

15. APPEALS AGAINST DECISIONS OF THE HOME OWNERS ASSOCIATION

15.1 A requestor aggrieved by a decision of the Information Officer to refuse a request for access, fees, time periods or forms of access may within 30 days apply to a court for appropriate relief and a Third Party aggrieved by a decision of the Information Officer regarding access to a record may similarly apply within 30 days to Court for appropriate relief.

16. FEES FOR ACCESS AND REPRODUCTION OF RECORDS

Copies of a manual

16.1 A copy of the manual can be obtained for a fee of R1,10 for every photocopy of an A4 page.

Reproduction fees

16.2 Where information is automatically available from the Home Owners Association, the fees for reproducing copies or transcriptions of the information are charged, as set out below.

Access fees

16.3 Access fees are the fees charged for copies or transcriptions of information requested in terms of PAIA, as set out below.

Other fees

16.4 **Request fees** of R50,00 is the fee payable by a non-personal requester who wants access to a record.

16.5 A **search fee** of R30,00 per hour or part thereof is the fee payable for searching and preparing the record for disclosure.

16.6 The Information Officer must by notice require the requester, other than a personal requester, to pay the prescribed request fee (if any), before processing the request. Personal requesters will be charged the cost of reproduction only.

16.7 If the request is not limited to records containing information which is personal to the requester and if the head of the private body is of the opinion that the time taken to give effect to the request will exceed six hours the requester can be called upon to pay a deposit of not more than one third of an estimate of the access fee which will become payable.

16.8 If a deposit has been paid in respect of a request for access which is refused the Information Officer must repay the deposit. The Information Officer shall withhold a record until the requester has paid the applicable fees, if any.

16.9 The Home Owners Association's bank account details will be provided to the requester at the time that the request for access is made, where a deposit is required.

16.10 The fees prescribed in the PAIA Regulations applicable to Home Owners Associations are set out below.

Item	Description	Fee
1	The fee for a copy of the manual as contemplated in regulation 9(2)(c) for every photocopy of an A4 size page or part thereof	R1,10
2	The fees for reproduction referred to in regulation 11(1) are as follows:	
a	For every photocopy of an A4 size page or part thereof	R1,10
b	For every printed copy of an A4 size page or part thereof held on a computer or in electronic or machine-readable form	R0,75
c	For a copy in a computer readable form on -	

	(i) Stiffy disc	R7,50
	(ii) Compact disc	R70,00
d	(i) For a transcription of visual images, for an A4 size page or part thereof	R40,00
	(ii) For a copy of visual images	R60,00
e	(e) (i) For a transcription of an audio record, for an A4 size page or part thereof	R20,00
	(ii) For a copy of an audio record	R30,00
3	The request fee payable by a requester, other than a personal requester, referred to in regulation 11 (2) is R50,00	R50,00
4	The access fees payable by a requester referred to in regulation 11(3) are as follows:	
(1)(a)	For every photocopy of an A4 sized page or part thereof	R1,10
(b)	For every printed copy of an A4 size page or part thereof held on a computer or in electronic or machine-readable form	R0,75
(c)	For a copy in a computer readable form on -	R
	(i). Stiffy disc	R7,50
	(ii). Compact disc	R70,00
(d)	(i) For a transcription of visual images, for an A4 size page or part thereof	R40,00
	(ii) For a copy of visual images	R60,00
(e)	(i) For a transcription of an audio record, for an A4 size page or part thereof	R20,00
	(ii) For a copy of an audio record	R30,00
(f)	To search for and prepare the record of disclosure, R30,00 for each hour or part of an hour reasonably required for such search and preparation	R30,00
(2)	For purposes of section 54(2) of the Act (PAIA), the following applies	
(a)	Six hours as the hours to be exceeded before a deposit is payable; and	
(b)	One third of the access fee is payable as a deposit by the requester	
(3)	The actual postage is payable when a copy of a record must be posted to a requester	

17. AVAILABILITY AND UPDATING OF THE PAIA MANUAL

Regulation Number R.187 of 15 February 2002

17.1 This PAIA Manual of the Home Owners Association is made available in terms of Regulation No. R.187 of 15 February 2002 and is available to view at its premises.

17.2 A copy will be made available against payment of the prescribed fee, as set out above.

17.3 The PAIA Manual will be updated as may be necessary.

18. PROTECTION OF PERSONAL INFORMATION PROCESSED BY THE HOME OWNERS ASSOCIATION

18.1 In order for the Home Owners Association to fulfil its statutory obligations, it necessarily processes personal information. The Home Owners Association will accordingly only process personal information in terms of POPIA and will only provide access thereto in accordance with PAIA.

