



**PRACTICE DIRECTIVE ON PROTECTION OF PERSONAL INFORMATION AND ACCESS
TO INFORMATION IN A COMMUNITY SCHEME**

No.1

2022

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1.0		Ms. Johlene Wasserman	EXCO submission:

Approvals

The undersigned has approved the release of version 1 of CSOS' Practice Directive on the Protection of Personal Information and Access to Personal Information in a Community Scheme in terms of the CSOS Act.

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Name	Designation	Signature	Date
Adv. Boyce Mkhize	Chief Ombud		
Ms. Phindile Mthethwa	Chairperson of the Board		

PRACTICE DIRECTIVE ON PROTECTION OF PERSONAL INFORMATION AND ACCESS TO INFORMATION IN A COMMUNITY SCHEME

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COMMUNITY SCHEMES OMBUD SERVICE ACT, 2011 (ACT 9 OF 2011)

PRACTICE DIRECTIVE ON PROTECTION OF PERSONAL INFORMATION AND ACCESS TO INFORMATION AUTHORISED IN TERMS OF THE COMMUNITY SCHEME OMBUD SERVICE ACT AND THE SECTIONAL TITLES SCHEMES MANAGEMENT ACT.

1. DEFINITION

In this Practice Directive, any word or expression to which a meaning has been assigned by the Community Scheme Ombud Service Act (CSOS Act), Protection of Personal Information Act (POPIA), Sectional Titles Schemes Management Act (STSM Act), and Regulations under the CSOS Act shall bear the same meaning assigned to it in the CSOS Act or Regulations made in terms of the CSOS Act, and unless the context indicates otherwise.

Term	Definition
“Act”	means the Community Schemes Ombud Service Act (2011) Act, No. 9 of 2011, and includes any Regulations made in terms of the Act;
“Constitution”	means the Constitution of the Republic of South Africa, 1996.
“CSOS”	means the Community Schemes Ombud Service;
“Data Subject”	means the person to whom the personal information relates;
“Information Officer of a private body”	means the head of a private body as contemplated in section 1 of the Promotion of Access to Information Act, 2013.

“Ombud”	means the Chief Ombud appointed in terms of the CSOS Act, 2011;
“PAIA”	means the Promotion of Access to Information Act (Act. No. 2 of 2000);
“Person”	means a natural or juristic person;
“Personal Information”	<p>means information relating to an identifiable, living, natural person, and where it is applicable and identifiable, existing juristic person, including, but not limited to: -</p> <p>information relating to the race, gender, sex, pregnancy, marital status, national, ethnic, or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language, and the birth of the person;</p> <p>information relating to the education or the medical, financial, criminal, or employment history of the person;</p> <p>any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier, or other particular assignments to the person;</p> <p>the biometric information of the person;</p> <p>the personal opinions, views, or preferences of the person;</p> <p>correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;</p> <p>the views or opinions of another individual about the person; and</p> <p>the name of the person if it appears with other personal information relating thereto.</p>
“POPIA”	means the Protection of Personal Information Act (Act No. 4 of 2013);
“Practice Directive”	means a notice issued in terms of the Community Schemes Ombud Service;

“Processing in terms of POPIA” means any operation or activity or any set of operations, whether by automatic means or not, concerning personal information, including:

- a) the collection, receipt, recording, organization, collation, storage, updating or modification, retrieval, alteration, consultation, or use;
- b) dissemination by means of transmission, distribution, or making available in any other form; or
- c) merging, linking, as well as restriction, degradation, erasure, or destruction of information.

“Relevant function” means any function—

- a) of a public body; or
- b) conferred on any person in terms of the law,
- c) which is performed with the view to protecting members of the public against

1. financial loss due to dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons concerned in the provision of banking, insurance, investment or other financial services or in the management of bodies corporate; or
2. dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorised to carry on any profession or other activity.

“Responsible Party” means 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.

