

# CSOS PRESENTATION

J WASSERMAN



# WHAT IS PAIA?

- ❑ It is every citizen's right to information from a private or a public body
- ❑ This is in terms of the Promotion to Access to Information Act (as amended)
- ❑ Goes hand in hand with POPIA
- ❑ PAIA Manual
- ❑ What information are you entitled to in terms of PAIA at the CSOS?
- ❑ Community Schemes must have a PAIA manual and make this available to the public
- ❑ Exemption until 31 December 2021
- ❑ Information Regulator published a PAIA template in terms of Section 14 and Section 51 – do not have to submit to the Information Regulator

# INFORMATION REGULATOR

- Information Regulator took over the function of PAIA effect from = 30 June 21

*PAIA is there to give effect to sec 32 of the Constitution of RSA  
you right to access to information and the protection of such rights*

- Access to Information must be efficient, cheap and easily accessible (PAIA manual must be on SCHEMES website or Managing Agents Office or at the Scheme)
- Information Regulator monitor the implementation of PAIA

**REMEMBER:** IR has a ADR process should be followed when access is denied.



# INFORMATION REGULATOR

- ❑ Access can only be refused on any of the listed grounds!! (i.e., judicial queries, safety)
- ❑ One of the most important provisions of PAIA is that the public interest **overrides** the statutory protection provision
- ❑ The Act provides that despite the fact that a ground of refusal may apply, the Information Officer must grant a request for access if the following conditions are met:
  - I. Does the information demonstrate a serious breach of law; or
  - II. Do the records contain information that poses an imminent and serious safety or environmental risk; and
  - III. Does the public interest in disclosing information clearly outweigh the potential harm?

**For instance, even if an Information Officer determines that a record should be kept secret on grounds of national security, the record must be disclosed if the public interest override conditions are present.**

# PENALTIES AND OFFENCES

- ❑ A fine or imprisonment can be incurred on the Information Officer IF he or she willfully and acting negligently denies access to information!
- ❑ Section 90 (2) – CSOS
- ❑ Section 90 (3) – Schemes!
- ❑ **By the 1 JANUARY 2022 all Schemes must have a PAIA manual!!!**

**A TEMPLATE CAN BE PROVIDED TO SCHEMES UPON REQUEST – FREE OF CHARGE!**

# PAIA MANUAL OF THE CSOS

## What should be in the Manual?

### (Section 14)

- The function and mandate of the CSOS and how it operates
- The postal and street address, phone and fax number, and e-mail address of the CSOS
- Name of the Information Officer – Adv B Mkhize
- The documents available (i.e., legislation, practice directives, APP, strategies, adjudication orders, articles, YouTube videos, presentations, training material)
- The documents available upon request (personal records of staff, court records, procurement records, recordings, scheme governance documentation)
- A description of and guide on how to get information from CSOS
- A list of other legislation applicable to the organisation e.g., the Employment Equity Act 55 of 1998, the Income Tax Act 58 of 1962, etc.
- Various information related to the Protection of Personal Information Act (POPI).

# Example of PAIA manual for Community Schemes

- ❑ **Name** of Community Scheme i.e., Milpark Mews BC and SS number / CIPC number
- ❑ Introduction and **Purpose of the Manuel** i.e., section 51 of the PAIA Act and section 32 of the Constitution, that records will be made available
- ❑ Information and contact details of the **Information Officer** and the deputy Information Officer
- ❑ **Records** that are available (records that are kept in accordance with statutory provisions = Legislation and then the actual records)



# Example continue..

- Records available in terms of Legislation:
- Basic Conditions of Employment Act
- Sectional Titles Act
- Unemployment Insurance Act
- Records held by the scheme:
- Financial records
- Employee records
- Records relating to fixed and movable assets



# Example continue..

Access to the records (which you might not need to request on website)

1. Management and Conduct Rules
2. Estate Rules and Regulations
3. AGM Notices
4. Minutes of the Meeting
5. Constitution
6. MOI
7. Use Agreement

