

Ref: 2023/001

Date of Request: 15/03/2023

Date of Response: 14/04/2023

## **Freedom of Information (Scotland) Act 2002**

### **Subject: Directors fitness to practice**

#### **Request:**

Evidence that that our current Director and our previous Director were deemed fit to manage Rosehill's interests.

#### **Response:**

- Both Directors were appointed to their respective posts because they met or exceeded the requirements and specifications of the post as set at the time of appointment. We do not hold any information regarding our previous Directors appointment, given that they were the first Director of Rosehill and remained in the post for over 30 years. At the time our current Director was appointed, the Rosehill Committee was involved in this process. The Committee, as the senior accountable body for Rosehill, ensured that the requirements and specifications of the post were met as part of the appointment. The Director would not have been appointed to the position if the Committee considered that they were unfit to manage Rosehill's interests.
- We hold information relating to our current Directors appointment as Director and appraisals and performance as Director, which fall within the scope of your request. We do not hold any equivalent information for the previous Director. However, we consider this information to be personal data on the basis that it relates to and identifies the individual and their professional capacities as Rosehill's current Director. This personal data is exempt from disclosure in response to your request on the basis of the exemption contained in Section 38(1)(b) of FOISA. This exempts information from disclosure if it is personal data and the first, second or third conditions contained within Sections 38(2A), 38(2B) or 38(3A), respectively, of FOISA is satisfied. The first condition contained within Section 38(2A) of FOISA is that the disclosure of the information to a member of the public otherwise than under FOISA would contravene any of the data protection principles. These are the data protection principles contained within Article 5(1) of the UK General Data Protection Regulation (UK GDPR). We are of the view that disclosure of such personal data would be contrary to the first data protection principle contained within Article 5(1)(a) of the UK GDPR. This provides that personal data must be processed lawfully, fairly and in a transparent manner. "Processing" includes disclosure of personal data to the public in terms of Section 3(4)(d) of the Data Protection Act 2018 (DPA 2018), for example, in response to FOISA requests received. Lawfulness requires that the processing of the personal data must be supported by at least one of the legal bases listed within Article 6 of the UK GDPR. Of the six available legal bases, the legal basis listed within Article 6(1)(f) of the UK GDPR is the most relevant when considering disclosure of personal data in response to FOISA requests.

This provides that processing of personal data is lawful where it is necessary for the purposes of the legitimate interests pursued by a third party, but only where such legitimate interests are not overridden by the interests or fundamental rights and freedoms of the individual subject of the personal data. While we acknowledge that you have a legitimate interest in disclosure of the requested personal data from transparency and accountability perspectives, we do not consider that disclosure is reasonably necessary for the purposes of such legitimate interests. The fundamental rights and freedoms of the individuals in the protection of their personal data about their appointment, performance and appraisals override any such legitimate interests in disclosure. This is because despite their senior and public-facing role, they would not reasonably expect us to disclose this personal data about them into the public domain. To do so would also be unfair and inconsistent with their legitimate expectations. We therefore regard the disclosure as unlawful and unfair.