

**Irene Farm Villages Home Owners Association (NPC)**  
**(Registration No.: 2000/030502/08)**  
(referred to as the IFV HOA)

**Access to Information**  
**Promotion of Access to Information Act, 2000 (Act No 2 of 2000)**  
Section 51 - Manual

<b>Standard Governance</b>	
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## **PART A: INTRODUCTION**

### **1. PURPOSE**

The objective of these guidelines is to ensure compliance with the Promotion of Access to Information Act, 2000 (Act No 2 of 2000) - referred to as "PAIA" as well as the Companies Act, 2008 (Act 71 of 2008) that gives effect to section 32 of the Constitution. Section 32 provides for "the right of access to information" and states that "everyone has the right of access to any information held by public and private bodies that is required for the exercise or protection of any rights."

Additionally, under the Protection of Personal Information Act, 2013 (Act No 4 of 2013) referred to as "POPI", the IFV HOA is required to be open and transparent about how it handles personal information.

The motivation for adhering to the legislative requirements is to foster a culture of transparency and accountability and to promote the IFV HOA in which the Members have effective access to records and personal information to enable them to fully exercise and protect all their rights.

### **2. STATUS & SCOPE OF THE POLICY**

#### **2.1 Status**

This version replaces all previous versions of such policies or guidelines and may be revised from time to time to reflect changes in laws and regulations, or changes in the IFV HOA's business operation.

#### **2.2 Private Bodies**

The Companies Act, 2008 contains provisions which aim to promote transparency, accountability and integrity in companies highlighting which company information must be made available to certain persons, who those persons are and the procedures for obtaining the information.

In terms of the PAIA, individuals have a right of access to certain records of any "private body". A "private body" is described as any Company, Close Corporation, Trust, Partnership or Individual who trades on a commercial basis.

The IFV HOA is registered as a Non-Profit Company (NPC) in terms of the Companies Act, 2008 (Registration No.: 2000/030502/08) and is therefore subjected to adhere to these legislative requirements.

## 2.3 Governance

The manual must comply with the requirements of the PAIA and the Companies Act as well as POPI as amended from time to time.

The following approved documents must be referenced in making any decision from a governance and legal perspective (in this order):

- a) Promotion of Access to Information Act, 2000 (Act No 2 of 2000);
- b) Companies Act, 2008 (Act No 71 of 2008);
- c) Protection of Personal Information Act, 2013 (Act No 4 of 2013);
- d) IFV HOA Memorandum of Incorporation (MOI);
- e) IFV HOA Member meeting minutes;
- f) IFV HOA Rules and Regulations;
- g) IFV HOA Board meeting minutes; and
- h) IFV HOA Finance Policy.

The PAIA is above any other legislation that may prohibit or restrict any access to information.

## 2.4 In Scope

This manual encompasses all aspects relating to the accessing of information held by the IFV HOA and how it attends to personal information held. These aspects include, but are not limited to:

- a) Who can request information?
- b) What information is readily accessible?
- c) What information may Members request under PAIA?
- d) What information may Members request under POPI?
- e) What are the rights of non-members?
- f) What information is protected?
- g) How can information be requested?
- h) How is a request processed?
- i) How long does it take to process a request?
- j) What process is to be followed if request is approved?
- k) What process can be followed if request is denied?
- l) What are the fees payable?

The manual includes duties performed by either the Estate Manager and/or the appointed Management Agency on behalf of the Board. While the Estate Manager and the appointed Management Agency are responsible to perform various duties as part of their contractual obligations, they do not have any decision-making authority and act solely as mandated bodies on behalf of the IFV HOA. The Board remains accountable for all affairs pertaining to the management of the IFV HOA.

## 2.5 Out of Scope

The policies of all other portfolios managed by the Board, including Finance, Security, Legal, Human Resources and Infrastructure (digital and physical) or the day-to-day operations of the IFV HOA are not covered by this policy.

