

INFORMATION MANUAL:
ELAWINI HOMEOWNERS' ASSOCIATION (RF) (NPC)
(Reg No.: 2007/005261/08)

IN TERMS OF SECTION 51 OF THE
PROMOTION OF ACCESS TO INFORMATION
ACT NO. 2 OF 2000
("THE ACT")

INDEX

1. Introduction
2. Purpose of Information Manual
3. Contact Details
4. South African Human Rights Commission Guide and Section 10 of the Act
5. Applicable Legislation
6. Schedule of Records
7. Form of Request
8. Prescribed Fees
9. Protection of Personal Information Act No. 4 of 2013
10. Decision on Request and Notification
11. Refusal of Access to Records
12. Remedies available when the HOA refuses a Request

1. INTRODUCTION

- 1) Elawini Homeowners' Association (RF) (NPC) with Registration Number: 20017/005261/08, is a private body, duly incorporated and established in terms of the Company Laws of South Africa.
- 2) The Promotion of Access to Information Act, No. 2 of 2000 ("the Act") was enacted on 3 February 2000, giving effect to the Constitutional right of access to any information in terms of Section 32 of the Bill of Rights contained in the Constitution of the Republic of South Africa, 108 of 1996 ("the Constitution").
- 3) Section 51 of the Act provides that all private bodies, as defined in Section 1 of the Act, are required to compile an information manual in accordance with the Act ("Information Manual").

2. PURPOSE OF INFORMATION MANUAL

- 1) This Information Manual is intended to ensure that the HOA complies with the Act and is transparent and accountable, by giving effect to the right of access to information.
- 2) Section 9 of the Act recognises that the right of access to information cannot be unlimited and should be subject to certain justifiable limitations, including but not limited to:-
 - a) limitations aimed at the reasonable protection of privacy;
 - b) commercial confidentiality;
 - c) effective, efficient and good governance; and
 - d) in a manner which balances that right with any other rights, including such rights contained in the Bill of Rights.

This Information Manual complies with the requirements of Section 10 of the Act and recognises that in terms of the Protection of Personal Information Act No.4 of 2013 ("the POPI Act"), the appointed Information Officer will be responsible to regulate compliance with the Act and the Regulations thereto.

3. CONTACT DETAILS OF HOMEOWNERS' ASSOCIATION

Directors: Sebatso Molefi, Eben Goosen, Kulani Chuake, Ntombi Kubheka
,Melanie De Jager (Bonheur properties representative), Gugu
Msimango (Village representative)

Chairman: Andrew Mkhabela

Information Officer: Estate Manager

Postal Address: PO Box 13443, Nelspruit, 1200

Street Address: 1 Elawini, Boulevard, Wild Berry Street, Riverside Ext 5, Nelspruit, 1226

Telephone Number: 013 590 0612

Managing Agent: Elawini Homeowners' Association ("HOA")

Contact Person: Estate Manager

Email: manager@elawini.co.za

Contact Telephone: 076 014 9614

4. SOUTH AFRICAN HUMAN RIGHTS COMMISSION GUIDE ("THE GUIDE") ON HOW TO USE THE ACT IN TERMS OF SECTION 10 OF THE ACT

- 1) The South African Human Rights Commission ("SAHRC"), has compiled the Guide, as required in terms of Section 10 of the Act. The Guide contains information on how to use the Act and includes and describes:-
 - a) the objectives of the Act;
 - b) particulars of every information officer of every private body, such particulars of every private body as are practicable;
 - c) the manner and form for requests for access to records of private bodies;
 - d) the assistance available from the head of the HOA and Human Rights Commission in terms of the Act;
 - e) All remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by the Act; and
 - f) the Regulations promulgated under the Act.

- 2) The Act grants a requester access to records of the HOA, if the record is required for the exercise or protection of any rights.
- 3) Requests in terms of the Act shall be made in accordance with the prescribed procedures, at the rates provided. The forms and tariff are dealt with in paragraphs 6 and 7 of the Act.
- 4) Requests are to be submitted to the Information Officer, alternatively, the Managing Agent.

Requesters are referred to the Guide in terms of Section 10 of the Act, which has been compiled by the South African Human Rights Commission, and contains information for the purposes of exercising Constitutional Rights. The Guide is available from the SAHRC. The contact details of the Commission are:

Postal Address: Private Bag 2700, Houghton, 2041
Telephone Number: +27-11-877 3600
Fax Number: +27-11-4030625
Website: www.sahrc.org.za

The guide is available for inspection on its website at www.sahrc.org.za.