# Example continue..

## Refusal of Access to certain records

(A Private Body is entitled to refuse a request for information)

1. Where the record would unreasonably disclose personal information of a third party [natural or juristic person].
  - I. Trade secrets
  - II. Confidential information of TP
  - III. Publication of records where a person's life is in danger

# Example continue..

## □ How to request information

1. Complete the application form attached to the manual
2. Provide reasons as to why the records are required by you
3. Scheme will notify the requester within certain time if request is accepted, denied, further particular required or record cannot be found
4. Payment of access fee (private and public bodies = attached to Act)

*(There are two basic types of fees applicable in terms of PAIA – “request” and “access” fees)*

- Request fee = Admin fee / Access fee = gaining access to the records

# CASE LAW PAIA - (CASE NO. 27303/14)

- **FACTS:** The Court appointed 2 administrators over the affairs of the BC under the previous provision in the STA
- ❖ The applicant requested certain **information and explanations** from the administrators via the managing agent
- ❖ The information and explanations which was requested INCLUDES:
  1. The debt owing to the Municipality and the settlement agreement with the Municipality regarding the debt of the BC
  2. Payment of administrator's fees
  3. Payment of salaries
  4. The service providers which have been appointed by administrators
- ❖ The applicant advised that its her right to know the current affairs of the BC and more so that this request is in the public interest
- ❖ The respondents (two administrators) refused to comply with the request of the applicant



# CASE LAW continue..

In terms of the provisions of Section 3 of PAIA, the Act applies to (a) a record of a public body, and (b) a record of a private body regardless of when the record came into existence.

“Record” is defined in Section 1 of PAIA as **“any recorded information** – (a) regardless of form or medium; (b) in the possession or under the control of that public or private body respectively, and (c) whether or not it was created by that public or private body respectively”

**Thus, the Judge advised that records must be requested and not so much information or explanations**

The Judge further indicated that the only records the applicant is entitled to is the settlement agreement the two administrators has with the Municipality regarding the debt of the BC and copies of service contracts with the service providers of the BC

# Administrators Reports

Section 16 of the STSMA states:

- “ (4) The administrator must—
- (a) convene and preside at the meetings required in terms of this Act and the scheme’s rules; and
- (b) lodge with the ombud—
- (i) copies of the notices and minutes of meetings; and
- (ii) written reports on the administration process every three months or at such shorter intervals as the Magistrate’s Court may direct”.
- Application can be made to the CSOS for documentation for administrator’s reports.

# What does the STSMA and PMR say?

In terms of section 3 (n) states:

“to comply with any reasonable request for the names and addresses of the persons who are the trustees of the body corporate in terms of the rules or who are members of the body corporate”

In terms of PMR 27 (4) states:

- “ On receiving a written request, the body corporate must make the records and documents referred to in this rule available for inspection by, and provide copies of them to —
- (a) a member;
- (b) a registered bondholder; or
- (c) a person authorised in writing by a member or registered bondholder”. (comply within 10 days....rules 5 days + plus pay a reasonable fee)

# What does the STSMA and PMR say?

Should every member and occupier now receive the contact details of the board of trustees?

Yes **but**..... It can be argued that only the email addresses will suffice and not provide the trustees private cellphone numbers then again, the unit numbers and section of all members are in the public domain if you do a search on various platforms!

**Argument** = Trustees places themselves in the “public domain” when they hold office and ultimately gives permission to the Managing Agent or members to give out their details!



# CONCLUSION

***(FOR EXAMPLE: I think you agree ladies and gentlemen that if someone asks for all unit owners' details, the Managing Agents shouldn't just provide them unless all the unit owners agree to the information being given out - : So, there is a dynamic tension between PMR27 and PAIA on the one side, and POPI on the other!***

**THANK YOU**

**[Johlene.Wasserman@csos.org.za](mailto:Johlene.Wasserman@csos.org.za)**

**066 302 5408**

