

# Dancing Quorums

Reviewing Social Media

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We have all heard of Social Media - haven't we? By now, almost every one of us has at least a Facebook account and probably a Twitter account as well. Some of us may even have accounts with LinkedIn, Google+, Instagram, Pinterest, SnapChat, or Flickr – or, at least our kids do. Social Media is constantly playing a larger role in how we communicate and not just among young people. The fastest growing demographic on twitter is the 55-64 year age bracket, which has grown 75% since 2012. The 45-54 year age bracket is the fastest growing demographic on both Facebook and Google+. Facebook has jumped 46% and Google+ 56%. Of Facebook's nearly one billion users, approximately 200 million are mobile only, and YouTube is more popular than cable television. More than 95% of Facebook users log into their account every day, 60% of Twitter users and only 30% of LinkedIn do the same. As Social Media becomes a larger part of our way to communicate, so does the opportunity to use these innovations to our benefit, as well as accidentally use them to get into trouble. While many of us have these accounts as individuals, many local governments are hesitant to embrace social networking and Social Media websites. This paper is to give more background information on the potential opportunities and pitfalls of Social Media.

### Social Media Overview

Social Media platforms are designed to enable instant gathering of vast networks of people. They are used to: share information with a large audience quickly; make and create connections with others; and, to share experiences and creative interests. They exist within one's own pre-established circle or they can be shared with people and groups many times removed. Technology has also increased the ability to share between these social networks. A City Council meeting placed on YouTube posted to the website or shared on Facebook can then be "liked" or

tweeted on Twitter. For a governmental body, this means that sharing information with constituents can be easy, sometimes too easy. For some projects or notifications central to a governmental body's responsibility, rapid dissemination of information is critical for the health, safety and welfare of the City (i.e. in the case of an emergency). However, for other situations, the rapid fire of misinformation, or premature information, can render some projects impossible to complete or get off the ground. This makes it essential for cities to understand how to manage Social Media, and train its employees and officials to understand the impacts of their use.

There are many types of Social Media. Social Networks, such as Facebook and LinkedIn are peer-to-peer services that allow you to connect with other people of similar interests and background. Usually they consist of a profile, various ways to interact with other users, and the ability to setup groups. Bookmarking Sites allow you to save, organize and manage links to various websites and resources around the internet. Most allow you to "tag" your links to make them easy to search and share. The most popular are Delicious and StumbleUpon. Social News allow people to post various news items or links to outside articles and then allows its users to "vote" on the items. The voting is the core social aspect as the items that get the most votes are displayed the most prominently. The community decides which news items get seen by more people, as with Digg and Reddit. YouTube, Flickr, Picasa, Vimeo and Tumblr are considered Media Sharing services for uploading and sharing various media such as pictures and video. Most services have additional social features such as profiles, commenting, etc. Twitter is a Microblogging Service, which focus on short updates that are pushed out to anyone subscribed to receive the updates. Blog Comments and Forums allow members to hold conversations by posting messages. Blog comments are similar except they are attached to blogs and usually the discussion centers around the topic of the blog post. There are many popular blogs and forums,

such as WordPress. Klout, Tweetlevel and Twitalyzer are examples of sites that provide an analysis of a specific Social Media user.

Other important Social Media tools for cities include Wikis and Crowd Sourcing. Wikis are repositories for information or documents. Online encyclopedias typically offer subject specific areas where information can be obtained and shared. Another wiki example is challenge.gov. The Federal Government and the public put forward challenges; anyone can compete by submitting ideas, solutions, or their opinions. In particular, Federal Emergency Management Agency (FEMA) has posted a challenge to the public to share ideas for community-based activities to help everyone prepare for disasters. This type of Social Media is excellent for sharing history and facts about your city and related organizations, as well as a way to receive comments and information from your citizens. Crowd Sourcing, or crowdfunding, is an approach to raising capital for new projects and businesses by soliciting contributions from a large number of stakeholders following three types of crowdfunding models: (1) Donations, Philanthropy and Sponsorship where there is no expected financial return, (2) Lending and (3) Investment in exchange for equity, profit or revenue sharing. Financial contributions come from online investors, sponsors or donors to fund for-profit or non-profit initiatives or enterprises. The most well-known crowdfunding tool is Kickstarter. Cities are using crowdsourcing networks like Kickstarter to fund city projects and to garner citizen involvement.

### How Cities Can Use Social Media

Almost all commercial enterprises now have Facebook and Twitter accounts to promote their connection through Social Media. Research shows that people online use Social Media at least once per week to read a blog, visit a social network or read and/or comment on a message board.