18.2 POPIA sets out the eight necessary conditions for the processing of information, subject to specified exclusions and exemptions. The conditions are the following:

- Accountability;
- Processing limitation;
- Purpose specification;
- Further processing limitation;
- Information quality;
- Openness;
- Security safeguards; and
- Data subject participation.

Condition 1 – Accountability

Responsible party to ensure conditions for lawful processing

18.3 The responsible party must ensure that the conditions, and all measures that give effect to such conditions, are complied with at the time of the determination of the purpose and means of the processing and during the processing itself.

Condition 2 - Processing limitation

Lawfulness of processing

18.4 Personal information must be processed -

18.4.1 lawfully;

18.4.2 in a reasonable manner that does not infringe the privacy of the data subject.

Minimality

18.5 Personal information may only be processed if, given the purpose for which it is processed, it is adequate, relevant and not excessive.

Consent, justification and objection

18.6 Personal information may only be processed if –

18.6.1 the data subject or a competent person where the data subject is a child consents to the processing;

18.6.2 processing is necessary to carry out actions for the conclusion or performance of a contract to which the data subject is party;

18.6.3 processing complies with an obligation imposed by law on the responsible party;

18.6.4 processing protects a legitimate interest of the data subject;

18.6.5 processing is necessary for the proper performance of a public law duty by a public

body; or

18.6.6 processing is necessary for pursuing the legitimate interests of the responsible party or of a third party to whom the information is supplied.

18.7 The responsible party bears the burden of proof for the data subject's or competent

person's consent.

18.8 The data subject or competent person may withdraw his, her or its consent, as referred to above, at any time: Provided that the lawfulness of the processing of personal information before such withdrawal or the processing of personal information in terms of the above will not be affected.

18.9 A data subject may object, at any time, to the processing of personal information -

18.9.1 in terms of subsection (1)(d) to (f), in the prescribed manner, on reasonable grounds relating to his, her or its particular situation, unless legislation provides for such processing; or

18.9.2 for purposes of direct marketing other than direct marketing by means of unsolicited electronic communications as referred to in section 69.

18.10 If a data subject has objected to the processing of personal information in terms of subsection (3), the responsible party may no longer process the personal information.

Collection directly from the data subject

18.11 Personal information must be collected directly from the data subject, except as otherwise provided for below.

18.12 It is not necessary to comply with the above if -

18.12.1 the information is contained in or derived from a public record or has deliberately been made public by the data subject;

18.12.2 the data subject or a competent person where the data subject is a child has consented to the collection of the information from another source

18.12.3 collection of the information from another source would not prejudice a legitimate interest of the data subject;

18.12.4 collection of the information from another source is necessary -

- to avoid prejudice to the maintenance of the law by any public body, including the prevention, detection, investigation, prosecution and punishment of offences;
- to comply with an obligation imposed by law or to enforce legislation concerning the collection of revenue as defined in section 1 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);
- for the conduct of proceedings in any court or tribunal that have commenced or are reasonably contemplated;
- in the interests of national security; or
- to maintain the legitimate interests of the responsible party or of a third party to whom the information is supplied;

18.12.5 compliance would prejudice a lawful purpose of the collection; or

18.12.6 compliance is not reasonably practicable in the circumstances of the particular case.

Condition 3 – Purpose specification

Collection for specific purpose

18.13 Personal information must be collected for a specific, explicitly defined and lawful purpose related to a function or activity of the responsible party.

18.14 Steps must be taken in accordance with section 18(1) to ensure that the data subject is aware of the purpose of the collection of the information unless the provisions of section 18(4) are applicable.

Retention and restriction of records

18.15 Subject to subsections (2) and (3), records of personal information must not be retained any longer than is necessary for achieving the purpose for which the information was collected or subsequently processed, unless –

18.15.1 retention of the record is required or authorised by law;

18.15.2 the responsible party reasonably requires the record for lawful purposes related to its functions or activities;

18.15.3 retention of the record is required by a contract between the parties thereto; or

18.15.4 the data subject or a competent person where the data subject is a child has consented to the retention of the record.

18.16 Records of personal information may be retained for periods in excess of those contemplated in subsection (1) for historical, statistical or research purposes if the responsible party has established appropriate safeguards against the records being used for any other purposes.

