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**Managing Social Media &
the State and Local
Records Acts:
A Quick Guide for
Social Media Policy
and Management**

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1. DEFINITIONS

Introduction:

A general definition given for Social Media is a form of electronic communication (such as web-based platforms for social networking, blogging and micro-blogging) through which users create online communities to share information, ideas, personal messages, and other content (such as videos). As governmental agencies strive to improve their communication and public engagement goals, using these available on-line platforms is a consideration and must be managed accordingly. Addressing the management of these web-based platforms is the purpose of this document.

Website Consideration:

Management recommendations for governmental agency websites are not the focus of this document. However some of the recommendations put forward can apply to an agency's website.

If an agency is undecided about using a website or social media platform for its communications with the public, a website is recommended. A website provides the agency full control of the site's administration, policy compliance, content, and communications. A third-party administered social media platform does not provide the agency with control of the information flow.

There is no statutory requirement for a governmental agency to have either a website or social media portal. There are no statutory constraints for a governmental agency then decommissioning its social media portal in favor of an agency website to communicate effectively with the citizens it serves.

Social Media:

For the purposes of this document, the definition of social media is a venue, temporary platform, or portal for displaying records. The platform provided by the social media vendor is not in and of itself a record as defined under the Local or State Records Acts. How the governmental agency decides to manage this platform through its policies and administrative procedures, can alter this definition.

IMPORTANT: When an agency chooses to use the social media platform as a two-way communication forum, then records are being created and will require management under either Act. In addition to being a record, any public comments are protected by the First Amendment of the United States Constitution, and must be managed accordingly. Therefore, agencies that decide to permit two-way communications on their social media platform should consult their legal counsel regarding the management of comments before taking any further action.

Record:

Both the Local and State Records Acts have similar definitions of what a record is:

"Public record" or "records" means all...[materials]...regardless of physical form or characteristics, made, produced, executed, or received by any agency [or officer] in the State in pursuance of State law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its successor as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the State or of the State [or local] Government, or because of the informational data contained therein..."

(Local Records Act, 50 ILCS 205/3) (State Records Act, 5 ILCS 160/2)

What is not a record:

"Library and museum material made or acquired and preserved solely for reference or exhibition purposes, **extra copies of documents preserved only for convenience of reference**, and stocks of publications, blank forms and of processed documents are not included within the definition of public record."

(Local Records Act, 50 ILCS 205/3) (State Records Act, 5 ILCS 160/2)

It is important to remember that "**extra copies of documents preserved only for convenience of reference**" are not records. The recommendation is that the agency's policy should explicitly state that **only copies** of existing records are posted to the social media site. These copies are not records managed under the Local or State Records Acts, and are posted to the site for convenience of reference.

2. SOCIAL MEDIA PLATFORM SET-UP

Social Media Platform Set-up:

It is recommended that a social media platform should not be a means of two-way communication, or a public forum, between the governmental agency and the public, nor should it be a place where new records are created and stored. Also, given the evolving nature of these platforms, specific functional recommendations are not possible.

Setting up a social media site for a governmental agency is not the same as setting up a social media site for a private individual. The principal difference is that for a private individual the social media platform can and usually is a two-way communication tool and not subject to legal constraints. A government agency is required to comply with many complex statutory requirements. An agency can simplify these compliance requirements by listing in their policy statement that the social media site is only used as a venue for posting copies of existing records that have been reviewed, approved, and retained and managed as a record under either the Local or State Records Acts outside of the platform.

For Face Book, the Profile Settings controls allow a user to enable posting, viewing, comments and communication functions (including “liking” and thumbs-up), for a given page. It is recommended that only viewing be enabled.

It is recommended that this approach be used to set-up social media posting. The agency can also identify, or tag, the platform profile and page postings with the phrase NOT A PUBLIC FORUM.

Please see posting examples in the Policy and Procedures section.

Social Media Accounts established by Agency Officials:

It is not recommended that agency officials set-up social media accounts in lieu of, or in addition to the official agency social media account. If so, the additional account will fall within these guidelines. There should be only one official agency account.

