



City of Dallas

Police and Fire Social Media Rules and Procedures

**Public Safety Committee
August 10, 2020**

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City of Dallas

Presentation Overview



- Administrative Directive 2-52
- Dallas Police Department General Order
- Dallas Police Department Code of Conduct
- Dallas Fire-Rescue Department Manual of Procedure on personal use of Social Media
- Current Review of Procedures
- Counseling/Disciplinary Process for Violations
- Legal Considerations



Administrative Directive (AD) 2-52



- Social Media / Social Networking
 - Amended at the end of June 2020
 - Issuing Department: Communications, Outreach and Marketing
 - Stated Purpose of AD
 - “The purpose of this Directive is to provide a framework, guidance, and assign responsibilities on official City use of social media platforms and City employee use of personal social media accounts.”
 - Includes, for the first time, guidance to employees on personal use of Social Media



Excerpt from AD 2-52 Social Media/Social Networking



- **5.6 Personal Use of Social Media.**
- **5.6.1** There may be times when an employee's personal use of social media not made on official social media accounts (even if it is off-duty or using personal equipment) may affect or impact the workplace and become the basis for counseling or discipline. Each situation or posting will be evaluated on a case-by-case basis. Examples include, but are not limited to:
 - A. Cyber-bullying, stalking, or harassment.
 - B. Posting social media content that harms working relationships at the City, is detrimental to the mission and function of the City, undermines the public's confidence in the City, or could cause disruption to City operations.
 - C. Releasing confidential or private information; or information that is not releasable under the Texas Public Information Act.



Excerpt from AD 2-52 Social Media/Social Networking



- D. Unlawful activity.
- E. Inappropriately using the City's name, logo, website URL, or an employee's position.
- F. Using City-owned equipment or City work time for more than occasional personal use on social media sites that are not official City social media accounts, and such use interferes with an employee's ability to do their job or with the efficiency of the workplace or department.



Dallas Police Department



- **DPD General Order on personal use of social media:**
- General Order 214.04 Precautions and Prohibitions on Employee Personal Use of Social Media
- Unless contrary to any federal law, state law, or city ordinance, employees shall abide by the following when using social media for personal use:
 - A. Employees are free to express themselves as private citizens* on social media sites to the degree that their speech and/or language does not impair working relationships of the Department, impede the performance of their duties, impair discipline and harmony among coworkers, or negatively affect the public perception of the Department.

* Citizens in original.



DPD General Order on Personal Use of Social Media (Continued)



B. Employees shall not divulge information gained by reason of their authority; make any statements, speeches, appearances, or endorsements; or publish materials that appear to represent the views or positions of this Department without prior written authorization from the Chief of Police or their designee.

C. Employees who are working in undercover operations, or who plan to in the future, shall not post any form of visual or personal identification to any social media network which would identify them as an employee of the Dallas Police Department, compromise Departmental objectives, or place themselves or another person in danger.

D. Employees shall not post speech involving on-duty conduct of themselves or other employees that reflects behavior that would reasonably be considered reckless, irresponsible or would bring discredit to themselves or the Dallas Police Department or City of Dallas.

E. Employees shall not post speech to social media networks that contain obscene or sexually explicit language, images, acts, statements, or other forms of speech that ridicule, malign, disparage, or otherwise express bias toward any individual or group.



Dallas Police Department



- **DPD General Order 214.04 Continued. . .**

- F. Employees shall not post speech involving themselves or other employees reflecting behavior that maligns, embarrasses, or causes disrepute to the Department.
- G. Employees shall not post department logos, banners, or similar identifying items on personal websites that would lead anyone to believe that website represents or has been approved by the Department without prior permission from the Chief of Police or their designee. In these matters, the Dallas Police Department will make the determination as to whether or not the content tends to represent the Department.
- H. Employees are encouraged to be mindful of their safety and the integrity of their careers, as well as the safety of their family and other officers, before posting any information on social media sites that identifies them as an employee of the Dallas Police Department.
- I. Employees are reminded that engaging in prohibited speech, as noted herein, may provide grounds for undermining or impeaching an employee's testimony in criminal and civil proceedings.
- J. Employees should expect that any information created, transmitted, downloaded, exchanged, or discussed in a public online forum may be accessed by the Department at any time without prior notice.



Dallas Police Department



- **DPD Code of Conduct 4.16:**

- No employee will make any comment or expression, either written or oral, which would deride, demean, condemn, or ridicule any person based upon their race, ethnicity, sex, religion, or sexual orientation, either on-duty or off-duty, if such comment or expression will tend to generate controversy and disruption within the Department, impede upon the Department's general operation and performance, and affect working relationships necessary to the Department's proper functioning.



Dallas Fire-Rescue Department



- **DFR Manual of Procedure on personal use of social media:**
 - **712.02 GUIDELINES FOR PERSONAL USE** There is no violation of departmental policy in the mere fact of maintaining a page or commenting on social networking sites and blogs. Department personnel are free to express themselves as private citizens* on social media sites as long as their speech does not impair or impede the performance of duties, impair discipline by superiors or harmony among co-workers, cause a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, negatively affect the public perception of or confidence in the department, or interfere with the regular operation of the department. Adherence to the department's code of conduct is expected in the personal use of social media.

