

**Friends, Faux Pas, Tweets and Traps:
How Elected Officials Can Use Social Media and Comply with the Law**

Poll Results and Participant Questions

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The Association of Washington Cities, the City of Everett, WA and the City of Lakewood, WA

Date: Thursday, January 07, 2010

Starting time: 10:00 AM PST

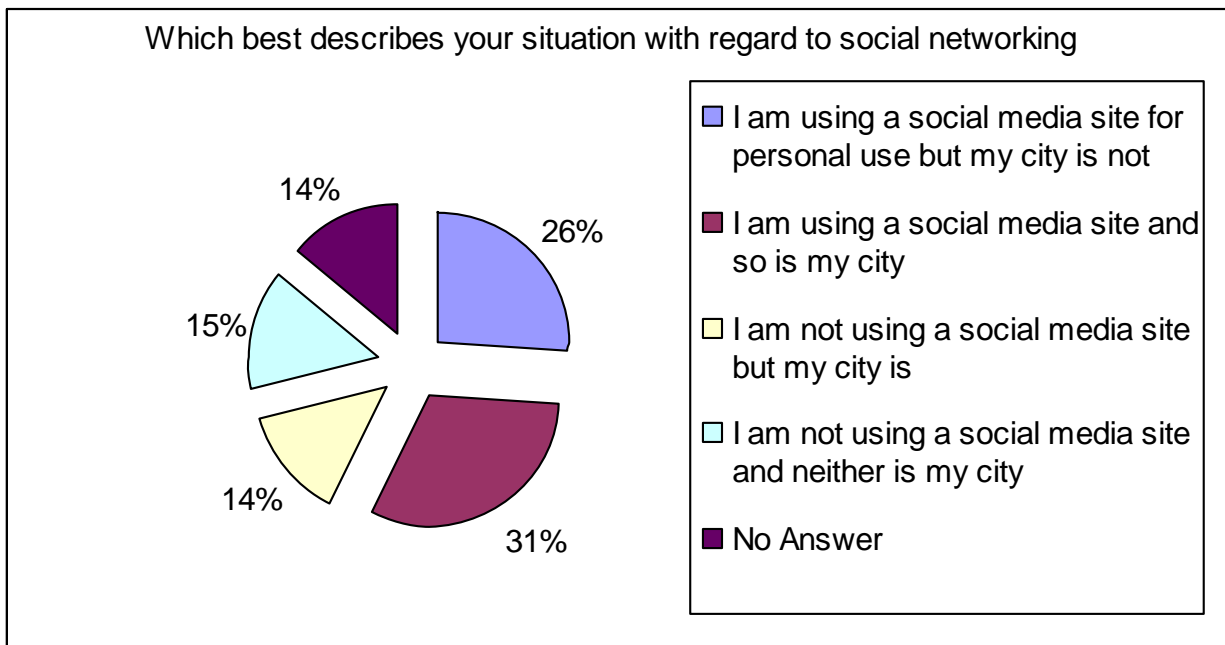
Session number: 925792059

Presented by:

Walter Neary - Lakewood City Council, Position 7

Ramsey Ramerman - Assistant City Attorney, City of Everett

Poll Results - Based on 78 Respondents



Q&A Results

Q: Are you saying that you recommend the city website have its own council member comment or blog section, if members are using social networks?

Ramsey: We are recommending two things. First, that you and your city consider using social media because it is a very effective way to communicate and interact with your citizens. Second, if you do use social media, post all content somewhere on your city website first, which will make the social media post a "secondary" copy with minimal retention value. I was just informed about another option for retention, a website called "Back Up Ify" – www.backupify.com – that purports to automatically back up all of your social media posts.

A city could host a “councilmember” blog section rather than use a third-party site to that hosts blogs if that is easier. The City of Seattle, for example, hosts its own blogs. This would simplify the retention issue. But if your city does not have the ability to host blogs, then you could still use a third-party blog hosting site like Word Press.

Walter: I know it sounds radical to have a council member blog on a city site, because we associate blogs with free expression of opinion, and blogs have their own history. But the potential liberality of expression is no different than how a council member can say whatever they want (within reason) during comments section of a meeting. My city does not offer this option now, and so I use Blogger by Google.

Q: If you are copy / pasting comments that read as a way of maintaining them, is there a particular format that you should keep them in, or is a word doc, etc. sufficient. Also, if comments are delivered as an e-mail notice, can you keep the email as copy?

Ramsey: Copying and pasting comments serves two purposes. First, it allows you to comply with retention requirements. To serve this goal, simply pasting comments into a word document is sufficient. Second, it can increase transparency by making sure the public can see the comments. This would require you to post the comments onto your website on the page(s) that you are using for your city-generated content that is then reposted on social media sites.

Q: Can risky problems be minimized if, instead of using an interactive forum like Facebook, I were to use a blog site (like WordPress) to publish my city opinions, and invite email responses to my city email address - i.e. NO comments on the blog?

Ramsey: This practice will minimize risks related to the retention of comments and First Amendment concerns. But it will only give you two of the three benefits of social media – a direct voice and direct feedback. A third benefit is the synergy that is created by allowing the public to see others’ comments and interact with other comment posters. A compromise would be to post all of the email comments you get. This will make the emails the primary documents for retention purposes, but will allow for the synergy. Of course, the First Amendment restrictions will also apply.

Walter: As I mentioned on the conference, some city council members enable comments and others don’t. I’m revisiting the subject because people are able to make up fake names when posting on my blog, and I get tired of anonymous comments. I’m thinking of removing comments from my blog and referring people to Facebook, where they are named. But I haven’t decided yet. I’ve seen people have good discussions on blogs.

