

UNDERSTANDING THE PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013 ("POPIA")

What is the purpose of POPIA?

The purpose of POPIA is to give effect to the constitutional right to privacy by safeguarding personal information that an Association processes.

How does POPIA apply to Oakwood Home Owners Association?

POPIA was enacted to promote and protect an individual's right to privacy, including the protection against the unlawful collection, use, disclosure and destruction of their personal information. Oakwood Home Owners Association has a duty to the personal information it processes. It must put measures in place to prevent unauthorised access to information it holds. POPIA is applicable to Oakwood Home Owners Association as it processes personal information.

What is "processing" of personal information?

Processing means any operation or activity concerning personal information, including:

- (i) the collection, receipt, storage or use;
- (ii) distribution or making available in any other form, or
- (iii) destruction of information.

What is personal information?

Personal Information relating to Oakwood Home Owners Association includes:

Owners

- Owner names and contact details
- Owner identity / passport numbers
- Owner banking information
- Owner financial details
- Owner marital status
- Owner / Occupier biometric / license details
- Owner Race, gender & language information

Employees:

- Names
- Contact information
- Physical addresses
- Banking information
- Medical history
- Educational history
- Criminal records
- Employment history
- Race, gender & language information

How does Oakwood Home Owners Association process personal information?

For the Association to function and comply with its governing documents and the applicable legislation, it needs certain information in order to do so. Personal information is processed by Oakwood Home Owners Association in that it collects, receives, stores, uses, distributes and destroys the personal information processed.

POPIA provides a framework whereby Oakwood Home Owners Association must implement and maintain reasonable security procedures in order to protect the information it processes in order to ensure that no breaches of confidentiality, unauthorised access, destruction, use, modification or disclosure of the personal information takes place.

Examples of Oakwood Home Owners Association processing of personal information

The Association processes its members' personal information for the purposes of their membership to the Association.

The Association processes its employees' personal information for the purposes of their employment and other related legal and operational reasons, including payroll purposes.

Are there any further requirements that Oakwood Home Owners Association has to comply with when processing personal information?

Oakwood Home Owners Association, when processing personal information, must do so in accordance with certain principles prescribed by POPIA. When processing personal information, they have to ask themselves, that when doing so, are they doing so in accordance with these principles.

(a) Accountability

The Association must ensure that they comply with POPIA when processing personal information. They are accountable to those whose information they process.

(b) Lawfulness

The processing of personal information must be done in a legal manner, it must not contravene any other law. The Association may not obtain personal information via theft as a means to do so.

(c) Minimality

The Association can only process personal information that is applicable to fulfil its purpose and function. Oakwood Home Owners Association does not require the political beliefs of a member thus it must not process that personal information.

(d) Consent

The Association requires the consent of its members and employees to process their personal information.

(e) Collection of Personal Information

The Association collects Personal Information member and employee submissions electronically and manually and via public records.

(f) Purpose

The Association can only process personal information if required for a specific purpose that it needs to fulfil.

(g) Information quality

POPIA places a positive obligation on the Association to ensure that the information they process is accurate and updated where necessary. The Association should, on a reasonable basis, request that their members and employees ensure that their personal information submitted is correct and up to date.

(h) Openness

If the Association processes personal information from another source, other than a member or employee, they must advise that person of the collection. This excludes personal information processed via public record.

(i) Information security

The Association has safeguarded all Personal Information against damage, loss, unauthorised access and unauthorised destruction. This includes both technical and organizational measures.

The Association must ensure that they have sufficient measures in place to protect their electronic data from being accessed or “hacked”. They must also ensure that personal information kept in physical records are safeguarded from theft, damage or loss.

What must Oakwood Home Owners Association do in order to comply with POPIA?

The Association must develop and maintain a POPIA manual / framework. This framework must be strictly enforced by the Association and it must state the following:

- a) How information is collected;
- b) What information is collected;

- c) How the information is used;
- d) How information is stored;
- e) Who has access to the information;
- f) How information is maintained; and
- g) How information is destroyed.

The Information Officer of Oakwood Home Owners Association

The Association MUST appoint an Information Officer who is responsible for ensuring compliance with POPIA. They MUST also be registered with the Information Regulator. Both PAIA and POPIA also allow for the appointment of a Deputy Information Officer within an Association.

Oakwood Home Owners Association must appoint an information officer and can appoint deputy information officers who will also need to be registered with the Information Regulator.

Persons appointed and registered as Information Officers or Deputy Information Officers will be responsible for the following:

- (a) encourage compliance with the conditions for the lawful processing of personal information by the Association;
- (b) deal with requests made pursuant to POPIA;
- (c) work with the Information Regulator in relation to investigations conducted;
- (d) ensure compliance by the Association with the provisions of POPIA;
- (e) develop, implement and monitor a POPIA Compliance Manual in terms of POPIA;
- (f) ensure that personal information impact assessments are done regularly to ensure that adequate measures and standards exist within the Association;
- (g) develop, monitor, maintain and make available a PAIA manual;
- (h) develop internal measures and adequate systems within the Association to process requests for access to information;
- (i) ensure that internal awareness sessions are conducted with all employees of the Association on a regular basis;

Who should be registered as an Information Officer?

Certain people, by virtue of their position, will automatically take up the role of Information Officer including chairperson, trustee, estate manager or managing agent, or any persons appointed as the head of an Association or juristic person.

The designation of and delegation of authority to Deputy Information Officers

Both PAIA and POPIA allow for the designation of a Deputy Information Officer within an Association. The designation and delegation of authority must be in writing and allows for the Information Officer to delegate some of its duties to the Deputy Information Officer however, the Information Officer will still retain the accountability and responsibility for the functions delegated to the Deputy Information Officer.

In any association this role can be designated to executive, administrative and financial managers.

A Deputy Information Officer should be suitably qualified and have a reasonable understanding of POPIA, PAIA and the Association's operations and processes in order to perform his or her duties.

Training of Information Officers and Deputy Information Officers?

A body must ensure that an Information Officer and Deputy Information Officer(s) receive appropriate training and keep abreast of the latest developments in POPIA and PAIA.

It is advisable that the Deputy Information receive training, however obtained, as they will most likely fulfil most of the roles envisioned by POPIA.

Updating the details of an Information Officer and Deputy Information Officer(s)

A body should update the particulars of an Information Officer and Deputy Information Officer(s) on an annual basis or as and when it becomes necessary.

Procedure for the registration of an Information Officer and Deputy Information Officer

An Information Officer of an Association must complete and submit a registration form to the Information Regulator. The Deputy Information Officer must also be registered with the Information Regulator.

A prescribed “Information Officer’s Registration Form” must be used to register Information Officers or it can be done via the Information Regulator’s online portal. A “Designation and Delegation of Authority to the Deputy Information Officer” form must be used to register a Deputy Information Officer. More than one Deputy Information Officer may be designated depending on the size, structure, and the complexity of the operations of a specific Association.