



GOVERNMENT & POLITICS

Greitens' penchant for secrecy goes digital with messaging app that leaves no trace

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December 07, 2017 07:30 AM

Updated December 08, 2017 12:23 PM

JEFFERSON CITY — Gov. Eric Greitens and his senior staff use an app that deletes text messages after they've been read, raising concerns among transparency advocates that it could be used to subvert Missouri open records law.

The app, called Confide, allows someone to send a text message that vanishes without a trace after it is read. It also prevents someone from saving, forwarding, printing or taking a screenshot of the text message.

Because the app is designed to eliminate a paper trail, it is impossible to determine whether the governor and his staff are using it to conduct state business out of view of the public, or whether they're using it for personal and campaign purposes.

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Self-destructing messages also mean there is no way to retain texts to decide whether they should be considered a public record.

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“If I were wanting there to be no record of what I was doing, that’s the route I would take,” said Jean Maneke, an attorney for the Missouri Press Association.

Even before Greitens took office in January, his administration has been cloaked in secrecy.

From refusing to divulge how much corporations and lobbyists donated to bankroll his inaugural to forcing his transition team to sign gag orders to charging fees for public records that critics argue are likely illegal, the governor has displayed a penchant for secrecy that alarms open-government advocates.

Use of a secret texting app, critics contend, is yet another example of that inclination.

If public officials do public business using this app, “they are intentionally removing that business from public scrutiny,” said Alex Howard, deputy director of the Sunlight Foundation, a nonprofit organization that advocates for open government.

“Removing public records about public business from scrutiny entirely removes the ability for oversight bodies, journalists and the public to hold our officials accountable for their work on our behalf, should waste, fraud, abuse or outright criminality occur,” he said. “Good public policy should always be able to withstand public scrutiny.”

Parker Briden, the governor’s press secretary, told The Star via email that “I don’t believe anyone has (Confide) downloaded on a state-issued device.”

The Star then asked about the fact that the governor and most of his staff — including Briden — have Confide accounts connected to their personal cell phones, and whether the office has a policy about using the app. Briden did not respond.

Among those with Confide accounts are the governor’s chief of staff, deputy chief of staff and a handful of other high-ranking advisers. Austin Chambers, who runs the governor’s political nonprofit, and Jimmy Soni, the governor’s former communications adviser who remains on Greitens’ campaign payroll, also have accounts.

The use of secure messaging apps like Confide, WhatsApp and Signal is becoming more prevalent in politics, especially in the aftermath of Russian hackers’ targeting Hillary Clinton and the Democratic National Committee. White House staffers reportedly used Confide to keep their communications secret until former press secretary Sean Spicer explicitly banned its use, saying it was a violation of the Presidential Records Act.

A conservative organization sued the Environmental Protection Agency earlier this year seeking texts that government workers sent using Signal, another encrypted messaging app.

Whether using these apps to conduct public business violates the state's Sunshine Law or records retention law is "a very, very tough legal question," said David Roland, director of litigation with the Freedom Center of Missouri, a Libertarian nonprofit that advocates for government transparency.

Under state law, Roland said, a record is any document or material, regardless of physical form or characteristics, made or received in connection with the transaction of official business. No record can be destroyed or disposed of, he said, unless it is determined that the record has no further administrative, legal, fiscal, research or historical value.

"The potential hitch here is that there has been almost no litigation concerning the requirements for retaining public records, and it's not clear what the penalty would be for failing to comply with the law's requirements," Roland said.

A court may determine that "vanishing texts on private phones used by public employees present a significant risk that those employees will try to avoid transparency," he said, "but that they may not have the legal tools to hold those public employees accountable for this sort of thing."

Government employees are entitled to a measure of privacy when they are not on the clock or are not dealing with public business, Roland said.

"I think it's fine if they want to use encrypted messaging apps on their own devices," he said, "so long as they are not using those apps to conduct public business."

The governor's use of Confide, and the legal questions it raises, is "just another example of how outdated and antiquated the state's Sunshine Law provisions are becoming," said Maneke, the Missouri Press Association attorney.

"The retention of records documenting acts of public officials in the conduct of public business is critical to ensuring that public business is conducted fairly and impartially," she said.

Public business being conducted on a secret messaging app, Maneke said, isn't that much different than a public board meeting in secret.

"If the latter is illegal," she said, "so is the former."

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