



Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 14

MEETING DATE: September 15, 2021

SUBJECT: Privacy and Confidentiality Policy

SUBMITTED FOR: ___ Consent X Deliberation and Action ___ Receive and File

RECOMMENDATION

Staff recommends the Board reaffirm SCERS' Protection of Individual Records Policy, which was introduced in 2008 and last reaffirmed in 2018.

PURPOSE

This item supports the Strategic Management Plan to promote transparency, fairness, and compliance with laws, regulations, and policies.

DISCUSSION

As a public pension system, much of the information that SCERS collects and maintains is subject to confidential treatment. Such confidential information includes: (1) Personal Information (information to which members and other individuals have a privacy interest), (2) Security Information (information critical to maintaining the security of SCERS' financial assets and information technology infrastructure), and (3) Privileged Information (information generated in the course of a protected relationship or protected process, such as the attorney-client communications).

SCERS' Privacy and Confidentiality Policy requires anyone associated with SCERS – trustees, employees, and vendors – to safeguard such information. In addition, the Policy requires SCERS to develop training, policies, and procedures related to the appropriate handling of such information.

The Board last reaffirmed the Policy in January 2018. Pursuant to SCERS' practice of reviewing and refreshing policies every three years, Staff has re-evaluated the Policy in light of practical experience and considered whether any amendments are necessary.

Staff recommends the Board reaffirm the Policy, with some minor amendments. Given the vast amount of sensitive information that SCERS maintains, it remains necessary for SCERS to have a policy that holds handlers of that information to a high degree of care and accountability.

However, the current iteration of the Policy has some practical limitations, in that it comes with a specific, one-size-fits-all Confidentiality Agreement (Standard Agreement) that all SCERS trustees, employees, and vendors are expected to sign. Staff recommends a few amendments to the Policy that give Staff more flexibility to depart from that Standard Agreement:

- Staff's experience has been that many vendors – particularly large institutions and investment managers – balk at signing the Standard Agreement. Specifically, those vendors object that its broad, all-inclusive language bear no relationship to the specific services that the vendor provides. (For example, some investment managers have objected to the Standard Agreement because it references information that they would never handle, such as member information or attorney-client communications.) Those vendors insist, understandably, on negotiating more specific and tailored confidentiality provisions as part of the primary service contract. This is a reasonable approach that should be incorporated into the Policy.
- Relatedly, Staff seeks the ability to make revisions and adjustments to the Standard Agreement over time without having to obtain Board approval. Thus, Staff recommends amending the Policy to state that SCERS personnel must sign an agreement “substantially similar” to the Standard Agreement attached to the Policy.
- The Standard Agreement should reference the fact that all signed agreements will be scanned and preserved in electronic form.

ATTACHMENTS

- Board Order
- Privacy and Confidentiality Policy (redlined)
- Privacy and Confidentiality Policy (clean)

Prepared by:

/S/

Stephen Lau
General Counsel

Reviewed by:

/S/

Eric Stern
Chief Executive Officer



Retirement Board Order

Sacramento County Employees' Retirement System

**Before the Board of Retirement
September 15, 2021**

MOTION:

Privacy and Confidentiality Policy

THE BOARD OF RETIREMENT hereby accepts the recommendation of staff to reaffirm the Privacy and Confidentiality Policy with amendments.

I HEREBY CERTIFY that the above order was passed and adopted on September 15, 2021 by the following vote of the Board of Retirement, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

ALTERNATES (Present but not voting):

Richard B. Fowler II
Board President

Eric Stern
Chief Executive Officer and
Board Secretary



PRIVACY AND CONFIDENTIALITY POLICY

PURPOSE

This policy provides a comprehensive plan to enable the Sacramento County Employees' Retirement System (SCERS): to meet its commitment to protect the privacy of its members; to protect the security of SCERS, its employees, and its assets; and to comply with relevant legal requirements.

