

PAIA AND POPIA

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SCOPE OF APPLICATION

Applies to all Community Schemes under CSOS Act, includes Sectional Titles, HOAs, Share Blocks, Retirement Schemes. CSOS mandates governance transparency and personal data protection.

- Covers both owners and occupiers, as well as scheme executives and managing agents.
- CSOS mandates protection of personal information and access to governance records as part of its regulatory oversight
- Every member/resident of a Community Scheme is entitled to receive or view certain information concerning the administration of the Community Scheme.
- Access is authorised by:
 - ✓ The CSOS Act
 - ✓ The STSM Act



PAIA AND POPIA

POPIA and PAIA give effect to Sections 14 32 of the Constitution.

PAIA (Promotion of Access to Information Act) ensures access to records for exercising or protecting rights.

- Enables individuals to obtain information (records held by public/private bodies).
- Access provided if:
 - Access to any record held by a private body will be provided if the record is required for the exercise or protection of any rights,
 - the individual requesting for such information complies with the procedural requirements of PAIA; and
 - Request for information does not fall within any of the grounds laid down in the PAIA upon which access to information is refused .



POPIA (PROTECTION OF PERSONAL INFORMATION ACT)

POPIA regulates the processing of personal information in a manner that gives effect to the right to privacy, whilst recognizing that such right may be justifiably limited to protect other rights and important interests. It does so by setting out a number of minimum conditions for the processing of personal information that Responsible Parties must adhere to.



CSOS ROLE IN THE PROTECTION OF PERSONAL INFORMATION

- CSOS enforces both acts through its directives, emphasizing transparency and accountability in scheme governance.

Act	CSOS Role Highlights
POPIA	Enforces lawful processing, mandates Information Officers, ensures data security
PAIA	Facilitates access to governance records, processes public requests, supports disputes

OVERVIEW OF KEY WORDS AND DEFINITIONS

Personal information relates to:

Any data that identifies or relates to a living person or juristic entity including:

- Full names, ID/passport numbers
- Contact details (email, phone, address)
- Demographic data (race, gender, age, religion)
- Employment, financial, medical, or criminal history
- Biometric data (fingerprints, facial recognition)
- Opinions or correspondence linked to the person”



OVERVIEW OF KEY WORDS AND DEFINITIONS

Special information relates to:

Sensitive data under POPIA which is subject to stricter protections. These include:

- Religious or philosophical beliefs
- Race or ethnic origin
- Trade union membership
- Political opinions
- Health or biometric data
- Sexual orientation or behaviour
- Criminal records

Special information may only be processed under specific legal grounds or with explicit consent.



OVERVIEW OF KEY WORDS AND DEFINITIONS

Processing means any operation involving personal data, including:

- Collection
- Recording
- Storage
- Updating
- Retrieval
- Use
- Sharing
- Destruction

Processing must therefore be lawful, purpose-specific, and secure.



OVERVIEW OF KEY WORDS AND DEFINITIONS

In terms of the POPIA, the Responsible Party is defined as:

“a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing personal information.”



CONDITIONS FOR LAWFUL PROCESSING OF INFORMATION

The Responsible Party must comply with 8 conditions:

1. Accountability
2. Processing Limitation
3. Purpose Specification
4. Further Processing Limitation
5. Information Quality
6. Openness
7. Security Safeguards
8. Data Subject Participation



CONSENT AND PROCESSING OF PERSONAL INFORMATION

By owning or occupying a unit, members are deemed to have consented to:

- Storage of their Personal Information by the scheme;
- Sharing of that information with trustees or governance structures; and
- Use of the information for managing scheme affairs (e.g. levy collection, rule enforcement, maintenance, security).

