



California Corporate & Securities Law

CalPERS Loses Public Records Act Fight

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Three years ago, I petitioned the California Public Employees Retirement System (CalPERS) to adopt regulations regarding requests for information pursuant to the California Public Records Act, Government Code § 6250 *et seq.* The purpose of my request was to improve the public's access to information concerning CalPERS. Because California's statutory process for the adoption of regulations involves public notice and comment as well as review by the Office of Administrative Law, it was, and remains, my belief that CalPERS' compliance with these procedures should enhance accountability and transparency.

CalPERS, however, didn't see it my way and refused to adopt its guidelines as regulations in compliance with the California Administrative Procedure Act (APA). CalPERS' refusal was unusual because other state agencies, including the Department of Corporations and the Department of Managed Health Care, had already adopted their disclosure guidelines as regulations in compliance with the APA. *See e.g.*, 5 CCR § 20310 (Library Board); 10 CCR § 250.9 (Dept. of Corporations); 16 CCR § 2524.1 (Board of Vocational Nurse and Psychiatric Technician Examiners); and 28 CCR § 1006 (Dept. of Managed Health Care).

Although CalPERS initially refused to accept my suggestion that it post its Public Records Act guidelines on its website, it ultimately did so and they can be read [here](#). The guidelines, however, are not consistent with the requirements of the Public Records Act.

I was therefore interested to see that CalPERS recently lost a Public Records Act fight with the First Amendment Coalition. Here is a copy of San Francisco Superior Court Judge Woolard's [order](#). The fight concerned disclosure of records relating to CalPERS' investment in a private real estate fund. The First Amendment Coalition has already posted on its [website](#) the 1,700 records that Judge Woolard ordered CalPERS to produce.

Notably, Judge Woolard found that CalPERS assurances of confidentiality did not convert public records into private records. Coincidentally, Broc Romanek wrote today in [TheCorporateCounsel.net blog](#) about Congress' decision to [repeal](#) and revise Section 9291 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

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