



Timothy M. Keller  
Mayor

# City of Albuquerque

## Albuquerque Police Department



Eric J. Garcia  
Interim Superintendent of Police Reform

### Interoffice Memorandum

January 21, 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 174-21

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
1-2-4(A)(1)	Sustained	Not Sustained

#### Rationale for non-concurrence of the above listed findings against Public Information Officer R A :

I concur with the recommendations provided by Chief of Staff C F as follows:

**1. FINDINGS: CPOA Recommendation: SUSTAINED**

**Recommendation: NOT SUSTAINED**

**1-1-4 Authority of Federal, State, and Local Laws and Regulations**

A. Department personnel shall obey the United States Constitution, the Constitution of the State of New Mexico, the New Mexico Governmental Conduct Act, the City of Albuquerque Code of Ordinances, the City's Administrative Instructions, the City's Personnel Rules and Regulations, and all Department Standard Operating Procedures (SOP), directives and orders.

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.

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.

RECEIVED CPOA  
JAN 24 '22 PM 4:48

**Ms. A 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.

"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:

- Ms. A positioned herself and has taken on the role as a government actor- after she blended APD related content on her account.
- The employee blocked the citizen which violated citizens 1<sup>st</sup> Amd right.

Ms. A "Re-Tweeted PUBLIC AVAILABLE PRE-SENT" tweets, 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.

**I do NOT concur with the CPOA Investigator and find the allegation NOT SUSTAINED.**

## **2. FINDINGS: CPOA Recommendation: SUSTAINED**

**Recommendation: NOT SUSTAINED**

1-2-4A.1

### **A. Permitted Social Media Use**

1. Department personnel may speak out on issues of public concern when acting as a private person. Department personnel shall include a disclaimer if they are commenting on City business in their personal capacity and state the comments represent their own opinions and do not represent those of the City.

The investigation showed that Ms. A spoke out on issues of public concern; however, she did have and included a disclaimer stating that the comments represented her own opinions.

The amount of language barring a specific city approved "exact disclaimer" is up for interpretation. Ms. A had a disclaimer and was within the policy at the time of her tweets.

**I do NOT concur with the CPOA Investigator and find the allegation NOT SUSTAINED.**

**Conclusion:**

Based on the aforementioned points of non-concurrence, the CPOA's recommended adverse findings will be replaced with the non-adverse finding of "Not Sustained." As a result, no further action and/or discipline will be imposed in this case.

Respectfully,



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

cc: Harold J. Medina, Chief of Police