

Social Media Compliance: Top 10 Frequently Asked Questions

1. What is Public Record Law?

A public record is any document, regardless of physical form (e.g. audio, pictures, files, emails, social media), that is made or received by a public agency or a private person/organization working with the public agency. A product of the Freedom of Information Act (FOIA), public records laws are broad, future-proofed, and ensure residents have expansive and unrestricted access to records by making public entities responsible for responding to FOIA/open records requests that may be related to social media and website content. Accurate record-keeping for compliance includes the preservation of metadata, and original content (even if edited, hidden, or deleted).

2. Is Social Media a Public Record?

Social media communications can be a public record in all fifty states. While the laws vary by state, essentially, all serve the same purpose and require that public agencies must be prepared to respond to public record requests for all their public and ancillary pages on Facebook, X, and other social networks. For public agencies to provide records for the requested information, they must preserve all of their records so they can be accessed at any time. Find out more about your state specific requirements with our state map, [here](#).

3. Why Not Rely on Social Networks to Retain Data?

Social media networks were built to facilitate the online connection of billions of private residents to one another. They are not built for, nor bound to, public records laws and have no legal obligation to retain records for you. Just relying on social networks to maintain your records is not an acceptable form of retention. It works in the same way that you can't rely on your email provider to retain your digital correspondence.



4. Can I Screenshot My Records?

Screenshots or other manual forms of capture only take a snapshot in time, and social media is dynamic and continuously changing. Attempting to meet compliance requirements with screenshots can present your agency with various issues, and often never hold up in court as they can be easily removed, altered, or manipulated. Not only is it nearly impossible to keep screenshots of everything on your social media accounts, but they also create gaps in your compliance and can lead to organizational inefficiencies. As for workflow, this time-consuming method makes it easy to miss hidden or deleted comments. Having an accurate record of all posts, including hidden and deleted content, in one secure location, is key to accurate record keeping.

5. Why Are We Responsible for Deleted Comments?

Public agencies are responsible for deleted comments because they are considered “received” communications under public records law. Agencies are held accountable for fulfilling retention requirements by keeping a record of the original message that can’t be lost or deleted. A deleted comment can be considered infringing on freedom of speech, and in some states, can also be illegal if it doesn’t clearly violate your policy. But ensuring that all deleted content is captured can be a 24/7 job. A 2020 CivicPlus® (formerly ArchiveSocial) study using a sample of 500 agencies and school districts found 1 in 12 of their social media records were no longer discoverable less than 12 months later. Not only are the networks not obligated to retain records, but public agencies could be found in violation of public records law due to forces outside of their control as users and account owners can delete content at any point. This can pose a serious risk if you cannot produce that deleted content if named in a records request or lawsuit.

6. Why Archive a Small, Non-Controversial Social Media Presence?

The same laws that require you to retain records also require that you produce them if there is a public request for them. These requests can be detailed, heavy, cover a large timeframe, or be for something that is no longer available on the networks. Without an archiving solution in place that captures all content and metadata, there is no way to ensure compliance and easily respond to and fulfill requests. When agencies can’t respond to requests accurately it can lead to costly legal penalties.



7. When Will I Have to Produce Records?

You are required by law to produce social media content if there is a public request for it, regardless of your agency size or budget. A general request could include any and all social media communications related to a project, tax bill, etc., in addition to other forms of communications. People also request social media records due to lost data, including:

- Deleting critical comments that don't violate your social media policy
- Blocking users from pages and accounts
- Deleting shared posts
- Deleting private messages

Whether it's because the content was deleted or a person just wants a copy of what's been said, you have to be ready to provide it when it happens. A comprehensive social media archiving tool that captures all content and metadata in one place and can respond efficiently to requests of all complexity and size is the only way to protect your agency in the event of a records request or First Amendment-related lawsuit.

8. How Can Elected Officials Pose a Risk?

Elected officials can expose your agency to risk if not educated properly on comment moderation, First Amendment concerns, and public records law. The content public officials post under their official office social media page is still considered a public record. It's also important to understand that the official social media page for an elected official's office is owned by your public entity, not the individual (e.g. Facebook page for the Office of the Mayor). Personal and business accounts should be separated to keep officials from using business accounts as an extension of your office to carry out their official duties or solicit public views about support. Elected officials should be aware of how to conduct business on social media in accordance with:

- Information considered privileged or confidential under state general statutes
- Public records law, local government retention schedules, and digital records policies and guidelines
- How best to communicate with city departments to avoid creating public records on city employees' personal accounts
- Avoiding conflicts of interest
- Adding disclaimers to personal profiles about personal views that do not reflect the city
- Avoiding open meetings law violations through inadvertent social media quorums



9. What Else Would I Need Social Media Records For?

Even if you never receive a public records request for social media records, there are various other situations where proper and accurate documentation will be helpful or necessary. For example, if your agency is being trolled, harassed, or accused of censorship, it will be essential to have this documentation. Even if you never receive a public records request for social media records, having records to back up your policy, address accusations, identify misinformation, identify crime tips and threats, and for centralization and oversight are all crucial areas of need that can be just as significant as the compliance obligation.

10. What Happens if We Wait Until We Have a Records Request for Social Media?

Public records requests are typically comprehensive and can ask for all social media posts related to an event from years prior. It can take hours of scrolling, screenshots, and printing pages of posts to respond manually to requests, which still wouldn't meet compliance requirements. Failure to respond to requests or fulfill them with the necessary data (including timestamps, user IDs, comments from your agency and residents, edit history, and high-resolution images) often lead to costly settlements and a public relations nightmare. In numerous court cases, residents have requested social media records, and either the agency couldn't provide records at all or they lacked underlying or historical data.

Gain compliance peace of mind with CivicPlus® Social Media Archiving Software

Automate your record retention to avoid legal risk and simplify public records management with the leading social media archiving solution proven to provide enormous cost-savings.

[Learn More](#)

