



RCH Group Policy:

Freedom of Information

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This policy is available, on request, in different languages and in other formats such as large print, audio format and braille as required.

1. Scope

- 1.1 This is a Group policy and therefore applies to Staff, Board and Committee members of The RCH Group of companies (“the RCH Group”). As of September 2023, the RCH Group consists of River Clyde Homes (RCH) and its subsidiary, Home Fix Scotland Ltd (HFS).
- 1.2 This policy applies to any information held by the RCH Group, including information held on behalf of the RCH Group, by another organisation, regardless of format, that relates to the RCH Group’s activities regulated by the Scottish Housing Regulator.

2. Introduction

- 2.1 The Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs), collectively “FOI legislation”, aim to increase openness and accountability in government and across the public sector by placing a general obligation on Scottish Public Authorities to allow the public access to information that they hold. The Scottish Information Commissioner (SIC) is the regulator for FOI legislation.
- 2.2 River Clyde Homes and Home Fix Scotland Ltd have legal responsibilities as individual companies, however, a joint approach will be taken by the two companies, wherever possible, to fulfilling these duties. References to ‘the RCH Group’ throughout this policy includes references to RCH and HFS individually, as well as collectively, as appropriate in the circumstances.
- 2.3 The key legal duties of the RCH Group are:
 - to respond to information requests;
 - to publish information; and
 - to provide advice and assistance.
- 2.4 The policy aims to provide guidance for the RCH Group on the FOI legislation and its responsibilities under the same.
- 2.5 This policy should be read in conjunction with the following documents which can be found on the staff intranet:
 - RCH Group Data Protection Policy; and
 - RCH Group Records Management Policy.

3. Definitions

- 3.1 **Applicant** refers to an individual who has made a request for information whether under FOISA or the EIRs.

3.2 **Environmental Information** is defined as information in any form (written, visual, aural, electronic or any other material) on any the following:

- (a) **the state of the elements of the environment**, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, **and the interaction among these elements**;
- (b) **factors**, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, **affecting or likely to affect the elements of the environment** referred to in paragraph (a);
- (c) **measures** (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, **and activities affecting or likely to affect the elements and factors** referred to in paragraphs (a) and (b) **as well as measures or activities designed to protect those elements**;
- (d) **reports on the implementation of environmental legislation**;
- (e) **costs benefit and other economic analyses and assumptions used within the framework of the measures and activities** referred to in paragraph (c); and
- (f) **the state of human health and safety**, including the contamination of the food chain, where relevant, **conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment** referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c).

4. Policy Statement and Responsibilities

4.1 It is RCH Group policy to support the aims of FOI legislation, openness and transparency, in relation to its activities regulated by the Scottish Housing Regulator by:

- following the relevant Scottish Ministers Codes of Practice relating to FOISA and the EIRs, as well as any relevant guidance issued by SIC;
- taking account of the needs of individuals when presenting information under FOISA and the EIRs;
- making all employees aware of their responsibilities under FOISA and the EIRs and support them in fulfilling those responsibilities;
- proactively making information available to the public by way of our Publication Scheme;
- monitoring compliance with FOISA and the EIRs with a view to continuous improvement;
- ensuring personal data is managed in accordance with the UK GDPR and Data Protection Act 2018 when complying with FOISA and the EIRs;
- only withholding information where entitled to do so under FOISA and the EIRs and explain why information is withheld; and

- providing advice and assistance to individuals seeking to access information.