18.17 A responsible party that has used a record of personal information of a data subject to make a decision about the data subject, must –

18.17.1 retain the record for such period as may be required or prescribed by law or a code of conduct; or

18.17.2 if there is no law or code of conduct prescribing a retention period, retain the record for a period which will afford the data subject a reasonable opportunity, taking all considerations relating to the use of the personal information into account, to request access to the record.

18.18 A responsible party must destroy or delete a record of personal information or de-identify it as soon as reasonably practicable after the responsible party is no longer authorised to retain the record in terms of subsection (1) or (2)

18.18.1 The destruction or deletion of a record of personal information in terms of subsection (4) must be done in a manner that prevents its reconstruction in an intelligible form.

18.18.2 The responsible party must restrict processing of personal information if –

- its accuracy is contested by the data subject, for a period enabling the responsible party to verify the accuracy of the information;
- the responsible party no longer needs the personal information for achieving the purpose for which the information was collected or subsequently processed, but it has to be maintained for purposes of proof
- the processing is unlawful and the data subject opposes its destruction or deletion and requests the restriction of its use instead; or
- the data subject requests to transmit the personal data into another automated processing system

18.19 Personal information referred to in subsection (6) may, with the exception of storage, only be processed for purposes of proof, or with the data subject's consent, or with the consent of a competent person in respect of a child, or for the protection of the rights of another natural or legal person or if such processing is in the public interest.

18.20 Where processing of personal information is restricted pursuant to subsection (6), the responsible party must inform the data subject before lifting the restriction on processing.

Condition 4 – Further processing limitation

Further processing to be compatible with purpose of collection

18.21 Further processing of personal information must be in accordance or compatible with the purpose for which it was collected in terms of section 13.

18.22 To assess whether further processing is compatible with the purpose of collection, the responsible party must take account of -

18.22.1 the relationship between the purpose of the intended further processing and the purpose for which the information has been collected;

18.22.2 the nature of the information concerned;

18.22.3 the consequences of the intended further processing for the data subject;

18.22.4 the manner in which the information has been collected; and

18.22.5 any contractual rights and obligations between the parties.

18.23 The further processing of personal information is not incompatible with the purpose of collection if -

18.23.1 the data subject or a competent person where the data subject is a child has consented to the further processing of the information;

18.23.2 the information is available in or derived from a public record or has deliberately been made public by the data subject;

18.23.3 further processing is necessary -

- to avoid prejudice to the maintenance of the law by any public body including the prevention, detection, investigation, prosecution and punishment of offences;
- to comply with an obligation imposed by law or to enforce legislation;
- concerning the collection of revenue as defined in section 1 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);
- for the conduct of proceedings in any court or tribunal that have commenced or are reasonably contemplated; or
- in the interests of national security.

18.24 the further processing of the information is necessary to prevent or mitigate a serious and imminent threat to -

18.24.1 public health or public safety; or

18.24.2 the life or health of the data subject or another individual;

18.24.3 the information is used for historical, statistical or research purposes and the responsible party ensures that the further processing is carried out solely for such purposes and will not be published in an identifiable form; or

18.24.4 the further processing of the information is in accordance with an exemption granted under section 37.

Condition 5 - Information quality

Quality of information

18.25 A responsible party must take reasonably practicable steps to ensure that the personal information is complete, accurate, not misleading and updated where necessary.

18.26 In taking the steps referred to in subsection (1), the responsible party must have regard to the purpose for which personal information is collected or further processed.

Condition 6 – Openness

Documentation

18.27 A responsible party must maintain the documentation of all processing operations under its responsibility as referred to in section 14 or 51 of PAIA.

Notification to data subject when collecting personal information

18.28 If personal information is collected, the responsible party must take reasonably practicable steps to ensure that the data subject is aware of -

18.28.1 the information being collected and where the information is not collected from the data subject, the source from which it is collected;

18.28.2 the name and address of the responsible party;

18.28.3 the purpose for which the information is being collected;

18.28.4 whether or not the supply of the information by that data subject is voluntary or mandatory;

18.28.5 the consequences of failure to provide the information;

18.28.6 any particular law authorising or requiring the collection of the information;

18.28.7 the fact that, where applicable, the responsible party intends to transfer the information to a third country or international organisation and the level of protection afforded to the information by that third country or international organisation;

18.28.8 any further information such as the -

- recipient or category of recipients of the information;
- nature or category of the information;
- existence of the right of access to and the right to rectify the information collected;
- existence of the right to object to the processing of personal information as referred to in section 11(3); and
- right to lodge a complaint to the Information Regulator and the contact details of the Information Regulator, which is necessary, having regard to the specific circumstances in which the information is or is not to be processed, to enable processing in respect of the data subject to be reasonable.