* Citizens in original.



Dallas Fire-Rescue Department



- **DFR Manual of Procedure 712.02 (continued):**

- Department members shall abide by the following when using social media:
 - A. As public employees, department personnel are cautioned that their speech either on or off duty, and/or in the course of their official duties, professional duties and responsibilities, may not necessarily be protected speech under the First Amendment.
 - B. Speech may not be protected speech if it impairs or impedes the performance of duties, impairs discipline by superiors or harmony among co-workers, causes a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, negatively affects the public perception of or confidence in the department, or interferes with the regular operation of the department, and may form the basis for discipline.
 - C. Department personnel should assume that their speech and related activity on social media sites could reflect upon their position within the department and of this department.



Dallas Fire-Rescue Department



- **DFR Manual of Procedure 712.02 (continued):**

- D. Members shall not post, transmit, or otherwise disseminate any information obtained as a result of their employment with DFR without written permission from the Fire Chief, or his/her designee; and
- E. For safety and security reasons, members are cautioned to use discretion when disclosing employment with DFR and shall refrain from disclosing employment of any other member without prior consent by that member. As such, members are advised to use good judgment when:
 1. Placing or allowing photographs or depictions of themselves dressed in the DFR uniform and/or displaying official identification, patches or badges, or in any other way, either directly or indirectly, identifying themselves as a member of the department for any reason or;
 2. Posting photographs or other depictions of department uniforms, badges, patches, or marked/unmarked vehicles on internet sites. When using social media, members should be mindful that their speech becomes part of the worldwide electronic domain.



Current Review of Departmental Procedures



- In light of the recent amendment of AD 2-52, DPD and DFR are in a review process of their internal rules and procedures regarding use of social media, to ensure consistency with the AD and applicable law.
- Timeline for completion and adoption of necessary updates:
 - Tentative: End of August 2020



Counseling/Disciplinary Process for Violations



- When a violation is determined, appropriate disciplinary action may be taken.
- Civil Service employees must be given notice and an opportunity to be heard before demotion or discharge, and the City must comply with the disciplinary and appeal procedures outlined in the Dallas City Charter and the Personnel Rules.
- For peace officers and fire fighters, the City must comply with Chapter 614 of the Texas Government Code
- **Chapter Sec. 614.023.** COPY OF COMPLAINT TO BE GIVEN TO OFFICER OR EMPLOYEE.
 - (a) A copy of a signed complaint against a law enforcement officer of this state or a fire fighter, detention officer, county jailer, or peace officer appointed or employed by a political subdivision of this state shall be given to the officer or employee within a reasonable time after the complaint is filed.
 - (b) Disciplinary action may not be taken against the officer or employee unless a copy of the signed complaint is given to the officer or employee.



Counseling/Disciplinary Process for Violations (continued)



- (c) In addition to the requirement of Subsection (b), the officer or employee may not be indefinitely suspended or terminated from employment based on the subject matter of the complaint unless:
- (1) the complaint is investigated; and
 - (2) there is evidence to prove the allegation of misconduct.



Legal Considerations



- The First Amendment protects individuals' freedom of speech.
- Public employers may impose restraints on job-related speech of employees that would be unconstitutional if applied to members of the public.
- However, public employees do not surrender all First Amendment rights simply by virtue of their employment.
- Public employers can be sued for First Amendment violations.



Legal Considerations (Continued)



- There are two types of First Amendment challenges: “as applied” challenges, and facial challenges.
- A facial challenge alleges that the rule is unconstitutional in all of its applications.
- There are three primary types of facial challenges:
 - Overbreadth
 - Vagueness
 - Prior restraint
- Courts’ general disfavor of facial challenges is less intense in the First Amendment context.
- In an “as applied” challenge, the claim is that the rule is unconstitutional “as applied” to the unique circumstances of the case, not that the rule is unconstitutional for all purposes.



Legal Considerations (Continued)



- First Amendment retaliation claim is an “as applied” challenge.
- A public employee asserting a First Amendment retaliation claim must prove that:
 - (1) S/he suffered an adverse employment action.
 - Includes discharges, demotions, refusals to hire, refusals to promote, and reprimands.
 - (2) S/he spoke as a “citizen” on a matter of public concern.
 - Speech involves a matter of public concern if it relates to any matter of political, social, or other concern to the community.



Legal Considerations (Continued)



(2) (cont'd). S/he spoke as a “citizen” on a matter of public concern.

- “Citizen” vs. employee speech
 - Relevant factors include job descriptions, whether the employee communicated with coworkers or with supervisors, whether the speech resulted from special knowledge gained as an employee, whether the speech was directed internally or externally, etc.
- Statements made pursuant to official duties and employment grievances are not protected.



Legal Considerations (Continued)



- (3) His/her interest in the speech outweighs the government's interest in the efficient provision of public services.
- Relevant considerations include whether the statement impairs discipline by superiors or harmony among co-workers, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, or impedes the performance of the speaker's duties or interferes with the regular operation of the enterprise.
 - Because police departments function as paramilitary organizations charged with maintaining public safety and order, they are given more latitude in their decisions regarding discipline and personnel regulations.
- (4) The speech precipitated the adverse employment action.





Questions?





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