

When a Facebook Post Becomes a Public Record Subject to the Right-to-Know Law

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Social media has become the modern town square for many public officials. Whether it's sharing a recap of a school board meeting, celebrating a community event, or commenting on local issues, platforms like Facebook and Instagram are now a routine part of how leaders connect with their constituents. But what happens when those online conversations intersect with Pennsylvania's Right-to-Know Law, 65 P.S. § 67.101, *et seq.* (the "RTKL")? The Pennsylvania Supreme Court considered this question recently in *Penncrest School District v. Cagle*, 341 A.3d 720 (Pa. 2025), a case that sheds new light on how personal social media use by public officials can blur into the purview of the RTKL.

In May 2021, controversy arose in the Penncrest School District ("Penncrest") after a high school library display included several books addressing LGBTQ+ issues. A third-party contractor photographed the display and posted it to Facebook, where a school board member shared the image on his personal account, adding comments denouncing the display as "evil" and suggesting he would raise the issue at a future school board meeting. Another board member also shared the post without commentary. The incident drew local media coverage, and a resident, Thomas Cagle, filed a request under the RTKL seeking school board members' emails and social media posts related to the incident. While Penncrest released some district emails, it denied the request for board members' social media posts, arguing that such content came from personal accounts. Cagle appealed to the Pennsylvania Office of Open Records, which granted his request, reasoning that the board members' posts directly related to district business, citing prior cases that emphasized substance over account ownership.

Penncrest petitioned for judicial review, arguing that personal Facebook posts fell outside the RTKL's definition of "records." The trial court disagreed, holding that posts by elected officials about school activities, even on personal accounts, could constitute public records because they involved district business. The trial court found that the board member's comments about the library display were made in his official capacity and, therefore, subject to disclosure.

Penncrest appealed, and in 2023, the Commonwealth Court, sitting en banc, vacated the trial court's decision. While acknowledging that, under the RTKL, the analysis regarding the disclosure of social media posts as public records lacked clear precedent, the Commonwealth Court crafted a framework that considers factors such as whether the account bore the "trappings" of an official page and whether the posts evidenced agency activity.

Concluding that the trial court's analysis was too narrow, the Commonwealth Court remanded the case for further factual development. The Pennsylvania Supreme Court later granted review to decide whether the RTKL requires disclosure of school board members' social media posts on private accounts about official school matters.

Writing for the majority, Justice Mundy reaffirmed that the RTKL provides a single, uniform definition of a "record" and established that courts must apply the statute's two-part test to all forms of communication, including social media posts. Under Section 102 of the RTKL, a record is information that (i) "documents a transaction or activity of an agency" and (ii) is "created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency." The Court emphasized that the statute's plain language is unambiguous: "[t]hese provisions, unambiguous on their face, provide for a two-part inquiry that applies equally to all forms of communication, including Facebook posts." The central question in this case was whether Facebook posts made by Penncrest school board members about a controversial LGBTQ+ book display in a school library were records "of the agency" and thus subject to disclosure. While the trial court had found that they were, the Commonwealth Court remanded the case, holding that the trial court's analysis was incomplete. The Supreme Court ultimately agreed that additional fact-finding was necessary.

Notably, the Court clarified that it was not adopting a new, social-media-specific test but rather requiring courts to apply the established RTKL framework in a context-sensitive manner. As the Court explained, whether something is “of an agency” is a “fact-specific inquiry” and must consider the substance and circumstances of the communication rather than its platform or location. Quoting earlier precedent, *Grine v. County of Centre*, 138 A.3d 88 (Pa. Cmwlth. 2016), the Court noted: “The location of the record or an agency’s possession does not guarantee that a record is accessible to the public; rather, the character of the record controls.” To make this determination, courts may consider several relevant factors, including whether the official was acting in an “official capacity,” whether the account had the “trappings” of an official agency account, whether the posts were created, received, or retained in connection with agency business, and whether the content “prove[s], support[s], or evidence[s]” agency activity.

The Court also invoked a vivid analogy from the U.S. Supreme Court’s decision in *Lindke v. Freed*, 601 U.S. 187 (2024): was the official speaking “at the meeting” or “at the backyard barbecue”? That framing highlights the key distinction between a personal viewpoint and agency business. In practice, when an official uses their account to recap votes, announce decisions, or provide role-related updates, they cross into the realm of public records subject to disclosure.

The Court stressed the importance of analyzing the context of social media posts, given that “many use social media for personal communication, official communication, or both—and the line between the two is often blurred.”

Ultimately, the Court held that the Commonwealth Court properly remanded the case for further proceedings under the traditional two-part test, concluding: “Today, we reaffirm that this two-part inquiry is the only test to be utilized when determining whether disclosure of information, regardless of its form, is required under the statute.”

The *Penncrest* decision carries significant implications for transparency, governance, and the conduct of public officials in Pennsylvania. First, it confirms that the RTKL is flexible enough to adapt to evolving technologies without the need for judicial invention of new tests. The statute’s definition of “record” applies across all media, ensuring that public access does not depend on the platform used. Second, the opinion underscores the importance of context.

Public officials can no longer assume that personal accounts are immune from disclosure simply because they are labeled “private.” If those accounts are used to announce, explain, or document agency action, their contents may be subject to public access under the RTKL. At the same time, purely personal posts, such as family photos, vacation updates, or unrelated commentary, remain outside the statute’s scope. Third, the case highlights the ongoing tension between transparency and privacy in the digital age. The Court’s refusal to create bright-line rules reflects an appreciation for that complexity. Instead, the decision leaves lower courts with discretion to make case-specific judgments, guided by the statutory test and informed by contextual factors. This approach ensures flexibility but may also generate continued litigation as courts and agencies apply the standard in varied circumstances.

Finally, the decision places responsibility on public officials to exercise caution in their use of social media. The line between personal and official capacity can be blurred, and posts made casually can later become the subject of public records requests. Agencies may wish to adopt clearer policies for officials’ use of social media, both to protect transparency and to provide guidance to employees navigating these boundaries.

For Pennsylvania’s local municipalities, authorities, counties, and its elected and appointed officials, employees, and citizens, the message is clear: the principles of open government remain constant even as technology changes the way communication occurs with the public. In Justice Mundy’s words, “[t]hese statutory requirements are the touchstone,” and they will guide courts in ensuring that the public continues to have meaningful access to government records in the digital era.

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