

MEETING
STATE OF CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
BOARD OF ADMINISTRATION
BOARD GOVERNANCE COMMITTEE

ROBERT F. CARLSON AUDITORIUM
LINCOLN PLAZA NORTH
400 P STREET
SACRAMENTO, CALIFORNIA

MONDAY, APRIL 17, 2017

3:25 P.M.

JAMES F. PETERS, CSR
CERTIFIED SHORTHAND REPORTER
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A P P E A R A N C E S

COMMITTEE MEMBERS:

Ms. Theresa Taylor, Chairperson

Ms. Priya Mathur, Vice Chairperson

Mr. Michael Bilbrey

Mr. Rob Feckner

Ms. Dana Hollinger

Mr. Henry Jones

Mr. Bill Slaton

BOARD MEMBERS:

Mr. John Chiang, represented by Mr. Eric Lawyer

Mr. Richard Gillihan, represented by Ms. Katie Hagen

Mr. Ron Lind

Ms. Betty Yee, represented by Mr. Alan Lofaso

STAFF:

Ms. Marcie Frost, Chief Executive Officer

Mr. Matt Jacobs, General Counsel

Ms. Marlene Timberlake D'Adamo, Interim Chief Financial Officer

Ms. Kristen Garner, Committee Secretary

ALSO PRESENT:

Mr. Ben Vernazza, Precision Fiduciary Analysis

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1 P R O C E E D I N G S

2 CHAIRPERSON TAYLOR: All right. Good afternoon
3 everyone. I'm calling the Board Governance meeting to
4 order. And first let's call roll.

5 COMMITTEE SECRETARY GARNER: Theresa Taylor?

6 CHAIRPERSON TAYLOR: Here.

7 COMMITTEE SECRETARY GARNER: Priya Mathur?

8 VICE CHAIRPERSON MATHUR: Here.

9 COMMITTEE SECRETARY GARNER: Michael Bilbrey?

10 COMMITTEE MEMBER BILBREY: Good afternoon.

11 COMMITTEE SECRETARY GARNER: Rob Feckner?

12 COMMITTEE MEMBER FECKNER: Hello.

13 COMMITTEE SECRETARY GARNER: Dana Hollinger?

14 COMMITTEE MEMBER HOLLINGER: Here.

15 COMMITTEE SECRETARY GARNER: Henry Jones?

16 COMMITTEE MEMBER JONES: Here.

17 COMMITTEE SECRETARY GARNER: Bill Slaton?

18 COMMITTEE MEMBER SLATON: Here.

19 CHAIRPERSON TAYLOR: Okay. And next let's get
20 our executive report.

21 GENERAL COUNSEL JACOBS: Okay. I don't really
22 have anything to report beyond the agenda. We do have
23 three action consent items with revisions to the Board
24 Governance Policy. And if those are approved by this
25 Committee and then the full Board on Wednesday, I would

1 propose to present those in a single new Board Governance
2 Policy that includes all of the amendments and present
3 them to Rob for signature.

4 Beyond that, we've got the annual calendar and
5 parking lot items 4a and 4b. They look a little sparse at
6 this point, in light of the change of leadership.
7 However, we'll be fleshing those out with the Chair and
8 the Vice Chair in the coming months.

9 And beyond that, I have no further report.

10 CHAIRPERSON TAYLOR: Okay. Thank you, Matt.

11 So let's move --

12 COMMITTEE MEMBER JONES: Move the action consent.

13 COMMITTEE MEMBER BILBREY: Second.

14 CHAIRPERSON TAYLOR: All -- thank you. That was
15 quick. All those in favor?

16 (Ayes.)

17 CHAIRPERSON TAYLOR: All those opposed?

18 All right. Motion carries. So action consent
19 carries.

20 Consent items -- yeah, I have information consent
21 items. Anything on those, anybody?

22 Okay. And then we'll move on to 5, Annual Review
23 of CEO Delegation.

24 GENERAL COUNSEL JACOBS: And Ms. Timberlake-
25 D'Adamo is going to be filling in for Kami Niebank on this

1 item.

2 INTERIM DEPUTY EXECUTIVE OFFICER TIMBERLAKE
3 D'ADAMO: Good afternoon. Marlene Timberlake-D'Adamo,
4 CalPERS team member.

5 The agenda for Item 5a -- or 5 is the annual CEO
6 delegation. And as you recall, this is an item that we do
7 every year. There have not been any significant changes
8 to the delegation this year from the previous year, other
9 than to note that we have added a clarification, which
10 indicates that it is the role and the responsibility of
11 the Board -- of the Board, correct, to actually conduct
12 the terminations as it relates to the public agencies.
13 And so we felt that that was something that needed to be
14 called out, since the delegation itself was silent on it.

15 That is the only comment that I have for that.

16 CHAIRPERSON TAYLOR: Okay. Anything else?

17 Is that an infor -- I'm sorry.

18 INTERIM DEPUTY EXECUTIVE OFFICER TIMBERLAKE

19 D'ADAMO: It's action an item.

20 CHAIRPERSON TAYLOR: Action item. So can I
21 get -- a

22 COMMITTEE MEMBER JONES: Move approval

23 COMMITTEE MEMBER FECKNER: Second.

24 CHAIRPERSON TAYLOR: Thank you.

25 All those in favor?

1 (Ayes.)

