

Access to Records & Privacy



PACIFIC LEGAL EDUCATION
AND OUTREACH SOCIETY

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Goals

- Understand your record keeping obligations under the *Societies Act* through a privacy lens
- Learn how to comply with privacy obligations under the *Personal Information and Privacy Act (PIPA)*
- Identify legal trouble spots
- Know when to call a lawyer
- Yes, I am a lawyer, but...this is not legal advice it is legal information.

Overview of the *Societies Act*

- Members of a non-profit have access to Official Records
–inspection (reviewing) and disclosure (requesting copies)
- Official Records may contain personal information that needs to be considered NOW before you get an access to records request
- The Civil Resolution Tribunal addresses disputes involving access to records.
- Some records will be available electronically but not all
- Electronic filing system: **Societies Online**
<https://www.bcregistry.ca/societies>

Societies Online



BRITISH
COLUMBIA

Societies Online

[Societies Home](#)

[Home](#)

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Welcome to Societies Online

With Societies Online you can:

- Submit a Society Name Approval Request
Note: Name Approval Request other than Societies go to **Name Request Online**
- Incorporate a Society
- File a Transition Application
- File an Annual Report
- Change registered office address

[Other filings and services](#)

[What is a society?](#)

[How do I request a society name?](#)

[Transition to the new Societies Act](#)

Get Started

[Tell me about BCeID](#)

To use Societies Online you will need a **Basic BCeID** account (Business and Personal not accepted).

[Register for Basic BCeID](#)

[Log in with Basic BCeID](#)

Official Records of the Society

- There are 14 Official Records (s. 20 (1) of the *Act*)
- All are accessible to members, as of right, except the three that can be restricted in the bylaws under s. 20(2):
 - Directors meeting minutes;
 - Written resolutions passed by the Directors;
 - Accounting records
- Create a new folder (digital or hard copy): Official Records
- Create a new policy: Access to Records Request Policy
- Create/update your privacy policy

a-d: Official Records

Societies Act allows members the right to inspect (and request copies) of all Official Records of the Society set out in s. 20(1):

- a) the society's certificate of incorporation;
- b) each certified copy, furnished to the society by the Registrar, of
 - (i) the constitution of the society;
 - (ii) the bylaws of the society;
 - (iii) the statement of directors and registered office of the society (aka Annual Report)
- (c) Any official documents provided to the organization from the Registrar (approvals, confirmations etc.);
- (d) a copy of any legal order from a court or government;

(e)Board of Directors Registry

(20)(1)(e) *the society's official register of members of the Board of Directors, including contact information provided by each director*

- This is NOT the same as Statement of Directors (Annual Report)
- Nor is it the directors' "list" that often contains a lot more personal information e.g. for a registered charity it will have the birthday of a director
- So: Create a new document called **Register of Directors** with name and ONE piece of contact info that the director has consented to disclosing for purposes under the *Societies Act*.
- New amendments require the date they were first elected and date of resignation/expiry must be included.

(f) Consent to Act as Director

(20)(1)(f) written consent to act as Director and each written resignation of a director;

- The AGM minutes can record consent at a meeting or use a form
- Using a Consent to Act as a Director form allows the Society to ensure directors are not disqualified (undischarged bankrupt, court ordered incapacity, fraud or related criminal offense)
- <http://pacificlegaloutreach.com/resources/>

(g) Conflict of Interest Disclosure

20(1)(g) a copy of each record evidencing a conflict of interest disclosure by a director or senior manager;

- Normally a society deals with conflicts of interest at board meetings; directors meeting minutes can be restricted in the bylaws;
- Ca “conflict of interest disclosure” form to be included in its Official Records folder. This form would include the name, the date, and the nature of the conflict as well as the outcome of the process dealing with the conflict

(h)Membership Registry

(20)(1)(h) the society's register of members, organized by different classes of member if different classes exist, including contact information provided by each member;

- This is the most contentious official record. The Membership Registry contains names of all members of the society and one piece of contact information that must be disclosed to other members. It should be kept in your Official Records folder.
- **Create Membership Registry with 3 pieces of information ONLY:** name, class of member, only one piece of contact information amendments add date membership started and ended. The *Act* does not define what that contact info must be so it could be hotmail email or one created by the Society
- Access can be refused if to do so would be harmful to the society.
Amendments require that requests must be connected to purposes pursuant to the Societies Act.

