

March 1, 2022

FILED VIA PACFILE

Michael Krimmel, Esq.
Prothonotary
Commonwealth Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 2100
Harrisburg, PA 17106-2575

RE: Submission of Record in:

Craig McCoy, Joseph DiStefano, and The Philadelphia Inquirer v. Public School Employees' Retirement System and AON Investments, USA, Inc, and Buck Global, LLC, No. 10 CD 2022

Dear Mr. Krimmel:

We hereby submit the record in the above-referenced matter. Section 1303 of the Right-to-Know Law, 65 P.S. §§ 67.101, *et seq.*, (“RTKL”), defines the Record on Appeal as “the record before a court shall consist of the request, the agency’s response, the appeal filed under section 1101, the hearing transcript, if any, and the final written determination of the appeals officer.” Pursuant to *Department of Transportation v. Office of Open Records*, 7 A.3d 329 (Pa. Commw. Ct. 2010), this record includes all “evidence and documents admitted into evidence by the appeals officer pursuant to Section 1102(a)(2).” The record in this matter consists of the following:

Office of Open Records Docket No. AP 2021-1856:

1. The appeal filed by Craig McCoy and Joseph DiStefano, reporters for The Philadelphia Inquirer (collectively “Requester”) to the Office of Open Records (“OOR”), received September 3, 2021.
2. Official Notice of Appeal dated September 7, 2021, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.

3. Email chain dated September 8, 2021, wherein the Public School Employees' Retirement System ("PSERS") asks for an extension to make a submission, the Requester grants the OOR additional time to issue a final determination and the OOR establishes a new submission deadline and updates the final determination due date.
4. Buck Global, LLC ("Buck") email dated September 16, 2021 seeking confirmation of their third-party submission deadline.
5. Email chain dated September 17, 2021 wherein the OOR confirms Buck's submission deadline and provides the Requester with a copy of PSERS' letter giving notice to Buck.
6. Buck's Request to Participate and submission dated September 21, 2021.
7. Request to participate and position statement from AON Investments USA, Inc. ("AON") dated September 21, 2021.
8. PSERS' submission dated September 21, 2021, with attachments and exhibits.
9. Requester's submission dated September 23, 2021.
10. Email chain dated October 6, 2021 wherein the Requester grants the OOR additional time to issue the final determination.
11. The Final Determination dated October 18, 2021, issued by the OOR.
12. Requester's Petition for Reconsideration dated October 27, 2021.
13. OOR's Grant of the Petition for Reconsideration dated November 8, 2021.
14. Entry of Appearance for Requester's counsel dated November 12, 2021.
15. Requester's submission on Reconsideration dated November 23, 2021.
16. PSERS' submission on Reconsideration dated November 23, 2021.
17. AON's submission on Reconsideration dated November 23, 2021.
18. OOR's Final Determination on Reconsideration dated December 6, 2021.

Prothonotary
Commonwealth Court of Pennsylvania

March 1, 2022
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The OOR has discretion to hold a hearing on appeals filed but chose not to do so in this matter. Therefore, there is no transcript to transmit. Certification of the record in this case is attached to this letter. Please feel free to contact us for any reason in connection with this matter.

Sincerely,

A handwritten signature in black ink that reads "Kyle Applegate". The signature is written in a cursive, flowing style.

Kyle Applegate
Chief Counsel

Attachments

cc: See certificate of service

Commonwealth of Pennsylvania

Agency Docket Number: AP 2021-1856

Appellate Court Docket Number: 10 CD 2022

I, Elizabeth Wagenseller, certify that the accompanying electronically transmitted materials are true and correct copies of all materials filed in the Office of Open Records and constitute the record for :

Craig McCoy, Joseph DiStefano,
and The Philadelphia Inquirer,
Petitioners

v.

Public School Employees'
Retirement System (Office of
Open Records),
Respondents

/s/ Elizabeth Wagenseller

03/01/2022

Executive Director

Volumes:

Agency Record (2)

**CRAIG McCOY, JOSEPH DiSTEFANO
and THE PHILADELPHIA INQUIRER**

and THE PHILADELPHIA INQUIRER

Petitioners,

V.

**PUBLIC SCHOOL EMPLOYEES’
RETIREMENT SYSTEM,**

Respondent,

and

AON INVESTMENTS, USA INC,

and

BUCK GLOBAL, LLC,

Possible Intervenorors

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No. 10 CD 2022

CERTIFIED RECORD

Kyle Applegate
Chief Counsel
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: (717) 346-9903
Fax: (717) 425-53123
Email: Kyapplegat@pa.gov

March 1, 2022

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CRAIG McCOY, JOSEPH DiSTEFANO	:	
and THE PHILADELPHIA INQUIRER	:	
Petitioners,	:	
	:	
v.	:	
	:	
PUBLIC SCHOOL EMPLOYEES'	:	
RETIREMENT SYSTEM,	:	
Respondent,	:	No. 10 CD 2022
	:	
and	:	
	:	
AON INVESTMENTS, USA INC,	:	
and	:	
BUCK GLOBAL, LLC,	:	
Possible Intervenors	:	

CERTIFICATE OF SERVICE


I hereby certify that I have served a true and correct copy of the Certified Record upon the following persons via email only:

Charles K. Serine, Esquire
Public School Employees' Retirement System
5 North 5th Street
Harrisburg, PA 17101
Ckserine@gmail.com

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pknudsen@rcfp.org
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Andrew Kabnick Garden, Esquire
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kkent@conradobrien.com
(Representing AON Investments USA, Inc.)



Faith Henry, Administrative Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: (717) 346-9903
Fax: (717) 425-53123
Email: fahenry@pa.gov

Dated: March 1, 2022

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CRAIG McCOY, JOSEPH DiSTEFANO	:	
and THE PHILADELPHIA INQUIRER	:	
Petitioners,	:	
	:	
v.	:	
	:	
PUBLIC SCHOOL EMPLOYEES’	:	
RETIREMENT SYSTEM,	:	
Respondent,	:	No. 10 CD 2022
	:	
and	:	
	:	
AON INVESTMENTS, USA INC,	:	
and	:	
BUCK GLOBAL, LLC,	:	
Possible Intervenor	:	

TABLE OF CONTENTS RECORD

Craig McCoy, Joseph DiStefano and The Philadelphia Inquirer v. Public School Employees’ Retirement System and AON Investments, USA, Inc and Buck Global, LLC,
OOR Dkt. AP 2021-1856

Office of Open Records Docket No. AP 2021-1856:

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18. OOR's Final Determination on Reconsideration dated December 6, 2021.

OOB Exhibit 1

DC, OpenRecords

From: no-reply@openrecordspennsylvania.com
Sent: Friday, September 3, 2021 6:47 PM
To: cmccoy@inquirer.com
Subject: [External] PA Office of Open Records - Appeal Confirmation

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.



You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	Craig McCoy
Company:	The Philadelphia INquirer
Address 1:	467 W School House Lane
Address 2:	
City:	Philadelphia
State:	Pennsylvania
Zip:	19144
Phone:	215-313-6813
Email:	cmccoy@inquirer.com
Agency (list):	Pennsylvania Public School Employees' Retirement System
Agency Address 1:	5 North Fifth St.
Agency Address 2:	
Agency City:	Harrisburg
Agency State:	Pennsylvania
Agency Zip:	17101
Agency Phone:	
Agency Email:	

Records at Issue in this Appeal:	We are appealing denials to our numbered requests 3, 4 and 5, in RTK #2021-19. See attached detailed appeals letter and companion documents.
Request Submitted to Agency Via:	web form
Request Date:	05/19/2021
Response Date:	08/25/2021
Deemed Denied:	No
Agency Open Records Officer:	Evelyn Williams, RTK officer and PSERS media relations person
Attached a copy of my request for records:	Yes
Attached a copy of all responses from the Agency regarding my request:	Yes
Attached any letters or notices extending the Agency's time to respond to my request:	No
Agree to permit the OOR additional time to issue a final determination:	No
Interested in resolving this issue through OOR mediation:	No
Attachments:	<ul style="list-style-type: none"> • Original RTK request-2021-19.docx • PSERS-email-5-26-21.docx • Inquirer-follow-up-June-2019-RTK-2021-19.docx • RTK-2021-19-time extension.docx • 2021 Special Board Meeting Minutes.pdf • 2021-19 Distefano response FINAL 06252021 .pdf • 2021-19 Inquirer response FINAL 08252021.pdf • Inquirer-appeal-9-3-21.docx

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

Sept. 3, 2021

Liz Wagenseller
executive director
Pa. Office of Open Records
333 Market Street
16th floor
Harrisburg, PA 17101-223

Craig McCoy
Joseph DiStefano
Staff writers, Phila. Inquirer
801 Market St., Suite 300
Phila, PA 19107
cmccoy@inquirer.com
McCoy: 215-313-6813

Dear Ms. Wagenseller,

We write to appeals the denials of parts of our May 2021 right-to-know request (RTK #2021-19) by PSERS, the Public School Employees' Retirement System.

We specifically appeal the denials of our requests #3 though #5. In summary, those three requests sought written communications (electronic or otherwise) between PSERS staff and three consultants, ACA, AON and Buck Global.

We sought information about these related matters – fund investment performance, the “risk-sharing” calculation, and the acknowledgment of PSERS of error in that calculation. We sought only the communications for a narrow time frame, from December 2020 to the present.

We note that PSERS said our request was too broad. We respectfully disagree. It is clear that we sought only information regarding the risk calculation, which involves issues of investment performance. As the denial letter notes, but does not address, we also quickly submitted a letter to PSERS, on June 8, narrowing our request.

However, the main thrust of the PSERS denial is that its communication with ACA, AON and Buck Global would involve “records relating to a criminal investigation” and “records relating to a noncriminal investigation.”

This is a far too expansive and incorrect reading of the so-called “investigative” exemption to the RTK law. State governmental entities have repeatedly cited this wrongly to deny basic public records to the public, only to have their position rejected by appeals officers and the courts.

It is true that the FBI and PSERS itself have launched inquiries into the calculation mistake. But that fact alone does not permit the fund to deny release of records that were kept in the course of business even before those inquiries began.

There was debate within PSERS about the performance calculation as far back as August 2020. The fund hired ACA to review the numbers on Oct. 4, 2020, the contract shows. The board approved what turned out to be an incorrect figure for returns in December 2020, a figure it later abandoned

All of this is before the FBI and PSERS itself launched special investigations of the matter, in late March 2021. The fund minutes shows that PSERS did not task its board audit committee to look into these issues until March 12, 2019 and did not hire law firms for that purpose March 19, 2021. The first federal grand jury subpoenas to the fund are dated March 24, 2021. And the fund's chief counsel, did not order staff to save documents related to the probes until April 8.

As in the 2014 case of *Levy v. Senate of Pennsylvania* and even more forcefully in the 2016 *Hockeimer v City of Harrisburg* cases, the courts have ruled that government documents developed independently of investigative materials – billing invoice, bond documents, correspondence – is the public's material and should be released.

As the appeals officer wrote in the Hockeimer cases,

“In this instant matter, it is clear that the requested records exist independently of any grand jury investigation. The Request seeks records created by the city and various City personnel over the course of several years for various purposes in relation to the City's operations and its bond offerings. There is no evidence demonstrating that any of the requested records were created for use by the grand jury.

The OOR case numbers in the Hockeimer cases are 2015-1793, 2015-1852 and 2015-1853. The officer's ruling was affirmed in detail by Dauphin Country Court in 2015-cv-9288. The county did not appeal.

The same arguments here apply with the same or even more force to the denial on the grounds that the material involved a noncriminal investigation.

For these reasons, we seek a reversal of the denials in this case.

Sincerely,

Craig McCoy

And Joseph DiStefano



COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

PSERS
5 N 5th Street
Harrisburg PA 17101-1905

Toll-free: 1.888.773.7748 (1.888.PSERS4U)
Local: 717.787.8540
www.psers.pa.gov

August 25, 2021

Joseph DiStefano
Craig McCoy
Philadelphia Inquirer
801 Market St. Suite 300
Philadelphia, PA 19107

Re: RTKL 2021-19

Dear Joe and Craig:

This letter again acknowledges receipt by the Public School Employees' Retirement System (PSERS) of your request under the Pennsylvania Right-to-Know Law (RTKL), 65 P.S. §§ 67.101 *et seq.*, for extensive records from PSERS. Your request, a copy of which is attached, was received on May 19, 2021 and extended 30 days on May 26, 2021. On June 8, 2021, you provided additional information in an effort to narrow your request, copy attached.

On June 23rd, PSERS requested at least an additional 60 days, until August 25, 2021, to complete the response for the remaining records in #1 (partial), #2 (partial), #3 a,b,c, #4 a,b,c, #5 a,b,c, #6, and the additional Board communications you asked for in your June 8 email. The reason for this extension request was due to the voluminous nature of the documents. On June 24th Mr. McCoy agreed to the extension.

On June 25th, your request was granted to the extent that records exist and are public. Enclosed with the response was records responsive to #1 (partial), #2 (partial), #7a, #7b, and #7c. The records were redacted of non-public information (i.e., federal tax id, banking information, etc.) as permitted under the RTKL. In addition, you were referred to the PA Treasury Contracts e-Library at <https://www.patreasury.gov/transparency/e-library/> for copies of contracts with ACA and Aon

With respect to the remainder of the requested documents, your request is granted in part and denied in part as below.

#1. With respect to all payments made by PSERS to Funston, your request is granted. According to PSERS' records, the amount of all payments up until May 19, 2021 (the date of your request) is \$240,000.

#1. With respect to all written communications, your request is denied because they are records relating to a criminal investigation, including records that, if disclosed would deprive persons of the right to a fair trial or an impartial adjudication. 67 P.S. § 67.708(b)(16)(vi)(B). They are similarly denied because they are records relating to a noncriminal investigation, including records that, if disclosed, would deprive a person of the right to an impartial adjudication. 67 P.S. § 67.708(b)(17)(vi)(B).



COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

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Harrisburg PA 17101-1905

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Local: 717.787.8540
www.psers.pa.gov

#2. With respect to all written communications, your request is denied because they are records relating to a criminal investigation, including records that, if disclosed would deprive persons of the right to a fair trial or an impartial adjudication. 67 P.S. § 67.708(b)(16)(vi)(B). They are similarly denied because they are records relating to a noncriminal investigation, including records that, if disclosed, would deprive a person of the right to an impartial adjudication. 67 P.S. § 67.708(b)(17)(vi)(B).

In addition, such records are denied because the information requested poses a substantial risk of causing detrimental impacts on PSERS' interests. Further, under its enabling legislation, PSERS stands in a fiduciary relationship to its members regarding Public School Employees' Retirement Fund investments, 24 Pa.C.S. §8521(e), and must manage the Retirement Fund in accordance with the prudent investor standard of care set forth in 24 Pa. C.S. §8521(a). Disclosing sensitive proprietary investment information would violate PSERS' fiduciary duty and the prudent investor standard because such disclosures would be damaging to investments. See *Macyda v. Pub. Sch. Employees' Ret. Sys.*, OOR Dkt. AP 2019-2150; *Davis v. State Employees' Ret. Sys.*, OOR Dkt. 2020-2357.

Also, PSERS will not release sensitive investment information, including potential opportunities that have been presented to PSERS and related portfolio company information, pursuant to 65 P.S. §67.706(b)(11), 24 P.A.C.S. §8502(e), 65 P.S. §67.306, and the definition of Public Record in 65 P.S. §67.102 (a Record that is exempt from being disclosed under any other state law or that is protected by a privilege is not a Public Record).

Specific information revealing the identity of direct real estate investments, portfolio companies and other specific investments, which PSERS typically obtains on the condition of maintaining its confidentiality and may be sensitive for various reasons depending on the circumstances, does not constitute a "public record" subject to inspection because it is exempt from disclosure under a state law, 24 Pa. C.S. §8502(e), because it is protected by a privilege, 67 P.S. §67.102, and because disclosure would reveal a trade secret or confidential proprietary information, 65 P.S. 67.708(b)(11).

The records are also exempt from disclosure under 68 P.S. section 67.708(b)(22) which exempts the contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by an agency prior to the disposal of the property.

#3, A, B and C. With respect to all written communications with ACA, your request is denied because they are records relating to a criminal investigation, including records that, if disclosed would deprive persons of the right to a fair trial or an impartial adjudication. 67 P.S. § 67.708(b)(16)(vi)(B). They are similarly denied because they are records relating to a noncriminal investigation, including records that, if disclosed, would deprive a person of the right to an impartial adjudication. 67 P.S. § 67.708(b)(17)(vi)(B).

#4, A, B and C. With respect to all written communications with Aon, your request is denied because they are records relating to a criminal investigation, including records that, if disclosed would deprive persons of the right to a fair trial or an impartial adjudication. 67 P.S. § 67.708(b)(16)(vi)(B). They are similarly denied because they are records relating to a noncriminal investigation, including records that,



COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

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Local: 717.787.8540
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if disclosed, would deprive a person of the right to an impartial adjudication. 67 P.S. § 67.708(b)(17)(vi)(B).

#5, A, B and C. With respect to all written communications with Buck Global, your request is denied because they are records relating to a criminal investigation, including records that, if disclosed would deprive persons of the right to a fair trial or an impartial adjudication. 67 P.S. § 67.708(b)(16)(vi)(B). They are similarly denied because they are records relating to a noncriminal investigation, including records that, if disclosed, would deprive a person of the right to an impartial adjudication. 67 P.S. § 67.708(b)(17)(vi)(B).

To the extent the requests for communications under numbers 1, 2, 3, 4 and 5 continues, after clarification, to include all PSERS' staff or all of PSERS, the request is too broad for response. In *Pennsylvania State Police v. Office of Open Records* (OOR), 995 A.2d 515 (Pa. Cmwlth. 2010), 2010 Pa. Commw. LEXIS 259—May 26, 2010, the Commonwealth Court concluded that a request for “any and all records” relating to a specific subject was not a sufficiently specific request for the agency to be required to respond under the RTKL.

Your request is denied because the RTKL requires that a request for records be made with “sufficient specificity to enable the agency to ascertain which records are being requested...” 65 P.S. §67.703. Your request for “any documents” is not specific to a particular record or timeframe. In *Pennsylvania State Police v. Office of Open Records* (OOR), 995 A.2d 515 (Pa. Cmwlth. 2010), 2010 Pa. Commw. LEXIS 259—May 26, 2010, the Commonwealth Court concluded that a request for “any and all records” relating to a specific subject was not a sufficiently specific request for the agency to be required to respond under the RTKL. Although your current request is insufficiently specific related to the information you are requesting, you are not precluded from refining your request (including specific document types and subject matter) and submitting a new request that enables PSERS to locate and produce the public records that you seek.

In the event that the OOR determines any portion of your request to be sufficiently specific and directs PSERS to provide you with any record, PSERS reserves the right to raise any and all available bases for non-disclosure, including privilege and the exceptions set forth in Section 708(b) of the RTKL and Section 8502(e) of the Public School Employees' Retirement Code; 24 Pa .C.S. §§ 8101-8535, because we are unable at this time to reasonably discern which exemptions might be applicable. Due to the lack of specificity, PSERS cannot meaningfully assert any exemptions at this time. See *Pennsylvania State Police v. Office of Open Records*, 995 A.2d 515 (Pa. Cmwlth. 2010), 2010 Pa. Commw. LEXIS 259 (May 26, 2010) (when a request is insufficiently specific, the agency should have opportunity to later assert exemptions, unless “the reason for denying access can be reasonably discerned when the request is made.”).

#6. With respect to Moneyline Reports, your request is granted to the extent the documents are public records. All individual fund/partnership names, values, and account numbers have been redacted because the report is arranged in a manner that would provide confidential value information about some of the investments. That said, more detailed quarterly public valuation data is available on PSERS website at [2020 3Q - PE FINAL.pdf \(pa.gov\)](#) and [2020 3Q - RE Final.pdf \(pa.gov\)](#).



COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

PSERS
5 N 5th Street
Harrisburg PA 17101-1905

Toll-free: 1.888.773.7748 (1.888.PSERS4U)
Local: 717.787.8540
www.psers.pa.gov

Nonpublic information has been redacted for the below reasons.

PSERS will not release sensitive investment information, including potential opportunities that have been presented to PSERS and related portfolio company information, pursuant to 65 P.S.

§67.706(b)(11), 24 Pa. C.S. §8502(e), 65 P.S. §67.306, and the definition of Public Record in 65 P.S.

§67.102 (a Record that is exempt from being disclosed under any other state law or that is protected by a privilege is not a Public Record).

Specific information revealing the identity of direct real estate investments, portfolio companies and other specific investments, which PSERS typically obtains on the condition of maintaining its confidentiality and may be sensitive for various reasons depending on the circumstances, does not constitute a “public record” subject to inspection because it is exempt from disclosure under a state law, 24 Pa. C.S. §8502(e) and because disclosure would reveal a trade secret or confidential proprietary information, 65 P.S. 67.708(b)(11).

The information is also redacted because the information requested poses a substantial risk of causing detrimental impacts on PSERS’ interests. Further, under its enabling legislation, PSERS stands in a fiduciary relationship to its members regarding Public School Employees’ Retirement Fund investments, 24 Pa.C.S. §8521(e), and must manage the Retirement Fund in accordance with the prudent investor standard of care set forth in 24 Pa. C.S. §8521(a). Disclosing sensitive proprietary investment information would violate PSERS’ fiduciary duty and the prudent investor standard because such disclosures would be damaging to its investments. See *Macyda v. Pub. Sch. Employees’ Ret. Sys.*, OOR Dkt. AP 2019-2150; *Davis v. State Employees’ Ret. Sys.*, OOR Dkt. 2020-2357.

Finally, Under the RTKL, we are not required to create records that do not exist. More specifically, under the RTKL, an agency is not required “to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.” 65 P.S. § 67.705; *Advancement Project et al. v. Department of Transportation*, 60 A.3d 891 (Pa. Cmwlth. 2013).

You have a right to appeal the denial of non-public information in writing to Executive Director, Office of Open Records (OOR), 333 Market Street, 16th Floor, Harrisburg, PA 17101-2234. If you choose to file an appeal you must do so within 15 business days of the mailing date of this response and send to the OOR:

- 1) this response;
- 2) your request; and
- 3) the reason why you think the agency is wrong in its reasons for saying that the record is not public (a statement that addresses any ground stated by the agency for the denial). If the agency gave several reasons why the record is not public, state which ones you think were wrong. Also, the OOR has an appeal form available on the OOR website at:

<https://www.openrecords.pa.gov/RTKL/Forms.cfm>

Note: If you appeal this denial, please send a copy of the appeal and all attachments to my attention at the address and the email provided below.



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Should you have any questions regarding this correspondence, please contact me at evwilliams@pa.gov.

Sincerely,
/s/ Evelyn Williams
Agency Open Records Officer
PSERS
5 North Fifth Street
Harrisburg, PA 17101

Enclosures

From: DiStefano, Joseph <joed@inquirer.com>
Sent: Tuesday, June 8, 2021 12:37 PM
To: Williams, Evelyn <evwilliams@pa.gov>
Cc: McCoy, Craig <cmccoy@inquirer.com>
Subject: [External] Re: interim response from PSERS / May 19 2021 RTKL request / Inquirer response

Evelyn, I'm sure you are very busy this week, but I hope this helps when you get to it. Joe D.

We are in the process of gathering responsive records. That said, some of your request, as noted in bold below, is overly broad and not specific enough for PSERS to identify the records that you are requesting.

To assist PSERS with locating possible responsive records for this request please provide the additional information noted below in red to help locate responsive records.

1- In October 2020, PSERS retained Funston Advisory Services LLC as board governance consultant to review governance. Regarding Funston's work, please provide:

--A copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from October to the present, between PSERS staff and any employee or representative of Funston.

The request is overly broad and not specific. Please identify a subject and the individual/individuals for whom you are requesting records.

Our request is specific. Nevertheless, to further identify, please provide the engagement letter and the contract between the Funston firm and PSERS, and intermediate (February and May, for example) and final reports re PSERS governance, and correspondence between Frederick Funston, Randy Miller, and other Funston principals, with Glen Grell, Jackie Lutz, Charles Serine, Lenann T. Engler, Chris Santa Maria, Sen. Patrick Browne, treasurers Joe Torsella and Stacy Garrity James Grossman, Tom Bauer, Charles Spiller and other PSERS staff and board members who helped shape the Funston relationship and responded to its work product.

2- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from December 2018 to the present, between PSERS staff and any representative of the owners or sellers of the following parcels of real estate in the City of Harrisburg:

- The former Patriot-News facilities at 812 Market St.
- The former Department of General Services building at 908 Market St.
- Any other parcel in Harrisburg acquired by PSERS since 1 January, 2016

This request is overly broad and not specific. Please identify a subject and the individual/individuals for whom you are requesting records.

Our request is specific. Still, to identify further, please include sales agreements, management and maintenance contracts between PSERS and PSERS-controlled entities such as those whose names contain the terms 812 Market, 908 Market," 5 North Fifth, Camcorr, Glen Grell, Charles Spiller, William P. Stalter, Jackie Lutz, Tom Bauer, Brian Carl, Jennifer Mills, Mellissa Quakenbush, Jason Davis, and Chris Santa Maria, all of PSERS, and John Gerdes, Jennifer Hanson of L&B Realty Advisers LP; Eric Kunkle, and David Dyson, and PMI Property Management; and Joseph Miller of Twenty Lake Holdings and Heritage Holdings.

3A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of ACA Compliance Group, related to investment performance reporting.

This request is overly broad and not specific. Please identify a narrower subject than investment performance reporting and the individual/individuals for whom you are requesting records. ACA is a global company with over 600 employees and PSERS also has over 340 employees throughout the Commonwealth.

Our request is specific and your recitation of employment numbers is not clearly relevant to the request. Still, to identify further, please provide the engagement letter and contract for ACA; and correspondence between Glen Grell, Jackie Lutz, Cathy Gusler, Chris Santa Maria, Francis X. Ryan Sen. Patrick Browne, and James Grossman, Tom Bauer, Charles Spiller, all of PSERS and Christie Horsman Dillard, Karen Foley and Kemmling, of ACA; and other ACA employees in relation to the contract.

4A -Please provide copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of AON, related to investment performance reporting; including but not limited to memos AON sent PSERS on March 5, 2021 and April 16, 2021 and since that date.

This request is overly broad and not specific. Please identify a subject and the individual/individuals for whom you are requesting records. AON is a global employer with over 50,000 colleagues in 120 countries and PSERS has over 340 employees in the Commonwealth.

Our request is specific. Still, to identify further, please provide the engagement letter and contract for AON, further correspondence regarding the 2020 "risk-sharing" calculation including reports sent by AON to PSERS regarding that calculation in the second half of 2020 and in 2021, including correspondence between Glen Grell, Jackie Lutz, Chris Santa Maria, Francis X. Ryan, Sen. Patrick Browne; James Grossman, Tom Bauer, Charles Spiller, all of PSERS; and Steve Voss and Claire Shaughnessy of AON and other AON employees related to that contract

4B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of AON, related to risk-sharing calculations.

This request is overly broad and not specific. Please identify a narrower subject and the individual/individuals for whom you are requesting records.

Our request is specific. Still, to identify further, please include the parties named in response to section 4A above

5A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to investment performance reporting.

This request is overly broad and not specific. Please identify a narrower subject and the individual/individuals for whom you are requesting records. Buck Global is a global company with over 1,500 employees in over 200 global locations and PSERS has over 340 employees in the Commonwealth.

Our request is specific and your recitation of the firm's employment totals beyond the scope of the request. Still, to identify further, please provide correspondence involving Glen Grell, Sen. Patrick Browne; James, Grossman, Tom Bauer, Charles Spiller, all of PSERS; and Buck employees David Driscoll; Edward Quinn and Salvador Nakar, and other Buck employees related to that contact.

5B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to risk-sharing calculations.

This request is overly broad and not specific. Please identify a narrower subject and the individual/individuals for whom you are requesting records.

Our request is specific. Still, to identify further, please provide correspondence involving Glen Grell, Sen. Patrick Browne; James, Grossman, Tom Bauer, Charles Spiller, all of PSERS; and Buck employees David Driscoll; Edward Quinn and Salvador Nakar, and other Buck employees related to that contact.

Thanks, Joe D.

Joseph N. DiStefano
Philadelphia Inquirer, business news
215.313.3124
JoeD@Inquirer.com

Always asking on
behalf of the people.





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www.psers.pa.gov

June 25, 2021

Joseph DiStefano
Craig McCoy
Philadelphia Inquirer
801 Market St.
Suite 300
Philadelphia, PA 19107

Re: RTKL 2021-19

Dear Joe and Craig:

This letter acknowledges receipt by the Public School Employees' Retirement System (PSERS) of your request under the Pennsylvania Right-to-Know Law (RTKL), 65 P.S. §§ 67.101 *et seq.*, for extensive records from PSERS. Your request was received on May 19, 2021 and extended 30 days on May 26, 2021. On June 8, 2021, you provided additional information in an effort to narrow your request.

Your request is granted to the extent the records exist and are public. Enclosed are records responsive to #1 (partial), #2 (partial), #7a, #7b, and #7c. The records have been redacted of non-public information (i.e., federal tax id, banking information, etc.) as permitted under the RTKL.

Copies of contracts for ACA and Aon can be found on the PA Treasury Contracts e-Library at:
<https://www.patreasury.gov/transparency/e-library/>

On June 23 PSERS requested at least an additional 60 days, August 25, 2021, to complete the response for the remaining records in #1 (partial), #2 (partial), #3 a,b,c, #4 a,b,c, #5 a,b,c, #6, and the additional Board communications you asked for in your June 8 email. The reason for this extension request is due to the voluminous nature of the documents we must gather and review to determine responsiveness. On June 24th Mr. McCoy agreed to the extension.

Should you have any questions regarding this correspondence, please contact me at evwilliams@pa.gov.

Sincerely,

/s/ Evelyn Williams
Agency Open Records Officer
PSERS
5 North Fifth Street
Harrisburg, PA 17101

Enclosures

From: **Williams, Evelyn** <evwilliams@pa.gov>
Date: Wed, May 26, 2021 at 3:59 PM
Subject: interim response from PSERS
To: DiStefano, Joseph <joed@inquirer.com>, Craig McCoy
<craigmccoy7@comcast.net>, McCoy, Craig <cmccoy@inquirer.com>

Craig, Joe,

PSERS received your extensive RTKL request dated May 19, 2021. Attached is an interim response. We will need at least 30 days to respond.

We are in the process of gathering responsive records. That said, some of your request, as noted in bold below, is overly broad and not specific enough for PSERS to identify the records that you are requesting.

To assist PSERS with locating possible responsive records for this request please provide the additional information noted below in red to help locate responsive records.

1- In October 2020, PSERS retained Funston Advisory Services LLC as board governance consultant to review governance. Regarding Funston's work, please provide:

--A copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from October to the present, between PSERS staff and any employee or representative of Funston.

The request is overly broad and not specific. Please identify a subject and the individual/individuals for whom you are requesting records

2- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from December 2018 to the present, between PSERS staff and any representative of the owners or sellers of the following parcels of real estate in the City of Harrisburg:

-The former Patriot-News facilities at 812 Market St.

-The former Department of General Services building at 908 Market St.

-Any other parcel in Harrisburg acquired by PSERS since 1 January, 2016

This request is overly broad and not specific. Please identify a subject and the individual/individuals for whom you are requesting records.

3A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of ACA Compliance Group, related to investment performance reporting.

This request is overly broad and not specific. Please identify a narrower subject than investment performance reporting and the individual/individuals for whom you are

requesting records. ACA is a global company with over 600 employees and PSERS also has over 340 employees throughout the Commonwealth.

3B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of ACA, related to risk-sharing calculations.

This request is overly broad and not specific. Please identify a narrower subject and the individual/individuals for whom you are requesting records.

4A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Aon, related to investment performance reporting; including but not limited to memos Aon sent PSERS on March 5, 2021 and April 16, 2021 and since that date.

This request is overly broad and not specific. Please identify a subject and the individual/individuals for whom you are requesting records. Aon is a global employer with over 50,000 colleagues in 120 countries and PSERS has over 340 employees in the Commonwealth.

4B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Aon, related to risk-sharing calculations.

This request is overly broad and not specific. Please identify a narrower subject and the individual/individuals for whom you are requesting records.

5A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to investment performance reporting.

This request is overly broad and not specific. Please identify a narrower subject and the individual/individuals for whom you are requesting records. Buck Global is a global company with over 1,500 employees in over 200 global locations and PSERS has over 340 employees in the Commonwealth.

5B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to risk-sharing calculations.

This request is overly broad and not specific. Please identify a narrower subject and the individual/individuals for whom you are requesting records.

Thanks for your continued cooperation.

Evelyn M. Williams
Communications Director

Public School Employees' Retirement System (PSERS)
5 North Fifth Street
Harrisburg, Pennsylvania 17101-1905
717.720.4734 | Fax 717.772.5372 | evwilliams@pa.gov
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RKL request 2021-19

Inbox



Williams, Evelyn <evwilliams@pa.gov>

Wed, Jun
23, 4:01
PM

to Joseph, me

Re: RTKL 2021-19

Dear Joe and Craig:

We are working on your request received on May 19, 2021 and extended 30 days on May 26, 2021. On June 8, 2021, you provided additional information to help identify responsive records. While we have gathered documents responsive to your request and intend to provide them to you within the current 30-day extension, we are requesting at least an additional 60-day extension to complete this response. The reason for this extension request is due to the voluminous nature of the documents we must gather and review to determine responsiveness. Additionally, your June 8 email expanded your original request to include PSERS Board member records, which will require an additional level of coordination with multiple state agencies and other related outside entities. While we continue to work diligently to respond, we simply cannot complete this effort without an additional extension.

Please respond before close of business Thursday, June 24 to indicate your acceptance of this extension.

Should you have any questions regarding this correspondence, please contact me at evwilliams@pa.gov.

Thank you.

Evelyn M. Williams

Communications Director

Public School Employees' Retirement System (PSERS)

5 North Fifth Street

Harrisburg, Pennsylvania 17101-1905

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On Thu, Jun 24, 2021 at 5:53 PM Williams, Evelyn <evwilliams@pa.gov> wrote:
Craig
Joe said you were planning to send me a notification that you both approved the extension for your/joe r extensive rtkl request?
Did you send me anything?
I want to make sure it was not caught in a spam filter or Commonwealth quarantine.

Thanks.

Evelyn M. Williams
Communications Director
Public School Employees' Retirement System (PSERS)
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Harrisburg, Pennsylvania 17101-1905
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Re: RTKL



McCoy, Craig <cmccoy@inquirer.com>

Thu, Jun
24, 6:08
PM

to Evelyn, Craig

Hi Evelyn

Sorry for the delay and thanks for the nudge. Yes, we are ok with the extension.

best,
Craig

From: DiStefano, Joseph <joed@inquirer.com>
Sent: Wednesday, May 19, 2021 1:02 PM
To: PS, PSERS Right To Know Law <RA-PSERSRTL@pa.gov>; Williams, Evelyn <evwilliams@pa.gov>; Craig McCoy <cmccoy@inquirer.com>; Esack, Steve <stesack@pa.gov>
Subject: [External] RTK request, Inquirer, 18 May 2021

Ms. Evelyn T. Williams
Right to Know officer
PSERS

Dear Evelyn,

Under applicable provisions of the Pennsylvania right-to-know law, as reporters at the Philadelphia Inquirer, 801 Market Street, Philadelphia PA 19107, please send to us, at JoeD@Inquirer.com and CMcCoy@Inquirer.com, the following public records:

1- In October 2020, PSERS retained Funston Advisory Services LLC as board governance consultant to review governance. Regarding Funston's work, please provide:

- The contract with Funston and any other document describing the arrangements under which Funston presented work product to PSERS since October 2020
- All invoices submitted by Funston
- All payments made by PSERS
- A copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from October to the present, between PSERS staff and any employee or representative of Funston.

2- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from December 2018 to the present, between PSERS staff and any representative of the owners or sellers of the following parcels of real estate in the City of Harrisburg:

- The former Patriot-News facilities at 812 Market St.
- The former Department of General Services building at 908 Market St.
- Any other parcel in Harrisburg acquired by PSERS since 1 January, 2016

3A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of ACA Compliance Group, related to investment performance reporting.

3B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of ACA, related to risk-sharing calculations.

3C - Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from December 2020 to the present, between PSERS staff and any employee or representative of ACA, related to the discovery or identification of an error in

calculating the historical investment performance, as part of the shared-risk determination. Please include, for example, the notice given ACA on Feb. 18, 2021 that Aon's source data was in error, and details of such error and its effect on the scale and direction of the calculation, and other notices related to the error.

4A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Aon, related to investment performance reporting; including but not limited to memos Aon sent PSERS on March 5, 2021 and April 16, 2021 and since that date.

4B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Aon, related to risk-sharing calculations.

4C- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from December 2020 to the present, between PSERS staff and any employee or representative of Aon, related to the the discovery of, or the identification of an error in, calculating the historical investment performance, as part of the shared-risk determination.

5A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to investment performance reporting.

5B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to risk-sharing calculations.

5C- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from December 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to the the discovery of, or the identification of an error in, calculating the historical investment performance, as part of the shared-risk determination.

6- Please provide a copy of each monthly Moneyline report detailing PSERS assets, to date, for calendar year 2021.

7A- Please provide a list of all nonprofit corporations and other related-party entities which hold or manage PSERS assets, such as directly-owned properties, including all qualified subsidiaries set up under section 501(c)25 of the Internal Revenue Code.

7B - Please explain the purpose and functions of each 501(c)25 entity and other related-party entities set up to hold PSERS properties, for example by providing the footnotes to financial statements that explain each in detail, and the most recent I-990 submitted for each to the Internal Revenue Service.

7C - Please list directors and other officers, senior managers, all other owners in addition to PSERS, all subsidiaries of each 501(c)5 entity and other related-party entities set up to hold PSERS properties.

PSERS has in the past attempted to limit disclosure of records that may be associated with an investigation. However, please recall that in open-records cases such as Levy v Senate (2014), and Hockheimer v Harrisburg (2015, affirmed in Dauphin County Common Pleas Court), requested records created for various purposes and existing independently of investigations are indeed found subject to disclosure.

Thank you, Joe DiStefano, 215.313.3124, JoeD@Inquirer.com, and Craig R. McCoy

Copies to: Pennsylvania Governor's Office of General Counsel; Office of the State Treasurer

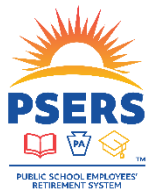
Joseph N. DiStefano
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behalf of the people.**





Public School Employees' Retirement Board

Special Meeting Minutes

Friday, March 12, 2021

Call to Order: Chris SantaMaria, Chairman of the Board, called the Special Meeting to order at 3:09 P.M. via MS TEAMS.

Board Members Present:

Christopher SantaMaria, Chairman	Patrick Lord for Sec. Noe Ortega	Jason Davis
Rep. Frank Ryan, Vice-Chairman	Sec. Richard Vague	Eric DiTullio
Patrick Shaughnessy for Rep. Matt Bradford	Sec. Stacy Garrity	Melva Vogler
Sen. Katie Muth	Nathan Mains	Deborah Beck
	Stacey Connors for Sen. Patrick Browne	Susan Lemmo

Others Present:

Thomas Clancy	Alan Flannigan	Sonia Kikeri
Christopher Craig	John Callahan	Joe DiStefano
Lloyd Ebright	Susan Boyle	Eric Arneson
James Bloom	Don Vymazal	

Staff Present:

Glen Grell	Mei Gentry	Steven Skoff
Jennifer Mills	Evelyn Williams	Mercedes Evans
Brian Carl	Steve Esack	Tivia Danner
James Grossman	Kathrin Smith	Laura Vitale
Antonio Parisi	Suzanne Dugan	

I. Public Comment – none.

II. Report of Fiduciary Counsel – Executive Session

- At 3:13 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees’ Retirement Board, we are going into an Executive Session to discuss the items on today’s agenda, namely Fiduciary Counsel Report. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”

- Frank Ryan moved that the Board enter Executive Session, with Nathan Mains seconding the motion. The motion passed unanimously.
- The Regular Session resumed at 6:45 P.M.

III. Action Item

Resolution 2021-09 Re: Delegation of Internal Investigation to Audit Committee

- Pursuant to Section 4.3 of the PSERB By-laws, the Board delegates to the Audit Committee the authority to oversee an investigation of the circumstances surrounding a possible error in the reporting of investment performance results used by the Board in its December 3, 2020 certification of contribution rates. This delegation includes the authority to select and engage independent outside counsel to oversee a special investigation of the circumstances of the error and the response when the error was first identified, further including recommendations for improvements to prevent similar errors in the future. Upon completion of the investigation, the report and recommendations shall be transmitted to the Board for any action.

IV. Other Business – none.

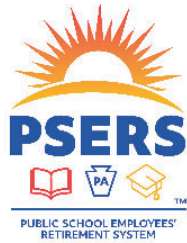
V. Chris SantaMaria adjourned the meeting at 6:48 P.M.

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Glen Grell

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3/16/2021



Public School Employees' Retirement Board Audit and Compliance Committee Special Meeting Minutes

Wednesday, March 17, 2021

Call to Order: Rep. Frank Ryan, Audit and Compliance Committee Chairman, called the Special Meeting to order at 3:04 P.M. via MS Teams.

Board Members Present:

Rep. Frank Ryan, Chairman	Patrick Shaughnessy for Rep.	Jason Davis
Nathan Mains, Vice-Chairman	Matt Bradford	Sen. Katie Muth
Christopher SantaMaria, Ex-Officio	Sec. Richard Vague	
	Treas. Stacy Garrity	

Others Present:

Suzanne Dugan, Cohen Milstein	Christopher Craig	Alan Flannigan
John Callahan	Lloyd Ebright	Susan Boyle
Thomas Clancy	James Bloom	Joe DiStefano

Staff Present:

Glen Grell	Mercedes Evans	Joseph O'Donnell
Steve Esack	Tivia Danner	

I. Public Comment – none.

II. Investigation of Investment Performance Reporting Issues – Executive Session

- At 3:09 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an Executive Session to discuss the items on today's agenda, namely Investigation of Investment Performance Reporting Issues. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”

- Patrick Shaughnessy moved that the Board enter Executive Session, with Jason Davis seconding the motion. The motion passed unanimously.
- The Regular Session resumed at 6:38 P.M.

III. Action Item –

- Rep. Frank Ryan announced that the next scheduled Audit and Compliance Committee Meeting will be held Friday, March 19, 2021 at 4:00 P.M., rather than the previously announced 3:00 P.M. start time.

IV. Other Business – none.

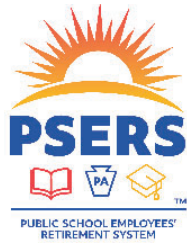
V. Rep. Frank Ryan adjourned the meeting at 6:40 P.M.

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Glen Grill

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3/19/2021



Public School Employees' Retirement Board Audit/Compliance Committee Special Meeting Minutes

Friday, March 19, 2021

Call to Order: Rep. Frank Ryan, Audit/Compliance Committee Chairman, called the Special Meeting to order at 4:00 P.M. via MS Teams.

Board Members Present:

Rep. Frank Ryan, Chairman
John Callahan for Nathan Mains,
Vice-Chairman

Christopher SantaMaria, Ex-
Officio
Patrick Shaughnessy for Rep.
Matt Bradford

Sec. Richard Vague
Treas. Stacy Garrity
Jason Davis
Sen. Katie Muth

Others Present:

Suzanne Dugan, Cohen Milstein
James Bloom
Susan Boyle

Thomas Clancy
Christopher Craig
Lloyd Ebright

Jill Vecchio

Staff Present:

Glen Grell

Tivia Danner

Joseph O'Donnell

I. Public Comment – none.

II. Investigation of Investment Performance Reporting Issues – Executive Session

- At 4:02 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an Executive Session to discuss the items on today's agenda, namely Investigation of Investment Performance Reporting Issues. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”
- Patrick Shaughnessy moved that the Board enter Executive Session, with John Callahan seconding the motion. The motion passed unanimously.
- The Regular Session resumed at 5:25 P.M.

III. Action Items –

- A. Patrick Shaughnessy moved to adopt Resolution 2021-10. Jason Davis seconded the motion, which passed unanimously.

Resolution 2021-10(A/C) Re: Engagement of Outside Special Counsel

Resolved, that the Audit/Compliance Committee of the Public School Employees' Retirement Board (the "Board") hereby authorizes engagement of Morgan Lewis as special counsel to assist the Board through an additional independent opinion letter relative to federal tax qualification issues involved with the shared risk calculation, and to provide guidance on the advisability and process to recertify the member shared risk contribution rate, due to the complexity and significance of the matter.

- B. Jason Davis moved to adopt Resolution 2021-11. Richard Vague seconded the motion, which passed unanimously.

Resolution 2021-11(A/C) Re: Engagement of Outside Counsel

Resolved, that the Audit/Compliance Committee of the Public School Employees' Retirement Board (the "Board") hereby authorizes engagement of Womble Bond Dickinson to conduct a special investigation surrounding the circumstances of the misstatement of the 9-year investment performance used for the shared risk calculation in December 2020. The engagement shall include recommendations to avoid similar circumstances in the future and any corrective action necessary. The scope of the work will be completed in concert with the firm selected.

IV. Other Business – none.

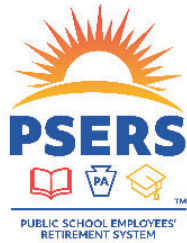
V. Rep. Frank Ryan adjourned the meeting at 5:30 P.M.

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Glen Grell

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3/22/2021



Public School Employees' Retirement Board Audit/Compliance Committee Special Meeting Minutes

Monday, March 22, 2021

Call to Order: Rep. Frank Ryan, Audit/Compliance Committee Chairman, called the Special Meeting to order at 3:00 P.M. via MS Teams.

Board Members Present:

Rep. Frank Ryan, Chairman	Patrick Shaughnessy for Rep.	Jason Davis
Nathan Mains, Vice-Chairman	Matt Bradford	Sen. Katie Muth
Christopher SantaMaria, Ex-Officio	Sec. Richard Vague	Eric DiTullio
	Treas. Stacy Garrity	

Others Present:

Suzanne Dugan, Cohen Milstein	Susan Boyle	Alan Flannigan
Claire Rauscher,	Thomas Clancy	Jill Vecchio
WombleBondDickinson	Christopher Craig	Joe DiStefano
James Bloom	Lloyd Ebright	

Staff Present:

Glen Grell	Tivia Danner
Mei Gentry	Joseph O'Donnell

I. Public Comment – none.

II. Investigation of Investment Performance Reporting Issues – Executive Session

- At 3:02 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an Executive Session to discuss the items on today's agenda, namely Investigation of Investment Performance Reporting Issues. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”
- Nathan Mains moved that the Board enter Executive Session, with Richard Vague seconding the motion. The motion passed unanimously.

- The Regular Session resumed at 4:37 P.M.
- Per Rep Frank Ryan:
 - In lieu of formal resolution, it is noted for the record that the Executive Session was to provide direction to Fiduciary Counsel to negotiate and finalize the scope of work and other terms of the contracts in accordance with the direction given by the Audit/Compliance Committee, and to report back to the Audit/Compliance Committee Chair prior to Agency execution of the contracts.

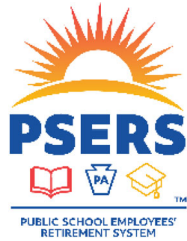
III. Action Items –

- No action items.

IV. Other Business – none.

V. Rep. Frank Ryan adjourned the meeting at 4:38 P.M.

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Glen Grill
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3/23/2021



Public School Employees' Retirement Board

Special Executive Session Meeting Minutes

Monday, March 29, 2021

Call to Order: Christopher SantaMaria, Board Chairman, called the Special Executive Session Meeting to order at 3:30 P.M. via MS Teams.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Sec. Richard Vague
Tres. Stacy Garrity

Nathan Mains
Rep. Matthew Bradford
Sen. Katie Muth
Sen. Patrick Browne

Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio

Others Present:

Suzanne Dugan, Cohen Milstein
James Bloom
Susan Boyle
John Callahan
Thomas Clancy

Stacey Connors
Christopher Craig
Lloyd Ebright
Alan Flannigan
Richard Goldberg, LewisBrisbois

Claire Rauscher,
WombleBondDickinson
Patrick Shaughnessy
Jill Vecchio
Don Vymazal

Staff Present:

Glen Grell
Jennifer Mills

Steve Skoff
Jackie Lutz
Evelyn Williams

Tivia Danner

I. Confirmation of 24-Hour Notice

- a. Jennifer Mills explained Sunshine Notice was not required for this Executive Session since no action item would result, and PSERB met the 24-hour notification to invested attendees. On Friday, April 2nd Special Meeting, this process will be shared with fuller audience.

II. Consultation with Counsel in Connection with Potential or Current Litigation

A. Glen Grell, Executive Director, stated “In Accordance with Section 5.13 of the Bylaws of the Public School Employees’ retirement Board, we are going into **Executive Session** to discuss the item listed on today’s agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss advice of counsel regarding pending or potential litigation and agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of law, and Quasi-judicial matters.”

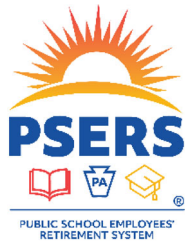
III. Actions from Executive Session - none

IV. Other Business – none

V. Adjournment at 6:35 P.M.

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4/2/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Friday, April 2, 2021

Call to Order: Christopher SantaMaria, Board Chairman, called the Special Board Meeting to order at 4:08 P.M. via MS Teams.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity

Nathan Mains
Patrick Shaughnessy for
Rep. Matthew Bradford
Sen. Katie Muth
Sen. Patrick Browne

Melva Vogler
Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio

Others Present:

Anne Baloga
Suzanne Dugan, Cohen Milstein
James Bloom
Susan Boyle
John Callahan
Stacey Connors

Christopher Craig
Lloyd Ebright
Alan Flannigan
Naina Kamath, Duane Morris
Sonia Kikeri
John Nixon, Duane Morris

Claire Rauscher,
WombleBondDickinson
Jill Vecchio
Don Vymazal

Staff Present:

Glen Grell
Jennifer Mills

Steve Skoff
Jackie Lutz
Evelyn Williams

Tivia Danner

I. Announcement of March 29, 2021 Executive Session and Purpose

- a. On Sunday, March 28, 2021, the Public School Employees' Retirement Board ("Board") was notified of a Monday, March 29, 2021 executive session scheduled for 3:30 p.m. via Microsoft Teams invite for the purpose of consulting with its attorney regarding information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed. Pursuant to Section 708 of the Pennsylvania Sunshine Act, if an executive session is not held during an open meeting, at the conclusion of an open meeting, or announced for a future open meeting, members of the Board are to be notified 24 hours in advance of the time of the convening of the executive session specifying the date, time, location, and purpose of the executive session. The Sunshine Act further requires that the executive session must be announced at the open meeting occurring immediately subsequent to the executive session, with such announcement being included within its minutes. Let the minutes show that the executive session was, in fact, held via Microsoft Teams on Monday, March 29, 2021 at 3:30 p.m. for the

reason of consulting with counsel regarding the investigation of the shared risk contribution rate. The executive session adjourned at 6:35 p.m. with no action item.

II. Public Comment – none

III. Consultation with Counsel in Connection with Potential or Current Litigation

A. At 4:12 P.M., Glen Grell, Executive Director, stated “In Accordance with Section 5.13 of the Bylaws of the Public School Employees’ retirement Board, we are going into **Executive Session** to discuss the item listed on today’s agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss advice of counsel regarding pending or potential litigation and agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of law, and Quasi-judicial matters.”

B. Regular session resumed at 7:40 P.M.

IV. Actions from Executive Session - none

V. Other Business – none

VI. Announcement of Future Executive Sessions – none

VII. Announcement of Next Special Board Meeting

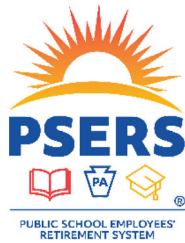
A. April 6, 2021 4:30 P.M.

B. April 9, 2021 3:00 P.M. for Audit/Compliance Committee and 4:00 P.M. for Board.

VIII. Adjournment at 7:45 P.M.

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Glen Grell
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4/5/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Tuesday, April 6, 2021

Call to Order: Christopher SantaMaria, Board Chairman, called the Special Board Meeting to order at 4:33 P.M. via MS Teams.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity

Nathan Mains
Patrick Shaughnessy for Rep.
Matthew Bradford
Sen. Katie Muth
Sen. Patrick Browne

Melva Vogler
Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio

Others Present:

Suzanne Dugan, Cohen Milstein
James Bloom
Susan Boyle
Thomas Clancy
Stacey Connors

Christopher Craig
Lloyd Ebright
Alan Flannigan
Sonia Kikeri

Claire Rauscher,
WombleBondDickinson
Jill Vecchio
Don Vymazal

Staff Present:

Glen Grell
Jackie Lutz
Jennifer Mills

Steve Skoff
Mercedes Evans
Tivia Danner

I. Public Comment – none

II. Consultation with Counsel in Connection with Potential or Current Litigation

At 4:34 P.M., Glen Grell, Executive Director, stated “In Accordance with Section 5.13 of the Bylaws of the Public School Employees’ retirement Board, we are going into **Executive Session** to discuss the item listed on today’s agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss advice of counsel regarding pending or potential litigation and agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of law, and Quasi-judicial matters.”

The Regular Session resumed at 9:45 P.M.

III. Actions from Executive Session

Resolution 2021-12 Re: Legal Services Contract, Pillsbury Winthrop Shaw Pittman LLP

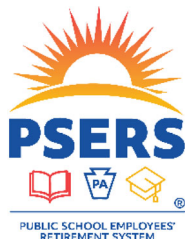
Resolved, that, the Public School Employees’ Retirement Board (Board) hereby retains the law firm of Pillsbury Winthrop Shaw Pittman LLP to represent and provide guidance to the Board in matters relating to a federal investigation and any collateral issues related thereto. Rep. Frank Ryan moved, Patrick Shaughnessy seconded the motion, which passed unanimously.

IV. Other Business – none

V. Adjournment at 9:47 P.M.

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Glen Grell
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4/10/2021



Public School Employees' Retirement Board

Special Audit/Compliance Committee Meeting Minutes

Friday, April 9, 2021

Call to Order: Rep. Frank Ryan, Audit/Compliance Committee Chair, called the meeting to order at 3:00 P.M. via MS Teams.

Board Members Present:

Rep. Frank Ryan, Chair	Treas. Stacy Garrity	Melva Vogler
Nathan Mains, Vice-Chair	Jason Davis	Susan Lemmo
Christopher SantaMaria, Ex-Officio	Patrick Shaughnessy for Rep. Matthew Bradford	Deborah Beck
Sec. Richard Vague	Sen. Katie Muth	

Others Present:

Suzanne Dugan, Cohen Milstein	Christopher Craig	Claire Rauscher,
Anne Baloga	Lloyd Ebright	WombleBondDickinson
James Bloom	Alan Flannigan	Thomas Rey, CLA Connect
Susan Boyle	Patrick Lord	Jill Vecchio
John Callahan		

Staff Present:

Brian Carl	Jennifer Mills
Mei Gentry	Steve Skoff
Glen Grell	Mercedes Evans
Jackie Lutz	Tivia Danner

I. Public Comment – none

II. Update of Special Investigation of Investment Performance Reporting

At 3:04 P.M., Glen Grell, Executive Director, stated "In Accordance with Section 5.13 of the Bylaws of the Public School Employees' retirement Board, we are going into **Executive Session** to discuss the item listed on today's agenda, namely an update of special investigation of investment performance reporting. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss advice of counsel regarding pending or potential litigation and agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of law, and Quasi-judicial matters."

