

Our Ref:  
Direct:  
eMail:  
Direct Fax:  
Your Ref:

[REDACTED]  
[REDACTED]  
[REDACTED]

**DIGBY BROWN**  
because it matters...

dx: AY6 Ayr  
w: digbybrown.co.uk

Irvine Housing Association  
44-46 Bank Street  
Irvine  
KA12 0LP

08 March 2024

Dear Sirs

**Request for Information  
Freedom of Information (Scotland) Act 2002 ("the 2002 Act")  
The UK General Data Protection Regulation (UK GDPR)**

**Our Client:** [REDACTED]

**Accident Date:** [REDACTED]

We refer to the above and the accident our client had on [REDACTED] in the property of [REDACTED] (hereinafter referred to as "the property.").

We would be grateful if you would provide us with a copy of any and all reports you have received regarding the faults in the property's bathroom for the last 5 years and any accident reports that have been prepared.

As you will be aware, we are entitled to this information in terms of the Freedom of Information (Scotland) Act 2002. In light of this, we look forward to receiving the information within the time frame set down by section 10 of the 2002 Act.

Yours faithfully



Gareth McFarlane  
Digby Brown LLP



18th year running Ranked Band 1



14th year running Ranked Tier 1



**DIGBY BROWN LLP – 24 Sandgate, Ayr, South Ayrshire, KA7 1BW**

Digby Brown Solicitors is a trading name of Digby Brown LLP, a limited liability partnership incorporated in Scotland with registered number S0302085 and having its registered office at Causewayside House, 160 Causewayside, Edinburgh EH9 1PR. Digby Brown LLP is regulated by the Law Society of Scotland with offices in Edinburgh, Glasgow, Dundee, Kirkcaldy, Inverness, Aberdeen and Ayr. The list of Digby Brown LLP members can be found at [www.digbybrown.co.uk/llpmembers](http://www.digbybrown.co.uk/llpmembers).

**From:** Freedom of Information

**Sent:** Monday, April 8, 2024 8:02 AM

**To:** [REDACTED]

**Subject:** Ref: [REDACTED]

Dear Sirs,

We acknowledge your request for information under the Freedom of Information Scotland Act (FOISA), made on 8<sup>th</sup> March 2024 where you requested the following to be provided relating to: [REDACTED]

*"We would be grateful if you would provide us with a copy of any and all reports you have received regarding the faults in the property's bathroom for the last 5 years and any accident reports that have been prepared."*

As you will be aware disclosure of information held by a public authority under the FOISA is deemed to be a disclosure to the world at large for the purposes of the public interest.

We confirm we do hold information relating to your request.

However, we believe the information if disclosed under the FOISA would lead to living individuals being identified - which the FOISA does not permit. To do so would be a breach of the Data Protection Act 2018/UK GDPR.

Further we deem the information attracts a level of confidentiality having been obtained from our customer/legal occupier, over the time period you have stated.

In view of the above, we therefore exercise 'Section 36 (2) – Confidentiality' and 'Section 38 (1)(b) – Personal Information' exemptions under the FOISA against disclosure at this time.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within 40 days of the date of receipt of your original response and should be forwarded to:

[foi@riverside.org.uk](mailto:foi@riverside.org.uk)

However, if you are not content with the outcome of the internal review, you have the right to apply directly to the Scottish Information Commissioner for a decision via the following details:

**Email**

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**Post**

Scottish Information Commissioner  
Kinburn Castle

Doubledykes Road  
St Andrews  
Fife  
KY16 9DS

**Telephone**  
01334 464610

Kind regards,

FOI Team  
The Riverside Group

Our Ref:  
Direct:  
eMail:  
Direct Fax:  
Your Ref:



**DIGBY BROWN**  
because it matters...

dx: AY6 Ayr  
w: digbybrown.co.uk

Irvine Housing Association  
44-46 Bank Street  
Irvine  
KA12 0LP

15 April 2024

Dear Sirs

**Request for Information  
Freedom of Information (Scotland) Act 2002 ("the 2002 Act")  
The UK General Data Protection Regulation (UK GDPR)**



**Our Client:**




**Accident Date:**



We write further to your correspondence dated 8<sup>th</sup> April 2024 and thank you for the same.