2 CHAIRPERSON TAYLOR: All those opposed?

3 All right. Motion carries.

4 Okay. And we are now on Item 6, Update on Form
5 700 Compliance.

6 GENERAL COUNSEL JACOBS: I'm pleased to report
7 that all required filers among both the Board and staff
8 have filed. So that's a good thing.

9 (Applause.)

10 CHAIRPERSON TAYLOR: Yea.

11 All right. We move on to Item 7, Potential
12 Limitations on Board Member Email Usage.

13 GENERAL COUNSEL JACOBS: Okay. This is the only
14 moderately meaty item on the agenda today. We've got --
15 this really presents two issues. So taking the first one
16 first, how should Board members distribute articles of
17 general interest regarding topics within CalPERS'
18 jurisdiction to other Board members?

19 The agenda item discusses a couple of options.
20 They were, number one, to send -- that Board members would
21 send them to the CEO who could then include them in the
22 back-up agenda materials. Board members we could -- we
23 would probably have to notice this as a separate item much
24 the way we do with respect to Board direction or the
25 Committee direction at the end of a meeting, but we could

1 have a time when Board members could just bring up
2 articles of general interest within either the Committee's
3 or the Board's jurisdiction.

4 We could also have, as kind of a variation of the
5 first option, Board members could send articles to the CEO
6 who would then distribute them to the other Board members
7 without attribution. And that would not have to await the
8 circulation of the Board materials.

9 So those are a couple of options. We looked for
10 formal policies of other agencies on this, and we really
11 couldn't find much of anything. I did find the Los
12 Angeles City Attorney's advice that -- and his advice was
13 that the agencies that are under the City of Los Angeles
14 would use option 1, which is send it to a centralized
15 individual who would then include it in the back-up agenda
16 materials.

17 So that was one -- that was the only other
18 guidance we could find or formal even semi formalized
19 guidance that we could find on this issue.

20 So with that introduction, Chair Taylor, I would
21 hand it back to you for discussion among the Committee --
22 Committee members.

23 CHAIRPERSON TAYLOR: Sure I have a couple of
24 people who want to make comments.

25 I'm going to start with Henry.

1 COMMITTEE MEMBER JONES: Yeah. Thank you, Madam
2 Chair.

3 Yeah --

4 CHAIRPERSON TAYLOR: Hold on sec. There we go.

5 COMMITTEE MEMBER JONES: Thank you, Madam Chair.

6 Yeah, I would suggest or recommend that we
7 forward it to the CEO and have it distributed to the rest
8 of the Board.

9 CHAIRPERSON TAYLOR: Okay. And I just want to
10 ask, because there were two ways to do that, one was with
11 credit, and one was without credit anonymously.

12 GENERAL COUNSEL JACOBS: Well, I don't -- I
13 guess I hadn't thought about whether the first one was
14 going to be with credit. I think it probably would be.

15 CHAIRPERSON TAYLOR: Yeah.

16 GENERAL COUNSEL JACOBS: But it would be
17 distributed with the back-up agenda materials.

18 CHAIRPERSON TAYLOR: Yeah. And then the other
19 one --

20 GENERAL COUNSEL JACOBS: The other one --

21 CHAIRPERSON TAYLOR: -- is with no name
22 attributed to it.

23 GENERAL COUNSEL JACOBS: Right. But prior to --
24 presumably prior to, or without regard to, when the
25 general materials go out that are the meeting back-up.

1 CHAIRPERSON TAYLOR: Okay. Mr. Feckner.

2 COMMITTEE MEMBER FECKNER: Thank you, Madam
3 Chair.

4 I agree with Henry and on the first item. My
5 question is on the second issue, Matt. On the -- in the
6 rule, and you may or may not know this, but half the way
7 down the paragraph it says that if you use your personal
8 email account or personal advice, it may be subject to
9 disclosure under the California Public Records Act.

10 Are they going to have to go to court every time
11 to figure what "may" means, or does somebody have a
12 definition of what that action means when it says may be
13 have to be disclosed. Why wouldn't it just be a yes or no
14 answer?

15 GENERAL COUNSEL JACOBS: You're jumping to the
16 second item?

17 COMMITTEE MEMBER FECKNER: I am. Sorry.

18 GENERAL COUNSEL JACOBS: Okay.

19 COMMITTEE MEMBER FECKNER: Oh, I'm sorry. I
20 thought you covered both. You can wait.

21 (Laughter.)

22 GENERAL COUNSEL JACOBS: Whatever the Chair's
23 preference is.

24 CHAIRPERSON TAYLOR: Go ahead and cover it right
25 now, just real quick.

1 GENERAL COUNSEL JACOBS: I think the "may" really
2 refers to whether it's responsive.

3 CHAIRPERSON TAYLOR: So I think it's in both.

4 GENERAL COUNSEL JACOBS: If it is responsive, it
5 has to be provided. That's what that "may" mean. In
6 other words, you could do a lot of things that pertain to
7 CalPERS business, if -- on your personal device. If
8 they're not responsive to the request, then they wouldn't
9 have to be produced, just like if you were using your
10 CalPERS email address. So that's what the "may" refers
11 to.

