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Social Networks

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Introduction

What We Include:

- Social Media Overview
- Trends and Municipal Uses
- Issues Associated with Employee Use of Social Media; *Ontario v. Quon*
- First Amendment issues: public forum doctrine
- Open Records, Open Meetings Acts
- Example Outline of Policy Manual Contents

Social Media Overview

- Facebook, Twitter, Myspace, Nixle, LinkedIn, etc.
- Something beyond a traditional city website
- Generally characterized by high degree of interactivity among users of the service.

Trends and Municipal Uses

- Increasing
 - Municipal events
 - Public safety
 - Interactive
- Integration of social media platforms with City website

Problems and Issues Associated with Employee Social Media Use

- Employee use of social media while at work
- Most existing guidelines do not adequately address
 - Need planning
 - Will review outline at end of this presentation

Employee Use: *City of Ontario v. Quon*

- U.S. Sup. Ct., June 2010: employee privacy expectations and electronic communications
- City police officer Quon issued textual pager; service provided by Arch Wireless
- City investigating overage charges, learns of excessive personal use by Quon (90%). City requests transcript of messages from Arch.
- Quon disciplined and sues City.

City of Ontario v. Quon

- 4th Amendment claim vs. City.
- Supreme Court found although Fourth Amendment applies, the search was justified because search was motivated by a legitimate work-related purpose and was not excessive in scope.
- Court avoiding sweeping pronouncement re: rapidly changing electronic media; Avoided question of whether reasonable expectation of privacy existed in the texts

Employee Use

- Monitoring employee use of social media, generally:
 - Purpose of the monitoring?
 - Quantity-of-use issue, or more substantive?
 - Use of government equipment (*Quon*) vs. use of personal equipment
 - Public vs. private postings
- Can government employer restrict employees' social media speech?

First Amendment

- Public forum doctrine, or:
 - “What if the KKK asks the City to be its Facebook friend?”
- (1) “Traditional public forum”:
 - Like a public park. An area that by tradition or fiat is dedicated to open expression. Generally no restrictions on speech permitted. Unmoderated. *See Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37 (1983).
 - Social media example: Site area dedicated to open, unmoderated public debate

First Amendment

- Public forum doctrine

- (2) “Non-public / private forum”:

- Generally no access to the forum for people not in the organization. Speech can be controlled by the organization. Restrictions must relate to the forum’s purpose, and will be permissible so long as reasonable and not viewpoint-based.

- Social media example: Twitter feed from only authorized officials; “government communication only”

First Amendment

- Public forum doctrine

(3) “Limited / Designated Public Forum”:

- Like a classroom. Speech allowed but topics can be limited/controlled, and participants selected / excluded. Any restrictions will be examined closely to determine whether adequately related to the purpose of the forum. *Cornelius v. NAACP Legal Defense and Educ. Fund*, 473 U.S. 788 (1985)
- Social media example: Site area dedicated to particular topic, and/or limited to certain participants

First Amendment

Two-part test to determine whether government intended a limited public forum or a non-public forum:

1. Whether govt. has made the “property” generally available to an entire class of speakers or whether individual members of that class must obtain permission in order to access the property.
2. Whether exclusion of certain expressive conduct is designed to limit the speech to that which is compatible with the forum’s purpose.

-- *Putnam Pit, Inc. v. City of Cookeville, Tennessee*, 221 F.3d 834

Open Records Laws

- Wide variety among states
- “Record” = electronic form
- Subject matter, vs. possession

- Ongoing retention of evolving social media: various technical options / services

Open Meetings Laws

- City officials may not need to be physically together, or even communicating in real time, to trigger open meeting obligations.
- A discussion thread on a website may be enough.

Other Issues

- Location-based services
- Copyright / trademark
- Defamation, etc.

Example Outline of Policy Manual Contents

1. Description of Service, Equipment and Technology
2. Description of General Overall Policy and Purpose of User of City-Owned Equipment
3. Administrative, Supervision, Help and Oversight and Personnel Responsible
4. Damage, Repair and Related Notification Regarding Equipment Use and Maintenance

Example Outline of Policy Manual Contents

5. Acceptable Personal Use During Both Work Time and Non-Work Time
6. City Disclaimer Applicable to Personal Use and Employee Liability for Content
7. Rights to Privacy and Electronic Monitoring
8. Use of Information and Disclosure that is Prohibited

Example Outline of Policy Manual Contents

9. Acceptance of License Agreements or Related Agreements to Connect to Work Site or Join a Social Network
10. Social Network Use Policies and How and When Acceptable
11. Personnel Misuse and Liability
12. Significant Legal Liability Matters and Warnings

Example Outline of Policy Manual Contents

13. Employee Responsible for Unauthorized Content
14. Guidelines Regarding Interoffice or Interdepartmental Communications
15. Authorized City Use of Social Networks to Provide Interoffice and Public Communications
16. Employee Acknowledgement
17. Example Disclaimers and Employee Agreements

Summary and Conclusion

This presentation is not intended to be a hands-on policy development guideline. It is intended to provide a broad scope overview. Because of its significant importance and risks associated with use, social media policy guidelines and instructional materials must be at the forefront of any community's ongoing current and long-range community development plans.