Commissioner Foreword



Dear Subscribers.

Welcome to our June edition of Common Ground.

This month we focus our attention on a very common topic of enquiry and disputes - accessing body corporate records.

While the *Body Corporate and Community Management Act 1997* and associated regulation modules provide for the release of body corporate records, there is still confusion as to what can be released, who to, and how and when.

I encourage you to read the below FAQs about accessing body corporate records, which cover the most frequent questions our Information and Community Education Unit receives about this issue. The information provided will hopefully assist in avoiding disputes by raising awareness of body corporate

obligations in relation to records, and by helping owners and other interested parties access the information they need to make informed decisions.

As always, our dedicated Information and Community Education staff are available to assist if you have any further questions. You can contact them with your question on 1800 060 199, or by submitting an online enquiry.

Michelle Scott Commissioner Office of the Commissioner for Body Corporate and Community Management

Frequently asked questions – Accessing body corporate records

A body corporate must keep particular records and allow certain people to inspect and copy those records. Section 205 of the Body Corporate and Community Management Act 1997 provides for this access, and the regulation modules cover the fees that will apply, a committee's right to records, and when access to records can be refused.

The information and community education unit receives many queries about accessing body corporate records. Accessing body corporate records is also a common topic in dispute resolution applications received by our office.

We have compiled a list of the most frequently asked questions to our office to assist bodies corporate and owners to understand their rights and responsibilities are in regard to accessing body corporate records.

Q1. Who can access body corporate records?

An 'interested person' can inspect and/or get copies of body corporate records. An interested person is:

an owner of a lot in a scheme



- a mortgagee of a lot
- the buyer of a lot
- someone who satisfies the body corporate of a proper interest in the records (e.g. a tenant who wants information about living in or using a lot), or
- the agent of someone on this list

Q2. What is a body corporate record?

<u>Section 231</u> of the Standard Module (and equivalent sections in the other regulation modules) sets out what documents the body corporate must keep and when they can be disposed of.

In addition to the documents referred to in section 231, the body corporate is also required to keep a roll of lots and entitlements (the body corporate roll) and certain registers such as a register of assets. Refer to the <u>records</u> a body corporate must keep page of our website for more information.

Q3. Is CCTV footage a body corporate record?

While body corporate legislation does not specifically mention video footage, adjudicators have made orders which conclude footage from CCTV that is operated by the body corporate is a body corporate record. One such order is Xanadu- [2015] QBCCMCmr 381.

Bodies corporate should be aware of both the potential for footage to be a record and of the record keeping requirements under the Act and consider how it will manage these requirements when considering installing CCTV.

You can read more on our fact sheet - Video surveillance in a body corporate.

Q4. How long does the body corporate have to keep its records?

<u>Section 231</u> of the Standard Module (and equivalent sections in the other regulation modules) determines when a record can be disposed of.

Under the Standard Module, some records can be disposed of after two years (unless they are still current).

They include:

- committee and general meeting material
- correspondence that is not important or no longer of interest
- financial statements, including bank statements and invoices.

The body corporate can also dispose of some other records after six years (unless they are still current), including:

- statements of account
- meeting notices and papers
- records about major repairs and installations to common property or defect assessment reports

- orders and notices from a court, tribunal, council or other authority
- contracts to which the body corporate is a party
- reports given by a body corporate manager acting for the committee.

The Australian Tax Office may require some records to be kept for longer.

Q5. How do I access body corporate records?

If you are an 'interested person' and would like to access records, you must give a written request to the body corporate to either inspect the records or obtain copies and pay the <u>fee that applies</u>.

You can request copies of documents without first searching the records if you are able to identify or name the documents you want copied. However, if you cannot name the specific documents, you will need to search the records to find the documents you want copied. You can appoint another person to do the search for you.

The body corporate can only charge the copying fee when supplying copies. A search fee will only apply if you inspect the records.

The body corporate must let you inspect and/or give you copies of the records within seven days of receiving your written request and fee.

Q6. Can the body corporate manager charge a fee higher than is set out in the regulations?