This consent is implied and not optional



CONSENT AND PROCESSING OF PERSONAL INFORMATION

If a scheme appoints an Operator (e.g. managing agent, IT provider) to process Personal Information:

- A formal Operator's Agreement must be in place, outlining duties and safeguards.
- The Operator must immediately notify the scheme if there are reasonable grounds to believe that:
 - a) Personal Information has been accessed or acquired by an unauthorized person.
 - b) A security breach or data compromise has occurred.

The scheme remains the Responsible Party and must ensure the Operator complies with POPIA.



LIMITS ON PROCESSING INFORMATION

The processing of information of a member of a Community Scheme must only be limited to the management of the Community Scheme such as:

- Levy collection;
- Compliance with Community Scheme rules;
- Maintenance;
- Security of the Community Scheme



SHARING AND ACCESS TO PERSONAL INFORMATION

No consent required to share personal information with:

- Members of the Community Scheme; or
- Debt collectors.

relating to the defaulters in terms of levy payments or members who have failed to adhere to the Community Scheme rules

Consent required for members to access other members' Personal Information, except for:

- Information already available for governance/management purposes.



DISCLOSURE AND REASONABLE REQUESTS



STSM Act S3(1)(n):

the board of trustees and/or members' names and addresses must be given to a requester upon reasonable request.

CSOS places emphasis that:

- the request for members' Personal Information protected by POPIA must be reasonable;
- only be furnished upon consent by the board of trustees or members; and
- it should further comply with the Personal Information principles outlined in POPIA subject to section 32 of the Constitution of the Republic of South Africa read together with PAIA.

MANDATORY INFORMATION TO COLLECT (PMR 27(2)(b))



Community Scheme must obtain the following information in relation to trustees, members, and tenants:

- Full names.
- Identity or in the case of non-South African citizens, their passport numbers;
- Section and mailing addresses, if different.
- Telephone numbers.
- Email or other electronic addresses, if any.

All the information above is classified as Personal Information in terms of POPIA and therefore consent must be obtained from the Data Subject before their Personal Information is transmitted to a third party unless the exemptions in section 18(4) and/or section 38 of POPIA apply.

LAWFUL PROCESSING OF INFORMATION

Consent required before sharing with third parties.

Exception: POPIA S18(4) and S38.

Exemptions apply when processing is necessary to discharge a legal or governance function. The processing for discharging a relevant function is exempt from certain POPIA sections (11(3) and (4), 12, 15, 18).



LAWFUL PROCESSING OF INFORMATION

Personal Information may only be processed if:

- Processed in a lawful manner;
- Necessary;
- Consent has been obtained; and
- Is collected directly from the Data Subject.



LAWFUL PROCESSING OF INFORMATION

Dispute Resolution:

Parties to a dispute are entitled to access relevant documents without needing to follow POPIA/PAIA procedures. CSOS adjudicators may request information under Section 51 of the CSOS Act.



INFORMATION OFFICER IN COMMUNITY SCHEMES

For private bodies, the Information Officer must be:

- CEO;
- Managing Director; or
- equivalent or equivalent officer of the juristic person or any person duly authorized by that officer or any person who is acting as such or any person duly authorized by such acting person and in essence within Community Schemes that would limit it to either a member of the board of trustees and/or directors, including a chairman, a building manager, or an estate manager.