The 73% of the estimated 127 million people that make up the U.S. Social Media audience is a large contingency that can be reached with little or no cost. These types of services allow a city not only to keep its constituents informed, but also to reach a market beyond its city limits.

Social Media has many benefits to the cities that use it. They are able to reach a large group of people, quickly, and with very little cost, and messages can be immediate and changed quickly. There are many examples of how this can benefit a city trying to share important information and where time is a critical factor. Natural disasters and emergency response situations are the best example of this. The FEMA encourages cities to incorporate Social Media as part of its emergency response strategies as a best practice. Not only can Social Media be a way for cities to send emergency alerts quickly, but it is also a vehicle for citizens to report severe damage and areas requiring immediate response. Recently in the Midwest, sharing interactive maps improved emergency responses to tornadoes and are examples of what can be done online within a short amount of time to assist with emergency response. Mapping tools used in conjunction with hand held devices allow emergency responders and inspectors to access maps real time and even provide edits of their own. With Social Media, emergency responders share these maps and this information with other agencies as well as citizens to improve and increase the efficiency of emergency response.

Most people are now using the Internet as a primary resource for information. Using Social Media to enhance your web-presence beyond a City website can help alleviate the pressure on city staff. Twitter, for example, can announce when new agendas are posted or that a new ordinance passed, as well as where to find the information on the city website. This can both preempt future questions and confusion, as well as decrease the number of phone calls to the city asking for information located on the website and for updates on city activities. In particular,

Social Media can effectively advertise city sponsored events or other community activities, as well as any last minute changes or cancellations. Social Media can enhance citizen engagement by increasing the amount of information available, as well as recognize citizens, employees, or civic groups. A strong web-presence can also attract new businesses and citizens, and support the local tourism and businesses. Further, unlike traditional print, the city can control the message. The city can be the first to make an announcement and share information in real-time, as well as change this message as events evolve. However, cities must be consistent and timely in their Social Media “postings” in order to develop “followers” and for their Social Media outlet to be reliable.

Social Media can also help cities and its representatives gather information. Citizens use Social Media to express concerns and support for activities in their community, as well as provide quick and informed feedback. These tools also increase the city’s awareness of non-city events. The Facebook pages and Twitter accounts of civic groups and other government agencies help cities schedule important events and update their calendars. This data may also contain important geographic location, and help cities to gather information from traditionally underserved communities. Social Media is a cost effective and efficient way for city employees and officials to receive feedback and input on city activities and projects, as well as gather ideas to propose new projects and shed light on potential issues.

### Areas of Concern

While Social Media has many benefits, there are also areas of concern. First, while the tools themselves are extremely cost-effective, it takes time to manage the sites and keep them updated for it to be effective. For some cities, this may require either additional training for staff or

possibly a new staff person dedicated to public relations or information technology. Additionally, while Social Media can help cities to reach new audiences, it may not reach all demographics. Cities should use caution in relying solely on Social Media to present important public information, especially when transitioning to the new medium.

Copyright issues are another concern that the City may have, as users can easily and mistakenly post or repost copyrighted material. However, the Digital Millennium Copyright Act (DCMA) may limit liability if he or she promptly removes content when notified by a copyright owner of the infringement. 17 U.S.C. § 512. *See also, Ellison v. Robertson*, 375 F3d 1072, 1080 (9<sup>th</sup> Cir. 2004). This is the same for issues of privacy. The nature of social media is to encourage the free flow of information. However, something mistakenly tweeted or posted to Facebook could have important implications, such as on releasing information influential on future negotiations or personnel information protected by the Public Information Act. Information posted on Social Media websites can also result in libel or tort claims. A libel plaintiff must prove that the defendant (1) published a statement; (2) that was defamatory concerning the plaintiff; (3) while acting with either actual malice, if the plaintiff was a public official or public figure, or negligence, if the plaintiff was a private individual, regarding the truth of the statement. V.T.C.A., Civil Practice & Remedies Code § 73.001.

#### Employment/Personnel Issues:

One of the biggest areas of concerns for Cities regarding Social Media has to do with employees and personnel issues. These issues include employees using Social Media to “vent” about their boss, co-workers, and their jobs in general, releasing confidential information, or general productivity issues of employees using Social Media during work hours. There are also

certain statutory and constitutional issues surrounding employee's use of social media in the work place.

