

FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (FCERA) POLICIES AND PROCEDURES REGARDING PUBLIC RECORDS REQUESTS

I. Overview

- 1) This policy is designed (a) to provide FCERA staff guidance when it responds to requests for documents under the California Public Records Act and (b) to inform the public of FCERA's 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.

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.

Appendix A to these policies and procedures addresses the disclosure of a member's personal data during the course of board member elections or to the retiree association upon retirement.

II. General Principles

- 1) A request to inspect FCERA 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:
 - a) 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.
 - b) An individual (member or beneficiary) generally must be permitted access to his or her own records.
 - c) The public -- i.e. any person, for any reason -- has a right to inspect records that relate to FCERA's operations and that are neither confidential nor protected from disclosure by the applicable laws.
 - d) Generally, FCERA 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 FCERA will produce the requested records or provide a basis for rejecting the request. If FCERA is unable to formulate a response within 10 days, it may extend the time for a response by as much as 14 days, but may only do so with good cause.

- e) Subpoenas or court orders requiring the production of records and/or information should be referred to legal counsel immediately upon receipt.
- f) 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 FCERA to disclose its existing records; it does not require FCERA to conduct studies, reorganize information or summarize data for the requesting party. Thus, when confronted with a request that will substantially disrupt FCERA's operations, the Administrator should consult legal counsel.¹
- g) When a request is made for information regarding an individual member that appears to be of a personal or private nature, FCERA should seek the advice of legal counsel.

III. Applicable Law

1) Public Records Act ("PRA")

The PRA generally requires FCERA 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 FCERA to withhold some records, the 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 FCERA and others may be applicable only in rare instances. The following exemptions are the most important exemptions for FCERA:

¹ Although FCERA 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.

² According to California case law, the listed exemptions permit FCERA to withhold records; they do not prohibit disclosure. In other words, these exemptions provide FCERA 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, FCERA is encouraged to consult legal counsel before disclosing any records that fall under an exemption.

- a) 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.
- b) 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.
- c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.
- d) 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.
- e) Certain types of records pertaining to the alternative investments of FCERA or incomplete negotiations for certain financial transactions.

Additionally, Government Code Section 6255 provides a “catch all” provision whereby FCERA 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

2) Government Code Section 31532 (from FCERA’s governing law)

“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 [FCERA’s governing law] or upon order of a court of competent jurisdiction, or upon written authorization by the member.”

Based upon section 31532 and applicable court rulings, the FCERA Board hereby adopts the following interpretation of section 31532 as it pertains to the confidentiality of member records.

Data filed by any member or beneficiary with FCERA is confidential (unless that same data is available from public sources), and no individual record shall be divulged by any official or employee having access to it to any person other than the member to whom the information relates or his or her authorized representative or, if necessary for the administration of the system, the county or participating agency by which he or she is employed. The information shall be used by FCERA for the sole purpose of administering the system. When information is provided to the County or participating

³ Generally, California law favors disclosure, and if a court disagrees with FCERA’s determination, FCERA 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.

agency, in the course of administering the system, those entities shall also treat the information as confidential.

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, or other personal information provided by the member or beneficiary (excluding the public information listed below).

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, final average compensation (including the elements of compensation earnable), total retirement allowance and member contribution amounts.

IV. Procedures For Responding to Public Records Requests

1) Initial Review

Upon receiving a request for records, FCERA must first determine whether the request seeks disclosable "public records."⁴ To make this determination, FCERA should proceed as follows:

- a) Determine if the records are prepared, owned, used, or retained by FCERA.
- b) If the records are prepared, owned, used, or retained by FCERA, 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. If so, the request should be referred to legal counsel for a case-by-case determination.

⁴ It is important to remember that a request may be partially acceptable and partially objectionable. FCERA should disclose all records that are properly sought, even if the person making the request has sought other records that need not be disclosed.

- 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. See Section III (B) above.
- f) Determine whether otherwise disclosable records need to be reorganized or redacted such that confidential information is not included in the disclosed material.
- g) If, for any reason, FCERA believes that certain records should not be disclosed, legal counsel should be consulted.

