



California Corporate & Securities Law

Can CalPERS Keep a Secret?

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Last week, I [wrote](#) about Judge Woolard's decision to order the California Public Employees Retirement System to disclose documents to the [First Amendment Coalition](#) about a real estate investment. This isn't the first time that CalPERS has tangled with the First Amendment Coalition. A few years ago, the First Amendment Coalition sued CalPERS in an effort to obtain disclosure of CalPERS' records relating some of its other investments.

Ultimately, a legislative compromise was worked out in the form of [SB 439](#) (Simitian) which added a new section to the Public Records Act in the form of Government Code § 6254.26. That statute excepts from disclosure specified records regarding "alternative investments" in which public investment funds invest. An "alternative investment" is an investment in a private equity fund, venture fund, hedge fund, or absolute return fund. Interestingly, the legislature didn't tackle defining "venture fund" or "hedge fund". Perhaps, the legislature agreed with [Justice Stewart](#): "I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it . . .".

There is no exception if the public investment fund has publicly released the information and there are exceptions to the exception for a long list of items. Moreover, items that are excepted from the exception are not considered trade secrets.

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