

MEMORANDUM OF LAW

DATE: January 26, 1995

TO: Doug McCalla, Investment Officer, via Lawrence B. Grissom,
Retirement Administrator

FROM: City Attorney

SUBJECT: Production of City Employees' Retirement System's Fixed
Income and Equity Holdings under the California Public
Records Act

QUESTION PRESENTED

You have forwarded to us a letter from Dylan Lissette, Data Acquisition Manager for CDA Investment Technologies, Inc. In his letter, Mr. Lissette requests a recent listing of the fixed income and equity securities held in City Employee's Retirement System's ("CERS") portfolio. You have asked us whether you are legally obligated to provide this information to Mr. Lissette.

SHORT ANSWER

The California Public Records Act ("CPRA"), which is codified in Government Code sections 6250-6270, is the law governing the production of public documents. After reviewing the CPRA, we conclude that you must provide this information to Mr. Lissette. The analysis which supports this conclusion follows.

ANALYSIS

The CPRA declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in the state. Cal. Gov't Code Section 6250. The general policy of this act is to favor disclosure of public records; however, the policy is also mindful of individual rights to privacy. *Black Panther Party v. Kehoe*, 42 Cal. App. 3d 645, 653 (1974).

The CPRA requires public agencies to hold public records open to inspection during the office hours of the agency. Cal. Gov't Code Section 6253. Citizens have the right to inspect any public record, unless specifically excepted in the CPRA. Cal. Gov't Code Section 6253.

The Retirement Board, which is responsible for administering the benefits of CERS, is a public agency subject to the disclosure requirements of the CPRA. Cal. Gov't Code Section 6252(b). The requested documents (a listing of fixed income and equity securities held in CERS' portfolio) qualify as public records within the definition set forth in Cal. Gov't Code Section 6252(d).

Cal. Gov't Code Section 6252(d) defines "public records" as follows: "'Public records' includes any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics"

The securities held in CERS' portfolio relate to the investment business and activity of CERS and are prepared, used and retained by the Retirement office. They are thus public records subject to disclosure.

This interpretation is consistent with that of the Attorney General who opined that general financial records of the Public Employees' Retirement System ("PERS"), including records of investments, reports of actuaries and public agency contracts and related correspondence, are subject to public inspection or may be made available for inspection. 27 Op. Cal. Att'y Gen. 267, 270 (1956). This opinion was based on the fact that these items relate to the overall operation of the system as opposed to the individual members of the system.

Similarly, the securities held in CERS' portfolio relate to the overall operation of CERS and not to the individual members of the system. As such, the Retirement Board, via the Retirement office, must make this information available unless the information is specifically exempt from the CPRA or if the public interest served by not making the records public clearly outweighs the public interest served by disclosure of the record. Cal. Gov't Code Section 6255.

Cal. Gov't Code section 6254 sets forth an exhaustive list of records exempt from the disclosure requirements of the CPRA. After thoroughly reviewing this list, we conclude that the information being requested is not expressly exempt from the CPRA.

In addition, based upon the information we have, there appears to be no basis to conclude that the public interest is better served by not disclosing the requested information. The request for a list of securities does not affect the privacy rights of individual members of CERS. Rather, the request involves the public's right to know who holds CERS' dollars. Based on the policy favoring disclosure of such public information, the public interest in disclosing the information clearly outweighs any public interest served by not disclosing the information. We recommend, therefore, that the requested information be made available to Mr. Lissette.

The CPRA requires that a local agency shall determine, within 10 days after the receipt of a request for a copy of records, whether they will comply with the request. Cal. Gov't Code Section 6256. The local agency shall immediately notify the person making the request of such determination and the reasons for the determination. Cal. Gov't Code Section 6256.

The request from Mr. Lissette was received in your office on January 17, 1995. You should, therefore, contact Mr. Lissette no later than January 27, 1995, and apprise him of whether you intend to provide

him with the information he requested.

Mr. Lissette is entitled to any identifiable public record or copy thereof. If his request requires computer data, you may determine the form in which to provide it. Cal. Gov't Code Section 6256. Since the CPRA requires disclosure of an identifiable public record, you may provide Mr. Lissette with a listing of the fixed income and equity securities held by CERS in the form which it currently exists. In other words, you are not required to compile the information in a form different than which you already have it.

Once the copies of the requested documents are made, you may only charge Mr. Lissette the direct costs of the duplication. Cal. Gov't Code Section 6257. This cost may only include the cost of copying the documents. It may not include costs for tasks associated with retrieval, inspection and handling of files from which the copy is made. *North County Parents Organization for Children with Special Needs v. Department of Educ.*, 23 Cal. App. 4th 144 (1994).

CONCLUSION

CERS, which is administered by the Retirement Board, is subject to the disclosure requirements of the CPRA. A listing of the fixed income and equity securities held in CERS' portfolio are public records subject to disclosure under the CPRA. The CPRA requires that you contact Mr. Lissette no later than January 27, 1995, to communicate to him whether you intend to make this information available to him.

If you agree to provide Mr. Lissette with this information, you only need to make copies of the requested information in the form in which you currently possess it. You may charge Mr. Lissette the reasonable cost for the duplication of the documents; however, you may not recover costs for the time associated with the retrieval, inspection and handling of the information.

Should you have any further questions, please do not hesitate to contact me at 236-6220.

JOHN W. WITT, City Attorney

By

Jennifer K. Hooper

Deputy City Attorney

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