

# 972 Employee Speech, Expression, and Social Networking

## 972.1 PURPOSE AND SCOPE

This order is intended to address issues associated with employee use of social networking sites and to provide guidelines for the regulation and balancing of employee speech and expression with the legitimate needs of the Department.

Nothing in this order is intended to prohibit or infringe upon any employee's communication, speech or expression that has been clearly established as protected or privileged.

### 972.1.1 APPLICABILITY

This order applies to all forms of communication including but not limited to film, video, print media, public or private speech, use of all Internet services, including the World Wide Web, email, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums, video and other file-sharing sites.

### 972.1.2 FIRST AMENDMENT CONSIDERATIONS

The United States Supreme Court case of *Garcetti v. Ceballos* (2006) held that speech made by public employees pursuant to their official duties is generally not protected by the First Amendment from employer discipline. Employees should be cognizant of the fact they are responsible, and may be held accountable, for any and all speech, posts, etc. made by them relating to, or as a result of, their employment.

Employees who are off-duty and speaking as private citizens on their personal social media website account(s), or in other forums, and address a matter of public concern are generally protected under the First Amendment from employer discipline. Matters of public concern include topics that address an issue of political, social, or other concern to the community, including matters of public corruption or the efficient provision of government services.

The United States Supreme Court case of *Connick v. Myers* (1983) held that speech made by public employees which affects the efficient operation of the public employer may not be protected by the First Amendment from employer discipline.

## 972.2 POLICY

Public employees occupy a trusted position in the community, and thus, their statements have the potential to contravene the orders and performance of this eDepartment. Due to the nature of the work and influence associated with the law enforcement profession, it is necessary that employees of this eDepartment be subject to certain reasonable limitations on their speech and expression. To achieve its mission and efficiently provide service to the public, the Austin Police Department will carefully balance the individual employee's rights against the Department's needs and interests when exercising a reasonable degree of control over its employees' speech and expression. This policy is not intended to restrict employee speech that is protected by the First Amendment.

## 972.3 SAFETY AND OTHER CONSIDERATIONS

(a) Employees should consider carefully the implications of their speech or any other form of expression when using the Internet. Speech and expression that may negatively affect the safety of the Austin Police Department employees, such as posting personal information in a public forum, can result in compromising an employee's home address or family ties.

Employees ~~should~~shall therefore not disseminate or post any information on any forum or medium that could reasonably be expected to compromise the safety or privacy of any employee, an employee's family or associates.

(b) Unless otherwise stated in this policy, employees are not barred from presenting themselves on the Internet or on social media platforms as Austin Police Department employees. However, when posting information or material to the Internet or to social media platforms, or in any publicly accessible communication application or medium, employees shall carefully consider whether or not to identify themselves as employees of the Austin Police Department or members of law enforcement. Any information posted or disseminated may remain accessible to the public for an indefinite length of time even if access is restricted. Posted information may impact courtroom credibility, potential citizen contacts, employee safety, or the ability to seek and obtain an undercover assignment within the Department.

#### **972.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT**

To meet the Department's safety, performance, and public-trust needs, the following is prohibited:

- (a) Speech or expression made pursuant to an official duty that tends to compromise or damage the mission, function, reputation or professionalism of the Austin Police Department or its employees.
- (b) Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, the Austin Police Department and tends to compromise or damage the mission, function, reputation or professionalism of the Austin Police Department or its employees.
- (c) Speech or expression that could reasonably be foreseen as creating a negative impact on the credibility of the employee as a witness. ~~For example, p~~Posting or making statements or expressions ~~to a website~~ that glorify or endorse dishonesty, unlawful discrimination, or illegal behavior is prohibited.
- (d) Speech or expression of any form that could reasonably be foreseen as creating a negative impact on the safety of the employees of the Department. ~~For example, a statement on a blog that provides specific details as to how and when prisoner transportations are made could reasonably be foreseen as potentially jeopardizing employees by informing criminals of details that could facilitate an escape or attempted escape.~~ This includes speech or expression that would reveal the identity or affiliation with law enforcement of any undercover officer.
- (e) Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the Austin Police Department.
- (f) Speech or expression that reveals the identities of victims, suspects, or witnesses to an investigation or police related incident, without the express consent of those person(s). Additionally, employees will not post content or make statements regarding the guilt or innocence of suspects/arrestees in cases involving the Austin Police Department, the involved employee, or where such information would reveal non-public information, violate confidentiality provisions of law or APD policy, would impact ongoing investigations, or would otherwise impact efficient operations of the Austin Police Department.
- ~~(f)~~(g) Use or disclosure, through whatever means, of any information, photograph, video or other recording obtained or accessible as a result of employment with the Department for financial or personal gain, or any disclosure of such materials without the expressed authorization of the Chief of Police or designee (Tex. Penal Code § 39.06(a)(1)).

~~(g)(h) Posting, transmitting or disseminating any photographs, video or audio recordings, likenesses or images of department logos, emblems, uniforms, badges, patches, marked vehicles, equipment or other material that specifically identifies the Austin Police Department on any personal or social networking or other website or web page, without the express written permission of the Chief of Police.~~ Posting, transmitting or disseminating images, video or other media that may include sensitive (CJIS) information or would otherwise compromise the integrity of an investigation (See General Order 116.8 PRIVACY AND SECURITY OF RECORDS).

~~(h)(i)~~ (i) Failure to take reasonable and prompt action to remove any content that is in violation of this order and/or posted by others from any web page or website maintained by the employee (e.g., social or personal website).

#### 972.4.1 UNAUTHORIZED ENDORSEMENTS AND ADVERTISEMENTS

Unless specifically authorized by the Chief of Police, employees may not represent the Austin Police Department or identify themselves in any way as being affiliated with the Austin Police Department in order to do any of the following (Tex. Local Gov't Code § 556.004(c) and (d)):

- (a) Endorse, support, oppose or contradict any political campaign or initiative.
- (b) Endorse, support, oppose or contradict any social issue, cause or religion.
- (c) Endorse, support or oppose any product, service, company or other commercial entity.
- (d) Appear in any commercial, social or nonprofit publication or any motion picture, film, video, public broadcast or on any website.

Additionally, when it can reasonably be construed that an employee, acting in his individual capacity or through some unofficial group or organization (e.g. bargaining group), is affiliated with this department the employee shall give a specific disclaiming statement that any such speech or expression is not representative of the Austin Police Department.

Employees retain their right to vote as they choose, to support candidates of their choice and to express their opinions on political subjects and candidates at all times while off-duty. However, employees may not use their official authority or influence to interfere with or affect the result of an election or a nomination for office. Employees are also prohibited from directly or indirectly using their official authority to coerce, command or advise another employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes (5 U.S.C. § 1502)).

#### 972.5 PRIVACY EXPECTATION

Employees forfeit any expectation of privacy with regard to anything published or maintained through file-sharing software or any Internet site open to public view (e.g., Facebook, ~~MySpace~~, ~~Twitter~~). While the Department does not actively monitor member off-duty use of social media, the Department does have the right to review and take appropriate lawful action with respect to statements or speech that violate Departmental policy, conflicts with job duties, interferes with the Department's mission, or improperly discloses confidential Departmental information.

Additional guidelines on privacy expectations are outlined in:

- (a) General Order 1000 (Department Technology Use); and
- (b) General Order 1002 (Electronic Mail (Email) Communications).