

RAC Email and Social Media Training

AND PROPOSED BYLAW REVISION

July 28, 2021

Messages from Personal Accounts About Public Business are Public Records

- ▶ In 2017 in *City of San Jose v. Superior Court* the California Supreme Court held “that when a city employee [*or public official*] uses a personal account [*email, phone, social media*] to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act (CPRA).*

Government Code California Public Records Act Section 6250 *et seq.*

Personal Social Media Pages Can Become a Public Forum

- ▶ If a public official uses a social media platform for public business, then that page can become a public forum subject to the CPRA (and other effects).
- ▶ The way to tell if your personal social media platform is likely to be deemed a public forum consider whether that page is a place where you:
 - ▶ Identify yourself in your public capacity
 - ▶ Use it to address constituents
 - ▶ Share information about public business
 - ▶ Provide access to constituents

Personal Social Media Pages Can Become a Public Forum, Cont.

- ▶ A public forum is the modern equivalent of a public square where the public's business is done.
- ▶ A public forum is subject to the First Amendment.
 - ▶ That means that actions like blocking individuals from that social media account, especially because you don't like or agree with the poster's viewpoint, could be found to be a violation of that poster's constitutional rights.

Brown Act is Back

- ▶ When we are talking about government or public business, then the Brown Act applies.
- ▶ The Brown act is a transparency law that requires that legislative and advisory bodies (like the RAC) to do their work only in noticed and open meetings.

Using Personal Email Accounts for RAC Business

- ▶ If you use a personal email account to send or receive emails on RAC business then:
 - ▶ Your personal email account is subject to searches for California Public Records Act requests and responsive emails will be deemed responsive public records.
 - ▶ Any email (or any communication) that involves RAC business and constitutes a meeting can be found to be a violation of the BROWN ACT.
 - ▶ Remember, an email meeting would be a message that is on RAC business, includes a majority of the RAC members (or there is a series of emails that ultimately involve a majority of the RAC members)
 - ▶ Any email that is a substantive comment on supervisorial redistricting may need to be captured as part of the supervisorial redistricting efforts.

Using Personal Email Accounts for RAC Business

▶ EMAIL TAKE AWAY:

- ▶ Inform staff if you have or intend to use your personal email for any RAC business EXCEPT
 - ▶ Sharing the website link for information on supervisorial redistricting <https://wedrawthelines.sjgov.org/> and/or
 - ▶ Provide the date, time, location, or agenda for supervisorial redistricting meetings, public hearings, or other Committee events, then please inform staff immediately.

Using Social Media for RAC Business

- ▶ Like emails regarding RAC business, using personal social media pages for RAC business results in:
 - ▶ The social media page is subject to search pursuant to the CPRA and responsive posts are public records.
 - ▶ Additionally, substantive comments on redistricting may become part of the redistricting record.
 - ▶ Finally, the page may become a public forum.
- ▶ However, there is also a new wrinkle regarding social media...

Using Social Media for RAC Business, Cont.

- ▶ To provide greater clarity on the actions public officials can and cannot take on social media, Assembly Bill 992 was drafted and signed in September 2020.
- ▶ AB 992 amended the State's Government Code's Brown Act with the goal of providing greater clarity and encouraging greater communication and transparency with the public through social media.
- ▶ [Assembly Bill 992](#), states that a public officials may use and communicate on social media to answer questions, provide information, to solicit information from the public on public business.
- ▶ HOWEVER...

Using Social Media for RAC Business, Cont.

- ▶ Pursuant to AB 992 public officials are prohibited from social media contacts with other commission members on issues of public business.
 - ▶ Specifically, each member is PROHIBITED from responding “directly to any communication on an Internet-based social media platform” regarding an agency matter if the communication is “made, posted, or shared by any other member of the legislative body.”
 - ▶ This prohibition is more strict than non-social media communication which allows communication between a non-voting majority without it violating the Brown Act. Under AB 992, even one LIKE, or comment, thumbs up emoji, or meme on another Commissioner’s page would be a Brown Act violation.

Social Media Take Away

- ▶ If you use your personal social media account for RAC business then:
 - ▶ Your account is subject to search and disclosure under the CPRA.
 - ▶ Your account and comments on it regarding redistricting may become part of the redistricting record kept pursuant to the Elections Code.
 - ▶ Your page may become a public forum, which will limit your ability to block people or take other actions on the page.
 - ▶ You become at risk of Brown Act violations pursuant to AB 992.

Proposed Revision to RAC Rules of Procedure Per AB 992

- ▶ **Newly added Section 20 (Page 9):**
- ▶ Committee Members and Alternates shall not communicate on the subject of the redrawing of Supervisorial Districts of the County on any internet based social media platform *except* to provide the website link for information on supervisorial redistricting <https://wedrawthelines.sjgov.org/> and/or to provide the date, time, location, or agenda for supervisorial redistricting meetings, public hearings, or other Committee events.
 - A. Any allowed communication on social media shall comply with the Brown Act, as amended by Assembly Bill 992 approved by the Governor on September 18, 2020.
 - B. “Communicate” or “Communication” as used in this section includes written, visual, or photographic posts, comments, or responses, “shares”, “retweets”, digital acknowledgement or response to posts, comments, or responses, and the use of digital icons (“emojis”).

AB 992 can be found at:

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB992

Questions?