

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**

Office of Government Ethics

June 7, 2024

**ADVISORY OPINION**

**Guidance on Social Media use for Official Purposes by District Government Elected Officials and District Government Employees.**

Pursuant to D.C. Official Code § 1-1162.19(a-1)(1), the Director of Government Ethics issues this opinion, *sua sponte*, to provide guidance on how District employees and elected officials should properly use official social media accounts to avoid violating the ethics rules. Official accounts maintained by a DC Government office or agency are government resources and should be used only for official purposes.<sup>1</sup> Personal accounts should not trade on an employee’s official position or make use of government time or resources. For more on personal social media accounts, please see the advisory opinion previously issued by the Director of Government Ethics, incorporated here by reference.<sup>2</sup>

**A. What is Social Media?**

Social media is generally a method of communication between individuals conducted over the Internet via an application (“app”) or a website. Some examples of currently popular apps are Facebook, Instagram, X (formerly Twitter), and LinkedIn, all of which are designed for users to share their message with an audience of followers. This guidance is not limited to these applications. While society has become more connected through social media, it is clear that guidance is needed for District employees and elected officials on how to properly use official accounts for official purposes on these apps.

**B. What is an Official Account?**

Under the Code of Conduct, an employee has a duty to protect and conserve government property and shall not use such property, or allow its use, for other than authorized purposes.<sup>3</sup> “Authorized purposes” are those purposes for which government property is made available to members of the public or those purposes authorized by an agency head in accordance with law or regulation. Official accounts are considered government property.<sup>4</sup>

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<sup>1</sup> The U.S. Office of Government Ethics Legal Advisory [LA-15-03](#): The Standards of Conduct as Applied to Personal Social Media Use; The U.S. Office of Government Ethics Legal Advisory [LA-23-03](#): The Standards of Conduct and 18 U.S.C. § 208 as Applied to Official Social Media Use.

<sup>2</sup> [BEGA Advisory Opinion 1559-001](#) – Advisory Opinion on Social Media and the Code of Conduct.

<sup>3</sup> 6B DCMR § 1801, et seq. (hereinafter DPM).

<sup>4</sup> See, DPM §1808 on Government Property.

When an account is used as a part of the job, it belongs to that office, agency, or elected position. This applies even if there are multiple employees who use the account on behalf of DC Government in their official capacity. An account is official when its primary purpose is as a tool of governing, which means the goal of the account is to inform the public as to the activities of the elected official or governmental agency. Maintaining a private account that is being managed based on or because of a government position is a violation of the District’s ethics rules.<sup>5</sup>

Elected and public officials should exercise caution because certain use of their personal accounts for official purposes could cause those posts in question to be attributable to the District government. That would make some posts on a private account subject to the restrictions of an official account and use of the account could become subject to the requirements of the First Amendment.<sup>6</sup> This advisory opinion will take only a cursory look into First Amendment issues, but some of the requirements of official accounts include allowing access to the public and not blocking anyone.<sup>7</sup> The United States Supreme Court has held that a public official who prevents someone from commenting on the official’s social-media page engages in state action under 42 U.S.C. § 1983 only if the official both (1) possessed actual authority to speak on the State’s behalf on a particular matter, and (2) purported to exercise that authority when speaking in the relevant social-media posts.<sup>8</sup>

#### I. Factors Test

As mentioned, the United States Supreme Court recently held that certain speech can be attributable to the State only if the official:

- (1) possessed actual authority to speak on the State’s behalf on a particular matter, and
- (2) purported to exercise that authority in the relevant social-media posts.<sup>9</sup>

Under the first prong, an act is not attributable to the state unless it is traceable to the State’s power or authority. Private action—no matter how “official” it looks—lacks the necessary lineage.<sup>10</sup> An official must have actual authority rooted in written law or longstanding custom to speak for the state. That authority must extend to speech of the sort that caused the alleged rights deprivation.<sup>11</sup> One example the court gives is to look at the individual’s position title and duties for clarification. For example, not all employees are authorized to speak on behalf of the agency and may be rebroadcasting or amplifying the message of another government official or agency. Under the second prong of the test, if a public official does not use their speech in furtherance of their official responsibilities, then they are speaking in their own voice.<sup>12</sup> Additionally, context can clarify that a social media account intends to speak for the government, for example, an account that is passed

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<sup>5</sup> See, DPM §1800.3(g), [e]mployees shall not use public office or position for private gain.

<sup>6</sup> See [OANC 2023-004](#) Constituent Access to ANC Social Media Accounts.

