Public Information Policy

of

the Commonwealth of Pennsylvania
Public School Employees' Retirement Board

As adopted by

the Board of Trustees

on December 13, 1994

Effective

December 13, 1994

Adopted: December 13, 1994
Date Last Revised: June 13, 2014
Date Last Reviewed by Chief Counsel: June 13, 2014

Public School Employees' Retirement Board Policy on Public Information

I. GENERAL POLICY.

It has always been, and continues to be, the policy of the Public School Employees' Retirement Board ("Board") to provide access to public records to the fullest extent required by law and Commonwealth of Pennsylvania policy, consistent with its duties to protect the interests and rights of the Public School Employees' Retirement System ("PSERS") and its members. This extensive revision of this Policy is occasioned by the enactment of the new Right-to-Know Law ("RTKL"), 65 P.S. §§67.101 - 67.3104 on February 14, 2008, to become effective on January 1, 2009.

In addition to the RTKL, the release of information pertaining to PSERS' business is controlled by, Management Directive 205.36 (Amended November 20, 2008), the "Sunshine Act," 65 Pa. C.S. §§ 701-716 and the Public School Employees' Retirement Code ("Retirement Code"), 24 Pa. C.S. §§8101-9102. The RTKL governs the inspection and copying of agency records; Management Directive 205.36 establishes policies and procedures for agency compliance when responding to requests made pursuant to the RTKL; the "Sunshine Act" requires public agencies to hold certain meetings and hearings open to the public; and the Retirement Code contains certain relevant provisions unique to PSERS.

Other applicable authorities include Administrative Agency Law, 2 Pa. C.S. §§501-508; Administrative Code (particularly 71 P.S. §182), General Rules of Administrative Practice and Procedure, 1 Pa.Code Ch. 31-35, Pennsylvania decisional law, Management Directives (particularly No. 505.18), as well as any other laws, rules, regulations, and policy directives that may apply to public records. The Office of Chief Counsel should be consulted in cases in which this Policy does not provide sufficient guidance to reach a determination.

In promulgating this new Policy on Public Information, this Board must recognize and give effect not only to the statutory and decisional law on the subject but also to its fiduciary and administrative duties and obligations to the members of PSERS and to the Public School Employees' Retirement Fund (the "Fund"). In balancing situations in which the right of the public to know competes with those other duties and obligations, PSERS shall apply the standards listed below, as appropriate.

• If the Board has reasonable grounds to believe that criminal activity has occurred or may occur, information that could be used in furtherance of the criminal activity shall not be released.

• In compliance with state and federal laws that protect the privacy of health-care information, including the Health Insurance Portability and Accountability Act of 1996, medical records shall not be released to the public.

• Information that could, if disclosed, be detrimental to Fund investments under the standard of care set forth in 24 Pa. C.S. §8521, shall not be released.

• Requests for information pertaining to PSERS' employees shall be administered in accordance with Management Directive 505.18 Amended, Management Directive 505.12 Amended and 67 P.S. § 708(b)(7).

Consistent with this policy, PSERS may, from time to time, make available on its web site (www.psers.state.pa.us) certain financial and investment information to facilitate access to such information and reduce the time associated with responding to formal written RTKL requests.

This Policy shall be construed and applied to give effect to compulsory changes in the law or Commonwealth policy that may become effective subsequent to the adoption of this Policy.

II. DEFINITIONS.

The RTKL defines a "record" and "public record" respectively as follows (emphasis added):

A "Record" is:

> "*Information*, regardless of physical form or characteristics, that documents *a transaction or activity of an agency* and that is *created*, received or retained pursuant to law or *in connection with a transaction, business or activity of the agency*. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document."

"Public Record" is defined as:

A record . . . that:

> (1) is not exempt under section 708;
> (2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or
> (3) is not protected by a privilege.

The Board recognizes three specific statutory exemptions from disclosure in the Retirement Code:

1. Records that would conflict with the Board's duty to protect the rights of the membership as to privacy and confidentiality under 24 Pa C.S. §8502(i).

2. Records relating to partnerships and other alternative investments described in 24 Pa. C.S. §8502(e)(2)(i) - (iii).

3. Records that could, if disclosed, be detrimental to Fund investments under the standard of care imposed on the Board by 24 Pa. C.S. §8521.

