Request for Names and Benefit Amounts of TRS Retirees
Balancing the Public Right to Know and the Individual's Privacy Interest

Test for Balancing Public Right to Know and Individual Right of Privacy - Montana Legal Determinations Regarding Disclosure of Information Pertaining to Public Employees

The legal determinations fall into two basic categories: 1) public right to know about conduct (typically misconduct) of public employees; and 2) public right to know the identity of and details about the compensation and benefits provided to public employees. There are no Montana Supreme Court cases balancing the public right to know and individual privacy rights regarding the identity of public employees or information about the compensation and benefits provided to them. Rather, the determinations in this category have all been issued through Attorney General Opinions.

Public employee conduct cases are typically concerned with the position held by the employee, the degree of trust reposed in the position, and whether the conduct of the employee evidenced by the requested disclosure evidences a violation of the public trust or otherwise reflects on the employee's fitness for or ability to do his/her job, and whether the public's right to know those details exceeds the individual's right to privacy *or the public agency interest in keeping the information about public employee conduct confidential*. For example, it has been held that public employees may have a right of privacy in their performance evaluations because the determinations stated by an evaluator in a performance evaluation may lack objective criteria, the employee may not have had an opportunity to rebut conclusions reached by the evaluator, and there is a potential that evaluations, if required to be publicly disclosed, could be used by supervisors to abuse employees. In addition, allegations involving an employee's character, integrity, honesty, and personality may reasonably be determined to be subject to a right of privacy that exceeds the public right to know. In addition, there is frequently consideration of the agency's (as representative of the public) interest in keeping evaluation and disciplinary information and determination confidential in order to facilitate employer investigations, protect and enhance frank communications between employers and employees, etc.

In contrast, the analysis of requests for public information pertaining to the expenditure of public funds begins from a very firm understanding that the public has an almost absolute right to know how the government spends their tax dollars, and to whom public funds are paid. Therefore, the AG opinions related to requests for information identifying public employees (and private employees being paid for work on publicly funded projects) begin with a firm presumption of the public right to know, require a showing of an objective, and substantial individual privacy interest to overcome the public right to know, and not including consideration for any interest of the State or the agency in applying the balancing test. In other words, the State/agency does not have a separate interest (including a privacy interest) related to its expenditure of public funds – the only interest that can overcome the public's right to know how public funds are spent and to whom they're paid is the privacy interest of an individual (generally, of course, the individual who receives the payment).

While determinations balancing the right to know and the right of privacy in both categories should be (and essentially are) made applying the same balancing test established by the Montana Supreme Court; the application of the test to requests for disclosure of public employee names and compensation/benefits has been phrased somewhat differently throughout the history of the applicable AG opinions than has the test as applied by the Supreme Court in the employee conduct cases. The elements of the test as applied and described in the two categories of cases are neither incompatible nor inconsistent, but they are described somewhat differently.

Test Articulated in Prior Decisions

The Montana Supreme Court has stated that an examination of a request under the public right to know provision of the Montana Constitution requires a three-step process:

1. *Consider whether the provision applies to the particular political subdivision against whom enforcement is sought.* TRS is clearly a state agency subject to the Constitutional provision, so no further discussion of this point is necessary.
2. *Determine whether the documents (information) in question are "documents of public bodies" subject to public inspection.* While state statute previously referred specifically to "documents of public bodies" as being subject to public inspection, the public right to know Constitutional provision was determined to apply to "public information" in any format, so was not limited by the language "public document' reference in statute. In addition, HB 123 (2015) revised the statute to now specifically refer to "public information" as being open to public inspection. The public right to know clearly applies to the form of information being requested in this case, so no further discussion of this point is necessary.
3. *If the first two requirements are satisfied, decide whether a privacy interest is present, and if so, whether the demand of individual privacy clearly exceeds the merits of public disclosure.* Clearly, step 3, in and of itself, actually contains at least two steps –
   a) *decide whether a privacy interest is present (frequently described as determining "whether the individual has a subjective or actual expectation of privacy")* The 2011 attorney general opinion acknowledges that there is at least a subjective expectation of privacy on the part of TRS members in the amount of their retirement benefits, so no further discussion of this point is necessary.
   b) *determine whether the demand of individual privacy clearly exceeds the merits of public disclosure (frequently expressed as determining "whether society is willing to accept the expectation of privacy as reasonable") .*

