

SOCIAL NETWORKING HAZARDS FOR LAW ENFORCEMENT: SHOULD YOUR PERSONAL BLOGS BE USED AS AMMUNITION?

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Abstract

The use of social networking is a growing trend that provides risk as well as opportunity. Social networking websites can reveal a large amount of information, both personal and professional and user behavior is often the preferred topic of discussion on blogs. Is this litany of thoughts, ideas, emotions, and superfluous information protected by the First Amendment of the Constitution? Information obtained through surveys from the Sheriff's Department of each Florida County and several state level law enforcement entities revealed that the use of social media websites is increasingly being considered as part of the background investigation process prior to employment. The information presented here bodes well for the legal wrangling involving ones right to free speech and a company, campus, or law enforcements right to utilize information legally obtained in their decisions to employ, promote, terminate, accept, discipline, and prosecute those who post revealing blogs on a forum designed for just that purpose. Does ones online persona present an accurate reflection of ones character?

Introduction

Facebook, My Space, You Tube, Twitter, and others are all part of the increasingly popular "social networking" phenomenon. Some social networks were created to link professionals, while others are designed to give college students a medium to connect with each other. No matter the catalyst that generated their existence, social networking sites allow people to search and connect based on schools, location, employers, charities, civic interests as well as a myriad of other user-created groups.

Social networking sites can be loosely organized or require verifiable information and a valid e-mail address to participate. Many of them are organized into a variety of sub-networks. Sometimes their connections are known as "friends" and they must obtain permission before being allowed entry, while other sites welcome any and all visitors and have a counter to track how many people viewed their pages.

Users of social networking sites post something called a "blog." A "blog" is short for weblog and serves as an online diary. The topics in a blog are seemingly limitless and millions of new blogs are posted everyday and just as many are updated. People update their blogs with short written comments about what they're doing. They can attach pictures, video clips, or other similar information to make their blogs more informative or stand out.

As technology increases and more social activities are played out on the World Wide Web, the content of our personal lives become more accessible to others, and therefore so does the demand that we be held more accountable for our comments. It is becoming more and more commonplace that the content of the blogs found on these

social networking sites are being accessed by employers and law enforcement. Their interpretation of the content is sometimes being used to make decisions that affect the livelihood of the writer. Where do the rights granted under the First Amendment fall when it comes to our online comments?

This writer's interest in the topic is a result of having her own online connection of "friends" within several social networks and the concern that her use of social media as a private individual isn't limited by her profession as a public servant. While understanding that certain types of behavior can attest to the character of an individual, it should be understood that the rights granted by the First Amendment were not conditional upon one's profession, religion, opinion, and or literary ability to express themselves.

Below are descriptions of various networking sites and terminology. This information is taken from <http://www.wikipedia.org>.

- Twitter - is a free social networking service that enables users to send and read messages known as tweets. Tweets are text-based posted of up to 140 characters displayed on the author's profile page and delivered to the author's subscribers.
- Facebook – is a social networking website where users can add friends and send them messages. A user can update their personal profiles to notify friends about themselves. Users can also join networks organized by city, workplace, school and region.
- MySpace – is a social networking website with an interactive, user-submitted network of friends, personal profiles, blogs, groups, photos and music.
- YouTube – is a video sharing website on which users can upload and share videos.
- Flickr – is an image and video hosting web site. In addition to being a popular web site for users to share personal photographs, the service is used by bloggers as a photo repository.
- LinkedIn - is an online network for professionals. It allows people to search and connect via alma mater, location, employer, or various user-created groups.
- Blog - is short for weblog. Blogs either provide commentary on news or a particular subject, or serve as an online diary. Most are text-based, but blogs can also focus on art, photos, videos, and audio. There are hundreds of millions of blogs on the internet, many updated as often as every day.

