



SHA Freedom of Information and Environmental Information Policy

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1. INTRODUCTION

- 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, Southside Housing Association (SHA) has been designated as a Scottish Public Authority and is required to make information available in accordance with FOISA. SHA has been a designated public authority in relation to the EIRs since 2014.
- 1.3 This is SHA’s Freedom of Information and Environmental Information Policy. The policy will:
- Provide a general understanding of FOISA and EIR; and,
 - Outline where responsibility lies for complying with SHA’s legal duties under FOISA and EIR

2. POLICY STATEMENT

- 2.1 SHA is committed to the underlying principles of openness and transparency underpinning FOISA and EIR and to complying fully with the requirements of both FOISA and the EIR. To this end the Association will:
- Follow the relevant Scottish Minister’s Codes of Practice relating to FOISA and EIR, as well as any relevant guidance issued by the 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 UK General Data Protection Regulation (UKGDPR) 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 access to information.

3. RESPONSIBILITIES

3.1 **The Chief Executive Officer (CEO)** has lead management responsibility for FOISA and EIR within SHA. This will include effective implementation and regular review of this Policy.

3.2 **The Management Committee** through delegated authority to the Finance and Corporate Services Sub-Committee has responsibility for ensuring monitoring performance and effective compliance with legal obligations under FOISA and EIR

3.3 **The Corporate Compliance Officer** has:

- operational responsibility for ensuring that Individual requests are handled and processed according to the appropriate statutory information access regime and in line with legislative requirements.
- responsibility for collating information and for responding to requests in line with FOISA and/or EIR
- responsibility for ensuring that information is proactively made available in accordance with the SHA Publication Scheme, and that the Publication Scheme is kept up to date.
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- responsible for providing guidance and advice and where appropriate training to SHA staff, on complying with legal obligations in respect to FOISA and EIRs, and the application of this policy.

3.4 **The SHA Leadership Team** are responsible for dealing with requests for a review in line with FOISA and/or EIR

3.5 **Line Managers** are responsible for raising awareness of this Policy among the SHA teams and staff that they manage, and ensuring staff are aware of what to do if they received a request for information directly

3.6 **All SHA Staff** are responsible for:

- maintaining accurate records and ensuring that documents are retained in line with the SHA Document Retention Schedule;

- forwarding information requests to the Corporate Compliance Officer as soon as they are received. If you are unsure how to recognise an information request, you should seek guidance from the Corporate Compliance Officer;
- assisting in the collation of information for use in a response to a request or for proactive publication as part of the SHA Publication Scheme and Guide to Information;
- undertaking any training in relation to FOISA and/or the EIR;
- seeking guidance from the Corporate Compliance Officer if they are unsure about any of the duties placed upon SHA by FOISA or EIR; and,
- familiarising themselves with and adhering to this policy.

3.7 All SHA staff should be aware that where an information request is received, and a member of staff deletes or alters information held by SHA with the intention of preventing disclosure of that information a criminal offence is committed. Where SHA staff are unsure if deletion or alteration of information may result in an offence, they should seek guidance from the Corporate Compliance Officer.

3.8 Compliance with this policy is compulsory for all SHA employees. Any employee who fails to comply with this policy may be subject to disciplinary action under the SHA Disciplinary Policy.

4. SCOPE OF THE POLICY

4.1 This policy applies to any information held by SHA 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 SHA.

4.2 This policy applies to all SHA employees and Governing Body members.

5. BACKGROUND

5.1 Why is the Association subject to FOISA and EIR?

5.1.1 SHA is subject to FOISA by virtue of the Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019

(the “Order”).

5.1.2 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.

5.1.3 The SIC had previously used legal powers set out in Regulation 2(1)(d) of the EIR to designate housing associations and co-operatives as Scottish public authorities for the purposes of the EIR in 2014.

5.2 What is subject to FOISA and EIR?

5.2.1 However, in accordance with the terms of FOISA and the EIR, not everything that SHA does is subject to FOISA and EIR. Instead, SHA is only subject to these regimes in respect of certain functions, namely ‘housing services’ (as defined in section 165 of the Housing (Scotland) Act 2010 which the 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 the Association are covered by FOISA and EIR:

- the prevention and alleviation of homelessness
- the management of social housing accommodation
- 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.

