Open Government in the (Newer) Digital Age

RU ReD 4it?

Kara A. Millonzi, Professor of Public Law and Government
School of Government
University of North Carolina at Chapel Hill

AGENDA

- Working in the (newer) digital age
- What is a public record?
- What does it mean to be a public record?
  - Retention
  - Public Access
- Common issues with e-public records
- Staying out of trouble

Ryan Lochte and 3 other Olympic swimmers reportedly robbed at gunpoint in Rio

Surveillance video shows U.S. swimmers after claimed robbery in Rio

Report: Gas station video indicates Lochte, U.S. swimmers lied about robbery story

RYAN LOCHTE
My Story Was Mostly True
TAPE EDITED AT CRITICAL POINT

PUBLIC RECORDS

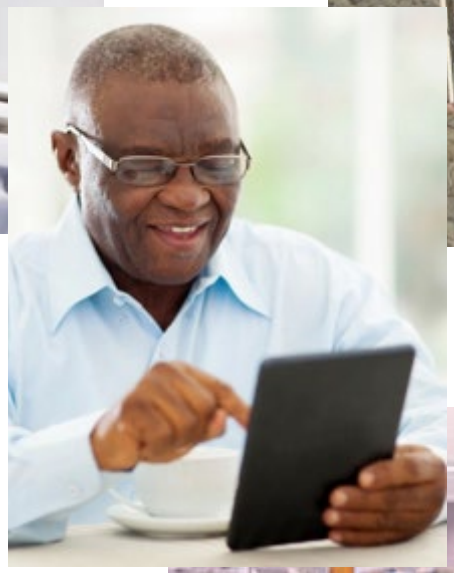
A Public Record is….

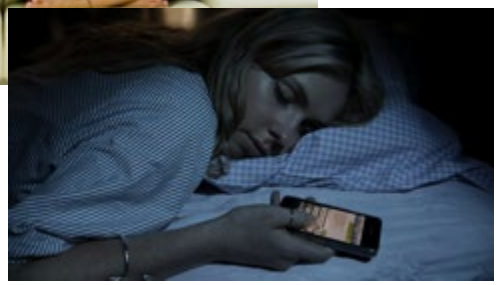
a record that is made or received in connection with public business.

Rule of Thumb

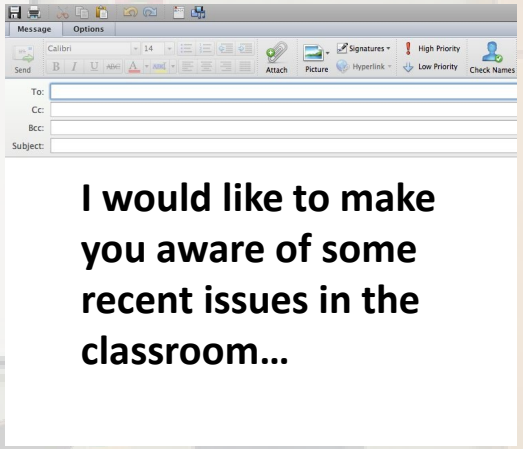
Everything document, fax, email, text message, Facebook post, tweet, instagram, etc. related to your public job duties is a public record!

Location is Irrelevant





Mr. Smith sends an e-mail to a parent requesting a conference from his school-issued e-mail address.



What does that mean?

Retention Requirements

- Must save/preserve a public record according to record retention schedules
- Record retention schedules are based on substantive content of the public record

Public Access Requirements

- Public has a right to inspect record and a right to copy record unless there is a specific statutory exception /exemption

Ms. Ramirez sends a WhatsApp message to a group of parents, from her personal tablet, after work hours, informing them that tomorrow is pajama day.

What does that mean?

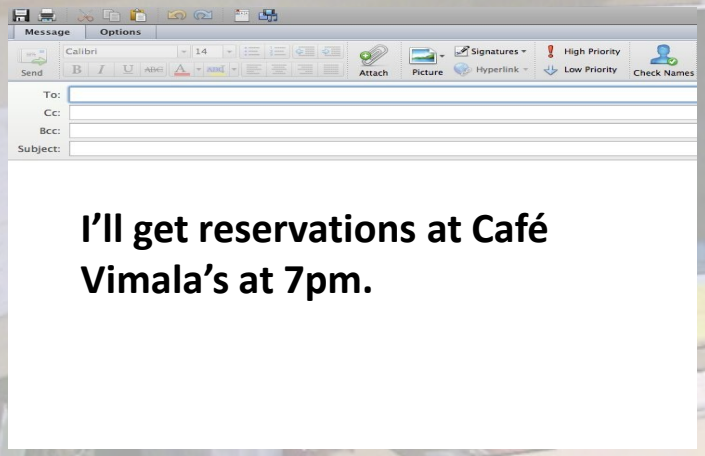
Retention Requirements

- Must save/preserve a public record according to record retention schedules
- Record retention schedules are based on substantive content of the public record

