

CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

ACCESSIBILITY OF RECORDS POLICY

Adopted 5/19/04

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.¹
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.

¹ 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.² 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.

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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.

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.”³

B. Government Code Section 31532 (from the '37 Act):

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.” To date, no reported cases have construed Section 31532 so as to define its scope. The California Attorney General’s Office first construed Section 31532 in 60 Op.Atty Gen. Cal. 110 (1977). In that Opinion, the AG’s Office determined, among other things, that “the names and amounts received by county retirees or their beneficiaries which are contained in county payroll records maintained by the auditor/controller are public records and are subject to inspection by the public or the press.” The AG’s Office also determined, however, that documents maintained by a Retirement Board in connection with a hearing on a claimed disability “are presumably records maintained by the Retirement Board and as such are subject to the requirements of confidentiality imposed by section 31532.”

Here, CCCERA’s retiree payroll is maintained and administered by CCCERA; it is not maintained by the auditor/controller. The auditor/controller does have access, however, to much of the information that CCCERA uses to determine a retired member’s final compensation amount (e.g., salary, bonuses). In addition, the formula that CCCERA uses to determine the amount of a member’s retirement allowance is based upon statute, case law, and Board policy, which is also public information.⁴

³ 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.

⁴ Ultimately, it appears to be within the sound discretion of the Board as to whether it will or will not provide a specific member’s retirement allowance amount in response to a PRA request. When adopting this policy on May 19, 2004, CCCERA’s Board voted to exercise its discretion such that in response to a PRA request, it will provide only the member information that is most plainly non-confidential (e.g., final compensation amount, formula used to calculate retirement allowance). Thus, the requestor would need to obtain the additional information necessary to calculate the retirement allowance amount from other sources (e.g., member’s age at retirement, years of service, designated beneficiaries who may be receiving a portion of the member’s retirement allowance, and amount paid to such designated beneficiaries).

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.”⁵ 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) 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.

⁵ 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 days⁶ 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.

4. If the requested records relate to a particular member, but are not confidential (and, thus, may be disclosed), a copy of the responses and notices described above should be sent to such individual member(s). The response letter should also notify the member that the records will be disclosed in 10 days unless the member obtains a court order preventing such disclosure, and provides that order to CCCERA's Administrator. *In these cases, the records should not be made available until at least 10 days after the date that the response letter is sent.* This will allow the

⁶ 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.

member(s) a fair opportunity to seek a court order preventing the production of the records.

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.

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.