



HHS Circular C-042
Attachment
HHS Social Media Policy
HHS Social Media Guidelines

Definitions

Accessibility

Usability of a product, service, or environment that can be used in a variety of ways and that does not depend on a single sense or ability.

Agency Internal Information

Includes certain legal, financial, technical or organization information that is not considered public or subject to public release by the Texas Public Information Act.

Confidential Information

Includes personal identifiers (PI) and Personally Identifiable Information (PII), combined identifiers that constitute Sensitive Personal Information (SPI), and Protected Health Information (PHI) as defined in the Enterprise Information Security Standards and Guidelines.

External Social Media Tool

A Social Media Tool built, owned, funded or operated by a commercial enterprise or nonprofit consortium that is intended for widespread use in a variety of contexts by the public users. Although not maintained/hosted on state servers, these are also considered “state websites” and the content must conform to records retention rules. Examples include Facebook, Twitter, YouTube, and Flickr.

Internal Social Media Tool

A Social Media Tool that is owned, funded or operated by or for a state agency. Internal Social Media Tools are considered “state websites” and must follow all requirements of 1 TAC 206. Examples include agency-hosted or externally-hosted and agency-dedicated instances of wikis, blogs, and learning management systems.

Personally Identifiable Information

Personally identifiable information is defined in Texas Business and Commerce Code (TBCC) Chapter 521 as “information that alone or in conjunction with other information identifies an individual.” This includes an individual’s:

- (a) name, social security number, date of birth, or government-issued identification number;



- (b) mother's maiden name;
- (c) unique biometric data including the individual's fingerprint, voice print, or retina or iris image;
- (d) unique electronic identification number, address, or routing code; and
- (e) telecommunication access device as defined by Section 32.51, Penal Code.

Public Social Media Policy

A public-facing document published by an agency that notifies the public of the policy areas that impact the public's use of agency Social Media Tools.

Restricted Information

Includes Internal Revenue Service Financial Tax Information (IRS FTI), Social Security Administration (SSA) supplied and verified information, Criminal Justice Information Systems (CJIS) information, as defined in the Enterprise Information Security Standards and Guidelines.

Social Media Tool

A software system or service provided via the Internet used to communicate and share information between people, especially affinity groups of people such as customers or constituents, where customers, constituents, or the general public are the primary creators of the information content. Examples include Facebook, Twitter, YouTube, Flickr, and Pinterest.

Policy Considerations

The decision to use Social Media Tools is a business decision based on an agency's specific needs and the appropriate scope of its use. When an HHS agency is developing and implementing a social media program, there are additional issues to consider that are outside the scope of this document. These issues may include objectives, strategy, content, and operations.

The agency should publish a public-facing document (Public Social Media Policy) that notifies the public of the policy areas that impact the public's use of agency Social Media Tools. At a minimum, the Public Social Media Policy should address the following:

- Accessibility
- Privacy notification
- Moderation policy
- Linking policy
- Public Information Act (Public Information Act, Texas Government Code Chapter 552)
- Third-party website policy
- Intellectual property rights and ownership



The HHS agency's Public Social Media Policy should be available within the Social Media Tool, if possible, or on the HHS agency's official website. The HHSC Social Media Policy (insert link) provides a template for the creation of such a policy.

1. Accessibility

HHS agencies have a legal responsibility to ensure that all electronic and information resources are accessible and usable by people with the widest range of capabilities possible.

1 TAC 206 and 1 TAC 213 describe requirements regarding accessibility of state websites and all agency EIR. External social media tools may or may not be compliant with 1 TAC 206/213; however, it is the agency's responsibility to ensure that agency content is fully accessible. An agency should provide links to the external social media accessibility policies, make a good faith effort to remediate accessibility concerns for those websites, and gravitate to websites that respect EIR accessibility concerns. Ultimately, it is the agency's responsibility to ensure social media content is fully accessible.

Accessibility requirements apply to the content on the social media tools, not the features of the tool. Therefore, if an agency does not use an inaccessible feature, it is not in violation of accessibility requirements. If an agency uses an inaccessible feature, it should employ the following or similar alternatives to ensure full compliance with the law:

- Contact the social media provider to address accessibility issues.
- Provide access to duplicated social media content on an accessible communication channel whenever possible.
- Direct users to an alternate version of the social media tool that will provide accessible content.

If the agency cannot implement a reasonable alternative solution and a business need to post inaccessible content remains, an exception must be obtained in accordance with 1 TAC 213. Exceptions still require the provision of an alternate method (for example, a toll-free number or a hard copy).

2. Privacy

Only public information may be submitted to social media tools. To protect a citizen's privacy, the agency's Public Social Media Policy should instruct the public to exclude personally identifiable information, sensitive personal information, and any other personal information protected by law from social media communications as well as information defined as restricted, confidential, or agency internal.



For information regarding restricted, confidential, and agency internal information, refer to the Definitions section of this policy.

There may be instances when personally identifiable information is needed to serve the public. If appropriate, agencies should provide an alternate means of communication for the public to continue the conversation in a protected environment. An agency should define when personally identifiable information will be deleted.

