

Policy  
**1055**

Bay Area Rapid Transit Police Department

BART PD Policy Manual

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## **Employee Speech, Expression and Social Networking**

### **1055.1 PURPOSE AND SCOPE**

This policy is intended to address issues associated with ~~employee~~ the use of social networking sites, ~~and to~~ provides guidelines for the regulation and balancing of ~~employee~~ member speech and expression with the needs of the ~~Department~~. Bay Area Rapid Transit Police Department.

This policy applies to all forms of communication including but not limited to digital media, print media, public or private speech, and use of all internet services, including the web, email, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums, and other file-sharing sites.

Nothing in this policy is intended to prohibit or infringe upon any communication, speech or expression that is protected or privileged under law. This includes speech and expression protected under state or federal constitutions as well as labor or other applicable laws. For example, this policy does not limit an ~~employee~~ member from speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or ~~officer associations~~ an employee group, about matters of public concern, such as misconduct or corruption.

~~Employees~~ Members are encouraged to consult with their supervisor regarding any questions arising from the application or potential application of this policy.

#### ~~1055.1.1 APPLICABILITY~~

~~This policy 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, e-mail, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums, video, and other file-sharing sites.~~

### **1055.2 POLICY**

Members of public ~~employees~~ entities occupy a trusted position in the community, and thus, their statements have the potential to contravene the policies and performance of ~~this department~~ the Bay Area Rapid Transit Police Department. Due to the nature of the work and influence associated with the law enforcement profession, it is necessary that employees of this department be subject to certain reasonable limitations on their speech and expression. To

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achieve its mission and efficiently provide service to the public, the Department will carefully balance the individual employee's rights against the needs and interests of the Department when exercising a reasonable degree of control over its employees' members' speech and expression.

#### **1055.3 SAFETY**

Employees Members 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 Bay Area Rapid Transit Police Department employees members, such as posting personal information in a public forum or posting a photograph taken with a Global Positioning System (GPS)- enabled camera, can result in compromising an employee's a member's home address or family ties. Employees Members should therefore not disseminate or post any information on any forum or medium that could reasonably be anticipated to compromise the safety of any employee, an employee's member, a member's family, or associates. Examples of the type of information that could reasonably be expected to compromise safety include:

- Disclosing a photograph and name or address of an officer who is working undercover.
- Disclosing the address of a fellow officer.
- Otherwise disclosing where another officer can be located off-duty.

#### **1055.4 PROHIBITED SPEECH, EXPRESSION, AND CONDUCT**

To meet the department's safety, performance, and public-trust needs of the Bay Area Rapid Transit Police Department, the following are prohibited unless the speech is otherwise protected (for example, an employee e.g., a member speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations an employee group, on a matter of public concern):

- (a) Speech or expression made pursuant to an official duty that tends to compromise or damage the mission, function, reputation, or professionalism of the Bay Area Rapid Transit Police Department or its employees members.
- (b) Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, the Bay Area Rapid Transit Police Department and tends to compromise or damage the mission, function, reputation, or professionalism of the Bay Area Rapid Transit Police Department or its employees members. Examples may include:
  1. Statements that indicate disregard for the law or the state or U.S. Constitution.
  2. Expression that demonstrates support for criminal activity.
  3. Participating in sexually explicit photographs or videos for compensation or distribution.
- (c) Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the employee member as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination, or illegal behavior.

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- (d) Speech or expression of any form that could reasonably be foreseen as having a negative impact on the safety of the ~~employees~~ ~~members~~ of the Department (e.g., ~~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~~ ~~members~~ by informing criminals of details that could facilitate an escape or attempted escape).
- (e) Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the ~~Bay Area Rapid Transit Police~~ Department.
- (f) 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 express authorization of the Chief of Police or the authorized designee.
- (g) 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 Bay Area Rapid Transit Police Department on any personal or social networking or other website or web page, without the express authorization of the Chief of Police.

~~Employees~~ ~~Members~~ must take reasonable and prompt action to remove any content, including content posted by others, that is in violation of this policy from any web page or website maintained by the employee (e.g., social or personal website).

#### 1055.4.1 UNAUTHORIZED ENDORSEMENTS AND ADVERTISEMENTS

While ~~employees~~ ~~members~~ are not restricted from engaging in the following activities as private citizens or as authorized members of a recognized bargaining unit or ~~officer associations~~ ~~an employee group~~, ~~employees~~ ~~members~~ may not represent the Bay Area Rapid Transit Police Department or identify themselves in any way that could be reasonably perceived as representing the Bay Area Rapid Transit Police Department in order to do any of the following, unless specifically authorized by the Chief of Police (Government Code § 3206; Government Code § 3302):

- (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 ~~n-employee member~~, acting in ~~his/her~~ ~~their~~ individual capacity or through an outside group or organization (e.g., bargaining group or ~~officer associations~~ ~~an employee group~~), is affiliated with this department, the ~~employee member~~ shall give a specific disclaiming statement that any such speech or expression is not representative of the Bay Area Rapid Transit Police Department.

~~Employees~~ ~~Members~~ retain their right to vote as they choose, to support candidates of their choice and to express their opinions as private citizens, including as authorized members of a recognized bargaining unit or ~~officer associations~~ ~~an employee group~~, on political subjects and

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candidates at all times while off- duty.

However, ~~employees~~ ~~members~~ may not use their official authority or influence to interfere with or affect the result of an election or a nomination for office. ~~Employees~~ ~~Members~~ are also prohibited from directly or indirectly using their official authority to coerce, command or advise another ~~employee~~ ~~member~~ to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes (5 USC § 1502).

#### **1055.5 PRIVACY EXPECTATION**

~~Employees~~ ~~Members~~ forfeit any expectation of privacy with regard to e-mails, texts, or anything published or maintained through file-sharing software or any internet site (~~e.g., Facebook~~) that is accessed, transmitted, received, or reviewed on any department technology system (see the Information Technology Use Policy for additional guidance).

The Department ~~shall~~ ~~should~~ not require an employee to disclose a personal user name or password for accessing personal social media or to open a personal social website; however, the Department may request access when it is reasonably believed to be relevant to the investigation of allegations of work-related misconduct (~~Labor Code § 980~~).

#### **1055.6 CONSIDERATIONS**

In determining whether to grant authorization of any speech or conduct that is prohibited under this policy, the factors that the Chief of Police or authorized designee should consider include:

- (a) Whether the speech or conduct would negatively affect the efficiency of delivering public services.
- (b) Whether the speech or conduct would be contrary to the good order of the Department or the efficiency or morale of its members.
- (c) Whether the speech or conduct would reflect unfavorably upon the Department.
- (d) Whether the speech or conduct would negatively affect the member's appearance of impartiality in the performance of ~~his/her~~ ~~their~~ duties.
- (e) Whether similar speech or conduct has been previously authorized.
- (f) Whether the speech or conduct may be protected and outweighs any interest of the Department.

#### **1055.7 TRAINING**

Subject to available resources, the Department should provide training regarding ~~the limitations on speech, expression, and use of social networking employee speech and the use of social networking~~ to all ~~members~~ of the Department.