Public Access Requirements

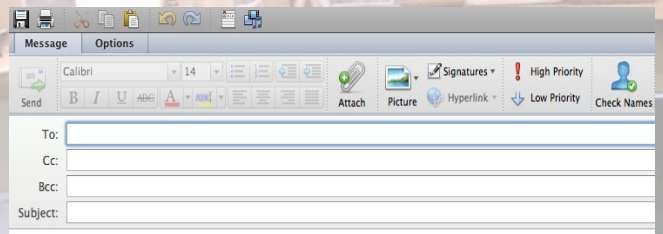
- Public has a right to inspect record and a right to copy record unless there is a specific statutory exception /exemption

Mr. Spencer sends an email from his school-issued email account, during work hours, to his friend about dinner plans for the evening



I'll get reservations at Café Vimala's at 7pm.

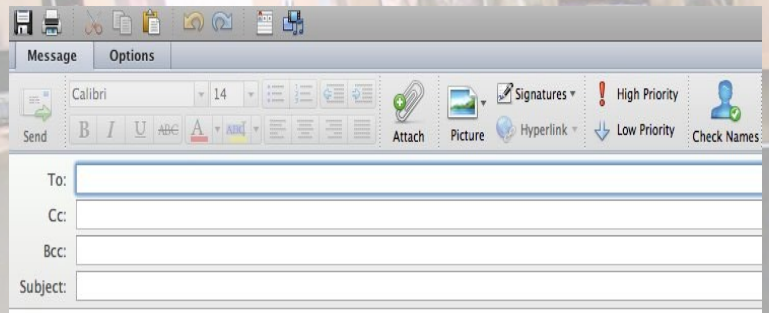
Mr. Spencer sends an email from his school-issued email account, during work hours, to his friend about dinner plans for the evening



I'll get reservations at Café Vimala's at 7pm.

I'm going to need a strong drink because Principal Loudmouth has been barking orders at me all day

Mr. Spencer sends an email from his school-issued email account, during work hours, to his friend about dinner plans for the evening



I'll get reservations at Café Vimala's at 7pm.

I'm going to need a strong drink because Principal Loudmouth has been barking orders at me all day.

Also, attached is the latest draft of the new school uniform policy. Let me know your thoughts by Friday.

What does that mean?

Retention Requirements

- Must save/preserve a public record according to record retention schedules
- Record retention schedules are based on substantive content of the public record

Public Access Requirements

- Public has a right to inspect record and a right to copy record unless there is a specific statutory exception /exemption

During his Saturday walk in the park, Vice Principal Miller edits a Google doc, with a draft proposal for a new school program targeted to at-risk students

What does that mean?

Retention Requirements

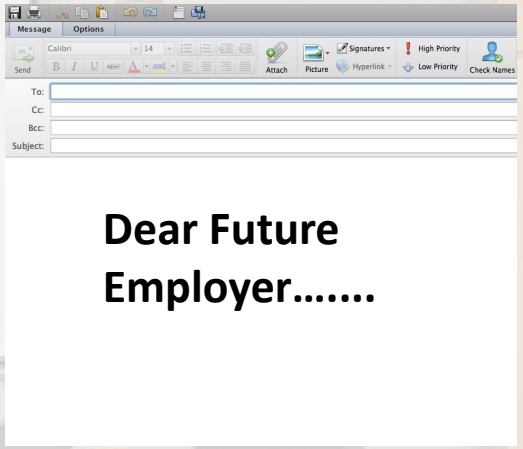
- Must save/preserve a public record according to record retention schedules
- Record retention schedules are based on substantive content of the public record