The Electronic Communications Privacy Act of 1986 ("ECPA") protects most electronic communications from interception, attempted interception, disclosure, use and unauthorized access. 18 U.S.C. § 2510-11, 2701-2; *see also* Tex. Penal Code § 16.02 (making it a criminal offense under Texas law to intentionally intercept, endeavor to intercept or procure another person to intercept or endeavor to intercept a wire, oral or electronic communication). However, the term "intercept" as recognized by Fifth Circuit only applies to e-mail messages retrieved while they are in transit, and not after they have been saved in electronic storage. There is also an exemption if: (1) the employer owns the network and does not read the e-mail before it reaches its destination, the employer probably has the right to store those e-mail messages; or, if there is consent, and prior consent of the employee.

In the case of State common law tort claims, an employee must establish that he or she had a "reasonable expectation of privacy" in his or her e-mail communications in order to prevail in the claim of invasion of privacy. *See Smyth v. Pillsbury Co.*, 914 F. Supp. 97, 100-1 (E.D. Penn. 1996). In *Smyth v. Pillsbury Co.*, the court applied a balancing test and determined that "the company's interest in preventing inappropriate and unprofessional comments or even illegal activity over its e-mail system [outweighed] any privacy interest the employee may have in those comments."

Fourth Amendment search and seizure claims are also an employment issue. In order for a search or seizure to be unreasonable, however, the employee must have a reasonable expectation that his or her computer activity is private. *See O'Connor v. Ortega*, 480 U.S. 709, 715 (1987)



(“Searches and seizures by government employers or supervisors of the private property of their employees... are subject to the restraints of the Fourth Amendment.”) In this case, the court found that employees had no reasonable expectation of privacy with regard to Internet use where a governmental employer’s official policy informed employees that the employer would conduct “electronic audits” to identify, terminate and prosecute unauthorized activity. *Id.*

First Amendment free speech claims are limited in the workplace. The Fourth Circuit has held that a Virginia law did not infringe upon the First Amendment rights of state employees where they were prohibited from accessing sexually explicit material on computers owned or leased by the state, except in conjunction with an agency-approved research project. *See Urofsky v. Gilmore*, 216 F.3d 401, 416 (4<sup>th</sup> Cir. 2001). In this case however, an employer may actually have the duty to report child pornography that the employer discovers on its computers under a federal public health statute on child abuse reporting.

Another important concern is the potential for Social Media to be used for virtual harassment and workplace violence. There is potential that harassment can occur on social networking sites and employers need to be careful of attempting to enforce personnel policies for conduct that occurs off-duty and not using public equipment or resources. One New Jersey case has raised the issue that there may be a duty to prevent co-worker harassment or injury to another if the employer knows or has reason to know that such harassment or threats are occurring on the company’s website. *Blakey v. Continental Airlines*, 164 N.J. 38 (2000) (involving a pilot’s claims for sexual harassment and defamation stemming, in part, from a co-worker’s postings on an electronic bulletin board on company’s Internet.).

### Open Meetings Act:

In addition to concerns about City employees, City officials must also be careful when using Social Media. Public employees' work-related social networking activities may be subject to public disclosure under the Texas Public Information Act and online postings can quickly evolve into potentially illegal gatherings under the Open Meetings Act. The Open Meetings Act requires that all municipal governing body meetings, with certain exceptions, be open to the public and decisions by the body must be made a properly called meeting. Texas Government Code chapter 551. Local government official's use of Social Media could cross the line into the territory of a "meeting" under the Open Meetings Act when they engage in communication that is more like a regular meeting than ordinary correspondence.

The Act defines a meeting as a gathering that is conducted by the governmental body at which a quorum is present, called by the body at which members receive and give information, ask and receive questions regarding public business or public policy over which the governmental body has supervision or control. *Id.* § 551.001(4)(A). The definition of a meeting expressly excludes: (1) gatherings of a quorum of a governmental body at a social function unrelated to the public business that is conducted by the body; and, (2) attendance by a quorum at certain other events such as conventions, ceremonial events and press conferences. There are not yet any specific statutory or judicial guidance in Texas on whether online presence on a Social Media site is akin to a social function or other social event. However, the goal remains to protect the public's interest, which is "not only to know what a governmental body decides but to observe how and why every decision is reached." *Acker v. Tex. Water Comm'n*, 790 S.W.2d 299, 300 (Tex. 1990).

A meeting has occurred if there was a quorum involved in the deliberation or “verbal exchange” of a matter of public business or public policy. Social Media enables an instant gathering of vast networks of people who can respond and share ideas and opinions quickly. Therefore, members of a governing body must be aware of avoiding “walking quorums”, which is where members meet in small numbers to circumvent the Act.