Q: It sounds like Council members and other officials should not be "friends" of the City's official Facebook site (as well as other Councilmember’s' FB sites), for fear of violating the OPMA

Ramsey: I think that would be the best practice. But at the very least, if they are “friends” of the city, councilmembers should be sure never to post anything that will make it onto the City’s Facebook site. I also agree with Walter’s comments below.

Walter: Ramsey can correct me if I am wrong, but I don’t think it’s a harm for council members to witness public comments on the city Facebook page. That would be no different than getting a copy of a series of letters between citizens. Where it goes wrong is if council members start deliberating on the subject.

It also sounds like it is alright for council members to be friends of each others’ personal pages, as long as those pages are indeed personal and do not include city business.

Q: What should a City do when City employees report to HR that their personal Facebook page has been solicited to become a "friend" of a senior City staff member's personal Facebook page? The employees feel obligated to accept.

Ramsey: A social media policy that addresses the personal use of social media, particularly for senior staff, could help minimize this issue.

Q: If the City used an official social media site to host a conversation about a City issue, and that conversation included comments from individual Council members, would that constitute a quorum? If we "noticed" it, would it be an acceptable public meeting

Ramsey: If the conversation included comments from a majority of the council, it may qualify as a meeting. Currently, there is now clear authority under the OPMA to notice a "virtual meeting." Until the law is amended, social media sites are best used to solicit input from the public, but not for elected officials to formulate policy.

Q: Note, a significant issue being a person who is not elected and running has no OPMA issues i.e. facebook yet an official running for re-election can get into trouble with Facebook real fast

Ramsey: Correct. Until a candidate is sworn in, he or she is not subject to the OPMA. But remember, open government laws like the OPMA are meant to build public trust. This means public perception is just as important as the letter of the law. If a candidate is using social media in a way that skirts the spirit of the OPMA, then that candidate maybe hurting public trust and therefore defeating one of the key benefits of the law.

Q: So basically the OPMA is broke when it comes to social media?

Ramsey: The OPMA has not caught up with technology including social media and even email. But the law is not broken, just outdated.

Walter: Here's a political thought, and my opinion alone. After the state Supreme Court hands down its decision on the Shoreline case, there needs to be some discussions about how to adjust state law to allow elected officials and cities to use social media and avoid any violations of the records or meetings laws because of the format of these new methods of communication.

Q: I see a critical need to fix this, this is very, very critical.

Ramsey: The legislative fix is not that difficult. The biggest hurdle is how to deal with the fact that some people don't have on-line access so conducting meetings on line can exclude people. But this is an easy fix – a city would simply need to make computer terminals available for the public during virtual meetings.

Q: I understand the legislature is not covered by OPMA?

Ramsey: That is correct, the legislature is not subject to the OPMA or the Public Records Act. Neither are the courts. This results in an imbalance because the body that makes the laws and the body that interprets the laws do not have to follow the laws. As a result, there are times when neither body considers the full implications of their actions.

Q: How do you retain content and metadata in compliance with PRA for a continually updated city website?

Ramsey: There are programs available that will “record” all of the changes. This is one area where cities could act collectively to find/build the software from use for all cities and through numbers do it relatively cheaply.

Q: Do you have any advice regarding employees posting on their personal social media sites comments on City issues? We've cautioned our employees about speaking for us or identifying themselves as employees when making public statements, but profiles may.

Ramsey: Because of the First Amendment, there are not many limits you can put on what employees say on their personal sites. But you can counsel them on the risks to their personal privacy if they start posting too much. This includes strongly encouraging them to post a “disclaimer.” This is an area where you really need specialized legal advice from an employment lawyer.

Q: How long do citizen comment e-mails have to be retained by public officials? Where can we find SIMPLE directions from state?

Ramsey: “Simple” and retention rarely go together. But the Archivist has recently made a serious effort to simplify retention issue for correspondence. Attached are recent proposed changes that should help.

Q: FYI - City of Newcastle has shut down its blog - lost the employee maintaining the blog - too expensive to delegate time of staff in maintaining the blog.

Ramsey: That’s too bad. The FTE investment has to be worth creating that level of citizen engagement. If the citizens feel they have a voice, they are going to be much more willing to support cities in their efforts to improve everyone’s lives. I hope other cities will see this as an example of a city being ahead of its time and not as a cautionary tale.

Walter: My bad for letting us use this example at the end of our talk, but it never occurred to us it would be gone. Obviously, we should have double-checked. I sent the employee an email a couple days before our talk and never heard back, which should have been a sign!

Q: Can you send along good examples of City social media policies?

Ramsey: The City of Seattle has a series of policies that are the best I have seen. Here is a link to where you can find them. http://www.seattle.gov/pan/SocialMedia_CityLink.htm

Q: We have a Council member that is also the editor and chief of our local newspaper. The newspaper has a facebook page but the Town does not. Do you see any potential conflicts with things that may be viewed or posted on the newspapers page?

Ramsey: You should discuss this with your city attorney, but in theory the paper has a First Amendment right to maintain its activities without turning everything it does into public records. The best thing to do is to make sure the councilmember is very explicit on what hat he’s wearing and very diligent about respecting the line between reporting about city actions (press role) and influencing city actions (councilmember role). While the media has a right to try to influence as well, this is the area where there is the greatest risk a court would think the editor is acting as a councilmember rather than a member of the press.