



Social Media & City Hall

City Hall Essentials
Texas Tech University
Fredericksburg, TX
July 13, 2018

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Travis County to reimburse commissioner for \$8,000 in legal expenses

METRO-STATE



By Taylor Goldenstein - American-Statesman Staff



Fireman fired for sharing wreck photos

BY MOSES LEOS III

moses@haysfreepress.com


A Hays County Emergency Services District No. 6 (ESD 6)/North Hays County Fire Rescue probationary firefighter was fired Thursday after an internal investigation discovered the employee posted “inappropriate photos” of a fatality accident on social media.



City Council officially censures mayor

Posted: Friday, April 14, 2017 1:48 pm

Dwight Baker reporter@baycitytribune.com |

 **0 comments**

There wasn't an empty seat in city council chambers Thursday night as the council voted to formally censure Mayor Mark Bricker for his social media posts after choosing to take no action on the matter at the previous meeting.

Agenda item 7.9 was entitled, "discuss, consider and/or take action as deemed appropriate concerning the mayor's judgment relative to the posting of derogatory and leading negative messages directed at individuals on his Facebook page and other forms of social media."

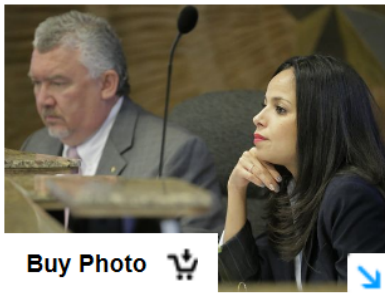
Bay City, TX

Claudia Ordaz faces ethics complaint over texts

Aileen B. Flores, El Paso Times

Published 8:26 p.m. MT Jan. 27, 2016 | Updated 8:47 p.m. MT Jan. 27, 2016

1989 attorney general opinion says it's not illegal to disclose executive session discussions



Buy Photo

(Photo: RUBEN R. RAMIREZ/EL PASO TIMES File)

CONNECT TWEET LINKEDIN 1 COMMENT EMAIL MORE

An ethics complaint alleges that city Rep. Claudia Ordaz violated state law by discussing executive session information with County Judge Veronica Escobar, although a longstanding attorney general opinion says it's generally not illegal for government officials to share such information.





Legit Use of Social Media

- Announcements
- Introductions
- News Stories
- Photos
- Videos
- Regulations
- Events
- Blogs & Chat Rooms
- Provide easy avenue for citizen input



Records Retention

Texas State Library and Archives Commission Electronic Records

- The retention of social media records is based on content and function.
- General e-mail sent or received in the normal conduct of business – **2 years**
- Photographs, images, recordings, and other non-textual media – AV
(as long as administratively valuable)
- Internet Cookies – AV
- Website history files – AV

Bulletin B, Electronic Records Standards and Procedures

Public Information Act

- All data collected, assembled, or maintained
- Regardless of format
 - Paper, Film, Digital media
- Duty to Provide Data posted on websites
- Can refer to website



Attorney General Rulings

- E-mail is clearly subject to disclosure under the PIA
- Duty to Provide copies of online data
- *Even postings on City FB!*
- OR2016-23161 (City of Seabrook)
 - Who maintains the site?
 - What is agency's policy on use of site?



Open Meetings

- Governed by the Texas Open Meetings Act (TOMA)
- Public business should be conducted in public
- A “Meeting” is:
 1. Deliberations (talking and/or voting)
 2. Quorum (majority)
 3. Governing body (city council, P&Z)
 4. City business
- Action without meetings
- Washington State: E-mail Exchange = Meeting
- *Email can = “Deliberation” thus OMA. GA-0896*

Agency Policy

Online activities can have job consequences.

- Restrict personal use on City resources
- Perform agency business on agency resources
- Apply to computers & phones
- Clarify role & opinions
- Protect privacy, confidentiality & privileges
- Remember respect & safety
- Work comes first



Agency Policy (cont.)

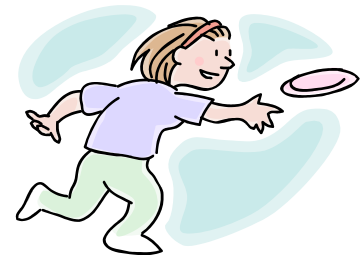
- Remember the reflection on Agency's image
- Be cautious with trade secrets, competitive info
- Do not tolerate plagiarism
- Honor logos or trademarks

<http://www.texasmunicipallawyers.com/files/publications/Sample-Social-Media-Policy.pdf>

Courtroom Drama

Employee sued Employer after being terminated upon Employer finding photos of Employee on Facebook dancing and playing frisbee while on FMLA leave for a “serious medical condition” that allegedly left her “completely incapacitated.”

Jaszczyn v. Advantage Health Physician Network (2012)



Shower Selfie

- Anonymous caller informed fire department female firefighter trainee had MySpace account with “fresh out of the shower” photos posing bare showing shoulders & backside.
- Department issued oral reprimand.
- When trainee demanded info about the photos, she was terminated for her “combative tone” and “disrespect toward administration”.
- Trainee sued alleging disciplined & terminated based on race & gender.



Marshall v. Mayor of Savannah (2010)

No Privacy

- Employers can conduct work-related audits of pager text messages and discipline employees for inappropriate content.
- For example, police officers can be disciplined for sending sexually-explicit material via city-issued devices.
- No 4th Amendment Search problems



City of Ontario v. Quon (U.S. Supreme Court 2010)

Reasonable & Proportionate

- Male employee posted photo on Facebook of female co-worker asleep at her desk with thong & buttocks showing.
- Female employee learned of photo 8 months later, reported it to H.R., who disciplined Male employee.
- Female employee sued Employer alleging sexual harassment and retaliation after furloughed.
- ***She lost.*** Employer won.



