

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

In Re the Ethics Complaint of MERWIN v. BULLOCK	Cause No. COPP-2020-ETH-004 SUMMARY DECISION Ethics Complaint Not Accepted for Filing Dismissed for Failing to State a Potential Violation of the Code of Ethics
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On March 6, 2020, Spencer Merwin, the Executive Director of the Montana Republican Party of Helena, Montana, lodged with the Office of the Commissioner of Political Practices (COPP) an ethics complaint against Steve Bullock (a Montana state officer).

As explained below, the complaint is not accepted for filing and is hereby dismissed and returned to Mr. Merwin. The reasons for the dismissal are that the complaint is time-barred, does not state a violation of the Code of Ethics and therefore grounds exist for dismissal of the complaint by the Commissioner, Mont. Code Ann. § 2-2-136(1)(b).

JURISDICTION AND AUTHORITY

The Commissioner of Political Practices has jurisdiction to hear and decide complaints filed under Montana's Code of Ethics against state officers, legislators, state employees and county attorneys. Mont. Code Ann. § 2-2-136.

Mr. Bullock is an elected official and serves as the Governor of State of Montana. The Code of Ethics defines a public officer to include "any state officer," Mont. Code Ann. § 2-2-102(8)(a). A state officer "includes all elected officers and directors of the

executive branch of state government," Mont. Code Ann. § 2-2-102(11). The Governor is an officer of the executive branch of Montana State government (Mont. Const. Art. VI, sec. 1). Governor Bullock therefore is a public officer of the state and subject to the Montana Code of Ethics.

PROCEDURAL HISTORY

On March 6, 2020, the COPP received a hand delivered copy of an Ethics Complaint from Mr. Merwin alleging ethics violations by Gov. Bullock while running for the office of U.S. President from May 14, 2019, to December 2, 2019. The Commissioner informed Mr. Merwin that the complaint was in lodged status at least until the original complaint was received by COPP. The Commissioner gave notice of the complaint to the respondent, Admin. R. Mont. 44.10.610. The Commissioner also requested additional information from Mr. Merwin and the Respondent, and after extensions of time the Commissioner received additional material by March 25, 2020.

The Commissioner replied to Mr. Merwin's initial complaint, informed him of the statute of limitations, and requested that the Montana Republican Party provide the Commissioner information including specific dates and allegations of specific violations of the Code of Ethics within two years of the Complaint's March 6, 2020 submission. The response received from Mr. Merwin included a "sampling of original evidence" provided in two exhibits. Exhibit A is an excel spreadsheet, which included some¹ direct links to Facebook and Twitter posts, included Mr. Merwin's assertion of whether the post was an "official" or "campaign" post. Exhibit B is a document that contains screen shots of Twitter and Facebook posts which were in Mr. Merwin's opinion either "official" or "campaign" related.

The Commissioner requested that Mr. Bullock respond to the complaint and to provide a timeline of when the accounts were created and when Mr. Bullock was a candidate for US. President.

¹ Not all the links provided by Mr. Merwin worked to each post. The Commissioners staff spent days attempting to matching alleged post with the date, and subject matter which was alleged to have violated the Code of Ethics. Exhibit A contained 20 Twitter and 14 Facebook alleged violations. Exhibit B contained 49 Facebook and 106 Twitter alleged violations.

CONTENTIONS

Complainant Mr. Merwin, the Executive Director of the Montana Republican Party, asserts that Mr. Bullock is a public employee who is subject to the Code of Ethics. The MRP alleges that Mr. Bullock used “public time, facilities, equipment, supplies, personnel, or funds” in the use of “two specific Facebook and Twitter accounts” during his presidential candidacy thereby violating the Code of Ethics. Specifically, Mr. Merwin alleges that the accounts are state property and are used by Mr. Bullock in his official capacity for state business and they should not be used for campaign purposes.

Mr. Merwin’s contentions are concerned with the following statutory prohibition on certain political activity by public employees:

(a) Except as provided in subsection (3)(b), a public officer or public employee may not use or permit the use of public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), “properly incidental to another activity required or authorized by law” does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office....

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

Mont. Code Ann. § 2-2-121(3).

