

CRT's decision that a strata corporation's obligations under s. 35 did not include keeping or producing out-of-date parking lists.

Although s. 35 is not specifically invoked with respect to a section, it would be unwise for a section not to maintain the same records to the extent they are available.

In *Ottens v. Strata Plan LMS 2875*, 2019 BCCRT 730, the CRT held that any attachments to an email form part of the email and are therefore subject to production under s. 36, even though the attachment itself may not fall within s. 35 (see also *Keating v. Strata Plan BCS 435*, 2022 BCCRT 1153).

In *Coman v. Strata Plan BCS 3360*, 2022 BCCRT 394, the CRT dismissed an owner's application for a copy of all proxy forms received by the strata corporation in connection with a general meeting, noting that s. 35 does not require a strata corporation to retain proxy forms.

## **B. STORING RECORDS [§7.102]**

The Act does not specify the location at which records must be kept or their format. Section 37 contemplates that some or all of the records may be in the possession of a strata manager.

Self-managed strata corporations may retain records in an office or in the possession of one or more strata council members, although the dangers inherent in this approach are obvious in light of the onerous requirements set out in s. 35. Keeping strata corporation records in the hands of a strata council member may breach the strata council members' standard of care set out in s. 31.

For discussion of personal information use, collection, and disclosure, see chapter 18 (Privacy Issues in Strata Corporations).

## **C. RECORDS DISCLOSURE AND PRODUCTION REQUIREMENTS [§7.103]**

All s. 35 records must be available to

- strata lot owners;
- tenants who have been assigned an owner's right to inspect records under s. 147 or 148, and anyone authorized by them in writing; and
- former owners and former tenants, with respect to documents relating to their period of ownership or tenancy.

The request need not be in writing. Section 36 requires the strata corporation to comply with a request for access within two weeks. If the request is regarding the rules or bylaws, then the strata corporation must comply within one week.

The strata corporation may not charge for access under s. 36, but may charge for copying. Maximum charges are set out in s. 4.2 of the Regulation—currently \$0.25 per page.

Section 36 ensures a high degree of transparency, and appears to protect the right of a strata lot owner to conduct an exhaustive review of the strata corporation’s correspondence and records without the need to provide justification. The strata corporation may incur significant unrecoverable expenses in complying with an owner’s request for access to information.

The court held in *Strata Plan VR 2733 v. Jensen*, 1999 CanLII 3662 (BC SC), that it was reasonable for a strata corporation to restrict access to records by a litigious strata lot owner, in the interest of decreasing the number of issues before an arbitrator. This decision predates s. 36 of the Act and is probably abrogated by s. 36. The CRT has, however, held that an owner’s entitlement to request access to or copies of records is subject to “reasonableness”. *Slack v. Strata Plan EPS 4413*, 2022 BCCRT 681 followed a number of prior CRT decisions that had found ss. 35 and 36 imply “that document requests must be reasonable, even though those section[s] are, on their face, mandatory provisions” (at para. 24). The CRT in *Slack* concluded that the strata corporation was not required to respond to an owner’s request to “essentially” review all the records that the strata corporation was required to keep under s. 35. See also *Matkaluk v. Strata Plan VIS 2616*, 2024 BCCRT 1102, where the CRT declined an owner’s request for access to records, because it was “so broad and vague that it would be unreasonable for the strata to provide access” (at para. 22).

#### **D. KEEPING AND PRODUCING “CONTROVERSIAL” RECORDS [§7.104]**

Strata corporation records may be considered controversial for a number of reasons:

- (1) they may contain information related to litigation that is privileged under s. 169 of the Act;

- (2) they may contain information, such as legal advice, obtained by the strata council in contemplation of litigation;
- (3) they may contain documents (for instance, letters received by the strata council or the strata manager) that include potentially defamatory statements;
- (4) they may contain strata lot owners' submissions and other information related to bylaw contraventions or fines; and
- (5) they may contain "personal information" under the *Personal Information Protection Act*, S.B.C. 2003, c. 63 (see chapter 18 (Privacy Issues in Strata Corporations)).

The starting point in such cases is s. 35 and s. 36 of the Act. These sections essentially set up a transparent regime between the strata council and the strata lot owners, with narrow exceptions.

Information related to litigation already commenced (such as legal opinions and related correspondence from legal counsel) is covered by s. 169, and may not be disclosed to an owner who is adverse to the strata corporation in the litigation. The question sometimes arises whether such information may be withheld from a strata lot owner when litigation is being contemplated but has not yet been commenced. In the absence of s. 36, solicitor-client privilege might apply to permit the strata corporation to keep such communications confidential from the potential adverse party. In *Azura Management (Kelowna) Corp. v. Strata Plan KAS 2428*, 2009 BCSC 506, varied on other grounds 2010 BCCA 474, the court held that s. 36 must be read in the context of the common law of solicitor-client privilege, which remains operative in relation to litigation not yet commenced. On judicial review in *Strata Plan VR 1120 v. Mitchinson*, 2022 BCSC 2054, the court confirmed that legal opinions regarding disputes between the strata corporation and an owner are protected by solicitor-client privilege, and therefore cannot be disclosed to the owner adverse to the strata corporation in the dispute, even if the dispute did not give rise to legal proceedings. That court held that legal opinions regarding contemplated or ongoing disputes between the strata corporation and an owner cannot be disclosed to any owner until the litigation has been fully resolved and all avenues of appeal spent, and that once the opinions are disclosed, the receiving owner cannot disclose them to anyone else. However, in *Mitchinson v. Strata Plan VR 1120*, 2024 BCCA 89, the appellate court set aside both the order of the judge below and the order of the CRT on the basis that the Act cannot

be interpreted to abrogate solicitor-client privilege, and dismissed the appellant's application for production of legal opinions.

If a strata corporation receives a request under s. 36 to produce "controversial" records, it is prudent for the strata council to seek legal advice before making them available.

Although those portions of strata council meetings that deal with bylaw contraventions are required to be held *in camera*, there is no provision in the Act permitting written submissions (which are a form of correspondence covered by s. 35(2)(k)) to be withheld from an owner.

Although the CRT has directed strata corporations not to redact records, it is not clear that the interplay between and among the Act, the *Personal Information Protection Act*, S.B.C. 2003, c. 63 (the "PIPA"), and the *Human Rights Code*, R.S.B.C. 1996, c. 210 in applicable cases has been fully considered. For full discussion, see chapter 18 (Privacy Issues in Strata Corporations).

#### **E. EFFECT OF PRIVACY LEGISLATION [§7.105]**

For a discussion of the strata corporation's obligations regarding personal information and privacy protection, see chapter 18 (Privacy Issues in Strata Corporations).

#### **F. CONSEQUENCES OF REFUSAL TO PRODUCE RECORDS [§7.106]**

If a strata corporation refuses to give access to information to a person entitled to it under s. 36, the person is entitled to seek a court order under s. 165 (see "Section 165 Applications to Compel Action" in chapter 12) compelling the strata corporation to comply with s. 36. If the strata corporation has improperly denied access, an award of costs can be expected.

Alternatively, and perhaps more conveniently, an owner may seek production of records from a strata corporation through the CRT. There have been a number of decisions of the CRT ordering a strata corporation to produce documents that an owner is entitled to view or obtain a copy of pursuant to ss. 35 and 36 of the Act, including *Hamilton v. Strata Plan NWS 1018*, 2017 BCCRT 141, appeal allowed in part 2019 BCSC 863 (Chambers) and *L.S. v. Strata Plan ABC XXXX*, 2018 BCCRT 376.