DEFINITIONS

Confidential Information - This is information obtained or created by SCERS which is restricted as to access, disclosure or use. It may be found in any medium, whether oral, written, or electronic. It includes the following:

- a. **PI:** Personal Information (PI) is any non-public information that is identifiable to an individual. Examples include demographic information such as the individual's age or address, or it may be health information, such as his or her medical history. It includes member records and sworn statements.
- b. **SI:** Security Information (SI) is information that, if improperly disclosed, could adversely impact the security of SCERS or its members, employees, or assets. Examples include information about SCERS' information technology systems and security, financial accounts, etc.
- c. **PRI:** Privileged Information (PRI) is information that falls into a legally recognized category that is protected from compulsory disclosure. An example is attorney-client communications.

Employees – For purposes of this policy means all SCERS personnel who are directly or indirectly supervised by the SCERS Board and/or SCERS management.

Individual - Any person who is the subject of PI.

POLICY

SCERS shall maintain the confidentiality of information that could impact the security of its members, its employees, or its assets, as well as legally privileged information. Accordingly, SCERS does not sell or trade members' personal information; nor does SCERS disclose it to anyone other than those who need it to provide member services or those who are legally entitled to it.

1. In accordance with applicable laws and SCERS' mission, all SCERS employees are responsible for ensuring that PI, including member records and sworn statements, are not disclosed except to:
 - Authorized SCERS employees for approved purposes,
 - The member upon request, or
 - Third parties who have appropriate authorizing documentation.
2. In addition, SCERS employees are responsible for ensuring that PI is obtained, used or shared only to the minimum necessary extent that is required to further SCERS' mission, within the constraints of applicable laws. This means that access to PI is permitted on a need-to-know basis.
3. Reasonable safeguards are to be implemented to ensure the privacy of PI, including controls on who can access the information, how the information is used, how it is obtained, stored and shared, and how it is eventually discarded. Member sworn statements and member records are to be kept confidential.
4. SI and PRI are to be secured at all times from unauthorized disclosure or use.
5. The deliberate or negligent mishandling or misuse of PI, SI, or PRI is considered to be misconduct and is enforced through employee discipline.

APPLICATION

SCERS' privacy policy will be implemented through the following activities:

1. SCERS will obtain a complete and signed Confidentiality Agreement ([in a form substantially similar to the attached](#)) from every Board of Retirement Member, SCERS employee, and all other persons associated with SCERS who in the course of that association will or may encounter Confidential Information to ensure the confidentiality of PI, SI, and PRI is maintained. [Alternatively, SCERS will require its vendors and service providers to enter into service agreements that contain confidentiality provisions satisfactory to SCERS' counsel.](#)
2. SCERS will maintain policies and procedures that provide guidance for the handling of PI, SI, and PRI.
3. SCERS will implement physical and electronic controls to protect the privacy of PI, SI, and PRI.
4. SCERS will train all employees upon entry and periodically thereafter on privacy and confidentiality policies and procedures.
5. SCERS will maintain proper disclosures and disclaimers in all publications and communications with outside parties that may involve PI.

6. SCERS will obtain a written authorization from the individual before disclosing that individual's PI to third parties other than third parties working on behalf of SCERS or those who require the information by law or pursuant to a court order (e.g., government agencies, litigants). Other exceptions may apply as well.
7. SCERS will obtain appropriate supporting documentation from third parties who require PI by law or pursuant to a court order before disclosing PI to such parties (e.g., government agencies, litigants).
8. SCERS will establish procedures for receiving and responding to disputes regarding PI, for providing individuals access to their own PI, and for notifying individuals about any unauthorized use of their PI.
9. SCERS will periodically review this privacy policy to ensure that it addresses all relevant laws and risks inherent in the handling of PI.
10. SCERS will monitor compliance with this policy and applicable laws. This may include periodic audits and other monitoring tools.

BACKGROUND

There are a number of laws that address privacy and security issues. The most significant law in this area is Government Code Section 31532 which precludes disclosure of SCERS' member records and sworn statements unless proper authorization is provided. Beyond these legal requirements, SCERS continuously reviews legislation and privacy and security practices to ensure the privacy of its members and the security of its operations.

See also SCERS' "Protection of Individual Records Policy" that identifies the retirement benefit information that is disclosable by SCERS pursuant to a Public Records Act request.