12 If it -- but I will -- to clarify, if it's
13 responsive, it would have to be produced.

14 COMMITTEE MEMBER FECKNER: Okay. Thank you.

15 CHAIRPERSON TAYLOR: Okay. Ms. Mathur.

16 VICE CHAIRPERSON MATHUR: I would agree with Mr.
17 Jones that option 2 is the more sensible one, particularly
18 because it may be that an article is sort of of general
19 interest, and might apply sort of generally to the
20 business that CalPERS does, but might not apply
21 specifically to an upcoming agenda eye, in which case, it
22 would never get distributed or it wouldn't get distributed
23 until such time as a specific item were agendized. So I
24 think -- sorry.

25 GENERAL COUNSEL JACOBS: Sorry.

1 VICE CHAIRPERSON MATHUR: Yes.

2 GENERAL COUNSEL JACOBS: Just to clarify. I
3 think that the CEO could include an item of general
4 interest with the Board materials. It just wouldn't
5 pertain to any particular item that needed to be decided
6 or was going to be an information item in that particular
7 meeting.

8 VICE CHAIRPERSON MATHUR: I see. That seems a
9 little cumbersome, but maybe --

10 GENERAL COUNSEL JACOBS: Well, it's a little
11 cumbersome and that's why I threw in there that it could
12 be done by link as opposed to the actual article. I mean,
13 if it's a short article fine, but if it were a longer one,
14 you could just do it by a link.

15 VICE CHAIRPERSON MATHUR: But you think either
16 one of these approaches is appropriate?

17 GENERAL COUNSEL JACOBS: Either one passes
18 muster.

19 VICE CHAIRPERSON MATHUR: Either one passes
20 muster. And in saying that it would go to the CEO, I
21 mean, I'm not sure the best use of the CEO's time is
22 vetting all these particularly items. So she would be
23 able to then delegate that responsibility to somebody
24 else, I would imagine --

25 GENERAL COUNSEL JACOBS: Yes.

1 VICE CHAIRPERSON MATHUR: -- who would have some
2 judge -- be able to apply judgment?

3 GENERAL COUNSEL JACOBS: Right.

4 VICE CHAIRPERSON MATHUR: Okay. And do you need
5 a motion on this at this time or would you bring this
6 back?

7 GENERAL COUNSEL JACOBS: I think we're looking
8 for a sense of the Committee and then we would bring it
9 back.

10 VICE CHAIRPERSON MATHUR: Okay.

11 CHAIRPERSON TAYLOR: Mr. Lind. Oh, I'm sorry.
12 Michael, you -- hold on.

13 COMMITTEE MEMBER LIND: Thank you.

14 I just want to repeat my opinion that I think
15 sending out general news articles without editorial
16 comment I think just goes too far, but I've clearly been
17 overruled on that one, so I get it. But to kind of
18 Priya's point about burdening the CEO with this, you know,
19 we get periodically these CalPERS-related news summary
20 emails with all these different articles and stuff,
21 couldn't whoever is doing that get something, if we wanted
22 to send it to him or her, and it be incorporated in that,
23 rather than some sort of separate operation?

24 GENERAL COUNSEL JACOBS: I think that might
25 dilute it. So if, for example, you pick out an article

1 and -- that you think your fellow Board members should
2 read, if it just gets included in the general news update,
3 I don't know that anybody would pick it out and say, ah,
4 this is a Board member who sent this. Just a kind of a
5 practical thought.

6 COMMITTEE MEMBER LIND: Okay. Thanks.

7 CHAIRPERSON TAYLOR: Okay. Mr. Bilbrey.

8 COMMITTEE MEMBER BILBREY: So similar to Mr.
9 Lind, so in -- I want to be clear. So in between
10 meetings, the CEO could just send some sort of a update
11 with articles or something to the Board, and there would
12 be no problem with that, correct?

13 GENERAL COUNSEL JACOBS: Right. Now, they would
14 be public documents. So if we got a Public Records Act
15 request, we would produce them.

16 COMMITTEE MEMBER BILBREY: And somebody could get
17 it, if they'd like. Okay. Thank you.

18 CHAIRPERSON TAYLOR: Mr. Slaton do you have a
19 question? Did I -- I'm sorry. Did I over-click you? I
20 apologize.

21 COMMITTEE MEMBER SLATON: No, I'm on. So just to
22 clarify here, because I think there's several types of
23 communications that are going on. First of all, there's
24 the occasional article. There's the occasional article
25 with some editorial comment. There's recommendations of a

1 FYI for some conference that's going on. Several of us
2 are on a list that Mr. Jelincic occasionally sends out.
3 And I think all of these should be treated exactly the
4 same way.

5 And I envision that they go to -- and I don't --
6 I'm not really concerned whether it's the Board unit,
7 whether it's the CEO, but they go somewhere other than
8 this Board, and without any editorial review, come back
9 out to all of us. I personally think they should be
10 without attribution, because putting attribution in again
11 sends a potential message.

12 So I would suggest that -- and if the CEO is the
13 appropriate place, obviously delegate it down from there,
14 that these come out. But it include all forms of
15 communication that are going out to multiple Board members
16 be done this way, and without attribution.

17 CHAIRPERSON TAYLOR: And I think that was the
18 intent of this was that it would include all forms of
19 communication, because we can't, because of the
20 Bagley-Keene Act, send it out or we shouldn't be sending
21 it out via email.

22 COMMITTEE MEMBER SLATON: Well, sometimes there's
23 some that -- where they -- somebody sends -- that there's
24 a conference coming up and sends it to four other Board
25 members.

