



Affordable homes.
Exceptional care.

Trust Housing Association Limited

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Trust Housing Association Ltd

Freedom of Information Policy

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Freedom of Information Policy

1. Introduction

- 1.1 Trust Housing Association aims to provide homes and services of the highest standard. In doing this the Association requires to hold information that relates to it's core social housing activities .
- 1.2 This document details the policy framework and the procedures and processes that Trust will follow to ensure compliance with the Freedom of Information (Scotland) Act 2002 (FOISA).

2. Aims and objectives

- 2.1 This policy aims to set out the responsibilities of the Association and its staff in publishing, and providing information that falls within Freedom of Information legislation & guidance.

3. Legislative framework

- 3.1 The Freedom of Information (Scotland) Act 2002 defines 3 duties that all public authorities must abide by in regards the information it makes available to the general public.
- 3.2 The Duty to Publish – All public authorities should pro-actively publish certain categories of information.
- 3.3 The Duty to Respond to Requests – All public authorities should be prepared to provide information that is not pro-actively published, where there is no valid exemption, on request by any member of the public.
- 3.4 The Duty to Advise and Assist – All public authorities should provide support and advice to members of the public to assist them to exercise their rights to information.
- 3.5 For the purpose of Freedom of Information, Trust Housing Association is classified as a public authority as of the 11th of November 2019, from which point Trust is required to apply the duties set out in the FOISA.

4. Notification

- 4.1 Trust Housing Association Ltd. and all subsidiaries are registered with the Scottish Information Commissioner (SIC).
- 4.2 Further information on Freedom of Information is available from the Scottish Information Commissioner via telephone on 01334 464610 and from their website at www.itspublicknowledge.info

5. Responsibilities

- 5.1 All staff members are responsible for Freedom of Information and should always follow the Freedom of Information policy and procedure when dealing with requests for information. Any failure to apply the policy and procedures that results in Trust's failure to comply with its legal obligations, may lead to disciplinary proceedings.
- 5.2 The Association's FOI Lead is the Data Protection Project Lead. The FOI Lead has responsibility for co-ordinating the Freedom of Information Policy within Trust Housing Association. Any Freedom of Information enquiries to the Association should be initially referred to the FOI Lead as the identified contact person and then channelled to the appropriate member of staff.
- 5.3 The FOI Lead will be responsible for responding to all requests for information and may task Directors and Heads of Service with arranging for requested information to be made available. The FOI Lead will also be responsible for ensuring that all actioned FOI requests are published on the Associations website.
- 5.4 The FOI Lead will be responsible for maintaining Trust's Model Publication Scheme and ensuring that all new valid information is published on the Association's website. They will be responsible for archiving old information once it has been removed from the MPS.
- 5.5 The FOI Lead will be responsible for all dealings with the Scottish Information Commissioner, including regular reporting on the requests for information received and consulting with them in the event of a complaint or investigation.
- 5.6 The FOI Lead will consult with the Data Protection Working Group on any complex Freedom of Information matters that require a greater degree of scrutiny.
- 5.7 In the event of there being a request for a review of the outcome of a FOI request, the Director of Finance & Business Services will be responsible for carrying out the review and advising the requester of the outcome.
- 5.8 Each Director has overall responsibility for their department or section and needs to ensure that staff members are cognisant of the FOI policy and procedures. They will be responsible for ensuring all applicable information generated is passed to the FOI Lead so that it may be published for public consumption. On receipt of a request for unpublished information, for which there is no exemption, they will also be responsible for the provision of the information held by their department or section.

6. Model Publication Scheme

- 6.1 Trust is committed to transparency and in line with the Duty to Publish requirements of FOISA, has signed up to the Model Publication Scheme (MPS) created by the SIC. The MPS clarifies what information should be proactively published, and what information and guidance Trust must offer to the public to facilitate their access to information.
- 6.2 Trust will publish all relevant categories of information, as defined by the MPS, on our website, alongside a guide to information which offers the public guidance on what information is available, how to access information that is not published, what fees may be charged for accessing information and how to get in touch with any queries.
- 6.3 Trust will continue to update the MPS when new information is published and will retain information for the current and two prior financial years as standard. Older information will be removed from the MPS but retained for a period of seven financial years, to enable us to facilitate requests for information no longer on the MPS.