Nathan Mains moved that the Audit/Compliance Committee enter Executive Session, with Patrick Shaughnessy seconding the motion. The motion passed unanimously.

The Regular Session resumed at 3:58 P.M.

III. Actions from Executive Session – none

IV. Other Business – none

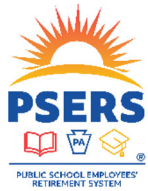
V. Adjournment at 4:01 P.M.

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4/14/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Friday, April 9, 2021

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 4:01 P.M. via MS TEAMS.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity

Nathan Mains
Patrick Shaughnessy for Rep.
Matt Bradford
Sen. Katie Muth
Sen. Patrick Browne

Melva Vogler
Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio

Others Present:

Robert Abramovitz, MorganLewis
Anne Baloga
Susan Boyle
Thomas Clancy
Stacey Connors
Christopher Craig

Suzanne Dugan, CohenMilstein
Lloyd Ebright
Alan Flannigan
Richard Goldberg, LewisBrisbois
Gregory Needles, MorganLewis

Claire Rauscher,
WombleBondDickinson
Jill Vecchio
Don Vymazal
Joe DiStefano
Shawn Barber, Hamilton Lane

Staff Present:

Glen Grell
Jennifer Mills
Brian Carl
Mei Gentry

Evelyn Williams
Jackie Lutz
Steven Skoff
Mercedes Evans

Tivia Danner
Joe O'Donnell

I. Public Comment – none.

II. Consultation with Counsel in Connection with Potential or Current Litigation

At 4:03 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters."

Rep. Frank Ryan moved that the Board enter Executive Session, with Jason Davis seconding the motion. The motion passed unanimously.

The Regular Session resumed at 8:19 P.M.

III. Action Item

Resolution 2021-13 Re: Legal Services Contract, Sidley Austin LLP

Resolved, that, the Public School Employee's Retirement Board (the "Board") hereby retains the law firm of Sidley Austin LLP, to represent and advise the Board t/b/a Commonwealth of Pennsylvania, Public School Employees' Retirement System in matters involving the System and its employees related to a Federal Investigation and collateral issues related thereto as may be directed by the Board.

Jason Davis moved, with Eric DiTullio seconding the motion, which passed unanimously.

IV. Announcement of Future Executive Sessions

- April 14, 2021 at 5:30 P.M. via MS Teams Re: Consultation with Counsel Regarding Ongoing or Pending Litigation
- April 21, 2021 at 5:30 P.M. via MS Teams Re: Consultation with Counsel Regarding Ongoing or Pending Litigation
- April 28, 2021 at 5:30 P.M. via MS Teams Re: Consultation with Counsel Regarding Ongoing or Pending Litigation
- May 5, 2021 at 5:30 P.M. via MS Teams Re: Consultation with Counsel Regarding Ongoing or Pending Litigation
- May 12, 2021 at 5:30 P.M. via MS Teams Re: Consultation with Counsel Regarding Ongoing or Pending Litigation
- May 19, 2021 at 5:30 P.M. via MS Teams Re: Consultation with Counsel Regarding Ongoing or Pending Litigation
- May 26, 2021 at 5:30 P.M. via MS Teams Re: Consultation with Counsel Regarding Ongoing or Pending Litigation
- June 2, 2021 at 5:30 P.M. via MS Teams Re: Consultation with Counsel Regarding Ongoing or Pending Litigation
- June 8, 2021 at 5:30 P.M. via MS Teams Re: Consultation with Counsel Regarding Ongoing or Pending Litigation

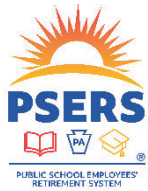
V. Announcement of Future Special Board Meetings

- April 19, 2021 at 4:00 P.M. via MS Teams Re: Recertification
- April 20, 2021 at 3:00 P.M. via MS Teams Re: Audit/Compliance Committee Update on Investigation of Investment Performance Reporting

VI. Other Business – none.

VII. Chris SantaMaria adjourned the meeting at 8:22 P.M.

DocuSigned by:
Glen Grell
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4/17/2021



Public School Employees' Retirement Board

Special Board Executive Session Minutes

Wednesday, April 14, 2021

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:33 P.M. via MS TEAMS.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity

Nathan Mains
Patrick Shaughnessy for Rep.
Matt Bradford
Sen. Katie Muth
Sen. Patrick Browne

Melva Vogler
Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio

Others Present:

Anne Baloga
Thomas Clancy
Stacey Connors
Christopher Craig

Suzanne Dugan, CohenMilstein
Lloyd Ebright
Alan Flannigan
Jill Vecchio

Don Vymazal
Joe DiStefano

Staff Present:

Glen Grell
Jennifer Mills
Brian Carl
Mei Gentry

Evelyn Williams
Jackie Lutz
Steven Skoff
Mercedes Evans

Tivia Danner
Joe O'Donnell

I. Public Comment – none.

II. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:43 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters."

Rep. Frank Ryan moved that the Board enter Executive Session, with Jason Davis seconding the motion.
The motion passed unanimously.

The Regular Session resumed at 6:05 P.M.

III. Action Item - none

IV. Announcement of Future Special Board Meetings

- April 19, 2021 at 4:00 P.M. via MS Teams Re: Consultation with Counsel and Recertification of Rates

V. Other Business – none

VI. Chris SantaMaria adjourned the meeting at 6:08 P.M.

DocuSigned by:

Glen Grell

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4/26/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Monday, April 19, 2021 [Sunshine Meeting]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 4:00 P.M. via MS TEAMS.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity

Nathan Mains
Patrick Shaughnessy for Rep.
Matt Bradford
Sen. Katie Muth
Sen. Patrick Browne

Melva Vogler
Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio

Others Present:

Anne Baloga
James Bloom
Susan Boyle
Thomas Clancy
Stacey Connors
Christopher Craig

Suzanne Dugan, CohenMilstein
Lloyd Ebright
Alan Flannigan
Claire Rauscher,
WombleBondDickinson
William Sullivan, Pillsbury
Jill Vecchio

Don Vymazal
Joe DiStefano, Phil Inquirer
Mark Levy, Assoc Press
Mary Walsh, NY Times
Steven Caruso, PA Capital Star
Steph Schwartz, Member

Staff Present:

Glen Grell
Jennifer Mills
Brian Carl

Mei Gentry
Evelyn Williams
Jackie Lutz

Mercedes Evans
Tivia Danner
Joe O'Donnell

I. Public Comment – none.

II. Consultation with Counsel in Connection with Potential or Current Litigation

At 4:05 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters."

Rep. Frank Ryan moved that the Board enter Executive Session, with Jason Davis seconding the motion. The motion passed unanimously.

The Regular Session resumed at 6:19 P.M.

III. Discussion on Recertification

At 6:20 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees’ Retirement Board, we are going into an **Executive Session** to discuss the items on today’s agenda, namely discussion on recertification. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”

Rep. Frank Ryan moved that the Board enter Executive Session, with Jason Davis seconding the motion. The motion passed unanimously.

The Regular Session resumed at 7:20 P.M.

IV. Action Item

Resolution 2021-14 Re: Engagement of Investment Oversight Consulting Firm

- **RESOLVED**, that the Public School Employees’ Retirement Board (the “Board”), having determined that circumstances exist to warrant an emergency procurement of an investment consulting firm to provide monitoring and oversight of investment activities to the Board during the pendency of internal and external investigations, the Board delegates the screening, review of proposals and selection of such firm to the Audit/Compliance Committee. Upon selection and engagement, the contracted firm shall report directly to the full Board on all matters within the scope of work.

Jason Davis moved, with Treas. Stacy Garrity seconding. The motion passed unanimously.

Resolution 2021-15 Re: Legal Services Contract

- **RESOLVED**, that the Public School Employees’ Retirement Board (the “Board”) hereby directs the Office of Chief Counsel to negotiate the retention of the law firm of Morgan, Lewis & Bockius LLP, to replace the law firm of Sidley Austin LLP, to represent and advise the Board t/b/a Commonwealth of Pennsylvania, Public School Employees’ Retirement System in matters involving the System and its employees related to a Federal investigation and collateral issues related thereto as may be directed by the Board.

Melva Vogler moved, with Patrick Shaughnessy seconding. The motion passed unanimously.

Resolution 2021-16 Re: Recertification of Member Contribution Rates

- **RESOLVED**, that the Public School Employees’ Retirement Board (the “Board”) amends PSERB Resolution 2020-52 by replacing the second paragraph of said Resolution in its entirety with the following.

RESOLVED FURTHER, that the Board certifies the T-E member contribution rate of 8.0%, T-F member contribution rate of 10.8%, T-G member contribution rate of 9.0% (Defined benefit rate 6.25%; DC rate 2.75%) and T-H member contribution rate of 8.25% (Defined benefit rate 5.25%; DC rate 3.00%) for the three-year period from July 1, 2021 to June 30, 2024 in accordance with the Shared Risk provisions of PSERS' Retirement Code.

Rep. Frank Ryan moved, with Nathan Mains seconding.

Discussion: Sen. Patrick Browne provided comments regarding his work on HB2497 Shared Risk Provision in 2010 and the need for appropriate legislative remedy.

The motion passed 12-1, with one opposed being Sen. Patrick Browne. Eric DiTullio had departed the meeting prior to the vote; however Chairman SantaMaria, on instructions from Mr. DiTullio, noted for the record that he would have voted “No” had he been present.

V. Announcement of Future Meetings

- April 28, 2021 at 5:30 P.M. via MS Teams to be a Sunshined meeting of the Audit/Compliance Committee.

VI. Other Business – none

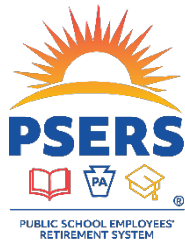
VII. Chris SantaMaria adjourned the meeting at 7:34.

DocuSigned by:

Glen Grill

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4/26/2021



Public School Employees' Retirement Board

Special Audit/Compliance Committee Meeting Minutes

Tuesday, April 20, 2021 [Sunshine Meeting]

Call to Order: Rep. Frank Ryan, Audit/Compliance Committee Chair, called the meeting to order at 3:04 P.M. via MS Teams.

Board Members Present:

Rep. Frank Ryan, Chair	Treas. Stacy Garrity	Jason Davis
Nathan Mains, Vice-Chair	Patrick Shaughnessy for Rep.	Patrick Lord
Sec. Richard Vague	Matt Bradford	

Others Present:

Suzanne Dugan, Cohen Milstein	James Bloom	Lloyd Ebright
Claire Rauscher,	Susan Boyle	Alan Flannigan
WombleBondDickinson	John Callahan	Patrick Lord
Thomas Rey, CLA Connect	Christopher Craig	Jill Vecchio
Anne Baloga	Thomas Clancy	Joe DiStefano, Phil Inquirer

Staff Present:

Brian Carl	Jackie Lutz	Tivia Danner
Mei Gentry	Jennifer Mills	
Glen Grell	Mercedes Evans	

I. Public Comment – none

II. Update of Special Investigation of Investment Performance Reporting, Engagement of Investment Oversight Consulting Firm, Including Confidential Audit Related Discussion with outside Auditors

At 3:05 P.M., Glen Grell, Executive Director, stated "In Accordance with Section 5.13 of the Bylaws of the Public School Employees' retirement Board, we are going into **Executive Session** to discuss the items listed on today's agenda, namely the update of special investigation of investment performance reporting, and engagement of investment oversight consulting firm, including confidential audit related discussion with our outside auditors. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of law, and Quasi-judicial matters."

Nathan Mains moved, with Patrick Shaughnessy seconding the motion. The motion passed unanimously.

The Regular Session resumed at 4:12 P.M.

III. Action Item from Executive Session

Resolution 2021-17 (Audit/Compliance Committee) Re: Engagement of Investment Oversight Consulting Firm

- **RESOLVED**, pursuant to delegation of authority by the Public School Employees' Retirement Board (the "Board") and the Board having determined that circumstances exist to warrant an emergency procurement of an investment consulting firm to provide monitoring and oversight of investment activities to the Board during the pendency of internal and external investigations, the Audit/Compliance Committee, having considered multiple vendors and at least two (2) formal proposals, authorizes and directs the Office of Chief Counsel to engage Verus Investments for such purposes, subject to successful contract negotiations Upon selection and engagement, Verus Investments shall report directly to the full Board on all matters within the scope of work.

Patrick Shaughnessy moved, with Sec. Richard Vague seconding. The motion passed unanimously.

IV. **Other Business** – PSERS Office of Chief Counsel, Rep. Frank Ryan, Alan Flannigan and Jason Davis will convene to define the final bid to work down cost associated and scope of work, therefore a decision was made to cancel follow up Audit/Compliance Committee Meeting planned for Monday, April 26, 2021.

V. **Adjournment at 4:15 P.M.**

DocuSigned by:

Glen Grell

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4/23/2021



Public School Employees' Retirement Board

Special Board Executive Session Minutes

Wednesday, April 21, 2021

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:30 P.M. via MS TEAMS.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity
Nathan Mains

Patrick Shaughnessy for Rep.
Matt Bradford
Sen. Katie Muth
Stacey Connors for Sen. Patrick
Browne
Melva Vogler

Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio

Others Present:

Anne Baloga
James Bloom
Susan Boyle
Thomas Clancy

Christopher Craig
Suzanne Dugan, CohenMilstein
Lloyd Ebright
Alan Flannigan

William Sullivan, Pillsbury
Jill Vecchio
Don Vymazal

Staff Present:

Glen Grell
Jackie Lutz

Tivia Danner

I. PSERS Comment

- Glen Grell: "At the April 9, 2021 meeting, this Executive Session of April 21, 2021 was announced Re: Consultation with Counsel Regarding Ongoing or Pending Litigation."

II. Public Comment – none.

III. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:43 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or

confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”

Melva Vogler moved that the Board enter Executive Session, with Rep. Frank Ryan seconding the motion. The motion passed unanimously.

IV. Action Items – none

V. Other Business – none

VI. Chris SantaMaria adjourned the meeting at 6:21 P.M.

DocuSigned by:

Glen Grell

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4/26/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Wednesday, April 28, 2021 [Sunshine]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:31 P.M. via MS TEAMS.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity
John Callahan for Nathan Mains

Patrick Shaughnessy for Rep.
Matt Bradford
Sen. Katie Muth
Stacey Connors for Sen. Patrick Browne
Melva Vogler

Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio

Others Present:

James Bloom
Susan Boyle
Christopher Craig

Suzanne Dugan, CohenMilstein
Lloyd Ebright
Alan Flannigan

William Sullivan, Pillsbury
Jill Vecchio
Don Vymazal

Staff Present:

Glen Grell
Jackie Lutz

Tivia Danner

I. PSERS Comment

- Glen Grell: "At the April 9, 2021 meeting, this Executive Session of April 28, 2021 was announced Re: Consultation with Counsel Regarding Ongoing or Pending Litigation."
- Glen Grell provided an update on the progress for the Shared Risk project.

II. Public Comment – none.

III. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:32 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or

confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”

Rep. Frank Ryan moved that the Board enter Executive Session, with Jason Davis seconding the motion. The motion passed unanimously.

The Regular session resumed at 7:28 P.M.

IV. Action Items – none

V. Other Business – none

VI. Chris SantaMaria adjourned the meeting at 7:29 P.M.

DocuSigned by:

Glen Grill

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5/24/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Wednesday, May 5, 2021 [Sunshine]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:37 P.M. via MS TEAMS.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity
Nathan Mains

Patrick Shaughnessy for Rep.
Matt Bradford
Sen. Katie Muth
Stacey Connors for Sen. Patrick Browne
Melva Vogler

Susan Lemmo
Deborah Beck
Eric DiTullio
Joe Torsella (off 6:05)

Others Present:

Meredith Auten, MorganLewis
James Bloom
Susan Boyle
Thomas Clancy
Christopher Craig

Suzanne Dugan, CohenMilstein
Lloyd Ebright
Alan Flannigan
Zane Memeger, MorganLewis
Luc Miron

William Sullivan, Pillsbury
Jill Vecchio
Don Vymazal
Joe DiStefano, Phil Inq.

Staff Present:

Glen Grell
Jackie Lutz

Tivia Danner

I. PSERS Comment

- Glen Grell: "At the April 9, 2021 meeting, this Special Board Meeting of May 5, 2021 was announced Re: Consultation with Counsel Regarding Ongoing or Pending Litigation."
- Next meeting [Sunshine] is scheduled for Wednesday May 12, 2021, with Audit/Compliance beginning at 4:30 and Board beginning at 5:30.

II. Public Comment – none.

III. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:39 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's

agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”

Rep. Frank Ryan moved that the Board enter Executive Session, with Patrick Shaughnessy seconding the motion. The motion passed unanimously.

The Regular session resumed at 6:32 P.M.

IV. Action Items – none.

V. Other Business – none.

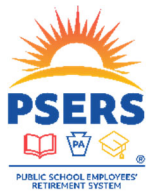
VI. Chris SantaMaria adjourned the meeting at 6:34 P.M.

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Glen Grill

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5/24/2021



Public School Employees' Retirement Board

Special Audit/Compliance Committee Meeting Minutes

Wednesday, May 12, 2021 [Sunshine]

Call to Order: Rep. Frank Ryan, Chair, called the meeting to order at 4:31 P.M. via MS TEAMS.

Board Members Present:

Rep. Frank Ryan, Chair
Nathan Mains, Vice-Chair
Christopher SantaMaria, Ex-Officio
Sec. Richard Vague

Treas. Stacy Garrity
Patrick Shaughnessy for Rep.
Matt Bradford
Jason Davis
Sen. Katie Muth

Melva Vogler
Susan Lemmo
Deborah Beck

Others Present:

James Bloom
Susan Boyle
Thomas Clancy
Christopher Craig
Lloyd Ebright

Alan Flannigan
Patrick Lord
Luc Miron
Claire Rauscher,
WombleBondDickinson

Thomas Rey, CLA
William Sullivan, Pillsbury
Jill Vecchio
Don Vymazal
Joe DiStefano, Phil Inq.

Staff Present:

Mei Gentry
Glen Grell

Stephanie Lanius
Tivia Danner

Mercedes Evans

I. Public Comment – none.

II. Cybersecurity Audit and Special Investigation of Investment Performance Reporting Updates

At 4:35 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees’ Retirement Board, we are going into an **Executive Session** to discuss the items on today’s agenda, namely updates on Cybersecurity audit and on special investigation of investment performance reporting. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”

Jason Davis moved that the Audit/Compliance Committee enter Executive Session, with Nathan Mains seconding the motion. The motion passed unanimously.

The Regular session resumed at 5:17 P.M.

III. CLA Audit Work Plan Update

Thomas Rey, CLA, presented on the Audit Work Plan. A discussion followed.

IV. Act 128 2020 Internal Control Audit of System Planning

Rep. Frank Ryan discussed the Internal Control Audit of System Planning.

V. Other Business – none.

VI. Rep. Frank Ryan adjourned the meeting at 5:32 P.M.

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Mei Gentry

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Glen Grill

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5/24/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Wednesday, May 12, 2021 [Sunshine]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:32 P.M. via MS TEAMs.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity

Nathan Mains
Sen. Katie Muth
Stacey Connors for Sen. Patrick Browne
Melva Vogler

Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio
Joe Torsella

Others Present:

James Bloom
Susan Boyle
John Callahan
Thomas Clancy
Christopher Craig

Lloyd Ebright
Alan Flannigan
Luc Miron
William Sullivan, Pillsbury
Jill Vecchio

Don Vymazal
Joe DiStefano, Phil Inq.

Staff Present:

Glen Grell
Jackie Lutz

Tivia Danner
Mercedes Evans

I. Public Comment – none.

II. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:35 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees’ Retirement Board, we are going into an **Executive Session** to discuss the items on today’s agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”

Rep. Frank Ryan moved that the Board enter Executive Session, with Melva Vogler seconding the motion. The motion passed unanimously.

The Regular session resumed at 7:10 P.M.

III. Action Items – none.

IV. Other Business – Chris SantaMaria, Board Chair, congratulated the PSERS IT department for their COVID-19 response and nomination to the Governor’s Awards for Excellence. They were not the finalist however were in the top.

V. Chris SantaMaria adjourned the meeting at 7:15 P.M.

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Glen Grell
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5/24/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Wednesday, May 19, 2021 [Sunshine]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:30 P.M. via MS TEAMs.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity

Nathan Mains
Sen. Katie Muth
Stacey Connors for Sen. Patrick Browne

Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio
Joe Torsella

Others Present:

Meredith Auten, Morgan Lewis
James Bloom
Susan Boyle
John Callahan
Thomas Clancy

Christopher Craig
Lloyd Ebright
Alan Flannigan
Zane Memeger, Morgan Lewis
Luc Miron

William Sullivan, Pillsbury
Jill Vecchio
Don Vymazal
Joe DiStefano, Phil Inq.

Staff Present:

Glen Grell
Jackie Lutz

Tivia Danner

I. Public Comment – none.

II. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:34 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters."

Rep. Frank Ryan moved that the Board enter Executive Session, with Jason Davis seconding the motion. The motion passed unanimously.

The Regular session resumed at 7:28 P.M.

III. Action Items – none.

IV. Other Business – none.

V. Chris SantaMaria adjourned the meeting at 7:29 P.M.

DocuSigned by:

Glen Grell

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5/24/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Wednesday, June 16, 2021 [Sunshine]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:30 P.M. via MS TEAMs.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity
Nathan Mains

Patrick Shaughnessy for Rep.
Matt Bradford
Sen. Katie Muth
Stacey Connors for Sen. Patrick Browne

Jason Davis
Susan Lemmo
Deborah Beck
Joe Torsella
Melva Vogler

Others Present:

James Bloom
Thomas Clancy
Suzanne Dugan, CohenMilstein

Alan Flannigan
Luc Miron
William Sullivan, Pillsbury

Jill Vecchio
Don Vymazal

Staff Present:

Mercedes Evans
Glen Grell

Jackie Lutz

I. Public Comment – none.

II. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:35 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”

Rep. Frank Ryan moved that the Board enter Executive Session, with Jason Davis seconding the motion. The motion passed unanimously.

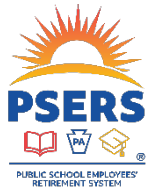
The Regular session resumed at 6:08 P.M.

III. Action Items – none.

IV. Other Business –

V. Chris SantaMaria adjourned the meeting at 6:09 P.M.

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7/13/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Wednesday, June 23, 2021 [Sunshine]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:30 P.M. via MS TEAMs.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity
Nathan Mains

Patrick Shaughnessy for Rep.
Matt Bradford
Sen. Katie Muth
Stacey Connors for Sen. Patrick Browne

Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio
Joe Torsella
Melva Vogler

Others Present:

James Bloom
Susan Boyle
Thomas Clancy
Christopher Craig

Lloyd Ebright
Alan Flannigan
Luc Miron
William Sullivan, Pillsbury

Jill Vecchio
Don Vymazal
Joe DiStefano, Phil Inq.

Staff Present:

Glen Grell
Jackie Lutz

Tivia Danner

I. Public Comment – none.

II. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:35 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters."

Rep. Frank Ryan moved that the Board enter Executive Session, with Melva Vogler seconding the motion. The motion passed unanimously.

The Regular session resumed at 6:21 P.M.

III. Action Items – none.

IV. Other Business –

Tivia Danner provided an update on pa.gov email assignment for Board members. More information will be shared with recipients by next week.

Jason Davis reported he received a call from James Grossman, PSERS-CIO, explaining Bloomberg Transaction terminals were closed to PSERS due to an outstanding invoice. PSERS secured a one-week grace period to research the unpaid amount and reconcile. Additional support was provided by Chris SantaMaria, Chair, and Frank Ryan, Vice-Chair in conjunction with Treasurer Stacy Garrity. Lenann Engler, PSERS Investment Office, explained the Comptroller's Office was unable to process the payment due to some unanswered terms. The terms were explained and Treasurer Garrity received a request to expedite the payment. Treasurer Garrity confirmed it was scheduled to be paid by Friday, June 25, 2021. Mr. Davis expressed appreciation on behalf of the Investment Office.

V. Chris SantaMaria adjourned the meeting at 6:22 P.M.

Next PSERB Special Board Meeting is scheduled for Wednesday, June 30, 2021 at 5:30 P.M.

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6/29/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Wednesday, June 30, 2021 [Sunshine]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:30 P.M. via MS TEAMs.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity
Nathan Mains

Patrick Shaughnessy for Rep.
Matt Bradford
Sen. Katie Muth
Stacey Connors for Sen. Patrick
Browne

Susan Lemmo
Deborah Beck
Eric DiTullio
Joe Torsella

Others Present:

James Bloom
Susan Boyle
Christopher Craig

Suzanne Dugan, CohenMilstein
Alan Flannigan
Luc Miron
William Sullivan, Pillsbury

Jill Vecchio
Don Vymazal

Staff Present:

Glen Grell
Jackie Lutz

Steve Skoff
Tivia Danner

I. Public Comment – none.

II. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:35 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters."

Rep. Frank Ryan moved that the Board enter Executive Session, with Eric DiTullio seconding the motion. The motion passed unanimously.

The Regular session resumed at 7:02 P.M.

III. Action Items – none.

IV. Other Business –

Glen Grell reported the General Fund budget passed with full actuarial funding and the PSERS Agency Budget also passed. Thanks extended to legislative members and Appropriations Chairs, as well as Governor's Office for 6th consecutive year with full actuarial funding.

Glen Grell reported the release on V3 for Shared Risk implementation successfully deployed last weekend and completed in advance of July 1 implementation. Congratulations and thanks to Jennifer Mills and whole PSERS team for a job well done.

Tivia Danner provided an update on pa.gov email assignment for Board members. Each member received a [SEND SECURE] email with username and password. A Quick Guide and PSERS IT HelpLine were provided to support activation of the account. Members are asked to confirm activation.

V. Chris SantaMaria adjourned the meeting at 7:07 P.M.

Next PSERB Special Board Meeting is scheduled for Wednesday, July 7, 2021 at 5:30 P.M.

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7/1/2021



Public School Employees' Retirement Board

Special Bylaws/Policy Committee Meeting Minutes

Wednesday, July 7, 2021 [Sunshine]

Call to Order: Patrick Shaughnessy (for Rep. Bradford), Chair, called the meeting to order at 4:30 P.M. via MS TEAMS.

Committee Members Present:

Patrick Shaughnessy for Rep.
Matt Bradford, Chair
Treas. Stacy Garrity, Vice-Chair

Stacey Connors for Sen. Patrick
Browne
Rep. Frank Ryan

Nathan Mains
Sec. Richard Vague

Others Present:

Deborah Beck
James Bloom
Susan Boyle
Thomas Clancy
Jason Davis

Suzanne Dugan, Cohen Milstein
Lloyd Ebright
Alan Flannigan
Susan Lemmo
Patrick Lord

Luc Miron
Joe Torsella
Sen. Katie Muth
Jill Vecchio
Melva Vogler

Staff Present:

Mercedes Evans
Glen Grell

Jackie Lutz
Jennifer Mills

I. Public Comment – none.

II. Discussion on Travel Policy - Patrick Shaughnessy

Chairman Shaughnessy provided a brief background on the process and content of the Draft Travel Policy to be considered.

Committee and Board Members were recognized for questions and comments, including a discussion of the elimination of any direct payment or reimbursement of travel costs by third parties.

Fiduciary Counsel Dugan offered comments regarding the process followed by the Committee and Board in connection with the prior Travel Resolution and the draft policy and offered that the Committee and Board may decide to accept the possibility of additional costs to the System to establish a higher standard of transparency and integrity.

Others disputed the belief that travel costs to PSERS would necessarily increase, given the post-COVID travel environment and greater scrutiny of the travel necessity.

Treasurer Garrity questioned why the Draft Policy allows an exception to “GSA lodging rates” and other members raised concerns about lodging at locations other than a meeting venue.

III. Action Items

Nathan Mains offered an amendment to the Draft Policy to require PSERS Travelers to follow applicable Office of Administration guidelines on lodging.

Treasurer Garrity seconded the motion. A further discussion followed.

The Amendment passed unanimously.

Resolution 2021.31 Re: Board and Staff Travel Policy

RESOLVED, that the Bylaws/Policy Committee of the Public School Employees' Retirement Board (the "Board") hereby recommends that the Board adopt the proposed Board and Staff Travel Policy for the Public School Employees' Retirement System dated December 3, 2020, to be amended to provide Travelers shall follow Commonwealth travel guidelines on all lodging.

Nathan Mains moved, with Rep. Frank Ryan seconding, which passed unanimously.

IV. Other Business

Sec. Vague thanked Patrick Shaughnessy for all the work navigating such a complicated process.

Rep. Ryan thanked Joe Torsella and the entire Board for working together on the Travel Policy.

V. Patrick Shaughnessy adjourned the meeting at 5:07 P.M.

DocuSigned by:

Glen Grill

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7/19/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Wednesday, July 7, 2021 [Sunshine]

Call to Order: Rep. Frank Ryan, Board Vice-Chair, called the meeting to order at 5:30 P.M. via MS TEAMS.

Board Members Present:

Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity
Nathan Mains

Patrick Shaughnessy for Rep.
Matt Bradford
Stacey Connors for Sen. Patrick
Browne
Susan Lemmo

Deborah Beck
Eric DiTullio
Joe Torsella
Jason Davis
Mel Vogler

Others Present:

James Bloom
Christopher Craig
Suzanne Dugan, CohenMilstein

Alan Flannigan
Luc Miron
William Sullivan, Pillsbury

Staff Present:

Mercedes Evans
Glen Grell

Jackie Lutz

I. Public Comment – none.

II. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:33 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters."

Patrick Shaughnessy moved that the Board enter Executive Session, with Eric DiTullio seconding the motion. The motion passed unanimously.

The Regular session resumed at 6:44 P.M.

III. Action Items – none.

IV. Other Business –

Sen. Katie Muth commented that it is important for the fiduciary to be informed and thanked Rep. Frank Ryan for conducting the meeting in absence of the Chair.

V. Rep. Frank Ryan adjourned the meeting at 6:47 P.M.

Special Investment and Budget/Finance Joint Committee Meeting is scheduled for July 12, 2021 at 1:00 P.M.

Special Audit/Compliance Committee Meeting is scheduled for July 13, 2021 at 2:00 P.M.

Special Board Meeting is scheduled for Wednesday, July 13, 2021 at 3:00 P.M.

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7/16/2021



Public School Employees' Retirement Board

Investment and Budget/Finance Committees Joint

Meeting Minutes

Monday, July 12, 2021

Call to Order: Jason Davis, Investment Committee Chair, called meeting to order at 1:03 P.M. via MS Teams.

Board Members Present:

Jason Davis, Chair
Eric DiTullio, Vice-Chair
Christopher SantaMaria, Ex-Officio
Deborah Beck
Patrick Shaughnessy for Rep. Matt Bradford

Sen. Patrick Browne (Out @ 1:17 pm)
Stacey Connors for Sen. Patrick Browne (In @ 1:17 pm)
Treas. Stacy Garrity (In @ 1:07 pm)
Sen. Katie Muth
Patrick Lord for Sec. Noe Ortega

Rep. Frank Ryan
Joe Torsella
Melva Vogler
Sec. Richard Vague

Board Members Absent:

Susan Lemmo
Nathan Mains

Others Present:

Sean Barber, Hamilton Lane
James Bloom (In @ 2:00 pm)
Mark Brubaker, Verus
Thomas Clancy
Christopher Craig
Tapan Datta, Aon
David Driscoll, Buck
Suzanne Dugan, Cohen Millstein

Lloyd Ebright
Corina English, Hamilton Lane
Alan Flannigan
Thomas Garrett, Verus
Michael Kennedy, Buck
Jeffrey MacLean, Verus
Salvador Nakar, Buck
Brandon Patterson, Aon

Edward Quinn, Buck
Stuart Schulman, Buck
Brittany Seibert, Hamilton Lane
Claire Shaughnessy, Aon
Jas Thandi, Aon
Ian Toner, Verus
Jill Vecchio

Staff Present:

Thomas Bauer

Brian Carl

Manaswita Dandapat

Tivia Danner

James Del Gaudio

Robert Devine

Steve Esack

Mercedes Evans

Andrew Fiscus

Darren Foreman

Mei Gentry

Glen Grell

James Grossman

Denise Knapp

Patrick Knapp

Brian Koleno

Jason Kuntz

Robert Little

Jackie Lutz

G. Anthony Meadows

Melissa Quackenbush

Jarrett Richards

Michael Severance

Joe Sheva

Steven Skoff

Charles Spiller

William Stalter

Philip VanGraafeiland

I. Acceptance of Published Agenda or Amendments

Glen Grell, Executive Director, explained Senate Bill 554 legislation signed into effect June 30, 2021, requiring modifications to open meetings and notification of agency business; namely addition of agenda item Acceptance of Published Agenda. Agendas are to be published and posted twenty-four hours in advance of an open meeting in specific locations, and the published agenda is to be approved during the open meeting.

Melva Vogler moved to approve the Acceptance of Published Agenda or Amendments. Eric DiTullio seconded the motion, which passed unanimously.

II. Opening Comments

Jason Davis opened the Joint Budget/Finance and Investment Committee Meeting with how the joint meeting will proceed, mentioned that this was an informational meeting only and the potential outcomes of this meeting.

III. Public Comments - none

IV. Executive Session

At 1:10 P.M., Mr. Grell stated, "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an Executive Session to discuss the items listed on today's agenda, namely, to discuss the Informational Items – Capital Market Assumptions and Expected Return Update, Expected Return Analysis and Expected Return on Assets Analysis. According to Section 708 (a) of the Sunshine Act (65 Pa C.S. § 708 (a)), we are going into Executive Session to present information only to Board Members relating to Capital Market Assumptions and Expected return Analysis, without deliberations or any Agency action all of which may take place at a future public meeting."

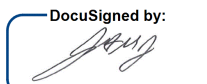
Frank Ryan moved that the Investment Committee enter into Executive Session. Patrick Shaughnessy seconded the motion, which passed unanimously.


Regular session resumed at 2:40 P.M.

V. Other business - none

VI. Adjournment

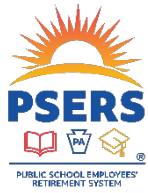
The Budget/Finance and Investment Committee meeting adjourned at 2:43 P.M.

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7/22/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Tuesday, July 13, 2021 [Sunshine]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 3:07 P.M. via MS TEAMS.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Deborah Beck
Patrick Shaughnessy for Rep.
Matt Bradford

Stacey Connors for Sen. Patrick
Browne
Jason Davis
Patrick Lord for Sec. Noe Ortega
Treas. Stacy Garrity
Nathan Mains

Sen. Katie Muth
Joe Torsella
Sec. Richard Vague
Melva Vogler

Others Present:

Meredith Auten, MorganLewis
James Bloom
Susan Boyle
Christopher Craig

Suzanne Dugan, CohenMilstein
Alan Flannigan
Michael Kichline, MorganLewis
Zane Memeger, MorganLewis
Luc Miron

William Sullivan, Pillsbury
Jill Vecchio

Staff Present:

Glen Grell
Jackie Lutz

Tivia Danner
Mercedes Evans

I. Acceptance of Published Agenda or Amendments

Melva Vogler motioned, with Rep. Frank Ryan seconding. The motion passed unanimously.

II. Public Comment – none.

III. Report of Bylaws/Policy Committee Travel Policy – Patrick Shaughnessy

Patrick Shaughnessy presented the PSERS Board and Staff Travel Policy dated July 12, 2021.

Nathan Mains moved that the Board accept the presented Travel Policy, with Rep. Frank Ryan seconding.

Melva Vogler proposed an amendment to the section that required travelers to choose a non-conference site hotel citing health and safety concerns. Nathan Mains indicated the proposed amendment would not be accepted as a “friendly amendment,” and moved to table the amendment (not seconded). Glen Grell, Executive Director, stated the Commonwealth Travel Policy allows for case-by-case exceptions. After discussion, Ms. Vogler withdrew her amendment.

Jason Davis stated he opposed the resolution, stating he supports the transparency, but believes it is unfair to the System to prohibit third-party reimbursement of certain travel costs, as most other funds allow.

Chris SantaMaria also expressed concerns about prohibiting reimbursement, especially with LPAC meetings and requested that the costs be closely tracked and re-visited in two years, or sooner if warranted.

Following further discussion, the resolution was considered.

Resolution 2021-31 Re: Board and Staff Travel Policy

- **RESOLVED**, that the Public School Employee's Retirement Board (the "Board") hereby adopts the proposed Board and Staff Travel Policy for the Public School Employee's Retirement System dated July 12, 2021 and attached hereto.

The motion passed with 12-1, with one opposed being Jason Davis, and Eric DiTullio and Susan Lemmo not attending.

IV. Status Report of Ad Hoc Governance Committee – Melva Vogler

Melva Vogler, Ad Hoc Committee Chair, provided an update on Funston's draft final recommendation report. Ms. Vogler reminded Board members Funston is available for follow-up through Friday, July 19. Treas. Stacy Garrity requested an extension due to schedule conflict, and Glen Grell said effort would be made to accommodate.

Nathan Mains requested clarification of dates for full Board to consider the draft final report. Glen Grell stated a full presentation to the Board would be scheduled for October 6, at which the recommendations could be expected to advance to the Board meeting scheduled for October 8.

V. Consultation with Counsel in Connection with Potential or Current Litigation

At 3:49 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law."

Rep. Frank Ryan moved that the Board enter Executive Session, with Melva Vogler seconding the motion. The motion passed unanimously.

The Regular session resumed at 4:40 P.M.

VI. Consultation with Counsel in Connection with Other Current Litigation

At 4:42 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with other current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law."

Rep. Frank Ryan moved that the Board enter Executive Session, with Jason Davis seconding the motion. The motion passed unanimously. Sen. Katie Muth and Designee Luc Miron recused themselves for the duration of the Executive Session. Sen. Muth asked on the record if she would be permitted to return for public comment following the Executive Session, which was affirmed.

The Regular session resumed at 5:27 P.M. Sen. Muth returned at 5:28 P.M.

VII. Action Items – none.

VIII. Other Business –

Jason Davis mentioned all Board should receive an email from Mark Brubaker, Verus, related to fixed income topic. Jason Davis followed with notice that Board members will also receive a survey from Verus about Private versus Public Equity Reports.

Glen Grell provided a reminder to Board members that NCTR 21st Annual Trustee Workshop scheduled for July 26-28, 2021 registration is due by Friday, July 16, and to contact Mercedes Evans merceevans@pa.gov or Tivia Danner tidanner@pa.gov to complete. The course is available for 30 days post workshop for virtual viewing to anyone registered but not able to attend.

Sen. Katie Muth asked to reflect “in the minute notes and public record that I was not a participant in the last Executive Session and was asked to recuse myself being that the discussion was regarding ongoing litigation. I also wanted to note for the record that I have not received any correspondence nor information regarding how the process behind the effort at which counsel was directed to respond on behalf of counsel, and by counsel I mean outside counsel hired by the Board which I am a member and also the System, and if the process was done by proper procedure there should have been a vote by the Board and I am not aware of any vote by the Board, and may I remind everyone that voting in Executive Session is not permitted so I just want to state that for the record. I request that a resolution be brought forward to make the motion for resolution for the Board to vote on that since the process has already been flawed and not adhered to and at least the Board should go on record voting to make those requests formal.”

Chris SantaMaria acknowledge Sen. Muth’s comments and stated that no vote was taken in Executive Session.

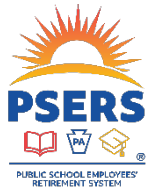
Sen. Muth said, “If I may, there is no member of this Board that has unilateral authority to make decisions on behalf of the entire Board and the public should know that because our Bylaws state that the majority of a Board so if a vote falls where it may, the vote still needs to occur so the public can witness it. I would also encourage all of my colleagues on the Board to not just blindly trust advice of counsel, that you do your due diligence and try to follow up on these items that were discussed that are of utmost importance to ensure that we are all upholding our fiduciary duty. Thank you.”

Chris SantaMaria announced the scheduled Special Board meeting is for July 14, 2021 at 5:30 P.M. is no longer necessary and is being cancelled.

IX. Chris SantaMaria adjourned the meeting at 5:33P.M.

Next PSERB Special Board Meeting is scheduled for Wednesday, July 21, 2021 at 5:30 P.M.

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Glen Grell
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Public School Employees' Retirement Board

Special Audit/Compliance Committee Meeting Minutes

Tuesday, July 13, 2021 [Sunshine]

Call to Order: Rep. Frank Ryan, Chair, called the meeting to order at 2:00 P.M. via MS TEAMS.

Committee Members Present:

Rep. Frank Ryan, Chair	Treas. Stacy Garrity	Jason Davis
Nathan Mains, Vice-Chair	Patrick Shaughnessy for Rep.	
Sec. Richard Vague	Matt Bradford	

Others Present:

Christopher SantaMaria, Ex-Officio	Christopher Craig	Sen. Katie Muth
Deborah Beck	Suzanne Dugan, CohenMilstein	Jill Vecchio
James Bloom	Lloyd Ebright	Melva Vogler (in @ 2:16)
Susan Boyle	Alan Flannigan	
Thomas Clancy	Patrick Lord	
	Luc Miron	

Staff Present:

Thomas Bauer	Mei Gentry	Jackie Lutz
Tivia Danner	Glen Grell	
Mercedes Evans	Stephanie Lanius	

I. Acceptance of Published Agenda or Amendments

Patrick Shaughnessy moved, with Jason Davis seconding. The motion passed unanimously.

II. Public Comment – none.

III. Public

At 2:06 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely the following: a discussion of the guidance on tracking restatement of financials in investments, a discussion on the external Board appointment and attendance at meetings policy, a review of the Auditor General 2017 Report, and a review of the EY 2018 Study. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law.”

Jason Davis moved that the Audit/Compliance Committee enter Executive Session, with Patrick Shaughnessy seconding the motion. The motion passed unanimously.

The Regular session resumed at 3:00 P.M.

IV. Other Business – none.

V. Rep. Frank Ryan adjourned the meeting at 3:02 P.M.

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Public School Employees' Retirement Board

Special Board Meeting Minutes

Wednesday, July 21, 2021 [Sunshine]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:30 P.M. via MS TEAMs.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Deborah Beck
Patrick Shaughnessy for Rep.
Matt Bradford

Stacey Connors for Sen. Patrick
Browne
Jason Davis
Christopher Craig for Treas. Stacy
Garritty
Susan Lemmo

Nathan Mains
Luc Miron for Sen. Katie Muth
Sec. Richard Vague
Melva Vogler

Others Present:

James Bloom
Susan Boyle
Thomas Clancy
Suzanne Dugan, CohenMilstein

Alan Flannigan
Ashley Matthews
William Sullivan, Pillsbury
Jill Vecchio

Staff Present:

Glen Grell
Jackie Lutz

Tivia Danner

I. Acceptance of Published Agenda or Amendments

Rep. Frank Ryan motioned, with Susan Lemmo seconding. The motion passed unanimously.

II. Opening Comment

Tivia Danner confirmed that the August Board meeting scheduled for August 4-6, 2021 will held at PSERS, 5 North 5th Street in Harrisburg. An RSVP email was sent to all Board/Designees for a reply by Friday July 23 to ensure Board Room arrangement, finalizing catering, and determine if an updated Board of Trustee photo will be arranged.

Glen Grell reported the COVID-19 restrictions have been lifted. Visitors to Commonwealth buildings, including PSERS, are not required to wear masks nor distance. The return to pre-COVID meeting guidelines means PSERS is required to have a physical presence in the Board Room and allow public access. For the record, PSERS had no public in attendance for this Board meeting.

III. Public Comment – none.

IV. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:36 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees’ Retirement Board, we are going into an **Executive Session** to discuss the items on today’s agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law.”

Rep. Frank Ryan moved that the Board enter Executive Session, with Jason Davis seconding the motion. The motion passed unanimously.

The Regular session resumed at 6:27 P.M.

V. Action Items – none.

VI. Other Business –

Chris SantaMaria, on behalf of the Board, welcomed Ashley Matthews, newly appointed Designee to Senator Katie Muth. Ashley provided a short background; see below.

Ashley Matthews currently serves as Executive Director of the Senate Democratic Policy Committee for Senator Katie J. Muth, committee chairwoman. Previously, Ms. Matthews served as press secretary for former Pennsylvania Treasurer Joe Torsella and the Pennsylvania Treasury Department. A graduate of Millersville University of Pennsylvania, Ms. Matthews currently resides in Lancaster with her husband Derrick and 3-month-old daughter Blaire.

PSERS Board member orientation has been scheduled for August 10-11, 2021.

VII. Chris SantaMaria adjourned the meeting at 6:29P.M.

Next PSERB Special Board Meeting is scheduled for Wednesday, July 28, 2021 at 5:30 P.M.

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Glen Grell
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7/22/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Wednesday, July 28, 2021 [Sunshine]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:30 P.M. via MS TEAMs.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Deborah Beck
Patrick Shaughnessy for Rep.
Matt Bradford
Stacey Connors for Sen. Patrick
Browne

Jason Davis
Eric DiTullio
Treas. Stacy Garrity
Susan Lemmo
Sen. Katie Muth
Patrick Lord for Sec. Noe Ortega
(in @5:48)

Joe Torsella
Sec. Richard Vague
Melva Vogler

Others Present:

James Bloom
Susan Boyle
Thomas Clancy
Christopher Craig
Suzanne Dugan, CohenMilstein

Lloyd Ebright
Alan Flannigan
Ashley Matthews
Luc Miron
William Sullivan, Pillsbury

Staff Present:

Glen Grell
Jackie Lutz

Tivia Danner

I. Acceptance of Published Agenda or Amendments

Rep. Frank Ryan motioned, with Jason Davis seconding. The motion passed unanimously.

II. Public Comment – none.

III. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:34 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees’ Retirement Board, we are going into an **Executive Session** to discuss the items on today’s agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or

confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law.”

Rep. Frank Ryan moved that the Board enter Executive Session, with Susan Lemmo seconding the motion. The motion passed unanimously.

The Regular session resumed at 5:55 P.M.

IV. Action Items – none.

V. Other Business –

Jason Davis reminded the Board members to complete a requested online survey requested by Mark Brubaker, Verus. The preferred submission date is Monday, August 2, 2021.

Chris SantaMaria shared that the NCTR Summer Workshop concluded on Wednesday July 28. Along with Jason Davis, he attended sessions that included internal audit set up and cybersecurity. The materials will be shared with the Board on Diligent.

VI. Chris SantaMaria adjourned the meeting at 5:57 P.M.

Next PSERB Special Board Meeting is scheduled for Wednesday, August 11, 2021 at 5:30 P.M.

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Glen Grill
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7/29/2021

OOR Exhibit 2

NOTICE OF DEADLINES

The appeal has been docketed by the OOR and it has been assigned to an Appeals Officer. The docket number and the Appeals Officer's contact information are included in the attachments you received along with this notice.

The Final Determination is currently due on **October 4, 2021**.

The timeline for this RTKL appeal may be extended by the OOR during the appeal. This extension will allow the OOR the flexibility it requires to protect due process and to ensure that the agency and requester, along with any third parties, have a full and fair opportunity to meaningfully participate in the appeal.

Evidence, legal argument and general information to support your position must be submitted within seven (7) business days from the date of this letter, unless the Appeals Officer informs you otherwise. *Note: If the proceedings have been stayed for the parties to submit a completed mediation agreement, the record will remain open for seven (7) business days beyond the mediation agreement submission deadline.*

Submissions in this case are currently due on **September 16, 2021**.

If you are unable to meaningfully participate in this appeal under the above deadlines, please notify the Appeals Officer as soon as possible.

Due to delays in U.S. mail, we urge agencies and requesters to use email for all communications with the OOR to the extent possible.

Presently, the OOR is receiving postal mail on a limited basis. Accordingly, we urge agencies and requesters to use email for all communication with the OOR to the extent possible.

If you have any questions about this notice or the underlying appeal, please contact the Appeals Officer. The OOR is committed to working with agencies and requesters to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.

September 7, 2021

Via Email Only:

Mr. Craig McCoy
The Philadelphia Inquirer
467 W School House Lane
Philadelphia, PA 19144
cmccoy@inquirer.com

Via Email Only:

Evelyn Williams
Agency Open Records Officer
Pennsylvania Public School Employees'
Retirement System
5 North 5th Street
Harrisburg, PA 17101-1905
ra-PSERSRTKL@pa.gov

**RE: OFFICIAL NOTICE OF APPEAL - McCoy and The Philadelphia Inquirer v. Pennsylvania
Public School Employees' Retirement System OOR Dkt. AP 2021-1856**

Dear Parties:

Review this information and all enclosures carefully as they affect your legal rights.

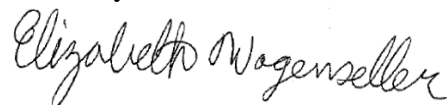
The Office of Open Records ("OOR") received this appeal under the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101, et seq. on September 3, 2021. A binding Final Determination ("FD") will be issued pursuant to the timeline required by the RTKL, **please see the attached information for more information about deadlines.**

Notes for both parties (more information in the enclosed documents):

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal.

Sincerely,



Elizabeth Wagenseller
Executive Director

Enc.: Description of RTKL appeal process
 Assigned Appeals Officer contact information
 Entire appeal as filed with OOR

The Right-to-Know Law Appeal Process

Please review this information carefully as it affects your legal rights.

The Office of Open Records (“OOR”) has received the enclosed appeal, which was filed under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. A binding Final Determination will be issued by the OOR pursuant to the statutory timeline, subject to the notice of deadlines enclosed herein. If you have any questions, please contact the Appeals Officer assigned to this case. Contact information is included on the enclosed documents.

Submissions to the OOR

Both parties may submit evidence, legal argument, and general information to support their positions to the assigned Appeals Officer. Please contact the Appeals Officer as soon as possible.

Any information provided to the OOR must be provided to all parties involved in this appeal. Information submitted to the OOR will not be considered unless it is also shared with all parties.

Include the docket number on all submissions.

The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Generally, submissions to the OOR — other than *in camera* records — will be public records. Do not include sensitive or personal information, such as Social Security numbers, on any submissions.

Agency Must Notify Third Parties

If records affect a legal or security interest of a third party; contain confidential, proprietary or trademarked records; **or** are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.**

Such notice must be made by: (1) Providing a copy of all documents included with this letter; **and** (2) Advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer assigned to this case (see 65 P.S. § 67.1101(c)).

The Commonwealth Court has held that “the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)).

A third party's failure to participate in a RTKL appeal before the OOR may be construed as a waiver of objections regarding release of requested records.

NOTE TO AGENCIES: If you have questions about this requirement, please contact the Appeals Officer immediately.

Statements of Fact & Burden of Proof

Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.**

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

An affidavit or attestation is required to prove that records do not exist.

Sample affidavits are on the OOR website, openrecords.pa.gov.

Any evidence or legal arguments not submitted or made to the OOR may be waived.

Preserving Responsive Records

The agency must preserve all potentially responsive records during the RTKL appeal process, including all proceedings before the OOR and any subsequent appeals to court.

Failure to properly preserve records may result in the agency being sanctioned by a court for acting in bad faith.

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process...”

Mediation

The OOR offers a mediation program as an alternative to the standard appeal process. To participate in the mediation program, both parties must agree in writing.

The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court — saving both sides time and money.

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.



APPEALS OFFICER:

Erin Burlew, Esq.

CONTACT INFORMATION:

Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

FACSIMILE:

(717) 425-5343

EMAIL:

eburlew@pa.gov

**Preferred method of contact and
submission of information:**

EMAIL

**Please direct submissions and correspondence related to this appeal to the above Appeals Officer.
Please include the case name and docket number on all submissions.**

**You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot
speak to parties individually without the participation of the other party.**

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review
prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff
are also available to provide general information about the appeals process by calling (717) 346-9903.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☐ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

00R Exhibit 3

From: [Burlew, Erin](#)
To: [Lutz, Jackie W.](#); [McCoy, Craig](#)
Cc: joed@inquirer.com
Subject: RE: [External] Re: Request for Extension - McCoy and The Philadelphia Inquirer v. Pennsylvania Public School Employees' Retirement System OOR Dkt. AP 2021-1856
Date: Wednesday, September 8, 2021 15:42:00

Parties-

My apologies. The final determination issuance date is actually being moved to October 12, 2021, as the first business day after a five day extension. Please note the OOR is closed on October 11, 2021.

Best,



Erin Burlew

Attorney
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
[\(717\) 346-9903](tel:(717)346-9903) | eburlew@pa.gov
<https://openrecords.pa.gov> | [@OpenRecordsPA](https://twitter.com/OpenRecordsPA)

From: Burlew, Erin
Sent: Wednesday, September 8, 2021 15:40
To: Lutz, Jackie W. <jlutz@pa.gov>; McCoy, Craig <cmccoy@inquirer.com>
Cc: joed@inquirer.com
Subject: RE: [External] Re: Request for Extension - McCoy and The Philadelphia Inquirer v. Pennsylvania Public School Employees' Retirement System OOR Dkt. AP 2021-1856

Dear Parties-

Taking the Requester's agreement to the extension to include a five day extension for the OOR to issue the final determination, the request to keep the record open until September 21, 2021 is granted. The final determination issuance date is now October 6, 2021.

Best,



Erin Burlew

Attorney
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
[\(717\) 346-9903](tel:(717)346-9903) | eburlew@pa.gov
<https://openrecords.pa.gov> | [@OpenRecordsPA](https://twitter.com/OpenRecordsPA)

From: Lutz, Jackie W. <jlutz@pa.gov>
Sent: Wednesday, September 8, 2021 15:30
To: McCoy, Craig <cmccoy@inquirer.com>
Cc: Burlew, Erin <eburlew@pa.gov>; joed@inquirer.com
Subject: RE: [External] Re: Request for Extension - McCoy and The Philadelphia Inquirer v. Pennsylvania Public School Employees' Retirement System OOR Dkt. AP 2021-1856

Thank you.

Jackie Wiest Lutz, Chief Counsel
Public School Employees' Retirement System
5 North 5th Street
Harrisburg, PA 17101-1905
Phone: 717.720.4679
Cell: 717.727.5914
Email: jlutz@pa.gov
PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

ATTORNEY WORK PRODUCT

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From: McCoy, Craig <cmccoy@inquirer.com>
Sent: Wednesday, September 8, 2021 3:27 PM
To: Lutz, Jackie W. <jlutz@pa.gov>
Cc: Burlew, Erin <eburlew@pa.gov>; joed@inquirer.com
Subject: [External] Re: Request for Extension - McCoy and The Philadelphia Inquirer v. Pennsylvania Public School Employees' Retirement System OOR Dkt. AP 2021-1856

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Dear Ms. Burlew and Ms. Lutz,

We agree to the five-day extension. Our filing is complete for now.
Sincerely,
Craig McCoy and Joseph DiStefano

On Wed, Sep 8, 2021 at 3:02 PM Lutz, Jackie W. <jlutz@pa.gov> wrote:

Dear Appeals Officer Burlew:

I represent the Public School Employees' Retirement System (PSERS). Submissions are currently due in the above-referenced appeal on Thursday, September 16, 2021. Due to the complexity of the material, PSERS respectfully requests a five (5) day extension of time until Tuesday, September 21, 2021, to file its submission to the OOR in the above-referenced appeal.

I have included the opposing party on this email.

Thank you for your consideration.