Mr. Bullock responds that the accounts are personal accounts and have been in existence for over a decade, and are used to communicate with people interested in his life, political work, and work as Montana’s Attorney General and Governor. “At times, Bullock works with advisors to create content for these accounts. To ensure the strictest compliance with state ethics laws, Bullock enforces a written policy in the Office of the Governor that prohibits the use of any public resources to contribute to content that does not directly relate to his official, public work”. Mr. Bullock responds that the policy has been in effect and enforced for the entire time relevant to Mr. Merwin’s complaints.

FINDINGS OF FACT

In order to apply the law to the contentions of Mr. Merwin and Mr. Bullock, the following Findings of Fact are necessary:

Finding of Fact 1: Mr. Bullock is a public employee who serves in the role of Governor, State of Montana, since January 2013 to the present time. (Commissioner's records).

Finding of Fact 2: Mr. Bullock served as Montana's Attorney General from January 2009 through January 2013. (Commissioner's records).

Finding of Fact 3: Mr. Bullock ran as a candidate for the President of the United States from May 14, 2019 to December 2, 2019. (Commissioner's Records).

Finding of Fact 4: Mr. Bullock later filed as a candidate for US Senate, Montana, with the Montana Secretary of State's Office on March 9, 2020. (Commissioner's Records).

Finding of Fact 5: Mr. Bullock created a Facebook account (@GovernorBullock) on February 5, 2010. The account handle originally referenced his position as Attorney General and was converted to reflect his election to Governor sometime in 2013. (Governor response).

Finding of Fact 6: Mr. Bullock created a Twitter account (@GovernorBullock) in February 2010. The account handle originally referenced his position as Attorney General and was converted to reflect his election to Governor sometime in 2013. (Governor response).

Finding of Fact 7: The Office of the Governor created a Twitter account (@MontanaGovernor) in July of 2019. (Complaint).

Finding of Fact 8: In March 2020, social media accounts (@stevebullockmt) were created on both Facebook and Twitter, which have been used in his campaign for U.S. Senate (Commissioner Records). The Twitter account is verified as a candidate running for office.

ANALYSIS and DISCUSSION

Ethics complaints against current state officers and employees may be filed with COPP, Mont. Code Ann. § 2-2-136(1)(a). Montana law requires that the original verified complaint be received either by mail or hand delivery, Mont. Admin. R. 44.10.604(1)(a) and 44.10.607(1)(e). A fax or a copy of the original does not meet the requirements of the statute. Such complaints must be filed with the Commissioner "within two years of

the alleged violation of the code,” Mont. Admin R. 44.10.604(1)(b). The COPP did receive the original complaint in response to its request.

1. Portions of The Complaint are Time Barred By The Statute of Limitations

The Montana Code of Ethics has a two-year time limit within which to file a complaint alleging violations by a public official, Mont. Admin. R. 44.10.604(1)(b) and Mont. Code Ann. § 27-2-211(1)(a).² The original complaint against Gov. Bullock alleged actions inappropriate social media account use “for years”. The Commissioner cannot legally sustain a complaint alleging conduct which occurred more than two years prior to the date the complaint is received by COPP, and those portions of the complaint are dismissed. *Tschida I*, at 3-4 (discussing Admin. R. Mont. 44.10.604(1)(b)).

2. The Complaint Fails to Allege a Potential Violation of the Code of Ethics

While the threshold for stating a potential violation of the code is a low one, conclusory allegations are insufficient. *Democratic Party v. Martz*, Sept. 2, 2002 (Commissioner Vaughney); *Tschida I*, at 4-5. Mr. Merwin and the Montana Republican Party’s allegations are conclusory as shown by their own “Key Facts and Allegations”.

A. State Guidelines on Use of Social Media Accounts

At issue in Mr. Merwin’s complaint are two social media accounts which Mr. Merwin asserts are Mr. Bullock’s official accounts for use by the Office of the Governor only, <https://twitter.com/GovernorBullock> and <https://www.facebook.com/GovernorBullock>. Mr. Bullock asserts that these are his personal accounts, and that both his Facebook and Twitter accounts were created in February of 2010 when he was serving as Montana’s Attorney General. Mr. Merwin also points out in his complaint that there is also a twitter account for the office of the governor, found at <https://twitter.com/montanagovernor>. Mr. Merwin’s complaint relies heavily on his conclusory allegation that the accounts are official state accounts, rather than personal accounts which at times are used to share information about the official’s work for the people.

