

### FREEDOM OF INFORMATION ACT 2000 & ENVIRONMENTAL INFORMATION REGULATIONS 2004 POLICY

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## Introduction and scope

* 1. The Freedom of Information Act 2000, came fully into effect in 2005. The Environmental Information Regulations 2004. It is a legal requirement all other public authorities including Derby Homes , must comply with the information governance legisialtion.
	2. This document is a policy statement outlining our commitment and approach to Freedom Of Information (FOI) and Environmental Information Regulations (EIR). The policy applies to all Board Members and employees, including temporary staff, who handle information on behalf of Derby Homes.
	3. Separate documents have been produced which will set out procedures and provide guidance for Board Members and employees to make sure that FOI and EIR aremanaged correctly. This includes a procedure on how requests received from Derby City Council are managed.

## Definitions

**Data Protection Act (2018) (“the DPA”) and GDPR 2016**

Law relating to privacy and the processing of personal data, including all applicable guidance and codes of practice issued by the Information Commissioner’s Office or any replacement EU or UK data protection or related privacy Law in force in England and Wales;

**Environmental Information Regulations (2004) (“EIRs”)**

Statute which came into force in 2005 and gives the right of access to environmental information held by public authorities.

Exceptions

Conditions which may be applied to an EIR in circunmstances which requested data maybe withheld. All Exceptions are qualified and require a public interest test.

**Exemptions**

Conditions which may be applied to an FOI in circumstances in which requested data may be withheld from disclosure. There are two types of exemption: absolute and qualified.

**Absolute exemptions:**

Exemptions that do not require a public interest test to be undertaken.

**Qualified exemptions:**

Exemptions which require a public interest test to be completed before they are applied.:

**Freedom of Information (FOI) Act (2000) (“the Act”):**

An Act of Parliament which came into force in 2005. The Act gives the public the “right to know” and allows them to request any information held by the Trust.

**Information Commissioner’s Office (ICO):**

An independent regulatory office reporting directly to Parliament and overseeing the DPA, the FOI Act, and the EIRs. The Information Commissioner is appointed by the Crown.

**Public Interest Test:**

A public interest test must be applied when the use of a qualified exemption under FOI is proposed. If an exception is being propsed under EIR a public interest test must be applied. The factors for and against the disclosure of requested information are considered. In order to apply the exemption, the factors against disclosure must be seen to outweigh the factors for disclosure.

**Publication Scheme:**

A list of information the ICO expects public authorities to regularly publish. All public authorities are required to produce and maintain a Publication Scheme.

## Responsibility and compliance

* 1. The Managing Director of Derby Homes has overall responsibility for FOI within Derby Homes. The Information Governance Manager has day-to-day responsibility for management and co-ordination of FOI.
	2. All employees and Board Members should be aware of their duties under the Act and should assist the Information Governance Manager when asked. Any member of staff could be asked for information. If employees knowingly fail to comply with this Policy, or the Freedom of Information Act, Derby Homes may take appropriate action under the Disciplinary Procedure.

## Requests for information

* 1. FOI and EIR is intended to cover all information that is not already subject to information access rights. In a number of areas information is already available under alternative access rights. An example of this is:

personal information, which is covered by the DPA

* 1. FOI requests must be made in writing. This can include fax and email or other electronic means. There is no requirement for people to mention FOI in their requests or to say why they need the information. If a request is unclear, we will try and clarify what is required.
	2. EIR requests do not need to be made in witing; however a written record should be be made of any verbal requests that are recieved. There is no requirement for people to mention EIR in their requests or to say why they need the information. If a request is unclear, we will try and clarify what is required.
	3. Derby Homes acknowledges that it has a duty to confirm or deny to the applicant whether the information is held.
	4. If the information covered by the FOI can be provided and it is not subject to an exemption, we will provide the information within 20 working days of a request being received. However, if a charge is to be made for information, the time that it takes between Derby Homes sending out a fees notice and the payment being received, is not counted as part of the 20 working days.
	5. If the information covered by the EIR can be provided and is not subject to an exception, we will provide the information in 20 working days of a request being received. For requests that are considered complex a further 20 days can be taken. The applicant must be notified within the 20 days if we are extending the response time by 20 days. However, if a charge is to be made for information, the time that it takes between Derby Homes sending out a fees notice and the payment being received, is not counted as part of the 20 working days
	6. Information will be provided in the most appropriate format. However, alternative formats can be requested. We will, however, consider the cost implications of such requests.
	7. We have no obligation to comply with vexatious requests. Vexatious means repeated, unreasonable and nuisance requests.
	8. We will use all reasonable efforts to assist an applicant to obtain the information required.
	9. ‘business as usual’ request is a request for information or services that a service area would expect to reciec in its normal day to day operation. Any request received that indicates its an FOI or EIR request cannot be treated in as ‘business as usual’.
	10. Derby Homes is not required to create new, recorded information that it does not currently hold in order to meet a request for information.
	11. If it is not clear what information is being requestd in the FOI or EIR Derby Homes has a duty to clarify what is being requested. In these circumstances the response clock stops and until clarification is received, once sufficient clarification is received the 20 day clock is recalculated and a new deadline will be given.
	12. Information must not be deliberately withheld or disposed of that is covered by the legislation. If you are not happy with some information that has been requested please contact email Foi.Derbyhomes@derbyhomes.org or contact the Information Governance Manager 01332 888606 to obtain advice on exemptions or exceptions that may apply.
	13. If employees knowingly do not comply with Derby Homes, policies, procedures or guidelines, Derby Homes may tak appropriate action in accordance with the Employee Code of Conduct.