A recent ruling by the U.S. Court of Appeals, 4th Circuit, addressed this issue concerning social media account set up by an individual agency official, and their blocking/removing posts to that account:

Fourth Circuit Court of Appeals ruling, January 9, 2019; USCA4 Appeal 17-2002, Doc: 91, Filed 01/09/2019.

“...[when a public official] used the Facebook page as a tool of governance, [and] swathed it “in the trappings of her office” [they are controlling the page as a government actor]...” pp. 13 and 14.

When this is the case, then a public record is created and is subject to either the State or Local Records Acts.

Agency officials who have personal social media accounts must make sure there are no references to their agency. This means using their official job title, the agency’s email, address, and phone numbers in their social media profile.

3. POLICY AND PROCEDURES

It is recommended that the agency create and adopt; a social media policy statement for posting on the platform profile; and procedures for developing, posting, and removing materials to and from the social media platform.

The agency policy statement and procedures should both use existing Record Series; items from current Records Retention Schedules, or contact the State Records Commission, Downstate Local Records Commission, or Cook County Local Records Commission to amend the agency's Application/Records Retention Schedule to include an item that addresses this specific function.

Posting/attachment preparation:

It is recommended that the agency develop; the posting or attachment in a word processing program, review and edit in that program, and then approve the material for posting to the social media platform; note the posting date and approval authority on the word processing document; and either print the document for retention or maintain as a digital record for its full life cycle (retention period).

Copy and paste the approved posting or attachment into the social media site.

Posting Period and Log:

It is recommended that the agency develop a consistent time period for leaving a posting on the platform. A recommendation is to leave a posting up for at least a minimum of forty-eight hours, but not longer than five days.

It is recommended that a posting log be created in a spread sheet application that records the initial posting date, content developer, approving authority, any attachments, record series identifier, and date of posting removal from the social media site. The posting log would be a record managed under the rules of the State Records Commission, the Downstate Local Records Commission, or the Cook County Local Records Commission as appropriate.

Associated Email:

The agency should implement an email address specifically for use as a contact point posted on the social media platform. This allows for easier monitoring and retention of message content as a **record** under the record series category "Administrative Files, Correspondence and Email Not Associated with Another Record Series", with a retention of one year for local governmental agencies; and "General Correspondence", with a retention of three years for State governmental agencies. Retain the email under a specific record series when its subject applies to those records and use their retention periods.

Policy Example:

The following is an example for local governmental agency's policy statement and any supporting procedures must use either the existing record series, or adopt a new records series for their Application for Authority to Dispose of Local Records. An example is when a record is not found in an existing record series to meet this need (such as Press Releases or Program Schedules), and then a record series can be added to the Application/Records Retention Schedule. Please contact your Local Records Field Representative or the State Records Management Unit to have this record series added to the agency's Application for Authority to Dispose of Records/Records Retention Schedule.

The policy statement for a local governmental agency could read as follows and be posted on the profile or about page:

The Village of Zenith has established a social media site for use by the Village to distribute information to the community in a timely fashion. It is not a public forum.

All postings to the social media site are not public records under the Local Records Act [50 ILCS 205]. It is a copy of records managed under Item #6 – Social Media Postings and Posting Log, Application for Authority to Dispose of Local Records #19:000, and available at the Village office for review or FOIA request. Any and all questions concerning a posting, or to respond to it, will use the Village email address, villageofzenith@FYI.com.

Posting Example with Policy statement:

Example of a social media page posting and disclaimer:

The Village of Zenith, Illinois – Public Posting

THIS SITE IS NOT A PUBLIC FORUM

**Village Board Open Meeting
Village Hall
Tuesday, July 16, 2019
7:00 PM**

See attached Meeting Agenda: [agenda719.pdf](#)

NOTICE: This posting is not a public record under the Local Records Act [50 ILCS 205]. It is a copy of records managed under Item #6 – Social Media Postings and Posting Log, Application for Authority to Dispose of Local Records #19:000, and available at the Village office for review or FOIA request. For questions concerning this posting, or to respond to it, please email villageofzenith@FYI.com.

NOTE: The posting size and content will be dictated by the application used for the posting, which varies by platform. This example is more effective when used on a website.

Posting Links:

Posting a link, as in the above example, should be limited to documents that are internal to the agency and managed under the agency's records management program. It is not recommended that links to sites outside the agency be posted.

