

Blog: Freedom of information net closing on housing associations

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Paul Motion and Muneeb Gill from BTO explore the implications of a draft order that will designate Registered Social Landlords (RSLs) and RSL subsidiaries as “public authorities” for the purposes of the Freedom of Information (Scotland) Act 2002 from April 2019.

Just like buses...

Yet another tier of administration recently hove into view on the social housing horizon. On 6 December 2017 the Scottish Government opened its consultation on a draft order that from April 2019 will designate Registered Social Landlords (RSLs) and RSL subsidiaries as “public authorities” for the purposes of the Freedom of Information (Scotland) Act 2002. The consultation paper can be viewed [here](#).

This is hardly ideal timing where RSLs are already facing added costs due to implementing the EU General Data Protection Regulation from 25th May 2018 as well as the general uncertainties caused by Brexit.

Housing Activities

The Government's professed thinking is that tenants of RSLs should have the same rights to information as tenants of a local authority landlord.

The draft order seeks to make RSLs subject to the FOI regime insofar as they carry out "housing activities" as defined in the Housing (Scotland) Act 2010, and in respect of which they are already subject to regulation by the Scottish Housing Regulator.

"Housing activities" are where a social landlord provides housing accommodation and related services for:

1. the prevention and alleviation of homelessness;
2. the management of housing accommodation;
3. the provision of services for owners and occupiers of houses; or
4. the provision and management of sites for gypsies and travellers.

Factoring

Interestingly, the government considers that the effect of draft order will also be that RSLs and their subsidiaries will be required to disclose information relating to any factoring services provided by them. This stems from the government's view that factoring services are an integral part of the housing services provided by RSLs (and RSL subsidiaries).

RSL subsidiaries

Of particular note is the government's proposal to make RSL subsidiaries subject to the freedom of information regime in addition to their RSL parents. This government had previously not proposed this on the basis that RSL subsidiaries were primarily set up as commercial organisations to undertake private activities that were not part of the main housing function of RSLs.

However, the government was concerned that not making RSL subsidiaries subject to the freedom of information regime would essentially mean that a person's access to information would be determined by whether a housing activity was being carried out by the RSL or its subsidiary (rather than simply looking at whether a housing activity is being carried out). The effect of this could be that a person was denied information relating to a housing service simply because the service is provided by the RSL's subsidiary, rather than the RSL itself.

Financial and administrative implications

The new requirements will place additional financial and administrative burdens on RSLs and their subsidiaries as they seek to comply with freedom of information requests. FOI costs will depend on the size and type of RSL, the information requested and to what extent staff have been trained to deal with requests or to recognise an FOI request in the first place.

As part of a previous consultation carried out by the government on this issue, one respondent noted that it took a day's work to respond to a single request. A Housing Association noted that the proposals would result in RSLs having to divert resources away from landlord services to meet legal requirements. Another respondent estimated that the proposals would cost it £11,500 annually based on 50 requests per year. This is in addition to the costs of training staff and putting the correct systems and processes in place.

Once it becomes law, the new order will be the subject of a review one year from commencement.

- **Paul Motion is a partner and solicitor advocate and Muneeb Gill is a solicitor in BTO Solicitors' Data Protection team**