Responsibilities

- 4.2 The Group Services Director has overall strategic responsibility for FOI and for overseeing compliance with FOI legislation.
- 4.3 The wider Senior Leadership Team has responsibility for creating a culture that is supportive of the public's right to know.
- 4.4 Managers have responsibility for ensuring that:
- employees are made aware of the existence and contents of this policy;
 - employees complete any required training; and
 - information is published in accordance with the RCH Group Publication Scheme.
- 4.5 The Information Compliance Team has responsibility for:
- the management of, and response to, requests under FOISA and the EIRs, including requests for reviews and appeals;
 - maintaining the RCH Group Guide to Information;
 - developing, reviewing and communicating the policies, procedures and guidance relevant to Freedom of Information and Environmental Information; and
 - co-ordinating responses to requests for review and the provision of information to the SIC for appeal.
- 4.6 All employees are responsible for:
- familiarising themselves with this policy and completing related training;
 - identifying an information request and providing notice of information requests received to InformationGovernance@riverclydehomes.org.uk as soon as practicable to enable response within statutory time limits;
 - providing advice and assistance to persons making requests for information in relation to making a valid request, locating published information and clarifying and describing the information required;
 - providing assistance to the Information Compliance Team to locate and retrieve requested information, and, if applicable, information relating to projected costs likely to be incurred in locating, retrieving and providing the requested information;
 - where applicable, maintaining the integrity of the RCH Group Publication Scheme; and
 - contacting the Information Compliance Officer when assistance is required.
- 4.7 Employees should note that deletion or alteration of information held by the RCH Group with the intention of preventing disclosure of that information can be a criminal offence.

- 4.8 Compliance with this policy is compulsory for all employees of the RCH Group. Any employee who fails to comply with this policy may be subject to disciplinary action.

Duty to publish information

- 4.9 The RCH Group has adopted and will continue to maintain a publication scheme approved by the SIC. The RCH Group Publication Scheme, available on River Clyde Homes' website, follows the Model Publication Scheme and publishes information under the following categories:
1. Information about the RCH Group entities;
 2. How the RCH Group delivers functions and services;
 3. How the RCH Group take decisions and what decisions have been taken;
 4. What the RCH Group spend and spending information;
 5. How the RCH Group manages its human, physical and information resources;
 6. How the RCH Group procures goods and services externally;
 7. How the RCH Group is performing;
 8. The RCH Group's commercial publications; and
 9. The RCH Group's open data.
- 4.10 The RCH Group Guide to Information, also available on the RCH website, provides further information about the publication scheme including alternative formats and charging schedule.
- 4.11 The RCH Group Publication Scheme is reviewed on a regular basis and information that is disclosed in response to a request for information will be considered for inclusion within it.

Duty to provide advice and assistance

- 4.12 The RCH Group must provide individuals seeking to access information with advice and assistance with a view to ensuring that all barriers which may potentially prevent an individual from accessing information are removed. It may include:
- providing advice on how to make a valid request;
 - providing advice on how to locate published information;
 - providing advice and assistance on how to describe clearly the information required;
 - seeking clarification of a request at an early stage;
 - notifying an applicant as soon as possible if a fee is chargeable and providing advice of wished on how to narrow the scope of the request so that information can be provided free of charge.

Duty to respond to information requests

4.13 The RCH Group has a duty to respond to requests for information that it receives in line with the technical requirements of the FOI legislation. A summary of the process to be followed is illustrated in Appendix A.

4.14 Requests for information that are not 'business-as-usual' (see paragraph 4.17) requests must be handled under the relevant legislation and a formal response issued:

- Requests for 'Environmental Information' will be processed under the EIRs.
- Requests by an applicant for their own personal information will be treated as a subject access request under data protection legislation and handled in accordance with the RCH Group: Data Subject Rights' Procedures.
- All other requests for information will be processed under FOISA.

Valid requests under FOISA and the EIRs

4.15 Under FOISA, a request for information is valid if it:

- is in writing or another permanent form (for example email, social media message, audio or video recording);
- states the name of the applicant a correspondence address (postal or email); and
- describes the information requested.

4.16 Under the EIRs, there are no similar provisions for requests for environmental information; requests can be made in any form, including verbally, and do not need to include the name of the individual requesting the information.

4.17 **Business-as-usual requests:** Many of the routine enquiries for information that the RCH Group receives are technically valid requests under either FOISA or the EIRs. However, this should not impact the way routine enquiries which form part of day-to-day activities are handled. Where "business as usual" requests meet the following criteria, they must be handled by the relevant business department in the normal manner:

1. the requests are simple and straightforward;
2. the information will be released on time, i.e., within 20 working days of receipt of the request; and
3. it is unlikely that the applicant will be dissatisfied with the response.

- 4.18 If the 3 criteria at paragraph 4.18 cannot be met, the request, or details of the request, must be sent to Information.Governance@riverclydehomes.org.uk without delay as there is a statutory time limit for responding to requests.

