

<b>Department:</b> Corporate Business	<b>Policy name:</b> Freedom of Information Policy
<b>Effective date:</b> 11 November 2019	<b>Policy number:</b>
<b>Review date:</b> 31 March 2020	<b>Approved by:</b> Board of Management
<b>Policy owner:</b> Freedom of Information Officer	<b>Policy Approval date:</b> 22 October 2019

**1. INTRODUCTION**

The DGHP Freedom of Information (‘FOI’) Policy is intended to provide guidance for the on the FOI Laws and our responsibilities under the FOI Laws.

This Policy applies to all information, including information stored on DGHP’s behalf by another organisation or authority, that relates to DGHP’s housing activities regulated by the Scottish Housing Regulator.

This Policy covers all employees, contractors, consultants, modern apprentices and all visitors to business premises shall comply with this Policy. Adherence to this Policy is an individual responsibility; failure to comply may result in disciplinary action.

**2. BASIC PRINCIPLES**

The FOI Laws aim to increase openness and accountability in government and across the public sector by ensuring that people (anywhere in the world) have the right to access information held by bodies defined as "Scottish public authorities".

The FOI Laws enable people to see and question how DGHP functions and how decisions are made in relation to the DGHP’s housing activities regulated by the Scottish Housing Regulator. Under the Freedom of Information (Scotland) Act 2002 (‘FOISA’), DGHP has to adopt and maintain a scheme relating to the publication of information (Publication Schemes) so that the public can see what types of information is held by DGHP. Where information is not proactively made available in the Publication Schemes, individuals can make specific requests for information under either FOISA or the Environmental Information Regulations (‘EiRs’). There are strict time limits for making information available to individuals when they submit requests.

It does not matter how old the information, why it was created or in what format it is held, if DGHP holds the information then it must be disclosed under the FOI Laws, unless it is specifically exempt.

DGHP’S Freedom of Information Officer can provide assistance and guidance on any matters relating to this.

**3. RESPONSIBILITIES**

DGHP employees have a responsibility to ensure that all requests for information are dealt with in conjunction with the applicable DGHP policies and procedures. Employees are responsible for:

- Familiarising themselves with this Policy and related guidance procedures;
- Providing advice and assistance to persons making requests for information;
- Dealing with all requests as soon as practicable or within the time limits in the FOI Laws;
- Where applicable, maintaining the integrity of the Publication Schemes;
- Providing the Freedom of Information Officer with notice of any requests and providing information to them when requested; and
- Contacting the Freedom of Information Officer when assistance is required.

It is the responsibility of managers to ensure that employees are made aware of the existence and contents of this Policy.

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**4. POLICY**

4.1 DGHP'S Publication Scheme

The FOI Laws require all Scottish public authorities to adopt and maintain Publication Schemes.

The primary purpose of DGHP's Publication Scheme is to make it easier for the public to locate and access information published by DGHP. The Publication Scheme tells the public what classes of information DGHP routinely makes available, where it can be accessed and whether access to it is free or if there is a charge.

DGHP has adopted the Model Publication Scheme, which is a standard framework for Scottish public authorities to publish the information they hold.

The following classes of information are published within the DGHP Publication Scheme:

- Information about DGHP – general information, how it is run and information on corporate planning and external relations;
- How DGHP delivers functions and services;
- How DGHP takes decisions and what decisions have been taken;
- What DGHP spends and spending information;
- How DGHP manages our human, physical and information resources;
- How DGHP procures goods and services externally;
- How DGHP is performing;
- DGHP'S commercial publications; and
- DGHP'S open data.

The Publication Scheme is available in hard copy format from the Freedom of Information Officer and electronically on the DGHP 's website.

4.2 Charges

Information published by DGHP in our Publication Scheme is available free of charge. Where additional copies of information require to be produced to satisfy a request, DGHP reserves the right to apply a standard per page charge in line with the FOI Laws.