Jackie Wiest Lutz, Chief Counsel
Public School Employees' Retirement System
5 North 5th Street
Harrisburg, PA 17101-1905
Phone: 717.720.4679
Cell: 717.727.5914
Email: jlutz@pa.gov
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OOR Exhibit 4

From: [Godofsky, David](#)
To: [Burlew, Erin](#)
Subject: [External] McCoy and The Philadelphia Inquirer v. Pennsylvania Public School Employees' Retirement System, OOR Dkt. AP 2021-1856
Date: Thursday, September 16, 2021 14:26:42
Attachments: [Spillane Letter.pdf](#)

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Dear Ms. Burlew,

Regarding McCoy and The Philadelphia Inquirer v. Pennsylvania Public School Employees' Retirement System, OOR Dkt. AP 2021-1856:

I represent Buck Global in this matter (See attached). PSERS has represented to us that the date for comments has been extended from today to Sept 21. Can you confirm that Buck can comment as late as September 21, and does not need to file its comment today?

Many thanks.

Regards,
David

David R. Godofsky
Alston & Bird LLP
950 F Street NW
Washington DC 20004
(202) 239-3392
Cell (703) 868-3392
Fax (202) 654-4922

<http://www.alston.com/professionals/david-godofsky/>

U.S. News Law Firm of the Year for ERISA Litigation 2018, 2016

U.S. News Law Firm of the Year for Employee Benefits (ERISA) 2017, 2015

<http://bestlawfirms.usnews.com/profile/alston-bird-llp/rankings/29201>

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COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM
OFFICE OF CHIEF COUNSEL
FACSIMILE (717) 783-8010

September 8, 2021

Maura S. Spillane
Associate General Counsel, U.S.
maura.spillane@buck.com

David Godofsky
Alston & Bird
David.godofsky@alston.com

Re: Buck

Dear Ms. Spillane and Mr. Godofsky:

This letter is to serve as notice to you regarding the enclosed Notice of Appeal to the Commonwealth of Pennsylvania, Office of Open Records ("OOR") received by the Commonwealth of Pennsylvania, Public School Employees' Retirement System ("PSERS") in the following case, *McCoy and The Philadelphia Inquirer v. Pennsylvania Public School Employees' Retirement System*, OOR Dkt . AP 2021-1856 (the "Appeal"). PSERS' response is currently due on September 21, 2021.

The Appeal concerns, among other things, PSERS' decision to withhold from public disclosure certain communications to and from your above-referenced client ("Client"), pursuant to the Right-to-Know Law ("RTKL") sections 708(b)(16)(vi)(B) and 708(b)(17)(vi)(B). In accordance with RTKL section 1101(c), your Client may have the right to file a written request with the OOR appeals officer to provide information or to appear before the OOR appeals officer or to file information in support of PSERS' position, such as one or more affidavits supporting your Client's position. If your client plans to provide one or more affidavits to OOR, PSERS would like the opportunity to review the affidavits and include these affidavits as part of its response.

I would appreciate it if you would advise me as to whether your Client plans to file the written request to the OOR appeals officer to submit information and/or affidavits in support of PSERS' denial of McCoy and The Philadelphia Inquirer's right-to-know request. Thank you for your attention to this matter.

Very truly yours,

DocuSigned by:
Jackie W. Lutz
5D0B1D0CB69D43E...

Jackie Wiest Lutz
Chief Counsel

Enclosure

00R Exhibit 5

From: [Burlew, Erin](#)
To: [DiStefano, Joseph](#); [Lutz, Jackie W.](#); [Godofsky, David](#); [McCoy, Craig](#)
Subject: RE: [External] McCoy and The Philadelphia Inquirer v. Pennsylvania Public School Employees' Retirement System, OOR Dkt. AP 2021-1856
Date: Friday, September 17, 2021 9:25:00
Attachments: [Spillane Letter.pdf](#)

Dear Mr. DiStefano:

Thank you for your email. Please note that each party is responsible for ensuring that the opposing party is copied on all communications with the OOR. To ensure that PSERS received your communication, I have copied them on this email.

Attached is a copy of the notification letter referenced in Mr. Godofsky's email. My apologies for the oversight.

Thank you for your cooperation in this process.

Sincerely,



Erin Burlew

Attorney

Office of Open Records

333 Market Street, 16th Floor

Harrisburg, PA 17101-2234

[\(717\) 346-9903](tel:(717)346-9903) | eburlew@pa.gov

<https://openrecords.pa.gov> | [@OpenRecordsPA](https://twitter.com/OpenRecordsPA)

From: DiStefano, Joseph <joed@inquirer.com>
Sent: Thursday, September 16, 2021 16:13
To: Burlew, Erin <eburlew@pa.gov>
Subject: Re: [External] McCoy and The Philadelphia Inquirer v. Pennsylvania Public School Employees' Retirement System, OOR Dkt. AP 2021-1856

Please forward referenced attachment from the letter appended, thanks.

On Thu, Sep 16, 2021 at 3:21 PM Burlew, Erin <eburlew@pa.gov> wrote:

Dear Mr. Godofsky,

Thank you for your email. I can confirm that the record in this matter has been held open until September 21, 2021, and you may file a Request to Participate, in addition to any evidence or argument by that date.

Best,



Erin Burlew

Attorney

Office of Open Records

333 Market Street, 16th Floor

Harrisburg, PA 17101-2234
(717) 346-9903 | eburlew@pa.gov
<https://openrecords.pa.gov> | [@OpenRecordsPA](#)

From: Godofsky, David <David.Godofsky@alston.com>
Sent: Thursday, September 16, 2021 14:26
To: Burlew, Erin <eburlew@pa.gov>
Subject: [External] McCoy and The Philadelphia Inquirer v. Pennsylvania Public School Employees' Retirement System, OOR Dkt. AP 2021-1856

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Dear Ms. Burlew,

Regarding McCoy and The Philadelphia Inquirer v. Pennsylvania Public School Employees' Retirement System, OOR Dkt. AP 2021-1856:

I represent Buck Global in this matter (See attached). PSERS has represented to us that the date for comments has been extended from today to Sept 21. Can you confirm that Buck can comment as late as September 21, and does not need to file its comment today?

Many thanks.

Regards,
David

David R. Godofsky
Alston & Bird LLP
950 F Street NW
Washington DC 20004
(202) 239-3392
Cell (703) 868-3392
Fax (202) 654-4922
<http://www.alston.com/professionals/david-godofsky/>
U.S. News Law Firm of the Year for ERISA Litigation 2018, 2016
U.S. News Law Firm of the Year for Employee Benefits (ERISA) 2017, 2015
<http://bestlawfirms.usnews.com/profile/alston-bird-llp/rankings/29201>

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--

Joseph N. DiStefano
Philadelphia Inquirer, business news
mobile and text 215.313.3124

Articles: https://www.inquirer.com/author/distefano_joseph_n/
Twitter @PhillyJoeD

subscribe checkout.inquirer.com/dss?pid=3265



OOOR Exhibit 6

From: [Godofsky, David](#)
To: [Burlew, Erin](#)
Cc: [Lutz, Jackie W.](#); cmccoy@inquirer.com; [Goldstein, Elizabeth](#); maura.spillane@buck.com; [DiStefano, Joseph](#); [Skoff, Steven](#); [PS, PSERS Right To Know Law](#)
Subject: [External] McCoy and The Philadelphia Inquirer v Pennsylvania Public School Employees" Retirement System, OOR Dkt. AP 2021-1856:
Date: Tuesday, September 21, 2021 16:55:08
Attachments: [Buck PSERS OOP comment letter 2021 09 21.pdf](#)

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Dear Ms. Burlew,

Attached please find a comment letter filed on behalf of Buck Global, LLC. As requested, I am filing this via email. Please note that certain attachments are supposed to be filed with the comment letter. Due to concerns about file size (and specifically whether your email server will reject an attachment of 3.9 MB), I am sending the attachments in a second email. Please let me know if you do not receive the second email with the attachments. Thank you very much.

Regards,

David R. Godofsky

Alston & Bird LLP

950 F Street NW

Washington DC 20004

(202) 239-3392

Cell (703) 868-3392

Fax (202) 654-4922

<http://www.alston.com/professionals/david-godofsky/>

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<http://bestlawfirms.usnews.com/profile/alston-bird-llp/rankings/29201>

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ALSTON & BIRD

The Atlantic Building
950 F Street, NW
Washington, DC 20004-1404
202-239-3300 | Fax: 202-239-3333

David R. Godofsky

Direct Dial: 202-239-3392

Email: david.godofsky@alston.com

September 21, 2021

Erin Burlew, Esq.
Office of Open Records (OOR)
Commonwealth of Pennsylvania
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

Via E-mail: eburlew@pa.gov

Re: McCoy and The Philadelphia Inquirer v. Pennsylvania Public School Employees'
Retirement System, OOR Dkt. AP 2021-1856

Dear Ms. Burlew:

I am writing on behalf of Buck Global, LLC ("Buck") to comment on the appeal of the denial of the right-to-know request (RTK #2021-19) filed by Craig McCoy, Joseph DiStephano and The Philadelphia Inquirer (collectively "The Inquirer"). The RTK requested, among other things, certain correspondence between Buck and the Pennsylvania Public School Employees' Retirement System ("PSERS").

Specifically, Buck would like to comment on requests 5A, 5B and 5C, which relate to correspondence with Buck. Buck believes the denial should be upheld on appeal and requests that OOR uphold the denial.

Reasons for Denial

Buck agrees with the reasons that PSERS listed for denial. Specifically, PSERS denied the requests because the records requested (1) are overly broad, (2) lack adequate specificity, (3) relate to a criminal investigation and include records that, if disclosed, would deprive persons of the right to a fair trial or an impartial adjudication, and (4) relate to a noncriminal investigation and include records that, if disclosed, would deprive a person of the right to an impartial adjudication. Because Buck is in agreement with PSERS on all these reasons, Buck does not believe it is necessary to repeat all of the arguments made by PSERS, but simply notes that it fully agrees with PSERS' denial and the reasons therefore.

Buck further notes that even after The Inquirer narrowed its requests in an email dated June 8, 2021, it still is requesting records "related to" investment performance reporting and risk-sharing calculations, to and from "any employee or representative of Buck Global." These categories are vague and overbroad. Buck is a global consulting firm with over 200 offices and 1500 employees.

In addition, Buck notes that the records requested may include confidential information regarding individual employees of PSERS and the participants in the retirement system.

Buck also would object to the production of any Excel spreadsheets (which Buck generally transmits to PSERS as attachments to e-mail messages) in native format, because such spreadsheets include proprietary formulas and macros that are confidential.

Thank you very much.

Sincerely,

David R. Godofsky

cc: Craig McCoy
Joseph DiStephano
The Philadelphia Inquirer
467 W. School House Lane
Philadelphia, PA 19144
cmccoy@inquirer.com

Pennsylvania Public School Employees' Retirement System
5 North Fifth Street
Harrisburg, PA 17101
c/o Jackie Wiest Lutz, Chief Counsel
jlutz@pa.gov
egoldstein@pa.gov

Maura Spillane, Associate General Counsel, Buck Global, LLC

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: AP 2021-1856

Today's date: 9/21/2021

Name: Buck Global, LLC

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Address/City/State/Zip c/o David Godofsky, 950 F Street NW, Washington DC 20004

E-mail david.godofsky@alston.com

Fax Number: 202-654-4922

Name of Requester: The Philadelphia Inquirer

Address/City/State/Zip 467 W. School House Lane, Philadelphia, PA 19144

Telephone/Fax Number: 215-313-6813 /

E-mail cmccoy@inquirer.com

Name of Agency: Pennsylvania Public School Employees' Retirement System

Address/City/State/Zip 5 North Fifth Street, Harrisburg PA 17101

Telephone/Fax Number: 717-787-8540 /

E-mail ra-PSERSRTKL@pa.gov

Record at issue: #5A, 5B and 5C - correspondence with Buck Global, LLC

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☒ The owner of a record containing confidential or proprietary information or trademarked records
- ☒ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, David R. Godofsky (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

OOR Exhibit 7

From: [Garden, Andrew K.](#)
To: [Burlew, Erin](#)
Cc: "[cmccoy@inquirer.com](#)"; [Lutz, Jackie W.](#); [Kent, Kevin](#); [Feltoon, Robert](#); [Martin, Craig C.](#); [Amert, Amanda S.](#); "[Basil, Matt D.](#)"; [Gamer, Samuel J.](#)
Subject: [External] McCoy v. PSERS, No. AP 2021-1856 - Request to Participate and Position Statement by Aon Investments USA, Inc.
Date: Tuesday, September 21, 2021 13:18:08
Attachments: [2021-09-21 Request to Participate and Position Statement of Aon Investments USA, Inc.pdf](#)

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Dear Ms. Burlew,

On behalf of nonparty Aon Investments USA, Inc., I attach Aon's Request to Participate and Position Statement in the referenced matter. I have copied all parties.

Kindly confirm receipt.

Respectfully,

Andrew Garden

Andrew K. Garden, Esquire | Conrad O'Brien PC

Centre Square West Tower | 1500 Market Street, Suite 3900 | Philadelphia, PA 19102-2100

Phone: 215.523.8305 | Fax: 215.523.9717 | Cell: 215.410.8902 | E-mail: agarden@conradobrien.com

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**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS**

IN THE MATTER OF:

CRAIG MCCOY and THE PHILADELPHIA
INQUIRER,

Requesters,

Docket No. AP 2021-1856

v.

PENNSYLVANIA PUBLIC SCHOOL
EMPLOYEES' RETIREMENT SYSTEM,

Respondent.

**REQUEST TO PARTICIPATE AND POSITION
STATEMENT BY AON INVESTMENTS USA, INC.**

Aon Investments USA, Inc. respectfully requests to participate in this appeal pursuant to 65 P.S. § 67.1101(c) because respondent Public Schools Employees' Retirement System ("PSERS") has in its possession a number of documents that contain Aon's proprietary and confidential information, trade secrets, and intellectual property, and requesters' requests may seek production of those documents.

Specifically, as set forth in the attached declaration of Claire Shaughnessy, Aon has a more than 7-year relationship with PSERS, during which time it has served as an investment advisor for PSERS. Exhibit A, 9/21/21 Declaration of Claire Shaughnessy at ¶ 2. Aon was notified of this appeal by letter dated September 8, 2021. In light of its longstanding relationship with PSERS and the volume of documents and information Aon has provided to PSERS during that time, Aon would need significant additional information about the documents, or at least the categories of documents, that PSERS believes are implicated by the requests before it can

provide a more specific position statement. However, Aon believes that PSERS has in its possession the following:

1. Email communications between Aon and PSERS employees containing information incorporating their thoughts or analysis related to PSERS performance, which include Aon's proprietary knowledge;
2. Performance reports and analysis, which include the results of analysis done with Aon's proprietary business procedures and is part of Aon's intellectual property.

Aon expects that this category may include:

- monthly performance reports;
 - quarterly investment reports; and
 - other portfolio analysis completed by Aon;
3. Documents regarding Aon's service offerings, which include confidential information about Aon's business procedures and strategies; and
 4. Documents and communications regarding the calculation that is at issue in requestors' requests, which include confidential and proprietary information regarding Aon's business procedures, strategies, and analytical processes.

Id. at ¶¶ 5a-5d.

These documents derive independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from their disclosure or use and are the subject of efforts that are reasonable under the circumstances to maintain their secrecy. *Id.* at ¶ 6. One way that Aon has endeavored to maintain the secrecy of its confidential documents and trade secrets is through its contract with PSERS; specifically, Contract PO4300636463, Rider 4, Section 1.39-

CONTRACT-037.1a(a), pursuant to which PSERS is obligated to maintain the secrecy of Aon's proprietary documents. *Id.* at ¶ 7.

It is Aon's position that such documents are "record[s] that constitute[] or reveal[] a trade secret or confidential proprietary information" and therefore exempt from disclosure pursuant to Section 708(b)(11) of the Right-to-Know Law. 65 P.S. §§ 67.708(b)(11). Importantly, while PSERS is "not permitted to waive a third party's interest in protecting the records", "decisional law allows third parties" such as Aon "to raise and defend exemptions to protect information that they believe is exempt from disclosure." *McKelvey v. Pennsylvania Dep't of Health*, 255 A.3d 385, 401 (Pa. 2021) (internal quotation marks omitted).

Aon has requested that prior to turning over any documents or information provided by Aon to PSERS pursuant to this request, PSERS advise Aon specifically what information and/or documents it proposes to provide, so that Aon can consider its options and urge PSERS or the Office of Open Records to invoke appropriate exemptions from disclosure. Exhibit A, Shaughnessy Decl. at ¶ 8. Aon was not provided with notice of requesters' requests prior to being notified of this appeal. *Id.* at ¶ 9. And as noted, Aon has had an insufficient opportunity to consider what documents may be implicated and the specific manner in which such documents may be exempt from disclosure. *Id.* at ¶ 4. This situation risks depriving Aon of its right to procedural due process under the circumstances. The OOR should not permit any disclosure of Aon's documents without providing Aon with a process sufficient to assert applicable exemptions. *See Pennsylvania State Educ. of Ass'n ex rel. Wilson v. DCED*, 50 A.3d 1263, 1275–76 (Pa. 2012) ("[T]he RTKL, as presently implemented by the OOR, does not provide public school employees with a reliable administrative or judicial method by which to seek redress for action that they believe violates the statutory scheme and/or their constitutional rights.").

Respectfully submitted,

Dated: September 21, 2021

/s/ Andrew K. Garden

Kevin Dooley Kent (No. 85962)
Robert N. Feltoon (No. 58197)
Andrew K. Garden (No. 314708)
CONRAD O'BRIEN PC
Centre Square West Tower
1500 Market Street, Suite 3900
Philadelphia, PA 19102-2100
Ph: (215) 864-9600/ Fax: (215) 864-9620
Email: kkent@conradobrien.com
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agarden@conradobrien.com

Craig C. Martin (cmartin@willkie.com)
(*pro hac vice forthcoming*)
Amanda S. Amert (aamert@willkie.com)
(*pro hac vice forthcoming*)
Matt D. Basil (mbasil@willkie.com)
(*pro hac vice forthcoming*)
Samuel J. Gamer (sgamer@willkie.com)
(*pro hac vice forthcoming*)
WILLKIE FARR & GALLAGHER LLP
300 North LaSalle, Suite 5000
Chicago, Illinois 60654
Tel: (312) 728-9000

Counsel for Aon Investments USA, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below I caused a true and correct copy of the foregoing document, including attachments, to be served on the following individuals by electronic mail:

Mr. Craig McCoy
The Philadelphia Inquirer
467 W School House Lane
Philadelphia, PA 19144
cmccoy@inquirer.com

Jackie Weist Lutz
Chief Counsel
Pennsylvania Public Schools Employees'
Retirement System
jlutz@pa.gov

Erin Burlew, Esq., Appeals Officer
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
eburlew@pa.gov

Respectfully submitted,

/s/ Andrew K. Garden

Dated: September 21, 2021

Kevin Dooley Kent (No. 85962)
Robert N. Feltoon (No. 58197)
Andrew K. Garden (No. 314708)
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Craig C. Martin (cmartin@willkie.com)
(*pro hac vice forthcoming*)
Amanda S. Amert (aamert@willkie.com)
(*pro hac vice forthcoming*)
Matt D. Basil (mbasil@willkie.com)
(*pro hac vice forthcoming*)
Samuel J. Gamer (sgamer@willkie.com)
(*pro hac vice forthcoming*)
WILLKIE FARR & GALLAGHER LLP
300 North LaSalle, Suite 5000
Chicago, Illinois 60654
Tel: (312) 728-9000

Counsel for Aon Investments USA, Inc.

EXHIBIT A

**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS**

IN THE MATTER OF:

CRAIG MCCOY and THE PHILADELPHIA
INQUIRER,

Requesters,

Docket No. AP 2021-1856

v.

PENNSYLVANIA PUBLIC SCHOOL
EMPLOYEES' RETIREMENT SYSTEM,

Respondent.

DECLARATION OF CLAIRE SHAUGHNESSY

I, Claire Shaughnessy, hereby declare as follows:

1. I am a Partner, and the Lead Relationship Manager and Lead Consultant at Aon Investments USA, Inc. ("Aon") relating to the relationship with respondent Public Schools Employees' Retirement System ("PSERS") and am authorized to make this declaration on Aon's behalf in support of Aon's request to Participate and Position Statement in this matter.
2. Aon has a more than 7-year relationship with respondent PSERS, during which time it has served as an investment advisor for PSERS.
3. Aon was notified of this appeal by letter dated September 8, 2021.
4. In light of its longstanding relationship with PSERS and the volume of documents and information Aon has provided to PSERS during that time, Aon would need significant additional information about the documents, or at least the categories of documents, that PSERS believes are implicated by the requests before it can provide more specific information.
5. However, Aon believes that PSERS has in its possession the following:

- a. Email communications between Aon and PSERS employees containing information incorporating their thoughts or analysis related to PSERS performance, which include Aon's proprietary knowledge;
- b. Performance reports and analysis, which include the results of analysis done with Aon's proprietary business procedures and is part of Aon's intellectual property. Aon expects that this category may include:
 - 1. monthly performance reports;
 - 2. quarterly investment reports; and
 - 3. other portfolio analysis completed by Aon;
- c. Documents regarding Aon's service offerings, which include confidential information about Aon's business procedures and strategies; and
- d. Documents and communications regarding the calculation that is at issue in requestors' requests, which include confidential and proprietary information regarding Aon's business procedures, strategies, and analytical processes.

6. These documents derive independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from their disclosure or use and are the subject of efforts that are reasonable under the circumstances to maintain their secrecy.

7. One way that Aon has endeavored to maintain the secrecy of its confidential documents and trade secrets is through its contract with PSERS; specifically, Contract PO4300636463, Rider 4, Section 1.39-CONTRACT-037.1a(a), pursuant to which PSERS is obligated to maintain the secrecy of Aon's proprietary documents.

8. Aon has requested that prior to turning over any documents or information provided by Aon to PSERS pursuant to this request, PSERS advise Aon specifically what information and/or documents it proposes to provide, so that Aon can consider its options and urge PSERS or the Office of Open Records to invoke appropriate exemptions from disclosure. Aon would need adequate time to review what PSERS may intend to produce.

9. Aon was not provided with notice of requesters' requests prior to being notified of this appeal.

10. I make this declaration to the best of my knowledge and information and pursuant to 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Dated: September 21, 2021



CLAIRE SHAUGHNESSY

OOR Exhibit 8

From: [Lutz, Jackie W.](#)
To: [Burlew, Erin](#)
Cc: JoeD@inquirer.com; [McCoy, Craig](#); [PS, PSERS Right To Know Law](#)
Subject: McCoy and The Philadelphia Inquirer v. Pennsylvania Public School Employees" Retirement System (OOR Dkt. AP 2021-1856)
Date: Tuesday, September 21, 2021 16:34:45
Attachments: [2021-1856 McCoy-PSERS.pdf](#)
[Curran Letter.pdf](#)
[Spillane Letter.pdf](#)
[Cline Letter.pdf](#)
[Buck PSERS OOP comment letter.pdf](#)
[ExtractPage1.pdf](#)
[2021-09-21 Request to Participate and Position Statement of Aon Investments USA Inc \(002\).pdf](#)
[RTKL Appeal Opposition 9.21.2021 encrypted .pdf](#)
[RTKL Appeal Attestation 9.21.2021 - signed.pdf](#)

Dear Appeals Officer Burlew:

I represent the Public School Employees' Retirement System (PSERS) in the above subject appeal. Please find attached PSERS' submission in response to Requester's appeal. PSERS' response consists of separately attached pdf documents consisting of: PSERS' RTKL Appeal Opposition; an affidavit of Evelyn Tatkovski Williams; PSERS' Notice Letters dated September 8, 2021 directed to counsels to Aon, Buck and ACA; a September 16, 2021 Buck Comment Letter to the Office of Open Records; and a Request to Participate and Position Statement by Aon Investments USA, Inc. Please kindly confirm receipt.

Jackie Wiest Lutz, Chief Counsel
Public School Employees' Retirement System
5 North 5th Street
Harrisburg, PA 17101-1905
Phone: 717.720.4679
Cell: 717.727.5914
Email: jlutz@pa.gov
PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

ATTORNEY WORK PRODUCT

The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any use of this information other than by the intended recipient is prohibited. If you receive this message in error, please send a reply e-mail to the sender and delete the material from any and all computers. Unintended transmissions shall not constitute waiver of the attorney-client or any other privilege.

NOTICE OF DEADLINES

The appeal has been docketed by the OOR and it has been assigned to an Appeals Officer. The docket number and the Appeals Officer's contact information are included in the attachments you received along with this notice.

The Final Determination is currently due on **October 4, 2021**.

The timeline for this RTKL appeal may be extended by the OOR during the appeal. This extension will allow the OOR the flexibility it requires to protect due process and to ensure that the agency and requester, along with any third parties, have a full and fair opportunity to meaningfully participate in the appeal.

Evidence, legal argument and general information to support your position must be submitted within seven (7) business days from the date of this letter, unless the Appeals Officer informs you otherwise. *Note: If the proceedings have been stayed for the parties to submit a completed mediation agreement, the record will remain open for seven (7) business days beyond the mediation agreement submission deadline.*

Submissions in this case are currently due on **September 16, 2021**.

If you are unable to meaningfully participate in this appeal under the above deadlines, please notify the Appeals Officer as soon as possible.

Due to delays in U.S. mail, we urge agencies and requesters to use email for all communications with the OOR to the extent possible.

Presently, the OOR is receiving postal mail on a limited basis. Accordingly, we urge agencies and requesters to use email for all communication with the OOR to the extent possible.

If you have any questions about this notice or the underlying appeal, please contact the Appeals Officer. The OOR is committed to working with agencies and requesters to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.

September 7, 2021

Via Email Only:

Mr. Craig McCoy
The Philadelphia Inquirer
467 W School House Lane
Philadelphia, PA 19144
cmccoy@inquirer.com

Via Email Only:

Evelyn Williams
Agency Open Records Officer
Pennsylvania Public School Employees'
Retirement System
5 North 5th Street
Harrisburg, PA 17101-1905
ra-PSERSRTKL@pa.gov

**RE: OFFICIAL NOTICE OF APPEAL - McCoy and The Philadelphia Inquirer v. Pennsylvania
Public School Employees' Retirement System OOR Dkt. AP 2021-1856**

Dear Parties:

Review this information and all enclosures carefully as they affect your legal rights.

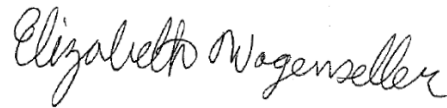
The Office of Open Records ("OOR") received this appeal under the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101, et seq. on September 3, 2021. A binding Final Determination ("FD") will be issued pursuant to the timeline required by the RTKL, **please see the attached information for more information about deadlines.**

Notes for both parties (more information in the enclosed documents):

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal.

Sincerely,



Elizabeth Wagenseller
Executive Director

Enc.: Description of RTKL appeal process
Assigned Appeals Officer contact information
Entire appeal as filed with OOR

The Right-to-Know Law Appeal Process

Please review this information carefully as it affects your legal rights.

The Office of Open Records (“OOR”) has received the enclosed appeal, which was filed under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. A binding Final Determination will be issued by the OOR pursuant to the statutory timeline, subject to the notice of deadlines enclosed herein. If you have any questions, please contact the Appeals Officer assigned to this case. Contact information is included on the enclosed documents.

Submissions to the OOR

Both parties may submit evidence, legal argument, and general information to support their positions to the assigned Appeals Officer. Please contact the Appeals Officer as soon as possible.

Any information provided to the OOR must be provided to all parties involved in this appeal. Information submitted to the OOR will not be considered unless it is also shared with all parties.

Include the docket number on all submissions.

The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Generally, submissions to the OOR — other than *in camera* records — will be public records. Do not include sensitive or personal information, such as Social Security numbers, on any submissions.

Agency Must Notify Third Parties

If records affect a legal or security interest of a third party; contain confidential, proprietary or trademarked records; **or** are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.**

Such notice must be made by: (1) Providing a copy of all documents included with this letter; **and** (2) Advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer assigned to this case (see 65 P.S. § 67.1101(c)).

The Commonwealth Court has held that “the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)).

A third party's failure to participate in a RTKL appeal before the OOR may be construed as a waiver of objections regarding release of requested records.

NOTE TO AGENCIES: If you have questions about this requirement, please contact the Appeals Officer immediately.

Statements of Fact & Burden of Proof

Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.**

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

An affidavit or attestation is required to prove that records do not exist.

Sample affidavits are on the OOR website, openrecords.pa.gov.

Any evidence or legal arguments not submitted or made to the OOR may be waived.

Preserving Responsive Records

The agency must preserve all potentially responsive records during the RTKL appeal process, including all proceedings before the OOR and any subsequent appeals to court.

Failure to properly preserve records may result in the agency being sanctioned by a court for acting in bad faith.

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process...”

Mediation

The OOR offers a mediation program as an alternative to the standard appeal process. To participate in the mediation program, both parties must agree in writing.

The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court — saving both sides time and money.

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.



APPEALS OFFICER:

Erin Burlew, Esq.

CONTACT INFORMATION:

**Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234**

FACSIMILE:

(717) 425-5343

EMAIL:

eburlew@pa.gov

**Preferred method of contact and
submission of information:**

EMAIL

**Please direct submissions and correspondence related to this appeal to the above Appeals Officer.
Please include the case name and docket number on all submissions.**

**You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot
speak to parties individually without the participation of the other party.**

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review
prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff
are also available to provide general information about the appeals process by calling (717) 346-9903.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☐ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

DC, OpenRecords

From: no-reply@openrecordspennsylvania.com
Sent: Friday, September 3, 2021 6:47 PM
To: cmccoy@inquirer.com
Subject: [External] PA Office of Open Records - Appeal Confirmation

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.



You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	Craig McCoy
Company:	The Philadelphia INquirer
Address 1:	467 W School House Lane
Address 2:	
City:	Philadelphia
State:	Pennsylvania
Zip:	19144
Phone:	215-313-6813
Email:	cmccoy@inquirer.com
Agency (list):	Pennsylvania Public School Employees' Retirement System
Agency Address 1:	5 North Fifth St.
Agency Address 2:	
Agency City:	Harrisburg
Agency State:	Pennsylvania
Agency Zip:	17101
Agency Phone:	
Agency Email:	

Records at Issue in this Appeal:	We are appealing denials to our numbered requests 3, 4 and 5, in RTK #2021-19. See attached detailed appeals letter and companion documents.
Request Submitted to Agency Via:	web form
Request Date:	05/19/2021
Response Date:	08/25/2021
Deemed Denied:	No
Agency Open Records Officer:	Evelyn Williams, RTK officer and PSERS media relations person
Attached a copy of my request for records:	Yes
Attached a copy of all responses from the Agency regarding my request:	Yes
Attached any letters or notices extending the Agency's time to respond to my request:	No
Agree to permit the OOR additional time to issue a final determination:	No
Interested in resolving this issue through OOR mediation:	No
Attachments:	<ul style="list-style-type: none"> • Original RTK request-2021-19.docx • PSERS-email-5-26-21.docx • Inquirer-follow-up-June-2019-RTK-2021-19.docx • RTK-2021-19-time extension.docx • 2021 Special Board Meeting Minutes.pdf • 2021-19 Distefano response FINAL 06252021 .pdf • 2021-19 Inquirer response FINAL 08252021.pdf • Inquirer-appeal-9-3-21.docx

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

Sept. 3, 2021

Liz Wagenseller
executive director
Pa. Office of Open Records
333 Market Street
16th floor
Harrisburg, PA 17101-223

Craig McCoy
Joseph DiStefano
Staff writers, Phila. Inquirer
801 Market St., Suite 300
Phila, PA 19107
cmccoy@inquirer.com
McCoy: 215-313-6813

Dear Ms. Wagenseller,

We write to appeals the denials of parts of our May 2021 right-to-know request (RTK #2021-19) by PSERS, the Public School Employees' Retirement System.

We specifically appeal the denials of our requests #3 though #5. In summary, those three requests sought written communications (electronic or otherwise) between PSERS staff and three consultants, ACA, AON and Buck Global.

We sought information about these related matters – fund investment performance, the “risk-sharing” calculation, and the acknowledgment of PSERS of error in that calculation. We sought only the communications for a narrow time frame, from December 2020 to the present.

We note that PSERS said our request was too broad. We respectfully disagree. It is clear that we sought only information regarding the risk calculation, which involves issues of investment performance. As the denial letter notes, but does not address, we also quickly submitted a letter to PSERS, on June 8, narrowing our request.

However, the main thrust of the PSERS denial is that its communication with ACA, AON and Buck Global would involve “records relating to a criminal investigation” and “records relating to a noncriminal investigation.”

This is a far too expansive and incorrect reading of the so-called “investigative” exemption to the RTK law. State governmental entities have repeatedly cited this wrongly to deny basic public records to the public, only to have their position rejected by appeals officers and the courts.

It is true that the FBI and PSERS itself have launched inquiries into the calculation mistake. But that fact alone does not permit the fund to deny release of records that were kept in the course of business even before those inquiries began.

There was debate within PSERS about the performance calculation as far back as August 2020. The fund hired ACA to review the numbers on Oct. 4, 2020, the contract shows. The board approved what turned out to be an incorrect figure for returns in December 2020, a figure it later abandoned

All of this is before the FBI and PSERS itself launched special investigations of the matter, in late March 2021. The fund minutes shows that PSERS did not task its board audit committee to look into these issues until March 12, 2019 and did not hire law firms for that purpose March 19, 2021. The first federal grand jury subpoenas to the fund are dated March 24, 2021. And the fund's chief counsel, did not order staff to save documents related to the probes until April 8.

As in the 2014 case of *Levy v. Senate of Pennsylvania* and even more forcefully in the 2016 *Hockeimer v City of Harrisburg* cases, the courts have ruled that government documents developed independently of investigative materials – billing invoice, bond documents, correspondence – is the public's material and should be released.

As the appeals officer wrote in the Hockeimer cases,

“In this instant matter, it is clear that the requested records exist independently of any grand jury investigation. The Request seeks records created by the city and various City personnel over the course of several years for various purposes in relation to the City's operations and its bond offerings. There is no evidence demonstrating that any of the requested records were created for use by the grand jury.

The OOR case numbers in the Hockeimer cases are 2015-1793, 2015-1852 and 2015-1853. The officer's ruling was affirmed in detail by Dauphin Country Court in 2015-cv-9288. The county did not appeal.

The same arguments here apply with the same or even more force to the denial on the grounds that the material involved a noncriminal investigation.

For these reasons, we seek a reversal of the denials in this case.

Sincerely,

Craig McCoy

And Joseph DiStefano



COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

PSERS
5 N 5th Street
Harrisburg PA 17101-1905

Toll-free: 1.888.773.7748 (1.888.PSERS4U)
Local: 717.787.8540
www.psers.pa.gov

August 25, 2021

Joseph DiStefano
Craig McCoy
Philadelphia Inquirer
801 Market St. Suite 300
Philadelphia, PA 19107

Re: RTKL 2021-19

Dear Joe and Craig:

This letter again acknowledges receipt by the Public School Employees' Retirement System (PSERS) of your request under the Pennsylvania Right-to-Know Law (RTKL), 65 P.S. §§ 67.101 *et seq.*, for extensive records from PSERS. Your request, a copy of which is attached, was received on May 19, 2021 and extended 30 days on May 26, 2021. On June 8, 2021, you provided additional information in an effort to narrow your request, copy attached.

On June 23rd, PSERS requested at least an additional 60 days, until August 25, 2021, to complete the response for the remaining records in #1 (partial), #2 (partial), #3 a,b,c, #4 a,b,c, #5 a,b,c, #6, and the additional Board communications you asked for in your June 8 email. The reason for this extension request was due to the voluminous nature of the documents. On June 24th Mr. McCoy agreed to the extension.

On June 25th, your request was granted to the extent that records exist and are public. Enclosed with the response was records responsive to #1 (partial), #2 (partial), #7a, #7b, and #7c. The records were redacted of non-public information (i.e., federal tax id, banking information, etc.) as permitted under the RTKL. In addition, you were referred to the PA Treasury Contracts e-Library at <https://www.patreasury.gov/transparency/e-library/> for copies of contracts with ACA and Aon

With respect to the remainder of the requested documents, your request is granted in part and denied in part as below.

#1. With respect to all payments made by PSERS to Funston, your request is granted. According to PSERS' records, the amount of all payments up until May 19, 2021 (the date of your request) is \$240,000.

#1. With respect to all written communications, your request is denied because they are records relating to a criminal investigation, including records that, if disclosed would deprive persons of the right to a fair trial or an impartial adjudication. 67 P.S. § 67.708(b)(16)(vi)(B). They are similarly denied because they are records relating to a noncriminal investigation, including records that, if disclosed, would deprive a person of the right to an impartial adjudication. 67 P.S. § 67.708(b)(17)(vi)(B).



COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

PSERS
5 N 5th Street
Harrisburg PA 17101-1905

Toll-free: 1.888.773.7748 (1.888.PSERS4U)
Local: 717.787.8540
www.psers.pa.gov

#2. With respect to all written communications, your request is denied because they are records relating to a criminal investigation, including records that, if disclosed would deprive persons of the right to a fair trial or an impartial adjudication. 67 P.S. § 67.708(b)(16)(vi)(B). They are similarly denied because they are records relating to a noncriminal investigation, including records that, if disclosed, would deprive a person of the right to an impartial adjudication. 67 P.S. § 67.708(b)(17)(vi)(B).

In addition, such records are denied because the information requested poses a substantial risk of causing detrimental impacts on PSERS' interests. Further, under its enabling legislation, PSERS stands in a fiduciary relationship to its members regarding Public School Employees' Retirement Fund investments, 24 Pa.C.S. §8521(e), and must manage the Retirement Fund in accordance with the prudent investor standard of care set forth in 24 Pa. C.S. §8521(a). Disclosing sensitive proprietary investment information would violate PSERS' fiduciary duty and the prudent investor standard because such disclosures would be damaging to investments. See *Macyda v. Pub. Sch. Employees' Ret. Sys.*, OOR Dkt. AP 2019-2150; *Davis v. State Employees' Ret. Sys.*, OOR Dkt. 2020-2357.

Also, PSERS will not release sensitive investment information, including potential opportunities that have been presented to PSERS and related portfolio company information, pursuant to 65 P.S. §67.706(b)(11), 24 P.A.C.S. §8502(e), 65 P.S. §67.306, and the definition of Public Record in 65 P.S. §67.102 (a Record that is exempt from being disclosed under any other state law or that is protected by a privilege is not a Public Record).

Specific information revealing the identity of direct real estate investments, portfolio companies and other specific investments, which PSERS typically obtains on the condition of maintaining its confidentiality and may be sensitive for various reasons depending on the circumstances, does not constitute a "public record" subject to inspection because it is exempt from disclosure under a state law, 24 Pa. C.S. §8502(e), because it is protected by a privilege, 67 P.S. §67.102, and because disclosure would reveal a trade secret or confidential proprietary information, 65 P.S. 67.708(b)(11).

The records are also exempt from disclosure under 68 P.S. section 67.708(b)(22) which exempts the contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by an agency prior to the disposal of the property.

#3, A, B and C. With respect to all written communications with ACA, your request is denied because they are records relating to a criminal investigation, including records that, if disclosed would deprive persons of the right to a fair trial or an impartial adjudication. 67 P.S. § 67.708(b)(16)(vi)(B). They are similarly denied because they are records relating to a noncriminal investigation, including records that, if disclosed, would deprive a person of the right to an impartial adjudication. 67 P.S. § 67.708(b)(17)(vi)(B).

#4, A, B and C. With respect to all written communications with Aon, your request is denied because they are records relating to a criminal investigation, including records that, if disclosed would deprive persons of the right to a fair trial or an impartial adjudication. 67 P.S. § 67.708(b)(16)(vi)(B). They are similarly denied because they are records relating to a noncriminal investigation, including records that,



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Harrisburg PA 17101-1905

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if disclosed, would deprive a person of the right to an impartial adjudication. 67 P.S. § 67.708(b)(17)(vi)(B).

#5, A, B and C. With respect to all written communications with Buck Global, your request is denied because they are records relating to a criminal investigation, including records that, if disclosed would deprive persons of the right to a fair trial or an impartial adjudication. 67 P.S. § 67.708(b)(16)(vi)(B). They are similarly denied because they are records relating to a noncriminal investigation, including records that, if disclosed, would deprive a person of the right to an impartial adjudication. 67 P.S. § 67.708(b)(17)(vi)(B).

To the extent the requests for communications under numbers 1, 2, 3, 4 and 5 continues, after clarification, to include all PSERS' staff or all of PSERS, the request is too broad for response. In *Pennsylvania State Police v. Office of Open Records* (OOR), 995 A.2d 515 (Pa. Cmwlth. 2010), 2010 Pa. Commw. LEXIS 259—May 26, 2010, the Commonwealth Court concluded that a request for “any and all records” relating to a specific subject was not a sufficiently specific request for the agency to be required to respond under the RTKL.

Your request is denied because the RTKL requires that a request for records be made with “sufficient specificity to enable the agency to ascertain which records are being requested...” 65 P.S. §67.703. Your request for “any documents” is not specific to a particular record or timeframe. In *Pennsylvania State Police v. Office of Open Records* (OOR), 995 A.2d 515 (Pa. Cmwlth. 2010), 2010 Pa. Commw. LEXIS 259—May 26, 2010, the Commonwealth Court concluded that a request for “any and all records” relating to a specific subject was not a sufficiently specific request for the agency to be required to respond under the RTKL. Although your current request is insufficiently specific related to the information you are requesting, you are not precluded from refining your request (including specific document types and subject matter) and submitting a new request that enables PSERS to locate and produce the public records that you seek.

In the event that the OOR determines any portion of your request to be sufficiently specific and directs PSERS to provide you with any record, PSERS reserves the right to raise any and all available bases for non-disclosure, including privilege and the exceptions set forth in Section 708(b) of the RTKL and Section 8502(e) of the Public School Employees' Retirement Code; 24 Pa .C.S. §§ 8101-8535, because we are unable at this time to reasonably discern which exemptions might be applicable. Due to the lack of specificity, PSERS cannot meaningfully assert any exemptions at this time. See *Pennsylvania State Police v. Office of Open Records*, 995 A.2d 515 (Pa. Cmwlth. 2010), 2010 Pa. Commw. LEXIS 259 (May 26, 2010) (when a request is insufficiently specific, the agency should have opportunity to later assert exemptions, unless “the reason for denying access can be reasonably discerned when the request is made.”).

#6. With respect to Moneyline Reports, your request is granted to the extent the documents are public records. All individual fund/partnership names, values, and account numbers have been redacted because the report is arranged in a manner that would provide confidential value information about some of the investments. That said, more detailed quarterly public valuation data is available on PSERS website at [2020 3Q - PE FINAL.pdf \(pa.gov\)](#) and [2020 3Q - RE Final.pdf \(pa.gov\)](#).



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Nonpublic information has been redacted for the below reasons.

PSERS will not release sensitive investment information, including potential opportunities that have been presented to PSERS and related portfolio company information, pursuant to 65 P.S.

§67.706(b)(11), 24 Pa. C.S. §8502(e), 65 P.S. §67.306, and the definition of Public Record in 65 P.S.

§67.102 (a Record that is exempt from being disclosed under any other state law or that is protected by a privilege is not a Public Record).

Specific information revealing the identity of direct real estate investments, portfolio companies and other specific investments, which PSERS typically obtains on the condition of maintaining its confidentiality and may be sensitive for various reasons depending on the circumstances, does not constitute a "public record" subject to inspection because it is exempt from disclosure under a state law, 24 Pa. C.S. §8502(e) and because disclosure would reveal a trade secret or confidential proprietary information, 65 P.S. 67.708(b)(11).

The information is also redacted because the information requested poses a substantial risk of causing detrimental impacts on PSERS' interests. Further, under its enabling legislation, PSERS stands in a fiduciary relationship to its members regarding Public School Employees' Retirement Fund investments, 24 Pa.C.S. §8521(e), and must manage the Retirement Fund in accordance with the prudent investor standard of care set forth in 24 Pa. C.S. §8521(a). Disclosing sensitive proprietary investment information would violate PSERS' fiduciary duty and the prudent investor standard because such disclosures would be damaging to its investments. See *Macyda v. Pub. Sch. Employees' Ret. Sys.*, OOR Dkt. AP 2019-2150; *Davis v. State Employees' Ret. Sys.*, OOR Dkt. 2020-2357.

Finally, Under the RTKL, we are not required to create records that do not exist. More specifically, under the RTKL, an agency is not required "to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record." 65 P.S. § 67.705; *Advancement Project et al. v. Department of Transportation*, 60 A.3d 891 (Pa. Cmwlth. 2013).

You have a right to appeal the denial of non-public information in writing to Executive Director, Office of Open Records (OOR), 333 Market Street, 16th Floor, Harrisburg, PA 17101-2234. If you choose to file an appeal you must do so within 15 business days of the mailing date of this response and send to the OOR:

- 1) this response;
- 2) your request; and
- 3) the reason why you think the agency is wrong in its reasons for saying that the record is not public (a statement that addresses any ground stated by the agency for the denial). If the agency gave several reasons why the record is not public, state which ones you think were wrong. Also, the OOR has an appeal form available on the OOR website at:

<https://www.openrecords.pa.gov/RTKL/Forms.cfm>

Note: If you appeal this denial, please send a copy of the appeal and all attachments to my attention at the address and the email provided below.



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Should you have any questions regarding this correspondence, please contact me at evwilliams@pa.gov.

Sincerely,
/s/ Evelyn Williams
Agency Open Records Officer
PSERS
5 North Fifth Street
Harrisburg, PA 17101

Enclosures

From: DiStefano, Joseph <joed@inquirer.com>
Sent: Tuesday, June 8, 2021 12:37 PM
To: Williams, Evelyn <evwilliams@pa.gov>
Cc: McCoy, Craig <cmccoy@inquirer.com>
Subject: [External] Re: interim response from PSERS / May 19 2021 RTKL request / Inquirer response

Evelyn, I'm sure you are very busy this week, but I hope this helps when you get to it. Joe D.

We are in the process of gathering responsive records. That said, some of your request, as noted in bold below, is overly broad and not specific enough for PSERS to identify the records that you are requesting.

To assist PSERS with locating possible responsive records for this request please provide the additional information noted below in red to help locate responsive records.

1- In October 2020, PSERS retained Funston Advisory Services LLC as board governance consultant to review governance. Regarding Funston's work, please provide:

--A copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from October to the present, between PSERS staff and any employee or representative of Funston.

The request is overly broad and not specific. Please identify a subject and the individual/individuals for whom you are requesting records.

Our request is specific. Nevertheless, to further identify, please provide the engagement letter and the contract between the Funston firm and PSERS, and intermediate (February and May, for example) and final reports re PSERS governance, and correspondence between Frederick Funston, Randy Miller, and other Funston principals, with Glen Grell, Jackie Lutz, Charles Serine, Lenann T. Engler, Chris Santa Maria, Sen. Patrick Browne, treasurers Joe Torsella and Stacy Garrity James Grossman, Tom Bauer, Charles Spiller and other PSERS staff and board members who helped shape the Funston relationship and responded to its work product.

2- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from December 2018 to the present, between PSERS staff and any representative of the owners or sellers of the following parcels of real estate in the City of Harrisburg:

- The former Patriot-News facilities at 812 Market St.
- The former Department of General Services building at 908 Market St.
- Any other parcel in Harrisburg acquired by PSERS since 1 January, 2016

This request is overly broad and not specific. Please identify a subject and the individual/individuals for whom you are requesting records.

Our request is specific. Still, to identify further, please include sales agreements, management and maintenance contracts between PSERS and PSERS-controlled entities such as those whose names contain the terms 812 Market, 908 Market," 5 North Fifth, Camcorr, Glen Grell, Charles Spiller, William P. Stalter, Jackie Lutz, Tom Bauer, Brian Carl, Jennifer Mills, Mellissa Quakenbush, Jason Davis, and Chris Santa Maria, all of PSERS, and John Gerdes, Jennifer Hanson of L&B Realty Advisers LP; Eric Kunkle, and David Dyson, and PMI Property Management; and Joseph Miller of Twenty Lake Holdings and Heritage Holdings.

3A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of ACA Compliance Group, related to investment performance reporting.

This request is overly broad and not specific. Please identify a narrower subject than investment performance reporting and the individual/individuals for whom you are requesting records. ACA is a global company with over 600 employees and PSERS also has over 340 employees throughout the Commonwealth.

Our request is specific and your recitation of employment numbers is not clearly relevant to the request. Still, to identify further, please provide the engagement letter and contract for ACA; and correspondence between Glen Grell, Jackie Lutz, Cathy Gusler, Chris Santa Maria, Francis X. Ryan Sen. Patrick Browne, and James Grossman, Tom Bauer, Charles Spiller, all of PSERS and Christie Horsman Dillard, Karen Foley and Kemmling, of ACA; and other ACA employees in relation to the contract.

4A -Please provide copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of AON, related to investment performance reporting; including but not limited to memos AON sent PSERS on March 5, 2021 and April 16, 2021 and since that date.

This request is overly broad and not specific. Please identify a subject and the individual/individuals for whom you are requesting records. AON is a global employer with over 50,000 colleagues in 120 countries and PSERS has over 340 employees in the Commonwealth.

Our request is specific. Still, to identify further, please provide the engagement letter and contract for AON, further correspondence regarding the 2020 "risk-sharing" calculation including reports sent by AON to PSERS regarding that calculation in the second half of 2020 and in 2021, including correspondence between Glen Grell, Jackie Lutz, Chris Santa Maria, Francis X. Ryan, Sen. Patrick Browne; James Grossman, Tom Bauer, Charles Spiller, all of PSERS; and Steve Voss and Claire Shaughnessy of AON and other AON employees related to that contract

4B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of AON, related to risk-sharing calculations.

This request is overly broad and not specific. Please identify a narrower subject and the individual/individuals for whom you are requesting records.

Our request is specific. Still, to identify further, please include the parties named in response to section 4A above

5A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to investment performance reporting.

This request is overly broad and not specific. Please identify a narrower subject and the individual/individuals for whom you are requesting records. Buck Global is a global company with over 1,500 employees in over 200 global locations and PSERS has over 340 employees in the Commonwealth.

Our request is specific and your recitation of the firm's employment totals beyond the scope of the request. Still, to identify further, please provide correspondence involving Glen Grell, Sen. Patrick Browne; James, Grossman, Tom Bauer, Charles Spiller, all of PSERS; and Buck employees David Driscoll; Edward Quinn and Salvador Nakar, and other Buck employees related to that contact.

5B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to risk-sharing calculations.

This request is overly broad and not specific. Please identify a narrower subject and the individual/individuals for whom you are requesting records.

Our request is specific. Still, to identify further, please provide correspondence involving Glen Grell, Sen. Patrick Browne; James, Grossman, Tom Bauer, Charles Spiller, all of PSERS; and Buck employees David Driscoll; Edward Quinn and Salvador Nakar, and other Buck employees related to that contact.

Thanks, Joe D.

Joseph N. DiStefano
Philadelphia Inquirer, business news
215.313.3124
JoeD@Inquirer.com

Always asking on
behalf of the people.





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June 25, 2021

Joseph DiStefano
Craig McCoy
Philadelphia Inquirer
801 Market St.
Suite 300
Philadelphia, PA 19107

Re: RTKL 2021-19

Dear Joe and Craig:

This letter acknowledges receipt by the Public School Employees' Retirement System (PSERS) of your request under the Pennsylvania Right-to-Know Law (RTKL), 65 P.S. §§ 67.101 *et seq.*, for extensive records from PSERS. Your request was received on May 19, 2021 and extended 30 days on May 26, 2021. On June 8, 2021, you provided additional information in an effort to narrow your request.

Your request is granted to the extent the records exist and are public. Enclosed are records responsive to #1 (partial), #2 (partial), #7a, #7b, and #7c. The records have been redacted of non-public information (i.e., federal tax id, banking information, etc.) as permitted under the RTKL.

Copies of contracts for ACA and Aon can be found on the PA Treasury Contracts e-Library at:
<https://www.patreasury.gov/transparency/e-library/>

On June 23 PSERS requested at least an additional 60 days, August 25, 2021, to complete the response for the remaining records in #1 (partial), #2 (partial), #3 a,b,c, #4 a,b,c, #5 a,b,c, #6, and the additional Board communications you asked for in your June 8 email. The reason for this extension request is due to the voluminous nature of the documents we must gather and review to determine responsiveness. On June 24th Mr. McCoy agreed to the extension.

Should you have any questions regarding this correspondence, please contact me at evwilliams@pa.gov.

Sincerely,

/s/ Evelyn Williams
Agency Open Records Officer
PSERS
5 North Fifth Street
Harrisburg, PA 17101

Enclosures

From: **Williams, Evelyn** <evwilliams@pa.gov>
Date: Wed, May 26, 2021 at 3:59 PM
Subject: interim response from PSERS
To: DiStefano, Joseph <joed@inquirer.com>, Craig McCoy
<craigmccoy7@comcast.net>, McCoy, Craig <cmccoy@inquirer.com>

Craig, Joe,

PSERS received your extensive RTKL request dated May 19, 2021. Attached is an interim response. We will need at least 30 days to respond.

We are in the process of gathering responsive records. That said, some of your request, as noted in bold below, is overly broad and not specific enough for PSERS to identify the records that you are requesting.

To assist PSERS with locating possible responsive records for this request please provide the additional information noted below in red to help locate responsive records.

1- In October 2020, PSERS retained Funston Advisory Services LLC as board governance consultant to review governance. Regarding Funston's work, please provide:

--A copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from October to the present, between PSERS staff and any employee or representative of Funston.

The request is overly broad and not specific. Please identify a subject and the individual/individuals for whom you are requesting records

2- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from December 2018 to the present, between PSERS staff and any representative of the owners or sellers of the following parcels of real estate in the City of Harrisburg:

-The former Patriot-News facilities at 812 Market St.

-The former Department of General Services building at 908 Market St.

-Any other parcel in Harrisburg acquired by PSERS since 1 January, 2016

This request is overly broad and not specific. Please identify a subject and the individual/individuals for whom you are requesting records.

3A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of ACA Compliance Group, related to investment performance reporting.

This request is overly broad and not specific. Please identify a narrower subject than investment performance reporting and the individual/individuals for whom you are

requesting records. ACA is a global company with over 600 employees and PSERS also has over 340 employees throughout the Commonwealth.

3B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of ACA, related to risk-sharing calculations.

This request is overly broad and not specific. Please identify a narrower subject and the individual/individuals for whom you are requesting records.

4A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Aon, related to investment performance reporting; including but not limited to memos Aon sent PSERS on March 5, 2021 and April 16, 2021 and since that date.

This request is overly broad and not specific. Please identify a subject and the individual/individuals for whom you are requesting records. Aon is a global employer with over 50,000 colleagues in 120 countries and PSERS has over 340 employees in the Commonwealth.

4B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Aon, related to risk-sharing calculations.

This request is overly broad and not specific. Please identify a narrower subject and the individual/individuals for whom you are requesting records.

5A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to investment performance reporting.

This request is overly broad and not specific. Please identify a narrower subject and the individual/individuals for whom you are requesting records. Buck Global is a global company with over 1,500 employees in over 200 global locations and PSERS has over 340 employees in the Commonwealth.

5B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to risk-sharing calculations.

This request is overly broad and not specific. Please identify a narrower subject and the individual/individuals for whom you are requesting records.

Thanks for your continued cooperation.

