

# Government Records Law and Social Media

## Guidance for Illinois Government Agencies

All government agencies must be able to communicate with the public. In the past, this was typically accomplished through controlled mechanisms such as press releases, fliers, bulletins and newsletters. While agencies still produce these, the public today expects agencies to have an online presence as well. Most government agencies maintain a website, and many now also have one or more social media accounts.<sup>1</sup> However, the use of social media by an agency brings with it significant record-keeping challenges and must be undertaken deliberately to ensure that all legal obligations are met.

The move from agency website to social media page may seem like a small evolution, but in reality it represents a huge leap in terms of control and accountability. Agency websites are controlled directly by an agency's IT department or a vendor under contract with that agency. All content on the site remains under the agency's control and can be changed, removed or captured through internal mechanisms. Social media, by contrast, is almost always controlled by a non-contracted third party entity. These entities are not subject to regulations that cover government agencies. Facebook, Tumblr, Twitter, Flickr and the dozens of other social media platforms all have their own terms of service, and they offer no guarantee that one will be able to retain control of or capture everything that has been posted. Some agencies choose to avoid social media for these reasons. For government agencies that wish to use social media, the below guidance will highlight concerns that arise with its use. It also will suggest policies or procedures to ensure that an agency using social media complies with the State/Local Records Act and FOIA.

### 1. Are social media posts considered public records?

Social media posts are considered public records *if*:

- Posts are made on an official public agency account or on a private account that is being used to distribute information for that agency to the public. Not included are private accounts of public employees that are not used as part of their job. If a private account is used to conduct government business, then it becomes public and is subject to FOIA and the Local Records Act.

*and*

- The content being posted is unique. Agencies do not need to preserve redundant content in all of its forms. For example, if the same event announcement is put out via both a press release and a social media post, then only one copy must be kept. Usually agencies will find it simpler to retain the "traditional" version, and this is acceptable. However, if the content of the two versions differs significantly, they should be considered unique records and both be retained.

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<sup>1</sup>"Social Media" in this context refers to any of a number of platforms where an account holder can post written messages, images, audio, video or multimedia files with the intention of sharing that information with other individuals or external groups. Examples include Facebook, Twitter, Tumblr, Flickr, Google+, Instagram and many others.

## **2. What is the retention period for social media posts that are records?**

The retention period for social media varies. It depends on the post (record) itself, as there is no “social media” category. Records retention is based upon function and content of the record, not its format. This means that information content has potentially the same retention period whether it is shared using social media, email or a paper memo. While social media is a new means of communication, the function it serves is not new. Since social media is most often used by agencies to disseminate information to the public, it is generally considered to be the same category as press releases, meeting notices and other informational notifications, and is subject to the same retention requirements. If, however, social media is used to have two-way communication, it should be considered as correspondence and treated accordingly. Agencies are not required to retain all copies of duplicate postings. When information content is being distributed through multiple outlets, the record copy for retention should be retained in the media format that is most economical to maintain and manage. Agencies should consult their Application for Authority to Dispose of State/Local Records for appropriate retention periods.

## **3. What about comments from members of the public on an agency’s page?**

Comments and posts put on an agency's account by members of the public or other outside entities are not by default considered to be records, unless those comments trigger some action by the agency. For example, if a resident comments on the City Public Works' page that there is a massive pothole that needs fixing and the city then dispatches a team to fill the pothole or corresponds with the resident about it, that comment is a public record. If the resident instead simply posts a complaint about how public works never gets anything done and there is no city response, that is not a public record.

Agencies are permitted to moderate their social media pages, but should be clear about criteria and publicly post the moderation policy on all accounts. Agencies are not required (for records management purposes) to maintain inappropriate comments or inflammatory language being posted by members of the public, but may wish to capture such posts to show evidence of their reasoning. An example could be a person being blocked from a page for repeated abuse who may then attempt to publicly accuse the agency of undue censorship. Having a log of the reasons behind the banning can help protect the agency. Agencies are also allowed to turn comments off when appropriate, as they are under no requirement to allow them.

## **4. How does an agency capture record content from its social media accounts?**

Most social media outlets do not by default allow account holders to download their activity logs (Twitter being a notable exception), so agencies must consider ahead of time how they will preserve their posts. This can be done by composing messages in local software and noting the time and date posted or by capturing screenshots of the post once it is on the page. There is also third party software that can capture social media content automatically for an agency. The mechanism is less important than making sure that the critical record information is captured and maintained appropriately.

Private messages sent or received through the social media platform’s messaging service represent another challenge, as there is often no convenient mechanism to move them to an agency’s own systems. Agencies are strongly discouraged from using social media messaging services for

correspondence and instead should route such communications through agency-managed email, telephone or paper correspondence. This might mean responding to a comment or message from a member of the public via email (reiterating the original message content to ensure completeness) or requesting that they send their inquiry via email to ensure it is addressed properly. If agencies do communicate with outside parties via social media messaging, they must ensure that all communication is captured and transferred to an agency-controlled medium to ensure proper retention.

## **5. Can members of the public submit FOIA requests via social media?**

The Illinois Freedom of Information Act states that “Written requests may be submitted to a public body via personal delivery, mail, telefax, or other means available to the public body” (5 ILCS 140/3 (c)). By creating and maintaining a social media page that allows public comment an agency is making that a “means available.” Therefore, if a member of the public posts a comment on an agency's account that clearly requests certain records it should be construed as a valid FOIA request. The agency will certainly wish to follow up with that person via email or phone to clarify details or get contact information, but social media can be a valid form of communication for FOIA purposes. Vague messages that might be construed as a request for records should be followed up on similarly. To avoid ambiguity or missed requests, agencies should prominently post contact information for FOIA requests on all social media accounts.

**Questions regarding social media policy or procedures can be directed to:**

**Robert Boots**  
**Electronic Records and Information Management Resource (ERIM)**  
**217-782-1082**  
**rboots@ilsos.net**

**Questions regarding an agency's retention schedule or specific retention periods should be directed to the appropriate section of the Illinois State Archives:**

**Local Government Records Section**  
**217-782-7076**  
**localrecords@ilsos.net**

**State Government Records Section**  
**217-782-2647**  
**staterrecords@ilsos.net**