## **PART B: REQUEST PROCEDURE UNDER PAIA/POPI**

### **3. Process to be followed**

#### **3.1 Who can request information?**

Any person or entity must be given access to any record of the IFV HOA if that record is required for the exercise or protection of any rights and if that person follows the correct procedure in requesting the information.

#### **3.2 What information is readily accessible?**

In terms of the Companies Act, 2008, any Member of the IFV HOA is entitled to receive any annual financial statements without having to make a demand for it.

The IFV HOA circulates monthly financial statements to all Members on a monthly basis via The Villager publication. Furthermore, audited financial statements are tabled for discussion and approval at the Annual General Meeting (AGM) no later than six (6) months after its financial year-end.

This information is made available by the IFV HOA at no cost to the Members.

#### **3.3 What information may Members request under PAIA?**

In terms of the Companies Act, 2008 the IFV HOA must keep the following:

- a) A copy of its MOI.
- b) Any amendments to the MOI and any rules.
- c) A detailed record of its current and past directors.
- d) Copies of all:
  - i. Reports presented at an AGM;
  - ii. Annual Financial Statements (AFS); and
  - iii. Accounting records
- e) Notices and minutes of all meetings, including:
  - i. All resolutions adopted; and
  - ii. Any document that was made available to Members in relation to each resolution.
- f) Copies of any written communications sent generally to all Members.
- g) Minutes of all meetings and resolutions of directors and director's committees.
- h) A register of Members.
- i) Records on the appointment of Estate Manager and auditor(s).

These records must be kept in writing or in a format that can be reduced to writing for a period of seven (7) years, at the IFV HOA's registered office that can include that of the appointed Managing Agent.

Access to the following types of records maintained by the IFV HOA including the following may be requested by Members:

- a) Personnel Records, including (but not limited to):
  - i. Training schedules and material;
  - ii. Personal records provided by personnel;
  - iii. Conditions of employment and other personnel related records; and
  - iv. Correspondence relating to personnel.

"Personnel" refers to any person who works for or provides services to or on behalf of the IFV HOA and receives or is entitled to receive remuneration and any other person who assists in carrying out or conducting the business of the IFV HOA, including directors, all permanent, temporary and part-time staff, as well as contract workers.

- b) Client Records, including (but not limited to):
  - i. Records generated by or within the IFV HOA relating to its clients;
  - ii. Records provided by a third party (typically insurer or reinsurer) in respect of the client; and
  - iii. Records provided by a client to a third party acting for or on behalf of the IFV HOA.

"Client" refers to any natural or juristic entity that the IFV HOA performs services for and by whom IFV HOA receives remuneration from by virtue of performing those services.

- c) Company Records, including (but not limited to):
  - i. Financial records (cross refer to par 3.2 above & par f) below;
  - ii. Operational records;
  - iii. IT-related records;
  - iv. Communication;
  - v. Administrative records;
  - vi. Internal Policies and Procedures;
  - vii. Statutory records;
  - viii. Human resources (HR) records (not being Personnel Records); and
  - ix. List of approved suppliers of services and goods.

"Company records" typically encompass records which pertain to the IFV HOA's own internal business affairs.

- d) Third Party Records including (but not limited to):
  - i. Financial records, correspondence, contractual records and records provided by the other party.
  - ii. Personnel, customer or company records which are held by another party, as opposed to the records held by the IFV HOA itself.
  - iii. The results of any product or environmental testing or other investigation supplied by, carried out by or on behalf of a third party and its disclosure would reveal a serious public safety or environmental risk excluding the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation.

"Third Party records" refers to records held by the IFV HOA pertaining to other parties (not being Personnel Records or Client Records) who has consented (after certain procedures were followed).

- e) Records available in accordance with various legislation, including (but not limited to):
  - i. Promotion of Access to Information Act, 2000 (Act No 2 of 2000);
  - ii. Companies Act, 2008 (Act No 71 of 2008);
  - iii. Protection of Personal Information Act, 2013 (Act No 4 of 2013) – refer to the par 3.4 below;
  - iv. The Employment Equity Act, 1998 (Act No 55 of 1998);
  - v. The Basic Conditions of Employment Act, 1997 (Act No 75 of 1997); and
  - vi. The Labour Relations Act, 1995 (Act No 66 of 1995).
- f) Financial or related information of the IFV HOA that must be disclosed if:
  - i. The disclosure of the record would reveal evidence of a substantial contravention of, or failure to comply with, the law.
  - ii. Imminent and serious public safety or environmental risk.
  - iii. If the disclosure will be in the interest of society.