5. APPLICABLE LEGISLATION

No	Ref	Act
1.	No 71 of 2008	The Companies Act
2.	No 9 of 2011	The Community Schemes Ombud Services Act
3.	No 2 of 2000	The Promotion of Access to Information Act
4.	No 4 of 2013	The Protection of Personal Information Act

Section 24 of the Companies Act - form and standards for company records:

- 1) Any documents, accounts, books, writing, records or other information that a company is required to keep in terms of this Act or any other public regulation must be kept:-
 - a) in written form, or other form or manner that allows that information to be converted into written form within a reasonable time; and
 - b) for a period of seven years, or any longer period of time specified in any other applicable public regulation, subject to subsection (2).
- 2) If a company has existed for a shorter time than contemplated in subsection (1) (b), the company is required to retain records for that shorter time.
- 3) Every company must maintain:-
 - a) a copy of its Memorandum of Incorporation, and any amendments or alterations to it, and any rules of the company made in terms of section 15 (3) to (5);
 - b) a record of its directors, including:-
 - i. all the information required in terms of subsection (5) in respect of each current director at any particular time; and
 - ii. with respect to each past director, the information required in terms of subparagraph (i), which must be retained for seven years after the past director retired from the company;
 - c) copies of all:-
 - i. reports presented at an annual general meeting of the company, for a period of seven years after the date of any such meeting;
 - ii. annual financial statements required by this Act, for seven years after the date on which each such particular statements were issued; and
 - iii. accounting records required by this Act, for the current financial year and for the previous seven completed financial years of the company;

d) notice and minutes of all shareholders meetings, including:-

i. all resolutions adopted by them; and

ii. any document that was made available by the company to the holders of securities in relation to each such resolution,

for seven years after the date each such resolution was adopted;

e) copies of any written communications sent generally by the company to all holders of any class of the company's securities, for a period of seven years after the date on which each such communication was issued; and

f) minutes of all meetings and resolutions of directors, or directors' committees, or the audit committee, if any, for a period of seven years after the date:-

i. of each such meeting; or

ii. on which each such resolution was adopted.

4) In addition to the requirements of subsection (3), every company must maintain:-

a) a securities register or its equivalent, as required by section 50, in the case of a profit company, or a member's register in the case of a non-profit company that has members; and

b) the records required in terms of section 85, if that section applies to the company.

5) A company's record of directors must include, in respect of each director, that person's:-

a) full name, and any former names;

b) identity number or, if the person does not have an identity number, the person's date of birth;

c) nationality and passport number, if the person is not a South African;

d) occupation;

e) date of their most recent election or appointment as director of the company;

- f) name and registration number of every other company or foreign company of which the person is a director, and in the case of a foreign company, the nationality of that company; and
- g) any other prescribed information.

Section 26 of the Companies Act - Access to company records:

- 1) A person who holds or has a beneficial interest in any securities issued by a profit company, or who is a member of a non-profit company, has a right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the following records of the company:
 - a) The company's Memorandum of Incorporation and any amendments to it, and any rules made by the company, as mentioned in section 24 (3) (a);
 - b) the records in respect of the company's directors, as mentioned in section 24 (3) (b);
 - c) the reports to annual meetings, and annual financial statements, as mentioned in section 24 (3) (c) (i) and (ii);
 - d) the notices and minutes of annual meetings, and communications mentioned in section 24 (3) (d) and (e), but the reference in section 24 (3) (d) to shareholders meetings, and the reference in section 24 (3) (e) to communications sent to holders of a company's securities, must be regarded in the case of a non-profit company as referring to a meeting of members, or communication to members, respectively; and
 - e) the securities register of a profit company, or the members register of a non-profit company that has members, as mentioned in section 24 (4).
- 2) A person not contemplated in subsection (1) has a right to inspect or copy the securities register of a profit company, or the members register of a non-profit company that has members, or the register of directors of a company, upon payment of an amount not exceeding the prescribed maximum fee for any such inspection.
- 2) In addition to the information rights set out in subsections (1) and (2), the Memorandum of Incorporation of a company may establish additional information rights of any person, with respect to any information pertaining to the company, but no such right may negate or diminish any mandatory protection of any record required by or in terms of Part 3 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

- 2) A person may exercise the rights set out in subsection (1) or (2), or contemplated in subsection (3):
 - a) for a reasonable period during business hours;
 - b) by direct request made to a company in the prescribed manner, either in person or through an attorney or other personal representative designated in writing; or
 - a) in accordance with the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).
- 5) Where a company receives a request in terms of subsection (4) (b) it must within 14 business days comply with the request by providing the opportunity to inspect or copy the register concerned to the person making such request.
- 5) The register of members and register of directors of a company, must, during business hours for reasonable periods be open to inspection by any member, free of charge and by any other person, upon payment for each inspection of an amount not more than R100,00.
- 5) The rights of access to information set out in this section are in addition to, and not in substitution for, any rights a person may have to access information in terms of:
 - a) section 32 of the Constitution;
 - a) the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000); or
 - a) any other public regulation.
- 8) The Minister may make regulations respecting the exercise of the rights set out in this section.
- 9) It is an offence for a company to:
 - a. fail to accommodate any reasonable request for access, or to unreasonably refuse access, to any record that a person has a right to inspect or copy in terms of this section or section 31; or
 - b. to otherwise impede, interfere with, or attempt to frustrate, the reasonable exercise by any person of the rights set out in this section or section 31.