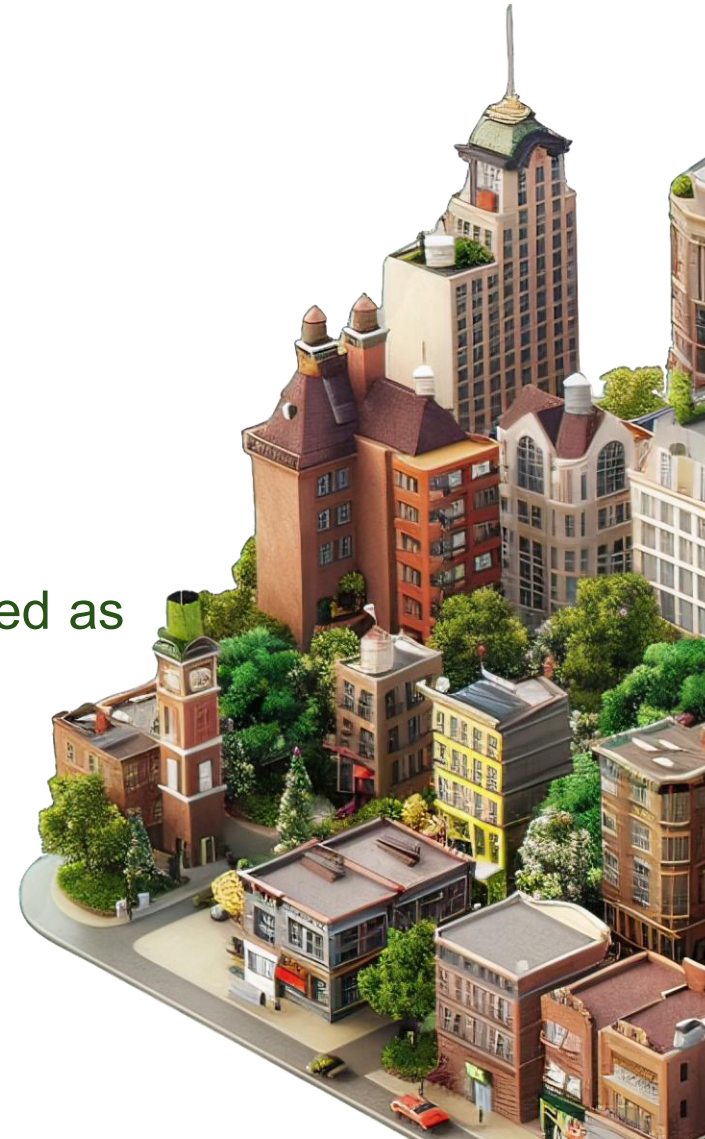


INFORMATION OFFICER IN COMMUNITY SCHEMES

In Community Schemes, this role can be:

- a managing agent,
- Executive Managing Agent ,
- administrator of the Community Scheme;
- or any other employee of the Community Scheme may be designated as a deputy Information Officer for the Community Scheme

subject to a resolution of the Community Scheme.