Time Limits

- 4.19 The RCH Group must respond to request for information within **20 working days** of receipt of the request anywhere in the organisation. It is therefore important that all employees forward requests onto the email address above **as soon as possible**.
- 4.20 There are some limited circumstances where complex requests made under the EIRs where the timescale for responding may be extended by an additional 20 working days; any decisions relating to this will be made by the Information Compliance Team.

Format of information to be released

- 4.21 If the applicant has indicated a preferred format, the RCH Group will endeavour to provide the information in the format requested in so far as is reasonably practicable. Any requirements for reasonable adjustments under the Equality Act 2010 will also be considered, where applicable, when deciding on the format of information for release.

Fees

- 4.22 Under FOISA the RCH Group are able to charge for responding to information requests in certain circumstances. The Freedom of Information (Fees for Disclosure under Section 13) (Scotland) Regulations 2004 set out:
- what can and cannot be charged for (for example, no account can be taken of costs in determining whether we hold the information requested and the first £100 of costs is not chargeable);
 - how much can be charged (for example, there are maximum rates for staff time and 10% of the allowable costs can be charged beyond the first £100 and up to £600); and
 - an upper limit (currently £600) beyond which an authority can refuse to comply with a request.
- 4.23 The RCH Group may choose to charge for fulfilling information requests when entitled to do so. If an individual is required to pay a fee, a Fees Notice will be issued by the Information Compliance Team as soon as possible after the initial request is received.
- 4.24 Under the EIRs the RCH Group can charge a reasonable amount for providing environmental information. Any fee charged must not exceed the

costs to the RCH Group of making the information available. There is no upper fees limit under the EIRs.

Withholding Information

4.25 The RCH Group can withhold certain information from disclosure when there is an applicable exemption (FOISA) or exception (the EIRs) – these can be applied to requests for information or to information within the RCH Group Publication Scheme. There is a presumption in favour of disclosure and, generally, information can only be withheld if it is in the public interest to do so.

Exemptions under FOISA

4.26 There are two types of exemption under FOISA: absolute and non-absolute. If an absolute exemption applies the RCH Group is not required to release the information; absolute exemptions cover information:

- which is otherwise accessible – for example, via the RCH Group Publication Scheme;
- which is prohibited by law from disclosure – for example, by another piece of legislation;
- obtained from a third party where disclosure would constitute an actionable breach of confidence;
- court records; and
- which is personal information and, if released, would contravene data protection principles; which is personal census information; which is a deceased person's health record or which should be considered as a subject access request.

4.27 If a non-absolute exemption is considered to apply, the RCH Group must make **two further considerations** before information can be withheld:

1. Assess whether disclosure of the information would result, or be likely to result, in “substantial prejudice” – if this is not found to be the case, the information must be disclosed.
2. Apply the “public interest test” – essentially consider whether the public interest in withholding the requested information outweighs the public interest in disclosing it. Arguments for both should be set out and assessed to determine where, on balance, the public interest lies. Only if there is found to a greater public interest in withholding the information, can the information be withheld.

4.28 Non-absolute exemptions apply to information:

- intended for future publication (within 12 weeks of the request);
- which, if disclosed, would result in substantial prejudice to relations between UK administrations;
- related to the formulation of Scottish Administration policy;
- which, if disclosed, would prejudice the effective conduct of public affairs;

- which, if disclosed, would prejudice national security and defence;
- which, if disclosed, would prejudice international relations; and
- which, if disclosed, would prejudice commercial interests;
- relates to investigations by Scottish public authorities and proceedings arising out of such investigations;
- which, if disclosed, would prejudice law enforcement;
- in respect of which a claim to confidentiality of communication could be maintained in legal proceedings;
- which, if disclosed, would contravene the right to object or that the information would otherwise be withheld under specific conditions relating to a subject access request (personal information);
- which, if disclosed, would endanger the physical or mental health or safety of an individual;
- relating to audit functions of other Scottish public authorities; and
- relating to Royal communications or honours.

Exceptions under the EIRs

4.29 The EIRs allow the RCH group to refuse to make environmental information available if an exception applies – the “public interest test” must be applied to information considered under **all** of these exceptions.