### 3.4 What rights do Members have under POPI?

Under POPI, everyone has various rights in respect of his/her own personal information. Member's rights under POPI include the right to ask the IFV HOA to:

- a) Confirm whether the IFV HOA handles **your** personal information.
- b) Grant access to your own personal information.
- c) Correct, destroy, or delete your personal information, if your personal information held by the IFV HOA is inaccurate, irrelevant, excessive, out of date, incomplete, misleading, or was obtained illegally. or
- d) Stop using your personal information ways, for example by asking the IFV HOA to stop using your personal information for direct marketing purpose.
- e) Further information regarding why and how IFV HOA handles personal information of its job applicants, employees, temps, contractors, and other workers is embedded in **Part C** par 3.13 of this Manual.
- f) Further information regarding why and how the IFV HOA handles personal information of its residents (clients), and other persons who are not IFV HOA's workers is embedded in **Part C** par 3.14 of this Manual.
- g) If you wish to make a request to the IFV HOA under POPI in respect of **your** personal information, please follow the procedure described in **Part B** of this Manual. Please note that your request will be subject to the applicable charges set out in Section B5.
- h) POPI establishes a new regulator called the Information Regulator. The Information Regulator is an independent body established in terms of Section 39 of POPI. The Information Regulator is, among others, empowered to monitor and enforce compliance by public and private bodies with the provisions of PAIA and POPI.

### 3.5 What are the rights of Non-Members?

Any person who is not a member of the IFV HOA may inspect or copy:

- a) The members register and the register of directors upon payment of a fee which is yet to be determined by Regulation, but which has been capped at R100.00.
- b) Any judgment creditor, after being informed by the relevant sheriff who is attending to execution of the IFV HOA's, that there is insufficient disposable property to satisfy a judgment debt, is entitled to demand access to the most recent AFS and to receive such AFS without charge within 5 (five) business days of making the demand.

### 3.6 What information is protected?

- a) The following information is automatically protected and must refuse access if it is requested, namely:
  - i. Trade secrets of a third party.
  - ii. Financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party. or
  - iii. Information supplied in confidence by a third party, the disclosure of which could reasonably be expected – to put that third party at a disadvantage in contractual or other negotiations; or to prejudice that third party in commercial competition.
  - iv. Any information that would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement.
- b) Information that protects the safety of individuals and property:
  - i. Any information that would be reasonably expected to endanger the life or physical safety of an individual must not be given to anybody.
  - ii. Information that is likely to prejudice or impair the security of a building, structure or system, (this includes computers or communications systems), or a means of transport; or any other property;

or methods, systems, plans or procedures for the protection of an individual in accordance with a witness protection scheme; the safety of the public, or any part of the public; or the security of property.

- c) Information with regards to legal proceedings:
  - i. If the record is privileged from production in legal proceedings unless the person entitled to the privilege has waived the privilege. If such information is obtained, without the required consent it may not be used in a court of law unless the court thinks that the exclusion of such information will be detrimental to the course of justice.
- d) Research information of a third party and/or of the Company may not be disclosed as the disclosure of which would be likely to expose:
  - i. The third party.
  - ii. A person that is or will be carrying out the research on behalf of the third party.
  - iii. The subject matter of the research is of serious disadvantage of the third party.

### 3.7 How can information be requested?

The Board has appointed the Estate Manager as Deputy Information Officer to assist in the administration of access to information requests.

