

# Freedom of Information and Environmental Information Policy

Date Reviewed: October 2025  
Date of Next Review: October 2028



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## 1. Introduction and Purpose

- 1.1 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”).
- 1.2 From 11 November 2019, Rosehill Housing Association Limited (Rosehill) has been designated as a Scottish Public Authority and as such needs to make information available in accordance with FOISA and EIR.
- 1.3 The purpose of this policy is to:
  - provide a general understanding of FOISA and EIR; and
  - outline where responsibility lies for complying with the legal duties of Rosehill under FOISA and EIR.

## 2. Background

- 2.1 Why is Rosehill subject to FOISA and EIR?
  - 2.1.1 Rosehill 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”).
  - 2.1.2 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.
- 2.2 What is subject to FOISA and EIR?
  - 2.2.1 However, in accordance with the terms of the Order, not everything that Rosehill does is subject to FOISA and EIR. Instead, Rosehill 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 Rosehill 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 Rosehill 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.

## 2.3 What is the difference between FOISA and EIR?

2.3.1 EIR provides a right of access to 'Environmental Information' held by Rosehill. 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.

2.3.2 Whilst the obligation 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.

## 3. Legal and Regulatory Requirements

3.1 The following legislation is relevant to this Policy:

- Freedom of Information (Scotland) Act 2002
- Environmental Information (Scotland) Regulations 2004

3.2 The Regulatory Standards of Governance and Financial Management requires that the RSL is open about 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 (Standard 2). The related guidance GS2.1 and GS2.3 states further that:

- The RSL gives tenants, service users and other stakeholders information that meets their needs about the RSL, its services, its performance and its future plans.
- The governing body is open and transparent about what it does, publishes information about its activities and, wherever possible, agrees to requests for information about the work of the governing body and the RSL.

3.3 Having a clear and comprehensive Policy governing our legal requirements under FOI law is an essential part of ensuring our compliance with legislative and regulatory requirements

## 4. Scope of the Policy

- 4.1 This policy applies to any information held by Rosehill which relates to one or more of the functions set out above in para 2.2.1, 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 Rosehill.
- 4.2 This policy applies to all Rosehill's employees.

## 5. Policy Principles

- 5.1 Rosehill 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 Rosehill 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 the 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.

## 6. Our Responsibilities

- 6.1 Our Corporate Services and HR Manager, supported by our external Data Protection Officer has lead management responsibility for FOISA and EIR within. This will include effective implementation and regular review of this Policy.
- 6.2 The Corporate Services and HR Manager will work with the Data Protection Officer to respond to all requests under FOISA and EIR. The Director will respond to requests in the Corporate Services and HR Managers absence.

- 6.3 The Management Team will be responsible for collating the information for the Corporate Services and HR Manager who will then forward the documentation onto our Data Protection Officer.
- 6.4 The Management Team will be responsible for ensuring that the information included within the publication scheme is up to date. The Corporate Services and HR Manager will ensure this is achieved through regular monitoring.
- 6.5 The Director will respond to all requests for reviews.
- 6.6 The Data Protection Officer will ensure that returns to the SIC are submitted timeously and accurately.
- 6.7 All employees are responsible for:
- familiarising themselves with this policy.
  - forwarding information requests received to the Corporate Services and HR Manager as quickly as possible. If they are unsure how to recognise an information request, they should seek guidance from the Corporate Services and HR Manager and in her absence, their Line Manager;
  - seeking guidance from the Corporate Services and HR Manager if they are unsure about any of the duties placed on Rosehill by FOISA or EIR.
- 6.8 Employees should be aware that where an information request is received, and an employee deletes or alters information held by Rosehill 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 Corporate Services and HR Manager.
- 6.9 Compliance with this policy is compulsory for all employees of Rosehill. Any employee who fails to comply with this policy may be subject to disciplinary action.

## 7. Legal Duties

7.1 Rosehill has several legal duties which it must comply with under FOISA and EIR. These are set out in more detail below:

### 7.2 Responding to Information Requests

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

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

7.2.3 Where Rosehill 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.

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

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

7.2.6 Rosehill may choose to charge for fulfilling information requests received from individuals. Any charges made by Rosehill 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 Rosehill.

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

7.2.8 Information about the applicable charges can be found at Appendix 1.

### 7.3 Responding to Requests for Review

7.3.1 Where someone has requested information from Rosehill and:

Rosehill 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 Rosehill reviews the response to their request to determine whether the provisions of FOISA or EIR have been followed.

