



PORT OF LEITH  
HOUSING ASSOCIATION

**FREEDOM OF INFORMATION AND  
ENVIRONMENTAL INFORMATION POLICY 2019**

## FULL REVIEW TRACKING

A “Full Review” refers to a point when the whole document is reconsidered by appropriate stakeholder to establish if it is still fit for purpose and this is formally signed-off at the appropriate management level. This acts as assurance the Association’s position on key matters is up to date with legislation, regulation and good practice.

<b>Policy Owner</b>	Chief Executive
<b>Document Author(s)</b>	FOI Project Team
<b>Approved By</b>	Leadership Team
<b>Review Cycle</b>	1 year
<b>Last reviewed</b>	September 2019
<b>Next Review Date</b>	September 2020
<b>Communication &amp; Training Methods</b>	Briefing sessions and team meetings
<b>The Policy has a direct link to the following POLHA policies and procedures</b>	<p>Information Security and Acceptable Use Policy 2018</p> <p>Data Management Policy 2018</p> <p>GDPR Privacy Notice Insert for Customers</p> <p>POLHA publication scheme (Guide to Information)</p> <p>Code of Conduct for Governing Board Members and Involved Customers 2017</p>
<b>This policy complies with the requirements of these legal and/or regulatory documents</b>	<p>Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019</p> <p>Environmental Information (Scotland) Regulations 2004</p> <p>Freedom of Information (Scotland) Act 2002</p> <p>Scottish Ministers’ Code of Practice on the Discharge of Functions by Scottish Public Authorities under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004</p> <p>Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004</p> <p>Data Protection Act 2018 and General Data Protection Regulation (EU) 2016/679</p> <p>Scottish Information Commissioner ‘Model Publication Scheme: Guide for Scottish Public Authorities’ (1 November 2018)</p>

	SFHA 'Open All Hours: A Template Guide to Information for Registered Social Landlords' (August 2019)
<b>Equality &amp; Diversity Impact (EI) Assessment Status</b>	<p>This document was EDI Assessed by the Business Improvement Officer, Finance Manager, Development Manager and IT Manager using the organisation's set procedure on 11 November 2019. A full assessment was undertaken.</p> <p>EI Assessment records are held by Corporate Services and can be accessed on request to the Corporate Services Manager.</p>

### REVISION TRACKING

Revisions are minor changes which are made between Full Reviews which might be needed because of new ideas or changes

<b>Revision Date</b>	<b>Part of doc revised</b>	<b>Reason for revision</b>	<b>Approved by</b>

## **1. BACKGROUND / INTRODUCTION**

- 1.1 This policy sets out Port of Leith Housing Association (POLHA) Group's responsibilities under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.
- 1.2 The Freedom of Information (Scotland) Act 2002 (FOISA) came into effect in January 2005 to encourage the development of a more open culture across the public sector by providing a statutory right of access to information held by Scottish public authorities. The Environmental Information (Scotland) Regulations 2004 (EIRs) sit alongside FOISA and provide a statutory right of access to environmental information held by Scottish public authorities. In April 2019 the Scottish Parliament approved the Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 (the Order) bringing Registered Social landlords (RSLs) and certain RSL subsidiaries under the scope of FOISA and the EIRs from 11 November 2019.
- 1.3 This policy identifies the responsibilities of POLHA Group staff in relation to compliance with FOISA and the EIRs. This includes the handling of Freedom of Information (FOI) and EIR requests and the adoption and maintenance of POLHA Group's publication scheme through POLHA Group's Guide to Information (GTI). The policy should be read alongside the GTI and other related policies, as listed in the cover page.
- 1.4 The policy is intended to cover all records created in the course of the business of the POLHA Group relating to activities covered by the legislations. This includes email messages and other electronic records as well as paper records.

## **2. POLICY STATEMENT**

- 2.1 POLHA Group is committed to full compliance with FOISA and the EIRs. To this end it will publish a wide range of information and will explain how this and other information can be accessed within the POLHA Group GTI. POLHA Group will process all FOI and EIR requests on the principles of openness and transparency, while at the same time respecting its data protection responsibilities. It will provide staff with regular training and continuous professional development on FOI and EIR matters and will ensure that FOI and EIR are included in the induction of any new members of staff.
- 2.2 The Association, as a member of Happy to Translate, is committed to helping people who encounter language barriers. The Association will make reasonable adjustments to help overcome speech, language or other communication barriers when handling FOI and EIR requests, for example through face to face meetings, interpretation or translation.