The definitions of other terms used in this Policy are either contained in Management Directive 205.36, which is attached to this Policy as Appendix A, or made when the term is first used in this Policy.

III. PROCEDURE FOR REQUESTS.

A. Adherence to Management Directive 205.36.

PSERS shall follow the procedure set forth in Management Directive 205.36, which is attached as Appendix A, for responding to RTKL requests and for handling exceptions to the denial of RTKL requests.

B. Agency Open Records Officer ("AORO").

All RTKL requests shall be directed to PSERS' AORO. Telephone inquiries to the AORO should be made to (717) 720-4749. Requests for public information must be in writing, signed by the requester, and addressed as follows:

Mail or Other Means of Delivery	Facsimile
Open Records Officer Public School Employees' Retirement System 5 N. Fifth Street Harrisburg, PA 17108-0125	Open Records Officer Public School Employees' Retirement System (717) 772-5372

E-mail requests shall be made to: ra-PSERSRTKL@pa.gov

Submittal of a request to any other address or facsimile number does not give rise to any obligation on the part of PSERS to respond to it, nor can it serve as a basis for the deemed denial of the request.

C. Who has the Right to Know?

A "requester" can be any person or corporation who is a legal resident of the United States, regardless of residency within or outside of the Commonwealth.

D. Form and Content of Request.

Requests for public records must: (1) be in writing, (2) contain the name, address and telephone number(s) of the requester, (3) be signed by the requester, (4) be clearly marked as a right-to-know request, (5) reasonably and specifically describe the information sought, and (6) provide the address to which PSERS should send its response. The request may be on the form developed by the Office of Open Records ("OOR"). PSERS does not accept anonymous or verbal requests for records. Requests may be sent via facsimile, mail and e-mail.

E-mail requests must be addressed to: ra-PSERSRTKL@pa.gov

E. *Business Hours*.

PSERS' regular business hours are from 7:30 a.m. to 4:30 p.m. on each business day. Any request received after business hours of a particular day shall be deemed received on the next business day.

F. Physical Access to Public Records.

In the event that a requester is allowed physical access to public records, PSERS shall designate a public access room in its headquarters located at 5 N. Fifth St., Harrisburg, PA or in any of its field offices for use during regular business hours.

G. Notice to Member.

When PSERS complies with a RTKL request for public information regarding an individual member's account, PSERS shall, whenever reasonably practicable, provide subsequent written notice to the member that identifies (a) the name of the requester and (b) the information provided by PSERS. Members do not have the right to approve or disapprove a request for public records. The request for information and a record of its administration shall also be retained in the member's file.

H. Member Authorization for Release of Information.

PSERS may release information that is available to a member from the member's file, including information that would otherwise not be released, upon written authorization by the member directed to PSERS. PSERS will limit its release of information to the extent provided in the member's authorization.

I. Fees.

PSERS shall assess fees as prescribed by Management Directive 205.36 Amended. A fee in the amount of 25 cents per page shall be charged for photocopies.

PSERS reserves the right, from time to time, to change the fees it assesses.

PSERS may waive fees on the basis of hardship or other relevant factors, in its sole discretion. PSERS may, in its discretion, require payment of fees in advance if the fees are expected to exceed $100.

J. Questions.

Questions regarding this Policy may be directed to PSERS' AORO at the above address or at (717) 720-4749.

IV. AGENCY INFORMATION.

RETIREMENT BOARD BUSINESS

In responding to requests for public records relating to the business of this Board, PSERS shall consider the fiduciary obligations and standard of care set forth in the Retirement Code. For example, by application of the "prudence" standard set forth in PSERS' enabling legislation, premature disclosure of information that could be detrimental to PSERS' interests in an investment would be prohibited if "persons of prudence, discretion, and intelligence who are familiar with such matters" would not disclose the information in the conduct of their own affairs. 24 Pa.C.S. §8521(a).

As a general rule, investment matters that have been approved for funding by the Board are subject to disclosure, unless the approval is conditioned in a manner that calls for confidentiality until the conditions are satisfied.

