



ELECTRONIC FRONTIER FOUNDATION

Protecting Rights and Promoting Freedom on the Electronic Frontier

August 16, 2016

Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
sharon.howell@tdcj.texas.gov

By email

Re: TDCJ's new social media rule

Dear Ms. Howell:

Thank you for speaking with us on August 3 about the new social media rule of the Texas Department of Criminal Justice (TDCJ). That policy prohibited inmates from maintaining social media accounts “through a third party.” *See* TDCJ, Offender Orientation Handbook (April 2016) at Part III(N)(4) on p. 4. Your May 5 letter to the Texas Defender Service clarified that this policy applies “to social media pages maintained by third parties on behalf of and at the direction of offenders,” and does not apply, for example, “to persons who feature death row offenders on their social media pages.” On August 3, you further clarified that this rule was prompted by a particular inmate who was maintaining a Facebook page through a third party.

We now write to you on behalf of Carrie Christensen and Esther Grosse. They are not TDCJ inmates. They plan soon to launch a few social media accounts in which they will publish news and commentary to the general public about Kenneth Foster, a TDCJ inmate, and his experiences with the criminal justice system. While Ms. Christensen and Ms. Grosse will publish content mostly submitted by Mr. Foster, Ms. Christensen and Ms. Grosse will retain ultimate editorial control. Specifically, Ms. Christensen and Ms. Grosse will feature Mr. Foster’s content in a webpage called “Free Kenneth Foster,” an Instagram account called “Free Kenneth Foster,” a Facebook account called “Rise,” and a Facebook account called “Law of Parties Texas.” They may also feature his content in other social media such as a Twitter account.

Before TDCJ promulgated its social media rule, Ms. Christensen and Ms. Grosse published similar social media accounts featuring Mr. Foster. When they learned of the new rule, they promptly shut down these accounts, out of fear that continued publication might lead to TDCJ discipline against Mr. Foster.

Based on your May 5 and August 3 clarifications of the new TDCJ rule, Ms. Christensen and Ms. Grosse now understand that their social media accounts will not violate the rule because they will not maintain them “on behalf of and at the direction of” Mr. Foster. Rather, Ms. Christensen and Ms. Grosse will maintain ultimate editorial control. They also understand that the webpage will not violate the rule for a second reason: according to your May 5 letter, webpages are not social media for purposes of the rule.

815 Eddy Street • San Francisco, CA 94109 USA

voice +1 415 436 9333

fax +1 415 436 9993

web www.eff.org

email information@eff.org

Thus, Ms. Christensen and Ms. Grosse will launch their social media accounts later this month. If you believe that doing so may violate the TDCJ rule or lead to any disciplinary action against Mr. Foster, please promptly advise me. If you have any questions, please do not hesitate to contact me at adam@eff.org or (415) 436-9333, extension 176.

Sincerely,

Adam Schwartz
Senior Staff Attorney