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**Policy Name:** SERS Second Amended and Restated Right-To-Know Law Policy  
**Policy Number:** 2010 POL-EO-08  
**Effective Date:** Applicable to Requests Made After December 31, 2008  
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**Applies To:** All SERS Offices  
**Contact Person:** SERS Legal Office

## Policy

The Commonwealth of Pennsylvania State Employees' Retirement System (SERS) shall provide the public with access to public records to the fullest extent required by law consistent with its duties to protect the interests and rights of SERS and its members. This policy relates to the release of information pertaining to SERS business in compliance with the Pennsylvania Right-To-Know Law (RTKL), 65 P.S. §§67.101-3104, and any management directives issued pertaining to the RTKL, each as may be amended from time to time. The Chief Counsel of SERS' Legal Office should be consulted in cases in which this policy does not provide sufficient guidance to reach a determination.

In promulgating this policy, the State Employees' Retirement Board (Board) is cognizant of the statutory and decisional law on the subject and the fiduciary and administrative duties it owes to the members of SERS and its obligations to the citizens of the Commonwealth of Pennsylvania (Commonwealth) to operate in an open manner. Retirement benefit options and payments and individual recipients' names may be released to the public when such release would not be inconsistent with the RTKL and the State Employees' Retirement Code.

In situations where a resident's right to access competes with the foregoing duties of the Board, the standards listed below shall, when appropriate, be applied.

- The release of medical records to the public shall be in compliance with state and federal laws, which protect the privacy of health care information by restricting the disclosure of records.
- As a general rule, the disclosure of information that will be detrimental to SERS' investments shall be protected if disclosure would breach the fiduciary responsibility set forth in 71 Pa. C.S. §5931 or the requirements of 71 Pa. C.S. §5902(e) or if such information constitutes or reveals a trade secret or confidential proprietary information as provided by 65 P.S. §§ 67.708, 3101.1.
- Disclosure of nonpublic information in response to court orders and subpoenas shall not result in disciplinary action.
- The names and home addresses of any active members, vestees or annuitants who are law enforcement officers, enforcement officers or psychiatric security aides (as defined by 71 Pa. C.S. §5102), members of the judiciary (as defined by 71 Pa. C.S. §5102), prison personnel employed by the Pennsylvania Department of Corrections, officers employed by the Pennsylvania Board of Probation and Parole and similarly-situated members shall

not be released to the public because disclosure may impair such members' personal security.

Consistent with this policy, SERS may, from time to time, make available on its website certain financial and investment information to facilitate access to such information and reduce time delays and processing efforts associated with formal written RTKL Requests.

Should this policy ever conflict with the RTKL, as it may be amended from time to time, the RTKL shall control and this policy shall be deemed modified only to the extent necessary to conform it to the RTKL.

## **Definitions**

**Business Day** – Any Monday, Tuesday, Wednesday, Thursday or Friday, except those days when SERS Central Office in Harrisburg, Pennsylvania is closed for all or part of a day due to a state holiday; pursuant to Management Directive 530.17, Partial and Full Day Closings of State Offices, or Management Directive 505.7, Personnel Rules, Section 8.7, due to severe weather (such as blizzard or ice storm); due to natural or other disaster; or due to the request or direction of local, state or federal law enforcement agencies or officials.

**Deemed Denied** – A RTKL Request is Deemed Denied if one of the following conditions occurs, subject to extension agreed to by the Requester: (i) SERS fails to respond within the initial 5 Business Day period after receiving a RTKL Request; (ii) SERS extends the 5 Business Day period by up to 30 calendar days, but then fails to respond by the end of that extended period; or (iii) SERS notifies the Requester that it requires additional time to issue or respond in excess of the permitted 30 calendar day period.

**Exceptions** – The exceptions to the definition of Public Record under the RTKL include but are not limited to those set forth in 65 P.S. §§ 67.708, 3101.1.

**Financial record**-- Any of the following:

- (1) Any account, voucher or contract dealing with:
  - (i) the receipt or disbursement of funds by an agency; or
  - (ii) an agency's acquisition, use or disposal of services, supplies, materials, equipment or property.
- (2) The salary or other payments or expenses paid to an officer or employee of an agency, including the name and title of the officer or employee.
- (3) A financial audit report. The term does not include work papers underlying an audit.