Evelyn M. Williams
Communications Director

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RKL request 2021-19

Inbox



Williams, Evelyn <evwilliams@pa.gov>

Wed, Jun
23, 4:01
PM

to Joseph, me

Re: RTKL 2021-19

Dear Joe and Craig:

We are working on your request received on May 19, 2021 and extended 30 days on May 26, 2021. On June 8, 2021, you provided additional information to help identify responsive records. While we have gathered documents responsive to your request and intend to provide them to you within the current 30-day extension, we are requesting at least an additional 60-day extension to complete this response. The reason for this extension request is due to the voluminous nature of the documents we must gather and review to determine responsiveness. Additionally, your June 8 email expanded your original request to include PSERS Board member records, which will require an additional level of coordination with multiple state agencies and other related outside entities. While we continue to work diligently to respond, we simply cannot complete this effort without an additional extension.

Please respond before close of business Thursday, June 24 to indicate your acceptance of this extension.

Should you have any questions regarding this correspondence, please contact me at evwilliams@pa.gov.

Thank you.

Evelyn M. Williams

Communications Director

Public School Employees' Retirement System (PSERS)

5 North Fifth Street

Harrisburg, Pennsylvania 17101-1905

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On Thu, Jun 24, 2021 at 5:53 PM Williams, Evelyn <evwilliams@pa.gov> wrote:
Craig
Joe said you were planning to send me a notification that you both approved the extension for your/joe r extensive rtkl request?
Did you send me anything?
I want to make sure it was not caught in a spam filter or Commonwealth quarantine.

Thanks.

Evelyn M. Williams
Communications Director
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Re: RTKL



McCoy, Craig <cmccoy@inquirer.com>

Thu, Jun
24, 6:08
PM

to Evelyn, Craig

Hi Evelyn

Sorry for the delay and thanks for the nudge. Yes, we are ok with the extension.

best,
Craig

From: DiStefano, Joseph <joed@inquirer.com>
Sent: Wednesday, May 19, 2021 1:02 PM
To: PS, PSERS Right To Know Law <RA-PSERSRTL@pa.gov>; Williams, Evelyn <evwilliams@pa.gov>; Craig McCoy <cmccoy@inquirer.com>; Esack, Steve <stesack@pa.gov>
Subject: [External] RTK request, Inquirer, 18 May 2021

Ms. Evelyn T. Williams
Right to Know officer
PSERS

Dear Evelyn,

Under applicable provisions of the Pennsylvania right-to-know law, as reporters at the Philadelphia Inquirer, 801 Market Street, Philadelphia PA 19107, please send to us, at JoeD@Inquirer.com and CMcCoy@Inquirer.com, the following public records:

1- In October 2020, PSERS retained Funston Advisory Services LLC as board governance consultant to review governance. Regarding Funston's work, please provide:

- The contract with Funston and any other document describing the arrangements under which Funston presented work product to PSERS since October 2020
- All invoices submitted by Funston
- All payments made by PSERS
- A copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from October to the present, between PSERS staff and any employee or representative of Funston.

2- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from December 2018 to the present, between PSERS staff and any representative of the owners or sellers of the following parcels of real estate in the City of Harrisburg:

- The former Patriot-News facilities at 812 Market St.
- The former Department of General Services building at 908 Market St.
- Any other parcel in Harrisburg acquired by PSERS since 1 January, 2016

3A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of ACA Compliance Group, related to investment performance reporting.

3B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of ACA, related to risk-sharing calculations.

3C - Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from December 2020 to the present, between PSERS staff and any employee or representative of ACA, related to the discovery or identification of an error in

calculating the historical investment performance, as part of the shared-risk determination. Please include, for example, the notice given ACA on Feb. 18, 2021 that Aon's source data was in error, and details of such error and its effect on the scale and direction of the calculation, and other notices related to the error.

4A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Aon, related to investment performance reporting; including but not limited to memos Aon sent PSERS on March 5, 2021 and April 16, 2021 and since that date.

4B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Aon, related to risk-sharing calculations.

4C- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from December 2020 to the present, between PSERS staff and any employee or representative of Aon, related to the the discovery of, or the identification of an error in, calculating the historical investment performance, as part of the shared-risk determination.

5A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to investment performance reporting.

5B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to risk-sharing calculations.

5C- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from December 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to the the discovery of, or the identification of an error in, calculating the historical investment performance, as part of the shared-risk determination.

6- Please provide a copy of each monthly Moneyline report detailing PSERS assets, to date, for calendar year 2021.

7A- Please provide a list of all nonprofit corporations and other related-party entities which hold or manage PSERS assets, such as directly-owned properties, including all qualified subsidiaries set up under section 501(c)25 of the Internal Revenue Code.

7B - Please explain the purpose and functions of each 501(c)25 entity and other related-party entities set up to hold PSERS properties, for example by providing the footnotes to financial statements that explain each in detail, and the most recent I-990 submitted for each to the Internal Revenue Service.

7C - Please list directors and other officers, senior managers, all other owners in addition to PSERS, all subsidiaries of each 501(c)5 entity and other related-party entities set up to hold PSERS properties.

PSERS has in the past attempted to limit disclosure of records that may be associated with an investigation. However, please recall that in open-records cases such as Levy v Senate (2014), and Hockheimer v Harrisburg (2015, affirmed in Dauphin County Common Pleas Court), requested records created for various purposes and existing independently of investigations are indeed found subject to disclosure.

Thank you, Joe DiStefano, 215.313.3124, JoeD@Inquirer.com, and Craig R. McCoy

Copies to: Pennsylvania Governor's Office of General Counsel; Office of the State Treasurer

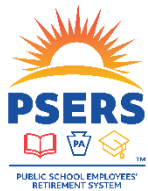
Joseph N. DiStefano
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mobile and text 215.313.3124

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Twitter @PhillyJoeD

subscribe checkout.inquirer.com/dss?pid=3265

**Always asking on
behalf of the people.**





Public School Employees' Retirement Board

Special Meeting Minutes

Friday, March 12, 2021

Call to Order: Chris SantaMaria, Chairman of the Board, called the Special Meeting to order at 3:09 P.M. via MS TEAMS.

Board Members Present:

Christopher SantaMaria, Chairman	Patrick Lord for Sec. Noe Ortega	Jason Davis
Rep. Frank Ryan, Vice-Chairman	Sec. Richard Vague	Eric DiTullio
Patrick Shaughnessy for Rep.	Sec. Stacy Garrity	Melva Vogler
Matt Bradford	Nathan Mains	Deborah Beck
Sen. Katie Muth	Stacey Connors for Sen. Patrick Browne	Susan Lemmo

Others Present:

Thomas Clancy	Alan Flannigan	Sonia Kikeri
Christopher Craig	John Callahan	Joe DiStefano
Lloyd Ebright	Susan Boyle	Eric Arneson
James Bloom	Don Vymazal	

Staff Present:

Glen Grell	Mei Gentry	Steven Skoff
Jennifer Mills	Evelyn Williams	Mercedes Evans
Brian Carl	Steve Esack	Tivia Danner
James Grossman	Kathrin Smith	Laura Vitale
Antonio Parisi	Suzanne Dugan	

I. Public Comment – none.

II. Report of Fiduciary Counsel – Executive Session

- At 3:13 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an Executive Session to discuss the items on today's agenda, namely Fiduciary Counsel Report. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”

- Frank Ryan moved that the Board enter Executive Session, with Nathan Mains seconding the motion. The motion passed unanimously.
- The Regular Session resumed at 6:45 P.M.

III. Action Item

Resolution 2021-09 Re: Delegation of Internal Investigation to Audit Committee

- Pursuant to Section 4.3 of the PSERB By-laws, the Board delegates to the Audit Committee the authority to oversee an investigation of the circumstances surrounding a possible error in the reporting of investment performance results used by the Board in its December 3, 2020 certification of contribution rates. This delegation includes the authority to select and engage independent outside counsel to oversee a special investigation of the circumstances of the error and the response when the error was first identified, further including recommendations for improvements to prevent similar errors in the future. Upon completion of the investigation, the report and recommendations shall be transmitted to the Board for any action.

IV. Other Business – none.

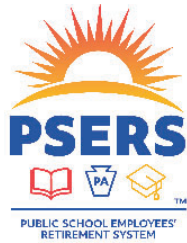
V. Chris SantaMaria adjourned the meeting at 6:48 P.M.

DocuSigned by:

Glen Grell

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3/16/2021



Public School Employees' Retirement Board Audit and Compliance Committee Special Meeting Minutes

Wednesday, March 17, 2021

Call to Order: Rep. Frank Ryan, Audit and Compliance Committee Chairman, called the Special Meeting to order at 3:04 P.M. via MS Teams.

Board Members Present:

Rep. Frank Ryan, Chairman	Patrick Shaughnessy for Rep.	Jason Davis
Nathan Mains, Vice-Chairman	Matt Bradford	Sen. Katie Muth
Christopher SantaMaria, Ex-Officio	Sec. Richard Vague	
	Treas. Stacy Garrity	

Others Present:

Suzanne Dugan, Cohen Milstein	Christopher Craig	Alan Flannigan
John Callahan	Lloyd Ebright	Susan Boyle
Thomas Clancy	James Bloom	Joe DiStefano

Staff Present:

Glen Grell	Mercedes Evans	Joseph O'Donnell
Steve Esack	Tivia Danner	

I. Public Comment – none.

II. Investigation of Investment Performance Reporting Issues – Executive Session

- At 3:09 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an Executive Session to discuss the items on today's agenda, namely Investigation of Investment Performance Reporting Issues. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”

- Patrick Shaughnessy moved that the Board enter Executive Session, with Jason Davis seconding the motion. The motion passed unanimously.
- The Regular Session resumed at 6:38 P.M.

III. Action Item –

- Rep. Frank Ryan announced that the next scheduled Audit and Compliance Committee Meeting will be held Friday, March 19, 2021 at 4:00 P.M., rather than the previously announced 3:00 P.M. start time.

IV. Other Business – none.

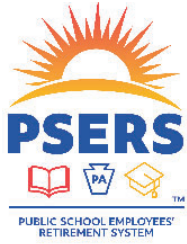
V. Rep. Frank Ryan adjourned the meeting at 6:40 P.M.

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Glen Grill

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3/19/2021



Public School Employees' Retirement Board Audit/Compliance Committee Special Meeting Minutes Friday, March 19, 2021

Call to Order: Rep. Frank Ryan, Audit/Compliance Committee Chairman, called the Special Meeting to order at 4:00 P.M. via MS Teams.

Board Members Present:

Rep. Frank Ryan, Chairman
John Callahan for Nathan Mains,
Vice-Chairman

Christopher SantaMaria, Ex-
Officio
Patrick Shaughnessy for Rep.
Matt Bradford

Sec. Richard Vague
Treas. Stacy Garrity
Jason Davis
Sen. Katie Muth

Others Present:

Suzanne Dugan, Cohen Milstein
James Bloom
Susan Boyle

Thomas Clancy
Christopher Craig
Lloyd Ebright

Jill Vecchio

Staff Present:

Glen Grell

Tivia Danner

Joseph O'Donnell

I. Public Comment – none.

II. Investigation of Investment Performance Reporting Issues – Executive Session

- At 4:02 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an Executive Session to discuss the items on today's agenda, namely Investigation of Investment Performance Reporting Issues. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”
- Patrick Shaughnessy moved that the Board enter Executive Session, with John Callahan seconding the motion. The motion passed unanimously.
- The Regular Session resumed at 5:25 P.M.

III. Action Items –

- A. Patrick Shaughnessy moved to adopt Resolution 2021-10. Jason Davis seconded the motion, which passed unanimously.

Resolution 2021-10(A/C) Re: Engagement of Outside Special Counsel

Resolved, that the Audit/Compliance Committee of the Public School Employees' Retirement Board (the "Board") hereby authorizes engagement of Morgan Lewis as special counsel to assist the Board through an additional independent opinion letter relative to federal tax qualification issues involved with the shared risk calculation, and to provide guidance on the advisability and process to recertify the member shared risk contribution rate, due to the complexity and significance of the matter.

- B. Jason Davis moved to adopt Resolution 2021-11. Richard Vague seconded the motion, which passed unanimously.

Resolution 2021-11(A/C) Re: Engagement of Outside Counsel

Resolved, that the Audit/Compliance Committee of the Public School Employees' Retirement Board (the "Board") hereby authorizes engagement of Womble Bond Dickinson to conduct a special investigation surrounding the circumstances of the misstatement of the 9-year investment performance used for the shared risk calculation in December 2020. The engagement shall include recommendations to avoid similar circumstances in the future and any corrective action necessary. The scope of the work will be completed in concert with the firm selected.

IV. Other Business – none.

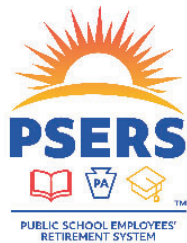
V. Rep. Frank Ryan adjourned the meeting at 5:30 P.M.

DocuSigned by:

Glen Grell

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3/22/2021



Public School Employees' Retirement Board Audit/Compliance Committee Special Meeting Minutes

Monday, March 22, 2021

Call to Order: Rep. Frank Ryan, Audit/Compliance Committee Chairman, called the Special Meeting to order at 3:00 P.M. via MS Teams.

Board Members Present:

Rep. Frank Ryan, Chairman	Patrick Shaughnessy for Rep.	Jason Davis
Nathan Mains, Vice-Chairman	Matt Bradford	Sen. Katie Muth
Christopher SantaMaria, Ex-Officio	Sec. Richard Vague	Eric DiTullio
	Treas. Stacy Garrity	

Others Present:

Suzanne Dugan, Cohen Milstein	Susan Boyle	Alan Flannigan
Claire Rauscher,	Thomas Clancy	Jill Vecchio
WombleBondDickinson	Christopher Craig	Joe DiStefano
James Bloom	Lloyd Ebright	

Staff Present:

Glen Grell	Tivia Danner
Mei Gentry	Joseph O'Donnell

I. Public Comment – none.

II. Investigation of Investment Performance Reporting Issues – Executive Session

- At 3:02 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an Executive Session to discuss the items on today's agenda, namely Investigation of Investment Performance Reporting Issues. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”
- Nathan Mains moved that the Board enter Executive Session, with Richard Vague seconding the motion. The motion passed unanimously.

- The Regular Session resumed at 4:37 P.M.
- Per Rep Frank Ryan:
 - In lieu of formal resolution, it is noted for the record that the Executive Session was to provide direction to Fiduciary Counsel to negotiate and finalize the scope of work and other terms of the contracts in accordance with the direction given by the Audit/Compliance Committee, and to report back to the Audit/Compliance Committee Chair prior to Agency execution of the contracts.

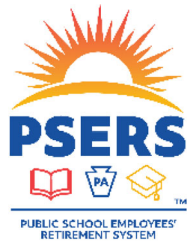
III. Action Items –

- No action items.

IV. Other Business – none.

V. Rep. Frank Ryan adjourned the meeting at 4:38 P.M.

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Glen Grill
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3/23/2021



Public School Employees' Retirement Board

Special Executive Session Meeting Minutes

Monday, March 29, 2021

Call to Order: Christopher SantaMaria, Board Chairman, called the Special Executive Session Meeting to order at 3:30 P.M. via MS Teams.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Sec. Richard Vague
Tres. Stacy Garrity

Nathan Mains
Rep. Matthew Bradford
Sen. Katie Muth
Sen. Patrick Browne

Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio

Others Present:

Suzanne Dugan, Cohen Milstein
James Bloom
Susan Boyle
John Callahan
Thomas Clancy

Stacey Connors
Christopher Craig
Lloyd Ebright
Alan Flannigan
Richard Goldberg, LewisBrisbois

Claire Rauscher,
WombleBondDickinson
Patrick Shaughnessy
Jill Vecchio
Don Vymazal

Staff Present:

Glen Grell
Jennifer Mills

Steve Skoff
Jackie Lutz
Evelyn Williams

Tivia Danner

I. Confirmation of 24-Hour Notice

- a. Jennifer Mills explained Sunshine Notice was not required for this Executive Session since no action item would result, and PSERB met the 24-hour notification to invested attendees. On Friday, April 2nd Special Meeting, this process will be shared with fuller audience.

II. Consultation with Counsel in Connection with Potential or Current Litigation

A. Glen Grell, Executive Director, stated “In Accordance with Section 5.13 of the Bylaws of the Public School Employees’ retirement Board, we are going into **Executive Session** to discuss the item listed on today’s agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss advice of counsel regarding pending or potential litigation and agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of law, and Quasi-judicial matters.”

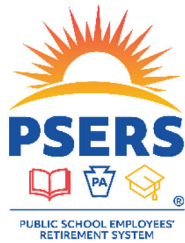
III. Actions from Executive Session - none

IV. Other Business – none

V. Adjournment at 6:35 P.M.

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Glen Grell
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4/2/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Friday, April 2, 2021

Call to Order: Christopher SantaMaria, Board Chairman, called the Special Board Meeting to order at 4:08 P.M. via MS Teams.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity

Nathan Mains
Patrick Shaughnessy for
Rep. Matthew Bradford
Sen. Katie Muth
Sen. Patrick Browne

Melva Vogler
Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio

Others Present:

Anne Baloga
Suzanne Dugan, Cohen Milstein
James Bloom
Susan Boyle
John Callahan
Stacey Connors

Christopher Craig
Lloyd Ebright
Alan Flannigan
Naina Kamath, Duane Morris
Sonia Kikeri
John Nixon, Duane Morris

Claire Rauscher,
WombleBondDickinson
Jill Vecchio
Don Vymazal

Staff Present:

Glen Grell
Jennifer Mills

Steve Skoff
Jackie Lutz
Evelyn Williams

Tivia Danner

I. Announcement of March 29, 2021 Executive Session and Purpose

- a. On Sunday, March 28, 2021, the Public School Employees' Retirement Board ("Board") was notified of a Monday, March 29, 2021 executive session scheduled for 3:30 p.m. via Microsoft Teams invite for the purpose of consulting with its attorney regarding information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed. Pursuant to Section 708 of the Pennsylvania Sunshine Act, if an executive session is not held during an open meeting, at the conclusion of an open meeting, or announced for a future open meeting, members of the Board are to be notified 24 hours in advance of the time of the convening of the executive session specifying the date, time, location, and purpose of the executive session. The Sunshine Act further requires that the executive session must be announced at the open meeting occurring immediately subsequent to the executive session, with such announcement being included within its minutes. Let the minutes show that the executive session was, in fact, held via Microsoft Teams on Monday, March 29, 2021 at 3:30 p.m. for the

reason of consulting with counsel regarding the investigation of the shared risk contribution rate. The executive session adjourned at 6:35 p.m. with no action item.

II. Public Comment – none

III. Consultation with Counsel in Connection with Potential or Current Litigation

A. At 4:12 P.M., Glen Grell, Executive Director, stated “In Accordance with Section 5.13 of the Bylaws of the Public School Employees’ retirement Board, we are going into **Executive Session** to discuss the item listed on today’s agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss advice of counsel regarding pending or potential litigation and agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of law, and Quasi-judicial matters.”

B. Regular session resumed at 7:40 P.M.

IV. Actions from Executive Session - none

V. Other Business – none

VI. Announcement of Future Executive Sessions – none

VII. Announcement of Next Special Board Meeting

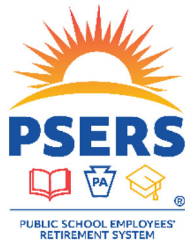
A. April 6, 2021 4:30 P.M.

B. April 9, 2021 3:00 P.M. for Audit/Compliance Committee and 4:00 P.M. for Board.

VIII. Adjournment at 7:45 P.M.

DocuSigned by:
Glen Grell
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4/5/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Tuesday, April 6, 2021

Call to Order: Christopher SantaMaria, Board Chairman, called the Special Board Meeting to order at 4:33 P.M. via MS Teams.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity

Nathan Mains
Patrick Shaughnessy for Rep.
Matthew Bradford
Sen. Katie Muth
Sen. Patrick Browne

Melva Vogler
Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio

Others Present:

Suzanne Dugan, Cohen Milstein
James Bloom
Susan Boyle
Thomas Clancy
Stacey Connors

Christopher Craig
Lloyd Ebright
Alan Flannigan
Sonia Kikeri

Claire Rauscher,
WombleBondDickinson
Jill Vecchio
Don Vymazal

Staff Present:

Glen Grell
Jackie Lutz
Jennifer Mills

Steve Skoff
Mercedes Evans
Tivia Danner

I. Public Comment – none

II. Consultation with Counsel in Connection with Potential or Current Litigation

At 4:34 P.M., Glen Grell, Executive Director, stated “In Accordance with Section 5.13 of the Bylaws of the Public School Employees’ retirement Board, we are going into **Executive Session** to discuss the item listed on today’s agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss advice of counsel regarding pending or potential litigation and agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of law, and Quasi-judicial matters.”

The Regular Session resumed at 9:45 P.M.

III. Actions from Executive Session

Resolution 2021-12 Re: Legal Services Contract, Pillsbury Winthrop Shaw Pittman LLP

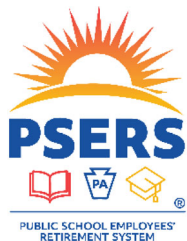
Resolved, that, the Public School Employees’ Retirement Board (Board) hereby retains the law firm of Pillsbury Winthrop Shaw Pittman LLP to represent and provide guidance to the Board in matters relating to a federal investigation and any collateral issues related thereto. Rep. Frank Ryan moved, Patrick Shaughnessy seconded the motion, which passed unanimously.

IV. Other Business – none

V. Adjournment at 9:47 P.M.

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Glen Grell
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4/10/2021



Public School Employees' Retirement Board

Special Audit/Compliance Committee Meeting Minutes

Friday, April 9, 2021

Call to Order: Rep. Frank Ryan, Audit/Compliance Committee Chair, called the meeting to order at 3:00 P.M. via MS Teams.

Board Members Present:

Rep. Frank Ryan, Chair	Treas. Stacy Garrity	Melva Vogler
Nathan Mains, Vice-Chair	Jason Davis	Susan Lemmo
Christopher SantaMaria, Ex-Officio	Patrick Shaughnessy for Rep. Matthew Bradford	Deborah Beck
Sec. Richard Vague	Sen. Katie Muth	

Others Present:

Suzanne Dugan, Cohen Milstein	Christopher Craig	Claire Rauscher,
Anne Baloga	Lloyd Ebright	WombleBondDickinson
James Bloom	Alan Flannigan	Thomas Rey, CLA Connect
Susan Boyle	Patrick Lord	Jill Vecchio
John Callahan		

Staff Present:

Brian Carl	Jennifer Mills
Mei Gentry	Steve Skoff
Glen Grell	Mercedes Evans
Jackie Lutz	Tivia Danner

I. Public Comment – none

II. Update of Special Investigation of Investment Performance Reporting

At 3:04 P.M., Glen Grell, Executive Director, stated "In Accordance with Section 5.13 of the Bylaws of the Public School Employees' retirement Board, we are going into **Executive Session** to discuss the item listed on today's agenda, namely an update of special investigation of investment performance reporting. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss advice of counsel regarding pending or potential litigation and agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of law, and Quasi-judicial matters."

Nathan Mains moved that the Audit/Compliance Committee enter Executive Session, with Patrick Shaughnessy seconding the motion. The motion passed unanimously.

The Regular Session resumed at 3:58 P.M.

III. Actions from Executive Session – none

IV. Other Business – none

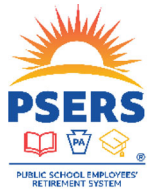
V. Adjournment at 4:01 P.M.

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4/14/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Friday, April 9, 2021

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 4:01 P.M. via MS TEAMS.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity

Nathan Mains
Patrick Shaughnessy for Rep.
Matt Bradford
Sen. Katie Muth
Sen. Patrick Browne

Melva Vogler
Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio

Others Present:

Robert Abramovitz, MorganLewis
Anne Baloga
Susan Boyle
Thomas Clancy
Stacey Connors
Christopher Craig

Suzanne Dugan, CohenMilstein
Lloyd Ebright
Alan Flannigan
Richard Goldberg, LewisBrisbois
Gregory Needles, MorganLewis

Claire Rauscher,
WombleBondDickinson
Jill Vecchio
Don Vymazal
Joe DiStefano
Shawn Barber, Hamilton Lane

Staff Present:

Glen Grell
Jennifer Mills
Brian Carl
Mei Gentry

Evelyn Williams
Jackie Lutz
Steven Skoff
Mercedes Evans

Tivia Danner
Joe O'Donnell

I. Public Comment – none.

II. Consultation with Counsel in Connection with Potential or Current Litigation

At 4:03 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters."

Rep. Frank Ryan moved that the Board enter Executive Session, with Jason Davis seconding the motion. The motion passed unanimously.

The Regular Session resumed at 8:19 P.M.

III. Action Item

Resolution 2021-13 Re: Legal Services Contract, Sidley Austin LLP

Resolved, that, the Public School Employee's Retirement Board (the "Board") hereby retains the law firm of Sidley Austin LLP, to represent and advise the Board t/b/a Commonwealth of Pennsylvania, Public School Employees' Retirement System in matters involving the System and its employees related to a Federal Investigation and collateral issues related thereto as may be directed by the Board.

Jason Davis moved, with Eric DiTullio seconding the motion, which passed unanimously.

IV. Announcement of Future Executive Sessions

- April 14, 2021 at 5:30 P.M. via MS Teams Re: Consultation with Counsel Regarding Ongoing or Pending Litigation
- April 21, 2021 at 5:30 P.M. via MS Teams Re: Consultation with Counsel Regarding Ongoing or Pending Litigation
- April 28, 2021 at 5:30 P.M. via MS Teams Re: Consultation with Counsel Regarding Ongoing or Pending Litigation
- May 5, 2021 at 5:30 P.M. via MS Teams Re: Consultation with Counsel Regarding Ongoing or Pending Litigation
- May 12, 2021 at 5:30 P.M. via MS Teams Re: Consultation with Counsel Regarding Ongoing or Pending Litigation
- May 19, 2021 at 5:30 P.M. via MS Teams Re: Consultation with Counsel Regarding Ongoing or Pending Litigation
- May 26, 2021 at 5:30 P.M. via MS Teams Re: Consultation with Counsel Regarding Ongoing or Pending Litigation
- June 2, 2021 at 5:30 P.M. via MS Teams Re: Consultation with Counsel Regarding Ongoing or Pending Litigation
- June 8, 2021 at 5:30 P.M. via MS Teams Re: Consultation with Counsel Regarding Ongoing or Pending Litigation

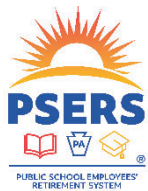
V. Announcement of Future Special Board Meetings

- April 19, 2021 at 4:00 P.M. via MS Teams Re: Recertification
- April 20, 2021 at 3:00 P.M. via MS Teams Re: Audit/Compliance Committee Update on Investigation of Investment Performance Reporting

VI. Other Business – none.

VII. Chris SantaMaria adjourned the meeting at 8:22 P.M.

DocuSigned by:
Glen Grell
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4/17/2021



Public School Employees' Retirement Board

Special Board Executive Session Minutes

Wednesday, April 14, 2021

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:33 P.M. via MS TEAMS.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity

Nathan Mains
Patrick Shaughnessy for Rep.
Matt Bradford
Sen. Katie Muth
Sen. Patrick Browne

Melva Vogler
Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio

Others Present:

Anne Baloga
Thomas Clancy
Stacey Connors
Christopher Craig

Suzanne Dugan, CohenMilstein
Lloyd Ebright
Alan Flannigan
Jill Vecchio

Don Vymazal
Joe DiStefano

Staff Present:

Glen Grell
Jennifer Mills
Brian Carl
Mei Gentry

Evelyn Williams
Jackie Lutz
Steven Skoff
Mercedes Evans

Tivia Danner
Joe O'Donnell

I. Public Comment – none.

II. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:43 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters."

Rep. Frank Ryan moved that the Board enter Executive Session, with Jason Davis seconding the motion.
The motion passed unanimously.

The Regular Session resumed at 6:05 P.M.

III. Action Item - none

IV. Announcement of Future Special Board Meetings

- April 19, 2021 at 4:00 P.M. via MS Teams Re: Consultation with Counsel and Recertification of Rates

V. Other Business – none

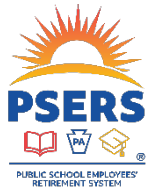
VI. Chris SantaMaria adjourned the meeting at 6:08 P.M.

DocuSigned by:

Glen Grell

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4/26/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Monday, April 19, 2021 [Sunshine Meeting]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 4:00 P.M. via MS TEAMS.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity

Nathan Mains
Patrick Shaughnessy for Rep.
Matt Bradford
Sen. Katie Muth
Sen. Patrick Browne

Melva Vogler
Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio

Others Present:

Anne Baloga
James Bloom
Susan Boyle
Thomas Clancy
Stacey Connors
Christopher Craig

Suzanne Dugan, CohenMilstein
Lloyd Ebright
Alan Flannigan
Claire Rauscher,
WombleBondDickinson
William Sullivan, Pillsbury
Jill Vecchio

Don Vymazal
Joe DiStefano, Phil Inquirer
Mark Levy, Assoc Press
Mary Walsh, NY Times
Steven Caruso, PA Capital Star
Steph Schwartz, Member

Staff Present:

Glen Grell
Jennifer Mills
Brian Carl

Mei Gentry
Evelyn Williams
Jackie Lutz

Mercedes Evans
Tivia Danner
Joe O'Donnell

I. Public Comment – none.

II. Consultation with Counsel in Connection with Potential or Current Litigation

At 4:05 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters."

Rep. Frank Ryan moved that the Board enter Executive Session, with Jason Davis seconding the motion. The motion passed unanimously.

The Regular Session resumed at 6:19 P.M.

III. Discussion on Recertification

At 6:20 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees’ Retirement Board, we are going into an **Executive Session** to discuss the items on today’s agenda, namely discussion on recertification. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”

Rep. Frank Ryan moved that the Board enter Executive Session, with Jason Davis seconding the motion. The motion passed unanimously.

The Regular Session resumed at 7:20 P.M.

IV. Action Item

Resolution 2021-14 Re: Engagement of Investment Oversight Consulting Firm

- **RESOLVED**, that the Public School Employees’ Retirement Board (the “Board”), having determined that circumstances exist to warrant an emergency procurement of an investment consulting firm to provide monitoring and oversight of investment activities to the Board during the pendency of internal and external investigations, the Board delegates the screening, review of proposals and selection of such firm to the Audit/Compliance Committee. Upon selection and engagement, the contracted firm shall report directly to the full Board on all matters within the scope of work.

Jason Davis moved, with Treas. Stacy Garrity seconding. The motion passed unanimously.

Resolution 2021-15 Re: Legal Services Contract

- **RESOLVED**, that the Public School Employees’ Retirement Board (the “Board”) hereby directs the Office of Chief Counsel to negotiate the retention of the law firm of Morgan, Lewis & Bockius LLP, to replace the law firm of Sidley Austin LLP, to represent and advise the Board t/b/a Commonwealth of Pennsylvania, Public School Employees’ Retirement System in matters involving the System and its employees related to a Federal investigation and collateral issues related thereto as may be directed by the Board.

Melva Vogler moved, with Patrick Shaughnessy seconding. The motion passed unanimously.

Resolution 2021-16 Re: Recertification of Member Contribution Rates

- **RESOLVED**, that the Public School Employees’ Retirement Board (the “Board”) amends PSERB Resolution 2020-52 by replacing the second paragraph of said Resolution in its entirety with the following.

RESOLVED FURTHER, that the Board certifies the T-E member contribution rate of 8.0%, T-F member contribution rate of 10.8%, T-G member contribution rate of 9.0% (Defined benefit rate 6.25%; DC rate 2.75%) and T-H member contribution rate of 8.25% (Defined benefit rate 5.25%; DC rate 3.00%) for the three-year period from July 1, 2021 to June 30, 2024 in accordance with the Shared Risk provisions of PSERS' Retirement Code.

Rep. Frank Ryan moved, with Nathan Mains seconding.

Discussion: Sen. Patrick Browne provided comments regarding his work on HB2497 Shared Risk Provision in 2010 and the need for appropriate legislative remedy.

The motion passed 12-1, with one opposed being Sen. Patrick Browne. Eric DiTullio had departed the meeting prior to the vote; however Chairman SantaMaria, on instructions from Mr. DiTullio, noted for the record that he would have voted “No” had he been present.

V. Announcement of Future Meetings

- April 28, 2021 at 5:30 P.M. via MS Teams to be a Sunshined meeting of the Audit/Compliance Committee.

VI. Other Business – none

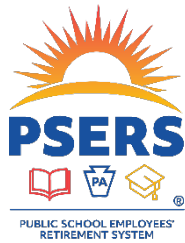
VII. Chris SantaMaria adjourned the meeting at 7:34.

DocuSigned by:

Glen Grill

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4/26/2021



Public School Employees' Retirement Board

Special Audit/Compliance Committee Meeting Minutes

Tuesday, April 20, 2021 [Sunshine Meeting]

Call to Order: Rep. Frank Ryan, Audit/Compliance Committee Chair, called the meeting to order at 3:04 P.M. via MS Teams.

Board Members Present:

Rep. Frank Ryan, Chair
Nathan Mains, Vice-Chair
Sec. Richard Vague

Treas. Stacy Garrity
Patrick Shaughnessy for Rep.
Matt Bradford

Jason Davis
Patrick Lord

Others Present:

Suzanne Dugan, Cohen Milstein
Claire Rauscher,
WombleBondDickinson
Thomas Rey, CLA Connect
Anne Baloga

James Bloom
Susan Boyle
John Callahan
Christopher Craig
Thomas Clancy

Lloyd Ebright
Alan Flannigan
Patrick Lord
Jill Vecchio
Joe DiStefano, Phil Inquirer

Staff Present:

Brian Carl
Mei Gentry
Glen Grell

Jackie Lutz
Jennifer Mills
Mercedes Evans

Tivia Danner

I. Public Comment – none

II. Update of Special Investigation of Investment Performance Reporting, Engagement of Investment Oversight Consulting Firm, Including Confidential Audit Related Discussion with outside Auditors

At 3:05 P.M., Glen Grell, Executive Director, stated "In Accordance with Section 5.13 of the Bylaws of the Public School Employees' retirement Board, we are going into **Executive Session** to discuss the items listed on today's agenda, namely the update of special investigation of investment performance reporting, and engagement of investment oversight consulting firm, including confidential audit related discussion with our outside auditors. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of law, and Quasi-judicial matters."

Nathan Mains moved, with Patrick Shaughnessy seconding the motion. The motion passed unanimously.

The Regular Session resumed at 4:12 P.M.

III. Action Item from Executive Session

Resolution 2021-17 (Audit/Compliance Committee) Re: Engagement of Investment Oversight Consulting Firm

- **RESOLVED**, pursuant to delegation of authority by the Public School Employees' Retirement Board (the "Board") and the Board having determined that circumstances exist to warrant an emergency procurement of an investment consulting firm to provide monitoring and oversight of investment activities to the Board during the pendency of internal and external investigations, the Audit/Compliance Committee, having considered multiple vendors and at least two (2) formal proposals, authorizes and directs the Office of Chief Counsel to engage Verus Investments for such purposes, subject to successful contract negotiations Upon selection and engagement, Verus Investments shall report directly to the full Board on all matters within the scope of work.

Patrick Shaughnessy moved, with Sec. Richard Vague seconding. The motion passed unanimously.

IV. **Other Business** – PSERS Office of Chief Counsel, Rep. Frank Ryan, Alan Flannigan and Jason Davis will convene to define the final bid to work down cost associated and scope of work, therefore a decision was made to cancel follow up Audit/Compliance Committee Meeting planned for Monday, April 26, 2021.

V. **Adjournment at 4:15 P.M.**

DocuSigned by:

Glen Grell

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4/23/2021



Public School Employees' Retirement Board

Special Board Executive Session Minutes

Wednesday, April 21, 2021

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:30 P.M. via MS TEAMS.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity
Nathan Mains

Patrick Shaughnessy for Rep.
Matt Bradford
Sen. Katie Muth
Stacey Connors for Sen. Patrick
Browne
Melva Vogler

Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio

Others Present:

Anne Baloga
James Bloom
Susan Boyle
Thomas Clancy

Christopher Craig
Suzanne Dugan, CohenMilstein
Lloyd Ebright
Alan Flannigan

William Sullivan, Pillsbury
Jill Vecchio
Don Vymazal

Staff Present:

Glen Grell
Jackie Lutz

Tivia Danner

I. PSERS Comment

- Glen Grell: "At the April 9, 2021 meeting, this Executive Session of April 21, 2021 was announced Re: Consultation with Counsel Regarding Ongoing or Pending Litigation."

II. Public Comment – none.

III. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:43 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or

confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”

Melva Vogler moved that the Board enter Executive Session, with Rep. Frank Ryan seconding the motion. The motion passed unanimously.

IV. Action Items – none

V. Other Business – none

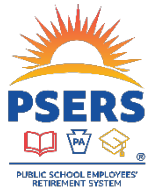
VI. Chris SantaMaria adjourned the meeting at 6:21 P.M.

DocuSigned by:

Glen Grell

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4/26/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Wednesday, April 28, 2021 [Sunshine]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:31 P.M. via MS TEAMS.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity
John Callahan for Nathan Mains

Patrick Shaughnessy for Rep.
Matt Bradford
Sen. Katie Muth
Stacey Connors for Sen. Patrick Browne
Melva Vogler

Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio

Others Present:

James Bloom
Susan Boyle
Christopher Craig

Suzanne Dugan, CohenMilstein
Lloyd Ebright
Alan Flannigan

William Sullivan, Pillsbury
Jill Vecchio
Don Vymazal

Staff Present:

Glen Grell
Jackie Lutz

Tivia Danner

I. PSERS Comment

- Glen Grell: "At the April 9, 2021 meeting, this Executive Session of April 28, 2021 was announced Re: Consultation with Counsel Regarding Ongoing or Pending Litigation."
- Glen Grell provided an update on the progress for the Shared Risk project.

II. Public Comment – none.

III. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:32 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or

confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”

Rep. Frank Ryan moved that the Board enter Executive Session, with Jason Davis seconding the motion. The motion passed unanimously.

The Regular session resumed at 7:28 P.M.

IV. Action Items – none

V. Other Business – none

VI. Chris SantaMaria adjourned the meeting at 7:29 P.M.

DocuSigned by:

Glen Grill

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5/24/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Wednesday, May 5, 2021 [Sunshine]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:37 P.M. via MS TEAMS.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity
Nathan Mains

Patrick Shaughnessy for Rep.
Matt Bradford
Sen. Katie Muth
Stacey Connors for Sen. Patrick Browne
Melva Vogler

Susan Lemmo
Deborah Beck
Eric DiTullio
Joe Torsella (off 6:05)

Others Present:

Meredith Auten, MorganLewis
James Bloom
Susan Boyle
Thomas Clancy
Christopher Craig

Suzanne Dugan, CohenMilstein
Lloyd Ebright
Alan Flannigan
Zane Memeger, MorganLewis
Luc Miron

William Sullivan, Pillsbury
Jill Vecchio
Don Vymazal
Joe DiStefano, Phil Inq.

Staff Present:

Glen Grell
Jackie Lutz

Tivia Danner

I. PSERS Comment

- Glen Grell: "At the April 9, 2021 meeting, this Special Board Meeting of May 5, 2021 was announced Re: Consultation with Counsel Regarding Ongoing or Pending Litigation."
- Next meeting [Sunshine] is scheduled for Wednesday May 12, 2021, with Audit/Compliance beginning at 4:30 and Board beginning at 5:30.

II. Public Comment – none.

III. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:39 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's

agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”

Rep. Frank Ryan moved that the Board enter Executive Session, with Patrick Shaughnessy seconding the motion. The motion passed unanimously.

The Regular session resumed at 6:32 P.M.

IV. Action Items – none.

V. Other Business – none.

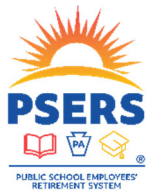
VI. Chris SantaMaria adjourned the meeting at 6:34 P.M.

DocuSigned by:

Glen Grill

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5/24/2021



Public School Employees' Retirement Board

Special Audit/Compliance Committee Meeting Minutes

Wednesday, May 12, 2021 [Sunshine]

Call to Order: Rep. Frank Ryan, Chair, called the meeting to order at 4:31 P.M. via MS TEAMS.

Board Members Present:

Rep. Frank Ryan, Chair
Nathan Mains, Vice-Chair
Christopher SantaMaria, Ex-Officio
Sec. Richard Vague

Treas. Stacy Garrity
Patrick Shaughnessy for Rep.
Matt Bradford
Jason Davis
Sen. Katie Muth

Melva Vogler
Susan Lemmo
Deborah Beck

Others Present:

James Bloom
Susan Boyle
Thomas Clancy
Christopher Craig
Lloyd Ebright

Alan Flannigan
Patrick Lord
Luc Miron
Claire Rauscher,
WombleBondDickinson

Thomas Rey, CLA
William Sullivan, Pillsbury
Jill Vecchio
Don Vymazal
Joe DiStefano, Phil Inq.

Staff Present:

Mei Gentry
Glen Grell

Stephanie Lanius
Tivia Danner

Mercedes Evans

I. Public Comment – none.

II. Cybersecurity Audit and Special Investigation of Investment Performance Reporting Updates

At 4:35 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees’ Retirement Board, we are going into an **Executive Session** to discuss the items on today’s agenda, namely updates on Cybersecurity audit and on special investigation of investment performance reporting. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”

Jason Davis moved that the Audit/Compliance Committee enter Executive Session, with Nathan Mains seconding the motion. The motion passed unanimously.

The Regular session resumed at 5:17 P.M.

III. CLA Audit Work Plan Update

Thomas Rey, CLA, presented on the Audit Work Plan. A discussion followed.

IV. Act 128 2020 Internal Control Audit of System Planning

Rep. Frank Ryan discussed the Internal Control Audit of System Planning.

V. Other Business – none.

VI. Rep. Frank Ryan adjourned the meeting at 5:32 P.M.

DocuSigned by:

Mei Gentry

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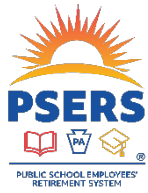
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Glen Grill

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5/24/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Wednesday, May 12, 2021 [Sunshine]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:32 P.M. via MS TEAMs.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity

Nathan Mains
Sen. Katie Muth
Stacey Connors for Sen. Patrick Browne
Melva Vogler

Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio
Joe Torsella

Others Present:

James Bloom
Susan Boyle
John Callahan
Thomas Clancy
Christopher Craig

Lloyd Ebright
Alan Flannigan
Luc Miron
William Sullivan, Pillsbury
Jill Vecchio

Don Vymazal
Joe DiStefano, Phil Inq.

Staff Present:

Glen Grell
Jackie Lutz

Tivia Danner
Mercedes Evans

I. Public Comment – none.

II. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:35 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters."

Rep. Frank Ryan moved that the Board enter Executive Session, with Melva Vogler seconding the motion. The motion passed unanimously.

The Regular session resumed at 7:10 P.M.

III. Action Items – none.

IV. Other Business – Chris SantaMaria, Board Chair, congratulated the PSERS IT department for their COVID-19 response and nomination to the Governor’s Awards for Excellence. They were not the finalist however were in the top.

V. Chris SantaMaria adjourned the meeting at 7:15 P.M.

DocuSigned by:
Glen Grell
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5/24/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Wednesday, May 19, 2021 [Sunshine]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:30 P.M. via MS TEAMs.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity

Nathan Mains
Sen. Katie Muth
Stacey Connors for Sen. Patrick Browne

Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio
Joe Torsella

Others Present:

Meredith Auten, Morgan Lewis
James Bloom
Susan Boyle
John Callahan
Thomas Clancy

Christopher Craig
Lloyd Ebright
Alan Flannigan
Zane Memeger, Morgan Lewis
Luc Miron

William Sullivan, Pillsbury
Jill Vecchio
Don Vymazal
Joe DiStefano, Phil Inq.

Staff Present:

Glen Grell
Jackie Lutz

Tivia Danner

I. Public Comment – none.

II. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:34 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters."

Rep. Frank Ryan moved that the Board enter Executive Session, with Jason Davis seconding the motion. The motion passed unanimously.

The Regular session resumed at 7:28 P.M.

III. Action Items – none.

IV. Other Business – none.

V. Chris SantaMaria adjourned the meeting at 7:29 P.M.

DocuSigned by:

Glen Grell

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5/24/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Wednesday, June 16, 2021 [Sunshine]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:30 P.M. via MS TEAMs.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity
Nathan Mains

Patrick Shaughnessy for Rep.
Matt Bradford
Sen. Katie Muth
Stacey Connors for Sen. Patrick Browne

Jason Davis
Susan Lemmo
Deborah Beck
Joe Torsella
Melva Vogler

Others Present:

James Bloom
Thomas Clancy
Suzanne Dugan, CohenMilstein

Alan Flannigan
Luc Miron
William Sullivan, Pillsbury

Jill Vecchio
Don Vymazal

Staff Present:

Mercedes Evans
Glen Grell

Jackie Lutz

I. Public Comment – none.

II. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:35 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters.”

Rep. Frank Ryan moved that the Board enter Executive Session, with Jason Davis seconding the motion. The motion passed unanimously.

The Regular session resumed at 6:08 P.M.

III. Action Items – none.

IV. Other Business –

V. Chris SantaMaria adjourned the meeting at 6:09 P.M.

DocuSigned by:
Glen Grell
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7/13/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Wednesday, June 23, 2021 [Sunshine]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:30 P.M. via MS TEAMs.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity
Nathan Mains

Patrick Shaughnessy for Rep.
Matt Bradford
Sen. Katie Muth
Stacey Connors for Sen. Patrick Browne

Jason Davis
Susan Lemmo
Deborah Beck
Eric DiTullio
Joe Torsella
Melva Vogler

Others Present:

James Bloom
Susan Boyle
Thomas Clancy
Christopher Craig

Lloyd Ebright
Alan Flannigan
Luc Miron
William Sullivan, Pillsbury

Jill Vecchio
Don Vymazal
Joe DiStefano, Phil Inq.

Staff Present:

Glen Grell
Jackie Lutz

Tivia Danner

I. Public Comment – none.

II. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:35 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters."

Rep. Frank Ryan moved that the Board enter Executive Session, with Melva Vogler seconding the motion. The motion passed unanimously.

The Regular session resumed at 6:21 P.M.

III. Action Items – none.

IV. Other Business –

Tivia Danner provided an update on pa.gov email assignment for Board members. More information will be shared with recipients by next week.

Jason Davis reported he received a call from James Grossman, PSERS-CIO, explaining Bloomberg Transaction terminals were closed to PSERS due to an outstanding invoice. PSERS secured a one-week grace period to research the unpaid amount and reconcile. Additional support was provided by Chris SantaMaria, Chair, and Frank Ryan, Vice-Chair in conjunction with Treasurer Stacy Garrity. Lenann Engler, PSERS Investment Office, explained the Comptroller's Office was unable to process the payment due to some unanswered terms. The terms were explained and Treasurer Garrity received a request to expedite the payment. Treasurer Garrity confirmed it was scheduled to be paid by Friday, June 25, 2021. Mr. Davis expressed appreciation on behalf of the Investment Office.

V. Chris SantaMaria adjourned the meeting at 6:22 P.M.

Next PSERB Special Board Meeting is scheduled for Wednesday, June 30, 2021 at 5:30 P.M.

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6/29/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Wednesday, June 30, 2021 [Sunshine]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:30 P.M. via MS TEAMS.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity
Nathan Mains

Patrick Shaughnessy for Rep.
Matt Bradford
Sen. Katie Muth
Stacey Connors for Sen. Patrick
Browne

Susan Lemmo
Deborah Beck
Eric DiTullio
Joe Torsella

Others Present:

James Bloom
Susan Boyle
Christopher Craig

Suzanne Dugan, CohenMilstein
Alan Flannigan
Luc Miron
William Sullivan, Pillsbury

Jill Vecchio
Don Vymazal

Staff Present:

Glen Grell
Jackie Lutz

Steve Skoff
Tivia Danner

I. Public Comment – none.

II. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:35 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters."

Rep. Frank Ryan moved that the Board enter Executive Session, with Eric DiTullio seconding the motion. The motion passed unanimously.

The Regular session resumed at 7:02 P.M.

III. Action Items – none.

IV. Other Business –

Glen Grell reported the General Fund budget passed with full actuarial funding and the PSERS Agency Budget also passed. Thanks extended to legislative members and Appropriations Chairs, as well as Governor's Office for 6th consecutive year with full actuarial funding.

Glen Grell reported the release on V3 for Shared Risk implementation successfully deployed last weekend and completed in advance of July 1 implementation. Congratulations and thanks to Jennifer Mills and whole PSERS team for a job well done.

Tivia Danner provided an update on pa.gov email assignment for Board members. Each member received a [SEND SECURE] email with username and password. A Quick Guide and PSERS IT HelpLine were provided to support activation of the account. Members are asked to confirm activation.

V. Chris SantaMaria adjourned the meeting at 7:07 P.M.

Next PSERB Special Board Meeting is scheduled for Wednesday, July 7, 2021 at 5:30 P.M.

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7/1/2021



Public School Employees' Retirement Board

Special Bylaws/Policy Committee Meeting Minutes

Wednesday, July 7, 2021 [Sunshine]

Call to Order: Patrick Shaughnessy (for Rep. Bradford), Chair, called the meeting to order at 4:30 P.M. via MS TEAMS.

Committee Members Present:

Patrick Shaughnessy for Rep.
Matt Bradford, Chair
Treas. Stacy Garrity, Vice-Chair

Stacey Connors for Sen. Patrick
Browne
Rep. Frank Ryan

Nathan Mains
Sec. Richard Vague

Others Present:

Deborah Beck
James Bloom
Susan Boyle
Thomas Clancy
Jason Davis

Suzanne Dugan, Cohen Milstein
Lloyd Ebright
Alan Flannigan
Susan Lemmo
Patrick Lord

Luc Miron
Joe Torsella
Sen. Katie Muth
Jill Vecchio
Melva Vogler

Staff Present:

Mercedes Evans
Glen Grell

Jackie Lutz
Jennifer Mills

I. Public Comment – none.

II. Discussion on Travel Policy - Patrick Shaughnessy

Chairman Shaughnessy provided a brief background on the process and content of the Draft Travel Policy to be considered.

Committee and Board Members were recognized for questions and comments, including a discussion of the elimination of any direct payment or reimbursement of travel costs by third parties.

Fiduciary Counsel Dugan offered comments regarding the process followed by the Committee and Board in connection with the prior Travel Resolution and the draft policy and offered that the Committee and Board may decide to accept the possibility of additional costs to the System to establish a higher standard of transparency and integrity.

Others disputed the belief that travel costs to PSERS would necessarily increase, given the post-COVID travel environment and greater scrutiny of the travel necessity.

Treasurer Garrity questioned why the Draft Policy allows an exception to “GSA lodging rates” and other members raised concerns about lodging at locations other than a meeting venue.

III. Action Items

Nathan Mains offered an amendment to the Draft Policy to require PSERS Travelers to follow applicable Office of Administration guidelines on lodging.

Treasurer Garrity seconded the motion. A further discussion followed.

The Amendment passed unanimously.

Resolution 2021.31 Re: Board and Staff Travel Policy

RESOLVED, that the Bylaws/Policy Committee of the Public School Employees' Retirement Board (the "Board") hereby recommends that the Board adopt the proposed Board and Staff Travel Policy for the Public School Employees' Retirement System dated December 3, 2020, to be amended to provide Travelers shall follow Commonwealth travel guidelines on all lodging.

Nathan Mains moved, with Rep. Frank Ryan seconding, which passed unanimously.

IV. Other Business

Sec. Vague thanked Patrick Shaughnessy for all the work navigating such a complicated process.

Rep. Ryan thanked Joe Torsella and the entire Board for working together on the Travel Policy.

V. Patrick Shaughnessy adjourned the meeting at 5:07 P.M.

DocuSigned by:

Glen Grill

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7/19/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Wednesday, July 7, 2021 [Sunshine]

Call to Order: Rep. Frank Ryan, Board Vice-Chair, called the meeting to order at 5:30 P.M. via MS TEAMS.

Board Members Present:

Rep. Frank Ryan, Vice-Chair
Patrick Lord for Sec. Noe Ortega
Sec. Richard Vague
Treas. Stacy Garrity
Nathan Mains

Patrick Shaughnessy for Rep.
Matt Bradford
Stacey Connors for Sen. Patrick
Browne
Susan Lemmo

Deborah Beck
Eric DiTullio
Joe Torsella
Jason Davis
Mel Vogler

Others Present:

James Bloom
Christopher Craig
Suzanne Dugan, CohenMilstein

Alan Flannigan
Luc Miron
William Sullivan, Pillsbury

Staff Present:

Mercedes Evans
Glen Grell

Jackie Lutz

I. Public Comment – none.

II. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:33 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law, and Quasi-judicial matters."

Patrick Shaughnessy moved that the Board enter Executive Session, with Eric DiTullio seconding the motion. The motion passed unanimously.

The Regular session resumed at 6:44 P.M.

III. Action Items – none.

IV. Other Business –

Sen. Katie Muth commented that it is important for the fiduciary to be informed and thanked Rep. Frank Ryan for conducting the meeting in absence of the Chair.

V. Rep. Frank Ryan adjourned the meeting at 6:47 P.M.

Special Investment and Budget/Finance Joint Committee Meeting is scheduled for July 12, 2021 at 1:00 P.M.

Special Audit/Compliance Committee Meeting is scheduled for July 13, 2021 at 2:00 P.M.

Special Board Meeting is scheduled for Wednesday, July 13, 2021 at 3:00 P.M.

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7/16/2021



Public School Employees' Retirement Board

Investment and Budget/Finance Committees Joint

Meeting Minutes

Monday, July 12, 2021

Call to Order: Jason Davis, Investment Committee Chair, called meeting to order at 1:03 P.M. via MS Teams.

Board Members Present:

Jason Davis, Chair
Eric DiTullio, Vice-Chair
Christopher SantaMaria, Ex-Officio
Deborah Beck
Patrick Shaughnessy for Rep. Matt Bradford

Sen. Patrick Browne (Out @ 1:17 pm)
Stacey Connors for Sen. Patrick Browne (In @ 1:17 pm)
Treas. Stacy Garrity (In @ 1:07 pm)
Sen. Katie Muth
Patrick Lord for Sec. Noe Ortega

Rep. Frank Ryan
Joe Torsella
Melva Vogler
Sec. Richard Vague

Board Members Absent:

Susan Lemmo
Nathan Mains

Others Present:

Sean Barber, Hamilton Lane
James Bloom (In @ 2:00 pm)
Mark Brubaker, Verus
Thomas Clancy
Christopher Craig
Tapan Datta, Aon
David Driscoll, Buck
Suzanne Dugan, Cohen Millstein

Lloyd Ebright
Corina English, Hamilton Lane
Alan Flannigan
Thomas Garrett, Verus
Michael Kennedy, Buck
Jeffrey MacLean, Verus
Salvador Nakar, Buck
Brandon Patterson, Aon

Edward Quinn, Buck
Stuart Schulman, Buck
Brittany Seibert, Hamilton Lane
Claire Shaughnessy, Aon
Jas Thandi, Aon
Ian Toner, Verus
Jill Vecchio

Staff Present:

Thomas Bauer

Brian Carl

Manaswita Dandapat

Tivia Danner

James Del Gaudio

Robert Devine

Steve Esack

Mercedes Evans

Andrew Fiscus

Darren Foreman

Mei Gentry

Glen Grell

James Grossman

Denise Knapp

Patrick Knapp

Brian Koleno

Jason Kuntz

Robert Little

Jackie Lutz

G. Anthony Meadows

Melissa Quackenbush

Jarrett Richards

Michael Severance

Joe Sheva

Steven Skoff

Charles Spiller

William Stalter

Philip VanGraafeiland

I. Acceptance of Published Agenda or Amendments

Glen Grell, Executive Director, explained Senate Bill 554 legislation signed into effect June 30, 2021, requiring modifications to open meetings and notification of agency business; namely addition of agenda item Acceptance of Published Agenda. Agendas are to be published and posted twenty-four hours in advance of an open meeting in specific locations, and the published agenda is to be approved during the open meeting.