2) Preparing the Response Letter

Under normal circumstances, within 10 days from ⁵ receipt of the request, FCERA 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:

- a) If any records will not be disclosed, FCERA 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 FCERA clearly delineates which records will be disclosed (and which will not) and explains the reasons for the distinctions.
- b) If some or all of the requested records will be disclosed, FCERA must state the estimated date and time when the records will be made available. In general, FCERA should provide the relevant information or make the records available at the earliest practicable date. Unless special circumstances exist, FCERA 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.)

⁵ Under "unusual circumstances," if FCERA cannot reasonably make a determination within 10 days, the Assistant Retirement Administrator or his/her designee should, within the 10 days, send a letter to the person making the requests 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: 91) 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 94) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

- c) 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) FCERA must set forth the names and titles or positions of each person responsible for the denial.
- d) 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). FCERA should also notify the member that the records will be disclosed in 10 days unless the member obtains a court order preventing such disclosure. 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 member(s) a fair opportunity to seek a court order preventing the production of the records.

3) 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, FCERA should send copies of the relevant records to the person making the request. If the production requires substantial copying, FCERA should not release the copies until the requesting party pays FCERA 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 FCERA’s offices.

V. Miscellaneous

1) Availability of This Policy

A copy of this policy statement shall be posted in a visible location of the FCERA office and shall be made available to any member of the public upon request.

2) Responsible Individual

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

3) Request Submission

Written requests, either hardcopy or electronic, are preferred as they generally more clearly state the information desired. Electronic requests should be addressed to FCERAwebmail@co.fresno.ca.us. Written requests should be mailed or delivered to the

FCERA office with attention to "Public Records Request Processing". Faxed requests should be sent to (559)457-0318 to the Attention of "Public Records Request Processing".

4) 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.

VI. Policy Review

- 1) The Board shall review this policy at least every three years to ensure that it remains relevant and appropriate.

VII. Policy History

- 1) This policy was adopted by the Board on August 23, 2003.
- 2) The policy was modified by the Board of Retirement on August 4, 2010 and December 16, 2015.

VIII. Secretary's Certificate

I, Donald Kendig, the duly appointed Secretary of the Fresno County Employees' Retirement Association, hereby certify the adoption of this Policy.

December 16, 2015

Date of Action:

Donald C. Kendig

By: Retirement Administrator

APPENDIX A

SPECIAL POLICIES AND PROCEDURES RELATING TO THE DISCLOSURE OF MEMBERS' PERSONAL DATA

Board Member Elections. The Retirement Board includes four regular members (two general, one safety and one retired) and up to two alternate members (one safety and one retired). These Board members are regularly elected to three-year terms. In connection with these elections, FCERA frequently receives requests from candidates and employee and retiree organizations for the names and addresses of electors, for the purpose of soliciting their support for particular candidates. FCERA recognizes that these requests may be reasonably related to the administration of the retirement system, but also recognizes the right of each member to the privacy of his or her home address, phone and fax numbers and email address ("Personal Data"), unless the member wishes to waive that right.

Balancing these important interests, FCERA adopts the following policies and procedures for responding to requests for members' Personal Data in connection with board member elections:

- 1) FCERA will not disclose to any candidate, employee or retiree organization any member's Personal Data, without the written authorization of the member.
- 2) Candidates, and employee or retiree organizations who seek to communicate with electors in advance of an election may provide FCERA with camera-ready copy of their intended communications, and identify the electors or groups of electors to whom they wish to send their communications. In the ordinary course of FCERA's business, FCERA will cause the communications to be processed and sent to such electors or groups of electors, provided the sender pre-pays FCERA for all estimated costs of transmission to be incurred (including but not limited to copying, preparing, handling, mailing, postage and other related costs and services, whether incurred by FCERA or by a third-party contractor) subject to later adjustment to reflect the actual costs incurred.
- 3) FCERA will not be responsible for assuring the timeliness or actual delivery of any such communications.
- 4) Members of FCERA who generally do not wish to receive any such communications, or communications relating to a specific election, may notify FCERA in writing in advance that they wish to "opt out" of the list of electors to whom such communications may be sent, and FCERA will use its best efforts to honor such requests.

Retiring Members. FCERA provides retiring members with a form that, upon the member's signature, will allow FCERA to release the member's contact information to the retiree association, so that the retiree association may contact the member. FCERA will also make available to the retiree association the procedures set forth in Par. 2 above for communicating with retirees, subject to the conditions stated in Pars. 3 and 4 above. The retiree association is required to maintain the confidentiality of such information.