



# California Corporate & Securities Law

## CalPERS Responds

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Earlier this week, I [wrote](#) about the many scandals that have been swirling about the California Public Employees Retirement System. A good sign that an organization is feeling embattled is when it sets up a website dedicated to providing responses. Two years ago, CalPERS did just that when it created its "[CalPERS Responds](#)" website and included a prominent link to the new site on the CalPERS website.

Marc Lifsher's *Los Angeles Times* [story](#) regarding CalPERS' [e-mail retention policy](#) must have touched a nerve in Sacramento because CalPERS posted a [response](#) this week on its "CalPERS Responds" website. I was also contacted by Brad Pacheco, the Division Chief for CalPERS' Office of Public Affairs. He wrote to tell me:

- CalPERS' policy is not new as reported;
- "CalPERS was not given opportunity to respond to the statement that raises concerns among government groups that CalPERS could be 'destroying evidence of misdeeds'";
- CalPERS' policy should be compared to the practices at other large agencies; and
- CalPERS trained its staff regarding its policy.

Mr. Pacheco called Mr. Lifsher's story "misleading at best and wrong". He also supplied the following statement by CalPERS' General Counsel, Peter Mixon:

*"The suggestion in the story that CalPERS has thwarted any federal or state law enforcement effort in connection with the administration of the agency's email policies is wrong. On the contrary, CalPERS has been praised by both federal and state authorities for the assistance it has provided to them in their investigations. CalPERS remains committed to protecting the interests of its members and beneficiaries, and continues to support the investigatory efforts of federal and state authorities."*

Government agencies, including CalPERS, understandably have an interest in communicating with the public. However, when they do so, they are using taxpayer money. The use of taxpayer money on public communications is most likely to be legitimate when the communications directly fulfill the agency's purpose.

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The members of the CalPERS' board of administration are fiduciaries with a constitutional obligation to discharge their duties "solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system." California Constitution, Article XVI, Section 17(b). On its face, it seems hard to square this obligation with the use of funds to maintain a website to respond to press stories critical of the system. The line between defending CalPERS as an institution and providing benefits to participants and their beneficiaries seems tenuous, at best.

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