

Office of the Commissioner for Body Corporate and Community Management

Access to Body Corporate Records



How to ask questions

If you have:

- Joined via the Zoom application, you have a Q&A function for questions.
- Joined via the browser, you can ask questions via a chat function.

You can also email questions via

bccm@justice.qld.gov.au

Presenters

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Topics

- Legislative framework
- What is a body corporate record?
- Who can access body corporate records
- Privacy issues
- How to access the body corporate records
- What are prescribed fees?
- When can body corporate refuse access
- What to do if committee refuses
- What to do if body corporate manager refuses
- Self resolution / dispute resolution

Legislative Framework

- *Body Corporate and Community Management Act 1997 – S. 205*
- Regulation Modules:
 - Standard - S. 204 & 205
 - Accommodation – S. 202 & 203
 - Commercial – S. 160 & 161
 - Small Schemes – S. 136 & 137
 - Specified Two-Lot Schemes – S. 72 & 73
- Objective of Act is to ensure accessibility to information (S. 4(h) Act)

What is a body corporate record?

Any document (hard copy or electronic) held in the body corporate records. Can include:

- Financial records
- Meeting material and minutes
- Correspondence
- Email addresses and phone numbers
- Contracts
- Reports from body corporate managers
- Video footage from body corporate owned CCTV security systems.

What is a not body corporate record?

- Body corporate records are not a body corporate manager's property
- Letting agent's personal business records are not body corporate records
- Body corporate manager's personal business records are not a body corporate record

Who can access body corporate records

Interested person means:

- the owner, or a mortgagee, of a lot included in the scheme; or
- the buyer of a lot included in the scheme; or
- another person who satisfies the body corporate of a proper interest in the information sought; or
- the agent of a person mentioned above.

Tenants (occupiers) can access applicable body corporate records.

When must access be given?

- The body corporate must give access to an interested person within 7 days if the person has written their request and paid the prescribed fee.
- The body corporate must do either or both:
 - permit the person to inspect the body corporate's records AND/OR
 - give the person a copy of a record kept by the body corporate.
- The interested person does not have to search the records to obtain a copy.

Privacy issues

- The privacy restrictions do not apply to information that must be given by law. This means the body corporate cannot refuse to make documents available because of privacy legislation.
- See Section 6.2(b) of the Australian Privacy Principles, Schedule 1 of the *Privacy Act 1988* (Cwth)
- Federal Australian Information Commissioner:
1300 363 992.
QLD Govt Office of the Information Commissioner:
07 3234 7373 or 1800 642 753.

How to access the body corporate records

If you are an interested person, you must

- Request in writing to search the records and pay the prescribed search fee

AND/OR

- Request that copies of the specific named documents to be provided and pay the prescribed copying fee

Committee members must be given reasonable access without payment of a search fee

How to access the body corporate records

- BCCM Form 12 (Requiring information from a body corporate) is NOT mandatory, but can be used if you choose.
- In “writing” includes requesting via email
- You do not have to search the records to obtain copies of documents
- If you cannot identify documents, you will have to search the records
- The legislation does not differentiate between photocopy or electronic copy for the copying fee

What are prescribed fees?

- Prescribed fees are amounts set in the regulation modules for access to the body corporate records.
- The prescribed fees usually increase on 1 July each year.
- The body corporate manager cannot charge more than the prescribed fee to the interested person.

Who do you pay prescribed fees to?

- The prescribed fees are a body corporate fee.
- They should be paid to the body corporate, not the body corporate manager.
- Body corporate managers can charge the body corporate under their contract for work they do to supply body corporate records to an interested person.
- That cost cannot be passed to the interested person.

When can body corporate refuse access

The body corporate can refuse access when:

- It reasonably believes the document has defamatory material in it.
- A body corporate may be able to keep records confidential because of 'legal professional privilege'.

Privileged from disclosure

Adjudicators have stated, to be 'privileged from disclosure', the document would need to be related to a legal proceeding that is started or threatened and:

- 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.

Privileged from disclosure

The previous points are a summary of statements made in adjudicators' orders interpreting legal privilege. Some of the orders include:

- 0425-2012 - Carmel By The Sea [2012] QBCCMCmr 297 (25 June 2012)
- 0906-2012 - Q1 [2013] QBCCMCmr 235 (7 June 2013)
- 0554-2017 - Princess Palm [2017] QBCCMCmr 571 (21 November 2017)

What to do if committee refuses

- Person requesting records can lodge a conciliation application if they are an owner, occupier or caretaker.
- Attach copies of your written request for records and evidence of payment of the fee – or attempt to pay – as evidence of self-resolution.
- Attach copy of committee minutes of decision or any other responses.
- Must write a statement explaining how the decision or action is breaching the legislation

What to do if Body Corporate Manager refuses

- Body corporate manager cannot refuse access and cannot charge above prescribed fees.
- Applicant (owner, occupier or caretaker) must have evidence of self-resolution and payment of fee.
- Can lodge an adjudication application for access to records – may be suitable for expediting (see Practice Direction 19).
- Applicant must provide statement of grounds demonstrating there is a breach of the BCCM Act.

Contact us and Questions

Phone: 1800 060 119 (free call back service)

Online enquiry:

www.qld.gov.au/bodycorporatequestion

Website:

www.qld.gov.au/bodycorporate

Search Adjudicators' Orders:

<http://www.austlii.edu.au/cgi-bin/viewdb/au/cases/qld/QBCCMCmr/>