

**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: December 9, 2005  
Date Last Reviewed by Chief Counsel: January 3, 2006

## Public School Employees' Policy on Public Information

### I. GENERAL POLICY.

The Public School Employees' Retirement Board ("Board") shall 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.

The release of information pertaining to PSERS' business is controlled by the "Right-to-Know Law" ("RTKL"), 65 P.S. §§66.1-66.9, [Management Directive 205.36](#) (Amended November 5, 2003), the "Sunshine Act," 65 Pa. C.S. §§ 701-716 et seq. 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 agencies when responding to requests made pursuant to the RTKL and to exceptions received from the denial of such requests; and the "Sunshine Act" requires public agencies to hold certain meetings and hearings open to the public.

Other applicable authorities include Administrative Agency Law, 2 Pa. C.S. §§501-508; [Administrative Code \(particularly 71 P.S. §502\)](#), 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 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.

Consistent with this policy, PSERS may, from time to time, make available on its web site ([www.psers.state.pa.us](http://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 public record as follows:

Any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and any minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons: Provided, that the term "public records" shall not mean any report, communication or other paper, the publication of which would disclose the institution, progress or result of an investigation undertaken by an agency in the performance of its official duties, except those reports filed by agencies pertaining to safety and health in industrial plants; it [public record] shall not include any record, document, material, exhibit, pleading, report, memorandum or other paper, access to or the publication of which is prohibited, restricted or forbidden by statute, law or order or decree of court, or which would operate to the prejudice or impairment of a person's reputation or personal security, or which would result in the loss by the Commonwealth or any of its political subdivisions or commissions or State or municipal authorities of Federal funds, excepting therefrom however the record of any conviction for any criminal act. (Emphasis added.)

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. RTKL Office and RTKL Officials.

PSERS' Press Office is the designated office to receive RTKL requests ("RTKL Office"), and PSERS' Press Secretary is the designated official to receive RTKL requests ("RTKL Official"). Telephone inquiries to the RTKL Office 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

Press Secretary  
Public School Employees' Retirement System  
5 N. Fifth Street  
Harrisburg, PA 17108-0125

Facsimile

Press Secretary  
(717) 772-5372

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.

PSERS' Executive Office is the designated office to receive and docket exceptions filed by requesters ("RTKL Exceptions Unit"), and PSERS' Executive Director is the designated official to consider exceptions, conduct hearings as appropriate, and issue final determinations that resolve exceptions ("RTKL Exceptions Official"). Exceptions must be stated in writing, signed by the person taking the exceptions and addressed to:

Mail or Other Means of Delivery

Executive Director  
Public School Employees' Retirement System  
5 N. Fifth Street  
Harrisburg, PA 17108-0125

Facsimile

Executive Director  
(717) 772-5372

Exceptions and any submission in connection with exceptions must be delivered to PSERS by U.S. Mail, by facsimile, courier delivery, overnight or parcel delivery service, or in-person, and must (unless U.S. mail is utilized) be received within 15 business days after the mailing date of a written denial or 15 calendar days after the date of a deemed denial. Improperly addressed exceptions will not stop the tolling of the 15-day exception period. Improperly addressed exceptions will be deemed received on the date they are actually received by the RTKL Exceptions Unit, and not the date of the postmark. If U.S. mail is utilized, provided the envelope is properly addressed and the postmarked date is legible, the date of the postmark shall be the date of filing. If the postmark date is not legible, the date of receipt is the prior business day immediately preceding the date of actual receipt. Exceptions submitted by e-mail will not be accepted.

