

# CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

## ACCESSIBILITY OF RECORDS POLICY

(Adopted 5/19/04)

Amended December 12, 2007; November 24, 2009

### **I. PURPOSE**

The Board of Retirement ("Board") of the Contra Costa County Employees' Retirement Association ("CCCERA") adopts this policy to establish guidelines and procedures for making determinations concerning the disclosure of information in CCCERA's files, records or other information when responding to requests made under the Public Records Act ("PRA").

The Board recognizes that it has an obligation to balance its members' right to privacy with the public's right to information regarding public business. There are no "bright line" standards available to the Board for knowing how that balance should tip in each instance. Nevertheless, the Board has determined that it would be useful to establish guidelines for CCCERA to follow when a request is made under the PRA, and to publish those guidelines for the benefit of its members and their beneficiaries, and the public at large.

All staff should be familiar with these guidelines so that the process of responding to requests is efficient, consistent and compliant with the applicable laws. In many circumstances, these guidelines will enable staff to respond to requests without the need for substantial analysis or the assistance of legal counsel. However, given the complexities of the law, situations will likely arise where a simple application of the general guidelines will not provide a definitive answer. When such a situation arises, the Administrator should refer any questions to legal counsel.

In addition, to the extent that any requests made to CCCERA under the PRA pertain to CCCERA's investment records, responses to such requests should follow the additional guidelines set forth in CCCERA's Policy and Guidelines for Accessibility of Investment Records.

### **II. GENERAL PRINCIPLES**

A request to inspect CCCERA records may be made by a telephone call, an in-person oral request, a written request, a subpoena or a court order. The person making a request for records may be a member, a beneficiary, an employee organization, a government agency or member of the press or general public. Staff should always be aware that a request, no matter how informal it may appear, must be analyzed under the principles outlined in this Policy (or analyzed by legal counsel in more complicated situations). The general principles of the policy may be summarized as follows:

1. Confidentiality of an individual member's records must be protected unless those records relate to the conduct of the public's business, or unless the member has authorized the disclosure in writing.

2. An individual (member or beneficiary) generally must be permitted access to his or her own records.

3. The public – i.e., any person, for any reason - has a right to inspect records that relate to CCCERA's operation and that are neither confidential nor protected from disclosure by the applicable laws.

4. Generally, CCCERA must respond to any request for information within 10 calendar days of receipt of the request. The response need not contain the actual requested information or production of the sought records, but must (at a minimum) provide a response as to whether CCCERA will produce the requested records or provide a basis for rejecting the request. If CCCERA is unable to formulate a response within 10 calendar days, it may extend the time for a response by as much as 14 calendar days, but may only do so with good cause.

5. Subpoenas or court orders requiring the production of records and/or information should be referred to legal counsel immediately upon receipt.

6. Even if a request seeks disclosable records, under California case law, a request may be objectionable if it is unreasonably burdensome. Additionally, the PRA only requires CCCERA to disclose its existing records; it does not require CCCERA to conduct studies, reorganize information or summarize data for the requesting party. Thus, when confronted with a request that will substantially disrupt CCCERA's operations, the Administrator should consult legal counsel.<sup>1</sup>

7. When a request is made for information regarding an individual member that appears to be of a personal or private nature, CCCERA should seek the advice of legal counsel.

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<sup>1</sup> Although CCCERA does not have to conduct studies, reorganize information or summarize data, it may have to invest substantial energy sifting through existing data. The amount of time or energy spent sifting through CCCERA's existing data is not, alone, a valid ground for withholding records or information.

### **III. APPLICABLE LAW**

#### **A. Public Records Act (PRA)**

The PRA generally requires CCCERA to disclose "public records" unless the particular information is exempt from disclosure. Under the PRA and interpreting case law, "public records" include information in virtually any format "relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency." Although certain exemptions allow CCCERA to withhold some records, case law is clear that the policy in California generally favors disclosure.

The PRA sets forth an extensive list of records that are exempt from required disclosure.<sup>2</sup> Many of the statutory exemptions are inapplicable to CCCERA and others may be applicable only in rare instances. The following exemptions are the most important exemptions for CCCERA:

1. Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.
2. Records pertaining to pending litigation to which the public agency is a party until the pending litigation or claim has been finally adjudicated or otherwise settled.
3. Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.
4. Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.
5. Additionally, Government Code Section 6255 provides a "catch all" provision whereby CCCERA can justify withholding any record by demonstrating that "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."<sup>3</sup>

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<sup>2</sup> According to California case law, the listed exemptions permit CCCERA to withhold records; they do not prohibit disclosure. In other words, these exemptions provide CCCERA with discretion to disclose certain records and information. However, due to (a) the possibly sensitive nature of the records covered by the exemptions and (b) the fact that disclosure may constitute a waiver of future rights to withhold information, CCCERA is encouraged to consult legal counsel before disclosing any records that fall under an exemption.

<sup>3</sup> Generally, California law favors disclosure, and if a court disagrees with CCCERA's determination, CCCERA may be liable for the requesting parties' attorney fees and costs associated with obtaining disclosure. Thus, the "catch all" provision should be used sparingly, and only with the benefit of legal counsel.

## **B. Member Records**

Government Code section 31532 provides as follows: "Sworn statements and individual records of members shall be confidential and shall not be disclosed to anyone except insofar as may be necessary for the administration of this chapter [the '37 Act] or upon order of a court of competent jurisdiction, or upon written authorization by the member."

Based upon section 31532 and applicable court rulings, the CCCERA Board hereby adopts the following interpretation of Government Code section 31532 as it pertains to the confidentiality of member records:

Subject to the provisions of this section, data filed by any member or beneficiary with CCCERA is confidential, and no individual record shall be divulged by any official or employee having access to it to any person other than the member to whom the information relates or his or her authorized representative or the county or participating agency by which he or she is employed. The information shall be used by CCCERA for the sole purpose of carrying into effect the provisions of this part. Any information that is requested for retirement purposes by any such public agency shall be treated as confidential by the agency.

