Monday Contemplation No 27
Access to information in a sectional title scheme

It is not uncommon practice, that an owner of a sectional title **requests information from either the trustees or managing agent** and is told that the information cannot be provided due to privacy requirements and the protection of information.

The recent case of Montrose Mews Body Corporate v Moela NO and others [2024] is very instructive in this regard.

The facts of the case are as follows:

1. On 30 September 2022, one of the owners (Ms Mokoka) of a unit in the Montrose Mews Sectional Title Scheme, **asked to see bank statements reflecting the state of Montrose Mews' administrative fund**, and a statement of the fund's expenditure for the months of July and August 2022. It appears that Ms. Mokoka thought the scheme's auditors had issued a poor auditor's report, and she suspected that an irregular loan had been made to the body corporate.

2. On receipt of Ms. Mokoka's request for information, Montrose Mews referred Ms. Mokoka to a PAIA manual it had prepared. Montrose Mews took the view that PAIA applies to any request made by a member of the body corporate for information held by the body corporate. Montrose Mews undertook that any request made under PAIA would not be unreasonably refused, by which it appears to have meant that the request would not be refused unless PAIA supplied the body corporate with a ground of refusal.

3. Ms Mokoka referred the dispute to CSOS and an adjudication order was handed down in her favour. Montrose Mews appealed the adjudication order to the High Court.

4. In the appeal case, Ms. Mokoka took the view that Montrose Mews' reliance on PAIA was no more than a tactic meant to conceal information to which she was entitled under the Management Rules. The judge in the case (Judge Wilson), was of the view that Montrose Mews did not use PAIA as a reason to obstruct her, but that the body corporate appeared genuinely to believe that its capacity to disclose information is regulated and constrained by PAIA and by the Protection of Personal Information Act 4 of 2013. The body corporate's advocate emphasised that the bank statements to which Ms. Mokoka sought access, contained information about deposits and withdrawals which are of a confidential nature, and which she may not be entitled to see and he urged the judge to find that the appropriate way to decide whether, and to what extent, Ms. Mokoka had a right to see the bank statements and to follow the process laid out in PAIA for determining whether and to what extent an information request should be agreed.

5. The judge referred to Management Rule 26(1)(a)(iv) of the Sectional Title Schemes Management Act, that requires that the body corporate's books of account must contain the "information to allow members to assess the body corporate's financial situation". Management Rule 26(2) requires Montrose Mews, "on application" by any member of the body corporate to "make all or any of [its] books of account and records available for inspection and copying".

6. The judge was of the opinion that Ms. Mokoka accordingly had a right under the Management Rules to inspect the statements she wished to see "on application".

7. The judge went on to say that although Ms. Mokoka was entitled to the statements she sought under the Management Rules, she was not entitled to information in them that was not necessary to allow her to assess the Montrose Mews' financial situation, and which Montrose Mews had a good faith basis to redact. This would include personal information that was irrelevant to Ms. Mokoka's assessment of Montrose Mews' financial state. The judge also said that does not mean that all personal information may be redacted. Access to some personal information of other body corporate members (their identities and payments they have made to the body corporate, for example), may be a necessary incident of Ms. Mokoka's rights under the Management Rules. That compromise is in the nature of sectional title arrangements, where members of a body corporate have to adopt rules and practices necessary to live together, and manage the property they share. The extent of that compromise in any particular context depends on the nature and application of the Sectional Titles Management Act and the rules adopted under it. In the case of any disagreement, an approach to the Ombud, where it has jurisdiction, will generally be the appropriate way of resolving the dispute, subject to a right of appeal or review to the High Court.

8. The judge held in favour of Ms Mokoka and said that PAIA does not apply to Ms. Mokoka's request to see the bank statements she demands because it was never intended to apply in situations where a duty to disclose information arises from pre-existing legal relationship between a person seeking information and the person holding that information.

PAIA is rather intended to apply where a person seeking information from a private body would otherwise have no right to it.

Therefore, as an owner of a unit in a sectional title scheme, you are entitled to access to certain information and cannot just be prevented from accessing that information on the basis of "**privacy and protection of information**".