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MESSAGE FROM
DANEE GARONE

SIDEBAR:

- The Ombudsman for Public Access is Staff Attorney Danee Garone.
- Open meeting law and public records law materials and updates are [available on our website](#).
- [Click here](#) to view our open meeting law booklet.
- [Click here](#) to view our public records law booklet.
- Review past [Public Access Newsletters](#)
- Please visit our website for [more information on training](#).
- [Upcoming Training](#)

August 10: Arizona Parks and Recreation Association — Open Meeting Law.

August 11: AZ Law Enforcement Records Management Association — Public Records Law

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From the Office of the Arizona Ombudsman — Citizens' Aide

The Public Record

State Ombudsman Dennis Wells

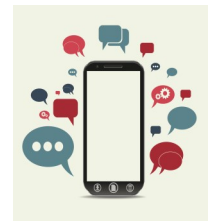
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Text Messages: Public Record?

It depends. Arizona law provides that all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics ... made or received by any governmental agency in pursuance of law or in transaction of public business are deemed public records subject to disclosure. Text messages are no different than any other electronic record. They are simply an electronic communication that is sent over a cellular network, generally from one mobile phone to another. Public bodies and public officials use text messaging in a variety of contexts. The bottom-line is that it does not matter that it is a text message, and it does not matter what phone is used to send or receive the text message. If the text message is made or received by a public employee or official in connection with the transaction of public business, it is a public record. In other words, text

messages are treated the same as email and any other written communication. Accordingly, text messages that constitute public records must be retained according to the retention schedules promulgated by Arizona Library, Archives and Public Records. Like any other public record, text message retention is based on the content of the record. They too must be retained according to the same rules as emails and paper documents with the same content. If you are not sure what that means, please visit [Retention Schedules](#). It can be difficult for an employee or official to figure out how to capture and retain the text. As with emails sent or received on a personal email account, the most practical way to retain text messages is to have the sender or receiver forward each public record text to his or her government email account. The email can then be archived along with

other public records emails of like content. At that point the text may be deleted. Text messages that are public records are subject to public access unless they are otherwise exempt for one of three reasons: 1) confidential by statute, 2) a privacy interest outweighs the public's right to know, or 3) disclosure is detrimental to the best interest of the State. To facilitate this process, public bodies should adopt and implement detailed policies and procedures for capturing and storing text messages and train employees and officials on how to identify a public record text and, if required, retain, search, and retrieve that text.



52nd Legislative Session Update



House Bill 2383 passed and amends Title 39 adding sections 39-121.04 and 39-123.01. The new statutory provisions address disclosure of certain images and personal identifying information contained in records created or received by, or in the possession of, a law enforcement or prosecution agency that relate to a criminal investigation or prosecution. For the details, see [HB 2383](#).

Senate Bill 1282 failed. The bill would have created a statutory defense to any action on the denial of access to public records that the request is unduly burdensome or harassing. That said, Arizona courts recognize unduly burdensome requests as a viable defense when the public body can specifically demonstrate how compliance would be detrimental to the best interests of the state. The courts look at the following criteria: 1) the resources and time it will take to locate, compile, and redact the requested materials; 2) the volume of materials requested; and 3) the extent to which compliance with the request will disrupt the agency's ability to perform its core functions.

Social Media and Arizona's Public Record Laws

Many public agencies use social media to communicate, obtain information and reach a broader audience. It is important to understand that the agency's social media sites are subject to Arizona's public records and retention laws. Basically, any content maintained in a social media platform related to agency business, including communication posted by the Agency and communication received from citizens, is a public record. It is the content that drives the analysis of whether the information is a record, not the type of device or platform used to post the information. Below are several tips: to consider:

1. Develop a social media policy to educate and train the staff, elected officials and public about the responsibilities to manage these types of records. Keep tabs on the social media sites. Consistently enforce the policies.
2. Unique information that only exists on your website including public comments may be a public record. Conversely, copies of content created offline, that is retained elsewhere, does not require retention.
3. Be familiar with the "Terms of Use" on social media sites. According to Arizona law, it is the public body's responsibility to properly maintain and preserve its records and respond to public record requests for social media content.
4. An agency's social media site serves as a limited public forum and all content is subject to monitoring.
5. Government employees have diminished First Amendment rights.
6. Content created or received by a public employee or public officer on their personal social media sites that relates to public business may be deemed a public record. Personal social networking should remain personal in nature and be sued to share personal opinions or non work related information. Public employees and officials who decide to comment on posts about official agency business should use a disclaimer indicating that, "The postings on this site are my own and don't reflect or represent the opinions of the agency for which I work."

Arizona Ombudsman – Citizens' Aide



Greetings!

In our summer newsletter, we discuss a couple of public access issues the Legislature addressed this session and how public records law applies to text messaging and social media.

As always, our goal is to provide you with timely and informative information related to Arizona's Public Record and Open Meeting Laws. If you have suggestions and ideas for an upcoming newsletter, or questions you

want answered, please feel free to contact our office. Public records law and open meeting law training is also available upon request.

Sincerely,

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