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"INTEGRITY...FAIRNESS...SERVICE"

SPECIAL ORDER #2019-04

DATE: November 19, 2019

TO: All Police Department Personnel. To be announced at Roll Call and a Copy Posted on the Department's intranet site.

RE: Personal Use of the Internet and Social Media.

EFFECTIVE: Immediately.

BACKGROUND: The Department recognizes the significant role the Internet and social media can play in the lives of its members, and respects the constitutional right to freedom of speech for all members. However, members must be mindful that by virtue of their status as public employees, some speech (including some speech made while using the Internet and social media), may not be protected under the First Amendment.

Members must be aware that, due to the nature of social media and the Internet, there is little to no expectation of privacy regarding a member's personal use, and that all activities have the potential to be disseminated broadly, even if originally posted under strict privacy settings. The Department reserves the right to view members' publicly accessible Internet and social media profiles and activities. This includes current and historical profiles and activities posted publicly by the member, as well as profiles and activities posted privately that become public by being copied, shared, or saved by others.

Members participating in Internet and social media activities must be aware that their activities, whether or not intended to do so, may be interpreted by members of the public as being representative of the Department and its views. Personal Internet and social media activities, whether intended to be private, or posted publicly, may be used as impeachment material during testimony or affect a member's ability to be called as a witness in a grand jury or court proceeding.

Case law has established that speech by public employees is treated differently than speech by private citizens. In general, case law supports balancing the interest of a public employer in promoting the efficiency of its public services with its employees' rights to free speech on matters of public concern, as well as recognizing rights of public employees to engage in concerted activities through recognized bargaining units.

This policy serves to:

1. Protect the rights of Department members to use the Internet and social media, and
2. Provide a set of guidelines and prohibitions that balance the potential negative impact some content may have on the individual's employment and the Department as a whole when determining if discipline is appropriate.

Members should review their social media profiles and activities, including historical activities and privacy settings based on the guidelines provided herein.

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PURPOSE: To establish a policy that protects the rights of Department members to use the Internet and social media, while providing a set of guidelines and prohibitions that balances the potential negative impact some content may have on the individual's employment and the Department as a whole.

RELATIONSHIP TO DEPARTMENTAL VALUES: This Special Order supports the Department's value of **SERVICE** by ensuring that Department members' rights to use personal Internet and social media is protected, while balancing the need to protect the Department from the potential negative impact some content may have on the individual's employment and the Department as a whole.

POLICY: It is the policy of the Baltimore County Police Department to permit members' personal use of the Internet and social media, within the limits of the law and First Amendment rights, while balancing the need to protect the Department from the potential negative impact some content may have on the individual's employment and the Department as a whole.

This policy does not address members' professional use of social media and the Internet.

PROCEDURES:

DEFINITIONS

- Activity - action performed on an Internet or social media site (e.g., share, like, comment, post, publish, subscribe, join, etc.)
- Digital Media - electronic photographs, video, sound, and other related content that can be created, viewed, distributed, modified, or preserved on computers and/or other electronic devices.
- Matter of Public Concern - speech that relates to a matter of political, social, or other concern to the community that the public is truly concerned with or interested in.
- Post - content a user publishes or shares on an Internet or social media site.
- Profile - user's summary of personal details on an Internet or social media site.
- Social Media - platforms of electronic communication through which a user can share information, ideas, personal messages, and other content.
- Speech - expression or communication of thoughts or opinions in spoken words, in writing, by expressive conduct, symbolism, photographs, video, digital media, or related forms of communication.

GENERAL

- The Department reserves the right to view members' publicly accessible Internet and social media profiles and activities.
NOTE: This includes current and historical profiles and activities posted publicly by the member, as well as profiles and activities posted privately that become public by being copied, shared, or saved by others.
- The Department's Personal Use of the Internet and Social Media policy applies to all members, even if their activities and profiles:
 1. Do not expressly connect the member with the Department; or
 2. Are made anonymously or using pseudonyms.
- Speech made pursuant to a member's official duties (i.e., made in an official capacity) may not be protected under the First Amendment.
- In determining whether discipline is appropriate, in matters of a member's speech, the Department will determine whether the:
 1. Member was speaking as a citizen on a matter of public concern rather than as an employee about a matter of personal interest; and

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2. Member's interest in speaking on a matter of public concern is outweighed by the potential negative impact the content may have on the individual's employment or the Department as a whole.