² See e.g. *Vehrs v. Moses*, 220 Mont. 473, 716 P.2d 207, 209 (1986).

Mr. Merwin also asserts that “[i]t is common practice among Montana elected officeholders who employ state personnel to have separate social media accounts for their official business activities and their political campaigns. This is done to stay within the bounds of the law and not violate §2-2-121(3)(a), MCA. Federal officeholders from Montana, while not bound by §2-2-121(3)(a), MCA, also maintain similar practices, due to a similar prohibition in the federal statutes.” (Merwin Complaint).

Mr. Bullock’s personal social media accounts were created on or around February 2010 (FOF 5 and 6). At that time the State of Montana through the Department of Administration did not allow state agencies to have or maintain a social media presence. That changed in July of 2013, when the State Information and Technology Services Division (SITSD) issued “Social Media Guidelines” through the Montana Operations Manual (MOM), dated July 3, 2013 (Exhibit C³). The policy specifically included reference to the Code of Ethics to be followed if an agency chose to establish social media accounts, *id.* at p. 2. There was no requirement that any state agency actually use social media to communicate with the public at the times relevant in Mr. Merwin’s complaint, *id.* at 1.

In July of 2019, the Office of the Governor did establish a social media account found on Twitter @MontanaGovernor (FOF 7). Whether an official account posts rarely or regularly, as the Montana Governor’s office twitter feed does, it was necessary to follow the DOA’s Social Media Guidelines in posting to the account⁴. The COPP did not

³ Recently the Department of Administration released an updated and more detailed Social Media Policy, which is not yet available to the public through the web, but is attached hereto as Exhibit D.

⁴ Mr. Merwin’s complaint in his “actions requested of the Commissioner to remedy this situation” asks that the Commissioner provide an advisory opinion on “the allowable use of a single social media account for both official government business and campaigning by an elected official”. The Commissioner does not have jurisdiction to issue such guidance, in this instance that authority that lies with the Department of Administration. Most state agencies use social media handles that stay with the office, not the official or administrator who heads the department (e.g. @montanagovernor, @DPHHS, @MontanaCOPP, etc.) By using the names of the office, instead of the official occupying the position, continuity is ensured for the public when the individual who is currently administering the duties of the office departs and their replacement assumes the duties. The State of Montana does not maintain guidance on naming conventions for state agency social media accounts, and the Commissioner is without

find any evidence that the @MontanaGovernor account acted in violation of Montana's Code of Ethics. The Commissioner, therefore, dismisses this portion of the Complaint for the reason that it fails to allege sufficient facts to support a potential violation of the Code of Ethics, Mont. Code Ann. § 2-2-136(1)(b).

In reviewing and comparing Mr. Bullock's personal twitter and facebook accounts (@GovernorBullock) with the other statewide government official accounts⁵, the only distinguishing characteristic between personal, campaign or "official" accounts referenced in Mr. Merwin's complaint is that most all of the social media accounts alleged to be "official" can be found on the respective governmental website of each individual's elected office. The lone exceptions are Mr. Bullock's personal social media accounts which do not appear on government websites, no evidence suggests they were at the time of Mr. Bullock's Presidential campaign or were otherwise promoted to the public using government resources during Mr. Bullock's Presidential campaign. Had the @GovernorBullock appeared on the state's website at the time of Mr. Bullock's Presidential campaign as a place where constituents could communicate with or follow Mr. Bullock's campaign activity, such a fact would have lent credence to Mr. Merwin's conclusory assumption that the accounts were state resources and should not be used while campaigning for office. The facts here are to the contrary.

The fact that Mr. Bullock's personal accounts were used to promote the work of the Governor's office does not make the accounts state property as Mr. Merwin correctly points out (Complaint pg. 11). Prior to Mr. Bullock's run for the Presidential nomination the @GovernorBullock handles were a mixed use to do discuss Mr. Bullock's public official work, his personal life and political work. Once Mr. Bullock began a campaign as a Presidential candidate, the accounts became almost exclusively campaign and

authority to direct state agencies, that power lies with the Department of Administration.