Literature Review

According to the numbers released by The Nielsen Company in June 2009, the average user in the United States spent more than seven hours per month logged into the website known as Facebook. This accounted for more time than was spent on Google, Yahoo, YouTube, Microsoft, Wikipedia, and Amazon combined. Those statistics revealed that Facebook was the Web's ultimate timesink. In an article published in January 2010 by Mashable, The Social Media Guide, it was also revealed that the average user had 55 sessions of internet usage each month and visited approximately 90 domains (Parr, 2010).

With so much time spent in the social networking websites it isn't hard to understand why employers, investigators, and campus authorities use these avenues to

elicit information. When so much of our free time is spent chatting online, sharing photos and posting blogs, it stands to reason that too much information is divulged without the appropriate protections to prevent predators and scam artists from taking advantage of our misconceived anonymity. Not only do we become potential victims to the predators, but we should also be concerned that people are using what we say and post to form an impression of us. According to a special report in Bloomberg Business Week, there is evidence that college professors have scanned profiles to determine which students to accept into their classroom. Additionally, university campus police have used social networking websites to identify students who have committed crimes. (Kharif, 2006).

With the prevalence of the use of the internet to express our opinions and post our thoughts, even employers have stepped up their use of information found on their employees web posts. This information is sometimes used to discipline or terminate employees. The new word "dooxed" has been coined to describe being fired for inappropriate blog posting. Even though privacy controls are provided by the social networking websites, many users don't utilize them fully until they encounter a problem (Kharif, 2006).

What can strangers learn about you? In an article by the Daily News, your virtual identity may not be what you want it to be. Try placing your name in Google's search engine and see what comes up. While the information found there may, or may not, be specifically about you, it is left up to the researcher to decide what he chooses to believe. Bad things can happen when too little or too much information reported by Google is used to form an opinion. The veracity of the information found on this popular website cannot be guaranteed and is an unreliable indicator of someone's total persona. There doesn't seem to be any rhyme or reason for why some information gets posted to the web and other, seemingly notable, information may not. But whether the data found when googling is accurate or not, efforts to have it removed sounds like a lesson in futility (Megna, 2001).

Lawsuits are currently emerging that seek to challenge the extent that limits American's freedom of speech granted under the First Amendment. In February of 2010 the Associated Press published an article about a Florida student who set up a Facebook page in 2007 to complain about a teacher. The student was subsequently suspended for the comments and later filed suit asking that the suspension be ruled unconstitutional. The student was concerned that the repercussions from the suspension would permanently tarnish their academic record and hamper efforts of future plans for college and career. The Magistrate Judge Barry Garber ruled that "...speech falls under the wide umbrella of protected speech... It was an opinion of a student about a teacher, that was published off-campus, did not cause any disruption on-campus, and was not lewd, vulgar, threatening, or advocating illegal or dangerous behavior." (Tampa Bay Online, 2010).

Sam Terilli, a media law and ethics professor at the University of Miami also commented "While we can all understand that, post-Columbine, there are limits." Terilli added "If a student is using or any other medium to threaten or even imply threats of violence, that's a different matter." (Tampa Bay Online, 2010).

While the legal issues in this Florida case continue, Matthew D. Bavaro, who filed the suit with the American Civil Liberties Union on the student's behalf, said

"These days, things are done on the Internet. Socialization is done on the Internet," "So the law needs to adapt and we need precedent on how courts are going to apply First Amendment principles for off-campus speech." He added that he believes the ruling "seems like a pretty strong signal" of where the case will go (Tampa Bay Online, 2010).

Would you be surprised to learn that information you divulge to your virtual friends on social networking sites may influence the hiring decision of a prospective employer? According to an article published in the IGI Global Books Newsletter, it's a risk we take with potentially negative consequences. This article also reports the results of a study conducted using 148 graduate students taking course work in human resource management targeted five informational areas. Sexual activity, negative attitude, drug use, alcohol abuse, and profanity were found to be pertinent categories of consideration. The study concluded that of the five, attitude about work and drug use should bear the most weight in a hiring decision. However, results revealed that the students were more likely to consider applicants whose Facebook posts did not mention sexual activities, drug use, or contain profanity. Additionally, the study revealed that the female gender received a stronger negative connotation for postings related to the five categories (IGI 2(8), 2008).