1 CHAIRPERSON TAYLOR: Right.

2 COMMITTEE MEMBER SLATON: Well, I think every
3 Board member should be aware of those, not just the four
4 of us. So I'm suggesting that those types of
5 communications also be treated exactly the same way.

6 CHAIRPERSON TAYLOR: All right.

7 GENERAL COUNSEL JACOBS: Well, I think, items 1
8 and 3 -- or sample items 1 and 3 that you talked about, I
9 agree with. Number 2, however, that contains editorial
10 comment.

11 COMMITTEE MEMBER SLATON: Well, I don't think
12 they should include editorial comment.

13 GENERAL COUNSEL JACOBS: Right.

14 COMMITTEE MEMBER SLATON: I should clarify
15 that --

16 GENERAL COUNSEL JACOBS: Right.

17 COMMITTEE MEMBER SLATON: -- that there should be
18 no editorial comment provided and no attribution. And
19 therefore, you do not have any kind of violation.

20 GENERAL COUNSEL JACOBS: Right. So the CEO or
21 her delegee would strip off any editorial comment.

22 COMMITTEE MEMBER SLATON: Exactly. Exactly.

23 CHAIRPERSON TAYLOR: Okay. Mr. Jones, do you --

24 COMMITTEE MEMBER JONES: Yes, I have a -- on the
25 conferences, I don't know if this is overload, because we

1 already have a process where all conference of interest
2 are in a binder when we come here. And then 98 percent of
3 if information that's forwarded to me about a conference,
4 I already receive it. So I think it's an overkill to just
5 continue to send out the conferences.

6 CHAIRPERSON TAYLOR: So then are you saying,
7 Henry, that if we get the conference notifications, that
8 whoever has been delegated to look at it, that they should
9 determine whether or not we've already seen it?

10 COMMITTEE MEMBER JONES: Yeah. No, I wasn't -- I
11 didn't go to that -- I didn't go to that step. I was just
12 saying whether or not -- the question is whether or not we
13 need to include information on conferences being
14 circulated, since we already have a process. Maybe we
15 sit -- that just -- be sent so that it is included in what
16 we look at every month, and you'll find probably that --

17 CHAIRPERSON TAYLOR: Just put it in the binder
18 back.

19 COMMITTEE MEMBER JONES: -- it's already in
20 there.

21 CHAIRPERSON TAYLOR: Okay.

22 COMMITTEE MEMBER JONES: Yeah, rather than
23 sending out additional emails

24 CHAIRPERSON TAYLOR: Is there a sense about that,
25 you guys? I know that Bill said otherwise.

1 COMMITTEE MEMBER SLATON: Yeah, I would disagree,
2 because the binder is once a month we're here, and you can
3 pass around and look at the binder. But a lot of us are
4 not here more than that one week a month. And sometimes
5 getting advanced notice or getting notice by an email of
6 an upcoming conference could be of value to us in our
7 personal schedules. So I -- the fact that it duplicates,
8 I don't think matters that much.

9 CHAIRPERSON TAYLOR: Okay. Okay. That's -- Mr.
10 Bilbrey.

11 COMMITTEE MEMBER BILBREY: Yeah, I just want to
12 talk on it too. Especially is there's a new Board member
13 on the Board still trying to figure out the different
14 processes. I know when I was new, I didn't realize we had
15 the binder or certain things, and you got to -- you always
16 wondered how did -- where did these conferences come,
17 where did somebody see? So it's kind of a double thing at
18 least for a new Board member to be able to have the
19 opportunities put before them.

20 CHAIRPERSON TAYLOR: Okay. What was our general
21 sense, did we -- was it 1 or 2?

22 VICE CHAIRPERSON MATHUR: It was number 2?

23 CHAIRPERSON TAYLOR: It was number 2?

24 Okay. So...

25 COMMITTEE MEMBER SLATON: I'm having trouble

1 finding number 2.

2 GENERAL COUNSEL JACOBS: I think what 1 and 2
3 become are both -- both involve sending the article -- and
4 I'm using article as a proxy for anything -- 1 is send it
5 to the CEO, who would then include it in the back-up
6 agenda materials. Two is send it to the CEO, who then
7 distributes it to the full Board.

8 COMMITTEE MEMBER SLATON: I vote 2.

9 CHAIRPERSON TAYLOR: Okay. So it looks like
10 everybody is nodding their heads on number 2, so
11 distribute it to the full Board

12 GENERAL COUNSEL JACOBS: Okay. So we'll write
13 that up and find a good place for it in the Board
14 Governance Policy, and bring that back at the June
15 meeting.

16 CHAIRPERSON TAYLOR: June meeting, yeah.
17 And then issue number 2.

18 GENERAL COUNSEL JACOBS: Yes. Issue number 2 is
19 whether Board members should use private email addresses
20 and systems to communicate regarding CalPERS business?

21 This may be moot at this point, because it
22 appears that all Board members have now converted to using
23 the CalPERS email address for doing -- for discussing
24 CalPERS business, but there may be some discussion yet to
25 be had. And so, again, Madam Chair, I throw it back to

1 you.

2 CHAIRPERSON TAYLOR: Sure. And I just -- I've
3 got Priya and Mr. Lofaso waiting to talk, but I just
4 wanted to kind of go into it a little bit. The City of
5 San Jose basically versus Superior Court, California
6 Supreme Court basically made this decision, so it's
7 something we should be doing. And we -- a now that we've
8 all converted, I don't know that we need to have a huge
9 discussion on it.

