TO INFORM OR TO INTERACT, THAT IS THE QUESTION

The role of Freedom of Information in Social Media Policies

Mathias Klang and Jan Nolin
University of Borås, Sweden

Introduction

The concept of Freedom of Information (Balkin 2004, Lamble 2002, Solove 2002) has been raised to a fundamental good that permeates all aspects of modern democratic societies. The goal of this paper is to explore the role of this principle in relation to local authorities attempts to increase citizen participation via increased levels of social media usage. We argue that social media policy work raises a conflict vis-à-vis the established norms of Freedom of Information and the ideological underpinnings of the technology in use. Our analysis builds on a Swedish case study and illustrates the conflict between citizen-government interaction via social media technologies and the established norms of Freedom of Information.

Freedom of Information

When Chydenius (Lamble 2002) in the 18th century proposed his radical vision of Freedom of Information (offentlighetsprincipen or FoI) he was arguing for an unheard of level of openness and transparency in government. He argued that FoI would produce stability and predictability in government as the acts of politicians and public servants could be observed and traced. Increased accountability leads to increased control. His arguments can be seen to be Fou-
cauldian (Bentham 1995, Foucault 1979) in nature as they focus on the individuals’ interest in internalizing their own supervision.

The FoI takes different forms in society. In general the principle refers, first and foremost to, public access to official documents. However, it also includes other forms such as whistleblowing by officials, court publicity, the publicity of decision-making meetings, etc. This principle has been successful and been implemented in many democratic states. However, the earliest and most radical forms have been established in Sweden and Finland (Lamble 2002). Additionally, Sweden and Finland have been early adopters of information technologies. Therefore, it is valuable to look at Swedish and Finnish implementations and adaptations of technology and administrative practices.

The concepts presented by Chydenius were put into practice in Sweden (and Finland). Since then these rules have become general principles of Swedish constitutional law. The right to inspect public documents was first introduced in Sweden through the Freedom of the Press Act of 1766. One way of looking at the success of the concept of FoI is the way in which the principle has been adopted (often in modified form) in many countries around the world, up until the point where today it is generally seen as a fundamental cornerstone of democracy.

The fundamental information infrastructure (Hanseth 1996, Pironti 2006) in the 18th, 19th and much of the 20th century has been analogue paper based information systems. Therefore the principle of FoI was proposed, implemented, matured and developed within a sophisticated, analogue, paper based system. This led to a command and control structure where the authority is involved in a monologue with its citizens.

From the point of view of efficiency the paper-based information infrastructure was eminently suited for conversion to a digitally based network structure. Therefore computers were easily adapted to fit into the administrative sphere. This implementation provided the first fundamental ideological challenge to the FoI principle as basic concepts such as document, file, signature, document creation and revision needed to be re-interpreted.
In recognition of these technological developments FoI has been re-interpreted in different international contexts. In Sweden two important changes have been made to the FoI. In 1974, freedom of access to public documents was deemed to apply to computer systems and in 1976 the principle was deemed to apply even when the data was not stored as documents. From the point of view of FoI the focus shifted from the information bearer (the document) to the content.

Technology and State

Government depends fundamentally upon the approval of the population it is set to govern (Dahl 1989, Harrison 1993, Pateman 1970, Sartori 1987). Therefore a democracy is a form of government where policies are directly or indirectly decided upon by the will of the majority of the population. This will is expressed by the participation of citizens in the democratic process. As a form of government, this system builds upon two assumptions (i) that people are capable of understanding, expressing and finding solutions for their problems, and (ii) effective solutions require the participation of the people who will be affected by them, without necessarily being dependent on authorities and experts (Oppenheimer 1971). However, participation has major logistical challenges (Dahl 1989, Pateman 1970) as the communications infrastructures required for large-scale participation have not always been in available. Democratic participation should be understood as a compromise between theoretical possibilities within technological realities. Therefore, it is of great interest when societies begin to overcome the technological limitations and the theoretical ideologies fall into the realm of the possible. The technology itself is not inherently democratic but may be implemented to support participatory processes. E-government or E-democracy Government and democracy are at times interchangeable terms but they should not be confused. For the purpose of this work electronic government (e-government) refers to the states goal to make its processes more efficient. In contrast, electronic democracy (e-democracy) is not about streamlining or economizing the state by alternative forms of communication. It
is about empowering the user in her ability to directly participate in the general democratic process (Kahn & Kellner 2004). Thus far the main thrust of technological implementation has focused on the processes of e-government while the processes of electronic democracy (e-2 democracy) have not been equally implemented. This mindset has also been possible to discern in many social media policies. This is an aspect that we will return to in our discussion of our empirical material. From information to interaction In the last decades advances and dissemination of communications technology have both enabled, and created a demand for, public access to public information via the Internet. Within the public sector the conflicting needs of the authorities to provide service and protect certain forms of information (for example personal data) have spurred a need for reinterpreting established norms. Even though digital documentation is the norm, there is, in the case of Sweden, no corresponding requirement for government bodies to provide access in digital format (SOU 2010).