Melva Vogler moved to approve the Acceptance of Published Agenda or Amendments. Eric DiTullio seconded the motion, which passed unanimously.

II. Opening Comments

Jason Davis opened the Joint Budget/Finance and Investment Committee Meeting with how the joint meeting will proceed, mentioned that this was an informational meeting only and the potential outcomes of this meeting.

III. Public Comments - none

IV. Executive Session

At 1:10 P.M., Mr. Grell stated, "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an Executive Session to discuss the items listed on today's agenda, namely, to discuss the Informational Items – Capital Market Assumptions and Expected Return Update, Expected Return Analysis and Expected Return on Assets Analysis. According to Section 708 (a) of the Sunshine Act (65 Pa C.S. § 708 (a)), we are going into Executive Session to present information only to Board Members relating to Capital Market Assumptions and Expected return Analysis, without deliberations or any Agency action all of which may take place at a future public meeting."


Frank Ryan moved that the Investment Committee enter into Executive Session. Patrick Shaughnessy seconded the motion, which passed unanimously.

Regular session resumed at 2:40 P.M.

V. Other business - none

VI. Adjournment

The Budget/Finance and Investment Committee meeting adjourned at 2:43 P.M.

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7/22/2021



Public School Employees' Retirement Board

Special Board Meeting Minutes

Tuesday, July 13, 2021 [Sunshine]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 3:07 P.M. via MS TEAMS.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Deborah Beck
Patrick Shaughnessy for Rep.
Matt Bradford

Stacey Connors for Sen. Patrick
Browne
Jason Davis
Patrick Lord for Sec. Noe Ortega
Treas. Stacy Garrity
Nathan Mains

Sen. Katie Muth
Joe Torsella
Sec. Richard Vague
Melva Vogler

Others Present:

Meredith Auten, MorganLewis
James Bloom
Susan Boyle
Christopher Craig

Suzanne Dugan, CohenMilstein
Alan Flannigan
Michael Kichline, MorganLewis
Zane Memeger, MorganLewis
Luc Miron

William Sullivan, Pillsbury
Jill Vecchio

Staff Present:

Glen Grell
Jackie Lutz

Tivia Danner
Mercedes Evans

I. Acceptance of Published Agenda or Amendments

Melva Vogler motioned, with Rep. Frank Ryan seconding. The motion passed unanimously.

II. Public Comment – none.

III. Report of Bylaws/Policy Committee Travel Policy – Patrick Shaughnessy

Patrick Shaughnessy presented the PSERS Board and Staff Travel Policy dated July 12, 2021.

Nathan Mains moved that the Board accept the presented Travel Policy, with Rep. Frank Ryan seconding.

Melva Vogler proposed an amendment to the section that required travelers to choose a non-conference site hotel citing health and safety concerns. Nathan Mains indicated the proposed amendment would not be accepted as a “friendly amendment,” and moved to table the amendment (not seconded). Glen Grell, Executive Director, stated the Commonwealth Travel Policy allows for case-by-case exceptions. After discussion, Ms. Vogler withdrew her amendment.

Jason Davis stated he opposed the resolution, stating he supports the transparency, but believes it is unfair to the System to prohibit third-party reimbursement of certain travel costs, as most other funds allow.

Chris SantaMaria also expressed concerns about prohibiting reimbursement, especially with LPAC meetings and requested that the costs be closely tracked and re-visited in two years, or sooner if warranted.

Following further discussion, the resolution was considered.

Resolution 2021-31 Re: Board and Staff Travel Policy

- **RESOLVED**, that the Public School Employee's Retirement Board (the "Board) hereby adopts the proposed Board and Staff Travel Policy for the Public School Employee's Retirement System dated July 12, 2021 and attached hereto.

The motion passed with 12-1, with one opposed being Jason Davis, and Eric DiTullio and Susan Lemmo not attending.

IV. Status Report of Ad Hoc Governance Committee – Melva Vogler

Melva Vogler, Ad Hoc Committee Chair, provided an update on Funston's draft final recommendation report. Ms. Vogler reminded Board members Funston is available for follow-up through Friday, July 19. Treas. Stacy Garrity requested an extension due to schedule conflict, and Glen Grell said effort would be made to accommodate.

Nathan Mains requested clarification of dates for full Board to consider the draft final report. Glen Grell stated a full presentation to the Board would be scheduled for October 6, at which the recommendations could be expected to advance to the Board meeting scheduled for October 8.

V. Consultation with Counsel in Connection with Potential or Current Litigation

At 3:49 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law."

Rep. Frank Ryan moved that the Board enter Executive Session, with Melva Vogler seconding the motion. The motion passed unanimously.

The Regular session resumed at 4:40 P.M.

VI. Consultation with Counsel in Connection with Other Current Litigation

At 4:42 P.M., Glen Grell stated "In accordance with Section 5.13 of the Bylaws of the Public School Employees' Retirement Board, we are going into an **Executive Session** to discuss the items on today's agenda, namely consultation with counsel in connection with other current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law."

Rep. Frank Ryan moved that the Board enter Executive Session, with Jason Davis seconding the motion. The motion passed unanimously. Sen. Katie Muth and Designee Luc Miron recused themselves for the duration of the Executive Session. Sen. Muth asked on the record if she would be permitted to return for public comment following the Executive Session, which was affirmed.

The Regular session resumed at 5:27 P.M. Sen. Muth returned at 5:28 P.M.

VII. Action Items – none.

VIII. Other Business –

Jason Davis mentioned all Board should receive an email from Mark Brubaker, Verus, related to fixed income topic. Jason Davis followed with notice that Board members will also receive a survey from Verus about Private versus Public Equity Reports.

Glen Grell provided a reminder to Board members that NCTR 21st Annual Trustee Workshop scheduled for July 26-28, 2021 registration is due by Friday, July 16, and to contact Mercedes Evans merceevans@pa.gov or Tivia Danner tidanner@pa.gov to complete. The course is available for 30 days post workshop for virtual viewing to anyone registered but not able to attend.

Sen. Katie Muth asked to reflect “in the minute notes and public record that I was not a participant in the last Executive Session and was asked to recuse myself being that the discussion was regarding ongoing litigation. I also wanted to note for the record that I have not received any correspondence nor information regarding how the process behind the effort at which counsel was directed to respond on behalf of counsel, and by counsel I mean outside counsel hired by the Board which I am a member and also the System, and if the process was done by proper procedure there should have been a vote by the Board and I am not aware of any vote by the Board, and may I remind everyone that voting in Executive Session is not permitted so I just want to state that for the record. I request that a resolution be brought forward to make the motion for resolution for the Board to vote on that since the process has already been flawed and not adhered to and at least the Board should go on record voting to make those requests formal.”

Chris SantaMaria acknowledge Sen. Muth’s comments and stated that no vote was taken in Executive Session.

Sen. Muth said, “If I may, there is no member of this Board that has unilateral authority to make decisions on behalf of the entire Board and the public should know that because our Bylaws state that the majority of a Board so if a vote falls where it may, the vote still needs to occur so the public can witness it. I would also encourage all of my colleagues on the Board to not just blindly trust advice of counsel, that you do your due diligence and try to follow up on these items that were discussed that are of utmost importance to ensure that we are all upholding our fiduciary duty. Thank you.”

Chris SantaMaria announced the scheduled Special Board meeting is for July 14, 2021 at 5:30 P.M. is no longer necessary and is being cancelled.

IX. Chris SantaMaria adjourned the meeting at 5:33P.M.

Next PSERB Special Board Meeting is scheduled for Wednesday, July 21, 2021 at 5:30 P.M.

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Public School Employees' Retirement Board

Special Audit/Compliance Committee Meeting Minutes

Tuesday, July 13, 2021 [Sunshine]

Call to Order: Rep. Frank Ryan, Chair, called the meeting to order at 2:00 P.M. via MS TEAMS.

Committee Members Present:

Rep. Frank Ryan, Chair	Treas. Stacy Garrity	Jason Davis
Nathan Mains, Vice-Chair	Patrick Shaughnessy for Rep.	
Sec. Richard Vague	Matt Bradford	

Others Present:

Christopher SantaMaria, Ex-Officio	Christopher Craig	Sen. Katie Muth
Deborah Beck	Suzanne Dugan, CohenMilstein	Jill Vecchio
James Bloom	Lloyd Ebright	Melva Vogler (in @ 2:16)
Susan Boyle	Alan Flannigan	
Thomas Clancy	Patrick Lord	
	Luc Miron	

Staff Present:

Thomas Bauer	Mei Gentry	Jackie Lutz
Tivia Danner	Glen Grell	
Mercedes Evans	Stephanie Lanius	

I. Acceptance of Published Agenda or Amendments

Patrick Shaughnessy moved, with Jason Davis seconding. The motion passed unanimously.

II. Public Comment – none.

III. Public

At 2:06 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees’ Retirement Board, we are going into an **Executive Session** to discuss the items on today’s agenda, namely the following: a discussion of the guidance on tracking restatement of financials in investments, a discussion on the external Board appointment and attendance at meetings policy, a review of the Auditor General 2017 Report, and a review of the EY 2018 Study. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law.”

Jason Davis moved that the Audit/Compliance Committee enter Executive Session, with Patrick Shaughnessy seconding the motion. The motion passed unanimously.

The Regular session resumed at 3:00 P.M.

IV. Other Business – none.

V. Rep. Frank Ryan adjourned the meeting at 3:02 P.M.

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Public School Employees' Retirement Board

Special Board Meeting Minutes

Wednesday, July 21, 2021 [Sunshine]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:30 P.M. via MS TEAMS.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Deborah Beck
Patrick Shaughnessy for Rep.
Matt Bradford

Stacey Connors for Sen. Patrick
Browne
Jason Davis
Christopher Craig for Treas. Stacy
Garrity
Susan Lemmo

Nathan Mains
Luc Miron for Sen. Katie Muth
Sec. Richard Vague
Melva Vogler

Others Present:

James Bloom
Susan Boyle
Thomas Clancy
Suzanne Dugan, CohenMilstein

Alan Flannigan
Ashley Matthews
William Sullivan, Pillsbury
Jill Vecchio

Staff Present:

Glen Grell
Jackie Lutz

Tivia Danner

I. Acceptance of Published Agenda or Amendments

Rep. Frank Ryan motioned, with Susan Lemmo seconding. The motion passed unanimously.

II. Opening Comment

Tivia Danner confirmed that the August Board meeting scheduled for August 4-6, 2021 will held at PSERS, 5 North 5th Street in Harrisburg. An RSVP email was sent to all Board/Designees for a reply by Friday July 23 to ensure Board Room arrangement, finalizing catering, and determine if an updated Board of Trustee photo will be arranged.

Glen Grell reported the COVID-19 restrictions have been lifted. Visitors to Commonwealth buildings, including PSERS, are not required to wear masks nor distance. The return to pre-COVID meeting guidelines means PSERS is required to have a physical presence in the Board Room and allow public access. For the record, PSERS had no public in attendance for this Board meeting.

III. Public Comment – none.

IV. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:36 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees’ Retirement Board, we are going into an **Executive Session** to discuss the items on today’s agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law.”

Rep. Frank Ryan moved that the Board enter Executive Session, with Jason Davis seconding the motion. The motion passed unanimously.

The Regular session resumed at 6:27 P.M.

V. Action Items – none.

VI. Other Business –

Chris SantaMaria, on behalf of the Board, welcomed Ashley Matthews, newly appointed Designee to Senator Katie Muth. Ashley provided a short background; see below.

Ashley Matthews currently serves as Executive Director of the Senate Democratic Policy Committee for Senator Katie J. Muth, committee chairwoman. Previously, Ms. Matthews served as press secretary for former Pennsylvania Treasurer Joe Torsella and the Pennsylvania Treasury Department. A graduate of Millersville University of Pennsylvania, Ms. Matthews currently resides in Lancaster with her husband Derrick and 3-month-old daughter Blaire.

PSERS Board member orientation has been scheduled for August 10-11, 2021.

VII. Chris SantaMaria adjourned the meeting at 6:29P.M.

Next PSERB Special Board Meeting is scheduled for Wednesday, July 28, 2021 at 5:30 P.M.

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Public School Employees' Retirement Board

Special Board Meeting Minutes

Wednesday, July 28, 2021 [Sunshine]

Call to Order: Chris SantaMaria, Board Chair, called the meeting to order at 5:30 P.M. via MS TEAMs.

Board Members Present:

Christopher SantaMaria, Chair
Rep. Frank Ryan, Vice-Chair
Deborah Beck
Patrick Shaughnessy for Rep.
Matt Bradford
Stacey Connors for Sen. Patrick
Browne

Jason Davis
Eric DiTullio
Treas. Stacy Garrity
Susan Lemmo
Sen. Katie Muth
Patrick Lord for Sec. Noe Ortega
(in @5:48)

Joe Torsella
Sec. Richard Vague
Melva Vogler

Others Present:

James Bloom
Susan Boyle
Thomas Clancy
Christopher Craig
Suzanne Dugan, CohenMilstein

Lloyd Ebright
Alan Flannigan
Ashley Matthews
Luc Miron
William Sullivan, Pillsbury

Staff Present:

Glen Grell
Jackie Lutz

Tivia Danner

I. Acceptance of Published Agenda or Amendments

Rep. Frank Ryan motioned, with Jason Davis seconding. The motion passed unanimously.

II. Public Comment – none.

III. Consultation with Counsel in Connection with Potential or Current Litigation

At 5:34 P.M., Glen Grell stated “In accordance with Section 5.13 of the Bylaws of the Public School Employees’ Retirement Board, we are going into an **Executive Session** to discuss the items on today’s agenda, namely consultation with counsel in connection with potential or current litigation. According to Section 708(a) of the Sunshine Act, 65 Pa. C.S. 708(a), we are going into Executive Session to discuss agency business which, if conducted in public would violate a privilege or lead to the disclosure of information or

confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible certain violations of law.”

Rep. Frank Ryan moved that the Board enter Executive Session, with Susan Lemmo seconding the motion. The motion passed unanimously.

The Regular session resumed at 5:55 P.M.

IV. Action Items – none.

V. Other Business –

Jason Davis reminded the Board members to complete a requested online survey requested by Mark Brubaker, Verus. The preferred submission date is Monday, August 2, 2021.

Chris SantaMaria shared that the NCTR Summer Workshop concluded on Wednesday July 28. Along with Jason Davis, he attended sessions that included internal audit set up and cybersecurity. The materials will be shared with the Board on Diligent.

VI. Chris SantaMaria adjourned the meeting at 5:57 P.M.

Next PSERB Special Board Meeting is scheduled for Wednesday, August 11, 2021 at 5:30 P.M.

DocuSigned by:
Glen Grill
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COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM
OFFICE OF CHIEF COUNSEL
FACSIMILE (717) 783-8010

September 8, 2021

Thomas J. Curran, Esq.
tcurran@pecklaw.com
Peckar & Abramson, P.C.

Re: Aon

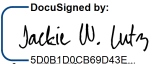
Dear Mr. Curran:

This letter is to serve as notice to you regarding the enclosed Notice of Appeal to the Commonwealth of Pennsylvania, Office of Open Records ("OOR") received by the Commonwealth of Pennsylvania, Public School Employees' Retirement System ("PSERS") in the following case, *McCoy and The Philadelphia Inquirer v. Pennsylvania Public School Employees' Retirement System*, OOR Dkt . AP 2021-1856 (the "Appeal"). PSERS' response is currently due on September 21, 2021.

The Appeal concerns, among other things, PSERS' decision to withhold from public disclosure certain communications to and from your above-referenced client ("Client"), pursuant to the Right-to-Know Law ("RTKL") sections 708(b)(16)(vi)(B) and 708(b)(17)(vi)(B). In accordance with RTKL section 1101(c), your Client may have the right to file a written request with the OOR appeals officer to provide information or to appear before the OOR appeals officer or to file information in support of PSERS' position, such as one or more affidavits supporting your Client's position. If your client plans to provide one or more affidavits to OOR, PSERS would like the opportunity to review the affidavits and include these affidavits as part of its response.

I would appreciate it if you would advise me as to whether your Client plans to file the written request to the OOR appeals officer to submit information and/or affidavits in support of PSERS' denial of McCoy and The Philadelphia Inquirer's right-to-know request. Thank you for your attention to this matter.

Very truly yours,

DocuSigned by:

500B1D0C868043E
Jackie Wiest Lutz
Chief Counsel

Enclosure



COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM
OFFICE OF CHIEF COUNSEL
FACSIMILE (717) 783-8010

September 8, 2021

Maura S. Spillane
Associate General Counsel, U.S.
maura.spillane@buck.com

David Godofsky
Alston & Bird
David.godofsky@alston.com

Re: Buck

Dear Ms. Spillane and Mr. Godofsky:

This letter is to serve as notice to you regarding the enclosed Notice of Appeal to the Commonwealth of Pennsylvania, Office of Open Records ("OOR") received by the Commonwealth of Pennsylvania, Public School Employees' Retirement System ("PSERS") in the following case, *McCoy and The Philadelphia Inquirer v. Pennsylvania Public School Employees' Retirement System*, OOR Dkt . AP 2021-1856 (the "Appeal"). PSERS' response is currently due on September 21, 2021.

The Appeal concerns, among other things, PSERS' decision to withhold from public disclosure certain communications to and from your above-referenced client ("Client"), pursuant to the Right-to-Know Law ("RTKL") sections 708(b)(16)(vi)(B) and 708(b)(17)(vi)(B). In accordance with RTKL section 1101(c), your Client may have the right to file a written request with the OOR appeals officer to provide information or to appear before the OOR appeals officer or to file information in support of PSERS' position, such as one or more affidavits supporting your Client's position. If your client plans to provide one or more affidavits to OOR, PSERS would like the opportunity to review the affidavits and include these affidavits as part of its response.

I would appreciate it if you would advise me as to whether your Client plans to file the written request to the OOR appeals officer to submit information and/or affidavits in support of PSERS' denial of McCoy and The Philadelphia Inquirer's right-to-know request. Thank you for your attention to this matter.

Very truly yours,

DocuSigned by:
Jackie W. Lutz
5D0B1D0CB69D43E...

Jackie Wiest Lutz
Chief Counsel

Enclosure



COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM
OFFICE OF CHIEF COUNSEL
FACSIMILE (717) 783-8010

September 8, 2021

Glenn Cline
Deputy General Counsel
glenn.cline@acaglobal.com

Matthew Steinhilber
Partner and General Counsel
matthew.steinhilber@acaglobal.com

Re: ACA

Dear Mssrs. Cline and Steinhilber:

This letter is to serve as notice to you regarding the enclosed Notice of Appeal to the Commonwealth of Pennsylvania, Office of Open Records ("OOR") received by the Commonwealth of Pennsylvania, Public School Employees' Retirement System ("PSERS") in the following case, *McCoy and The Philadelphia Inquirer v. Pennsylvania Public School Employees' Retirement System*, OOR Dkt . AP 2021-1856 (the "Appeal"). PSERS' response is currently due on September 21, 2021.

The Appeal concerns, among other things, PSERS' decision to withhold from public disclosure certain communications to and from your above-referenced client ("Client"), pursuant to the Right-to-Know Law ("RTKL") sections 708(b)(16)(vi)(B) and 708(b)(17)(vi)(B). In accordance with RTKL section 1101(c), your Client may have the right to file a written request with the OOR appeals officer to provide information or to appear before the OOR appeals officer or to file information in support of PSERS' position, such as one or more affidavits supporting your Client's position. If your client plans to provide one or more affidavits to OOR, PSERS would like the opportunity to review the affidavits and include these affidavits as part of its response.

I would appreciate it if you would advise me as to whether your Client plans to file the written request to the OOR appeals officer to submit information and/or affidavits in support of PSERS' denial of McCoy and The Philadelphia Inquirer's right-to-know request. Thank you for your attention to this matter.

Very truly yours,

DocuSigned by:
Jackie W. Lutz
5D0B1D0CB69D43E...

Jackie Wiest Lutz
Chief Counsel

Enclosure

ALSTON & BIRD

The Atlantic Building
950 F Street, NW
Washington, DC 20004-1404
202-239-3300 | Fax: 202-239-3333

David R. Godofsky

Direct Dial: 202-239-3392

Email: david.godofsky@alston.com

September 16, 2021

Erin Burlew, Esq.
Office of Open Records (OOR)
Commonwealth of Pennsylvania
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

Via E-mail: eburlew@pa.gov

Re: McCoy and The Philadelphia Inquirer v. Pennsylvania Public School Employees'
Retirement System, OOR Dkt. AP 2021-1856

Dear Ms. Burlew:

I am writing on behalf of Buck Global, LLC ("Buck") to comment on the appeal of the denial of the right-to-know request (RTK #2021-19) filed by Craig McCoy, Joseph DiStephano and The Philadelphia Inquirer (collectively "The Inquirer"). The RTK requested, among other things, certain correspondence between Buck and the Pennsylvania Public School Employees' Retirement System ("PSERS").

Specifically, Buck would like to comment on requests 5A, 5B and 5C, which relate to correspondence with Buck. Buck believes the denial should be upheld on appeal and requests that OOR uphold the denial.

Reasons for Denial

Buck agrees with the reasons that PSERS listed for denial. Specifically, PSERS denied the requests because the records requested (1) are overly broad, (2) lack adequate specificity, (3) relate to a criminal investigation and include records that, if disclosed, would deprive persons of the right to a fair trial or an impartial adjudication, and (4) relate to a noncriminal investigation and include records that, if disclosed, would deprive a person of the right to an impartial adjudication. Because Buck is in agreement with PSERS on all these reasons, Buck does not believe it is necessary to repeat all of the arguments made by PSERS, but simply notes that it fully agrees with PSERS' denial and the reasons therefore.

Buck further notes that even after The Inquirer narrowed its requests in an email dated June 8, 2021, it still is requesting records "related to" investment performance reporting and risk-sharing calculations, to and from "any employee or representative of Buck Global." These categories are vague and overbroad. Buck is a global consulting firm with over 200 offices and 1500 employees.

In addition, Buck notes that the records requested may include confidential information regarding individual employees of PSERS and the participants in the retirement system.

Buck also would object to the production of any Excel spreadsheets (which Buck generally transmits to PSERS as attachments to e-mail messages) in native format, because such spreadsheets include proprietary formulas and macros that are confidential.

Thank you very much.

Sincerely,

David R. Godofsky

cc: Craig McCoy,
The Philadelphia Inquirer
467 W. School House Lane
Philadelphia, PA 19144
cmccoy@inquirer.com

Pennsylvania Public School Employees' Retirement System
5 North Fifth Street
Harrisburg, PA 17101
c/o Jackie Wiest Lutz, Chief Counsel
jlutz@pa.gov
egoldstein@pa.gov

Maura Spillane, Associate General Counsel, Buck Global, LLC

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: AP 2021-1856

Today's date: 9/21/2021

Name: Buck Global, LLC

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip c/o David Godofsky, 950 F Street NW, Washington DC 20004

E-mail david.godofsky@alston.com

Fax Number: 202-654-4922

Name of Requester: The Philadelphia Inquirer

Address/City/State/Zip 467 W. School House Lane, Philadelphia, PA 19144

Telephone/Fax Number: 215-313-6813 /

E-mail cmccoy@inquirer.com

Name of Agency: Pennsylvania Public School Employees' Retirement System

Address/City/State/Zip 5 North Fifth Street, Harrisburg PA 17101

Telephone/Fax Number: 717-787-8540 /

E-mail ra-PSERSRTKL@pa.gov

Record at issue: #5A, 5B and 5C - correspondence with Buck Global, LLC

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☒ The owner of a record containing confidential or proprietary information or trademarked records
- ☒ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, David R. Godofsky (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS**

IN THE MATTER OF:

CRAIG MCCOY and THE PHILADELPHIA
INQUIRER,

Requesters,

Docket No. AP 2021-1856

v.

PENNSYLVANIA PUBLIC SCHOOL
EMPLOYEES' RETIREMENT SYSTEM,

Respondent.

**REQUEST TO PARTICIPATE AND POSITION
STATEMENT BY AON INVESTMENTS USA, INC.**

Aon Investments USA, Inc. respectfully requests to participate in this appeal pursuant to 65 P.S. § 67.1101(c) because respondent Public Schools Employees' Retirement System ("PSERS") has in its possession a number of documents that contain Aon's proprietary and confidential information, trade secrets, and intellectual property, and requesters' requests may seek production of those documents.

Specifically, as set forth in the attached declaration of Claire Shaughnessy, Aon has a more than 7-year relationship with PSERS, during which time it has served as an investment advisor for PSERS. Exhibit A, 9/21/21 Declaration of Claire Shaughnessy at ¶ 2. Aon was notified of this appeal by letter dated September 8, 2021. In light of its longstanding relationship with PSERS and the volume of documents and information Aon has provided to PSERS during that time, Aon would need significant additional information about the documents, or at least the categories of documents, that PSERS believes are implicated by the requests before it can

provide a more specific position statement. However, Aon believes that PSERS has in its possession the following:

1. Email communications between Aon and PSERS employees containing information incorporating their thoughts or analysis related to PSERS performance, which include Aon's proprietary knowledge;
2. Performance reports and analysis, which include the results of analysis done with Aon's proprietary business procedures and is part of Aon's intellectual property.

Aon expects that this category may include:

- monthly performance reports;
 - quarterly investment reports; and
 - other portfolio analysis completed by Aon;
3. Documents regarding Aon's service offerings, which include confidential information about Aon's business procedures and strategies; and
 4. Documents and communications regarding the calculation that is at issue in requestors' requests, which include confidential and proprietary information regarding Aon's business procedures, strategies, and analytical processes.

Id. at ¶¶ 5a-5d.

These documents derive independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from their disclosure or use and are the subject of efforts that are reasonable under the circumstances to maintain their secrecy. *Id.* at ¶ 6. One way that Aon has endeavored to maintain the secrecy of its confidential documents and trade secrets is through its contract with PSERS; specifically, Contract PO4300636463, Rider 4, Section 1.39-

CONTRACT-037.1a(a), pursuant to which PSERS is obligated to maintain the secrecy of Aon's proprietary documents. *Id.* at ¶ 7.

It is Aon's position that such documents are "record[s] that constitute[] or reveal[] a trade secret or confidential proprietary information" and therefore exempt from disclosure pursuant to Section 708(b)(11) of the Right-to-Know Law. 65 P.S. §§ 67.708(b)(11). Importantly, while PSERS is "not permitted to waive a third party's interest in protecting the records", "decisional law allows third parties" such as Aon "to raise and defend exemptions to protect information that they believe is exempt from disclosure." *McKelvey v. Pennsylvania Dep't of Health*, 255 A.3d 385, 401 (Pa. 2021) (internal quotation marks omitted).

Aon has requested that prior to turning over any documents or information provided by Aon to PSERS pursuant to this request, PSERS advise Aon specifically what information and/or documents it proposes to provide, so that Aon can consider its options and urge PSERS or the Office of Open Records to invoke appropriate exemptions from disclosure. Exhibit A, Shaughnessy Decl. at ¶ 8. Aon was not provided with notice of requesters' requests prior to being notified of this appeal. *Id.* at ¶ 9. And as noted, Aon has had an insufficient opportunity to consider what documents may be implicated and the specific manner in which such documents may be exempt from disclosure. *Id.* at ¶ 4. This situation risks depriving Aon of its right to procedural due process under the circumstances. The OOR should not permit any disclosure of Aon's documents without providing Aon with a process sufficient to assert applicable exemptions. *See Pennsylvania State Educ. of Ass'n ex rel. Wilson v. DCED*, 50 A.3d 1263, 1275–76 (Pa. 2012) ("[T]he RTKL, as presently implemented by the OOR, does not provide public school employees with a reliable administrative or judicial method by which to seek redress for action that they believe violates the statutory scheme and/or their constitutional rights.").

Respectfully submitted,

Dated: September 21, 2021

/s/ Andrew K. Garden

Kevin Dooley Kent (No. 85962)
Robert N. Feltoon (No. 58197)
Andrew K. Garden (No. 314708)
CONRAD O'BRIEN PC
Centre Square West Tower
1500 Market Street, Suite 3900
Philadelphia, PA 19102-2100
Ph: (215) 864-9600/ Fax: (215) 864-9620
Email: kkent@conradobrien.com
rfeltoon@conradobrien.com
agarden@conradobrien.com

Craig C. Martin (cmartin@willkie.com)
(*pro hac vice forthcoming*)
Amanda S. Amert (aamert@willkie.com)
(*pro hac vice forthcoming*)
Matt D. Basil (mbasil@willkie.com)
(*pro hac vice forthcoming*)
Samuel J. Gamer (sgamer@willkie.com)
(*pro hac vice forthcoming*)
WILLKIE FARR & GALLAGHER LLP
300 North LaSalle, Suite 5000
Chicago, Illinois 60654
Tel: (312) 728-9000

Counsel for Aon Investments USA, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below I caused a true and correct copy of the foregoing document, including attachments, to be served on the following individuals by electronic mail:

Mr. Craig McCoy
The Philadelphia Inquirer
467 W School House Lane
Philadelphia, PA 19144
cmccoy@inquirer.com

Jackie Weist Lutz
Chief Counsel
Pennsylvania Public Schools Employees'
Retirement System
jlutz@pa.gov

Erin Burlew, Esq., Appeals Officer
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
eburlew@pa.gov

Respectfully submitted,

/s/ Andrew K. Garden

Dated: September 21, 2021

Kevin Dooley Kent (No. 85962)
Robert N. Feltoon (No. 58197)
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Craig C. Martin (cmartin@willkie.com)
(*pro hac vice forthcoming*)
Amanda S. Amert (aamert@willkie.com)
(*pro hac vice forthcoming*)
Matt D. Basil (mbasil@willkie.com)
(*pro hac vice forthcoming*)
Samuel J. Gamer (sgamer@willkie.com)
(*pro hac vice forthcoming*)
WILLKIE FARR & GALLAGHER LLP
300 North LaSalle, Suite 5000
Chicago, Illinois 60654
Tel: (312) 728-9000

Counsel for Aon Investments USA, Inc.

EXHIBIT A

**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS**

IN THE MATTER OF:

CRAIG MCCOY and THE PHILADELPHIA
INQUIRER,

Requesters,

v.

PENNSYLVANIA PUBLIC SCHOOL
EMPLOYEES' RETIREMENT SYSTEM,

Respondent.

Docket No. AP 2021-1856

DECLARATION OF CLAIRE SHAUGHNESSY

I, Claire Shaughnessy, hereby declare as follows:

1. I am a Partner, and the Lead Relationship Manager and Lead Consultant at Aon Investments USA, Inc. ("Aon") relating to the relationship with respondent Public Schools Employees' Retirement System ("PSERS") and am authorized to make this declaration on Aon's behalf in support of Aon's request to Participate and Position Statement in this matter.
2. Aon has a more than 7-year relationship with respondent PSERS, during which time it has served as an investment advisor for PSERS.
3. Aon was notified of this appeal by letter dated September 8, 2021.
4. In light of its longstanding relationship with PSERS and the volume of documents and information Aon has provided to PSERS during that time, Aon would need significant additional information about the documents, or at least the categories of documents, that PSERS believes are implicated by the requests before it can provide more specific information.
5. However, Aon believes that PSERS has in its possession the following:

- a. Email communications between Aon and PSERS employees containing information incorporating their thoughts or analysis related to PSERS performance, which include Aon's proprietary knowledge;
- b. Performance reports and analysis, which include the results of analysis done with Aon's proprietary business procedures and is part of Aon's intellectual property. Aon expects that this category may include:
 - 1. monthly performance reports;
 - 2. quarterly investment reports; and
 - 3. other portfolio analysis completed by Aon;
- c. Documents regarding Aon's service offerings, which include confidential information about Aon's business procedures and strategies; and
- d. Documents and communications regarding the calculation that is at issue in requestors' requests, which include confidential and proprietary information regarding Aon's business procedures, strategies, and analytical processes.

6. These documents derive independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from their disclosure or use and are the subject of efforts that are reasonable under the circumstances to maintain their secrecy.

7. One way that Aon has endeavored to maintain the secrecy of its confidential documents and trade secrets is through its contract with PSERS; specifically, Contract PO4300636463, Rider 4, Section 1.39-CONTRACT-037.1a(a), pursuant to which PSERS is obligated to maintain the secrecy of Aon's proprietary documents.

8. Aon has requested that prior to turning over any documents or information provided by Aon to PSERS pursuant to this request, PSERS advise Aon specifically what information and/or documents it proposes to provide, so that Aon can consider its options and urge PSERS or the Office of Open Records to invoke appropriate exemptions from disclosure. Aon would need adequate time to review what PSERS may intend to produce.

9. Aon was not provided with notice of requesters' requests prior to being notified of this appeal.

10. I make this declaration to the best of my knowledge and information and pursuant to 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Dated: September 21, 2021



CLAIRE SHAUGHNESSY

BEFORE THE OFFICE OF OPEN RECORDS

**CRAIG MCCOY AND THE
PHILADELPHIA INQUIRER,
Complainants**

v.

**PENNSYLVANIA PUBLIC SCHOOL
EMPLOYEES' RETIREMENT
SYSTEM,
Respondent**

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AP 2021-1856

**MEMORANDUM OF PENNSYLVANIA PUBLIC SCHOOL EMPLOYEES'
RETIREMENT SYSTEM IN OPPOSITION TO APPEAL**

I. PROCEDURAL HISTORY

On May 18, 2021, Philadelphia Inquirer reporters Joseph DiStefano ("DiStefano") and Craig McCoy ("McCoy") (together, "Requesters") submitted a Right-To-Know Law ("RTKL") request to the Commonwealth of Pennsylvania, Public School Employees' Retirement System ("PSERS") via its Agency Open Records Officer Evelyn Williams ("Williams"). The submission made the following requests:

- 1- In October 2020, PSERS retained Funston Advisory Services LLC as board governance consultant to review governance. Regarding Funston's work, please provide:
 - The contract with Funston and any other document describing the arrangements under which Funston presented work product to PSERS since October 2020
 - All invoices submitted by Funston
 - All payments made by PSERS
 - A copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from October to the present, between PSERS staff and any employee or representative of Funston.
- 2- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from December 2018 to the present, between PSERS staff and any representative of the owners or sellers of the following parcels of real estate in the City of Harrisburg:
 - The former Patriot-News facilities at 812 Market St.
 - The former Department of General Services building at 908 Market St.

- Any other parcel in Harrisburg acquired by PSERS since 1 January, 2016
- 3A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of ACA Compliance Group, related to investment performance reporting.
- 3B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of ACA, related to risk-sharing calculations.
- 3C - Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from December 2020 to the present, between PSERS staff and any employee or representative of ACA, related to the discovery or identification of an error in calculating the historical investment performance, as part of the shared-risk determination. Please include, for example, the notice given ACA on Feb. 18, 2021 that Aon's source data was in error, and details of such error and its effect on the scale and direction of the calculation, and other notices related to the error.
- 4A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Aon, related to investment performance reporting; including but not limited to memos Aon sent PSERS on March 5, 2021 and April 16, 2021 and since that date.
- 4B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Aon, related to risk-sharing calculations.
- 4C- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from December 2020 to the present, between PSERS staff and any employee or representative of Aon, related to the [] discovery of, or the identification of an error in, calculating the historical investment performance, as part of the shared-risk determination.
- 5A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to investment performance reporting.
- 5B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to risk-sharing calculations.
- 5C- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from December 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related

to the [] discovery of, or the identification of an error in, calculating the historical investment performance, as part of the shared-risk determination.

- 6- Please provide a copy of each monthly Moneyline report detailing PSERS assets, to date, for calendar year 2021.
- 7A- Please provide a list of all nonprofit corporations and other related-party entities which hold or manage PSERS assets, such as directly-owned properties, including all qualified subsidiaries set up under section 501(c)25 of the Internal Revenue Code.
- 7B - Please explain the purpose and functions of each 501(c)25 entity and other related-party entities set up to hold PSERS properties, for example by providing the footnotes to financial statements that explain each in detail, and the most recent I-990 submitted for each to the Internal Revenue Service.
- 7C - Please list directors and other officers, senior managers, all other owners in addition to PSERS, all subsidiaries of each 501(c)5 entity and other related-party entities set up to hold PSERS properties.

RTKL Request #2021-19; Williams Attestation ¶ 6.

On May 26, 2021, Williams responded to Requesters informing them that PSERS had received their request and would need at least 30 days to respond. Williams Attestation ¶ 8. Williams also asked the Requesters to provide additional information for requests 1, 2, 3A, 3B, 4A, 4B, 5A, and 5B, including identification of a narrower subject and the individual(s) for whom they were requesting said records so that PSERS could identify the records requested. *Id.* ¶¶ 9–10. Requesters provided responses to Williams’ requests on June 8, 2021. *Id.* ¶ 11. As described in detail below, these responses did not cure all of the requests’ lack of specificity, but where such deficiency was cured, PSERS produced responsive documents: *Id.* ¶¶ 12–14, 19–20, 26, 31–34.

On June 23, 2021, Williams informed Requesters that PSERS had gathered certain documents responsive to their request. *Id.* ¶¶ 15. Due to the voluminous nature of the records and the June 8, 2021 expansion of the request to include PSERS Board members, Williams also requested an additional 60-day extension to facilitate and complete the gathering and review of

the records to determine their responsiveness. *Id.* ¶ 16. McCoy approved the extension on June 24, 2021. *Id.* ¶ 17.

Williams provided Requesters with a production of records responsive to requests 7A, 7B, and 7C on June 25, 2021. *Id.* ¶ 18. As a result of some of the additional information Requesters provided in their June 8, 2021 correspondence, Williams was also able to provide a partial production of records responsive to requests 1 and 2. *Id.* ¶ 19. She noted that per the parties' agreement, PSERS had until August 25, 2021 to complete its response for the remaining records. *Id.* ¶ 21.

On August 25, 2021, Williams provided PSERS' final response to Requesters. *Id.* ¶ 22. PSERS granted a portion of requests 1 and 2, and all of request 6, and provided the associated records and information. *Id.* ¶ 23. PSERS denied the remainder of the requests. *Id.* ¶ 24. Relevant to the current appeal, PSERS denied requests 3A, 3B, 3C, 4A, 4B, 4C, 5A, 5B, and 5C on the grounds that the records requested related to criminal and noncriminal investigations, the disclosure of which would deprive a person of the right to a fair trial or an impartial adjudication. *See* 65 P.S. §§ 67.708(b)(16)(vi)(B), (17)(vi)(B). *Id.* ¶ 25. Additionally, because the requests asked for "any documents" and continued to include communications with "all PSERS' staff" or "all of PSERS," PSERS denied the requests as too broad and lacking sufficient specificity for PSERS to ascertain the records requested. *Id.* ¶ 26. PSERS noted that Requesters were not precluded from refining their request and making a new submission, and the agency reserved its right to raise any and all available bases for non-disclosure. *Id.* ¶¶ 27–28.

Requesters appealed PSERS' denial of requests 3 through 5. *Id.* ¶ 29. For the reasons that follow, PSERS respectfully requests that the Office of Open Records ("OOR") deny Requesters' appeal and affirm PSERS' denials.

II. LIST OF EVIDENCE

The following evidence is submitted in support of PSERS' Argument in Response to Appeal:

1. Attestation of Evelyn Williams, PSERS Agency Open Records Officer
2. RTKL Request #2021-19
3. September 8, 2021 PSERS Notice Letter to Aon
4. September 8, 2021 PSERS Notice Letter to Buck
5. September 8, 2021 PSERS Notice Letter to ACA
6. Buck Letter to Office of Open Records
7. Aon Letter to Office of Open Records

III. PSERS' ARGUMENT

A. Brief Background

PSERS is a governmental, cost-sharing, multiple-employer retirement plan with approximately 500,000 members and assets totaling approximately \$64.9 billion as of June 30, 2021. Williams Attestation ¶ 3. The exclusive control and management of the Fund and the full power to invest the Fund rest with the PSERS Board, which is comprised of 15 members. *See* 24 Pa.C.S. §§ 8411, 8501, 8502, 8503, 8504, 8505, 8521. More than 360 employees make up the PSERS staff, which is organized into an Executive Office, Investment Office, Office of Chief Counsel, Internal Auditor's Office, Office of Financial Management, Deputy Executive Director and Director of Defined Contribution Investments, and Deputy Executive Director of Administration. Williams Attestation ¶ 4.

Pursuant to Act 120, P.L. 834, effective July 1, 2011, a "shared risk/shared gain" provision was added to the Public School Employees' Retirement Code. *See* 24 Pa.C.S. § 8321(b). With a "shared risk/shared gain" provision, Class T-E, Class T-F, Class T-G, and Class T-H members benefit when investments are doing well and share some of the risk when investments underperform. *See* 24 Pa.C.S. § 8321(b)(1). The most recent period for which the PSERS Board was required to certify PSERS' performance was the review period starting July 1, 2011 and ending June 30, 2020. *See generally id.*

In December 2020, the PSERS Board certified the member contribution rates for Class T-E, Class T-F, Class T-G, and Class T-H members that did not include a shared risk/shared gain contribution rate because the investment performance exceeded the threshold by 0.02%. PSERB Resolution 2020-52, Dec. 3, 2020, Re: Actuarial Valuation; Williams Attestation ¶ 5. The PSERS Board via its Audit/Compliance Committee engaged outside counsel in March 2021 to conduct a special investigation into the circumstances of the investment performance used for the

calculation of the shared risk/shared gain provision in December 2020. PSERB Resolution 2021-11 (A/C), Mar. 19, 2021, Re: Engagement of Outside Counsel; Williams Attestation ¶ 5. Also in March 2021, the Department of Justice (“DOJ”) commenced a grand jury investigation into PSERS’ risk-sharing calculation for the nine-year review period ending June 30, 2020 and PSERS’ restatement of historical investment and fund performances. Williams Attestation ¶ 5. In April 2021, the PSERS Board recertified the member contribution rates for Class T-E, Class T-F, Class T-G, and Class T-H members to include a shared risk/shared gain contribution rate. PSERB Resolution 2021-16, April 19, 2021, Re: Recertification of Member Contribution Rates, effective July 1, 2021; Williams Attestation ¶ 5.

In the midst of these ongoing investigations, Requesters have published numerous articles about PSERS’ recertification of the shared risk/shared gain contribution rate. Williams Attestation ¶ 7. Most recently, Requesters submitted the at-issue overly broad RTKL request, which would include the information requested by the DOJ.

B. The Requests Are Overly Broad

PSERS denied requests 3 through 5 in part as overly broad because Requesters did not adequately specify the subject matter of or individuals involved in the requested communications, failing the three-part sufficiency test enumerated in *Pennsylvania Department of Education v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015). Williams Attestation ¶ 25–26. There, the Commonwealth Court explained that, “[w]hen considering a challenge to the specificity of a request under Section 703 of the RTKL, this Court employs a three-part balancing test, examining the extent to which the request sets forth (1) the subject matter of the request; (2) the scope of documents sought; and (3) the timeframe for which records are sought.” *Pittsburgh Post-Gazette*, 119 A.3d at 1125 (citing *Carey v. Dep’t of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013)).

Requesters' initial May 18, 2021 request sought, in part, all communications from January 2020 to the present between PSERS staff and any employee or representative of ACA Compliance Group, Aon, and Buck Global related to investment performance reporting and risk-sharing calculations. *See* RTKL Request #2021-19; Williams Attestation ¶ 6. In Requesters' June 8, 2021 response to Williams' request that they clarify the scope of their requests, Requesters purported to provide clarification as to the individuals from whom they requested communications. Williams Attestation ¶ 11. After naming certain employees of PSERS, ACA, Aon, and Buck, however, they proceeded to name "all of PSERS," "and other PSERS' staff," "and other ACA employees," "and other AON employees," "and other Buck employees." *Id.* ¶ 13. PSERS acknowledges that "[a] request for a broad category of documents, such as all records, may be sufficiently specific if confined to a particular recipient or recipients." *Pittsburgh Post-Gazette*, 119 A.3d at 1125–26. There is no such limitation here.

Requests 3A, 3B, 4A, 4B, 5A, and 5B also fail to specify a subject matter. Williams Attestation ¶ 6. In *Pittsburgh Post-Gazette*, the court held that a request that identifies a finite timeframe and limits the scope of the request can still be insufficient if it fails to specify the subject matter of the request. 119 A.3d at 1126. There, the request at issue sought "all of the emails of Acting Secretary of Education Carolyn Dumaesq as they pertain to the performance of her duties as Acting Secretary' for approximately one year." *Id.* The requester argued that this request sufficiently specified the subject matter because it only sought emails "as they pertain to the performance of her duties as Acting Secretary." *Id.* The court rejected that argument because, "by virtue of the Secretary's position," the request equated to "a request for emails about all of the agency's activity over[] nearly a one year period," or, "[i]n other words, . . . a fishing expedition." *Id.*

In the instant matter, even after Requester's June 8, 2021 response purporting to narrow the requests, request 3A sought all correspondence "in relation to the [ACA] contract"; Requesters did not narrow 3B, which sought all correspondence between PSERS and ACA "related to risk-sharing calculations"; request 4A sought all correspondence between PSERS and Aon "regarding the 2020 'risk-sharing' calculation"; request 4B sought all correspondence between PSERS and Aon "related to risk-sharing calculations"; request 5A sought all correspondence between PSERS and Buck "related to [the Buck] contract"; and request 5B sought all correspondence between PSERS and Buck related to "risk-sharing calculations." Williams Attestation ¶ 14.

Where Requesters did provide narrowing information for other requests, such as for portions of requests 1 and 2 and the engagement letters and contracts under 3A and 4A, PSERS was able to identify responsive records and release them to Requesters in a partial production. *Id.* ¶¶ 19–20. For requests 3 through 5, however, like the request in *Pittsburgh Post-Gazette*, the purportedly narrowed requests encompass PSERS' broad function as an agency. *Id.* ¶¶ 32–34. The calculation of PSERS' shared risk/shared gain provision is derived from its overall fund performance. *See* 24 Pa.C.S. § 8321(b); Williams Attestation ¶ 33. Accordingly, information on PSERS' investment performance is tied to the calculation of the shared risk/shared gain provision. Williams Attestation ¶ 33. Without further specificity, PSERS is unable to identify responsive documents because the requests call for practically any and all documents in its possession related to the investment management of the Fund, which extends to the entire investment operation of PSERS. *Id.* ¶ 34. Requesters should not be permitted to engage in such a fishing expedition here.

If, however, Requesters were to properly narrow their requests, PSERS would be able to identify and produce, on a rolling basis, all responsive records that are not subject to other exemptions relied upon in this Response. *Id.* ¶ 35. Due to the lack of specificity, PSERS cannot meaningfully assert any exemptions at this time. *See Pa. State Police v. Off. of Open Recs.*, 995 A.2d 515, 517 (Pa. Commw. Ct. 2010) (when a request is insufficiently specific, the agency should have opportunity to later assert exemptions, unless “the reason for denying access can be reasonably discerned when the request is made”). PSERS is also willing to participate in the OOR’s Mediation Program to reach a mutually agreeable settlement of this dispute, saving all parties, and in turn the Commonwealth, time and expense. *Id.* ¶ 35. Requesters indicated in the appeal, however, that they were not interested in resolving the dispute through OOR mediation.

C. The Requests Relate to a Noncriminal Investigation

PSERS also denied requests 3 through 5 in part because they called for records relating to a noncriminal investigation, which are exempt from release under 65 P.S. § 67.708(b)(17). Williams Attestation ¶ 37. Specifically, the requests call for investigative materials, notes, correspondence, and reports; underlying audit materials; and materials that would deprive a person of the right to an impartial adjudication. *See* 65 P.S. §§ 67.708(b)(17)(ii), (v), (vi)(B).

“[A]s used in Section 708(b)(17), the term ‘investigation’ means a systematic or searching inquiry, a detailed examination, or an official probe.” *Dep’t of Health v. Off. of Open Recs.*, 4 A.3d 803, 811 (Pa. Commw. Ct. 2010). An agency’s actions support finding an investigation where the “activities are conducted in order to assess . . . compliance with statutory and regulatory provisions and determine if any corrective and/or disciplinary action needs to be taken.” *Id.*

For example, in *Department of Health v. Office of Open Records*, the Commonwealth Court held that the inspections and surveys performed by the Department constituted “a

systematic and searching inquiry, a detailed examination, and an official probe” into whether a nursing home’s operations were in compliance with the relevant laws and regulations where the Department took the following measures:

[V]isiting and inspecting the building, grounds, equipment and supplies of a nursing home; reviewing records of the nursing home and patients; and observing and interviewing patients and staff of the nursing home . . . in order to assess a nursing home's compliance with statutory and regulatory provisions and determine if any corrective and/or disciplinary action needs to be taken[;] . . . examin[ing] medical records of residents; interview[ing] residents, staff, and family members; and mak[ing] observations of a facility, which include observing medication preparation and administration and dining area and eating assistance practices . . . in order to assess whether a nursing home is providing the quality of care mandated by law.

Id.

The court also held that the agency’s activities constituted an investigation in *Pennsylvania Public Utility Commission v. Gilbert*, 40 A.3d 755 (Pa. Commw. Ct. 2012). There, the Commission created a Bureau of Investigation & Enforcement and hired gas safety inspectors whose sole duty was to conduct inspections and investigations of gas utilities to determine compliance with the applicable state and federal gas safety regulations. *Id.* at 759. These investigations were performed as part of the requirement for United States Department of Transportation Pipeline and Hazardous Materials Safety Administration funding eligibility, which required an annual certification by the Commission. *Id.* The court determined that the gas safety inspections, which involved “the investigation of the gas utility’s entire operation, the plant, the infrastructure, the records and employees,” and the purpose of which was “to assess whether the gas utility [was] providing the quality of service mandated by law,” constituted investigations because they involved “systematic, searching, detailed examinations of a natural gas utility’s operations and whether such operations were in compliance with the applicable federal and state pipeline safety regulations.” *Id.* at 760.

Furthermore, Pennsylvania law applies the “noncriminal investigation” exemption “to preclude disclosure of materials related to noncriminal investigations conducted by an agency acting within its legislatively-granted fact-finding and investigative powers.” *Johnson v. Pa. Convention Ctr. Auth.*, 49 A.3d 920, 925 (Pa. Commw. Ct. 2012). “That is, its ‘official duties.’”

1. PSERS Conducted an Investigation Acting Within its Official Duties

In the summer of 2020, as the global COVID-19 pandemic impacted global markets and investment performance, PSERS became aware that net investment returns were in the narrow range of potentially triggering the shared risk/shared gain provision. Williams Attestation ¶ 38. PSERS launched a systemic, searching, detailed examination and probe into its performance reporting and calculation of the shared risk/shared gain provision for the time period ending June 30, 2020, the statutory time period for the shared risk measurement. *Id.* ¶ 39. Internal PSERS staff worked in coordination with Aon to investigate the size and scope of financial return adjustments over a historical period, the reasons that PSERS’ consultants reported certain figures, whether the Comprehensive Annual Financial Report (“CAFR”) or any other official financial document should be amended, and the use of previous returns in determining contribution calculations. *Id.* ¶ 40. This review also led the PSERS Board’s Audit/Compliance Committee to engage an independent performance verification firm, ACA Compliance Group, to conduct the verification of the investment return for the nine years ending on June 30, 2020. *Id.* ¶ 41. The purpose was to, *inter alia*, to perform a calculation review of the investment performance data. *Id.* In addition, PSERS’ review included PSERS’ work and communications with Buck. *Id.* ¶ 42.

PSERS operated within its official duties and powers when it reviewed with Aon the Fund’s historic performance, Aon’s calculations and methodologies, and the accuracy of the calculation for the shared risk/shared gain provision, among others. Under 24 Pa.C.S. § 8501(e),

the PSERS Board possesses “the power and privileges of a corporation.” Like most corporations, PSERS is governed by a Statement of Organization, Bylaws, and Other Procedures. *See* PSERS, STATEMENT OF ORGANIZATION, BYLAWS, AND OTHER PROCEDURES OF THE COMMONWEALTH OF PENNSYLVANIA PUBLIC SCHOOL EMPLOYEES’ RETIREMENT BOARD (Jan. 25, 1991). Therein, Article IV Section 4.2(b) sets forth the duties and responsibilities of the Audit/Compliance Committee. These duties and responsibilities include, but are far from limited, to:

[The Audit/Compliance Committee] shall review the findings and recommendations of any examination by regulatory agencies, any auditor, staff and/or consultant observations related to compliance, management’s responses and actions taken to implement those observations/recommendations; shall oversee special investigations and whistleblower cases, as needed; and shall provide a forum for the resolution of all disputes between management and the internal and/or external auditors regarding the financial reporting process, risk assessment, internal control and other compliance issues.

Id. Indeed, PSERS’ governing statute recognizes the agency’s “Audit/Compliance Committee.” 24 Pa.C.S. § 8501(g)(1).

Furthermore, the PSERS Board has “exclusive control and management” of the fund, 24 Pa.C.S. § 8521(a), and the Board has the authority to perform “such other functions as are required” for the execution of its administrative duties, 24 Pa.C.S. § 8502.

Thus, PSERS “was clothed with the authority” to oversee, investigate, and ensure legal and regulatory compliance regarding its investment performance reporting, the calculation of the shared risk/shared gain provision, and all applicable laws and regulations, making the investigative actions it took “within its ‘official duties’ and considered noncriminal investigations for purposes of RTKL.” *Johnson*, 49 A.3d at 925.

Requesters contend that PSERS’ invocation of the investigative exemption here is too expansive. Relying on *Levy v. Senate of Pennsylvania* and the *Hockeimer v. City of Harrisburg*

cases, Requesters assert that PSERS cannot stand on the investigative exemption because the requested records existed independently of the internal investigation being performed by outside counsel that PSERS commenced in 2021 and the Department of Justice's separate 2021 inquiry. Those investigations, however, are not the only ones at issue here. In the summer of 2020, PSERS began a systematic inquiry and detailed examination into the Fund's investment performance reporting and the calculation for the shared risk/shared gain provision. Williams Attestation ¶ 39. These inquiries continued up through the certification of the shared risk/shared gain contribution rate and continue to the present day, and this investigation exempts the requested materials from disclosure. *Id.* ¶¶ 43–44.

2. The Requests Call for Investigative Materials, Notes, Correspondence, and Reports

As detailed, PSERS' communications with Aon, ACA, and Buck starting in the summer of 2020 regarding performance reporting and the calculation of the shared risk/shared gain provision were undertaken as part of a rigorous investigation. *Id.* ¶¶ 38–39. Communications between PSERS and its agents, including the attachments to those communications, constitute investigative materials, notes, correspondence, and reports, which are exempt from disclosure under 65 P.S. § 67.708(b)(17)(ii). *Id.* ¶ 45.

3. The Requests Call for Underlying Audit Materials

The plain language dictionary definition of an audit is “a formal examination of an organization's or individual's accounts or financial situation,” “the final report of an audit,” or “a methodical examination and review.” *Audit, Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/audit> (last visited September 16, 2021). Black's Law Dictionary provides a similar definition: “A formal examination of an individual's or

organization's accounting records, financial situation, or compliance with some other set of standards." *Audit, Black's Law Dictionary* (11th ed. 2019).

