



OAK TREE HOUSING ASSOCIATION

Openness & Confidentiality Policy

Adopted December 2004

Last Reviewed November 2015

Next Review Due November 2018

1. INTRODUCTION

- 1.1 Oak Tree Housing Association (OTHA) is committed to the highest standards of openness, probity and accountability. We recognise that as a publicly funded body we should be open in our dealings and accountable for our actions. At the same time, OTHA must acknowledge its duty to keep personal or sensitive information confidential.
- 1.2 This Policy therefore, sets out OTHA's commitment to openness, whilst balancing the competing requirement of confidentiality.

2. POLICY PRINCIPLES

- 2.1 As a matter of general policy, information about OTHA and its work should be widely and freely available. OTHA will publish material about the organisation, its services and its performance, and communicate it in a variety of ways. We will make additional information available upon request, unless there are good reasons of confidentiality or practicality, or where its disclosure is restricted by legislation.
- 2.2 Our commitment to openness does not detract from the need to keep certain types of information confidential, particularly where it is required by law. The policy intends to strike a balance between a commitment to openness and the need for confidentiality in some circumstances. In general terms, all organisational information, which is not sensitive should be openly available; all personal information that is not a matter of public record should be kept confidential.

3. POLICY AIMS

- 3.1 The aims of this Policy and associated procedures are to describe:
- How OTHA will meet its commitments to openness and accountability;
 - How OTHA will make information available and provide access to information;
 - How OTHA will deal with information which must remain confidential.
- 3.2 OTHA has a separate policy on data protection. This describes the arrangements for access to personal information and compliance with the law on data protection.

4. EQUALITIES COMMITMENT

- 4.1 The Openness and Confidentiality Policy acknowledges and aims to complement our Equal Opportunity and Diversity Policy. OTHA seeks to embrace diversity, promote equal opportunities for all and eliminate any unlawful discrimination in all areas of our work. Through this policy no-one will be discriminated against.

5.0 LEGAL AND REGULATORY FRAMEWORKS

5.1 LEGISLATION

In formulating and implementing this Policy, statutory requirements have been incorporated, where required. The legislation particularly relevant to this Policy includes:

Data Protection Act 1998: provides rights to individuals in relation to personal data held about them; and regulates the use of personal data

Freedom of Information (Scotland) Act 2002: entitles members of the public to receive information that they request from a public authority, subject to certain exemptions such as the need for the protection of personal data, commercial sensitivity or national security. Although not currently bound by the Freedom of Information Act (which currently does not extend to RSLs), OTHA aims to meet the spirit of the legislation. This Act supersedes the Access to Personal Files Act 1987.

Housing (Scotland) Act 2001: provides a statutory right to all tenants with Scottish Secure Tenancies to receive information about their landlord's policies and procedures. The Act also obliges landlords to consult and provide tenants with information in developing their Tenant Participation Strategy.

Housing (Scotland) Act 2010: provides the legal framework for the modern social housing regulatory regime, and includes provisions compelling social landlords to act in accordance with the Equality Act (2010).

Scottish Public Services Ombudsman Act 2002: describes the statutory arrangements for conducting independent investigations of complaints relating to misadministration by a wide range of listed authorities, including RSLs.

Human Rights Act 1998: gives individuals a right to respect for their privacy.

5.2 REGULATORY REQUIREMENTS

In formulating and implementing this Policy, the Scottish Housing Regulator (SHR) requirements have been incorporated, where required. The regulation relevant to this Policy includes:

Regulatory Standard 2: *“The RSL is open about and accountable for what it does. It understands and takes account of the needs and priorities of its tenants, service users and stakeholders. And its primary focus is the sustainable achievement of these priorities.”*

In addition, the Scottish Social Housing Charter sets out the overall outcomes which social landlords should aim to achieve in performing their housing activities.

Scottish Social Housing Charter Outcome 2: *“Social landlords manage their businesses so that tenants and other customers find it easy to communicate with their landlord and get the information they need about their landlord, how and why it makes decisions and the services it provides.”*

6.0 PROVIDING INFORMATION

6.1 This section outlines the steps which OTHA will take to ensure compliance with this Policy and outlines information that will be made publically available.