You have outlined that you consider the information requested, if disclosed, would lead to living individuals being identified. The individuals referred to, will be   


Our client's request does not relate to the residents of the property and there is no requirement for these individuals to be identified. Our client is simply seeking details of the complaint(s). If you are concerned about individuals being identified, redacted records will satisfy the request. We would accordingly request an internal review following our request.

Furthermore, our client formally makes a request for the accident report prepared following their accident on , under Article 15 of the UK GDPR. A copy of our client's signed mandate is enclosed for ease.

We look forward to receiving the requested in the next 14 days.

Yours faithfully,



Gareth McFarlane  
Digby Brown LLP



18th year running Ranked Band 1



14th year running Ranked Tier 1



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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

G McFarlane  
c/o Digby Brown Solicitors

Date: 14<sup>th</sup> May 2024  
Reference: FOISA-2024-4 (IR)

Dear Gareth,

**Re: Request for Internal Review of Freedom of Information request**

Thank you for your correspondence dated the 15<sup>th</sup> April 2024, regarding the handling of your Freedom of Information Scotland Act 2002 (FOISA) request.

You sought in your original request dated 8<sup>th</sup> March 2024 to be provided with:

*'any and all reports you have received regarding the faults in the property's bathroom for the last 5 years; and any accident reports that have been prepared'*

This related to information held by Riverside Scotland, regarding one of our managed properties.

On receipt of our FOISA response sent to you on 8<sup>th</sup> April 2024, you replied as follows:

*"You have outlined that you consider the information requested, if disclosed, would lead to living individuals being identified. The individuals referred to, will be our client's (REDACTED).*

*Our client's request does not relate to the residents of the property and there is no requirement for these individuals to be identified. Our client is simply seeking details of the complaint(s). If you are concerned about individuals being identified, redacted records will satisfy the request. We would accordingly request an internal review following our request."*

In view of your dissatisfaction with the original response, Riverside Scotland then logged your matter as an internal review.

Riverside Scotland places great emphasis on being open and transparent with its functions and operation and welcomes feedback from its customers and partners, to improve ongoing quality of service and to also be seen as held to account where relevant.

Equally, Riverside Scotland as a Registered Social Landlord, has a legal responsibility to protect the identity of others and the information it holds, where if disclosed inappropriately, could have a significant and detrimental effect on both our customers, its employees and its overall functions and services.

The purpose of this internal review is to allow Riverside Scotland to take a fresh look at its response to an information request, to confirm the decision (with or without modifications) or, if appropriate, to substitute a different decision.

In respect of your request, Riverside Scotland has decided to substitute our original decision. The new decision is that Riverside Scotland can confirm that we hold the requested information and is able to release part of the requested information attached hereto. Further explanation as to why Riverside Scotland cannot release all of the requested information is provided below.

In making our decision to exercise both the Section 38 (1)(b) – ‘Personal Information’ and Section 36 (2) – ‘Confidentiality’ exemptions in our initial response to you, we considered the following:

### Breach of Data Protection Principles

For the purposes of context ‘personal information’ has the same meaning as ‘personal data’.

Personal data is defined in Article 4 (1) of the UK General Data Protection Regulations (UK GDPR) and further clarified under Part 1 (3) of the Data Protection Act 2018, as information relating to an identified or identifiable living individual.

Section 38 (1)(b) of the FOISA, allows the withholding of personal data if the data protection principles would be breached by its disclosure. Article 5 (1)(a) of the UK GDPR and Part 1(2) of the Data Protection Act 2018 requires that personal data is processed lawfully and fairly.

Certain information within the requested information relates to living individuals who can be identified by that information – therefore Riverside Scotland is satisfied that the withheld information contains personal data.

In accordance with the considerations outlined above, Riverside Scotland has assessed if disclosure of this personal data would be lawful. Further, Article 5(1) of the UK GDPR provides the data protection principles which Riverside Scotland must follow when processing any personal data.

The first principle is that Riverside Scotland must use personal data in a way which is lawful, fair and transparent. As such, it would only be lawful for Riverside Scotland to disclose the requested personal data in very limited circumstances, namely, where it is necessary to disclose the personal data for the purposes of legitimate interests pursued by you except where such interests are overridden by the interests or fundamental rights and freedoms of the people whose personal data is contained in the requested information.

