




Use of Social Media

Daniel J. Bolin and Gregory W. Jones









 **Donald J. Trump** 
@realDonaldTrump



 



It's Thursday. How much money did Barack Obama waste today on crony green energy projects?

418 RETWEETS **156** FAVORITES

3:54 PM - 18 Oct 12 · Embed this Tweet

 **Donald J. Trump** 
@realDonaldTrump

Lyin' Ted Cruz just used a picture of Melania from a G.Q. shoot in his ad. Be careful, Lyin' Ted, or I will spill the beans on your wife!

RETWEETS 16,006 LIKES 35,631

9:53 PM - 22 Mar 2016

 **Donald J. Trump** 
@realDonaldTrump

What's funny about the name "F**kface Von Clownstick" -- it was not coined by Jon Leibowitz-- he stole it from some moron on twitter.

83 RETWEETS **36** FAVORITES

11:37 AM - 3 May 13

Reply to @realDonaldTrump

#TakeHomeTips

1. Treat government social media as a public record
2. Be careful not to “censor” comments
3. Don’t put the intern in charge
4. Beware of copyright issues
5. Adopt a social media policy covering comments, records retention, and employee usage
6. Employees will behave badly on social media

Open Meetings



Public records

Is information on your social media sites (posted by you and others) subject to release under freedom of information/open records laws?

TAKE HOME TIP: Most open records/freedom of information laws define public records to include “electronic communications,” which would include social media content.



Records retention

Are communications and other information posted on your sites subject to local record retention laws?

TAKE HOME TIP: The Illinois State Archivist just published guidelines for government agencies on what content on social media may be subject to records retention laws. Other states have similar regulations.

Records retention, cont.

- 1. Are social media posts public records?**
- 2. How long do I have to retain a social media post that qualifies as a public record?**
- 3. Do comments from the public have to be retained?**
- 4. How do I capture content from our social media accounts?**
- 5. Do we have to respond to FOIA requests submitted through social media?**

First Amendment

Are postings on government social media sites protected by the First Amendment?



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Don't – Beech Grove, IN

- **Quick v. City of Beech Grove, U.S. Dist. Ct, Ind. (filed June 29, 2016)**
- **“This Facebook site was created to pass on information to you and to try to keep you informed as to what is occurring in our City. We will not entertain negative comments towards anyone, nor will we host arguments between individuals. We do not care who you are, we are trying to inform you. If you decide to make unpleasant comments we will delete you.”**

Don't – Honolulu PD

- [Hawaii Defense Foundation, et al. v. City and County of Honolulu, et al., CV 12 00469 \(filed August 21, 2012\)](#) – complaint filed alleging:
 - **The HPD created a public forum on Facebook**
 - **Removal of comments critical of the police department violated First Amendment**
- **\$31K lesson to the City of Honolulu**

Don't - South Pittsburg

- **Elected representatives, appointed board members, employees, volunteers, vendors, contractors and anyone associated with the town are prohibited from posting negative comments about the town or anyone associated with the town government on social media.**

Don't – Harris County

- **[Pittman v. Garcia \(S. Dist. Texas, 2014\)](#)** – complaint challenged Harris County Sheriff's Office's (HCSO) social media policy that provided:
 - **An employee's actions must never bring the HCSO in disrepute**
 - **Personnel are free to express themselves as private citizens on social media sites to the degree that their speech does not impair working relationships of the HCSO**
 - **Personnel shall not post any information pertaining to any other member of the HCSO**
 - **Employees cannot engage in negative speech about the HCSO**
- **\$13K lesson to County, and the County amended its policy**



Do- comment policy

The policy should identify the type of content that is not allowed and will be subject to removal.



