

<b>Pennsylvania Municipal Retirement Board</b>	
Policy Statement No. 2009- 2	
Adopted, January 22, 2009	

Right-to-Know Policy

## **I. GENERAL POLICY**

The Pennsylvania Municipal Retirement System (“System”) shall provide access to public records to the fullest extent authorized by law and Commonwealth of Pennsylvania policy, consistent with its duties to protect the interests and rights of the System and its members.

The release of information pertaining to the System’s business is controlled by the Right to Know Law, (“RTKL”) 65 P.S. §§67.101 - 67.3104, and the “Sunshine Act,” 65 Pa. C.S. §§701-716. The RTKL governs the inspection and copying of agency records; 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; General Rules of Administrative Practice and Procedure, 1 Pa. Code Ch. 31-35; Pennsylvania Municipal Retirement Law, as amended, 53 P.S. §§881.101- 881.413; and Pennsylvania decisional law. Additionally, the Pennsylvania Municipal Retirement Board has elected to adopt the provisions of Management Directives 205.36; 215.1 and 505.18, as amended, but has also reserved the right to modify them as deemed appropriate for a State-affiliated entity.

In promulgating this Right-to-Know Policy, this Board recognizes and gives 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 the System and to the Pennsylvania Municipal Retirement Fund (the “Fund”).

To facilitate access to documents of public interest and reduce the need for RTKL requests, the Board may, from time to time, make available on its website ([www.pMrs.state.pa.us](http://www.pMrs.state.pa.us)) certain financial and investment information as it deems appropriate and upload contracts to the Department of Treasury website, [www.patreasury.org](http://www.patreasury.org), pursuant to the requirements of Chapter 17 of the RTKL, 65 P.S. §§67.1701-67.1702. The Department of General Services publishes many solicitations, awards, and contracts on its website at <http://www.emarketplace.state.pa.us>.

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

## **II. DEFINITION OF PUBLIC RECORD**

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 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.**

The System, although not specifically required to follow the provisions of Management Directive 205.36 because of its status as a State-affiliated entity, elects to follow the procedure set forth in said directive 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 the System's AORO. Telephone inquiries to the AORO should be made to (717) 787-2065. Requests for public information must be in writing, signed by the requester, and addressed as follows:

Mail or Other Means of Delivery

Open Records Officer

Pennsylvania Municipal Retirement System

P.O. Box 1165

Harrisburg, PA 17108-1165

Facsimile

Open Records Officer

(717) 783-8363

Email requests shall be made to: ra-staff@state.pa.us

Submittal of a request to any other address or facsimile number does not give rise to any obligation on the part of the System 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 without the Commonwealth.

A request from the following shall not be considered a RTKL request by virtue of the position or office held and shall be deemed as authorized to review and copy any public record of the System:

- System’s legal counsel
- System’s contracted auditors
- System’s contracted actuary
- Auditor General of the Commonwealth
- State Treasurer of the Commonwealth

A request from any member of the governing body of a municipality that has contracted with the System for the administration of a pension plan or a designated pension plan contact person shall not be considered a RTKL request and shall be authorized to review and copy, subject to the fees adopted by the Board, any public record of the System that references the particular pension plan the System administers on their behalf:

**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) reasonably describe the information sought, (4) provide the address to which the System should send its response, (5) state that the request is being made pursuant to the RTKL, and (6) be addressed to the System’s AORO. The request may be on the form developed by the Office of Open Records (“OOR”). The System does not accept anonymous or verbal requests for records. Requests may be sent via mail, facsimile or email.

**E. Business Hours.**

The System’s regular business hours are from 7:45 a.m. to 4:15 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, the System shall designate a public access room in its headquarters located at 1010 North Seventh Street, Suite 301 Eastgate Building, Harrisburg, PA during regular business hours.

**G. Member Authorization for Release of Information.**

The System 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 the System. The System will limit its release of information to the extent provided in the member's authorization.

**H. Notice to Member**

When the System complies with a RTKL request for public information regarding an individual member's account, the System's AORO 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 the System. 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 be retained in the member's file.

**I. Determination**

The AORO shall consult with the System's Office of Chief Counsel when rendering determinations on requests for information.

**J. Form of Information**

The AORO will provide a public record to a requester in the medium requested if the record exists in that medium. Otherwise, the public record must be provided in the medium in which it exists. If a public record only exists in one medium, the System is not required to convert that public record to another medium, except that if the public record is only available in an electronic form, the System will print it out on paper.

This Policy applies only to existing records. The System is under no obligation to create or generate new records or to organize or reorganize file systems to respond to requests.

**K. Redaction**

The AORO will not deny access to a record based upon the fact that portions of the record are not public records and, as a result, not subject to disclosure. The AORO shall redact portions of records that are not public records and produce the portions that are public records.

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**L. Fees**

The System 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.

The System reserves the right to change the fees it assesses from time to time.

The System may waive fees on the basis of hardship or other relevant factors, in its sole discretion. The System may, in its discretion, require payment of fees in advance if the fees are expected to exceed \$100. No charge shall be assessed to individuals representing a governmental entity requesting information in their official capacity as a representative of the plan.