There are several ways in which your online blogging activities can affect your employment. Not only do potential employers use the social network resource in an attempt to garner information about your worthiness to employ, but your current employer might be utilizing the IT department to tell how much of your work day is spent perusing the web. So, not only can what you say about your workplace cause you to get fired, even if you're saying positive things about your boss or company, you can get fired if you're saying those things on company time using company equipment. An article published in 2007 reminds us that it doesn't matter what end of the job market you are employed, comments made and time spent on social networking sites can get you fired. The author recommends that you clean out your accounts or change your privacy settings before sending in an application for a new job. The party pictures you post might not portray you in your best light to a potential employer (Strems, 2007).

The use of social networking is a growing problem for businesses. Many companies have solved the problem by blocking access by their employees to all social media sites. Other companies, however, have embraced the opportunity to advertise their products and offer their services using this virtual world medium. This opportunity comes with risk. To mitigate this risk, especially important with government agencies, it was necessary to develop a set of rules for public employees and state officials that provide guidelines to those who participate in social networks. With the guidelines comes a warning to employees to be honest and respectful in their postings, urges them to think before replying to comments, and to remind them to follow privacy laws (Towns, 2009).

According to an article written by Senior Research Specialist Amanda Lenhart in January of 2009, the share of adult internet users who have a profile on a social networking site has more than quadrupled in the past four years. This information was gathered by a December 2008 tracking survey by Pew Internet & American Life Project. (Lenhart, 2009)

While media coverage and policy attention focus heavily on how children and young adults use social network sites, adults still make up the bulk of the users of these websites. The study revealed that overall, personal use of social networks is more prevalent than professional use of networks, both in the type of networks that adults choose to use as well as the reasons they give for using the applications. (Lenhart, 2009)

Method

The purpose of this research was to determine if a law enforcement applicant's use of social networks is considered by prospective employers, and if so, to what extent?

In order to obtain statewide data, each sheriff's office in Florida's 67 counties was surveyed, as well as nine state level law enforcement entities. The survey was designed to target the person responsible for complying with the statutory requirement to conduct pre-employment background investigations on all law enforcement officers. The intent of the survey was to elicit specific information on the use, or projected use, of an applicants social networking participation in the hiring decision making process.

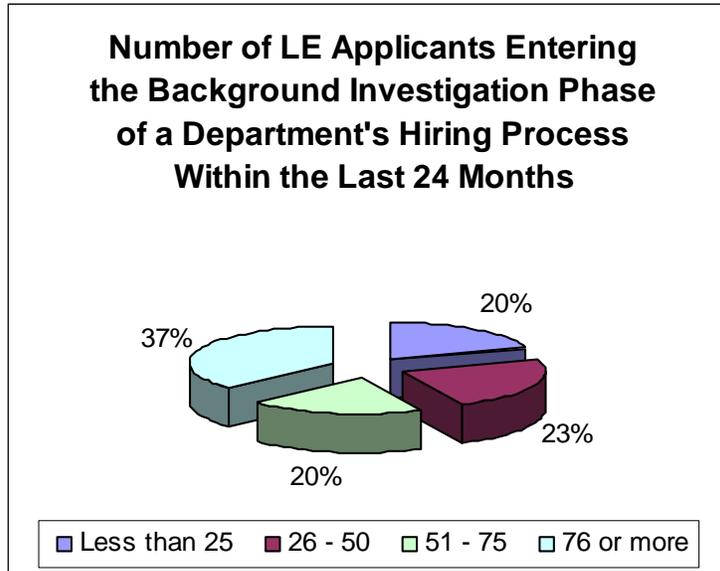
In addition to determining how many law enforcement agencies use an applicant's participation in social networking sites in their hiring process, the survey hoped to reveal how much weight was placed on the information gleaned from that resource.

The margin for error did exist given the perception of vulnerability of the department if the information was used in the selection process before the judicial system has had the opportunity to fully vet the First Amendment right of the freedom of speech as it pertains to the World Wide Web.

