Oregon Public Records Law and Social Media Guidance

All government agencies must be able to communicate with the public. Today, the public 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. 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.

Using social media means a government agency will be using a platform that is almost always controlled by a non-contracted third-party entity. These entities are not subject to regulations that cover government agencies have their own terms of service. They offer no guarantee that one will be able to retain control of or capture everything that has been posted. Government agencies must decide for themselves whether or not to use social media. For 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 Oregon Public Records Law. If your agency needs help with best practices or with developing a social media plan, please see the DAS [Social Media Best Practices: Guidelines for Oregon state government](#).

1. Are social media posts considered public records?
Social media posts are considered public records *if both conditions below are met*:

- 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. If a private account is used to conduct government business, then it becomes public and is subject to the Oregon Public Records Law.

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

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. 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 or news releases 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. In that case agencies should designate a record copy and retain that for the appropriate period of time. Agencies should consult their Records Retention Schedule 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 automatically 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 a pothole needs fixing and the city then corresponds with the resident or takes action to fix the pothole, then that comment is 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 prior to deletion as having a log of the reasons behind the banning can help protect the agency. Agencies may also disable comments on their page or individual posts.

4. How does an agency capture record content from its social media accounts?
Most social media outlets do not by default allow accountholders to download their activity logs (Twitter being a notable exception), and so agencies must consider ahead of time how they will preserve their posts. This can be done by composing and retaining 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 coordinate multiple social media accounts and 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 a 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.

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