There are many ways that governing body members can participate in discussion regarding public business or public policy. Deliberation is “a verbal exchange . . . between a quorum of a governmental body”. This can include an exchange of written materials or electronic mail and can occur even when members of a governmental body are not in each other’s physical presence. *See* Tex. Att’y Gen. Op. No. JC-0307 (2000); *see also* Tex. Att’y Gen. Op. No. DM-95 (1992). Furthermore, the “like” button on Facebook is a form of speech. *Bland v. Roberts*, No. 12-1671, 2013 WL 5228033, at \*15 (4th Cir. Sept. 18, 2013). Online postings can quickly evolve into potentially illegal gatherings.

Recently, the 83<sup>rd</sup> Legislative Session amended the Texas Open Meetings Act (TOMA) to allow for online discussion and incorporation of recent technologies and mediums. Government Code Section 551.006 has been effective only since September 1, 2013; however, it is helping to redefine what constitutes a meeting. This section allows certain electronic communications between governmental body members take place without constituting a meeting; it applies to “online message board or similar Internet application.” Gov’t Code § 551.006. Section 551.006 exempts from TOMA those communications and exchanges of information between members of a governmental body about a public business or public policy over which the governmental body has supervision or control if: 1. the communication is in writing; 2. the writing is posted to an online message board or similar Internet application that is viewable and searchable by the

public; and 3. the communication is displayed in real time and displayed on the online message board or similar Internet application for no less than 30 days after the communication is posted. Facebook, Twitter, and Instagram are not permissible online forums under Section 551.006.

The online board contemplated by Section 551.006 must be hosted by the governmental entity. While the online board may offer a great way for public officials to discuss topics, there are certain statutory limitations. For instance, no vote may take place on the online message board. Required action must still take place at a meeting and not on the online board. Only members of the governmental body or authorized staff members are permitted to post communications to the message board. If a city employee posts on the message board, the employee must include his or her name and title with the communication. A city is prohibited from having more than one online message board used for these purposes. Additionally, the online message board must be prominently displayed on the city's primary website and no more than one click away from the city's website. Finally, posts to the online board fall within the purview of the Texas Public Information Act ("PIA"). As such, posts are subject to PIA requests, and deleted and/or removed posts must be retained for six years.

#### Public Information Act:

Social Media networks do not have retention policies, can either delete or retain information with which the City would prefer or is legally obligated to do the opposite. If the City has a Social Media website, as many do these days, information must be retained in accordance with the applicable records retention schedules. Enclosed are sample policies for distribution: 1) sample policy for a city considering a website or blog and 2) a sample employee policy addressing these issues.

Many governmental entities have developed Facebook pages and blogs. It would be difficult in today's society to find a website anywhere that does not have a link to a Twitter or Facebook page. There is no duty for a City to provide information online, but as changes in the way we communicate and live daily advance in the technological sense, we must do our best to stay current by considering the availability of these options for our cities.

Many employees and officials maintain their Facebook or Twitter posts are not subject to the Act. However, if the post is made by a city employee or city official and relates to official city business – it is subject to the Act. This does not mean that all information relating to city business posted on such a site would have to be disclosed to a requestor, as the exceptions to disclosure under the Act could still apply. *See* Tex. Att'y Gen. Op. OR2009-07029 (determining that certain information on a Facebook account could be withheld under Section 552.108(a)(2) of the Government Code). The Act defines "public information" broadly to include "all information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business." Tex. Gov't Code § 522.002. Public information may exist in book form, paper, letters, documents, photos, film, map, etc. as well as voice, data, or video representation. The Act further provides that if the requested public information exists in an electronic or magnetic medium, the public may request a copy of the information in its electronic form.

The Public Information Act establishes exceptions to disclosure and Social Media is subject to the Act in the same way as any other medium. Just because information may be maintained on a third-party website does not mean the information is not public and unavailable to the governmental body. There are disclaimers for privacy settings and if someone is utilizing, for example, Facebook – if you're not familiar with how this works, you set up a Facebook page

using your e-mail address. There are numerous privacy settings that can be personalized to fit your needs – you can make sure that some information is public and some is private, you can “friend” people or not – making your page only visible to “friends” or “family.” The worries start when public officials have webpages and put out posts announcing their “NAME, COUNCIL-PERSON FOR THE CITY OF \_\_\_\_\_.” That clearly opens the door for anything posted on that page or associated with that account to be responsive to a public information request. Violations of the Public Information Act and Open Meetings Act could potentially result in fines or incarceration.

Public records may only be destroyed as provided by statute. Tex. Gov’t Code § 552.353. It is very important for all officials and employees of a public entity to be aware of their record retention and destruction policies. E-mails cannot just be deleted. Keep an open line of communication with your staff regarding policies that are adopted. And, keep in mind, there are many options when it comes to adopting the necessary policies. Social Media and networking websites do not have an obligation to archive or maintain storage of information, whereas, governmental bodies and public entities do have that obligation.

