

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

December 22, 2016

Opinion No. 16-47

Application of Tennessee Public Records Act to Municipal Social Media Accounts

Question 1

Are the social media accounts created and maintained by a municipality a matter of public record?

Opinion 1

To the extent a municipal social media account is made “pursuant to law or ordinance or in connection with the transaction of official business,” that account and any comments posted on the account constitute public records subject to inspection under the Tennessee Public Records Act.

Question 2

Are the comments on social media accounts created and maintained by a municipality subject to removal or censorship by the municipality’s social media administrator?

Opinion 2

The Tennessee Public Records Act does not address whether comments posted on a municipal social media account are subject to removal or censorship. The Tennessee Public Records Act only provides a statutory right of inspection of public records to Tennessee citizens.

Question 3

Is the appointment process and identity of a social media administrator for a municipal social media account a matter of public record?

Opinion 3

To the extent a municipality has any “public records,” as defined under Tenn. Code Ann. § 10-7-503(a)(1)(A), with respect to the appointment and identity of an administrator of a social media account established by that municipality, those records are subject to inspection under the Tennessee Public Records Act.

Question 4

Are comments regarding official business made by officials of a municipality on the municipality's social media website a matter of public record?

Opinion 4

To the extent a municipal social media account is made "pursuant to law or ordinance or in connection with the transaction of official business," any comments posted on the account constitute public records subject to inspection under the Tennessee Public Records Act.

Question 5

What is a municipality's duty to respond to inquiries, regarding official business, by a citizen?

Opinion 5

A records custodian of municipal public records is required to respond to a public records request in accordance with the procedures set forth in Tenn. Code Ann. § 10-7-503(a)(2)(B).

Question 6

What is the process available to a citizen who believes that public documents are not being produced as required in response to a request?

Opinion 6

If a records custodian denies a request for public records or otherwise fails to timely respond to the request in accordance with the procedures set forth in Tenn. Code Ann. § 10-7-503(a)(2), the Tennessee citizen making the request may bring an action pursuant to Tenn. Code Ann. § 10-7-505 in chancery or circuit court for the county in which the records are situated for judicial review of the denial of access to the requested records. Tenn. Code Ann. § 10-7-503(b). A member of the public may also consult with the Office of Open Records Counsel, who has the authority to answer questions, to issue informal advisory opinions, and to informally mediate and assist with the resolution of issues concerning the open records laws.

ANALYSIS

1. Municipal Social Media Accounts Constituting Public Records

Tennessee's Public Records Act ("TPRA") provides that "[a]ll state, county and municipal records shall, at all times during business hours, . . . be open for inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law." Tenn. Code Ann. § 10-7-503(a)(2)(A). For purposes of the TPRA, a "public record" is defined as "all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound records, or other

material regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of official business by any government entity.” Tenn. Code Ann. § 10-7-503(a)(1)(A).

To the extent a municipal social media account or website is made “pursuant to law or ordinance or in connection with the transaction of official business,” then that municipal social media account, including any comments regarding official business posted by municipal officials on the account, are public records subject to inspection under the TPRA.

2. Comments on Municipal Social Media Accounts Subject to Censorship

The TPRA does not address whether comments posted on a municipal social media account are subject to removal or censorship. The TPRA only provides a statutory right of inspection of public records to Tennessee citizens.

3. Appointment of Administrator of Municipal Social Media Account

To the extent a municipality has any “public records,” as that term is defined under Tenn. Code Ann. § 10-7-503(a)(1)(A), with respect to the appointment or identity of an administrator of a social media account established by that municipality, such records are public records subject to inspection under the TPRA.

4. Comments on Municipal Social Media Website as Public Records

See analysis section 1, above.

5. Municipal Response to Public Records Request

The TPRA provides that a custodian of a public record, or the custodian’s designee, shall promptly make available for inspection any public records not specifically exempt from disclosure. Tenn. Code Ann. § 10-7-503(a)(2)(B). If, however, it is not practicable for the record to be promptly made available for inspection, the custodian is required to respond within seven business days by: (1) making the record available to the requestor, (2) denying the request in writing and including the basis for the denial, or (3) providing a “completed records request response form developed by the office of open records counsel stating the time reasonably necessary to produce the record or information.” *Id.*

6. Remedy for Denial of Request or Failure to Respond

If a records custodian denies a request for public records or otherwise fails to timely respond in accordance with the procedures set forth in Tenn. Code Ann. § 10-7-503(a)(2), the Tennessee citizen making the request may bring an action pursuant to Tenn. Code Ann. § 10-7-505 in chancery or circuit court for the county in which the records are situated for judicial review of the denial of access to the requested records. Tenn. Code Ann. § 10-7-503(b). Additionally, a person requesting municipal public records may consult with the Office of Open Records Counsel, who has the authority to answer questions and issues advisory opinions to local government officials, members of the public and the media, as well as the authority to informally mediate and assist with the resolution of issues concerning the open records laws. Tenn. Code Ann. § 8-4-601.

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