

Freedom of Information for RSLs

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Overview

1. How did we get here?
2. FOI: who and what is covered?
3. What does FOI mean for you and how to prepare?
4. Questions

How Did We Get Here?

- Freedom of Information (Scotland) Act 2002
- Placed obligations on 'Scottish public authorities' to share and publish information
- Regulated by Scottish Information Commissioner
- Still hitting the headlines (e.g. Brexit Campaign)

How Did RSLs get here?

- FOI always on horizon for RSLs (Housing Charter / Environmental Information Regulations)
- Scottish Ministers can extend FOI to persons who appear to “exercise functions of a public nature”
- Years long consultation process led to...

The Order

- The Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019
- Extends application of the FOISA to RSLs come 11 November 2019
- We need to understand who and what is covered

The Order: Who is Covered?

- Registered Social Landlords and their subsidiaries
- For Subsidiaries need to consider: level of parent control and functions it carries out
- SIC anticipates majority of subsidiaries covered by FOI

The Order: What is Covered?

- Any activity in relation to “housing services” as defined in s165 of the Housing Scotland 2010 Act (subject to some restrictions)
- What does this mean in reality...?

Is Covered:

- Prevention and alleviation of homelessness
- Management of social housing accommodation (e.g. (S)SST)
- The provision and management of sites for gypsies and travellers
- Finance and Governance info supplied to SHR

Isn't Covered:

- The provision of services for owners and occupiers of houses (i.e. Factoring)
- Management of non-social housing accommodation (i.e. Mid-Market Rent)

What does FOI mean for your Organisation?

Come November RSLs will have 3 new legal duties:

1. Responding to Requests
2. Advising and Assisting Requesters
3. Publishing Information

Responding to Requests

- Must provide information that you hold to individuals if requested
- Generally have 20 working days to reply
- Requests need to be in a 'format you can refer back to' with the requester's details
- Requests don't need to mention FOI
- Need to prepare staff for recognising requests and forwarding to appropriate person.

When Can Information be Withheld?

- Where an 'exemption' applies.
- 2 categories of exemptions: absolute and public interest
- 'Public Interest' = subject to public interest test
- Lots of exemptions – some more relevant than others!

Exemptions and RSLs: What Will You Use?

1. Vexatious and Repeated Requests: must be looked at on case-by-case basis
2. Sharing information will cause harm to 'commercial interests': key for contracts and tenders
3. Breach of confidentiality: key for contracts

Exemptions and RSLs

4. Information requested is personal data:

- GDPR v FOI: who wins?
- If request for person's own personal data deal with under GDPR
- If request relates to 3rd party's data probably need to ask:
 - Do we have their consent; or
 - Does the requester have a legitimate interest?

Advice and Assistance

- You must help the public get the information they want
- How to achieve this? Follow the Section 60 Code of Practice
- S.60 Code: provides best practice guidance on meeting FOI Obligations
- Also important the: S.61 Code

Publishing Information: What do you need to do?

- Must adopt and maintain a publication scheme which sets out the information you publish proactively and explains how to access it. Must be approved by SIC
- Adoption of SIC Model Publication Scheme (MPS) is advised as easiest way to comply with obligations

The Model Publication Scheme

- Must produce a 'Guide to Information'
- Information must be published in accordance with the 6 'MPS Principles'
- At a minimum you need to publish all information you hold that falls under the 9 'MPS Classes of Information'

When things go wrong...

- Requesters can ask you to review decision (second chance?) and appeal to SIC following review
- SIC can issue 'decision notice' and escalate to Court of Session
- SIC decisions can be appealed
- Similar process for failing to publish information
- Adverse findings may have widespread impact

Data Protection Officer

- ‘Public Authorities’ must have a Data Protection Officer (DPO)
- Subject to FOI = Public Authority
- DPO responsible for organisations overall compliance with GDPR / DPA 2018
- Need to consider how to deal with this (internal position, external position, joint DPO?)

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