



Timothy M. Keller
Mayor

City of Albuquerque

Albuquerque Police Department



Eric J. Garcia
Interim Superintendent of Police Reform

Interoffice Memorandum

January 10, 2022

To: Diane McDermott, Interim Executive Director, CPOA

From: Eric J. Garcia, Interim Superintendent of Police Reform/DCAO

Subject: Non-Concurrence of Findings and/or Discipline re: CPC 134-21

This memorandum serves to convey the articulation for APD's points of non-concurrence in the above captioned administrative investigation conducted by the Civilian Police Oversight Agency.

Summary of non-concurrence of finding(s):

Policy	CPOA Finding	APD Finding
1-1-4(A)	Sustained	Not Sustained
1-1-5(A)(1)	Sustained	Not Sustained

Rationale for non-concurrence of finding for 1-1-4(A):

I concur with the recommendation provided by Deputy Chief C E as follows:

The investigation cited court case: KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, PLAINTIFFS: BUCKWALTER, COHEN, FIGUEROA, GU, NEELY, PAPP, and PAPPAS, V. DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES.

However, there are conflicting rulings by different federal circuit courts, and the cases are focused on whether elected officials may ban constituents from their social media pages without violating their constituents First Amendment rights.

Mr. C is not an elected official.

Campbell v. Reisch

The court held that Cheri Toalson Reisch, a Republican state representative for Missouri's 44th District, is entitled to block a constituent on Twitter without violating her constituents First Amendment Rights.

The majority distinguished Trump and Davidson by noting that Representative Reisch conducted little official business on her Twitter account.

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“The First Amendment, by its terms, prohibits only governmental abridgement of speech. By not interfering with private restrictions on speech, the amendment protects a robust sphere of individual liberty. Similarly, for a claim to succeed, a defendant must have acted under color of state law. It is not enough that the defendant is a public official, because acts that public officials take in the ambit of their personal pursuits do not trigger liability.”

The investigator also referenced Administrative Instruction 2-25 (2016) which states that no City managed social media account is allowed to block or restrict the public from viewing content or postings made by the City account. The investigator further noted:

- Mr. G “positioned himself and has taken on the role as a government actor” after he blended APD related content on his account.
- There should be checks and balances so that this does not happen again.
- The investigation also showed that there were no work emails that linked Mr. G twitter page to his work.
- A stated that this led to confusion on his end. A later learned that G had blocked him because this account is a personal account.

Mr. G blended his accounts by retweeting APD related content; however, this content is available on the official APD Twitter account. The official APD Twitter account should be the account the public uses to obtain information. Subsequently, I do not concur with the findings of the investigator. Additionally, there is conflicting case law specific to this allegation.

Rationale for non-concurrence of finding for 1-1-5(A)(1):

I concur with the recommendation provided by Deputy Chief Cecily Barker as follows:

1-1-5 A 1

General Conduct and Responsibilities, Public Welfare

Department personnel shall treat the public with respect, courtesy, and professionalism at all times.

The investigation noted that Mr. G did not have the capability of blocking anyone on his personal page because he portrayed himself as a government actor. The investigator noted, “G calling A and/or others “troll and butthurt” violates general guidelines.” There is no evidence to show who Mr. G was referring to. The comments were generalized and made on his personal Twitter page, which the investigation showed there were no notifications linking Mr. C city email to his personal Twitter account.

Conclusion:

Based on the aforementioned points of non-concurrence, it is further deemed appropriate to reject the CPOA's discipline recommendation of an 8 hour suspension, and instead impose the mitigated penalty recommended by Deputy Chief C B of a written reprimand.

Respectfully,



Eric J. Garcia
Interim Superintendent of Police Reform/DCAO
Albuquerque Police Department, Police Reform Bureau

cc: Harold J. Medina, Chief of Police