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Public Agency Considerations for Responding to First Amendment Audits

by Scarlett Sadler

With the advent of social media and smartphones, everywhere people go, and everything people do can be immediately scrutinized with the touch of a button. This can occur within a public agency when an employee encounters a First Amendment auditor with intentions to place the public agency and employees in the spotlight.

A First Amendment audit can be considered a form of activism. The individuals performing the audits often consider themselves auditors, citizen journalists, or social activists. It is a process where members of the public conduct an audit of how well government officials and others working in the public arena stay within the bounds of the Constitution and comply with the First Amendment freedoms.

Preparing for a First Amendment audit is often a public agency's best defense against being in the spotlight. A public agency should take steps to limit an auditor's ability to cause a disturbance. In preparing for a First Amendment audit, a public agency should ensure employees are aware of an auditor's rights and the agency's protocols for responding to a First Amendment audit.

The following are considerations a public agency should address when preparing for First Amendment audits:

- **Identify** – All nonpublic spaces inside a facility, such as bathrooms, offices, break rooms, work areas, and any other space that should be kept private should be identified. Once identified, these nonpublic spaces should be clearly marked as “**private**” or “**for employees only.**” Identifying these areas should prevent a First Amendment auditor from entering private spaces. All nonpublic areas should be identified before a First Amendment auditor visits a public agency facility.



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- **Policies** – Adopt written policies and/or procedures that inform employees of an agency’s protocols in the event of a First Amendment audit. A clearly defined policy will help employees understand what behaviors are acceptable, what auditors can and cannot do, where auditors are allowed, and when and how to get help. If there is already a policy in place, ensure that the policy is periodically reviewed and ensure all employees receive training on the policy as well as training on how to respond to a First Amendment Audit. It is advised that a policy regarding responding to First Amendment audits be reviewed by an agency’s legal counsel.
- **Video Recordings** – Inform employees and elected officials that when in a public place, they are subject to being recorded without consent. Furthermore, a First Amendment auditor is not required to state their name or explain their intentions or reasons for recording. Employees and elected officials should also be advised not to attempt to make an auditor uncomfortable by taking pictures of them or recording their actions. Doing so with a personal device, such as a cell phone, could result in a public records request, and an auditor could obtain access to an employee’s personal photos and data stored on the device.
- **Customer Service** – Inform employees of the importance of upholding an excellent level of customer service. During a First Amendment audit, employees should remain calm and treat all auditors with the same level of customer service as any other member of the public. Remaining calm and professional will likely produce a positive outcome when dealing with an auditor. An uncooperative attitude or negative response from an employee can cause an auditor to claim they are not being allowed to exercise their First Amendment rights, and a situation can escalate into an uncomfortable encounter. In these circumstances, it is recommended to have a protocol in place for an employee to obtain support from another employee, supervisor, or law enforcement if warranted.



Educating and informing employees on the ins and outs of First Amendment audits and an agency’s policy could help employees feel more comfortable with an audit when one occurs. Ideally, every public agency wants a First Amendment audit to go smoothly and never become a story on the local news or be posted to social media. By taking the preventative measures discussed above, a public agency will hopefully avoid the spotlight. For questions about First Amendment audits, please reach out to [PRISM’s Risk Control](#).