5.3 What is the difference between FOISA and EIR?

5.3.1 EIR provides a right of access to ‘Environmental Information’ held by SHA. Environmental Information has a very wide definition which is set out in the Regulations. Where a request under FOISA is received for Environmental Information, it should be refused under FOISA and instead be processed in accordance with the EIR.

5.3.2 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 SIC’s website.

6. LEGAL DUTIES

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

6.2 The Duty to Respond to Requests for Information

Valid Requests

FOISA

- 6.2.1 A request made by a requester under FOISA must be made in writing or in a recordable format such as video or audio tape,
- 6.2.2 A request received by SHA under FOISA does not have to refer to the legislation, however for the request to be valid it cannot be made anonymously or under a pseudonym. A valid request must include:
- The full name of the requester, this may be a first name and a surname, a title and a surname or a first initial and a surname
 - A correspondence address, either a postal or email address, and;
 - A clear request for information
 - The name of the individual the information is being requested for in the case of third-party applicants or advocates acting on behalf of another individual
- 6.2.3 A request received under FOISA can be made through any of the following channels:
- Post
 - Email
 - Social media
 - SHA website
 - Voicemail message
 - Audio recording
 - Via www.whatdotheyknow.com
- 6.2.4 If a FOISA request is made verbally, the requester will be asked to submit their request in a written format and provided with appropriate advice and assistance by the Association to do so.

EIR

- 6.2.5 A verbal request may be received by SHA and is considered a valid request under the EIR.
- 6.2.6 There is also no requirement for a requester to provide their full name when making a request under the EIR.
- 6.2.7 An anonymous request may also be valid under the EIR, however some form of contact address is required for SHA to adequately respond to an anonymous request.

6.3 Handling Information Requests

- 6.3.1 Any recorded information held by SHA which applies to the specific provisions of FOISA, or the EIR are subject to either of those statutory information access regimes.
- 6.3.2 Any individual has the right to request information from SHA. Where the information requested is within the scope of the Order and SHA holds that information SHA must release the information unless an exemption (under FOISA) or an exception (under EIR) applies. SHA shall, when responding to requests for information from individuals, follow the Section 60 Code of Practice and any relevant guidance produced by the SIC.
- 6.3.3 If a request is unclear under either FOISA or the EIR, SHA will seek clarification as soon as possible from the requester to enable us to proceed with the request. The timescale is paused until clarification is received from the requester.
- 6.3.4 SHA 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 SHA is entitled to extend the timescale for responding by an additional 20 working days).
- 6.3.5 Where SHA is providing a requester with the information they have requested we will, in so far as is reasonable to do so, provide information in the format that the requester has requested and will adhere to any duties under the Equality Act 2010.
- 6.3.6 Where SHA is refusing to provide information to a requester it will clearly explain to the requester what provision in FOISA or EIR allows the Association to withhold that information and why SHA believes that provision applies (including, where required, an explanation of how SHA has carried out the Public Interest Test).
- 6.3.7 Where SHA is asked to provide information which it does not hold, but SHA knows that another Scottish public authority does hold the requested information – SHA shall provide contact details of the public authority to the requester and explain that the requester may wish to request the information from that Scottish public authority.
- 6.3.8 Where a request is being handled under EIR and these circumstances apply SHA shall offer to transfer the request to the other Scottish Public Authority.
- 6.3.9 SHA may choose to charge for fulfilling information requests received from individuals. Any charges made by SHA shall be made in accordance with:
- for requests being handled under FOISA: the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004, and;

- For requests being handled under EIR: the Schedule of Changes published by SHA on its website.

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

6.4 Provision of Advice and Assistance to Individuals

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

6.4.2 In line with Section 15 of FOISA the Association has a duty to provide advice and assistance to inform an applicant of what they have to do to make their request valid, and how best to make use of their statutory information rights.

6.4.3 Where a fee is charged by the Association for providing information under FOISA or the EIR (see section 7 of this Policy), the Association has a duty to advise and assist an applicant under FOISA of how they may reframe the scope or volume of their request to bring the request within a threshold where a fee need not be charged or costs incurred in providing the information are reduced.