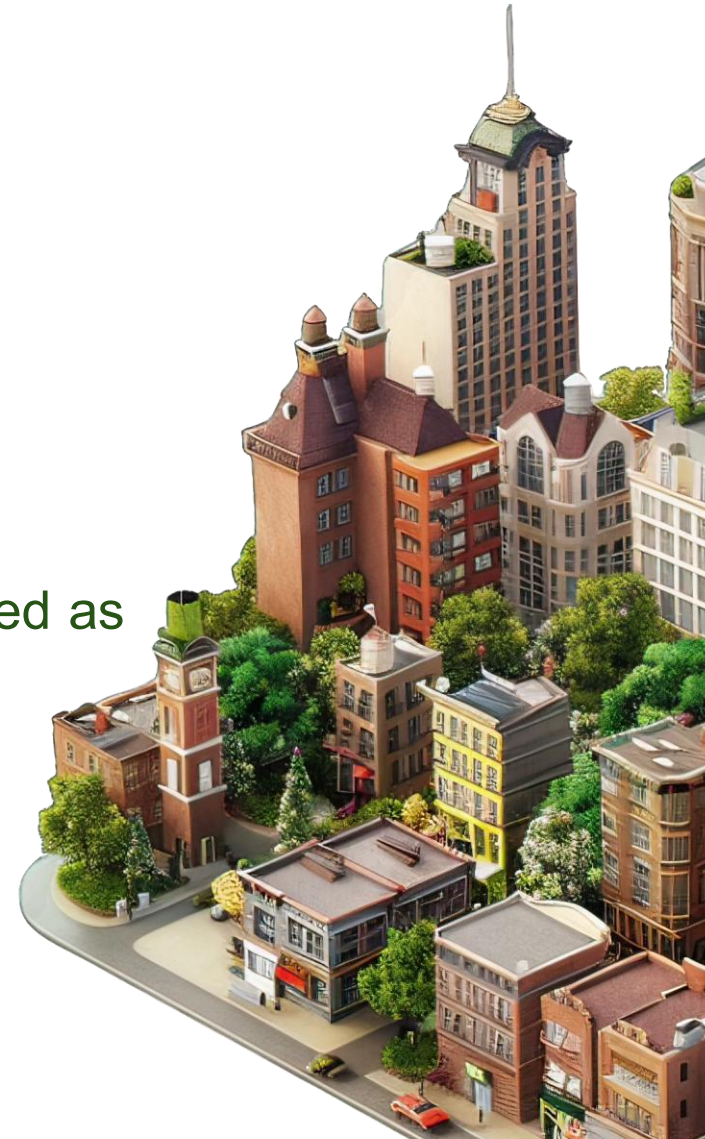


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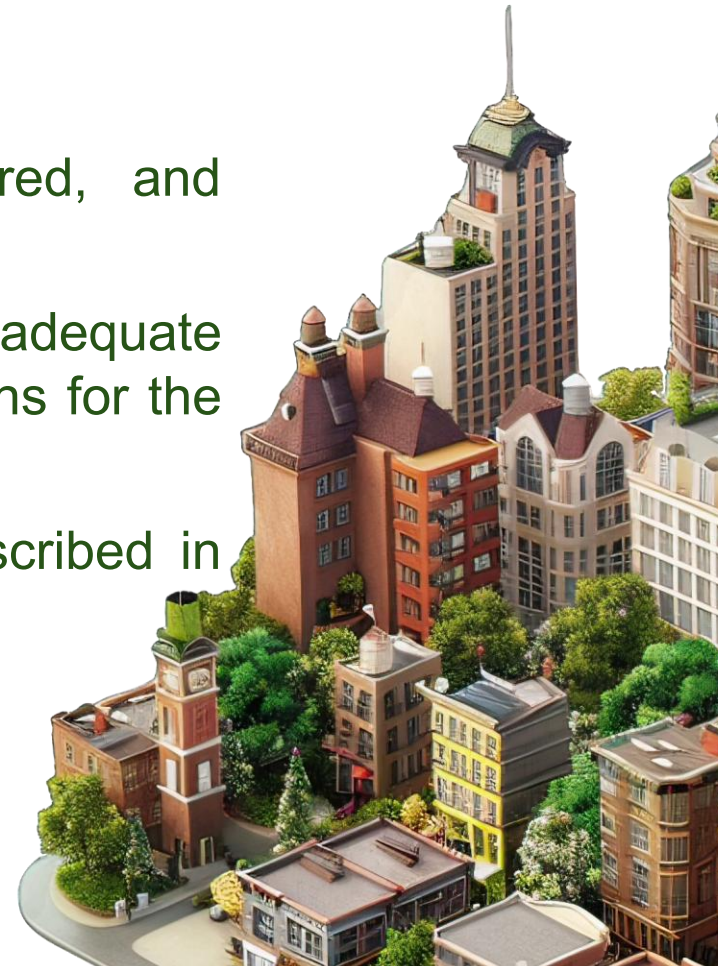
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INFORMATION OFFICER DUTIES

There are additional duties to be performed by the Information Officers, which include ensuring that:

- A compliance framework is developed, implemented, monitored, and maintained;
- A Personal Information impact assessment is done to ensure that adequate measures and standards exist in order to comply with the conditions for the lawful processing of Personal Information;
- A manual is developed, maintained, and made available as prescribed in terms of PAIA;



INFORMATION OFFICER DUTIES



- Internal measures are developed together with adequate systems to process requests for information; and
- Internal awareness sessions are conducted regarding the provisions of POPIA, the regulations, codes of conduct, or any other information obtained from the Information Regulator.