## Resources and References:

Cindy Crosby, Bikkerstaff Health Delgado Acosta LLP (2010). The Impact of Social Networking on Cities. <[http://texascityattorneys.org/2010speakerpapers/1-SocialMedia\\_Crosby.pdf](http://texascityattorneys.org/2010speakerpapers/1-SocialMedia_Crosby.pdf)>

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<<http://training.fema.gov/EMIWeb/IS/courseOverview.aspx?code=is-42>>

GovLoop.Com, The Social Media Experiment in Government: Elements of Excellence (2013): <<http://www.govloop.com/profiles/blogs/the-social-media-experiment-in-government-elements-of-excellence->>

Kim Hodgman, Strasburger Attorneys at Law. Facebook, Twitter, Instagram – Oh my!: <<http://www.strasburger.com/userfiles/file/Government%20Newsletter%20-%20FacebookTwitterInstagramOhMy.pdf>>

HowTo.Gov information on Social Media, and training webinars:  
<<http://www.howto.gov/social-media/social-media-types>>

Donna Johnson, Olson & Olson, LLP (2012). E-mail Retention and Social Media and How They Relate to the Texas Public Information Act and Texas State Library Retention Schedule.

OutThinkGroup.Com article on types of Social Media: <<http://outthinkgroup.com/tips/the-6-types-of-social-media>>

Texas Attorney General Social Media Policy:  
<[https://www.oag.state.tx.us/site\\_policy.shtml](https://www.oag.state.tx.us/site_policy.shtml)>

Texas Municipal League, S.B. 1297 (2013): Online Message Board Discussions – Does Facebook Qualify?: <<http://www.tml.org/p/SB-1297-and-Facebook-July2013.pdf>>

Exhibits:

Exhibit A: TML Social Media Policy Example, <  
<http://www.texasmunicipallawyers.com/files/publications/Sample-Social-Media-Policy.pdf>>

Exhibit B: Texas Office of the Attorney General Social Media Policy, <  
[https://www.texasattorneygeneral.gov/site\\_policy.shtml](https://www.texasattorneygeneral.gov/site_policy.shtml)>

Exhibit C: 551.006 of the Government Code: Open Meetings Act, Written Electronic Communications Accessible to Public

Exhibit D: Attorney General Rulings regarding disclosure of public information



## EXHIBIT A

TML Social Media Policy Example

<<http://www.texasmunicipallawyers.com/files/publications/Sample-Social-Media-Policy.pdf>>

## Matrix City

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### Social Media Policy

Given the multitude of concerns (legal, political, and ethical) raised by social networking (Facebook, MySpace, Twitter, etc.) this policy (effective immediately) establishes prudent and acceptable practices regarding Matrix City officials and employees (personnel) use of the internet.

While Matrix City encourages its personnel to enjoy and make good use of their off-duty time, certain activities on the part of its personnel may become a problem if they have the effect of impairing the work of any official or employee; harassing, demeaning, or creating a hostile working environment; disrupting the smooth and orderly flow of work; or harming the goodwill and reputation of the City among its citizens or in the community. For these reasons, the City reminds its personnel that the following guidelines apply in their use of social media, both on and off duty.

Under this policy, the City disavows, and is not responsible for any sites, posts, opinions, or content not coordinated through and approved by the City Manager or Mayor. If City personnel posts data purporting to be on behalf of the City while using a social media site without the approval of the City Manager, the City is not responsible for that content, such content is not to be construed as reflecting the views or opinions of the Mayor, City Council or City management, and the City is not responsible for archiving such content in accordance with the records retention schedule, or providing copies in accordance with the Texas Public Information Act (PIA). Furthermore, the absence of explicit reference to a particular site does not limit the extent of the application of this policy. If you are uncertain, consult your supervisor or manager before proceeding.

#### General Guidelines

1. While on duty, the use of City equipment or internet service by personnel must be limited to work related tasks. Social media activities should never interfere with work commitments.
2. No personnel may post online content as a representative of the City, or on the City's behalf without the City Manager's or Mayor's approval.
3. If discussing City related issues, but not posting online content as an approved representative of the City or on the City's behalf, all personnel must make it clear that they are speaking for themselves, and not on behalf of the City by displaying a disclaimer that states: "This is my own opinion and not necessarily the opinion or position held by the City or City Council."