NOTE: The context in which the speech was made, including the member's role and the extent to which the speech impairs the efficiency of the workplace will be considered.

- In determining its interest, the Department will consider whether a member's speech:
 1. Impaired the maintenance of discipline by superiors;
 2. Impaired harmony among coworkers;
 3. Impeded the performance of the member's duties;
 4. Interfered with the operation of the Department;
 5. Undermined the mission of the Department;
 6. Was communicated to the public or to coworkers in private;
 7. Conflicted with the responsibilities of the member within the Department;
 8. Abused the authority and public accountability that the member's role entailed; or
 9. Diminished public confidence in the impartiality of the Department.
- When imposing discipline, the Department need not prove that a member's speech resulted in an actual disruption of its ability to provide effective and efficient police services, only that there is a reasonable apprehension that an adverse effect could result from the member's speech.
- The nature of the Internet and social media increases the potential, in some cases exponentially, that a member's speech may result in departmental disruption.

MEMBERS

- May utilize the Internet and personal social media in accordance with Department and Baltimore County policy.
 - May express themselves as private citizens regarding private or personal matters, in a manner of conduct consistent with the Department's core values.
 - May be subject to discipline for expressions of:
 1. Complaints related to their employment; and
 2. Complaints about conditions of employment.
- EXCEPTION:** Expressions on a matter of public concern rather than a matter of personal interest where the member's interest in speaking on a matter of public concern is outweighed by the potential negative impact the content may have on the individual's employment or the Department as a whole.
- Treat as confidential all official and confidential matters of the Department.
 - Are strongly cautioned that Internet and social media profiles and activities may impact the member's ability to perform essential functions of their job (e.g., may be used as impeachment material during testimony, may affect their ability to be called as a witness in a grand jury or court proceeding, etc.).
 - May identify themselves as a member of the Department on the Internet and social media sites, unless they are assigned to, or may reasonably be expected to work in undercover, confidential, or covert operations. However, in choosing to identify as a member of the Department on the Internet or social media sites, members may increase the likelihood that their profiles and activities are perceived to represent the Department.
- NOTE:** Choosing to identify yourself or others as a member of the Department on the Internet or social media sites may hinder a member's ability to work in or be assigned to undercover, confidential, or covert operations.
- Will report acts of discrimination, harassment, or sexual harassment by other members on the Internet and social media, whether involved as a victim or witness.
 - Will monitor their personal social media profiles and activities to ensure that other users have not posted material that is in conflict with Department policy and remove prohibited content, when possible.
 - Should consider exercising discretion and available social media security settings to control release of personally identifying information and Department affiliation to the public, to protect their safety and the safety of their families, personal property, etc.

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PROHIBITIONS

- Participation in an Internet or social media site or group that:
 1. Expresses discrimination, harassment, and/or sexual harassment (Refer to Administrative Manual, Article 7, Personnel Issues).
 2. Otherwise violates Department policies related to member conduct.
- Utilizing County-owned devices for non-business related Internet or social media use.
NOTE: Members have no expectation of privacy on County-owned devices.
- Posting:
 1. Personally identifying information of any member without their consent.
 2. Digital media or personally identifying information of any member assigned to undercover, confidential, or covert operations.
 3. Digital media of Department uniforms, vehicles, equipment, facilities, or other property that would project the Department in a negative or unprofessional light (Refer to Administrative Manual, Article 1, Conduct).
 4. Information or digital media that may compromise police operations or tactics, and/or the safety and security of Department facilities, vehicles, equipment, etc.
 5. Materials that imply the member is speaking on behalf of the Department.
 6. Language, images, or acts that are obscene.
NOTE: The courts have determined that obscenity is not free speech, but cannot be easily defined.
 7. Expressions of discrimination, harassment, and/or sexual harassment (Refer to Administrative Manual, Article 7, Personnel Issues).
 8. Participation or endorsement of unlawful behavior.

LEGAL SECTION

- Conducts regular reviews of this policy to ensure compliance with applicable laws.
- May be consulted regarding members' personal use of the Internet and/or social media to assist with evaluations of possible violations.

IMPLEMENTATION: This Special Order will be distributed electronically to all Department members. Shift/Unit supervisors will be responsible for the referencing of this Special Order.

By order of,



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