Here, PSERS' investigation into the Fund's performance reporting and the calculation of the shared risk/shared gain provision was unequivocally a formal examination of its accounting records, financial situation, and compliance with accounting standards. Williams Attestation ¶¶ 46–47. Via its own investigation in the summer, fall, and winter of 2020, and through its engagement of ACA, PSERS' investigative activities constituted an audit. Accordingly, the requests for correspondence between PSERS, Aon, ACA, and Buck regarding this investigation of PSERS' calculation of the shared risk/shared gain provision are, in fact, requests for underlying audit materials that are exempt from disclosure under 65 P.S. § 67.708(b)(17)(v). *Id.*

4. The Requests Call for Materials That Would Deprive a Person of the Right to an Impartial Adjudication

The requested materials, if released, would also deprive PSERS and its employees of the right to an impartial adjudication under 65 P.S. § 67.708(17)(vi)(B).¹ *Id.* ¶ 48. PSERS' investigation into its accounting and calculation of the shared risk/shared gain provision began in the summer of 2020 and is ongoing to this day. *Id.* ¶¶ 38–39, 43. Although an independent investigation is now being conducted by outside counsel, that investigation was commenced as part and parcel of PSERS' continued need and desire to determine the facts surrounding the calculation of the shared risk/shared gain provision for the relevant time period ending June 30, 2020 arising out of the investigation that began in the summer of 2020. *Id.* ¶ 5. This investigation directly involves PSERS itself and its employees. *Id.*

¹ PSERS also takes the position that the requested records, if disclosed, will impact the right of PSERS and its employees to a fair trial or an impartial adjudication under 65 P.S. § 67.708(16)(vi)(B).

Furthermore, a grand jury has been empaneled to gather and evaluate information concerning the calculation of the shared risk/shared gain provision. *Id.* In the midst of this criminal investigation, PSERS has been subjected to numerous press articles published by Requesters revealing PSERS' confidential and in some cases, privileged, information. *Id.* ¶ 7. Requesters also have access to the grand jury subpoena that was served on PSERS and, it appears, have knowingly and intentionally submitted overly broad requests that would contain the information requested by the DOJ. This is nothing short of a transparent fishing expedition spearheaded for the goal of putting PSERS on trial in the press with no opportunity to explain or defend itself or its records. The members of the grand jury would have open access to and could be influenced or impacted by any information published by Requesters. Giving Requesters access to these investigative records, that were created as part of PSERS' own noncriminal investigation beginning in the summer of 2020 or that contain the information request by DOJ, would materially impact the rights of PSERS and its employees to a fair trial or an impartial adjudication. Accordingly, they are exempt from disclosure under 65 P.S. § 67.708(17)(vi)(B).

D. The Requests Call for Trade Secrets or Confidential Proprietary Information

The RTKL exempts from access records that constitute or reveal a trade secret or confidential proprietary information. *See* 65 P.S. § 67.708(11). In accordance with 65 P.S. § 707(b), PSERS has provided notice of Requesters' appeal to Aon, Buck, and ACA. *See* Sept. 8, 2021 PSERS Notice Letter to Aon; Sept. 8, 2021 PSERS Notice Letter to Buck; Sept. 8, 2021 PSERS Notice Letter to ACA; Williams Attestation ¶ 49. Contemporaneously with this Response to Appeal, Buck is submitting to OOR a comment regarding the instant appeal. *See* Buck Letter to Off. of Open Recs.; Williams Attestation ¶ 50. Therein, Buck objects "to the production of any Excel spreadsheets (which Buck generally transmits to PSERS as attachments

to e-mail messages) in native format, because such spreadsheets include proprietary formulas and macros that are confidential.” *Id.* Aon is also submitting a letter objecting to the production of records containing its proprietary and confidential information, trade secrets, and intellectual property. *See* Aon Letter to Off. of Open Recs.; Williams Attestation ¶ 51. These objections are reflective of third-parties Buck and Aon asserting their right to not reveal their confidential proprietary information under 65 P.S. § 67.708(11). PSERS agrees with Buck and Aon that these records are exempt from release. *McKelvey v. Pa. Dep't of Health*, 255 A.3d 385, 404 (Pa. 2021); Williams Attestation ¶ 52.

IV. CONCLUSION

PSERS submits that the evidence presented, and the legal authorities and arguments herein, satisfy its burden of proof and, for that reason, respectfully requests that the OOR deny Requesters' appeal and affirm PSERS' denials.

September 21, 2021

Respectfully Submitted,

Jackie Lutz

Jackie W. Lutz, Chief Counsel

The Pennsylvania Public School Employees'
Retirement System

Signature: Jackie Lutz
Jackie Lutz (Sep 21, 2021 10:23 EDT)

Email: jlutz@pa.gov

BEFORE THE OFFICE OF OPEN RECORDS

**CRAIG MCCOY AND THE
PHILADELPHIA INQUIRER,
Complainants**

v.

**PENNSYLVANIA PUBLIC SCHOOL
EMPLOYEES' RETIREMENT
SYSTEM,
Respondent**

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AP 2021-1856

ATTESTATION OF EVELYN WILLIAMS

I, Evelyn Williams, Agency Open Records Officer, Commonwealth of Pennsylvania,
Pennsylvania Public School Employees' Retirement System, hereby aver:

1. I work for the Pennsylvania Public School Employees' Retirement System ("PSERS") as the Communications Director within the Executive Director's Office.
2. I am PSERS' Agency Open Records Officer for Right-To-Know Law ("RTKL") requests.

Background

3. PSERS is a governmental, cost-sharing, multiple-employer retirement plan with approximately 500,000 members and assets totaling approximately \$64.9 billion as of June 30, 2021.
4. More than 360 employees make up the PSERS staff, which is organized into an Executive Office, Investment Office, Office of Chief Counsel, Internal Auditor's Office, Office of Financial Management, Deputy Executive Director and Director of Defined Contribution Investments, and Deputy Executive Director of Administration.
5. In December 2020, the PSERS Board certified the member contribution rates for Class T-E, Class T-F, Class T-G, and Class T-H members that did not include a shared risk/shared gain contribution rate because the investment performance exceeded the threshold by 0.02%. The PSERS Board via its Audit/Compliance Committee engaged outside counsel in March 2021 to conduct a special investigation into the circumstances of the investment performance used for the calculation of the shared risk/shared gain provision in December 2020. Also in March 2021, the Department of Justice ("DOJ") commenced a grand jury investigation into PSERS' risk-sharing calculation for the nine-year review period ending June 30, 2020 and PSERS' restatement of historical investment and fund

performances. In April 2021, the PSERS Board recertified the member contribution rates for Class T-E, Class T-F, Class T-G, and Class T-H members to include a shared risk/shared gain contribution rate.

6. On May 18, 2021, I received a RTKL request from Philadelphia Inquirer reporters Joseph DiStefano ("DiStefano") and Craig McCoy ("McCoy") (together, "Requesters"), in which they asked for:

1- In October 2020, PSERS retained Funston Advisory Services LLC as board governance consultant to review governance. Regarding Funston's work, please provide:

The contract with Funston and any other document describing the arrangements under which Funston presented work product to PSERS since October 2020

All invoices submitted by Funston

All payments made by PSERS

A copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from October to the present, between PSERS staff and any employee or representative of Funston.

2- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from December 2018 to the present, between PSERS staff and any representative of the owners or sellers of the following parcels of real estate in the City of Harrisburg:

The former Patriot-News facilities at 812 Market St.

The former Department of General Services building at 908 Market St.

Any other parcel in Harrisburg acquired by PSERS since 1 January, 2016

3A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of ACA Compliance Group, related to investment performance reporting.

3B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of ACA, related to risk-sharing calculations.

3C - Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from December 2020 to the present, between PSERS staff and any employee or representative of ACA, related to the discovery or identification of an error in calculating the historical investment performance, as part of the shared-risk determination. Please include, for example, the notice given ACA on Feb. 18, 2021 that Aon's source data was in error, and details of such error

and its effect on the scale and direction of the calculation, and other notices related to the error.

4A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Aon, related to investment performance reporting; including but not limited to memos Aon sent PSERS on March 5, 2021 and April 16, 2021 and since that date.

4B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Aon, related to risk-sharing calculations.

4C- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from December 2020 to the present, between PSERS staff and any employee or representative of Aon, related to the discovery of, or the identification of an error in, calculating the historical investment performance, as part of the shared-risk determination.

5A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to investment performance reporting.

- a. 5B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to risk-sharing calculations.
- b. 5C- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from December 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to the discovery of, or the identification of an error in, calculating the historical investment performance, as part of the shared-risk determination.
- c. 6- Please provide a copy of each monthly Moneyline report detailing PSERS assets, to date, for calendar year 2021.
- d. 7A- Please provide a list of all nonprofit corporations and other related-party entities which hold or manage PSERS assets, such as directly-owned properties, including all qualified subsidiaries set up under section 501(c)25 of the Internal Revenue Code.
- e. 7B - Please explain the purpose and functions of each 501(c)25 entity and other related-party entities set up to hold PSERS properties, for example by providing the footnotes to financial statements that explain each in detail, and the most recent I-990 submitted for each to the Internal Revenue Service.

- f. 7C - Please list directors and other officers, senior managers, all other owners in addition to PSERS, all subsidiaries of each 501(c)5 entity and other related-party entities set up to hold PSERS properties.
7. Requesters are reporters who have published numerous articles about PSERS' recertification of the shared risk/shared gain contribution rate.
 8. On May 26, 2021, I responded to Requesters informing them that PSERS had received their request and would need at least 30 days to respond.
 9. In my May 26, 2021 correspondence, I also informed Requesters that requests 1, 2, 3A, 3B, 4A, 4B, 5A, and 5B were overly broad and not specific.
 10. I asked that they provide additional information so that PSERS could identify records responsive to the requests, specifically a narrower subject and the individual/individuals for whom they were requesting records.
 11. On June 8, 2021, I received a response from DiStefano, copying McCoy, providing additional information regarding their requests 1, 2, 3A, 4A, 4B, 5A, and 5B.
 12. Requesters did not provide additional information regarding request 3B.
 13. In response to my request that they identify the individual/individuals for whom they were requesting records, with regard to requests 3A, 4A, 4B, 5A, and 5B, Requesters listed certain employees of PSERS, ACA, Aon, and Buck, and then proceeded to name "all of PSERS," "and other PSERS' staff," "and other ACA employees," "and other AON employees," "and other Buck employees."
 14. In response to my request that they identify a narrower subject, Requesters stated that 3A sought all correspondence "in relation to the [ACA] contract"; request 4A sought correspondence between PSERS and Aon "regarding the 2020 'risk-sharing' calculation"; request 4B sought all correspondence between PSERS and Aon "related to risk-sharing calculations"; request 5A sought all correspondence between PSERS and Buck "related to [the Buck] cont[r]act"; and request 5B sought all correspondence between PSERS and Buck related to "risk-sharing calculations."
 15. On June 23, 2021, I sent Requesters a letter explaining that PSERS had gathered certain documents responsive to portions of their request.
 16. Due to the voluminous nature of the records and Requester's June 8, 2021 correspondence's expansion of their request to include PSERS Board members, I also requested an additional 60-day extension to gather and review the records to determine their responsiveness.
 17. McCoy approved the extension on June 24, 2021, giving PSERS until August 25, 2021 to complete its response.

18. PSERS was able to identify records responsive to requests 7A, 7B, and 7C, which I produced to Requesters on June 25, 2021.
19. As a result of some of the additional information Requesters provided in their June 8, 2021 correspondence, PSERS was also able to provide a partial production of records responsive to requests 1 and 2.
20. PSERS also provided the engagement letters and contracts for ACA and AON as requested by Requesters in the June 8, 2021 correspondence.
21. In my June 25, 2021 letter, I noted that PSERS had until August 25, 2021 to complete its response for the remaining records.
22. On August 25, 2021, I sent Requesters PSERS' final response to their RTKL request.
23. In that response, PSERS granted a portion of request 1 and all of request 6, and I provided the related records and information.
24. PSERS denied the remainder of the requests.
25. PSERS denied requests 3A, 3B, 3C, 4A, 4B, 4C, 5A, 5B, and 5C on the grounds that the records requested related to criminal and noncriminal investigations, the disclosure of which would deprive a person of the right to an impartial adjudication. *See* 65 P.S. §§ 67.708(b)(16)(vi)(B), (17)(vi)(B).
26. To the extent that the requests asked for "any documents" or continued to include communications with "all PSERS' staff" or "all of PSERS," PSERS denied the requests as too broad and lacking the requisite sufficient specificity for PSERS to ascertain the records requested.
27. I informed Requesters that they were not precluded from refining their request and making a new submission.
28. PSERS reserved its right to raise any and all available bases for non-disclosure.
29. On September 3, 2021, Requesters appealed PSERS' denial of requests 3 through 5 to the Office of Open Records ("OOR").
30. When I received notice of the Requesters' appeal, I sent the appeal packet to the PSERS' legal counsel.

PSERS Cannot Identify Responsive Records to Requests 3 Through 5

31. PSERS is unable to identify which records are responsive to requests 3 through 5 because Requesters did not limit the individuals whose communications are requested, instead referring to "all of PSERS," "and other PSERS' staff," "and other ACA employees," "and other AON employees," "and other Buck employees."

32. PSERS is unable to identify which records are responsive to requests 3 through 5 because the requests are not limited to a narrow enough subject matter.
33. The calculation of PSERS' shared risk/shared gain provision is derived from its overall fund performance, meaning all of PSERS' investments are tied to the shared risk/shared gain provision.
34. Without further specificity, PSERS is unable to identify responsive documents because the requests call for practically any and all documents in its possession related to the investment management of the Fund, which extends to the entire investment operation of PSERS.
35. It is my understanding that if Requesters were to properly narrow their requests, PSERS would be able to identify and produce all responsive records that are not subject to the other exemptions relied upon in PSERS' Argument in Response to Appeal.
36. It is also my understanding that PSERS is willing to participate in the OOR's Mediation Program to reach a mutually agreeable settlement of this dispute.

Some Requests Are Also Related to PSERS' Noncriminal Investigation

37. It is my understanding that requests 3 through 5 also call for records relating to a noncriminal investigation. *See* 65 P.S. § 67.708(b)(17).
38. In the summer of 2020, as the global COVID-19 pandemic impacted global markets and investment performance, PSERS became aware that net investment returns were in the narrow range of potentially triggering the shared risk/shared gain provision.
39. PSERS launched a detailed examination into its performance reporting and calculation of the shared risk/shared gain provision for the time period ending June 30, 2020.
40. This detailed review included working in close coordination with Aon to investigate the size and scope of financial return adjustments over a historical period, the reasons that PSERS' consultants reported certain figures, whether the Comprehensive Annual Financial Report ("CAFR") or any other official financial document should be amended, and the use of previous returns in determining contribution calculations.
41. This review also led the PSERS Board's Audit/Compliance Committee to engage an independent performance verification firm, ACA Compliance Group, to conduct the verification of the investment return for the nine years ending on June 30, 2020. The purpose of this review was, among other things, to perform a calculation review of the investment performance data.
42. PSERS' review included PSERS' work and communications with Buck.
43. PSERS' detailed review continued up through the certification of the shared-risk rate calculation in December 2020 and continues to the present day.

44. It is my understanding that this investigation exempts the requested materials from disclosure.
45. One reason the investigation exempts the requested materials from disclosure is that communications between PSERS and its agents Aon, ACA, and Buck beginning in the summer of 2020, including the attachments to those communications, constitute investigative materials, notes, correspondence, and reports. *See* 65 P.S. § 67.708(b)(17)(ii).
46. Another reason the investigation exempts the requested materials from disclosure is that PSERS performed a formal examination of its accounting records through its own investigation in the summer, fall, and winter of 2020, and through its engagement of ACA. *See* 65 P.S. § 67.708(b)(17)(v).
47. These activities involved a formal examination of PSERS' accounting records, financial situation, and compliance with its own internal standards and broader accounting standards.
48. Furthermore, the investigation exempts the requested materials from disclosure because the records related to PSERS' noncriminal investigation, if released, could be accessed by members of the grand jury that has been empaneled to gather and evaluate information concerning the shared-risk calculation, depriving PSERS and its employees of the right to an impartial adjudication. *See* 65 P.S. § 67.708(17)(vi)(B).

Trade Secrets and Confidential Proprietary Information

49. PSERS provided notice of Requesters' appeal to Aon, Buck, and ACA.
50. Buck is submitting to OOR a comment regarding the instant appeal objecting "to the production of any Excel spreadsheets (which Buck generally transmits to PSERS as attachments to e-mail messages) in native format, because such spreadsheets include proprietary formulas and macros that are confidential."
51. Aon is also submitting a letter objecting to the production of records containing its proprietary and confidential information, trade secrets, and intellectual property.
52. It is my understanding that these documents are exempt from public access because they constitute confidential proprietary information. *See* 65 P.S. § 67.708(11)

I declare, under penalty of perjury, pursuant to 18 Pa. C.S. § 4904(a), that the foregoing averments are true and correct, to the best of my knowledge, information, and belief.

September 21, 2021

Respectfully Submitted,
Evelyn Williams

Evelyn Williams, Agency Open Records Officer

The Pennsylvania Public School Employees'
Retirement System

Signature: 
Evelyn Williams (Sep 21, 2021 10:07:00)

Email: evwilliams@pa.gov

RTKL Appeal Attestation_9.21.2021

Final Audit Report

2021-09-21

Created:	2021-09-21
By:	Jen Mills (jenmills@pa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAMf6pxmw1QU9dlvbjgiOtMhaAZQi2SoaP

"RTKL Appeal Attestation_9.21.2021" History



Document created by Jen Mills (jenmills@pa.gov)

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Document e-signed by Evelyn Williams (evwilliams@pa.gov)

Signature Date: 2021-09-21 - 8:27:55 PM GMT - Time Source: server- IP address: 8.20.65.4



Agreement completed.

2021-09-21 - 8:27:55 PM GMT

OOR Exhibit 9

From: [McCoy, Craig](#)
To: [Burlew, Erin](#)
Cc: [Williams, Evelyn](#); [Lutz, Jackie W.](#); [PS, PSERS Right To Know Law](#); [matthew.steinhilber@acaglobal.com](#); [glenn.cline@acaglobal.com](#); [agarden@conradobrien.com](#); [David.Godofsky@alston.com](#); [maura.spillane@buck.com](#); [Craig McCoy](#); [Karl Stark](#); [Joseph DiStefano](#)
Subject: [External] Phila Inquirer response re RK case #2021-19.
Date: Thursday, September 23, 2021 12:40:25

ATTENTION: *This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.*

Sept. 23, 2021

Erin Burlew
Pa. Office of Open Records
333 Market Street
16th floor
Harrisburg, PA 17101-223

Craig McCoy
Joseph DiStefano
Staff writers, Phila.

Inquirer

801 Market St.,

Suite 300

Phila, PA

19107

cmccoy@inquirer.com

Dear Ms. Burlew,

We write to respond to the follow-up letters from PSERS and the consultants regarding our Right-to-Know appeal in RTK case #2021-19. (As you see, we are coping this to the others involved in this case.)

In its Sept. 21 memorandum, PSERS repeatedly asserts that our May 2021 request was “voluminous” and “overly broad.” We disagree. Moreover, we narrowed our request in a June 8 email and narrow it further today.

We seek communications between three consulting firms and a small group of PSERS officials – board members Chris Santa Maria, Francis X. Ryan and Patrick Browne and top staffers Glen Grell, Jackie Lutz, James Grossman, Tom Bauer and Charles Spiller – over a specific matter of public importance.

Thus, please put aside the references to “other PSERS’ staff,” “other ACA employees,” “other AON employees,” “other Buck employees,” etc. We only seek the communications involving this tight group of PSERS employees and a few experts with the consultants.

We are baffled by PSERS statements that we failed to “specify a subject matter,” that we are on a “fishing expedition” and that we seek information about investments overall. This is an unfair and inaccurate caricature of our request.

As plainly stated in our appeal, we are focusing only on the communication among these people about the recent calculation of PSERS investment returns for the state’s “shared-risk” test. This is no technical issue, but one of important public interest in which the board’s adoption of a mistaken figure and subsequent retraction led to an increase in pension payments for thousands of teachers and others.

Calculating the returns from investments is a basic function of PSERS, done repeatedly. To characterize this task now as an “investigation” is to use this RTK exemption to shut public access to a big part of what the agency does routinely. Moreover, the agency itself in its response notes that it hired consultant ACA to assist in this task under a contract dating back to Oct. 4, 2020 and then goes further to trace the matter back to the summer of 2020.

We note that the agency appears to be moving away from citing the criminal investigation as a reason for denial. Instead, it is stressing the Evelyn Williams statement, one in which she herself calls the internal work a “detailed examination,” and also says it began in the summer of 2020.

Again, the agency is wrongly cloaking ordinary work, months before the FBI took an interest and before outside law firms were hired, as an “investigation.” Ms. Williams attests that the FBI probe did not begin until March 2021.

Finally, both the consultants and PSERS say they are concerned about proprietary information. We have no interest in Excel formulas and trade secrets and would have no objection to such material being redacted. At the same time, let’s not lose sight of the fact that the calculation of investment returns is a matter of arithmetic and a subject of great interest to a lay audience.

PSERS questions about our motives aside, what we seek here is public information to share with our readers about a vital, regular aspect of PSERS governance. We are not seeking to put anyone “on trial,” but rather to deepen understanding of an important issue involving a taxpayer-funded agency. This is what open records are all about.

Sincerely,

Craig and Joseph

Craig McCoy and Joseph DiStefano

Craig R. McCoy
staff writer/editor
The Philadelphia Inquirer
Work: 215-854-4821
Cell: 215-313-6813
cmccoy@inquirer.com

OOR Exhibit 10

From: [McCoy, Craig](#)
To: [Burlew, Erin](#)
Cc: [Williams, Evelyn](#); [Lutz, Jackie W.](#); [PS, PSERS Right To Know Law](#); [matthew.steinhilber@acaglobal.com](#); [glenn.cline@acaglobal.com](#); [agarden@conradobrien.com](#); [David.Godofsky@alston.com](#); [maura.spillane@buck.com](#); [Karl Stark](#); [Joseph DiStefano](#)
Subject: [External] Re: McCoy v. PSERS, 2021-1856, OOR extension request
Date: Wednesday, October 6, 2021 11:17:01

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.

Of course. I am sorry at your news.

On Wed, Oct 6, 2021 at 10:41 AM Burlew, Erin <eburlew@pa.gov> wrote:

Dear Mr. McCoy and Mr. DiStefano-

I write seeking a brief extension to the final determination issuance date in this appeal. Due to a death in my family, I will be out of the office and the final determination is currently due October 12, 2021. Would you be willing to extend that by one week to October 19, 2021?

Best,



Erin Burlew

Attorney

Office of Open Records

333 Market Street, 16th Floor

Harrisburg, PA 17101-2234

[\(717\) 346-9903](tel:(717)346-9903) | eburlew@pa.gov

<https://openrecords.pa.gov> | [@OpenRecordsPA](#)



OOB Exhibit 11

From: [Burlew, Erin](#)
To: ["McCoy, Craig"](#)
Cc: [Williams, Evelyn](#); [Lutz, Jackie W.](#); [PS, PSERS Right To Know Law](#); ["matthew.steinhilber@acaglobal.com"](#); ["glenn.cline@acaglobal.com"](#); ["agarden@conradobrien.com"](#); ["David.Godofsky@alston.com"](#); ["maura.spillane@buck.com"](#); ["Karl Stark"](#); ["Joseph DiStefano"](#)
Subject: McCoy v. PSERS, OOR Dkt. AP 2021-1856, final determination
Date: Monday, October 18, 2021 14:31:00
Attachments: [2021-1856 McCoy PSERS FD.pdf](#)

Parties-

Please find attached a copy of the OOR's Final Determination in the above captioned appeal.

Sincerely,



Erin Burlew

Attorney

Office of Open Records

333 Market Street, 16th Floor

Harrisburg, PA 17101-2234

[\(717\) 346-9903](tel:(717)346-9903) | eburlew@pa.gov

<https://openrecords.pa.gov> | [@OpenRecordsPA](#)



IN THE MATTER OF

V.

Docket No: AP 2021-1856

and

and

**BUCK GLOBAL, LLC,
Direct Interest Participant**

Craig McCoy, Joseph DiStefano and The Philadelphia Inquirer (collectively “Requester”) submitted a request (“Request”) to the Pennsylvania Public School Employees’ Retirement System (“PSERS”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking, in relevant part, written communications between PSERS staff and three consulting firms. PSERS partially denied the Request, arguing it was insufficiently specific and that responsive records are exempt criminal and noncriminal investigative records. The Requester appealed to the Office of

Open Records (“OOR”). For the reasons set forth in this Final Determination, the appeal is **granted in part, denied in part and dismissed as moot in part**, and PSERS is required to take additional action as directed.

FACTUAL BACKGROUND

On May 19, 2021, the Request was filed, stating, in relevant part:

3A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of ACA Compliance Group, related to investment performance reporting.

3B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of ACA, related to risk-sharing calculations.

3C - Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from December 2020 to the present, between PSERS staff and any employee or representative of ACA, related to the discovery or identification of an error in calculating the historical investment performance, as part of the shared-risk determination. Please include, for example, the notice given ACA on Feb. 18, 2021 that Aon’s source data was in error, and details of such error and its effect on the scale and direction of the calculation, and other notices related to the error.

4A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Aon, related to investment performance reporting; including but not limited to memos Aon sent PSERS on March 5, 2021 and April 16, 2021 and since that date.

4B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Aon, related to risk-sharing calculations.

4C- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from December 2020 to the present, between PSERS staff and any employee or representative of Aon, related to the [] discovery of, or the identification of an error in, calculating the historical investment performance, as part of the shared-risk determination.

5A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to investment performance reporting.

5B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to risk-sharing calculations.

5C- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from December 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to the [] discovery of, or the identification of an error in, calculating the historical investment performance, as part of the shared-risk determination.

On August 25, 2021, following several extensions to respond, 65 P.S. § 67.902(b), PSERS partially denied the Request, providing some responsive records and arguing that certain Items are insufficiently specific, 65 P.S. § 67.703 and, alternatively, that the requested records would all be exempt criminal and noncriminal investigative records, 65 P.S. §§ 67.708(b)(16)-(17).

On September 3, 2021, the Requester appealed to the OOR, challenging the denial of Items 3-5 only and stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and directed the PSERS to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On September 8, 2021, PSERS requested to keep the record open for an additional five days. The Requester consented to the extension and, on the same date, the OOR extended the final determination issuance date accordingly. 65 P.S. § 67.1101(b)(1).

On September 21, 2021, the OOR received a statement under Section 1101(c) of the RTKL from Aon Investments USA, Inc. (“Aon”) asserting that it has a direct interest in this matter, and

¹ The Requester initially granted the OOR a 30-day extension to issue a final determination and on October 6, 2021, granted the OOR additional time. See 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

it is not being represented by the other parties. Aon asserts that the requested information would contain its confidential proprietary information that is exempt under the RTKL. *See* 65 P.S. § 67.708(b)(11). With this Final Determination, the OOR grants Aon Direct Interest Participant status.

On September 21, 2021, the OOR received a statement under Section 1101(c) of the RTKL from Buck Global, LLC (“Buck”) asserting that it has a direct interest in this matter, and it is not being represented by the other parties. Buck asserts that Items 5A-C are insufficiently specific and that it objects to the production of any Excel spreadsheets in native format as those include proprietary formulas and confidential macros. *See* 65 P.S. § 67.708(b)(11). With this Final Determination, the OOR grants Buck Direct Interest Participant status.

On September 21, 2021, PSERS submitted a position statement reiterating its grounds for denial. PSERS claims that the Items at issue are insufficiently specific, relate to a noncriminal investigation, and responsive records contain trade secrets or confidential proprietary information, 65 P.S. § 67.708(b)(11).² In support of its position, PSERS submitted the statement made under the penalty of perjury of Evelyn Williams, PSERS’ Open Records Officer and Communications Director.

On September 23, 2021, the Requester submitted additional argument in support of the appeal.³ The Requester disclaims any interest in Excel formulas and trade secrets and makes no objection to the redaction of such information but cautions that the calculation of investment returns is a matter of arithmetic that is of great interest to a lay audience.

² In its submission, PSERS did not address the argument asserted in its denial letter that the records are criminal investigative records; as such, the OOR deems the argument abandoned on appeal and will not address that issue in this Final Determination.

³ The Requester’s September 23, 2021, submission was received after the record closed; however, to develop the record, the submission was considered. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”).

LEGAL ANALYSIS

“The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government.” *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is “designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required “to review all information filed relating to the request” and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* Here, neither party requested a hearing.

PSERS is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a

record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

1. The Items are sufficiently specific in part

During the response period, PSERs contacted the Requester seeking more information to assist with the search for records. Specifically, PSERS asked for a narrower subject matter and the individual/individuals for whom they were requested records for Items 3A-B, 4A-B, and 5A-B. PSERS did not request any clarification for Items 3C, 4C and 5C. On June 8, 2021, the Requester provided a response narrowing the Request language. The Requester clarified the Items as follows:

- a. 3A sought “the engagement letter and contract for ACA; and correspondence between Glen Grell, Jackie Lutz, Cathy Gusler, Chris Santa Maria, Francis X. Ryan Sen. Patrick Browne, and James Grossman, Tom Bauer, Charles Spiller, all of PSERs and Christie Horsman Dillard, Karen Foley and Kemmling, of ACA; and other ACA employees in relation to the contract.”
- b. 4A sought: “the engagement letter and contract for AON, further correspondence regarding the 2020 [‘]risk-sharing[’] calculation including reports sent by AON to PSERS regarding that calculation in the second half of 2020 and in 2021, including correspondence between Glen Grell, Jackie Lutz, Chris Santa Maria, Francis X. Ryan, Sen. Patrick Browne; James Grossman, Tom Bauer, Charles Spiller, all of PSERS; and Steve Voss and Claire Shaughnessy of AON and other AON employees related to that contract.”
- c. 4B was clarified to seek records of the parties named in 4A
- d. 5A sought: “correspondence involving Glen Grell, Sen. Patrick Browne; James, Grossman, Tom Bauer, Charles Spiller, all of PSERS; and Buck

employees David Driscoll; Edward Quinn and Salvador Nakar, and other Buck employees related to that cont[r]act.”

- e. 5B also sought “correspondence involving Glen Grell, Sen. Patrick Browne; James, Grossman, Tom Bauer, Charles Spiller, all of PSERS; and Buck employees David Driscoll; Edward Quinn and Salvador Nakar, and other Buck employees related to that cont[r]act.”

The Requester did not clarify Item 3B as requested.

Although a Requester may not modify the Request on appeal; here, PSERS properly sought clarification at the request stage, *see Office of the Governor v. Engelkemier*, 148 A.3d 522, 532-33 (Pa. Commw. Ct. 2016) (an agency’s failure to object to specificity and seek further clarification during the request stage is a factor in determining whether a request is sufficiently specific), thus the OOR will review the Request for specificity following the June 8, 2021 clarification. In the Requester’s appeal response, there is an attempt to modify the Items by asking PSERS to “put aside the references to “other PSERS’ staff,” “other ACA employees,” “other AON employees,” “other Buck employees,” etc.” This is an improper modification and the OOR cannot consider it on appeal.⁴

PSERS partially denied the Items arguing they are insufficiently specific but did provide the engagement letters and contracts. In its appeal submission, PSERS asserts that Items 3-5 are insufficiently specific even with the June 8, 2021 clarification because the Requester did not sufficiently limit either the scope or the subject matter of the records requested. PSERS makes no objection to the timeframe within the Request.

⁴ The Commonwealth Court has held that a requester may not modify or expand a request on appeal. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010); *Michak v. Dep’t of Pub. Welfare*, 56 A.3d 925 (Pa. Commw. Ct. 2012) (holding that “where a requestor requests a specific type of record ... the requestor may not, on appeal argue that an agency must instead disclose a different record in response to the request”).

Section 703 of the RTKL states that “[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” 65 P.S. § 67.703. When interpreting a RTKL request, agencies should rely on the common meaning of words and phrases, as the RTKL is remedial legislation that must be interpreted to maximize access. *See Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at *16 (Pa. Commw. Ct. 2012) (citing *Bowling*, 990 A.2d 813). In determining whether a particular request is sufficiently specific, the OOR uses the three-part balancing test employed by the Commonwealth Court in *Pa. Dep’t of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015), and *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013). First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Pa. Dep’t of Educ.*, 119 A.3d at 1125. Second, the scope of the request must identify a discrete group of documents (e.g., type or recipient). *See Id.* at 1125. Third, “[t]he timeframe of the request should identify a finite period of time for which the records are sought.” *Id.* at 1126. This factor is the most fluid and is dependent upon the request’s subject matter and scope. *Id.* Failure to identify a finite timeframe will not automatically render a sufficiently specific request overbroad; likewise, a short timeframe will not transform an overly broad request into a specific one. *Id.*

a. Item 3B is insufficiently specific due to lack of scope and broad subject matter

The scope of Item 3B “written communications” “between PSERS staff and any employee or representative of ACA” was never limited by the Requester, despite PSERS seeking clarification. PSERS argues that the Item is insufficiently specific because the scope is not limited by sender or recipient and has too broad of a subject matter. The scope of a request must identify a discrete group of documents. *Pa. Dep’t of Educ.*, 119 A.3d at 1125.

In *Mollick v. Twp. of Worcester*, the Commonwealth Court concluded that a request for “all emails between the Supervisors regarding any Township business” and “all emails between the Supervisors and the Township employees regarding any Township business and/or activities for the past one and five years” was insufficiently specific because it failed to specify “what category or type of Township business or activity for which [the requester was] seeking information.” 32 A.3d 859, 871 (Pa. Commw. Ct. 2011). Further, in *Montgomery County v. Iverson*, the RTKL request sought emails from the county’s domain to four other email domains, with the subject and body containing fourteen different search terms and no timeframe provided. 50 A.3d 281, 224 (Pa. Commw. Ct. 2012). The Commonwealth Court held that a request with no timeframe, a broad scope, and some “incredibly broad” keywords was insufficiently specific. *Id.* at 284.

In *Pa. State Police v. Office of Open Records*, the Commonwealth Court held that the portion of a request seeking “any and all records, files or communications” related to vehicle stops, searches, and seizures was insufficiently specific under Section 703 of the RTKL, and that only the portion of the request seeking a particular type of document – manuals related to vehicle stops, searches, and seizures – was sufficiently specific. 995 A.2d 515, 517 (Pa. Commw. Ct. 2010). Here, the scope encompasses written communications between “all PSERS staff and any employee or representative of ACA.” This does not seek a clearly defined universe of documents. *See Pa. Dep’t of Env’tl. Prot. v. Legere*, 50 A.3d 260 (Pa. Commw. Ct. 2012).

Furthermore, the subject matter does not identify a transaction or activity of the agency with sufficient specificity. Ms. Williams attests that the “calculation of PSERS’ shared risk/shared gain provision is derived from its overall fund performance, meaning all of PSERS’ investments are tied to the shared risk/shared gain provision.” She affirms that the Item “call[s] for practically

any and all documents in [PSERS'] possession related to the investment management of the Fund, which extends to the entire investment operation of PSERS.”⁵

This broad scope, combined with a subject matter that encompasses all of PSERS business, makes the Item insufficiently specific. *See Commonwealth v. Engelkemier*, 148 A.3d 522, 532-33 (Pa. Commw. Ct. 2016) (finding that a request with a broad subject matter requires a narrow scope and timeframe that render the request specific); *see also Shepherd v. Pa. Dep't of Health*, OOR Dkt. AP 2020-2730, 2021 PA O.O.R.D. LEXIS 188 (finding that a RTKL request seeking emails amongst five individuals, including two organizations, with a timeframe of four months and no subject matter, is insufficiently specific). Item 3B seeks a broad subject matter and scope of records over a 15-month time period. Because there was no limitation on either scope or subject matter to limit the universe of potentially responsive records, this Item is insufficiently specific.

b. Items 3A, 4A-B and 5A-B are insufficiently specific due to their broad subject matters and lengthy timeframe

PSERS argues that to the extent the Items above seek “any documents” or include communications with “all of PSERS staff,” or “all of PSERS,” the scope is too broad. However, on June 8, 2021, the Requester limited the scope of individuals whose communications were sought to a specific list for Items 3A, 4A-B, and 5A-B.

The scope of the Items encompasses “all written communications” regarding subject matters and the scope of Items 3A, 4A-B and 5A-B is limited to written communications between defined senders or recipients.

⁵ Under the RTKL, a sworn affidavit or statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that PSERS has acted in bad faith, “the averments in [the statement] should be accepted as true.” *McGowan v. Pa. Dep't of Envtl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

While the limitations did include the phrase “all of PSERS,” that phrase followed a list of PSERS staff or officials and is an identifier that the named individuals are all PSERS-related, rather than employees of the consulting firms. When limiting the scope of individuals, the Requester also identified groups of consulting firm employees and referred to them as “of” the firm. Furthermore, to the extent the Items initially read “PSERS staff” and “any employee or representative” of a consulting firm, that was clarified by the Requester on June 8, 2021 and should not have been considered by PSERS when performing a search for responsive records.

While responding to a RTKL request must entail a good faith effort to provide all of the records sought, it is not an exact science, and must also encompass reasonable discretion by the agency to identify and provide the requested information, particularly where the Request is a broad one. Here, the Requester defined the scope of Items 3A, 4A-B and 5A-B by the type of documents sought and recipients or senders within PSERS and the firms, and, by doing so, satisfied the scope element of the sufficiently specific test. *Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119 (Pa. Commw. Ct. 2017). However, to the extent that the clarified Items used the phrase “other employee of [firm] related to [that firm’s] contract,” that phrasing is insufficiently specific as it includes all firm employees.⁶

However, PSERS also argues that the subject matters of these Items are too broad. Items 3A, 4A and 5A seek communications between PSERS and each of the three firms “related to investment performance reporting,” and Items 4B and 5B seek communications between PSERS and two of the three firms “related to risk-sharing calculations.”

Ms. Williams attested that “calculation of PSERS’ shared risk/shared gain provision is derived from its overall fund performance, meaning all of PSERS’ investments are tied to the

⁶ Per the communications between the parties, prior to the appeal, the firms have anywhere from 600 to 50,000 employees.

shared risk/shared gain provision.” She affirms that the Item “call[s] for practically any and all documents in [PSERS’] possession related to the investment management of the Fund, which extends to the entire investment operation of PSERS.”

Although a request with a limited scope and a broad subject matter may be sufficiently specific, the extremely broad subject matter of Items 3A, 4A-B, and 5A-B combined with a 15-month timeframe renders them insufficiently specific. *See Shepherd v. Pa. Dep’t of Health*, OOR Dkt. AP 2020-2730, 2021 PA O.O.R.D. LEXIS 188 (finding that a RTKL request seeking emails amongst five individuals, including two organizations, with a timeframe of four months and no subject matter, is insufficiently specific).

c. Items 3C, 4C and 5C are sufficiently specific

Items 3-5C seek communications between PSERS and each of the three firms “related to the discovery of, or the identification of an error in, calculating the historical investment performance, as part of the shared-risk determination.” PSERS did not seek clarification as to specific individuals whose communications were sought as it relates to this subject matter.

As Ms. Williams affirms, the agency business is investing and determining contribution rates of members and therefore records “related to” investment performance or the risk-sharing calculation would entail nearly every agency record. Conversely, the subject matter of records that relate to the discovery of, or the identification of an error in, calculating the historical investment performance, as part of the shared-risk determination is not insufficiently specific. It is well known that an error in the shared-risk calculation occurred and that PSERS re-certified a new calculation to rectify that error. *See Carey*, 61 A.3d at 372 (“[T]he specific subject matter and timeframe, coupled with the fact that the Transfer is well-known to DOC, suffice to apprise DOC of the records sought.”

Here, the subject matter identifies a well-known matter of agency business but the Items do not identify senders and recipients. That is, the Items have a broad scope, specific subject matter and 15-month timeframe. The OOR has found that a request for “all communications” to and from a set of email addresses is a broad scope, though not necessarily unreasonable if there is sufficient limitation in either the subject matter or timeframe of a request. *Briggs v. City of Phila.*, OOR Dkt. AP 2019-0647, 2019 PA O.O.R.D. LEXIS 625 (finding a request insufficiently specific because of a lengthy timeframe). Unlike in *Briggs*, the Items here identify a specific subject matter – the discovery or identification of a calculation error. While 15 months is a lengthier timeframe, it is not so lengthy as to render it difficult to search for communications about the identification of such an error. Furthermore, when PSERS sought clarification to assist with the search, PSERS did not include Items 3C, 4C and 5C as Items it believed were insufficiently specific such that it could not perform a search for records. *See Engelkemier*, 148 A.3d 522, 532-33 (Pa. Commw. Ct. 2016) (an agency’s failure to object to specificity and seek further clarification during the request stage is a factor in determining whether a request is sufficiently specific).

Thus, Items 3C, 4C and 5C are sufficiently specific insofar as they identify a specific subject matter. PSERS must perform a good faith search to identify the records responsive to Items 3C, 4C, and 5C.

2. Some records are exempt noncriminal investigative records

While PSERS asserts that it was unable to identify records, it does acknowledge that potentially responsive records exist as PSERS has communicated with the various firms and asserts that the potentially responsive records are exempt noncriminal investigative records. Furthermore, as Items 3C, 4C, and 5C are sufficiently specific, PSERS may raise exemptions in support of withholding the records.

In *Pa. Dep't of Educ. v. Bagwell*, the Commonwealth Court explained:

[I]t is well-established that:

[A]n agency must raise all its challenges before the fact-finder closes the record. This will allow efficient receipt of evidence from which facts may be found to resolve the challenges. In the ordinary course of RTKL proceedings, this will occur at the appeals officer stage, and a reviewing court will defer to the findings of the appeals officer

In addition, there is no statutory authority for a two-step process. This Court recently rejected an agency's challenge to OOR's refusal to bifurcate proceedings to resolve an issue of insufficient specificity separate from the merits. We rejected bifurcation as infeasible given the timelines under the RTKL. This Court also reasoned an agency had ample opportunity to present evidence of substantive exemptions at the appeals officer level. When the agency did not submit evidence of exemptions, and rested on its specificity argument, this Court precluded the agency from submitting evidence of any exemptions on remand.

Pa. Dep't of Educ. v. Bagwell, 131 A.3d 638, 660 (Pa. Commw. Ct. 2016) (citations omitted).

PSERS was obligated to raise this exemption despite not identifying or reviewing potentially responsive records. PSERS is similarly obligated to provide sufficient evidence of the exemption.

Section 708(b)(17) of the RTKL exempts from disclosure records of an agency "relating to a noncriminal investigation," including "[i]nvestigative materials, notes, correspondence and reports," "work papers underlying an audit," and "[a] record that, if disclosed, would...[d]eprive a person of the right to an impartial adjudication." 65 P.S. §§ 67.708(b)(17)(ii),(v); 65 P.S. § 67.708(b)(17)(vi)(B). In order for this exemption to apply, an agency must demonstrate that "a systematic or searching inquiry, a detailed examination, or an official probe" was conducted regarding a noncriminal matter. *See Pa. Dep't of Health v. Office of Open Records*, 4 A.3d 803, 810-11 (Pa. Commw. Ct. 2010). Further, the inquiry, examination, or probe must be "conducted as part of an agency's official duties." *Id.* at 814; *see also Johnson v. Pa. Convention Ctr. Auth.*, 49 A.3d 920 (Pa. Commw. Ct. 2012). An official probe only applies to noncriminal investigations conducted by agencies acting within their legislatively granted fact-finding and investigative

powers. *Pa. Dep't of Pub. Welfare v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014). To hold otherwise would “craft a gaping exemption under which any governmental information-gathering could be shielded from disclosure.” *Id.* at 259. Here, at issue are written communications between the identified individuals related to the discovery or identification of the rate calculation error (Items 3-5C).

Ms. Williams attests, in relevant part:

38. In the summer of 2020...PSERS became aware that net investment returns were in the narrow range of potentially triggering the shared risk/shared gain provision.

39. PSERS launched a detailed examination into its performance reporting and calculation of the shared risk/shared gain provision for the time period ending June 30, 2020.

40. This detailed review included working in close coordination with Aon to investigate the size and scope of financial return adjustments over a historical period, the reasons that PSERS' consultants reported certain figures, whether the Comprehensive Annual Financial Report (CAFR”) or any other financial document should be amended, and the use of previous returns in determining contribution calculations.

41. This review also led the PSERS Board's Audit/Compliance Committee to engage an independent performance verification firm, ACA Compliance Group, to conduct the verification of the investment return for the nine years ending on June 30, 2020. The purpose of this review was, among other things, to perform a calculation review of the investment performance data.

42. PSERS' review included PSERS' work and communications with Buck.

43. PSERS's detailed review continued up through the certification of the shared-risk rate calculation in December 2020 and continues to the present day.

...

45. One reason the investigation exempts the requested materials from disclosure is that communications between PSERS and its agents Aon, ACA, and Buck, beginning in the summer of 2020, including the attachments to those communications constitute investigative materials, notes, correspondence, and reports....

46. Another reason the investigation exempts the requested materials from disclosure is that PSERS performed a formal examination of its accounting records through its own investigation in the summer, fall, and winter of 2020, and through its engagement of ACA....

47. These activities involved a formal examination of PSERS' accounting records, financial situation, and compliance with its own internal standards and broader accounting standards.

48. Furthermore, the investigation exempts the requested materials from disclosure because the records related to PSERS' noncriminal investigation, if released, could be accessed by members of the grand jury that has been empaneled to gather and evaluate information concerning the shared-risk calculation, depriving PSERS and its employees of the right to an impartial adjudication...

In the appeal submission, the Requesters states:

It is true that the FBI and PSERS itself have launched inquiries into the calculation mistake...

There was debate within PSERS about the performance calculation as far back as August 2020. The fund hired ACA to review the numbers on Oct. 4, 2020, the contract shows....

All of this is before the FBI and PSERS itself launched special investigations of the matter, in late March 2021. The fund minutes shows that PSERS did not task its board audit committee to look into these issues until March 12, 20[21] and did not hire law firms for that purpose [until] March 19, 2021. The first federal grand jury subpoenas to the fund are dated March 24, 2021. And the fund's chief counsel, did not order staff to save documents related to the probes until April 8.

While it is uncontested that PSERS and other agencies did, and continue to, investigate the calculation error, the OOR notes that the PSERS board is granted the "power and privileges of a corporation," 24 Pa.C.S. § 8501(e), and is governed by a Statement of Organization Bylaws, and Other Procedures.⁷ Article VI of Section 4.2(b) sets forth the Audit/Compliance Committee duties, which include, but are not limited to, reviewing the findings and recommendations of any examination by regulatory agencies, auditor, staff and/or consultant observations related to

⁷ Available at

<https://www.psers.pa.gov/About/Board/Documents/Governance%20Manual/Statement%20of%20Organization,%20Bylaws,%20and%20Other%20Procedures.pdf> (last accessed October 4, 2021).

compliance. The Committee is also empowered to oversee special investigations as needed. The Board has “exclusive control and management” of the fund and has the authority to perform “such other functions as are required” for the execution of its administrative duties. 24 Pa.C.S. §§ 8521(a), 8502. Thus, PSERS has the requisite statutory authority to perform noncriminal investigations; however, not all agency fact-finding constitutes a noncriminal investigation. *Pa. Dep’t of Pub. Welf. v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014).

Items 3C, 4C and 5C seek records from January 2020 to the date of the Request; therefore, the date on which a noncriminal investigation commenced is determinative of which, if any, records are exempt. PSERS explains that there are several overlapping noncriminal investigations in this matter. According to PSERS, a noncriminal investigation was initiated by PSERS alone in the summer of 2020 as a result of the COVID-19 pandemic and its impact on global markets and investment performance. Ms. Williams affirms that PSERS became aware that the net investment returns were in the range that could potentially trigger the shared risk/shared gain provision of the Retirement Code, 24 Pa.C.S. § 8321(b), and so began reviewing its investment performance and calculations at that point.

The Requester acknowledges that PSERS hired ACA to “review the numbers” on Oct. 4, 2020, and that special investigations by both the FBI⁸ and PSERS were launched in late March 2021. Thus, there are three relevant investigational timelines. First, the PSERS investigation, started in summer 2020 into the fund’s performance; second, any investigation that occurred

⁸ Section 708(b)(17) only protects records of the agency conducting the investigation. *See Hayes v. Pa. Dep’t of Public Welf.*, OOR Dkt. AP 2012-0415, 2012 PA O.O.R.D. LEXIS 530; *see also Bagwell v. Pa. Office of the Governor*, OOR Dkt. AP 2013-1551, 2013 PA O.O.R.D. LEXIS 1227 (finding records possessed by the Office that relate to an investigation conducted by a law firm on behalf of a state-related institution are not exempt under Section 708(b)(17)); *Silver v. City of Pittsburgh*, OOR Dkt. AP 2013-1395, 2013 PA O.O.R.D. LEXIS 886; *Hockeimer v. City of Harrisburg*, OOR Dkt. AP 2015-1853, 2015 PA O.O.R.D. LEXIS 1655, *affirmed by*, No. 2015-CV-9289-MP (Dauph. Com. Pl. Mar. 11, 2016).

following October 4, 2020, when ACA was hired; and third, the PSERS investigation initiated in March 2021.

In summer 2020, PSERS began reviewing its investment performance and the calculation because the COVID-19 pandemic was affecting global markets and investment performance, and this might trigger the shared/risk shared gain provision. PSERS “launched a detailed investigation into its performance reporting and the calculation of the shared risk/shard gain provision for the time period ending June 30, 2020.” Ms. Williams Affidavit Para. 39. PSERS worked with Aon to investigate the size and scope of financial return adjustments, the reason for certain figures being reported and whether any official documents needed to be amended.

This investigation led to Audit/Compliance Committee to hire ACA in October 2020 “to conduct the verification of the investment return for the nine years ending on June 30, 2020. The purpose of this review was, among other things, to perform a calculation review of the investment performance data.” In March 2021, after certifying a rate that did not trigger the shared risk provision in December 2020, PSERS announced the discovery of the error and launched an investigation.

First, any written communications between the identified individuals related to the identification or discovery of the rate calculation error from January 2020 to the date the PSERS summer 2020 investigation began are not exempt. PSERS did not provide evidence that a noncriminal investigation was occurring at that point, as PSERS asserts that the first investigation began in summer 2020.

Ms. Williams attests that PSERS internal review beginning in summer 2020 is a formal examination of its accounting records; that is, an audit. PSERS argues that its investigation in the performance reporting and calculation was a formal examination of its accounting records,

financial situation, and compliance with accounting standards and thus constitute an audit. Black's Law Dictionary defines audit as "a formal examination of an individual's or organization's accounting records, financial situation, or compliance with some other set of standards," BLACK'S LAW DICTIONARY (11th ed. 2019), or "to make an official investigation and examination of accounts and vouchers." BLACK'S LAW DICTIONARY Free Online 2nd Ed. By definition, a financial audit is an investigation and PSERS does have investigatory authority, including audit authority.

A financial audit report is a public record under the RTKL, 65 P.S. § 67.102, however, Section 708(b)(17)(v) specifically exempts works papers underlying an audit, 65 P.S. § 67.708(b)(17)(v). Therefore, the issue becomes whether the requested records are work papers underlying an audit, or constitute "investigative materials, notes, correspondence and reports." 65 P.S. § 67.708(b)(17)(ii).

The RTKL does not define "work papers underlying an audit," but the OOR has relied on the definition promulgated by the American Institute of Certified Public Accountants, which defines "work papers" as records of "the procedures applied, the tests performed, the information obtained, and the pertinent conclusions reached in the engagement." *See Harmon v. Londonderry Twp.*, OOR Dkt. AP 2017-2276, 2018 PA O.O.R.D. LEXIS 140 (*citing Kelly & Assoc. v. NEIU*, 36 Pa. D. & C. 5th 300, 316 (Lackawanna C.C.P. 2014)).⁹

Ms. Williams attests that these "activities involved a formal examination of PSERS' accounting records, financial situation and compliance with its own internal standards and broader accounting standards." This is insufficient to demonstrate that any written communications

⁹ This definition, including the section raised by the Department below, is found in the American Institute of Certified Public Accountants' lists of standards archived as of 2017, indicating that those standards may no longer be in effect. *See* <https://pcaobus.org/Standards/Archived/Pages/AU339A.aspx>. However, the OOR is not relying on this definition as a statement of law, but as an interpretive aid in construing terms in the RTKL according to their common and approved usage. 1 Pa.C.S. § 1903(a). The OOR has no basis to believe that the common understanding of an auditor's "working papers" has changed significantly since 2017.

between the identified individuals related to the discovery or identification of the calculation error are records of the procures, tests, information and pertinent conclusions. Specifically, there is no evidence that the communications contained any tests performed, or procedures applied that would make these records work papers underlying an audit.

However, Section 708(b)(17)(ii) exempts “investigative materials, notes, *correspondence* and reports.” 65 P.S. § 67.708(b)(17)(ii) (emphasis added). Ms. Williams affirms that PSERS corresponded with Aon and Buck regarding the investigation into its fund performance as early as summer of 2020. A statement made under the penalty of perjury is competent evidence to sustain an agency’s burden of proof under the RTKL. *See Sherry*, 20 A.3d at 520-21; *Moore*, 992 A.2d at 909. PSERS has thus demonstrated that communications with Aon and Buck following the commencement of the 2020 review of its investment performance are exempt noncriminal investigative records. Furthermore, because PSERS contracted with ACA in October 2020 to perform independent verification of its performance, communications with ACA following that contract are exempt noncriminal investigative correspondence.

The OOR notes that the RTKL is not a confidentiality statute meaning it allows but does not require an agency to withhold records. An agency generally has the discretion to release otherwise nonpublic records. See 65 P.S. § 67.506(c). Based on any number of factors, an agency may release otherwise nonpublic or deidentified records in the public interest. Such an approach can be used to build trust and confidence in the agency especially when dealing with such compelling issues.

3. The appeal is moot in part

Aon and Buck are both granted Direct Interest Participant status. Aon argues that PSERS is in possession of records that constitute or reveal a trade secret or confidential proprietary

information. Aon asks that “prior to turning over any documents or information provided by Aon to PSERS pursuant to this request, PSERS advise Aon specifically what information and/or documents it proposes to provide, so that Aon can consider its options...Aon would need adequate time to review what PSERS may intend to produce.” Buck, meanwhile, asserts that it agrees with PSERS’ reasons for denial and notes that the records may include confidential information regarding individual employees of PSERS and retirement system members, as well as objecting to the production of an Excel spreadsheets in their native format because such spreadsheets include proprietary formulas and macros that are confidential.

On September 23, 202, the Requester disclaimed interest in Excel formulas and trade secrets and notes no objection to the redaction of such information. Because the Requester has agreed to the redaction of trade secrets and Excel formulas, the appeal as to that information is not at issue.

4. Some records are exempt confidential proprietary information

Buck “objects to the production of any Excel spreadsheets...in native format because such spreadsheets include proprietary formulas and macros that are confidential.” Because the Requester has disclaimed interest in Excel formulas, that is not at issue. However, the macros remain at issue.¹⁰ Similarly, Aon argues that PSERS has documents that contain Aon’s proprietary and confidential information, trade secrets, and intellectual property that may be responsive to the Request and seeks time to review any records that PSERS would provide prior to PSERS providing them to the Requester.

