Archiving Communications in the Face of Upcoming Elections

Best practices and modernization advice for public sector agencies

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Introduction

Public records requests are nothing new. However, the quantity of these requests dramatically increased during the pandemic, further exacerbated by a contentious 2020 election cycle and growing civil unrest. In Washington state alone, requests related to the state's voter registration database grew so much that the legislature changed the law[1], rerouting requests to the Secretary of State's office to relieve the burden on local agencies.

At the same time, the growing use of communication channels such as text messaging, social media and online collaboration tools led to a substantial increase in the complexity of fulfilling those requests. In the third quarter of 2020, a survey by GovQA[2] found that agencies increased time spent responding to public records requests from 438 to 1,658 hours.

In an election year, state and local agencies face increasing demands to fulfill requests related to elections and election candidates. In some states, election-related requests fall to a Special Election Office. In others, records management teams are responsible for fulfilling these requests, impacting their ability to carry out other official duties.

"We know that FOIA requests have been used in bad faith previously in a number of different contexts, not just elections, and that [large language models] are really good at doing stuff like writing FOIAs. At times, the point of the records requests themselves seem to have been that they require work to respond to. If someone is working to respond to a records request, they're not working to do other things like administering an election."

- Zeve Sanderson, director of New York University's Center for Social Media and Politics

The bottom line: Citizens, media and watchdog groups across the nation value government transparency and they are putting it to the test. Agencies must ensure they are prepared to respond to public records requests in accordance with state and federal laws. In an election year, this is even more critical. With some states opening elections as early as June, the race is officially on.

Ramifications of the 2020 General Elections

- Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin all faced accusations of voter fraud in the 2020 elections. As a result, these states were asked to audit communications for traces of potential voter fraud.[1]

- News agencies and civilians have stepped up their efforts in submitting open records requests to report on elected officials' communications ahead of the election, which could directly or indirectly impact election outcomes.[2]

- Since 2020, there has been an increase in threats made against election officials, with as many as 1 in 6 officials having experienced threats because of their job.[3]

Getting started with the basics

Defining a record

Each government agency faces the challenge of identifying public records, especially as technology evolves and new communication channels emerge. What once centered on emails now includes additional text messaging, social media, instant messaging and collaboration applications.

When it comes to defining a record, agencies can take a page out of regulated organizations' playbooks. Robert Smallwood, CEO of Information Governance World Magazine, noted three general guidelines his team provides for what constitutes a business record:

- The content deals with regulatory, compliance or legal issues
- The content is related to a business transaction
- The content is something someone could dispute in the future

Federal and state freedom of information laws require agencies to archive all business-related communications and to produce those records in response to public records requests. However, the details around request processes and timelines vary from state to state.

State public records laws

Public records laws can also vary significantly between states, so agencies must understand the full scope of their state's laws. Here's a quick rundown of some state public records laws and how they differ.

Access to Public Records Act (APRA)

In Indiana and Rhode Island, public records related laws fall under the APRA. This law applies to all three branches of government and requires a requester receive a response in a "reasonable amount of time." The permitted response time varies between the two states. For example, the required time can be extended in Rhode Island from 10 to 20 days for "good cause."

Freedom of Information Act (FOIA)

The FOIA gives any person the right to request access to records of the Executive Branch of the United States Government. While FOIA is a federal law, many states have their own versions similar to FOIA; however, "reasonable time to respond" varies from state to state.

Freedom of Access Act

In Maine, the Freedom of Access Act guarantees the public access to "public records" and "public proceedings" of state and local government bodies and agencies. The Act also grants government offices up to five days to acknowledge a public records request and allows for collection of fees.

Data Practices Act

In Minnesota, the Data Practices Act offers guidance for public records requests. No specific response time is indicated; however, agencies must still respond within a "reasonable amount of time."

Freedom of Information Law (FOIL)

The FOIL in New York gives the public the right to access records maintained by government agencies with certain exceptions. FOIL also differs in response time, providing up to five days for a "reasonable time to respond."

Government Records Access and Management Act (GRAMA)

Utah has the GRAMA, which applies to all three branches of government. It states who has access to records and how the law is enforced. The GRAMA also allows state agencies to collect fees for duplication and labor over 15 minutes. Noncompliant agency employees can be charged with a Class B misdemeanor.

