

Are Facebook Posts and Other Computer Records Subject to OPRA?

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As the number of public agencies with a social media presence grows, questions arise regarding whether the content of the social media sites is a “government record” subject to OPRA. We believe that it is.

OPRA defines government records very broadly and includes “information stored or maintained electronically.” This should cover posts made on a public agency’s official Facebook page, as well as information such as web browser history on computers used by public employees during their official course of business. Computers are, in other words, electronically storing everything a public employee does during the course of his or her day and that activity creates government records – be it posting on a Facebook page or entering data into budgeting software. At least one court has held that “metadata” is subject to OPRA.

The difficulty, however, is how to gain access to such information. Though all government records should be retained and public agencies should go through the proper process for disposing such records, employees tend to treat data with less care than hard copy records. So, electronic records are often deleted and may not always be retrievable from the server.