



U.S. Department of Justice

Justice Management Division

Washington, D.C. 20530

MAY 14 2010

VIA FIRST CLASS MAIL

Shane Witnov
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Re: JMD FOIA No. 1842631
FBI FOIA No. 1139566-000

Dear Mr. Witnov,

In connection with its review of your October 6, 2009, Freedom of Information Act (FOIA) request, the Federal Bureau of Investigation (FBI) recently forwarded to the Justice Management Division (JMD) of the U.S. Department of Justice (Department) a document that the FBI deemed responsive for review and possible release to you. The document is a memorandum from the Assistant Attorney General for Administration to the heads of Department components, dated May 8, 2009. I am releasing the memorandum to you in full at no charge. A copy is enclosed with this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stuart Frisch".

Stuart Frisch
General Counsel

Enclosure



U.S. Department of Justice

MAY - 8 2009

Washington, D.C. 20530

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: Lee J. Lofthus
Assistant Attorney General
for Administration

SUBJECT: Web 2.0 Applications

The purpose of this memorandum is to provide interim direction to components regarding the use of Web 2.0 applications and public social web services for official Department of Justice content. These applications and services are increasingly being used across the Federal government, and in a limited way by some DOJ components to enhance agency communication and collaboration as well as to increase government transparency and public participation. The use of Web 2.0 applications as well as public social web services at the Department of Justice may hold great potential, but such use also raises significant issues. The Department has established a policy working group to recommend policies and processes that will address the use of Web 2.0 applications and public social web services.

Over the next 30 to 60 days, this policy working group will be focused on developing recommended processes and policies related to several public social web services and other high priority projects. In addition, if your Component is already using or planning to use Web 2.0 applications or public social web services, you will be asked to provide information regarding your activities and plans via a data call. This information is being collected in order to understand the extent to which our concerns are currently being addressed and to provide input into the development of Department policies and processes. Until the policy working group has completed its work, Components are requested 1) not to deploy any Web 2.0 applications on DOJ Internet sites and 2) not to enter into agreements to use public social web services in an official capacity to conduct Department business. What follows below is a brief description of web 2.0 applications and public social web services, followed by a discussion of the major concerns that have been identified to date with Web 2.0 applications deployed on DOJ Intranet and Internet sites as well as the use of public social web services for official DOJ content.

Background and Definitions

"Web 2.0 applications" are web-based applications that provide enhanced information sharing, collaboration and decision-making by facilitating horizontal communication among multiple

users. These capabilities can be deployed on public web sites or private intranet sites. Some well-known examples of Web 2.0 applications include: wikis, blogs, forums, social networks, tagging and media sharing.¹ "Public social web services" are web sites open to the general public that make use of Web 2.0 applications to build online communities of people who share interests and/or activities. Examples of public social web services include: Facebook, YouTube, Twitter, Flickr, and Second Life.²

Use of Web 2.0 Applications on Department Intranet Sites

I understand that components are interested in using, or may already be using, Web 2.0 applications on their intranet sites (or in other ways that limit the user community to Department employees and contractors). In a sense this is merely using new tools to do things that components have always done; for example, instead of collaborating on a document through e-mail a component may use a wiki to facilitate review and comment. While the use of Web 2.0 applications on the Department's intranet sites does not generate all of the issues raised when these tools are deployed on the Department's Internet sites, there are still concerns that need to be considered:

- *Audience:* Who is the audience for the media? How is it being limited? Who is eligible to post and/or contribute? We note that it is important to consider the potential Freedom of Information Act (FOIA) ramifications of such decisions; the larger the audience the more likely the material will be releasable under FOIA. Further, more care needs to be

¹ *Wikis* are pages or collections of pages that allow users to contribute or modify content using a simplified markup language. *Blogs* involve regular entries of commentary, descriptions of events or other material such as graphics or video and often include an opportunity for user comment. *Forums* are online message boards that allow users to discuss issues and ask and answer questions. *Social networks* are groups of individuals organized by self-identified attributes such as friendship, business relationship or organizational membership. *Tagging* is the practice of collaboratively creating and managing tags to annotate and categorize content (also known as social bookmarking or folksonomies). *Media sharing* is the online posting of audio (podcasting), photos, videos or other rich media to share with a community.

² *Facebook* as a free-access website where users can join networks organized by city, workplace, school, and region to connect and interact with other people by sending messages and updating their personal profile. *YouTube* is a video sharing website where users can upload, view and share video clips and comment on them. *Twitter* is a micro-blogging service that enables its users to send and read other users' updates (known as tweets) that are text-based posts of up to 140 characters in length. *Flickr* is an image and video hosting website, web services suite, and online community platform. *Second Life* is a virtual world where users interact with each other through avatars.

taken with privacy and/or privileged material to ensure that collaboration tools are not being used to disseminate such information beyond what is legal and appropriate.