10 But let me go to Ms. Mathur.

11 VICE CHAIRPERSON MATHUR: I just have a -- I
12 don't disagree. I just have a couple of questions. One
13 is that if somebody sends us an email, like let's say a
14 constituent sends me an email or a stakeholder sends me an
15 email to my personal email, is it -- what -- should I not
16 respond from my personal email, should I forward it to
17 my|CalPERS email, and then respond to it from there? What
18 is the -- what would you suggest is the best practice?

19 GENERAL COUNSEL JACOBS: The latter.

20 VICE CHAIRPERSON MATHUR: The latter.

21 GENERAL COUNSEL JACOBS: Yes.

22 VICE CHAIRPERSON MATHUR: Okay. Forward it to
23 my --

24 GENERAL COUNSEL JACOBS: Forward it to your
25 CalPERS email, respond.

1 VICE CHAIRPERSON MATHUR: Okay.

2 GENERAL COUNSEL JACOBS: And you might mention in
3 the response that further communications should go to your
4 CalPERS email account.

5 VICE CHAIRPERSON MATHUR: Okay. All right.
6 Thank you.

7 GENERAL COUNSEL JACOBS: You're welcome.

8 CHAIRPERSON TAYLOR: Unless it has anything to do
9 with your campaign or fund raising.

10 VICE CHAIRPERSON MATHUR: Well, of course.

11 CHAIRPERSON TAYLOR: Mr. Lofaso.

12 ACTING BOARD MEMBER LOFASO: Thank you, Madam
13 Chair. Quick question for Mr. Jacobs. When you say
14 everybody using CalPERS emails, you mean any State of
15 California platform, any .ca.gov?

16 GENERAL COUNSEL JACOBS: Yes.

17 ACTING BOARD MEMBER LOFASO: Thank you.

18 CHAIRPERSON TAYLOR: Ms. Hagen?

19 ACTING BOARD MEMBER HAGEN: That -- I had the
20 same question.

21 CHAIRPERSON TAYLOR: Oh, that was the same
22 question.

23 Mr. Bilbrey.

24 COMMITTEE MEMBER BILBREY: And along the same
25 lines that Ms. Mathur was saying. Also, through social

1 media, I get a number of members who will send me
2 questions via messenger, through social media. I copy it
3 and then put it -- direct it to -- usually direct it to
4 whatever staff or whoever it might be, but copy it from
5 there and post it into a CalPERS email. So that happens
6 now. And I'm sure at some point we'll see legislation
7 or -- or I wouldn't be surprised seeing a court take that
8 issue as well.

9 GENERAL COUNSEL JACOBS: Right, a follow-on court
10 case. City of San Jose 2.

11 COMMITTEE MEMBER BILBREY: Thank you.

12 CHAIRPERSON TAYLOR: Mr. Slaton, did you want to
13 talk?

14 COMMITTEE MEMBER SLATON: So just a clarifying
15 question on -- so even if you convert over, how does a
16 court know that you've completed converted over? In other
17 words, do you -- being a Board member, do you have a risk
18 that a court could have you turn over your personal email
19 to validate the fact that you're not using personal email.

20 GENERAL COUNSEL JACOBS: There's a risk, but this
21 substantially lessens the risk. There would have to be
22 some suggestion that you were not being truthful in a
23 statement that you don't use your personal email address,
24 or some suggestion, based in real evidence, that there
25 were some emails on your personal account that you hadn't

1 turned over. So it would -- it would -- it would not
2 eliminate the possibility. Everybody has that possibility
3 really today, but it would certainly minimize it.

4 COMMITTEE MEMBER SLATON: Okay. So let me ask
5 now the reverse question. So if one were to continue to
6 use their email, but be responsive to PRAs, the only
7 remaining risk -- this doesn't prevent one from using
8 personal email, it just increases the risk of a court
9 saying, well, you turned over some, but we want to go look
10 to see if there's anymore, is that the risk?

11 GENERAL COUNSEL JACOBS: Yeah. Well, the City of
12 San Jose case does not say every -- all public officials
13 must use public email addresses. You can certainly
14 continue to use private. It just means that it's going to
15 be more of an administrative burden on both the agency and
16 the Board members, in terms of making sure that we've all
17 complied with the Public Records Act request.

18 With regard to your specific question, yes, it
19 would increase the risk. I'm not saying it's a big risk,
20 but it would still increase the risk of a court doing what
21 you say, which is requiring you to turnover everything.

22 COMMITTEE MEMBER SLATON: Okay. So let me just,
23 from a protocol standpoint, ask the question this way. So
24 because the security system at CalPERS is such that if,
25 like me, I use my personal email for most things,

1 including at SMUD. If I copy someone in the CalPERS
2 system to any email that I send out that has anything to
3 do with CalPERS, now the administrative burden is reduced,
4 because the CalPERS system now has every email that I
5 would have written on the subject of a PRA, would that be
6 a fair statement?