<sup>7</sup> See, *Davison v. Randall*, 912 F.3d 666 (4th Cir. 2019) (holding that a government official violated the First Amendment when she blocked an individual from a Facebook page for criticizing her).

<sup>8</sup> See, *Lindke v. Freed*, 601 US \_\_ (2024).

<sup>9</sup> See, *Lindke v. Freed*, 601 US \_\_ (2024).

<sup>10</sup> *Id.* at 9.

<sup>11</sup> *Id.* at 12.

<sup>12</sup> *Id.*

down to whomever occupies a particular position.<sup>13</sup> When taken together, these factors help determine whether a post or account was created with the specific authority of a government official or agency. Accounts that include language describing it as a personal page are given a heavy presumption that it is a personal account.

### **C. What are “Official Purposes” for the Use of Social Media?**

Allowable “official purposes” for the use of social media include, without limitation, to engage constituents in real time and provide customer service, to promote thought leadership among district government entities, to disseminate news, information, services, and events, to provide another vehicle for agency outreach, and to build real and virtual communities.<sup>14</sup>

Prohibited uses of an official social media account can include, again without limitation, any purpose that violates a federal or District government law, policy, standard or procedure. As well as advertising or promotion of any private business enterprise or activity, access to and/or distribution of: pornography, fraudulent information, sensitive information, proprietary and/or public trust information, racially discriminatory, disparaging or harassing information, hate-related information or opinions, including unsubstantiated accusations, and any activity with religious or political purposes outside the scope of the user's assigned and authorized governmental duties.<sup>15</sup>

### **D. Compliance with the Local Hatch Act**

The Local Hatch Act (“LHA”) provides political activity guidance to DC government employees.<sup>16</sup> Under the LHA, “political activity” is “activity that is regulated by the District government and directed toward the success or failure of a political party, partisan political group, candidate for partisan political office, ballot initiative, or referendum.”<sup>17</sup> The LHA prohibits District employees from engaging in political activity while on duty, among other things.<sup>18</sup> These restrictions apply to political activity that relates to federal and District elections. Additionally, the LHA prohibits District employees from using their official authority to influence or affect others vote or election activity.<sup>19</sup> This includes engaging in political activity while acting in your official capacity. This understanding of political activity is broad and does not require any express advocacy for or against a political party or candidate.

When using an official account, an employee is prohibited from engaging in following, liking, or commenting on partisan pages or platforms, and most importantly, they are prohibited from making postings that in any way would encourage a reader to contribute financially to a partisan campaign, political party, or partisan political group.<sup>20</sup> According to the Office of Campaign Finance (“OCF”) the posting of a link to a partisan candidate’s webpage is a form of

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<sup>13</sup> *Id.* at 13.

<sup>14</sup> DC Office of the Chief Technology Officer's [Social Media Access and Use Policy](#), Reviewed Date – 03/13/2023.

<sup>15</sup> *Id.*

<sup>16</sup> *See*, D.C. Official Code § 1-1171.01-seq.

<sup>17</sup> D.C. Official Code § 1-1171.01(8)(A).

<sup>18</sup> D.C. Official Code § 1-1171.03(a) (setting rules for engaging in political activity while on duty, in a government room or building, while wearing a uniform or official insignia, or while using a government vehicle).

<sup>19</sup> D.C. Official Code § 1-1171.02(a)(1).

<sup>20</sup> *See*, [Advisory Opinion Guidance Local Hatch Act and Fundraising Activities](#), September 22, 2022.

endorsement.<sup>21</sup> In the specific OCF matter, ANCs posted a picture on the official ANC 2B Twitter account and included an @username linked to the page for an official candidate for office. OCF found that this type of linking was clearly “construed as using a government resource to support a political campaign.”<sup>22</sup> OCF concurs with BEGA Advisory Opinion 1559-001, which states specifically that the act of mentioning a candidate on an official account is “political activity because it demonstrates support for that group [or individual partisan candidate].” Comparatively speaking, from a private account, an individual may voice their opinions i.e., support for partisan office candidates with some limitations, but are still prohibited from fundraising.<sup>23</sup> It is important to remember that both the LHA and federal Hatch Act (for employees paid with federal funds) prohibit fundraising.