## **Guidelines for Official City Social Media Sites and Content**

1. All City-sanctioned social media sites shall be maintained by the City Manager. Any content to be posted on City-sanctioned social media sites must meet the approval of the City Manager or Mayor before it is posted.
2. All personnel that engage in social media activities on the City's behalf and all City-sanctioned social media sites shall adhere to applicable federal, state and local laws, regulations and policies, including the Texas Public Information Act and the records retention schedule. All content must be managed, stored and retrieved to comply with these laws.
3. All online content posted as representative of the City, or on the City's behalf shall clearly indicate that it is subject to records retention and public disclosure. All City-sanctioned social media sites shall clearly indicate that any articles and any other content posted or submitted for posting are subject to records retention and public disclosure.
4. Any content posted as representative of the City, or content posted to a City-sanctioned social media site containing any of the following shall not be allowed:
  - a. Comments not topically related to the particular site or blog article being commented upon;
  - b. Profane language or content;
  - c. 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;
  - d. Sexual content or links to sexual content;
  - e. Conduct or encouragement of illegal activity;
  - f. Information that may tend to compromise the safety or security of the public or public systems; or
  - g. Content that violates a legal ownership interest of any other party.
5. Content submitted for posting on a City-sanctioned social media site that is deemed unsuitable for posting by the City Manager because it violates criteria in the preceding item (Item 4, above) of this Policy, shall be retained pursuant to the records retention schedule along with a description of the reason the specific content is deemed unsuitable for posting.
6. Any hyperlinks posted on a City sanctioned social media site shall be accompanied by a disclaimer which states: "The City guarantees neither the authenticity, accuracy, appropriateness nor security of the link, website, or content linked thereto."

**Personnel found in violation of this policy may be subject to disciplinary action, up to and including termination of employment.**

**All personnel are to sign copies of this policy and be trained in its meaning.**

## **EXHIBIT B**

Texas Office of the Attorney General Social Media Policy

< [https://www.texasattorneygeneral.gov/site\\_policy.shtml](https://www.texasattorneygeneral.gov/site_policy.shtml) >



## Site Policies

On this page you can find our office's website privacy and accessibility policies. You can also find ways to contact us if you have concerns about these policies or believe we have violated any of their terms. In addition we provide links from this page to our Open Records policy, our link policy and our Compact with Texans.

### Privacy Policy

Your privacy and security are important to us. We have tried to balance the interest of consumer privacy with the requirements of open government. We will continue to review our website to ensure that we are protecting your privacy as best we can under the law and will update our privacy policy whenever necessary to reflect any relevant changes to our site or our practices.

### Notice

Collection and use of personally identifiable information: We do not collect any personally identifiable information, such as names, addresses, phone numbers or email addresses, unless you choose to provide such information, for instance, in the form of an online complaint, as part of our child support interactive service, or to subscribe to our E-Presslist or our E-Opinions list. The information you submit to us in the form of an online complaint will be used by the Attorney General's staff to respond to your complaint and to fulfill our official duties. We do not use "cookies," which are pieces of data stored on the user's hard drive that can be used to track information about browsing habits during multiple visits to the site. If you access our child support interactive services or our website, we do, however, use "server log software" which allows us to collect the following limited navigational information to assist us in managing and improving our website:

- Your Internet Service Provider. For instance, if you connect to our site using AOL, our system will know that someone using AOL connected to the site. However, your actual identity will not be known. We will not know any personally identifiable information about you, including your name and email address.
- The date and time that our website was visited.

### ite policies:

[Privacy Policy](#)  
[Accessibility Policy](#)  
[Open Records](#)  
[Policy Social Media](#)  
[Policy Link Policy](#)

### more information:

[Compact with Texans](#)  
[Contacts](#)

- The website from which you accessed our site. For instance, we will know if someone accessed our site through the National Association of Attorneys General website. Your personal identity, however, will not be known.

This information is used internally to help our staff count the number of people visiting our website and the various Web pages within our site. This information helps us to maintain and improve our website for our visitors.

**Disclosure of information:** If you file an on-line complaint form or submit information through the child support interactive service, the information submitted will be disclosed to the Attorney General and his staff to assist us in fulfilling our official duties, as stated above. The information may also be sent to the person or company that is the subject of your complaint or to other governmental agencies involved in the administration or enforcement of the matter. The information will not be disclosed to third parties, unless we receive an open records request and, we are required to disclose the information under the **Public Information Act**. The rules regarding public disclosure of information we receive from online complaints are the same rules that apply to disclosure of information we receive when you file a paper complaint with our office. **Protected health information** will only be used or disclosed as permitted or required by law. Any information you submit to us online will not be sold, rented or leased to third parties.