RESPONSIBILITIES

Executive Owner: Chief Operating Officer

POLICY HISTORY

Date	Description
<u>09-15-2021</u>	<u>Board reaffirmed policy with amendments</u>
08-01-2018	Renumbered from 009
01-17-2018	Board affirmed in revised policy format
05-23-2009	Board approved new policy

Instructions:

This form is to be completed and signed by all Retirement Board Members, all SCERS employees, and ~~all~~ other persons associated with SCERS who in the course of that association will or may encounter information that is considered confidential. The signed form will be converted to electronic form and retained ~~remain with the Chief Executive Officer~~ for a period of no less than six (6) years from the last day of the signer's employment or association with SCERS.

CONFIDENTIALITY AGREEMENT

I, _____, understand that, in the course of my employment or association with SCERS, I may encounter information that is considered confidential (hereinafter referred to as Confidential Information). I further understand that all Confidential Information must be protected from improper use or disclosure. In addition to other applicable federal and state laws, SCERS is required by California Government Code section 31532 to ensure that "sworn statements and individual records of members shall be confidential and shall not be disclosed to anyone except insofar as may be necessary for the administration of the County Employees' Retirement Law or upon order of a court of competent jurisdiction, or upon written authorization by the member."

Confidential Information includes:

- **Personal Information (PI)**, which is any non-public information identifiable to an individual (e.g. member records and employee files),
- **Security Information (SI)**, which, if improperly disclosed, could adversely impact the security of SCERS, its employees, or its assets, (e.g. information about SCERS information technology systems and security, or financial accounts, etc.)
- **Privileged Information (PRI)**, which is information that falls into a legally recognized category that is protected from compulsory disclosure (e.g. attorney-client communications).

I have read and understand SCERS' Privacy and Confidentiality Policy, which protects the confidentiality of PI, SI and PRI.

I hereby agree that I will not at any time (either during my employment or association with SCERS or after my employment or association ends) use, access or disclose any Confidential Information to any person or entity, internally or externally, except as is required and permitted in the course of my duties and responsibilities with SCERS, as set forth in SCERS' Privacy and Confidentiality Policy and related procedures or as permitted under applicable federal or state laws.

I understand this obligation extends to any Confidential Information that I may have acquired or may acquire during the course of my employment or association with SCERS, whether in oral, written or electronic form and regardless of (1) the manner in which access was obtained, (2) whether the Confidential Information came into my custody, possession, or knowledge, or was developed, compiled, prepared or used by me, before or after the date of this Agreement, and (3) whether the Confidential Information has been published or has become a part of the public domain, or has been put in my possession or knowledge by a third person not acting on behalf of SCERS, or was in my possession or knowledge prior to the commencement of my employment or association with SCERS.

I understand and acknowledge my responsibility to apply SCERS' Privacy and Confidentiality Policy and related procedures during the course of my employment or association with SCERS.

I understand that this obligation will survive the termination of my employment or association with SCERS, regardless of the reason for such termination, and that my obligations under this Agreement are in addition to, and not exclusive of, any and all of my other obligations and duties to SCERS, whether express or implied, in fact or in law.

As a **SCERS Retirement Board Member**, I understand that my unauthorized use or disclosure of Confidential Information may result in the imposition of civil and/or criminal penalties under applicable federal and state law.

Signed _____ Date _____

As a **SCERS Employee**, I understand that my unauthorized use or disclosure of Confidential Information may result in disciplinary action, up to and including the termination of employment with SCERS and the imposition of civil and/or criminal penalties under applicable federal and state law. I also understand that the original of this signed Agreement will be included in my employee file at SCERS.

Signed _____ Date _____

As a **SCERS Vendor** I understand that my unauthorized use or disclosure of Confidential Information may result in the termination of my association with SCERS and the imposition of civil and/or criminal penalties under applicable federal and state law.

Name _____ Title _____

Company _____

Address _____
City State Zip Code

Signed _____ Date _____



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I understand that this obligation will survive the termination of my employment or association with SCERS, regardless of the reason for such termination, and that my obligations under this Agreement are in addition to, and not exclusive of, any and all of my other obligations and duties to SCERS, whether express or implied, in fact or in law.

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Name _____ Title _____

Company _____

Address _____
City State Zip Code

Signed _____ Date _____