“STSMA” means the Sectional Titles Schemes Management Act (2011), No. 8 of 2011, and includes any Regulations made in terms of the Act;

1. OBJECTIVES OF THE PRACTICE DIRECTIVE

- 1.1 The objective of the Practice Directive is to provide information on the protection of Personal Information and access to Personal Information relating to the administration of a Community Scheme (Scheme). Nothing in this Practice Directive supersedes the provisions of the CSOS Act, the STSMA, POPIA, and any other pieces of legislation.
- 1.2 The underlying aim of this Practice Directive in relation to Personal Information is to:
- 1.2.1 ensure that Personal Information of the members and/or residents of units or homes in the Scheme is collected, stored, and managed responsibly by not only the Scheme executives and managing agents, but also by unit-owners.
 - 1.2.2 Protect the rights of the owners or residents not to have their personal information abused or compromised by having the information shared arbitrarily and irresponsibly with anyone without the Data Subject (holder of information) authorization.
 - 1.2.3 regulate access by members and/or residents of Schemes to certain information within their respective Schemes.
- 1.3 In achieving these objectives, the CSOS will adhere to best practices in the processing and management of information as outlined in POPIA.

2. LEGISLATIVE FRAMEWORK

- 2.1 The CSOS is primarily responsible for the regulation, promotion, and monitoring of good governance within Community Schemes and the following legislation has a direct impact on the successful implementation of this Practice Directive:
- I. The Community Schemes Ombud Service Act, 2011(Act No. 9 of 2011);
 - II. The Protection of Personal Information Act, (Act No. 4 of 2013);
 - III. The Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

- IV. Share Block Control Act, 1980 (Act No. 59 of 1980);
- V. Housing Development Schemes for Retired Persons Act (1988 (Act No. 65 of 1988);
- VI. South African Co-operatives Act, 2005 (Act No. 14 of 2005);
- VII. Companies Act, 2008 (Act No. 71 of 2008);
- VIII. Sectional Titles Schemes Management, 2011 (Act No. 8 of 2011), and
- IX. The Constitution of the Republic of South Africa, 1996.

3. SCOPE OF THE PRACTICE DIRECTIVE

- 3.1 This Practice Directive applies to all Community Schemes as defined in section 1 of the CSOS Act.
- 3.2 The purpose of this Practice Directive is to ensure that Scheme members and/or residents' Personal Information are protected and that every member and/or resident of a Scheme is entitled to receive certain information concerning the administration of the Scheme authorised by the CSOS Act and STSMA

4. PROTECTION OF PERSONAL INFORMATION

- 4.1 Section 9 of POPIA states that Personal Information must be processed lawfully (for a lawful purpose) without violating the privacy of the data subject, and the data subject in this instance are the members and/or residents and any third-party information which might be held by the Scheme.
- 4.2 Section 11 of POPIA sets out the requirements for lawful processing of Personal Information and that a Scheme is entitled to process personal information of the members and/or residents insofar as it is about the governance of the Scheme.
- 4.3 In terms of Section 11(1) of POPIA, Personal Information may only be processed if:
 - a. the data subject or a competent person where the data subject is a child consents to the processing;
 - b. processing is necessary to carry out actions for the conclusion or performance of a contract to which the data subject is a party;
 - c. processing complies with an obligation imposed by law on the responsible party;

- d. processing protects a legitimate interest of the data subject;
 - e. processing is necessary for the proper performance of a public law duty by a public body; or
 - f. processing is necessary for pursuing the legitimate interests of the responsible party or of a third party to whom the information is supplied.
- 4.4 Section 13 of POPIA states that Personal Information must be collected for a specific, defined, and lawful purpose, however, the Data Subject must be aware of the purpose for which the information is being collected, subject to the applicable conditions set out in POPIA.
- 4.5 In the context of Schemes, a member of a Scheme is deemed, by virtue of ownership or occupation of a unit within a Scheme, to have consented to his or her personal information being stored and/or shared with the relevant parties by the Board of Trustees or any governance structure of a Scheme for the purposes of managing the affairs of the Scheme.
- 4.6 The processing of information of a member of a Scheme must only be limited to the management of the Scheme such as collection of levies, compliance with Scheme Rules, maintenance and security of the Scheme.
- 4.7 Each Scheme must, within six months of the coming into effect of this Directive, develop its own POPIA Manual to be adopted by the Body Corporate at an annual or Special General Meeting, setting out conditions for accessing and dissemination of information.
- 4.8 Sharing of personal information with members of the Scheme or debt collectors relating to the defaulters in terms of levy payments or members who have failed to adhere to the Scheme Rules will not require a member's consent.
- 4.9 A member of the Scheme shall not be entitled to access members' personal information without their consent, other than information readily available in terms of the governance or management of affairs of the Scheme.

