Three Topics for Legislators

• Open Records and Open Meetings (OROM) Issues Regarding Social Media
• Best Practice Tips for Using Social Media
• Developing Social Media (Technology) Policies
Where to Start

• Treat each post and account: blog, Pinterest, Twitter, Facebook, email, etc. just like a real world letter or photograph (would you send THAT out on your stationery?)

• Your legislature may be exempt from OROM but what about the person you just sent something to or got something from?
Does Social Media Use Create A Public Record?

Whether the government or a private entity posts content - the content is generally subject to OROM

1. Public Record for our purposes includes “all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency or by a private person or entity in performance of a service or function for or on behalf of an agency or when such documents have been transferred to a private person or entity by an agency for storage or future governmental use.” O.C.G.A. Sec. 50-18-70(b)(2)

2. Democracies can only work if people have access to information

“Those who cannot remember the past are condemned to repeat it.” George Santayana
A View From The Posting Party

• No expectation of privacy generally since whatever posted is a public record O.C.G.A. Sec. 50-18-70(a)

• OROM Exemptions may still apply but have to look at content not format of communication O.C.G.A. Sec. 50-18-72
Social Media and Public Meetings

• General Rule: Public to have access to meetings at all times

• Radio, TV, Public can broadcast a meeting at all times  O.C.G.A. Sec. 50-14-1(c)
Can a Social Media Exchange Be A Meeting?

• Could Be

• Need:

1. Quorum of members or whatever number of officials is allowed to communicate
2. Any official business, policy or public matter is formulated, presented, discussed or voted
3. Short message and response time
Weed-Cole Open Meetings Continuum

Meetings

Most likely not Meetings

?
Options for Legislators

• **Avoid social media completely**
  - Avoids all legal risk
  - Limits communication and openness to the public

• **Have an information–only site**
  - Limits First Amendment risks
  - Loses interaction with citizens

• **Fully-interactive social media**
  - Maximizes benefits of social media
  - Opens door to First Amendment disputes
Best Practices Framework

Legislator’s Use of Social Media (personal/political)
  – First Amendment risks

Legislator’s Office Use
  – Employee Use
    • First Amendment risks
    • Cyber Liability
    • Privacy
• Personal
• Political
• Legislator’s Office

Rep. Gary Holder-Winfield posts an update from a meeting.
Best Practices Framework

• First Amendment Issues
• Cyber liability:
  - Employee misconduct online
  - Discrimination, harassment and retaliation
• Privacy Issues:
  - Searches
  - Employee Monitoring
Find Out What Policy Your State Has

- Contact Attorney General
- Legislative Counsel
- Secretary of State (records retention)
- Legislative IT
Developing Technology Policies

Technology Policy

• Unified policy
• Establish right to inspect/monitor use of assigned technology, including texts
• Define what constitutes a policy violation
• Any use that violates law or policy is prohibited
• State consequences of violating policy
Developing Technology Policies

• Be careful about monitoring during application stage

• No expectation of privacy on assigned equipment

• Address all forms of technology in policy
Developing Technology Policies

- Do not coerce employee passwords
- Do not gain pass words by surreptitious means
- EEO policy applies to on-line activities
- Remember the First Amendment when taking actions with employees regarding social media matters
Developing Technology Policies

- State expectations for social media use:
  1. Not allowed on work time
  2. Clearly state that employee’s opinions do not represent you or your office
  3. Avoid posting anything that undermines ability to operate effectively
Developing Technology Policies

• Clearly state the purpose of the site
• Make an identified website the “official” site and have all social media refer back whenever possible
• Decide if comments are allowed
• If allowed, limit to business first posted on the website
• Establish or learn the policy for retention of records
• Notify users of policies and public records by providing a hyperlink to official site
FOR MORE INFORMATION

Contact: Murray J. Weed
Carl Vinson Institute of Government
The University of Georgia
706-542-9502
weed@uga.edu

Posted on NCSL site