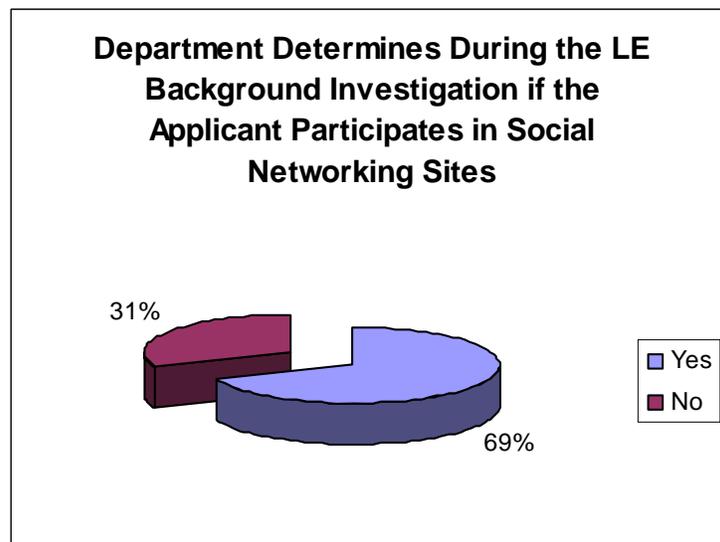
Results

Within Florida's 67 counties there are 66 Sheriff's Offices. Each of these offices, along with nine of the state agencies that employ certified state law enforcement officers, were e-mailed a 10-question survey entitled "Social Networking as it Pertains to a Law Enforcement Applicant's Background Investigation" (Appendix A). The target of the survey was the person responsible for coordinating the background investigations that are conducted on law enforcement applicants to examine their moral character. This examination is required by FAC Rule 11B-27.0011 (requires an applicant's moral character to be carefully examined before hired by an agency), and F.S. 943.13(7) (requires that an applicant be of good moral character as determined by a background investigation under procedures established by the commission.)

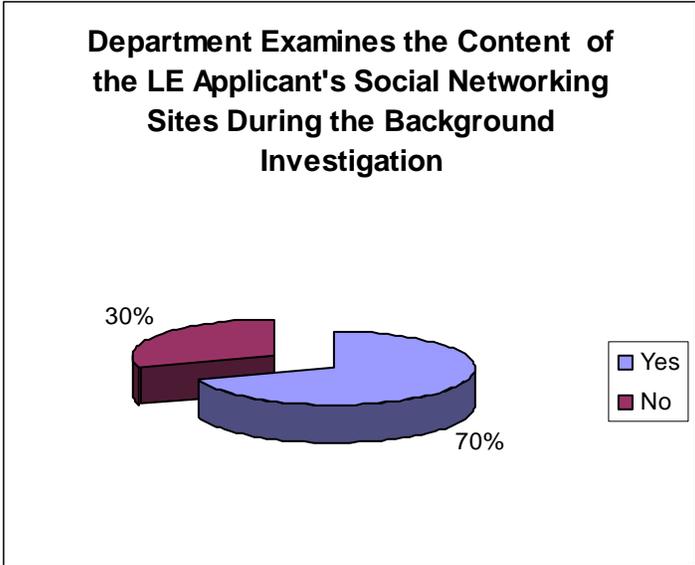
Of the 75 surveys delivered, responses were received from 51, which provided a 68% rate of return. The validity of the survey was bolstered by the variety of the size of the departments that participated. Of the 51 departments that responded, ten had less than 25 applicants reach the background investigation phase within the past two years. Twelve departments had between 26 and 50 applicants move to that phase. Ten departments processed between 51 and 75 applicants through the background phase, and 19 departments conducted over 75 background investigations.