ACCESS TO INFORMATION (PAIA PROCESS)



- A request for access to information must be made by a requester in the prescribed form (Form 2 – request for access to record) which can be obtained from the Information Regulators website (www.inforegulator.org.za/) .
- The form is to be addressed and sent to the Information Officer of the relevant Community Scheme. The form can be delivered via email, by courier or hand delivery to the Information Officer.

ACCESS TO INFORMATION (PAIA PROCESS)



The requester shall furnish the following information:

- 1) particulars of the person making the request;
- 2) particulars of the person on whose behalf the request is made (if applicable);
- 3) particulars of the record to which access is requested;
- 4) the form of access required (inspection, photocopies, etc);
- 5) particulars of the constitutional right to be exercised or protected; and
- 6) an indication as to how the requester wishes to be notified of the decision regarding the *request to the record concerned.*

ACCESS TO INFORMATION (PAIA PROCESS)

A person who seeks access to a record containing Personal Information concerning that person, is exempted from paying the request fee.

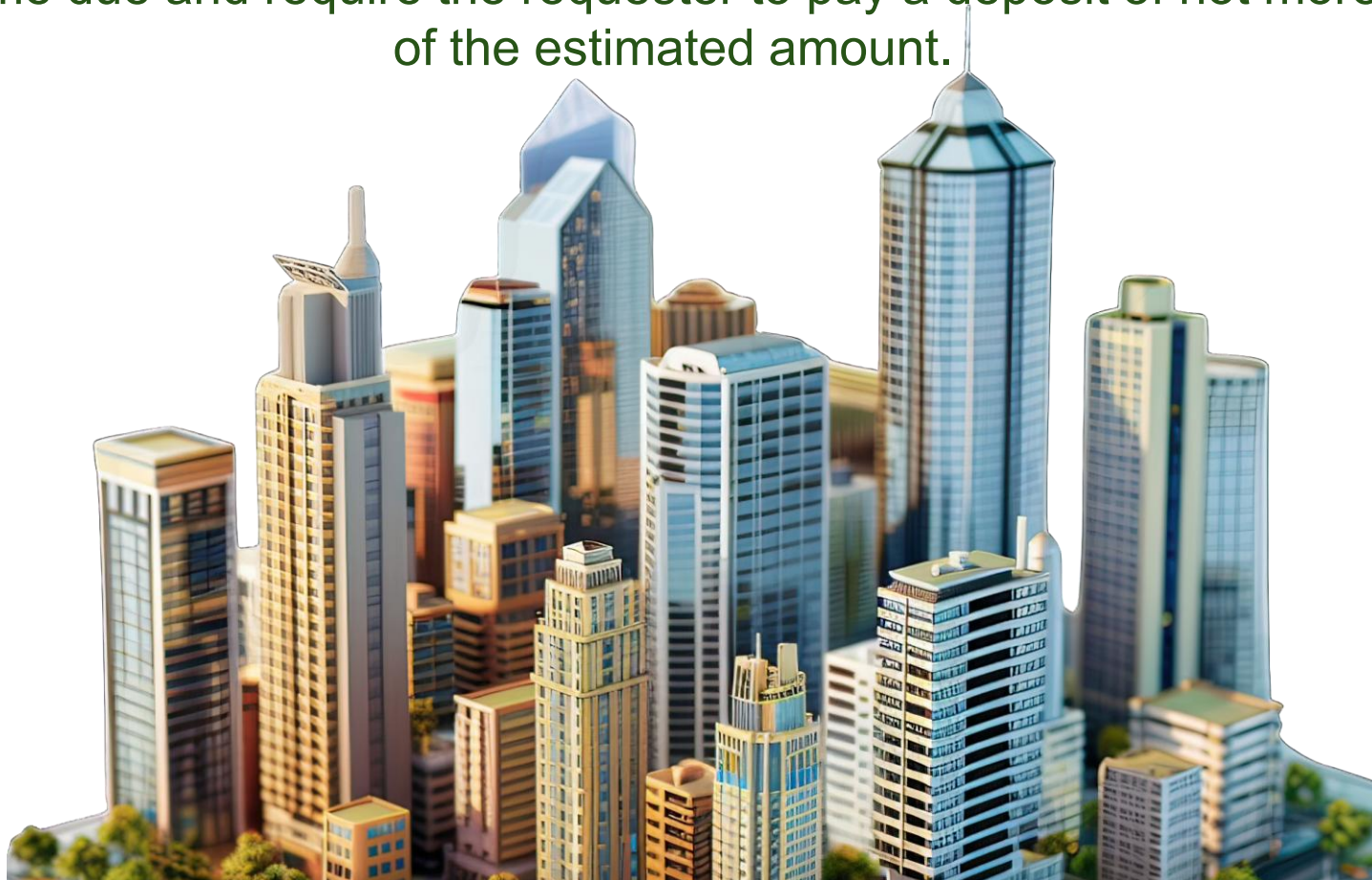
A Community Scheme which receives a request for access to a record, and which contains the information should respond by issuing a written notice which can take the form of a letter, requiring the requester to pay the request fee prescribed in the regulations.

