

The Social Layer of Freedom of Information Law

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Social media allows for an unprecedented amount of informal but structured dissemination and analysis of information. However, US freedom of information law has failed to harness the power of these networks in a way that amplifies public knowledge of government information. For example, the groundbreaking Legislative Branch Appropriations Act of 2010 (“LBAA”) requires that Congress release Congressional expenditure reports in electronic format. For the first time, there is the possibility of the release of digital structured data, which allows for the manipulation and search of information based upon set criteria, by and about Congress. But the LBAA fails to require the release of data in an optimal format. Indeed the Senate recently announced that in November 2011 it will release the first set of information as a PDF, a formatted document. The LBAA appears to allow the Senate to use this difficult-to-manipulate format, as PDFs meet the minimal statutory criteria of being “searchable” and “itemized.” Thus, while a major step forward in government transparency, the LBAA does not go far enough to force the release of truly useful structured data from the government and allow meaningful exploitation of social media websites that thrive on simple and effective access to information.

Similarly, the Freedom of Information Act (“FOIA”), the major US sunshine law, suffers from a related, but worse, statutory deficiency. FOIA requires that an agency provide a “record” in “any form or format requested by the person if the record is *readily reproducible* by that agency in that form or format.” Thus, FOIA, like the LBAA, allows agencies to produce information in less-than-optimal formats, without even the requirement that the data be searchable or itemized.

Social media is a prism through which this problem can be addressed. By analogy to network layers theory, there are several core layers of information provided by freedom of information laws (i.e., when/where is something happening, who is involved in the discussion, what is being discussed, how/why is a certain conclusion reached). Social networking sites like Facebook and Twitter, as well as newer social ideation sites like Ahhha and Socrata, can be viewed as part of an additional and related “social layer” of FOIA where much information can be disseminated, manipulated and analyzed in structured ways to networks of interested persons, allowing for the creation of additional information and hence a greater understanding of government operations.

I argue that governments therefore should provide information in the social media formats and forums, which will vary depending on the layer of the request and responsive information, that best meet the public’s analytical needs. For example, a request asking whether a meeting has taken place could receive a response by way of a one sentence Twitter-style post, whereas a request seeking data that was discussed at that meeting might require use of a newer social ideation tool. Copyright law generally stands in support of this proposal due to the inability of governments to claim

copyright over their works, although some minor alterations would need to be made to prevent Facebook and other social media sites from claiming ownership over transformed public information, and trade secret and patent law may have to be reconsidered in this context. Thus, the LBAA, FOIA and other related federal and state laws must be amended to allow for the public's development and exploitation of the social layer of government information.