



SUNSHINE LAWS

# Posts and Tweets and Texts ... Oh My!

Public records in the social media age

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Florida's Sunshine Laws require that all records made or received in connection with official city business be retained for a defined period of time, and they must be produced upon request.

With salacious headlines such as “Public records reveal quid pro quo in council member’s text messages,” many think Sunshine Laws impact only those who deliberately flaunt the law on high-profile issues.

However, whether you’re a city employee or an elected official, remember that these laws apply to your written communications – no matter how seemingly mundane.

The inability to retain and produce messages in response to a public records request can have severe consequences. Violations can lead to fines, removal from office, expensive and lengthy legal battles, and even jail time.

Florida’s Sunshine Laws require that all records made or received in connection with official city business be retained for a defined period of time, and they must be produced upon request.

Considering the wide array of today’s forms of communication, such as text messaging and social media, you should have a robust

and proactive system to capture digital communications and to understand how Sunshine Laws apply to such communications.

Adopted in 1973, Florida's public records laws do not differentiate between traditional forms of communication and the broad options available today. As with any legal question, each situation is unique, but it's important that city employees and elected officials keep best practices in mind while adapting to the digital age.



**IS IT A PUBLIC RECORD?**

Whether a text message, post, tweet, etc. is a "public record" depends on whether the message is made or received in connection with official city business. **Content determines if a communication is a public record, not**

**the device or platform that was used to create or send the message.**

Common examples are conversations that occur via personal email, texts on personal cell phones, or posts on personal social media pages. If those conversations were made or received in connection with official city business, regardless of whether they were on a personal platform or device, they are likely a public record.

Alternatively, if a personal exchange occurs on city channels, it may not necessarily be considered a public record. For example, let's say you are emailing from a city computer about the health of a family member. The content is personal and would not necessarily need to be preserved or produced in response to a public records request.



**YOU'VE CREATED A PUBLIC RECORD. WHAT NOW?**

Unless the record is covered by a specific statutory exemption, the record must be retained for a certain period of time and be produced upon request. The state retention schedule establishes the length of time a record must be preserved.

Retention requirements are based on the importance or value of the record to the city and exist for nearly every category of records.

Retention requirements vary widely. The key to determining what retention schedule applies is the **content** of the message, not the form or device that was used. For example: A text message saying, "I'll meet you at Starbucks at 10 a.m." loses any relevance shortly after the meeting occurs and could be deleted. Alternatively, a text message saying, "Let's discuss the Main St. zoning issue at Starbucks at 10 a.m." may have a longer retention schedule.

Text messages, social media posts or other digital records may have a very short or a very long retention schedule, depending on the content.



**BEST PRACTICES**

Because of the many forms of communication and the wide variance in retention rules, this territory is challenging for even the most diligent city employees and officials.

This area is one in which an ounce of prevention is worth a pound of cure, and instituting a few best practices can save a lot of pain in the long run.

**EMPLOYEES AND OFFICIALS:**

**Keep city business separate.** Make every effort to keep official city business on official city channels. If you choose to have a conversation about official city business on your personal email, text or social media channel, be prepared to retain and produce that record if asked.

Using official channels will ensure that your city's public record retention professionals have access to your records and can save and produce them when needed.

**Minimize the harm.** It's important to think about the means of communication, even when using official channels. For example, it may seem as if Facebook posts are easily retrievable because they're online for the world to see, but did you know Facebook displays only your 500 most recent posts? If not proactively archived, public records may be being automatically deleted without your even knowing it.

Text messages are particularly challenging to archive. Most users do not know when their phone switches from SMS (short message service) to MMS (multimedia messaging service) to iMessage, and each is saved a different way. Also, your phone company's retention may not be in compliance with Sunshine Law retention requirements.

The easiest answer? If possible, don't use platforms that are difficult to archive and retrieve.

**MUNICIPALITIES:**

**Develop a solid policy for retaining and archiving records.** Without direction, employees and elected officials may gravitate to platforms that are challenging for retention and retrieval.

Consider giving employees and officials the responsibility for retaining their communications that are done via difficult-to-archive channels. This action provides a barrier that can limit risky behavior. Also, just knowing that they are responsible for retention can help encourage employees to keep conversations on channels that are easier to archive and retrieve, such as email.

**Consider software solutions.** There are products on the market designed to capture communications directly from devices and archive them in an easily searchable way. These products represent additional cost, but avoiding costly litigation should be a strong consideration when deciding what's best for your city.

As methods of communication proliferate, staying one step ahead is important for cities, employees and elected officials. Drawing the line between what is a public record and how long it must be preserved is difficult, but retaining records in a smart, well-planned way is absolutely necessary for proper compliance.



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