With few exceptions, if you complete and file an informational form with the Office of the Attorney General (hereinafter "OAG"), you are entitled on request to be informed about the information that the OAG has collected about you. In most cases, you have the right to receive and review the information. If you request copies of the information, you may be subject to charges authorized under the Public Information Act. Under section 559.004 of the Government Code, you are entitled to have the OAG correct any information the OAG maintains about you that is incorrect. You will not be charged for correcting this information. If you want to review or obtain copies of agency records, please send a written request to the following: [publicrecords@texasattorneygeneral.gov](mailto:publicrecords@texasattorneygeneral.gov).

## Choice

The only personal information we collect from you is information you choose to provide to us in the form of an online complaint or through our interactive child support services.

## Access

If you have a question, concern or change regarding information in a consumer complaint form that was submitted online, please contact us at [consumerprotection@texasattorneygeneral.gov](mailto:consumerprotection@texasattorneygeneral.gov). If you have a question, concern or change regarding information contained in or submitted via our child support interactive service, please contact us at [child.support@texasattorneygeneral.gov](mailto:child.support@texasattorneygeneral.gov).

## Security

We use a secure socket layer (SSL) and a security certificate to enhance the security of any information you choose to submit to us through our website. In other areas of our website, we provide only the security necessary to maintain our website and information we provide to you as part of our child support interactive services.

## Social Media Policy

### Purpose & Scope

Social media tools are software systems or services provided on the Internet, such as Facebook and Twitter, through which users create online communities or web pages to share information and other content. The Office of the Attorney General (OAG) recognizes

that social media tools allow users to quickly and easily share information with one another. In keeping with the OAG's goal of making government open and accessible, the agency may utilize social media tools to post or share information related to official agency business. The purpose of this policy is to ensure that the OAG's use of social media tools for official agency business remains in compliance with any applicable laws and rules. The OAG's Information Technology Security Policy Manual and this policy will govern the agency's use of any social media tool. This policy does not govern OAG employees' personal use of social media tools; employee personal use is still governed by the OAG's Social Media: Personal Use by Employees policy.

### **Control & Monitoring**

The decision to utilize any social media tool, or create a social media page, shall be made by the First Assistant Attorney General or his/her designee. The OAG's Communications Division shall exclusively control and regularly monitor any OAG social media page or account. No other OAG division or employee may utilize social media tools, or create a social media page, to conduct agency business.

### **Information & Privacy**

The agency may not post or share information on an OAG social media page if that information is confidential under any law or rule or would be excepted from disclosure under the Public Information Act, Chapter 552 of the Texas Government Code.

Members of the public should not post or share information on an OAG social media page if that information is personal, sensitive, obscene, threatening, harassing, discriminatory, or would otherwise compromise public safety or incite violence or illegal activities.

### **Retention, Destruction & Removal of Information**

Information posted or shared on an OAG social media page may qualify as public information and/or a state record. Accordingly, such information will be retained or destroyed in accordance with the OAG's Records Retention Schedule and any applicable laws or rules.

Unless otherwise prohibited by law or rule, information posted or shared on an OAG social media page may be removed and/or deleted from the page at any time at the OAG's discretion.

### **Intellectual Property**

The OAG respects the rights of intellectual property owners and will not intentionally infringe on those rights. The OAG's use of protected intellectual property on an OAG social media page will be in compliance with applicable laws and rules.

The terms of service of the respective social media tool will govern the posting or sharing of intellectual property on an OAG social media page by a member of the public.

If an intellectual property owner believes his/her rights have been infringed by the posting or sharing of intellectual property on an OAG social media page, he/she should contact the OAG at:

*Communications Division Office of the Attorney*

*General*

*P.O. Box 12548*

*Austin, TX 78711-2548*

Phone: (512) 463-2050

Email: [communications@texasattorneygeneral.gov](mailto:communications@texasattorneygeneral.gov)

## Public Information Requests

The OAG will not accept public information requests submitted through an OAG social media page. In order to request information from the OAG, a written request must be sent by mail, fax or email to the following:

*Public Information Coordinator Office of the Attorney  
General P.O. Box 12548*

*Austin, TX 78711-2548*

Fax: (512) 494-8017

Email: [publicrecords@texasattorneygeneral.gov](mailto:publicrecords@texasattorneygeneral.gov)

Further instructions for requesting information from the OAG can be found at:

<https://www.oag.state.tx.us/open/requestors.shtml>

## Linking

The **Texas Department of Information Resources State Website Link Policy**, which contains guidelines and information on linking to state agency websites, will govern linking to and from an OAG social media page. The OAG does not assume responsibility for the content of linked sites and does not endorse the content, products, services or viewpoints expressed or provided by linked sites.