⁵ At page 10 of Mr. Merwin's complaint, he alleges that other statewide elected officials maintain a strict separation between their "official", "personal", and "campaign" social media accounts. In addition to reviewing the allegations against Governor Bullock, the Commissioner's office also spent substantial time reviewing the accounts alleged to be complying with Mr. Merwin's interpretation and application of the Montana Code of Ethics for Attorney General Tim Fox, State Auditor Matt Rosendale, Superintendent of Public Instruction Elsie Arntzen, Secretary of State Corey Stapleton, Senator Jon Tester, Senator Steve Daines and Representative Greg Gianforte.

personal speech, and campaign consultants or staff posted regularly. Then once the Presidential campaign ended Mr. Bullock's accounts reverted to discussion of Mr. Bullock's public official work and personal life.

State Social media account ownership was not addressed by the State of Montana until the June 2020 draft Montana Operations Manual (MOM) Social Media Policy was issued, and included for the first time the introduction of a written procedure for securing Agency or "Official" social media channels (Exhibit D). It also was the first time that the State required agencies to maintain a social media presence⁶.

There is no prohibition in the Code of Ethics preventing a state employee or elected officer from "sharing information about their government work using personal or campaign resources". Without a law prohibiting⁷ those types of posts, there is nothing for the Commissioner to enforce. The Commissioner, therefore, dismisses this portion of the Complaint for the further reason that it fails to allege sufficient facts or legal basis to support a potential violation of the Code of Ethics, Mont. Code Ann. § 2-2-136(1)(b).

B. Use of State Employee Time

Mr. Bullock admits that at times, he worked with state employed advisors to create content for his @GovernorBullock, however all content created by state advisors is strictly limited to content that directly relates to his official, public work. During the time that Mr. Bullock was running for the Presidential nomination, from May 14 to December 2, 2019, the content on his personal accounts were managed by Mr. Bullock and his campaign. Since that time, the personal accounts have posted about Mr. Bullock's official and public work for the State⁸. As noted above, "[t]here is no

⁶ "Social media shall be used for communicating with staff, customers and the public. It will be implemented based on agency business needs considered in this policy." Exhibit D, "Purpose", p. 1.

⁷ Such a prohibition would likely run into a constitutional free speech complaint if it did exist.

⁸ Mr. Bullock has created a separate twitter and facebook account to campaign for the US. Senate as of March 2020.

prohibition in state statutes against politicians sharing information about their official governmental work using personal or campaign resources.”

Additionally, Mr. Merwin correctly asserts that Mr. Bullock’s own time spent campaigning is exempt from consideration, 51 OP. Att’y Gen. N. 1 (2005), *Fox v. Molnar*, 2013 MT 132, ¶39. As there is no prohibition in the Code of Ethics for a state official or employee to use resources created by state employees on their personal social media accounts, Mr. Merwin’s complaint lacks a factual based assertion that there has been a violation of the code of ethics. The Commissioner, therefore, dismisses this portion of the Complaint for the reason that it fails to allege sufficient facts to support a potential violation of the Code of Ethics, Mont. Code Ann. § 2-2-136(1)(b).

C. Use of State Photographs

As discussed in *Zolnikov v. O’Donnell*, “[o]fficial photographs of elected officials or state employees are taken and used for a variety of purposes, including for the use of identification, on agency websites, or publicity and public relations use”, COPP-2020-ETH-005, pp. 5-6. The photographs are released to the public domain, and there is an expectation by the state that the photographs are public domain, including use and reuse, by not only the general public and media but also political opponents have access to and can and have used the photographs. It would create constitutional absurdity to prohibit an elected official from using a photograph in the public domain, while at the same time allowing unelected officials or political committees to use the same state resource with impunity, *Fox v. Molnar*, 2013 MT 132, ¶¶38-39. So long as Mr. Bullock does not direct a state employee to take a photograph for his campaign while the employee is on paid state time, a factual basis cannot lie against Mr. Bullock for use of resources that are just as available to others.

The Commissioner, therefore, dismisses this portion of the Complaint for the further reason that it fails to allege sufficient facts to support a potential violation of the Code of Ethics, Mont. Code Ann. § 2-2-136(1)(b).