In reality, step 3(b), itself, contains multiple "steps," which are the very considerations upon which the balancing test balances. Fundamentally, you cannot weigh the public right to know against the individual right of privacy without, in some way, describing/quantifying/qualifying the substance of the public's interest and the individual's interest. An agency applying the balancing test must do the following things:

i. *Identify the individual's interest in keeping the information private,*
ii. *Identify the public interest in disclosure of the information,, and*
iii. *Determine whether the demand of individual privacy clearly outweighs the demand of public disclosure.*

MONTANA AG OPINIONS

In order to identify the legal substance of an individual right of privacy, and then to weigh it against the public's right to know, it is necessary to understand the basic premises of the right at issue. Unfortunately, this is also the step in the analysis and the critical information that is the most difficult to "nail down" in case law. Like all individual rights and liberties, the right of privacy is largely conceptual and subjective, so the right almost always ends up being defined by argument rather than by plain example.

The type of privacy interest at issue in the current request for TRS member names and benefit amounts is referred to as disclosural or informational privacy. It refers to and is concerned with an individual's right to choose the time and circumstances under which and the extent to which the individual's attitudes, beliefs, behavior and opinions are to be shared with or withheld from others. Various AG opinions have described the "information to which a right of privacy attaches as:

- A right of privacy exists if the information at issue reveals facts about an individual's attitudes, beliefs, behavior, and any other personal aspect of that individual's life. See **37 Op. Att'y Gen. No. 107**.
- Information which reveals facts concerning personal aspects of an individual's life necessarily involve individual privacy. Information concerning commercial matters may or may not constitute private information, depending on the nature of that information. The recording of personal information such as one's attitudes, beliefs, or medical history, for example, would substantially infringe on one's privacy and therefore such information would be subject to disclosure if at all only upon a strong showing of public interest in its disclosure. See **38 Op. Atty Gen. Mont. No. 1.**
- Individual privacy is involved only when the information at issue reveals facts about an individual's attitudes, beliefs, behavior, and any other personal aspect of that individual's life. A state employee's job title reveals no personal aspect of that individual's life. It is related purely to his or her public role as a public employee. …I reach the same conclusion—no privacy right is infringed by the disclosure of a state employee's dates of employment and salary. …In this case, the slight demand of individual privacy does not outweigh the great merit of allowing the public to know who its employees are, what their jobs are, and how much they are being paid. Disclosing such information increases public confidence in its government, and consequently increases government's ability to serve the public. See **38 Op. Atty Gen. Mont. 375**, citing cases from other states:
    - The names and salaries of university employees are not "intimate details" of a "highly personal" nature. Disclosure of this information would not [result in] highly offensive public scrutiny of totally private personal details. The precise expenditure of public funds is not a private fact. … Even if the information being sought did infringe on the privacy of the employees, it would have to be disclosed because the minor invasion occasioned by disclosure of information which a university employee might have considered private is outweighed by the public's right to know precisely how its tax dollars are spent. **Penokie v. Michigan Tech. Univ., 287 N.W.2d 304 (1980)**
    - The names and salaries of state college employees are disclosable because the very existence of public institutions depends upon finances provided by the public

and it is not discordant to reason that the public would want to know and ought to know how their money is spent. In regard to the College's expressed fears that the exposure of such information will have an adverse effect upon its ability to operate the College, it seems there is even greater potential for evil in permitting public funds to be expended secretly. In this connection it is also to be realized that by accepting employment at the college its employees are not merely private citizens, but become public servants in whose conduct and salary the public has a legitimate interest. **Redding v. Brady, 606 P.2d 1193 (Utah 1980)**