Unless the information requested is limited to information which is personal to the requester.



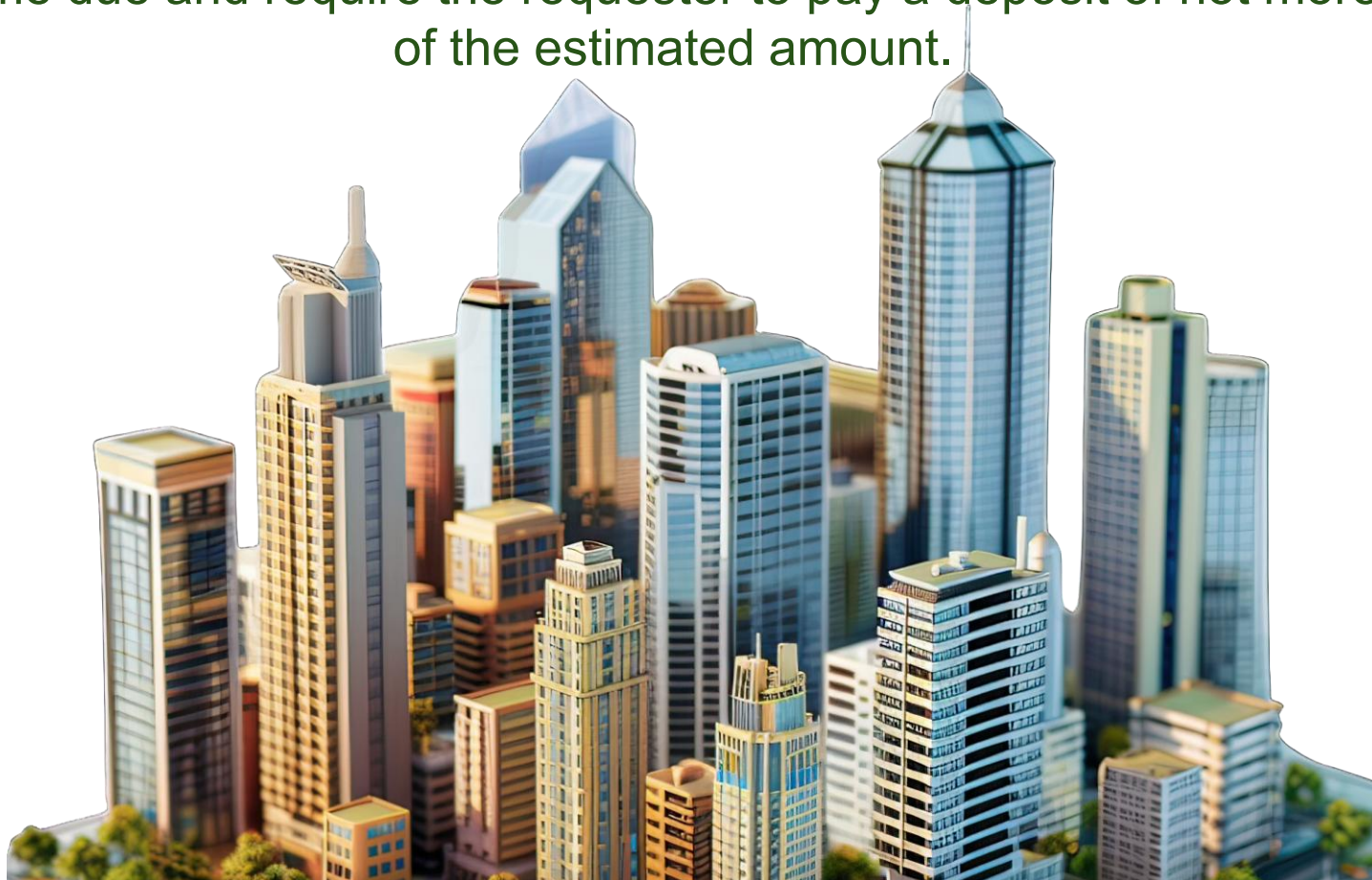
FEES

If the Information Officer is of the opinion that more than 6 (six) hours will be taken in giving effect to the request, the Information Officer may estimate the amount of the access fees which will become due and require the requester to pay a deposit of not more than one third of the estimated amount.



FEES

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FEES

However, the following persons are exempted from paying the access fee amount, namely:

- single persons whose annual income after permissible deductions are made does not exceed **R14 712.00** and
- married persons, or a person and his or her life partner whose annual income after permissible deductions does not exceed **R27 192.00**.



SECTIONAL TITLE SCHEME – ACCESS TO RECORDS

STSM Act PMR 27(4):

Members, registered bondholders, or authorised persons may request Body Corporate records in writing. PMR 27(4), Annexure 1 of the STSM Act states that a member, a registered bondholder, or a person authorised by a member is entitled to receive the documents and records of a body corporate upon written request.



SECTIONAL TITLE SCHEME – ACCESS TO RECORDS

Timeframes

The executive committee or the managing agent must provide the member with the documents:

- within 10 (ten) business days of receiving the request in terms of PMR 27(5); but
- should a member request the rules of the Body Corporate, then this must be sent to the member within 5 (five) business days.

Generic information (not containing Personal Information):

- Can be requested informally (e.g., via email).
- Prescribed Form 2 required for certain documents



