Summary

This is mySociety (the charity that runs WhatDoTheyKnow) response to a consultation run by the (now) Ministry of Housing, Communities and Local Government, on implementing new Social Tenant Access to Information Requirements (STAIRs).

The tl;dr is that greater transparency is good, but there would be more benefit with less work by extending the Freedom of Information Act to cover Social Landlords (as has happened smoothly in Scotland)

Response

Question 1 Do you agree with the requirements for the publication scheme, as outlined above? If not, why not?

Yes. Publication schemes are good at avoiding the need for access to information requests – putting more information in public helps people find the information they need without having to ask for it.

Question 2 - Do you consider it appropriate for the publication scheme to include a requirement for providers to publish previous information requests made under STAIRs, and the responses to those requests? Please provide your reasoning.

Yes, disclosure logs are a valuable tool in making information requested by one person available to more people – helping reduce repeat requests.

Question 4 - Do you have any wider comments on the costs providers will face in implementing STAIRs?

The costs of access to information systems are outweighed by the massive benefit of improved services that public transparency brings. Improved transparency does not just flush out errors and faults, but encourages a higher standard of planning and work in the expectation of the future release of information.

The publication scheme makes reference to Scotland, where full coverage over FOI has happened and the sector itself regards it having gone well. In part, this is because landlords have started

publishing much more information as a result of the access to information backstop – increasing the benefit to tenants and the public while minimising the costs of the new schemes.

Question 5 - Do you agree with the scope of information that is covered by STAIRs, as outlined in paragraphs 46-50? If not, why not?

No. The objectives of this change would be better achieved by extending coverage of FOI to cover social landlords. The scope of information under STAIRs is more limited than the right to information under Freedom of Information. Social tenants in England will have less rights to access information than social tenants in Scotland, whose landlords are covered under FOISA.

In general, creating a new concept of 'relevant information' invites new arguments and disagreements rather than deferring to the well established practices and exemptions under FOI. For instance, it is not clear from the proposed scope whether social tenants would be entitled to information on the landlord's performance on the handing STAIR requests.

If the Government decides, contrary to our suggestions above, to include a definition of 'relevant information,' then the matters noted below should be considered.

(1) Paragraph 43 references "Environmental and energy efficiency information": it would be advisable to define "environmental information" by reference to the Environmental Information Regulations 2004 rather than creating a new definition or leaving an important term undefined.

(2) There are a number of areas that are of legitimate interest to tenants which are not included in the list of examples in paragraph 43, for example:

- Business continuity and resilience.
- Equality and diversity.
- Handling of rights-based requests under GDPR.
- Human rights considerations.

Question 6 - The above section (paragraphs 51 to 53) outlines the requirements relating to who can make information requests. Do you agree with these requirements? If not, why not?

No. Limiting requests to users of the provider is a more limited right than under Freedom of Information (which has been successfully extended to social landlords in Scotland) and reduces the effectiveness of the access to information process.

Social Housing is not a normal service-to-customer relationship – it is part of the social support system that everyone (as we are all potential tenants) has an interest in functioning well.

From our experience creating the site FixMyBlock, we learned how community pressure is an important tool in encouraging landlords to fix issues. A clear issue in the landlord-tenant relationship is the power imbalance – it is useful for tenants to be able to ask someone to submit information requests on their behalf without having to declare them as a proxy.

If the ultimate purpose of giving more access to information is systematic improvement (not just of one landlord, but many) – infomediaries (such as researchers and journalists) are an essential group excluded under these rules. Part of the value of Freedom of Information in upholding good standards from service providers is exactly the cross-system perspective that comes from being able to see the same information from different service providers.

Given no information is being released that could not be released to anyone (personal information is exempt) - the only reason to limit who can apply is to manage capacity. The Scottish example found only a small increase in workload, with 95% of providers receiving 24 or fewer requests under general FOI law. As such, there is no strong reason to limit who can make information requests.

Question 9 - Paragraph 57 relates specifically to information held on behalf of the landlord by another body or person. Do you agree with the requirements relating to information held on behalf of the landlord? If not, why not?

Yes – this is equivalent to the rule under FOI – and otherwise subcontracting greatly diminishes tenants' access to information.

Question 10 - Do you agree with the requirements relating to where providers can refuse to disclose information? If not, why not?

No. As in answers to Questions 2 and 5, this is a more expansive set of reasons not to disclose information than has been successfully implemented by Social Landlords in Scotland under FOISA. The included FOI exemptions and rules are in themselves sufficient (and now well established) in balancing competing interests in disclosing information.

Question 11 - Do you agree with the staff time limit (18 hours) for responding to requests, as outlined in paragraph 63? If applicable, please make reference to any costs or other burdens relating to the time limit.

Yes. This mirrors the FOI rule – already seen as reasonable by a range of public bodies of comparable size (and those even smaller) than social landlords.

Question 13 - Do you have any comments regarding the process for dealing with complaints?

One of the most important aspects of a functional access to information system is an effective regulator. Swift correction to incorrect decisions by authorities, and authorities acting in bad faith, helps keep the overall system functioning and rewards authorities doing the right thing.

Given the general alignment of exceptions with the Freedom of Information Act, it does not make sense to give extra responsibility for escalation to the Housing Ombudsman rather than the Information Commissioner's Office (ICO), who deal with exactly these rules every day. Bypassing the well established regulator gives the Housing Ombudsman a new role, without the established expertise and skill sets to be quickly effective.

There is additionally less oversight of the Housing Ombudsman's decisions. Under STAIRs, neither landlords nor tenants have a right of appeal of Housing Ombudsman decisions to the First-tier Tribunal, as they would for decisions made by the ICO.

Question 14 - Do you have any comments on the draft direction?

This is, in general, the wrong legislation to give tenants an effective access to information system. As in Scotland, Social Landlords should be added through Section 5 of the Freedom of Information Act – providing a more expansive right to information backed by an established and effective regulator.

If STAIRs is implemented, it should be seen as a stepping stone in that direction.