Public Access Requirements

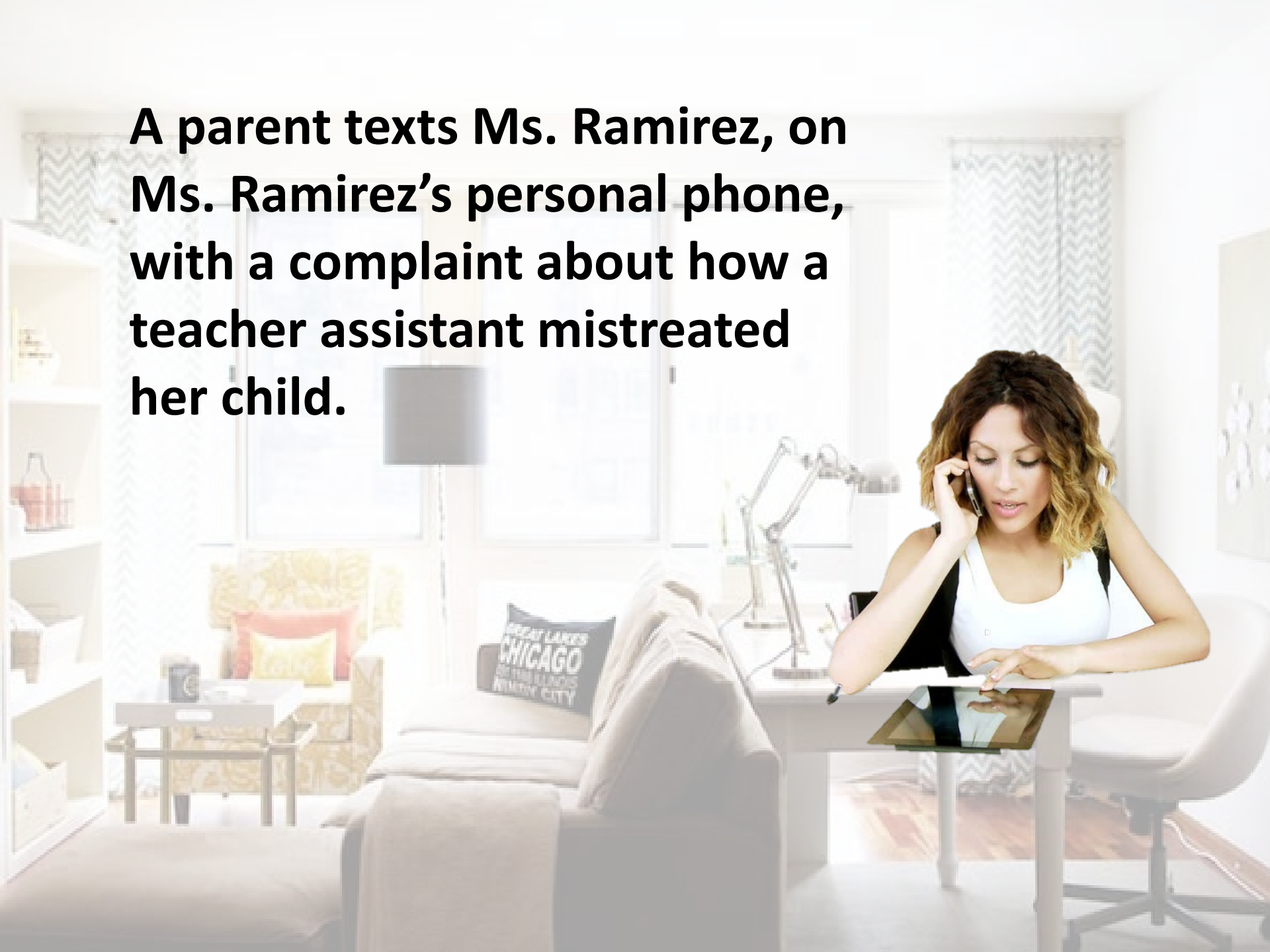
- Public has a right to inspect record and a right to copy record unless there is a specific statutory exception /exemption

Kindergarten teaching team holds Skype meeting to talk about lesson plans for the quarter.

Mr. Smith sends an e-mail from his work-issued email account inquiring about a job in another state. A coworker requests a copy of the email.



A parent texts Ms. Ramirez, on Ms. Ramirez's personal phone, with a complaint about how a teacher assistant mistreated her child.



What does that mean?

Retention Requirements

- Must save/preserve a public record according to record retention schedules
- Record retention schedules are based on substantive content of the public record

Public Access Requirements

- Public has a right to inspect record and a right to copy record unless there is a specific statutory exception /exemption