## **3. ACTIVITIES COVERED BY THE LEGISLATION**

- 3.1 The Order applies to both RSLs and their subsidiaries who perform certain functions. These functions include, among other things, the management of social housing accommodation, where the RSL has granted a Scottish Secure Tenancy (SST) or Short Scottish Secure Tenancy (SSST) and functions related to the prevention and alleviation of homelessness. Further information on RSL functions covered by the Order is available from the Scottish Information Commissioner (SIC).
- 3.2 As the Order also applies to an RSL's statutory function of providing information to the Scottish Housing Regulator (SHR) in relation to financial well-being and standards of

governance, requesters may therefore request that information direct from the RSL rather than from the SHR.

3.3 FOI rights apply only to information held by the POLHA Group in relation to the functions covered by the Order.

3.4 A summary of the activities covered by the legislation is provided below:

<b>Functions covered by the Order</b>	<b>Functions not covered by the Order</b>
Management and maintenance by POLHA of social housing, where provided through an SST or SSST.	Management and maintenance by POLHA of non-social housing e.g. mid market rent, open market rent and shared ownership.
Services provided by POLHA's Community Works and Tenancy Support Teams to support social housing (SST or SSST) tenants.	Services provided by POLHA's Community Works and Tenancy Support Teams to support mid market rent tenants, sharing owners, owners and members of the wider community.
Services provided by POLHA's Community Works and Tenancy Support Teams (to anyone) for the prevention and alleviation of homelessness.	Services provided to owners and sharing owners, e.g. factoring.
Services provided by Quay Community Initiatives to social housing (SST or SSST) tenants of other RSLs.	
Information provided by POLHA to the SHR in relation to its financial well-being and standards of governance.	

It should be noted that the above list is based on advice from SIC and current legal interpretation of the legislation. This may change, pending case law. If in doubt, legal advice should be sought.

3.5 The table in 3.4 above applies to FOISA only. As the definition of a Scottish public authority is wider under the EIRs than FOISA, activities which are not covered under FOISA may still be subject to the EIRs. The main differences between FOISA and the EIRs are contained within Section 6.

3.6 As a commitment to openness and transparency, the Group will always consider whether information not covered by the Order can be disclosed anyway.

#### **4. RESPONSIBILITIES UNDER THE POLICY**

4.1 Ultimate responsibility for compliance with this policy and with FOISA and EIRs rests with the Chief Executive, but all staff members who record information or who are in contact with the public also have responsibilities under FOISA and the EIRs and under this policy.

**4.2 The Freedom of Information (FOI) Lead is responsible for:**

- Ensuring organisational compliance with FOISA and the EIRs.
- Maintaining the currency of this policy and the GTI.
- Promoting FOI and EIR awareness throughout the organisation.
- Ensuring the general public has access to information about their rights under FOISA and the EIRs.
- Setting up and overseeing the FOI team.
- Ensuring that FOI and EIR requests are responded to within the deadlines.
- Referring all FOI and EIR reviews to Leadership Team.
- Assisting the Leadership Team with FOI and EIR reviews as required.
- Providing data on FOI and EIR compliance to SIC.

**4.3 The Leadership Team is individually and collectively responsible for:**

- Considering and responding to FOI and EIR reviews.
- Reviewing progress on POLHA Group compliance with FOISA and EIRs.
- Reporting on FOI and EIR issues to the Board.

**4.4 The Operational Management Team is (individually and collectively) responsible for ensuring that:**

- Information is supplied to the FOI Lead when requested for inclusion within the GTI.
- Information not included within the GTI is created and stored in accordance with POLHA Group's Data Management Policy and all relevant procedures and processes to enable easy location when required.
- Ensuring that at all times there are sufficient hard copies of documents contained in the GTI.
- Responding to requests for information from the FOI Lead (in response to FOI and EIR requests) or Leadership Team (in response to FOI and EIR reviews).