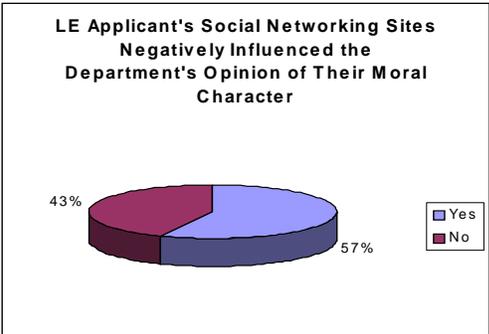
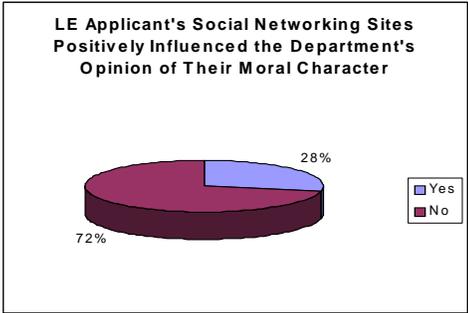
69% of the Florida law enforcement agencies that participated in the survey indicated that they attempt to determine if a law enforcement applicant participates in any social networking sites.



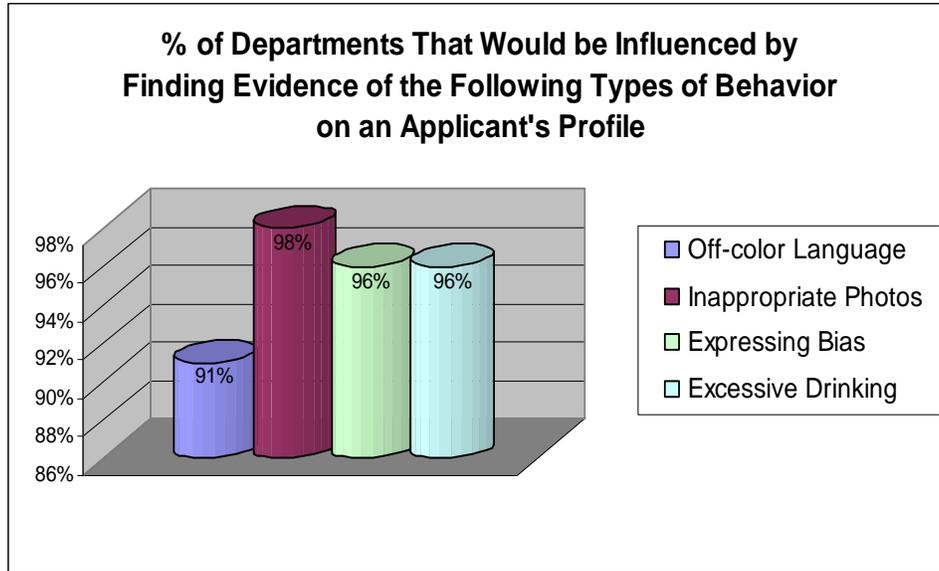
70% indicate that their department examines the content of an applicant's social networking site(s) during the pre-hiring process.



While only 28% of the departments surveyed indicated that their opinion of an applicant's moral character was positively influenced by the content discovered during this search, 57% indicated that the content discovered during these searches has negatively influenced their opinion of the moral character of the applicant.