4.3 Maintenance

DGHP's Publication Scheme will be reviewed on a regular basis. It is important to maintain and review the Publication Schemes to ensure that up-to-date information is available to the public.

4.4 Handling requests for information

Business Areas by the appropriate Manager or Head of Service, should continue to handle routine enquiries which form part of their day-to-day activities as they do just now, unless any requests have been identified as requests for information under the FOI Laws.

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All requests under FOISA must be in 'permanent form' (i.e. letter, email, etc.) but requests under the EIRs do not need to be in 'permanent form' and can also be made verbally. Individuals do not need to specifically refer to the legislation for a request to be valid.

4.5 Duty to provide advice and assistance

Under the FOI Laws, DGHP needs to provide individuals with advice and assistance in relation to their rights. This is to help individuals who have made a request for information or who want to make a request for information.

This duty could involve employees assisting individuals to make a valid request. Under FOISA, for a request to be valid it must:

- Be in writing or another permanent form, including email or audio recording;
- Include the name of the individual and an address; and
- Include a description of the information requested.

There are no similar provisions under the EIRs and requests for environmental information can be made in any format (including verbally) and do not need to include the name of the individual requesting the information.

DGHP is able to ask individuals for more details to clarify their request where it is not clear what information has been requested. If you think that someone wants information under the FOI Laws you should clarify this with them before sending the request to the Freedom of Information Officer. Please check with the Freedom of Information Officer if you are unsure.

If an individual is requesting their own personal information, this should be treated as a subject access request under the General Data Protection Regulation ('GDPR') and dealt with under the DGHP 's Subject Access Request guidance.

4.6 Time limits

DGHP must respond to requests for information under the FOI Laws within 20 working days of receiving the request – this time limit starts when any employee receives the request, including where that employee is out of the office. It is therefore important that all employees forward requests to the [foi@dghp.org.uk](mailto:foi@dghp.org.uk) email address as soon as possible.

There is no time extension for requests under FOISA but it is possible to extend the time for responding to requests under the EIRs by another 20 working days (40 working days in total). The extension only applies to requests that are complex and for a large volume of information. DGHP needs to tell the individual within the initial 20 working days of the decision to extend and the reasons for the extension.

4.7 Procedures for handling requests

Any DGHP employee can receive a request for information under the FOI Laws.

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There are a number of key procedural steps which DGHP employees should think about when they receive a request for information. It is important for DGHP employees to understand the key principles of the FOI Laws so that you can identify requests.

Key procedural issues include:

- The need to identify a request as a request for information under the FOI Laws – if it is a request under FOISA, is it valid? Is the request more than a routine request for information that the employee would normally provide?;
- The obligation on employees to provide advice and assistance to anyone making a request for information;
- General awareness of timescales – DGHP must generally respond to requests for information within 20 working days;
- The need to properly identify the information being requested;
- The need to establish whether DGHP actually holds the information being requested;
- General awareness of the contents of the DGHP’s Publication Scheme, with particular emphasis on the information which individual Business Areas have made available under the Publication Schemes;
- Basic knowledge of the exemptions and exceptions under the FOI Laws and charging for information;
- General awareness of the need to issue a refusal notice in respect of information which is not going to be disclosed and the content of such a notice;
- General awareness of the DGHP’s internal review procedures in respect of information requests for information; and
- General awareness of the requirement to regularly review and, where necessary, revise internal procedures in respect of the FOI Laws, including the need to regularly review the DGHP’s Publication Scheme.

#### 4.8 Locating information

It is important that all Group employees across Business Areas co-operate with the FOI Officer by ensuring that requests for information are immediately sent to them once received. In addition, the FOI Officer will require assistance from Business Areas to locate and retrieve the requested information. The FOI Officer will require assistance within specific timescales to ensure that DGHP complies with the time limits under the FOI Laws.

#### 4.9 Fees

The FOI Laws contain specific Fees Regulations that govern when Scottish public authorities can charge for information provided to the public through Publication Schemes or in response to requests for information. The Fees Regulations also set out what can and cannot be charged for. DGHP must ensure that certain procedures are followed where we want to charge for information.

