

<b>Policy Name</b>	Freedom of Information Policy
<b>Policy Category</b>	Corporate & Governance
<b>Policy Number</b>	CG023
<b>Officer Responsible</b>	Chief Executive
<b>Application</b>	Lochaber Housing Association Limited Lochaber Care and Repair Lochaber Housing Association Property Services C.I.C.
<b>Date to Board of Management</b>	7 October 2019
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## 1 INTRODUCTION AND OVERVIEW

### Introduction

- 1.1 The Freedom of Information (Scotland) Act 2002 (the "**Act**") places a number of obligations on the way Lochaber Housing Association Limited (the "**Association**") manages and shares information held by us or on our behalf.
- 1.2 The aim of the Act is to increase openness and accountability across the public sector by ensuring that people have the right to access information held by Scottish public authorities.
- 1.3 The Act will enable people to see and question how the Association functions and how decisions are made. As a result, any employee who deals with information or with the public should be aware of the key principles and obligations under the Act. This Policy is designed to inform employees about the Act, their responsibilities under the Act and the practical steps that need to be taken to ensure compliance.

### Application of this Policy

- 1.4 This Policy covers the Association, Lochaber Care and Repair and Lochaber Housing Property Services C.I.C. (together referred to as the "**Group**" and each a "**Group Member**") only to the extent that their activities fall within the scope of the Act.
- 1.5 The Association, as a registered social landlord, and its subsidiaries have been designated a Scottish public authority for the purposes of the Act to activities which are of a "public nature". The following

activities carried out by the Group fall within the scope of the Act and this Policy:

- 1.5.1 the provision of housing accommodation and related services in relation to:
  - 1.5.1.1 the prevention and alleviation of homelessness;
  - 1.5.1.2 the management of housing accommodation for which the Association has granted a Scottish secure tenancy or short Scottish secure tenancy; and
  - 1.5.1.3 the provision and management of sites for gypsies and travellers, whatever their race or origin; and
- 1.5.2 the supply of information to the Scottish Housing Regulator in relation to a Group Member's financial well-being and standards of governance.

### **Responsibility for Freedom of Information ("FOI")**

- 1.6 The Association will appoint a Corporate Services Officer who will provide advice and assistance to the Group in relation to FOI requests and responses and support the mechanisms for exemption decisions and reviews. The Corporate Services Officer will be supported by Harper Macleod LLP.

### **What are the implications of the Act for the Group?**

- 1.7 There are three duties under the Act: the duty to publish; the duty to respond to requests for information; and the duty to provide advice and assistance.
- 1.8 The duty to publish: under the Act, the Group will have to develop and maintain a publication scheme so that the public can see what sort of information the Group holds. Where information is not proactively made available through the publication scheme, the Group Members will have to respond to specific requests for information within 20 working days.
- 1.9 The duty to respond to requests for information: under the Act, any individual or organisation anywhere in the world has the right to request information from the Group. It does not matter how old the information is, why it was created, or in what format, if the Group holds the information then it will have a duty to disclose unless the information being requested falls within one of the exemptions under the Act.

- 1.10 The duty to provide advice and assistance: under the Act, the Group must provide applicants with advice and assistance in relation to their rights under the Act. In particular, the Group may have to assist applicants in making a valid request for information. Where an applicant cannot make a valid request for information in a permanent recorded format because of some physical or mental disability or impairment, employees should assist applicants in making their request.

### **Relationship between the Act and other legislation**

- 1.11 The Act does not override existing statutory prohibitions on disclosure of information, nor does it affect the Group's existing statutory obligations in respect of the handling of information, such as those found in the General Data Protection Regulation (EU) 2016/679.