6. SCHEDULE OF RECORDS

Records	Subject	Availability
Financial	Financial Statements, Management Accounts, Books of Account, Invoices, Company Reports and Securities Register.	Request from HOA/Information Officer
Notices and Minutes of all Meetings	Members' and Directors' Meetings.	Request from HOA/Information Officer
Resolutions	Members' and Directors' Resolutions.	Request from HOA/Information Officer
Members'/Directors'/Tenants' details	Identity Documents, Contact Details, Bank Account details, Full Names, Biometrics, Addresses, Nationality, Gender, Sex, Language, Vehicle registration and details, Occupation.	Request from HOA/Information Officer
Personnel Records	Identity Documents, Contracts, Correspondence.	Request from HOA/Information Officer
Other	Memorandum of Incorporation and Rules. Visitors' details, drivers license details and identification/passport numbers.	Request from HOA/Information Officer

7. FORM OF REQUEST

To facilitate the processing of your request, kindly:

- 1) Use the prescribed form, available on the website of the South African Human Rights Commission at www.sahrc.org.za and attached hereto, for convenience.
- 2) Address your request to the Information Officer alternatively, the Managing Agent.
- 3) Provide sufficient details to enable the HOA to identify:
 - a) The record(s) requested;
 - b) The requester (if an agent is lodging the request, proof of capacity);
 - c) The form of access required;
 - d) The postal address or fax number of the requester in the Republic;
 - e) If the requester wishes to be informed of the decision in any manner (in addition to written) the manner and particulars thereof;
 - f) The right which the requester is seeking to exercise or protect with an explanation of the reason the record is required to exercise or protect the right.
 - g) The reasons for making such a request.
- 4) The requester shall be advised whether access is granted or denied in writing. If, in addition, the requester requires the reasons for the decision in any other manner, the requester will be obliged to state which manner and the particulars required.
- 5) If a request is made on behalf of another person, then the requester must submit proof of the capacity in which the requester is making the request to the reasonable satisfaction of the HOA.
- 6) If an individual is unable to complete the prescribed form because of illiteracy or disability, such a person may make the request verbally.

8. PRESCRIBED FEES

The following applies to requests (other than personal requests):

- 1) There is no prescribed fee for requesting access to this information manual, unless the manual is being requested directly from the SAHRC, in which case, the prescribed fee shall be payable.
- 2) If copies are required, the requester will be liable for reasonable photocopying charges, which charges must be paid before copies will be made available.
- 3) If the preparation of the record requested requires more than the prescribed hours (six), a deposit shall be paid (of not more than one third of the access fee which would be payable if the request were granted); and
- 4) Records may be withheld until the fees have been paid.

9. PROTECTION OF PERSONAL INFORMATION ACT NO. 4 OF 2013 (“THE POPI ACT”)

- 1) The purpose of processing personal information, a description of the categories of data subjects and of the information or categories of information relating thereto, the recipients or categories of recipients to whom the personal information may be supplied, and a general description allowing a preliminary assessment of the suitability of the information security measures to be implemented by the responsible party to ensure the confidentiality, integrity and availability of the personal information which is to be processed, is contained in the HOA’s Privacy Policy.
- 2) A copy of the HOA’s Privacy Policy is available from the Information Officer, upon request.

10. DECISION ON REQUEST AND NOTIFICATION THEREOF

- 1) The HOA, to whom the request is made, shall, as soon as reasonably possible decide in accordance with the Act, whether to grant the request and notify the requester of the decision.

- 2) Should the request for access be granted, the HOA, on notice to the requester, shall set out the access fee, if any, to be paid upon access and the form in which the access will be given.
- 3) Should the request for access be refused, the HOA, on notice to the requester, shall state the adequate reasons for the refusal, and exclude, from any such reasons, any reference to the content of the record.
- 4) In the event that the HOA fails to give the decision on a request for access to the requester within the period contemplated, the head of the HOA is regarded as having refused the request.
- 5) Requests for information that are clearly frivolous or vexatious, or which involve an unreasonable diversion of resources shall be refused.
- 6) All requests for information will be assessed on their own merits and in accordance with the applicable legal principles and legislation.
- 7) If the requested record cannot be found or if the record does not exist, the HOA shall notify the requester that it is not possible to give access to the requested record. Such a notice will be regarded as a decision to refuse a request for access to the record concerned for the purpose of the Act. If the record should later be found, the requester shall be given access to the record in the manner stipulated by the requester in the prescribed form, unless the head of the HOA refuses access to such record.