Inspection of Public Records Act (IPRA)

The IPRA applies to all three branches of government in New Mexico and grants agencies up to 15 days to respond to records requests. Additionally, New Mexico agencies face fines of up to $100 per day for noncompliance.

Public Information Act (PIA)

Maryland and Texas each have their own Public Information Act. While Maryland state agencies have up to 30 days to fulfill public records requests, Texas law requires a response to requests within 10 days. Moreover, PIA in Texas specifies all government agencies may withhold records under certain circumstances.

Sunshine Law

The states of Florida, Missouri, South Dakota, and Wyoming fall under Sunshine Law. The four states vary in required response times, fees and penalties, and the law's extension to different branches of government within each state.

Open Public Records Act (OPRA)

The OPRA applies to all branches of government in New Jersey and allows up to seven days for response to requests. Notably, "unreasonable" noncompliance civil penalties include $1,000 for the first offense, $2,500 for a second offense, and $5,000 for a third offense.

Right to Know Law

New Hampshire and Pennsylvania fall under the Right to Know law, which allows for up to five days to respond to public records requests in both states. All three branches of government are included under this law. These states do differ in penalties and fee waivers.

Uniform Information Practices Act

Hawaii is one of the only states to create a government agency — the Office of Information Practices — to exclusively manage public records requests. Hawaii enforces the Uniform Information Practices Act, which applies to all three branches of government. The Act allows agencies up to 10 days to respond to public records requests and permits agencies to collect fees related to request processing.

Meeting records requirements

Agencies do not want to be on the wrong side of complying with records requirements

All signs point to the increasing volume of public records requests continuing. This means more agencies will also experience consequences if they fail to have modern records management systems, processes and technology in place to meet their records management requirements. In recent years, these consequences have included lawsuits, fines and reputational damages:

Michigan clerks sued as activists seek voting records

At least 18 clerks or local officeholders in Michigan have been sued over the last year for rejecting open records requests for data on voters.

Portland paid $167,000 to settle lawsuit over Mayor Ted Wheeler's text messages

In 2024, the Portland City Council agreed to pay nearly $167,000 to settle a 2022 lawsuit that accused the city and Mayor Ted Wheeler of withholding thousands of text messages from a public records request.

Groups sue U.S. Senate candidate seeking correspondence about election and voter fraud

The ACLU of Arizona and the nonpartisan watchdog group American Oversight are suing Pinal County sheriff and U.S. Senate candidate Mark Lamb over what they describe as Lamb's failures to respond to records requests in violation of state law.

Anaheim called out for doing a bad job of keeping public records accessible

Independent investigators looking into alleged corruption and outsized corporate influence at Anaheim City Hall called out city leaders and staff for doing a "terrible job" tracking public records and messages.

Jim Kenney's deleted messages showcased Philly's archiving limitations

In 2019, the Inquirer discovered Jim Kenney used a personal cell phone during his tenure as mayor of Philadelphia and deleted all his messages, professional or otherwise. What became a Right-to-Know case shined a spotlight on Philadelphia's municipal records retention policy sprouting from a lack of modern archiving capabilities.

Agencies desperately need modernization

It's critical to understand that "modernizing" is not an option; it's a necessity. Without the right policies, processes and archiving technology, agencies stand little to no chance of keeping up with the growing requests using outdated systems. Many state laws were created decades ago, and legislation will catch up. Public records no longer refer to email communications alone. Public records now cross email, text, messaging applications, and social media. Managing these records will only become more challenging, if not impossible, without updated systems.

These communications technologies are available — and everyone is using them. A survey report by ArchiveSocial found that 91% of respondents working in the public sector are leveraging social media for citizen engagement, while 72.3% use it for critical response communications.[4]

However, just because everyone is doing it does not mean it's easy. Regarding social media adoption by districts and agencies, 45.5% agreed on the challenge of meeting public record law requirements, a 20.5% increase from the year prior.[5]

What purposes do public entities have for social media?

Citizen engagement

2021	92.3%
2022	91%

Critical response communications

2021	74.4%
2022	72.3%

Employer branding & recruiting

2021	48%
2022	56.5%

Customer care/service

2021	48%
2022	50%

Survey results from "The State of Social Media in the Public Sector" by ArchiveSocial.

