

INTERNAL EMAILS BETWEEN COMMITTEE MEMBERS – PUBLIC OR PRIVATE?

We are often asked, do emails between committee members form part of the records of a body corporate?

The answer is...it depends (so you need to read on).

Internal communications

This is a critical question because, if they do, those emails may be accessed by an owner or prospective purchaser and there is no restriction on the purpose for which the records may be used.

A committee acts on behalf of a body corporate, and the requirement to keep correspondence is usually understood to refer to correspondence with parties external to the committee.

However, emails between committee members (which includes caretaking service contractors and letting agents as non-voting committee members) may form part of the records of a body corporate depending on:

- the role of the person sending the email at the time in which the email was sent; and
- the subject matter of the email.

Role

Understanding the role of the sender and receiver of an email is part of the process to determining whether that correspondence forms part of the records of a body corporate.

That is because there is no requirement to keep correspondence received or sent between owners, only that correspondence to and from the body corporate (or committee acting on behalf of the body corporate).

Committee members usually have two hats on. One is as a member of the committee representing all owners, and the other is as an owner. It is only those emails sent by or received by a person in the role as a committee member that may be caught by the provisions about body corporate records.

Subject matter

Often the role being played by a person (as committee member or as an owner) is not clear but may be inferred by the subject matter of the email.

If the subject matter of the email is about body corporate or committee business, being carrying out the functions under the body corporate legislation, the email is likely to be a record of the body corporate.

Examples

Practical examples of internal written communications that would likely form part of body corporate records:

- a committee member advising of their resignation;
- a committee member proposing a vote outside a committee meeting;
- email exchanges between committee members about a maintenance issue at the scheme.

Practical examples of internal written communications that would likely not form part of body corporate records:

- select committee members discussing their personal opinions on a matter to be voted on at an upcoming meeting;
- a committee member seeking personal advice (not on behalf of the body corporate) on a body corporate or other matter.

This is a touchy topic, particularly where committee members wrote an email with sensitive information thinking it was not available to the public. To allay any concerns, a body corporate should seek advice either before or during the seven day turnaround time for a record request.

Article Written by Brendan Pitman (5 April 2022)

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