



Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 7B

MEETING DATE: September 18, 2024

SUBJECT: Protection of Individual Records Policy

SUBMITTED FOR: Consent Deliberation and Action Receive and File

RECOMMENDATION

Approve amendments to the Protection of Individual Records Policy.

PURPOSE

This item supports Strategic Management Plan goals regarding transparency, fairness, and compliance with laws, regulations and policies.

DISCUSSION

SCERS' Protection of Individual Records Policy was approved by the Board in December 2011, following an appellate court decision adverse to SCERS earlier that year regarding the California Public Records Act ("CPRA"). The policy sought to clarify what member records were still protected from disclosure under the confidentiality requirements of the CERL, specifically Government Code Section 31532, in light of the appellate court's ruling that certain member information was required to be disclosed under the CPRA. In 2018, the policy was affirmed in a new format and renumbered, then affirmed again with minor amendments in September 2021.

Pursuant to SCERS' current practice of reviewing and refreshing policies every three years, Staff has re-evaluated the policy to consider whether any amendments are appropriate due to legal changes or practical experience. In this instance, although application of the law has been largely well-settled since the 2011 decision, the CPRA itself was renumbered in 2020. As such, the proposed amendments are mostly cosmetic in nature, intended to streamline the policy for public consumption in a manner consistent with other policy revisions recently recommended by General Counsel.

ATTACHMENTS

- Board Order
- Protection of Individual Records Policy—Redline with Amendments
- Protection of Individual Records Policy—Clean

Prepared by:

/s/

Jason R. Morrish
General Counsel

Reviewed by:

/s/

Eric Stern
Chief Executive Officer



Retirement Board Order

Sacramento County Employees' Retirement System

**Before the Board of Retirement
September 18, 2024**

MOTION:

Protection of Individual Records Policy

THE BOARD OF RETIREMENT hereby approves Staff's recommendation to approve amendments to the Protection of Individual Records Policy.

I HEREBY CERTIFY that the above order was passed and adopted on September 18, 2024 by the following vote of the Board of Retirement, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

ALTERNATES (Present but not voting):

James Diepenbrock
Board President

Eric Stern
Chief Executive Officer and
Board Secretary

Item 7B



PROTECTION OF INDIVIDUAL RECORDS POLICY

PURPOSE

The purpose of this Policy is to clarify what individual member records are subject to 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. Information in Member Records Subject to Disclosure Retirement Benefit Amount

~~A.~~

1. Retirement Benefit Amount: ~~The amount of the member's monthly benefit (total gross allowance) paid by SCERS (total gross allowance) and/or, if requested, the composition thereof (e.g., base allowance amount, cost of living adjustments, other monthly benefit amount, health benefit amount, etc.) paid by SCERS.~~
2. Basis for Calculation of Retirement Benefit Amount: ~~the information relied upon by SCERS to calculate the amount of the member's monthly benefit, e.g.:~~

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:~~

- a. Years of service (in the aggregate, but not a breakdown of individual regular and special service credits, such as service purchases);
- b. Last position held (generally not maintained by SCERS);
- c. Employer or Department from which retired (Intra-employer department information may not be maintained by SCERS);
- d. Date of retirement;
- e. Final compensation;
- f. Applicable retirement formula and tier;
- g. Age factor; and

- h. Any other information determined by ~~the~~SCERS' General Counsel to be necessary ~~to~~for calculation~~one of~~ a particular ~~monthly~~retirement benefit, such as applicable federal or state limitations on benefits or compensation, unless specifically protected from disclosure under this Policy.

B. Information in Member Records Not Subject to Disclosure

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), ~~is 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.

~~10.~~

C. Procedural Requirements for Disclosure

1. SCERS will only provide records or disclose information prepared, owned, used or retained by SCERS. No records will be created.
2. The direct cost of duplicating any paper record shall be \$0.25 per page. The cost of duplication of an electronic record shall be the direct cost of producing a copy of the record in an electronic format, including any necessary cost of construction and programming and computer services where data compilation, extraction or programming is required.
3. Any public requests for SCERS' records or information should be referred to General Counsel for review and response in consultation with the Chief Executive Officer. General Counsel will maintain a log of CPRA requests and responses.

AUTHORITY

California Government Code Section 31532

California Government Code Sections 7920.000 et seq.
Sacramento County Employees' Ret. System v. Sup. Court (2011) 195 Cal. App. 4th 440
Sonoma County Employees' Ret. Assoc. v. Sup. Court (2011) 198 Cal. App. 4th 986
Haynie v. Superior Court (2001) 26 Cal.4th 1061

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.4th 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 3rd District Court of Appeal ("3rd 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. 4th 440, 463. This has been interpreted for all practical purposes by the California 1st District Court of Appeal ("1st 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. 4th 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 3rd 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.4th at 465.~~

RESPONSIBILITIES

Executive Owner: General Counsel

POLICY HISTORY

Date	Description
<u>09-18-2024</u>	<u>Board amended policy</u>
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



PROTECTION OF INDIVIDUAL RECORDS POLICY

PURPOSE

The purpose of this Policy is to clarify what individual member records are subject to disclosure.

POLICY

A. Information in Member Records Subject to Disclosure

1. Retirement Benefit Amount: the amount of the member's monthly benefit paid by SCERS (total gross allowance) and the composition thereof (e.g., base allowance amount, cost of living adjustments, other monthly benefit amount, health benefit amount, etc.).
2. Basis for Calculation of Retirement Benefit Amount: the information relied upon by SCERS to calculate the amount of the member's monthly benefit, e.g.:
 - a. Years of service (in the aggregate, but not a breakdown of individual regular and special service credits, such as service purchases);
 - b. Last position held (generally not maintained by SCERS);
 - c. Employer or Department from which retired (Intra-employer department information may not be maintained by SCERS);
 - d. Date of retirement;
 - e. Final compensation;
 - f. Applicable retirement formula and tier;
 - g. Age factor; and
 - h. Any other information determined by SCERS' General Counsel to be necessary for calculation of a particular monthly benefit, such as applicable federal or state limitations on benefits or compensation, unless specifically protected from disclosure under this Policy.

B. Information in Member Records Not Subject to Disclosure

All otherwise nonpublic information provided to SCERS by a member, or by a third party on behalf of a member (including the employer), is protected from disclosure, 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;
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AUTHORITY

California Government Code Section 31532

California Government Code Sections 7920.000 *et seq.*

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