DGHP has published separate guidance on charging for information under the FOI Laws and has also produced a charging schedule for providing information under the EIRs. If an individual is required to pay a fee, a Fees Notice will be issued by the FOI officer as soon as possible after the initial request is received.

The Fees Regulations state that requests for information which cost DGHP up to £100 to deal with must be

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responded to for free. Where a request for information will cost DGHP more than £100, DGHP is entitled to recover 10% of costs up to a maximum limit of £600. Where a request will cost DGHP more than £600, DGHP is entitled to refuse the request for information, unless the individual is willing to pay DGHP for the full cost of providing the information.

The costs for providing information will be calculated in line with the DGHP's guidance on charging for FOI and EIRs requests available on DGHP's website.

#### 4.10 Withholding information

The FOI Laws contain exemptions (FOISA) and exceptions (the EIRs) that can be applied by DGHP to withhold information from disclosure, either within our Publication Schemes or when responding to requests for information.

#### 4.11 Exemptions under FOISA

FOISA provides that certain information can be withheld by DGHP 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.

There are two types of exemptions under FOISA: absolute exemptions and non-absolute exemptions. If an absolute exemption applies, DGHP will not be required to release the information. Absolute exemptions apply to the following categories of information:

- Information which is otherwise accessible – for example, information which is contained in DGHP's Publication Scheme;
- Information which is prohibited by law from disclosure – for example, information which cannot be disclosed by virtue of another Act of Parliament;
- Confidential information – information obtained from a third party which is subject to a duty of confidentiality;
- Court records; and
- Personal data – information which, if disclosed, would constitute a breach of the DGHP's obligations under the GDPR.

If a non-absolute exemption applies, DGHP 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.

The second test to be applied is referred to as the "public interest test". DGHP 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 DGHP 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.

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

- Information intended for future publication – information which DGHP intends to publish within 12 weeks of the request being made need not be disclosed;
- Information relative to formulation of Scottish Administration policy;
- Information relative to relations within the United Kingdom;
- Information which, if disclosed, may prejudice the effective conduct of public affairs;
- Information which, if disclosed, may prejudice national security and defence;
- Information which, if disclosed, may prejudice international relations; and
- Information which, if disclosed, may prejudice commercial interests or the economy.

#### 4.12 Exceptions under the EIRs

The EIRs allow DGHP to refuse to make environmental information available if an exception applies, 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.

There are two types of exceptions under the EIRs: class exceptions and substantial prejudice exceptions. Class exceptions are based on the type of information held or the nature of the request and apply in the following circumstances:

- Information is not held – if DGHP does not hold the information but believes that another Scottish public authority does, we must either transfer the request or give the individual the details for the other authority;
- Request is manifestly unreasonable – for example, it would impose a significant burden on DGHP to comply with the request for information;
- Request is too general – this can only be applied after asking the individual to clarify their request;
- Information is still being completed – for example, unfinished documents or incomplete data; and
- Internal communications – for example, internal DGHP correspondence.

Substantial prejudice exceptions only apply where providing the information would, or would be likely to, cause substantial prejudice by asking the following questions:

- Would disclosure of the information cause, or be likely to cause, substantial harm?
- Have circumstances changed since the information was created?
- Is the information publicly available? If so, disclosure is less likely to cause substantial prejudice.

Substantial prejudice exceptions apply where disclosure would, or would be likely to prejudice substantially:

- International relations, defence, national security or public safety;
- The course of justice (including law enforcement), ability of a person to receive a fair trial or ability of any public authority to conduct an inquiry of a criminal or disciplinary nature;
- Intellectual property rights – such as, copyright, database rights, copyright in databases, etc.;
- The confidentiality of proceedings of any public authority where such confidentiality is provided for by

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law;

- The confidentiality of commercial or industrial information – for example, information supplied by contractors and as part of a tendering or procurement process;
- Third party interests – where information was supplied on a voluntary basis in the expectation that it would not be disclosed and the supplier has not consented to the disclosure; and
- Protection of the environment.

