

10 Things To Know About Social Media

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1. **PUBLIC RECORD:** Posts, comments, and other activities on government social media sites are probably a public record.
2. **RECORDS RETENTION:** The Illinois State Archivist has published guidelines on retention of social media content to ensure compliance with the Illinois Local Records Act. As a general rule, government posts are subject to the municipality's record retention/destruction policy. Posts made by others will only need to be retained in certain circumstances.
3. **FIRST AMENDMENT:** Government social media sites and activities are likely to be subject to the First Amendment. According to recent court rulings, government social media sites may be considered a designated or limited public forum, meaning that the government must be careful not to take actions that might violate someone's free speech rights.
4. **COMMENT MODERATION:** Because of the protections offered by the First Amendment, governments should be careful when moderating comments posted on government social media sites. For example, governments should avoid censorship of purely negative or critical speech, which may be protected free speech. Train your moderators!
5. **TOS FOR COMMENTS:** Although governments must consider the First Amendment in moderating comments and posts on government sites, that does not mean that all speech must be allowed. Governments should consider adopting a comment policy to put people on notice of the type of comments that are not appropriate on the government social media site. For example, a comment policy might prohibit threats, advertisements, illegal activity, and other comments that are not protected speech.
6. **OPEN MEETINGS ACT:** Members of public bodies should be careful not to "gather" on social media in a way that would trigger the OMA. So, a majority of a quorum of a body should not contemporaneously discuss government business on social media.
7. **ELECTED OFFICIALS AND SOCIAL MEDIA:** A few cases, including one involving the President's Twitter account, have held that an elected officials' personal social media account can be a public forum subject to the First Amendment. Whether a personal account will be a public forum depends on a number of factors, including whether the government official identifies his or her position, uses government staff to post on the official's behalf, and posts about government business on the personal page. If it is a public forum, elected officials should be cautious in deleting comments or banning users.
8. **COPYRIGHT LAWS:** Governments are not exempt from copyright laws. So, a good tip is to create your own content to post on your social media sites (i.e., photos and videos).
9. **EMPLOYEES:** Some employees will behave badly on social media, even government employees. Make sure your employees understand your employee social media use policy and that even off-duty social media activities could violate that policy and result in discipline. Be careful not to punish protected speech. Conduct regular trainings.
10. **POLICY:** All governments should adopt a social media policy that includes provisions regarding social media comments, records retention, and employee use policies.

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Julie Tappendorf is an equity partner with Ancel Glink in Chicago. For more than 20 years, she has focused her practice on representing and advising municipalities, counties, libraries, and other units of local government on general government, litigation, and land use issues.

Julie has published a number of books on government topics, including government use of social media, land use, compliance with local records and meetings laws, as well as a number of articles on government-related topics. She is a frequent speaker at local and national conferences on FOIA, OMA, ethics, social media, land use, and other local government topics. She regularly conducts trainings on compliance with FOIA and the Open Meetings Act, board procedures, ethics, and conducting zoning hearings.

Julie currently serves as City Attorney for Park Ridge and Lake Forest, and Village Attorney for Glenview, Gilberts, and Lindenhurst. She also serves as special counsel to a number of other government bodies in a variety of matters.

Prior to her law career, she served in the U.S. Army, Military Intelligence Branch, as a Korean cryptologic-linguist.

Julie is the author and moderator of the popular local government blog [Municipal Minute](#), where she writes about local government issues.

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