

# Social Media, Texting and Public Records in the New Tech World

PALM BEACH COUNTY LEAGUE OF CITIES

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# Types of Social Media Being Used by Public Entities

- \* Facebook
- \* Twitter
- \* YouTube
- \* Blogs



# Facebook – Public Entities & Officials

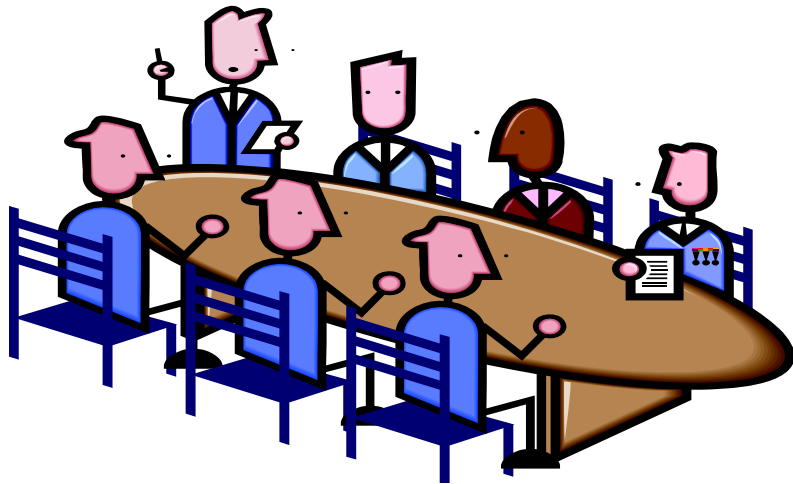
- \* There is **no legal prohibition** against PUBLIC ENTITIES (municipalities, counties, taxing districts, etc...) or PUBLIC OFFICIALS (appointed or elected) from having a Facebook or other social media page, subject to certain limitations and conditions.
- \* Public Records/Records Retention
- \* Sunshine Law

# Legal Authority (Municipalities)

Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise ANY POWER FOR MUNICIPAL PURPOSES except as otherwise provided by law. See Article VIII, Section 2(b), Florida Constitution, and Section 166.01, F.S.

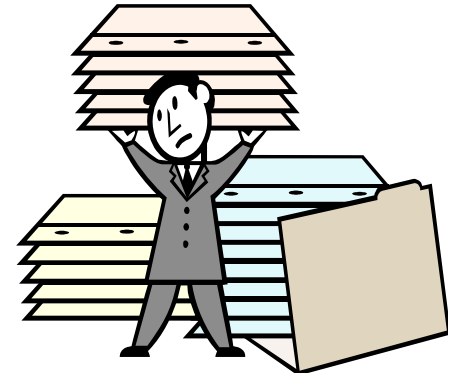
# Municipal/Public Purpose

- \* Does the use of the social media tool serve a public purpose?



# Legal Considerations

- 1) The Sunshine Law – Section 286.011, F.S.
- 2) The Public Records Act – Ch. 119, F.S.
- 3) Records Retention – Section 257.36, F.S.
- 4) Use of Official Seal – Section 165.043, F.S.



# The Sunshine Law – Section 286.011, F.S.

- 1) Meetings of public boards or commissions must be open to the public;
- 2) Reasonable notice of such meetings must be given;  
and
- 3) Minutes of the meetings must be taken and promptly recorded.



# The Sunshine Law - Continued

- Applies to meetings of two (2) or more members of the same collegial body.
- Must be construed “so as to avoid all evasive devices.” Town of Palm Beach v. Gradison, 296 So.2d 473m 477 (Fla. 1974).
- **Physical presence** of two (2) or more members of the same collegial body **is not necessary**.
- Members of a public board **may not** use computers to conduct a private discussion among themselves about matters which may foreseeably come before them in their official capacity. See AGO 89-39 (1989) and AGO 09-19 (2009).