Examples of banned comments

Comments containing any of the following inappropriate content will not be permitted and are subject to removal and/or restriction:

- 1. Profane, obscene, violent, sexual, or pornographic content and/or language.**
- 2. Content that promotes discrimination on the basis of race, color, age, religion, gender, etc.**
- 3. Content that violates a legal ownership interest, such as a copyright or trademark.**
- 4. Threats to any person or organization.**
- 5. Conduct in violation of any federal, state, or local law or the encouragement of illegal activity.**
- 6. Information that may tend to compromise the safety or security of the public or public systems**
- 7. Promotion of any business, product, services, or activities not related to government business.**
- 8. Spam or links to other sites.**



Copyright issues

- **Do you have permission to use content posted on your social media sites (photos and videos)?**
- **There is no blanket government or non-profit exception to copyright laws.**
- **“Fair use” does not apply to everything on the Internet.**

TAKE HOME TIP: Create your own content (i.e., take and use your own photos)

Use of stock photos cost \$8,000

- **Lawyer used stock photos on his website without the owner's permission.**
- **He was sued under copyright laws for \$150,000 per instance.**
- **He settled for \$8,000.**
- **Lesson? Just because it's on the Internet does not mean its free to use.**

Use of citizen photos

- **Does the individual have a reasonable expectation of privacy?**
- **How is the photo used (i.e., commercial?)**
- **Notices, releases, and opt-outs**



Release: Ex. 1

- **Typical Photo Release**

Photos and videos are periodically taken of people participating in government programs and activities. All persons registering for government programs/activities, or using government property thereby agree that any photograph or videotape taken by the government may be used by the government for promotional purposes including its promotional videotapes, brochures, flyers, and other publications without additional prior notice or permission and without compensation to the participant.

- **So, what is missing?**



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Release: Ex. 2

- **The Internet!**
- **Include the following:**

“... brochures, event flyers, social media (including Facebook, YouTube, Instagram, Twitter, and other social media sites operated by the agency), and the agency’s website without additional prior notice”

Employees behaving badly...

- **28 percent of employers report that they've fired people for using the Internet for non-work-related activity (such as shopping online or checking out [Facebook](#)) during the workday.**
- **18 percent have dismissed employees because of something they posted on social media.**

credit:http://www.careerbuilder.com/share/aboutus/pressreleasesdetail.aspx?sd=6/12/2014&siteid=cbpr&sc_cmp1=cb_pr827_&id=pr827&ed=12/31/2014

Employees behaving badly

- **So many examples...**



Zoo Worker Fired

- **Brookfield Zoo fired an employee for posting the comment “rude a** white people” in an Instagram selfie, which she then shared to Facebook.**
- **Photo showed her wearing her Brookfield Zoo uniform and she tagged the location as the Brookfield Zoo.**
- **Justifiable termination?**

Where are we going, and why are we in this handbasket?

- **Tenured teacher created a blog.**
- **Examples of posts:**
 - **She referred to students as “jerk,” “rat-like,” “dunderhead,” “whiny, simpering grade-grubber with an unrealistically high perception of own ability level” and “frightfully dim.”**
 - **She wrote that parents were “breeding a disgusting brood of insolent, unappreciative, selfish brats.”**

“I wish I could get fired...”

“I wish I could get fired some days, it would be easier to be at home than to have to go through this.”



Sometimes, wishes do come true.

Bad teacher



credit: [@CarlyCrunkBear](https://twitter.com/CarlyCrunkBear)
on Twitter

“Patient privacy, what’s that?”

A dispatcher posts a screenshot of a patient call, including name, personal information, and description of a medical emergency.

Justifiable termination?



“Lifeguard style”



Ok to swear at your boss?

Bob is a nasty mother f** don't know how to talk to people. F*** his mother and entire f***** family. What a LOSER!!! Vote yes for the UNION.***

Several employees saw the post, as did members of management, and he was fired.

Protected speech?



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Acting in official capacity?

- **County district attorney blogged about local politicians (called them liars, etc.)**
- **Politicians sued district attorney and county**
- **Court dismissed lawsuit – found DA was not acting in official capacity, and his blog contained a disclaimer that he was speaking personally.**
- **Careful about perception of “official” speech**



Campaign “like” = political speech

- **Deputies reinstated after sheriff fired them for “liking” his opponent’s Facebook campaign page.**
- **A “like” can be speech, and political speech is protected.**

Employee discipline

Employers can discipline employees for:

- **Excessive use of social media at work**
- **Individual gripes about job or boss, even on personal sites**
- **Illegal (or improper) personal social media activities**
- **Violating employer's social media policy**

Employers should be careful not to discipline for:

- **Protected concerted activities among co-workers**
- **Matters of public concern**
- **Political or other protected speech**



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Importance of a social media policy

- **Notify public on types of content that will not be tolerated on government social media sites**
- **Inform employees of social media activities (both on the job and outside of work) that could subject the employee to discipline**
- **Notify employees of monitoring**
 - **Signed acknowledgment**



Purpose of a Social Media Policy

- **Social media policies are important to:**
 - **Govern the administration, monitoring, and retention of site content**
 - **Set ground rules for public input and comments**
 - **Establish policies for employee use of social media**

TAKE HOME TIP: Draft your purpose statement first – all of the substantive policies should further your purpose.