What an individual says or does on a website can be a reflection on their constituency or their employer.<sup>24</sup> One of the best practices for District government employees and officials is to maintain separate accounts, one for private use and one for official use to prevent privately held beliefs from being shared with an inappropriate audience or violating the LHA.<sup>25</sup>

#### **E. Compliance with the District of Columbia Freedom of Information Act of 1976**

The District of Columbia Freedom of Information Act of 1976 (“DC FOIA”) requires that all physical and digitally created records possessed by the District Government be made accessible by request of the public.<sup>26</sup> Official social media accounts that are run by an agency or elected official often serve the intended purpose, as mentioned above, of informing the public or constituents about governmental activity.<sup>27</sup> Again, these official accounts are considered government property.<sup>28</sup>

Social media is considered the new public forum and is currently an area of limited governmental interference in citizens’ right to free speech. Individual social media sites require users to accept user agreements, which apply some restrictions. However, District government officials and employees are prohibited from deleting, blocking, muting, or otherwise hindering public or constituent access to their social media platforms.<sup>29</sup>

It is becoming more accepted that communication through social media is an essential function and tool of the government. An official account serves as a forum for the public to make comments

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<sup>21</sup> See The Office of Campaign Finance [Docket No. 2019-001](#). While ANCs are not subject to the Local Hatch Act, D.C. Official Code § 1-1163.36 prohibits the use of government resources to support or oppose any candidate for public office, whether partisan or nonpartisan, or to support or oppose any initiative, referendum, or recall measure, including a charter amendment referendum conducted in accordance with § 1-203.03.

<sup>22</sup> *Id.* at 9.

<sup>23</sup> D.C. Official Code § 1-1171.03(a) (setting rules for engaging in political activity while on duty, in a government room or building, while wearing a uniform or official insignia, or while using a government vehicle).

<sup>24</sup> See, [Quick Do’s and Don’ts List on the Local Hatch Act](#).

<sup>25</sup> See, [Advisory Opinion Social Media and the Code of Conduct](#), January 26, 2017.

<sup>26</sup> See, Freedom of Information, D.C. Official Code §§ 2-531 – 2-540.

<sup>27</sup> *Id.*

<sup>28</sup> See, DPM §1808 on Government Property.

<sup>29</sup> See, [How to Capture your Website and Social Media for FOIA and eDiscovery Compliance](#), July 19, 2018.

on the activities of the government.<sup>30</sup> It is, therefore, improper to limit the public’s access to official websites or accounts which provide such information to the public.<sup>31</sup> In order to remain in compliance with the DC FOIA, an official account may not delete comments or postings even if a member of the public makes critical or disapproving comments.<sup>32</sup>

However, if a member of the public finds the private account of a District official or employee and harasses them through spam or other online conduct such as vulgarity or threats, an employee or official may block or delete them from their private account.<sup>33</sup> It must be clear to the observer that this is the private account and not the one intended for serving the public in an official capacity.

## **Illustrative Examples**

### **Scenario A**

ANC123(a) runs and operates a Facebook page “ANC123” that informs constituents in the neighborhood and Ward about different events and encourages them to reach out with any recommendations, concerns, and/or feedback. ANC123(a) leaves the office and refuses to turn over the account to ANC123(b) who has replaced the former ANC in the same geographical area, claiming that the account is ANC123(a)’s personal account.

#### **What should the employee do?**

Because of ANC123(a)’s use of the account it has been converted to an official account and is therefore government property. For consistency and as a matter of remaining compliant with DC FOIA, ANC123(a) would be required to hand over the use of the Facebook page to ANC123(b). Public accounts, such as the example here “ANC 123,” serve the official function of informing the public of the activities of the government and are therefore government property.

### **Scenario B**

An EOM employee, as a part of their official duties, creates posts for the office detailing activities and events the Mayor is engaged in from week to week. The employee supports a candidate for partisan political office and accidentally uses the EOM account that they have access to as a part of their normal job duties to encourage followers to support the candidate financially.

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<sup>30</sup> See, *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017) (for less traditional public forums, characterizing the internet as a place for exchanging views).

<sup>31</sup> *Id.* See also, [Applicability of D.C. FOIA to Text Messaging \(including Ephemeral-Content Applications, such as WhatsApp\) \(#OOG 2022-001\)](#), March 16, 2022.

<sup>32</sup> See, Freedom of Information, D.C. Official Code § 2-531 *et seq.* Some content may be deleted from the visible portion of the platform but must be retained elsewhere. This is due to requirements within the act requiring the maintenance of public records for review. The Office of Public Records (OPR) requests social media posts be submitted quarterly to the DC Archives for preservation. Individual agencies may also have schedules that require them to submit social media posts quarterly. For help submitting social media records, agencies should contact their agency-specific records manager or OPR at [archives@dc.gov](mailto:archives@dc.gov). OPR has a digital preservation system that allows easy storage of social media records.

