

Fire Department Use of Social Media The Legal Issues

Presented to the
Association of Fire Districts
of the State of New York
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Two Sets of Legal Issues

- Free Speech and 1st Amendment Issues
- Compliance with Open Meetings, FOIL and Record Retention Requirements

Free Speech and the First Amendment

- First Amendment:
 - "**Congress shall make no law** respecting an establishment of religion, or prohibiting the free exercise thereof; or **abridging the freedom of speech**, or of the press; or **the right of the people peaceably to assemble**, and to petition the Government for a redress of grievances."
- First Amendment Applies to Local Governments
 - *Gitlow v. New York* (US Supreme Court, 1925)
- Application to Fire Department Use of Social Media
 - Volunteer Firefighters are considered government employees for First Amendment Issues.
(*Reed v. Medford Fire Dept.*, 806 F.Supp.2d 594, ED NY 2011)

Restrictions on “Government Employees”

Key question: Is restriction on a government employee's speech permitted by the 1st Amendment.

General Rule: Government employees have diminished 1st Amendment rights.

Restrictions on “Government Employees”

Pickering v Board of Education (US Supreme Court 1983)

2 step analysis:

1. Determine if the speech is a matter of public concern, and if yes,
2. Weigh the interests of the government employee, commenting on matters of public concern, against the State’s interest in effective government.

Pickering says:

- When the speech *substantially interferes* with the legitimate operations of government it can be regulated.
- “So long as employees are speaking as citizens about matters of public concern, they must face only those speech restrictions that are necessary for their employers to operate efficiently and effectively.”





App!

Police & Fire

Mount Vernon Firefighter Suspended over Social Media Posts

He is alleged to have shown support for the Dallas sniper, according to news reports.

By Lanning Taliaferro (Patch Staff) - August 5, 2016 9:55 am ET



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Ga. Firefighter Who Took Crash Video Fired



Associated Press



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Uploaded on Oct 29, 2010

A Georgia firefighter who sent around personal cell phone video of a horrific crash has been dismissed. The father of the crash victim eventually received the video via text message from a friend. (Oct. 29)

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Kurtis Cook

He needs to be praised for the good deed he has done.

Yesterday at 7:48 PM · Like · 1



Elliott Brown

Call Kurtis Cook at home [REDACTED] and tell him his racist comments are not acceptable. Or call the Mabank Fire Department ([REDACTED]) and tell them their firefighter, Kurtis Cook is making racist comments on Facebook and whatever else feels right to you. Be peaceful and kind even though his ignorance is hateful and angry.



"As of 1123 hrs, after an investigation in the allegations being made of Firefighter Kurtis Cook, the Mabank Fire Department Command Staff has terminated Kurtis Cook as a volunteer Firefighter permanently and has trespassed him from all Mabank Fire Department property. The Mabank Fire Department does not condone nor promote these type of actions or thoughts. On behalf of all members, the Mabank Fire Department offers our deepest apologies to all that were offended by his actions and comments."

Going a Bit Too Far!

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Couple faces suspension from Garfield Fire Department over wedding invitation on Facebook

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Adopting a Social Media Policy

Department Use of Social Media

- Which sites can be used (Facebook, Twitter, Etc.)
- What types of information and opinion
- Who can post
- Whether to use a moderator/gatekeeper
- Policy for deleting material
- Policy for FOIL production
- Policy for archiving

Adopting a Social Media Policy

Members' Use of Social Media

- Personnel should be free to express themselves as private citizens to the degree that their speech does not impair working relationships of the department.
- Personnel should not be prohibited from posting information to which they have access as a result of their position without written permission from the Chief or the President.

- Personnel should be permitted to speak on a matter of public concern as a spokesperson for the department only with written permission from the Chief or President
- Personnel should be prohibited from publicly discussing fire department matters that are confidential.
- Personnel should be prohibited from engaging in speech that is false, deceptive, libelous, slanderous, misleading or causes harm to others, ***including speech that constitutes hate speech, or harassment.***

Compliance with State Records Laws

- Freedom of Information Act
- Open Meetings Law
- Record Retention Laws

Freedom of Information Act

Public Officers Law Art. 6

Definition of a "Record" -

"Record" means any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, **in any physical form** whatsoever including, but not limited to ... **computer tapes or discs**.....

Public Officers Law §86(4)

Is content on a social media site a "record" as defined in FOIL?

- State of the Law - "Maybe"
- FOIL is to be construed "liberally"

Record Retention

Arts and Cultural Affairs Law Art. 57-A

Definition of a "Record" is Different – Broader than FOIL's

"Record" means any book, paper, map, photograph, or other information-recording device, regardless of physical form or characteristic, that is made, produced, executed, or received by any local government or officer thereof pursuant to law or in connection with the transaction of public business.

Arts and Cultural Affairs Law §57.17(d)(4)

What the Law Requires

It shall be the responsibility of every local officer

- to maintain records ...
- ... for so long as the records are needed for the conduct of the business of the office;
- to adequately protect such records;
- to pass on to his successor records needed for the continuing conduct of business of the office.

Arts and Cultural Affairs Law §57.25

Open Meetings Law

Public Officers Law Art. 7

Open Meetings Law §103(a):

“Every meeting of a public body shall be open to the general public...” [exception for executive sessions].

Issues:

- When do interactions of the District on social media sites constitute meetings in accordance with the NY Open Meetings Law.
- What if a majority of a the District’s commissioners post on a social media site on a matter before them?

No NY case law - No NY opinions

If you have any questions
please ask now, or contact me:

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