Legal Issues Related to Records and Social Media

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County Management of Information

• The Sauk County Board will consider a new Information Practices Ordinance this month:
  – Consolidates all record management provisions in one place.
  – Addresses the status and retention of electronic records.
  – Provides guidance to records custodians regarding denial of request for records.

• The Sauk County Code of Ordinances:
  – Updated and maintained by my office.
  – Uses state statutes as a guide for uniformity.
Office Management of Records

• Adopt a filing system that makes sense.
• Maintain a record of actions that come in, status and completion.
• Each department has a number and files and actions are organized by department number.
• Computer files are organized by department number in that department’s subdirectory.
• Recurring issues or forms are located in special subdirectories.
Electronic Records and Paperless

- Electronic records are here.
- Paperless is here and expanding.
- In January, we implement Thomson Reuters Concourse Legal Workflow Management.
- Courts have gone or are going to E-Filing.
  - Federal Court District Court electronic.
  - US Bankruptcy Court entirely electronic.
  - State Courts of Appeal and Supreme Court electronic.
  - 24 state circuit courts are primarily E-Filing.
Legal Issues Related to Records and Meetings

• Wis. Stat. s. 19.32(2) includes electronic records in the definition of records.
• State Public Records Board has the retention schedule for county records on line.
• Electronic communications implicate the Open Meetings Law.
  – Quorums/walking quorums by E-Mail and Instant Messaging.
  – Attendance at meetings by conference call.
Legal Issues and Social Media

• Social media includes services like Facebook, Twitter, Linkedin, etc.

• New issues continue to arise.
  – Need to apply existing laws such as constitutional protections to privacy and civil rights to social media.
  – Need to be savvy about the second and third order affects of social media.

• This is the way the younger generation communicates.
Legal Issues and Social Media
Cases and Issues

• **City of Ontario v. Quon** (US Supreme Ct. 2010)
  – Warrantless search of Police Officer’s text messages constitutional but Fourth Amendment applies.
  – The case left many issues unresolved.

• **City of Bozeman, Montana.**
  – Came under fire for asking for passwords to employees’ social media sites as a condition of employment.

  – Restaurant found liable for violating Stored Communications Act by accessing social media using an employee’s password.
• Wisconsin Social Media Protection Act (2013
Wisconsin Act 208)
  – It is unlawful for an employer to require an employee to provide passwords for personal E-Mail, social media sites.
  – “Shoulder surfing” is also unlawful.
  – Fines of up to $1,000.
  – Unlawful to retaliate against an employee for making a complaint.
  – Enforced by State Equal Rights Division
  – Employers may access information in the public domain or discipline employees for breaching confidentiality.
Conclusion

• Consult with your information professional and corporation counsel to make sure your policies and ordinances are up to date.

• This is an evolving area of the law.

Questions?