

# Ohio News Organization

An association of Ohio's leading newspapers

July 4, 2010

Ms. Laura Ecklar, Director, Communication Services  
State Teachers Retirement System of Ohio  
275 E. Broad Street  
Columbus, OH 43215-3771

The Ohio News Organization of the state's leading newspapers is requesting records from the State Teachers Retirement System of Ohio, recognizing the limitations imposed by R.C. 145.27 and Chapter 1347.

We understand, for example, that R.C. 1347.10(A) creates potential civil liability in an agency if it were to release "personal information" that is not a "public record" if the release of that information harms the individual who is the subject of the information. We also understand that "personal information" under R.C. 1347.01 is "any information that describes anything about a person, or that indicates actions done by or to a person, or that indicates that a person possesses certain personal characteristics, and that contains, and can be retrieved from a system by, a name, identifying number, symbol, or other identifier assigned to a person."

We further understand that R.C. 145.27(A)(2) requires STRS to decline to release: a public employee's detailed statement of all that employee's previous service under R.C. 145.16; the "amount of a monthly allowance or benefit paid to the individual" employee; an individual employee's "personal history record."

A prime objective of our request is not to seek recorded information that we or our readers could link to any particular individual. Because we don't want STRS to disclose any content that would link the recorded information that we seek to any particular individual, R.C. 1347.10(A) and R.C. 145.27(A)(2) should not inhibit the ability of STRS to provide the recorded information that we seek.

With that said, we request records in electronic format that, individually or collectively, apply to all of the STRS members and retirants who received monthly benefits during 2009, but redacting names, addresses, names of employers, and all unique identifiers assigned to each member and retirant.

As to each member of that class of people and subject to those redactions, please provide records that, individually and collectively, show:

- name of county where last employed for each such member
- age of each such member and retirant at the time of retirement;
- years of service of each such member and retirant;
- total taxed and tax-deferred contributions by each such member
- annual compensation paid to each such member for each of the five years immediately preceding retirement;
- total amount of the monthly benefit paid to each such member and retirant during 2009.

Kathy Siemon of The Plain Dealer is coordinating this request on behalf of the Ohio News Organization. If you have questions about this request, please call her at 216-999-4027. You may also reach her via e-mail at [ksiemon@plaind.com](mailto:ksiemon@plaind.com).

Sincerely,

Bruce Winges, Editor, Akron Beacon Journal  
Tom Callinan, Editor, Cincinnati Enquirer  
Ben Marrison, Editor, Columbus Dispatch  
Kevin Riley, Editor, Dayton Daily News  
Susan Goldberg, Editor, The Plain Dealer  
Jeff Gauger, Executive Editor, The Repository,  
Kurt Franck, Executive Editor, Toledo Blade  
Todd Franko, Editor, Youngstown Vindicator,



STATE TEACHERS  
RETIREMENT SYSTEM  
OF OHIO

275 East Broad Street  
Columbus, OH 43215-3771  
614-227-4090  
www.strsoh.org

July 14, 2010

Kathy Siemon  
The Plain Dealer  
Plain Dealer Plaza  
1801 Superior Avenue  
Cleveland, OH 44114

RETIREMENT BOARD CHAIR  
TIM MYERS

RETIREMENT BOARD VICE CHAIR  
JAMES MCGREEVY

EXECUTIVE DIRECTOR  
MICHAEL J. NEHF

Dear Ms. Siemon:

This is in response to the Ohio News Organization's letter to Laura Ecklar dated July 4, 2010, which was received by STRS Ohio on July 8, 2010. In that letter you request records for all STRS Ohio members and retirants who received monthly benefits during 2009 that individually and collectively show: name of county where last employed for each such member; age of each such member and retirant at the time of retirement; years of service of each such member and retirant; total taxed and tax-deferred contributions by each such member; annual compensation paid to each such member for each of the five years immediately preceding retirement; and total amount of the monthly benefit paid to each such member and retirant during 2009.