6.2 **Annual Report and Accounts**

OTHA will comply with the law and make available on an annual basis an Annual Report and its Annual Accounts through the AGM and on request. The Annual Report will contain standard information required by company law and more detailed information on any changes to our structure or governance and details of our activities and performance carried out in the previous financial year. Our annual report will be made available on our website and circulated widely and our annual accounts are available on request and will also be posted on the SHR website. Our annual accounts take the form required by law and will be available at the Annual General Meeting, to our lenders and upon request to any interested party.

6.3 **Providing Information to Tenants**

OTHA tenants have a statutory right under their Scottish Secure Tenancy to receive information about their tenancy and about their landlord's policies and procedures. The information which we will provide to each tenant will include:

- Complaints Policy and Procedure
- Tenancy Agreement
- Information about Right to Repair, Right to Compensation for Improvements
- Rent Setting Information and Service Charges Information
- Equal Opportunity and Diversity Policy
- Service Standards
- Information about our Repairs and Maintenance Service
- Details about other policies such as Allocations, Customer Engagement Policy etc

6.3.1 This information will be made available at the point of signing for a new tenancy and most of this will be contained within our tenant's handbook. This will be periodically revised. This information will also be available on our website and future consultations will take place using email, internet and twitter.

6.3.2 OTHA acknowledges and shall fully comply with the SHR requirement for all social landlords to report their performance in achieving or progressing towards the Scottish Social Housing Charter outcomes and standards to their tenants and service users. We will also ensure that information produced by SHR about our performance is freely provided to all tenants and service users and accessible to any other stakeholder.

6.4 **Consultation with Tenants**

Section 54 of the Housing (Scotland) Act 2001 contains significant legislative requirements on a duty to consult. OTHA will follow SEDD Circular 7/2002 and in particular Part 5 which details how and when consultation with tenants should take place.

6.5 **Structure and Governance**

OTHA will make the following information publicly available about its structure and governance:

- How the Management Committee is elected
- How decisions are made about housing and related services, and about the management of the Association.

We will also make all our other governance related policies and other relevant documents freely available. This will include in particular our:

- Rules
- Standing Orders
- Membership Policy
- Staff Structure
- Financial Regulations
- Entitlements, Payments and Benefits Policy

6.6 *Minutes of Management Committee Meetings*

Minutes of our Management Committee Meetings will be available for inspection at the office. These will be provided on request to members and service users, unless there are matters of commercial and personal confidentiality which cannot reasonably be placed in the public domain. The classification of confidential Committee Reporting information is contained in Sections 13 and 14.

6.7 *Customer Surveys*

OTHA will carry out periodic surveys of its tenants and service users to determine the level of satisfaction with our services and performance. These results will be published in full and in a summary format along with our response to them, in order to demonstrate our commitment to act on the results of the information received.

6.8 *Scottish Housing Regulators Regulatory Assessment of Performance of OTHA's Performance*

The SHR publishes a range of information about individual social landlords on its website. We will advise or assist any person who may wish to obtain or access this information, or draw comparisons with other RSLs.

7.0 COMMUNICATION OF INFORMATION

7.1 Information on the above will be made available through a range of channels appropriate to the information in question, including:

- OTHA's website, which will be maintained in order to ensure that it provides an accessible, accurate and up-to-date information resource covering all of the items listed earlier in the policy
- Twitter and in the future, other social media options
- Tenants Handbook
- Regular newsletters distributed to OTHA customers
- In printed form; upon request from OTHA's offices.

7.2 OTHA will regularly ask stakeholders how they would like information provided and will ensure that, wherever possible and practicable, information available to the public will be written in plain English, avoiding jargon and unexplained acronyms and jargon. We will make information available on request in a variety of information formats and in translation.

8.0 ACCESS TO MEETINGS

8.1 Management and Sub Committee meetings are generally closed to the public. Minutes and non-confidential reports however are available as printed copies from our office. OTHA, in accordance with our constitution, will hold an Annual General Meeting (AGM), usually in June of each year, to which all members of the Association will be invited. Information will be provided in accordance with the Association's rules.