Ex: The purpose of the government's Facebook page is to disseminate information to residents and others about government activities and events.

Approval and administration

- **An administrator should be appointed to oversee and supervise government social media sites.**
- **The administrator should be trained on the policy and his or her responsibilities.**

TAKE HOME TIP: The intern should not be in charge of your social media sites.

TOS for commenters/posters

The policy should identify the type of content that is not allowed and will be subject to removal.

TAKE HOME TIP: Make sure your comment policy/TOS (or a link to that policy) is posted on your social media sites.

BONUS TAKE HOME TIP: Be specific.

Disclaimers

“If you post links to other sites, or allow others to comment or post links in comments, include disclaimer language on your site and/or in your social media policy to clarify that the views and opinions expressed on these outside sites and by outside persons are not necessarily the views and positions of the agency.”

Employee usage policy

- **Establish clear guidelines and boundaries for employee social media activities.**
 - **Conduct on the employer’s official social media sites.**
 - **Conduct “on the job” or on employer equipment.**
 - **Conduct outside of work that may impact employer.**
- **Communicate whether social media use at work will be banned or minimal use allowed.**

TAKE HOME TIP: Zero tolerance policies are difficult to enforce. Be careful of unequal enforcement.

Be careful not to discriminate in enforcing social media policy

Louisiana court overturned termination of a reporter, finding that TV station employer inconsistently applied its social media policy – the employer had terminated one employee for negative Facebook posts about a viewer, but did not discipline a co-worker for similar Facebook posts.

Employee training

Employee training is important, particularly because technology changes so quickly.

TAKE HOME TIP: Have employees sign an acknowledgment that they (1) read the policy and (2) received training.



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What about elected officials?

- **Personal use**
- **Professional use**
- **Speaking officially or personally?**
- **Covered under employee social media policy?**



Best practices – professional hat

- **Social media is a public record subject to “Sunshine Laws.”**
- **Be careful not to censor speech.**
- **Credit original sources. Better, create your own content.**
- **Don’t put intern in charge of your social media sites. Train your administrator and content generators.**
- **Adopt a social media policy to set guidelines for public engagement (comments) and employee usage.**

credit: “Think Before You Post,” Christine Guerci-Nyhus (IMLA, 2015)

Site verification – ✓

Request a Verified Badge

Re

A verified Page has a blue checkmark next to its name.

A

Select people, sports, media, entertainment and government Pages may be eligible for verification if they can show their authenticity and meet Facebook's requirements for having a Verified Badge.

Se

Page you're requesting to verify

au

Note: Right now, we don't support verification requests for other types of Pages (ex: businesses, brands, organizations).

Pe

You have no eligible admined pages.

Ne

To confirm your request, please attach one of the following official documents:

Yc

• Drivers License

Tc

• Passport

• [

• Birth Certificate

• F

• Articles of Incorporation (if you represent a media, entertainment or sports company)

• E

• /

Official website

If applicable, please provide a link to your official website

Or

If:

Learn more about verified Pages and profiles.

Le



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Facebook Required Disclaimer

If government has an official website, its Facebook page must contain, in a prominent location, the following:

If you are looking for more information about [Government Entity], please visit [website URL].



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Best practices – personal hat

- **The Internet is not anonymous, nor does it forget. If you can find it, so can others.**
- **Do not blog, post, or tweet when you are angry or frustrated.**
- **There is no clear line between your work life and your personal life. So, be honest and respectful in both capacities.**
- **Humor sometimes fails.**

Credit: "Think Before You Post," Christine Guerci-Nyhus (IMLA, 2015)

Questions

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