

First Amendment Auditors

What Public Agencies need to know

4/11/2025

Agenda

- First Amendment & Auditors
- Public vs. Non-public spaces
- What to expect
- Be prepared
- DOs & DON'Ts
- Workplace Safety

The First Amendment

- protects freedom of speech and expression from government interference
- allows individuals to express themselves through publication/dissemination

Video recording is protected speech under First Amendment.

First Amendment Auditor

- self-identified individuals who photograph/video public facilities
 - under the act of transparency for “*We, The People*”
- testing if constitutional rights will be upheld
 - possible lawsuit
- post videos online
 - make money from video views

Case law interprets this to include recording of any public employee in any public place, including public areas inside of public buildings.

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Public vs. Non-Public space

- public forum
- limited public forum
- non-public forum

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Public Forum:

area in which expressive activity or assembly is allowed

Examples where Auditors record include:

- | | |
|------------------------|--------------------------------|
| - streets | - public building exteriors |
| - parks | - steps of City Hall |
| - sidewalks | - interior public access/lobby |
| - crimes/traffic stops | - public plaza/square |

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Public Forum, related issues

limitations to when, where & how (not what)	allowed
loitering, staying in one location without intended purpose	FA Auditors know this and state their purpose directly or indirectly. Individuals can conduct the audit and video/record.
rights of other citizens attempting to conduct "personal" business	It's legal to video a private citizen in an area where there is no expectation of privacy. Move private/personal business out of public space.
sensitive locations on government property	The government has the power "to preserve the property under its control for the use to which it is lawfully dedicated." Clearly define and mark which areas are off limits to members of the public.

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Limited Public Forum:

area in which government has intentionally reserved for certain groups or discussion of certain topics with reasonable limitations on time, place and manner of expression

Examples include:

- inside schools after school hours
- interior of city hall
- public meetings

Some limits on speech can be imposed provided that they are viewpoint neutral (nondiscriminatory) and reasonable in light of the purpose of the forum.

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NonPublic Forum:

area which is NOT a designated for public expression

Examples include:

- private offices
- polling places
- courtrooms
- jails
- military bases
- public hospitals

Government is authorized to ensure that employees are not interrupted while working and that sensitive information is not compromised.

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ORS 164.245 – Criminal Trespass in the Second Degree

- A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully in or upon premises.
- Schools may have district-level policies for issuing "no trespass" letters to non-students or disruptive individuals.

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additional notes...

- It is unlawful to record an in-person communication without the consent of all parties involved.
- Websites should be handled as a limited closed public forum. Essentially, allowing outsiders to post on a public agency webpage may alter the website to an open forum and could limit the ability to delete offensive posts, etc.

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What to expect...

- actions
- intentions
- behaviors
- target

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what to expect

- surprise visit, no advance notice
- no specific profile, could be anyone
- dressed in professional or casual attire
- could be one or more people
- could be community or not from the area

intentions

- derogatory social media backlash
- goal is to make money
via online views (more clicks = \$)

behaviors

- recording in an obvious manner
- asking a lot of questions
- not answering any questions
- seeking confrontation

target/staff affected

- public employees, especially front office staff
- law enforcement
- elected officials
- any public employee who will become agitated enough to call the police

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Examples of questions/statements

- What's your name/position?
- How much money do you make?
- How do I get a complaint form?
- Do you know what the First Amendment is?
- I'd like to see the annual budget/financial report.
- I don't answer questions.
- I don't work for you - you work for me.
- I'm just asking questions - no need to give me attitude.

Freedom of Information Act:
public record information includes basic employee information such as **name, grade, salary, title and duty station** which are generally releasable to the public.

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Elaborating on "What is your name?"

When asked for your name/position?