¹⁰ An Excel macro is “an action or set of actions that you can run as many times as you want. When you create a macro, you are recording your mouse clicks and keystrokes.” See <https://support.microsoft.com/en-us/office/quick-start-create-a-macro-741130ca-080d-49f5-9471-1e5fb3d581a8>.

PSERS, in turn, indicates its agreement with Buck and Aon that the records are exempt under Section 708(b)(11). Meanwhile, the Requester asserts that “the calculation of investment returns is a matter of arithmetic and a subject of great interest to a lay audience.”

Section 708(b)(11) of the RTKL exempts from disclosure “[a] record that constitutes or reveals a trade secret or confidential proprietary information.” 65 P.S. § 67.708(b)(11). These terms are defined in Section 102 of the RTKL as follows:

“Confidential proprietary information.” Commercial or financial information received by an agency:

- (1) which is privileged or confidential; and
- (2) the disclosure of which would cause substantial harm to the competitive position of the [entity] that submitted the information.

“Trade secret.” Information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that:

- (1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use;
and
- (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

65 P.S. § 67.102. Here, neither Buck nor PSERS provides evidence as to how a macro is a trade secret or constitutes confidential and proprietary information. In its response, Buck merely states that the macros are confidential. Under the RTKL, the agency, or third party, must provide sufficient evidence to demonstrate that a record is exempt. 65 P.S. § 67.708(a)(1). Because neither Buck nor PSERS has provided that evidence, to the extent that they are contained in records this final determination grants access to, the macros may not be redacted. *See Highmark Inc. v. Voltz*, 163 A.3d 485, 490-491 (Pa. Commw. Ct. 2017) (the party asserting an exemption bears the burden of proving the exemption applies and a direct interest participant who provided records to the agency may be in the best position to establish their protected nature). Aon, however, provided

the statement made under penalty of perjury of Claire Shaughnessy, a Partner and the Lead Relationship Manager and Lead Consultant at Aon relating to the relationship with PSERS. Ms. Shaughnessy identifies several types of records that contain Aon's proprietary knowledge, and intellectual property:

- a. Email communications between Aon and PSERS employees containing information incorporating their thoughts or analysis related to PSERS performance, which include Aon's proprietary knowledge;
- b. Performance reports and analysis, which include the results of analysis done with Aon's proprietary business procedures and is part of Aon's intellectual property. Aon expects that this category may include:
 - 1. monthly performance reports;
 - 2. quarterly investment reports; and
 - 3. other portfolio analysis completed by Aon;
- c. Documents regarding Aon's service offerings, which include confidential information about Aon's business procedures and strategies; and
- d. Documents and communications regarding the calculation that is at issue in requestors' requests, which include confidential and proprietary information regarding Aon's business procedures, strategies, and analytical processes.

She explains that the documents derive independent economic value, actual or potential, from not being generally known to or ascertainable by proper means. She explains that Aon's contract with PSERS contains a confidentiality provision pursuant to which PSERS is obligated to maintain the secrecy of Aon's proprietary documents. Therefore, Ms. Shaughnessy has provided evidence that Aon provided PSERS with information that meets the definition of a trade secret under the RTKL. As the Requester has disclaimed interest in any trade secrets, PSERS may redact or withhold any of Aon's trade secrets from any responsive records.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part, denied in part** and **dismissed as moot in part**, and PSERS is required to perform a good faith search for written communications

between PSERS and each the three firms related to the identification or discovery of the rate calculation error, for the time period January 2020 to the date the summer 2020 investigation commenced and provide all responsive records within thirty days. PSERS may redact Excel formula and trade secrets. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.¹¹ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 18, 2021

/s/ Erin Burlew

ERIN BURLEW, ESQ.
APPEALS OFFICER

Sent to: Craig McCoy (via email only);
Joseph DiStefano (via email only);
Jackie W. Lutz, Esq. (via email only);
David R. Godosfky, Esq. (via email only);
Andrew K. Garden, Esq (via email only)

¹¹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

OOR Exhibit 12

From: [Applegate, Kyle](#)
To: [Henry, Faith](#)
Subject: FW: [External] Re: McCoy v. PSERS, OOR Dkt. AP 2021-1856, final determination
Date: Wednesday, October 27, 2021 12:36:51 PM

From: DiStefano, Joseph <joed@inquirer.com>
Sent: Wednesday, October 27, 2021 12:24 PM
To: Burlew, Erin <eburlew@pa.gov>
Cc: Craig McCoy <cmccoy@inquirer.com>; Applegate, Kyle <kyapplegat@pa.gov>; Joseph DiStefano <joed@inquirer.com>
Subject: [External] Re: McCoy v. PSERS, OOR Dkt. AP 2021-1856, final determination

ATTENTION: *This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.*

We petition the Office of Open Records to reconsider its 18 October 2021 decision, McCoy v PSERS, OOR Dkt. AP 2021-1856, in so far as it accepts PSERS actions through December 2020 as constituting “a noncriminal investigation,” shielding requested records from the public under the Right to Know law. As written, the decision accepts PSERS’ after-the-fact characterization of one of the standard performance reviews the agency conducts in accordance with state laws (noted below) as constituting just such a “noncriminal investigation,” in order to claim an after-the-fact exemption. But as noted in the decision, “not all agency fact-finding constitutes a noncriminal investigation.” In fact, the steps described by Evelyn Williams in her affidavit describe, not an “investigation” whose steps if disclosed would likely “deprive a person of the right to an impartial adjudication.” Rather, she describes routine actions used to conduct a state-mandated, triennial investment performance calculation on which the agency’s annual funding formulas rest. The decision appears to accept that a “noncriminal investigation was initiated by PSERS alone in the summer of 2020 as a result of the COVID-19 pandemic and its impact on global markets and investment performance.” But there is nothing provided to support the claim that those global, external causes led to an “investigation” requiring protection from public disclosure. Outside events continually affect investment values; PSERS conducts investment reviews on quarterly, part-year, annual, and many multi-year bases; the three-year cycle of legislatively-mandated “shared-risk” performance reviews rolls on, no matter the news. It is instructive that in the affidavit itself, as cited in the decision, the matter is described for five paragraphs as a “detailed examination,” as “this detailed review,” as a “review,” a “review” and again as a “detailed review.”

Finally, only in paragraph 44, the affidavit attempted to bootstrap this into “the investigation.” What Ms. Williams is describing is the routine, core work of PSERS – figuring out returns on its investments. As PSERS notes in its appeal, “Pursuant to Act 120, P.L. 834,” and its provision for the calculation of “shared risk,” the PSERS Board “was required to certify PSERS’ performance” from 2011 to 2020. It performed similar calculations in 2017 and 2014 and plans another for 2023, under the law. When the board voted in December to adopt a performance figure, there was no mention of an investigation in the previous months. (To the contrary, James Grossman, the fund’s chief investment officer, told board members, “We did our due diligence. We covered it. I’m not worried about it.”) It was not until March 2021, as the record and the decision itself point out, that the board even initiated what it finally, contemporaneously, termed an investigation. Again as noted, this was in the March 12, 2021 adoption of Resolution 2021-09, in which the board gives its audit committee “authority to oversee an investigation of the circumstances surrounding a possible error in the reporting of investment performance results” The same resolution for the first time

approved hiring an outside law firm for this “special investigation.” This is when investigation began, not the previous summer. The actions described in the Evelyn Williams affidavit cited in the decision do not support the “investigation” label that PSERS conveniently applies to them after-the-fact. To borrow phrases from an earlier case cited in the decision, this ruling risks creating “a gaping exemption” under which any regular, periodic, legislatively-mandated governmental information-gathering efforts, re-labeled much later as an “investigation,” could be retroactively “shielded from disclosure.” Surely the Right to Know office does not mean to set a precedent under which the regular and cyclical work expected of every state agency could retroactively be attributed to an investigation and removed from the public record. Please reconsider and recognize that these materials are of public interest and are not privileged to be exempt for disclosure. Sincerely,

Craig R. McCoy, and Joseph N. DiStefano: Philadelphia Inquirer, business news, phone 215.313.3124

On Mon, Oct 18, 2021 at 2:31 PM Burlew, Erin <eburlew@pa.gov> wrote:

Parties-

Please find attached a copy of the OOR’s Final Determination in the above captioned appeal.

Sincerely,



Erin Burlew

Attorney

Office of Open Records

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Harrisburg, PA 17101-2234

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OOOR Exhibit 13

OOOR RESPONSE TO PETITION FOR RECONSIDERATION

DATE ISSUED AND MAILED: November 8, 2021

IN RE: *McCoy, DiStefano, & The Phila. Inquirer v. PSERS*, OOR Dkt. AP 2021-1856

In this Final Determination, the OOR found that certain records generated prior to a formal investigation commenced in March 2021 were exempt noncriminal investigative records, as there were three distinct noncriminal investigations that were conducted by PSERS. The Requester has filed for reconsideration, arguing that PSERS was performing routine duties, as opposed to noncriminal investigations, prior to the commencement of the formal investigation.

The OOR believes that an additional examination of this issue is necessary and would be beneficial for any judicial review of its Final Determination. Specifically, the OOR requests that the parties to further address how the Commonwealth Court's decisions in *Pa. Dep't of Public Welfare v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014), *California Univ. of Pa. v. Schackner*, 168 A.3d 413 (Pa. Commw. Ct. 2017), *Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515 (Pa. Commw. Ct. 2011), and other cases involving an agency's performance of routine duties apply to the actions taken by PSERS.

For this reason, the petition is **GRANTED**. We note here that in the absence of applicable OOR regulations regarding petitions for reconsideration, this office will follow the procedures set forth in Pennsylvania General Rules of Administrative Practice and Procedure, 1 Pa. Code § 35.241.

PSERS may file a response in the form of a response within 15 days of the issuance of this order, or by November 23, 2021. The response shall be confined to the issue upon which reconsideration has been granted, i.e. whether PSERS conducted noncriminal investigations prior to the commencement of the formal investigation, and should address the above-cited cases, as well as any other case law PSERS deems relevant. 1 Pa. Code § 35.241(c). The Requester may also file a brief or position statement addressing case law in support of its position by that date. However, the Appeals Officer will not accept any new evidence from the parties on reconsideration; the submissions should be limited to legal argument, as the evidentiary record before the OOR is now closed. See generally *Pa. Dep't of Educ. v. Bagwell*, 131 A.3d 638, 656 n.12 (Pa. Commw. Ct. 2016).

Issued by:

/s/ Kyle Applegate

CHIEF COUNSEL
Kyle Applegate

Sent to: Craig McCoy (via email);
Joseph DiStefano (via email);
Evelyn Williams (via email);
Erin Burlew, Esq. (via email)

OOOR Exhibit 14

IN THE OFFICE OF OPEN RECORDS

**Craig McCoy, Joseph DiStefano, and
The Philadelphia Inquirer**

v.

PSERS

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OOR Dkt. AP 2021-1856

ENTRY OF APPEARANCE

Please enter my appearance on behalf of Craig McCoy, Joseph DiStefano and The Philadelphia Inquirer.

Respectfully submitted,

/s/Paula Knudsen Burke

Paula Knudsen Burke

REPORTERS COMMITTEE FOR FREEDOM OF
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Dated: November 12, 2021

PROOF OF SERVICE

I hereby certify that I have served the foregoing document, Entry of Appearance, upon the persons listed on the date and in the manner indicated below, which satisfies the requirements of Pa.R.A.P. 121:

Notification by email:

PSERS Right to Know Law Officer
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Dated: November 12, 2021

/s/Paula Knudsen Burke
Counsel for Requesters

00R Exhibit 15

IN THE OFFICE OF OPEN RECORDS

Craig McCoy, Joseph DiStefano, and
The Philadelphia Inquirer

v.

Public School Employees' Retirement System

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OOR Dkt. AP 2021-1856

BRIEF IN SUPPORT OF REQUESTERS' PETITION FOR RECONSIDERATION

I. INTRODUCTION

The records at issue in this case involve a \$64 billion pension plan that benefits Pennsylvania's retired public school employees. The *Philadelphia Inquirer* and two of its reporters are seeking to shed light on the operations of this massive system, and through their Right to Know Law request, inform the public, allowing them to understand who is performing services for a government agency as well as other issues related to those services.

II. PROCEDURAL HISTORY

On May 19, 2021, Craig McCoy and Joseph DiStefano, reporters for the *Philadelphia Inquirer* (collectively "Requesters"), submitted an enumerated Right to Know Law request of seven items to the Public School Employees' Retirement System ("PSERS") seeking, among other things, written communications between PSERS staff and three consultants (ACA, AON and Buck Global) regarding fund investment performance, the "risk-sharing" calculation, and the acknowledgment of PSERS's error in that calculation (collectively, the "Consultant Records").

Thereafter, on August 25, 2021, PSERS produced some items, denied some items, and asserted that a portion of the request was insufficiently specific. Of importance to this appeal, PSERS claimed that all the Consultant Records constituted "records relating to a criminal

investigation” and “records relating to a noncriminal investigation,” and contended that the items were exempt from disclosure.

On September 3, 2021, Requesters appealed to the Office of Open Records (“OOR”). Although Requesters originally sought seven items, on appeal they narrowed the scope of OOR’s review to Items 3 through 5. Specifically, Requesters appealed PSERS’ decision to withhold all the Consultant Records from disclosure.

On September 21, 2021, in support of its denial of the Consultant Records, PSERS submitted the attestation of Evelyn Williams, PSERS’ Open Records Officer and Communications Director. According to the document, the PSERS Audit/Compliance Committee engaged outside counsel in March 2021 to conduct a special investigation into the circumstances of the investment performance used for the calculation of the shared risk/shared gain provision in December 2020. *See* Attestation of Evelyn Williams (September 21, 2021) at ¶5 (hereinafter “Williams Attestation”). At the same time (March 2021), the U.S. Department of Justice initiated a grand jury investigation into PSERS’ risk-sharing calculation for the nine-year review period ending June 30, 2020, as well as PSERS’ restatement of historical investment and fund performances. *Id.* ¶ 5. In September 2021, the U.S. Securities and Exchange Commission joined the Department of Justice in an investigation of the agency.¹

On October 18, 2021, the OOR issued a final determination granting in part, denying in part, and dismissing as moot in part, the appeal. *See* October 18, 2021 FD, OOR Dkt. AP 2021-1856. Among other findings, OOR noted that because PSERS failed to address its claim

¹ See Angela Couloumbis, Craig R. McCoy and Joseph N. DiStefano, *Embattled Pa. teacher pension fund subpoenaed by SEC over ‘compensation and gifts’ to staff*, Philadelphia Inquirer (September 29, 2021)

that the Consultant Records are “criminal” investigative records, OOR deemed the argument abandoned. *Id* 4, n.2.

On October 27, 2021, Requesters petitioned the OOR for reconsideration of its final determination, asking this agency to find that PSERS’s actions through December 2020 are not covered by the noncriminal investigation exemption to the Right to Know Law. The OOR’s Procedural Guidelines allow parties to seek reconsideration via a petition specifically stating the grounds upon which the petition seeks relief. *See* OOR Procedural Guidelines, Section VIII(A). (Revised September 29, 2015) available at https://www.openrecords.pa.gov/Documents/Appeals/2015-10-01_Procedural_Guidelines.pdf (last accessed November 23, 2021).

OOR granted reconsideration on November 8, 2021, specifically requesting that the parties focus their arguments on whether the noncriminal exemption applies to Consultant Records generated prior to the commencement of a formal investigation of PSERS in March 2021. *See* Williams Attestation ¶5. The OOR follows the General Rules of Administrative Practice and Procedure and as such, OOR has precluded the introduction of new evidence on reconsideration. *See* 1 Pa.Code § 35.241.

In particular, the OOR asked the parties to address the Commonwealth Court’s decisions in other cases involving an agency’s performance of routine duties and apply those cases to the instant PSERS case. The cases referenced by OOR include: *Pa. Dep’t of Public Welfare v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014), *California Univ. of Pa. v. Schackner*, 168 A.3d 413 (Pa. Commw. Ct. 2017), and *Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515 (Pa. Commw. Ct. 2011).

Requesters submit this brief in response to the OOR's November 8, 2021 directive. In addition to the instant brief, Requesters incorporate their argument set forth in their October 27, 2021 petition for reconsideration.

III. ARGUMENT

A. The Consultant Records were formulated as part of the agency's performance of routine duties and cannot be considered part of a "noncriminal investigation."

a. More than a decade of Commonwealth Court decisions has set the standard for the noncriminal investigation exemption.

More than a decade ago, the Commonwealth Court began fleshing out the "noncriminal investigation" exemption contained within Section 708(b)(17) of the Right to Know Law ("RTKL"). In *Pa. Dep't of Health v. Office of Open Records*, 4 A.3d 803, 810 (Pa. Commw. Ct. 2010), the Commonwealth Court noted the legislature did not define "noncriminal" or "investigation" in the RTKL. After turning to the rules of statutory construction and analyzing the words, the Court found that for an agency to assert the noncriminal investigation exemption, it must demonstrate that "a systematic or searching inquiry, a detailed examination, or an official probe" was conducted regarding a noncriminal matter. *Id.* at 810-11. Further, the inquiry, examination or probe must be "conducted as part of an agency's official duties." *Id.* at 814.

The three cases cited in the OOR's November 8, 2021 directive build off *Dep't of Health*. First, in 2011, in *Sherry v. Radnor Twp. Sch. Dist.*, the Commonwealth Court provided more clarity to the idea of routine businesses versus a systemic inquiry. The requester in *Sherry* sought school district honor code violations. In upholding the school district's invocation of the noncriminal investigation exemption to withhold responsive records, the Commonwealth Court concluded that the "records surpass the District's routine performance of its duties and entail a systematic or searching inquiry, detailed examination, and/or official probe into purported

student rule violations on the District's premises." *Id* at 523. The Court noted that the requested reports were similar to Pennsylvania State Police incident reports in that they were "forms upon which violations are noted and contain a description of the violative conduct, witness/teacher statements, and the course and result of the investigation." *Id* at 524. Thus, the court determined, this distinction differentiated the records from routine school business.

In 2014, the document in question in *Pa. Dep't of Public Welfare v. Chawaga* was a performance audit report. The Commonwealth Court found the report was not exempt from disclosure under Section 708(b)(17) of the RTKL because it was not a part of a "systematic or searching inquiry," "detailed examination," or "official probe." To qualify for the exemption, the investigation must be done pursuant to an agency's statutory authority and conducted as part of the agency's regular duties. The court found that DPW's performance audit report was unlike the comprehensive, repeated, on-site inspections of nursing homes conducted in *Dep't of Health*. The court focused on the fact that DPW did not make regular and repeated visits but rather conducted a one-time inquiry into an entity's finances by interviewing management; reviewing the general ledger, payroll records, invoices, and client case files; inventorying the manufacturing equipment; and examining various other supporting documents. *Id* at 259. The court also found that there was no "official probe" because the agency had not shown it was acting within its legislatively-granted fact-finding and investigative powers. Finally, the court noted that the public policy considerations present in *Dep't of Health* did not exist; instead, "maintaining the transparency of such a performance audit report serves the public interest by discouraging financial abuses by businesses under governmental contracts." *Id*.

Three years later in *California Univ. of Pa. v. Schackner*, relying on *Chawaga*, the Commonwealth Court held that California University of Pennsylvania could not withhold from

disclosure records relating to the University's investigation into the structural failure of an on-campus parking garage. In particular, the court concluded that the university failed to prove that it had an official duty, which went beyond its routine duties, to investigate the structural failure of an on-campus parking garage. The court found that the University's "inquiry was ancillary to its public safety services." *Schackner* at 419. Explaining further, the court said:

The public has the right to know who is performing services for the government agency, the scope of [those] services, the disputes concerning the scope of services, the costs relating to those services, and the resolution of disputes concerning the services. There was no danger of an invasion of personal privacy rights, public endangerment, or divulgence of secret information.

Id. (quoting *Johnson v. Pennsylvania Convention Center Authority*, 49 A.3d 920, 926 (Pa. Cmwlth. 2012)).

A recent OOR final determination aptly summarizes the Commonwealth Court's key holdings with respect to application of the noncriminal investigation exemption, and underscores the agency's burden, which must be demonstrated by a preponderance of the evidence²:

Section 708(b)(17) of the RTKL exempts from disclosure records of an agency "relating to noncriminal investigations," including "[i]nvestigative materials, notes, correspondence and reports[,]" and a record the disclosure of which would "[r]eveal the institution, progress or result of an agency investigation... In order for this exemption to apply, an agency must demonstrate that "a systematic or searching inquiry, a detailed examination, or an official probe" was conducted regarding a noncriminal matter. See *Pa. Dep't of Health v. Office of Open Records*, 4 A.3d 803, 810-11 (Pa. Commw. Ct. 2010). Further, the inquiry, examination or probe must be "conducted as part of an agency's official duties." *Id.* at 814; see also *Johnson v. Pa. Convention Ctr. Auth.*, 49 A.3d 920 (Pa. Commw. Ct. 2012). Furthermore, the investigation must specifically involve an agency's legislatively granted fact-finding powers. See *Pa. Dep't of Pub. Welf. v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014). To hold otherwise would "craft a gaping exemption under which any governmental information-gathering could be shielded from disclosure." *Id.* at 259.

² See, generally, 65 P.S. § 67.708(a)

Peter Hall and The Morning Call v. Pennsylvania Department of Labor and Industry, OOR Docket No. AP 2021-1102 at 6 (August 16, 2021).

b. PSERS cannot meet its burden to show that the Consultant Records were generated for a “systematic or searching inquiry,” “detailed examination,” or “official probe.”

The Public School Employees’ Retirement Code requires the PSERS board to undertake certain routine actuarial investigations and valuations, as well as audits. PSERS is required to have an actuary review its accounts within six months of the close of each fiscal year, as well as every five years. Information related to these routine actuarial reports is to be published in the Pennsylvania Bulletin. In addition, “the board shall include a report on the significant facts, recommendations and data developed in each five-year actuarial investigation and evaluation of the system in the annual financial statement published pursuant to the requirements of subsection (n) for the fiscal year in which such investigation and evaluation were concluded.” 24 Pa. Stat. and Cons. Stat. Ann. § 8502(j). The PSERS board is also required to provide for annual audits of the system and the plan by an independent certified public accounting firm. 24 Pa. Stat. and Cons. Stat. Ann. § 8502(o).

In order for PSERS to claim that the Consultant Records – which document routine, cyclical and legislatively-mandated inquiries – are exempt from disclosure under Section 708(b)(17) of the RTKL, the agency must show that the records surpass its routine performance of its duties and entail a systematic or searching inquiry, detailed examination, and/or official probe. *See Sherry* at 523. PSERS has not and cannot make this showing.

The RTKL is “remedial legislation designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials, and make public

officials accountable for their actions.” *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff’d*, 75 A.3d 453 (Pa. 2013). Accordingly, “exemptions from disclosure must be narrowly construed.” *Id.* Indeed, cases like *Hall*, in which the OOR disallowed an agency to shield disclosure of ski lift inspection reports pursuant to the noncriminal investigation exemption, demonstrate that over time the OOR and the courts have demanded a more stringent application of this exemption in light of the RTKL’s remedial purpose.

The instant case involves records that illustrate PSERS’ routine oversight and administration of public fund investments, returns and disbursements. The Consultant Records thus represent the very nature of PSERS’ function, and if these records are considered “investigatory” or “official probes,” then none of PSERS’ records would be public under the RTKL. PSERS has not shown any specifically granted legislative power, beyond its core statutory grant of power, that would authorize it to conduct a special investigation involving the requested records. Instead, the Williams Attestation describes the Consultant Records as pertaining to nothing more than the usual work of PSERS – figuring out returns on its investments and studying the impact of the pandemic on its operations. See, e.g., Williams Attestation ¶¶ 38-48. Indeed, the Consultant Records constitute records that were produced in the course of normal business, including work surrounding the performance calculation. *Id.* ¶¶ 47 (PSERS was examining its accounting records, financial situation, and compliance with its own internal standards and broader accounting standards.). Notably, all of this occurred **before** the FBI and PSERS itself launched special investigations of the matter, in late March 2021. See *supra* at Section II.

Moreover, to the extent there was an investigation undertaken at some point after the requested records were created, such a scenario does not render the noncriminal investigation exemption applicable. The fact that an agency uses an otherwise public record as part of an investigation does not render such records them non-public, and such an interpretation would create a gaping hole in the RTKL. The fact that financial records, *which are the most public of public records*, see *infra* § B, are used as part of a subsequent investigation does not render those records investigatory in nature. The Consultant Records at issue here were created for purposes independent from any subsequent ancillary investigation PSERS may have undertaken.

To put the issue in another context, consider access to salary records. If PSERS decides to investigate salaries paid to its executives, the noncriminal investigation exemption does not transform those salary records into non-public investigatory records. On the contrary, salary records are – and remain – public records regardless of their subsequent use by the agency for other purposes. *See* 65 P.S. § 67.708(b)(6)(ii).³ Similarly, the Consultant Records were generated in furtherance of PSERS’s routine obligations to calculate and analyze its returns on investments and the agency’s later choices to review those historic records does not render them into noncriminal investigation records exempt from disclosure.

The public has a right to use public records to conduct their own investigations and to maintain agency accountability, and the RTKL does not allow an agency to thwart that right by conducting its own inquiry. The noncriminal investigation exemption was not intended to cast a cloak of confidentiality over otherwise public records that happen to be swept into an agency’s later investigation. As the Court in *Schackner* explained, the intent of the exemption is to protect

³ In fact, PSERS’ employees’ salaries are publicly displayed on the state website PennWATCH (<http://pennwatch.pa.gov/>).

“divulgence of secret information” about PSERS’ investigation, if any. The records in this case were created for purposes other than an investigation, and as such, they reveal no “secret information” that rises to the level of the noncriminal investigation exemption. The records relate to PSERS’ administration of public funds, and even if they were subsequently swept into an ancillary PSERS investigation, that fact does not transform them into exempt records. The law’s fundamental purpose is government accountability through public access to information and as such, the law must be applied in a manner that both recognizes its purpose and furthers its intent.

B. The requested documents are financial records, the most accessible form of records under the Right to Know Law.

The Consultant Records sought in the instant case are financial records, which can never be entirely withheld from disclosure under the Right to Know Law. No matter the title or description applied to these records, if their purpose is to provide documentation of receipt, expenditure or use of public monies, they are “financial records” under the Right to Know Law. *See* 65 P.S. § 67.102 (Definitions).

The Pennsylvania Supreme Court requires a two-step analysis to determine if a record is a financial record. In *City of Harrisburg v. Prince*, 219 A.3d 602 (Pa. 2019), the court noted that its “interpretation of financial record requires that a record **both** bear a ‘sufficient connection’ to a financial ‘account, voucher or contract’ **and** ‘deal with the receipt or disbursement of funds by an agency.’” *Prince* at 617 (emphasis in original). Clearly, financial records that include information on the return on investments bear directly on financial accounts and the agency’s receipt of funds.

Section 708(c) of the RTKL makes it clear that financial records are a special category of public information. 65 P.S. § 67.708(c). While Section 708(b) of the RTKL enumerates thirty exemptions pursuant to which an agency is entitled to deny access to some public records,

only eight of those exemptions may apply to financial records. And, even if one of the eight exemptions applies to a financial record, the law only permits redaction, not wholesale denial. 65 P.S. § 67.708(c) (“The exceptions set forth in subsection (b) shall not apply to financial records, except that an agency may redact that portion of a financial record protected under subsection (b)(1), (2), (3), (4), (5), (6), (16) or (17).”).

PSERS’s own description of the Consultant Documents confirms that the records are financial records. In the agency’s view, the Consultant Documents comprise a “detailed” “review” or “examination” of financial information. Williams Attestation ¶¶ 39, 40, 42. But the nomenclature used by PSERS to describe these records is not the guiding question in determining whether they are financial records; rather, the correct inquiry is the content of the records. *See Prince* at 615, 616 (broadly construing the “account, voucher or contract” category of financial record and determining that “account” has multiple acceptable definitions). However, even by PSERS’ own admission, the records relate to details of PSERS’ financial investments and the various means by which those financial investments are administered by PSERS, its staff and contractors. Williams Attestation ¶¶ 40, 47.

The Consultant Records reflect the foundation for PSERS’ stewardship of public funds and oversight for PSERS’ receipt and disbursement of those funds, and accordingly, the RTKL requires expanded public access to them. The two factors enunciated in *Prince, supra*, are clearly met with regard to these records because they are “connected to” PSERS’ administration and oversight of public fund investments, and the investments themselves are, on their face, accounts, vouchers and contracts that deal with the receipt and disbursement of public funds by PSERS.

The Consultant Records at issue in this case are strikingly similar to records recently ordered released in *North York v. Segelbaum* and *North York v. Locurto*. In those cases, reporters for two York County news outlets sought a forensic audit of a borough fire department. See *North York v. Segelbaum*, OOR Dkt. No. AP. 2020-1336, No. 2020-SU-002061 (C.P. York August 19, 2021) (Vedder, J) <https://perma.cc/N7KU-L6FU>; *North York v. Locurto*, OOR Docket No. AP 2021-0193, No. 2021 SU-00898 (C.P. York August 19, 2021) (Vedder, J) <https://perma.cc/E2ZA-J6EN>. Suspecting possible misappropriation of funds provided to a fire company, North York Borough officials had commissioned an accounting firm to perform the audit, including witness interviews. The review ultimately uncovered potential criminal activity and was turned over to the York County District Attorney's office. The borough claimed that the audit was exempt from disclosure as both a record of a criminal and noncriminal investigation, citing 65 P.S. §§ 67.708(b)(16)-(17), arguing that "but-for the investigation of possible misappropriation of Borough funds, the record would not exist and the forensic audit is significantly different than a routine audit, more akin to the 'official probe' required for assertion of the non-criminal investigation exemption." *Id* at 10. In both cases, at the OOR level and again on appeal, the agency's claimed criminal and noncriminal investigation exemptions were rejected.

In particular, York County Judge Clyde Vedder concluded that the "Forensic audit is a Financial Record discoverable under the RTKL," even if the audit was "investigatory in nature and was only undertaken for the Borough's investigation into possible misappropriation of funds," because "the underlying background of the audit cannot be denied." See *Segelbaum* and *Locurto*, Page 10. The York Court rejected the borough's argument that a "forensic audit" was an exempt noncriminal investigation record. Instead, citing *Dep't of Pub. Welfare v. Chawaga*,

91 A.3d 257, 259 (Pa. Cmwlth. 2014), the York Court concluded that “[t]he forensic audit in this case is not a system or searching inquiry nor is it a detailed examination.” *Id* at 17.

The York Court also cited an OOR final determination in *Silver v. Pittsburgh*, which also addressed both the criminal and noncriminal exemptions, and explained:

The fact that a record becomes evidence in a criminal investigation – especially a nominally public record dealing with the expenditure of public funds – does not transform that record into one exempt from disclosure ... In situations such as this, the OOR will not deprive itself of jurisdiction over appeals where the records at issue are plainly public records, i.e., dealing with the expenditure of public funds, and, therefore, incapable of being criminal investigative records.

Id at 13-14 (quoting *Silver v. Pittsburgh*, OOR Dkt. AP 2013-1395).⁴ In *Silver*, reporters from the *Pittsburgh Post-Gazette* sought police overtime forms and related records. The City of Pittsburgh denied the request, arguing that the requested records were related to an FBI investigation into the City’s Bureau of Police, and, thus, exempt from disclosure pursuant to Sections 708(b)(16) and 708(b)(17) of the RTKL. Even though the FBI later became involved, the OOR still found the criminal and noncriminal investigative exemptions inapplicable. Relying on *Silver*, the York Court noted the borough could not “refuse to release a financial record subject to a RTKL request but may release a redacted version that omits any details that are protected as evidence of a criminal or non-criminal investigation.” *Id*.

The York Court also noted the public policy considerations underpinning release of the audit because “even though the forensic audit was not a regularly occurring audit, it is not comprehensive enough to be considered an ‘investigation’ as defined by the Commonwealth

⁴ While the quote Judge Vedder cited referenced the criminal investigation exemption, the OOR found the same reasoning applied to its decision on the noncriminal investigation.

Court and allowing the release of the forensic audit would further the public policy goals of the RTKL.” *Id* at 18.

Turning to the instant case, it is clear that some of the responsive items reflect the first part of the RTKL’s definition of “financial record” -- “account, voucher, or contracts” dealing with “receipt or disbursement of funds by an agency” or “acquisition, use or disposal of services, supplies, materials, equipment or property.” And other items may be included in the third part of the RTKL’s definition of financial record – a “financial audit report.” Whether the items sought fall under (1)(i), (1)(ii), (2) or (3) under the definition of the term in §102, the Consultant Records sought in the instant case are “financial records,” which can never be entirely withheld from disclosure under the Right to Know Law. *See* 65 P.S. § 67.102 (Definitions).

IV. CONCLUSION

It is of the upmost importance for the approximately 500,000 PSERS members that there is transparency and accountability surrounding the financial records of a government agency with assets totaling approximately \$64.9 billion as of June 30, 2021. Williams Attestation ¶ 3. Financial records are the most accessible information available under the Right to Know Law, allowing the taxpaying public to understand who is performing services for a government agency as well as other issues related to those services. The requested items in this case are financial records and PSERS cannot shield their disclosure by applying an after-the-fact “noncriminal investigation” label. Accepting PSERS’ assertion that regular, periodic, legislatively-mandated governmental information-gathering efforts, re-labeled much later as an “investigation,” are anything but routine flies in the face of the OOR and Commonwealth Court’s precedent such as *Sherry*, *Chawaga* and *Schackner*. PSERS has not proven by a preponderance of the evidence that the requested items surpass its routine performance of its duties and entail a systematic or

searching inquiry, detailed examination, and/or official probe. Nor has PSERS shown any specifically granted legislative power, beyond its core statutory grant of power, that would authorize it to conduct a special investigation involving the requested items.

Requesters respectfully request that the OOR reject PSERS' argument that the items should not be released because of the noncriminal investigation. Instead, the OOR should find that these items are public, and order their release, with redactions, if appropriate.

Respectfully submitted,

/s/Paula Knudsen Burke

Paula Knudsen Burke

REPORTERS COMMITTEE FOR FREEDOM OF
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Dated: November 23, 2021

PROOF OF SERVICE

I hereby certify that I have served the foregoing document, Brief in Support of Requesters' Petition for Reconsideration, upon the persons listed on the date and in the manner indicated below, which satisfies the requirements of Pa.R.A.P. 121:

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Dated: November 23, 2021

/s/Paula Knudsen Burke
Counsel for Requesters

OOR Exhibit 16

BEFORE THE OFFICE OF OPEN RECORDS

CRAIG MCCOY AND THE PHILADELPHIA INQUIRER, Complainants	:	
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v.	:	AP 2021-1856
	:	
PENNSYLVANIA PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM, Respondent	:	
	:	

**PENNSYLVANIA PUBLIC SCHOOL EMPLOYEES' RETIREMENT
SYSTEM'S RESPONSE TO RECONSIDERATION**

I. PROCEDURAL HISTORY

On May 18, 2021, Philadelphia Inquirer reporters Joseph DiStefano (“DiStefano”) and Craig McCoy (“McCoy”) (together, “Requesters”) submitted a Right-To-Know Law (“RTKL”) request to the Commonwealth of Pennsylvania, Public School Employees’ Retirement System (“PSERS”) via its Agency Open Records Officer Evelyn Williams (“Williams”). The submission made the following requests:

- 1- In October 2020, PSERS retained Funston Advisory Services LLC as board governance consultant to review governance. Regarding Funston's work, please provide:
 - The contract with Funston and any other document describing the arrangements under which Funston presented work product to PSERS since October 2020
 - All invoices submitted by Funston
 - All payments made by PSERS
 - A copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from October to the present, between PSERS staff and any employee or representative of Funston.
- 2- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from December 2018 to the present, between PSERS staff and any representative of the owners or sellers of the following parcels of real estate in the City of Harrisburg:
 - The former Patriot-News facilities at 812 Market St.
 - The former Department of General Services building at 908 Market St.

- Any other parcel in Harrisburg acquired by PSERS since 1 January, 2016
- 3A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of ACA Compliance Group, related to investment performance reporting.
- 3B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of ACA, related to risk-sharing calculations.
- 3C - Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from December 2020 to the present, between PSERS staff and any employee or representative of ACA, related to the discovery or identification of an error in calculating the historical investment performance, as part of the shared-risk determination. Please include, for example, the notice given ACA on Feb. 18, 2021 that Aon's source data was in error, and details of such error and its effect on the scale and direction of the calculation, and other notices related to the error.
- 4A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Aon, related to investment performance reporting; including but not limited to memos Aon sent PSERS on March 5, 2021 and April 16, 2021 and since that date.
- 4B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Aon, related to risk-sharing calculations.
- 4C- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from December 2020 to the present, between PSERS staff and any employee or representative of Aon, related to the [] discovery of, or the identification of an error in, calculating the historical investment performance, as part of the shared-risk determination.
- 5A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to investment performance reporting.
- 5B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to risk-sharing calculations.
- 5C- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from December 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related

to the [] discovery of, or the identification of an error in, calculating the historical investment performance, as part of the shared-risk determination.

- 6- Please provide a copy of each monthly Moneyline report detailing PSERS assets, to date, for calendar year 2021.
- 7A- Please provide a list of all nonprofit corporations and other related-party entities which hold or manage PSERS assets, such as directly-owned properties, including all qualified subsidiaries set up under section 501(c)25 of the Internal Revenue Code.
- 7B - Please explain the purpose and functions of each 501(c)25 entity and other related-party entities set up to hold PSERS properties, for example by providing the footnotes to financial statements that explain each in detail, and the most recent I-990 submitted for each to the Internal Revenue Service.
- 7C - Please list directors and other officers, senior managers, all other owners in addition to PSERS, all subsidiaries of each 501(c)5 entity and other related-party entities set up to hold PSERS properties.

RTKL Request #2021-19; Williams Attestation ¶ 6.

On May 26, 2021, Williams responded to Requesters informing them that PSERS had received their request and would need at least 30 days to respond. Williams Attestation ¶ 8. Williams also asked the Requesters to provide additional information for requests 1, 2, 3A, 3B, 4A, 4B, 5A, and 5B, including identification of a narrower subject and the individual(s) for whom they were requesting said records so that PSERS could identify the records requested. *Id.* ¶¶ 9–10. Requesters provided responses to Williams’ requests on June 8, 2021. *Id.* ¶ 11. As described in detail below, these responses did not cure all of the requests’ lack of specificity, but where such deficiency was cured, PSERS produced responsive documents. *Id.* ¶¶ 12–14, 19–20, 26, 31–34.

On June 23, 2021, Williams informed Requesters that PSERS had gathered certain documents responsive to their request. *Id.* ¶¶ 15. Due to the voluminous nature of the records and the June 8, 2021 expansion of the request to include PSERS Board members, Williams also requested an additional 60-day extension to facilitate and complete the gathering and review of

the records to determine their responsiveness. *Id.* ¶ 16. McCoy approved the extension on June 24, 2021. *Id.* ¶ 17.

Williams provided Requesters with a production of records responsive to requests 7A, 7B, and 7C on June 25, 2021. *Id.* ¶ 18. As a result of some of the additional information Requesters provided in their June 8, 2021 correspondence, Williams was also able to provide a partial production of records responsive to requests 1 and 2. *Id.* ¶ 19. She noted that per the parties' agreement, PSERS had until August 25, 2021 to complete its response for the remaining records. *Id.* ¶ 21.

On August 25, 2021, Williams provided PSERS' final response to Requesters. *Id.* ¶ 22. PSERS granted a portion of requests 1 and 2, and all of request 6, and provided the associated records and information. *Id.* ¶ 23. PSERS denied the remainder of the requests. *Id.* ¶ 24. Relevant to the current appeal, PSERS denied requests 3A, 3B, 3C, 4A, 4B, 4C, 5A, 5B, and 5C on the grounds that the records requested related to criminal and noncriminal investigations, the disclosure of which would deprive a person of the right to a fair trial or an impartial adjudication. *See* 65 P.S. §§ 67.708(b)(16)(vi)(B), (17)(vi)(B). *Id.* ¶ 25. Additionally, because the requests asked for "any documents" and continued to include communications with "all PSERS' staff" or "all of PSERS," PSERS denied the requests as too broad and lacking sufficient specificity for PSERS to ascertain the records requested. *Id.* ¶ 26. PSERS noted that Requesters were not precluded from refining their request and making a new submission, and the agency reserved its right to raise any and all available bases for non-disclosure. *Id.* ¶¶ 27–28.

Requesters appealed PSERS' denial of requests 3 through 5. *Id.* ¶ 29. PSERS opposed Requesters' appeal and filed a brief in support on September 21, 2021. Requesters submitted

additional written argument on September 23, 2021 after the record closing date, and OOR considered the submission to develop the record.

On October 18, 2021, the OOR issued a final determination which granted in part, denied in part, and dismissed as moot in part the requests at issue. As part of OOR's final determination, PSERS was required to perform a good faith search for written communications between PSERS and Aon, Buck Global, and ACA Compliance Group related to the identification or discovery of the rate calculation error, for the time-period January 2020 to the date the summer 2020 investigation commenced and provide all responsive records within thirty days on November 17, 2021. PSERS performed a good faith search and informed Requesters on November 17, 2021, that the search did not identify any responsive documents and, therefore, PSERS had no documents to produce.

Without providing any notice to PSERS, Requesters sent an *ex parte* communication to the OOR on October 27, 2021 regarding a petition of reconsideration. PSERS was not involved in, notified of, or aware of that filing or communication until PSERS received the OOR ruling granting Requesters' petition for reconsideration on November 8, 2021. PSERS was not provided a copy of Requesters' petition and had to request a copy from the OOR.

For the reasons that follow, PSERS respectfully submits that the OOR did not err in its final determination and reconsideration is not warranted. Accordingly, PSERS requests that the OOR find no error occurred and uphold its original final determination.

II. RECONSIDERATION IS NOT WARRANTED

"The OOR has not promulgated any regulations regarding petitions for reconsideration." *Pa. Tpk. Comm'n v. Elec. Transaction Consultants Corp.*, 230 A.3d 548, 560 (Pa. Commw. Ct. 2020). "In general, however, an agency's 'decision to grant or deny a request for reconsideration is a matter of administrative discretion . . .'" *Id.* (quoting *Fleeher v. Dep't of Transp., Bureau*

of Driver Licensing, 850 A.2d 34, 36 (Pa. Commw. Ct. 2004); *Muehleisen v. State Civil Serv. Comm'n*, 443 A.2d 867, 869 (Pa. Commw. Ct. 1982)). A petition for reconsideration “shall state concisely the alleged errors in the adjudication or other order of the agency.” 1 Pa. Code § 35.241.

Here, the OOR committed no error of law or fact. Nor has there been an intervening change in controlling law or new evidence. Rather, Requesters, unsatisfied with the outcome of their appeal, rely on the same facts and same arguments in the hopes of securing a different result. However, the OOR did not err in its application of the RTKL. As much as Requesters may desire the information they seek, the drafters of the RTKL crafted important carveouts to public access with purpose and intention. As argued by PSERS and held by the OOR, certain of those exemptions applied here. In recognizing those exemptions, the OOR ensured that the RTKL as applied to the at-issue requests worked as designed and intended. To hold differently would run afoul of the RTKL and Pennsylvania case law interpreting its application.

III. THE CASES CITED BY THE OOR SUPPORT ITS FINAL DETERMINATION

The OOR has specifically requested that the parties address how the Commonwealth Court’s decisions in *Pennsylvania Department of Public Welfare v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014), *California University of Pennsylvania v. Schackner*, 168 A.3d 413 (Pa. Commw. Ct. 2017), and *Sherry v. Radnor Township School District*, 20 A.3d 515 (Pa. Commw. Ct. 2011), apply to the actions taken by PSERS. As detailed below, each of these decisions provides further support for the OOR’s final determination that PSERS engaged in a noncriminal investigation exempting the requested documents from disclosure.

A. ***Pa. Dep't of Public Welfare v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014)**

In *Chawaga*, attorney Stephen Chawaga requested a Department of Public Welfare (“DPW”) performance audit report pursuant to the RTKL. The OOR granted in part and denied in part his request, and DPW appealed.

1. Unlike DPW, PSERS Engaged in a Noncriminal Investigation

DPW argued that its performance audit report was exempt from disclosure under the RTKL as part of a noncriminal investigation. The Commonwealth Court rejected this argument, finding that “DPW’s performance audit report was not part of a ‘systematic or searching inquiry’ or a ‘detailed examination.’” *Chawaga*, 91 A.3d at 259. “Rather, DPW conducted a one-time inquiry into [the National Comprehensive Center for Fathers’] finances by interviewing management; reviewing the general ledger, payroll records, invoices, and client case files; inventorying the manufacturing equipment; and examining various other supporting documents.” *Id.*

In stark contrast to DPW’s activities, beginning in the summer of 2020, PSERS engaged in comprehensive and repeated detailed inspection into its performance reporting and calculation of the shared risk/shared gain provision for the time period ending June 30, 2020. Williams Attestation ¶ 39. Unlike DPW, PSERS did not merely “review[] the general ledger, payroll records, invoices, and client case files.” *Chawaga*, 91 A.3d at 259. In addition to the extensive back-and-forth review process PSERS engages in with its expert consultant Aon during the course of its routine activities, PSERS staff had Aon perform additional targeted examination into the size and scope of financial return adjustments over a historical period, the reasons that PSERS’ consultants reported certain figures, whether the Comprehensive Annual Financial Report or any other official financial document should be amended, and the use of previous returns in determining contribution calculations. Williams Attestation ¶ 40. These inquiries

were not part of PSERS' and Aon's routine activities, and these steps had not been a part of PSERS' prior calculations of the shared risk/shared gain provision. Rather, these steps were taken as part of PSERS' targeted investigation into the calculation of the shared risk/shared gain provision that arose in the wake of a perfect storm of factors in the summer of 2020.

Aon's supplementary inspection was not the only unique searching inquiry PSERS performed. The PSERS Board's Audit/Compliance Committee also engaged the performance verification firm ACA to conduct the verification of the investment return for the nine years ending on June 30, 2020. *Id.* ¶ 41. The purpose was to, *inter alia*, to perform a calculation review of the investment performance data. *Id.* PSERS had never previously engaged ACA or any other performance verification firm to investigate its performance consultant's calculation process. There was nothing routine about the engagement of ACA, its scope of work, or the process PSERS undertook to investigate Aon's calculation of the shared risk/shared gain provision beginning in the summer of 2020.

2. Unlike DPW, PSERS Seeks to Protect Underlying Audit Materials

In *Chawaga*, the Commonwealth Court also instructed that, "[m]ore importantly, the RTKL specifically exempts the work papers underlying an audit without exempting the actual audit." 91 A.3d at 260 (citing 65 P.S. § 67.708(b)(17)(v)). Because the exemption includes work papers but not the resulting audit, the court presumed that "the General Assembly did not intend to exempt the actual performance audit report under principles of statutory construction." *Id.* (citing *Governor's Off. of Admin. v. Purcell*, 35 A.3d 811, 816 (Pa. Commw. Ct. 2011)).

Here, Requesters do not seek disclosure of an audit report or any final findings. Instead, they seek the communications and work product exchanged during the course of the execution of an audit. However, communications between PSERS and its agents, including the attachments to

those communications, constitute investigative materials, notes, correspondence, and reports, which are exempt from disclosure under 65 P.S. § 67.708(b)(17)(ii).

The plain language dictionary definition of an audit is “a formal examination of an organization’s or individual’s accounts or financial situation,” “the final report of an audit,” or “a methodical examination and review.” *Audit, Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/audit> (last visited September 16, 2021). Black’s Law Dictionary provides a similar definition: “A formal examination of an individual’s or organization’s accounting records, financial situation, or compliance with some other set of standards.” *Audit, Black’s Law Dictionary* (11th ed. 2019).

As PSERS has previously explained, PSERS’ investigation into the Fund’s performance reporting and the calculation of the shared risk/shared gain provision was unequivocally a formal examination of its accounting records, financial situation, and compliance with accounting standards. Williams Attestation ¶¶ 46–47. Via its own investigation in the summer, fall, and winter of 2020, and through its engagement of ACA, PSERS’ investigative activities constituted an audit. Accordingly, the requests for correspondence between PSERS, Aon, ACA, and Buck regarding this investigation of PSERS’ calculation of the shared risk/shared gain provision are, in fact, requests for underlying audit materials that are exempt from disclosure under 65 P.S.

§ 67.708(b)(17)(v). *Id.* *Chawaga* demands no other outcome.

3. Unlike DPW, PSERS Acted Within Its Legislatively Granted Fact-Finding and Investigative Powers

The *Chawaga* court also rejected DPW’s argument that the performance audit report was exempt from disclosure as a noncriminal investigation because “an ‘investigation’ in the context of section 708 of the RTKL [is defined] as a systematic or searching inquiry, a detailed examination, or an official probe[.]” and “[a]n official probe only applies to noncriminal

investigations conducted by an agency acting within its legislatively granted fact-finding and investigative powers.” 91 A.3d at 258–59 (citations and internal quotations omitted). The court held that “DPW’s performance audit was not part of the DPW’s legislatively granted fact-finding or investigative powers; rather, the audit was ancillary to DPW’s public assistance services.” *Id.* at 259. As Requesters quoted in part in their request for reconsideration, the court further explained that “[a] contrary interpretation of an ‘official probe’ would craft a gaping exemption, under which any governmental information-gathering could be shielded from disclosure.” *Id.*

However, despite Requesters’ assertions to the contrary, PSERS is not asking the OOR to craft a contrary interpretation. PSERS’ noncriminal investigation constituted an official probe as defined under the RTKL and applied by *Chawaga* because, unlike DPW, PSERS was acting in its legislatively granted fact-finding or investigative powers when it conducted its noncriminal investigation into the calculation of the shared risk/shared gain provision. As PSERS set forth in its original brief, and as held by the OOR:

While it is uncontested that PSERS and other agencies did, and continue to, investigate the calculation error, the OOR notes that the PSERS board is granted the “power and privileges of a corporation,” 24 Pa.C.S. § 8501(e), and is governed by a Statement of Organization Bylaws, and Other Procedures. Article VI of Section 4.2(b) sets forth the Audit/Compliance Committee duties, which include, but are not limited to, reviewing the findings and recommendations of any examination by regulatory agencies, auditor, staff and/or consultant observations related to compliance. The Committee is also empowered to oversee special investigations as needed. The Board has “exclusive control and management” of the fund and has the authority to perform “such other functions as are required” for the execution of its administrative duties. 24 Pa.C.S. §§ 8521(a), 8502. Thus, PSERS has the requisite statutory authority to perform noncriminal investigations; however, not all agency fact-finding constitutes a noncriminal investigation. *Pa. Dep’t of Pub. Welf. v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014).

Final Determination 16–17.

Accordingly, PSERS has checked each box set forth by the *Chawaga* court supporting the conclusion that the agency engaged in activities exempting records from disclosure. For all

these reasons, the Commonwealth Court’s decision in *Chawaga* supports the OOR’s final determination as originally issued.

B. Cal. Univ. of Pa. v. Schackner, 168 A.3d 413 (Pa. Commw. Ct. 2017) &

In *Schackner*, the court reiterated that, “[i]n construing the noncriminal investigation exemption in the context of section 708 of the RTKL, this Court has determined that the agency needs to show that it conducted an ‘investigation,’ which is defined as a ‘systematic or searching inquiry, a detailed examination, or an official probe.’” 168 A.3d at 418 (quoting *Dep’t of Health v. Off. of Open Recs.*, 4 A.3d 803, 811 (Pa. Cmwlth. 2010)). The court added that, “[a]bsent evidence of bad faith, the veracity of an agency’s submissions explaining reasons for nondisclosure should not be questioned.” *Id.* (quoting *Off. of Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

Attempting to trivialize PSERS’ activities in the summer of 2020, Requesters claim it is “instructive” that Ms. Williams’ affidavit described PSERS’ investigation as a “detailed examination,” “detailed review,” and “review.” This line of argument disregards, diminishes, and fails to address Pennsylvania courts’ unwavering instruction that, “as used in Section 708(b)(17), the term ‘investigation’ means a systematic or searching inquiry, **a detailed examination**, or an official probe.” *Dep’t of Health*, 4 A.3d at 811 (emphasis added).

Furthermore, although “[m]erely performing routine duties, such as determining the cause of a structure failure and the cost of its repairs, does not amount to an official probe or an investigation,” *Schackner*, 168 A.3d at 418, there was nothing routine about the activities undertaken by PSERS in the summer of 2020. It is true that in its day-to-day activities, PSERS must respond to shifting frameworks and changing market dynamics. Those dynamics, even in a volatile market, rarely require PSERS to change its day-to-day activities and routine, ordinary course of business practices.

However, there is a stark and material difference between a volatile stock market and a global pandemic that caused a worldwide economic crash. PSERS, responding to these external forces and increased internal scrutiny, took steps far beyond its routine duties to investigate the propriety of the processes and procedures underlying the calculation of the investment return for the nine years ending on June 30, 2020. These steps included supplemental, targeted inquiries with Aon that had never been part of PSERS' process in any prior calculation, as well as the engagement of ACA to conduct the verification of the investment return. Requesters might paint PSERS' actions in a routine light with sweeping language of regular "reviews," but that paint strips away when the actual actions of the agency are examined in contrast to its traditional day-to-day activities. There is no comparison.

C. Sherry v. Radnor Twp. Sch. Dist., 20 A.3d 515 (Pa. Commw. Ct. 2011)

Finally, *Sherry* no more changes the outcome. There, the Commonwealth Court closely examined the definition of a noncriminal investigation under the RTKL. Quoting yet again from *Department of Health v. Office of Open Records*, 4 A.3d 803 (Pa. Cmwlth. 2010), the same case PSERS cited for the definition of a noncriminal investigation in its original brief, the *Sherry* court explained:

While Section 708(b)(17) clearly exempts from public disclosure "record[s] of an agency relating to a noncriminal investigation," the RTKL does not define "noncriminal" or "investigation." It is well settled that, "[w]hen a statute fails to define a term, the term's ordinary usage applies." *Educ. Mgmt. Servs. v. Dep't of Educ.*, 931 A.2d 820, 825–26 (Pa. Cmwlth. 2007). Moreover, "[d]ictionaries provide substantial evidence of a term's ordinary usage." *Id.* We initially conclude that the use of the word "noncriminal" in Section 708(b)(17) is intended to signal that the exemption is applicable to investigations other than those which are criminal in nature. This conclusion is supported by the fact that Section 708(b)(16) of the RTKL also exempts records "relating to or resulting in a criminal investigation." 65 P.S. § 67.708(b)(16). Thus, our inquiry here is focused on determining the meaning of the term "investigation." Black's Law Dictionary does not define the term "investigation"; however, it defines the term "investigate" as follows: "1. To inquire into (a matter) systematically; to make (a suspect) the subject of a criminal inquiry.... 2. To make an official inquiry...." Black's Law

Dictionary 902 (9th ed. 2009). Webster's Third New International Dictionary defines the term "investigation" as follows: "1: the action or process of investigating: detailed examination ... 2. a searching inquiry: ... an official probe...." Webster's Third New International Dictionary 1189 (2002). ***Therefore, we conclude that, as used in Section 708(b)(17), the term 'investigation' means a systematic or searching inquiry, a detailed examination, or an official probe.***

20 A.3d at 522–23 (emphasis added) (quoting *Dep't of Health*, 4 A.3d at 810–811).

For all the reasons PSERS has extensively detailed, through its repeated targeted investigation efforts with Aon and its supplemental engagement of ACA to investigate the investment performance data for the nine years at issue, PSERS performed a searching inquiry, detailed examination, and official probe into its performance reporting and calculation of the shared risk/shared gain provision for the time period ending June 30, 2020.