#### a) Complete the Request Form

The Request Form to be completed and submitted in terms of section 53(1) of PAIA to the Deputy Information Officer is Form C (Regulation 10): Request for Access to Record of Private Body. The Request Form is:

- i. Embedded in Part D of this Manual.
- ii. Obtainable from the Estate Office.
- iii. Accessed from the Department of Justice website: [http://www.justice.gov.za/forms/form\\_paia.htm](http://www.justice.gov.za/forms/form_paia.htm) (Select "Form C" from the list).

If difficulties are experienced with the completion of the Request Form (e.g. not able to write/type or due to a disability, please contact the Deputy Information Officer for assistance: Tel: +27 (0)12 662-3505.

The Request Form is to be completed as fully as possible as the request will not be able to be processed unless:

- i. The IFV HOA is able to:
  - Identify the requester.
  - Identify the records/personal information in question.
  - Ascertain the nature of your request and the form or way access is required.
- ii. A request under PAIA provides:
  - Sufficient explanation regarding the right sought to exercise or protect, including a clear explanation as to why the records requested is required to exercise or protect that right.
- iii. Request for another person:
  - Proof of the capacity in which the request is made on behalf of another person is made available.

#### b) Submit the Request Form

The completed and scanned PDF Request Form is to be emailed, delivered or posted to the Deputy Information Officer:

- For Attention: Estate Manager.
- Email: [estatemanager@irenefarmvillages.co.za](mailto:estatemanager@irenefarmvillages.co.za).
- Physical address: Cnr Nelmapius Drive and Van Ryneveld Ave, Irene.



- Postal address: PO Box 61238 Pierre Van Ryneveld 0045.

c) Payment of Request Fee

The requester is also obliged to pay the applicable Request Fee described in par 3.12 below. A request will not be processed until the applicable Request Fee is paid.

Payment can be made via:

- Bank guaranteed cheque or postal order (written to Irene Farm Villages HOA (NPC)); or
- EFT (direct bank transfer). Proof of payment should be submitted with the completed Request Form. The EFT can be obtained from the IFV HOA Estate Office.

Unfortunately, the IFV HOA cannot accept payment via credit card or debit card.

The PAIA Unit at the South African Human Rights Commission (SAHRC) can also be contacted for assistance:

- Address: Braampark Forum 3 33 Hoofd Street Braamfontein
- Tel: +27 (0)11 877 3600.
- Website: <http://www.sahrc.org.za>.
- Email: [info@sahrc.org.za](mailto:info@sahrc.org.za).

SAHRC has produced a detailed guidance on how to exercise your rights under PAIA known as PAIA Section 10 Guide and is available from SAHRC, and can be accessed on SAHRC's website.

The office of the Information Regulator can be contacted for assistance at:

- Tel: 012 406 4818.
- Fax: 086 500 3351.
- Website: <http://www.justice.gov.za/infoereg/>.
- Email: [infoereg@justice.gov.za](mailto:infoereg@justice.gov.za).

### **3.8 How is a request processed?**

In practice, receipt of the Request Form will be acknowledged in writing by the Deputy Information Officer. The request will be processed when the completed Request Form is received and any applicable Request Fee is paid.

Once confirmation a payment of Request Fee has been received by the Deputy Information Officer the Request Form and supporting information will be forwarded to the IFV HOA Board for consideration and a decision.

### **3.9 How long does it take to process a request?**

The IFV HOA must respond within 30 days of receipt of the completed Request Form, provided the request was correctly submitted and or the required details are properly set out in the completed Request Form.

The IFV HOA may extend the 30-day period in processing your request if it turns out that it will take more than 30 days to process the request (e.g. due to the volume of records/personal information that must be processed, or difficulty in accessing the relevant record/personal information). Should this become necessary, the IFV HOA will notify the requester.

Once a decision is reached, the IFV HOA will notify the requester on decision taken in writing.

### 3.10 What process is to be followed if request is approved?

The IFV HOA will in writing:

- a) Notify the requester:
  - i. How the access will be granted. The inspection or copying of the records must take place during business hours and for a reasonable period.
  - ii. What Access Fees are payable. Release the requested record/personal information upon receipt of the applicable Access Fee.
  - iii. How the request to correct or delete personal information has been or will be actioned.
- b) Confirm whether the IFV HOA in terms of a request under POPI section 23(1)(a) handles his/her personal information.