While STRS Ohio is unable to provide all the information you seek, collective demographic and economic information is contained in STRS Ohio's Comprehensive Annual Financial Report ("CAFR"). CAFRs from 2001 through 2009 can be found at <http://www.strsoh.org/about/CAFR09.html>. Specifically, please see the statistical data on pages 63-70 of the 2009 CAFR, reflecting the number of benefit recipients by type, benefit expenses by benefit type and amount, and a schedule of average benefits with average monthly benefit, average final salary, and number of recipients. Additionally, I have enclosed a two page overview of STRS Ohio, which also includes information about the system's membership and benefit payments.

The information you request regarding individual members and benefit recipients does not exist in record form. In order to create records containing the individualized information you request, STRS Ohio would have to perform custom programming of its computer system. The Ohio's Public Records Act ("Act") does not compel such an action be taken. A public office is not required to create new records to respond to a public records request.

Even if STRS Ohio were required to compile the information you request into a record, such a record would not be subject to disclosure under the Act. Public records do not include "[r]ecords the release of which is prohibited by state or federal law." Ohio



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EXECUTIVE DIRECTOR  
MICHAEL J. NEHF

Revised Code Section 149.43(A)(1)(v). The information you request is part of STRS Ohio's members' and benefit recipients' personal history record and may not be released without the written authorization of the individual concerned. Ohio Revised Code Section 3307.20 and Ohio Admin. Code Section 3307-1-03.

STRS Ohio is a fiduciary to its members and benefit recipients and is required by law to protect their personal information. Within the confines of those obligations, STRS Ohio is happy to work with you to provide non-confidential information or public records which may be of assistance. Do not hesitate to contact me at the number below if you would like to discuss this matter further.

Very truly yours,

A handwritten signature in black ink that reads 'William J. Neville'. The signature is written in a cursive style with a vertical line through the middle of the name.

William J. Neville  
General Counsel  
(614) 227-4093



## SCHOOL EMPLOYEES RETIREMENT SYSTEM OF OHIO

300 EAST BROAD ST., SUITE 100 • COLUMBUS, OHIO 43215-3746 • 614-222-5853  
Toll-Free 1-866-280-7377 • www.ohsers.org

LISA J. MORRIS  
Interim Executive Director

July 14, 2010

Kathy Siemon  
Cleveland Plain Dealer  
Plain Dealer Plaza  
1801 Superior Avenue  
Cleveland, Ohio 44114

Dear Ms. Siemon:

The School Employees Retirement System of Ohio ("SERS") is responding to your public records request dated July 4, 2010 for the following:

records for all SERS members and retirants who received monthly benefits during 2009 that individually and collectively show: name of county where last employed for each such member; age of each such member and retirant at the time of retirement; years of service of each such member and retirant; total taxed and tax-deferred contributions by each such member; annual compensation paid to each such member for each of the five years immediately preceding retirement; and total amount of the monthly benefit paid to each such member and retirant during 2009.

For the reasons set forth below, SERS is unable to comply with your request.

First, no such record currently exists. SERS is not required to create new records to respond to a public record request, even if it is only a matter of compiling information from existing records. *Fant v. Mengel*, 62 Ohio St.3d 197 (1991).

Second, even if SERS were required to compile the information you requested into a record, such a record would not be subject to disclosure under the Ohio Public Records Act ("the Act"). Public records do not include records the release of which is prohibited by state or federal law. Ohio Revised Code Section 149.43(A)(1)(v).