Common Statutory Exceptions

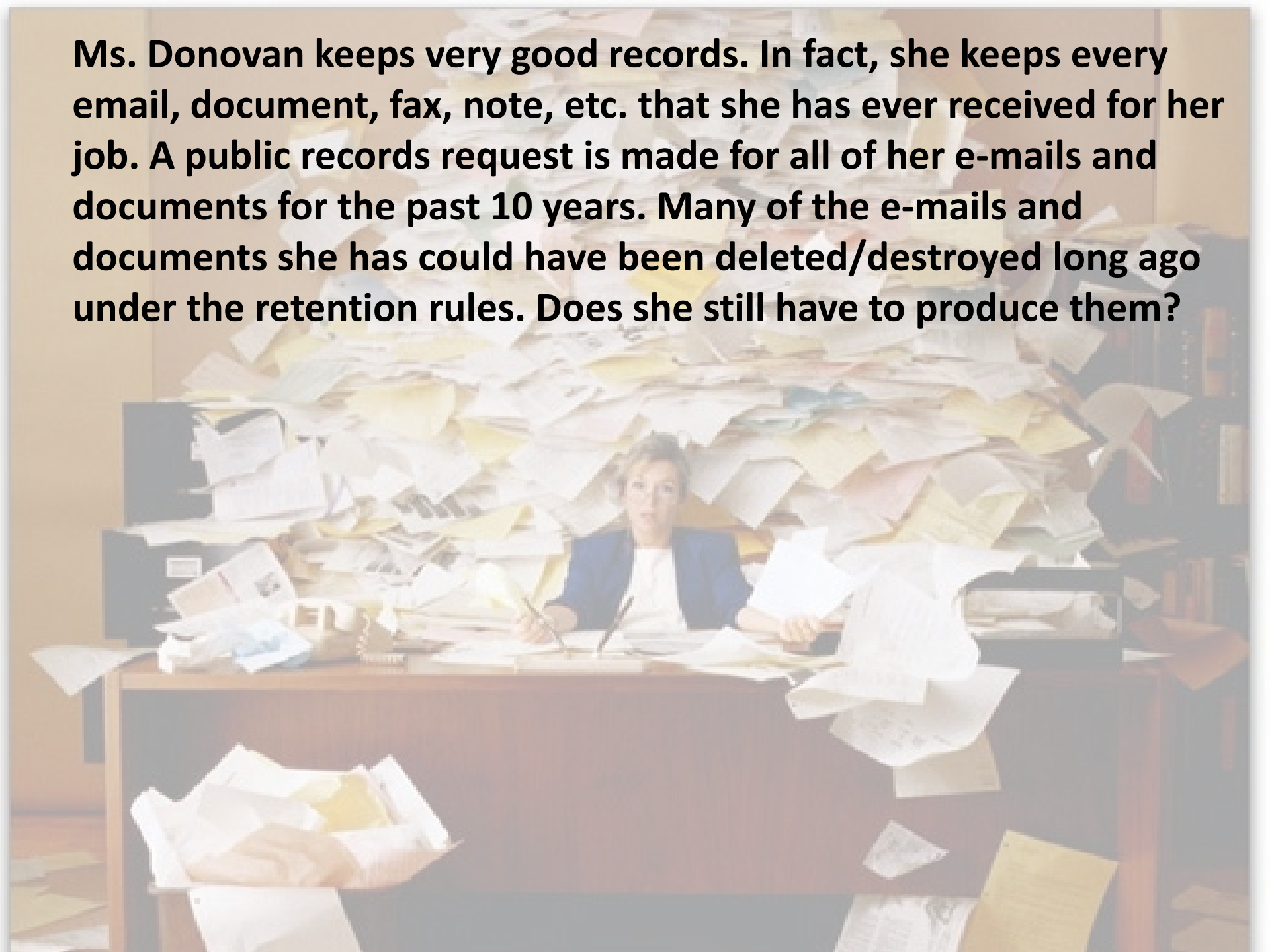
Confidential Records	Non-Public Records	Confidential Records for Limited Time Period
Release is prohibited except as authorized by statute	Release is permitted but not required	Release is prohibited, but only for a limited period of time
• Certain personnel information • Trade secrets • Income or receipts info on tax records • Social Security Numbers • Certain Personal Identifying Information • Certain Medical Information • Certain law enforcement records (except by court order)	• Certain law enforcement records • Attorney/client records (client may release) • Economic development information (except trade secrets) • Public enterprise (utility) billing information (except personal identifying information and Social Security Numbers)	• Certain bidding information • Minutes of closed sessions

Personnel Records are Confidential

EXCEPT

- Name
- Age
- Date of date of original employment/appointment
- Terms of contract,
- Current title,
- Current salary (total compensation),
- Salary history,
- Date and amount of most recent increase or decrease in salary,
- Date and type of each personnel action (promotion, demotion, transfer, suspension, separation), or other change in position classification,
- Office to which currently assigned,
- General description of reasons for promotion,
- Copy of final notice of dismissal for disciplinary reasons setting forth the bases for the dismissal

Ms. Donovan keeps very good records. In fact, she keeps every email, document, fax, note, etc. that she has ever received for her job. A public records request is made for all of her e-mails and documents for the past 10 years. Many of the e-mails and documents she has could have been deleted/destroyed long ago under the retention rules. Does she still have to produce them?



What does that mean?

