

IN THE SUPREME COURT OF OHIO

**THE STATE OF OHIO, ex rel.
EDWARD SIEDLE**

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CASE NO.

RELATOR

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Original Action in Mandamus

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-vs-

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**STATE TEACHERS RETIREMENT
SYSTEM OF OHIO
275 E. Broad Street
Columbus, OH 43215**

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and

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**CEM BENCHMARKING, INC.
372 Bay Street, Suite 1000
Toronto, Ontario, M5H 2W9**

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RESPONDENTS

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**COMPLAINT FOR WRIT MANDAMUS
WITH SUPPORTING AFFIDAVIT**

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INTRODUCTION

Relator seeks public records regarding reports prepared for and given to Respondent State Teachers Retirement System of Ohio (“STRS”) relating to the state’s public school teachers’ pension fund. Those reports summarize various financial information for the STRS pension fund, such as the returns achieved, the expenses incurred by the funds, including the fees charged by the outside fund managers, and the comparison of STRS’s pension performance with those of similar public pensions around the country. In particular, Relator sought the reports generated by Respondent CEM Benchmarking, Inc. (“CEM”) a consultant retained by STRS to provide an annual cost effectiveness analysis for the pension fund.

Eventually, STRS provided Relator with five reports generated by CEM. But each of the reports contained extensive redactions. The redacted documents were accompanied by a written explanation from CEM as to why the documents were so heavily redacted. CEM claimed that the redactions were to protect “trade secrets” that are exempt from disclosure under the Public Records Act. CEM’s position is frivolous with respect to most, if not all, of the information it redacted from the reports.

Relator files this Complaint to obtain an order from this Court directing STRS and CEM to produce unredacted versions of CEM’s reports.

For his Complaint, Relator, Edward Siedle, states:

JURISDICTION AND PARTIES

1. This Court has jurisdiction over this matter pursuant to Art. IV, Sec. 2(B)(1)(b) of the Ohio Constitution, R.C. § 149.43, and R.C. § 2731.01 et seq.
2. Relator, Edward Siedle, is an attorney and President of Benchmark Financial Services, Inc. His company performs forensic investigations of pension funds around the country.

Mr. Siedle's affidavit supporting this action is filed herewith.

3. STRS is a "public office" within the meaning of R.C. § 149.43. STRS holds and manages the pension and health care funds paid into it on behalf of public school teachers in Ohio. As part of its statutory duties, STRS is charged with investing public pension funds in suitable investment vehicles for the benefit of Ohio's public school teachers and is responsible for accurately accounting for and reporting the composition, value, and performance of the assets under its management. In performing its statutory mission, STRS controls "public money" as that term is defined in R.C. § 149.011(C).
4. CEM is a Canadian company headquartered in Toronto. Among the services CEM provides to pensions funds is to compare the fund's cost, performance, and risk against those of other, similar pension funds.
5. At all times CEM was working on behalf of STRS in furtherance of STRS's public functions. At all times, STRS was intended to receive the reports prepared for it by CEM and was able to monitor CEM's performance.

OPERATIVE FACTS

6. In October 2020, the Ohio Retired Teachers Association, an association of retired public school teachers in the state, retained Benchmark Financial Services, Inc. and Mr. Siedle to perform a forensic investigation of the STRS pension fund.
7. As part of that investigation, on February 19, 2021, Mr. Siedle, through his attorney, sent a letter to STRS requesting that it produce to him, under the Ohio Public Records Act: (1) all contracts between STRS and CEM Benchmarking; (2) all reports and analysis produced by CEM Benchmarking related to STRS's investment management fees, costs, and expenses; and (3) all reports and analysis produced by CEM Benchmarking related to

alternative investments.

8. Upon information and belief, upon receipt of Mr. Siedle's records request, STRS forwarded the request to CEM for input prior to responding.
9. Approximately two and a half months later, STRS provided to Siedle five annual reports entitled Investment Cost Effectiveness Analysis prepared by CEM for the years 2015-2019. Each of the reports, however, was heavily redacted. Upon information and belief, all the redactions were made or demanded by CEM.
10. STRS has not produced a copy of any agreement between it and CEM.
11. In addition to the reports, STRS provided a written response to the request. Included in that response was the following information relayed by STRS to Siedle regarding CEM's redactions:

CEM Benchmarking's explanation of their redactions is:

"The redactions have been made in line with the definition of "Trade secret" as defined in Ohio Code 1333.61 Uniform trade secrets act definitions as follows:

(D) "Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

(1) It 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.