6.4.4 There is a similar duty to provide advice and assistance with regard to the EIR where a fee is being charged for providing information and staff must assist an applicant in narrowing the scope or volume of a request to bring it under the threshold over which the Association may charge a “reasonable amount” for providing information.

6.4.5 Examples of reasonable advice and assistance that staff may provide to applicants includes:

- Providing guidance on how to make a valid request and any associated costs
- Helping an applicant to understand the processes, procedures and relevant legislation involved in making a statutory request for information
- Maintaining communication with an applicant with regard to who is handling their request, and third parties being consulted and when the applicant should expect to receive a response
- Sending reminders to an applicant with regard to any clarifications sought from them and/or payment of fees required
- Consideration of an applicant’s needs, and making reasonable adjustments where necessary and appropriate

- Informing an applicant about what information can be provided to them within the fees limit, and highlighting to an applicant what information can be provided with no charge
- Assisting an applicant to understand the application of Exemptions (FOISA) and Exceptions (EIR) and what other information may be held by the Association that is not exempt or excepted which may be useful and relevant to an applicant's request

6.5 Publication of Information

6.5.1 FOISA also places a duty on the Association to proactively publish information in accordance with our Publication Scheme through the SHA Guide to Information. SHA's Guide to Information will be available on our website and a hard copy format will also be provided on request.

6.5.2 The EIR also places a duty on public authorities to "actively disseminate" environmental information that they hold. The Association will meet this duty through proactive publication where possible, and publicise it through the SHA Guide to Information

6.7 Data Protection

6.7.1 SHA is committed to upholding its data protection obligations set out in the UKGDPR and the Data Protection Act 2018.

6.7.2 Under data protection law, individuals have the right to request access to all of the personal data that SHA holds or processes in relation to them. This and other rights that individuals have under data protection law are not covered by this policy and you should refer to the SHA Privacy Policy and Fair Processing Notices when dealing with these rights.

7. CHARGES FOR PROVIDING INFORMATION

7.1 Any information made available through SHA's Publication Scheme will be provided free of charge unless otherwise specified.

7.2 SHA may however charge an appropriate fee for dealing with a specific request. Any charge will be in accordance with the charging schedule set out in our Guide to Information.

7.3 SHA can charge direct and indirect costs incurred in locating, retrieving and providing information. We will not charge for employee time spent in determining whether the information requested is held by SHA.

FOISA

- 7.4 SHA will make no charge for requests made under FOISA which cost SHA £100.00 or less to provide
- 7.5 If the costs involved in processing and responding to a request made under FOISA exceed £600.00, SHA does not have to comply with the request as set out in section 12 of FOISA.
- 7.6 SHA can charge for staff resources involved in processing a request up to a maximum of £15.00 per hour. FOISA fees regulations limit the amount that public authorities can charge as below:
- Up to £100.00:- Information must be provided without charge;
 - £100.00 to £600.00:- The initial £100.00 is deducted, the Association may charge 10% of the remaining cost;
 - Over £600.00:- No obligation to provide information.
- 7.7 SHA has a duty to advise and assist under FOISA, and where a request will exceed £600.00 SHA will liaise with the requester to assess if the scope of the request may be narrowed to allow it to be processed below the £600.00 threshold.
- 7.8 If SHA intends to charge before providing information under FOISA, a fees notification will be provided to the requester. Information will not be released until the payment has been received by SHA. The twenty working day timescale for responding to a request will be stalled until payment has been received by SHA.
- 7.9 A requester under FOISA has three months from the issue of the fees notice to make payment. If the payment is not received within this timescale, then the request will not be processed.

