

Members' Rights to Access Board Information

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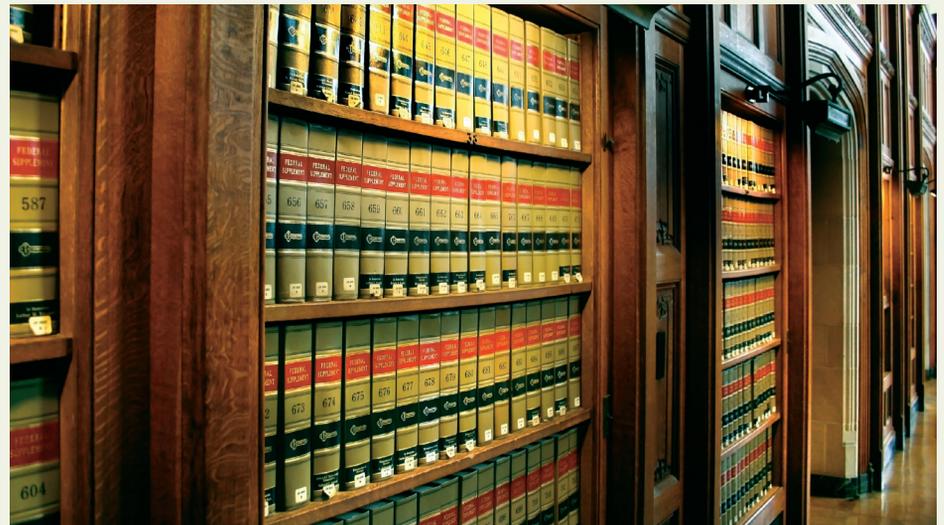


Q: I have a member who is asking for a lot of information about what is going on with our board of directors. Must I (or should I) provide the information?

A: You rightly recognize that there may be a difference between what you *must* do and what you *should* do. The “must” part is governed by state law and your organization’s corporate governance rules and policies. In most cases, state law does not require that all members be given access to what happens at board of directors meetings. Most state statutes require that organizations keep “correct and complete books and records of account” and also “minutes of the proceedings of its members, board of directors and committees having the authority of the board.” In Illinois, for example, and in many other states, the statute states that voting members (not all members) have the right to examine the corporation’s books and records of account and minutes, but only for a proper purpose.

As such, in Illinois, and in states with similar statutory requirements, there is no absolute right of a member to have access to what happens at board meetings. Usually, however, members are given access to minutes (which is why, among other reasons, it is so important to keep good minutes — only documenting actions taken, not who said what). Members typically are not entitled to background information that the members of the board might have, including, for example, budget material, personnel records and the like. And, it is worth noting that in Illinois and many other states, members have the right only to inspect records in person (not be provided copies), and only if they are able to establish a proper purpose.

Further, most organizations’ articles of incorporation or bylaws do not require that board information be provided to members. And yet some organizations have created an expectation of openness and availability of information to



members. For example, some groups routinely allow members to attend board meetings, even though there is no “right” to do so and even though attendance by members can compromise the confidentiality of board discussions.

So, in general, organizations are not obligated to provide board information (other than, possibly, official board minutes) to members. However, that doesn’t mean that organizations shouldn’t provide such information. In part, the “should the information be provided” question is a function of each organization’s personality and culture. Trade associations, especially those with only one class of member, often are very liberal about sharing board information with members. Professional societies tend to be less liberal. Professional societies, however, often are more likely to hear member “complaints” about transparency and openness if their reasonable requests for information go unfulfilled.

In the absence of established policy, determining how best to respond to a member request for information often requires a balancing of interests. What is being requested? Why? Who is requesting it? What are the consequences of saying yes or no? If a member is perceived to be on a fishing expedition and is looking for information with which to cause trouble,

organizations often just say no. However, if there is a potential legitimate interest, and saying no is likely going to create the perception that the organization has something to hide, then organizations often conclude that it is best to grant the request. Once a request is granted, however, it is hard to later say no when that member keeps asking for more. In addition, organizations should be mindful that how they respond to requests will likely set precedent and can result in the creation of a policy, by precedent, that the organization will have a hard time applying in anything other than a uniform manner.

For all of those reasons, it is prudent to know what the law in your organization’s state of incorporation requires and to establish a policy on information sharing consistent with that law and with practices the organization is comfortable following when a member asks for board information — irrespective of the specific facts of each situation. ▣

The answers provided here should not be construed as legal advice or a legal opinion. Consult a lawyer concerning your specific situation or legal questions.