

**Managing the
Social Media Minefield**

East Central Illinois Highway Commissioners Association
March 26, 2019

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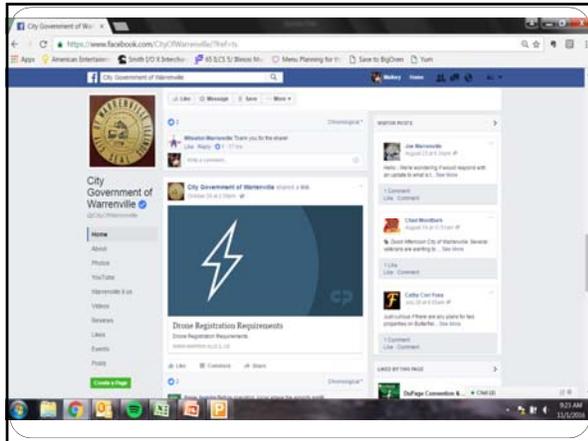
Legal Considerations for Social Media

- First Amendment rights limiting government restrictions on speech
- Open Meetings Act (“OMA”) issues
- Public records retention and disclosure issues
- Freedom of Information Act (“FOIA”) issues

What Kind of Forum is Created?

- The two primary public forums are:
 - **designated public forum** and

 - **limited public forum**





Guidelines for Restricting Speech

- **DO** adopt a policy that clearly designates the type of forum created and the scope and purpose of the social media site
- **DO** define what kinds of content fall outside acceptable parameters or scope
- **DON'T** forget to provide the public with notice of content that is restricted and a warning that restricted content will be removed
- **DON'T** remove content just because it is negative or unfavorable to the Road District, its employees or officials

What Speech Can You Restrict?

- Slanderous, libelous, or defamatory language or content*
- Comments not topically related to the particular site or blog article being commented upon*
- Content that promotes, fosters, or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, status with regard to public assistance, national origin, physical or mental disability or sexual orientation
- Sexual content or links to sexual content
- Solicitations of commerce
- Personally identifiable information, such as an address, phone number, social security number or other sensitive information
- Comments cannot represent a person other than the one posting the comment.
- Charitable solicitations or political campaigning
- Conduct or encouragement of illegal activity
- Content that violates a legal ownership interest of any other party

Procedures for Removing Speech

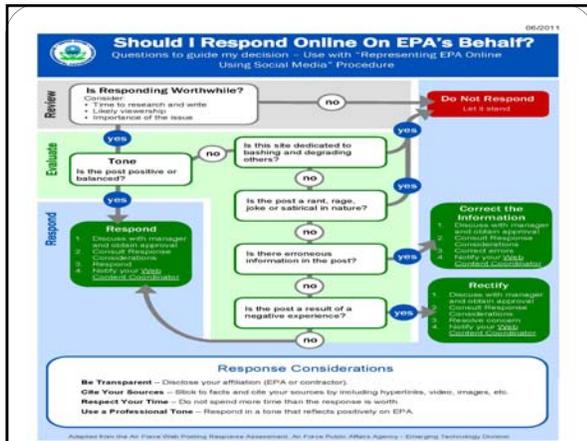
- In case of dispute over content of the removed speech, the Road District should keep a record of its decisions
 - This should include, at minimum, a screenshot (or some copy) of the speech being removed and a memo that explains how the speech in question violates the Road District's policy
- There should be a central location where these records are maintained
- Inflammatory or inappropriate comments are most likely not subject to the Illinois Record Retention law but the Road District should have a policy that dictates how long it will retain the removed speech

Communicating with the Public

- Content posted on social media accounts can be conversational in nature but should remain professional, particularly if responding to a comment
 - Employees using the social media accounts should respect and accept opinions of those interacting with the Road District's social media accounts, regardless of whether such opinions are positive or negative, provided the opinions are on topic and not offensive, denigrating or completely out of context
- Identify the policy regarding the content the Road District will post
- Employees using the Road District's social media accounts should obey all privacy protection laws, such as, HIPAA, and protect sensitive and confidential Road District information at all times
- No employee should comment on litigation involving the Road District on the Road District's social media accounts without prior approval of the Road District's Attorney

Communicating with the Public (cont.)

- Disputes between Road District employees/posters and commenter on the Road District's social media accounts should be avoided.
- Forward requests for Road District-related services received on the Road District's social media accounts through proper channels
- Comments or responses on Road District social media accounts should be limited. The Road District's social media designees should limit their response to (1) providing a factual response to a question posed (for example: what road is closed for construction); (2) providing the information for the appropriate agency which would be most helpful; or (3) encourage or direct persons interacting with the Road District's social media accounts to use appropriate resources



Final Reminders

Don't...

- Pick a fight on social media – it never ends well;
- Try to change someone's mind – that never happens;
- Feed (i.e. interact with) the trolls;
- Make it personal;
- Remove comments without an explanation;
- Remove comments because you don't like them or because they are critical of your organization.

Final Reminders
And Do...

- Take the conversation offline when appropriate (i.e. if it is a private matter or a specific situation concerning the individual);
- Keep it professional;
- Know who you are dealing with – is this a journalist? A lobbyist? A troll? Are they influential on social media? Do they have an agenda? Do they have a history of posting negative comments on your channels?;
- Post corrective information if you believe the comments are an honest mistake (as opposed as someone with a set agenda or a troll)

Final Reminders
And Do...

- Stick to the facts;
- Refer to authoritative sources when answering;
- Do thank people for re-tweets, good comments, etc., and offer more info if relevant;
- Get pre-approval for different types of interactions;
- Do have a crisis plan in place in case a simple comment escalates into a full blown PR crisis;
- Keep track of your interactions, good and bad

Additional Policy Considerations

- Have designated person who is responsible for social media
 - Can designate certain employees to post on behalf of the Road District or generate content, but someone should be a point person
 - Make sure all designated employees understand the policy
- If social media is not going to be monitored 24/7, clearly state that in the policy
- Social media accounts should be tied to a general Road District email in case of employee turnover
 - The District should have a list of all current passwords for social media accounts

Corrections, Updates and Edits

- It is perfectly acceptable to update, correct or edit a post
 - This could be to correct incorrect information or provide new information
- The post should clearly indicate that it has been changed and if possible, how it was edited or altered
- Any deleted posts should be retained similar to deleted comments

Social Media & Public Records

Illinois Local Records Act

- Social media posts are public records if they are made on an official public agency account or a private account being used to distribute information for that agency to the public
- There is no "social media" category under the Local Records Act
 - Records retention is based on the function and content of the record, not its format
 - Example: two way communications (comments and replies to posts) would be correspondence
- Do not need to preserve redundant content in all of its forms

Social Media & Public Records

Open Meetings Act

- Officials commenting on a post may inadvertently create a meeting
 - "Meeting" means **any gathering, whether** in person or **by** video or audio conference, telephone call, **electronic means** (such as, without limitation, electronic mail, electronic chat, and instant messaging), **or other means of contemporaneous interactive communication**, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for **a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.**

Social Media & Public Records

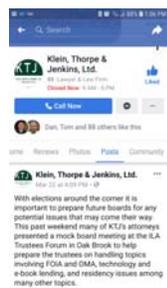
Freedom of Information Act

- A Road District's social media postings would be public records akin to a press release or announcement
- Comments by public are unclear, but are likely public records
 - Comments that cause or constitute some government action or response are public records
 - Comments are similar to correspondence
- Submitting FOIA requests via social media
 - FOIA states that written requests can be submitted to a public body via "other means available" which can include social media sites
 - Road District should monitor comments for requests for documents and follow up on all potential requests

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