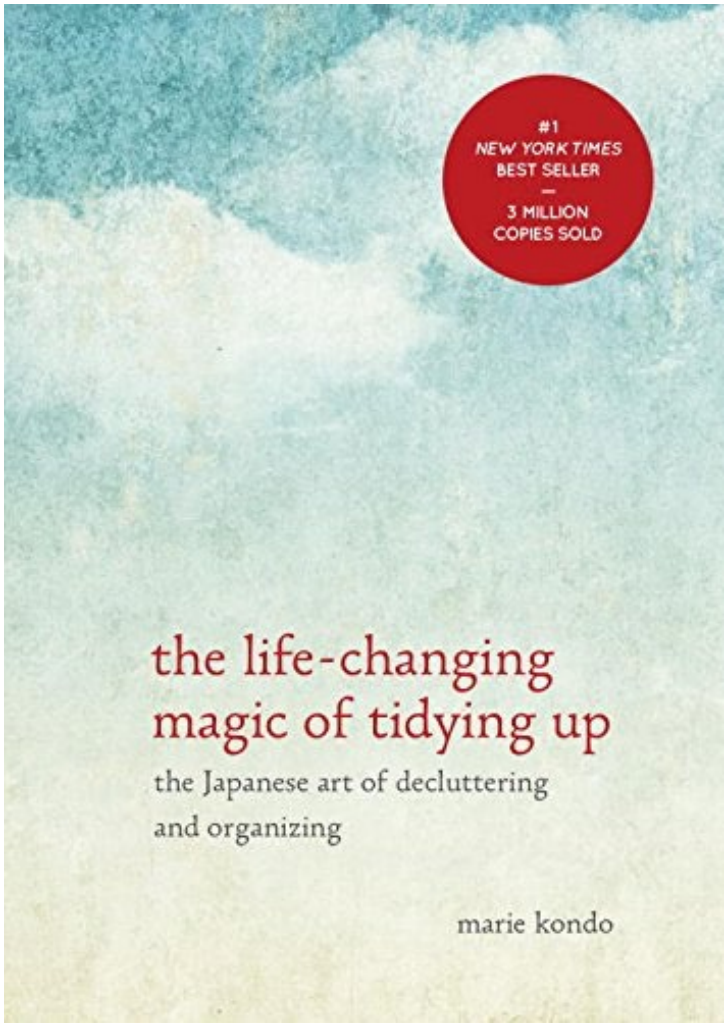
Retention Requirements

- Must save/preserve a public record according to record retention schedules
- Record retention schedules are based on substantive content of the public record

Public Access Requirements

- Public has a right to inspect record and a right to copy record unless there is a specific statutory exception /exemption

If You Don’t Need It, Heave It



Broad Right of Public Access

True or False

- Only a North Carolina citizen may make a request for access to a public record.

True or False

- A school unit may require a person requesting access to a public record to make the request in writing.

True or False

- A school unit may inquire as to why a person is requesting access to a public record.

True or False

- A school unit may deny access to a public record if it believes the person requesting access will use the information for an improper purpose.

True or False

- A school unit must compile information to create a record at the request of a citizen.

True or False

- A school unit must provide access to its computer system to any person that requests to view electronic information.

True or False

- If a person requests an electronic copy of a public record, the school unit can instead print out the record and provide a hard copy.

Assessing Costs

"Mind if I sneak in and make a quick 500 copies?"

Assessing Costs

- Cannot assess costs of providing access only
- Can assess direct costs of providing copies
- Special charge authorized if request for copies involves "extensive use of information technology resources or extensive clerical or supervisory assistance…."

Is it a <u>Record</u> made or received in connection with public business?

Yes

No

Must the record be retained (and for how long)?

Does the public have access to the record?

Do NOT have to keep record or provide public access

Based on retention schedules; depends on substantive content of record

Is there a statutory exemption?

Yes

No

Does the exemption prohibit disclosure?

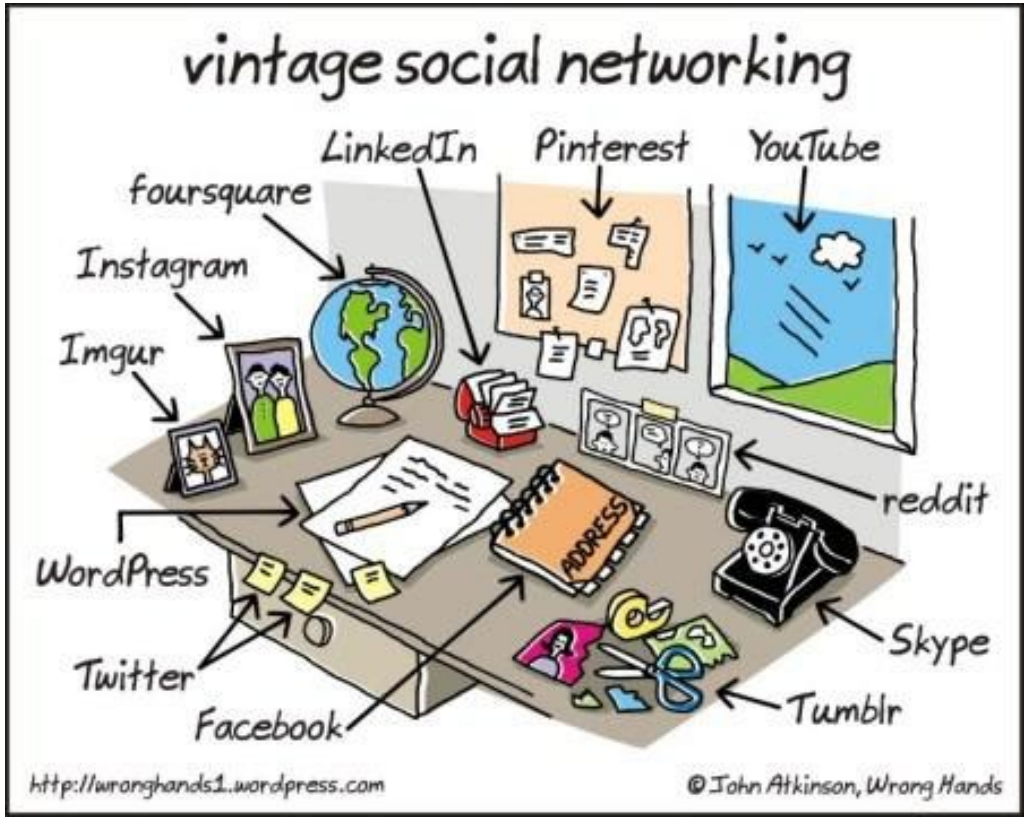
Does the exemption simply not require disclosure?