The information you requested is part of each individual's personal history record. Ohio Revised Code Section 3309.22 provides that an individual's personal history record is

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### RETIREMENT BOARD

BARBRA M. PHILLIPS <i>Chair</i>	HARRY J. LEHMAN <i>Vice-Chair</i>	MARK E. ANDERSON <i>Employee Member</i>	MADONNA D. FARAGHER <i>Employee Member</i>	
MARY ANN HOWELL <i>Retiree Member</i>	CATHERINE P. MOSS <i>Retiree Member</i>	JAMES A. ROSSLER, JR. <i>Appointed Member</i>	BEVERLY A. WOOLRIDGE <i>Employee Member</i>	RICHARD W. SENSENBRENNER <i>Appointed Member</i>

excluded from public inspection, except with the written authorization of the individual concerned. Personal history record is defined in R.C. 3309.22 as "information maintained by the board on an individual who is a member, former member, contributor, former contributor, retirant, or beneficiary that includes the address, telephone number, social security number, record of contributions, correspondence with the system, and other information the board determines to be confidential."

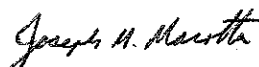
Ohio Administrative Code Section 3309-1-45(A) further states "Except as otherwise provided in section 3309.22 of the Revised Code, the following records shall be released to a third party only upon the written authorization of the person to whom the record pertains:

- (1) Any part of an individual's personal history record.
  - (a) In addition to the information set forth in division (A)(1) of section 3309.22 of the Revised Code, personal history record includes, but is not limited to, any record identifying:
    - (i) The amount of benefit or allowance paid or payable to any person,
    - (ii) The service history or service credit of a member or retiree, or
    - (iii) The dependents or beneficiaries of a member or retiree.

While SERS is unable to provide all the information you seek, collective demographic information may be found in our 2009 Annual Financial Report that is available on SERS' website at <http://www.ohsers.org/financials-reports-1>. Specifically, please see pages 80-84 for detailed statistics including demographics of new pension benefit recipients, demographics of active and retired members, retired members by type of benefit and average benefit payments.

If you have further questions, please contact me at 614-340-2699.

Sincerely,



Joseph M. Marotta  
General Counsel

# Ohio Police & Fire Pension Fund

140 East Town Street / Columbus, Ohio 43215-5164 / Tel. (614) 228-2975 / www.op-f.org

July 15, 2010

Ms. Kathy Siemon  
Cleveland Plain Dealer  
Plain Dealer Plaza  
1801 Superior Avenue  
Cleveland, OH 44114

Re: Ohio News Organization records request

Dear Ms. Siemon:

This letter is in response to the Ohio News Organization's letter to William Estabrook, dated July 4, 2010, and received July 8<sup>th</sup>, 2010, which requests information (not records) from the Ohio Police and Fire Pension Fund ("OP&F") concerning OP&F members who received monthly benefits in 2009. ("the Request"). The Request seeks information about retired police officers and firefighters including:

- 1) name of the county where last employed for each member;
- 2) age of the member and retirant at the time of retirement;
- 3) years of service of each member and retirant;
- 4) total taxed and tax-deferred contributions by each member;
- 5) annual compensation paid to each member for each of the five years immediately preceding retirement; and
- 6) total amount of the monthly benefit paid to each member and retirant during 2009.

The Request further indicates that the members' names, addresses and other such unique identifiers may be redacted.

OP&F is statutorily prohibited from providing the personal history records of former police officers and firefighters as you have requested. OP&F is governed by Chapter 742 of the Ohio Revised Code. Ohio Revised Code Section 742.41(B) prohibits OP&F from releasing any information from a member's personal history record. Ohio Revised Code Section 742.41(A) defines "personal history record" as including a member's name, address, Social Security number, etc., and "and any other information deemed confidential by the trustees of the fund." Ohio Administrative Code Rule 742-7-02(B) amplifies this statute by providing that, with certain limited exceptions, a "member's personal history record" includes "*all information related to an OP&F member*." The provisions cited above are specific exceptions to the Ohio Public Records law, which provides that if any provision of state and/or federal law prohibits public disclosure of a certain type of record, a public office must not release it in response to a public records request (Ohio Revised Code Section 149.43(A)(1)(v)).