## Publication Scheme

* 1. Derby Homes is required to produce and maintain a Publication Scheme. This will be available on our web site. This is a directory of information and publications that are routinely available. The Publication Scheme outlines:
* the way we intend to present the information
* how we intend to publish it
* whether we intend to make a charge and if so, what the charge is.
	1. Information covered by the Publication Scheme should be obtained in the manner described in the Scheme.
	2. We will review our Publication Scheme from time to time with the intention of increasing the scope and range of information covered by it.

## Charges

* 1. We provide most information free of charge, particularly that which is available on Derby Homes’ web site. Some documents in the Publication Scheme are subject to a charge, usually intended to meet some or all of the cost of publication.
	2. The regulations allow us to pass on to the applicant any disbursement costs that are incurred when processing a request. This includes photocopying and the cost of CD ROM’s. However, if the total disbursement costs are less than £10.00 a charge will not normally be made.
	3. The regulations allow us to refuse any requests where the time taken to locate and retrieve the information is longer than 18 hours. If this is the case, the applicant will be given the option to refine and resubmit their request so that is reduces the time to within the appropriate limit.
	4. We have the right to withhold information if the required fee is not paid.

## Exemptions and Exceptions

* 1. Certain information held by Derby Homes is exempt from FOI. There are 24 exemptions. These fall into two categories.

**Absolute exemptions.** These exemptions are unconditional. Examples of these include information accessible by other means, information provided to Derby Homes in confidence and personal information covered by the DPA. A full list is given below.

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| Section [21.](http://www.hmso.gov.uk/acts/acts2000/00036--f.htm#21) | Information accessible to applicant by other means. |
| Section [23.](http://www.hmso.gov.uk/acts/acts2000/00036--e.htm#23) | Information supplied by, or relating to, bodies dealing with security matters. |
| Section [32.](http://www.derby.gov.uk/#32) | Court records, etc. |
| Section [34.](http://www.hmso.gov.uk/acts/acts2000/00036--f.htm#34) | Parliamentary privilege. |
| Section [40.](http://www.hmso.gov.uk/acts/acts2000/00036--f.htm#40) | Personal information. |
| Section [41.](http://www.hmso.gov.uk/acts/acts2000/00036--e.htm#41) | Information provided in confidence. |
| Section [44.](http://www.hmso.gov.uk/acts/acts2000/00036--f.htm#44) | Prohibitions on disclosure. |

**Qualified exemptions.** This category of exemption is subject to a public interest test. In these cases we will look at whether the balance of public interest is weighted in favour of giving the information requested. Where this is found to be the case, the information will be given. Examples of qualified exemptions include commercially sensitive information and information that would prejudice the health and safety of an individual. A full list is given below.