Public has right to inspect and right to a copy of record

May NOT Give Public Access to Record

May Give Public Access to Record, but Do Not Have To

E-PUBLIC RECORDS



Citizen: u and wife want to meet us for dinner at 6 2moro?

Mayor: same place as last Fri? scallops were delish

Citizen: yeah. btw–Y potholes on Jones St. not fixed yet? ruining my car shocks. mayoer promised theyd be fixed 6 mnths ago. As usual LOPSOD

Mayor: BMY publ. werks crew painfully slow. will direct to fix asap

Citizen: Thx. it's doog to know peeps in high paces :-}

Mayor: had 2 pull rank. crew will get there early next week at latest.. ITMT take Smith st.

Citizen: YTM. where/when is next council mtg?

Mayor: in 3 weeks. moved 2 library mtg. room. 7pm. CU 2moro

Social Media

Empower the People

Texting

Self-Destructing

Dating

meet me

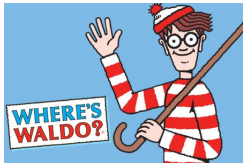
GRINDR

SKOUT™

DOWN

omegle

What's the data?

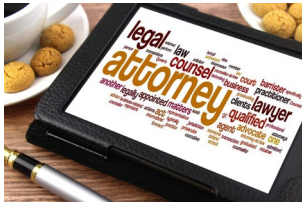


Where's the data?

How do you capture and save it?

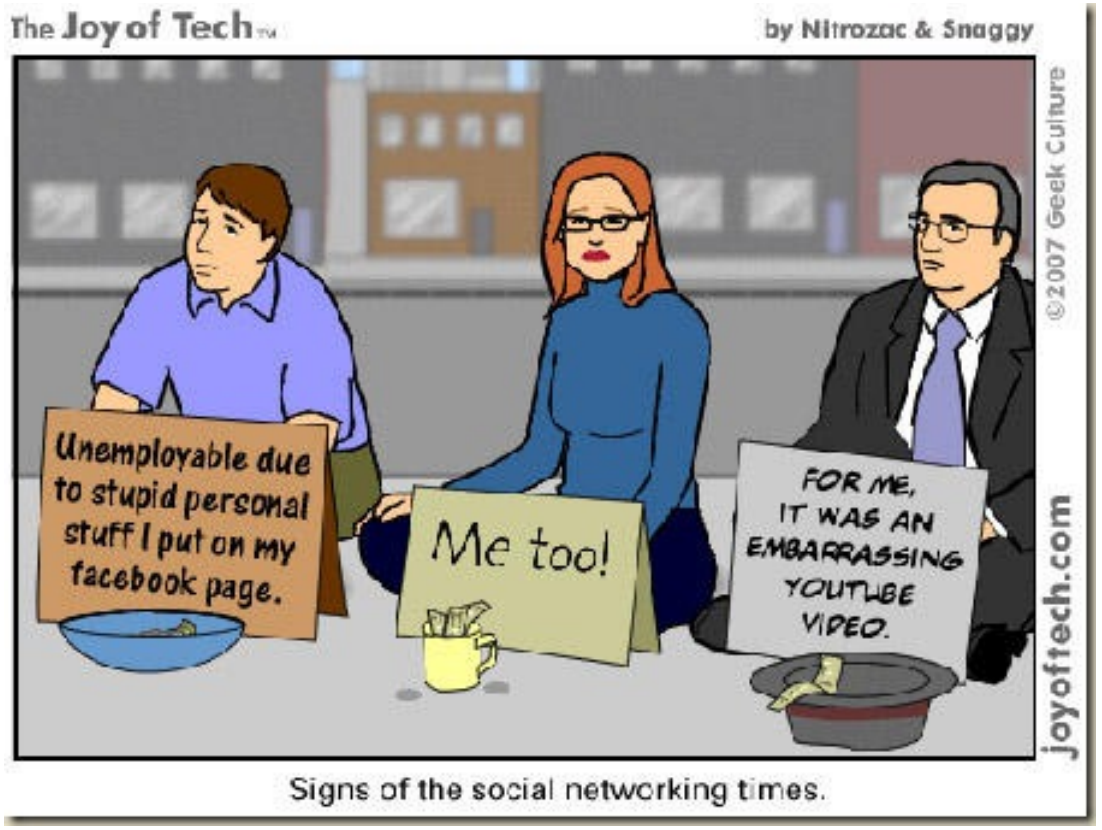
Who's in charge?