- In **39 Op. Atty Gen. Mont. 62** (on request for disclosure of property record cards), the AG cited a Washington case that cited the Restatement (Second) of Torts §652D (1977):
    - [T]he Washington Supreme Court adopted the privacy standard of the Restatement, which limits the disclosure of any private matter that "would be highly offensive to a reasonable person and…is not of legitimate concern to the public. Examples cited are "sexual relations….family quarrels, many unpleasant or disgraceful or humiliating illnesses, most intimate personal letters, most details of a man's life in his home, and some of his past history that he would rather forget. …. The court applied this privacy standard and concluded:
        - In this case, we reach only the first step in the balancing process—determining whether the release of the materials sought would be highly offensive to a reasonable person. The appellant has not demonstrated that these records fall within this category. There is nothing in the materials that reveals intimate details of anyone's private life in the Restatement sense.
- In **44 Op. Atty Gen. Mont. No. 32,** the AG determined that county employee timesheets, including hours worked, designation of hours as regular, overtime, vacation, sick, holiday, compensatory, military/jury duty, and leave without pay were subject to public disclosure:
    - Generally speaking, the information shown does not reveal any personal aspects of a public employee's life. The most personal aspect involved would be a claim for nonwork pay. But even the disclosure of an employee's claim for vacation or sick leave pay does not entail disclosure of the particular circumstances associated with the claim.

The AG's determinations regarding the public right to know about public expenditures do not apply only to individuals who are currently (or were ever) public employees. Rather, several additional opinions make clear the public right to know applies to the expenditure of public funds even where the recipient is not a public employee:

- In **43 Op. Atty Gen. Mont. No. 6,** the AG determined the payroll record information, including the names, addresses, and wages of private employees working on a publicly funded project that is reported to the Department of Highways is subject to public disclosure.
    - [An] opinion concerning public employee information is not necessarily dispositive of an issue concerning private employees working on a publicly funded project. Nonetheless, I find the discussion of the nature of names and wages helpful, and I conclude that the names, addresses, and wages of employees

are not intimate details of a highly personal nature. Thus, with respect to the names, addresses, and wages of the employees, I find that while they involve a privacy interest, it is a minimal one. In comparison, the public has a substantial interest in verifying that employers receiving federal funds are complying with labor laws. In my opinion, the slight demand for individual privacy concerning names, addresses, and wages does not outweigh the merits of public disclosure.

- In **41 Op. Atty Gen. Mont. No. 35**, the AG determined that the "Buyer's Affidavit and Certification" form completed by individuals applying for the Mortgage Credit Certificate program through the Board of Housing were subject to the public right to know though the forms required disclosure of personal financial information concerning the house being purchased and the borrower's annual household income. The information was pertinent to establishing eligibility for the program and ongoing compliance with program requirements. While the AG determined there is an expectation of individual privacy related to the personal financial information, that privacy interest did not exceed the merits of public disclosure.
    - Although information pertaining to personal income is a matter of individual privacy, that privacy interest is necessarily diminished when the individual submits the information to the Board of Housing for the MCC program. The Board of Housing requires the information in order to determine eligibility to participate in the program. Once an MCC certificate is issued, the information serves to document the decision of the Board, and since the borrower is required to comply with the requirements of the program on a continuous basis, the information also serves as a basis for confirming compliance. Thus, upon submission to the Board, the information is integrated into a governmental function that directly benefits the borrower, and his objective expectation of privacy is thereby reduced.

      In comparison, the public has a substantial interest in verifying continued compliance of MCC participants, since the program involves the public treasury. Public disclosure is an added safeguard to assure that the Board administers the MCC program properly and that participants comply with the program's requirements.

CASES FROM OTHER STATES SPECIFIC TO DISCLOSURE OF PENSION BENEFITS

As evidenced by the AG opinions described above, the public right to know is grounded in the general expectation and requirement that government operates best when it operates in full view of its citizens. More specifically, analysis of the public's right to know related to the current information request must include consideration for the public's right to know:

- Who is receiving public funds, for what reason, and in what amount
- Whether the individuals receiving public funds are receiving them for appropriate purposes and in appropriate amounts
- Whether individuals receiving public funds are eligible to receive those funds and are otherwise in compliance with "program" requirements

While the argument may appeal- that a member of the public, without more information, could not "answer" any of those questions based on the member's name and benefit amount, keep in mind that the public right to know is fundamentally the right of each citizens to observe the operation of government and draw personal conclusions about the "correctness" or "incorrectness" of governmental operations and value of governmental programs and expenditures.