No, the body corporate manager can only charge the 'interested person' accessing records the fee prescribed under the legislation. However, the body corporate manager may charge the body corporate for the work they do on behalf of the body corporate to provide access to body corporate records if this is contemplated in their contract of engagement. There is no provision in the legislation to pass these charges on to the interested person accessing records.

Q7. Are the caretaker's records part of the body corporate records?

The caretaker's personal business records may fall within the definition of a body corporate record, and some documents may be both a body corporate record (e.g. invoices for work done on common property) and the caretaker's personal record.

Q8. Do I have to pay the copying fee if the document is emailed?

The legislation simply provides that an interested person must pay 65 cents per page for a copy of a record. It does not provide the copy must be a hard copy and not electronic.

You may wish to search for adjudicators orders about this topic on Austlii.

Q9. I am a committee member; do I have to pay a fee for accessing records?

The regulations provide that the body corporate must allow all members of its committee reasonable access, without payment of a fee, to the body corporate's records. However, there is no definition provided for 'reasonable access'. In some circumstances it may be reasonable for a committee member to pay a fee for copies.

You can search for previous adjudicators orders about committee members accessing body corporate records on Austlii.

Q10. Does the body corporate manager need approval from the committee to provide records to an interested person?

Section 205 of the Act does not specifically provide that the committee must approve the release of the information to an interested person.

Q11. How long do I wait to receive the records?

The Act provides that the body corporate must allow an interested person to inspect or provide copies of records within seven days after the receipt of a written request and payment of the prescribed fee.

Q12. Are the contact details of owners and occupiers private? Can an owner instruct the body corporate they don't want their information shared?

An owner's name and address for service (which can include an email address) are recorded on the body corporate roll. Under the Act, the body corporate must provide an interested person access to the roll on request and payment of the applicable fees.

The <u>Privacy Act 1988 (Cwlth)</u> and the <u>Information Privacy Act 2009 (QLD)</u> may apply to the body corporate (and its agent).

However, privacy restrictions under this legislation do not apply to information that must be given by law. This means the body corporate cannot refuse to make documents containing an owner's contact details, such as the body corporate roll, available under the privacy legislation if the Act requires the body corporate to provide access to these documents.

There is no specific provision in the body corporate legislation which allows an owner to request that their information be kept private. An owner who has concerns about the privacy of their contact details may wish to set up an email address specifically for receiving body corporate correspondence.

Q13. When can the body corporate refuse access to records?

A body corporate does not have to make a document available if it reasonably believes the document contains defamatory material. Also, a body corporate may be able to keep records confidential because of 'legal professional privilege'.

To be 'privileged' the document would need to be:

- a communication between a lawyer and their client
- created for a lawyer as part of legal advice to their client, or to take current or planned legal action
- kept confidential by the client.

A body corporate does not have to give a committee member privileged records if legal action between the body corporate and the committee member has started or is threatened.

Q14. How would I know how many pages a document consists of in order to pay the copy fees?

If you only want copies and do not know the number of pages for calculating the copying fee, you can ask the body corporate to tell you the number of pages. Once you have paid the fee, the body corporate has seven days to provide the copies to you.

That the point of hourself

Q15. What can I do if the body corporate refused to provide me the records?

If the body corporate does not allow you to inspect or provide copies of records within seven days of receiving the request and you have been unable to resolve the issue of obtaining access to the records with the body corporate, you could consider lodging a <u>dispute resolution</u> application with our office. To lodge the application your dispute must fall within the meaning of dispute set out in <u>section 227</u> of the Act.



Body Corporate and Community Management www.ql

www.gld.gov.au/bodycorporate

1800 060 119

The material presented in this publication is distributed by the Queensland Government for information only and is subject to change without notice. The Queensland Government disclaims all responsibility and liability (including liability in negligence) for all expenses, losses, damages and costs incurred as a result of the information being inaccurate or incomplete in any way and for any reason. © State of Queensland (Department of Justice and Attorney-General) 2013