

DRAFT

Guidelines for County Board Supervisors Using Social Media

1. Overview

For County Board Supervisors, social media offers the opportunity to connect with their communities, raise awareness around important issues, share legislative goals, and highlight County services.

However, Supervisors should be aware of the challenges social media presents related to records management, Wisconsin open meetings law, campaign rules, and potential impacts to the image and liability of the County.

It is this County's policy that we do not authorize, create, or manage official, County-sponsored social media accounts for County Board Supervisors. Any social media accounts created and maintained by County Board Supervisors shall be their own.

2. Purpose

The purpose of this document is to provide guidance on the suggested use of social media for County Board Supervisors.

The guidelines herein strive to strike a balance between Supervisors' First Amendment rights, the legal implications of public records laws, and the potential impacts to the reputation of the County.

3. Definitions

Social media is an internet-based technology that facilitates the sharing of ideas, thoughts, and information through virtual networks and communities. Social media enables users to create, publish, and share content (personal information, documents, photos, and videos) that readers can interact with. Examples of social media include Facebook, Twitter, Instagram, YouTube, blogs, Reddit, Gab, Telegram, TikTok, RSS, LinkedIn, Pinterest, and NextDoor.

Public comments include text, articles, pictures, videos, links, or any other form of communicative content posted on a Walworth County social media site by a member of the public.

Facebook profile: A place on Facebook where you can share information about yourself, such as your interests, photos, videos, current city, and hometown.

Facebook page: A place where public figures, businesses, brands, organizations, and non-profits can connect with their fans or customers.

Facebook group: A group is a place to connect, learn, and share with people who have similar interests. You can create or join a group for anything. Groups can be public or private.

4. Maintaining Separate Personal, Business, and Political Accounts:

County Board Supervisors who use social media to communicate with constituents or for campaigning purposes are advised to maintain separate personal, business, and political accounts.

Supervisors should make a clear distinction between personal, business, and political accounts. One way to do this is by adding disclaimers that identify the account purpose and that the opinions you express are your own.

Example: This is my personal Facebook profile for friends and family only. The opinions expressed herein are my own.

To keep a personal account from becoming subject to public records, consider some basic precautions:

Do:

- Post a disclaimer on your personal account that identifies the account purpose and that the opinions you express are your own.
- Limit the account content to personal use.
- Understand and use privacy settings to manage the account.
- Have a plan in place to respond to or forward county-related comments to the county, including how the record is retained.

Don't:

- Write posts on personal accounts that would fit within the scope of your role as a County Board Supervisor.
- Discuss your private accounts in public meetings or documents.
- Link to your private accounts from a campaign or political account.
- Use county devices to maintain your social media accounts.

5. General Best Practices

- Supervisors who choose to use social media should do so exclusively for communications with the public and not as a mechanism for conducting official County business.
- Any social media account used by a supervisor to communicate with constituents should include a link back to the County's official website (www.co.walworth.wi.us) for detailed information, where applicable.
- Supervisors will not access their social media accounts using County technology.
- Supervisors are asked to conduct themselves on social media with the same professionalism and decorum as if they were communicating with the public while attending a board or committee meeting.
- Supervisors shall not share non-public or confidential information related to County business and operations.

- Take care not to post offensive photos or content.
- Be picky when giving access to your social media accounts. Decide who, if anyone, has access to your social media accounts and can post on your behalf. If you delegate access, have clearly defined policies in place for who can post and what they can post on your behalf. Granting access to social media accounts increases your risk of cyber-vandalism—it is always best to limit access whenever possible.
- Supervisors should correct mistakes or errors in communication as soon as they become aware of them. Rather than deleting the post, supervisors should edit the original post to reflect the update or correction. For example:

UPDATE: This post has been updated to reflect changes to the date and time of the Walworth County ADRC's upcoming Medicare workshop. The revised date and time is Jan. 14, 2022, at 6 p.m.

CORRECTION: This post has been corrected. The correct date and time of the Medicare event is 6 p.m. on January 14, 2022. I apologize for the oversight.

Additionally, supervisors may want to follow up by publishing a second post with the correct information.