The communications infrastructure of social media does not fit well into a hierarchical communication model and as such does not reinforce the role of the position of the authority. Social media is based upon high levels of social interaction between those involved and may be likened to a dialogue rather than a monolog. In addition, social media has less built-in systematic controls but, rather, allows all the participating parties to choose both topic and forms of dialog (Honeycutt & Herring 2009, Huberman et al 2009). An important feature of this novel communication structure is the layers of legal and technological control (Winner 1985), which lies largely outside the control of the governmental authorities and the citizens. The legal and technological basis for the use of social media is in the hands of the platform owners. Physical control of the platforms depend on servers located outside Swedish borders and access to their information and use are regulated by licensing agreements controlled by the platform owners and regulated under the laws of the countries of their corporate domicile. These conditions present particular problems for formalistic regulation and control by the municipalities and citizens as users of the information infrastructure. One could ask if the FoI actually could
facilitate the information gathering activities of multi-national corporations? Empirical Study Sweden is divided into 290 municipalities with populations ranging between 2,460–847,073 (Statistics Sweden, “Population statistics” at http://www.scb.se/, accessed 15 March 2011). Each municipality is responsible for social services, care of elderly and handicapped, childcare and schools, planning and zoning, environment and health protection, public cleaning and garbage management, fire brigade, water and waste, order and security. In addition to these areas the municipality may also play an active part in recreational activities, culture (but not libraries), housing, energy, business and reception of refugees. To better understand the municipalities attempts to use social media as a platform for increased openness and citizen interaction this paper analyzes social media policies published by Swedish municipalities prior to December 2010. The choice of limiting the study to policies prior to December 2010 was not arbitrary but coincided with the publication of the report from E-delegationen (The eGovernment Delegation) who were given an additional mandate on public information and social media to develop draft guidelines for government agencies’ use of social media. The publication of these guidelines (E-Delegationen 2010) created an informal precedent that has been followed by many Swedish municipalities. Prior to their publication the main source of semi-official support was a PM published by Sveriges Kommuner och Landsting (Swedish Association of Local Authorities and Regions) in April 2010 (SKL 2010) and a document on organizational responsibility for data in social media by Datainspektionen (Data Inspection Board) published in August 2010 (Datainspektionen 2010).

The empirical data collection resulted in 26 policy documents. These texts varied greatly in length and ambition, from a few paragraphs to 20 pages (Klang & Nolin 2011).

**Results**

The empirical material reviewed for this article turned out to be exceptionally rich. It has not been possible to fully explore the many different dimensions that our analysis has brought forward.
We hope to explore several themes in greater detail in separate works. We have already pursued a few other perspectives in a separate article (Klang & Nolin 2011). It is also a rich field for other researchers. In the following, we will therefore, roughly outline a number of themes and problems that seem urgent for both policy makers and researchers.

The 26 policies included in this study vary widely in their length, organization, focus and content but there are some clear areas of common ground that are interesting to point out.

Legality: 19 policies included statements reminding that criminal acts would not be tolerated. This is an interesting point as there is nowhere an assumption that social media use is free from regulation by criminal law. Therefore the high numbers of policies that reinforce the statement that criminal acts are not allowed in social media are a signal of the concerns of the municipality. Additionally 18 policies referred to administrative law. This reflects a concern in relation to the value of acts carried out in social media (for example: What is the difference in administrative law between a message, sent or received, via letter, email or social media?).

Analogue bias: All policies demonstrated an analogue bias. This is not unexpected as the organizations have well-established routines, forged through law, tradition and culture. However, the analogue bias is often seen acting against the logic of social media. In part this is shown through the ways in which legal requirements of administrative law, such as duty of service and archiving, are interpreted by the policies.

In a concrete example of the analogue bias: Many policies require that social media be recorded and archived this is a duty created by administrative law, however the wording of 11 policies shows a clear lack of understanding of social media. In order to fulfill their archival duties these 11 policies require screen shots of the social media sites to be taken every six months. Considering the fast changing pace of social media interaction, such a form of archiving would be redundant.

Goals & purpose: While 17 policies included statements on the purpose of using social media by the municipality only five policies addressed measurable goals or success or failure factors. The most
common reason for using social media, stated in the policies, was to increase the level of communication. These statements on increased communication were mainly about how the municipality could increase its communication to its citizens. All communication from citizens was treated as either administratively or legally problematic.

