



# FOI and EIR Procedure

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## 1.0 Introduction

ARK Housing Association Ltd ('ARK') is committed to ensuring that it meets the requirements of the Freedom of Information (Scotland) Act 2002 ('FOISA') and the Environmental Information (Scotland) Regulations 2004 ('EIR').

The purpose of this procedure is to:

- Provide a general understanding of FOISA and EIR; and
- Outline where responsibility lies for complying with ARK's legal duties under FOISA and EIR.

This procedure should be read in conjunction with ARK's FOI and EIR Policy (G35).

## 2.0 Scope

This procedure applies to any information held by ARK 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 ARK.

This procedure applies to all ARK employees, and all employees are required to abide by it, as well as ARK's FOI and EIR Policy.

## 3.0 Background

### 3.1 Why is ARK Subject to FOISA and EIR?

ARK 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'). 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.

### 3.2 What is Subject to FOISA and EIR?

In accordance with the terms of the Order, not everything that ARK does is subject to FOISA and EIR. ARK 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 ARK carries out, subject to some restrictions. Based on the definition of 'housing services', and the restrictions which are set out in the Order, the following functions carried out by ARK 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 travellers; 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.

### 3.3 What is the Difference Between FOISA and EIR?

EIR provides a right of access to ‘Environmental Information’ held by ARK. ‘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.

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 is available on [the website of the Scottish Information Commissioner \(‘SIC’\)](#).

## 4.0 Legal Duties

ARK has a number of legal duties which it must comply with under FOISA and EIR. These are set out in more detail below.

### 4.1 Responding to Information Requests

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

ARK shall, when responding to requests for information from individuals, follow the Section 60 Code of Practice issued by Scottish Ministers and any relevant guidance produced by SIC.

ARK 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 ARK is entitled to extend the timescale for responding by an additional 20 working days).

Where ARK is providing an individual with the information they have requested we 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 ARK is refusing to provide information to individuals we will clearly explain to said individual what provision in FOISA or EIR allows us to withhold that information and why we believe that provision applies (including, where required, an explanation of how ARK has carried out the Public Interest Test).

Where ARK is asked to provide information which we do not hold, but we know that another Scottish Public Authority does hold the requested information, we will 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 we will offer to transfer the individual's request to the other Scottish Public Authority.

ARK may choose to charge for fulfilling information requests received from individuals. Any charges made by ARK shall be made in accordance with:

- for requests being handled under FOISA: the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004, and as set out in Appendix 1 to this procedure; and
- for requests being handled under EIR: the Schedule of Charges set out in Appendix 1 of this procedure.

We will also publish the information on charges contained at Appendix 1 in our Guide to Information.

Any fee charged by ARK will be reasonable and will not exceed the costs to ARK of providing the requested information.

#### 4.2 Responding to Requests for Review

Where someone has requested information from ARK and:

- ARK 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),

then they have the right to request that ARK reviews the response to their request, in accordance with section 5.3 of this procedure, to determine whether or not the provisions of FOISA or EIR have been followed.

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

Where ARK performs a review and determines that a response to a request is in accordance with FOISA or EIR then ARK will notify the individual who asked for a review as quickly as possible.

In any event ARK will handle all requests for review in accordance with the timescales set out in FOISA and EIR.

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 ARK and the individual in question have a right to appeal to the courts on a point of law.

### 4.3 Provision of Advice and Assistance to Individuals

ARK 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. ARK will comply with this duty by following the guidance contained in the Section 60 Code of Practice issued by Scottish Ministers.

### 4.4 Publication of Information

ARK will publish information in accordance with its Publication Scheme through its Guide to Information. ARK's Guide to Information will be available on our website and a paper format will also be available on request. ARK's Guide to Information can be accessed [here](#).

### 4.5 Data Protection

ARK is committed to upholding its data protection obligations set out in the GDPR and the Data Protection Act 2018.

Under data protection laws, individuals have the right to request access to all of the information that ARK holds about them. This and other rights that individuals have under data protection are not covered by this policy and you should refer to ARK's Privacy and Data Protection Policy (G24) and Procedure (G48) when dealing with these rights.

## 5.0 Responsibilities

### 5.1 Head of Quality and Compliance

ARK's Head of Quality and Compliance has lead management responsibility for FOISA and EIR within ARK, supported by the Q&C Officer (who also acts as ARK's Data Protection Officer). This will include:

- effective implementation and regular review of this procedure, and the related FOI and EIR policy which it supports;
- Receiving requests for information, whether directly or from colleagues; and
- Responding to Requests under FOISA and EIR.

### 5.2 Senior Leadership Team

The duties of members of ARK's Senior Leadership Team will include:

- Ensuring effective implementation of ARK's FOI and EIR policy and procedure within their teams;
- With regard to ARK's duty to publish, and more particularly the Guide to Information, agreeing with ARK's Head of Quality and Compliance which areas their function will be responsible for, and implementing effective measures to ensure that those aspects are regularly reviewed and updated;
- With regard to ARK's duty to provide Advice and Assistance, ensuring that they, or relevant members of their team, provide such advice and assistance to those individuals seeking to access information, to support the removal of all barriers which may potentially prevent the individual from accessing that information; and
- In response to requests for information which relate to their team's function, ensuring that they or their team collates information for sending out within relevant timescales, and that they provide a 'sign-off' function in relation to agreeing the nature and scope of any information which will be shared in order to meet the relevant request.