9.0 REQUESTS FOR INFORMATION

9.1 In addition to the information made publicly available, OTHA will comply with requests for information wherever practicable and appropriate, subject to considerations of confidentiality, cost and practicality.

9.2 Although not currently bound by the Freedom of Information Act, OTHA will abide by the spirit of the legislation. In general terms, OTHA will respond positively to written requests for information, from whatever source and for whatever reason, unless:

- The request is vexatious;
- The Association has already complied with the request;
- The request is identical or substantially similar to a request previously received from the same individual or organisation;
- The information is covered by an exemption from the requirements set out in the Freedom of Information Act and summarised in 9.4 of this Policy.

9.3 In cases where an information request is considered vexatious by the staff member receiving the request, the request should be referred to a member of the Senior Management Team, who may take legal advice, prior to making a determination on the request and responding.

9.4 The other main exemptions relevant to OTHA are where the information:

- Is otherwise accessible (i.e through the OTHA or SHR website)
- Is intended for future publication (within 12 weeks of the request being received);
- Is commercially sensitive;
- Is related to investigations in respect of a potential prosecution or civil proceedings;
- Is likely to prejudice the prevention or detection of crime;
- Would substantially prejudice the governance of the Association;
- Relates to the categories of information covered by the Data Protection Act 1998, where disclosure is regulated. (In the event of

any conflict between Freedom of Information Act and Data Protection Act requirements, the Data Protection legislation takes precedence);

- Whose disclosure is prohibited under other legislation or any contractual obligation, or would constitute contempt of court.

10.0 PROCEDURES FOR RESPONDING TO INFORMATION REQUESTS

10.1 We will respond to any request for information as soon as possible and within a maximum of 20 working days, with the exception of requests covered by the Data Protection legislation where a 40 day period will apply. This timescale applies both to requests where information is provided in full, and requests, which are covered by an exemption and are refused. In the event of a refusal, an explanation must be provided.

10.2 If staff members have any doubt about whether ad hoc information requests can be met within the terms of the Policy, they should seek authorisation from their line manager. Staff should also inform their line manager if they intend to refuse a request for information, explaining the reasons for their view.

11.0 CHARGING FOR INFORMATION

11.1 Our general policy is not to charge for the copying of documents which are requested. OTHA will not charge for providing copies of any of the information listed in Section 6 of the Policy.

11.2 OTHA will charge a fee of £10 for each Data Protection request requiring a search for information on an individual (See OTHA's Data Protection Policy). The fee level will be notified to the individual or organisation in advance of any transaction.

11.3 For large volumes of material, OTHA must also take account of the fact that the staff resources associated with providing information is met by tenants' rents. It reserves the right to charge for the cost of providing information, or to refuse to provide information, in the following circumstances:

- If an information request will absorb significant staff resources either because of the nature of the request or if copy material is requested with a frequency which affects the Association's ability to manage its day to day business;
- If the person requesting information is not a OTHA tenant or service user. For example, the Association often receives requests from students seeking information for research purposes, and is not always able to meet such requests without compromising service standards for tenants.

12.0 REQUESTS FOR INFORMATION FROM THE MEDIA

12.1 OTHA will respond openly to requests for information from the media. However, in order to manage the release of information and to ensure that the release is consistent with OTHA's interests, all information releases must be authorised by the Chief Executive Officer/Depute Chief Executive Officer or other Senior Manager. Only members of the Senior Management Team are

authorised to speak to the media and this should only be the case in the event of absence of the CEO/DCEO.

13.0 CONFIDENTIAL INFORMATION

13.1 OTHA, while fully committed to the principles of openness and accountability, also recognises the need, and in some cases the statutory duty, to maintain confidentiality in respect of certain information and activities.