What's your favorite teenager doing?



What is YOUR role?

AVOIDING TROUBLE



Travel - State Dept
@TravelGov

Follow

Not a “10” in the US? Then not a 10 overseas. Beware of being lured into buying expensive drinks or worse—being robbed. #springbreakingbadly

RETWEETS 19 LIKES 23

1:20 PM - 30 Mar 2016

Travel - State Dept
@TravelGov

Follow

Some have been offended by our earlier tweet and we apologize that it came off negatively (1/2)

6:00 PM - 30 Mar 2016

62 69

Travel - State Dept
@TravelGov

Follow

We see many Americans fall victim to scams each year & want all to be careful while traveling 2/2

6:50 PM - 30 Mar 2016

25 43

[redacted]

@[redacted]

Follow

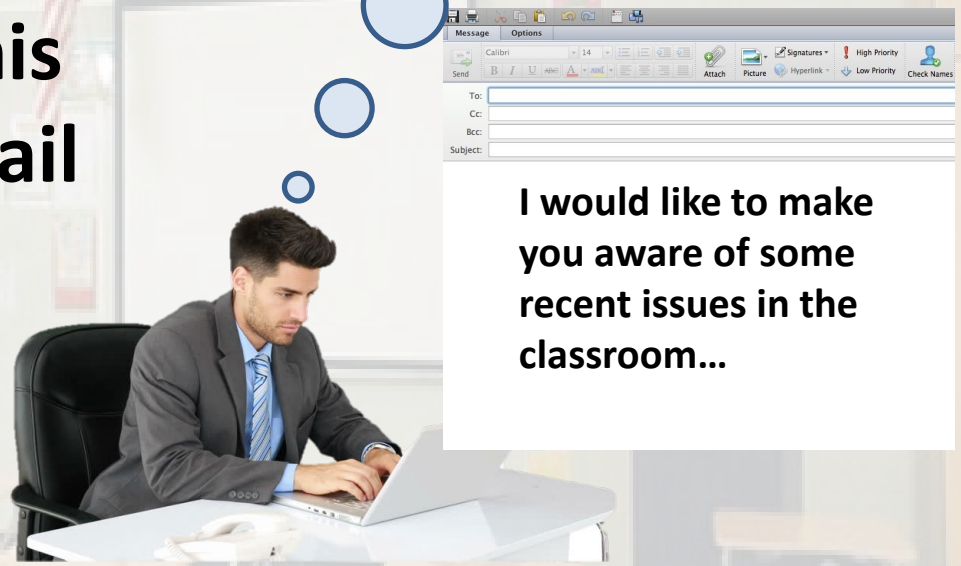
[redacted]y is just a talented little puke face! You just want to backhand him all the time.

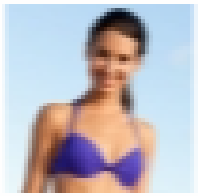
RETWEETS 129

LIKES 95

Your child is behaving really really really badly!

Mr. Smith sends an e-mail to a parent requesting a conference from his school-issued e-mail address.





Anna Jones

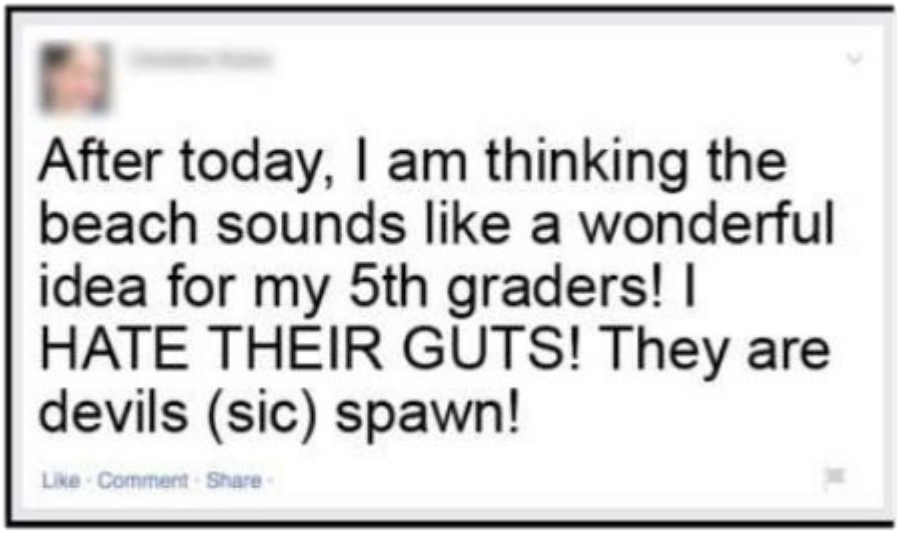
Had enough of the kids today – no one at the school ever supports me.

