

Public Records – Social Networking

Social networking sites such as Facebook are becoming increasingly popular in business as well as social contexts. Many elected officials use Facebook as a method to keep in touch with their constituents. If a government entity, such as a city, were to choose to maintain a Facebook page, there would be several factors to consider under Florida's public records and open meetings laws.

First, all contents of the city's page, including information about the city's friend list, would be subject to disclosure under Florida's Public Records Act.

Second, the city will be obligated to follow a public records retention schedule as set forth in the State of Florida General Records Schedule for State and Local Government Agencies.

Third, communications on the city's Facebook page regarding city business would be subject to Florida's Government in the Sunshine Law.

Since the city is authorized to exercise powers for a municipal purpose, any material placed on the city's page would presumably be in furtherance of municipal business. Section 119 of the Florida Statutes defines "public records" to include"

"all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

The Florida Supreme Court has interpreted this definition to include all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge. It is the content of the record created which determines whether it is a public record. The placement of information on the city's Facebook page would communicate knowledge, and would presumably be in connection with the transaction of official business. This would subject the contents of the Facebook page to the provisions of Chapter 119 of the Florida Statutes.

Individual Facebook users can set privacy settings for their personal pages. A Facebook page created by a government entity, however, would have to be open to the public. While the personal pages of the government entity's "friends" may or may not be public, the names on that government entity's friend list would be subject to disclosure.

In light of this, a government entity may wish to post a warning regarding the implications of the Public Records Law.

Communications on a city's Facebook page regarding city business by city commissioners may be subject to Florida's Government in the Sunshine Law, section 286.011 of the Florida Statutes. Members of a city board or commission must not engage on the city's Facebook page in an

exchange or discussion of matters that foreseeably will come before the board or commission for official action.

Section 286.011, Florida Statutes, the Government in the Sunshine Law, has three basic requirements:

- (1) meetings of public boards or commissions must be open to the public;
- (2) reasonable notice of such meetings must be given; and
- (3) minutes of the meetings must be taken and promptly recorded.

The law applies to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission. The law extends to the discussions and deliberations as well as the formal action taken by a public board or commission, with no requirement that a quorum be present.

While the Sunshine Law generally applies to meetings of "two or more" members of the same board or commission, the Florida Supreme Court has stated that the Sunshine Law is to be construed "so as to frustrate all evasive devices." The courts and this office have found that there are instances where the physical presence of two or more members is not necessary in order to find the Sunshine Law applicable. This office has stated that members of a public board may not use computers to conduct a private discussion about board business.

In Attorney General Opinion 08-07, this office concluded that the use of a website, blog or message board to solicit comment from other members of the board or commission by their response on matters that would come before the board would trigger the requirements of the Sunshine Law.

While there is no statutory prohibition against a city council member posting comments on a privately maintained website or blog, members of government boards or commissions must not discuss matters that foreseeably will come before the boards or commission. It would be incumbent upon the board or commission members to avoid any action that could be construed as an attempt to evade the requirements of the law.

While there is not a prohibition against a board or commission member posting comments on a city's Facebook page, members of the board or commission must not engage in an exchange or discussion of matters that foreseeably will come before the board or commission for official action.

New technology presents exciting and effective communication tools as well as some challenges maintaining transparency in government. While these small challenges should not deter public officials from using technology for the benefit of the people they serve, technology can't be an excuse for lack of transparency. At the Attorney General's office, we use the social network Twitter to alert consumers of scams and fraudulent business practices.

We find that this is an effective way to reach people quickly and effectively. Just like our e-mails and BlackBerry PINs, our agency maintains a record of all our Tweets.

Finally, let's talk about records retention. Chapter 119 of the Florida Statutes requires the Division of Library and Information Services of the Department of State to adopt rules establishing retention schedules and a disposal process for public records. Each agency must comply with these rules.

To the extent that the information on the city's Facebook page constitutes a public record, the city is under an obligation to follow the public records retention schedules established by law.

Questions relating to the applicability of a retention schedule or retention of a specific record, however, should be referred to the Division of Library and Information Services in the Department of State.