EIR

- 7.10 Under EIR there is no upper or lower limit placed upon public authorities with regard to charging for providing environmental information. The EIR provide only that any fee charged should not exceed a “reasonable amount”, and must not exceed the actual cost of producing the information required.
- 7.11 SHA will make no charge for requests made under the EIR which cost SHA £100.00 or less to provide.
- 7.12 Where information costs SHA between £100.00 and £600.00 to provide, a requester under the EIR may be asked to pay 10% of the cost of providing

that information over the initial £100.00. For example, if the information requested will cost SHA £600.00 to provide, a requester may be asked to be £50.00 calculated on the basis of a waiver for the initial £100.00, and a charge of 10% based on the remaining £500.00

- 7.13 The EIR require SHA to provide advice and assistance to someone who has made or wishes to make a request for environmental information. The Association will liaise with a requester where a request may exceed a “reasonable amount” to assess if the scope of the request may be narrowed to allow it to be processed.
- 7.14 If SHA intends to charge before providing information under the EIR, a fees notification will be provided to the requester. Information will not be released until the fee has been received by SHA. The twenty working day timescale for responding to a request will be stalled until payment has been received by the SHA.
- 7.15 A requester has sixty working days from the issue of the fees notice to make payment. If the payment is not received within this timescale, then the request will not be processed.

8. FOISA EXEMPTIONS

- 8.1 As outlined at sections 6.3.2 and 6.3.6 of this policy there may be instances where SHA may not provide information to a requester in response to their information request under FOISA.
- 8.2 Sections 25-41 of FOISA set out a number of Exemptions which may be applied where appropriate by public authorities. Exemptions may be applied to an entire request or part of a request. A full list of FOISA Exemptions is included at Appendix 1.
- 8.3 A ‘public interest’ test will be used in situations where certain exemptions are applied by SHA. Where the public interest in disclosing the information outweighs the public interest in withholding information then disclosure of the information will be made.
- 8.4 In line with the FOISA and SIC guidance where a ‘public interest’ is conducted when an Exemption under FOISA is applied to a request, the Association will apply a presumption in favour of disclosure when conducting the ‘public interest test.

9. EIR EXCEPTIONS

- 9.1 As outlined at sections 6.3.2 and 6.3.6 of this policy there may be instances where SHA may not provide information to a requester in response to their information request under the EIR.

- 9.2 Regulations 10-11 of the EIR allow public authorities to refuse to make information available in some cases. These are called the Exceptions and may be applied to an entire request or to part of a request. A full list of EIR Exceptions is included at Appendix 2.
- 9.3 A 'public interest' applies when using certain exceptions. Where the public interest in disclosing the information outweighs the public interest in withholding information then disclosure of the information will be made.
- 9.4 In line with the EIR and SIC guidance where a 'public interest' is conducted when an Exception under the EIR is applied to a request, the Association will apply a presumption in favour of disclosure when conducting the 'public interest test'.

10. REQUESTS FOR A REVIEW

- 10.1 Where an applicant has requested information from SHA and:
- SHA 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 the Association reviews the handling of and/or response to their request to determine whether or not the provisions of FOISA or EIR have been followed. A requester has forty working days following the receipt of a response (or the date at which they expected to be issued a response to request a review.

- 10.2 An applicant may not request a review where the original request for information was a vexatious or repeated request under FOISA, or a manifestly unreasonable request under the EIR. Where a request for a review is received under these circumstances, the Association will issue a notice refusing a review while setting out the applicant's rights to appeal to the SIC, and if necessary, appeal any SIC decision to the Court of Session on a point of law.
- 10.3 A review will normally be co-ordinated by a member of the Associations' Leadership Team, although other Association employees may be required to contribute at the request of the Leadership Team member co-ordinating the review. This ensures that the Association member of staff conducting the review is different from the staff member who handled and responded to the applicant's initial request, and that the review process is:
- Fair and impartial, and an opportunity for the Association to review and consider how we handled and responded to the request