- attempt with first name and title (without last name)
- law references identification, does not address safety issues
- remain professional



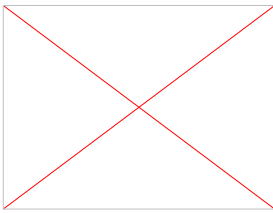
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Oregon Public Records Law (OPRL)

- transparency law granting the public the right to access government records
- applies to state and local agencies including school districts and public universities
- gives the public access to information that enable them to monitor the functioning of their government
- have 5 days to acknowledge and 10 days to respond with records or a timeframe of when to expect records requested
- existing records, not new records to be created
- no disclosure of personal information

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Learn from videos...

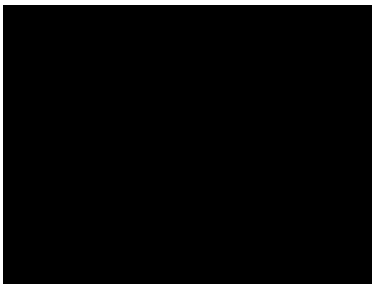


Please note: This video is being shared for learning purposes - not to be critical of any members or staff.

Some of our members have recently been visited, this video was posted. In discussion with Twin Rivers, we agreed to share the intro of the video, again not to be critical, but because it is an accurate example of how this plays out and how, when unaware of what's going on, the behavior is perceived as threatening and makes a very uncomfortable situation.

I can't emphasize enough that this is not to call anyone out. Understandably, gatekeepers defend. We can review this incident, not make anyone look bad, but to provide information on what to expect and how to handle this situation.

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<https://www.krqe.com/news/new-mexico/youtubers-video-of-police-incident-leads-to-internal-investigation/>

SIA for



SCHOOLS IN PART

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Be prepared

- space
- staff

SIA for



SCHOOLS IN PART

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Prepare public space

**RESTRICTED
ACCESS AREA**

Authorized persons only
beyond this point

NOTICE

PRIVATE
OFFICE
DO NOT ENTER

Clearly designate non-public areas.

- **signage must be visible**
- comply with ADA standards
- physical barriers
(e.g. doors, counters, stanchions/ropes)

SIA for



SCHOOLS IN PART

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Prepare Staff

- Train those who will likely encounter an Auditor
 - Front Office Staff, Security, Supervisors and staff who regularly interact with the public
- Select a designee to interact
- Inform all staff
 - where video recording is allowed
 - how to respond when encountering an Auditor
- Send a message notifying staff if FA Auditor is onsite

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Examples of statements by Auditor

- I want to film in that area.
 - If private area, only employees and those specifically invited for District Business can go in that area.
- Why are you following me?
 - providing a tour of public areas, allow unimpaired access, be helpful in assisting guests who may not want to be filmed
- You are violating my rights.
 - You can film in public areas, but not in areas with private/confidential information.

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DOs & DON'Ts

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DO [1 of 2]

- Train Management, Front Office, Security and staff:
 - keep calm, composed, patient and polite
 - de-escalate the situation
 - contact the designated representative to interact with the Auditor
 - cover confidential information in your workspace
 - avoid discussion or debate, keep communication brief
 - reference signs differentiating public vs. non-public areas
 - respectfully disengage - continue with duties, you do not have to talk
 - answer basic public information questions like name and/or title

*If the activity is not disruptive,
let the Auditor record.*

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DO [2 of 2]

- follow standard procedures for visitor registration
- document trespassing into private area
- follow up with supportive actions if anyone is targeted
- report this type of incident to SIA

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DON'T

- video the Auditor
- post about the Auditor
- get into debate or lengthy discussion
- argue
- refuse to give your name, no Right to Withhold Identity
- engage in physical altercation
- detain or confine
- try to confiscate recording
- close the office or call law enforcement if no laws are being broken

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Workplace Safety Reminders

Remain aware of the differences between an audit and surveillance.

First Amendment Auditors:

- seek attention
- very obvious about recording

Someone scoping out property:

- covert
- trying to go unnoticed
- likely NOT to engage with people

*If you see something,
say something.*

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Get help from your jpa:

- public space site inspections
- training information for staff
- incident response

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Thank you!

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