**M. Questions**

Questions regarding this Policy may be directed to the System's AORO at (717) 787-2065 or as follows:

Mail or Other Means of Delivery  
Open Records Officer  
Pennsylvania Municipal Retirement System  
P.O. Box 1165  
Harrisburg, PA 17108-1165

Facsimile  
Open Records Officer  
(717) 783-8363  
Email  
ra-staff@state.pa.us

**IV. AGENCY INFORMATION**

In responding to requests for public records, the System shall consider its fiduciary obligations under the Pennsylvania Municipal Retirement Law. For example, premature disclosure of information that could be detrimental to the System's interests in an investment would be prohibited if it would violate the Board's fiduciary duty to the Fund.

Questions relating to investment matters will require case-by-case analyses by staff. As a general rule, however, 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 following is a non-exclusive list that illustrates common examples of public and non-public information:

## **BOARD**

### **Public Information**

- Board agenda
- Approved board minutes
- Financial reports
- Reports of purchases and sales of securities
- Proxies voted
- Board reports on annuities
- Disability annuities
- Board resolutions
- Signing resolutions
- Board position papers
- Board member names and association/  
group they represent
- Reports, summaries and other documents  
presented to the Board in advance of, or at,  
public meetings that qualify as public  
records under the RTKL

### **Non-Public Information**

- Proposed or pending investments if  
premature release of information could be  
detrimental to the System's 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 that are labeled  
confidential, protected by attorney-client  
privilege, or attorney work product, unless  
disclosure is approved by the Office of  
Chief Counsel
- Research/internal memoranda
- Medical records
- 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**

Any information that could adversely affect the value, if disclosed to the public, of investments by the Board or otherwise compromise the Board’s fiduciary obligations under the Retirement Law 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 manager performance/status reports
- Investment portfolio – list of assets
- Investment plans – annual and 10-year
- Investment advisory agreements, consultant agreements, and other investment services agreements
- Asset allocation plans and investment guidelines and objectives

#### **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

**AGENCY ADMINISTRATION**

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. §67.708(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.

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
- Response to Requests for Proposal after a contract has been entered
- Audited financial statements
- Board-approved actuarial valuations/evaluations
- Board-approved actuarial notes/tables
- All executed contracts and procurement documents
- Assets attributed to a municipality

**Non-Public Information**

- Summary report on proposals
- Independent auditor's report to management
- Special staff reports that warrant protection under this policy
- Material protected by attorney-client privilege
- Competitive proposals, prior to the execution of a contract, and financial information contained in a proposal used to demonstrate economic capability
- Identity of evaluation Committee and notes, point scores of committee members and recommendations

**BENEFITS ADMINISTRATION**

Any information available to a member from his own member file, including information that would otherwise be protected, shall be released upon written authorization by the member that is directed to the System.

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,



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in responding to requests for records that contain members' personal information, for those matters not specifically addressed below, the System 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. Staff is authorized to release any pertinent information from active and retired members' files to any employing agency as required in conducting retirement business, with the exception of beneficiary nomination information in cases where no payment is due. Specific benefit calculations are not provided to the public; however, the System will provide actuarial tables, retirement formulas, and the necessary data for preparing calculations upon request.

The Board bases its policy not to release addresses or dates of birth upon *Sapp Roofing Co. v. Sheet Metal Workers' International Assoc.*, 713 A.2d 627 (Pa. 1988) and *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."

In addition, the System 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 by law or rule of court. Further, the System 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. All subpoenas received by PMRS should be forwarded to the Office of Chief Counsel for review. Requests for information from investigatory bodies 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- Active Member**

- Account balance, including excess interest, if any
- Retirement service credited/amount and type
- Current salary/salary history
- Employing municipality
- Benefit applications (subsequent to effective date)

**Non-Public Information – Active Member**

- Address/telephone number
- Correspondence
- Beneficiary designation
- Date of birth
- Present value of account
- Retirement estimates
- Social Security number
- Medical reports and other information protected under the Health Insurance Portability and Accountability Act of 1996

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**Public Information- Other than Active Member**

- Monthly annuity, initial payment, refund, final settlement, or any other type of vouchered expenditure from the Retirement Fund
- Beneficiary/designated survivor (subsequent to member's death)
- Option selected
- Present value of account
- Date of retirement
- Credited pension service

**Non-Public Information -Other than Active Member**

- Address/telephone number
- Social Security number
- Beneficiary/survivor designation prior to member's death
- Specific annuity calculations
- Medical reports and other information protected under the Health Insurance Portability and Accountability Act of 1996
- Date of birth

Effective  
Date and  
Repeal:

This policy repeals the previously adopted Right To Know Policy (Policy Statement 07-2) and is to be effective immediately.

Adoption  
Date:

Adopted at the January 22, 2009 meeting of the Pennsylvania Municipal Retirement Board.

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James B. Allen, Secretary

JBA:jba  
1/16/2009