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

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

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

7.3.5 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 Rosehill and the individual in question have a right to appeal to the courts on a point of law.

### 7.4 Provision of Advice and Assistance to Individuals

- 7.4.1 Rosehill 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. Rosehill will comply with this duty by following the guidance contained in the Section 60 Code of Practice issued by Scottish Ministers.

## 7.5 Publication of Information

- 7.5.1 Rosehill shall publish information in accordance with its Publication Scheme through its Guide to Information. The Guide to Information is available on its website and a paper format will also be available on request.

## 8. Data Protection

- 8.1 On the 25<sup>th</sup> of May 2018 the legislation governing data protection changed with the introduction of the General Data Protection Regulation (GDPR). Following the UK's exit from the EU, and the end of the transition period which followed, the GDPR formed part of the retained EU law and became the UK GDPR which together with the Data Protection Act 2018 constitute the UK's data protection legislation.

## 9. Equality and Human Rights

- 9.1 Rosehill's Equality and Human Rights policy (January 2024) outlines our commitment to zero tolerance of unfair treatment or discrimination towards any individuals or group of individuals, particularly those belonging to a protected characteristics (as defined by the Equality Act (2010)). This includes ensuring everyone has equal access to information and services, by making copies of all policies available in a variety range of alternative formats (i.e. large print, translated, etc.) in response to reasonable requests.

Rosehill is aware of the potential for policies to inadvertently discriminate against individuals or group of individuals. To help address this we carry out Equality Impact Assessments (EIA) to help identify any part of a policy that may be discriminatory so this can be addressed (please see Section 9 of our Equality and Human Rights policy for more information).

As this policy applies equally to all groups, Rosehill (with committee approval) made the decision not to carry-out an Equality Impact Assessment on this policy.



## **10. Risk Management**

- 10.1 In all key areas of our business we need to consider any risks which may arise. To this end we have in place a robust Risk Management Policy and from these flows our Risk Register. We have identified our strategic risks which are regularly monitored by our Management Team and Audit Sub-Committee.
- 10.2 The risks relating to managing Freedom of Information requests fall under the main risk category of Data/Information Management. Key to the mitigation of these risks is having a clear and comprehensive Policy in place to support the application of Freedom of Information requirements.
- 10.3 To ensure we continue to manage the associated risks we will periodically review this policy to ensure compliance with all legislative, regulatory requirements and best practice guidance.

## **11. Review**

- 11.1 This Policy is reviewed on a 3 yearly basis or sooner if circumstances require it.



## Appendix 1

Charges for providing information requested through The Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (EIR) are set out below:

### FOISA Charges

What we can charge	What we can't charge
For information that costs between £100 and £600*, the charge will be <b>10% of the costs</b>	For information that costs £100 or less to provide
For locating, retrieving and providing the information requested	For the time to determine whether we hold the information requested
For staff costs in relation to the above, calculated at the actual hourly rate per staff member. This is capped at £15.00 per hour per staff member	For the time it takes to decide whether the information can be released
For the costs relating to photocopying/printing and postage costs:  A4 print in black and white – 1p per sheet A3 print in black and white – 2p per sheet A4 print in colour – 4p per sheet A3 print in colour – 4p per sheet  Postage – actual cost of postage	

\*In respect of requests made under FOISA we are not obliged to respond to requests which will cost us over £600 to process.

### Fee Notice

In the event that we decide to impose a charge we will issue you with notification of the charge (a fees notice) and how it has been calculated. You will have three months from the date of issue of the fees notice in which to decide whether to pay the charge. Once a fees notice has been issued to you the statutory deadline for responding to your request pauses and will resume once you make payment of the fee. If you decide not to proceed with the request, there will be no charge to you.

## EIR Charges

Under the EIRs there are no lower or upper limits set for the provision of information. We are allowed to charge “reasonable costs” for providing Environmental Information, however, any charge cannot exceed the costs to Rosehill of providing the information requested.

As with FOISA we can charge for staff time for locating and retrieving information requested but we **cannot** charge for time spent determining whether information is actually held or is subject to one or more of the exceptions.

Under the EIRs we are allowed to set our own charging schedule for providing environmental information requested. Rosehill has decided to apply the same charges as set out in the table above for FOISA (see “What we can charge”). This reflects the Commissioner’s recommendation that organisations develop their EIR charging schedules to mirror the FOISA fee provisions.

