

Social Media and Public Records: Developing a Social Media Use Policy

Social media is an important and pervasive part of modern life. Facebook, Twitter, Instagram and other social media are where people go to get significant and timely information – including government information. Government obligations to the public require social media to be handled carefully.

Develop a Social Media Policy

Social media is an important communication tool that requires clear processes, policies and responsibilities to manage well. It is good policy to develop a plan with specific goals and purposes for each social media tool and publicly offer the statement of intent. A comprehensive social media policy should include:

- Manage expectations for appropriate government social media use
 - How to talk about your administration and initiatives
 - How staff should respond to, follow and engage with social media when it mentions your administration
 - Confidentiality restrictions – what should and should not be shared on social media
- Define roles and responsibilities
 - Clearly defined ownership of content and responsibility for managing content by subject or platform
- Manage potential legal risks
 - Credit original sources when using open materials
 - Draft privacy and confidentiality guidelines
 - Ensure employee accountability for what they post and present via social media
 - Recognize that comments on social media will likely include personally identifiable information at times. Be sure to develop a policy about identifying legally exempt information and properly handling it. Publicly post your policy.
- Identify and use recordkeeping practices and requirements
 - Incorporate government recordkeeping needs into terms of service
 - Develop policies and procedures for regular identification and transfer of public records on social media to the appropriate records agencies. Social media tools are unique and the content generated in each tool must be evaluated and captured in ways best suited to that tool.
 - Contact your state's archives or records management agency for information about capturing your social media accounts, posts and comments for archiving.

Social media policies will offer detailed guidance on how to manage the changing landscape of electronic communication. A social media policy should be regularly reviewed and refined by a social media management team. This group, likely within the governor's communications office, should include social media staff, managers and content creators. The social media management team should consult the governor's legal counsel and state archives and records management staff to make sure the policies and practices being implemented are consistent with state law and statute. For example, social media may include comments or other postings which are inconsistent with an administration's policies and may require removal from the site. An administration should draft policies for moderating content consistent with its First Amendment obligations.



Negotiating Terms of Service Agreements

Government agencies have specific needs and limitations that should be reflected in social media Terms of Service (ToS) agreements. Do not just “click through” and agree with standard social media terms of service. Work with your state IT department and others to make sure that there is an enterprise-level agreement with a social media vendor that meets the standards of the state and covers the appropriate provisions. Government agencies should work with their general counsels, in-house fiscal authorities and others to negotiate state-wide terms of service agreements that reflect their needs. **Special attention should be paid to the following areas in ToS agreements:**

- **Indemnity clauses.** Frequently government indemnity is limited by constitution or law. The ToS should adequately reflect the level of indemnity appropriate to the government agency. In many cases, this means striking the indemnity clause.
- **Legal disputes.** Terms of service agreements often specify that legal disputes be heard in a state favorable to the social media provider and under the law of that state. This may be in opposition to state government practices.
- **Records Management.** The terms of service agreement should ensure that the records created as part of the social media platform are compliant with all relevant state records management laws and regulations throughout the life and termination of the agreement. If the provider can export a record, the agency should include a clause in the terms of service agreement that stipulates how and when this will occur. This clause should state that export shall occur before the provider deletes or otherwise destroys the public records that reside in their systems. It should include instructions for notification and export requirements if the provider goes out of business or is purchased by another company. Agencies may have other business and legal needs regarding capture and should work with providers to ensure these needs are met.

Official Accounts for Official Communications

Any social media accounts used for state business are subject to public records laws. If personal accounts are used for government business, the content created is a public record. The accounts must be managed and archived according to public record laws.

To simplify your compliance, be sure that all public officials – from the governor to the entire staff – use official media accounts for state business. Consider these best practices to distinguish between use of official versus personal accounts:

- State business should occur on state accounts. Official accounts should be used for all government business that happens via social media.
- Personal accounts can be used to amplify government account communications; however, official government communications should not originate from personal accounts. Personal accounts should be used for personal communications. Personal communications should not be made via public accounts.

Likewise, it is best practice for campaign accounts and public accounts to be separate and used only for their intended purposes.

Social Media is a Public Record

Significant governance is happening via social media. Social media communications have been used in court cases and to calm the public in times of uncertainty. Public policy is unveiled on Twitter. Instagram and Facebook are offering insights into government decisions and practices. As a result, social media content and accounts are required to be preserved as public records. State archives and records management staff can help determine which records have long-term value and how to preserve them. **Public records in social media that should be captured and preserved may include:**

- Evidence of an administration’s policies, business or mission
- Information only available on the social media site
- Official agency information
- Direct communication with the public using social media

Preserved social media records should include content, context and structure along with associated metadata (e.g., author, date of creation). Your state archives and records management staff can help you ensure the record and its metadata are maintained reliably and authentically. They can help you determine the best method for exporting or capturing your social media records.

BEST PRACTICES CHECKLIST

Using Social Media in Government

- Develop a social media policy
- Review terms of service agreements for social media
- Maintain official accounts for official information
 - Only use official government social media accounts for official business (keep personal information on personal accounts)
 - Use campaign accounts for campaigning and official accounts for official business
- Understand that social media is a public record
 - Develop a records retention policy and regularly transfer social media records to the appropriate agencies, such as your state archives
 - Hand off government social media accounts from one administration to the next to maintain consistency and integrity
 - Comments or messages on social media platforms may also be subject to public record laws



Additional Resources

The Council of State Archivists (CoSA) is the membership organization of the 56 state and territorial archives, and offers detailed information and resources pertaining to government records management and archives. CoSA can help the governor's office to connect with the appropriate state agencies. A state-by-state directory of archival and records management agencies can be found at: <https://www.statearchivists.org/connect/resources-state/>

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Definitions

"Appraisal" means the process of determining the length of time records should be retained, based on legal requirements and on their current and potential usefulness.

"Disposition" means the final destruction or transfer of records to an archives as determined by their appraisal.

"Essential records" means rights-and-interests records necessary to protect the assets, obligations, and resources of the state, as well as its employees and citizens. Essential records typically document delegation of authority and line of succession, and include legal documents and contracts, financial records, and other rights-and-interests records.

"Personal papers" means nonofficial documents maintained by an individual at a place of work or on an enterprise network or equipment.

"Public records" means data or information in a fixed format created or received by a government agency in the course of business. These include records created or received by the governor, his or her immediate staff, and other units and individuals in the executive office, in the conduct of government business. Please note that state statutes may provide a more specific definition of what constitutes a "public record".

"Records management" means "the systematic and administrative control of records throughout their life cycle to ensure efficiency and economy in their creation, use, handling, control, maintenance, and disposition."

"Retention schedules" means "documents that identify and describe an organization's records, usually at the series level, provides instructions for the disposition of records throughout their life cycle." Some states refer to records retention schedules as Records Disposition Authorities (RDAs).

"Record series" means a group of similar records that are related as the result of being created, received, or used in the same activity.

All terms are adapted from the *SAA (Society of American Archivists) Archival and Records Terminology Glossary*.