C. Who has the Right to Know?

A "requester" can be any person or corporation, regardless of residency within or outside of the Commonwealth. Although the RTKL specifically provides that a "requester," defined as "a person who is a resident of the Commonwealth," shall have the right to obtain public records, the residency requirement is no longer enforced in light of Lee v. Minner, 458 F.3d 194 (3d Cir. 2006) (in which the court held that an in-state residency requirement in Delaware's public records law was unconstitutional because it

~~discriminated between citizens of the state and noncitizens. This definition is interpreted to include a corporation created under the laws of Pennsylvania. PSERS may, at its discretion, require a requester to produce photographic identification to verify that the requester is a resident of Pennsylvania.~~

~~Not uncommonly, however, PSERS receives requests from parties domiciled outside of the Commonwealth, especially from businesses that may use the requested information for commercial purposes. In such cases, PSERS may exercise its discretion in either declining to comply with the request or providing the records as a courtesy to the requesting party. Where the records are provided as a courtesy, the written response shall advise the requester that the release of such records does not constitute an acknowledgment that they are public records. Among the factors that will be considered in exercising discretion are the administrative burdens of compliance, the benefits to be derived by PSERS (i.e., cooperating in a survey that would be of interest to PSERS), the risk that the information could be used to PSERS' or the membership's detriment, establishing an unintended precedent for the handling of other information requests, and other considerations that may be relevant to the particular request at hand. Discretionary allowance of a request by PSERS in one instance shall not require PSERS to provide the same information or information of the same type in the future to any other requester, including any requester whose request was previously allowed.~~

#### 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) reasonably describe the information sought, and (5) provide the address to which PSERS should send its response. PSERS does not accept anonymous, verbal or e-mail requests for records. Requests sent via facsimile are acceptable.

#### E. Business Hours.

PSERS' regular business hours are from 7:30 a.m. to 4:00 p.m. on each business day. Any request or exception 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 that reflect prevailing costs of labor, materials, and postage.

A fee in the amount of 15 cents per page shall be charged for photocopies. The cost of labor and materials for compliance-related services, including but not limited to retrieval or redaction services, shall be assessed in accordance with Management Directive 205.36, as amended.

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' RTKL Office 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 reputation or personal security. 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

- Unfunded commercial mortgage applications
- 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

- Court orders, including domestic relations orders
- Hearing examiners' reports
- Administrative hearing records
- Briefs and pleadings filed of record

## Non-Public Information

- Legal opinions
- Research/internal memoranda
- Medical records
- Letters to clients
- 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

## 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. Any information that could have a detrimental effect on an investment by the Board or otherwise compromise the Board's fiduciary obligations or standard of care under the Retirement Code is non-public information.~~

~~———— PERS will apply the above test in responding to requests for investment-related records that are not specifically addressed below.~~

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
- 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, letter agreements, subscription agreements and other alternative investment contracts if, and to the extent that, the release of such information would be reasonably likely to have a detrimental effect on PSERS' interest in an investment
  - (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; and

(ix) Partnership agreements, letter agreements, subscription agreements and other alternative investment contracts, 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).

~~(x) Investment advisory agreements, consultant agreements, brokerage agreements, and other investment services agreements~~

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

• Asset allocation plans and investment guidelines and objectives

## AGENCY ADMINISTRATION

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

In reference to the competitive bidding process, Management Directive M215.3 (the "Field Procurement Handbook") provides that bids and proposals are not public records unless or until a contract is executed with one of the bidders or offerors. If a contract is executed, only the selected firm's bid or proposal becomes public information.

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
- The selected sealed proposal of the proposer with whom a contract has been entered in the case of Requests for Proposal at the time the bids are tabulated
- Identity of evaluation committee members
- 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, except the selected proposal after execution of a contract
- 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
- Evaluation committee recommendations and point scores of offers

## BENEFITS ADMINISTRATION

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 would impair a member’s reputation or personal security. See 65 P.S. § 66.1(2); Tribune-Review Publishing Co. v. Westmoreland County Housing Authority, 795 A.2d 1094 (Pa. Cmwlth. 2002). In addition, 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 was upheld by the Commonwealth Court in Rowland v. Public School Employees’ Retirement System, 885 A. 2d 621(Pa. Cmwlth. 2005). 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

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 – 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

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.