The Retirement Code also sets forth a duty for PSERS to "protect the rights of its membership as to privacy and confidentiality." 24 Pa.C.S. §8502(i). The membership's privacy "rights" include the prohibition in the RTKL against release of records that would impair a member's personal security. 65 P.S. §708(b)(1)(ii). The fact that requested information may be used for commercial purposes, standing alone, is not a permissible ground for denial.

Requests for information pertaining to PSERS' employees shall be administered in accordance with Management Directive 505.18 Amended.

The following is a non-exclusive list that illustrates common examples of public and non-public information:

Public Information

•Board agenda

•Approved Board minutes

•Financial reports

•Reports of purchases and sales of securities

•Proxies voted

•Board reports on annuities

•Board resolutions

•Signing resolutions

•Board policies and bylaws

•Reports, summaries and other documents presented to the Board in advance of, or at, public meetings that do qualify as public records under the RTKL

Non-Public Information

•Proposed or pending investments if premature release of information could be detrimental to PSERS' interests

•Documents protected by attorney-client privilege

•Proposed Retirement Board opinions not yet acted upon

•Reports, summaries and other documents presented to the Board in advance of, or at, public meetings that do not qualify as public records under the RTKL and that may, but are not required to be, marked, held and treated as confidential

OFFICE OF CHIEF COUNSEL

Staff notations and memoranda that include Office of Chief Counsel documents, may be privileged or otherwise protected and should be reviewed by the Office of Chief Counsel prior to release.

The following is a non-exclusive list that illustrates common examples of public and non-public information:

Public Information	Non-Public Information
•Court orders, including domestic relations orders	•Legal opinions that are labeled confidential, protected by attorney-client privilege, or attorney work product, unless disclosure is approved by the Office of Chief Counsel
•Hearing examiners' reports	•Research/internal memoranda
•Administrative hearing records	•Medical records
•Briefs and pleadings filed of record	•Letters to clients that are labeled confidential, protected by attorney-client privilege, or attorney work product, unless disclosure is approved by the Office of Chief Counsel
	•Records pertaining to investigations within the meaning of "public record" as defined in the RTKL
	•Records relating to investment transactions that are protected by attorney-client privilege or that otherwise do not qualify as public records under the RTKL
	•Records relating to litigation matters protected by attorney-client privilege or otherwise under this Policy
	•Records exempted from disclosure under 65 P.S. §67.708(b).
	•Records protected by the attorney-work product privilege, the attorney-client privilege or any other privilege recognized by Pennsylvania Courts.

INVESTMENT OFFICE

The information specified in the Retirement Code at 24 Pa. C.S. §8502(e)(5)(i)-(viii) is public information. The information specified in 24 Pa. C.S. §8502(e)(2)(i)-(iii) is non-public information. The following is a non-exclusive list that illustrates common examples of public and non-public information:

Public Information

•Listing of investment managers

•Summary of assets by investment managers

•Brokerage commissions paid

•Statement of investment policy/amendments

•Investment portfolio - list of assets

•Investment manager performance/status reports

•Partnerships and Other Alternative Investments:

(i) The name, address and vintage year of each alternative investment vehicle

(ii) The identity of the manager of each alternative investment vehicle

(iii) The dollar amount of the commitment made by PSERS to each alternative investment vehicle

(iv) The dollar amount of cash contributions made by PSERS to each alternative investment vehicle since inception

(v) The dollar amount of cash distributions received by PSERS from each alternative investment vehicle since inception

(vi) The net internal rate of return of each alternative investment vehicle since inception, provided that PSERS shall not be required to disclose the net internal rate of return under circumstances in which, because of the limited number of portfolio assets remaining in an alternative investment vehicle, such disclosure could reveal the values of specifically identifiable

Non-Public Information

•Special staff reports and consultant reports that warrant protection under the general rule above

•Investment negotiations

•Documents protected by attorney-client privilege or attorney-work product privilege

•Partnerships and Other Alternative Investments:

(i) Identities of specific alternative investment portfolio investments

(ii) Performance data on, and valuations of, specific alternative investment portfolio investments

(iii) Partnership agreements, and side letter agreements, and like agreements in the case of other types of investment vehicles