Continued

Riverside Scotland is satisfied that the rights of the people whose data is contained in the information requested outweigh your right to this information.

The personal data in question concerns individuals who do not have any expectation that this information would be made public as a result of an information request under FOISA, and in view of disclosure under FOISA being recognised as publication to the 'world at large', Riverside Scotland believes we would be in breach of this principle if we disclosed the above requested personal data.

This exemption is not subject to the public interest test.

As Riverside Scotland has determined that it would not be lawful for us to disclose part of the personal data in question Riverside Scotland is withholding part of the requested information under section 38(1)(b) of FOISA.

In response to your assertion in your reply that the information should be redacted and then released, we also considered the 'mosaic effect' of the information being readily available in the public domain.

It was our opinion that even if redacted of immediate personal data of living individuals, identification of persons could still be made in due course by piecing other items of information together.

### Breach of Confidentiality

As for the Section 36 (2) – 'Confidentiality' exemption exercised, it states:

*(2) Information is exempt information if—*

*(a) it was obtained by a Scottish public authority from another person (including another such authority); and*

*(b) its disclosure by the authority so obtaining it to the public (otherwise than under this Act) would constitute a breach of confidence actionable by that person or any other person.*

The information sought has been obtained by Riverside Scotland from our customer (who is not your client) and such information was provided in circumstances which imposed an obligation of confidentiality on Riverside Scotland, and the information is not accessible to the public.

Disclosure of this information would effectively be disclosure 'to the world at large' and so Riverside Scotland consider that disclosure would be detrimental to the individual(s) involved. As such, Riverside Scotland would be breaching their obligation of confidentiality with its customer by disclosing part of the requested information.

This exemption is not subject to the public interest test and Riverside Scotland cannot determine any public interest defence, which would allow this information to be



Continued

disclosed into the public domain.

As mentioned above, and in response to your assertion in your reply that the information should be redacted and then released, we also considered the 'mosaic effect' of the information being readily available in the public domain. It was our opinion that even if redacted of immediate personal data of living individuals, identification of persons could still be made in due course by piecing other items of information together.

In conclusion, this internal review finds Riverside Scotland, in the interest of protecting the privacy rights of its customers, was correct to exercise the exemptions in its original response, to withhold part of the requested information, but substitute its original decision and disclose part of the requested information attached hereto.

This now completes our internal review of your FOISA request.

### Your right to seek a review

If you still disagree with the decision following our internal review of your request, then you have a right of appeal to the Scottish Information Commissioner (the "**Commissioner**"):

### **Appealing to the Commissioner**

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Commissioner

You must submit your complaint to the Commissioner within 6 months of receiving our review response.

You can request an appeal by writing to or emailing the Commissioner. The Commissioner recommends that you use their application form to submit your appeal (although you do not have to use this method) as this will provide them with the information they require to investigate your case quickly.

The application form can be found [here](http://www.itspublicknowledge.info/appeal) (www.itspublicknowledge.info/appeal) and can be completed and returned to the Commissioner.

If you don't use the application form, your appeal must be in a format that can be kept for future use, for example, by email or post or in an audio or video recording.

### **Send your appeal by email**

If you want to send your appeal by email, you should send your email to [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

### **Send your appeal by post**

If you want to send your appeal by post, you should send your letter to:

Continued

Office of the Scottish Information  
Commissioner  
Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS

If you need help making an appeal you can contact the Commissioner's Office:

Email: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**Telephone**

01334 464610

**Appeal to the Court of Session**

If you have appealed to the Scottish Information Commissioner and are unhappy with the decision they have made then you may be able to appeal to the Court of Session.

You can only do this where you think the Commissioner has incorrectly applied the law – not because you disagree with his decision.

If you are considering appealing to the Court of Session you should seek legal advice.

You can find further information on appealing to the Court of Session on the Commissioner's website. Click [here](#).

Website [www.itspublicknowledge.info](http://www.itspublicknowledge.info)

Kind regards,

FOI Team Riverside

Scotland