(2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

We have redacted our cost data as well as certain formulas and methods used in the preparation of the report. The information that has been redacted is not publicly available and is only provided to our paying clients. The redacted cost data has been provided to us by our clients and forms our proprietary cost database. This data and database is not available from other public sources and forms the basis for our analysis. It is key to our business model that the data not be publicly released. Note that I have not redacted return

information since 1) much of this data could be gleaned from publicly available sources (CAFRs) and is not core to our product."

12. The redactions on each report were essentially the same. Each report contained complete or partial redactions of nearly half of its pages. For example, the 2019 report, which comprises 144 pages, had 63 of its pages fully or completely redacted. The 2017 report, also 144 pages in length, had 72 pages fully or partially redacted.
13. Conspicuously redacted from the reports are the identities of the public pension funds that CEM chose as STRS's peers for performance comparison. However, CEM's own website indicates that it will disclose the identity of a client if that client is in another pension fund's peer group. CEM's only guarantee is that it will not identify a client paired with that client's investment data. The webpage states:

Confidentiality

The information that CEM collects from clients is sensitive and we are very careful about how we handle it. Your data will be treated in the same confidential manner as data received from all other clients who participate in our surveys. Data collected from you may be used for benchmarking and research, but only in a manner that preserves confidentiality by combining your responses with many others. CEM may disclose your fund's inclusion by name in its client reports if your fund is part of the peer group used as the basis for the report. This disclosure will not be linked to your data or results. From time to time, CEM may provide access to the data on an unnamed basis, and under a strict confidentiality agreement, for academic research.

<https://www.cembenchmarking.com/confidentiality.html>

14. CEM also redacted data about STRS's performance, including investment costs, outside money manager fees, and performance information on STRS's investments. All that information is provided by STRS staff to CEM, which CEM then analyzes. CEM offered no explanation as to how it can claim that STRS's own internal data can be CEM's trade secret.

15. Upon information and belief, none of the information redacted from the five annual reports can be fairly classified as a trade secret.
16. STRS failed to produce any written analysis provided to it by CEM relating to its investment management fees, costs, and expenses. STRS also failed to produce any reports or analysis prepared by CEM related to its alternative investments.

**Count I
Mandamus**

17. The purpose of the contractual relationships between STRS and CEM was to assist STRS in the performance of its statutory and fiduciary responsibilities to the public school teachers of Ohio.
18. During the fulfillment of its contractual duties to STRS, CEM was responsible for the public records of STRS provided to it.
19. CEM prepared the records sought in order to carry out the responsibilities of STRS, namely the benchmarking analysis required by R.C. 3307.15.
20. STRS was able to monitor the performance of CEM through the requested documents.
21. STRS had the right to access all the requested documents in the possession or control of CEM for the purpose of monitoring CEM's performance.
22. Siedle's February 19, 2021 letter was a proper records request under R.C. 149.43, and all the documents requested were public records as defined by that statute.
23. The assertions of STRS and CEM that the redactions to the produced reports were to protect trade secrets is false.
24. The redactions to the reports and failure to provide the contracts between STRS and CEM are violations of the duties of STRS and CEM to disclose public records upon request.

25. Siedle is aggrieved by the failure of STRS and CEM to produce or allow him to inspect the requested records.
26. Siedle is entitled to a writ of mandamus directing STRS and CEM to prepare and permit inspection of all the requested records.
27. Pursuant to Supreme Court Practice Rule 12.02(B), an affidavit supporting the statement of facts upon which the claim for relief is based are attached hereto.

WHEREFORE, Relator requests relief from this Court as follows:

- 1) Issue a Peremptory Writ of Prohibition directing Respondents to provide to Relator all requested contracts and reports without redaction;
- 2) Issue an Alternative Writ directing Respondents to show cause why disclosure of such records is not required under law;
- 3) Award Relator statutory damages under R.C. 149.43(C);
- 4) Award Relator his court costs and attorney's fees pursuant to R.C. 149.43(C); and
- 5) Issue such other and further relief as may be available either at law or in equity.

Respectfully submitted,

/s/ Andrew M. Engel

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