Like the 2011 AG Opinion requested by TRS, the courts in several states that have applied a balancing test to analyze the public right to know vs. individual privacy rights regarding public retiree names and benefit amounts have concluded that the individual right of privacy, if it exists at all, does not outweigh the public right to know. In those court's determinations, many of the same arguments for individual privacy raised to TRS have been addressed.

In ***Seattle Firefighters Union v. Hollister*, 1987 Wash. App. LEXIS 4276,** the Washington Appeals Court found that disability retirement records of police and firefighters were subject to public disclosure.

- The privacy right protected in the public disclosure act is of that information which a reasonable person would find highly offensive to disclose and which is not of public interest. (Citing the Restatement (Second) of Torts §652D (1977)) The comment to the Restatement illustrates what nature of facts are protected by this right to privacy:
    - Every individual has some phases of his life and his activities and some facts about himself that he does not expose to the public eye, but keeps entirely to himself or at most reveals only to his family or close personal friends. Sexual relations, for example, are normally entirely private matters, as are family quarrels, many unpleasant or disgraceful or humiliating illnesses, most intimate personal letters, most details of a man's life in his home, and some of his past history that he would rather forget. When these intimate details of his life are spread before the public gaze in a manner highly offensive to the ordinary reasonable man, there is an actionable invasion of his privacy, unless the matter is one of legitimate public interest.
- Inconvenience or embarrassment resulting from the fact of privacy alone does not violate the right of privacy contemplated by the privacy exemption of the statute. The files requested in this case contain information pertaining to back injury, asthma, emphysema, ulcers, and possible arterial problems. None of these are unpleasant, disgraceful, or humiliating illnesses. They are not the kinds of illnesses that would be highly offensive to reasonable people.
- The record indicates that the administration of disability retirement programs is of legitimate concern to the public.
    - Nobody questions that everybody has a public interest in the pension systems and their problems. I can take judicial notice that there's intense public interest in all pension systems both by those who help to get them sometime and by the taxpayers who are concerned about the cost. There's no question about the cost.

In ***Rhode Island Fed. Of Teachers v. Sundlin, 1991 R.I. Super. LEXIS 164,*** the Superior Court of RI held that names and pension benefit amounts, and service purchase information (amounts contributed, when contributions made, total number of credits purchased, total amounts paid for

credits, when credits purchased, type of credits purchased, amounts paid for each credit) under laws that allows service purchase at less than full actuarial cost or where not normally available to a system participant.

- This Court can perceive no overriding privacy interest on the part of the recipients of such uncommon benefits which would in any manner outweigh the citizenry's predominant interest in knowing exactly how its public fisc is being administered, and whether it is being administered in an even-handed fashion.
- People receiving money from the State for services rendered forfeit some privacy interest. If a public employee's privacy and confidentiality interests may be sacrificed for services rendered, it follows ineluctably that such interests have even less significance where, as here, the recipients of public funds provided no services at all to the State of Rhode Island, but simply bought credit for expansive pension benefits at substantially less than going rate.
- This Court holds that those who would enrich themselves with pension benefits flowing from such special legislation cannot shroud their gain in the mantle of confidentiality or secrecy when they avail themselves of the public fisc.
- In general, no public employee has a reasonable expectation of privacy with respect to the amount of public funds dispensed to him. This court detects no persuasive reason, and none has been advanced, why people benefiting from public funds will have their privacy invaded simply by disclosing records which demonstrate the manner in which they receive public funds. Moreover, the records in question here are much more akin to budgetary and fiscal records than they are personal in nature. Plainly, the content of these financial records does not in any imaginable fashion reach the level of "facts involving intimate details" of a "highly personal nature," nor would the disclosure of such information constitute an "unreasonable, substantial, or serious interference with the right of privacy."
- The citizenry has a far-reaching and compelling interest in knowing how and why its public monies are being spent. More particularly, it is essential that the populace be informed with precision of the manner and means by which such funds are being extracted from the State's retirement account through legislation which favors those who would not ordinarily be entitled to such benefits. Mere summaries or aggregate compilations of such information, without particularity, is antithetical to the citizens' substantial and paramount interest in knowing how the public fisc.