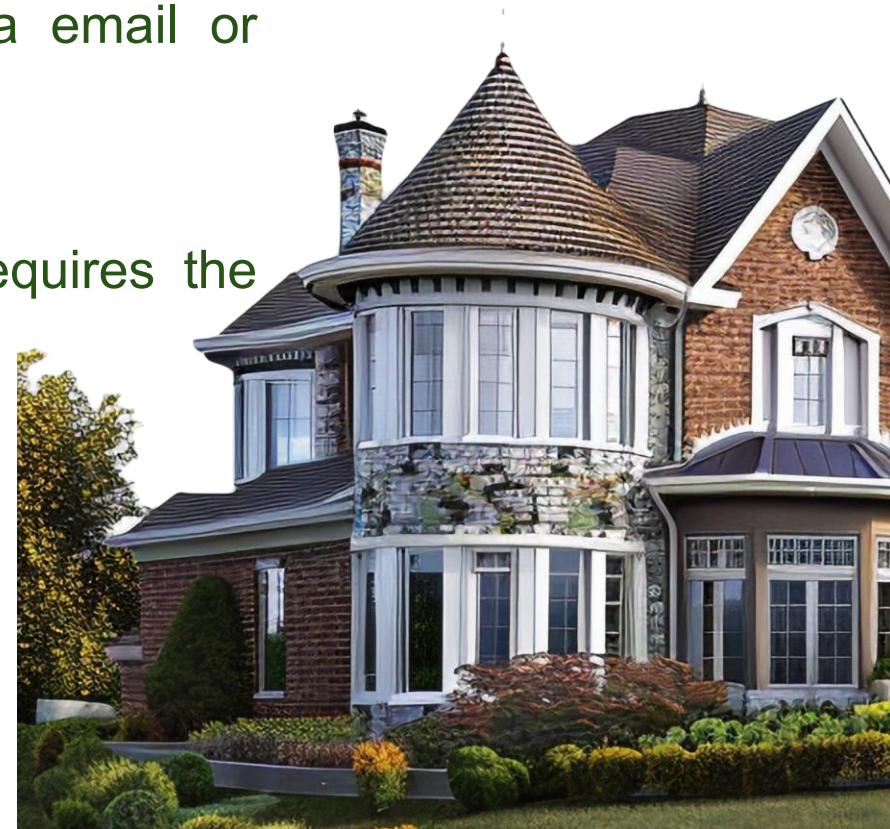
DOCUMENTS REQUIRING FORM 2

Generic information (not containing Personal Information):

A request for generic information which does not contain the Personal Information of an identifiable person can be requested via email or otherwise without the completing the prescribed Form 2.

However, a request for the below mentioned documents requires the requester to complete the prescribed Form 2 and comprise of:

Minutes of meetings, including AGMs and trustees' meetings;



DOCUMENTS REQUIRING FORM 2

- The CSOS approved management and conduct rules accompanied by a section 10 compliance certificate;
- The audited financial statements of the Body Corporate (this will be inclusive of a statement of income and expenditure, assets, and liabilities);
- Trustees, by accepting office, automatically consent to their Personal Information being shared and/or accessible to the members of the Community Scheme. In order to satisfy section 32 of the Constitution of the Republic of South Africa, read together with PAIA;



DOCUMENTS REQUIRING FORM 2

- The bank accounts for the administrative and reserve fund;
- Procurement decisions;
- Election outcomes and process;
- Investments for the Community Scheme;
- Information relating to security and maintenance of the Community Scheme;



DOCUMENTS REQUIRING FORM 2

- any other information pertaining to the governance of the Community Scheme as may be deemed necessary; and
- The Body Corporate's insurance policy as directed in section 3(1)(s) of the STSM Act.

The members can ask for these documents as far back as 6 (six) years, as this is the period for which they must be kept.

When requesting the books of account, the members are entitled to receive information about both the administrative and reserve fund bank accounts, as PMR 26 (1) and (2) state that a Body Corporate must have both accounts and keep separate books for each of these accounts.



HOA'S, HOUSING SCHEME FOR RETIRED PERSONS, SHARE BLOCK COMPANIES, HOUSING CO-OPERATIVES

Community Scheme	Where Rights Are Found	Notes
HOA (Homeowners' Association)	Memorandum of Incorporation or Constitution	Subject to PAIA
Share Block Company	Use Agreement	Legal agreement governs access
Housing Scheme for Retired Persons	Contract	Terms of contract specify access
If no provision exists	Sectional Title Scheme documents	Members can request similar documents

ACCESSING INFORMATION FROM CSOS

CSOS is a public body therefore requester must use PAIA Form 2

- Requester must submit form to the Deputy Information Officer: paia@csos.org.za
- Requester may be liable to pay a fee unless exempted.

For Community Scheme Governance Information:

- Complete PAIA Form 2 and send to paia@csos.org.za.
- Acknowledgement sent within 2 business days.
- PAIA Form 3 issued for payment of fee (unless exempt).
- After payment, send proof of payment to paia@csos.org.za to receive documents.



