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# Sanctuary Group

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**Title:** Freedom of Information (Scotland) - Group Procedure

**Business Function:** All Functions across Sanctuary Group that hold information relating to regulated activities of Sanctuary Scotland

**Authors:** Legal Services

**Other Contributors:** Sanctuary Scotland

**Authorised by:** Executive Director - Corporate Services

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**Sanctuary Group:**  
Sanctuary Group is a trading name of Sanctuary Housing Association, an exempt charity, and all of its subsidiaries.

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## General Information

### 1. Objective of this procedure

- 1.1 The objective of this procedure is to provide a framework to guide staff in the implementation of the [Freedom of Information \(Scotland\) - Group Policy](#), and to provide clarification on the basic requirements of the legislation.
- 1.2 It is important that all staff involved in handling of information covered by the Freedom of Information (Scotland) Act 2002 (FOISA) are appropriately trained as soon as possible upon commencement of their employment. It is important that staff recognise that whilst the FOISA currently only affects regulated activities of Sanctuary Scotland, a request can be made by anyone to any part of Sanctuary Group (the Group). Staff need to be able to recognise a valid request and direct it through the procedure set out at section 4 of the Detailed Procedures.
- 1.3 **This procedure should be read in conjunction with the following:**
- [Data Protection - Group Policy and Procedure](#)
  - [Archiving - Group Policy and Procedure](#)
  - [Disciplinary - Group Procedure](#)
  - [Information Security - Group Policy](#) and the [Information Security Management System Manual](#)
  - [Content and Records Management - Group Policy and Procedure](#).
  - [Freedom Of Information: Sanctuary Scotland's Publication Scheme | Sanctuary Scotland](#)

### 2. Legislative/Regulatory context

- 2.1 References and sources are set out in the [Freedom of Information \(Scotland\) - Group Policy](#). In particular, the policy and procedure are driven by the Group's obligations to comply with the regulatory and legal requirements of the:
- [Freedom of Information \(Scotland\) Act 2002 \(FOISA\)](#)
  - [The Environmental Information \(Scotland\) Regulations 2004 \(EIRs\)](#)
- 2.2 Given the possibility that this legislation may be amended over time, or as case law develops through decision of the Scottish Information Commissioner, Sanctuary Scotland will keep this procedure under review and will specifically review its operation following any change in FOISA or the EIRs, to ensure it remains in full compliance with the law.

### 3. Responsibilities for implementation

- 3.1 Directors (or equivalent) are responsible for ensuring adoption of, and adherence to, this procedure and its associated policy relevant to their operation.

- 3.2 This procedure, and its associated policy, applies to all staff within the Group who carry out work relating to Sanctuary Scotland's activities regulated by the Scottish Housing Regulator. In addition, certain staff working in central functions within the Group are also required to understand and comply with this policy and procedure. It is the responsibility of Directors and the Freedom of Information Officer (FOI Officer) to ensure that relevant staff undertake training on FOISA and EIRs, as appropriate.
- 3.3 The Director - Sanctuary Scotland is the Group's nominated FOI Officer. The FOI Officer, with support from Legal Services where appropriate, has overall responsibility for ensuring compliance with the FOISA, deciding on the validity of requests, collating requested information, reviewing information to be released in response for a request, preparing and issuing responses to any requests for information, reviewing publishable material, ensuring the ongoing publication of material, liaising with the Scottish Information Commissioner (SIC), co-ordinating review requests and dealing with complaints.
- 3.4 All contractors providing services or goods to Sanctuary Scotland in relation to its regulated activities will also need comply with the requirements of FOISA and EIRs. This must be provided for in any written agreement between the Group and the individual/company. This will ensure that they agree to abide by FOISA and EIRs, in so far as they hold information relating to Sanctuary Scotland and its regulated activities.
- 3.5 All staff must know how to recognise a request for information which may be subject to the FOISA or the EIRs, and to direct it to the FOI Officer for consideration.
- 3.6 All staff should be aware of the obligation to provide advice and assistance to individuals seeking information.

#### 4. What's new - What's different?

- 4.1 January 2024 - Formal review, amended to clarify the process being followed in Sanctuary Scotland and updates to role titles; no other significant changes.