4.30 There are two types of exceptions under the EIRs: class and substantial prejudice. Class exceptions are based on the type of information held or the nature of the request and apply in the following circumstances:

- the information is not held by RCH Group – if it is believed that another public authority does, the request should either be transferred or the applicant provided with the relevant contact details;
- the request is manifestly unreasonable;
- the request is too general – this can only be used after the requester has failed to respond to a request for clarification;
- the information is still being completed – for example, unfinished documents or incomplete data; and
- the request involves making available internal communications.

4.31 Substantial prejudice exceptions apply where providing the information would, or be likely to, substantially prejudice the following:

- international relations, defence, national security, or public safety;
- the course of justice (including law enforcement) – the ability of any person to receive a fair trial, or ability of any public authority to conduct an investigation or inquiry of a criminal or disciplinary nature;
- intellectual property rights;
- the confidentiality of proceedings of any public authority, where such confidentiality is provided for by law;
- the confidentiality of commercial or industrial information;
- third party interests; and
- the protection of the environment.

- 4.32 If the RCH Group considers that the public interest is in favour of disclosure then the information must be disclosed, even if such disclosure would result in substantial prejudice to, for example, a third party's interests.
- 4.33 An additional exception to the requirement to disclose environmental information relates to personal information, this is similar to the exemption under FOISA; the public interest test only applies in relation to certain elements.

Refusal Notices

- 4.34 If a request is to be refused a refusal notice must be issued clearly explaining the reasons for refusal and detailing the provision in FOISA or the EIRs that has been applied and why (including, where required, an explanation of how the RCH Group has carried out the Public Interest Test). The refusal notice will also detail the RCH Group review process and the individuals' right to make an application to the SIC.

Reviews and investigations

- 4.35 There are two stages for individuals to have the RCH Group's response to their request for information reviewed under FOI legislation. The first is an internal review by the RCH Group and the second is to make an application to the SIC. Details on how to request a review or to appeal the SIC are included on all response templates used by the Information Compliance Team.

Internal Reviews

- 4.36 If an individual is dissatisfied with our handling of their request or the decision(s) made, they can ask for the response to be reviewed within 40 working days of receiving the response. A request for review must be:
- in writing or some other permanent form;
 - state the name of the applicant and a correspondence address;
 - specify the information request to which it relates; and
 - the matter giving rise to dissatisfaction.
- 4.37 Requests for review will be handled by the Information Compliance Team and may:
- confirm a decision complained of, with or without such modifications as it considers appropriate;
 - substitute for any such decision a different decision; or
 - reach a decision, where the complaint is that no decision had been reached.
- 4.38 Where the RCH Group performs a review and determines that a response to a request is not in accordance with FOISA or the EIRs the RCH Group will take immediate steps to rectify this (which could, for example, include releasing information which was previously withheld).

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

4.40 In any event the RCH Group will handle all requests for review in accordance with the timescales set out in FOISA and the EIRs.

Applications to the Scottish Information Commissioner

4.41 An individual is who remains dissatisfied with the response to their review request can appeal to the SIC. The SIC has a wide variety of powers to ensure compliance with FOI legislation; the RCH Group will fully co-operate with any investigation by the SIC.

4.42 Following the SIC's investigation and determination of the matter, a decision notice will be issued which may require disclosure of any withheld information.

4.43 Both the RCH Group and the individual in question have a right of appeal to the courts on a point of law.

5. Equality, Diversity, and Inclusion

5.1 The RCH Group will apply this policy fairly and consistently. In implementing this policy, we will not directly or indirectly discriminate against any person or group of people because of their race, religion or belief, gender, disability, age, sexual orientation, or any other grounds. Our commitment to equality and fairness will apply irrespective of factors such as age, disability, gender reassignment, marital or civil partnership status, pregnancy or maternity, race, religion or belief, sex, sexual orientation, or other personal attributes.

6. Review

6.1 This policy will be reviewed in its entirety every 3 years, unless an earlier review is required due to changes in legal, regulatory or best practice requirements, or because monitoring and reporting reveals that a change in policy is required sooner.

Appendix A: Flowchart of Process Summary