7. Freedom of Information Requests

- 7.1 Trust will treat all requests for information fairly and without prejudice. There will be no consideration given to previous interactions with the requester save for cases of persistent or vexatious requests for information. Similarly, no consideration will be given towards the perceived motivations for the request for information.
- 7.2 Once a request for information has been received, Trust has 20 working days in which to reply. The 20-working day period does not start until a valid request is received, so any period of waiting for a response or clarification will not count towards the period we have to respond.
- 7.3 There is also a provision that allows us to 'stop the clock' in any instance where it is necessary to go back to the requester to ask that they clarify something about their request. This should not be used as a stalling tactic or as a means of avoiding missing the original 20 working day deadline.
- 7.4 If it is determined that a fee should be charged for the provision of the information, it is permitted to 'stop the clock' until the payment has been received.
- 7.5 All requests will be passed to the FOI Lead who will review the request, determine whether the information is already published, determine if there are any applicable exemptions on the requested information, determine if there is an applicable fee for providing the information and communicate the result of that review to the requester.
- 7.6 In cases where the information is not currently published, no exemption applies, and any charge has been paid, the FOI Lead will contact the relevant Director or Head of Service to ask them to provide the information. Once provided the FOI Lead will forward the information to the requester.

- 7.7 The FOI Lead will retain a record of all information requests and will arrange for actioned requests to be published on the Association's website

8. Exemptions

- 8.1 There are some exemptions to Freedom of Information legislation, where access to information can be denied. Those exemptions are broken in to two categories: Absolute Exemptions and Qualified Exemptions.

Absolute Exemptions

- 8.2 Are instances where you can deny any FOI request without any further consideration. Absolute exemptions include the following instances:
- Where the requested information is already publicly available.
 - Where disclosure would be in breach of a court order.
 - Where disclosure would constitute an actionable breach of a confidentiality agreement.
 - Where the requested information is part of court records.
 - Where a requester has asked for their own personal data (while the basis of denying a FOI request, this would need to be treated instead as a Data Subject Access Request under GDPR legislation).
 - Where disclosure would be in violation of GDPR regulations.
 - Where the requested information is personal census information.

Qualified Exemptions

- 8.3 Can be the basis of denying a FOI request but before coming to that decision we must engage in a process of weighing the personal interest versus the public interest. If the public interest is considered to outweigh the personal interest of the body it relates to, we should provide the information to the requester. Qualified exemptions include the following instances:
- Where the requested information is intended for future publication (within 12 weeks of the receipt of FOI request).
 - Where disclosure would substantially prejudice the commercial interests of any person.
 - Where the requested information is in relation to investigation by Scottish public authorities and proceedings arising out of such investigations.
 - Where disclosure would prejudice substantially any ongoing law enforcement proceedings.
 - Where the requested information could be subject to a claim of confidentiality in legal proceedings
 - Where disclosure would endanger physical or mental health of an individual.

Vexatious or repeated requests

- 8.4 There is no compulsion to comply with a FOI request if it is deemed to be vexatious in nature. There is no set test in place to determine what is and what is not vexatious but some factors to consider are:
- Would the request cause a significant burden?
 - Is there no genuine purpose to making the request?
 - Is the request designed to cause disruption?
 - Is the request intended to harass staff?
 - Is the request inherently unreasonable?

- 8.5 Questions of whether a request is vexatious in nature should always be applicant blind, a request should not be denied based purely on the grounds of previous unrelated behaviours. Generally, it would be wise to err on the side of not considering the request to be vexatious.
- 8.6 Repeated requests can be denied if the information previously provided, or circumstances justifying the denial of a previous request, have not changed.

Protecting commercial interests

- 8.7 One of the Qualified Exemptions that can be the basis of denying a FOI request is where disclosure of information would prejudice the commercial interests of any person. One example of this would be in the case where we have engaged in a tendering process and have selected a contractor to carry out the job we were tendering for. If in this case one of the unsuccessful contractors (or any other contractor working in the same field) were to make a FOI request for information on the tender made by the successful contractor, we would need to consider the commercial interests of the contractor. Getting this information may allow the requester to structure future tenders in such a way as to 'undercut' their competitors, giving a competitive advantage in future bids.
- 8.8 In such an instance we are advised to contact the successful contractor and ask them what aspects of their tender they would consider to be commercially sensitive and would be against their commercial interest to provide to a competitor. We would then have to determine whether the public interest in releasing the information outweighed the commercial interests of the winning contractor.

9 Fees

- 9.1 FOI legislation allows for the charging of a fee for providing access to information in specific circumstances, though there are strict controls on how much can be charged.