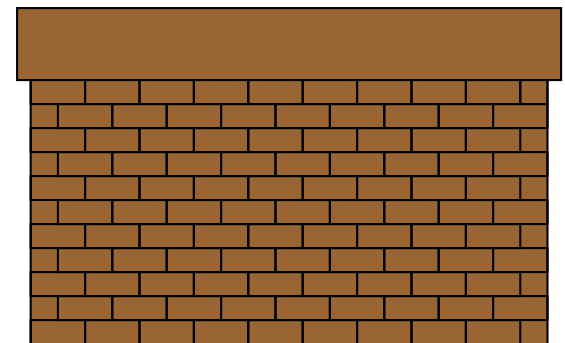
# Use of Blog or Message Board

- \* The use of a blog or message board by one (1) member of a collegial body to solicit comments from other members **does** trigger the requirements of the Sunshine Law. See AGO 08-07 (2008).



# Facebook - “Posting on the Wall”

- \* No prohibition against a Commission member posting comments on a Facebook page (including a City’s page), but members of the Commission **must not** engage in an exchange or discussion of any matter that foreseeably will come before the Commission for official action.



# Attorney General Opinion 08-07

- \* No statutory provision prohibiting Commission members from posting on a blog.
- \* Members of Commission **must not** engage in exchange or discussion of matters that foreseeably will come before the Board for official action.
- \* It is incumbent upon Commission members to **avoid any action** that could be construed as an attempt to evade the requirements of the law.

# Ch. 119, F.S. – The Public Records Act

- \* “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.** See Section 119.011(12), F.S.

# Disclosure of Public Records

- \* Every person who has custody of a public **record shall permit** the record to be inspected and copied **by any person** desiring to do so, at **any reasonable time**, under reasonable conditions, and under supervision by the custodian of the public records. Section 119.07(1)(a), F.S.

# Public Entity's Facebook Page

- \* Material placed on a public entity's Facebook page would be presumably in furtherance of public business and, therefore, subject to disclosure under Ch. 119, F.S.
- \* Material placed on the Facebook page of a "friend" of a public entity **may also** be subject to Ch. 119, F.S., **if** the information was made or received in connection with the transaction of official business by or on behalf of a public agency. See AGO 2009-19.

# Chapter 119 Disclaimer

The screenshot shows a Windows Internet Explorer browser window with the address bar displaying <http://www.facebook.com/coralsprings>. The page content is as follows:

**Basic Information**

**About Coral** Under Florida law, all content on the City's Facebook page is subject to public records law, Chapter 119, Florida Statutes. By becoming a friend your information is public record. For FULL disclosure click <http://www.coralsprings.org/fb>

**Mission Statement :**  
To be the nation's premier community in which to live, work and raise a family.

<http://www.coralsprings.org/facts/MissionStatement.cfm>

**Networks** City of Coral Springs

**Contact Information**

**Address** 9551 West Sample Road  
Coral Springs, FL 33065

**Website** <http://www.coralsprings.org>  
<http://www.liveworkplaylearn.org>  
<http://www.coralspringsfireacademy.org>  
<http://www.csteensundecided.com/>  
<http://www.twitter.com/CoralSpringsFL>  
<http://www.youtube.com/user/CityofCoralS...>

**Facebook** [facebook.com/coralsprings](https://www.facebook.com/coralsprings)

Facebook © 2011 · English (US) [About](#) · [Advertising](#) · [Developers](#) · [Careers](#) · [Privacy](#) · [Terms](#) · [Help](#)

Done Internet | Protected Mode: Off Chat (3) 100%

# Chapter 119 Disclaimer (continued)

The screenshot shows a Windows Internet Explorer browser window with the address bar displaying <http://www.broward.org/StayConnected/Pages/Default.aspx>. The page content includes a navigation menu with 'Stay Connected' selected, a 'Parks E-newsletter' link, and a 'Transportation' section with links to 'BrowardCountyTransit' on Facebook, 'BrowardCountyTransit' on YouTube, and 'Transit E-newsletter'. Below this is a 'Disclaimer' section with the following text:

**Disclaimer**

Twitter, Facebook and YouTube are free services, and as such are susceptible to the interruptions and outages inherent in using any Internet based program. Broward County's participation in these services is offered as a public convenience to share information about County programs, services, events and activities. Broward County cannot guarantee these services will be available or functional at all times. When participants register for these services they are subject to the terms of use as provided by the service providers.