Ms. Kathy Siemon, Cleveland Plain Dealer

July 15, 2010

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Since the information requested by the Ohio News Organization is "information related to an OP&F member" and does not fall under the limited exceptions set forth in Administrative Rule 742-7-02, the information is part of an OP&F member's personal history record. Consequently, the information falls under a mandatory exemption under the Ohio Public Records law and OP&F is prohibited from disclosing such information.

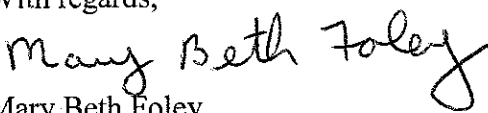
The Ohio News Organization's letter states that "[b]ecause we don't want OP&F to disclose any content that would link the recorded information that we seek to any individual, R.C. 1347.10(A) and R.C. 145.27(A)(2) should not inhibit the ability of OP&F to provide the recorded information that we seek." Please note, however, neither of the statutory provisions cited apply to OP&F. R.C. 145.27 governs the Ohio Public Employees Retirement System. Ohio Revised Code Chapter 1347, which applies to personal information systems "maintained by a state or local agency", likewise is not applicable to OP&F.

The Ohio News Organization's letter asserts that OP&F should be able to provide the requested information as long as any unique personal identifiers are redacted from a record containing this information. We understand that Ohio Public Records law provides that if a record contains confidential information as well as information that is subject to public disclosure, the public office must redact the confidential information and release the remainder of the record (Ohio Revised Code Section 149.43(B)(1)). However, as noted above, the information requested by the Ohio News Organization is not subject to disclosure under Ohio Revised Code Section 149.43(A)(1)(v) because the entire personal history record is exempt from disclosure. Thus, the redaction provisions are not applicable.

Moreover, even if OP&F was not statutorily prohibited from disclosing the information requested, OP&F does not have any records in electronic format that provide the information requested. A public office is not required to create new records to respond to a public records request, even if it is only a matter of compiling information from existing records ( See State ex. rel. Kerner v. State Teachers Retirement Bd., 82 Ohio St.3d 273, 1998; State ex rel. Lanham v. Ohio Adult Parole Auth. (1997), 80 Ohio St.3d 425, 427, 687 N.E.2d 283, 285, State ex rel. Thomas v. Ohio State Univ. (1994), 70 Ohio St.3d 1438, 638 N.E.2d 1041.

Finally, we also believe that the release of the information requested could create significant privacy implications for our membership and may subject OP&F to member suits on that basis. For all of the foregoing reasons, OP&F cannot provide the requested information to the Ohio News Organization. We believe this letter fully responds to your request and consider it closed.

With regards,

  
Mary Beth Foley  
General Counsel

cc: William J. Estabrook, Executive Director  
David Graham, Communications Director  
Kay Penn, Director of Member Services



**From:** "Dan Weiss" <dweiss@ohprs.org>  
**To:** <ksiemon@plaind.com>  
**Date:** 7/19/2010 10:27 AM  
**Subject:** July 4 request

I am writing in response to the July 4 records request from the Ohio News Organization.

Member account information is maintained by individual member, rather than collectively. Accordingly, the information that you requested is not a record that is available and would require custom programming to extract. Ohio law does not require that new records be created. Kerner v. State Teachers Retirement Bd., 82 Ohio St. 3d 273.

There is significant collective statistical data in the HPRS annual report, which can be accessed at <https://www.ohprs.org/ohprs/annualReport.jsp>. The Statistical Section of the 2009 report begins on page 58.

Beyond the limitations noted above, the information requested is part of the personal history record of the members and benefit recipients of the system. Accordingly, the disclosure would be prohibited by Ohio Revised Code Sections 5505.04(C)(2) and 149.43(A)(1)(v).

If I may be of assistance in providing public records that may be lawfully disclosed, please contact me.

Dan Weiss, CPA, JD  
Executive Director/Chief Investment Officer  
Highway Patrol Retirement System  
6161 Busch Boulevard, Suite 119  
Columbus, OH 43229-2553  
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