



Texting and Social Media

A new frontier with public records law...

After lawsuit, city officials pledge to release text messages

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Published 5:43 p.m. ET Dec. 7, 2017 | Updated 6:22 p.m. ET Dec. 7, 2017

Florida's
Sunshine
Law

Public Records

Chapter 119,
Florida Statutes



(Photo: Joe Rondone/Democrat)

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A week after the Tallahassee Democrat sued the city of Tallahassee over its failure to collect and produce text messages of its employees and elected officials, city commissioners voted to proceed with a policy to do exactly that.

Commissioners voted unanimously Wednesday to direct Treasurer-Clerk Jim Cooke to draft a text messaging policy that would retain text messages in the same fashion as emails, something the city had not been doing.

City Attorney Lew Shelley pledged the city would do better and work to become a state leader in complying with public records laws as they relate to text messages. Mayor Andrew Gillum even issued a rare apology.

"I do think it's necessary," Gillum said of the new policy. "And I want to apologize along with the city attorney to everyone that we hadn't frankly prior to this point been able to grapple with capturing the text messages, particularly on personal devices. That, however, is not an issue unique to the city of Tallahassee. This is an issue all over the state of Florida."

The Democrat filed the lawsuit in Leon Circuit Court after the city failed to produce texts from the cell phone of City Manager Rick Fernandez in which he solicited and accepted expensive Florida State University football tickets from a city-registered lobbyist. Fernandez, who deleted the messages, was placed on paid leave several days after the Democrat published the text exchange, which it obtained elsewhere.

Florida Public Records Law

- We must archive public records regardless of the method used.
- Public records are open for personal inspection and copying by any person.
- “Public records” means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.
- **Automation of public records must not erode the right of access to those records.**
- **Regardless of the device being used (District-owned or private)** public electronic records must be captured and retained to be in compliance with Florida Public Records Law.



Archiving Official Records

- Transitory messages (temporary in nature, don't require archiving):
 - Reminders about scheduled meetings/appointments.
 - Announcement of school/holiday parties
 - Class assignment "X" is due tomorrow, unless, as example, there is a dispute with a parent and then it becomes a public record.
 - The class trip on Friday is postponed.
 - All 1st grade teachers are meeting at Applebee's tonight.
 - Don't forget next Friday is a planning day.
 - Football play-off game this weekend.
 - You have a quiz on Friday.



Archiving Official Records

- Non-Transitory messages (must be archived):
 - Messages that formalize or perpetuate knowledge, set policy, establish guidelines or procedures, certify a transaction, or become a receipt.
 - Discussions with parents/students that could impact known public records like attendance, grades, health, discipline, ESE, etc.
 - Messages that record official decisions.
 - Messages that have legal or compliance value.
 - Messages that you keep when you need to prove something did or did not occur.
 - Messages that support facts you claim to be true, since the person with direct knowledge of the facts is not available.
 - Something that could help resolve a dispute later.



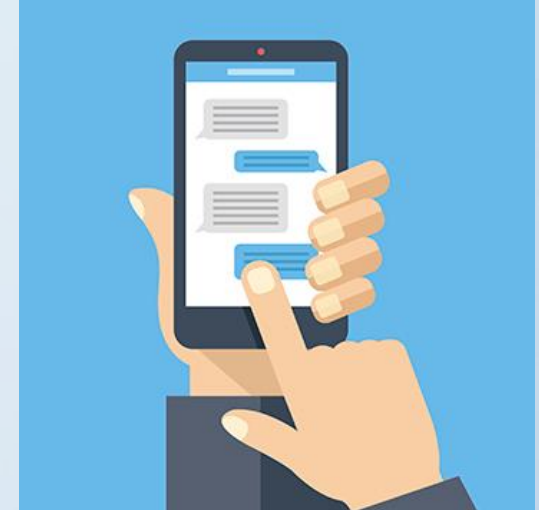
Technical/Funding challenge for Education

- Leadership and school/site department administrators aren't the only ones who can create official records
 - Teachers can as well!!
- Our solution to this problem has to address official LCS phones used throughout the District AND private devices used by teachers/staff.
- Must meet technical needs and be something we can afford.





It's just a matter of time.....