- Able to arrive at a different decision in relation to the request, if necessary and appropriate.
 - Able to reach an outcome promptly and within 20 working days of receipt of the requirement for a review.
- 10.4 The Association staff member conducting the review may undertake new or further searches in relation to the information requested and may contact the applicant and provide advice and assistance to clarify their request for a review
- 10.5 Where Association performs a review and determines that a response to a request is not in accordance with FOISA or EIR, the Association will take immediate steps to rectify this (which could, for example, include releasing information which was previously withheld).
- 10.6 Where the Association performs a review and determines that a response is in accordance with FOISA or EIR then the Association will notify the individual who asked for a review as quickly as possible.
- 10.7 In any event the Association will handle all requests for review in accordance with the timescales set out in FOISA and EIR, and the Association staff member conducting the review will notify the applicant in writing of the outcome of their review. The Association's response following a review must also signpost the applicant to their right to appeal to the SIC, and ultimately thereafter if they remain dissatisfied to the Court of Session on a point of law.
- 10.8 In line with the Scottish Government's Section 60 Code of Practice on the discharge of functions by Scottish Public Authorities with respect to FOISA and the EIR, the Association will produce a report following any review which will record the review process undertaken and any lessons learned which have been identified through the review process

11. APPEALING A DECISION TO THE SIC

- 11.1 Where an individual is unhappy with the response to their review request, they may appeal to the SIC for an independent review. An applicant may appeal to the SIC if:
- The applicant is dissatisfied with the outcome of the Associations' review
 - The Association has refused to review our decision on the basis of a request being vexatious or repeated under FOISA, or 'manifestly unreasonable' in the event of a request under the EIR
 - The Association has not responded to your request for a review.

11.2 The SIC will deem an appeal a ‘valid appeal’ where an applicant has:

- Been through the Associations; review process
- Provided the SIC with the requisite information needed to investigate their appeal
- Has told the SIC specifically the reasons why they are dissatisfied

11.3 An appeal should be made using the SIC’s online appeal form at <https://www.foi.scot/appeal>

An appeal may also be made in writing or email to:

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St. Andrews
Fife
KY16 9DS

Email: enquiries@foi.scot

11.4 If an appeal is made to the SIC and a decision handed down by them, both the SHA and the requester in question have a right to appeal to the Scottish courts on a point of law.

11.5 In the event of the SIC issuing a Decision Notice which upholds or partially upholds an applicant’s appeal, the Association will comply with any remedial actions which the SIC instructs the Association to take in its Decision Notice, unless the Association wishes to appeal the SIC’s decision to the Court of Session on a point of law.

11.6 The Association will also use any ‘lessons learned’ arising from an upheld decision notice to implement any changes to improve our statutory information processes.

12. RECORD KEEPING

12.1 The Association will collate and retain detailed records in relation to statutory information requests received from applicants including:

- Information about the applicant and the contents of the request
- Dates for acknowledging and issuing a response to the request, and whether the request was responded to within statutory timescales
- Details of any requests made to the Applicant for clarification
- Whether a fees notice was issued and the level of the fee
- Steps taken to retrieve information relevant to the request including searches undertaken in electronic and paper files and consultations with third parties including the outcome of any third-party consultations

- Explanatory notes with regard to the application of any Exemptions or Exceptions to the request.
- Procedure followed at any Review stage, including the outcome of the Review
- In the event of an applicant making an appeal to the SIC, notes of any decision made by the SIC and actions outlined in the SIC Decision Notice.
- Where the SIC has decided that the Association has not complied with FOISA or the EIR, any steps and measures implemented by the Association and when they were implemented.

13. REPORTING

- 13.1 A report on the Association's Information Governance arrangements including statutory information requests such as FOISA and EIR is presented quarterly to the Finance and Corporate Services Sub-Committee.
- 13.2 The Corporate Compliance Officer also has responsibility for collating statistical information on the Association's performance in relation to FOISA and EIR, and the submission of a quarterly return to the SIC.

14. EQUALITIES AND HUMAN RIGHTS

- 14.1 SHA will provide equality of opportunity and fair treatment for all, ensuring that no individual or group is treated less favourably than anyone else. We work closely with community stakeholders, to provide assurance that we are achieving these aims.
- 14.2 SHA will meet, and where appropriate exceed our obligations under the **Equality Act 2010**, including the general equality duty in the Act, to ensure we do not discriminate against, harass or victimise a person because they have one or more of the nine protected characteristics described in the Act.
- 14.3 An Equality Impact Assessment (see Appendix 3.) has been carried out as part of the review of this policy, in order to assess where the aims of this policy may have a positive, negative or neutral impact upon any of the nine Protected Characteristics set out in the Equality Act 2010.

