

# *In Brief*

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## **PUBLIC BODIES USE OF SOCIAL MEDIA PLATFORMS AND ARCHIVING**

Many public bodies have been increasing their use of social media platforms such as Facebook and Twitter to communicate with the public. Public bodies need to be conscious of the legal obligations of record-keeping that come with using such social media platforms. Social media platforms pose new challenges to record-keeping, as most social media platforms are controlled by an independent third party entity. Entities such as Facebook and Twitter are not subject to the same regulations as public bodies and cannot guarantee that the public body will have control over everything that is posted on their platform. Additionally, the public body may not have control of how long the content is retained on the social media platform or how and when the content is deleted.

When using social media platforms, public bodies need to be conscious of their compliance with the Illinois Freedom of Information Act (“FOIA”) and the Local Records Act (“LRA”) (collectively the “Acts”). FOIA and LRA both have very broad definitions that likely require disclosure and retention of most social media posts. The Illinois Secretary of State’s office recently issued guidance on this issue (the “Guidance”). According to the Guidance, social media posts are considered public records if: (1) either the post is made using an official public body account or a private account is used to post information to the public for the public body; and (2) the content is unique.

Typically, private accounts of public employees that are not used as part of their job are not included. If a private account is used to conduct government business, however, it could be

considered a public record subject to FOIA and the LRA. Additionally, the public body does not need to preserve redundant content in all its forms. For example, if the same event announcement is put out via both a public body press release and a post on an official public body social media account, then only one copy must be kept. However, if the content differs significantly, both forms should be considered unique records and be retained by the public body. Similarly, under FOIA, in instances where the public body has shared something on social media that has also been published on its website, the public body only has a duty to direct the requester to the website where the record can be reasonably accessed. See FOIA Section 8.5(a).

Social media posts where the public body engages in dialogue through social media or acts upon a social media “comment” from members of the public could also require retention of relevant social media posts. While comments and posts made by the public on official public body social media accounts are not by themselves public records, if the public body engages in a dialogue on social media or acts upon a post, this could trigger the requirements of the Acts. The public body should make an effort to retain a copy of these types of posts. Due to this additional requirement, the public body may want to minimize any dialogue with the public over its social media platforms. Capturing and preserving posts on social media may be challenging as the social media platform may not have a convenient way for the public body to transfer this information to their agency controlled medium for retention.

The public body should also be conscious of FOIA requests that may be made via the social media platform. Members of the public may make requests for certain records on the public body's social media page. The public body should monitor and be aware that FOIA requests made on the social media page are considered a valid form of communication for FOIA purposes, and the public body should follow up on any requests no matter how vague the request may be.

If the public body intends on using social media platforms, the public body should have record retention policies that incorporate retaining and archiving social media posts that communicate public business for the public body and are unique to the public body's social media site(s).

Please contact your Robbins Schwartz attorney for further information or questions regarding FOIA and LRA.