CONCLUSION

Prior to and at the time relevant to the complaint, the Governor’s office and its employees have followed a strict division between official and governmental work vs. campaign work which is not tolerated. Mr. Merwin’s complaint asserts that the use

must have occurred, but does not allege facts or a legal basis which supports these conclusory allegations⁹.

3. Mr. Merwin's Liability for Costs of This Proceeding

In addition to assessing costs against a respondent when a violation is found, when a violation is *not* found, the Commissioner is also able to assess the costs of the proceeding "against the person bringing the charges ...," Mont. Code Ann. § 2-2-136(2)(c). To the knowledge of the undersigned Commissioner, no dismissal decision has yet assessed costs against an ethics complainant pursuant to this statute.

Ethics complaints, with and without basis in law and fact are on a steep rise with the COPP¹⁰. Conclusory allegations without supporting factual occurrences or without the legal basis of finding a potential violation in the Code of Ethics consume an increasingly significant amount of the resources of the Office of the Commissioner of Political Practices. The COPP does not investigate ethics complaints. The pleadings are taken as they are alleged when supported by evidence which prove or substantiate the allegations of the complaint. Conclusory statements, assumptions, or opinions are not enough to support a proceeding under the Code of Ethics. While the Commissioner has determined not to assess the costs against Mr. Merwin and the Montana Republican Party at this time, notice is given that in the future when complaints are received that fail to meet the pleading standards under the law, the Commissioner will begin assessing the costs of Ethics proceedings against the Complainant¹¹.

CONCLUSIONS OF LAW

1. A complaint "must ... be filed within two years of the date of the alleged violation of the code," Mont. Admin R. 44.10.604(1)(b). A time-barred complaint is subject to dismissal. *Tschida I*, at 4.

⁹ The COPP does not investigate ethics complaints. Instead the Commissioner relies on the evidence and submitted by the parties in determining whether or not a factually based allegation is alleged.

¹⁰ 2014, eight rejected one accepted; 2015 eight rejected; 2016, six rejected and one dismissed; 2017 four rejected; 2018 one dismissal one finding; 2019 6 rejected and two findings; 2020 thus far we have had eleven total complaints.

¹¹ This is the second time in as many years that the Commissioner has notified individuals who file such deficient complaints of the intention to assess costs in the future, *Tschida II*, dated Aug. 17, 2019.

2. As set forth *supra*, at §1, the present complaint is partially untimely and time-barred by the statute of limitations, Mont. Admin R. 44.10.604(1)(b).

3. The Commissioner may also dismiss a complaint that is “frivolous, does not state a potential violation of [the Code of Ethics], or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation of [the Code,]” Mont. Code Ann. § 2-2-136(1)(b).

4. As set forth *supra*, at §2, the complaint additionally fails a facial pleading review both as a legal and a factual matter, and does not state a potential violation of the Code of Ethics, Mont. Code Ann. § 2-2-136(1)(b).

5. The Commissioner has discretion to assess the costs of an ethics proceeding “against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur,” Mont. Code Ann. § 2-2-136(2)(c).

6. The Commissioner exercises his discretion and does not assess the costs of this proceeding against Mr. Merwin, Mont. Code Ann. § 2-2-136(2)(c).

ORDER

1. Jurisdiction is **ACCEPTED** for this ethics complaint, pursuant to the provisions of Mont. Code Ann. § 2-2-136(1)(a).

2. The lodged complaint is **DISMISSED** as untimely, as without basis in law for failing to state a potential violation of the code of ethics, Mont. Code Ann. § 2-2-136(1)(b).

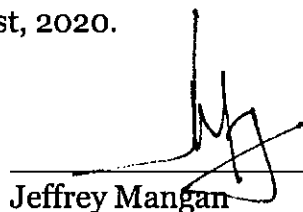
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NOTICE

The Commissioner provides notice to the parties that this summary dismissal decision is a final agency order, and either party may seek judicial review of the Commissioner's determination pursuant to Montana Code Annotated, Title 2, Chapter 4, part 7. Mont. Code Ann. § 2-2-136(3). The parties are further informed that the Complaint, record established, and Decision are available for public inspection. Mont. Code Ann. § 2-2-136(4).

ORDERED this 25th day of August, 2020.