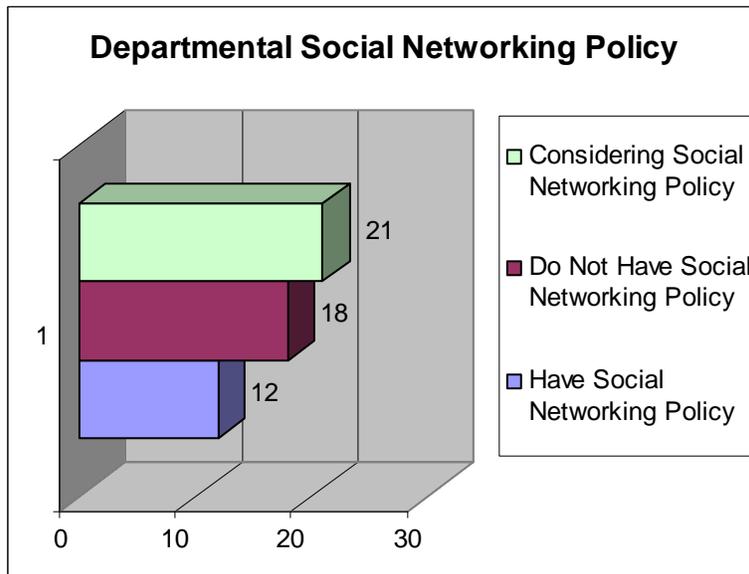


Four specific behaviors were identified in the survey and the question was posed to determine if evidence of a behavior was revealed in an applicant's social networking site, if it would influence the opinion of the department as to the applicant's moral character. While all of the behaviors seemed to weigh heavily, the display of inappropriate photographs received a 98% affirmative answer.



The survey also revealed that the majority of the departments (54%) that responded do not review the social networking sites of current employees. Of the departments that do review current employee's sites, 78% report that it is done in reference to a complaint as opposed to a random review.

Of the 51 departments that responded to the survey, 12 departments indicated that they have a social networking policy that spells out their expectation of employees who use social networking sites. 18 departments report that they do not currently have a policy and 21 departments reveal that a social networking policy is being considered.



Discussion

There is no question that the internet has changed the way departments hire people. 69% of the law enforcement agencies that participated in this survey indicated

that they use social networking sites to conduct online searches to screen applicants. If you are a job applicant that means that your potential employer is looking at your posted photographs, reading your status messages, and analyzing your blog posts.

Demographics of Social Network Users

Percentage of online Americans in each demographic category who have a profile on a social network website:

All adults	35%
Sex	
Men	35
Women	35
Age	
18-24	75*
25-34	57*
35-44	30*
45-54	19*
55-64	10
65+	7
Race	
White, non-Hispanic	31*
Black, non-Hispanic	43
Hispanic	48
Annual Household Income	
Less than \$30,000	45*
\$30,000 - \$49,999	38
\$50,000 - \$74,999	30
\$75,000 +	31
Education	
Less than HS	43
HS grad	31
Some college	41*
College grad	33
Locale	
Urban	34*
Suburban	26
Rural	23

Source: Pew Internet & American Life Project Survey December 2008 Survey, n=2,253, with an n of 1,650 internet users. For internet users the margin of error is $\pm 3\%$.

* These groups are significantly different from other groups in the section.

There are a myriad of reasons for using social networks, from updating your status, to networking with friends and family. Although the law on social networks is still evolving, it is important to be aware of possible legal problems. The information posted can be obtained by legal adversaries and may be exploited if we become involved in a lawsuit. Before posting, we need to think about how this information can be used against us.

Adults & teens use online networks to stay in touch with pre-existing friends		
<i>Do you use your online profile to...?</i>		
	<i>Adults</i>	<i>Teens</i>
Stay in touch with friends*	89%	91%
Make plans with friends	57	72
Make new friends	49	49
Organize with others for an event, issue or cause	43	n/a
Make new business or professional contacts	28	n/a
Promote yourself or your work	28	n/a
Flirt	20	17

Source: Adult internet user data comes from the Pew Internet & American Life Project May 2008 Tracking Survey. The n for internet users is 1,553 and the margin of error is ±3%. Teen data is from the Teen & Parent survey fielded in Oct-December 2006. Margin of error is ± 4% for online teens.

**This question was posed slightly differently to teens: "Do you ever use [social networking] sites to stay in touch with friends you see a lot?" There was also a complementary question asked of teens: "Do you ever use those sites to stay in touch with friends you rarely see in person" and 82% of teens who use social networks responded yes.*

We should remember that everything we post online serves to build a lifetime scrapbook of us. And ever increasingly, employers are searching this online history using Google or other search engines in an attempt to hire or retain employees who most closely reflect their mission and values.

Not only can errant photographs or inappropriate posts made to our social networking site impact our pre-employment chances, things posted during our tenure with the department and/or even after we terminate our employment can be used against us.

