

<b>Policy Name</b>	Environmental Information Policy
<b>Policy Category</b>	Corporate & Governance
<b>Policy Number</b>	CG024
<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>	16 <sup>th</sup> December 2019
<b>Next Review Date</b>	December 2024

## 1 INTRODUCTION AND OVERVIEW

### Introduction

- 1.1 The Environmental Information (Scotland) Regulations 2004 (the "**EIRs**") places a number of obligations on the way Lochaber Housing Association Limited (the "**Association**") manages and shares environmental information held by us or on our behalf.
- 1.2 The aim of the EIRs is to give members of the public access to environmental information to encourage greater awareness of issues that affect the environment. Greater awareness by the public helps make Scottish public authorities more accountable and transparent and it builds public confidence and trust in them.
- 1.3 The EIRs enable public access to environmental information held by or on behalf of the Association. As a result, any employees who deal with environmental information or with the public should be aware of the key principles and obligations under the EIRs. This Policy is designed to inform employees about the EIRs, their responsibilities under the EIRs 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**").
- 1.5 The Association, as a registered social landlord, is classed as a Scottish public authority for the purposes of the EIRs as it is under

the control of another public body, the Scottish Housing Regulator and it has public responsibilities relating to the environmental.

- 1.6 From 11 November 2019, the Association and its subsidiaries were subject to the Freedom of Information (Scotland) Act 2002 ("**FOISA**"). This means that the Association and each Group Member will fall within the definition of a Scottish public authority for the purposes of the EIRs.

### **Responsibility for Environmental Information**

- 1.7 The Association will appoint a Corporate Services Officer who will provide advice and assistance to the Group in relation to EIRs requests and responses and support the mechanisms for exception decisions and reviews.

### **What is environmental information?**

- 1.8 It may be obvious when requested information is environmental, for example, information about waste management or pollution levels. However, environmental information covers a large range of topics, such as:

- 1.8.1 the environment itself, including air, water, earth, and the habitats of animals and plants;
- 1.8.2 other things that affect the environment, such as emissions, radiation, noise and other forms of pollution; and
- 1.8.3 policies, plans and laws on the environment.

- 1.9 For this reason, it is important that employees forward any suspected requests for environmental information on to the Corporate Services Officer as soon as they are received.

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

- 1.10 There are three main duties under the EIRs: the duty to actively disseminate environmental information; the duty to respond to requests for environmental information; and the duty to provide advice and assistance.
- 1.11 The duty to actively disseminate: under the EIRs, the Group is required to actively disseminate environmental information to members of the public. This involves making environmental information easily available by means of websites,

telecommunications and electronic technology. The Group must also keep this information organised and up to date. Some environmental information may be found within the Group's Model Publication Schemes, however, these may not include all the environmental information which the Group holds and the Group must actively disseminate outstanding environmental information.

1.12 The duty to respond to requests: where environmental information is not actively disseminated, the Group Members will have to respond to specific requests for environmental information within 20 working days, unless the environmental information falls within one of the exceptions under the EIRs. The Group may extend the time for complying with a request by up to an additional 20 working days, but only where the volume and complexity of the information covered by the request makes it impracticable to comply within the original 20 working days' deadline. Anyone or any organisation, irrespective of geographical location, can ask for environmental information and they do not have to say why they want that information.

1.13 The duty to provide advice and assistance: under the EIRs, the Group must provide requesters with advice and assistance in relation to their rights under the EIRs, so far as it would be reasonable to expect the Group members to do so. In particular, the Group may have to assist requesters in defining the environmental information they require, providing an outline of the different types of environmental information that meet the terms of the request and providing access to catalogues and indexes to assist the requester. The Group can also transfer the request for another authority if it does not hold the requested environmental information.

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

1.14 The EIRs do not 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. However, any other law or enactment would prevent environmental information being disclosed does not apply under the EIRs and that environmental information must still be disclosed.