7 GENERAL COUNSEL JACOBS: The question is whether
8 a CalPERS -- the administrative burden is decreased?

9 COMMITTEE MEMBER SLATON: Well, you said there
10 was an administrative burden. I've got to go through my
11 email and figure out to respond positive --

12 GENERAL COUNSEL JACOBS: Right.

13 COMMITTEE MEMBER SLATON: -- you know,
14 affirmatively to a PRA. If my protocol is that anytime I
15 do CalPERS business using my personal email --

16 GENERAL COUNSEL JACOBS: From your personal
17 account.

18 COMMITTEE MEMBER SLATON: -- that someone is
19 CC'd --

20 GENERAL COUNSEL JACOBS: Right.

21 COMMITTEE MEMBER SLATON: -- within the CalPERS
22 system?

23 GENERAL COUNSEL JACOBS: That would lessen the
24 administrative burden. It would still leave you a little
25 bit open, because you would not be able to swear that all

1 of your -- that you never conduct business -- well, it
2 would still leave some question about is it a possibility
3 that you missed something. That when you sent -- when you
4 were operating on your personal account, we all sometimes
5 forget to include somebody on a CC line, or what have you,
6 so it would leave your -- leave you a little bit open for
7 that.

8 COMMITTEE MEMBER SLATON: Okay. Thank you.

9 CHAIRPERSON TAYLOR: Okay. Mr. Jones.

10 COMMITTEE MEMBER JONES: Yeah. Thank you, Madam.
11 What about Tweets?

12 (Laughter.)

13 GENERAL COUNSEL JACOBS: The same rule.

14 COMMITTEE MEMBER JONES: Because I don't -- I
15 don't know where they come from and they come -- but it's
16 about CalPERS. No, I mean -- but they're coming to my
17 personal -- the app is on my personal phone.

18 GENERAL COUNSEL JACOBS: Right.

19 COMMITTEE MEMBER JONES: And so I open it, if I
20 know it -- you know, it comes from Richard Costigan --

21 (Laughter.)

22 COMMITTEE MEMBER JONES: -- I open it.

23 COMMITTEE MEMBER FECKNER: You open it?

24 (Laughter.)

25 COMMITTEE MEMBER JONES: But it's on my personal

1 phone.

2 GENERAL COUNSEL JACOBS: Well, what I would -- I
3 don't know how -- I don't know from Tweets --

4 (Laughter.)

5 COMMITTEE MEMBER SLATON: Somebody else said it.

6 COMMITTEE MEMBER FECKNER: That's all public
7 domain.

8 COMMITTEE MEMBER HOLLINGER: It's all public --
9 yeah.

10 DEPUTY EXECUTIVE OFFICER PACHECO: Henry, Brad
11 Pacheco, CalPERS team. I think what you're referencing is
12 when someone tags you in a Tweet, and that notification
13 goes to your email, you're simply just being notified that
14 someone has mentioned you publicly on the platform. So I
15 don't -- if that was something that would be responsive to
16 a public records request, it's already being seen anyway.
17 So it's out in the public sphere.

18 COMMITTEE MEMBER JONES: Okay. Okay.

19 CHAIRPERSON TAYLOR: Okay. Any other comments on
20 this?

21 And it sounds like everybody is already
22 complying, but we should include it in the governance
23 procedures.

24 GENERAL COUNSEL JACOBS: Very good. I will bring
25 that back as well in the -- at the June meeting.

1 COMMITTEE MEMBER SLATON: Well, just -- excuse
2 me.

3 CHAIRPERSON TAYLOR: Oh, I'm sorry. Bill.

4 COMMITTEE MEMBER SLATON: Yes. You know,

5 CHAIRPERSON TAYLOR: Oh, let me try again. Try
6 again.

7 There you go. You just automatically go up.

8 COMMITTEE MEMBER SLATON: So I have reluctantly
9 moved over very recently to the CalPERS system, which
10 requires now going to two email systems, and one of which
11 cannot tell you that you've got an email waiting. You've
12 got to go affirmatively check it, is because you have to
13 use the web version, unless you're going to carry a second
14 device, because of security.

15 So I mean, I -- here's what I would recommend. I
16 am hesitant to support a process that says we are
17 requiring ourselves to do this. If a board member is
18 careful enough, you can use your private email. Your risk
19 is to the individual Board member, not to CalPERS if you
20 don't respond affirmatively to a PRA request.

21 But I don't think we should be telling the
22 individual Board members you can only use this, because
23 it's an individual risk. It's not a CalPERS risk.

24 CHAIRPERSON TAYLOR: So what you're --

25 GENERAL COUNSEL JACOBS: Well, let me just

1 comment on that. I think it is a little bit of a CalPERS
2 risk, because CalPERS is ultimately responsible for
3 responding to the PRA. And so, yes, there's an element
4 that we can rely on the member's of the agency Board, such
5 as yourselves, but if it turns out that you missed
6 something, that's going to potentially reflect on the
7 agency.

8 CHAIRPERSON TAYLOR: I just want to say wouldn't
9 that be the same case though through my own E -- through
10 my CalPERS email, if I don't -- if I don't see it, and I
11 forget to send it to someone, then there's a problem, I
12 forgot to send it. So there's still a problem that I
13 didn't send out a Public Records Act request. So is that
14 not the case?

15 GENERAL COUNSEL JACOBS: I'm not sure I'm
16 tracking your scenario?

17 CHAIRPERSON TAYLOR: So if I'm using the CalPERS
18 email, right --

19 GENERAL COUNSEL JACOBS: Yes. Right.

20 CHAIRPERSON TAYLOR: I did not know that. I'm
21 being advised that CalPERS searches your emails for public
22 records.

