

TRAINING

- **Open Meeting Law and Public Records Law is available at the Carnegie Center. For dates and information go to: <http://www.azleg.gov/ombudsman/presentations.asp>**
- **To schedule training contact Liz Hill at 602-285-9136 x32 or ehill@azoca.gov**

INSIDE THIS ISSUE:

**Social Net-
working and
Open Gov-
ernment** 1-3

**2009 Legisla-
tion** 1-2

**Disclosure of
Coyotes sale
Negotiations** 2

Social Networking and Open Government

By now, most of us are familiar with the various social networking utilities: Twitter, Facebook, My Space, LinkedIn, blogs, microblogs, etc. These utilities have created new communication tools for individuals as well as private and public organizations. As a result, government entities and public officials are taking advantage of, or are considering taking advantage of, the unique opportunities they afford.

But users beware! Use of this media must comply with a variety of statutes, rules, and ethical obligations including Arizona's open meeting and public record laws.

In Arizona, members of a public body subject to the open meeting law, must conduct business at

public meetings and may not use technological devices to circumvent the open meeting law requirements. When a quorum of



The tangled web of social media.

a public body discusses, deliberates or takes legal action on a matter that may foreseeably come before the public body for action, the communications constitute a meeting. This is true even if the communications are

accomplished via social media. For example: One board member on a three-member board posts information related to board business on his Facebook page. A second board member sees the posting and provides a comment with his opinion. This is an open meeting law violation.

Moreover, government entities are required by law to retain certain records. Generally, records created and received in connection with the transaction of public business are public records and must be promptly made available for public inspection and copying. You might say, well that is the whole point of putting it on the web. The concern is retention and control of

(Continued on page 2)

2009 Legislation

The Arizona Legislature adjourned sine die on July 1, 2009. As a result of the first regular session, there are few changes to Arizona's public access laws that will take effect September 30, 2009.

SB 1303 amends A.R.S §§ 38-

431.01 and -431.02 and clarifies three things: 1) electronic postings required under A.R.S. § 38-431.01(E) must remain on the website for a period of one year from the date of posting, 2) charter schools must file their disclosure statements with the Arizona Secretary of State, and 3) the 24

hour notice and agenda requirement includes Saturdays, so long as the public has access to the primary physical posting location, and excludes Sundays and other holidays prescribed under A.R.S. § 1-301.

(Continued on page 2)

Social Networking and Open Government



Social media is fraught with danger.

New public access laws take effect
September 30, 2009

Judge orders Glendale to produce public records in Coyotes sale negotiations.



(Continued from page 1)

public records.

If the communications or postings constitutes a public record it must be retained per a specific records series on an Arizona State Library, Archives and Public Record's approved retention schedule.

Contrary to popular belief, it is not the technology used that determines whether it is a record or how long it must be retained. Instead, it is the nature and content that deter-

mines what record series to apply.

For example: a document or information posted on a public body's website that is a copy of a record otherwise maintained by the public body is not in itself a public record.

Conversely, a unique and original communication, idea, or information posted to the web or social media is a public record. Although communications and information determined to be transitory in na-

ture have no minimum retention period, other records such as public service announcements or communications that constitute executive correspondence must be retained as permanent records.

It's a challenge for government to figure out how to navigate these complex issues, including capturing and storing all sorts of new content in the age of social media. Be proactive.

(Continued on page 3)

2009 Legislation

(Continued from page 1)

SB1062 amends A.R.S. § 38-1101 and limits disclosure of information regarding an investigation of a law enforcement officer until the investigation is complete.

SB1097 adds A.R.S. § 36-2227 and allows emergency medical personnel under investigation by the Department of Health Services access to certain information.

SB1196 amends A.R.S. §§ 15-183 and -321 and provides that vacancies on the governing body of school districts and charter schools are not included for purposes of determining a quorum. A majority of the remaining members of the governing body constitute a quorum for the transaction of business.

SB1246 amends A.R.S. § 8-525 and modifies access to Child Protective Services records

and information.

SB1289 amends A.R.S. § 28-667, which among other things now requires disclosure of unredacted accident reports to persons involved in the accident, owner of vehicle involved in the accident, or a representative of either.

For the full text go to: <http://azleg.gov/SessionLaws.asp>

Disclosure of Coyote Sale Negotiations

In a recent superior court decision *Goldwater Institute v. City of Glendale*, the judge ruled that the City of Glendale must produce public records related to the negotiations of the sale of the Phoenix Coyotes.

The ruling orders the City of Glendale to: Immediately produce all the records that are not confidential, produce records of negotiations with everyone who submits a bid to buy the team and keep it in Glendale, release tentative agreements, which city staff decides to present to City

Council, and make the records available on an ongoing basis as new records are created.

For more information on *Goldwater Institute v. City of Glendale*, CV2009-020757 (July 2009), go to: <http://www.goldwaterinstitute.org/case/3200>

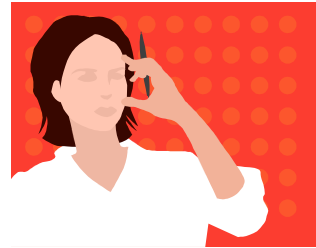


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Greetings everyone! We hope you enjoyed our August 2009 newsletter. Our intent is to bring you interesting and helpful information in a timely manner. If you have ideas for a story, a special item of concern, or an article you would like to submit, contact Liz Hill directly at 602-285-9136 x32 or ehill@azoca.gov. She is waiting to hear from you!



Social Networking and Open Government

(Continued from page 2)

Don't wait for a problem to arise. Evaluate these issues and develop policies and procedures.

Although there is no easy or one-size-fits all answer to handling these issues, our office intends to continue working with other government agencies to develop tools for public bodies and public officers throughout Arizona: tips to avoid pitfalls, practical guidance for using social media in compliance with public access laws, and basic records management considerations.

Arizona's Government Information Technology Agency is also drafting a statewide policy to identify proper usage and behavior for social networking applications in an effort to protect the rights and privacy of its

citizens and the integrity of state government.

Meanwhile, we have a few suggestions:

1. Make sure your information technology department tracks the use of these technologies.
2. Remind users to treat these tools and communications as they would any other public record.
3. Implement policies.
4. Attend records management, open meeting law, and public records law training.
5. Proceed with caution and be mindful that the technology used does not change government's legal responsibilities.



Attend training and implement policies.