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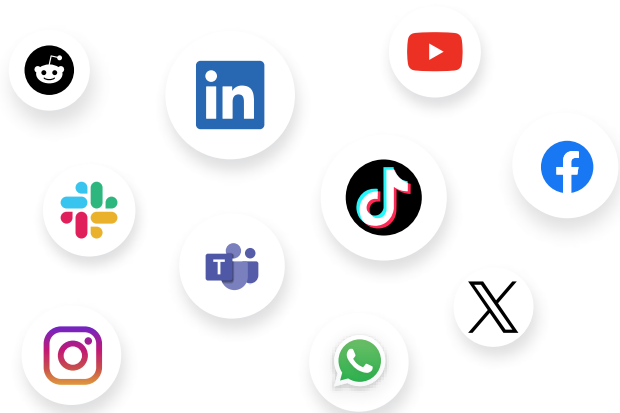
The biggest challenges to social media adoption by agencies and districts

Legend:
- 2020
- 2021
- 2022

Category	2020	2021	2022
Managing controversial topics	16.7%1	6.7%	73%
Compliance with public records laws	8.6%	25%	45.5%
Staffing and support	41%	33.3%	27.3%
Buy in on benefits	8.9%	16.7%	27.3%
Building likes/comments/followers/engagement	18.5%	8.3%	18.2%
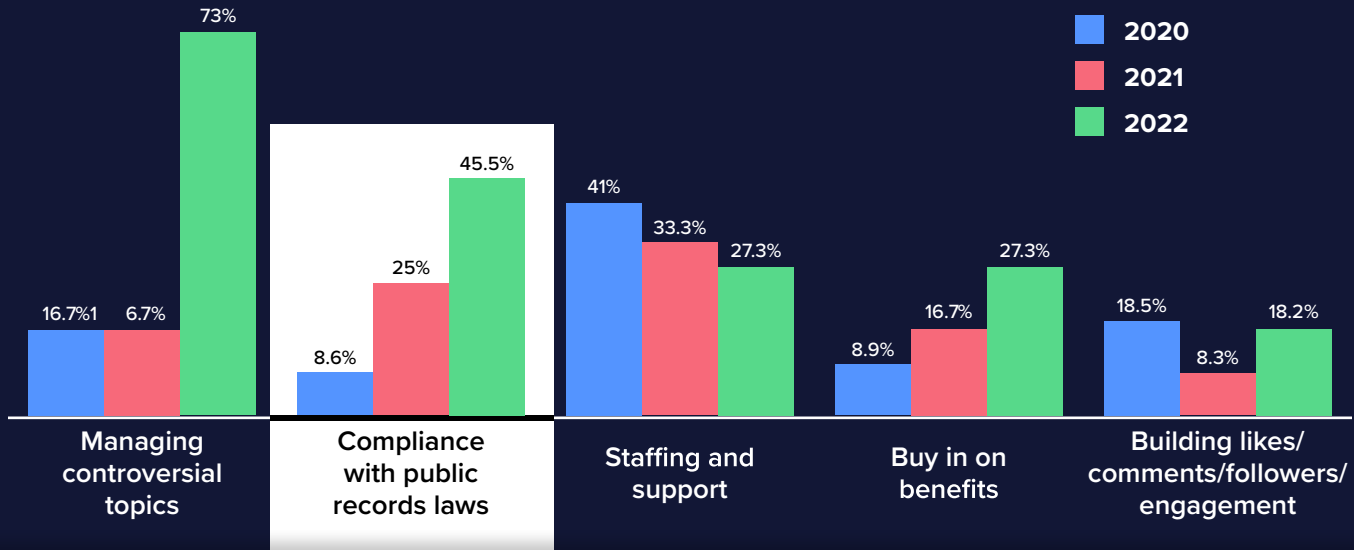
57% **YoY increase** in concern about managing controversial topics and a **20.5% YoY increase** in concern about remaining in compliance with public record laws, which has risen steadily over the past three years.

Government agencies can't afford to be left behind. However, modernization does not consist of technology adoption alone. Whether public agencies use social media to promote a candidate or streamline internal collaboration through messaging applications, they must also manage the use of the adopted technology and employee behavior.

Records management tips for newly elected officials and staff

1. Keep **public-facing communications accounts** and personal accounts separate.
2. Archive all **text messages** — a screenshot is not enough.
3. Understand the full scope of using **government-owned devices vs. BYOD** and set up the proper technology and guard rails to manage your approach.
4. Know when a message is a **transitory record** — and when it isn't.