23 GENERAL COUNSEL JACOBS: Sometimes, not all
24 always.

25 CHAIRPERSON TAYLOR: Yeah, because I don't -- I

1 don't think they have the ability to do that on the reg.
2 I don't -- so if I have a Public Records Act request as a
3 Board member, and it's sitting in email, and I've been out
4 of town and I haven't checked, you're saying that CalPERS
5 does a check? And let me put you up here, Priya.

6 GENERAL COUNSEL JACOBS: Not all the time.

7 VICE CHAIRPERSON MATHUR: Not all the time? I
8 thought --

9 GENERAL COUNSEL JACOBS: Not all the time.

10 VICE CHAIRPERSON MATHUR: Okay. I thought -- I
11 thought CalPERS as a matter of routine did. If there was
12 something with respect to CalPERS Board member emails
13 would look in our emails -- in our CalPERS emails to see
14 if there's anything responsive to that PRA -- PRA request.

15 GENERAL COUNSEL JACOBS: No.

16 CHAIRPERSON TAYLOR: Yeah, that's -- that
17 requires --

18 GENERAL COUNSEL JACOBS: That's why we send out
19 those emails asking you to look for them.

20 VICE CHAIRPERSON MATHUR: I see. Okay.

21 I totally appreciate where Bill is coming from
22 about the challenge of managing multiple devices. I do
23 carry two devices, and it's -- it is cumbersome, but I do
24 think this is something where it's appropriate for the
25 Board to have a policy about what -- what restrictions we

1 want to place on ourselves in terms -- so that we are as
2 responsive as possible to PRA requests, and that CalPERS
3 has access to the information it needs to be responsive --
4 CalPERS -- the team at CalPERS has that, so --

5 COMMITTEE MEMBER SLATON: But --

6 CHAIRPERSON TAYLOR: So what I will -- go ahead.
7 Hold on one second. What I will say is I'm not sure we've
8 defined language here. I'm not sure that we -- Matt, do
9 you have an opinion on saying "required" versus "should",
10 and then putting in what could happen if we don't?

11 GENERAL COUNSEL JACOBS: Well, that's the
12 question. The question that's posed in the agenda item is
13 since CalPERS operationally has that policy for staff,
14 does the Board want to adopt that policy for itself?
15 There's many variations of that that the Board -- excuse
16 me, that the Committee could discuss, and could settle on.
17 But the way it was written up was is that -- does the
18 Committee want to adopt that policy for itself for the
19 Board, or recommend it to the Board?

20 CHAIRPERSON TAYLOR: Okay. And, Bill, go ahead.

21 COMMITTEE MEMBER SLATON: So I think it should be
22 recommended rather than required, and here's the reason.
23 Because based on the question that you just asked of Matt
24 a little earlier, Matt, you responded that the PRA
25 requests come out to us for us to search our email, is

1 that correct?

2 GENERAL COUNSEL JACOBS: Yes.

3 COMMITTEE MEMBER SLATON: Okay. That's the same
4 thing you would do -- in fact, you did send me one
5 recently, where I had to go look at through my personal
6 email. So the risk of missing something is, I think, the
7 same risk, unless CalPERS is going to go back after I
8 respond and further search through the CalPERS, or are you
9 going to rely on me either using personal or using CalPERS
10 to fulfill the PRA request.

11 GENERAL COUNSEL JACOBS: I understand the point.

12 CHAIRPERSON TAYLOR: It wasn't CalPERS though.

13 COMMITTEE MEMBER SLATON: No, what I --

14 CHAIRPERSON TAYLOR: I think the -- I think when
15 we got that request, wasn't it that the court could
16 request?

17 COMMITTEE MEMBER SLATON: Well, I'm not -- I'm
18 dealing with a real situation of a PRA request, not a
19 court -- it wasn't a court thing. And all I'm saying is
20 that if staff doesn't go through everyone's emails in
21 order to meet a PRA request, but rather relies on each of
22 us to respond, then it seems to me that the risk is
23 exactly the same, whether it -- I'm searching through my
24 personal or whether I'm searching through my CalPERS
25 email.

1 GENERAL COUNSEL JACOBS: Well, I think one of the
2 problems, or the potential problems is follow up. So if
3 there's a challenge to whether CalPERS has produced
4 everything, then it would certainly be easier for
5 CalPERS --

6 COMMITTEE MEMBER SLATON: If you had -- can have
7 access.

8 GENERAL COUNSEL JACOBS: Right.

9 CHAIRPERSON TAYLOR: Okay. Ms. Hagen.

10 ACTING BOARD MEMBER HAGEN: I just wanted to make
11 a comment. Isn't it also more than just access that we're
12 talking about here or isn't it more a reputational risk?
13 I mean, thinking of recent media focus on personal emails,
14 it seems like that would be a bigger risk, but I don't
15 know. I just offer that to my colleagues.

16 CHAIRPERSON TAYLOR: So what's the appetite for
17 making it recommended rather than required? How does --
18 how does everybody feel? Because if we do the required,
19 it's the same as the current staff policy. So how
20 about -- are we doing the required, is that what everybody
21 is agreeing on, or --

22 VICE CHAIRPERSON MATHUR: It can come back as an
23 agenda item.

24 CHAIRPERSON TAYLOR: I know, but to write it one
25 way or the other, so -- okay so just do it as required and

1 we come back and discuss it.