If sensitive personal information or other confidential information is posted, the agency must remove it as soon as practicably possible. If the agency chooses to provide an explanation for the removal, the agency should reference the relevant section in its Public Social Media Policy. Other federal laws, rules and regulations may apply.

3. Open Records Requests

Open records requests under the Texas Public Information Act for social media content must follow the agency's Open Records (or "Public Information") Requests Policy.

4. Records Retention

Content posted by the HHS agency or the public on an HHS agency's social media website is a state record [Government Code, Section 441.180(11)], and is subject to state records retention requirements in Government Code Chapter 441, Subchapter L, 441.180-205.

To manage compliance, agencies may consider common exceptions to state records retention requirements in developing social media content strategy. Two common exceptions are:

- **Duplicate content** is content that is duplicated from another source. [Government Code, Section 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 TAC 6.10 and 13 TAC 6.91(8)]

An HHS agency may be prohibited from deleting social media records, regardless of its established records retention policy, if the record is the subject of legal claims or actions (Government Code, Section 441.187). In addition, state and federal courts require the preservation of relevant records if a judicial or administrative action is reasonably foreseeable, even if such action is not yet initiated.



5. Security

In its usage of social media, an HHS agency must comply with its own IT security policies, standards, and guidelines as well as the HHS Enterprise Information Security Standards and Guidelines. (<http://hhsx.hhsc.state.tx.us/tech/policy/default.shtml>)

6. Third-Party Website Policies and Terms of Service

Before creating an account with a social media tool, an HHS agency should review and accept the provider's terms of service. The decision to accept a provider's terms of service is the responsibility of each HHS agency. The state does not accept the terms on behalf of all state agencies. Each agency should review these terms and determine whether the risks stemming from the provider's terms are acceptable.

Agencies may negotiate with a social media provider directly to obtain agency-specific terms of service. If an agency is able to negotiate more favorable terms, please notify SocialMedia@dir.texas.gov.

If possible, an agency will inform users that the external social media tool is hosted by a third party and the use of the website is governed by the social media provider's own policies and by any additional policies as set forth by the HHS agency.

There is currently a nationwide effort led by the National Association of State Chief Information Officers (NASCIO) to negotiate a state and local government-specific terms of service with several popular social media providers. To date, Facebook has negotiated a special terms of service for state and local government entities that can be viewed [here](#).

YouTube has also agreed to terms for state government, but requires an application process through the State Chief Information Officer. Contact SocialMedia@dir.texas.gov for more information.

7. Moderation and Monitoring

An HHS agency must first determine if it will allow public comments on its social media websites. If an agency allows public comments, then such content should be monitored regularly by the agency; however, the means and frequency by which an agency monitors its social media content is determined by the agency. Monitoring may be active or passive at the agency's discretion.

If an agency chooses to monitor, it is the agency's responsibility to determine the extent of moderation. There may be instances where an agency chooses to moderate posted content by deleting all or part of a post. The extent to which an agency limits or restricts speech requires careful consideration, including the application of the First Amendment to the U.S. Constitution.



The criteria for removing, rejecting, or disavowing public content should be determined by each agency and communicated to the public in its Public Social Media Policy.

An agency is not required to provide an explanation for removing content, but may choose to do so. Removal of content does not preclude retention based on an agency's records retention policy.

8. Intellectual Property Rights and Ownership

Social media content may sometimes include photographs, audio, or video. An HHS agency must ensure that it has the right to post all social media content and is not infringing on the intellectual property rights of others. Due to the functional nature of certain Social Media Tools, a Twitter "retweet" or Facebook "share" automatically provides attribution to the original post. 1TAC 206.53(1) provides rules regarding the copying and use of information by website owners linking to state agency sites. Adherence to this rule will ensure an agency is compliant with requirements related to intellectual property rights and ownership.

Intellectual property rights of content provided by the public will be governed by federal copyright law, the terms of service of the social media provider, and the agency's copyright policies.

The Digital Millennium Copyright Act (DMCA) provides for a limitation of liability for alleged copyright infringement. To comply with the Online Copyright Infringement Liability Limitation Act of the Digital Millennium Copyright Act, agencies must include a notice of policy and contact information for its appointed copyright agent.

9. Linking

1 TAC 206 outlines the policies for linking to and from state agency websites, including Private Social Media Tools. Public Social Media Tools are not state websites, but rather are third party interfaces that should be treated as state agency websites whenever possible. HHS agencies are encouraged to adhere to 1 TAC 206 on their social media websites, when possible.

HHS agencies should disclose a public-facing Linking Policy that extends to agency content on Social Media Tools.

References

- [Texas Administrative Code, Title 1, Chapter 206](#)
- [Texas Administrative Code, Title 1, Chapter 213](#)
- [Texas Business and Commerce Code, Chapter 521](#)
- [Texas Government Code, Chapter 441, Subchapter L, 441.180-205](#)
- [Texas Government Code, 441.180 \(11\)](#)



- Texas Government Code, 441.187
- Public Information Act, Government Code Chapter 552
- Copyright Act of 1976 (including the Digital Millennium Copyright Act)