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FREEDOM OF INFORMATION POLICY

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A registered Scottish Charity No.SCO39891 Registered: Scottish Housing Regulator.
Registration No. HCB 161 SC Registered: Financial Conduct Authority - 1818 R(S).
Registered under the Co-operative and Community Benefit Societies Act 2014.



1. **BACKGROUND**

a. Why is Milnbank HA subject to Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (EIRs)?

Milnbank Housing Association is subject to both FOISA and EIRs 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 EIRs.

b. What is subject to FOISA and EIRs?

However, in accordance with the terms of the Order, not everything that Milnbank Housing Association does is subject to FOISA and EIRs. Instead, Milnbank Housing Association is only subject to these regimes in respect of certain functions, name 'housing services' (as defined in s.165 of the Housing (Scotland) Act 2010) which Milnbank Housing 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 Milnbank Housing Association are covered by FOISA and EIRs:

- 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 (ie. a subsidiary) in relation to its financial wellbeing and standards of governance.

c. What is the difference between FOISA and EIRs?

EIRs provides a right of access to 'Environmental Information' held by Milnbank Housing Association. 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 EIRs.

Whilst the obligation under FOISA and EIRs are similar – there are some key difference that employees must be aware of when dealing with requests for information. Further guidance on the differences are available on Scottish Information Commissioner's (SIC) website.

2. **SCOPE OF THE POLICY**

This policy applies to any information held by Milnbank Housing Association which relates to one or more of the functions set out above, 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 Milnbank Housing Association.

This Policy applies to all Milnbank Housing Association employees.

3. **RESPONSIBILITIES**

a. **Data Protection Officer**

The Association have appointed a Data Protection Officer who will be responsible for:

- Responding to requests under FOISA and EIRs and who information requests should be forward to;
- Collating information for sending out to requesters;
- Making information available in accordance with MHA's Publication Scheme;
- Effective implementation and regular review of this Policy

b. **Directorate**

The Directorate has lead management responsibility for FOISA and EIRs within Milnbank Housing Association. This will include dealing with requests for review.

c. **MHA Employees**

All employees are responsible for:

- Familiarising themselves with this policy;
- Forwarding information requests received to the Data Protection Officer, as soon as possible. If you are unsure how to recognise an information request you should seek guidance from the Data Protection Officer.
- Seeking guidance from the Data Protection Officer if they are unsure about any of the duties placed on Milnbank Housing Association by FOISA or EIRs;

Employees should be aware that where an information request is received and an employee deletes or alters information held by Milnbank Housing Association 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 Data Protection Officer.

Compliance with this policy is compulsory for all employees of Milnbank Housing Association. Any employee who fails to comply with this policy may be subject to disciplinary action.

4. **LEGAL DUTIES**

Milnbank Housing Association has a number of legal duties which it must comply with under FOISA and EIRs. These are set out in more detail below:

a. Responding to Information Requests

People have the right to request information from Milnbank Housing Association. Where the information requested is within the scope of the Order and Milnbank Housing Association holds that information it must release the information unless an exemption (under FOISA) or an exception under (EIRs) applies. Milnbank Housing Association shall, when responding to requests for information from individuals follow the Section 60 Code of Practice and any relevant guidance produced by SIC.

Milnbank Housing Association will aim to respond to information requests promptly, and in any event within 20 working days of receiving the request (except in some circumstance under EIRs where Milnbank Housing Association is entitled to extend the timescale for responding by an additional 20 working days).

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

Where Milnbank Housing Association is asked to provide information which it does not hold, but the Association knows that another Scottish Public Authority does hold the requested information – the Association shall provide contact details of said Authority to the individual requesting the information and explain that the individual may wish to request the information from the Scottish Public Authority. Where a request is being handled under EIRs and these circumstances apply the Association shall offer to transfer the individual's request to the other Scottish Public Authority.

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

- For requests being handled under FOISA: the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004;
- For requests being handled under EIRs: the Schedule of Charges [link to published schedule] of Milnbank Housing Association

Any fee charged by Milnbank Housing Association will be reasonable and will not exceed the costs to Milnbank Housing Association of providing requested information. Milnbank Housing Association's charging schedule can be found at Appendix 1.

b. Responding to Requests for Review

Where someone has requested information from Milnbank Housing Association and:

- Milnbank Housing Association has failed to respond to the request within the 20 working day deadline (or extended deadline in respect of certain requests made under EIRs); 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/EIRs)

then they have the right to request that Milnbank Housing Association reviews the response to their request to determine whether or not the provisions of FOISA or EIRs have been followed.

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

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

In any event Milnbank Housing Association will handle all requests for review in accordance with the timescales set out in FOISA and EIRs.

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

c. Provision of Advice and Assistance to Individuals

Milnbank Housing Association 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 as removed. Milnbank Housing Association will comply with this duty by following the guidance contained in the Section 60 Code of Practice issued by Scottish Ministers.

d. Publication of Information

Milnbank Housing Association shall publish information in accordance with its Publication Scheme through its Guide to Information. The Guidance to Information of Milnbank Housing Association will be available on its website and a paper format will also be available on request.

The online Guide to Information can be found at www.milnbank.org.uk .

e. Data Protection

Milnbank Housing Association is committed to upholding its data protection obligations set out in the GDPR and the Data Protection Act 2019.

Under data protection laws, individuals have the right to request access to all of the information that Milnbank Housing Association holds about them. This and other rights that individuals have under data protection are not covered by this policy and you should refer to the Privacy Policy when dealing with these rights.

The Privacy Policy can be found on <http://www.milnbank.org.uk/?id=142>

APPENDIX 1 – MHA CHARGING SCHEDULE

There is no charge to view information on our website or at our premises. We may charge for providing information to you, but we will charge you no more than it costs us to do so. We will always tell you what the cost is before providing the information to you.

Our charges for providing any information detailed in this guide are summarised below:

Format	Charge
Online	Free
View at our office	Free
Print in black and white	10p per A4 sheet 20p per A3 sheet
Print in colour	20p per A4 sheet 40p per A4 sheet
CD	£0.50
Posted document/CD	Cost of 1 st class postage

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 to you in relation to our published information.

Charges for information which is not available under the scheme:

If you submit a request to us for information which is not available in this Guide 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 you may be asked to pay 10% of the cost. That is, if you were to ask for information that cost us £600 to provide, you 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, nor for the time it takes to decide whether the information can be released. Charges may be made for locating, retrieving and providing information to you
- In the event that we decide to impose a charge we will issue you with notification of the charge (a fees notice) and how it has been calculated. You 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 you on payment of the charge. If you decide not to proceed with the request there will be no charge to you.