- 4.10 Section 19 of POPIA requires a Responsible Party to ensure that appropriate, reasonable technical and organisational measures are put in place to safeguard personal information against loss, damage, or unlawful possession or access to this information.
- 4.11 Section 56 of POPIA states that each public and private body must appoint an Information Officer to give effect to the requirements as set out in the legislation.
- 4.12 The Information Officer must ensure that the Personal Information of members and/or residents and third parties is processed safely and securely. Each Scheme must accordingly designate a person to be an Information Officer for the Scheme, which may include a member of a Managing Agent.
- 4.13 Members and/or residents must advise the Information Officer if any of their Personal Information must be updated, amended, or deleted.
- 4.14 Section 3(1)(n) of the STSMA states that upon reasonable request, the board of trustees and or members' names and addresses must be furnished to the requestor. The CSOS emphasis is that the request for members' personal information protected by POPIA must be reasonable and further comply with the personal information principles outlined in POPIA.
- 4.15 PMR 27(2)(b) of the STSMA states that the Scheme must obtain the following information, which must be kept updated, in relation to trustees, members, and tenants. Their—
- a. full names;
 - b. identity numbers or, in the case of non-South African citizens, their passport numbers; and
 - c. section addresses and mailing addresses, if different;
 - d. telephone numbers; and
 - e. email or other electronic addresses if any.
- 4.16 All the information in 4.10 above is classified as personal information in terms of POPIA and therefore consent must be obtained from the Data Subject unless the exemptions in section 18(4) and/or section 38 of POPIA apply.

- 4.17 Personal information processed for the purpose of discharging a relevant function is exempt from sections 11(3) and (4), 12, 15 and 18 in any case to the extent to which the application of those provisions to the personal information would be likely to prejudice the proper discharge of that function.
- 4.18 Personal information can therefore only be processed in a lawful manner, if necessary, if consent is obtained and collected directly from the data subject.

5. INFORMATION OFFICER

- 5.1 The Information Officer (Officer) for private bodies in terms of Section 1 of the Protection of Personal Information Act (POPIA) must be a head of an organisation and in essence within Schemes that would limit it to either a member of the board of trustees and/or directors, including a chairman, a building, or an Estate Manager. However, in the context of Scheme's governance, a Managing Agent of the Scheme may be designated as an Information Officer for the Scheme, subject to a resolution of the Board of Trustees or Body Corporate.
- 5.2 This Officer as outlined in section 55 of POPIA, prescribes certain duties that an Officer is required to comply with. These duties include, among other things, encouraging and ensuring that the responsible party complies with the provisions of POPIA, dealing with requests made under POPIA, and assisting the Information Regulator with any investigations conducted in respect of the organisation.
- 5.3 Regulation 4 of POPIA includes additional duties to be performed by information officers, which include ensuring that:
- a. a compliance framework is developed, implemented, monitored, and maintained;
 - b. 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;

- c. a manual is developed, maintained and made available as prescribed in terms of PAIA;
- d. internal measures are developed together with adequate systems to process requests for information; and
- e. internal awareness sessions are conducted regarding the provisions of POPIA, the Regulations, codes of conduct, or any other information obtained from the Information Regulator.

6. ACCESS TO INFORMATION

- 6.1 Section 32 of the Constitution of the Republic of South Africa, 1996 (Constitution), read together with the Promotion of Access to Information Act No. 2 of 2002 (PAIA), states that every person is entitled to receive information that affects his or her rights and therefore the procedure as set out below must be followed to obtain information from the Scheme.
- 6.2 In terms of section 18(1) of PAIA a request for access must be made in the prescribed form to the Information Officer of the relevant Scheme to his or her fax number or electronic mail address.
- 6.3 The process for accessing information relating to the various categories is set out below.

