

Social Media Guidelines for Elected and Appointed Officials

While a robust social media policy that guides daily activities is essential for public agencies, clear guidelines are vital during a traditional emergency/disaster or crisis of confidence. The following information is useful in helping public officials understand the mechanics of social media policy, but as a crisis begins to emerge, staff leadership should remind elected/appointed officials of the agency's policies and stress the importance of only posting verified communication on all platforms, whether official or personal.

Elected/appointed officials have a role at their agency that is inherently different from staff. The agency social media policy should be very clear in social media guidance for elected officials. Use of social media is encouraged while being clear what elected/appointed officials can and cannot do via social media platforms.

Social media is a tool growing in popularity for developing direct communications with your stakeholders and creating informal opportunities to reach out beyond official publications. Agency policies should cover the "official" agency account, employee use of social media inside and outside of work, and elected/appointed official use of social media.

The extent to which an agency or individual uses social media varies. Before engaging you should assess your risk tolerance and make sure certain laws – such as the California Public Records Act and Ralph M. Brown Act – are followed.

Tips for Using Social Media Effectively and Responsibly during a Crisis

- Public vs. private is blurred – Personal posts by elected/appointed officials will be interpreted by many as official agency posts; it is essential to only post crisis-related information that has been verified by emergency response or other appropriate sources.
- Link to official accounts – Elected/appointed officials can ensure that those affected receive verified information by linking to official agency social media accounts.
- Coordinate all crisis-related posts with staff – "Rogue" and unconfirmed posting is one of the most frequent causes of misinformation and inaccurate rumors during a crisis.
- Avoid serial posting – If a quorum of any public body merely comments on the same social media post, they could be in violation of open meeting laws.
- Be wary of deleting posts – The First Amendment protects freedom of speech from government interference, and public agencies must be cautious about censoring an individual's right to free speech; if an elected/appointed official blocks a social media user, it could be argued that they are blocking future speech made by that person.

Clarifying Definitions

- Social media can include websites and applications that enable users to create and share content or to participate in social networking.
- A social platform is a web-based technology that enables the development, deployment, and management of social media solutions and services.
- A third-party system is any system maintained by another entity. This could include Twitter, Facebook, Nextdoor, Wordpress, Google, phone carriers, and more.

Know When Social Media is a Public Record

It is essential to know when social media is a public record as determined by your agency's legal counsel. Retention of documents, including social media, is based on the content and not the platform. Agency policy should consider retention and adopt a process outlining responsibilities.

Make a clear distinction between official accounts, campaign accounts, and personal accounts. One way elected officials and staff can clearly distinguish private social media accounts is by adding disclaimers on election and personal accounts, and not using the account for agency business. Agency-sponsored accounts may not be used for campaign-related purposes.

To keep a personal account from becoming subject to public records, consider some basic precautions.

Do:

- Post a disclaimer on your personal account that identifies the account purpose and that the opinions you express are your own.
- Limit the account content to personal use.
- Understand and use privacy settings to manage the account.
- Have a plan in place to respond to or forward city-related comments to the agency, including how the record is retained.

Don't:

- Write posts on personal accounts that would fit within the scope of employment.
- Don't discuss your private accounts in public meetings or documents.
- Don't link to your private accounts from an official agency account.
- Don't use agency devices to maintain your private account.

First Amendment and Employment Rights

Agency policies should strike an appropriate balance between privacy, liability, and public records concerns. Employees have first amendment and employment rights that need to be balanced against impacts to the image and liability of the agency. Agency policies should provide clear guidance on use of official accounts and advice for keeping clear distinctions between official and personal accounts (see precautions noted above).

Develop and Follow your Agency Policy

Agency policies should address situations that apply to elected/appointed officials and their unique needs. Specifically, these policies should address open public meetings implications, the intersection with campaign rules, impacts on agency decision-making processes, and public records and retention issues.

- Evaluate how the elected/appointed official and agency will respond if an official's personal account receives a complaint or public records request.
- Establish a process to follow if an elected/appointed official receives an agency-related question or comment on their personal account. Outline how the question or comment will be addressed, and how the record will be retained.

- Limit “friending” or “liking” by elected/appointed officials subject to the Ralph M. Brown Act. Elected/appointed officials need to avoid inadvertent serial meetings that would violate the notice and public meeting requirements. Courts have found those to occur when a chain of conversations involving “action” by a quorum of the policy-setting body occurs. Passive receipt of information is generally not considered to be action.
- The policy-setting body may consider adopting rules that outline usage and etiquette, including use both inside and outside of meetings.

Establish procedures for approval of official agency social media use that considers retention when the accounts are created.

- Establish an approval process before an agency account is created.
- Define who is allowed to post.
- Outline processes related to disclosure of passwords, regular password changes, and security.
- Know how access will be provided if requested as part of a public records request.
- Research your third-party vendor retention policies and consider investing in retention software.
- Consider limiting posts to “secondary copies” of documents that are already available on a platform that is more easily retained, such as the Website.
- Consider non-agency accounts or Websites your agency may or may not link to. Some agencies avoid linking to accounts or Websites they do not control.
- Address when and how accounts could be subject to search for public records, and require employees to cooperate in searches and providing affidavits.
- Prohibit activities that would be prohibited in other contexts such as: use of public resources for campaign activities; defamatory, discriminatory, or obscene language; violations of intellectual property rights; and disclosure of confidential or HIPAA-protected healthcare information.
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Sources: *Government Technology* and Association of Washington Cities (adapted for California public agencies).