

## **PUBLIC RECORDS**

### **I. PURPOSE**

The Board of Retirement (“Board”) of the Sonoma County Employees’ Retirement Association (“SCERA”) adopts this Policy to establish guidelines and procedures regarding responses to requests made under the California Public Records Act (“PRA”).

The Board is committed to the principle of transparency. 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. This Policy is not intended to cover all of the complex legal and factual issues that may arise in responding to a PRA request. However, the Board has determined that it would be useful to establish certain guidelines for SCERA to consider when a request is made under the PRA, and to publish those guidelines for the benefit of its members, their beneficiaries, and the public at large.

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 may arise where a simple application of the general guidelines will not provide a definitive answer. When such a situation arises, staff should confer with counsel and, if necessary, present a recommendation to the Board.

### **II. GUIDELINES FOR DISCLOSURE OF RECORDS**

Generally, subject to the PRA exemptions referenced below, a member or benefit recipient is entitled to access their own records and may authorize, in writing, equivalent access by another.

The PRA generally requires SCERA to disclose “public records” unless the particular information is exempt from disclosure. SCERA will not disclose records exempt from disclosure under the PRA, including, but not limited to, the following:

- A. Records pertaining to pending litigation to which SCERA is a party until the litigation or claim has been finally adjudicated or otherwise settled;
- B. Records, the disclosure of which is exempted or prohibited pursuant to state or federal law, including, but not limited to, the provisions of the Evidence Code related to privilege;
- C. Preliminary drafts, notes or interagency or intra-agency memoranda that are not retained by SCERA in the ordinary course of business, provided that the public

interest in withholding those records clearly outweighs the public interest in disclosure.

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."

In 2011, SCERA was a party to a published decision by the California First District Court of Appeal interpreting the applicability of section 31532 to requests for records under the PRA. Until there is a relevant change in legal requirements, SCERA will respond to production requests in accordance with the decision in *Sonoma County Employees' Retirement Association v. Superior Court* (2011) 198 C.A.4<sup>th</sup> 986. In that decision, the Court specifically ruled that SCERA was required to release the names and gross monthly benefit amounts paid, but the age at retirement of a member is confidential. The decision also provided guidance regarding the scope of the confidentiality required by section 31532. The Court found that the statute does make confidential all information submitted to SCERA either by the member or by a third party (e.g., an employer) about a member that would not otherwise be considered public information.

In accordance with that decision, in response to a PRA request, SCERA will publicly release the following information, to the extent available:

1. Member or benefit recipient name
2. Current gross monthly benefit amount
3. Original gross monthly benefit amount
4. Cost of living adjustments
5. Total final compensation
6. The components of total final compensation
7. Total years of credited service
8. Effective date of retirement
9. Information regarding the member's former employment department, agency and/or job class
10. Statutory basis for the benefit calculation formula
11. Type of retirement (e.g. service, service connected disability, non-service connected disability)

Also in accordance with that decision, SCERA will not publicly disclose the following information:

1. Social Security number
2. Date of birth
3. Age at any time
4. Address
5. Telephone and fax numbers
6. Email address
7. Disability information and medical records
8. Spouse or registered domestic partner and beneficiary designations
9. Member contributions
10. Individual accounts
11. Gross refund amount
12. Personal retirement option election
13. Individual benefit calculation formula rate
14. The components of credited service
15. Personnel records
16. Non-public correspondence with SCERA
17. Non-public information provided to SCERA by the member

Requests for information not listed above will be determined on a case-by-case basis, in accordance with applicable law. Also, a request for disclosable records may be objectionable if it is unreasonably burdensome. In such situations, staff should consult with counsel.

In the absence of a written request to the contrary by the affected party and subject to the terms of Government Code section 53760.9, SCERA shall provide the name and mailing address of each retired employee, or his or her beneficiary receiving the retired employee's retirement benefit, in list form, to a qualifying organization for the purpose of representing retired employees in specified bankruptcy proceedings, upon that organization's request.

SCERA will not provide the identification number, alphanumeric character, or other unique identifying code SCERA uses to identify a vendor or contractor, or an affiliate of a vendor

or contractor, unless the same are used in a public bidding or an audit involving SCERA.

### III. PROCEDURE FOR RESPONDING TO PUBLIC RECORDS REQUESTS

#### A. Initial Review/Response Letter

Upon receiving a PRA request, SCERA will follow the guidelines set forth above and determine whether the request seeks disclosable records. Under normal circumstances, SCERA will give written notification within 10 calendar days after receipt of the request to the person making the request whether some or all of the requested records will be disclosed. If circumstances are not normal, SCERA should notify the requester explaining when a response can be expected, which must be no more than 24 days after the receipt of the request. Factors indicating that circumstances are not normal include the need to search other locations, the need to consider voluminous records, the need for consultation with another agency, the need to compile data or develop programming to extract data. If any records will not be disclosed, SCERA should explain why those records are being withheld and set forth the names and titles or positions of each person responsible for the denial. Government Code Section 6253. If some or all of the requested records will be disclosed, SCERA will provide an estimated date when the records will be made available.

#### B. Producing the Records

The logistics and timing of providing the requested records should be worked out on a case-by-case basis in cooperation with the person making the request.

Under PRA, SCERA is entitled to charge a fee for the direct costs of duplicating any record. If the production will require substantial copying, SCERA will not commence copying until the requesting party pays SCERA the estimated cost. Because SCERA operates a trust fund for the exclusive benefit of its members and their beneficiaries, SCERA will seek to recover any costs associated with responding to the production requests that are permitted by law. For example, if a request is made which requires SCERA to construct a new record in electronic form, and the request would require data compilation, extraction, or programming, SCERA will ordinarily charge for the actual cost of constructing the new record, including any necessary costs for programming and computer services. Government Code Section 6253.69(b). For records that require detailed manual file review of processing, SCERA may propose an alternative of accelerating the process through the use of extra help staff at the requester's expense, if that alternative is reasonably available.

SCERA is only required to provide public records in its possession or reasonably available to it which it prepared, owned, used or retained. Government Code Section 6252(e). SCERA is not required to create a record that does not already exist at the time of the request. *The People's Business: A Guide to the Public Records Act*, League of California Cities (2017), pages 11-13.

- C. SCERA has a Computer System containing information like that listed in II.C. above, utilized in the administration of the retirement system. The frequency of data collection and updating largely depends on timing of input from SCERA employers.

#### IV. REVIEW

The Board shall review this policy at least every 3 years to ensure that it remains relevant and appropriate.

#### V. HISTORY

The Board adopted this policy on 1/19/2012.

Reviewed 1/29/2015 and 10/20/2022.

Reviewed and revised 3/24/2016, 1/26/2017 and 1/16/2020.