11. REFUSAL OF ACCESS TO RECORDS

- 1) The HOA is entitled to refuse a request for information, amongst others which relates to the:
 - a) Mandatory protection of the privacy of a third party who is a natural person and includes deceased persons (Section 63) or a juristic person, as included in the POPI Act, which would involve the unreasonable disclosure of personal information of that natural juristic person;
 - b) Mandatory protection of personal information and for disclosure of any personal information to, in addition to any other legislative, regulatory or contractual agreements, comply with the provisions of the POPI Act;

- c) Mandatory protection of the commercial information of a third party (Section 64), if the record contains:
 - i. Trade secrets,
 - ii. financial, commercial, scientific or technical information which disclosure could likely cause harm to the harm to the financial or commercial interests of that third party; or
 - iii. information disclosed in confidence by a third party, the disclosure of which could put that third party at a disadvantage in negotiations or commercial competition;
- d) Mandatory protection of confidential information of third parties (Section 65) if it is protected in terms of any agreement;
- e) Mandatory protection of the safety of individuals and protection of property (Section 66);
- f) Mandatory protection of record which would be regarded as privileged in legal proceedings (Section 67);
- g) Mandatory protection of commercial information of a private body (Section 68).

12. REMEDIES AVAILABLE WHEN THE HOA REFUSES A REQUEST

The HOA does not have internal appeal procedures. The decision made by the HOA is final. Requesters may exercise such external remedies at their disposal, if their request for information is refused and the requestor is not satisfied with the answer supplied by the HOA.

FORM C

REQUEST FOR ACCESS TO RECORD OF PRIVATE BODY
(Section 53(1) of the Promotion of Access to Information Act, 2000
(Act No. 2 of 2000)

[Regulation 10]

A. Particulars of private body

The Head:

B. Particulars of person requesting access to the record

- | | |
|-----|---|
| (a) | The particulars of the person who requests access to the record must be given below. |
| (b) | The address and/or fax number in the Republic to which the information is to be sent must be given. |
| (c) | Proof of the capacity in which the request is made, if applicable, must be attached. |

Full names and surname:

Identity number:

Postal address:

Fax number:

Telephone number:

E-mail address:

Capacity in which request is made, when made on behalf of another person:

C. Particulars of person on whose behalf request is made

This section must be completed <i>ONLY</i> if a request <i>for information</i> is made on behalf of <i>another</i> person.
--

Full names and surname:

Identity number:

D. Particulars of record

- | | |
|-----|--|
| (a) | Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located. |
| (b) | If the provided space is inadequate, please continue on a separate folio and attach it to this form. The requester must sign all the additional folios. |

- 1 Description of record or relevant part of the record:
- 2 Reference number, if available:
- 3 Any further particulars of record:

E. Fees

- | | |
|-----|--|
| (a) | A request for access to a record, other <i>than</i> a record containing personal information about yourself, will be processed only after a request fee has been paid. |
| (b) | You will be <i>notified</i> of the amount required to be paid as the request fee. |
| (c) | The fee payable for access to a record depends <i>on</i> the form <i>in which</i> access is required and the reasonable time <i>required</i> to search for and prepare a record. |
| (d) | If you qualify for exemption <i>of</i> the payment <i>of</i> any fee, please state the reason for exemption. |

Reason for exemption from payment of fees:

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.

Disability:	Form in which record is required
Mark the appropriate box with an X.	
NOTES: (a) Compliance with your request in the specified form may depend on the form in which the record is available. (b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form. (c) The fee payable for access for the record, if any, will be determined partly by the form in which access is requested.	

1. If the record is in written or printed form:			
☐	copy of record*	☐	inspection of record
2. If record consists of visual images this includes photographs, slides, video recordings, computer-generated images, sketches, etc)			
☐	view the images	☐	copy of the images"
☐		☐	transcription of the images*
3. If record consists of recorded words or information which can be reproduced in sound:			
☐	listen to the soundtrack audio cassette	☐	transcription of soundtrack* written or printed document
4. If record is held on computer or in an electronic or machine-readable form:			
☐	printed copy of record*	☐	printed copy of information derived from the record"
☐		☐	copy in computer readable form* (stiffy or compact disc)
'If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? Postage is payable.			YES NO

G Particulars of right to be exercised or protected

If the provided space is inadequate, please continue on a separate folio and attach it to this form. The requester must sign all the additional folios.

1. Indicate which right is to be exercised or protected:
2. Explain why the record requested is required for the exercise or protection of the aforementioned right:

H. Notice of decision regarding request for access

You will be notified in writing whether your request has been approved/denied. If you wish to be informed in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record?

Signed at..... This..... day of202_

SIGNATURE OF REQUESTER / PERSON ON
WHOSE BEHALF REQUEST IS MADE