



Massachusetts Municipal Association

MMA BEST PRACTICES SERIES

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Best Practice Recommendation: Considering Social Media Policies in the Context of the Open Meeting and Public Records Laws

BEST PRACTICE: Develop a detailed written policy on the use of social media by employees and officials. Having a social media policy will help to avoid unintended conflicts or problems under the open meeting law and the public records law.

The open meeting law requires that meetings of a public body be properly noticed and open to members of the public, unless an executive session is convened. A “meeting” is defined as “a deliberation by a public body with respect to any matters within the body’s jurisdiction.” The law was revised in 2010 to include exchanges by email in the definition of deliberation. A “deliberation” is thus defined, in relevant part, as “any oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.” For the purposes of the open meeting law, a “quorum” is a simple majority of the members of a public body. The law does not restrict an individual’s right to make comments to the general public.

As stated in the Guide to the Massachusetts Public Records Law, “The Public Records Law applies to all government records generated, received or maintained electronically, including computer records, electronic mail, video and audiotapes.” According to the Massachusetts Municipal Records Retention Manual, electronic records must be managed and maintained in accordance with an electronic records management plan.

In the context of social media, here are recommended actions for members of public bodies:

- Avoid “friending” or following members of your public body.
- Understand that the intent of your public posts will be examined to determine if there are any open meeting law violations.
- Make certain that you do not comment about hearings or other specific public body matters that may fall under its jurisdiction. The expression of an opinion of one public body member on matters within a public body’s jurisdiction to a quorum of a public body is considered a deliberation, even if no other public body member responds.

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- If you must comment or discuss matters on social media, limit comments to political statements that are not within the public body's jurisdiction.
- Recognize that the distribution of meeting agendas, scheduling information or other procedural information, or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed, are excluded from the definition of deliberation.
- Always proceed with caution when communicating over social media platforms. It is not always apparent whether a subject is considered public business within the public body's jurisdiction. Even if you feel you are following the law, the Attorney General's Office might disagree.
- Develop an electronic records management plan that includes social media. Capturing and preserving social media content must be a part of any municipal electronic records management plan, and municipalities should work with their legal counsel and IT professionals to do so.

Resources:

- From the MMA's Municipal Advocate magazine, "To Tweet or Not to Tweet? Social Media, Public Records and the Open Meeting Law": www.mma.org/wp-content/uploads/2018/07/mma_advocate_28-4_law_social_media.pdf
- From KP Law, "The Opening Meeting Law and Social Media – Potential Pitfalls": www.k-plaw.com/wp-content/uploads/2017/01/Open-Meeting-Law-and-Social-Media-Potential-Pitfalls.pdf
- From the Attorney General's Office, Open Meeting Law Frequently Asked Questions: www.mass.gov/frequently-asked-questions-about-the-open-meeting-law
- Attorney General's Office Open Meeting Law Determinations Search: <http://massago.onbaseonline.com/Massago/1700PublicAccess2/OML.htm>
- Secretary of State's Guide to the Massachusetts Public Records Law: www.sec.state.ma.us/pre/prepdf/guide.pdf