Since an agency cannot insure the security or viability of external links, it is recommended that they not be used.

Comments:

When an agency elects to open a page to receive comments from the public, then the original posting along with all comments associated with it are a record. This record is managed under an existing record series such as "General Correspondence", or the creation of a new record series for social media postings.

When the time period of the posting ends that the agency sets in their policy, the entire post is copied into another application, such as a word processing program. The post is then saved in its entirety for the retention period required by the records series, and a Disposal Certificate for the records will be required before disposing of it.

NOTE: The comments are considered protected speech under the First Amendment of the United States Constitution and must be managed accordingly.

4. Local Records Act/State Records Act Retention/Disposal Requirements

When an agency posts copies of existing records to the social media platform for reference purposes, these postings are not considered records under the Local or State Records Acts. The postings can be added and removed by the agency under its posting policy without submitting a Disposal Certificate for the records.

Please review the agency's existing retention schedule for current record series items that could be used for retaining any posts to the social media platform that could be considered a record. Examples of existing record series that could meet this need are "Administrative Files and General Correspondence", "Press Releases", or "Program Schedules". The agency's Application for Authority to Dispose of Records is the authority from which the agency develops all internal retention policies. An approved Disposal Certificate for those records is necessary before deleting/destroying any record.

Example of a Record Series for managing social media postings (add-on to existing Application) by a local governmental agency:

6. SOCIAL MEDIA POSTINGS AND POSTING LOG

Dates:	2019 –
Volume:	1 Cu. Ft. – 1 MB
Annual Accumulation:	5 Cu. Ft. – 5 MB
Arrangement:	Chronological

Recommendation: Retain for three (3) years after posting to social media site.

Example of a Record Series for managing social media postings by a state governmental agency:

7. Social Media Information

Dates:	2019 –
Volume:	1 Cu. Ft. – 1 MB
Annual Accumulation:	5 Cu. Ft. – 5 MB
Arrangement:	Chronological

This record series consists of official Department information sent to the public via the agency’s official accounts on social media vendor websites such as, but not limited to: Facebook, Messenger, Twitter and YouTube. Social Media information does not include generic referrals to Customer Services, or links to the agencies website and general information already provided on the media platform.

Retention: Retain for three (3) calendar years after date of posting to a social media platform, then destroy in a secure manner or, delete form system provided all audits have been completed, if necessary, and no litigation is pending or anticipated.

The three year retention is based upon the statute of limitations for filing any damages that might have been suffered as a result of the posting.

There is **no** statutory requirement under either the Local or the State Records Acts to retain the social media platform in its entirety in the form of a screen-capture, or through additional digital storage services as a record. ***The social media platform is a venue, or portal for displaying copies of records, but is not in and of itself a record.***

If you have any questions, contact either your Local Records Unit Field Representative or the State Records Management Unit for further action:

Contact Information:

Local Records Unit:

Phone: 217-782-1080

State Records Management Unit:

Phone: 217-782-2647

5. STAFF TRAINING

It is recommended that the agency set-up initial employee training for using the social media platform policies and procedures, and designate agency staff who will be responsible for maintaining posting, and log entries. Set-up an approval process for postings and make sure that all employees are trained on this process.

It is recommended that the agency follow this up with annual social media policy training of all employees and new employee training when necessary. This is also an opportunity to conduct annual training for all employees in records management processes, and review existing record series items and retentions with your Local Records Field Representative or a staff member of the State Records Management Unit.

It is recommended that the agency maintain a record of the training in employee training records along with a signed acknowledgement of the training received by the employee.

The agency must demonstrate that it is in compliance with its policies and procedures, and insure that all employees are fully trained in the area of compliance.

6. RELEVANT LEGAL CASES

1. *Davison v. Randall*, 912 F.3d 666 (4th Cir. 2019)
2. *Robinson v. Hunt County, Texas*, 921 F.3d 440 (5th Cir. 2019)
3. *Knight First Amendment Inst. at Columbia Univ. v. Trump*, No. 18-1691-cv (2nd Cir. 2019).

Also see:

<https://www.businessinsider.com/alexandria-ocasio-cortez-apologizes-blocking-critics-twitter-first-amendment-2019-11>