15. DATA PROTECTION

- 15.1 SHA handles the personal data we use in line with our obligations under data protection legislation and the Association's Privacy Policy and Data Retention Schedule. Information about how we handle personal data and the legal basis for processing personal data is available through the Association's Fair Processing Notices.

- 15.2 There is a separate statutory information access regimen with regard to an individual requesting their own personal data, this is known as a Data Subject Access Request and the legislation which governs this is the UK General Data Protection Regulation (UKGDPR) and the Data Protection Act 2018. An individual wishing to request their own personal data from SHA should refer to the SHA Privacy Policy and SHA Fair Processing Notices.
- 15.3 Specific exemptions under FOISA and exceptions under the EIRs relate to where a request relates to an individual's own personal data and/or to third party personal data. These are set out at Appendix 1 and 2 of this Policy.

16. POLICY REVIEW

- 16.1 This policy will be subject to review every three years, or sooner in the case of significant legislative or regulatory changes.



Appendix 1.

Freedom of Information (Scotland) Act 2002 – Exemptions

FOISA	EXEMPTION	DETAILS	PUBLIC INTEREST TEST
Section 25	Information Otherwise Accessible	Exempts information from disclosure where the requester can reasonably obtain the information without making a request for it.	
Section 26	Prohibitions on Disclosure	Where disclosure is prohibited by or under an enactment; is incompatible with an EU regulation; or would constitute, or be punishable as, contempt of court.	No
Section 27	Information Intended for Future Publication	Refusal to disclose if public authority already plans to publish it within it within the next 12 weeks, but only if it reasonable to delay disclosing the information until the planned date of publication.	Yes
Section 28	Relations Within the United Kingdom	Where disclosure would, or would be likely to, prejudice substantially relations between administrations in the UK (e.g. between Westminster and Holyrood)	Yes
Section 29	Formulation of Scottish Administration Policy	Exempts information from disclosure where it relates to the formulation or development of Government policy; Ministerial communications; the provision of advice from any of the Law Officers; or the operation of any private Ministerial office.	Yes
Section 30	Prejudice to the	Exempts information where	Yes

	Effective Conduct of Public Affairs	disclosure would, or would be likely to harm the maintenance of the convention of the collective responsibility of the Scottish Ministers; the free and frank provision of advice; the free and frank exchange of views for the purposes of deliberation; or the effective conduct of public affairs	
Section 31	National Security and Defence	Information is exempt from disclosure if required for the purpose of safeguarding national security; or if disclosure would, or would be likely to, prejudice substantially the defence of the British islands or of any colony, or the capability, effectiveness or security of the armed forces co-operating with them.	Yes
Section 32	International Relations	Information is exempt from disclosure if required for the purpose of safeguarding national security; or if disclosure would, or would be likely to, prejudice substantially relations between the UK and another state; relations between the UK and any international organisation or court; the interests of the UK abroad; or the promotion or protection by the UK of its interests abroad.	Yes
Section 33	Commercial Interests and the Economy	Information may be withheld if it is a Trade Secret; disclosure would or would be likely to prejudice substantially the commercial interest of any person or organisation; the economic interests of the whole or part of the UK; the financial interests of any administration in the UK.	Yes
Section 34	Investigations by Scottish Public Authorities	Exemption applies to criminal prosecutions, fatal accident inquiries and civil proceedings.	Yes
Section 35	Law Enforcement	Exempts if disclosure would, or would be likely to prejudice substantially the prevention or detection of crime; the apprehension or prosecution of offenders; the administration of	Yes