Jeffrey Mangan
Commissioner of Political Practices
P.O. Box 202401
Helena, MT 59620-2401

CERTIFICATE OF SERVICE


I hereby certify that I caused a true and accurate copy of the foregoing to be emailed and send by first class US mail to:

Spenser Merwin,
Executive Director of the
Montana Republican Party
PO Box 935
Helena, MT 59624

Steve Bullock
State Capitol, Room 204
Helena, MT 59601

DATED this 25th day of August, 2020.



	Montana Operations Manual Guideline	Category	Information Technology, Web Management
		Effective Date	07/03/2013
		Last Revised	02/02/2017
Issuing Authority	Department of Administration State Information Technology Services Division		
GDE-Social Media Guidelines			

I. Purpose

The state recognizes that the internet provides unique avenues to participate in discussions and share information with customers and the public. Social Media in particular offer ways to communicate with a broad range of individuals and groups who are using the internet rather than traditional forms of media for communicating and learning.

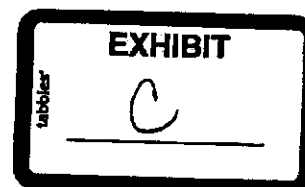
Social Media use will vary from agency to agency, depending upon an agency's mission. Each agency should carefully select the Social Media that will best serve its needs.

Like all communication tools, Social Media should be used in ways that enhance the agency's business while maintaining the security of the state's network. These guidelines are intended to help agencies decide whether to use Social Media, and, if the decision is to use this tool, how best to implement the decision.

II. Reasons for Using Social Media

Each agency should take the time to determine how Social Media fits into its communication strategy. When evaluating whether use of Social Media is appropriate, the agency should consider the following:

1. How will Social Media enhance outreach and communication with customers, the public, and within the agency?
2. How will the agency manage the use of Social Media?
3. How will the agency train employees and contractors to use Social Media properly?
4. Does the agency have the ability and resources to monitor employees' use of Social Media?
5. How will the agency protect confidential information contained in Social Media?
6. How will the agency capture, and store information generated from Social Media?
7. Does the agency have the resources to respond to public records requests arising from use of Social Media?



III. Laws and Policies

Agencies and employees using Social Media should comply with applicable Montana and federal laws and State policies. The following laws and policies are examples of those that apply to Social Media use:

1. Federal and Montana laws prohibiting the disclosure of social security numbers, credit card numbers, certain health care information, and other confidential personally identifiable information;
2. Federal and Montana laws prohibiting discrimination, harassment, and defamation;
3. Federal copyright laws and federal and Montana trademark and service mark laws;
4. Montana laws and policies addressing the ethical standards of conduct for public employees;
5. Montana laws and policies addressing the ethical standards of conduct for public employees
6. Montana law regarding access to technology by individuals who are blind or visually impaired (See 18-5-601, MCA, et seq.); and
7. State policies regarding the use of email and the internet. These policies include but are not limited to:
 - a. Statewide Information Systems Policies – User Responsibility
8. SITSD recommends that legal counsel and human resources staff be consulted regarding these laws and policies.

IV. Acceptable Use

Work-related communications using Social Media should be professional and consistent with the agency's policies, procedures, and expectations. Inappropriate use of Social Media may be grounds for disciplinary action up to and including termination of employment.

Inappropriate use includes but is not limited to profane language or content; content that promotes or fosters discrimination prohibited under Federal and State law; sexual content or links thereto; and content regarding private business activities or political purposes. Inappropriate use also includes use that is inconsistent with an agency's mission and its general standards that an employee's work be conducted in a professional and courteous manner.

There is no reasonable expectation of privacy in messages and information transmitted to, received and printed from, or stored on the State's network. An employee should not use the State's network for any matter the employee wants to keep private. (See VII, Public Records, below.)

V. AGREEMENTS WITH SOCIAL MEDIA PROVIDERS

To the extent consistent with an agency's internal review process, legal counsel should review Social Media service provider agreements before the agency signs the agreement to ensure compliance with Montana law. Some of the common terms and conditions in service provider agreements that bear noting are: Indemnification; Liability for misuse; Dispute resolution; Venue for disputes; Which state's laws will govern the agreement; Ownership of the content located on the Social Media site; and Confidentiality provisions. If the

agreement with a service provider contradicts Montana law or agency policy, then that service should not be used.