## Website Link Policy

The Office of the Attorney General's website complies with the **Texas Department of Information Resources State Website Link Policy**, which contains guidelines and information on linking to State agency websites. Our website also includes links to a variety of other public and private websites. These external sites have been selected based on the relevance of their content to assist visitors in locating additional resources and information on government, law, and other matters within the scope of the agency's duties or of general public concern. Some links to external sites are required by law to be included on our site. The Office of the Attorney General does not assume responsibility for the content of linked sites and does not endorse the content, products, services or viewpoints expressed or provided by linked sites.

## Accessibility Policy

The Office of the Attorney General is committed to making its website accessible to all users. We welcome comments and suggestions to improve the accessibility of our website. Please visit the **Electronic and Information Resources Accessibility Policy and Procedures Manual**.

If you use assistive technology and the format of any material on our website interferes with your ability to access the information, please contact our Webmaster by email at [webmaster@texasattorneygeneral.gov](mailto:webmaster@texasattorneygeneral.gov).

To enable us to respond in the most helpful way, please indicate the nature of the accessibility problem, the preferred format in which to receive the material, the Web address of the requested material, and your contact information. Every attempt will be made to resolve the problem; however, due to technological resource limitations we may be unable to address all issues. You may contact our Accessibility Coordinator by sending an email with "Regarding Accessibility" in the subject line to [public.information@texasattorneygeneral.gov](mailto:public.information@texasattorneygeneral.gov), or by calling 512-475-4413.

Additional information on accessibility programs in Texas is available from the Governor's Committee on People with Disabilities at [www.governor.state.tx.us/disabilities/](http://www.governor.state.tx.us/disabilities/).



## Contacts

If you have questions about this policy or believe that we have acted in violation of this policy, please contact us at [public.information@texasattorneygeneral.gov](mailto:public.information@texasattorneygeneral.gov) or write or call us at:

*Office of the Attorney General*

*Public Information & Assistance Division, MC-027 P.O. Box 12548*

*Austin, TX 78711-2548*

Tele: (512) 463-2007 or (800) 252-8011

Visit the **contact us** section of this site for more information about agency contacts.

*Revised: December 06 2013*

## EXHIBIT C

551.006 of the Government Code: Open Meetings Act  
Written Electronic Communications Accessible to Public

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§ 551.006. Written Electronic Communications Accessible to Public, TX GOVT § 551.006

Vernon's Texas Statutes and  
Codes Annotated Government  
Code (Refs & Annos)

Title 5. Open Government; Ethics  
(Refs & Annos) Subtitle A. Open  
Government

Chapter 551. Open Meetings  
(Refs & Annos) Subchapter  
A. General Provisions

V.T.C.A., Government Code § 551.006

§ 551.006. written Electronic Communications Accessible to Public

Effective: September 1, 2013

[Currentness](#)

(a) A communication or exchange of information between members of a governmental body about public business or public policy over which the governmental body has supervision or control does not constitute a meeting or deliberation for purposes of this chapter if:

(1) the communication is in writing;

(2) the writing is posted to an online message board or similar Internet application that is viewable and searchable by the public; and

(3) the communication is displayed in real time and displayed on the online message board or similar Internet application for no less than 30 days after the communication is first posted.

(b) A governmental body may have no more than one online message board or similar Internet application to be used for the purposes described in Subsection (a). The online message board or similar Internet application must be owned or controlled by the governmental body, prominently displayed on the governmental body's primary Internet web page, and no more than one click away from the governmental body's primary Internet web page.

(c) The online message board or similar Internet application described in Subsection (a) may only be used by members of the governmental body or staff members of the governmental body who have received specific authorization from a member of the governmental body. In the event that a staff

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member posts a communication to the online message board or similar Internet application, the name and title of the staff member must be posted along with the communication.

(d) If a governmental body removes from the online message board or similar Internet application a communication that has been posted for at least 30 days, the governmental body shall maintain the posting for a period of six years. This communication is public information and must be disclosed in accordance with Chapter 552.

(e) The governmental body may not vote or take any action that is required to be taken at a meeting under this chapter of the governmental body by posting a communication to the online message board or similar Internet application. In no event shall a communication or posting to the online message board or similar Internet application be construed to be an action of the governmental body.

### **Credits**

Added by [Acts 2013, 83rd Leg., ch. 685 \(H.B. 2414\), § 3, eff. June 14, 2013](#); [Acts 2013, 83rd Leg., ch. 1201 \(S.B. 1297\), § 1, eff. Sept. 1, 2013](#).

V. T. C. A., Government Code § 551.006, TX GOVT § 551.006

Current through the end of the 2013 Third Called Session of the 83rd Legislature

End of Document

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## Exhibit D

Attorney General Rulings regarding disclosure of social media as public information