**Except as provided by this section, the following information is not public information and shall not be disclosed:** a member's, beneficiary's or annuitant's social security number, date of birth, address, telephone and facsimile numbers, email addresses, age at entry into service, spouse's and/or beneficiary's names, disability application, medical records, or other personal information provided by the member or beneficiary (excluding the public information listed below).

**The following information is public information and shall be released in response to a valid request:** member's and benefit recipient's names, member's date of hire, category of service (e.g., general or safety), employment tier, date of hire, applicable benefit formula, date of retirement, election of retirement options, type of retirement allowance (e.g., service, service connected disability, non-service connected disability), years of credited service, age factor for calculation of benefit, final average compensation (including the elements of compensation earnable) and total retirement allowance.

## **IV. PROCEDURE FOR RESPONDING TO PUBLIC RECORDS REQUESTS**

### **A. Initial Review**

Upon receiving a request for records, CCCERA must first determine whether the request seeks disclosable "public records."<sup>4</sup> To make this determination, CCCERA should proceed as follows:

1. Determine if the records are prepared, owned, used, or retained by CCCERA.
2. If the records are prepared, owned, used, or retained by CCCERA, then determine if the requested records relate to the conduct of the public's business.
3. Determine if the requested records fit under one of the exemptions discussed above (e.g., preliminary drafts, records related to litigation or personnel files).
4. Always consider whether there is a good public policy reason to withhold the records. If so, the request should be referred to legal counsel for a case-by-case determination.
5. Determine whether the requested records will reveal information regarding a member that is of a personal or private nature. Generally, records or information that relate to a member's official responsibilities, his or her actions as a public employee, information that is within the public domain (e.g. formula used to calculate pension allowances) or information that is provided to the county auditor/controller (e.g., the member's salary, bonuses) or information provided by other similarly situated retirement systems (e.g., the gross amount of any benefit or any refund of a member contribution) is non-confidential, public information and should be disclosed. However, requests for more personal information (e.g., addresses, telephone numbers, social security numbers, disability and medical records and investigations, marital status, designated beneficiary, etc.) ordinarily should not be disclosed, unless the member has consented to disclosure, and the request should be referred to legal counsel for further handling.
6. Determine whether otherwise disclosable records need to be reorganized or redacted such that confidential information is not included in the disclosed material.
7. If, for any reason, CCCERA believes that certain records should not be disclosed, or questions whether certain records should be disclosed, legal counsel should be consulted.

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<sup>4</sup> It is important to remember that a request may be partially acceptable and partially objectionable. CCCERA should disclose all records that are properly sought, even if the person making the request has sought other records that need not be disclosed.

## **B. Preparing the Response Letter**

Under normal circumstances, within 10 calendar days<sup>5</sup> after receipt of the request, CCCERA must notify - in writing -- the person making the request whether some or all of the records will be disclosed. The response letter should also contain the following:

1. If any records will not be disclosed, CCCERA must explain why those records are being withheld. If some of the requested records will be disclosed while others will not, it is important that CCCERA clearly delineate which records will be disclosed (and which will not) and explain the reasons for the distinctions.

2. If some or all of the requested records will be disclosed, CCCERA must state the estimated date and time when the records will be made available. In general, CCCERA should provide the relevant information or make the records available at the earliest practicable date. Unless special circumstances exist, CCCERA should endeavor to produce the information or records within 10 days after the response letter is sent (i.e., within 20 days after the original request).

3. If some or all of the requested records will not be disclosed, because "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record," (pursuant to Govt. Code Section 6255) CCCERA must set forth the names and titles or positions of each person responsible for the denial.

## **C. Producing the Records**

The logistics of providing the requested records should be worked out on a case- by-case basis in cooperation with the person making the request. If practicable, the information should be communicated by letter. If, however, the request seeks review of specific records, or if the requested information is too voluminous for inclusion in a letter, CCCERA should send copies of the relevant records to the person making the request. If the production requires substantial copying, CCCERA should not release the copies until the requesting party pays CCCERA for copying at the rate of \$.10 per page. If the requested information is particularly voluminous (or the person requesting the information does not want to pay for copy charges) arrangements should be made so that he or she can view the records at CCCERA's offices.

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<sup>5</sup> Under "unusual circumstances," if CCCERA cannot reasonably make a determination within 10 days, the Administrator "or his or her designee" should, within the 10 days, send a letter to the person making the request explaining when a response is expected (but in no case more than 24 days after the initial request) and setting forth the reason(s) for the extension. Extensions should not be used simply to postpone the response, but rather should only be used when "unusual circumstances" exist. "Unusual circumstances" includes: (1) the need to search for and collect the requested records from other locations; (2) the need to search for, "sift through" and examine voluminous records; (3) the need for consultation with another agency or department; or (4) the need to compile data, to write programming language or a computer program, or to construct a computer report to extract more limited data that CCCERA seeks to provide in response to a PRA request.

**V. MISCELLANEOUS**

**A. Availability Of This Policy**

A copy of this policy statement shall be posted in a visible location of the CCCERA office, shall be made available to any member of the public upon request, and shall be made available on CCCERA's website.

**B. Responsible Individual**

For consistency and efficiency, the Administrator shall be the responsible individual for requests under the PRA. Staff shall promptly refer all requests to the Administrator, or his or her designee(s).

**C. Record Keeping**

A separate file shall be maintained for all documents relating to requests for records under the PRA. All communications relating to requests for records under the PRA shall either be in writing or memorialized by a writing that is appropriately filed.