6. Comments, Comments Moderation & Blocking and the First Amendment

Supervisors should have a clear, viewpoint-neutral policy for deleting offensive comments and/or messages on political or campaign accounts. Supervisors are advised to avoid blocking users with whom they disagree or deleting critical comments that may be protected speech under the First Amendment. (Source: "Practical Pointers: Social Media Guidelines for Public Officials (and the People who Advise Them)"; *Knight First Amendment Institute v. Trump, Brian Davison v. Phyllis Randall and Loudon County Board of Supervisors.*)

The comments policy should be clearly stated in the page's About section and executed consistently. Any comments that are hidden or deleted for violation of said policy should be maintained as records.

County Board Supervisors who comment on official Walworth County social media accounts shall be subject to the Comment Policy in the Walworth County Social Media Handbook, Administrative Procedure 3-502-A. In general, it is best to avoid commenting in any capacity on any County-authorized social media account.

Supervisors shall not make comments or leave replies on official Walworth County social media accounts in reference to any of the following:

- electioneering

- content that endorses or opposes political candidates or ballot propositions, including links to any campaign sites
- content that promotes or advertises commercial services, entities or products
- content that compromises confidential information
- comments in response to other supervisors' comments

7. Open Meetings, Public Records & Records Retention

Wisconsin Open Meetings Law

Board Supervisors should be mindful of the risks social media poses concerning Wisconsin's open meetings law. Use of social media for informal communications with constituents is acceptable, but discussion of board business poses risks, especially if it involves multiple Board Supervisors.

Communication between members of the County Board, whether directly between one another or as part of a conversational thread among multiple parties, may constitute a meeting under the open meetings law and should be strictly avoided.

The following excerpt from the "Wisconsin Open Meetings Law Compliance Guide" further explains:

"Written communications transmitted by electronic means, such as email, instant messaging, blogging, or other social media, may constitute a "convening of members," depending on how the communication medium is used ... If the communications closely resemble an in-person discussion, they may constitute a meeting if they involve enough members to control an action by the body."

Public Records Law and Records Retention

Supervisors' social media posts made in their capacities as elected officials are public records and, therefore, shall not be deleted and shall be maintained in compliance with Wisconsin public records law.

Is social media a public record?

Yes. Wis. Stat. 19.32 broadly defines a record as, "any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created by, or is being kept by, an authority."

The Wisconsin Public Records Law Compliance Guide, produced by the Wisconsin Office of the Attorney General (Oct. 2019), specifically addresses social media, noting that, "Electronic records include content posted by or on behalf of authorities to social media sites, such as Facebook and Twitter, to the extent that the content relates to government business. If an authority uses social media, the content shall be produced if it is responsive to a public records request. This includes not only currently "live" content, but also past content."

Do I need to retain social media records and for how long?

Per “Wisconsin County Official’s Handbook (6th Edition, a publication of the Wisconsin Counties Association, 2018)”: “The Public Records Law provides in general that elective officials are the custodians of the records of their offices. As the legal custodian, therefore, you become responsible for providing access to these records, unless one of the limited exceptions applies.”

In “Public Records Law: Applications to Individual Local Officials,” Claire Silverman, legal counsel for the League of Wisconsin Municipalities, writes:

“For offices with a successor, the law clearly requires the incumbent to safely keep and preserve records relating to the office and transfer them to the officer’s successor ... However, it is unclear whether individual officers like alderpersons or village trustees or board and commission members have a “successor” in the sense that officers like a mayor, municipal clerk, treasurer, assessor, etc. do.

The default retention period for a “city or village public record” is 7 years but the law does not appear to require retention of records of individual governing body members (trustees and common council members). The lack of clear guidelines or requirements makes determining how long to keep records difficult but records that need to be kept should be maintained, at a minimum, until the official is no longer in office.”

Thus, the County asks that Board Supervisors retain social media records made in their capacities as elected officials for the duration of their time in office plus one year.

Sources

1. *Wisconsin Open Meetings Law Compliance Guide*, May 2019
2. *Wisconsin Public Records Law Compliance Guide*, October 2019
3. Hogan Lovells’ *Focus on Regulation: “Practical Pointers: Social Media Guidelines for Public Officials (and the People who Advise Them)”*
4. “Public Records Law: Application to Individual Local Officials,” by Claire Silverman, Legal Counsel, League of Wisconsin Municipalities, January 2018
5. Knight First Amendment Institute at Columbia University: *Knight First Amendment Institute v. Trump*
6. Knight First Amendment Institute at Columbia University: *Brian Davison v. Phyllis Randall and Loudon County Board of Supervisors*