(i-k) Minutes, Resolutions & Financial Statements

(20)(1) (i) the minutes of each meeting of members, including the text of each resolution passed at the meeting;

(20)(1)(j) a copy of each ordinary resolution or special resolution, other than a resolution included in the minutes of members, and, in the case of a resolution consented to in writing by the voting members, a copy of each of the consents to that resolution;

(20)(1)(k) financial statements of the society required under section 35 and the auditor's report, if any, on those financial statements.

Directors Meetings, Resolutions & Accounting Records

- S. 20 (2) provides that the following are also Official Records:*
- (a) the minutes of each meeting of directors, including
 - (i) a list of all of the directors at the meeting, and*
 - (ii) the text of each resolution passed at the meeting;**
 - (b) a copy of each consent resolution of directors and a copy of each of the consents to that resolution;*
 - (c) adequate accounting records for each of the society's financial years, including a record of each transaction materially affecting the financial position of the society.*
- Directors meetings minutes should only reflect the decisions taken by the Directors – it is not a verbatim transcript of a meeting. Many societies overshare in director's meeting minutes.
 - Accounting records are extensive – include bank statements receipts
Recent case from CRT required disclosure of accounting records without redaction

Directors Meetings, Resolutions & Accounting Records

S. 24 allows the society to restrict access to the records under s. 20(2)!

HOW? By drafting a bylaw restricting access to these records.

- Only official records under s.20(1) are available for inspection by, and disclosure to, members. All other records are only accessible at the sole discretion of the directors.
- The board of the society will establish procedures for the inspection and disclosure of all official records.
- Only the official records of the society pursuant to s. 20(1) of the *Act* will be open to the inspection of the Members.
- Members and other persons do not have the right to access any official record of the society, including the directors' meeting minutes and accounting records, without the board's approval at their sole discretion.

Seeking Access from BC Registry

A member can request access to the official records of a Society by contacting the BC Registry

- *The registry will require that the member has made the request in writing.*
- If the society fails to provide applicant with a copy or access to a record, the Registrar may issue an order requiring the society to provide the record AND/OR it may seek a signed statement of a director of the society stating the reason for refusal
- The BC Registry **does not enforce these orders**; this is up to the requestor.
- **NOW** the Civil Resolution Tribunal will address access to records disputes. Many cases including Harvey and Oakley.

Access to Records & Privacy

Your society has received an access request. Now what?

- If there is **no restriction in bylaws** the board must review the records for third party personal information and redact accordingly. The society must have a privacy policy and use considerable care in handling a request for records!
- Board should ask member for reasons records are being sought and determine whether for purposes under the *Act*. Pass a resolution to refuse access if the request for the Membership Registry would be **harmful to the society**.
- **NB!** There is no case law as to what harmful means nor the extent to which the refusal is enforceable e.g. where there are vulnerable members or if you have reason to believe that the request is for nefarious reasons.

Access to Records & Privacy

How does the society protect the privacy of members when there's a record request?

1. Restrict access to minutes of directors meetings and accounting records in the bylaws.
2. Always ask the member's reasons for requesting access. This right is limited to requesting a special meeting, filing a member proposal, AND communicating with members as part of either process. **Create policy to deal with access to records request.**
3. Review your privacy policy!

Access to Records Policy

Your society should have an Access to Records policy! What does this include?

1. Always ask the requester for their reasons
2. Request must be in writing
3. Establish how inspection will take place e.g. during business hours, having a director present
4. Society has 14 days to respond, per the *Act*

What is personal information?

Name

Address

Email address

Birthdate

SIN

Gender

Medical information

Educational history

Employment information

IP address

Personal contact information

Anything else?

Sample Privacy Policy

- **Privacy is the right to control the collection, use and disclosure of your personal information.**
- **Privacy policy must first explain how information is collected. In the example of an arts organizations they identify the various ways they do so**

COLLECTION OF INFORMATION

The Society collects personal information only from: attendees (directly or through the venue box offices and ticketing agencies), donors, members, volunteers and others who have shown an interest in the Society

This information is collected by a variety of methods: phone, fax, mail, email, online, or in person.