		justice; the assessment or collection of any tax or duty; the operation of immigration controls; the maintenance of security and good order in prisons, etc.; the exercise by a public authority of one or more of the functions listed in section 35(2), such as ascertaining whether conduct is improper or securing the health, safety and welfare of people at work; or civil proceeding brought and arising out of an investigation conducted for any of the purposes listed in section 35(2).	
Section 36	Confidentiality	Information may be withheld if it is information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings (section 36(1)); or the information was obtained by a Scottish public authority and disclosing it would constitute and actionable breach of confidence.(Section 36(2))	Section 36(1) – Yes Section 36(2) - No
Section 37	Court Records	Information is exempt from disclosure if it is contained in a document that has been: lodged with a court for the purposes of court proceedings; served on, or by a Scottish public authority for the purposes of court proceedings; or created by a court for the purposes of court proceedings; lodged with a person conducting an inquiry or arbitration, for the purposes of that inquiry or arbitration.	No
Section 38	Personal Information	Information is exempt from disclosure if it is: the personal data of the person requesting the information; the personal data of a third party if conditions apply; personal census information; or a deceased person's health record.	No (except in relation to the personal data of a third party)
Section 39	Health, Safety and the Environment	Information may be withheld if: disclosure would, or would be likely to, endanger the physical or mental health and safety of an individual; or it is environmental information	Yes

		and the public authority is obliged to make it available under the EIR	
Section 40	Audit Functions	Information may be withheld if: disclosure would or would be likely to prejudice substantially a Scottish public authority's functions in relation to: the audit of accounts of other Scottish public authorities; or the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.	Yes
Section 41	Communications with Her Majesty etc. and Honours	Exempts disclosure if information relates to: communications with the Queen, with other members of the Royal family or with the Royal Household; or the awarding of honours by the Queen.	Yes



Appendix 2.

Environmental Information (Scotland) Regulations 2004 – Exceptions

EIR	EXCEPTION	DETAILS	PUBLIC INTEREST TEST
Regulation 10(4)(a)	Information Not Held	Exception applies if the public authority does not hold the information being requested	Yes
Regulation 10(4)(b)	Manifestly Unreasonable Requests	Exception MAY apply if complying would impose a significant burden on the public authority; the request does not have serious value or purpose; or the request is designed to cause disruption or annoyance to the public authority; or the request would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.	Yes
Regulation 10(4)(c)	Formulated in Too General a Manner	The public authority may refuse a request for information if it is formulated in too general manner and the public authority has met its duty to provide advice and assistance to a requester.	Yes
Regulation 10(4)(d)	Material in the Course of Completion etc.	Covers material which is still in the course of completion, unfinished documents and incomplete data	The public authority must tell the requester when it thinks the information will be

			finished or completed
Regulation 10(4)(e)	Internal Communications	Exception is potentially very wide and includes any correspondence between officials in the same authority and its agencies.	Yes
Regulation 10(5)(a)	International Relations, Defence etc.	Allows a public authority to withhold information where disclosure would, or would likely to, prejudice substantially international relations, defence, national security or public safety	Yes
Regulation 10(5)(b)	The Course of Justice etc.	Exception applies where disclosure of the information would, or would be likely to, substantially prejudice: the course of justice (including law enforcement); the ability of a person to receive a fair trial; or the ability of any public authority to conduct an inquiry of a criminal or disciplinary nature.	Yes
Regulation 10(5)(c)	Intellectual Property Rights	Exception applies where disclosure would, or would likely to, cause substantial prejudice to intellectual property rights e.g. Copyright; Database Rights; or Copyright in databases.	Yes
Regulation 10(5)(d)	Confidentiality of Proceedings	Exception applies where disclosure would harm the confidentiality of the proceedings of any public authority where such confidentiality is provided for by law.	Yes
Regulation 10(5)(e)	Confidentiality of Commercial or Industrial Information	Exception may potentially apply to a range of commercially sensitive information such as trade secrets, information supplied by contractors, information supplied as part of a tendering or procurement process and information held by regulators.	Yes

Regulation 10(5)(f)	Third Party Interests	Exception applies where the information was supplied on a voluntary basis in the expectation that it would not be disclosed and where the supplier has not consented to disclosure. An example of what may potentially be covered include information collected from members of the public in research or surveys.	Yes
Regulation 10(5)(g)	Protection of the Environment	Exception applies to protect information in order to protect the environment to which it relates, e.g. the nesting of rare birds.	Yes
Regulation 11(1)	Personal Data	Information is exempt from disclosure if it is: the personal data of the person requesting the information; the personal data of a third party if conditions apply	No (except in relation to the personal data of a third party)



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