

April 2019

## **MPERS**

### **Missouri Sunshine Law and Contracts**

The Sunshine Law states in Section 610.011, RSMo., that “it is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.200 shall be liberally construed and exceptions be strictly construed to promote this public policy.” MPERS meets the definition of a “public governmental body” and therefore, has an obligation to follow the aforementioned sections of the Sunshine Law. There are however, a few exceptions specific to contracts that apply to some of MPERS’ contracts that require some explanation.

Section 610.011.2 states that all public records of a public governmental body are open to the public for inspection. Many of MPERS contracts are public records; they primarily govern administrative relationships. Examples of contracts open to the public are the following:

- Vendor contracts
  - Socket, internet
  - Huber, IT services
  - LRS, pension database administration
  - Westlaw, legal research
- Consultants:
  - NEPC, general investment consultant
  - Bob Charlesworth, risk consultant
  - Williams Keepers, auditor
  - GRS, actuary
  - Mike Winter and Associates, governmental consultant
- Memoranda of Understanding with MOSERS
- Memoranda of Understanding with Highway Patrol

In contrast, Section 610.021 provides for the specific exclusions when records are closed to the public. Specifically, subparagraph 14 of this section provides for an exclusion for “records which are protected from disclosure by law.” MPERS has a large library of contracts that fall under this exclusion and those contracts are the agreements associated with MPERS’ alternative investment relationships. The following is a list of the most common documents associated with these relationships, including a short explanation.

1. The private placement memorandum describes the deal along with business and legal terms and disclosures.
2. The limited partnership agreement is the bulk of the contractual relationship and explains the legal and business terms of the deal in detail.
3. The subscription agreement is almost entirely a business document whereby MPERS tells the manager what kind of an investor MPERS is and makes its representations and warranties to the manager. It also contains legal terms that must be reconciled with the limited partnership agreement.

4. The side letter is an agreement solely between the investment manager and MPERS describing specific legal and business terms that will only apply to MPERS, usually due to our status as an instrumentality of the state and a public entity or terms we have negotiated independent of other investors.

Due to the sensitive nature of the information contained in these legal documents, it is industry standard that the documents listed above are protected by trade secret laws. Chapter 417 of the Missouri Revised Statutes governs the law of trade secrets in Missouri. Sections 417.450 to 417.467 are known as The Missouri Uniform Trade Secrets Act. Section 417.453(4) defines trade secret as

information, including but not limited to, technical or nontechnical data, a formula, pattern, compilation, program, device, method, technique or process that (a) 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 (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Section 417.453(2) defines misappropriation of a trade secret, in relevant part, as

disclosure or use of a trade secret of a person without express or implied consent by another person who at the time of disclosure, knew or had reason to know that knowledge of the trade secret acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use.

It is readily understood by all limited partners entering into agreements with the general partners in the alternative assets space, that everything related to the underlying portfolio investments and the investment process and strategy are considered highly confidential and a matter of trade secret. Every agreement of the general partners states the same, and the expectation is that all information will remain confidential unless otherwise agreed upon by the parties. Of the list mentioned above, three require MPERS to review and agree to the terms of confidentiality.

Because of the express promises MPERS makes when entering into these agreements, and in consideration of MPERS' responsibilities under the Sunshine Law as well as its responsibilities to its stakeholders, MPERS enters into an ancillary agreement called a side letter (the fourth document mentioned above) that gives MPERS permission to share specific information with the public as required by the Sunshine Law. The side letter gives MPERS the authority it requires to release a number of reports to the public upon request, and as required by statute. In addition, in the event MPERS is required by other laws, civil action, or otherwise, to provide documentation to a third party, MPERS may do so, but must notify the general partner prior to releasing the information to the requestor so that the general partner may take legal action if appropriate and necessary.

MPERS, as well as every other limited partner investing in this space, has an obligation to abide by the terms of the agreements. Not only are these terms industry standard and appropriate, but the laws governing public information in every state are similar to those in Missouri, i.e., all public funds are operating under the same general laws and expectations.