<sup>33</sup> See, *Randall, F.3d* at 680.

### What should the employee do?

This activity would be expressly prohibited under the LHA because it would encourage the public, via social media, to support a partisan candidate. Furthermore, campaign activity on official time or in official space is strictly prohibited under the LHA. Employees need to be mindful of when and where they are engaging in political activity. The District's public records retention and maintenance policies, discourages the deletion of the post from the official EOM account.<sup>34</sup> To adhere to both the LHA and maintenance of public records, EOM should delete the post from the platform and from public view, but maintain a record of the posting to keep a full and accurate public record.

### Scenario C

An elected District government official runs an X (formerly Twitter) account under “@DC\_CommunityRecs” and decides to block a constituent who repeatedly comments on posts with upsetting and disturbing remarks. The elected official runs this account and uses it to announce actions taken by his office, post meeting notices, and bring attention to comments made by constituents during meetings that they believe others may want to know about.

### What should the employee do?<sup>35</sup>

The account is being used by an elected official for an official purpose. We can apply the above-mentioned factors analysis to determine if the account serves a public or private capacity. It is clear by the account name—@DC\_CommunityRecs—that the intended audience is members of the public. Furthermore, the account's intended use is for the sharing of constituent comments during public meetings and to announce official actions. The function of a public meeting is to serve as a public forum and, in this case, the elected official is spreading the public forum on X for other members of the public to comment on and have access to. Using the Lindke factors, the official possessed actual authority to speak on the District's behalf and exercised that authority by announcing official actions in furtherance of his official responsibility. Based on the facts of the example, the X account is government property, and the elected official is prohibited from blocking the constituent.

### Scenario D

A professor at the University of the District of Columbia (“UDC”) has a public account where she posts about the frustrations related to teaching but never specifies which classes she teaches or who the students are. One day, a student discovers this account and decides to reply and comment on each post made. Upon discovery of the student's comments, the professor blocks the student. Her profile does not reference her position or title with UDC. Some of her postings contain pictures and comments from other UDC faculty and staff.

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<sup>34</sup> D.C. Official Code § 2-1706(a)(1). See also, [Applicability of D.C. FOIA to Text Messaging \(including Ephemeral-Content Applications, such as WhatsApp\) \(#OOG 2022-001\)](#), March 16, 2022.

<sup>35</sup> See also [OANC 2023-004](#) Constituent Access to ANC Social Media Accounts.



What should the employee do?

Based on the above-mentioned factors test, an employee such as the Professor here has created enough separation between her official government role and her social media. She would be free to block a student because her account is not meant to inform students or any members of the public about the day-to-day functions of UDC.

**Scenario E**

The Director of the Mayor's Office of Nightlife and Culture ("MONC") performs with a troupe as an improv comedian in her spare time. She runs an official X account under "@DC\_MONC\_Dir" that primarily retweets other official DC Government content from elected officials and other agencies. The MONC also has an official account under the handle "@DC\_MONC" that highlights similar content. Every so often, @DC\_MONC\_Dir tweets about her own comedy shows or promotes other artists and shows that she finds personally interesting.

Is this acceptable? What should the employee do?

The Director can use the agency's official account for official business. She must use a personal account for her outside activities and personal ideas. Using the official platform gives an appearance of impropriety as well as an appearance that she is using her public office for private gain. It is inadvisable to maintain multiple accounts for an agency unless there is a specific distinguishable purpose for each. The director must keep her outside activities separate from her DC Government work. The posts regarding comedy shows using @DC\_MONC\_Dir is not an official purpose and constitutes a misuse of government property.

The above examples are intended to be illustrative and are in no way exhaustive. Moreover, the analysis needed to determine whether an ethics or D.C. FOIA issue applies is based on the totality of the fact patterns and small details can create different determinations. Notwithstanding the guidance provided herein, employees should continue to request safe-harbor advice from this Office as it pertains to official social media use.

**Pursuant to Chapter 3 of the D.C. Municipal Regulations § 5405.7 this proposed advisory opinion shall be published in the District of Columbia Register for a 30-day public-comment period during which time a person may submit information or comment to [bega@dc.gov](mailto:bega@dc.gov).**

Sincerely,



ASHLEY D. COOKS

Director of Government Ethics

Board of Ethics and Government Accountability