



Guidelines for elected and appointed officials using social media

Social media is a tool growing in popularity for developing direct communications with your community and creating informal opportunities to reach out beyond official publications. City policies should cover the “official” city account, employee use of social media inside and outside of work, and elected official use of social media.

The extent to which a jurisdiction or individual uses social media varies. Before engaging you should assess your risk tolerance and make sure certain laws – such as the Public Records Act and Open Public Meetings Act – are followed.

A few 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, Wordpress, Google, phone carriers, and more.

Know when social media is a public record

A recent court decision (*Nissen v. Pierce County*) case outlined a test for when a document on a third-party system is created within the “scope of employment” and is a public record. Scope of employment may include elected officials acting within their capacity as a mayor or councilmember. This includes when an employee or elected official is:

- Required by the job duties *or*
- Directed by the employer *or*
- In furtherance of the employer’s interests

Retention of documents, including social media, is based on the content and not the platform. City 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 city business. *City-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 city, including how the record is retained.

Don’t:

- 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 city account.
- Don’t use city devices to maintain your private account.

First amendment and employment rights

City 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 city. City 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 city policy

City council policies should address situations that apply to council members and their unique needs. Specifically, council policies should address open public meetings implications, the intersection with campaign rules, impacts on council decision processes, and public records and retention issues.

- Evaluate how the elected official and city will respond if an elected official's personal account receives a complaint or public records request.
- Establish a process to follow if an elected official receives a city-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 officials or board members subject to the Open Public Meetings Act. While court guidance is evolving, elected 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 council occurs. Passive receipt of information is generally not considered to be action.
- Council may consider adopting rules that outline usage and etiquette, including use both inside and outside of meetings.

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

- Establish an approval process before a city 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's retention policy 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-city accounts or websites your city may or may not link to. Some cities 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; disclosure of confidential or HIPAA protected healthcare information.

For more information

MRSC information and sample policies: [mrsc.org/Home/Explore-Topics/Management/Information-Technology/Social-Media.aspx#Wash](https://www.mrsc.org/Home/Explore-Topics/Management/Information-Technology/Social-Media.aspx#Wash)

State Archives: www.sos.wa.gov/_assets/archives/RecordsManagement/Blogs-Twitter-and-Managing-Public-Records-Nov-2013.PDF