Becoming a change-centric, forward thinking department requires that we understand and interact through social media. Accordingly, we must adjust to this change and allow technology to advance our position to facilitate the execution of our mission. We need to embrace the opportunities associated with social media to include how we use these tools to work internally and collaborate externally.

Recommendations

In reviewing the data presented in the results of the survey, there are several recommendations that can be made.

For the law enforcement employee/applicant:

- Clean up your own “internet image.” Conduct a search on your name in the major search engines. If you find information that is inaccurate or may not be favorable, contact the web site to determine if there is a remedy.
- If you have profiles on any of the social networking sites, review the comments and photographs that you and your friends have posted. Look at this content from the perspective of a potential employer. Remove anything that may be offensive or reflect negatively on your morals or character.
- People in general, but public servants in particular, should avoid posting any negative comments. Information posted on bulletin boards, in chat rooms, personal blogs, or almost anywhere else can be accessed by the digital public.
- Remember, even if photos are deleted or posts are removed from your social networking page, its footprint will still exist and may resurface later.

For the law enforcement employer:

- Develop a social networking policy and provide training for your employees.
- Use recruiting activities as an opportunity to educate potential candidates (even at the high school level) about the ramifications of information they post on the web.

Gloria Whitehurst began her career in the fire service in the mid 1980's. She obtained her law enforcement certification in 1990 and was employed by the State Fire Marshal's Office, Bureau of Fire and Arson Investigations in 1992. During her 18 years with the Bureau she has served as a Detective in the Central Region, a Lieutenant in the North Central Region and, in 2005, was promoted to the rank of Captain. She currently serves as the Northwest Regional Commander where she and her troops investigate all fire and explosive related incidents that occur in the eight westernmost Florida counties. In addition to her law enforcement credentials, Captain Whitehurst maintains state certifications as a Firefighter, Emergency Medical Technician, Fire Safety Inspector, and Arson Investigator.

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APPENDIX A
SURVEY
Social Networking as it Pertains to a
Law Enforcement Applicant's Background Investigation

1. Approximately how many law enforcement applicants have entered the **background investigation phase** of your hiring process within the last 24 months?

Less than 25
 26 - 50
 51 - 75
 76 or more

2. When conducting the background investigation, does your department determine if a law enforcement applicant participates in any social networking sites (i.e. Facebook, You Tube, My Space, Twitter, etc.)?

Yes
 No

3. Does your department examine the content of a law enforcement applicant's social network(s)?

Yes
 No

4. Has the content discovered on a law enforcement applicant's social networking site ever positively influenced your opinion of their moral character?

Yes
 No

5. Has the content discovered on a law enforcement applicant's social networking site ever negatively influenced your opinion of their moral character?

Yes
 No

6. In considering the moral character of law enforcement applicants, would the following types of behavior, if found on their social networking site, influence your opinion?

a. The use of off-color or vulgar language?

_____ Yes

_____ No

b. Displaying inappropriate photographs?

_____ Yes

_____ No

c. Expressing bias toward a race, religion, gender, sexual preference, etc.?

_____ Yes

_____ No

d. Comments involving excessive drinking, drunkenness?

_____ Yes

_____ No

7. Does your department review the social networking sites of **current** employees?

_____ Yes

_____ No

8. If the answer is yes, what type of review is accomplished?

_____ Random

_____ In reference to a complaint

9. Does your department have a social networking policy that spells out your expectation of employees when they use online networking sites such as Facebook, You Tube, My Space, or Twitter?

_____ Yes

_____ No

_____ Being Considered

10. Is there anything involving this topic that I failed to ask that you feel might be pertinent to my research?

It is important that this survey be returned by April 9, 2010. Please e-mail the completed survey to Gloria.Whitehurst@myfloridacfo.com or mail to:

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Please note that only the combined data will be reported in the research paper and individual departments will not be identified.

please check here if you wish to receive a copy of the results at the conclusion of this study.

Thank you for your participation.