



# Board of Retirement Regular Meeting

## Sacramento County Employees' Retirement System

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### Agenda Item 13

**MEETING DATE:** September 15, 2021

**SUBJECT:** Protection of Individual Records Policy

**SUBMITTED FOR:** \_\_\_ Consent       X  Deliberation and Action      \_\_\_ Receive and File

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### **RECOMMENDATION**

Staff recommends the Board reaffirm SCERS' Protection of Individual Records Policy, which was introduced in 2008 and last reaffirmed in 2018.

### **PURPOSE**

This item supports the Strategic Management Plan to promote transparency, fairness, and compliance with laws, regulations, and policies.

### **DISCUSSION**

#### **Background**

SCERS frequently receives requests for information about individual retirees, including via Public Records Act (PRA) requests, media inquiries, and subpoenas. The primary purpose of the Protection of Individual Records Policy (Policy) is to set forth clear rules on what information can be provided by SCERS in response to such requests.

The Policy identifies two categories of retiree information. The first category is "Disclosable Information" – i.e., information that is available to the public and that SCERS can produce in response to a PRA request. Such "Disclosable Information" about retirees consists of:

1. Years of service (in the aggregate, but not a breakdown of individual regular and special service credits, such as service purchases);
2. Last position held;
3. Department from which retired;
4. Date of retirement;
5. Final compensation;
6. Applicable retirement formula and tier;

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7. Age factor, and
  8. Any other information determined by the General Counsel to be necessary to calculate a particular retirement benefit, such as applicable federal or state limitations on benefits or compensation, unless specifically protected from disclosure under this Policy.

The second category is “Protected Individual Records” – i.e., records that are protected by Government Code section 31532. Such records are inaccessible to requestors unless the requestor can present a court order or the member’s written authorization. Such “Protected Individual Records” consist of:

1. Medical reports and information regarding medical or psychological status or condition;
2. Personal data such as contact and address information, names of spouses, relatives and dependents, and Social Security numbers;
3. Date of birth;
4. Age, including age at retirement;
5. Member contributions;
6. Individual accounts;
7. Breakdown of regular and special service credits, such as service purchases;
8. The names of beneficiaries and eligible survivors;
9. Payment option selections; and,
10. Nonpublic correspondence with the Board or staff

These lists were defined in large part by two California appellate court decisions from 2011: *Sacramento County Employees’ Retirement System v. Superior Court* (2011) 195 Cal. App. 4<sup>th</sup> 440, 463 and *Sonoma County Employees’ Retirement Association v. Superior Court* (2011) 198 Cal. App. 4<sup>th</sup> 986, 1004.

### Reaffirming the Policy

The Board last reaffirmed the Policy in August 2018. Pursuant to SCERS’ practice of reviewing and refreshing policies every three years, Staff has re-evaluated the Policy in light of practical experience and considered whether any amendments are necessary.

Staff recommends the Board reaffirm the Policy, with some technical amendments. The Policy remains a useful resource for SCERS staff as well as for members of the public who seek member information from SCERS. The two appellate decisions that prompted the adoption of the Policy in 2011 remain good law, and the Legislature has not amended Government Code section 31532. Thus, there is no need to substantively modify the list of “Disclosable Information” on Page 1 or the list of “Protected Individual Records” on Page 2.

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Some technical amendments are necessary, however, because the Policy is currently worded in a way that may create a misimpression about the type of information maintained by SCERS. Currently, the Policy's list of "Discloseable Information" includes the following:

- "Department from which [the member] retired." (SCERS distinguishes between a retiring member's "Employer" (e.g., Sacramento County) and the member's intra-employer "Department" (e.g., Sacramento County Department of Personnel Services).
- A retiree's "Last position held" before retirement.

Although the Policy describes these types of retiree information as disclosable, the fact is that SCERS has no administrative need for such information and therefore does not consistently collect or maintain it. (Indeed, SCERS does not collect or maintain any "Last position held" information at all.) And although Sacramento County maintains such retiree information in its Comprehensive Online Management Personnel and Accounting System for Sacramento County (COMPASS), and SCERS currently has access to COMPASS, SCERS does not own or control COMPASS. Since SCERS is under no obligation to collect information from external databases in response to PRA requests, the Policy should be amended to clarify that SCERS may not need to provide "Department" or "Last position held" information going forward.

## **ATTACHMENTS**

- Board Order
- Protection of Individual Records Policy (redlined)
- Protection of Individual Records Policy (clean)

Prepared by:

/S/

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Stephen Lau  
General Counsel

Reviewed by:

/S/

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Eric Stern  
Chief Executive Officer



# Retirement Board Order

## Sacramento County Employees' Retirement System

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**Before the Board of Retirement  
September 15, 2021**

MOTION:

### **Protection of Individual Records Policy**

THE BOARD OF RETIREMENT hereby accepts the recommendation of staff to reaffirm the Protection of Individual Records Policy with amendments.

I HEREBY CERTIFY that the above order was passed and adopted on September 15, 2021 by the following vote of the Board of Retirement, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

ALTERNATES (Present but not voting):

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Richard B. Fowler II  
Board President

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Eric Stern  
Chief Executive Officer and  
Board Secretary



# PROTECTION OF INDIVIDUAL RECORDS POLICY

## PURPOSE

The purpose of this Policy is to clarify what records continue to be protected from disclosure as “individual records” by Government Code Section 31532.

## POLICY

### Disclosable Information

If requested under the California Public Records Act (“PRA”) (Government Code section 6250, et seq.), SCERS will provide:

#### **A. Retirement Benefit Amount**

The amount of the monthly benefit (total gross allowance) and/or, if requested, the components thereof (e.g., base allowance amount, cost of living adjustments, other monthly benefit amount, health benefit amount, etc.) paid by SCERS.