Accessing published information

- 9.2 The Model Publication Scheme requires us to make certain categories of information available on our website. If a request is made for information that is published as part of our MPS but the requester does not want to, or is unable to, access the information on the website, and is unable or unwilling to travel to our offices to view the information in person, we can charge a fee to provide the information in hard copy format.
- 9.3 In such a circumstance Trust is entitled to recoup the cost of providing the hard copies of information. This will include charging for the cost of printing/photocopying and the cost of postage. It is not permissible to charge any more than it actually costs Trust to provide the information in this format.

Accessing unpublished information

- 9.4 When a request is made for information that is not included in the Model Publication Scheme, Trust is entitled to charge a fee for the work that goes in to gathering and providing the information.

- 9.5 There are no set fees, instead the fee should be based on the costs incurred in the gathering of the data. Costs will include photocopying/printing, postage and staff's time. Charges for staff time should be calculated per member of staff per hour they have spent based on their hourly salaried rate (this is capped at £15 per hour).
- 9.6 If the total costs come to less than £100 we are not entitled to charge a fee. If the total costs are between £100 and £600 we can charge 10% of the cost (minus the initial £100 cost which is exempt). If the total costs are greater than £600 then that would constitute a basis to deny the FOI request. However rather than flatly saying no, we should advise the requester of the costs involved and see if it's possible for them to amend their request to reduce the costs incurred.

10 Reporting to the SIC

- 10.1 The SIC requires Trust to report to them on a quarterly basis, with details of the number of requests for information we receive. This is done by logging in to the SIC's online portal and uploading data directly.
- 10.2 Trust will report the number of requests received in the quarter, the timescales for our responses to requests and any exemptions we have applied in denying requests for information.

11. Appeals & Complaints

- 11.1 Requesters have the right to appeal if they are unhappy with the response to their request. In such an instance the request would need to be reviewed by someone other than the FOI Lead who reviewed and responded in the first instance.
- 11.2 If the requester is still not satisfied with the response to their appeal, they should be advised of their right to take their appeal to the SIC, who on review may issue a 'decision notice' which would require Trust to act within a given timeframe. Failure to comply with this 'decision notice' could result in the matter being escalated to the Court of Sessions.
- 11.3 If an information requester has a complaint regarding any element of the Freedom of Information Policy or Procedure this should be dealt with under the appropriate section of the Complaints process. (See Complaints Policy and Procedure).

12. Training

- 12.1 The Association will provide all its staff with appropriate training and guidance on the Freedom of Information (Scotland) Act 2002, its importance and their responsibilities in complying with the legislation. This training is provided through the induction programme and ongoing training programme.

13. Data Protection

13.1 Trust will comply with both the Data Protection Act 2018 and the General Data Protection Regulations. Our full privacy policy can be found on the Trust Housing website – www.trustha.org.uk.

14. Anti-Bribery

14.1 Trust is committed to the highest standards of ethical conduct and integrity in all its activities and, to ensure compliance with the Bribery Act 2010, it has introduced an Anti-Bribery policy and procedures. These must be adhered to by all employees, Board Members and associated persons or organisations acting for or on behalf of Trust when undertaking any actions referred to in this policy.

15. Equality, Diversity & Inclusion

15.1 As leaders of EDI, Trust aims to promote equality and diversity and operate equal opportunities policies which inform all aspects of its business. It will ensure that it adheres to the Equality Act 2010 by being committed to equal and fair treatment for all and opposed to any form of unlawful discrimination.

15.2 As such, in considering this policy, no one will be treated differently or less favourably than others because of any of the protected characteristics as listed in the Equality Act 2010:

- disability;
- gender;
- gender reassignment;
- pregnancy and maternity;
- race, colour or nationality;
- sexual orientation; or
- religion or belief.

13.3 Or because of any other condition or characteristic which could place someone at a disadvantage were it to be taken into account, unless this can be objectively justified in terms of the legislation.

13.4 Trust will make reasonable adjustments for disabled people where necessary and possible to do so.

13.5 Upon request, the Trust will make information available in alternative formats, such as large print, tape and Braille to overcome communication barriers.

16. Policy Review

16.1 This Policy will be reviewed on a three-yearly basis. The purpose of the review is to assess the policy's effectiveness and adhering to current legislation and good practice, and identify any changes which may be required.

17. Documentary References

17.1 In all Trust's official documents, where references are made to specific job titles, roles, groups or committees, such references shall be deemed to include any changes or amendments to these job titles, roles, groups or committees resulting from any restructuring or organisational changes made within the Association (or, where this policy also applies to another member of the Trust group, made within that group member) between document reviews.