The view of citizen communication as disruptive is particularly interesting when one remembers that the policies arise from democratic institutions attempts to incorporate social media in their daily work. The fundamental role of Swedish Municipalities is, according to the Local Government Act, to provide services to its citizens in a democratic, non-discriminatory manner. It could be argued that by viewing social media as disruptive, municipalities are not adopting the full potential of the technology.

One conclusion that can be drawn from this is that the purpose of the policies is to regulate the actions of the employees of the municipality rather than to encourage their forays into social media. The high focus on law and prevention of error would support arguments that the policies are there to reduce the potential legal and social liabilities faced by the municipalities. This is in large part due to the recognition that used incorrectly social media can cause a wide range of problems: everything from damaging the organizations reputation to involving the organization in criminal proceedings. Therefore, from this perspective, it is only natural that the document reminds, or warns, employees of the potentially serious consequences of their online actions.

Analysis

Is Social Media a public or private space?

The policies tend not to define social media. A number of policies list examples of social media platforms, however this listing approach to the problem of definition does not address how to treat non-listed platforms. Furthermore, this approach results in an unsatisfactory “non-definition definition”. Attempting to define social media as a phenomenon by listing organizations that provide social media services does little to further our understanding of the
phenomenon. An organization, and a service, such as, for example, Facebook means different things to various people. Facebook can be seen as a network, a privacy threat, a site for self-publication, a photo-sharing site, a chat site etc. Additionally, definition by listing corporations demands that these corporations have attained a relatively agreed upon and static meaning. However, Facebook is not the same thing today as when it was launched, with much more applications, settings and complexity.

The policies also only rarely discuss the difference between social media used privately by identified municipality employees from social media used by employees in authorized municipality business. This lack of clarity raises issues of acceptable online behavior.

In this latter question the policies demonstrate a conflict between encouraging employees to be enthusiastic about their work and using social media. This conflict is especially visible in private settings, where employees may discuss issues of interest to them but may need to draw a line between enthusiasm and presenting a correct view of municipality work and attitudes. Policies regularly reiterate that employees fundamental free speech rights apply to social media, coupled with reminders that even in their private lives employees may be identifiable with the municipality and owe loyalty to their employer.

In addition to the free speech problem above the policies also attempt to regulate forms of address. Nine policies specifically bring up the question of formal or informal address and these maintain that address in social media should be informal. Those using the municipalities’ authorized social media should or must respond using informal manners of address. Linguistically this manifests itself most commonly in using the more informal “du” rather than the more formal “ni” when referring to others in second person singular pronoun.

Unaddressed issues: the cloud problems

It is surprising to note that none of the policy documents touch upon the important question of the legal and ethical consequences of government – citizen interaction via cloud services. All services
discussed in the policy documents are technically built up in such a way as all information is transferred to servers controlled by the service providers. Most of these servers are based outside Swedish jurisdiction. By using social media in citizen communication the municipalities have difficulties with:

(1) Promoting chosen corporations: since the interoperability is low in social media, choosing a specific service provider limits the use of alternative service providers.

(2) Personal data transfers: while the policies were clear that specific questions between client and municipality should not be conducted over social media. The use of the latter as a communications platform will facilitate the sending of personal data to systems outside the municipalities’ control.

(3) Loss of control: Information added to social media falls outside the control of the information provider. Removing information on social media does not remove the information from the service providers but only makes it inaccessible to other social media users.

It is surprising to note that questions such as these are not dealt with either in the policy documents or in any other government or municipal documentation surrounding the use of social media.

**Property, Privacy and Voice**

A common factor for all the social media policies is that they attempt to control social media use. It is noteworthy that many policies did not make any differentiation between forms of use. Among those that did the concept of use is badly defined at best. Within the policies three separate forms of use are defined:

(1) Official municipality use,

(2) Private use of social media during work, and

(3) Private use of social media outside work. These three forms are not equally addressed in the policies. In those
policies that attempt to define forms of social media use they commonly focus on one or two.

Despite this, there is a specific control question that is not brought up in all policies – the question of which individuals have access to the social media account and, which individuals have the authority to publish information. For the purpose of this paper we have used the terms property and ownership to distinguish this problem from other more general issues of control.

It is interesting to note that the relative uncertain positions taken by many municipalities are made more complex by the lack of definitions for social media and the wide range of types and licensing agreements social media usage requires. Not all social media allow corporate or shared accounts and would therefore make municipalities use of such social media a violation of the service. Some policies refer to this and require user names and passwords to be individual – but still stored with a supervisor to ensure continuity should the individual leave the municipalities employ.

