

@FinCom: What You Should Know About #SocialMedia: Open Meeting Law and Public Records Law

Presented by:

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OPEN MEETING LAW OVERVIEW



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OPEN MEETING LAW OVERVIEW

Basic OML Principles:

- All meetings are open to the public.
- A quorum may not deliberate outside of a public meeting.
- Meetings must be properly noticed.
- Meetings may only be held in executive session for one of 10 specific purposes.
- Minutes must be taken of all meetings.



OPEN MEETING LAW OVERVIEW

Key Definitions:

- Meeting:

“a deliberation by a public body with respect to an matter within the body’s jurisdiction...”

OPEN MEETING LAW OVERVIEW

Key Definitions:

- Deliberation:

“an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that ‘deliberation’ shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting [materials] or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.”

OPEN MEETING LAW OVERVIEW

OML Realities:

- OML is contrary to human nature.
- OML is inefficient by design.
- OML is very easy to violate.
- OML complaints are very easy (and free) to file.
- OML violations are bad for PR, no matter how innocent.
- Technology makes violating the OML easy.



OPEN MEETING LAW OVERVIEW

Consequences of Non-Compliance:

- Bad PR
- Orders from the Attorney General
- Mandatory Training
- Fines for Intentional Violations
- Nullification of Votes



OML + SOCIAL MEDIA = RISK

Less Risky:

- Meeting Notices.
- Meeting Materials.
- Recordings of Meetings.

Risky:

- Posting Opinions.
- Responding to Opinions.
- Group Pages.

OML: SOCIAL MEDIA CASE STUDIES

- Posts concerning past actions, for political purposes, are OK.
(OML 2013-27)
- Group page discussions are OK if less than a quorum participates.
(OML 2013-62)
- OK to view meeting materials posted to a private Facebook page.
(OML 2017-111)
- Opinion posts are OK if not “directed to a quorum.”
(OML 2017-192)

OML: SOCIAL MEDIA CASE STUDIES



- “I agree”
- Not OK, because opinions reached a quorum (OML 2018-118)

PUBLIC RECORDS LAW OVERVIEW

- New Law, Same as the Old Law
- Definition of Public Record

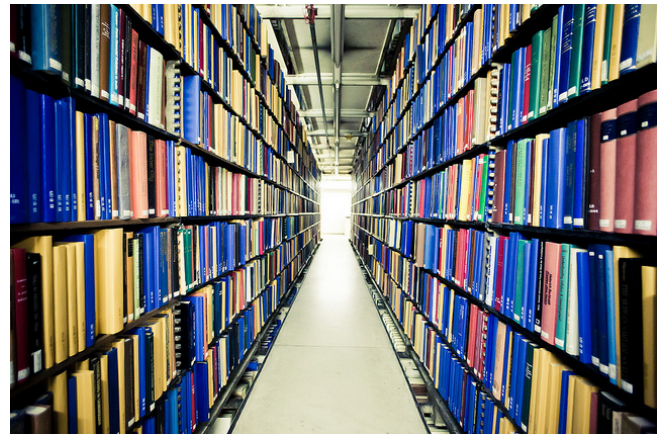
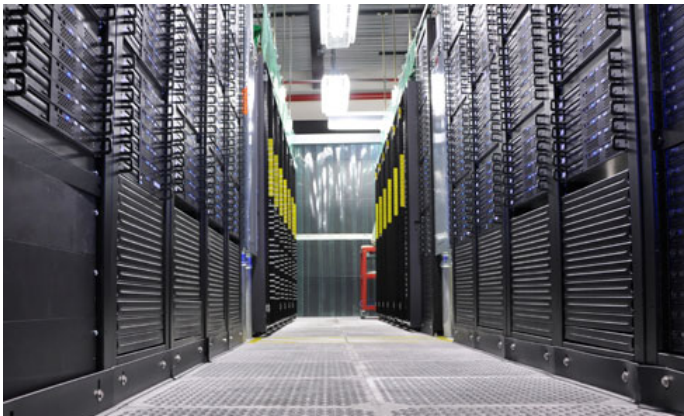


“[A]ll books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof ... unless such materials or data fall within the following exemptions ...”

M.G.L. c. 4, Sec. 7, Clause 26

PUBLIC RECORDS LAW OVERVIEW

- Requirements:
 - Preservation and Retention of Records
 - Access to Records



PUBLIC RECORDS LAW OVERVIEW

- Consequences of Non-Compliance:
 - Bad PR
 - Orders from the Supervisor of Public Records
 - Lawsuits
 - Attorney's Fees and Costs
 - Litigation Sanctions



SOCIAL MEDIA: KEY ISSUES

- Social Media Policy
- Personal vs. Public
- Records Retention Rules
- Access to Records



TIPS:

1. Understand your Social Media Policy.
2. Understand your Records Management Plan.
3. Avoid posts with opinions directed at committee members.