**Mailing Date** – The date (1) affixed to a Response from the Open-Records Officer to a RTKL Request, which is to be the date the Response is deposited in the United States Mail.

**Open-Records Officer** – Any official or employee designated by the Board or, if authorized by the Board, by the Executive Director to receive and respond to RTKL Requests. The Board or, if

authorized by the Board, the Executive Director may designate a chief Open-Records Officer and one or more individuals as assistant Open-Records Officers.

**Public Record** – A record, including a financial record, of a Commonwealth or local agency that:

- (1) is not exempt under the Right-to-Know Law;
- (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.

**Privilege**-- The attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court interpreting the laws of this Commonwealth.

**Record** -- 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.

**Records Custodian** – Any person having custody, possession or control of a record.

**Redaction** – The eradication of a portion of a record by any means while retaining the remainder.

**Requester** – A person who is a legal resident of the United States and requests a record pursuant to the RTKL. The term includes an agency.

**Response** – Access to a record or SERS' written notice to a requester granting, denying or partially granting and partially denying access to a record.

### **Form of RTKL Request**

All RTKL Requests must:

- Be submitted in writing;
- State the name and address of the Requester;
- Set forth the address to which the Response should be addressed; and
- Identify or describe the records sought with sufficient specificity to enable SERS to ascertain which records are being requested.

**Note:** SERS will accept RTKL Requests submitted on a uniform form published by the Office of Open Records in the Pennsylvania Bulletin and on the Office of Open Record's Internet website or on a substantially similar SERS' form.

All RTKL Requests must be submitted in writing via United States mail, facsimile, e-mail or hand delivery to the Open-Records Officer and be properly addressed as follows:

Mail: SERS Open-Records Officer  
30 North Third Street, Suite 150  
Harrisburg, PA 17101-1716

Facsimile: SERS Open Records Officer  
(717)783-7300

Hand delivery: SERS Open-Records Officer  
30 North Third Street, 1<sup>st</sup> Floor Receptionist  
Harrisburg, PA

E-mail: [RA-sersrtk@pa.gov](mailto:RA-sersrtk@pa.gov)

For purposes of this policy, SERS' business hours are from 8:30 a.m. to 4:00 p.m. on any Business Day.

### **Who Has the Right to Know**

The RTKL provides that, unless otherwise provided by law, a Public Record shall be accessible for inspection and duplication by a Requester in accordance with the RTKL. SERS may, at its discretion, require a requesting party to produce proper identification to establish that the party is a legal resident of the United States.

SERS may receive requests for records from parties that are not legal residents of the United States, especially from businesses that may use the requested records for commercial purposes. In such cases, SERS may exercise discretion in either declining to comply with the request or providing the records as a courtesy to the requesting party. Among the factors that may be considered by SERS are the administrative burdens of compliance, the benefits to be derived by SERS (e.g., cooperating in a survey that would be of interest to SERS), the risk that the information could be used to SERS' or a member's detriment, and other considerations that may be relevant to the particular request at hand. Voluntary disclosure by SERS shall not require SERS to provide the same records to others or to provide future records of the same type to anyone.

### **Procedure for Responding to RTKL Requests**

SERS shall respond only to written RTKL Requests delivered via United States mail, facsimile, e-mail or hand delivery. All RTKL Requests must be directed to the SERS Open-Records Officer. The time limitations set forth herein do not take effect until the SERS Open-Records Officer receives the RTKL Request. (Any RTKL Request received by SERS after the close of SERS' business hours, as set forth above, shall be deemed received on the following Business

Day.) Upon receipt of a RTKL Request, the SERS Open-Records Officer will take the following actions:

- Date stamp the RTKL Request;
- Assign a tracking number to the RTKL Request;
- Record the RTKL Request in the system used by SERS for tracking RTKL Requests;
- Compute the day on which the 5-Business Day period will expire and make a notation of that date on the first page of the RTKL Request (the day that a RTKL Request is received or deemed received is not counted for this purpose);
- Make an electronic or paper copy of the RTKL Request, including all documents submitted with it and the envelope, if any, in which it came;
- Create a file for the retention of the original RTKL Request, a copy of the Response, a record of verbal or written communications with the Requester and a copy of other communications.

