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Public Information Act Updates

By Allen Keller

Now that school is back in session, we're sure that you're all super stoked to get back in the saddle in responding to public information requests. During the 86th Legislative Session, a bill was passed that should help take some of the pain and frustration out of tracking and keeping up with record requests. Senate Bill 944 added Section 552.234 to the Government Code; this new provision provides updated guidelines for how members of the public are to submit public information requests.

Under this new Section 552.234, written public information requests may be made **only** by delivering a request by one of the following methods to your school's designated staff member(s) responsible for handling record requests:

- (a) United States mail;
- (b) Electronic mail;
- (c) Hand delivery; or
- (d) Any other appropriate method approved by your school, including fax or electronic submission through your school's Internet website.

However, before your school can limit the methods through which record requests may be submitted, you must provide instructions to the public on the process for submitting such requests. These instructions may be published through:

- (a) A sign posted in the school's administrative offices and that is plainly visible to members of the public and employees whose duties include receiving or responding to public information requests;¹ or

- (b) On the school's website.

If your school posts the mailing address and e-mail address designated for receiving public information requests on your website or on the sign posted in your administrative offices, you **are not** required to respond to a written request for public information unless the request is received:

- (a) At one of the designated addresses;
- (b) By hand delivery; or
- (c) By U.S. mail, electronic mail, hand delivery, or another method approved by your school.

Please let us know if you would like additional guidance on preparing an updated sign or website posting in order to streamline the process for receiving public information requests.

¹ The sign must be in a format approved by the Attorney General; sample signs are available in English and Spanish online at <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/pia-poster>.

Unlawful Electronic Transmission of Sexually Explicit Visual Material

By Allen Keller

The 86th Texas Legislature passed an update to the Texas Penal Code to keep pace with the rapid advance of communication technology. While Chapter 21 of the Penal Code previously addressed the physical act of indecent exposure, the law was silent as to the increased use of cell phones and social media to send sexually explicit images to others without consent.

As a result, House Bill 2789 was enacted to create Texas Penal Code § 21.19, which deals with the unlawful electronic transmission of sexually explicit visual material. This new law creates a criminal offense for the knowing electronic transmission of visual material that:

- (a) Depicts any person engaging in sexual conduct; or
- (b) Depicts a person's intimate parts exposed; or
- (c) Depicts the covered genitals of a male person that are in a discernibly turgid state; and
- (d) Is not sent at the request of or with the express consent of the recipient.

Your Student Code of Conduct likely already covers students who engage in similar conduct, as you should have prohibitions against sexual harassment and bullying conduct (including the sharing of intimate visual material). However, you may also consider adding an additional disciplinary offense to your Code of Conduct to address the electronic transmission of sexually explicit visual material to give your school greater flexibility in responding to “sexting” issues.

Please contact us if you'd like assistance in adding this requirement to your Code of Conduct.

Social Media and Record Retention Requirements

By Emily Boney

If your school has a social media presence, as most do, then it is important to understand your obligations regarding record retention requirements. Per Texas Government Code § 552.002(c), public information is “The general forms in which the media containing public information exist include a book, paper... **internet posting**, text message, instant message, other electronic communication, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory” (emphasis added). Content posted by the school on its social media website is a state record according to Texas Government Code § 441.180(11) and is subject to state records retention requirements in Texas Government Code §§ 441.180-205. Thus, you are required to maintain social media records and to potentially produce them if you receive a request under the Public Information Act.

It is important to understand when social media postings are required to be retained by the school and when they are not. For the information to be a record, the information must be unique and document the transaction of state and public business. *Tex. Local Gov'n't. Code §§ 201.003(8)(A) and 441.180(11)(B)*. Two notable exceptions to the retention requirement are duplicate content, and transitory information.

Duplicate content is content that is duplicated from another source that exists elsewhere in a different format. *Tex. Gov'n't.*

Code, § 441.180(11). Transitory information is a record of “temporary usefulness that are not an integral part of a records series of an agency, that are not regularly filed within an agency’s recordkeeping system, and that are required only for a limited period of time for the completion of an action by an official or employee of the agency or in the preparation of an on-going records series.” *13 Tex. Admin. Code §§ 6.10 and 6.91(8)*. Thus, if the information has no lasting importance beyond its initial purpose, it does not need to be retained. For example, a post announcing Black History Month likely does need to be retained.

A social media record is comprised of the record content (text, photograph, audio files, etc.) as well as any associated metadata (document type, date, file size, etc.) Comments on a school’s social media post can also be classified as records that need to be retained by the school. The school needs to decide whether they want to allow users to comment on posts and then be responsible for retaining those comments. Creating records with metadata is easy but capturing the entire record with metadata can be more difficult.

In order to ensure that you are capturing the entire record, including metadata, we recommend that you use software or browser add-ons to capture and store the content, contract with a social media or backup provider, or use automated web archiving software. Once you have captured the record, you need to classify the record into a series based on the content of the record. Public relations records, open meeting notices, employment ads, and general correspondence should be maintained for 2 years. Complaints should be maintained for 2 years after the resolution or dismissal of the complaint.

When destroying social media records, you must destroy all copies and enter the destruction of the electronic record on a disposition log. Please note that the record cannot be destroyed if it is the subject of an ongoing audit or review. If the record is the subject of legal claims or actions, then the school may be prohibited from deleting the record. *Tex. Govn’t. Code § 441.187*. The school should also retain relevant records if a judicial or administrative action is reasonably foreseeable, even if the action is not yet initiated.

Toto, We’re Not In Kansas Anymore!

By SLHA

Congratulations! You were awarded an open-enrollment charter. Yes. A bit belated in many instances, but better late than never. Speaking of better late than never, let’s talk about board policies. No. We are not going to bore you to death with everything that you should know. Instead, we are providing you with a short list of some of the policies that you should likely have in place for this school year.

Personnel Policies

- (a) At-Will Employment and Term Contract
- (b) Cellular and Wireless Telephone Acceptable Use
- (c) Child Abuse Reporting
- (d) Criminal History Record Reviews
- (e) Standards of Conduct and Code of Ethics
- (f) Guidelines for Reporting Educator Misconduct
- (g) Outside Employment

- (h) Performance Appraisal Process
- (i) Social Networking
 - Student Policies*
- (j) Admission, Enrollment and Registration
- (k) Athletics and Extracurricular Activities and Eligibility
- (l) Child Abuse Investigations
- (m) Computer and Internet Use
- (n) Expulsion
- (o) Freedom from Discrimination, Harassment, and Retaliation
- (p) Law Enforcement Interrogations of Students
- (q) Student Speech Activities
- (r) Tuition, Fees and Fines

Governance Policies

- (s) Community Complaints
- (t) Ethics, Conflicts of Interest and Nepotism Policy
- (u) Public Participation

Financial Policies

- (v) Activity Funds
- (w) Credit Cards and Corporate Accounts
- (x) Employee Compensation
- (y) Interested and Related Party Transactions
- (z) Purchasing and Contracting

Have Questions? We'll Answer.

If you have any questions concerning the content in this e-newsletter or any other school law matter, please contact Lori Madla at lmadla@slh-law.com or at (210) 538-5385.