As all exceptions under the EIRs are subject to the "public interest test". DGHP 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 DGHP 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 third party's interests.

The only generally "absolute" exception under the EIRs is where the environmental information contains personal data. However, there are two specific situations where DGHP does need to apply the public interest test before withholding personal data under the EIRs.

#### 4.13 Refusal notices

Where DGHP decides to refuse to provide information in response to a request under the FOI Laws, we must issue a refusal notice. Refusal notices must contain specific information and DGHP has template responses that are used by the FOI officer to comply with the FOI Laws.

The templates mainly include the following:

- Reasons for the refusal – for example, details of the exemption that has been applied and why;
- Application of the public interest test, if relevant;
- Details of the DGHP's review processes; and
- Details of individuals' right to make an application to the Scottish Information Commissioner.

#### 4.14 Reviews and investigations

There are two stages for individuals to have the DGHP's response to their request for information reviewed under the FOI Laws. The first is an internal review by DGHP and the second is to make an application to the Scottish Information Commissioner (the Commissioner).

#### 4.15 Reviews by DGHP

If any individual is unhappy about how we have handled their request for information under the FOI Laws they can ask for the response to be reviewed. Individuals must request a review within 40 working days of receiving DGHP 's response and we must comply with the review and respond within 20 working days.

	<b>DUMFRIES AND GALLOWAY HOUSING PARTNERSHIP</b>
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The nature of internal reviews will depend on the response and there is no set structure. For example, if DGHP has refused to provide information under an exemption or exception then the review would consider the initial request and whether the exemption or exception was correctly applied.

#### 4.16 Applications to the Scottish Information Commissioner

The FOI regime in Scotland is regulated by the Commissioner, which is a separate body to the Information Commissioner's Office (which governs data protection in the UK and FOI in England and Wales). The Commissioner has two main responsibilities: to make sure that individuals are aware of their right to access information under the FOI Laws and then to enforce this right to make sure that individuals get the information to which they are entitled.

The Commissioner has a wide variety of powers under the FOI Laws to ensure compliance. Individuals who are unhappy with how DGHP has dealt with a request for information under the FOI Laws may refer the matter to the Commissioner who will investigate the matter and make a determination as to the action which DGHP should take. This may include a determination as to whether information should be disclosed.

If the Commissioner considers that DGHP is not complying with our duties under the FOI Laws, the Commissioner can issue an enforcement notice informing the Group which part of the FOI Laws we are failing to comply with and the remedial action required. DGHP could be found in contempt of court if we fail to comply with an enforcement notice issued by the Commissioner.

Although primary responsibility for regulation of the FOI regime lies with the Commissioner, there are instances where the courts may become involved. It is a criminal offence for DGHP or its employees to destroy or erase information after a request for information has been received and such an offence carries a fine of up to £5,000.

### **5. GOVERNANCE AND REGULATION**

This Policy complies fully with the DGHP's Equality and Diversity Policy. We recognise our pro-active role in valuing and promoting diversity, fairness, social justice and equality of opportunity by adopting and promoting fair policies and procedures.

We are committed to providing fair and equal treatment for all our stakeholders including tenants and will not discriminate against anyone on the grounds of race, colour, ethnic or national origin, language, religion, belief, age, sex, sexual orientation, gender re-alignment, disability, marital status, pregnancy or maternity. Indeed, we will positively endeavour to achieve fair outcomes for all.

We carry out Equality Impact Assessments when we review our policies. We check policies and associated procedures regularly for their equal opportunity implications. We take appropriate action to address inequalities likely to result or resulting from the implementation of the policy and procedures.

### **6. RELATED / REFERENCED POLICIES**

Document Retention Policy  
Data Protection Policy



**DUMFRIES AND GALLOWAY HOUSING PARTNERSHIP**

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