

JJ Jelincic
366 Jane Court
Hayward, California 94544

August 24, 2020

David Teykaerts
Manager Stakeholder Strategy
Office of Stakeholder Relations
400 Q Street
Sacramento, CA 95811

Via email

Re: PRA tracking #5268

Dear Mr. Teykaerts:

The most surprising thing about your “I don’t wanna and ain’t gonna” reply to my Public Records Act request was your claimed need to protect the criminal elements involved in the private debt program.

Your response is inconsistent with the Public Records Act. It is also inconsistent with Marcie Frost’s statement “We will always do everything we can to be transparent and accountable in our mission to deliver retirement security to California’s public employees.” It is however, consistent with your ongoing practices related to the PRA and transparency.

You assert “Section 6254.26* exempts certain information concerning alternative investments in which public investment funds invest.” As you well know Section 6254.26 uses the following definition: “ “Alternative investment” means an investment in a private equity fund, venture fund, hedge fund, or absolute return fund.” You have previously claimed that this section exempts information about inflated real estate evaluations. In the current legislative session, the California

Public Employees' Retirement System (CalPERS) sponsored AB 2473 to include private debt as an exempted asset.

This bill did not make it out of committee and was CalPERS' acknowledgement that private debt was not included as an "alternative investment". Since you do not feel bound by the plain language of the statute, I am obligated to point out that, at least relative to real estate, you lost the 2010 litigation over this very issue in First Amendment Coalition v. California Public Employees' Retirement System.

This asserted exemption is clearly made in bad faith.

Section 6254 (k) reads "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege"

You cite Evidence Code section 1040. I can only assume that you know Evidence Code section 1040 et seq. is about protecting the identity of confidential police informants. If the disclosure of borrowers and the term of the loans would actually disclose confidential informants the private debt program is a cesspool in which no prudent fiduciary would invest trust assets.

Which is it, a bad faith claim of exemption, a cesspool or both?

You also cite Evidence Code section 1060 which reads "If he or his agent or employee claims the privilege, the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice." You do realize that Evidence Code section 1060 et seq. refer to **criminal** cases? I would assume you do since you chose to cite it. I guess that is why a confidential informant might get exposed.

Which reinforces the question, a bad faith claim of exemption, a cesspool or both?

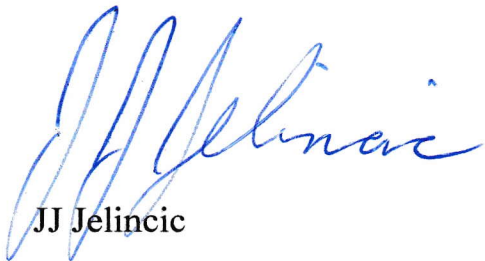
You also claim exemption under Section 6255(a) which exempts records from disclosure when the public interest served by not disclosing the records clearly outweighs the public's interest in disclosure. You offer no basis for claims that the public is **clearly** better off not knowing what CalPERS is doing with trust assets than knowing. This is a section which agencies tend to use when trying to protect their own interests or avoid embarrassment. However, the California Attorney

General and the courts have consistently shut down such claims. It is the interests of the public and not the interests of the agency that are to be considered.

It took you 39 days to provide your non-responsive reply, even after I pick the fiscal year end just to aid your search knowing year end reports would be readily available.

Please try again. Since you have already done the research, I hope your definition of "prompt" is more consistent with Webber's.

Sincerely,



JJ Jelincic

* All references to statutory sections are Government Code unless otherwise specified.

cc: Marcie Frost
Members, Board of Administration
Senator Jerry Hill
Senator Hannah- Beth Jackson
Senator Bob Wieckowski
Assembly Member Freddie Rodriguez
Assembly Member Mark Stone
Assembly Member Bill Quirk