The SERS Open-Records Officer shall be responsible for the issuance of interim and final Responses to all RTKL requests. Upon receipt of a RTKL Request, the SERS Open-Records Officer shall render a final Response within 5 Business Days from the date the RTKL Request is received, unless an interim Response is warranted and issued within that time.

An interim Response may be sent on or before the last day of the 5-Business Day period to extend the period for a final Response. Such interim Response must notify the Requester that the RTKL Request is being reviewed, must state a reasonable date that a final Response is expected to be provided, and must set forth one of the following reasons justifying the need for additional time:

- The RTKL Request requires Redaction of a Public Record;
- The RTKL Request requires the retrieval of a record stored in a remote location;
- A final Response within the 5-Business Day period cannot be accomplished due to bona fide and specified staffing limitations;
- A legal review is necessary to determine if a record is a Public Record subject to access under the RTKL;
- The Requester has not complied with SERS' policies regarding access to Public Records;  
or
- The anticipated cost of complying with the RTKL Request exceeds \$100 and the Requester has not prepaid such amount. If SERS requires prepayment, the time for issuance of a final Response shall be tolled from the time the demand for prepayment is made until such time as payment is actually received.
- The extent or nature of the request precludes a response within the required time period.

If an interim Response is issued, then a final Response should be sent within 30 calendar days from the end of the 5-Business Day period. Failure to comply with either the 5-Business Day or the 30-calendar day time limit will result in the RTKL Request being Deemed Denied unless the requester agrees in writing to a further extension.

**Note:** If the anticipated cost of complying with the RTKL Request exceeds \$100 and the Requester does not pay such amount within 30 calendar days after he/she is informed to do so by an interim Response, the RTKL Request will be considered withdrawn.

The SERS Open-Records Officer shall conduct an initial review of each RTKL Request according to the following intake procedure:

- Review the RTKL Request to determine whether a basis exists for rejecting or forwarding the RTKL Request, in whole or in part, without further consideration, including but not limited to the following:
    - A. The requesting party is not a legal resident of the United States;
    - B. Lack of specificity;
    - C. The requested records are not within the RTKL's definition of Public Record; or
    - D. If the SERS Open-Records Officer after making a good faith effort to determine that the requested records are not in the possession or control of SERS, has personal knowledge that the requested records are in the possession or control of another Commonwealth agency subject to the RTKL, then the SERS Open-Records Officer may forward the request to that agency's appropriate SERS Open-Records Officer and notify the requester forthwith.
  - Determine whether the RTKL Request must be granted, in whole or in part, without further consideration;
  - Draft any Response denying or granting access to the identified records as necessary;
  - Review any questions with RTKL Counsel as necessary;
  - Draft written instructions to Records Custodians regarding compliance with the RTKL Request as necessary; and
- Determine if the anticipated cost of complying with the RTKL Request will exceed \$100 and if prepayment will be required and, if so, present the Requester with a demand for prepayment.

If the SERS Open-Records Officer does not identify a basis for denying the RTKL Request in its entirety without further consideration, the SERS Open-Records Officer shall forward the RTKL Request or relevant portions thereof to potential Records Custodians. Once the SERS Open-Records Officer forwards the RTKL Request or relevant portions thereof, it shall be the responsibility of each such potential Records Custodian to conduct a good faith investigation to determine if he/she has custody of any of the requested records. It shall be the responsibility of each such potential Records Custodian to promptly inform the SERS Open-Records Officer whether he/she has possession of any of the requested records, and, if so, the estimated cost of providing such records.

If any such potential Records Custodian knows or believes that another official, employee or agent of SERS has possession of the requested records, he/she shall forward the RTKL Request to that person and shall inform the SERS Open-Records Officer of this immediately.