A second set of property problems concern the material that is published. Here the focus is on questions of copyright and attempts to clarify which material from the municipalities may be used. It deals with questions such as: Who is the copyright-holder of the material once it has been published? What rights, if any, does the municipality have to the material? How can material published via social media be re-used in other media? This second set of questions has not been dealt with adequately in any of the policies included in this study. Most policies have not touched upon these issues at all.

A third set of problems deals with the removal of information. Here many of the policies are concerned with the effects of allowing the public to participate in social media dialogues in spaces that are under the municipalities’ control. Much of the concern is focused on what would happen if illegal speech acts are undertaken in these spaces. This latter problem is dealt with very clearly in most (19) of the policies, which are clear that illegal speech will not be tolerated and will be removed. However, there is no discussion of the grey zones of illegal speech – will uncomfortable, but not necessary,
illegal speech be removed? And to what degree should, and can, harsh criticism be tolerated?

It is clear from this third set of problems that the municipalities are happy to regulate where the law is clear but unwilling to address areas that are more complex. This lack of policy clarity reduces the effectiveness and usefulness of the documents for those who are regulated by them.

Conclusion

From the wording and intentions of the policies included in this study it is clear that the municipalities are suffering from a lack of clear definition of social media. The lack of definition is not a problem particular to municipalities but it becomes more acute when highly-rule based organizations, such as municipalities, attempt to regulate its use. Without a clear definition of social media the idea of creating a policy in which the use of such a technology can be regulated becomes increasingly complex. The difficulties in regulation through become more complex when taking into account the wide range of services, forms of communication and interaction the Swedish municipality is charged with.

The policies included in this study have focused on different uses of the technology and varying levels of threats social media misuse may cause the organization.

One suggestion as to why the policies remain vague in relation to many of these areas discussed above may be found in the social context within which the municipalities operate. Legal and social understanding of employee rights, freedom of expression, and public information shape the workplace and the social agreements therein. This must also be coupled with the nature of social media and the ways in which such media can support and promote communication – but also by its technical or regulatory nature (the terms of use of the social media platforms) limit what can and is done online.

It is important to understand that the policies created by the municipalities do not exist in a vacuum but are part of a complex reality of control. The policies themselves span from areas that are highly regulated to unregulated and often refer and allure to laws,
other regulatory documents and social norms. The technology itself also controls the behavior of the users, and in this ways acts as a regulatory instrument. It is in these contexts that the policies must be understood and appreciated.

Notwithstanding the approach taken to social media policy by the 26 municipalities it is clear that these organizations have attempted to take a positive approach to social media use within their municipalities. While the efficiency of these technological platforms for municipalities need to be studied longitudinally it may be deduced that by their adoption an expectation of service is created. This is reflected in the policy documents that attempt to clarify response times to incoming social media messages, re-action times to negative or illegal information, and creating redundancy when individuals responsible for social media end their employ. The policies reflect a fear of creating ignored or unmonitored information infrastructures.

An interesting question that is not brought up in the policies is the issue of municipality privacy. The Swedish FoI act regulates both state openness and, to an extent, the right of the state to operate privately, i.e. at which stage the state actor need not provide information.

It is understood that even within a democracy there must be levels of privacy (Shils 1956, 1997; Westin 1967). The recent focus on FoI and the adoption of social media by state actors (such as municipalities) runs the risk of creating an expectation of service that cannot be delivered without productivity costs. Murray (2005 p 197) argues that a level of state privacy is necessary: “...a condition in which there is enough privacy to nourish individual creativity and group expression; enough publicity of government affairs to let the public know the facts necessary to form judgments in political matters; and a small area of secrecy for government to preserve the integrity of certain secret information and the privacy of internal policy-making processes.” By introducing social media as an information infrastructure in interactions between municipalities and citizens this private space will be challenged. It will be interesting to see how this point develops over time.

In closing it is worth pointing once again to the high level of analogue bias that permeates the policies. The municipalities view, and
often refer to, social media an addition communications channel. This view clearly shows a level of unpreparedness for any real interaction that is the real potential offered by social media use. The municipalities are very much mired in a mind-set of e-government and have yet to move onwards to e-democracy where collaboration, participation and dialogue are key ingredients.

With this lack of interaction and participation the potential of social media has yet to reach any real potential and cannot now be seen as the fulfillment of Chydenius dream. The policies show a clear focus on adapting social media as channels of communication to further the interests of e-government while avoiding social media’s potential as a tool for increasing participatory democracy and furthering the goals of e-democracy. We find this state of affairs problematic and in need of both further research and dialogue between researchers and policy makers.
Bibliography