### **The Scottish Information Commissioner**

- 1.12 The FOI regime in Scotland is regulated by the Scottish Information Commissioner (the "**Commissioner**"), a fully independent public official. The Commissioner has two main responsibilities: to make sure that people are aware of their right to access information under the Act and then to enforce this right to make sure that people get the information to which they are entitled.
- 1.13 The Commissioner has a wide variety of powers under the Act to ensure compliance. Applicants who are dissatisfied with the manner in which the Group has dealt with a request for information may refer the matter to the Commissioner who will investigate the matter and make a determination as to the action which the Group should take. This may include a determination as to whether information should be disclosed.
- 1.14 If the Commissioner considers that the Group is not complying with its duties under the Act, the Commissioner can issue an enforcement notice informing the Group which part of the Act it is failing to comply with and the remedial action which is required. The Group could be found in contempt of court if it fails to comply with an enforcement notice issued by the Commissioner.

### **Awareness and Training**

- 1.15 All employees should have a general awareness of key FOI principles and obligations. Individual company areas will have primary responsibility for ensuring employees are aware of their obligations

and that policies and procedures are in place to facilitate compliance. General information on FOI will be available from the Corporate Services Officer.

## **2 THE MODEL PUBLICATION SCHEME**

### **Publication Schemes – General**

2.1 The Act provides that all Scottish public authorities must adopt and maintain a scheme relating to the publication of information. The Group has adopted the Commissioner's Model Publication Scheme.

2.2 The primary purpose of the Model Publication Scheme is to make it easier for the public to locate and access information published by the Group. The Model Publication Scheme tells the public what classes of information the Group routinely makes available, where this information can be accessed and whether the information is provided free of charge or is subject to a fee.

### **Awareness**

2.3 All information contained in the Model Publication Scheme must be made available in the manner indicated. It is important, therefore, that all employees are aware of the existence of the Model Publication Scheme and familiarise themselves with its content, particularly in respect of information provided by their own Company area.

### **Structure**

2.4 The following classes of information are published within the Group's Model Publication Scheme:

2.4.1 information about the Group – general information, how it is run and information on corporate planning and external relations;

2.4.2 how the Group delivers functions and services;

2.4.3 how the Group takes decisions and what decisions have been taken;

2.4.4 what the Group spends and how it spends it;

2.4.5 how the Group manages our human, physical and information resources;

- 2.4.6 how the Group procures goods and services from external providers;
- 2.4.7 how the Group is performing;
- 2.4.8 the Group's commercial publications; and
- 2.4.9 the Group's open data.

### **Availability**

- 2.5 Hard copies of the Model Publication Scheme are available from Corporate Services upon request. The electronic version of the Scheme is available on the Association's website at:  
<https://www.lochaberhousing.org.uk/wp-content/uploads/2019/10/FOI-MPS-and-Guide-to-Information-v1.-2019.pdf>

### **Charges**

- 2.6 We may make a charge for our publications and how any charge will be calculated. There is no charge to view information on our website or at our premises. We may charge for providing information to you, but we will charge you no more than it costs us to do so. We will always tell you what the cost is before providing the information to you. Details of our charging schedule is included within the Guide to Information.

### **Importance of the Model Publication Scheme**

- 2.7 The Model Publication Scheme is an important document for the Group. It is designed to be a proactive and public commitment to making information available.
- 2.8 In addition, the Model Publication Scheme is of practical benefit to the Group in that it will ease the administrative and financial burden of dealing with direct requests for information under the Act.

### **Maintenance**

- 2.9 The Group's Model Publication Scheme has been approved by the Commissioner and does not require to be reviewed for a further four years. However, there will be a continuing need to maintain and review the Model Publication Scheme to ensure that the public can access up-to-date information.

- 2.10 It is important that all Company areas within the Group take a proactive approach to the Model Publication Scheme and ensure it is regularly reviewed and updated.