The SERS Open-Records Officer shall issue a final Response within the aforementioned time periods, which Response shall specify that the RTKL Request is (1) granted, (2) denied, or (3) granted in part and denied in part. If a RTKL Request is denied, in whole or in part, the SERS Open-Records Officer must specify the following in the Response:

- A description of the records requested;
- The specific reasons for the denial, including a citation of supporting legal authority (if based on a determination that a record is not a Public Record, the specific reasons for such determination shall be included);
- The typed or printed name, title, business address, business telephone number, and signature of the SERS Open-Records Officer on whose authority the denial is issued;
- The Mailing Date of the Response;
- The procedure to appeal the denial of access under the RTKL.

**Note:** SERS is not required to create a Public Record that does not already exist, nor is SERS required to compile, maintain, format or organize a Public Record in a manner that the agency does not currently do so.

### **Physical Access to Public Records**

The Public Records of SERS shall be accessible for inspection and duplication by any Requester during the hours of 8:30 a.m. to 4:00 p.m. on any Business Day. A Requester wishing to inspect SERS' Public Records on site shall provide a written request to the SERS Open-Records Officer who shall determine on an ad hoc basis the time and place where such Public Records shall be made available to a Requester and the manner of duplication that shall be available.

SERS may maintain certain Public Records in electronic form. For those who wish to inspect a paper copy of portions of such Public Records, SERS shall print the portions of such Public Records that the Requester wishes to see. If the Requester wants to keep the pages from such printed portions or to receive the record in electronic form, SERS will charge a fee.

### **Notice to Member**

At the time SERS issues a Response to a RTKL Request for records regarding a member account, SERS may provide written notice to that member that identifies (a) the name of the Requester and (b) the information provided by SERS. For those RTKL Requests that seek records regarding the accounts of multiple members, notice may be provided by publication via the website, newsletter or any other reasonable method.

Neither members nor employers have the right to approve or disapprove a request for SERS' records. Records regarding a member may be furnished to current agency employers and former employers upon request without written notice to the member.

### **Member Authorization for Release of Information**

In addition to any release of records in response to a RTKL Request, any information available to a member from his/her own member file shall be released upon written authorization from such member and confirmation by SERS.

### **Redaction**

SERS shall redact those portions of a record that are prohibited from disclosure and may redact those portions that otherwise are not public records. The Public Record portions of a record that may remain after such redaction shall be subject to release.

### **Fees\***

The fees applicable to all RTKL Requests shall be determined by the Open-Records Officer.

- Charges for other services and materials will be determined on a case-by-case basis based upon the applicable cost to SERS. These include, but are not limited to, charges for the following:

- A) PC Diskette or Compact Disc copies
- B) Microfilm/microfiche and other forms of copies
- C) Postage
- D) Redaction (based on hourly wage and benefits)
- E) User fee for printing or copying records from SERS' computers
- F) Certification of copies
- G) Employee time for preparing printed responses (based on hourly wage and benefits)
- H) Employee time for preparing electronic responses (based on wage and benefits)
- I) Computer time for preparing requested records

The SERS Open-Records Officer, after consultation with the Executive Director, may waive fees on the basis of hardship or de minimus charges.

**Note:** The SERS Open-Records Officer may require a Requester to prepay if the fees required to fulfill the request are expected to exceed \$100. If SERS requires prepayment, the time for providing the records as to which SERS has indicated it will grant access shall be tolled from the time the demand for prepayment is made until such time as payment is actually received.

A Requester who is informed that his/her RTKL Request has been granted but that prepayment is necessary due to the anticipated costs exceeding \$100 shall have 30 calendar days to make payment to SERS. If SERS does not receive payment by the end of this period, SERS will

consider the RTKL Request to have been withdrawn and will purge the file accordingly. Any future attempt to procure the identified records after this time must be done by initiating a new RTKL Request.

### **Appeals**

If a written request for access to a record is denied or deemed denied, the Requester may file an appeal with the Office of Open Records within 15 business days of the mailing date of SERS' response or within 15 business days of a deemed denial. The appeal shall state the grounds upon which the Requester asserts that the record is a Public Record and shall address any grounds stated by SERS for delaying or denying the request.

*\*Amended December 8, 2010, by Board Motion and Resolution 2010-55.*

### **Document Properties**

- a. **Document Owner:** Executive Office
- b. **Document Author:** SERS Legal Office
- c. **Summary of Changes:**

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11/20/15		Barbara Kiral	Assigned Policy Number