FOI legislation, its importance, and their responsibilities for compliance with it and Eildon's policy and procedure.

New employees and Board Members will be provided with a FOI briefing as part of their induction process.

MONITORING AND REPORTING

Compliance with this policy and its associated procedures will be monitored by the Director of Business Support, together with independent reviews by both internal and external auditors on a periodic basis.

The DPIO will monitor and report quarterly to Executive Team and Operational Managers on FOI legislation activity.

An annual report to the Board will be provided that covers compliance with FOI legislation and how we are responding.

REVIEW

The Director of Business Support is responsible for ensuring that this policy is reviewed every three years or earlier if it is deemed appropriate. The purpose of these reviews is to assess the policy's effectiveness and adherence to current legislation and good practice, and to identify any changes which may be required.

The Executive Team have delegated authority to approve and review this management policy.