### **3 DEALING WITH REQUESTS FOR INFORMATION**

#### **Handling routine requests**

- 3.1 The Act should not affect the way in which Company areas deal with the vast majority of enquiries that they receive. The Association already makes information available to the public and provides information upon request. As a result, Company areas should continue to handle routine enquiries which form part of their day-to-day activities as they do presently, unless they have been identified as a request for information under the Act.
- 3.2 However, it is important to understand that the Act imposes further obligations upon the Group in respect of requests for information. All enquiries, routine or otherwise, received in a permanent format (letters, faxes, emails, video cassettes, audio tapes, recorded voicemail messages, etc.) will be subject to the Act, even if they do not cite or mention the Act. As a result, it is important that Company areas direct such enquiries immediately to the Corporate Services Officer to allow a response to be provided within the 20 working day timescale to ensure compliance with the terms of the Act.

#### **Verbal requests for information**

- 3.3 While verbal requests for information do not fall within the scope of the Act, the Group does have a duty to provide advice and assistance as detailed above. Where an employee receives a verbal request for information they should advise the applicant of the need to put their request in writing and confirm what must be included in the request for it to be valid under the Act.
- 3.4 Employees should note that verbal requests for environmental information under the Environmental Information (Scotland) Regulations 2004 are valid.

#### **How is a request for information made?**

- 3.5 Requests for information must be made in writing or in another permanent recorded form, such as recorded voice message. Applicants must state their name and address and describe in sufficient detail the nature of the information they require. There is

no need to cite the Act or explain why information is being requested.

### **Can the Group withhold information?**

- 3.6 The Act provides that certain information is exempt from disclosure, although in most cases the information should only be withheld if the public interest in withholding it is greater than the public interest in disclosing it.
- 3.7 The Act makes provision for two types of exemptions: absolute exemptions and non-absolute exemptions.
- 3.8 If an absolute exemption applies, the Group will not be required to release the information. Absolute exemptions apply to the following categories of information:
  - 3.8.1 information which is otherwise accessible – for example, information which is contained in the Group's Model Publication Scheme;
  - 3.8.2 information which is subject to a legal prohibition on disclosure – for example, information which cannot be disclosed by virtue of another Act of Parliament;
  - 3.8.3 confidential information – information obtained from a third party which is subject to a duty of confidentiality;
  - 3.8.4 court records; and
  - 3.8.5 personal information – information the disclosure of which would constitute a breach of the Group's obligations under the General Data Protection Regulation (EU) 2016/679.
- 3.9 If a non-absolute exemption applies, the Group will have to apply a two-step test to establish whether the information should be released. The first of these is to establish whether disclosure of the information would, or would be likely to, result in "substantial prejudice" – for example, substantial prejudice to a person's commercial interests or to the effective conduct of public affairs.
- 3.10 The second test to be applied is referred to as the "public interest test". The Group must carefully consider the nature of the information being requested and decide whether the public interest in disclosure of the information outweighs the public interest in withholding the information. If the Group considers that the public interest is in favour of disclosure then the information must be

disclosed, even if such disclosure would result in substantial prejudice to, for example, a person's commercial interests.

3.11 Non-absolute exemptions apply to the following categories of information:

3.11.1 information intended for future publication – information which the Group intends to publish within 12 weeks of the request being made need not be disclosed;

3.11.2 information relative to formulation of Scottish Administration policy;

3.11.3 information relative to relations within the United Kingdom;

3.11.4 information which, if disclosed, may prejudice the effective conduct of public affairs;

3.11.5 information which, if disclosed, may prejudice national security and defence;

3.11.6 information which, if disclosed, may prejudice international relations; and

3.11.7 information which, if disclosed, may prejudice commercial interests or the economy.

3.12 The Group may also refuse to comply with a request for information under the Act where the request is repeated or vexatious:

3.12.1 if a request for information is identical or substantially similar to a previous request for information and a reasonable period of time has not lapsed between the requests then it may be a repeated request and the Group may refuse to comply with it; and

3.12.2 a request for information may be vexatious where:

3.12.2.1 it would impose a significant burden on the Group;

3.12.2.2 it does not have a serious purpose or value;

3.12.2.3 it is designed to cause disruption or annoyance to the Group;

3.12.2.4 it has the effect of harassing the Group; and/or



3.12.2.5 it would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate,

the vexatious provisions under the Act only apply to requests for information and may not be applied to the applicant submitting the request.