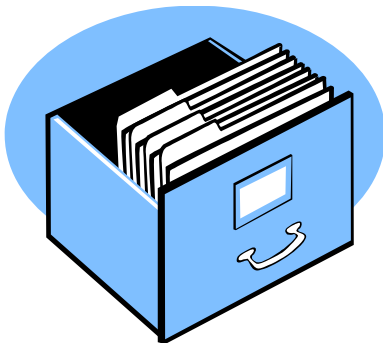
Participants are encouraged to research details of their cell phone contract with regard to the cost of text messaging. Standard text messaging rates may apply if you choose to receive tweets through text messaging on your cell phone.

Broward County communications on Twitter, Facebook and YouTube are one-way posts and for informational purposes only. All information posted to a social media site by Broward County is considered a public record under the State of Florida Public Records Law and as such will be archived for the required retention period and available to any person upon request.



# Records Retention

- \* All public records must be maintained in accordance with the appropriate retention schedule established by the Florida Division of Library and Information Services.



# Social Media Content

- \* Depending on the specific use or intent of a particular social media source, content may be considered transitory messages.
- \* See Item #146, General Records Schedule GS1-SL for State and Local Agencies.



# Transitory Messages

- \* **Transitory Messages are Public Records.**
- \* The following is from the State Records Retention Schedule:
  - \* Transitory messages are messages of short-term value based upon the content or purpose of the message, *not* the format used to transmit it (i.e. reminders, event notices, etc...).
  - \* Transitory messages **are not** intended to formalize or perpetuate knowledge, do not set policy, establish guidelines, confirm a transaction or act as a receipt.
  - \* Retain until obsolete, superseded or administrative value is lost.

# Other Examples of Social Media

facebook



twitter

flickr<sup>®</sup> from YAHOO!

# Texts are Public Records

- \* Orange County “Textgate”
- \* County Commissioners receipt of text messages related to the “sick time initiative.”
- \* Public records request made. Not all commissioners retained the text messages
- \* State Attorney conducted investigation and found that commissioners did not act “knowingly” when they deleted text messages, as they were not aware that text messages were public records

# Texts are Public Records

- \* The State Attorney imposed a \$500 fine against the County Mayor and the four County Commissioners who received text messages that could not be produced.
- \* Citizen group that filed request for public records, and then filed suit when records were not produced received \$90,000 to cover attorney fees and court costs.

# Retention of Text Messages

- \* Personal responsibility to copy and e-mail text messages to your own municipal e-mail to maintain on server.
- \* Companies to assist in retaining text messaging and email:
- \* Barracuda Networks, Symantec, Gov Live Vault (not an endorsement of any company or system)
- \* Best practice is to not use text for conducting government business. **Pick up the telephone and talk to the other party.**

# Facebook

Red... +

facebook.com/DelrayCRA

Delray Beach Community Redevelopment Agency

Home Find Friends Post

Create Page

Sponsored [See All](#)

**The United Explorer Card**  
theexplorercard.com

30K bonus miles, priority boarding, & United Club passes. The benefits add up. Learn more!

**Buying or Selling Soon?**  
terrystory.com

Are you thinking of buying or selling a home soon in the Boca Raton Area? If so, call me...

**Florida - 1st in ID Theft**  
aarpidprotection.com

Exclusive AARP Credit and Identity Theft Protection from TrustedID - 13% off. Sign up now!

**Delray Beach Community Redevelopment Agency**

1,197 likes · 19 talking about this · 4 were here

Government Organization  
20 N. Swinton Avenue, Delray Beach, Florida 33444  
(561) 276-8640  
Today 8:00 am - 5:00 pm

About - Suggest an Edit

Photos Email Signup Likes Tweets

1,197

twitter Tab 2

Highlights

Post Photo / Video

Write something...

9 Friends  
Connected to Delray Beach Community Redevelopment Agency

9 friends like this

Recent

- 2013
- 2012
- 2011
- 2010
- 2009
- Created



# YouTube

LULA Lake Worth Arts 9 Arch Mural Project Event - YouTube - Mozilla Firefox

File Edit View History Bookmarks Yahoo! Tools Help


LULA Lake Worth Arts 9 Arch ... +

https://www.youtube.com/watch?v=6iAN6JfNpr8

YouTube MUSIC AWARDS lake worth community redevelopment agency Upload Sign in

GUIDE

MORE RESULTS lake worth communit...