(iv) Information that PSERS agreed to keep confidential under written agreements, unless disclosure is required by law

remaining portfolio assets to the detriment of the alternative investment

(vii) The aggregate value of the remaining portfolio assets attributable to PSERS' investment in each alternative investment vehicle, provided that PSERS shall not be required to disclose said value under circumstances in which, because of the limited number of portfolio assets remaining in an alternative investment vehicle, such disclosure could reveal the values of specifically identifiable remaining portfolio assets to the detriment of the alternative investment

(viii) The dollar amount of total management fees and costs paid to each alternative investment vehicle by PSERS on an annual fiscal year-end basis

(ix) Subscription agreements, provided that the release of such information would not be reasonably likely to have a detrimental effect on PSERS' interest in an investment (such contracts may be redacted to the extent necessary).

• Investment advisory agreements, consultant agreements, brokerage agreements, and other investment services agreements

•Asset allocation plans and investment guidelines and objectives

Consultant recommendations, staff recommendations, and special studies or investigations tend to be non-public information.

In reference to the competitive bidding process, the RTKL, 65 P.S. §708(b)(26) has changed the law, and now provides that bids and proposals are not public records unless or until a contract is executed with one of the bidders or offerors, at which time all proposals – successful or unsuccessful – are subject to disclosure, with the exception of financial information furnished to demonstrate economic capability.

PSERS may furnish information to or receive information from other Commonwealth agencies under 71 P.S. §182, which provides that whenever "power is vested in a department, board, or commission, to inspect, examine, secure data or information, or to procure assistance, from any other department, board, or commission, a duty is hereby imposed upon the department, board, or commission, upon which demand is made, to render such power effective." PSERS may condition the release of information under §182 on the completion of a confidentiality agreement by the requesting entity.

The following is a non-exclusive list that illustrates common examples of public and non-public information:

Public Information

•Legislative updates

•Board-approved budget requests

•Requests for Proposals and Invitations to Bid

•The names of the bidders and the amounts bid in the case of responses to Invitations to Bid

• Responses to Requests for Proposal after a contract has been entered

•All executed contracts for goods and services

•Board-approved actuarial valuations/evaluations

•Board-approved actuarial notes/tables

•Audited financial statements

Non-Public Information

•Competitive proposals prior to the execution of a contract, and financial information contained in a proposal used to demonstrate economic capability.

•Summary report on proposals

•Independent auditor's report to management

•Special staff reports that warrant protection under this policy

•Materials protected by attorney-client privilege

• Identity of evaluation committee and notes, recommendations and point scores of committee members

The Retirement Code requires the Board to "protect the rights of its membership as to privacy and confidentiality." 24 Pa. C.S. §8502(i); *see Rowland v. Public School Employees' Retirement System*, 885 *A. 2d 621 (Pa. Cmwlth. 2005).* The RTKL expressly prohibits release of information that may not be disclosed under any other Federal or State Law. 65 P.S. §67.102 ("Public Record"). A member has a privacy interest guaranteed by the Pennsylvania Constitution in avoiding disclosure of personal matters. See *Denoncourt v. State Ethics Commission*, 504 Pa. 191, 198, 470 A.2d 945, 948 (1983). Therefore, in responding to requests for records that contain members' personal information, for those matters not specifically addressed below, PSERS will follow the balancing test adopted in *Times-Publishing Co. v. Michel*, 633 A.2d 1233 (Pa. Cmwlth. 1993), *appeal denied*, 538 Pa. 613, 645 A.2d 1321 (1994), and will release the records only if the benefits of releasing the information outweigh the individual's privacy interest. The Board's policy not to release addresses or dates of birth relied upon *Sapp Roofing Co. v Sheet Metal Workers' International Assoc.,* 713 A.2d 627 (Pa. 1988), and was upheld by the Commonwealth Court in *Rowland v. Public School Employees' Retirement System*, 885 *A. 2d 621(Pa. Cmwlth. 2005).* In *Sapp, id. at 630*, the Supreme Court stated: "Pennsylvania recognizes the right to privacy in Article I, § 8 of the Pennsylvania Constitution, and this Court often invokes this right to privacy to give greater protection to our citizens than that found in the United States Constitution." The staff is authorized to release any pertinent information from active and retired members' files to an employer as required in connection with PSERS' retirement transactions, with the exception of beneficiary nomination information in cases where no payment is due. Specific benefit calculations are not provided to the public; however, PSERS will provide actuarial tables, retirement formulas and the necessary data for preparing calculations upon request.