### 5.3 Executive Team

Members of ARK's Executive Team will be responsible for dealing with requests for review, as appropriate, within their function.

### 5.4 All Employees

All ARK employees are responsible for:

- Complying with the terms of this procedure, and the policy which it supports;
- Forwarding information requests which they or their teams receive to the Head of Quality and Compliance or the Quality and Compliance Officer ('the Q&C Team') as quickly as possible; and
- seeking guidance from the Q&C Team if they are unsure how to recognise an information request, or if they are unsure about any of the duties placed on ARK by FOISA or EIR.

### 5.5 Legal Compliance and Policy/ Procedure Breaches

Compliance with this procedure, and the policy which it supports, is compulsory for all ARK employees. Any employee who fails to comply with this procedure, or the policy which it supports, may be subject to disciplinary action.

Where an information request is received and an employee deletes or alters information held by ARK, 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 Quality and Compliance.

## 6.0 Implementation and Review

### 6.1 Implementation

ARK's Senior Leadership Team, on behalf of the Executive Team, is responsible for ensuring that this procedure is implemented.

Each Director and Manager is responsible for ensuring that this procedure is implemented by the staff for whom they are responsible.

In order to support with implementation, appropriate training and/ or guidance will be developed and rolled out to all relevant employees.

Responsibility for monitoring the application of this procedure will rest with the Senior Leadership Team of ARK.

### 6.2 Review

The Head of Quality and Compliance, on behalf of the Chief Executive, will ensure that this procedure is reviewed regularly as necessary, and in any event not less than every three years.

## Appendix 1

### **Charges for information which we publish (our publications)**

This section explains when ARK may make a charge for our publications and how any charge will be calculated. There is no charge to view information on our website or at our premises. We may charge for providing information, but we will charge no more than it costs us to do so. We will always advise what the cost is before providing the information. Our photocopying charge per side of paper is shown in the tables below:

#### **Black and White Photocopying**

Size of Paper	Pence per sheet
A4	10p
A3	20p

#### **Colour Photocopying**

Size of Paper	Pence per sheet
A4	20p
A3	40p

#### **Alternative Formats**

Format	Charge
Computer Discs	50p

#### **Postage Costs**

Postage costs may be recharged at the rate we paid to send the information. Our charge is for sending information by Royal Mail First Class.

When providing copies of pre-printed publications, we will charge no more than the cost per copy of the total print run. We do not pass on any other costs in relation to our published information.

## **Charges for information which is not available under our Guide to Information**

If we receive a request for information which is not available in our Guide to Information, the charges will be based on the following calculations:

### **General information requests**

- There will be no charge for information requests which cost us £100 or less to process;
- Where information costs between £100 and £600 to provide we may ask the requester to pay 10% of the cost. That is, if they were to ask for information that cost us £600 to provide, they would be asked to pay £50 calculated on the basis of a waiver for the first £100 and 10% of the remaining £500;
- We are not obliged to respond to requests which will cost us over £600 to process;
- In calculating any fee, staff time will be calculated at actual cost per staff member hourly salary rate to a maximum of £15 per person per hour;
- We do not charge for the time to determine whether we hold the information requested, for the time it takes to decide whether the information can be released, or for any translation service that may be required if the information is requested in another language. Charges may be made for locating, retrieving and providing information; and
- In the event that we decide to impose a charge we will issue a notification of the charge (a fees notice) and how it has been calculated. The requester will have three months from the date of issue of the fees notice in which to decide whether to pay the charge. The information will be provided to the requester on payment of the charge. If the requester decides not to proceed with the request there will be no charge to them.

## **Charges for Environmental Information Environmental information is provided under the EIRs rather than FOISA**

The rules for charging for environmental information are slightly different.

We do not charge for the time to determine whether we hold the environmental information requested or deciding whether the information can be released. Charges may be made for locating, retrieving and providing information e.g. photocopying and postage.

If we decide to impose a charge, we will issue the requester a notification of the charge and how it has been calculated. The information will be provided on payment of the charge.

If the requester decides not to proceed with the request there will be no charge to them. Charges are calculated based on the actual cost to ARK of providing the information:

- Photocopying is charged at 10p per A4 sheet for black and white copying, 20p per A4 sheet for colour copying.
- Postage is charged at actual rate for Royal Mail First Class.
- Staff time is calculated at actual cost per staff member hourly salary rate to a maximum of £15 per person per hour.

The first £100 worth of information will be provided without charge.

Where information costs between £100 and £600 to provide, the requester will be asked to pay 10% of the cost. That is, if the requester were to ask for information that cost us £600 to provide, they would be asked to pay £50, calculated on the basis of a waiver for the first £100 and 10% of the remaining £500.

Where it would cost more than £600 to provide the information, however, we will ask the requester to pay the full cost of providing the information, with no waiver for any portion of the cost.

### **Charges for requesting an Individual's own personal data**

There is no charge for an individual who requests their own personal data under the General Data Protection Regulation (GDPR) Subject Access Request. We must provide a copy of the information free of charge.

However, we can charge a 'reasonable fee' when a request is manifestly unfounded or excessive, particularly if it is repetitive. We may also charge a reasonable fee to comply with requests for further copies of the same information. This does not mean that we can charge for all subsequent access requests. The fee must be based on the administrative cost of providing the information.

Further information on GDPR can be found on the [Information Commissioner's Office website](#).