

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

Date: 06/02/2010

Time: 01:08:00 PM

Dept: C06

Judicial Officer Presiding: Luis Rodriguez

Clerk: Cheryl Henderson

Reporter/ERM:

Bailiff/Court Attendant:

Case No: **30-2009-00330855-CU-WM-CJC** Case Init. Date: 12/18/2009

Case Title: **California Foundation For Fiscal Responsibility vs. Orange County Employees Retirement System**

Case Category: Civil - Unlimited

Case Type: Writ of Mandate

EVENT ID/DOCUMENT ID: 70994244

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Court having fully considered the arguments of all parties, both written and oral, as well as the evidence presented:

The Court, having taken the above-entitled matter under submission on 05/06/10, now makes the following ruling:

The matter having been submitted, the Court having considered the briefs and oral arguments of counsel the Court now issues its ruling.

Petitioner California Foundation For Fiscal Responsibility(CFFR), and Marcia Fritz (hereafter Petitioners) motion for issuance of a Writ of Mandate against Respondent Orange County Employees Retirement System (OCERS) is one of law and of first impression in this Court. Petitioners demand an order compelling the release of information and data maintained by OCERS specifying the gross amount of retirement annuity or retirement benefit coupled with the name of the retiree and the agency the retiree last worked for constitutes a public record subject to disclosure under Government Code Section 6259 which has been refused by OCERS. The Court agrees with the Petitioners. The Petition for Writ of Mandate is granted. A Writ of Mandate pursuant to this Ruling shall be issued. Counsel for CFFR and Marcia Fritz are directed to prepare a Writ of Mandate consistent with this Ruling, for the Court's consideration.

The basic facts are not in dispute. OCERS is an agency subject to the provisions of the California Public Records Act (CPRA) The parties also agree that OCERS is required to maintain contribution records of its members(Gov. Code §31599) to meet its legal obligation to pay its members a pension, retirement, or annuity allowance.(Gov. Code§31600). Finally it is undisputed that OCERS must issue an annual financial statement which incorporates basic data relating to the payments made during the year. (Gov. Code. §§31597,31598) Where the parties disagree is whether OCERS is required to release the individual names of members, their last employing agency along with the retiree member's gross

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payment amount? Petitioners claim that this data is part of the financial information maintained by the OCERS therefore a public record. OCERS counters that names and last prior public employer is outside of its collection, and maintenance obligations because such information must be separately extracted from its financial data base thus it is information that is specifically exempted from CPRA disclosure under Government Code § 31532 which precludes release by OCERS of the "sworn statements or individual records of its members". As explained below the court finds that the names and prior service public employer is data which does not warrant exemption as an "individual record" but information which is itself public. Thus, attaching this data to the retirement amount allowance is a public record of OCERS subject to disclosure and access by the public under current law.

It is settled that exemptions to the CPRA are to be construed narrowly to give effect to the policy of public disclosure and access. (See, *New York Times v. Superior Court*, (1990) 218 Cal. App 3d 1579,1585) and in *International Federation of Professional and Technical Engineers Local 21 v. Sup.Ct (Contra Costa Newspapers)* (2007) 42 Cal.4th 319. The Court construed Penal Code §832.7, which is similar to §31532 and provides that peace officer personnel records are confidential. The court held that salary is a matter of public interest and not primarily a matter of the individual's private business. (Id. at 341.) Individuals must have access to government files to hold governments accountable for their actions. (Id. at 328-329.) Personal embarrassment is outweighed by the strong public policy supporting transparency in government and the strong public interest in knowing how it spends its money "to expose corruption, incompetence, inefficiency, prejudice and favoritism." (Id. at 331, 333.) Similarly, in *Commission on Peace Officer Standards and Training v. Sup. Ct* (2007) 42 Cal.4th 278, the LA Times asked for detailed information police officers (names, employment dates, reasons for termination). The court held these were public records, not personal records even though some information was also in the officer's personal records. (Id. at 290.) Privacy interests did not outweigh the public interest in disclosure. (Id. at 303.)

It is clear that this ruling by the Supreme Court regarding the public nature of compensation, the identity of the recipient receiving the compensation is incidental and may be necessary to effectuate the policy embedded in favoring disclosure of information related to the public employee's compensation and benefits which are paid by the public. Thus, here in connection with revealing the name and last public employer this information is relevant to decipher the disclosed compensation information. Thus, this is related information necessary to effectuate the disclosure of compensation information as mandated by the PCRA. Further this information has not been viewed as information that has been identified as being "personal" in nature. For example, medical, home addresses or family information have been subject to a balancing of privacy v. public interest. (Government Code §§6254 (c), 6255; *BRV Inc v. Superior Court* (2006) 143 Cal. App 4th 519). This Statutory and judicial analysis regarding compensation and its related information applies equally to this situation to authorize release of the compensation information that Petitioners have demanded of OCERS. Moreover, OCERS appears to accept the plethora of cases cited by petitioner that a public employee's pension payments is merely deferred compensation for work performed during employment (See *Miller v. State of California* (1977) 18 Cal.3d 808, 814) Instead OCERS argues without offering any authority that disclosure should apply to active public employees but not to retired employees because they are not doing the people's business. The court agrees if that were the only issue but as *International, supra*, makes clear the public interest is assuring that there is visibility when public monies are expended.

The fact that Supreme Court addressed disclosure in the context of active versus retired does not meaningfully alter the public character of OCERS retirement compensation payments such that it renders public disclosure inapplicable to retirees and applicable to active public employee's as they both collect for their current or past service salary or retirement payments from public monies. Nevertheless the Court understands and is sensitive to the concerns of OCERS and its members that if this information is released to the public it may cause embarrassment or other "mischief" as expressed by OCERS. However, the Court must be cognizant that this information implicates public funding since OCERS mandated retirement payments are derived from public funds as such the public has a right to know the amount, the prior public source, and to which payees these funds are being paid to insure the transparency and accountability set forth in the PCRA in connection with a public agency's duties. Here,

OCERS expenditure of public funds to comply with the retirement rights of its members. These are therefore records of OCERS as such the data requested is a public record subject to disclosure not an exempt "individual record" .

The court's ruling that the specific information requested by Petitioner is a public record and not an "individual record exempted under Government Code §31532 and therefore subject to disclosure is limited to only the gross amount paid to the payee member, the name of the payee, and identification of the prior public employer of the named payee and no other information contained in the records OCERS. OCERS request for a protective order in light of the court's ruling is denied.

Court orders clerk to give notice.