9 Arch Mural Project  
Lake Worth CRA


LULA Lake Worth Arts 9 Arch Mural Project Event

lakeworthagent 95 videos 210 views


Subscribe 23

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Published on Nov 20, 2012  
LULA, Lake Worth CRA, City of Lake Worth  
9 Arch Mural Project Event  
1000 Lake




Catering Videos  
by netbizvideos




Your art look Amateurish?  
by OilPaintingWorkshop  
197,582 views Ad




Miss Palm Beach County USA 10 Minute Pageant.mov  
by telair  
2,007 FEATURED



UNBELIEVABLE New York Street Art!!!  
by Dan Weecks  
116,723 views



Downtown Lake Worth, Florida Tour  
by John Dc  
2,337 views



PNPM Creative Communities - Jatipamor mural project  
by PNPM SupportFacility

# City of Boynton Beach's photostream

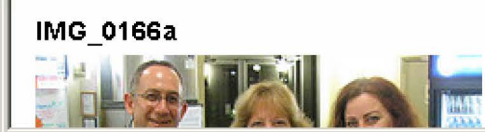
Sets Galleries Tags People Archives Favorites Profile Slideshow



All rights reserved  
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0 comments



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Uploaded on Nov 23, 2010  
1 comment



- Class of Fall 2010 City...**  
11 photos  
7 views
- Read for the Record**  
4 photos  
7 views
- Wet & Wild Activity at...**  
26 photos  
15 views
- City Commission...**  
2 photos  
24 views

# TWITTER

The screenshot shows a Mozilla Firefox browser window displaying the Twitter profile of Boynton Beach CRA. The browser's address bar shows the URL <https://twitter.com/BoyntonBeachCRA>. The profile page features a dark header with the organization's name and handle, a bio, and statistics for tweets, following, and followers. A 'Follow' button is visible. Below the header, there are three tweets, each with a palm tree icon, a date, and a brief description of an event or program. On the left side, there is a navigation menu with options like 'Tweets', 'Following', 'Followers', 'Favorites', and 'Lists'. Below the menu is a 'Follow Boynton Beach CRA' section with input fields for full name, email, and password, and a 'Sign up' button. At the bottom left, there is a 'Photos and videos' section with a grid of images, and a 'Worldwide Trends' section with a 'Change' link.

Boynton Beach CRA (BoyntonBeachCRA) on Twitter - Mozilla Firefox

File Edit View History Bookmarks Yahoo! Tools Help

Boynton Beach CRA (BoyntonBeachCRA) +

Twitter, Inc. (US) <https://twitter.com/BoyntonBeachCRA> twitter boynton beach cra

Search Have an account? Sign in

**Tweets**

Following

Followers

Favorites

Lists

**Follow Boynton Beach CRA**

Full name

Email

Password

Sign up

**Photos and videos**

Worldwide Trends · Change

#StovOrMtl #e

**Boynton Beach CRA**  
@BoyntonBeachCRA

The Boynton CRA serves the community by guiding redevelopment activities that create a vibrant downtown core and revitalized neighborhoods within the District.

Boynton Beach, FL · [boyntonbeachcra.com](http://boyntonbeachcra.com)

263 TWEETS 71 FOLLOWING 555 FOLLOWERS

Follow

**Tweets**

**Boynton Beach CRA** @BoyntonBeachCRA 11 Sep  
Disco Dance - 9/20 - \$10 for buffet and professional dance instruction - [catchboynton.com](http://catchboynton.com) [icont.ac/1Wlly](https://t.co/1Wlly)  
Expand

**Boynton Beach CRA** @BoyntonBeachCRA 30 Aug  
KDW Fishing Tournament, Boynton Beach, 9/13 - 9/15, [xgenerationfishingtournaments.com/default.html](http://xgenerationfishingtournaments.com/default.html) [icont.ac/1VdpT](https://t.co/1VdpT)  
Expand

**Boynton Beach CRA** @BoyntonBeachCRA 19 Jul  
CRA's New Grant Program Offers Incentives For Commercial Investment In Downtown Boynton Beach [boyntonbeachcra.com/?p=6245](http://boyntonbeachcra.com/?p=6245)  
Expand



# QUESTIONS?



**GOREN CHEROF**  
**DOODY & EZROL P.A.**  
ATTORNEYS AT LAW