Streamlining public records request processes

With differing retention rules and permitted response times, each agency has slightly different needs to remain compliant with public records laws. However, all agencies risk litigation, fines, and reputational damage the longer it takes them to respond to requests or produce the requested records. The need for efficiency to save time and resources responding to requests is vital across all state and local governments.

And the answer is NOT the deletion of records. In 2022, [Maryland's General Assembly considered legislation](#) prohibiting Gov. Lawrence J. Hogan Jr. (R) — and future governors — from using texting apps that automatically destroy their messages. While the average citizen can use text-destroying applications, it's not an option for officials and government agency employees. All of these records must be preserved and made available upon request.

With growing demands, agencies are turning to cloud-based archiving solutions that can simplify public records requests by storing every message and file in the same repository, regardless of the communication channel. Cloud solutions have reliable uptime and make it easier for agencies to capture, store, search and produce content.

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Record fulfillment best practices

1. Establish policies and procedures

First, an agency should have dedicated resources responsible for managing and retaining records. Then, the agency should establish policies and procedures to ensure organized and secure records capture and storage.

Agencies should make their policies known and available for inspection. This helps funnel requests through the proper channels. The policies should include the times and places where records can be accessed or requested, the costs for obtaining records (if fees apply), methods for accessing copies, and records retention policies.

2. Train and keep training

All individuals involved in public records requests should receive adequate training in managing and preserving the records they are responsible for. It is crucial that this training is ongoing and emphasizes the importance of proper records management. Educating staff about the uses, risks, and methods of communication is the most effective way to maintain order and avoid litigation.

3. Get more information from requesters

In some cases, requester identification should be a requirement before granting access to certain records. An agency must be able to verify permission before releasing requested records. In most cases, the requester does not have to state a reason for the request. However, your policies may specify different rules for residents and non-residents of your state. Note that certain individuals may have special access rights to records pertaining to themselves.

When requesting information, an agency should ask for clear details about the subject matter and specific timeframe involved. This approach can help the agency save time and resources, especially when dealing with extensive requests requiring significant effort to understand and respond to. In these cases, an agency may be able to use a "burdensome request" exemption if applicable.

4. Know your mandatory timing requirements

Different states have varying definitions for a "reasonable response time," so it's important for an agency to be aware of the specific timing requirements and ensure compliance or deny requests within those limits. Utilizing modern software tools can be particularly useful for tracking response times, especially when dealing with multiple requests in a queue.

5. Understand your exemption codes

Not every records request needs to be fulfilled. It's important to understand the allowable exemption codes used in denying public records requests. Use redaction to securely remove portions of public records that are exempt from disclosure and be sure to generate an exemption log and defensible audit trail. Types of exemptions may include privacy and reputational interests, crime victims and their families, law enforcement records, children and juveniles, correspondence with elected officials, and more.

6. Don't forget your fees

Your state may allow your agency to impose fees for inspecting and duplicating records. These fees allow agencies to recoup some of the costs associated with fulfilling public records requests. Additionally, your agency may provide an estimate of these fees before performing the work.

7. Properly capture and store your records

Your agency should have complete control over its records management. This means that staff know what records are in the system, where they are located, and in what format they are stored. The best way to maintain order over sizable volumes of records is to implement an electronic records management solution.

The ideal solution should include electronic communications data capture, archival and search. This includes:

- Capturing all electronic communications data
- Storing all data in a unified archive
- Enabling advanced search and record discovery
- Fast, easy data exports to fulfill records requests
- Flexible deployment to adhere to existing and future data storage requirements

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Prepare for the future

Public agencies must ensure they are prepared with a modern archiving system, particularly during an election year when public interest and scrutiny from media and oversight groups intensify. A robust archiving system simplifies the management and access of public records, ensuring communications data is accurately recorded and preserved.

Implementing a comprehensive archiving system can streamline processes, reduce costs, and cut down the time needed to respond to public records requests. The system allows for the automatic capture, storage, and retrieval of records and enables recordkeeping managers and staff to address public concerns promptly and accurately.

Adapting to a modern archiving approach not only enhances the efficiency and transparency of government operations but also plays a critical role in maintaining public trust and integrity during the highly scrutinized period of an election year.

Sources

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