



# PROTECTION OF INDIVIDUAL RECORDS POLICY

**Revision Date:** January 17, 2018

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## 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 following information as determined by the Board in a good faith effort to be consistent with the 3<sup>rd</sup> DCA decision to be necessary to calculate the 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;
3. Department from which retired;
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                             |
|------------|---|
| 08-01-2018 | Renumbered from 010                     |
| 01-17-2018 | Board affirmed in revised policy format |
| 12-15-2011 | Board approved new policy               |

