



CLIENT ALERT

August 25, 2017

PA Office Of Open Records Rules That Public Officials' Facebook Pages Are Public Records When Discussing Agency Business

In the case of *Purdy v. Chambersburg Borough*, OOR Dkt. No.: AP 2017-1229, a Final Determination was issued on August 16, 2017, the Pennsylvania Office of Open Records has determined a Pennsylvania borough's denial of a Right to Know Request seeking records relating to the borough mayor's Facebook account and rejected the borough's claims that the Facebook page was not a record of the borough and reflected the mayor's own private social media activity.

The requester in the case sought copies of all Facebook posts and associated comment threads from the mayor's "public figure Facebook page" relating to or mentioning in any way a rail trail mural proposal that had been presented to borough council, including all related posts and comments that were deleted from the Facebook page. The borough denied the request, contending that the mayor's public Facebook page constituted his own private social media activity and that it did not constitute records "of the borough." On appeal, the requester noted that the mayor has both a public figure account and a private account on Facebook, and that the public figure account was listed with a link on the borough's website and identified as a means of contacting the mayor, thereby establishing that the Facebook posts are utilized by the mayor in his "official capacity" and subject to the Right to Know Law. The borough responded arguing that the Facebook account was not created, administrated, or required by the borough and that the borough's own computer network blocks the use of Facebook. However, OOR agreed with the requester and found that it was immaterial as to whether the borough had oversight over the Facebook page. OOR noted that the Facebook page was listed on the borough's official website, contained a link to "Find the Mayor on Facebook," and that the mayor's own page identified itself as a "public figure" Facebook page, and contained discussions and posts regarding activities within the borough, including those relating to police department and council members as well as contact information for the borough. As a result, according to OOR the Facebook page meets the criteria of being a "record of the borough" under the Right to Know Law. In the absence of any exemptions asserted by the borough, OOR then held that the requested records, including Facebook posts, associated comments, and messages sent via Facebook messenger were all subject to public access.

In statements to the press taking place after the decision was issued, OOR Director Erik Arneson indicated that this decision is a novel one as it relates to social media records requested under the Right to Know Law but social media records of public officials are likely to be ruled as a public record, subject to the same exemptions of any public record, and general obligations for disclosure in the absence of said exemptions, in the future. In any instance in which a public official holds himself out on a Facebook or other social media page as a public official, and discusses the agency and its officials should anticipate that any posts and comments discussing agency business are going to be deemed a public record subject to disclosure under the Right to Know Law, in the absence of any applicable exemption.

School districts, municipalities, and other public agencies who are aware of public officials utilizing Facebook pages to hold themselves out as public figures in relation to their public office would be well-served by reviewing this case with the relevant officials and agencies should ensure that they are aware of what types of activities are taking place on the relevant social media accounts, as many of the posts, comments, and messages are, according to OOR now "of" the agency. We recommend that any questions or concerns arising with respect to content included on the Facebook page of public officials be reviewed carefully and referred to legal counsel for further advice.

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