




RETIREMENT BOARD POLICY AND REFERENCE MANUAL

SUBJECT: POLICY ON PUBLIC RECORDS ACT REQUESTS FOR INFORMATION	Section: 2-39 Date Adopted/Revised: 10/12/2011
SYSTEM(S): JOINT	Approved:  Retirement Administrator

PURPOSE

The purpose of this policy is to provide CFRS' staff with guidance when responding to requests for documents under the California Public Records Act, and to inform the public of CFRS procedures in responding to such requests. This Policy has been designed to be consistent with applicable law, but in the event that this Policy is inconsistent with applicable law, the law will govern.

POLICY

It is the Policy of the Retirement Board to comply with the provisions of the California Public Records Act (PRA) which requires disclosure of "public records" unless the particular information is exempt. 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 the Board to withhold some records, the law is clear that the policy in California generally favors disclosure.

GENERAL PRINCIPLES

A request to inspect Board 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 the right to inspect records that relate to Board operations and that are neither confidential nor protected from disclosure by the applicable laws.
4. Generally, staff 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 staff will produce the requested records or provide a basis for rejecting the request. If staff is unable to formulate a response within 10 calendar days, staff may extend the time for a response by as much as 14 calendar days, but may only do so on the basis of 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 law only requires staff to disclose its existing records; it does not require staff to conduct studies, reorganize information or summarize data for the requesting party. Thus, when confronted with a request that will substantially disrupt staff's operations, staff should consult legal counsel.

Although staff 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 collecting data is not, alone, a valid ground for withholding records or information.

7. When a request is made for personal or private information regarding an individual member or retiree, staff should seek the advice of legal counsel.

EXEMPT FROM DISCLOSURE

The PRA generally requires staff to disclose “public records” unless the particular information is exempt from disclosure. The PRA sets forth an extensive list of records that are exempt from required disclosure. Many of the statutory exemptions are inapplicable to CFRS and others may be applicable only in rare instances. The following exemptions are the most important exemptions for CFRS:

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. Certain types of records pertaining to alternative investments or incomplete negotiations for certain financial transactions.

Additionally, Government Code Section 6255 provides a “catch all” provision whereby staff with Board approval 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. Generally, California law favors disclosure, and if a court disagrees with the Board’s determination, the Board 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.

DISCLOSABLE/NON-DISCLOSABLE DOCUMENTS

1. Disclosable Documents

Except as otherwise provided by other governing law, the following information is public information and shall be released in response to a records request: member’s name, spouse’s and/or beneficiary’s name (after they are entitled to a benefit payment), date of hire, category of service (e.g., general or safety), retirement tier, 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 calculating of benefit, DROP balances, total retirement allowance, and member contribution amounts.

2. Non-Disclosable Documents

Except as otherwise expressly provided by other governing law, the following information is not public information and shall not be disclosed, unless disclosure is authorized by the member or required by a court order: social security number, date of birth, address, telephone and facsimile numbers, email addresses, age at entry into service, spouse and/or beneficiary designations (before they are entitled

to any benefit payments), disability applications, medical records, banking information, or other personal information provided by the member or beneficiary (excluding the public information listed above).

PROCEDURE FOR RESPONDING TO PUBLIC RECORDS REQUESTS

1. Initial Review

Upon receiving a request for records, staff must first determine whether the request seeks disclosable “public records.”¹ To make this determination, staff should proceed as follows:

- a. Determine if the records are prepared, owned, used, or retained by the Boards.
- b. If the records are prepared, owned, used, or retained by the Boards, then determine if the requested records relate to the conduct of the public’s business (they usually will).
- c. Determine if the requested records fit under one of the exemptions discussed above (e.g., preliminary drafts, records related to litigation or personnel files).
- d. Always consider whether there is a good public policy reason to withhold the records.
- e. 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, or the benefits he or she receives (e.g., the member’s salary, bonuses, or the amount of his or her pension) 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, 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.

¹ It is important to remember that a request may be partially acceptable and partially objectionable. Staff should disclose all records that are properly sought, even if the person making the request has sought other records that need not be disclosed.

- f. Determine whether otherwise disclosable records need to be reorganized or redacted such that confidential information is not included in the disclosed material.
- g. Refer the request to legal counsel.

3. Preparing a Response Letter

Under normal circumstances, within 10 calendar days² from the receipt of the request, staff 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:

If any records will not be disclosed, staff 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 staff clearly delineates which records will be disclosed (and which will not) and explains the reasons for the distinctions.

- a. If some or all of the requested records will be disclosed, staff must state the estimated date and time when the records will be made available. In general, staff should provide the relevant information or make the records available at the earliest practicable date. Unless special circumstances exist, staff should endeavor to produce the information or records within 10 calendar days after the response letter is sent (i.e., within 20 calendar days after the original request).
- b. 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), staff must set forth the names and titles or positions of each person responsible for the denial.
- c. If the requested records relate to a particular member but are not confidential (and thus may be disclosed), a copy of the response and notices described above should be sent to such individual member(s). Staff should also notify the member that the records will be disclosed in 10 calendar days unless the

² Under “unusual circumstances,” if staff cannot reasonably make a determination within 10 calendar days, the Administrator “or his or her designee” should, within the 10 calendar days, send a letter to person making the request explaining when a response is expected (but in no case more than 24 calendar 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” include: (1) the need to search for and collect the requested records from other locations; (2) the need to search for, collect, 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 data.

member obtains a court order preventing such disclosure. *In these cases, the records shall not be made available until at least 10 calendar days after the date that the response letter is sent.* This will allow the member(s) a fair opportunity to seek a court order preventing the production of the records.

4. 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 the production requires substantial copying, staff should not release the copies until the requesting party pays staff 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 the Retirement Office.

MISCELLANEOUS

1. Availability of This Policy

A copy of this policy statement shall be made available to any member of the public upon request.

2. Responsible Individual

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

3. Record Keeping

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

POLICY REVIEW

The Boards shall review this policy at least every three years to ensure that it remains relevant and appropriate.