Like · Comment · 9 minutes ago ·

4 people like this.

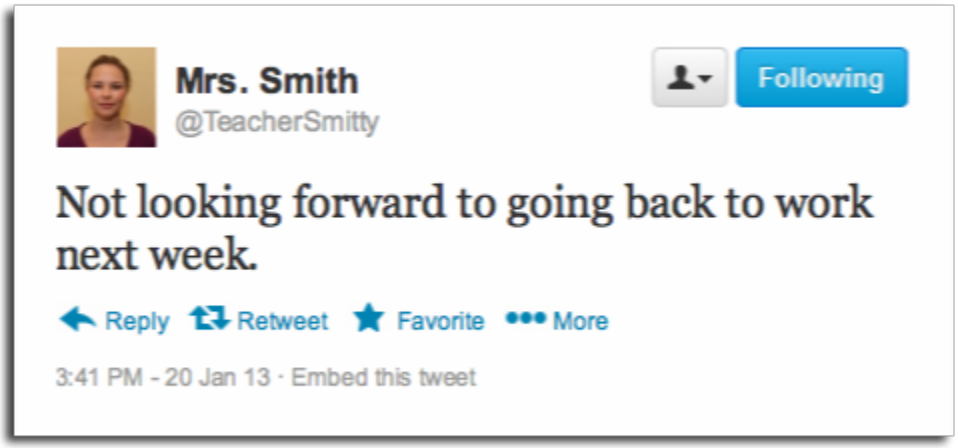
Write a comment ...

Well I have an annual IEP this morning with lawyers and crazy parents. The student is a hot mess but so sweet! So after work I'm hitting happy hour at least I have something to look forward too!!!! Deep breath.....I'm going in!
Share


After today, I am thinking the beach sounds like a wonderful idea for my 5th graders! I HATE THEIR GUTS! They are devils (sic) spawn!
Like · Comment · Share ·

» "Had a good day today, didn't want to kill even one student Now Friday was a different story …"

» "Does anyone know where I can find a very discrete hitman, it's been that kind of day."

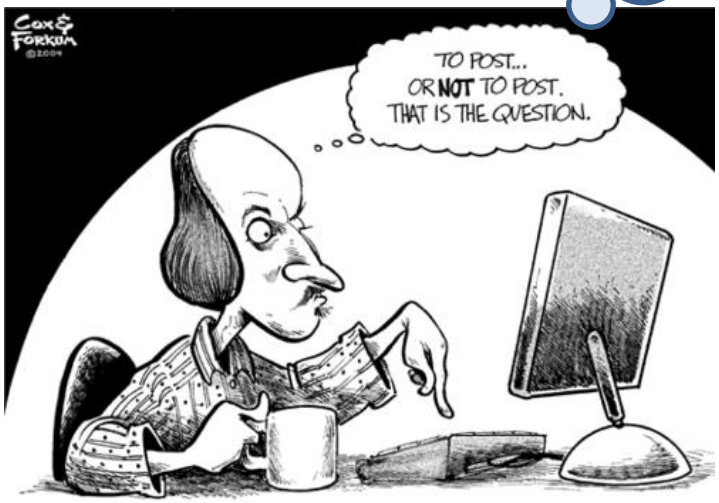


But what about Free Speech?

- **Speech as an Employee** – **Not protected**: "When public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes . . . ."
- **Speech on Matters that are NOT of Public Concern** – **Not Protected**: "If a school employee does not speak on a matter of public concern . . . The employee has no First Amendment cause of action . . . "
- **Speech as a citizen on matters of public concern** – **Sometimes Protected**: If the employee "speaks as a citizen on a matter of public concern" then there is the possibility of a First Amendment claim. Balancing test.

myspace

- Is it a public record?
- Is it against employer policy?
- Would I want my [mother, father, significant other, 1st grade teacher, mentor, great-grandmother, neighbor, child, student, potential employer, etc.] to see it?



School Social Media Policies

- Reasonable expectation of privacy?
- Expectations of employer for use, on and off the job?
- Protecting public image?
- Enforcing anti-harassment and anti-discrimination?
- Address free speech rights?
- Procedures for retaining and producing records according to public records laws?