**4.5 The IT department is responsible for:**

- Ensuring that the GTI is displayed on the POLHA website and that this is regularly reviewed to ensure it is up to date and that any hyper-links continue to work.

**4.6 All members of staff are responsible for:**

- The creation of their own records and for adhering to POLHA Group's Data Management Policy and all relevant procedures and processes.
- Informing their departmental or line managers of the creation of any new categories of document.
- Ensuring that any FOI or EIR requests or FOI or EIR reviews are referred to the FOI Lead. Where a member of staff is unsure as to whether or not they have received an FOI or EIR request or review they should raise this with the FOI Lead. Where an information request is received and a staff member alters, destroys or

conceals information held by POLHA Group with the intention of preventing disclosure of that information a criminal offence is committed.

## **5. POLICY FRAMEWORK**

### **5.1 Guide to Information (GTI)**

5.1.1 To comply with FOISA, POLHA Group has a duty to adopt and maintain a publication scheme and a Guide to Information (GTI). POLHA Group has adopted the Model Publication Scheme (MPS) produced and approved by the Scottish Information Commissioner and has used the Scottish Federation of Housing Associations' 'Open All Hours: A Template Guide to Information for Registered Social Landlords' (August 2019) to ensure compliance with the MPS.

5.1.2 POLHA Group has published its GTI on its website and has also made it available in hard copy. Through the GTI, POLHA Group:

- publishes the classes of information that it routinely makes available and sets out the manner in which publication will be made
- tells the public how to access the information it publishes and whether the information is available free of charge or if payment is required.
- provides links to the information published through the MPS.
- includes contact details of staff that can help access information from POLHA Group.

The GTI and MPS will be regularly reviewed and updated to ensure the currency of information contained within it.

5.1.3 Requests for a hard copy of the GTI and requests for information contained within the GTI may be made to the Freedom of Information Lead, Port of Leith Housing Association, 108 Constitution Street, Edinburgh EH10 6AZ or by email to [info@polha.co.uk](mailto:info@polha.co.uk).

### **5.2 Advice and Assistance**

5.2.1 POLHA has a duty under FOISA to provide advice and assistance to people who are making requests for information. For example, POLHA staff will explain what kinds of information it holds and in what format and will be available to answer any questions at any stage during an FOI request or review. Advice will also be provided in relation to requests under the EIRs (see Section 6 below).

### **5.3 FOI Requests**

5.3.1 The following section refers to FOI requests. The process for EIR requests is very similar and all EIR requests will be handled by the FOI Lead. However, there are some differences in the way EIR and FOI requests are dealt with (largely in relation to fees and timescales) and these are explained in Section 6 below.

5.3.2 FOISA gives the public the right to access information that POLHA Group holds, subject to certain exemptions.

5.3.3 A request for specific information not included within the GTI must be made in writing (or in another recordable format). Requests should include:

- the applicant's full name and an address for correspondence (e.g. a postal or email address), alongside

- a description of the information they are requesting

In certain circumstances a charge will be payable for supply of the information (see 5.4 below). FOI requests may be made to the Freedom of Information Lead, Port of Leith Housing Association, 108 Constitution Street, Edinburgh EH10 6AZ or by email to [info@polha.co.uk](mailto:info@polha.co.uk)

- 5.3.4 Where possible the information will be supplied in the format requested by the applicant. However, requests can be met by providing a copy of the original document, as a summary of the original or even by allowing the applicant to visit POLHA's offices to read the document(s).
- 5.3.5 FOI requests will be met promptly and in any event within 20 working days of receipt of the request (or fee – as discussed in section 5.4 below). "Working" days means Monday to Friday and not bank holidays or Christmas Day. The first working day of the request is the first working day after the date on which POLHA Group receives it. If POLHA Group has to ask for more details to help it identify exactly what the applicant is asking for, the 20 working days will only start once those details have been provided.
- 5.3.6 If POLHA Group advises the applicant that a fee is due, the 20 working day clock will stop. Once the fee is paid, the clock will re-start again.