18.29 The steps referred to in subsection (1) must be taken -

18.29.1 if the personal information is collected directly from the data subject, before the information is collected, unless the data subject is already aware of the information referred to in that subsection; or

18.29.2 in any other case, before the information is collected or as soon as reasonably practicable after it has been collected.

18.30 A responsible party that has previously taken the steps referred to in subsection (1) complies with subsection (1) in relation to the subsequent collection from the data subject of the same information or information of the same kind if the purpose of collection of the information remains the same.

18.31 It is not necessary for a responsible party to comply with subsection (1) if -

18.31.1 the data subject or a competent person where the data subject is a child has provided consent for the non-compliance;

18.31.2 non-compliance would not prejudice the legitimate interests of the data subject as set out in terms of this Act;

18.31.3 non-compliance is necessary -

- to avoid prejudice to the maintenance of the law by any public body, including the prevention, detection, investigation, prosecution and punishment of offences;
- to comply with an obligation imposed by law or to enforce legislation concerning the collection of revenue as defined in section 1 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);
- for the conduct of proceedings in any court or tribunal that have been commenced or are reasonably contemplated; or
- in the interests of national security;

18.31.4 compliance would prejudice a lawful purpose of the collection;

18.31.5 compliance is not reasonably practicable in the circumstances of the particular case; or

18.31.6 the information will -

- not be used in a form in which the data subject may be identified; or
- be used for historical, statistical or research purposes.

Condition 7 – Security Safeguards

Security measures on integrity and confidentiality of personal information

18.32 A responsible party must secure the integrity and confidentiality of personal information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent -

18.32.1 loss of, damage to or unauthorised destruction of personal information; and

18.32.2 unlawful access to or processing of personal information

18.32.3 In order to give effect to subsection (1), the responsible party must take reasonable measures to -

18.32.4 identify all reasonably foreseeable internal and external risks to personal information in its possession or under its control;

18.32.5 establish and maintain appropriate safeguards against the risks identified;

18.32.6 regularly verify that the safeguards are effectively implemented; and

18.32.7 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.

18.33 The responsible party must have due regard to generally accepted information security practices and procedures which may apply to it generally or be required in terms of specific industry or professional rules and regulations. Information processed by operator or person acting under authority⁴⁰

18.34 An operator or anyone processing personal information on behalf of a responsible party or an operator, must -

18.34.1 process such information only with the knowledge or authorisation of the responsible party; and

18.34.2 treat personal information which comes to their knowledge as confidential and must not disclose it, unless required by law or in the course of the proper performance of their duties.

Security measures regarding information processed by operator

18.35 A responsible party must, in terms of a written contract between the responsible party and the operator, ensure that the operator which processes personal information for the responsible party establishes and maintains the security measures referred to in section 19.

18.36 The operator must notify the responsible party immediately where there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by any unauthorised person.

Notification of security compromises

18.37 Where there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by any unauthorised person, the responsible party must notify -

18.37.1 the Regulator; and

18.37.2 subject to subsection (3), the data subject, unless the identity of such data subject cannot be established.

18.38 The notification referred to in subsection (1) must be made as soon as reasonably possible after the discovery of the compromise, taking into account the legitimate needs of law enforcement or any measures reasonably necessary to determine the scope of the compromise and to restore the integrity of the responsible party's information system.

18.39 The responsible party may only delay notification of the data subject if a public body responsible for the prevention, detection or investigation of offences or the Regulator determines that notification will impede a criminal investigation by the public body concerned.

18.40 The notification to a data subject referred to in subsection (1) must be in writing and communicated to the data subject in at least one of the following ways:

18.40.1 Mailed to the data subject's last known physical or postal address;

18.40.2 sent by e-mail to the data subject's last known e-mail address;

18.40.3 placed in a prominent position on the website of the responsible party;

18.40.4 published in the news media; or

18.40.5 as may be directed by the Regulator.

18.41 The notification referred to in subsection (1) must provide sufficient information to allow the data subject to take protective measures against the potential consequences of the compromise, including -

18.41.1 a description of the possible consequences of the security compromise;

18.41.2 a description of the measures that the responsible party intends to take or has taken to address the security compromise;

18.41.3 a recommendation with regard to the measures to be taken by the data subject to mitigate the possible adverse effects of the security compromise; and

18.41.4 if known to the responsible party, the identity of the unauthorised person who may have accessed or acquired the personal information.