- Public records request typically request you:
 - To provide all records you possess between individuals
 - To provide all records on a particular subject
 - To provide all emails between certain people
- All it takes is one request saying please provide all texts between person X and Y....and then you have a problem
- The public is getting smarter and the time is near when they will start specifically asking for texts

Our Solution for Texting (Those with official LCS phones)

- LCS has 115 District issued cell phones—mainly issued to Administrators
 - We will use Smarsh to capture texts on LCS issued phones
- Requires you to look down apps on phone (you can only have one specific app for texting)
- Can't use iMessage on iPhones – Apple encrypts
- To lock down requires an MDM solution
 - To insure no other message app is added later, you have to lock down the entire phone (only allow specific apps)

Our Solution for Texting (for those using private cell phones)



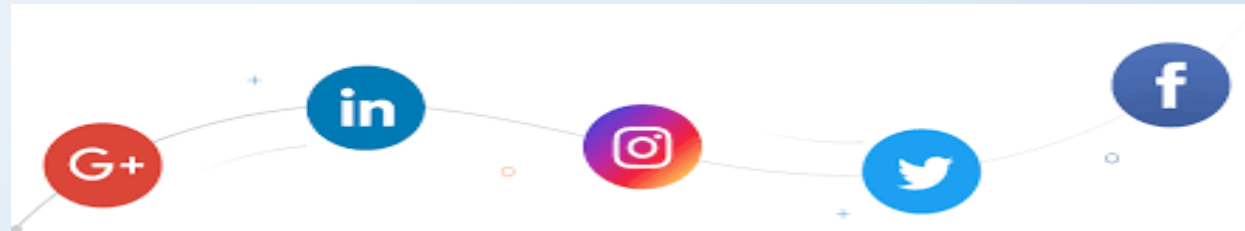
- Use the enterprise version of “Remind” (www.remind.com)
 - Allows us unlimited devices. Also, app that everyone can load on their phone (District provided phones and private phones).
 - Captures text messaging between users.
 - Enterprise version allows:
 - Public Records Request Manager to retrieve messages centrally.
 - Rostering of staff/students accounts using OneRoster (Fall 2018)
- Require annual certification by all staff that they understand they must use District approved applications for official business.
- Remind is very popular with teachers and is currently being used by many teachers, parents, and students today.

Social Media: Public Records Law

- The requirements are the same as texts concerning public records/official business.
- Our challenges:

- Schools have multiple social media sites.

- School site
- Activities
- Sports



- Teachers use social media in the classroom, potential exists to create a public record

Problems with Social Media Networks

Don't capture the content needed.

- ▶ We cannot rely on the social networks to archive for us.



The social networks do not provide user comments or revisions to content (edited, deleted, and hidden content) in their download features



The social networks are not bound to public records laws, and have no legal obligation to retain records

- ▶ We cannot rely on “manual” archiving, or screenshots



Screenshots are only a snapshot in time, do not capture deleted or revised content, and are not searchable



Screenshots have no metadata attached to them, and are not effective in court

- ▶ We cannot just make our social media “one-way”



There's no way to consistently block users from generating content on our social media pages



For example, on Facebook, we cannot disable users' ability to comment on our posts



Social Media: ArchiveSocial

- LCS will implement Archive Social
- Issue is that we don't know how many social media accounts exist
 - 46 school sites, most have at least one social media sites; high schools have 15-20 sites based upon athletics and extra curricular programs
 - We have 2,200 teachers, how many social media sites being used in the classroom??
- Archive Social charges by the post, not by the account
- Smarsh, for example, charges by the account



Social Media: Policy & Procedure



- District recognizes social media is used throughout the District including in the classroom.
- District staff can only use District approved social media sites that are captured by the District archiving solution for public records request (ArchiveSocial).
- Employees must conduct themselves in a professional manner and have approval from their Principal or District site Administrator.
- Staff members must obtain parental permission before using social media with children under 13 (Federal Law-COPPA) if that site captures personally identifying information from a student.



Social Media: Policy & Procedure

- Staff may only use approved social media sites (apps that can be captured by the District archiver for social media): Fb, Twitter, Instagram, YouTube, Google+, Flickr, Pinterest, Vimeo, LinkedIn
- Professional sites:
 - Staff must use their school board email address for registering.
 - Must have the official stated purpose of the site on the site.
- Sites meet common set of guidelines:
 - Moderated to ensure exchanges are informative, respectful of diverse points of view, and lawful.
 - Remove comments that are off-topic, spam, contain profanity or inappropriate language, hate speech, or copyrighted material.
- Extracurricular programs have additional guidelines like parental consent, maintained as a closed group, posts sent to all members, etc.

Social Media: Procedure, continued

- Employee personal use of social media:
 - As role models in the community teachers are responsible for modelling and teaching high standards of decency and civic values.
 - An employees whose personal use of social media interferes with the employee's ability to effectively perform his/her jobs may be subject to disciplinary action.
 - Must use their personal email address when creating a personal site.
 - Must not "friend" a current student on a staff member's personal page (example: Fb).