## **The Scottish Information Commissioner**

- 1.15 The EIRs are 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 environmental information under the EIRs and to enforce this right to make sure that people get the environmental information to which they are entitled.
- 1.16 The Commissioner has a wide variety of powers under the EIRs to ensure compliance. Requesters who are dissatisfied with the manner in which the Group has dealt with a request for environmental 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 the environmental information should be disclosed.
- 1.17 If the Commissioner considers that the Group is not complying with its duties under the EIRs, the Commissioner can issue an enforcement notice informing the Group which part of the EIRs 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**

- 1.18 All employees should have a general awareness of key EIRs principles and obligations. General information on EIRs will be available from the Corporate Services Officer.

## **2 Dealing with requests for environmental information under the EIRS**

- 2.1 No type of environmental information is restricted from being disclosed in response to a request under the EIRs. This means that environmental information can be disclosed regardless of its source, including anything that is written down, such as documents, notes, sketches and post-it notes. Digital and analogue records, DVDs, Dictaphone tapes or any other electronic storage device is also subject to the EIRs. Any other type of electronic files or databases can also contain environmental information. Further, the duty to make environmental information available includes the duty to provide copies of original documents.

- 2.2 As a result, it is important that departments and subsidiaries 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 EIRs.

### **Verbal requests for information**

- 2.3 While verbal requests for information do not fall within the scope of FOISA, verbal requests for environmental information under the EIRs are valid.
- 2.4 The Group cannot require requesters to put their request in writing. However, if a request is made verbally, employees should write down the request and date it. It should then be passed to the Corporate Services Officer who will confirm with the requester whether this is an accurate record of their request. There should be no delay in passing requests for environmental information to the Corporate Services Officer as the date on which the Group receives the verbal request will count as the date of receipt for the purposes of the EIRs, rather than the date of confirmation by the requester.

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

- 2.5 Requests for environmental information can be made in any form and in any way. There is no need for requestors to cite the EIRs or explain why environmental information is being requested, or provide their name or address. However, in order to respond to a requester's request for environmental information, it is good practice to take an email address or postal address from the requester.

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

- 2.6 The EIRs provides that in some cases environmental information may be withheld from disclosure, although in all cases the environmental information should only be withheld if the public interest in withholding it is greater than the public interest in disclosing it.
- 2.7 The EIRs make provision for two types of exceptions: class exceptions and substantial prejudice exceptions.

### **Class exceptions**

2.8 Class exceptions are based on the type of environmental information held or the nature of the request rather than the content of the environmental information. Even if any of these exceptions apply, the Group must also apply the public interest test. These exceptions include:

2.8.1 environmental information which is not held – this applies where the Group does not hold the requested environmental information;

2.8.2 manifestly unreasonable requests – for example, in complying with the request, a significant burden would be imposed on the Group, or the request is designed to cause disruption or annoyance to the Group;

2.8.3 the request is formulated in too general a manner – for example, the Group can refuse a request for environmental information if the request is formulated in too general a matter. However, under the duty to provide advice and assistance, the Group will be required to assist the requester to see if their request can be clarified;

2.8.4 material in the course of completion; and

2.8.5 internal communications.

### **Substantial prejudice exceptions**

2.9 Substantial prejudice exceptions can only be applied where disclosure would, or would be likely to, cause substantial prejudice. If a substantial prejudice exception applies, the Group will have to apply a three-step test to establish whether the environmental information should be released:

2.9.1 the first step is to establish whether disclosure of the environmental information would cause, or be likely to cause, substantial harm to, for example, issues, processes, persons etc.;

2.9.2 the second step is to consider whether circumstances have changed since the information was created; and

2.9.3 the third step requires the Group must determine if the environmental information is publically available. If so, the disclosure is less likely to cause substantial prejudice.

The public interest test must also be applied.

- 2.10 Substantial prejudice exceptions apply where the disclosure of the environmental information would, or would be likely to, substantially prejudice:
- 2.10.1 international relations, defence, national security or public safety;
  - 2.10.2 the course of justice, the ability of a personal to receive a fair trial or the ability of any public authority to conduct an inquiry of a criminal or disciplinary nature;
  - 2.10.3 intellectual property rights, including copyright, data base rights and copyright in database;
  - 2.10.4 the confidentiality of proceedings;
  - 2.10.5 the confidentiality of commercial or industrial information – for example, trade secrets, information supplied by contractors, information supplied as part of a procurement process;
  - 2.10.6 third party interests; and
  - 2.10.7 the protection of the environment.