VI. PUBLIC RECORDS

Under Montana law, public records include records in electronic form (§2-6-1002, MCA). Therefore, communication to or from state personnel through Social Media is likely presumed to be a public record. If a communication is a public record, then the Secretary of State's General Records Retention Schedules provide guidance regarding how long certain types of state government records must be kept. The Secretary of State's website at <http://sos.mt.gov/Records/index.asp> provides information regarding public records and records retention schedules for public records.

A public record is subject to disclosure upon citizen request. See §2-6-1006, MCA. Since citizens using state government Social Media sites may be unaware of public record laws, an agency using Social Media should post a statement on the social networking site indicating that communications on the site are presumed to be public records subject to disclosure to third parties.

VII. SECURITY

Agencies should be aware that the use of Social Media may provide an avenue for anyone with access to the internet to access the Social Media site or the State's network without authorization. The intent of this access may be to damage the State's network or to acquire confidential information about employees or citizens. Given this potential, agencies should educate their employees about the care needed when disclosing information using Social Media and the various attack strategies that hackers use to gain access to systems.

AT A MINIMUM, AGENCIES SHOULD REQUIRE EMPLOYEES USING SOCIAL MEDIA TO ADHERE TO THE FOLLOWING BASIC PRECAUTIONS: Read social network services privacy guidelines that are published on their Web sites. Take the time to understand these documents. These documents will include the types of information that the services will reveal or sell to other parties (including spammers). If the terms and conditions of these documents are vague or objectionable, SITSD recommends consultation with legal counsel, human resources staff or SITSD before using the service.

Create passwords that use both numbers and letters, both upper and lowercase, and special characters for added complexity. Don't share your password with anyone.

After you type your email address and password into the log-in page, make sure the "Remember me" check box is turned off before you click the log-in button.

Do not allow your browser to save any passwords.

Always remember to log-out when finished using the Social Media site.

Never use personally identifiable or private information on Social Media sites, such as social security numbers, health care information, or information involving individual private personnel matters.

If a site is hacked, discontinue the site immediately and notify the agency IT department. Indications that the site has been tampered with may include alteration or removal of site graphics or logos, changes to expected functionality, or unapproved content postings.

KB0011413

MOM-POL-Social Media Policy

Authored by Amber Conger

24d ago • 64 Views • ★★★★★

Category: Communications and Networking, Information Technology, Web Management

Effective Date: 06-09-2020

Last Revised: 07-01-2020

Issuing Authority: Director's Office

I. Purpose

This policy establishes agency requirements for managing social media websites and tools. Social media shall be used for communicating with staff, customers, and the public. It will be implemented based on agency business needs considered in this policy.

II. Scope

This policy applies to all agency staff and third-party contractors that have access to use or manage social media on the agency's behalf.

III. Requirements

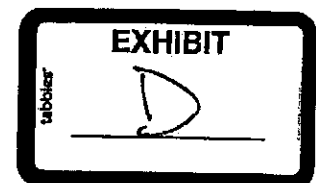
A. Introduction

Social media websites are highly accessible, interactive tools for creating, distributing, or sharing online content. Social media tools generally allow users to generate and exchange content and engage in peer-to-peer conversations. Agencies may publish general information, security alerts, success stories, job postings, photos, videos, news, and events on social media sites to inform and engage staff, customers, and the public.

B. State Guidelines

This policy provides guidance for state organizations to implement and manage social media. All official agency-related communications through social media must remain professional in nature and must be conducted in accordance with this policy. Prohibited activities include but are not limited to:

- Posting obscene, vulgar, or abusive language, images, or other media;
- Posting personal attacks of any kind;
- Posting offensive or discriminatory terms targeting individuals or groups;
- Sharing material that violates the laws of the United States, the State of Montana, or another state;
- Endorsing of commercial products, services, or entities;
- Endorsing political parties, candidates, issues, or groups; and
- Lobbying members of the State Legislature or Congress.



C. Additional Guidelines

Agency staff authorized to represent the agency on social media shall maintain a high level of ethical conduct and professional decorum when posting on social media sites or forums, such as online blogs or networking sites. Agency staff should be mindful that inappropriate usage of social media can be grounds for disciplinary action (see Section IV.J, Enforcement).