## **5.4 Fees**

- 5.4.1 Where POLHA Group publish information under the GTI there is no charge for viewing this information on POLHA Group's website or at POLHA Group's premises. POLHA Group may charge for providing information published under the GTI in other formats (e.g. sending out printed versions) but will charge no more than it costs POLHA Group to provide. POLHA Group will always advise of the total costs before providing this information. A full note of POLHA Group's charges for providing this information is available in the GTI [<https://www.polha.co.uk/about-us/foi/#guide-to-information>]
- 5.4.2 POLHA Group may charge for providing information in response to an FOI or EIR request, and a schedule of charges is available in the GTI. For FOI requests, any fees charged for additional, specific information will be set in accordance with the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004.
- 5.4.3 POLHA Group has a separate schedule of fees for environmental information (see Section 6 below).
- 5.4.4 POLHA Group will not charge for the first £100 it costs to provide information in response to an FOI request. If the cost is more than £100 but up to including £600, it will charge 10% of the cost of providing the information. As the first £100 is always free, the maximum that POLHA Group will charge is £50 (10% of the difference between £100 and £600 – when waiving the first £100 of costs).
- 5.4.5 For FOI requests, if the total cost to POLHA Group is more than £600, POLHA Group may refuse the request but will offer advice on how the applicant can reduce the cost by making changes to the request. POLHA Group may also ask the applicant to pay the full cost above the £600 limit.
- 5.4.6 For FOI requests, POLHA Group will tell applicants if it is going to charge by sending them a fee notice within 20 working days of the request, showing the estimated fee, how it has been calculated and how applicants can appeal against the fee. This will state clearly that it is a fee notice. If the actual cost turns out to be more than estimated



in the fee notice, the fee will not be increased. If the cost turns out to be less than estimated, POLHA Group will consider refunding any overpayments.

5.4.7 For FOI requests, POLHA Group may charge for staff time to gather the information (up to a maximum of £15 per hour per staff member) and reasonable costs for photocopying or providing it to the applicant in another format.

5.4.8 The applicant will be given three months to respond to the FOI fee notice. The applicant may decide not to pay the fee (in which case POLHA Group will not send the information) or may ask for the fee to be reviewed. Where an applicant is unhappy with the level of fees they should contact POLHA Group to discuss how the scope of the request could be narrowed to reduce fees.

## **5.5 FOISA Exemptions**

5.5.1 FOISA gives individuals the general right to see all recorded information held by POLHA Group. In certain circumstances the Group will refuse FOI requests, for example, if:

- the applicant has not provided enough detail to identify the information requested and does not respond to a request from POLHA Group for clarification
- POLHA Group does not hold the information requested
- it will cost over £600 to provide the information
- POLHA Group thinks the request is “vexatious”, and is intended to disrupt the Group’s work, rather than a genuine request for information
- POLHA has already provided the information to the applicant in response to a substantially similar request (unless a reasonable period of time has elapsed)
- the information is exempt under FOISA.

5.5.2 Information may be exempt from disclosure under FOISA in some circumstances, for example where POLHA Group can demonstrate that:

- disclosing the information would breach data protection law; or
- disclosure would cause substantial harm to someone’s commercial interests

POLHA may also disclose information subject to redacting certain pieces of information where exemptions apply and will provide an explanation as to why the information has been redacted. POLHA will generally seek professional advice before withholding information or applying exemptions.

5.5.3 In some circumstances when deciding if information is exempt, POLHA Group will also be required to consider whether it would be in the public interest for the information to be released. In these circumstances POLHA Group will disclose the information unless the public interest in disclosing the information is outweighed by the public interest in maintaining the relevant exemption.

5.5.4 If POLHA Group decides to refuse a request it will write to the applicant to explain why it is refusing and will also tell the applicant what to do if he or she disagrees.

