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William Cox  
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July 26, 2010

The Honorable Board of Supervisors  
County of Sacramento  
700 H Street  
Suite 2450  
Sacramento, CA 95814

RE: Decision by SCERS to Appeal the Court Ruling Requiring Disclosure  
of Individual Member Information

Dear Supervisors:

On behalf of the Sacramento County Employees' Retirement System (SCERS), I am writing to provide you with information regarding why SCERS has decided to appeal the recent ruling by the Sacramento County Superior Court that SCERS must disclose individual information about SCERS' retirees and beneficiaries. Hopefully this information will help you to understand why SCERS believes an appeal is warranted in this case and why the information should be kept confidential while the appeal is being pursued.

SCERS supports and adheres to the principles of 'open government' that underlie the Public Records Act (PRA) and concurs that access to information about how government operates is vital for preserving the trust and confidence of the public. To that end, SCERS operates in an open and transparent manner designed to let our stakeholders and the public see that we carry out our responsibilities in managing the retirement system in accordance with the law and the highest fiduciary and professional standards. For this reason, in addition to the wealth of information that is always publicly available, SCERS provided extensive information regarding our retirees and beneficiaries to the parties who filed the current lawsuit. That included a listing of the amount of the monthly retirement allowances, and the retirement dates, length of service and

employers of the retirees and beneficiaries in question. What SCERS did not provide was the names of the retirees and beneficiaries or supply the information in a way that identified people individually.

SCERS' declined to provide the names because SCERS is required by law to keep such information confidential. Specifically, Section 31532 of the California Government Code expressly declares that "... individual records of members shall be confidential and shall not be disclosed ... ." It should be noted that this statutory obligation is distinctly different from the law governing CalPERS and CalSTRS which expressly requires that names and pension amounts be disclosed. It should also be noted that over its history SCERS has scrupulously kept such information confidential in its dealings with any and all third parties, including with the County. Finally, SCERS would have been subject to a lawsuit by our retirees and beneficiaries if SCERS had disclosed the information in question.

In the current case, the Court ultimately concluded that the disclosure principles of the PRA outweigh the confidentiality provisions of the Government Code. SCERS recognizes that a similar conclusion has been reached by Courts in other jurisdictions, however, after close scrutiny SCERS believes that these decisions are flawed and that the important issues in this case are more likely to be fully and fairly addressed at the appellate court level, where the decision will be made by a panel of judges rather than by a single judge.

In particular, SCERS is pursuing an appeal in order to obtain clear guidance on what the confidentiality obligation under the Government Code means in the face of future PRA requests. If the confidential 'individual records' of SCERS members do not cover their names, pension amounts, when they retired, who they were working for, and how long they worked, then what is to be kept confidential? In this regard, it is important to remember that PRA requests can come from sources other than the media. For example, SCERS recently received a PRA request for the names of deceased SCERS members who have a balance of \$20,000 or more in their retirement account. Conceivably, this information would be used by the requesting party in order to contact heirs of the deceased retirees to tell them that they have 'unclaimed property' which will be obtained for them for a fee. Are names and other individual information entitled to a higher level of confidentiality in such cases? Could SCERS be sued by an heir who unnecessarily paid such a fee because the information was disclosed?

In sum, SCERS believes an appeal is vital in order for SCERS to have a clear understanding of what must be disclosed and what must not be disclosed so that SCERS can properly comply with the law and avoid continued litigation over such questions. It is worth noting that SCERS is not alone in this desire as several other County retirement systems have expressed their support for obtaining the necessary clarification of duties.

SCERS recognizes that other parties may have a different perspective on whether the information in question should be disclosed and whether the case should be appealed. SCERS respectfully notes, however, that under the California Constitution, in making decisions regarding the administration of the retirement system, the SCERS Board has the fiduciary obligation to focus on what is in the best interests of the participants of the retirement system. To that end, after extended discussion and thoughtful consideration, the SCERS Board determined that it was necessary to pursue an appeal in this case in order to assure that SCERS is properly complying

with both the confidentiality responsibilities imposed by the Government Code and the disclosure responsibilities imposed by the PRA.

SCERS wants to reiterate that in no way is the decision to pursue an appeal premised on a desire to prevent or impede public oversight of SCERS' benefits. In that regard, it is important to bear in mind that SCERS does not establish the benefit formulas for SCERS members, nor does SCERS set the compensation for SCERS members. SCERS' role is simply to collect the necessary compensation and service credit data from participating employers and employees, invest the contributions prudently and then administer the benefits earned in accordance with the law. Put another way, the benefits earned are a function of the decisions made by parties other than SCERS, including previous court decisions regarding what must be counted as compensation for pension benefit purposes. If and when SCERS is directed to disclose individual pension information by the appellate court there will be ample opportunity to assess the benefits produced by those decisions.

I hope this information is helpful. Also attached for your review is the statement issued by SCERS when the decision was made to appeal.

Thank you for your consideration.

Yours Sincerely,

Richard Stensrud  
Chief Executive Officer  
Sacramento County Employees' Retirement System