### **The public interest test**

- 2.11 All of the above exceptions are subject to the public interest test. Therefore, the Group may still need to disclose environmental information if it is in the public interest to do so. The "public interest test" is not defined in the EIRs but the Group needs to determine if it would serve the interests of the public better to withhold or disclose the environmental information. There is also a presumption in favour of disclosure, so the starting point will be that the environmental information will be disclosed unless it can be demonstrated why it should not be.

### **Personal data**

- 2.12 There is also specific provision within the EIRs which provides that personal data may be withheld from disclosure where it would constitute a breach of the Group's obligations under the General Data Protection Regulation (EU) 2016/679. There is no need to

apply the public interest test before withholding personal data under the EIRs.

### **Emissions**

2.13 In the event that the environmental information relates to emissions, the Group cannot rely on the following exceptions:

2.13.1 confidentiality of proceedings;

2.13.2 confidentiality of commercial or industrial information;

2.13.3 the interests of the person who provided the information;  
and

2.13.4 the protection of the environment.

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

2.15 In specific circumstances, the Group may issue a fees notice to requesters for responding to their requests for environmental information under the EIRs.

2.16 The Group does not charge for the time involved in determining whether it holds the environmental information requested or whether the environmental information can be released. However, charges can be made for locating, retrieving and providing information – for example, photocopying and postage.

2.17 The Group will issue the requester with a notification of the charge and how it has been calculated. Once payment of this has been made by the requester, the Group will then provide them with the requested environmental information.

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

<https://www.lochaberhousing.org.uk/your-lha/about-us/freedom-of-information/>



Any fee charged by the Group will be reasonable and will not exceed the procedure for dealing with a request for environmental information.

- 2.19 It is important that employees familiarise themselves with the key principles of the EIRs in order that they can properly identify a request for environmental information under the EIRs and the ways in which such a request should be dealt with.
- 2.20 Employees should report any suspected requests for environmental information under the EIRs to the Corporate Services Officer immediately. Employees should also be aware of the following key procedural steps when the Group receives a request for environmental information:
- 2.20.1 identify a request as a request for environmental information under the EIRs – a request can be made in any form and does not have to be made in writing;
  - 2.20.2 the obligation on employees to provide advice and assistance to anyone making a request for environmental information;
  - 2.20.3 general awareness of timescales – the Group must respond to requests for environmental information within 20 working days, although this can be extended to 40 working days in certain circumstances;
  - 2.20.4 the need to properly identify the environmental information being requested – it is important to refer to the full definition of environmental information provided in the EIRs to determine whether information is environmental or not;
  - 2.20.5 the need to establish whether the Group actually holds the environmental information being requested;
  - 2.20.6 general awareness of the duty to actively disseminate environmental information in an accessible and systematic way;
  - 2.20.7 the Group's Model Publication Scheme may include environmental information which is available to members of the public;
  - 2.20.8 general awareness of the Group's internal review procedures in respect of requests for environmental information; and

2.20.9 general awareness of the requirement to regularly organise and keep environmental information up to date.

2.21 If a requester is unhappy about how the Group has handled a request for environmental information under the EIRs, they can ask for the response to be reviewed. Requesters must request a review within 40 working days of receiving the Group's response to their request for environmental information and the Group must review the response and respond within 20 working days. The Group cannot accept late requests for review under the EIRs.

2.22 The Corporate Services Manager is responsible for internal reviews.

### **Other information regimes**

2.23 In addition to the right to request environmental information under the EIRs, information held by the Group can also be accessed under other legislation, most notably the General Data Protection Regulation (EU) 2016/679 and FOISA.

2.24 If employees receive a request for information which relates to the General Data Protection Regulation (EU) 2016/679 or FOISA and if employees are unable to routinely deal with the request in the course of their normal duties, please inform the Corporate Services Officer in the first instance.

## **3 BREACH AND REVIEW**

### **Role of internal audit**

3.1 Failure to observe practices that help the Group comply with the EIRs could expose the Group 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.

3.2 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**

3.3 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.

- 3.4 A failure to comply with this Policy could also expose the Lochaber Housing Association Group 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**

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