



Spokane, Wash.

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Lawsuit for Social Media Records: Not If, But When How Spokane, Washington was prepared with proactive archiving

In 2013, the Spokane Parks Department

was faced with a major lawsuit. As part of the discovery process, the city was asked to produce social media posts for a two-year period for all of its park social media sites. Had the city still been relying on printed screenshots, the cost of producing the records could have been astronomical. Fortunately, Spokane was prepared with an automated archive solution that was able to produce the requested records with a few clicks.

Located in the heart of the inland Northwest, the city of Spokane is home to more than 210,000 people with nearly half a million residents in its larger metropolitan area. Once dependent upon agriculture and extracting natural resources, its economy found equilibrium over the last decade by diversifying into technology, education, health services and manufacturing. It's a place where prosperity is picking up — and like most American cities today, constituents there who want to gather information or communicate about its multitude of public services and issues do so online.

City of Spokane Utilities Communications Manager Marlene Feist says, "Long gone are the days where you just put out a meeting notice and everyone shows up — it just doesn't happen. So with today's instant 24/7 communications, it's really imperative for local government to be in the space where their customers are. For us, it means we have our own cable access channel and Web presence, and our mayor is out there talking to the media. But it also means that we're in the social media space where our constituents spend a lot of time, using as many avenues as possible to reach them."¹

Active users of social media for the last six years, the various departments — police, fire, parks and library, as well as the main city itself — use Twitter, Facebook, Instagram and YouTube to connect

with and inform their community. But as social media usage gains momentum, so too does the risk factor involved with public records documentation. Over time, the city's communications and legal teams grew concerned about preserving social media records in such a way that would comply with state laws around record keeping. Staff struggled to comply with regulations by printing out every single social media post, and as volume expanded to more posts each day and additional platforms, that practice became utterly unwieldy.

"In Washington state, printing out posts doesn't actually meet the spirit of the law," Feist says. "If it's an electronic record, you're supposed to be able to provide it to the requester in an electronic form." Screenshots also fail to capture the metadata associated with each post and tweet, which is considered public record under Washington case law.² "Even if I had a dedicated employee to do all that printing, am I using public dollars effectively and efficiently? Not to mention the lack of ability to search and pull information. Our conclusion was that we needed to hire a company that could archive the records for us."

The city contracted with ArchiveSocial, a social media archiving service, whose assistance proved to be invaluable during an important juncture not long afterwards.

Be Prepared: Records Risk Management

Public records requests are increasingly common in government, and agencies are often the target of litigation. The costs of a legal case in terms of fees, labor, time and financial liability can be disastrous for any city. In Washington state, public entities can also incur daily fines for not producing requested information within five business days — an excellent reason to have a records retention policy and an automated archiving solution that permits fast data gathering.

When the Spokane Parks Department was facing litigation in 2013 and needed to produce complete records of all of its social media posts for two years, the department was able to retrieve the requested information instantly. “Using ArchiveSocial, we were able to select time parameters, refine the search functionality to do the search ourselves and collect all the posts for a two-year period from multiple sites, with all comments attached to the original posts,” Feist says. “Without the archiving service, it would have been very difficult for us to provide that information in a timely fashion, if at all. But with it, we were able to get the legal team what they needed to respond to the discovery request.”

Feist feels that maintaining an archiving service such as ArchiveSocial is an excellent risk management tool. “You don’t know when you will receive the next public records or discovery request, and you have to be prepared to answer those,” she says.

ArchiveSocial: A Public Records Partner

The mandate that federal, state and local agencies must abide by Freedom of Information Act or other public records requests has government scrambling to make sure their social media is as open and accessible as the rest of their communications. For some, it can be a difficult adjustment without clear-cut rules and practices. While a jurisdiction may have the best of intentions where record keeping is concerned, social media is still relatively new. There is danger in not knowing what formally constitutes an actual public record, which can vary from state to state. For example, Norfolk, Va., was sued earlier this year for not archiving its city council members’ text messages.³

ArchiveSocial can help agencies map out their jurisdictional responsibilities, and simplify and automate record keeping. It has the ability to go back in time, and gather and store all social media content ever generated by a jurisdiction by way of its authentic capture and digital signature technologies. Raw metadata underlying social media is gathered, time-stamped and recorded permanently, with easy access for swift retrieval whenever needed.

The city of Austin, Texas, also uses ArchiveSocial to retain a historical record of its social media activity. Doug Matthews, the city’s chief communications director, says, “One of the attractive things about ArchiveSocial [is] the ability to capture all posts — even those that were edited or deleted — which is the requirement under public information law. Once it’s posted, it’s public.”⁴

Don’t Fly Without a Safety Net

In a time when social media has become the go-to instrument of engagement between government and its citizenry, it has taken a prominent place in the regulatory spotlight. It is now critical to control social media information and assure its delivery in an effective, well-documented manner when necessary.

Feist warns against relying on third-party, cloud-based social media platforms. “If Twitter’s servers went down tomorrow and they said,

Best Practices: Social Media Posting and Archiving

Create policies and practices now that will make your agency’s response swift and thorough should you receive public records requests in the future.

- **Keep track of who has access to records** and construct a strong policy for who may post social media for your organization. This is especially important for jurisdictions with many agencies using multiple social media platforms.
- **If a post is made on one day and someone comments on it two weeks or two months later, it’s imperative the thread remain consolidated**, logical and intact should there be a public request in the future. An archiving service can help guarantee this.
- **The public sector must be assiduous with its tone and messaging.** Not only do you represent your organization at all times, social media posts become a permanent public record.
- **Keep an eye on what tools your organization uses.** New tools emerge constantly, and unbeknownst to you, different branches of your organization may use some that could eventually pose problems down the line. If public sector staff utilize social media platforms as their sole method for content retention, it could be deleted at any time — and that’s a public records disaster waiting to happen.

‘Sorry, everybody, but we can’t reproduce tweets back to the beginning — we’re only going to give you tweets for the last six months,’ well, that’s their business decision. But what’s just happened is I’ve lost all my records, and that’s a problem.” Furthermore, social media platforms do not maintain deleted content. There is a risk of losing records when citizens delete their own comments or private messages to the city.

She underscores a key differential in utilizing a professional archiving service such as ArchiveSocial. “ArchiveSocial is a cloud service too,” Feist says, “but I have a contractual relationship with them that they’re going to manage. They have an obligation to do what I’ve asked. It’s a great way to manage public records that might otherwise be far less under your control — and can help your city stay prepared.”

ENDNOTES

1. Interview with city of Spokane Utilities Communications Manager Marlene Feist was conducted on November 14, 2014.
2. <http://mrsc.org/Home/Explore-Topics/Legal/Open-Government/Electronic-Public-Records-Retention.aspx>
3. www.govtech.com/data/Should-Governments-Bother-Archiving-Social-Media.html
4. Ibid.

Sample an archive of your own social media at archivesocial.com

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