In addition, PSERS will respond to a valid subpoena requesting the production of documents or testimony concerning a member's account at a trial, hearing or deposition, as provided in law or rule of court. Further, PSERS can be compelled to produce documents and things for inspection by parties in a lawsuit even if no trial, hearing or deposition takes place, as provided in Rule 4009.21 of the Pennsylvania Rules of Civil Procedure.

The following is a non-exclusive list that illustrates common examples of public and non-public information:

Public Information - Active Member

•Member contributions and interest

•Retirement credited service with PSERS

•Last full fiscal year retirement-covered salary reported

•Last employer(s) reported

Non-Public Information – Active Member

•Social Security number

•Address/telephone number

•Beneficiary designation

•Date of birth

•Present value of account

•Retirement estimates

•Medical reports and other information protected under the Health Insurance Portability and Accountability Act of 1996

Public Information-Other than Active Member

•Current monthly annuity

•Beneficiary/designated survivor subsequent to member's death

•Option selected

•Date of retirement

•Years of credited service

•Member contributions and interest

Non-Public Information-Other than Active Member

•Social Security number

•Address/telephone number

•Beneficiary/survivor designation prior to member's death

•Specific annuity calculation

•Medical reports and other information protected under the Health Insurance Portability and Accountability Act of 1996

•Date of birth

V. PRESS RELEASES/PRESS CONFERENCES.

All press inquiries shall be referred to the Press Secretary, who may coordinate a response with the Executive Office, the Investment Office, or the Office of Chief Counsel.

Information that is not subject to disclosure under this Policy or that is otherwise afforded protection under the law shall not be released to the press.

If the Press Secretary determines that the subject of the inquiry relates to a significant or controversial issue that PSERS has not yet addressed, the Executive Director and Board Chair will be consulted immediately for a decision or concurrence to determine the manner in which to handle the issue.

The Press Secretary may issue press releases as appropriate and provide copies to the Board. PSERS' staff will not conduct press conferences without prior notification to the Board.

Sections Amended January 1, 2000

The spelling of “employe” has been changed in all sections to “employee.”

Sections Amended January 31, 2003

All sections amended to conform with Act 2002-100, enacted June 29, 2002;effective December 26, 2002 (Management Directive 205.36, dated November 27, 2002).

Sections Amended June 18, 2004

Sections throughout Policy revised to provide staff guidance in handling matters involving public information issues frequently encountered in the administration of benefits and investments, and to conform to Management Directive 205.36 Amended, dated November 5, 2003.

Sections Amended March 18, 2005

Housekeeping changes to the Policy included: Citation to the Administrative Agency Law corrected in the discussion of “who has the right to know;” reflecting a change in the RTKL from the word “citizen” to “resident;” and clarification of the balancing test as it affects the disclosure of personal information of members and annuitants where the Board has already announced a policy.

Sections Amended December 9, 2005

Revised the listing of items under the "Public Information" column in the Investment Office section.

Reference added to the *Rowland v. Public School Employees Retirement System* case.

Sections throughout Policy revised for clarification or editorial purposes.

Sections Amended January 26, 2007

Added references to the Administrative Code in Section I and in Section IV under the Agency Administration heading.

Revised Section III.C. to expand the definition of "requester" in light of a recent federal case, *Lee v. Minner*.

Revised Section IV under the Investment Office heading to reflect an amendment to the Public School Employees' Retirement Code dealing with investment information, 24 Pa. C.S. §8502(e).

Included references to the Health Insurance Portability and Accountability Act of 1996 in Section IV under the Benefits Administration heading.

Sections Amended December 12, 2008

Updated the Policy to comply with the new Right-to-Know Law of February 14, 2007, 65 P.S. §67-101, et seq., effective January 1, 2009.

Sections Amended June 12, 2014

Revised the listing of items under the “Public Information” and “Non-Public Information” columns in the Investment Office Section for clarification and editorial purposes.