

High-Tech Advisor

Inside the Mind of a VC

FOIA? GOIA!

(translation: Freedom of Information Act? Get Over It Already!)

Over the past year or two, we've seen increasing consternation on the part of private-equity partnerships about FOIA's impact on the historically secretive nature of



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of our industry. Across a number of major limited-partner investors ("LPs"), particularly those in the public-pension and university-endowment domain, FOIA is forcing the disclosure of individual partnership performance and terms as never before.

In response, we've recently seen a top venture fund demand that a few of its long-term LPs withdraw from an existing partnership. Another quality VC closed a new fund specifically excluding any LPs thought to be subject to the FOIA statute. While the partnerships in question are credible, the reasons given for their actions frankly are not. In fact, the entire stink over this issue is a smoke screen by many firms less altruistic than they seem. It is time to be real, and honest, about the motivation here.

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First, let me set the stage with a little-known fact influencing our opinion. One of our largest and oldest LPs, the Oregon Public Employees Retirement Fund, has been publishing cash-on-cash performance of its private-equity partnerships for well over a decade. Even with funds better known than OVP in the mix (such as KKR), this seems to have escaped notice on a national scale. So, since our data have been in the public domain for many years, we "got over it" a long time ago. Our numbers are our numbers. When we do well, we're delighted to have them visible. If not, we're responsible for them nonetheless. In any event, we can't hide from them.

Those who rail against the impact of FOIA usually claim two reasons for their objections: (1) Because we are a private partnership, we choose to remain private with our performance. (2) This is a slippery slope. Today fund performance—tomorrow individual portfolio-company data will be forced open.

The second point is a red herring. FOIA can force open only
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data actually transmitted to bodies subject to the law. If there were to come a time when the law was deemed to reach beyond fund performance, all of us in the industry would simply stop making sensitive portfolio-company data available in hard-copy form to our LPs. They could listen to us talk at quarterly or annual meetings, but not walk away with any paper. This is not an ideal way to communicate, but would certainly preserve the privacy of those private companies and therefore allow them to maximize their return potential without interference.

Colorado even recently passed a law specifically prohibiting disclosure at the portfolio-company level. This whole objection is moot.

Now let's get back to the real sticking point—Objection 1.

If you are a major “brand” in the private-equity business, the last thing you want to risk is any damage to that brand. There is a mystique about LPs’ and funds of funds’ having “access” to your highly selective partnership. In some cases, this mystique is well justified, having been built on a history of sustained superior returns. But as we have seen with the publishing of the CalPERS, UTIMCO, and U Michigan data (among others), quite a few brands do not live up to their billing, or at least haven’t for many, many years.

If you are one of those “hollow” brands, you cannot afford the questions coming from the trustees of those LPs as to why they keep re-upping with you when your performance, and that of your competitors, is in the bright light of day. It is entirely too uncomfortable to have to stand up and defend your record when everyone has provided full disclosure and you don’t measure up.

Even if you are among the “solid” brands, disclosure offers only downside. No matter how good you’ve been, for how long, this is a humbling business. Every so often you will have a weak fund, as confirmed by recently published data by Mark O’Hare at Private

Equity Intelligence. Having those results visible strips the aura of invincibility away from these brands not only to LPs but also to entrepreneurs. Going with XYZ Ventures is no longer a sure path to success. Heaven forbid!

For those of us still in “brand-building” mode, FOIA is actually a blessing. We now go into meetings with potential new LPs with real data, often about partnerships they already back. When hit with the inevitable “we invest only in top quartile funds,” we not only can point to our performance against the historically suspect industry benchmarks, but can do so against now publicly available data showing that many of the “top quartile” firms in fact are not.

The furor over FOIA is very simply a case of established brand-name players’ trying to keep the playing field tilted in their favor, absent the facts. Funny, that’s what established companies try to do against the startups we invest in.

How ironic.



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