Sample Privacy Policy

The Privacy Policy must identify the uses to which it puts the personal information it collects. Consent can be express or implied. Individuals may withdraw or vary consent, subject to legal obligations.

USE OF INFORMATION

The Society uses personal information to better serve our patrons and to expand our community of support. This includes using the information:

- *To deliver services to provide information about tickets, events, membership and donations*
- *To thank supporters, fulfill subscriber and donor benefits and issue tax receipts*
To invite supporters to special events
- *To sell subscriptions, tickets and solicit donations*
- *For service phone calls and e-mails*
- *For audit purposes*

The Society is committed to using personal information in a respectful and useful way. The Society is also committed to making sure patrons do not receive more than a reasonable number of emails, letters or phone calls.

Sample Privacy Policy

Limit collection/use/disclosure to purposes that are reasonable, and the extent reasonable to fulfill the purposes.

DISCLOSURE OF INFORMATION

The Society treats its obligations with respect to the use and disclosure of personal information very seriously. Generally, we will only use or disclose personal information for the primary purpose that it was collected or for a purpose related to the primary purpose that you would reasonably expect it to be used. The Society will not sell, rent or share your personal information.

Note that this more general provision follows one that identifies the uses to which information will be put if any such as : “*To sell subscriptions, tickets and solicit donations*”

Sample Privacy Policy

- **Make reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, copying, modification, disposal or destruction. Ensure only authorized people have access to any personal information. Another option is to develop a confidentiality and privacy policy as part of an employee handbook.**

STORAGE OF INFORMATION

Personal information is stored in our database(s) on a secure server and in hard copy files. Only authorized Society personnel have access to this information. The Society uses personal information to better serve our patrons and to expand our community of support.

Sample Privacy Policy

ACCOUNTABILITY

The Society does its best to ensure that all information is recorded accurately—if you notice any errors in our correspondence with you or if your personal information changes, please contact us at 604.605.1234 ext 100 or info@society.a to update your file.

If you do not wish to be contacted by phone, mail or email, please contact us and we will ensure that your request is honoured.

If you have any questions about the Society's privacy policy or concerns about the way that your information is being used, please contact us.

Online Privacy

A range of data specific to the online environment can be considered personal data under specific circumstances, for example:

- **location information, including GPS data**
- **device identifiers such as IP and MAC address**
- **click stream data, browser history, bookmarks**
- **user generated social network data such as comments, ratings, likes and dislikes, Twitter stream, customer service interactions**

Privacy Policy should include:

Our Society is committed to protecting the privacy of those who use our website. The Society does not systematically collect any information about the identity of individuals searching our site. The Society does collect statistical information through a log file which indicates which pages were visited and how frequently. This information is analyzed to help us develop content that responds to the interests of site visitors.

Online Privacy

Privacy Policy should include:

- ES's website uses Google Analytics to track usage of our website for reporting and evaluation purposes.
- Google Analytics uses first-party cookies to report on user interactions on Google Analytics customers' websites. These cookies are used to store non-personally identifiable information. Browsers do not share first-party cookies across domains. For further information on the privacy policy concerning Google Analytics, please see:
<http://www.google.com/analytics/learn/privacy.html>
- There may be more to add have a look at Sample Privacy Policy 2 on the lawforprofits.ca and for an ecommerce site lunapads.ca

Stay Up to Date!

- **Privacy is an obligation** that carries through across the organization. This includes all platforms including social media.
- Make sure that training is made available to all, including volunteers, especially those who may be posting material to social media channels as this is an area where there are frequent privacy issues.
- Terms and Conditions of social media channels should be reviewed for privacy policies. A good reference can be found at tosdr.org <https://tosdr.org/>

Top Tips: Access to Records/Privacy

- Create the Official Records folder with all records required by s.20(1)
- Create an Access to Records Policy so that Society knows how to deal with requests
- Restrict access to directors' meeting minutes and accounting records in bylaws
- Create/update the Society's privacy policy.

Resources

- pacificlegaloutreach.com
- **Martha Rans, Lawyer**
 - mrans@shaw.ca
 - 604.669.5171
 - www.martharans.ca



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La Fin

Merci!