#### 5. Definitions

- 5.1 The following definitions aim to support the user's understanding of this procedure.

<b><i>Classes of Information</i></b>	Nine broad categories describing the types of information that every public authority adopting the Model Publication Scheme must publish (if they hold it)
<b><i>EIRs</i></b>	The Environmental Information (Scotland) Regulations 2004
<b><i>Exemptions</i></b>	Specific exemptions that are set out in the FOISA at section 25 - 40 which may be applied in relation to a request for information.
<b><i>FOISA</i></b>	The Freedom of Information (Scotland) Act 2002

<b><i>Freedom of Information Officer or FOI Officer</i></b>	A senior person within the Group who has overall responsibility for compliance with the FOISA.
<b><i>Model Publication Scheme</i></b>	A standard framework for public authorities to publish information under the FOISA approved by the SIC and which has been adopted by Sanctuary Scotland
<b><i>MPS Principles</i></b>	The six key principles with which all information published under the Model Publication Scheme must comply.
<b><i>Public Authority</i></b>	Means any Scottish public authority as defined by section 3 of the FOISA. Section 3 references a list of public authorities contained in Schedule 1 of the FOISA or as may be designated by an order under section 5 (1).
<b><i>Regulated activities</i></b>	Any activity that is regulated by the Scottish Housing Regulator
<b><i>Scottish Information Commissioner or SIC</i></b>	The regulatory body that oversees compliance with the FOISA and the EIRs in Scotland

## Detailed Procedures

### 1. Freedom of Information overview

1.1 The FOISA and the EIRs enable the public to access information of any age held by Scottish public authorities. The three main duties are:

- the duty to proactively publish information;
- the duty to respond to information requests; and
- the duty to provide advice and assistance.

1.2 These regimes require authorities to either make available the information requested by an applicant or to explain why the information is not being made available by reference to an Exemption. Public authorities must also have a publication scheme which sets out the information that they will routinely publish. In addition, an authority must provide advice and assistance to an applicant in addressing their request. The SIC is responsible for enforcing and promoting both regimes.

1.3 The EIRs apply to environmental information only. In Scotland, the Group has been subject to the EIRs for some time. The FOISA applies to all information (including environmental information). However, section 39(2)(a) of the FOISA allows a public authority to exempt environmental information, which the authority is obliged to make available to the public under the EIRs. By applying this exemption, the public authority can then go on to consider the request under the EIRs alone. The process for dealing with such a request is the same and is detailed in section 4 below.

### 2. What information is covered?

2.1 All information relating to Sanctuary Scotland's activities which are regulated by the Scottish Housing Regulator and which it holds. This will mainly be information relating to the provision of social housing in Scotland and in particular information related to that activity which will have a specific public interest. This will include information about decisions made and the facts and analysis that inform them and the functions and services provided by Sanctuary Scotland, including the costs of those services and their performance. The fundamental principle of the FOISA is that information must be disclosed unless it is exempt from disclosure.

2.2 For clarity, information which is not part of regulated activities, and is held exclusively for the purpose of the private commercial activities of Sanctuary Scotland (such as factoring services) is not within scope of FOISA. Any request for such information may still be considered by the FOI Officer but there is no obligation to disclose information of this nature in terms of FOISA.

2.3 Sanctuary Scotland has adopted SIC's Model Publication Scheme (MPS). A copy of the MPS is available on the website of SIC. This sets out the different Classes of Information that fall within the scope of the FOISA which Sanctuary Scotland is obliged to proactively publish in order to comply.

- 2.4 In addition, the Scottish Federation of Housing Associations, in conjunction with SIC, has produced a model template Guide to Publication which it is recommended that registered social landlords in Scotland follow as best practice. Sanctuary Scotland has chosen to follow this template guide, with amendments where appropriate. Following this template ensures full compliance with the MPS. The MPS is a living document and should be regularly reviewed to ensure any changes are reflected in [Freedom Of Information: Sanctuary Scotland's Publication Scheme | Sanctuary Scotland](#) (the “Guide to Information”).
- 2.5 The information can be in any ‘recorded form’ so could include: computer records; handwritten notes; video/audio recordings; and photographs. The information does not have to have been created by the Group. Information held by a third party on behalf of a Public Authority is also covered.
- 2.6 Where Sanctuary Scotland does not currently hold the information requested in a recorded format, there is no obligation to ‘create’ new information in order to satisfy a request.

