



POLICY DEVELOPMENT · RESOURCES

Social Media Policy: Why Do We Need One?

By **DLG Learning Center**

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DAIGLE LAW GROUP

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By Atty. Eric P. Daigle,

Law enforcement standards across this country clearly set forth the need for specific policies to govern the actions and decision-making of officers. In the age of Internet use and online social networking, has law enforcement provided the comprehensive policies and procedures to provide officers with proper guidance regarding appropriate use of social media, and take viable disciplinary action against the officers who utilize such social media sites at the detriment of the Department? Social media sites are being utilized by all generations for the purpose of interacting with each other. Websites such as Twitter and Facebook allow users to provide minute-by-minute updates on their actions and activities, along with the user's thoughts and opinions on a host of topics. Let's not forget Instagram and Snapchat, which allow users to share what they are doing as well as what they are seeing. What implications does this have on law enforcement operation?

It all started in 2009, when an Indiana state trooper was faced with an Internal Affairs investigation for what some call compromising photos and statements that he posted on the Internet. An investigation conducted by a news organization found that the trooper had photographs in which he was posed with a .357 Magnum pointed at his head, drinking what he described to be lots of beer with his buddies, and lewd horseplay. The investigation of the trooper's Facebook page revealed that it was used to brag of heavy drinking as well as updates as to his actions at work. In fact, he was not shy about sharing his views about police work, referring to himself not as a state trooper but as a "garbage man." His Facebook page said "I pick up trash for a living." In fact, it is reported that the trooper went so far as to weigh in on the issue of people who resisted arrest and threatened police officers. He allegedly referred to an incident in California in which officers punched a homeless man during an arrest, and he wrote "Let someone, homeless or not, try and stab me with a pen, knife, spoon, etc., not only will he fail, he'll probably end up shot. These people should have died when they were young anyway, I'm just doing them a favor." *[sic]* When identified, this got the attention of the Indiana State Police. An investigation revealed that not only were these statements and photographs on the trooper's Facebook page, but he would continually provide updates as to his location and what he was doing while allegedly working. The biggest concern for the State was that the trooper was Facebooking while on duty. It is alleged that records show multiple occasions when the trooper was on duty Facebooking about what he was doing and how he was doing it.

This type of situation, however, can go a step further and create far-reaching implications for departments and officers. Not only will the agencies have investigation and disciplinary issues resulting from the actions of the officers on Facebook or other social media, but departments may also face credibility issues regarding the offending officer. Let's use, for example, the New York officer who utilized his MySpace account to express his views. The officer's use of social media became a concern for the officer when a man he had arrested for carrying a loaded gun went on trial in the State Supreme Court in Brooklyn. A large portion of the case relied on the credibility of the officer who arrested him. The man on trial claimed that the officer and his partner stopped him, beat him, and planted a gun on him to justify breaking three of his ribs. In cross-examination, the attorney for the accused, who had done his research and had viewed the arresting officer's MySpace page, asked him questions regarding why he had posted a description of his mood on his MySpace account as "devious." Moreover, jurors learned that a few weeks before the trial, the officer had posted this status on his Facebook page: "Vaughn is watching 'Training Day' to brush up on proper police procedures." What the jury's actual take was on the officer's posting a description of his mood as devious, and the officer's response to questions regarding "Training Day", is unknown. What is known is that the accused, who was on parole for a burglary conviction when he was arrested, beat the most serious charge – felony possession of a weapon and a bag full of ammunition — and was convicted of resisting arrest.

In addition to the comments listed on MySpace, the defense attorney had tracked down comments that the officer had made on the Internet about video clips of an arrest in which an officer punched a handcuffed man. The arresting officer stated "If he wanted to tune him up, he should have delayed handcuffing him." He added "If you're going to hit a cuffed suspect, at least get your money's worth because now he's going to get disciplined for 'a relatively light punch.'" In New Bedford Massachusetts, the Police Chief initiated an internal affairs investigation when the department received information that an officer had uploaded a crime scene photograph of a deceased male on her Facebook page. Unfortunately, it is reasonable to expect to see more of this type of conduct as most officers carry private cell phones, and interest in these types of photographs is extremely high.

What is the lesson to be learned here? It is very clear that we must convey to our officers that comments and statements made in the cyber world can be saved for everyone to see for all times in perpetuity. Whether it's in your Facebook page, MySpace page, or commenting on a newspaper article or YouTube video, specific rules need to be put in place to protect not only the officer, but the officer's credibility and the image of the Department. While we have policies in our manuals which may have limited value in this area, Departments must strongly consider putting into place an order to govern the use of social media and identify acceptable and unacceptable conduct. We continue to preach the theory that when a policy is proper and officers are properly trained on that policy, any violation of that

policy should result in discipline. Enforcing this theory requires serious consideration for the need of a social media policy.

So the question now is “What should be included in a social media policy?” While we all have policies regarding the proper use of the Internet and email within the organization, specific issues directly related to the use of social media should be addressed. Such direction should include but is not limited to:

- ensuring officers do not indicate their affiliation with the Department;
- that officers are prohibited from posting photographs that are taken on Department property and/or while in uniform, to include official department training, activities or work assignments;
- ensuring that utilization of social media websites, blogs, Twitter, or other medium or electronic communication is not done in their office-duty time, and that any proof that this has occurred in their on-duty time and/or on department computers will result in discipline;
- prohibiting the posting of confidential and sensitive information along with photographs of ongoing criminal or administrative investigations;
- Officers should be advised that an appropriate level of professionalism should be followed so as not to broadcast in a manner which is detrimental to the mission and the function of the agency.

While we take specific interest in the Facebook, MySpace, and Twitter accounts of new applicants to the law enforcement employment, we have forgotten to provide guidance to the officers who are currently employed and utilizing them. Officers should be advised that during an administrative investigation, employees may be ordered to provide the agency with access to social media sites when the subject of the investigation is directly, narrowly, and specifically related to an employee's performance or ability to perform his or her function within the operation, or when the subject in the investigation is potentially adverse to the operation, morale, and efficiencies of the agency. In a time where the legal standards as to privacy issues are being interpreted at all levels, the need to ensure clear standards are in place is more important than ever.

When drafting a social media policy, departments should ensure that the policy provides comprehensive guidelines regarding: Department-sanctioned use of social media, including conduct during Department-sanctioned use; Recognized uses for a department-sanctioned media presence; and personal use of social media, including precautions and prohibitions. Given the widespread use of social media, a proper policy should also provide guidelines regarding the employment screening process and a review of internet-based content during the background investigation process.

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