5.5.6 Exemptions under the EIRs are called ‘Exceptions’ and slightly different rules apply (see Section 6 below).

## 5.6 Reviews

- 5.6.1 Any applicant who is unhappy with the way their request for information has been responded to, or has not received a response within the set time limit, has a legal right to ask POLHA Group to review its decision.
- 5.6.2 Applicants may ask for a review within 40 working days of receiving the response from POLHA Group, or, if no response was received, within 40 working days of the end of the original 20 working day response period.
- 5.6.3 Requests for a review must be submitted in writing or any other form that can be kept for future use (e.g. fax, audio or video tape). Requests should include:
- the applicant's full name and an address for correspondence (e.g. a postal or email address)
  - details of the original request, and
  - the reason why the applicant wants POLHA Group to review how it handled the request.
- 5.6.4 Requests for a review may be made to the Freedom of Information Lead, Port of Leith Housing Association, 108 Constitution Street, Edinburgh EH10 6AZ or by email to [info@polha.co.uk](mailto:info@polha.co.uk).
- 5.6.5 POLHA Group will respond to a request for a review as quickly as possible, and within 20 working days of receipt of the request for review. Reviews will be carried out by the Leadership Team.
- 5.6.6 The response will include one of the following:
- All or some the information requested. In certain circumstances POLHA Group will provide requested information with some sections redacted (with an explanation of why the redactions have been carried out).
  - A notice confirming that POLHA Group still intends to withhold information requested, and why.
  - A decision about the level of fee to be charged (if the review related to the fees).
  - A decision on the request, if POLHA Group did not reply to the original request.
  - A notice from POLHA Group saying it doesn't think it has to review its decision, because it thinks the original request was vexatious, or the same as a request made before.
- 5.6.7 Applicants who are not happy with the response to a request for a review may appeal to the Scottish Information Commissioner.
- Applicants may contact the Scottish Information Commissioner at Kinburn Castle, Doubledykes Road, St Andrews, Fife KY16 9DS (Tel: 01334 464610, Fax: 01334 464611) or email at [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info). Appeals can also be made through the Scottish Information Commissioner's [appeal portal](#).
- 5.6.8 Applicants who are unhappy with the Commissioner's decision have a right of appeal to the Court of Session (but only on a point of law).

## **6. Environmental Information (Scotland) Regulations (EIRs)**

6.1 Environmental information is covered by the EIRs. The EIRs sit alongside FOISA and provide similar rights to information. Under Section 39(2) (a) of FOISA, POLHA Group may respond initially under FOISA, but go on to consider the request under the EIRs alone.

6.2 There are several differences in the way that POLHA Group handles requests under EIRs and FOISA:

- Requests for information can be made verbally under EIRs.
- The 20 day time period for responding to requests can be extended to 40 working days where the request is complex and voluminous and would involve a considerable amount of work. POLHA Group will notify applicants where the time period is extended.

There is no upper or lower cost limit and POLHA Group can recover in full the reasonable cost of supplying the information requested. POLHA has a schedule of fees relating to environmental information that sets out the charges applicable to EIR requests. This is available within the GTI [<https://www.polha.co.uk/about-us/foi/#guide-to-information>] EIRs have exceptions rather than exemptions and all of these are subject to the public interest test.

- Information relating to emissions has special status and will have to be supplied in most cases.
- Where an applicant is unhappy with POLHA Group's response to a request for environmental information and wants POLHA Group to review its decision, this request must be made in writing.
- POLHA Group cannot accept late requests for a review under the EIRs whereas under FOISA a late request for a review may be considered where POLHA considers it appropriate to do so.

6.3 Requests for environmental information may be made in writing to the Freedom of Information Lead, Port of Leith Housing Association, 108 Constitution Street, Edinburgh EH10 6AZ, by email to [info@polha.co.uk](mailto:info@polha.co.uk) or by phoning 0131 554 0403.

## **7. ASSOCIATED PROCEDURE(S)**

7.1 POLHA Guide to Information – website page and hard copy

POLHA Freedom of Information (FOI) Procedures, incorporating:

- FOI request template
- FOI response template
- FOI request tracker (in 20 working days, tracker, interactive update page)

7.2 **Other relevant POLHA Group documents**

Data Management Policy 2018

Information Security and Acceptable Use Policy 2018

GDPR Privacy Notice Insert for Customers

Code of Conduct for Governing Board Members and Involved Customers 2017

**8. POLICY & PROCEDURE EFFECTIVENESS ASSESSMENT CRITERIA**

- 8.1 POLHA Group will collect, collate and report data on the management of its compliance with FOISA and the EIRs which will be used to demonstrate the effectiveness of this policy and associated procedures.