- *Privacy & Civil Liberties:* The use of Web 2.0 applications on DOJ intranet sites may create new privacy issues involving the collection, disclosure, and posting of personally identifiable information (PII) and therefore any use should be coordinated with the Department's Office of Privacy and Civil Liberties.
- *Records:* Are records being created? Is there an appropriate records retention schedule in place? What steps are being taken to ensure compliance with the schedule?

Use of Web 2.0 Applications on Department Internet Sites

Components have also expressed interest in using Web 2.0 applications on the Department's public-facing Internet sites. Deploying Web 2.0 applications on the Internet opens up communication with and participation of individuals and groups outside the Department. Therefore, the concerns are amplified because the user community will not be limited to DOJ employees or contractors. The following issues need to be considered:

- *Business need:* What mission need is being supported? What other options are available and why was this option chosen?
- *Posting:* Who is eligible to post and "speak for" the Department? Will such postings be subject to review?
- *Audience and Public Interaction:* Who is the potential audience? What level of public participation will be allowed? Will public comments be moderated? Who will be responsible for such moderation?
- *Privacy:* Will PII from the public be collected and posted? What is considered PII in this context? Does the collection of comments implicate the Privacy Act or other privacy laws? Is a Privacy Impact Assessment required and, if so, has one been conducted? Is a Privacy Act System of Record Notice (SORN) necessary? Is one in place or will a new one need to be created?
- *Civil Liberties:* How does the posting of information implicate First Amendment issues? Can the agency collect or maintain any information that describes First Amendment activities in this context?
- *Paperwork Reduction Act:* Do the component's interactions with the public qualify as "information collections" pursuant to the Paperwork Reduction Act? What steps are being taken to comply with the Act?

- *Records:* Are records being created? Is there an appropriate records retention schedule in place? What steps are being taken to ensure compliance with the schedule?

Official Use of Public Social Web Services

Finally, I understand that some components want to establish an official Department of Justice "presence" on one or more of the popular public social web services such as Facebook or YouTube. These services require every user to sign a "terms of service" agreement before posting. I understand that the General Services Administration (GSA) has been coordinating with federal agencies and these outside sites to establish terms of service agreements that attempt to address the legal concerns of federal agencies. GSA has stated, and we agree, that there must be a Department-level decision regarding whether to sign such agreements; individual components should *not* be signing such agreements. We will inform the components as soon as possible if we choose to move forward with any of these services and sign an agreement on behalf of the Department.

Our concerns with respect to using Web 2.0 applications on DOJ Internet sites also apply to DOJ official use of public social web services. Many of these concerns are magnified by the fact that a third-party and not DOJ will have control over most of the aspects of operating the service. For example, how do we ensure that records are being properly maintained when we do not control the server on which they are being kept? We also have the following additional concerns and questions:

- *Terms of Service Agreements:* The terms of service agreements proposed by many public services include conditions that federal agencies cannot or should not agree to, including those related to: indemnification, applicable law and jurisdiction, limitations on liability, and the rights of the service provider to change terms without notice.
- *Security:* From a security standpoint, how great of a risk is there that Department information will be hacked and/or defaced on the third party site for which the Department has no security controls in place?
- *Advertising:* Does the service allow for advertising? Is the advertising appropriate given the business need of the Department and the content posted?
- *Web Service Selection:* To the extent the Department uses one public social web service versus another, the firm hosting the service will essentially receive free publicity; will the Department be subject to criticism for that choice? Why was the particular service chosen?
- *Configuration:* Many of these tools have configurable parameters that serve to enable or disable certain functionality some of which may or may not be desired by the Department. What configuration best meets DOJ's needs?

- *One Instance or Many:* In some cases it may make sense for the Department to have a single overall presence on these web sites, in other cases it may make sense for each Component to have a presence. What is the arrangement that best meets DOJ's needs?

Next Steps

We provided an overview of the Web 2.0 issues at the last Executive Officer's meeting with department components. The next step the data call to obtain an inventory of component activities and plans in these areas. Instructions for completing this data call will be sent separately from the Office of the CIO. Components are requested to complete the data call by Tuesday, May 26, 2009. If you have any questions regarding this memo, please contact Eric Olson, Deputy CIO, e-Government Services at 202-353-2355 (eric.olson@usdoj.gov). If you have any questions about completing the data call, please contact Tina Kelley, Assistant Director, e-Government Services at 202-616-0992 (tina.kelley@usdoj.gov).

As the Department's policies and processes for addressing this area take form, we will be following up with you for review and comment on draft documents. Again, in the interim, components are requested 1) not to deploy any Web 2.0 applications on DOJ Internet sites and 2) not to enter into agreements to use public social web services in an official capacity to conduct Department business.

cc: Executive Officers
Component Chief Information Officers