

Loreburn Group

Freedom of Information and Environmental Information Policy



Creating Great Places to Live

Policy	Freedom of Information & Environmental Information Policy									
Version Reference	1									
Approved by	MC			LET	X				MT	
Date of Approval	October 2019									
Review Period	Every 3 Years or as legislation or substantive changes occur									
Review Due	October 2022									
Policy Champion	Head of Governance & Assurance									
Who this policy affects	Staff	X	Customers	X	Contractors	X	Members of the Public	X		
Where this policy affects	General needs	X	Sheltered	X	Supported	X	Offices/staff base	X		

1. Purpose of this Policy

- 1.1 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”).
- 1.2 From 11 November 2019 **Loreburn Housing Association** will be designated as Scottish Public Authority and will need to make information available in accordance with FOISA and EIR.
- 1.3 This is the Freedom of Information and Environmental Information Policy of **Loreburn 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 **Loreburn Housing Association** under FOISA and EIR
- 1.4 This policy applies to any information held by **Loreburn 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 **Loreburn Housing Association**.
- 1.5 This policy applies to all **Loreburn Housing Association** employees and is accompanied by the [Freedom of Information and Environmental Information Request Procedure](#).

2. Legislative Background

The Freedom of Information (Scotland) Act 2002 (“FOISA”)

Environmental Information (Scotland) Regulations 2004 (“EIR”)

General Data Protection Regulation (GDPR)

3. Associated Policies & Guidance

Privacy Policy

Freedom of Information & Environmental Information Request Procedure

4. Aims & Outcomes of this Policy

- 4.1 **Loreburn 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 **Loreburn 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

5. Background

Why is Loreburn Housing Association subject to FOISA and EIR?

- 5.1 **Loreburn 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”).
- 5.2 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?

- 5.3 However, in accordance with the terms of the Order, not everything that **Loreburn Housing Association** does is subject to FOISA and EIR. Instead, **Loreburn 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 **Loreburn 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 **Loreburn 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?

5.4 EIR provides a right of access to ‘Environmental Information’ held by **Loreburn 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.

5.5 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.

6. Legal Duties

6.1 **Loreburn 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

6.2 People have the right to request information from **Loreburn Housing Association**. Where the information requested is within the scope of the Order and **Loreburn Housing Association** holds that information it must release the information unless an exemption (under FOISA) or an exception (under EIR) applies. **Loreburn 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.

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

6.4 Where **Loreburn 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 **Loreburn Housing Association** is refusing to provide information to individuals it will clearly explain to said individual what provision in FOISA or EIR allows **Loreburn Housing Association** to withhold that information and why **Loreburn Housing Association** believes that provision applies (including, where required, an

explanation of how **Loreburn Housing Association** has carried out the Public Interest Test).

- 6.5 Where **Loreburn Housing Association** is asked to provide information which it does not hold, but **Loreburn Housing Association** knows that another Scottish Public Authority does hold the requested information – **Loreburn 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 **Loreburn Housing Association** shall offer to transfer the individual's request to the other Scottish Public Authority.
- 6.6 **Loreburn Housing Association** may choose to charge for fulfilling information requests received from individuals. Any charges made by **Loreburn 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](#) of **Loreburn Housing Association**
- 6.7 Any fee charged by **Loreburn Housing Association** will be reasonable and will not exceed the costs to **Loreburn Housing Association** of providing requested information.

Responding to Requests for Review

- 6.8 Where someone has requested information from **Loreburn Housing Association** and:
- **Loreburn 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);

They have the right to request that **Loreburn Housing Association** reviews the response to their request to determine whether or not the provisions of FOISA or EIR have been followed.

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

- 6.11 Where **Loreburn Housing Association** performs a review and determines that a response to a request is in accordance with FOISA or EIR then **Loreburn Housing Association** will notify the individual who asked for a review as quickly as possible.
- 6.12 In any event **Loreburn Housing Association** will handle all requests for review in accordance with the timescales set out in FOISA and EIR.
- 6.13 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 **Loreburn 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

- 6.14 **Loreburn 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. **Loreburn 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

- 6.15 **Loreburn Housing Association** shall publish information in accordance with its Publication Scheme through its Guide to Information. The Guide to Information of **Loreburn Housing Association** will be available on its website and a paper format will also be available on request. This will be reviewed at least annually by the Head of Governance & Assurance.