#### **B. Calculation of Retirement Benefit Amount**

The Board interprets *Sacramento County Employees’ Retirement System v. Superior Court*, 195 Cal.App.4th 440 (2011) to hold that the following information is publicly disclosable if maintained by SCERS. The following information as determined by the Board in a good faith effort to be consistent with the 3<sup>rd</sup> Appellate District decision (*Sacramento County Employees’ Retirement System v. Superior Court* (2011) 195 Cal. App. 4<sup>th</sup> 440) is necessary information to calculate a retirement benefit:

1. Years of service (in the aggregate, but not a breakdown of individual regular and special service credits, such as service purchases);
2. Last position held (generally not maintained by SCERS);
3. Employer or Department ~~Department~~ from which retired (Intra-employer department information may not be maintained by SCERS);
4. Date of retirement;
5. Final compensation;
6. Applicable retirement formula and tier;
7. Age factor, and
8. Any other information determined by the General Counsel to be necessary to calculate a particular retirement benefit, such as applicable federal or state

limitations on benefits or compensation, unless specifically protected from disclosure under this Policy.

### **Protected Individual Records**

All otherwise nonpublic information provided to SCERS by a member, or by a third party on behalf of a member (including the employer), will continue to be protected from disclosure under Government Code Section 31532 as "individual records," including, but not limited to, the following examples:

1. Medical reports and information regarding medical or psychological status or condition;
2. Personal data such as contact and address information, names of spouses, relatives and dependents, and Social Security numbers;
3. Date of birth;
4. Age, including age at retirement;
5. Member contributions;
6. Individual accounts;
7. Breakdown of regular and special service credits, such as service purchases;
8. The names of beneficiaries and eligible survivors;
9. Payment option selections; and,
10. Nonpublic correspondence with the Board or staff

### **APPLICATION**

SCERS is only required to provide records which it prepared, owned, used or retained and does not have a duty to create a record when one does not exist (Government Code Section 6252(e); *Haynie v. Superior Court* (2001) 26 Cal.4<sup>th</sup> 1061; 71 Ops. Cal. Atty. Gen. 235 (1998)).

SCERS is entitled to charge a fee for the direct costs of duplicating any record. The Board has determined that the direct cost of duplicating any paper copy of any record is \$0.25 per page (Government Code Section 6253(b)).

If a request is made for SCERS to construct a new record in electronic form, and the request would require data compilation, extraction, or programming, SCERS may charge for the actual cost of constructing the new electronic record; including any costs of programming and computer services necessary to produce a copy of the record (Government Code Section 6253.9(b)).

As with any PRA Request, including any questions as to whether a public inquiry should be considered to be a PRA Request, any request that may involve "individual records" should be immediately referred to the General Counsel, who will determine how to respond in

consultation with the Chief Executive Officer. The General Counsel shall be responsible to maintain a log of all PRA Requests and Responses thereto.

## BACKGROUND

The PRA requires that public records be disclosed unless the records are exempt from disclosure (Government Code section 6253(b)). The PRA specifically exempts from disclosure any records that are protected by state or federal law (Government Code section 6254(k)). The County Employees' Retirement Law ("CERL") requires that "individual records" of members not be disclosed (Government Code section 31532).

The phrase "individual records" has been defined by the California 3<sup>rd</sup> District Court of Appeal ("3<sup>rd</sup> DCA") to mean any "information provided by a member, or on the member's behalf." *Sacramento County Employees' Retirement System v. Superior Court* (2011) 195 Cal. App. 4<sup>th</sup> 440, 463. This has been interpreted for all practical purposes by the California 1<sup>st</sup> District Court of Appeal ("1<sup>st</sup> DCA") to mean the same as "all otherwise nonpublic information submitted to a CERL retirement system by or about individual members." *Sonoma County Employees' Retirement Association v. Superior Court* (2011) 198 Cal. App. 4<sup>th</sup> 986, 1004.

Under either definition, both appellate district courts have agreed that "individual records" do not include the name and amount of retirement benefits received by a member or beneficiary. However, the 3<sup>rd</sup> DCA has also concluded that "how that amount was calculated (years of service, position held, date of retirement, and so forth)" does not 'fall within a member's individual records'..."195 Cal.App.4<sup>th</sup> at 465.

~~Similarly, the California 4<sup>th</sup> District Court of Appeal (4<sup>th</sup> DCA) upheld a lower court order that required the disclosure of a "computer generated document, titled 'Disability Retirement Calculation Summary Final,' redacted to exclude certain information including "retiree dates of birth." *San Diego County Employees' Retirement System v. Superior Court* (2011) 196 Cal. App. 4<sup>th</sup> 1228, 1234.~~

~~In contrast, the 1<sup>st</sup> DCA recognized that, while amending Government Code Section 31532 in 1957, the Legislature understood that "individual records of members" would encompass "the details of how retired members' monthly gross benefit amounts were calculated (but not the resulting amounts)." 198 Cal.App.4<sup>th</sup> 986, 1003; citing opinions rendered by the California Attorney General in 1955 and 1956 regarding a similar provision in the Public Employees' Retirement Law. The 1<sup>st</sup> DCA specifically held that "a member's date of birth and age at retirement would be protected from disclosure either as part of a member's 'sworn statement'...or as otherwise nonpublic information about the member supplied to the [retirement] board by a member or a third party." 198 Cal.App.4<sup>th</sup> 986, 1003.~~

## RESPONSIBILITIES

Executive Owner: General Counsel

## POLICY HISTORY

Date	Description
09-15-2021	Board reaffirmed policy with amendments
08-01-2018	Renumbered from 010
01-17-2018	Board affirmed policy in revised policy format
12-15-2011	Board approved new policy





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