Requesters insist that PSERS did not engage in an investigation until March 2021, when the PSERS Board passed a resolution authorizing its Audit/Compliance Committee to oversee an investigation into a possible error in the reporting of investment performance results. Requesters fail to acknowledge, however, that PSERS conducted distinct noncriminal investigations: (1) an affirmative investigation into the processes and procedures of its performance reporting and calculation of the shared risk/shared gain provision beginning in the summer of 2020; and (2) a reactive, retrospective investigation into a possible error in that calculation beginning in March 2021. The fact that PSERS later determined that a subsequent, retroactive investigation was also necessary has no bearing on the fact that PSERS had previously investigated its performance reporting and calculation of the shared risk/shared gain provision beginning in the summer of 2020.

IV. CONCLUSION

For the foregoing reasons, PSERS submits that the OOR did not err in fact or law in the issuance of its final determination, and respectfully requests that the OOR uphold its original determination.

November 23, 2021

Respectfully Submitted,

Charles K. Serine

Charles K. Serine, Acting Chief Counsel

The Pennsylvania Public School Employees'
Retirement System

OOR Exhibit 17

From: [Garden, Andrew K.](#)
To: [Burlew, Erin](#); [Applegate, Kyle](#)
Cc: ["pknudsen@rcfp.org"](#); [Serine, Charles](#); [Feltoon, Robert](#); [Kent, Kevin](#); [Martin, Craig C.](#); [Amert, Amanda S.](#); [Basil, Matt D.](#); ["Gamer, Samuel J."](#)
Subject: [External] McCoy v. PSERS, No. AP 2021-1856 - Position Statement by Aon Investments USA, Inc. Regarding Request for Reconsideration
Date: Tuesday, November 23, 2021 16:47:56
Attachments: [2021-11-23 Aon OOR Reconsideration Position Statement.pdf](#)

ATTENTION: *This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.*

Dear Ms. Burlew and Mr. Applegate:

On behalf of Direct Interest Participant Aon Investments USA, Inc., I attach Aon's Position Statement Regarding Request for Reconsideration in the referenced matter. I have copied all parties.

Kindly confirm receipt.

Respectfully,

Andrew Garden

Andrew K. Garden, Esquire | Conrad O'Brien PC

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**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS**

IN THE MATTER OF:

CRAIG MCCOY and THE PHILADELPHIA
INQUIRER,

Requesters,

Docket No. AP 2021-1856

v.

PENNSYLVANIA PUBLIC SCHOOL
EMPLOYEES' RETIREMENT SYSTEM,

Respondent,

and

AON INVESTMENTS, USA INC.,

Direct Interest Participant,

and

BUCK GLOBAL, LLC,

Direct Interest Participant.

**POSITION STATEMENT BY AON INVESTMENTS USA, INC.
REGARDING REQUEST FOR RECONSIDERATION**

Aon Investments USA, Inc. ("Aon") respectfully requests that the Office of Open Records (the "OOR") reconfirm its holding when reviewing the petition of Craig McCoy, Joseph DiStefano, and The Philadelphia Inquirer (collectively, "Requester") seeking reconsideration of the OOR's Final Determination as to communications three consulting firms, including Aon,

conducted with respondent Public School Employees' Retirement System ("PSERS").¹ Because the PSERS investigation in question began in Summer 2020 (the "Summer 2020 Investigation"), those communications are exempt noncriminal investigative records pursuant to 65 P.S. § 67.708 (b)(17), and the OOR should uphold its initial finding.

In its Final Determination, the OOR properly found that beginning with the Summer 2020 Investigation, Aon's (and the other consulting firms') correspondence with PSERS constituted noncriminal investigative records and were exempt from the Request.² *McCoy v. Pa. Pub. Sch. Sys.*, No. AP 2021-1856, 19–20 (Off. Of Open Recs. Oct. 18, 2021) ("Final Determination"). That decision was well supported by precedent and the record. *Id.* (citing Attestation of Evelyn Williams ("Williams Attestation")); *see also* 65 P.S. § 67.708 (b)(17); *Ca. Univ. of Pa. v. Schackner*, 168 A.3d 413, 418–19 (Pa. Commw. Ct. 2017); *Pa. Dep't of Pub. Welfare v. Chawaga*, 91 A.3d 257, 258–59 (Pa. Commw. Ct. 2014); *Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 521–24 (Pa. Commw. Ct. 2011)). Accordingly, on reconsideration, the OOR should confirm its decision that the noncriminal investigation exemption applies to those communications.

Under the Right-to-Know Law ("RTKL"), "[i]nvestigative materials, notes, correspondence and reports" relating to the record of an agency's noncriminal investigation are "exempt from access by a requester." 65 P.S. § 67.708 (b)(17). The noncriminal investigation

¹ With respect to Aon, the communications at issue are defined in the Requester's request 4C (the "Request"), which seeks "a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from December 2020 to the present, between PSERS staff and any employee or representative of Aon, related to the [] discovery of, or the identification of an error in, calculating the historical investment performance, as part of the shared-risk determination." Final Determination at 2.

² In addition to its findings relating to the noncriminal investigation exemption, the OOR also determined that "Aon provided PSERS with information that meets the definition of a trade secret under the RTKL." *Id.* at 23. Accordingly, the OOR found that PSERS could "redact or withhold any of Aon's trade secrets from any responsive records." *Id.* This finding is not under reconsideration by the OOR.

exemption applies to “investigations other than those which are criminal in nature.” *Sherry*, 20 A.3d at 522. For an agency’s actions to be investigative within the meaning of the RTKL, they must be a “systematic or searching inquiry, a detailed examination, or an official probe.” *Schackner*, 168 A.3d at 418 (internal quotation and citation omitted); *Sherry*, 20 A.3d at 523 (internal quotation and citation omitted); *Chawaga*, 91 A.3d at 258–59 (internal quotation and citation omitted). They also must be beyond the agency’s “routine duties.” *Schackner*, 168 A.3d at 419.

In *Chawaga*, the court described “systematic and searching inquir[ies]” and “detailed examination[s]” as those that are “regular and repeated.” 91 A.3d at 259. An agency’s “one-time inquiry” is insufficient to be deemed an investigation under the RTKL. *Id.* And an agency conducts an “official probe” when it acts “within its legislatively granted fact-finding and investigative powers.” *Id.* at 259 (internal quotation and citation omitted) (finding no official probe where an agency’s audit of a company’s compliance with two agency contracts was “ancillary” to that agency’s “public assistance services,” and therefore, the noncriminal investigation exemption did not apply); *see also Schackner*, 168 A.3d at 419 (internal quotation and citation omitted). Thus, in order to be exempted, the investigation must be “undertaken as a part of an agency’s official duties.” *Id.* at 418 (internal quotation and citation omitted).

Additionally, to invoke the exemption, an agency’s actions must go beyond its “routine duties.” *Schackner*, 168 A.3d at 419. For example, in *Schackner*, a public university claimed that under the RTKL, records relating to its actions following the collapse of an on-campus parking garage were exempt noncriminal investigative records. 168 A.3d at 416. The court determined that the exemption did not apply because the university failed to show how “determining the cause of the structure failure and the cost of repairs” were both (1) part of the university’s official duties;

and (2) beyond its routine responsibilities. *Id.* at 418–19. By contrast, in *Sherry*, a school district claimed that records of students’ honor code violations were exempt noncriminal investigative records under the RTKL. 20 A.3d at 517. There, the court found that in maintaining these records, the school district’s actions exceeded its routine duties, but fell within the scope of its official duties. *Id.*

Here, the record establishes that the Summer 2020 Investigation was: (1) noncriminal; (2) a systematic or searching inquiry, a detailed examination, or an official probe; and (3) beyond PSERS’ routine duties, but within the scope of its official duties. Accordingly, records of that investigation fall within the noncriminal investigative records exemption.

First, the record in this case establishes that PSERS’ investigation was other than criminal. *Sherry*, 20 A.3d at 522. During the Summer 2020 Investigation, PSERS examined why its own net investment returns appeared close to triggering a shared risk/shared gain provision of the Pennsylvania Retirement Code, 24 P.S. § 8321(b). Final Determination at 15, 17 (citing Williams Attestation, at ¶¶ 38–39). PSERS investigation of its own investment performance was not criminal in nature.

Second, the Summer 2020 Investigation was an investigation within the meaning of the RTKL. The Summer 2020 Investigation was a “systematic and searching inquiry” and a “detailed examination” of PSERS’ performance and reporting calculations. *Chawaga*, 91 A.3d at 259; *see also* Williams Attestation at ¶¶ 38–41. As the OOR previously found, throughout that time, Aon regularly and repeatedly communicated with PSERS regarding “the size and scope of financial return adjustments over a historical period, the reasons that PSERS’ consultants reported certain figures, whether the Comprehensive Annual Financial Report (‘CAFR’) or any other financial document should be amended, and the use of previous returns in determining contribution

calculations.” Final Determination at 15; *see also* Williams Attestation at ¶ 40. This correspondence began during the Summer 2020 Investigation and continued up through December 2020 when the shared-risk rate calculation was certified. Final Determination at 15 (citing Williams Attestation at ¶¶ 43, 45). Unlike *Chawaga*, where there was only one inquiry, Aon’s continuing correspondence with PSERS demonstrates that the Summer 2020 Investigation was systematic, searching, and detailed.

Furthermore, the Summer 2020 Investigation was an “official probe.” PSERS’ in-depth examination of its performance reporting and calculations was within the ambit of “its legislatively granted fact-finding and investigative powers,” *Id.* at 259. As the OOR described:

the PSERS board is granted the “power and privileges of a corporation,” 24 Pa.C.S. § 8501(e), and is governed by a Statement of Organization Bylaws, and Other Procedures. Article VI of Section 4.2(b) sets forth the Audit/Compliance Committee duties, which include, but are not limited to, reviewing the findings and recommendations of any examination by regulatory agencies, auditor, staff and/or consultant observations related to compliance. The Committee is also empowered to oversee special investigations as needed. The Board has “exclusive control and management” of the fund and has the authority to perform “such other functions as are required” for the execution of its administrative duties. 24 Pa.C.S. §§ 8521(a), 8502.

Final Determination at 16–17 (footnote omitted). PSERS’ actions in investigating its performance reporting and calculations for the pension fund are analogous to the *Sherry* school district’s maintenance of disciplinary records for its students. 20 A.3d at 517. In both sets of circumstances, the agencies acted within their “legislatively granted fact-finding or investigative powers.” *Chawaga*, 91 A.3d at 259. Accordingly, the PSERS investigation was within its official duties.

Lastly, the Summer 2020 Investigation was anything but routine. *Schackner*, 168 A.3d at 419. The investigation commenced in light of concerns that the unprecedented COVID-19 pandemic may have impacted the global market and, in turn, investment performance. Final

Determination at 17; Williams Attestation at ¶ 38. The unique context in which the Summer 2020 Investigation began indicates that PSERS' actions were beyond their routine duties.

For these reasons, the Summer 2020 Investigation was a noncriminal investigation under the RTKL. Because Aon's correspondence with PSERS throughout the Summer 2020 Investigation was a record of that noncriminal investigation, the OOR should confirm its finding that the correspondence is subject to the noncriminal investigation exemption under 65 P.S. § 67.708 (b)(17).

Dated: November 23, 2021

Respectfully submitted,

/s/ Andrew K. Garden

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CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below I caused a true and correct copy of the foregoing document, including attachments, to be served on the following individuals by electronic mail:

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OOB Exhibit 18

From: [Burlew, Erin](#)
To: [McCoy, Craig](#); [Serine, Charles](#); [Joseph DiStefano](#); [Paula Knudsen Burke](#)
Cc: [agarden@conradobrien.com](#); [David.Godofsky@alston.com](#)
Subject: McCoy v. PSERS, OOR Dkt. AP 2021-1856, final determination upon reconsideration
Date: Monday, December 6, 2021 11:19:00
Attachments: [2021-1856R_McCoy_PSERS_FDUR.pdf](#)

Parties-

Please find attached a copy of the OOR's Final Determination upon Reconsideration in the above captioned appeal.

Sincerely,



Erin Burlew

Attorney

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FINAL DETERMINATION
UPON RECONSIDERATION

IN THE MATTER OF

**CRAIG MCCOY, JOSEPH DISTEFANO
AND THE PHILADELPHIA INQUIRER,
Requester**

v.

**PENNSYLVANIA PUBLIC SCHOOL
EMPLOYEES' RETIREMENT SYSTEM,
Respondent**

Docket No: AP 2021-1856

and

**AON INVESTMENTS, USA INC,
Direct Interest Participant**

and

**BUCK GLOBAL, LLC,
Direct Interest Participant**

INTRODUCTION

Craig McCoy, Joseph DiStefano and The Philadelphia Inquirer (collectively "Requester") submitted a request ("Request") to the Pennsylvania Public School Employees' Retirement System ("PSERS") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*, seeking, in relevant part, written communications between PSERS staff and three consulting firms. PSERS partially denied the Request, arguing it was insufficiently specific and that responsive records are

exempt criminal and noncriminal investigative records. The Requester appealed to the Office of Open Records (“OOR”). The OOR granted in part, denied in part, and dismissed as moot in part the appeal and the Requester filed a Petition for Reconsideration. For the reasons set forth in this Final Determination upon Reconsideration, the appeal is **granted in part, denied in part and dismissed as moot in part**, and PSERS is required to take additional action as directed.

FACTUAL BACKGROUND

On May 19, 2021, the Request was filed, stating, in relevant part:

3A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of ACA Compliance Group, related to investment performance reporting.

3B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of ACA, related to risk-sharing calculations.

3C - Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos), from December 2020 to the present, between PSERS staff and any employee or representative of ACA, related to the discovery or identification of an error in calculating the historical investment performance, as part of the shared-risk determination. Please include, for example, the notice given ACA on Feb. 18, 2021 that Aon’s source data was in error, and details of such error and its effect on the scale and direction of the calculation, and other notices related to the error.

4A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Aon, related to investment performance reporting; including but not limited to memos Aon sent PSERS on March 5, 2021 and April 16, 2021 and since that date.

4B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Aon, related to risk-sharing calculations.

4C- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from December 2020 to the present,

between PSERS staff and any employee or representative of Aon, related to the [] discovery of, or the identification of an error in, calculating the historical investment performance, as part of the shared-risk determination.

5A- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to investment performance reporting.

5B- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from January 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to risk-sharing calculations.

5C- Please provide a copy of all written communications, electronic or otherwise (for example, e-mails, texts, letters, memos) from December 2020 to the present, between PSERS staff and any employee or representative of Buck Global, related to the [] discovery of, or the identification of an error in, calculating the historical investment performance, as part of the shared-risk determination.

On August 25, 2021, following several extensions to respond, 65 P.S. § 67.902(b), PSERS partially denied the Request, providing some responsive records and arguing that certain Items are insufficiently specific, 65 P.S. § 67.703 and, alternatively, that the requested records would all be exempt criminal and noncriminal investigative records, 65 P.S. §§ 67.708(b)(16)-(17).

On September 3, 2021, the Requester appealed to the OOR, challenging the denial of Items 3-5 only and stating grounds for disclosure.¹ The OOR invited both parties to supplement the record and directed the PSERS to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On September 8, 2021, PSERS requested to keep the record open for an additional five days. The Requester consented to the extension and, on the same date, the OOR extended the final determination issuance date accordingly. 65 P.S. § 67.1101(b)(1).

¹ The Requester initially granted the OOR a 30-day extension to issue a final determination and on October 6, 2021, granted the OOR additional time. See 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

On September 21, 2021, the OOR received a statement under Section 1101(c) of the RTKL from Aon Investments USA, Inc. (“Aon”) asserting that it has a direct interest in this matter, and it is not being represented by the other parties. Aon asserts that the requested information would contain its confidential proprietary information that is exempt under the RTKL. *See* 65 P.S. § 67.708(b)(11). With this Final Determination, the OOR grants Aon Direct Interest Participant status.

On September 21, 2021, the OOR received a statement under Section 1101(c) of the RTKL from Buck Global, LLC (“Buck”) asserting that it has a direct interest in this matter, and it is not being represented by the other parties. Buck asserts that Items 5A-C are insufficiently specific and that it objects to the production of any Excel spreadsheets in native format as those include proprietary formulas and confidential macros. *See* 65 P.S. § 67.708(b)(11). With this Final Determination, the OOR grants Buck Direct Interest Participant status.

On September 21, 2021, PSERS submitted a position statement reiterating its grounds for denial. PSERS claims that the Items at issue are insufficiently specific, relate to a noncriminal investigation, and responsive records contain trade secrets or confidential proprietary information, 65 P.S. § 67.708(b)(11).² In support of its position, PSERS submitted the statement made under the penalty of perjury of Evelyn Williams, PSERS’ Open Records Officer and Communications Director.

On September 23, 2021, the Requester submitted additional argument in support of the appeal.³ The Requester disclaims any interest in Excel formulas and trade secrets and makes no

² In its submission, PSERS did not address the argument asserted in its denial letter that the records are criminal investigative records; as such, the OOR deems the argument abandoned on appeal and will not address that issue in this Final Determination.

³ The Requester’s September 23, 2021, submission was received after the record closed; however, to develop the record, the submission was considered. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”).

objection to the redaction of such information but cautions that the calculation of investment returns is a matter of arithmetic that is of great interest to a lay audience.

On October 18, 2021, the OOR issued a final determination and on October 27, 2021, the Requester filed a Petition for Reconsideration, challenging the OOR's determination that records created in summer 2020 were exempt noncriminal investigative records and arguing those records are records of routine agency duties. On November 8, 2021, the OOR granted the Petition for Reconsideration, instructing the parties to address how certain Commonwealth Court decisions and other cases involving an agency's performance of routine duties apply to the actions taken by PSERS. On November 23, 2021, PSERS submitted a response to the Petition for Reconsideration, and the Requester submitted additional argument in support of reconsideration. Aon also submitted argument on November 23, 2021, opposing reconsideration.

LEGAL ANALYSIS

"The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government." *SWB Yankees L.L.C. v. Wintermantel*, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is "designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions." *Bowling v. Office of Open Records*, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), *aff'd* 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. *See* 65 P.S. § 67.503(a). An appeals officer is required "to review all information filed relating to the request" and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing

to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. *Id.* Here, neither party requested a hearing.

PSERS is a Commonwealth agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and respond within five business days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemptions. *See* 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: “(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.” 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

1. The Items are sufficiently specific in part

During the response period, PSERS contacted the Requester seeking more information to assist with the search for records. Specifically, PSERS asked for a narrower subject matter and the individual/individuals for whom they were requested records for Items 3A-B, 4A-B, and 5A-B. PSERS did not request any clarification for Items 3C, 4C and 5C. On June 8, 2021, the

Requester provided a response narrowing the Request language. The Requester clarified the Items as follows:

- a. 3A sought “the engagement letter and contract for ACA; and correspondence between Glen Grell, Jackie Lutz, Cathy Gusler, Chris Santa Maria, Francis X. Ryan Sen. Patrick Browne, and James Grossman, Tom Bauer, Charles Spiller, all of PSERS and Christie Horsman Dillard, Karen Foley and Kemmling, of ACA; and other ACA employees in relation to the contract.”
- b. 4A sought: “the engagement letter and contract for AON, further correspondence regarding the 2020 [‘]risk-sharing[’] calculation including reports sent by AON to PSERS regarding that calculation in the second half of 2020 and in 2021, including correspondence between Glen Grell, Jackie Lutz, Chris Santa Maria, Francis X. Ryan, Sen. Patrick Browne; James Grossman, Tom Bauer, Charles Spiller, all of PSERS; and Steve Voss and Claire Shaughnessy of AON and other AON employees related to that contract.”
- c. 4B was clarified to seek records of the parties named in 4A
- d. 5A sought: “correspondence involving Glen Grell, Sen. Patrick Browne; James, Grossman, Tom Bauer, Charles Spiller, all of PSERS; and Buck employees David Driscoll; Edward Quinn and Salvador Nakar, and other Buck employees related to that cont[r]act.”
- e. 5B also sought “correspondence involving Glen Grell, Sen. Patrick Browne; James, Grossman, Tom Bauer, Charles Spiller, all of PSERS; and Buck employees David Driscoll; Edward Quinn and Salvador Nakar, and other Buck employees related to that cont[r]act.”

The Requester did not clarify Item 3B as requested.

Although a Requester may not modify the Request on appeal; here, PSERS properly sought clarification at the request stage, *see Office of the Governor v. Engelkemier*, 148 A.3d 522, 532-33 (Pa. Commw. Ct. 2016) (an agency’s failure to object to specificity and seek further clarification during the request stage is a factor in determining whether a request is sufficiently specific), thus the OOR will review the Request for specificity following the June 8, 2021 clarification. In the Requester’s appeal response, there is an attempt to modify the Items by asking PSERS to “put aside the references to “other PSERS’ staff,” “other ACA employees,” “other AON employees,”

“other Buck employees,” etc.” This is an improper modification and the OOR cannot consider it on appeal.⁴

PSERS partially denied the Items arguing they are insufficiently specific but did provide the engagement letters and contracts. In its appeal submission, PSERS asserts that Items 3-5 are insufficiently specific even with the June 8, 2021 clarification because the Requester did not sufficiently limit either the scope or the subject matter of the records requested. PSERS makes no objection to the timeframe within the Request.

Section 703 of the RTKL states that “[a] written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested.” 65 P.S. § 67.703. When interpreting a RTKL request, agencies should rely on the common meaning of words and phrases, as the RTKL is remedial legislation that must be interpreted to maximize access. *See Gingrich v. Pa. Game Comm’n*, No. 1254 C.D. 2011, 2012 Pa. Commw. Unpub. LEXIS 38 at *16 (Pa. Commw. Ct. 2012) (citing *Bowling*, 990 A.2d 813). In determining whether a particular request is sufficiently specific, the OOR uses the three-part balancing test employed by the Commonwealth Court in *Pa. Dep’t of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121 (Pa. Commw. Ct. 2015), and *Carey v. Pa. Dep’t of Corr.*, 61 A.3d 367, 372 (Pa. Commw. Ct. 2013). First, “[t]he subject matter of the request must identify the ‘transaction or activity’ of the agency for which the record is sought.” *Pa. Dep’t of Educ.*, 119 A.3d at 1125. Second, the scope of the request must identify a discrete group of documents (e.g., type or recipient). *See Id.* at 1125. Third, “[t]he timeframe of the request should identify a finite period of time for which the records are sought.” *Id.* at 1126. This factor is the most fluid and is

⁴ The Commonwealth Court has held that a requester may not modify or expand a request on appeal. *See Pa. State Police v. Office of Open Records*, 995 A.2d 515, 516 (Pa. Commw. Ct. 2010); *Michak v. Dep’t of Pub. Welfare*, 56 A.3d 925 (Pa. Commw. Ct. 2012) (holding that “where a requestor requests a specific type of record ... the requestor may not, on appeal argue that an agency must instead disclose a different record in response to the request”).

dependent upon the request's subject matter and scope. *Id.* Failure to identify a finite timeframe will not automatically render a sufficiently specific request overbroad; likewise, a short timeframe will not transform an overly broad request into a specific one. *Id.*

a. Item 3B is insufficiently specific due to lack of scope and broad subject matter

The scope of Item 3B “written communications” “between PSERS staff and any employee or representative of ACA” was never limited by the Requester, despite PSERS seeking clarification. PSERS argues that the Item is insufficiently specific because the scope is not limited by sender or recipient and has too broad of a subject matter. The scope of a request must identify a discrete group of documents. *Pa. Dep’t of Educ.*, 119 A.3d at 1125.

In *Mollick v. Twp. of Worcester*, the Commonwealth Court concluded that a request for “all emails between the Supervisors regarding any Township business” and “all emails between the Supervisors and the Township employees regarding any Township business and/or activities for the past one and five years” was insufficiently specific because it failed to specify “what category or type of Township business or activity for which [the requester was] seeking information.” 32 A.3d 859, 871 (Pa. Commw. Ct. 2011). Further, in *Montgomery County v. Iverson*, the RTKL request sought emails from the county’s domain to four other email domains, with the subject and body containing fourteen different search terms and no timeframe provided. 50 A.3d 281, 224 (Pa. Commw. Ct. 2012). The Commonwealth Court held that a request with no timeframe, a broad scope, and some “incredibly broad” keywords was insufficiently specific. *Id.* at 284.

In *Pa. State Police v. Office of Open Records*, the Commonwealth Court held that the portion of a request seeking “any and all records, files or communications” related to vehicle stops, searches, and seizures was insufficiently specific under Section 703 of the RTKL, and that only

the portion of the request seeking a particular type of document – manuals related to vehicle stops, searches, and seizures – was sufficiently specific. 995 A.2d 515, 517 (Pa. Commw. Ct. 2010). Here, the scope encompasses written communications between “all PSERS staff and any employee or representative of ACA.” This does not seek a clearly defined universe of documents. *See Pa. Dep’t of Env’tl. Prot. v. Legere*, 50 A.3d 260 (Pa. Commw. Ct. 2012).

Furthermore, the subject matter does not identify a transaction or activity of the agency with sufficient specificity. Ms. Williams attests that the “calculation of PSERS’ shared risk/shared gain provision is derived from its overall fund performance, meaning all of PSERS’ investments are tied to the shared risk/shared gain provision.” She affirms that the Item “call[s] for practically any and all documents in [PSERS’] possession related to the investment management of the Fund, which extends to the entire investment operation of PSERS.”⁵

This broad scope, combined with a subject matter that encompasses all of PSERS business, makes the Item insufficiently specific. *See Commonwealth v. Engelkemier*, 148 A.3d 522, 532-33 (Pa. Commw. Ct. 2016) (finding that a request with a broad subject matter requires a narrow scope and timeframe that render the request specific); *see also Shepherd v. Pa. Dep’t of Health*, OOR Dkt. AP 2020-2730, 2021 PA O.O.R.D. LEXIS 188 (finding that a RTKL request seeking emails amongst five individuals, including two organizations, with a timeframe of four months and no subject matter, is insufficiently specific). Item 3B seeks a broad subject matter and scope of records over a 15-month time period. Because there was no limitation on either scope or subject matter to limit the universe of potentially responsive records, this Item is insufficiently specific.

⁵ Under the RTKL, a sworn affidavit or statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that PSERS has acted in bad faith, “the averments in [the statement] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

b. Items 3A, 4A-B and 5A-B are insufficiently specific due to their broad subject matters and lengthy timeframe

PSERS argues that to the extent the Items above seek “any documents” or include communications with “all of PSERS staff,” or “all of PSERS,” the scope is too broad. However, on June 8, 2021, the Requester limited the scope of individuals whose communications were sought to a specific list for Items 3A, 4A-B, and 5A-B.

The scope of the Items encompasses “all written communications” regarding subject matters and the scope of Items 3A, 4A-B and 5A-B is limited to written communications between defined senders or recipients.

While the limitations did include the phrase “all of PSERS,” that phrase followed a list of PSERS staff or officials and is an identifier that the named individuals are all PSERS-related, rather than employees of the consulting firms. When limiting the scope of individuals, the Requester also identified groups of consulting firm employees and referred to them as “of” the firm. Furthermore, to the extent the Items initially read “PSERS staff” and “any employee or representative” of a consulting firm, that was clarified by the Requester on June 8, 2021 and should not have been considered by PSERS when performing a search for responsive records.

While responding to a RTKL request must entail a good faith effort to provide all of the records sought, it is not an exact science, and must also encompass reasonable discretion by the agency to identify and provide the requested information, particularly where the Request is a broad one. Here, the Requester defined the scope of Items 3A, 4A-B and 5A-B by the type of documents sought and recipients or senders within PSERS and the firms, and, by doing so, satisfied the scope element of the sufficiently specific test. *Office of the Dist. Atty. of Phila. v. Bagwell*, 155 A.3d 1119 (Pa. Commw. Ct. 2017). However, to the extent that the clarified Items used the phrase

“other employee of [firm] related to [that firm’s] contract,” that phrasing is insufficiently specific as it includes all firm employees.⁶

However, PSERS also argues that the subject matters of these Items are too broad. Items 3A, 4A and 5A seek communications between PSERS and each of the three firms “related to investment performance reporting,” and Items 4B and 5B seek communications between PSERS and two of the three firms “related to risk-sharing calculations.”

Ms. Williams attested that “calculation of PSERS’ shared risk/shared gain provision is derived from its overall fund performance, meaning all of PSERS’ investments are tied to the shared risk/shared gain provision.” She affirms that the Item “call[s] for practically any and all documents in [PSERS’] possession related to the investment management of the Fund, which extends to the entire investment operation of PSERS.”

Although a request with a limited scope and a broad subject matter may be sufficiently specific, the extremely broad subject matter of Items 3A, 4A-B, and 5A-B combined with a 15-month timeframe renders them insufficiently specific. *See Shepherd v. Pa. Dep’t of Health*, OOR Dkt. AP 2020-2730, 2021 PA O.O.R.D. LEXIS 188 (finding that a RTKL request seeking emails amongst five individuals, including two organizations, with a timeframe of four months and no subject matter, is insufficiently specific).

c. Items 3C, 4C and 5C are sufficiently specific

Items 3-5C seek communications between PSERS and each of the three firms “related to the discovery of, or the identification of an error in, calculating the historical investment performance, as part of the shared-risk determination.” PSERS did not seek clarification as to specific individuals whose communications were sought as it relates to this subject matter.

⁶ Per the communications between the parties, prior to the appeal, the firms have anywhere from 600 to 50,000 employees.

As Ms. Williams affirms, the agency business is investing and determining contribution rates of members and therefore records “related to” investment performance or the risk-sharing calculation would entail nearly every agency record. Conversely, the subject matter of records that relate to the discovery of, or the identification of an error in, calculating the historical investment performance, as part of the shared-risk determination is not insufficiently specific. It is well known that an error in the shared-risk calculation occurred and that PSERS re-certified a new calculation to rectify that error. *See Carey*, 61 A.3d at 372 (“[T]he specific subject matter and timeframe, coupled with the fact that the Transfer is well-known to DOC, suffice to apprise DOC of the records sought.”)

Here, the subject matter identifies a well-known matter of agency business but the Items do not identify senders and recipients. That is, the Items have a broad scope, specific subject matter and 15-month timeframe. The OOR has found that a request for “all communications” to and from a set of email addresses is a broad scope, though not necessarily unreasonable if there is sufficient limitation in either the subject matter or timeframe of a request. *Briggs v. City of Phila.*, OOR Dkt. AP 2019-0647, 2019 PA O.O.R.D. LEXIS 625 (finding a request insufficiently specific because of a lengthy timeframe). Unlike in *Briggs*, the Items here identify a specific subject matter – the discovery or identification of a calculation error. While 15 months is a lengthier timeframe, it is not so lengthy as to render it difficult to search for communications about the identification of such an error. Furthermore, when PSERS sought clarification to assist with the search, PSERS did not include Items 3C, 4C and 5C as Items it believed were insufficiently specific such that it could not perform a search for records. *See Engelkemier*, 148 A.3d 522, 532-33 (Pa. Commw. Ct. 2016) (an agency’s failure to object to specificity and seek further clarification during the request stage is a factor in determining whether a request is sufficiently specific).

Thus, Items 3C, 4C and 5C are sufficiently specific insofar as they identify a specific subject matter. PSERS must perform a good faith search to identify the records responsive to Items 3C, 4C, and 5C.

2. Some records are exempt noncriminal investigative records

While PSERS asserts that it was unable to identify records, it does acknowledge that potentially responsive records exist as PSERS has communicated with the various firms and asserts that the potentially responsive records are exempt noncriminal investigative records. Furthermore, as Items 3C, 4C, and 5C are sufficiently specific, PSERS may raise exemptions in support of withholding the records.

In *Pa. Dep't of Educ. v. Bagwell*, the Commonwealth Court explained:

[I]t is well-established that:

[A]n agency must raise all its challenges before the fact-finder closes the record. This will allow efficient receipt of evidence from which facts may be found to resolve the challenges. In the ordinary course of RTKL proceedings, this will occur at the appeals officer stage, and a reviewing court will defer to the findings of the appeals officer

In addition, there is no statutory authority for a two-step process. This Court recently rejected an agency's challenge to OOR's refusal to bifurcate proceedings to resolve an issue of insufficient specificity separate from the merits. We rejected bifurcation as infeasible given the timelines under the RTKL. This Court also reasoned an agency had ample opportunity to present evidence of substantive exemptions at the appeals officer level. When the agency did not submit evidence of exemptions, and rested on its specificity argument, this Court precluded the agency from submitting evidence of any exemptions on remand.

Pa. Dep't of Educ. v. Bagwell, 131 A.3d 638, 660 (Pa. Commw. Ct. 2016) (citations omitted).

PSERS was obligated to raise this exemption despite not identifying or reviewing potentially responsive records. PSERS is similarly obligated to provide sufficient evidence of the exemption.

Section 708(b)(17) of the RTKL exempts from disclosure records of an agency "relating to a noncriminal investigation," including "[i]nvestigative materials, notes, correspondence and

reports,” “work papers underlying an audit,” and “[a] record that, if disclosed, would...[d]eprive a person of the right to an impartial adjudication.” 65 P.S. §§ 67.708(b)(17)(ii),(v); 65 P.S. § 67.708(b)(17)(vi)(B). In order for this exemption to apply, an agency must demonstrate that “a systematic or searching inquiry, a detailed examination, or an official probe” was conducted regarding a noncriminal matter. *See Pa. Dep’t of Health v. Office of Open Records*, 4 A.3d 803, 810-11 (Pa. Commw. Ct. 2010). Further, the inquiry, examination, or probe must be “conducted as part of an agency’s official duties.” *Id.* at 814; *see also Johnson v. Pa. Convention Ctr. Auth.*, 49 A.3d 920 (Pa. Commw. Ct. 2012). An official probe only applies to noncriminal investigations conducted by agencies acting within their legislatively granted fact-finding and investigative powers. *Pa. Dep’t of Pub. Welfare v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014). To hold otherwise would “craft a gaping exemption under which any governmental information-gathering could be shielded from disclosure.” *Id.* at 259.

Here, at issue are written communications between the identified individuals related to the discovery or identification of the rate calculation error (Items 3-5C).⁷ In our Final Determination, the OOR determined that a noncriminal investigation began in summer 2020, and the Consultant Records are exempt noncriminal investigative materials. In the Petition for Reconsideration and supplemental argument, the Requester asserts that PSERS cannot meet its burden of proof that the Consultant Records are exempt noncriminal investigative records, and that they are in fact financial records that cannot be withheld in their entirety even if they are subject to an exemption.⁸

⁷ In the Requester’s Brief in Support of Requesters’ Petition for Reconsideration, the Requester use the term “Consultant Records” to describe the records at issue. The OOR will also use this term to describe records that were created prior to March 2021, when all parties acknowledge that a formal investigation began.

⁸ This is the first time the Requester asserts that the records are financial records and may not be withheld in their entirety; however, the OOR does not accept newly raised bases for disclosure in reconsiderations. *See Pa. Dep’t of Conserv. & Nat. Res. v. Vitali*, No. 1013 C.D. 2014, 2015 Pa. Commw. Unpub. LEXIS 479 (Pa. Commw. Ct. 2015) (stating the OOR cannot accept new evidence submitted in conjunction with a petition for reconsideration.)

The Requester argues that the Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. §§ 8101 *et seq*, requires actuarial review and annual audits and the actions described in Ms. William's affidavit are merely those routine duties and that the Consultant Records document routine, cyclical, legislatively mandated inquiries. Further, the Requester argues that PSERS has no authority to conduct special investigations.

Ms. Williams attests, in relevant part:

38. In the summer of 2020, as the global COVID-19 pandemic impacted global markets and investment performance, PSERS became aware that net investment returns were in the narrow range of potentially triggering the shared risk/shared gain provision.

39. PSERS launched a detailed examination into its performance reporting and calculation of the shared risk/shared gain provision for the time period ending June 30, 2020.

40. This detailed review included working in close coordination with Aon to investigate the size and scope of financial return adjustments over a historical period, the reasons that PSERS' consultants reported certain figures, whether the Comprehensive Annual Financial Report ("CAFR") or any other financial document should be amended, and the use of previous returns in determining contribution calculations.

41. This review also led the PSERS Board's Audit/Compliance Committee to engage an independent performance verification firm, ACA Compliance Group, to conduct the verification of the investment return for the nine years ending on June 30, 2020. The purpose of this review was, among other things, to perform a calculation review of the investment performance data.

42. PSERS' review included PSERS' work and communications with Buck.

43. PSERS's detailed review continued up through the certification of the shared-risk rate calculation in December 2020 and continues to the present day.

...

45. One reason the investigation exempts the requested materials from disclosure is that communications between PSERS and its agents Aon, ACA, and Buck, beginning in the summer of 2020, including the attachments to those communications constitute investigative materials, notes, correspondence, and reports....

46. Another reason the investigation exempts the requested materials from disclosure is that PSERS performed a formal examination of its accounting records through its own investigation in the summer, fall, and winter of 2020, and through its engagement of ACA....

47. These activities involved a formal examination of PSERS' accounting records, financial situation, and compliance with its own internal standards and broader accounting standards.

48. Furthermore, the investigation exempts the requested materials from disclosure because the records related to PSERS' noncriminal investigation, if released, could be accessed by members of the grand jury that has been empaneled to gather and evaluate information concerning the shared-risk calculation, depriving PSERS and its employees of the right to an impartial adjudication...

In the appeal submission, the Requester states:

It is true that the FBI and PSERS itself have launched inquiries into the calculation mistake...

There was debate within PSERS about the performance calculation as far back as August 2020. The fund hired ACA to review the numbers on Oct. 4, 2020, the contract shows....

All of this is before the FBI and PSERS itself launched special investigations of the matter, in late March 2021. The fund minutes shows that PSERS did not task its board audit committee to look into these issues until March 12, 20[21] and did not hire law firms for that purpose [until] March 19, 2021. The first federal grand jury subpoenas to the fund are dated March 24, 2021. And the fund's chief counsel, did not order staff to save documents related to the probes until April 8.

While it is uncontested that PSERS and other agencies did, and continue to, investigate the calculation error, the OOR notes that the PSERS board is granted the "power and privileges of a corporation," 24 Pa.C.S. § 8501(e), and is governed by a Statement of Organization Bylaws, and Other Procedures.⁹ Article VI of Section 4.2(b) sets forth the Audit/Compliance Committee duties, which include, but are not limited to, reviewing the findings and recommendations of any

⁹ Available at

<https://www.psers.pa.gov/About/Board/Documents/Governance%20Manual/Statement%20of%20Organization,%20Bylaws,%20and%20Other%20Procedures.pdf> (last accessed October 4, 2021).

examination by regulatory agencies, auditor, staff and/or consultant observations related to compliance. The Committee is also empowered to oversee special investigations as needed. The Board has “exclusive control and management” of the fund and has the authority to perform “such other functions as are required” for the execution of its administrative duties. 24 Pa.C.S. §§ 8521(a), 8502. Thus, contrary to the Requester’s assertion, PSERS does have the requisite statutory authority to perform noncriminal investigations or special investigations; however, not all agency fact-finding constitutes a noncriminal investigation. *Pa. Dep’t of Pub. Welf. v. Chawaga*, 91 A.3d 257 (Pa. Commw. Ct. 2014).

Items 3C, 4C and 5C seek records from January 2020 to the date of the Request; therefore, the date on which a noncriminal investigation commenced is determinative of which, if any, records are exempt. PSERS explains that there are several overlapping noncriminal investigations in this matter. According to PSERS, a noncriminal investigation was initiated by PSERS alone in the summer of 2020 as a result of the COVID-19 pandemic and its impact on global markets and investment performance. Ms. Williams affirms that PSERS became aware that the net investment returns were in the range that could potentially trigger the shared risk/shared gain provision of the Retirement Code, 24 Pa.C.S. § 8321(b), and so began reviewing its investment performance and calculations at that point. The Requester, meanwhile, argues that the summer 2020 activities were merely routine agency duties.

The Retirement Code provides:

(j) Actuarial investigation and valuation. The board shall have the actuary make an annual valuation of the various accounts of the fund within six months of the close of each fiscal year. In the fiscal year 1975 and in every fifth year thereafter, the board shall have the actuary conduct an actuarial investigation and evaluation of the system based on data including the mortality, service, and compensation experience provided by the board annually during the preceding five years concerning the members and beneficiaries of the system. The board shall by resolution adopt such tables as are necessary for the actuarial valuation of the fund

and calculation of contributions, annuities, and other benefits based on the reports and recommendations of the actuary....The board shall include a report on the significant facts, recommendations and data developed in each five-year actuarial investigation and evaluation of the system in the annual financial statement published pursuant to the requirements of subsection (n) for the fiscal year in which such investigation and evaluation were concluded.

24 Pa.C.S. § 8502(j). The Board is also required to provide for annual audits by an independent certified public accounting firm. 24 Pa.C.S. § 8502(o).

The Requester acknowledges that PSERS hired ACA to “review the numbers” on Oct. 4, 2020, and that special investigations by both the FBI¹⁰ and PSERS were launched in late March 2021. Thus, there are three relevant investigational timelines. First, the PSERS investigation, started in summer 2020 into the fund’s performance; second, any investigation that occurred following October 4, 2020, when ACA was hired to conduct the verification of the investment return for the nine years ending on June 30, 2020; and third, the PSERS investigation initiated in March 2021.¹¹

According to Ms. Williams, in summer 2020, PSERS began reviewing its investment performance and the calculation because the COVID-19 pandemic was affecting global markets and investment performance, and this might trigger the shared/risk shared gain provision. PSERS “launched a detailed investigation into its performance reporting and the calculation of the shared risk/shared gain provision for the time period ending June 30, 2020.” Ms. Williams Affidavit Para. 39. PSERS worked with Aon to investigate the size and scope of financial return adjustments, the

¹⁰ Section 708(b)(17) only protects records of the agency conducting the investigation. *See Hayes v. Pa. Dep’t of Public Welf.*, OOR Dkt. AP 2012-0415, 2012 PA O.O.R.D. LEXIS 530; *see also Bagwell v. Pa. Office of the Governor*, OOR Dkt. AP 2013-1551, 2013 PA O.O.R.D. LEXIS 1227 (finding records possessed by the Office that relate to an investigation conducted by a law firm on behalf of a state-related institution are not exempt under Section 708(b)(17)); *Silver v. City of Pittsburgh*, OOR Dkt. AP 2013-1395, 2013 PA O.O.R.D. LEXIS 886; *Hockeimer v. City of Harrisburg*, OOR Dkt. AP 2015-1853, 2015 PA O.O.R.D. LEXIS 1655, *affirmed by*, No. 2015-CV-9289-MP (Dauph. Com. Pl. Mar. 11, 2016).

¹¹ The Requester concedes that a special investigation commenced on March 12, 2021, with the adoption of a resolution instructing the Audit Committee to oversee an investigation into the possible error. *See Petition for Reconsideration*, ¶ 2; *Requesters’ Brief in Support of Requesters’ Petition for Reconsideration* § II.

reason for certain figures being reported and whether any official documents needed to be amended. The Requester acknowledges that there was “debate within PSERS about the performance calculation as far back as August 2020.” *See Pa. Game Comm’n v. Fennell*, 149 A.3d 101 (Pa. Commw. Ct. 2016) (holding that the OOR must consider uncontradicted statements in the appeal filing when construing exemptions); *see also Office of the Governor v. Davis*, 122 A.3d 1185, 1192 (Pa. Commw. Ct. 2015) (*en banc*) (holding that an affidavit may be unnecessary when an exemption is clear from the face of the record).

This investigation led to Audit/Compliance Committee to hire ACA in October 2020 “to conduct the verification of the investment return for the nine years ending on June 30, 2020. The purpose of this review was, among other things, to perform a calculation review of the investment performance data.” In March 2021, after certifying a rate that did not trigger the shared risk provision in December 2020, PSERS announced the discovery of the error and launched an investigation.

First, any written communications between the identified individuals related to the identification or discovery of the rate calculation error from January 2020 to the date the PSERS summer 2020 investigation began are not exempt. PSERS did not provide evidence that a noncriminal investigation was occurring at that point, as PSERS asserts that the first investigation began in summer 2020.

Ms. Williams attests that PSERS’ internal review beginning in summer 2020 is a formal examination of its accounting records; that is, an audit. PSERS argues that its investigation in the performance reporting and calculation was a formal examination of its accounting records, financial situation, and compliance with accounting standards and thus constitute an audit. Black’s Law Dictionary defines audit as “a formal examination of an individual’s or organization’s

accounting records, financial situation, or compliance with some other set of standards,” BLACK’S LAW DICTIONARY (11th ed. 2019), or “to make an official investigation and examination of accounts and vouchers.” BLACK’S LAW DICTIONARY Free Online 2nd Ed. By definition, a financial audit is an investigation and PSERS does have investigatory authority, including audit authority.

A financial audit report is a public record under the RTKL, 65 P.S. § 67.102, however, Section 708(b)(17)(v) specifically exempts works papers underlying an audit, 65 P.S. § 67.708(b)(17)(v). Therefore, the issue becomes whether the requested records are work papers underlying an audit, or constitute “investigative materials, notes, correspondence and reports.” 65 P.S. § 67.708(b)(17)(ii).

The RTKL does not define “work papers underlying an audit,” but the OOR has relied on the definition promulgated by the American Institute of Certified Public Accountants, which defines “work papers” as records of “the procedures applied, the tests performed, the information obtained, and the pertinent conclusions reached in the engagement.” *See Harmon v. Londonderry Twp.*, OOR Dkt. AP 2017-2276, 2018 PA O.O.R.D. LEXIS 140 (*citing Kelly & Assoc. v. NEIU*, 36 Pa. D. & C. 5th 300, 316 (Lackawanna C.C.P. 2014)).¹²

Ms. Williams attests that these “activities involved a formal examination of PSERS’ accounting records, financial situation and compliance with its own internal standards and broader accounting standards.” This conclusory statement is insufficient to demonstrate that any written communications between the identified individuals related to the discovery or identification of the

¹² This definition, including the section raised by the Department below, is found in the American Institute of Certified Public Accountants’ lists of standards archived as of 2017, indicating that those standards may no longer be in effect. *See* <https://pcaobus.org/Standards/Archived/Pages/AU339A.aspx>. However, the OOR is not relying on this definition as a statement of law, but as an interpretive aid in construing terms in the RTKL according to their common and approved usage. 1 Pa.C.S. § 1903(a). The OOR has no basis to believe that the common understanding of an auditor’s “working papers” has changed significantly since 2017.

calculation error are records of the procures, tests, information and pertinent conclusions.¹³ Specifically, there is no evidence that the communications contained any tests performed, or procedures applied that would make these records work papers underlying an audit.

However, Section 708(b)(17)(ii) exempts “investigative materials, notes, *correspondence* and reports.” 65 P.S. § 67.708(b)(17)(ii) (emphasis added). In *Cal. Univ. of Pa. v. Schackner*, 168 A.3d 413 (Pa. Commw. Ct. 2017), the Court determined that a University’s gathering of information regarding the cause of a parking garage structural failure was not a noncriminal investigation. The Court held that because the University did not show how the steps it took following the structural failure amounted to a noncriminal investigation and there was no showing that the University had an official duty to investigate the cause of the structural failure, the inquiry was ancillary to the University’s public safety services. Conversely, in *Sherry*, 20 A.3d 515, the Court determined that honor code violations were noncriminal investigative records because they surpass the District’s routine performance of its duties, comparing the honor code violation forms to Pennsylvania State Police incident reports. Finally, in *Chawaga*, 91 A.3d 257, the Court determined that a performance audit report was not part of a noncriminal investigation because it was neither a systematic or searching inquiry, a detailed examination, nor an official probe.

In this matter, PSERS’ daily activities include investment performance review; however, PSERS argues that there was nothing routine in the activities of summer 2020. In its Response to Reconsideration, PSERS acknowledges that in its day-to-day activities, it must respond to market volatility and changing market dynamics and that a volatile market rarely requires it to change its day-to-day activities and routine, ordinary course of business practices; but, in summer 2020, the

¹³ An agency cannot rely on conclusory statements to sustain its burden of proof. *See Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa Commw. Ct. 2013) (“[A] generic determination or conclusory statements are not sufficient to justify the exemption of public records”).

COVID-19 pandemic had caused a worldwide economic crash and PSERS asserts it took steps beyond its usual duties with regard to the shared risk provision.

Ms. Williams affirms that PSERS began investigating its investment performance due to the COVID-19 pandemic, working in close coordination with Aon to determine the size and scope of financial return adjustments over a historical period, the reasons that consultants reported certain figures, whether any official document should be amended, and the use of previous returns in determining the contribution calculations. She affirms PSERS corresponded with Aon and Buck regarding the investigation into its fund performance as early as summer of 2020. Under the RTKL, an agency must only prove that a record is exempt from disclosure by a preponderance of the evidence. 65 P.S. § 67.708(a)(1). “[A] preponderance of the evidence standard, the lowest evidentiary standard, is tantamount to a more likely than not inquiry.” *Delaware County v. Schaefer ex rel. Philadelphia Inquirer*, 45 A.3d 1149, 1156 (Pa. Commw. Ct. 2012). A statement made under the penalty of perjury is competent evidence to sustain an agency’s burden of proof under the RTKL. *See Sherry*, 20 A.3d at 520-21; *Moore*, 992 A.2d at 909.

PSERS has thus demonstrated that communications with Aon and Buck following the commencement of the 2020 review of its investment performance are exempt noncriminal investigative records. Ms. Williams affidavit is sufficient to demonstrate that PSERS began investigating its performance due to market volatility caused by the COVID-19 pandemic, and not the required annual valuations, or the actuarial investigation performed every five years. Furthermore, because PSERS contracted with ACA in October 2020 to perform independent verification of its performance, communications with ACA following that contract are exempt noncriminal investigative correspondence.

The OOR notes that the RTKL is not a confidentiality statute meaning it allows but does not require an agency to withhold records. An agency generally has the discretion to release otherwise nonpublic records. *See* 65 P.S. § 67.506(c). Based on any number of factors, an agency may release otherwise nonpublic or deidentified records in the public interest. Such an approach can be used to build trust and confidence in the agency especially when dealing with such compelling issues.

3. The appeal is moot in part

Aon and Buck are both granted Direct Interest Participant status. Aon argues that PSERS is in possession of records that constitute or reveal a trade secret or confidential proprietary information. Aon asks that “prior to turning over any documents or information provided by Aon to PSERS pursuant to this request, PSERS advise Aon specifically what information and/or documents it proposes to provide, so that Aon can consider its options...Aon would need adequate time to review what PSERS may intend to produce.” Buck, meanwhile, asserts that it agrees with PSERS’ reasons for denial and notes that the records may include confidential information regarding individual employees of PSERS and retirement system members, as well as objecting to the production of an Excel spreadsheets in their native format because such spreadsheets include proprietary formulas and macros that are confidential.

On September 23, 202, the Requester disclaimed interest in Excel formulas and trade secrets and notes no objection to the redaction of such information. Because the Requester has agreed to the redaction of trade secrets and Excel formulas, the appeal as to that information is not at issue.

4. Some records are exempt confidential proprietary information

Buck “objects to the production of any Excel spreadsheets...in native format because such spreadsheets include proprietary formulas and macros that are confidential.” Because the Requester has disclaimed interest in Excel formulas, that is not at issue. However, the macros remain at issue.¹⁴ Similarly, Aon argues that PSERS has documents that contain Aon’s proprietary and confidential information, trade secrets, and intellectual property that may be responsive to the Request and seeks time to review any records that PSERS would provide prior to PSERS providing them to the Requester.

PSERS, in turn, indicates its agreement with Buck and Aon that the records are exempt under Section 708(b)(11). Meanwhile, the Requester asserts that “the calculation of investment returns is a matter of arithmetic and a subject of great interest to a lay audience.”

Section 708(b)(11) of the RTKL exempts from disclosure “[a] record that constitutes or reveals a trade secret or confidential proprietary information.” 65 P.S. § 67.708(b)(11). These terms are defined in Section 102 of the RTKL as follows:

“Confidential proprietary information.” Commercial or financial information received by an agency:

- (1) which is privileged or confidential; and
- (2) the disclosure of which would cause substantial harm to the competitive position of the [entity] that submitted the information.

“Trade secret.” Information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that:

- (1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use;
- and

¹⁴ An Excel macro is “an action or set of actions that you can run as many times as you want. When you create a macro, you are recording your mouse clicks and keystrokes.” See <https://support.microsoft.com/en-us/office/quick-start-create-a-macro-741130ca-080d-49f5-9471-1e5fb3d581a8>.

(2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

65 P.S. § 67.102. Here, neither Buck nor PSERS provides evidence as to how a macro is a trade secret or constitutes confidential and proprietary information. In its response, Buck merely states that the macros are confidential. Under the RTKL, the agency, or third party, must provide sufficient evidence to demonstrate that a record is exempt. 65 P.S. § 67.708(a)(1). Because neither Buck nor PSERS has provided that evidence, to the extent that they are contained in records this final determination grants access to, the macros may not be redacted. *See Highmark Inc. v. Voltz*, 163 A.3d 485, 490-491 (Pa. Commw. Ct. 2017) (the party asserting an exemption bears the burden of proving the exemption applies and a direct interest participant who provided records to the agency may be in the best position to establish their protected nature). Aon, however, provided the statement made under penalty of perjury of Claire Shaughnessy, a Partner and the Lead Relationship Manager and Lead Consultant at Aon relating to the relationship with PSERS. Ms. Shaughnessy identifies several types of records that contain Aon's proprietary knowledge, and intellectual property:

a. Email communications between Aon and PSERS employees containing information incorporating their thoughts or analysis related to PSERS performance, which include Aon's proprietary knowledge;

b. Performance reports and analysis, which include the results of analysis done with Aon's proprietary business procedures and is part of Aon's intellectual property. Aon expects that this category may include:

1. monthly performance reports;
2. quarterly investment reports; and
3. other portfolio analysis completed by Aon;

c. Documents regarding Aon's service offerings, which include confidential information about Aon's business procedures and strategies; and

d. Documents and communications regarding the calculation that is at issue in requestors' requests, which include confidential and proprietary information regarding Aon's business procedures, strategies, and analytical processes.

She explains that the documents derive independent economic value, actual or potential, from not being generally known to or ascertainable by proper means. She explains that Aon's contract with PSERS contains a confidentiality provision pursuant to which PSERS is obligated to maintain the secrecy of Aon's proprietary documents. Therefore, Ms. Shaughnessy has provided evidence that Aon provided PSERS with information that meets the definition of a trade secret under the RTKL. As the Requester has disclaimed interest in any trade secrets, PSERS may redact or withhold any of Aon's trade secrets from any responsive records.

CONCLUSION

For the foregoing reasons, the appeal is **granted in part, denied in part** and **dismissed as moot in part**, and PSERS is required to perform a good faith search for written communications between PSERS and each of the three firms related to the identification or discovery of the rate calculation error, for the time period January 2020 to the date the summer 2020 investigation commenced and provide all responsive records within thirty days. PSERS may redact Excel formula and trade secrets. This Final Determination upon Reconsideration is binding on all parties. Within thirty days of the mailing date of this Final Determination upon Reconsideration, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as

a party.¹⁵ This Final Determination upon Reconsideration shall be placed on the OOR website at:
<http://openrecords.pa.gov>.

**FINAL DETERMINATION UPON RECONSIDERATION ISSUED AND MAILED:
December 6, 2021**

/s/ Erin Burlew

ERIN BURLEW, ESQ.
APPEALS OFFICER

Sent to: Craig McCoy (via email only);
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¹⁵ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).