

Written evidence submitted by the Information Commissioner's Office [RSH 103]

Introduction to ICO

The Information Commissioner's Office (ICO) has responsibility for promoting and enforcing the General Data Protection Regulation (GDPR), the Data Protection Act 2018 (DPA18), the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Privacy and Electronic Communications Regulations 2003 (PECR), amongst others. We are independent from government and uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. We do this by providing guidance to individuals and organisations, and taking appropriate action where the law is broken.

Reason for submitting evidence

We note the proposals in The Charter for Social Housing Residents Social Housing White Paper include the creation of an 'access to information scheme' for social housing tenants.

The ICO believes that housing associations that provide social housing should be covered by the Freedom of Information Act 2000 in the same way as housing provided by local authorities. We believe access to information laws should remain relevant and appropriate to how public services are delivered.

This response will focus on the following question.

Will the reforms proposed in the social housing White Paper improve the regime and what progress has been made on implementing those reforms?

ICO public position

Our 2019 [Outsourcing Oversight](#) report to Parliament set out the case for an expansion of the existing Freedom of Information Act (FOIA). This would include private companies undertaking work on behalf of the public sector. This specifically included social housing providers that exercise functions of a public nature.

In recent evidence to the PACAC Select Committee the ICO stated that the FOI Act should be extended as far as possible to any organisations that are delivering public services.

Ongoing concerns about the issues with cladding following the tragedy at Grenfell have brought renewed focus on the need for transparency in social housing.

Social housing tenants

While the ICO welcomes the commitment to providing some information to tenants, the scope appears narrower than FOI in a number of significant ways. The White Paper proposes limiting the right specifically to tenants and 'their representatives'. Some examples of representatives are given. However, this would appear to require a tenant to be actively involved in making an information request, or appointing someone else to do so on their behalf. This may not, for example, allow community and civil society groups, special interest groups, charities, MPs or councillors or journalists to make requests of social housing providers as they can under FOIA.

The type of information disclosable under the scheme also appears to be more limited than FOIA. The White Paper only refers to the 'management' of social housing held by landlords and relevant information held by sub-contractors. Information related to 'management' is not defined. Time limits for providing information and exemptions are not defined but are will be 'broadly aligned' to FOIA.

These are some examples of how the scheme is narrower and could significantly undermine transparency and might prevent, for example, the exposure of systemic issues that may exist across a housing provider or the wider sector.

Scotland

In Scotland, FOIA was extended to include registered social landlords in 2019. The Scottish Information Commissioner has [reported](#) that this has worked well. The report examines the experience of Registered Social Landlords over their first year of FOI, and finds that 81% of organisations responding to its survey were publishing more information as a result of FOI. It also found that organisations have not been overwhelmed by FOI requests and are, on the whole, successfully meeting their FOI responsibilities within existing resources.

Regulation

The White Paper proposes that tenants who feel that information has been withheld would be able to appeal to the Housing Ombudsman, who can refer 'suspected systemic breaches to the regulator'. The ICO does not know whether either the Housing Ombudsman or Regulator of Social Housing has the resources or expertise to respond to complaints about accessing information.

The ICO does have the expertise in handling complaints about requests for information. We are concerned that a separate scheme with a different system of regulation could cause confusion for many people and their advocates about which access to information scheme they should be using and how they can use their right to appeal. It will likely also cause duplication of effort and delays in redirecting people between different organisations.

Conclusion

The ICO believes that the social housing sector should have the same commitment to transparency as local authorities and that their tenants should have the same information rights. This could simply and effectively be achieved by including them within the scope of the FOIA. This is easy to achieve through the mechanisms already included in FOIA to extend the Act and would replicate the successful approach recently taken in Scotland.

The rationale for not including social housing providers in FOIA is unclear. We would welcome the Committee's scrutiny of the evidence in this area and an assessment of the validity of the arguments. In the meantime, we will continue to engage with government and others as these proposals are developed.

If Parliament decides that an access to information scheme is the only way forward, the ICO would of course seek to work with the Housing Ombudsman and the Regulator of Social Housing, as appropriate and insofar as our limited resources allow, to share our expertise and ensure that citizens are provided clear advice and guidance on how to exercise their rights.

January 2022