2 GENERAL COUNSEL JACOBS: We can do that.

3 CHAIRPERSON TAYLOR: All right. We are at
4 Summary of Committee Direction

5 GENERAL COUNSEL JACOBS: Yes, I think we've
6 touched on that with respect to the -- I'm going to bring
7 back -- what am I going to bring back?

8 A -- policy language on the circulation of
9 articles and the like, and then the item that we just
10 discussed. Was there anything else?

11 I don't think so.

12 CHAIRPERSON TAYLOR: I don't think so. I think
13 that was it.

14 GENERAL COUNSEL JACOBS: Okay.

15 CHAIRPERSON TAYLOR: All right. And then we move
16 on to number 9, Public Comment. And I have Mr. Ben
17 Vernazza. Please come up here. And how do I turn on the
18 timer or do they?

19 VICE CHAIRPERSON MATHUR: They'll do it.

20 CHAIRPERSON TAYLOR: Okay.

21 MR. VERNAZZA: Well, it seems seam like I --
22 excuse me? Is this okay?

23 CHAIRPERSON TAYLOR: This is okay. Go ahead.

24 MR. VERNAZZA: It seems like I've been coming
25 here and Tweeting to you often. What I'd like to do is I

1 left you some other materials. I left you part of the
2 materials from your last meeting about enterprise
3 compliance and laws and regulations is where you start.
4 And that's where we started this morning with the letter
5 that my partner wrote.

6 And I'm not going to go into the fiduciary
7 matter, except to suggest you get a legal opinion. I
8 think that's extremely important.

9 Now, Henry did Tweet to me in Rohnert Park by
10 saying have you talked to the staff yet? And you -- you
11 encouraged me to do so, which I did. And I talked to
12 Wylie several times. And finally, he said send a
13 proposal. So I sent him a proposal in the middle of
14 August, and I didn't hear anything for a couple months.
15 And then I got a letter from a woman in the Investment
16 department that said, well, there's no request for
17 proposals, so it doesn't go through the system.

18 So I believe it belongs with you, this Committee,
19 Governance, because it's not only fiduciary, it's also a
20 matter of eliminating uncompensated risk to gain the
21 benefits. So I've put in a one-pager on the proposal, and
22 I would like to -- I would like to send the complete
23 proposal to this Committee for a review.

24 The third page is about what Angelo Calvello
25 talked about, get an informational edge versus flipping a

1 coin. And that's what reducing uncompensated risk will
2 give you. Just haven't had the math for years for only a
3 few years to be able to do it. I'd listen to his -- his
4 presentation again. I thought it was magnificent.

5 The next section is out of -- 11 pages out of the
6 third restatement of trust with highlights of where it
7 mentions about uncompensated risk, and there's no doubt,
8 in my mind, that this is significant because it's the most
9 significant thing that is talked about in the
10 diversification section. And then I -- I put in a
11 duplication actually of the analysis of the five counties
12 with a link to that 27-page study, as well as how I
13 arrived at the fact that I believe that you left 1.2
14 billion on the table for the 12-months ending 9-30 of '16.
15 That's the period that we did the study.

16 I had my partner arrange to have 10 ten of --
17 sent to me by Friday, but I didn't get them, but I had two
18 in my office. It's prudent practices for investment
19 stewards. It's the standards that were developed by
20 fi360, and also reviewed by the American Institute of
21 CPAs, and my partner was on the Committee.

22 By the way, we --

23 CHAIRPERSON TAYLOR: Mr. Vernazza.

24 MR. VERNAZZA: -- we will be --

25 CHAIRPERSON TAYLOR: Your time is up.

1 MR. VERNAZZA: Okay. We will be writing the
2 diversification section in the revision.

3 Thank you very much. I'd like to give one to the
4 Chairman and one to the Vice Chairman.

5 CHAIRPERSON TAYLOR: Certainly. Thank you.

6 MR. VERNAZZA: And the next time I come and
7 Tweet, I'll bring the rest.

8 Thank you.

9 CHAIRPERSON TAYLOR: Thank you. Do you want to
10 ask it.

11 VICE CHAIRPERSON MATHUR: I just had a question.
12 It sounds like this a proposal for -- to perform work for
13 CalPERS, as opposed to really public comment, I guess, is
14 what I'm trying to understand. Is that what -- is that
15 your interpretation?

16 GENERAL COUNSEL JACOBS: Yes, I that was my
17 understanding.

18 VICE CHAIRPERSON MATHUR: It's a vendor proposal.

19 GENERAL COUNSEL JACOBS: Yes.

20 VICE CHAIRPERSON MATHUR: Okay. Thank you.

21 CHAIRPERSON TAYLOR: All right. So seeing
22 nothing further, no further public comment, I adjourn the
23 Board Governance Committee meeting.

24 (Thereupon California Public Employees'
25 Retirement System, Board Governance Committee

meeting adjourned at 4:04 p.m.)

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C E R T I F I C A T E O F R E P O R T E R

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing California Public Employees' Retirement System, Board of Administration, Board Governance Committee meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and was thereafter transcribed, under my direction, by computer-assisted transcription;

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of April, 2017.

JAMES F. PETERS, CSR
Certified Shorthand Reporter
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