13.2 In general terms, the following information will be regarded as confidential:

- Personal information held about individuals (Management Committee members, tenants and other customers), subject to the right of the individuals concerned to have access to the information held on them;
- Personal information held about members of staff relating to their employment, such as selection, remuneration, or any grievance or disciplinary action;
- Matters relating to the business of OTHA and its subsidiaries that are defined as commercially sensitive (see 13.3);
- Matters related to legal disputes or actions concerning OTHA and its subsidiaries;
- Matters relating to the business of OTHA and its subsidiaries, funders, partners and contractors and other third parties with which OTHA has or may have a business or commercial relationship, and which has been provided to OTHA in confidence;
- Items deemed on their individual merits to be confidential.

13.3 OTHA will apply the following definition of commercially sensitive information:

“Information that has an intrinsic commercial value where the value depends upon its confidentiality being maintained, or where although it may not have an intrinsic commercial value, its disclosure might unreasonably disadvantage the organisation, or person to whom it relates, in the conduct of their lawful business, commercial, financial or professional affairs.”

14.0 SAFEGUARDING FINANCIAL INFORMATION

14.1 In the interests of clarity, all papers prepared for consideration by the Management Committee and its Sub Committees, which meet the criteria referred to above, will be marked as CONFIDENTIAL. As an additional safeguard, no names, addresses or other details, which would allow individuals concerned to be identified would be given in these papers. Management Committee discussions on these items will be recorded in a confidential minute, which will not form part of the publicly available record of the meeting.

14.2 Neither staff nor Management Committee members should pass on confidential information to people who have no need or right to know it. All requests for information, which are covered by the above criteria, will be refused, with an explanation as to why it cannot be provided.

- 14.3 Where Management Committee members receive an enquiry from a tenant or other customer, they should advise the person to contact the appropriate member of staff rather than dealing with the enquiry themselves. Confidential information must not be used for personal gain or benefit, not passed to others who might use it in such a way.
- 14.4 Confidentiality has to allow for the exceptional circumstances where the law requires disclosure, or to safeguard individuals. The following exceptions will apply in relation to the disclosure of personal information:
- Where personal information is requested by the individual concerned, in circumstances covered by Data Protection legislation and OTHA's Policy (see below).
 - Where an employee has appealed to the Association and a personal representation is being made to the relevant Committee as a stage in the disciplinary procedure.
 - Where the Association has a legal obligation to provide information to a third party, for example under a court order.
 - Where information is requested by the police or other third party, covered by local protocols on sharing information.
 - Where information is requested for the purposes of providing a reference.
 - Where the individual concerned is deemed to be at risk or in need of care and support, and where the disclosure of information to relatives or other professionals is necessary to protect the individual.
 - Where a Management Committee member or employee has a serious concern about the wrongdoing or improper conduct within the organisation, and cannot raise it without breaching the guidelines (see OTHA's Whistleblowing Policy).

15.0 DATA PROTECTION

- 15.1 OTHA will comply with the Data Protection Act 1998, including any subsequent related legislation and all associated guidance, which regulates the use of personal data.
- 15.2 The Data Protection Act 1998:
- Requires those who record and use personal information to be open about their use of that information, and to observe sound practices about how the information is handled.
 - Provides rights to individuals in relation to personal data or information held about them on computer or in manual systems.
- 15.3 OTHA has a separate Data Protection Policy which sets out how the organisation will meet the requirements of the legislation and observe best practice in data protection.

16.0 BREACHES OF CONFIDENTIALITY

16.1 Any breach of confidentiality, whether deliberate or inadvertent, will be dealt with seriously by OTHA. The circumstances surrounding the breach will be taken into account and may result:

- In the case of staff, investigation and possible disciplinary action in accordance with the disciplinary procedures.
- In the case of Management Committee Members, investigation and possible action under the Code of Conduct for Governing Body Members.

17.0 EQUALITIES AND DIVERSITY

17.1 This policy will be implemented in line with our Equal Opportunity and Diversity Policy and is subject to an Equalities Impact Assessment to assess the likely or actual effects of the policy to our customers. This will ensure equal and fair access to all.

18.0 MONITORING AND REPORTING

18.1 OTHA will use appeals, complaints, comments or suggestions from users of this policy to monitor its effectiveness. These will also be used to prompt a review of the policy where necessary.