

May 16, 2019

Kelly Fox
Division Chief
California Public Employees' Retirement System (CalPERS)
Office of Stakeholder Relations
P.O. Box 942701
Sacramento, CA 94229

Re: Bloomberg Public Records Act Request #4359

Dear Ms. Fox:

I am Newsroom Counsel to Bloomberg L.P. the owner and operator of Bloomberg News. I write with respect to Bloomberg News reporter Mr. John Gittelsohn's California Public Records Act (the "CPRA") request (the "Request"), identified above. Mr. Gittelsohn requested:

- (1) A copy of the 41-page BCG report prepared in December about private equity Pillars III and IV, which was discussed at the March 22, 2019 investment committee meeting; and
- (2) Transcripts of the closed-session discussions about Pillars III and IV that are not related to investments.

Despite the fact that some of the information appears already to be public and some appears to be clearly releasable, CalPERS denied Mr. Gittelsohn's Request in full. In its denial, CalPERS cited a variety of statutes, some of which seem to have greater relevance to the material requested than others, including:

- Government Code section 6254(k) (exempting "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, but not limited to, provisions of the Evidence Code relating to privilege.");
- Government Code section 6254.26 (exempting, among other things, specific information related to alternative investment vehicles");
- Government Code section 6255 (stating that an entity withholding records must show that "the public interest serviced by not disclosing the record clearly outweighs the public interest served by disclosure of the record.");
- Evidence Code section 1040(b)(1) (exempting official information where disclosure is prohibited by a federal or state statute)
- Government Code section 1126(c)(16) (allowing closed voting on investment decisions); and

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- Government Code section 11126.1 (exempting the minute book kept by a clerk at a closed meeting).

CalPERS wholesale denial is in error. I write to urge you to reconsider CalPERS's denial and provide all responsive, non-exempt documents immediately.

CalPERS did not provide any explanation of how these statutes apply and, accordingly, failed to meet its burden to justify the withholding of records under the CPRA. See Long Beach Police Officers Assn. v. City of Long Beach, 59 Cal. 4th 59, 67 (2014). However, even had CalPERS attempted to justify its denial, it would not be able to do so for the entirety of the records requested. It is our understanding that the two proposed programs (Pillars III and IV) are private equity strategies to each invest \$1-2 billion annually in late state tech and health-care related startups and in operating companies that would be held for a long time period, respectively. The investments would be managed by external teams hired and financed by CalPERS. On March 18, the board endorsed pursuit of the two plans on a 10-3 vote. The reports requested were referenced in an open session by boardmember Margaret Brown, who cited risks outlined by BCG but not made public. Ms. Brown's comments indicate that the report made conclusions about potential risks and recommendations for mitigation measures that pertain to general strategies of the investments, rather than specific investment decisions, contracts or financial results (which, of course, would not be available for an investment that hasn't yet commenced). In fact, discussions of specific investments under Pillars III and IV prior to March 18 would have been premature and out of compliance with the motion approved that day. According to the official meeting transcript,¹ the Investment Committee authorized staff to "develop the structure and guiding principles" of the new strategies and required a "prudent person opinion" and board approval before any funding commitment would be finalized. Bloomberg also believes some of the information may relate to returns on past investments, which are already subject to public reporting on an annual basis under AB 2833.

While Bloomberg is not in a position to know for certain whether the withheld materials contain material exempted under any of the statutes cited, the fact that CalPERS withheld the entirety of Mr. Gittelsohn's Request strongly suggests that CalPERS has failed to conduct the segregability analysis required by the CPRA. Even if the requested documents contain some amount of information that is exempt from disclosure pursuant to the cited exemptions CalPERS's withholding of the documents in their entirety is improper. Cal. Gov't Code 6253(a) ("Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law."). It is difficult to believe that the entirety of the records requested, which Bloomberg believes relate to two possible new high-level strategies, would be exempt, even under the lengthy list of statutes laid out above.

¹ See https://www.calpers.ca.gov/docs/board-agendas/201903/invest/transcript-ic_a.pdf.

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Moreover, in order to withhold a document or portion of a document under Section 6255, CalPERS must show that "the public interest serviced by not disclosing the record clearly outweighs the public interest served by disclosure of the record." The burden is on CalPERS to establish a "clear overbalance" on the side of nondisclosure. Michaelis Montanari & Johnson v. Super. Ct., 38 Cal. 4th 1065, 1071 (2006). Merely citing various statutes is not sufficient and CalPERS has offered no further analysis of the public interests involved here. In fact, there is immense public interest in the disclosure of these documents. CalPERS serves 1.9 million current and former employees and retirees, whose pension payments depend on the returns generated by CalPERS investment strategies and decisions. CalPERS also has about \$28 billion invested in private equity assets and seeks ways to expand its exposure to achieve its annual 7 percent investing return target. Its private equity plans are of great interest to members of the industry and investors more generally.

For all of the above reasons, Bloomberg believes that CalPERS's wholesale denial is in error and it would be a clear abuse of CalPERS discretion to continue to withhold the entirety of the requested documents. We hope that CalPERS will comply with its obligations and produce any non-exempt records that Mr. Gittelsohn requested as soon as practicable and no later than 20 days from receipt of this letter. If you have any questions or require additional information, please contact me directly at (212) 617-3671.

Sincerely,



Katherine Kriegman Graham, Esq.

Cc: John Gittelsohn



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March 21, 2019

John Gittelsohn
1999 Avenue of the Stars
Los Angeles, CA 90067
johngitt@bloomberg.net

Dear Mr. Gittelsohn:

**Subject: PUBLIC RECORDS REQUEST – PRIVATE EQUITY PILLARS III AND IV,
TRACKING #4359**

This letter is in response to your Public Records Act (PRA) request received by the Office of Stakeholder Relations on March 19, 2019. In your correspondence, you stated:

Can I get a copy of a 41-page BCG report prepared in December for the board about private equity Pillars III and IV, which was discussed at the March 22, 2019 investment committee meeting?

Can I get transcripts of closed-session discussions about Pillars III and IV that are not related to investments, which should be disclosable under the Bagley-Keene Open Meeting Law, as described in public comments March 22 by attorney David Soares.

After a search and review of our records staff determined that the records you requested are exempt from disclosure pursuant to Government Code sections 6254(k), 6254.26 and/or 6255. (For your reference, please also see Evidence Code section 1040(b)(1) as well as Government Code sections 11126(c)(16) and 11126.1.)

By providing you this information we consider your PRA request closed. If you have any further questions regarding this request, please contact the Office of Stakeholder Relations at the above address or telephone number (916) 795-3055.

Sincerely,

A handwritten signature in blue ink that reads "Kelly L Fox".

KELLY FOX
Division Chief
Office of Stakeholder Relations