In ***Detroit Free Press, Inc. v. City of Southfield,*** **2005 Mich. App. LEXIS 3151,** the Michigan Court of Appeals found that the names and pension amounts of police and fire fighters were subject to public disclosure.

- Disclosure of retiree names and pension amounts does not constitute a clearly unwarranted invasion of the individual's privacy as the information is not of a personal nature – it does not reveal intimate or embarrassing details of an individual's private life according to the moral standards, customs, and views of the community. The information does not solely relate to private assets or personal decisions. Rather, the pension amounts reflect specific governmental decisions regarding retirees' continuing compensation for public service. Therefore, the pension amounts are more comparable to public salaries than to private assets.

- Although we might agree with defendants that the analysis might be different if the retirees' benefits were maintained in individually managed accounts such as individual retirement accounts (IRAs), defendants presented no such evidence. Rather, the evidence suggests that the pensions represent mathematical application of specific, quantifiable rates to general employment circumstances.
- Accordingly, the pension amounts do not constitute personal information because the precise manner of expenditure of public funds is simply not a private fact. It goes without saying that private information… Similarly, the retirees' publicly funded pensions – like their previous salaries – are of interest to the public, and only through disclosure can the public expect to prevent abuse. We note that a public official has no reasonable expectation of privacy in an expense the public bears to pay for income or any other benefit.

In ***Penn. State Univ. v. Althouse, 2007 Pa. LEXIS 2406,*** the Pennsylvania Supreme Court found that the names and salary and service history information of private university employees allowed to participate in the public pension plan is subject to public disclosure.

- The retirement system board's fiduciary duties do not prohibit disclosure of the information.
- Gramm-Leach-Bliley does not make the "public" a "non-affiliated third party" with respect to a public agency, so cannot prohibit disclosure of public records.
- The public interest asserted is the people's right to governmental transparency in the form of their right to know the identities of individuals receiving, or standing to receive, Commonwealth funds and the specific basis therefor. Such requests for information go to the heart of the right to know act and are precisely what the General Assembly intended when codifying the public's right to know.
- The public's interest in governmental transparency regarding receipts and disbursements of Commonwealth funds generally outweighs any recipient's or future recipient's right to privacy with respect to his or her name and relevant financial data. Any person who desires to keep such information private should refuse Commonwealth disburesments, and should decline SERS participation. The public has a right to know how the Commonwealth spends its money.
- Appellants may very well have a subjective expectation of privacy regarding their salaries and service history in light of the fact the PSU generally regards this information as confidential. However, while PSU is only a "state-related" university, SERS is a Commonwealth agency and therefore and extension of the Commonwealth. Individuals and private entities cannot reasonably expect the Commonwealth to keep secrets from its citizens regarding the disbursement of public funds, past, present, or future. It is inappropriate for the Commonwealth to keep information relevant to Commonwealth expenditures secret from the public under ordinary circumstances.
- Where privacy rights are raised as a bar to disclosure of information, our courts must determine whether the records requested would potentially impair the reputation or personal security of another, and must balance any potential impairment against any legitimate public interest. The issue of whether a particular disclosure is intrinsically harmful may be relevant in determining the weight of any privacy interest at stake for purposes of conducting the appropriate balancing test, as indeed intrinsic harmfulness

may affect the reasonableness of any privacy expectation. Intrinsic harmfulness, however, may not be regarded as the sole determining factor in the privacy analysis.