18.42 The Regulator may direct a responsible party to publicise, in any manner specified, the fact of any compromise to the integrity or confidentiality of personal information, if the Regulator has reasonable grounds to believe that such publicity would protect a data subject who may be affected by the compromise.

Condition 8 – Data Subject Participation

Access to personal information

18.43 A data subject, having provided adequate proof of identity, has the right to -

18.43.1 request a responsible party to confirm, free of charge, whether or not the responsible party holds personal information about the data subject; and

18.43.2 request from a responsible party the record or a description of the personal information about the data subject held by the responsible party, including information about the identity of all third parties, or categories of third parties, who have, or have had, access to the information—

- within a reasonable time;
- at a prescribed fee, if any;
- in a reasonable manner and format; and
- in a form that is generally understandable

18.44 If, in response to a request in terms of subsection (1), personal information is communicated to a data subject, the data subject must be advised of the right in terms of section 24 to request the correction of information.

18.45 If a data subject is required by a responsible party to pay a fee for services provided to the data subject in terms of subsection (1)(b) to enable the responsible party to respond to a request, the responsible party—

18.45.1 must give the applicant a written estimate of the fee before providing the services; and

18.45.2 may require the applicant to pay a deposit for all or part of the fee

18.46 A responsible party may or must refuse, as the case may be, to disclose any information requested in terms of subsection (1) to which the grounds for refusal of access to records set out in the applicable sections of Chapter 4 of Part 2 and Chapter 4 of Part 3 of the Promotion of Access to Information Act apply.

18.47 The provisions of sections 30 and 61 of the Promotion of Access to Information Act are applicable in respect of access to health or other records.

18.48 If a request for access to personal information is made to a responsible party and part of that information may or must be refused in terms of subsection (4)(a), every other part must be disclosed.

Correction of personal information

18.49 A data subject may, in the prescribed manner, request a responsible party to—

18.49.1 correct or delete personal information about the data subject in its possession or under its control that is inaccurate, irrelevant, excessive, out of date, incomplete, misleading or obtained unlawfully; or

18.49.2 destroy or delete a record of personal information about the data subject that the responsible party is no longer authorised to retain in terms of section 14.

18.50 On receipt of a request in terms of subsection (1) a responsible party must, as soon as reasonably practicable—

18.50.1 Correct the information;

18.50.2 Destroy or delete the information;

18.50.3 provide the data subject, to his or her satisfaction, with credible evidence in support of the information; or

18.50.4 where agreement cannot be reached between the responsible party and the data subject, and if the data subject so requests, take such steps as are reasonable in the circumstances, to attach to the information in such a manner that it will always be read with the information, an indication that a correction of the information has been requested but has not been made.

18.50.5 If the responsible party has taken steps under subsection (2) that result in a change to the information and the changed information has an impact on decisions that have been or will be taken in respect of the data subject in question, the responsible party must, if reasonably practicable, inform each person or body or responsible party to whom the personal information has been disclosed of those steps;

18.50.6 The responsible party must notify a data subject, who has made a request in terms of subsection (1), of the action taken as a result of the request.

Manner of access

18.51 The provisions of sections 18 and 53 of PAIA (form of access) apply to requests made in terms of section 23 of POPIA (as set out above).

Part B – Processing of special personal information

18.52 Part B deals with the manner in which special personal information is to be processed and the restrictions and exceptions around such.

Part C – Processing of special personal information of children

18.53 Part C similarly sets out how special personal information in respect of children is to be processed.

Chapter 4 Exemptions from conditions for processing of personal information

18.54 Chapter 4 deals with the exemptions from the conditions for processing of personal information if the Regulator grants an exemption or is processed for the purpose of discharging a relevant function, as defined, which is performed with the view to protecting members of the public against dishonesty, malpractice or incompetence of, amongst others, bodies corporate.

Chapter 9 Transborder information flows

18.55 Chapter 9 prohibits a responsible party in the Republic from transferring personal information about a data subject to a third party who is in a foreign country unless

18.55.1 the third party who receives such is bound by a law, corporate rules or an agreement which provide an adequate level of protection;

18.55.2 the data subject consents;

18.55.3 the transfer is necessary for the conclusion or performance of a contract; or

18.55.4 the transfer is of benefit to the data subject (and if it was obtainable the data subject would likely consent).

19. PRESCRIBED FORMS

19.1 The forms prescribed in terms of PAIA and POPIA are annexed hereunder.