### **3. How can a request be made?**

- 3.1 Anyone anywhere may make a request. Any entity may make a request (it does not have to be an individual only). For a request to be valid it must be in writing or in permanent form that can be referred to at a later date (for example a video recording). It must state the name of the applicant and an address for the reply to be sent to. The request does not need to mention the words “freedom of information” or any legislation. The request must also contain an adequate description of the information requested. A web form is available at <https://www.sanctuary-scotland.co.uk/foi-sanctuary-scotlands-publication-scheme> which all applicants should be directed to complete, so that their request is properly dealt with. If a request is made via letter or email, then the recipient should complete the webform.
- 3.2 A Public Authority may charge for the provision of information. Sanctuary Scotland will not charge for the provision of information unless such a request is expected to cost in excess of £100] to prepare and issue. The Guide to Information contains details of charges that may apply in these circumstances. If the cost of complying with a request exceeds £600 then the Public Authority does not have to respond. The FOI Officer should be consulted in relation to charging for exceptional cases as there are detailed provisions around what can and cannot be included in the costs.
- 3.3 Requests for information must be answered as soon as possible and within 20 working days from the first working day after the request is received. It is good practice to acknowledge a request for information. If a request is for environmental information (and is therefore being responded to under the EIRs) and the information held is both complex and voluminous, the Public Authority may extend this period up to a maximum of 40 working days.

3.4 In responding to a request for information a Public Authority must have due regard to request for information in a particular format. In particular a Public Authority must be mindful of its duties under the Equality Act 2010 (the “Act”). Any cost of converting the information in to the requested format which is required under the Act must not be taken in to consideration when determining if Sanctuary will be required to charge the requester, or to refuse to respond (see section 3.2).

#### **4. Responding to a request**

4.1 When a request is received, the FOI Officer will decide if the request is a valid request in terms of FOISA or EIRS or if it should be dealt with in some other way.

4.2 If the request is unclear). Sanctuary Scotland must ask the requester for further information to allow the authority to identify and locate the information requested. If clarification is needed, the 20 working days starts when the authority receives the clarification response. Any request for clarification should be issued as soon as possible after the request is received. Advice and assistance should be given to help the requester provide the necessary clarification.

4.3 If, after seeking clarification and all reasonable assistance has been given, the requester still cannot describe the information requested in a way which enables the authority to identify and locate it, then the authority is not required to proceed with the request.

4.4 When the FOI Officer is satisfied that the request is valid and, where necessary, that there is enough information available to allow the requested information to be located, the request will be sent to the relevant business area(s) for the information to be collated and an outline response prepared.

4.5 The relevant business areas should carry out searches to locate and obtain the information held. It is good practice for a record to be kept of the searches made for the information. This is particularly important if the information is not held. The search information will be requested by the SIC if an appeal is made to them.

4.6 The relevant business areas should prepare the outline response, including reference to any exemptions they believe may be appropriate, and forward to the FOI Officer within the timescales specified by the FOI Officer.

4.7 The FOI Officer will review and finalise the response, with input from Legal Services where required. Legal Services should respond to a request from the FOI Officer within the timescales specified.

4.8 The FOI Officer will respond to:

- confirm or deny if Sanctuary Scotland holds the requested information;
- provide access to, or copies of, the requested information;



- where applicable, explain if any information is exempt from disclosure and why that Exemption applies including how the public interest test has been applied if that is appropriate;
- explain any applicable charges due to receive the information; and/or
- explain if any or all of their request is being refused.

4.9 In certain circumstances, Sanctuary Scotland may elect to refuse to confirm or deny if it holds the requested information where doing so would be contrary to the public interest. The FOI Officer will seek the support of Legal Services where necessary in considering whether this applies to a request.

4.10 In responding to any request, the requester must be informed that they have the right to request a review within 40 days, and to appeal to the Scottish Information Commissioner.