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| Section [22.](http://www.hmso.gov.uk/acts/acts2000/00036--h.htm#22) | Information intended for future publication. |
| Section [24.](http://www.hmso.gov.uk/acts/acts2000/00036--f.htm#24) | National security. |
| Section [25.](http://www.hmso.gov.uk/acts/acts2000/00036--g.htm#25) | Certificates under ss. 23 and 24: supplementary provisions. |
| Section [26.](http://www.hmso.gov.uk/acts/acts2000/00036--e.htm#26) | Defence. |
| Section [27.](http://www.hmso.gov.uk/acts/acts2000/00036--e.htm#27) | International relations.  |
| Section [28.](http://www.hmso.gov.uk/acts/acts2000/00036--g.htm#28) | Relations within the United Kingdom. |
| Section [29.](http://www.hmso.gov.uk/acts/acts2000/00036--f.htm#29) | The economy. |
| Section [30.](http://www.hmso.gov.uk/acts/acts2000/00036--e.htm#30) | Investigations and proceedings conducted by public authorities. |
| Section [31.](http://www.hmso.gov.uk/acts/acts2000/00036--g.htm#31) | Law enforcement. |
| Section [33.](http://www.hmso.gov.uk/acts/acts2000/00036--e.htm#33) | Audit functions. |
| Section [35.](http://www.hmso.gov.uk/acts/acts2000/00036--f.htm#35) | Formulation of government policy, etc. |
| Section [36.](http://www.hmso.gov.uk/acts/acts2000/00036--g.htm#36) | Prejudice to effective conduct of public affairs. |
| Section [37.](http://www.hmso.gov.uk/acts/acts2000/00036--h.htm#37) | Communications with Her Majesty, etc. and honours. |
| Section [38.](http://www.hmso.gov.uk/acts/acts2000/00036--e.htm#38) | Health and safety. |
| Section 39. | Environmental information. |
| Section [42.](http://www.ico.gov.uk#42) | Legal professional privilege. |
| Section [43.](http://www.hmso.gov.uk/acts/acts2000/00036--h.htm#43) | Commercial interests. |

* 1. Under EIR all exceptions are subject to the public interest test to determine if the information should be withheld or disclosed. If an EIR is to be withheld please contact the Information Governance Manager for advice.
	2. It is out intention to apply exemptions and exceptions in appropriate circumstances.
	3. For example, we recognise that some information supplied to us is confidential in nature or commercially sensitive. We will have regard to that in our application of exemptions or exceptions
	4. We will make clear statements to parties contracting with Derby Homes to make sure they are aware of our obligations to disclose under FOI and EIR and we will resist attempts to impose confidentiality obligations on Derby Homes where the information is not confidential in nature.

## If a request is turned down or refused

* 1. We will always confirm or deny whether or not we hold information requested and we will respond promptly to information requests. We will either provide the information requested or, if it is withheld, explain why it has not been provided, quoting the relevant exemption or exceptionunder the relevant Act. We will only turn down a request or refuse to provide information in the following circumstances. If:
		+ it falls into one of the exemption or exception categories
		+ the request is considered vexatious
		+ the required fee is not paid within three months.
	2. If a request is refused or dissatissfied with the handling of their request, the applicant has the right to ask for that decision to be reviewed under Derby Homes complaints procedure.
	3. An internal review of an FOIA must be dealt with within 20 working days of a written complaint being received by Derby Homes
	4. An internal review of an EIR must be dealt with within 40 working days of a written complaint being receive by Derby omes, this may be extended if the review is complex.
	5. If ater the internal appeal, the information is still not disclosed or the applicant is still disatissfied with the handling of their request, the applicant has the right to ask the Information Commisioner to review the decision.

## Transferring a request to another body

* 1. If it is found that another public body holds the information requested, we will either transfer the request to that organisation or advise the applicant where that information can be obtained. Any part of the request that relates to Derby Homes will be handled in the normal way.
	2. We will inform the applicant if all or part of an enquiry has been transferred to another public body.
	3. In cases where there are reasonable grounds to believe that the applicant would object to a transfer, we will first ask for consent from the applicant.

## Records Management

* 1. All Board Members and employees must make sure that information for which they are responsible is held in an organised and systematic way that will allow it to be identified and retrieved.

## Other relevant policies and procedures

* Data Protection Act 2018 Policy
* Data Protection Act 2018 Code of Practice
* GDPR 2016

## Version Control

* 1. All copies will be updated for changes through the Company Solicitor.

## Version History

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| **Date Issued** | **Version** | **Status** | **Reason for change** |
| July 2014 | 1.0 |  | New policy  |
| July 2017 | 2.0 |  | Review  |
| July 2020 | 3.0 |  | Review and update |

## Further guidance

**Freedom of Information and Environmental Information Regulations**Is available on DHNet and from the Informationation Governance Manger.

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| Information Governance Manager |  | 01332 888606 |

Email: Foi.Derbyhomes@derbyhomes.org

Further Information on FOI and EIR can be found on the Information Commisioners Office (ICO) or you can contact them:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 0303 123 1113 (local rate) or 01625 545 745 if you prefer to use a national rate number

Fax: 01625 524 510

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|  | [www.ico.gov.uk](http://www.hmso.gov.uk/acts/acts2000/00036--g.htm) |

* **Data Protection Act 2018**

Derby Homes Information Governance Managerhandles requests for information covered by the Data Protection Act 2018

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