Timing Is Everything (almost)

- Employee filed suit alleging termination in retaliation for posting on Facebook, “anyone know a good EEOC lawyer? I need one.”
- Court found that one-week proximity between Facebook post and termination, combined with Employer’s awareness of the post, was sufficient to make a case.
- Ultimately, *Court found for Employer* because employee couldn’t show the Employer’s stated, legitimate, non-retaliatory reasons were pretext.

Deneau v. Orkin (2013)

Off-The-Job-Blog

- non-union security employee terminated
- FB post: “u kno wat, I do not give a f*** about a police officer that got shot, if they quit f***kin wit ppl, ppl prolly quit shootin em all the goddamn time.....karmas a bitch.”
- Awarded Unemployment Comp
- Court: off-the-job blog post was ***not work-connected misconduct*** and therefore she was entitled to unemployment benefits.

Toxic

- Comptroller was terminated
- Tweets [u](#) referred to his work environment as “toxic” his co-workers as “morons” and his administrative assistant as “dysfunctional” “psychotic” and “schizophrenic”
- Denied Unemployment Comp
- Court: properly terminated for willful misconduct and correctly denied unemployment benefits.

Think Before You Post

- Bubba Gump Shrimp Restaurants, Inc., had adopted a social media policy in its employee handbook
- “While your free time is generally not subject to any restriction by the Company, the Company urges all employees not to post information regarding the Company, their jobs, or other employees which could lead to morale issues in the workplace or detrimentally affect the Company’s business. This can be accomplished by always thinking before you post, being civil to others and their opinions, and not posting personal information about others unless you have received their permission.”
- NLRB affirmed an Administrative Judge’s decision that the language was **appropriate** and determined that employees reasonably would not construe the policy to prohibit protected activity. *Gump won, again!*

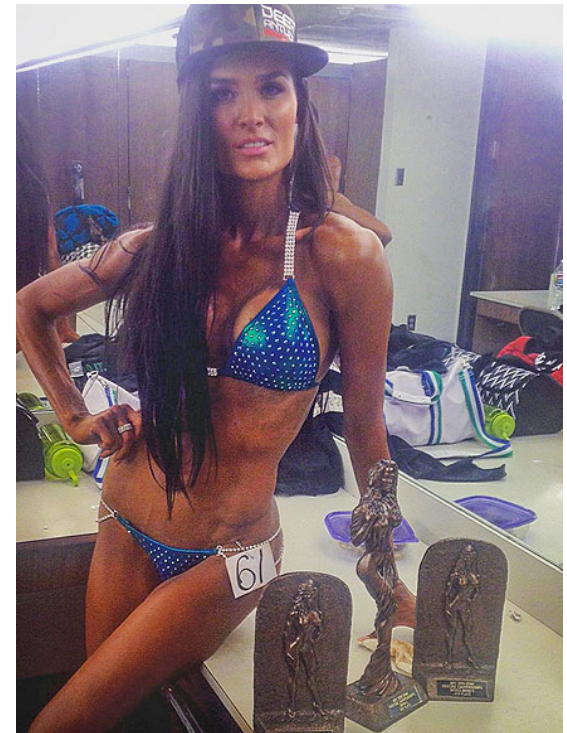
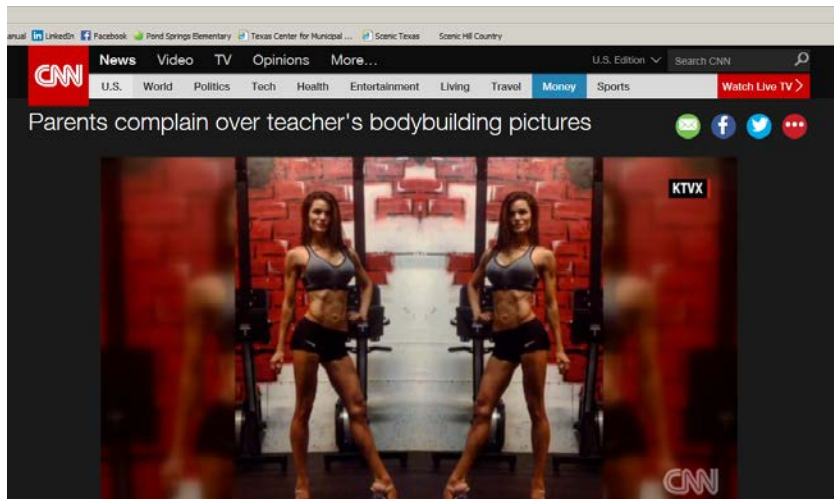
Landry’s, Inc., 362 N.L.R.B. 69 (California 2015)



Personal Life?

Utah Teacher Receives Complaints from Parents and Fears Losing Her Job After Posting Body Building Bikini Shots on Social Media

"Why are my rights being taken away and not the child's rights? It's between the parent and the child. Put restrictions on your children."



Getting Fired for Social Media Stupidity

Bankers Who Think ISIS Killings Are A Hoot



A Brief History of People Getting Fired for Social Media Stupidity,

<http://www.rollingstone.com/culture/lists/a-brief-history-of-people-getting-fired-for-social-media-stupidity-20150713/the-bankers-who-think-isis-killings-are-a-hoot-20150713>

Think Before You Post

- Am I discussing official city business?
- Is this information subject to Open Meetings?
- Is this information subject to Open Records?
- How long must this information be kept?
- What will current or future employers think?
- Who will be able to view the information I post?
- Will this reveal potentially embarrassing information?
- *What happens in Vegas ... stays on YouTube, Flickr, Twitter, Facebook...*

Because I'm a hypocrite,

please follow us...



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