In ***Sacramento Cnty Employees' Ret. Sys. V. Superior Court,*** **2011 Cal. App. LEXIS 569,** the California Court of Appeals found that county retirees' names and benefit amounts were subject to public disclosure. Sacramento County Employees' Retirement System (SCERS) raised the following issues:

1. The righto to financial privacy of its members, to which the Court responded:
    - There is an individual right of privacy in financial information. However, public salary information is not private information that happens to be collected in public records. Rather, it is information regarding an aspect of government operations, the disclosure of which contributes to the public's understanding and oversight of those operations by allowing interested parties to monitor the expenditure of public funds.
2. A portion of each pension stems from member contributions or may be related to individual factors such as longevity of service and purchased service credits, to which the Court responded:
    - Each pension is also funded by public money and investment return, including investment return on public money. In addition, the taxpayer must back public pensions in case of investment failure. Further, a public pension is deferred public compensation.
3. The risk to retirees of financial abuse and public obloquy, to which the Court responded:
    - This argument edges in the direction of "unsupportable age-based stereotyping." Simply because many retirees are elderly does not mean they are too frail to weather disclosure of their individual pensions. Further, the concern for public hostility toward retirees seems overblown, or at least misdirected. Most people will understand that if a pension seems too generous, it is likely the responsibility of the public agency granting the pension, not the worker earning it under the prescribed formula. Thus, although some neighbors or others may be envious upon learning of a particular pension, the fact of the pension would not necessarily expose the member to public shame or abuse.
    - In contrast, the public has a legitimate interest in the information to expose potentially inappropriate employment practices, and to conduct follow-up research. As well, the fact of an individual's public retirement, like public employment, is not a personal matter.
    - Although unrealized threats must be considered in weighing the interest against disclosure, speculative threats must not. Further, in concluding public salaries must be released, our Supreme Court has held that the interest of employees in avoiding unwanted solicitations or marketing efforts is comparatively weak, and the request for disclosure does not include addresses or telephone numbers.
4. That the media outlet had alternative methods of collecting information and reporting on public pension issues, to which the Court responded:
    - Whether data is disclosable does not turn on who requests it. Further, the media outlet submitted declarations explaining a need to link pensions to specific people to determine if certain abuses occur.

In ***Union Leader Corp. v. New Hampshire Retirement System,*** **2011 N.H. LEXIS 153**, the New Hampshire Supreme Court found that retirees had a privacy interest in their names and benefit amounts, but that interest was comparable to public employees' privacy interest in their names and salaries. The Court held:

- Retirement benefits don't differ from salaries. Though the amount of the benefit may depend on an individual's particular and personal family and financial situation, such as divorce, separation or disability, which the retiree has a strong interest in keeping private, disclosure of the benefit amount does not reveal any of that information.
- Assertions that retirees differ from school teachers because they are more likely to be elderly and specifically targeted by fraudulent solicitations and scams are speculative at best.
- Disclosure of benefit amounts without names is not sufficient as names are necessary for anyone to know whether the payments were calculated in accordance with the formula, and for the public to judge whether the reported amount is consistent with the period of public employment. In other words, for the public to uncover governmental error, corruption, incompetence, inefficiency, prejudice and favoritism.
- The fact that the calculation of benefits is "formulaic" and can't be varied by the retirement system is not compelling because knowing how a public body is spending taxpayer money in conducting public business is essential to the transparency of government.
- Though only a portion of contributions to the system come from public employers, the retirement program is a form of deferred compensation for public employment and the taxpayers have the same interest in its operations as it does in the salaries of public employees.

In ***San Diego Cnty Employees' Ret. Sys. v. Superior Court,*** **2011 Cal. App. LEXIS 823,** the California Court of Appeals, Fourth District, found that the names of retirees, amount of benefits, and calculation methods were subject to public disclosure to a nonprofit entity seeking to educate government decision makers and the public on public employee pension benefit issues.

