

# 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?
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?

You now have 3 new legal duties:

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

# Responding to Requests: The Basics

- 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 members for recognising requests and forwarding to appropriate person.

# Charging for a Request

- Can charge for: locating information and redacting information
- Charges should be per staff member, per hour based on their hourly rate (cap of £15 per hour)
- Total cost £100 or less? No charge
- If cost is between £100 - £600 can charge 10%
- Photocopying + printing and posting costs can be charged

# 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!

# Commercial Interests

- Information may be withheld if disclosure would cause substantial prejudice to commercial interests
- Subject to public interest test
- Likely impact on: procurement; subsidiary activity; arrangements with external contractors and finance documents

# Breach of Confidence

- Information obtained from another person can be withheld if disclosure would result in an ‘actionable’ breach of confidence
- Not subject to Public Interest Test – *but* – public interest important
- Need to consider impact on contracts

# Other Exemptions

1. Vexatious Requests: used to combat requests designed to cause significant disruption. Vexatious request and not Vexatious requester.
2. Repeated Requests: may be used where information and circumstances haven't changed since the person last asked.

# Other Exemptions

3. 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 3<sup>rd</sup> party's data probably need to ask:
    - Do we have their consent; or
    - Is disclosing: lawful; fair and transparent?



# Advice and Assistance: Legal Obligation

- You must provide advice and assistance to a requester (or potential requester) as far as it is reasonable to do so
- Focus on removing barriers that might prevent information being accessed
- If the guidance in the Section 60 Code of Practice is followed – legal obligation met

# S60 Code of Practice

- Provides guidance on best practice in dealing with FOI and EIR obligations
- Code sets out operational standards and functions that Scottish Ministers recommend are followed
- For example: staffing arrangements; how to handle and respond to requests and monitoring
- If not followed SIC can take steps to intervene
- Also important: s61 Code of Practice

# Publishing Information: What do you need to do?

- You will all have adopted a publication scheme – most likely SIC's Model Scheme
- As part of this your organisation will have produced a Guide to Information – an index of information you publish and how to access it

# Your 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’

# MPS Principles

1. **Availability and Formats:** must clearly state how to access information / information must be reasonably accessible to all and where possible on your website
2. **Exempt Information:** may withhold information from publication if exempt under FOI
3. **Copyright:** should set out copyright and re-use conditions for published info

# MPS Principles

4. **Charges:** Guide must provide information on charges for published information and how they are calculated
5. **Advice and Assistance:** must provide contact info for queries and explain how to access information which is not published (i.e. a FOI Request)
6. **Duration:** once published via the Guide information should be available for 2 years – unless updated

# MPS Classes of Information

1. Information about the authority
2. How the authority delivers its functions and services
3. How the authority makes decisions
4. Management of financial resources
5. How human, physical and information resources are managed
6. How goods, works and services are procured
7. How the authority is performing
8. Commercial Publications
9. Open Data

# Maintaining your GTI

- Factor publication duty into information you create
- Where published info is updated have processes in place for GTI inclusion
- Maintain a record of what you publish and when it was available
- Set review dates and keep record of info due for publication
- Use SIC Self-Assessment Tool-Kit to monitor performance



# Statistics

- SIC asks that all Scottish public authorities provide them with data about the information requests they receive on a quarterly basis
- Statistics are self-reported by the authority via an online portal and not checked or verified by SIC
- The type of information to report: no. of requests received; timescales for responses; exemptions used

# 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 if not followed
- SIC decisions can be appealed
- Similar process for failing to publish information
- Adverse findings may have widespread impact

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