7. SECTIONAL TITLE DEVELOPMENTS

- 7.1 PMR 27(4), Annexure 1 of the Sectional Titles Schemes Management Act, 2011 (STSMA) states that a member is entitled to receive the documents and records of a body corporate upon written request.
- 7.2 The executive committee or the managing agent must provide the member with the documents within 10 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 days.

- 7.3 PMR 27(4) of the STSMA states that upon reasonable request the Scheme must make records and documents referred to in this rule available for inspection by a member, a registered bondholder, or a person authorised by a member and provide copies thereof.
- 7.4 A member and/or resident is entitled to the following documentation subject to the requirements set in POPIA and the POPIA Manual adopted by the respective Scheme at an Annual or Special General Meeting:
- a. Minutes of meetings, including annual general meetings and trustees' meetings.
 - b. The CSOS approved management and conduct rules accompanied by a section 10 compliance certificate.
 - c. The audited financial statements of the body corporate (this will be inclusive of a statement of income and expenditure, assets, and liabilities).
 - d. Trustees, by accepting office, automatically consent to their personal information being shared and/or accessible to the members of the Scheme. This will then satisfy Section 32 of the Constitution read together with PAIA.
 - e. The bank accounts for the administrative and reserve fund.
 - f. Procurement decisions.
 - g. Election outcomes and process.
 - h. Investments for the Scheme.
 - i. Information relating to security and maintenance of the Scheme.
 - j. other information pertaining to the governance of the Scheme as may be deemed necessary.
 - k. The body corporate's insurance policy as directed in section 3(1)(s) of the STMSA.

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

7.6 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.

8. HOMEOWNERS ASSOCIATIONS, LIFE RIGHTS, SHARE BLOCK COMPANIES, HOUSING COOPERATIVES

8.1 The right of a member to have access to information will be set out in the scheme governance documentation for instance, in a homeowner's association (HOA) the right to access certain information will be found in either the Memorandum of Incorporation (MOI) for non-profit companies and in the Constitution for common law associations, subject to the requirements set in POPIA.

8.2 In the instance where the Scheme is a Share Block Company, the access to documentation will be found in the Use Agreement.

8.3 For a Life Right Scheme, it will be in the contract.

8.4 Should no provision be made in the Scheme Governance Documentation then similar documents as listed in paragraph 7.4, above for Sectional Title Developments can be requested from the Scheme.

9. APPLICATION TO ACCESS INFORMATION HELD BY THE CSOS

9.1 Should any of the information above be held by CSOS, the requester should complete the form CSR "Request for Access to Scheme Governance Information".

9.2 The completed form should be sent to either sectionaltitle@csos.org.za for sectional title developments or governance@csos.org.za for all other types of community scheme governance information.

9.3 An acknowledgment will be sent within 2 days of receiving the request advising whether the CSOS has the relevant documentation.

9.4 A payment request letter will be sent to the requester to pay the sum of R 8.00 for a copy of the scheme governance documentation.

9.5 Once payment has been made and the proof of payment is sent to the CSOS, the documents will be released.

10. GOVERNANCE DOCUMENTATION NOT HELD BY THE CSOS

10.1 Governance documentation not held by the CSOS should be requested from the Scheme itself and the relevant process should be followed as set out in the Scheme's policies and procedures to obtain the relevant documentation.

10.2 The Scheme is entitled to charge a fee for releasing the relevant information as per section 15(3) of PAIA, subject to an approved POPIA Manual of the Scheme.

11. REVIEW OF THE PRACTICE DIRECTIVE

11.1 This Practice Directive will be reviewed annually or as and when there is a change in legislation, if a court decision amends or varies any of the provisions contained herein or if the CSOS deemed it necessary to do so.

11.2 The approved amended Practice Directive will be published on the CSOS website.

12. COMMENCEMENT OF THE PRACTICE DIRECTIVE

12.1 This Practice Directive will commence on the date of signature hereof and will remain in force until amended, substituted, withdrawn, or repealed.

End