



## **Gardeen Housing Association**

### **Freedom of Information and Environmental Information Policy**

<b>Implemented</b>	<b>2023/2024</b>
<b>Next Review:</b>	<b>2026 or earlier if changes in publication of the Scottish Housing Regulator Guidance Notes or Performance Standards or Association Procedures</b>

#### **A: Governance & Accountability**

# **Freedom of Information and Environmental Information Policy**

## **Introduction**

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”).

From 11 November 2019 Gardeen Housing Association will be designated as Scottish Public Authority and will need to make information available in accordance with FOISA and EIR.

This is the Freedom of Information and Environmental Information Policy of Gardeen Housing Association. The policy will:

- provide a general understanding of FOISA and EIR; and
- outline where responsibility lies for complying with the legal duties of Gardeen Housing Association under FOISA and EIR

## **Policy Statement**

Gardeen Housing Association 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 Gardeen Housing Association 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 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

## **Responsibilities**

- The Director has lead management responsibility for FOISA and EIR within Gardeen Housing Association. This will include effective implementation and regular review of this Policy. The Senior Housing Officer will also share responsibility for data protection responsibilities.
- As a small staff team, all members of staff will be involved in the management of FOI and EIR and will receive regular training
- All Gardeen employees are responsible for:
  - familiarising themselves with this policy;
  - forwarding information requests received to the Director and the Senior Housing Officer as quickly as possible. If you are unsure how to recognise an information request you should seek guidance from the Director and Senior Officer.
  - seeking guidance from the Director and Senior if they are unsure about any of the duties placed on Gardeen Housing Association by FOISA or EIR;
  - attend refresher training as required to update FOI skills.
- Employees should be aware that where an information request is received and an employee deletes or alters information held by Gardeen Housing Association 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 Director or Senior Housing Officer.
- Compliance with this policy is compulsory for all employees of Gardeen Housing Association. Any employee who fails to comply with this policy may be subject to disciplinary action.

## **Scope of the Policy**

This policy applies to any information held by Gardeen Housing Association which relates to one or more of the functions set out below, 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 Gardeen Housing Association.

This policy applies to all Gardeen Housing Association employees.

## **Background**

### **Why is Gardeen Housing Association subject to FOISA and EIR?**

Gardeen Housing Association 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”).

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.

### **What is subject to FOISA and EIR?**

However, in accordance with the terms of the Order, not everything that Gardeen Housing Association does is subject to FOISA and EIR. Instead, Gardeen Housing Association 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 Gardeen Housing Association 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 Gardeen Housing Association 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.

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

EIR provides a right of access to ‘Environmental Information’ held by Gardeen Housing Association. 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.

Whilst the obligations 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.

## **Legal Duties**

Gardeen Housing Association has a number of legal duties which it must comply with under FOISA and EIR. These are set out in more detail below:

### **Responding to Information Requests**

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

Gardeen Housing Association 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 Gardeen is entitled to extend the timescale for responding by an additional 20 working days).

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

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

Gardeen Housing Association may choose to charge for fulfilling information requests received from individuals. Any charges made by Gardeen Housing Association 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 [see publication scheme) of Gardeen Housing Association

Any fee charged by Gardeen Housing Association will be reasonable and will not exceed the costs to Gardeen Housing Association of providing requested information.

### **Responding to Requests for Review**

Where someone has requested information from Gardeen Housing Association and:

- Gardeen Housing Association 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 Gardeen Housing Association reviews the response to their request to determine whether or not the provisions of FOISA or EIR have been followed.

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

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

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

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 Gardeen Housing Association and the individual in question have a right to appeal to the courts on a point of law.

### **Provision of Advice and Assistance to Individuals**

Gardeen Housing Association 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. Gardeen Housing Association will comply with this duty by following the guidance contained in the Section 60 Code of Practice issued by Scottish Ministers.

## **Publication of Information**

Gardeen Housing Association shall publish information in accordance with its Publication Scheme through its Guide to Information. The Guide to Information of Gardeen Housing Association will be available on its website and a paper format will also be available on request.

## **Data Protection**

Gardeen Housing Association is committed to upholding its data protection obligations set out in the GDPR and the Data Protection Act 2018.

Under data protection laws, individuals have the right to request access to all of the information that Gardeen Housing Association holds about them. This and other rights that individuals have under data protection are not covered by this policy and you should refer to Gardeen's Data protection Policy when dealing with these rights.