Agency staff shall not publish material on agency social media sites that includes:

- Sensitive information;
- Copyright violations;
- Profanity, racist, sexist, discriminatory, or derogatory content or comments;
- Partisan political views; or
- Commercial endorsements or spam.

D. Social Media Use

Agencies will use social media to achieve the following:

- Improve customer understanding of the agency's mission and bring awareness to agency goals and accomplishments;
- Support the agency's business needs;
- Promote agency services and products;
- Promote best-practices and share recommendations;
- Share agency success stories and customer collaborations;
- Promote the agency as an employer and advertise open positions; and
- Enhance employee communications and agency morale.

F. Social Media Content

Content published on agency social media sites is public and could be considered official agency statements. Content posted to agency social media sites must respect copyright, fair use, and other applicable laws.

G. Managing Agency Social Media Accounts

Agencies shall manage all public-facing, official social media sites. Agency head may designate an employee to post on the agency's behalf.

The following procedures apply to all agency social media:

1. Only staff authorized to represent the agency may publish content on official agency social media.
2. Prior to launching a social media channel, the following items must be completed first:
 - Get approval for the new channel from the applicable administrator and the agency's Communications Director/Public Information Officer.
 - The new channel must be created using a mt.gov email address.
 - The channel must be set up as a company page, not personal profile.
 - Page administrator shall not use their state password for Social Media account and follow state policy for complex password.
 - The Communications Director must be added as a page administrator.
 - Develop a content plan for the channel and share it with the communications team.

Agency-branded social media channels should follow these best practices:

- Research which social media platform is the best fit for its intended purpose.

- Do not use the channel for advocacy of legislation, ballot issues, constitutional initiatives, or political candidates.
- Be sure you have permission to share photos or written content that are not owned by your agency. Linking to and excerpting from written content that does not belong to your agency is a good way to share useful information. Never copy and paste an entire article that does not belong to your agency.

H. User-Created Content

1. The agency may permit users to submit or post content, including photographs and videos, to official agency sites that allow users to post content, provided that the content meets the standards articulated in this Policy and pertains to the subject of the social media site.
2. Users may only post their own, original content.
3. Reproduced or borrowed content that reasonably appears to violate third party rights will be deleted.
4. Agencies may engage tools/applications to manage and monitor its social media sites. These tools may or may not include web-based applications.
5. Agencies share information, images, and video with the public through external social media sites. Comments made by the public to these sites are reviewed and, while agencies are not required to edit comments, agencies may hide or delete a comment if it violates this Policy or any of the following standards:
 - Comments should be related to the agency's post or page. Agency social media accounts are not meant for comments that do not directly relate to the purpose or topic of the social media website.
 - Users are subject to the Terms of Service (TOS) of the host site. Information (photos, videos, etc.) users share with or post to official agency pages is subject to the TOS of the host site and may be used by the owners of the host site for their own purposes. For more information, consult the host website's TOS.
 - Agency social media accounts are not open to comments promoting or opposing any person campaigning for election to a political office, any ballot issue or constitutional initiative, any recall petition, or promoting or advertising a business or commercial transaction.
 - The use of obscene, threatening, or harassing language, images, or other media is prohibited.
 - Personal attacks of any kind or offensive comments that target or disparage any ethnic, racial, age, or religious group, gender, sexual orientation, or disability status are prohibited.
 - Comments advocating illegal activity or posting of material that violates copyrights or trademarks of others are prohibited.

I. Social Media Records Retention

1. The social media channel and its content created through a mt.gov account to promote or represent an agency is property of that agency.
2. Social media communications are not subject to records retention. Therefore, a backup or archive solution is not required.

J. Enforcement

Each agency is responsible for the policy's implementation and enforcement. Agency administrators shall monitor compliance and may make enforcement recommendations to the appropriate level of management given the circumstances.

If warranted, management may take appropriate disciplinary action to enforce this policy, up to and including termination of employment, consistent with the current state discipline policy. When considering formal disciplinary action, management shall consult with their assigned Human Resource Specialist before taking action.

V. References

A. Statutes

- 2-15-114, MCA: Security responsibilities of departments for data.

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