Whilst there is no upper fee limit, under the EIRs we can refuse to comply with a request if the request is manifestly unreasonable. Where it would cost more than £600 to provide the information requested, we will charge the full cost of providing the information, with no waiver for any portion of the cost.

### Fee Notice

If we decide to impose a charge, we will issue you with notification of the charge (a fees notice) and how it has been calculated. If we require payment in advance, you will have three months from the date of issue of the fees notice in which to decide whether to pay the charge. Once a fees notice has been issued to you the statutory deadline for responding to your request pauses and will resume once you make payment of the fee. If you decide not to proceed with the request, there will be no charge to you.

### **Stage 1 – Receive, Identify & Log**

#### **Request Received (days 1-2)**

Pass to Corporate Services and HR Manager who will Log details, validate request, ID Legislation & send acknowledgement

Pass the Request to the Corporate Services and HR Manager. They will:

- Evaluate the request and identify which legislation it will be processed under. Is it:
  - Freedom of Information (Scotland) Act (FOISA)
  - Environmental Information Regulations (EIRs)
  - Data Protection Act (DPA)
- Log the request.
- If the request is a complex/controversial case, inform the Management Team.
- Send an acknowledgement letter confirming receipt of the request, and the legislation under which it will be processed or proceed to Stage 2.

### **Stage 2 – Clarify**

#### **Clarify Request (days 1-2)**

Corporate Services and HR Manager to contact requester if necessary to seek further clarification

The Corporate Services and HR Manager will ensure that the request is clear regarding what information is being asked for. If the request is unclear clarification will be sought.

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### Stage 3 - Assess

#### **Assess Request (days 3-5)**

Data Protection Officer to decide if: the information is covered by the Order; The Corporate Services and HR will check if we hold the information & if it is already accessible

The Data Protection Officer, supported by the Corporate Services and HR Manager will assess:

- If the request relates to functions covered by The Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 (the Order):
- If information covered by the Order will proceed with next steps in Stage 3
- If information not covered by the Order but we are willing to release some or all of the information proceed with next steps in stage 3
- If information not covered by the Order and we are not willing to release any of the information a letter will be sent to the requestor informing them that we are not obliged to provide them with the information
- if we hold the information and if it is already accessible:
  - If we do not hold the information a letter will be sent to the requestor informing them the information is not held.
  - If the information is held but is already published, then a Section 25 exemption letter will be sent to the requestor informing them of where to find this information. Where the information is not covered by the Order we should simply write to the requester and inform them where to find the information.
  - If the information is held and has not been published, then the request process will proceed to stage 4.

**Stage 4 - Assign  
Request to Relevant  
Section - Inform &  
Consult**

**Assign/Inform/  
Consult  
(Days 3-5)**

The Corporate Services and HR Manager will send request to appropriate department to request information held.

Relevant department will respond to the Corporate Services and HR Manager when information has been collected or to inform the Corporate Services and HR Manager that department does not hold information.

Consult with the Corporate Services and HR Manager to determine if fees are applicable. The Corporate Services and HR Manager will advise on applying fees.

**Stage 5 - Locate &  
Consider Information  
to be Disclosed**

**Locate  
Information  
(days 3-5)**

Appropriate  
department  
collate  
information.  
Corporate Services  
and HR Manager  
will assist,  
support & advise

Appropriate department, the Corporate Services and HR Manager, and the Data Protection Officer to consider if the information can be supplied or whether any exemptions apply. Where the information requested is not covered by the Order you do not need to determine whether or not exemptions apply and can instead choose what information you are prepared to release.

The Data Protection Officer will advise and assist in applying exemptions.

Appropriate department obtains information from all sources and collates.

Appropriate department completes information request documents as appropriate.

**Stage 6 - Consider Response**

**Consider Response  
(Days 6-10)**

Data Protection Officer review & draft response

The Data Protection Officer will review documents and prepare response letter

**Stage 7 - Clearing Response**

**Clearing Response  
(Days 11-15)**

In cases of complex/controversial requests the Corporate Services and HR will seek clearance and consult with the Data Protection Officer as necessary.

**Stage 8 - Issue Response**

**Issue Response  
(days 16-20)**  
Corporate Services and HR Manager issue response

The Corporate Services and HR Manager quality checks and issues information requested, stating any exemptions as appropriate.





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Registered Scottish Charity, No. SC053776. Company Registration No. SP02220R.  
A registered society under the Co-operative and Community Benefit Societies Act 2014 No. 2220R(S) and with  
The Scottish Housing Regulator (Number HAC174).