Data Protection

- 6.16 **Loreburn Housing Association** is committed to upholding its data protection obligations set out in the GDPR and the Data Protection Act 2018.
- 6.17 Under data protection laws, individuals have the right to request access to all of the information that **Loreburn 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 **Loreburn's Privacy Policy** when dealing with these rights.

7. Equality & Human Rights

- 7.1 Loreburn aims to ensure that equality, fairness, dignity and respect are central to the way we work and how we treat our customers. We support diversity and uphold equal opportunities in all areas of our work as an employer and service provider.

- 7.2 Loreburn will not discriminate against tenants, staff, visitors, suppliers or others based on their age, sex, sexual orientation, race, disability, religion or belief, marital status, pregnancy and maternity or gender reassignment (collectively referred to as 'protected characteristics' in the Equality Act 2010).

8. Risk Management

- 8.1 Loreburn has a Risk Management Strategy, Policy and Procedure. These documents set out how the organisation will manage risk as an integral part of its governance and management systems, ensuring risks are identified, evaluated and controlled effectively.
- 8.2 Identifiable risks arising from this policy will be monitored and managed by the internal processes set out herein and by regular review of this and all other associated policies and procedures, ensuring risks are mitigated and Loreburn complies with all legislative requirements and regulatory and best practice guidance.

9. Responsibilities

- 9.1 The **Chief Executive** has lead management responsibility for FOISA and EIR within **Loreburn Housing Association**. This will include effective implementation and regular review of this Policy.
- 9.2 All employees are responsible for:
- familiarising themselves with this policy;
 - forwarding information requests received to **the Head of Governance & Assurance** as quickly as possible. If you are unsure how to recognise an information request you should seek guidance from **the Head of Governance & Assurance**;
 - seeking guidance from **Head of Governance & Assurance** if they are unsure about any of the duties placed on **Loreburn Housing Association** by FOISA or EIR;
- 9.3 The below chart illustrates the responsibilities of all staff pertaining to this policy:

Responsibilities	MC	LET	MT	HGA	All Staff
Setting strategic direction and approving Freedom of Information Policy		X			
Ensuring staff are familiar with Policy and their responsibilities.			X	X	X
Providing guidance & Advice to staff with regards FOI		X	X	X	
Ensuring FOI requests (or potential FOI requests) are passed to HGA without delay					X
Assessing requests and collating preparation of response				X	
Assist with collation of information as requested by HGA					X
Sign off Draft Responses		X			
Conduct Review in Request Handling		X			
Review the Publication Scheme as required (and as a minimum annually) to ensure it remains up to date.				X	

- 9.3 Employees should be aware that where an information request is received and an employee deletes or alters information held by Loreburn 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 Head of Governance & Assurance.
- 9.4 Compliance with this policy is compulsory for all employees of Loreburn Housing Association. Any employee who fails to comply with this policy may be subject to disciplinary action in line with the Disciplinary Policy.

10. Policy Review

- 10.1 The Policy Champion is the Head of Governance & Assurance.
- 10.2 The Policy Champion is responsible for completing the Health and Safety Assessment and Equality and Human Rights Assessment Checklist.

10.3 This policy will be reviewed by the Policy Champion every 3 years or sooner as required due to legislative or substantive change.

Policy Assessment Checklist

Health & Safety Assessment

Does this policy have the potential to affect:

Lone Working	No
Safety and/or wellbeing of customers	No
Safety and/or wellbeing of customers	No
Have the above items been considered in the preparation of this policy?	No

Comments:

Equality & Human Rights Assessment

Does this policy have the potential to affect:

Staff's rights to equal opportunities	Yes
Tenants' / Customer's rights to equal opportunities	Yes
Tenants' / Customer's ability to access to homes and/or services	Yes
Have the above items been considered in the preparation of this policy?	Yes

Comments:

This Policy provides a means for all customers/stakeholders to request information and to ensure that all requests are handled transparently and consistently.

Whilst there is a requirement for a formal response and written documentation, staff will also consider additional contact with customers in ways that are appropriate for each individual for example following up letters with phone calls where considered necessary to ensure the content has been understood, particularly where exemptions apply and legal wording and terminology is used (as required under the template guidance to ensure compliance).

Agile Working Assessment

Agile working requirements have been considered and addressed in the preparation of this policy: Yes

