

The logo for Bojorquez Law Firm, PLLC features a dark brown horizontal bar at the top with a small 'TM' trademark symbol on the right. Below the bar, the name 'BOJORQUEZ' is written in a large, blue, serif font. Underneath that, 'LAW FIRM, PLLC' is written in a smaller, blue, serif font. A thin horizontal line separates this from the website address 'TexasMunicipalLawyers.com', which is written in a smaller, black, serif font.

**BOJORQUEZ**  
**LAW FIRM, PLLC**  
TexasMunicipalLawyers.com

# **Legal Issues Relating to Governmental Social Networking:**

*by:*

**Alan J. Bojorquez**  
&  
**Jill Hoffman**

*Texas Certified Public Manager (CPM) Conference*

Texas State University  
Avery Building

Round Rock, Texas

February 3, 2012

## Legal Issues Relating to Governmental Social Networking

**Introduction:** This paper is a summary of the article, *Open Government & The Net: Bringing Social Media into the Light*, by Alan J. Bojorquez and Damien Shores, which was published in Volume 11, Book 1 of the Texas Tech Administrative Law Journal. The article discusses how Texas's open government laws (primarily the Records Retention Act, Public Information Act, and Open Meetings Act) applies to government agents use of social media websites such as Facebook, LinkedIn, Twitter, Blogger, MySpace, etc. The intent of the article is to clarify the obligations of government agencies to preserve data created online, provide general public access to that data, and avoid public decision-making in cyberspace. The article also offers policies, practices, and procedures government agencies should consider implementing to better manage their obligations under Texas's open government laws.

**Records Retention:** Under the Records Retention Act, state agencies and local governments are required to store and eventually destroy records in strict accordance with a records retention schedule. Considering these obligations, there is a legitimate government interest in what types of digital records are being created in the first place. This also creates challenges for public entities because records of comments made by an employee regarding official business on MySpace are maintained by a third-party (e.g., MySpace of Los Angeles). Ultimately, government employees and officials should understand the type of information they release into cyberspace and should consider whether they need to retain the information themselves.

**Open Records:** The basic premise of the Texas Public Information Act (PIA) is that *all* government information should be available to the public. While some types of information are exempt from the PIA, it is wise for government employees and officials to operate under the assumption that they are subject to the PIA, which means that whatever they post on a social media website or type in an email is public information subject to disclosure. In addition to being cautious about what is posted online, government agencies must be cautious about actions that may result in violations of the PIA, such as withholding information deemed to be public.

**Open Meetings:** Under the Texas Open Meetings Act (TOMA), every meeting of a governmental body is considered open to the public. The TOMA definition of "meeting" is sufficiently broad to include Internet exchanges that create virtual meetings. This means that if a quorum of a governmental body posts comments on Facebook that discuss public business over which they have supervision or control, then they are violating TOMA if they did not first give public notice of the meeting. Violations of TOMA, such as not giving public notice, in addition to criminal penalties, could result in making actions of the governmental body voidable. As such, TOMA encourages caution when members of a governmental body participate in social media websites.

**Policies:** In light of these and other concerns (e.g., privacy and online harassment) it is suggested that more attention be paid toward what is posted online by government employees and officials. Generally, a reasonable social networking or media policy will go a long way toward addressing the risks involved with social media websites.

Please visit our website to download the full law review article *Open Government & The Net: Bringing Social Media into the Light*, and sample forms: [texasmunicipallawyers.com/training-opengov.html](http://texasmunicipallawyers.com/training-opengov.html)