4.11 In rare circumstances, Sanctuary Scotland may refuse to respond to a request where the request is deemed vexatious or repeated. In such circumstances, the requester must still be informed of their rights to seek a review or appeal and of their right to appeal to the Court of Session where applicable. The FOI Officer will seek the support of Legal Services in relation to such a refusal where that is considered necessary.

## 5. Are there any exemptions that can be relied upon?

5.1 The nature of Sanctuary's business as a registered social landlord means that there are few exemptions available. The exemptions are set out in full in sections 25 - 41 of the FOISA. In relation to the application of Exemptions, in most cases where an Exemption applies, there is a further assessment required which is whether, notwithstanding the Exemption, the public interest in disclosing outweighs the interest in not. These are referred to as 'qualified' Exemptions. The most common Exemptions which may apply to information held by Sanctuary Scotland are:

- **Information otherwise accessible** - exempts information from disclosure where applicant can reasonably obtain it without asking under the FOISA.
- **Information intended for future publication** - exempts information held by an authority for future publication within 12 weeks of the request (qualified).
- **Commercial Interests** - disclosure would (or would be likely to) prejudice substantially the commercial interests of any person or organisation (including Sanctuary) (qualified).
- **Confidentiality** - information is exempt if it is legally privileged, subject to litigation privilege or obtained by an Authority from another person and disclosing it would constitute an 'actionable breach of confidence'.
- **Personal information** - personal data of third parties is exempt from disclosure.

- 5.2 Where information is exempt from disclosure, this must be communicated to the requester in the response. The response must explain which Exemption has been applied. In some cases, information may be partially exempt. Sanctuary Scotland has template letters for using in relation to responses required.
- 5.3 Applicants can request a review of a response to a request. This must be done within 40 working days of the response. All review requests should be directed to the FOI Officer in the first instance. The review must be undertaken within 20 working days. The FOI Officer must ensure that the review is carried out by someone independent of the original decision.

## **6. Reviewing a previous response**

- 6.1 Where a requester has asked for a response to be reviewed, Sanctuary Scotland must do so within 20 working days of the request. A request for review must refer to the original request, explain why the requester is unhappy with the original response, and include the requester's name and address.
- 6.2 When reviewing the original response, the reviewer should:
- Double check the terms of the original request to ensure the question posed has been correctly considered. Do not assume that any previous interpretation of the request is correct. If there is any doubt, seek clarification from the requester.
  - Double check the information held. It is good practice to keep a record of the searches which are carried out as the SIC will ask for these if an appeal is sent to them.
  - Review the information held to see what has been released and what could be released.
  - Reconsider the application of any Exemption, including the application of the public interest test where appropriate.
  - Consider whether any further advice and assistance could be given to the requester to help them to obtain the information they are seeking.
- 6.3 When the review has been completed, the requester should be advised:
- what steps Sanctuary Scotland has taken to review the original response
  - the outcome of the review process which can include confirming the original decision, reaching a different decision, or to reach a decision where no decision had originally been made;
  - the right to appeal to the SIC; and
  - any right of appeal to the Court of Session
- 6.4 Where an original request was considered to be vexatious or repeated and a refusal notice was issued (see 4.7), a review of that response may also be refused on the same grounds. The rights of appeal must still be provided to the requester in such circumstances.

- 6.5 If the review process concludes that information which was previously withheld should have been released, that information should be sent to the requester with the review response.
- 7. Appeal to the Scottish Information Commissioner (SIC)**
- 7.1 The FOI Officer is the contact for the SIC and will deal with any appeals made to or correspondence from them.
- 7.2 If, following an appeal, the SIC finds that a Public Authority has wrongly withheld information, the Authority may be ordered to disclose it. The FOI Officer will arrange for the information to be disclosed in these circumstances.

## Supporting Information

- 1. Model Publication Scheme**
- 1.1 [Model Publication Scheme](#)
- 2. Scottish Federation of Housing Associations: Open All Hours**
- 2.1 See **Appendix 1**.
- 3. Webform**
- 3.1 <https://www.sanctuary-scotland.co.uk/foi-sanctuary-scotlands-publication-scheme>
- 4. Templates**
- 4.1 Template letters are available from Legal Services and the Freedom of Information Officer
- 5. Additional support and guidance**
- 5.1 For additional support and guidance please contact the Legal Services team and the Freedom of Information Officer.