

## **§ 8-44-109. Electronic communication; Internet forums**

**(a) A governing body may, but is not required to, allow electronic communication between members by means of a forum over the Internet only if the governing body:**

**Comment:** The members of the governing body need to discuss the possible use of the forum at a public meeting and decide at a public meeting that the body (1) wants to allow its members to use an internet forum to communicate; (2) understands what the law requires regarding implementation and use of such a forum; and (3) approves of submitting a plan to the Office of Open Records Counsel (hereinafter "OORC") as required by Tenn. Code Ann. Section 8-44-109(c). The plan submitted to the OORC should include an adopted resolution, ordinance, or the minutes from the meeting where the above mentioned was discussed.

**(1) Insures that the forum through which the electronic communications are conducted is available to the public at all times other than that necessary for technical maintenance or unforeseen technical limitations;**

**Comment:**

The plan submitted to the OORC should address the following:

1. Has the server that the forum will be housed on been identified?
2. Describe the server.
3. What is the performance history of the server that the forum will be housed on?
4. Who will monitor the accessibility of the forum to the public and how will the monitoring be done?
5. What will be the exact role (job duties) of the individuals monitoring the forum?
6. Who will be responsible for the technical maintenance of the forum?
7. Will there be information on the governing body's main webpage informing the public of whom to contact if there is a problem accessing the forum?

**(2) Provides adequate public notice of the governing body's intended use of such electronic communication forum;**

**Comment:**

The plan submitted to the OORC should address the following:

1. Will the format of the notice be consistent with and located in the same place(s) as the other notices published by the governing body?
2. Will the adequate public notice be placed in a newspaper of general circulation?
3. Does the governing body intend to have a public hearing where the public has an opportunity to comment on the governing body's intended use of an internet forum?
4. The OORC suggest that the governing body's IT department or whomever is in charge of monitoring and maintenance of the forum dedicate the initial posting on the forum to explaining its purpose and intended use. It is also suggested that this initial posting remain on the forum for as long as the forum is in operation.

**(3) Controls who may communicate through the forum;**

**Comment:**

The ORRC suggest that a Terms of Use Agreement be developed and implemented so that the governing body has better control over who communicates on the forum. A template Terms of Use Agreement is available on the OORC website. The following issues should be addressed in the plan submitted to the OORC in some manner:

1. Has a Terms of Use Agreement been developed? If the answer is no, why?
2. Does the Terms of Use Agreement specify that only the members of the governing body are allowed to post to the forum and no one else?

3. Will the ability to post to the forum require that a password be used? If not, what measures will be in place to ensure that only members of the governing body are allowed to post comments?
4. Will a password be provided to each member of the governing body or will the member be allowed to choose his/her own password?
5. Will the password be required to contain complex characters so that it cannot be easily compromised?
6. Will the passwords be changed or reset on a regular cycle? If the answer is yes, will members of a governing body be notified prior to the expiration of their current password?
7. Will a member of a governing body be locked out of his/her account after a certain number of incorrect password attempts?
8. The OORC also suggests that until such time as a member of a governing body signs a Terms of Use Agreement and receives a copy of the governing body's plan in its entirety and a copy of PC 175, Acts of 2009, the member not be allowed to post on the forum.

**(4) Controls the archiving of the electronic communications to ensure that the electronic communications are publicly available for at least one (1) year after the date of the communication; provided, that access to the archived electronic communications is user-friendly for the public; and**

**Comment:**

The plan submitted to the OORC should address the following:

1. Who will be responsible for ensuring that the postings are accessible for at least one (1) year?
2. How will the responsible party ensure that the records are available for at least one (1) year and that the postings are not deleted or edited during that time frame?
3. Will postings be deleted after they have been on the forum for one (1) year?
4. If posting are deleted after one (1) year, how will this be done? Will there be an automatic deletion of all postings once they have been on the forum for a year, or will there be a manual deletion of the postings over one (1) year old?
5. If a posting is part of a discussion thread where some of the postings are over one (1) year old and some are not, will the older postings be deleted or will they remain as part of the thread until all related postings are over a year old?
6. After postings are deleted, will they still be accessible to the public in some format?
7. In order to make the forum more user-friendly, the OORC suggest that a search engine be incorporated so that the public can search by keywords.

**(5) Provides reasonable access for members of the public to view the forum at the local public library, the building where the governing body meets, or other public building.**

**Comment:**

1. What public building has been identified as the location where public access will be provided?
2. During what hours will computer(s) be available for the public to access/view the forum?
3. How many computers will be available in the public building for the purpose of accessing the forum? Is there at least one computer in the public building that will be dedicated solely to accessing the forum?
4. If a library is determined to be the location where access is provided, do patrons of the library have to have a library card to use the library's computers? If the answer is yes, has the governing body worked out an arrangement where those without a library card can still access the forum?
5. Is there a written agreement in place between the governing body and the entity

responsible for the building where public access is going to be provided regarding free access to the forum by the public?

**(b) Electronic communications posted to a forum shall not substitute for decision making by the governing body in a meeting held in accordance with this part. Communications between members of a governing body posted to a forum complying with this section shall be deemed to be in compliance with the open meetings laws compiled in this part.**

**Comment:** The OORC suggests that each governing body include a similar statement in its Terms of Use Agreement.

**(c) Prior to a governing body initially utilizing a forum to allow electronic communications by its members which meets the requirements of this section, including the public notice required in subsection (a), the governing body shall file a plan with the office of open records counsel. The plan shall describe how the governing body will ensure compliance with subsection (a). Within thirty (30) days of receipt of the plan, the office of open records counsel shall acknowledge receipt of the plan and shall report whether or not the plan and the proposed actions comply with subsection (a). If the office determines that compliance with subsection (a) has not been met, the office shall provide written comments regarding the plan to the governing body. Until such time as the governing body complies with the written comments provided by the office and the office issues a report of compliance, the governing body shall not be allowed to establish or utilize such forum. This subsection shall not apply to any governing body which had established a forum pursuant to this section prior to the effective date of this act.**

**Comment:** The OORC will accept plans submitted electronically via email and plans submitted through written correspondence via the postal service. Any written comment made by the OORC will be delivered to the governing body either via email or written correspondence. The only governing body exempt from the requirements of this subsection is the Knox County Commission.

**(d) No member participating in an electronic communication pursuant to this section is deemed to be eligible for per diem for such participation.**

**Comment:** The OORC suggests that each governing body include a similar statement in its Terms of Use Agreement.

**(e) As used in this section, "governing body" means the elected governing body of a county, city, metropolitan form of government, or school board.**

**Comment:** Only the "elected governing body" of a county, city, metropolitan form of government, or a school board is authorized to utilize an internet forum. Boards and commissions established or appointed by an "elected governing body" are not authorized to utilize an internet forum.