

OOB Rules that Elected Official's Social Media Accounts are Records of the Agency

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In *Schultz v. Montgomery County*, AP 2020-1280, the Requester sought records related to a County Commissioner's social media accounts, including sent and received Twitter Direct Messages and private Facebook messages, all Facebook posts, all deleted Facebook and Twitter messages and a list of blocked Twitter and Facebook accounts.

The County denied the Request, stating that the Commissioner's Facebook and Twitter accounts are the Commissioner's private social media accounts and the posts on the accounts are not records of the County.

Section 102 of the RTKL defines a "record" as "[i]nformation, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency." 65 P.S. § 67.102. The RTKL imposes a two-part inquiry for determining if certain material is a record: 1) does the material document a "transaction or activity of an agency"; and, if so, 2) was the material "created, received or retained ... in connection with a transaction, business or activity of [an] agency."

The OOR found that the social media accounts were records of the County even though the County did not operate or maintain the Commissioner's accounts. The OOR noted that in *Purdy v. Chambersburg Borough*, AP 2018-1229, it held that "it is immaterial whether or not the [agency] has oversight over the Facebook page or authorized the [officer] to maintain such an account." Instead, the OOR looks at whether the content of the Facebook page shows that it is used as a significant platform by an elected official or employee to conduct or discuss official business such as "among other things, economic development, community planning, maintenance, public safety and community service projects within the [agency]."

In *Schultz*, the OOR found that the records requested of the Commissioner's social media accounts met the criteria of being records of the County under the RTKL because they contained discussions and posts regarding activities of the Commissioner, in his capacity as the County Commissioner.

Many elected officials and officers utilize social media accounts for personal and official purposes. It is critical that they understand that by discussing public matters on private accounts, they are potentially subjecting private accounts to RTKL requests.

If you have any questions or comments, please do not hesitate to contact Chris Voltz or any of the other Municipal and School Attorneys at Tucker Arensberg, P.C.