### **What are the cost implications for the Group?**

- 3.13 In specific circumstances, the Group may charge a fee for responding to requests for information under Regulations passed in relation to the Act (the "**Fees Regulations**")
- 3.14 The Fees Regulations state that requests which cost the Group up to £100 to deal with must be complied with free of charge. Where a request will cost the Group more than £100, the Group is entitled to recover 10% of costs up to a maximum prescribed limit of £600. Where a request will cost the Group more than £600, the Group is entitled to refuse the request unless the applicant is willing to pay the Group for full cost recovery.
- 3.15 The rate for staff time for dealing with a request for information has been set at a maximum rate of £15 per hour. In addition, photocopying, printing etc. may only be charged at cost.
- 3.16 Full details of our charging schedule is included within the Guide to Information.

### **Procedures for dealing with a request for information**

- 3.17 It is important that employees familiarise themselves with the key principles of the Act in order that they can properly identify a request for information under the Act and the ways in which such a request should be dealt with.
- 3.18 Employees should report any suspected requests for information under the Act to the Corporate Services Officer immediately. Employees should also be aware of the following these key procedural steps when the Group receives a request for information:
- 3.18.1 identify a request as a request for information under the Act – does the request meet the minimum threshold requirements?;
- 3.18.2 the obligation on employees to provide advice and assistance to anyone making a request for information;

- 3.18.3 general awareness of timescales – the Group must respond to requests for information within 20 working days;
  - 3.18.4 the need to properly identify the information being requested and if it is within the scope of the Act;
  - 3.18.5 the need to establish whether the Group actually holds the information being requested;
  - 3.18.6 general awareness of the contents of the Group's Model Publication Scheme, with particular emphasis on the information which individual Company areas have made available under the Group's Model Publication Scheme;
  - 3.18.7 general awareness of the Group's internal appeal procedures in respect of requests for information; and
  - 3.18.8 general awareness of the requirement to regularly review and, where necessary, revise internal procedures in respect of the Act including the need to regularly review the Group's Model Publication Scheme.
- 3.19 If an applicant is unhappy about how the Group has handled a request for information under the Act, they can ask for the response to be reviewed. Applicants must request a review within 40 working days of receiving the Group's response to their request for information and the Group must review the response and respond within 20 working days.
- 3.20 The Corporate Services Manager will be responsible for internal reviews

### **Other information regimes**

- 3.21 In addition to the right to request information under the Act, information held by the Group can also be accessed under other legislation, most notably the General Data Protection Regulation (EU) 2016/679 and the Environmental Information (Scotland) Regulations 2004.
- 3.22 If employees receive a request for information which relates to the General Data Protection Regulation (EU) 2016/679 or the Environmental Information (Scotland) Regulations 2004 and is one employees are unable to routinely deal with in the course of their normal duties please inform the Corporate Services Officer in the first instance.

## 4 **BREACH AND REVIEW**

### **Role of internal audit**

- 4.1 Failure to observe practices that help the Group comply with the Act could expose the Association to a certain degree of risk. Keeping this Policy up to date and ensuring that employees are aware of its contents is one way of helping guard against any legal breaches. As an added safeguard, the internal auditors will be required to comment on freedom of information at least once in every three years.

### **Breach of this Policy**

- 4.2 This Policy is mandatory and therefore any employees, including others who obtain, handle, process and share information on behalf of the Group, must adhere to the rules of this Policy. Any breach of this Policy will be taken seriously and may result in disciplinary action (in the case of an employee). Failure by employees to comply with this Policy could amount to misconduct, which is a disciplinary matter.
- 4.3 A failure to comply with this Policy could also expose the Association to enforcement action by the Commissioner. There may also be negative publicity as a result of a breach that is made public.

### **Review of this Policy**

- 4.4 The Association may review or amend this Policy at any time and will inform the Group Members and employees of any amendments.