- Openness in government is essential to the functioning of a democracy. Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process. Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.
- Generally, individuals have a legally recognized privacy interest in their personal financial information. However, to the extent some public employees may expect their salaries to remain a private matter, that expectation is not a reasonable on and is, accordingly, entitled to diminished weight in the balancing test we apply. We conclude that likewise public employees lack a reasonable expectation of privacy in an expense the public largely bears after their retirement.
- The names of pension recipients combined with their pension amounts is not information of a personal nature. The information does not solely relate to private assets or personal decisions. Rather, the pension amounts reflect specific governmental decisions regarding retirees continuing compensation for public service. Therefore, the pension amounts are

more comparable to public salaries than to private assets. Retirees' publicly funded pensions – like their previous salaries – are of interest to the public, and only through disclosure can the public expect to prevent abuse.

- Without surnames, petitioners cannot obtain information about a retiree's employment history, including past employers, past salaries, or years of employment. Without this information it is impossible to determine whether the person's pension is correctly or unfairly calculated. By comparing pensions to salaries and employment history for named individuals, the following pension abuses can be identified:
    - Pension spiking;
    - Unearned service credits;
    - Double dipping;
    - Excessive compensation

  The public is, of course, interested in knowing the total amount of pension payments, but it also has a legitimate interest in knowing how pensions are calculated.
- Assertions that disclosure of information including retiree names and pension amounts will be used by criminals for purposes of elder fraud constitutes substantial evidence of potential harm, a relevant factor in the balancing test. However, the evidence also shows that criminals can obtain information on elderly retirees and their financial conditions by other means. An out of state opinion observes: "It is a fact of modern life in this age of technology that names can be used to obtain other personal information from various sources, but we conclude that is not sufficient to prevent disclosure of public employee names. Further, SDCERA presented no evidence of any actual adverse consequences from previous disclosures, another factor we may consider.
- We also disagree with SDCERA's assessment that retiree names are immaterial because pension benefits are vested, and thus no amount of investigation will change them, and because Fritz testified in her deposition that pension spiking is not illegal. CFFR's stated purpose is "to educate government decision-makers and the general public about California public employee retirement benefit issues, and to help solve the crisis of the unsustainable state and local retirement costs by developing fiscally responsible solutions that are fair to employees, employers and taxpayers. Even if CFFR's work cannot bring retrospective change, it may bring prospective change.
- The disclosure of pension information provides information about the government's management of public funds, in which the public has a legitimate interest. Pension benefits are not exclusively related to personal financial decisions of the former employee.

In ***Sonoma Cnty Employees' Ret. Assoc. v. Superior Court, 2011 Cal. App. LEXIS 1124,*** the California Court of Appeals, First District, held that the names and gross benefit amounts of county employees was subject to public disclosure.

- The asserted fact that only 20% of what SCERA pays in benefits comes directly from public employer contributions does not change the public character of the benefits. Most of the rest arises from investment returns on public contributions, with only 10% coming from the employees' personal contributions. Moreover, defined pensions are ultimately backed by the public treasury if investment returns and personal contributions are inadequate to fully fund them.

- Although SCERA members do make private contributions to their retirement, the program SCERA administers is in the end a form of deferred public compensation for county employees. As such, the taxpaying public has substantially the same interest in its operations and payout levels as it does in the salaries of county employees.
- With regard to the claimed special vulnerability of elderly persons to financial predation, we note our ruling will not result in the release of home addresses, telephone numbers, or email addresses of retirees or beneficiaries. We find SCERA's claim that releasing information to the public about pension benefits will expose retirees to annoyance and abuse too speculative to outweigh the public's interest in securing information about how public information is spent.
- We note articles published throughout the state that used information concerning public employee salaries to illustrate claimed nepotism, favoritism, or financial mismanagement in state and local government. We take judicial notice of media articles concerning asserted pension abuses in various jurisdictions around the state, in which it is alleged named individuals were able to unfairly boost their retirement income at the public's expense through controversial practices such as pension spiking and double dipping. While we venture no opinion on the validity of the allegations made in the articles, we agree that the public's interest in knowing the names and pension amounts of SCERA retirees and beneficiaries is substantial, and SCERA has failed to demonstrate such interest is clearly outweighed by the members' privacy interests.