### 3.11 What process can be followed if request is denied?

The IFV HOA will in writing:

- a) Notify the requester of the reasons why the request is refused with specific reference to which section of the PAIA the request was refused.
- b) Confirm why a request under POPI section 23(1)(a) to correct or delete his/her personal information has been denied.

Should the IFV HOA deny such a request or the requester is not satisfied about the way in which the request was handled including dissatisfaction about the Access Fee charged or the length of time taken to process the request, note that there is no internal appeal for private bodies. The requester must approach a Court of Law - the Constitutional Court, the High Court or another court of similar status for relief. Such an application needs to be done within 180 days of receiving the relevant decision made by the IFV HOA.

### 3.12 What are the fees payable?

The Deputy Information Officer will advise the requester on whether any fees are payable. PAIA (its sections 54(1); (7) & (8)) makes provision for the payment of two types of fees which are payable under PAIA, namely the Request Fee and the Access Fee.

- a) Request Fee:
  - i. The fee of R57.00 (inclusive of VAT) is payable upon making a request to access records/personal information.
  - ii. The payment of the fee is not required if the requester is:
    - Single and earning less than R14,812 p/a; or
    - Married (or in a life partnership), and earning less than R27,192 p/a.
- b) Access Fee:
  - i. The fee is payable in respect of records/personal information which are produced in response to request received.
  - ii. This fee is payable by everyone who makes a request.
  - iii. The rate of the Access Fees are as follows:

Type of activity involved in producing the record or personal information	Rate
For every photocopy of an A4-size page or part thereof	R1.25
For every printed copy of an A4-size page or part thereof held on a computer or in electronic or machine-readable form	R0.86
For a copy in a computer-readable form on stiffy disc	R8.55
For a copy in a computer-readable form on compact disc (CD)	R79.80
For a transcription of visual images, for an A4-size page or part thereof	R45.60

<b>Type of activity involved in producing the record or personal information</b>	<b>Rate</b>
For a copy of visual images	R68.40
For transcription of an audio record, for an A4-size page or part thereof	R22.80
For a copy of an audio record	R34.20
Each hour or part of an hour (excluding the first hour) reasonably required to search for and prepare the record/personal information for disclosure	R34.20
For posting the record/personal information	Actual postage incurred
For confirming whether or not IFV HOA handles personal information of the requestor (POPI s23(1)(a) request)	Free of charge

Note that:

- a) Where the Request Fee is payable, the request will not be processed until the Request Fee has been paid.
- b) Where the Access Fee is payable, the record/personal information requested will not be released until the Access Fee is paid.
- c) If the requester is not a private individual and if the search for and preparation of the record requested is in the IFV HOA's view likely to require more than six (6) hours of work, the IFV HOA reserves the right to require the payment of a 1/3rd of the Access Fee up front as a deposit.

## **PART C: PRIVACY NOTES: POPI**

### **3.13 Workers Privacy Notice**

Privacy Notice for Job Applicants, Associates, Temps, Contractors, and other Workers if applicable this document can be obtained from the Deputy Information Officer: Estate Manager - [estatemanager@irenefarmvillages.co.za](mailto:estatemanager@irenefarmvillages.co.za).

### **3.14 Client Privacy Notice**

Privacy Notice for Clients (Residents) if applicable this document can be obtained from the Deputy Information Officer: Estate Manager - [estatemanager@irenefarmvillages.co.za](mailto:estatemanager@irenefarmvillages.co.za).

## **PART D: REQUEST FORM: PAIA**

Promotion of Access to Information Regulations 2002: J752 PAIA Form C

This form can also be obtained from the:

- Deputy Information Officer: Estate Manager - [estatemanager@irenefarmvillages.co.za](mailto:estatemanager@irenefarmvillages.co.za).
- Website of the Department of Justice: [http://www.justice.gov.za/forms/form\\_paia.htm](http://www.justice.gov.za/forms/form_paia.htm) (Select "Form C" from the list).