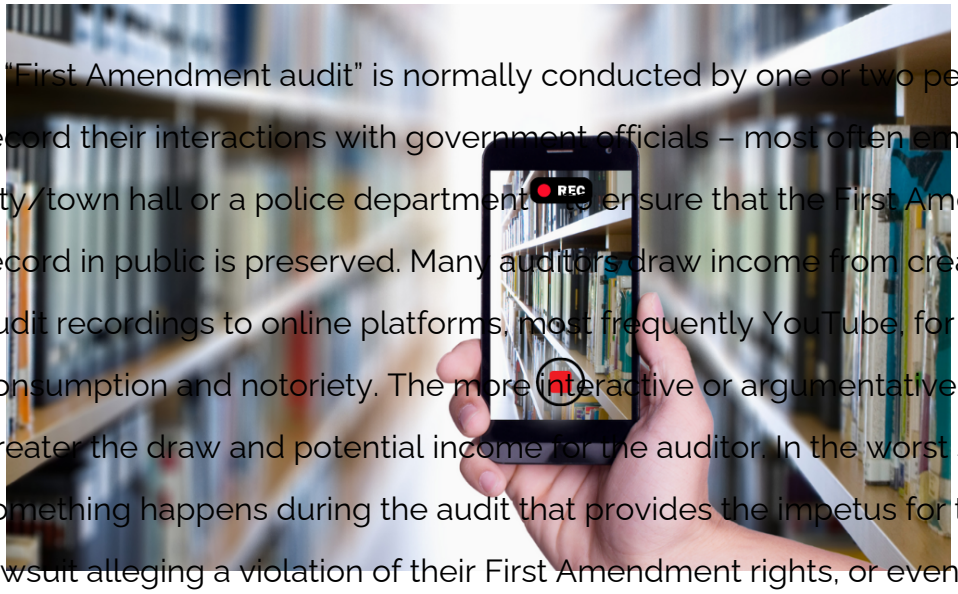
Reducing Risk from First Amendment Audits

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A "First Amendment audit" is normally conducted by one or two people who intend to record their interactions with government officials – most often employees at a city/town hall or a police department – to ensure that the First Amendment right to record in public is preserved. Many auditors draw income from creating and posting audit recordings to online platforms, most frequently YouTube, for public consumption and notoriety. The more interactive or argumentative the audit, the greater the draw and potential income for the auditor. In the worst scenarios, something happens during the audit that provides the impetus for the auditor to file a lawsuit alleging a violation of their First Amendment rights, or even false arrest.

What can government employees do to protect themselves and their municipality?

- Do not challenge recording that is taking place in areas that are open to the public. If the public can be present in a space, room, or office, a member of the public can also record in that space. There are a few exceptions for areas where there is a clear expectation of privacy, such as a rest room or locker room.
    - Permitted access includes filming into vehicles: if a parking area is open to the public, an auditor can be in that area and can record through a window.
    - Many auditors obtain valuable video when they film police vehicles or private vehicles of police officers and get a negative reaction from employees. If the parking area is open to the public, meaning not fenced or clearly delineated with "Employees Only, No Entry" or similar signage, an auditor may be present and record.
    - Be prepared by positioning computer screens to face away from public view and turning over or covering sensitive documents when any member of the public is present.
- Ask the auditor if you can assist them. If they refuse assistance but continue to explore and record in public areas, do not try to interrupt or stop them.

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- An audit often feels uncomfortable, so government officials must remind themselves that recording may take place in any public space. This includes the lobby of a city/town hall, the lobby of a police station, and any unposted public property around municipal buildings. Recording may take place through a window as long as it does not violate the voyeurism law. Recordings may be made of items and documents posted in these public spaces.
- Answer questions that appear to be about information that the public has the right to know about. For example, names of employees and their positions.
- Have a clear understanding of the Vermont Public Records Act.
    - When in doubt, confer with the senior municipal official in your city/town and the city/town attorney.
    - Requestors are not obligated to identify themselves or to give a reason for their records request.
        - If someone refuses to identify themselves, ask to schedule a date and time for them to return to either obtain the requested records or receive a status update on their request. You can also suggest that they phone you at a predetermined date and time.

A First Amendment audit that goes well is rarely seen in public and is a boon to the municipality for being cognizant of, and supporting, First Amendment rights. Any lack of controversy or perceived overreach by a government official is not newsworthy and is generally not posted.

Conducting a YouTube search for "First Amendment Audit" will provide a multitude of videos that may be informative. Additional guidance includes:

- Be Aware of First Amendment Audits, an article from the Colorado Intergovernmental Risk Sharing Agency (CIRSA)
- First Amendment Audits, an informative online video created by and shared with permission of the Utah Local Governments Trust

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Please feel free to direct questions to VLCT PACIF's Law Enforcement Consultant, Trevor Whipple, twhipple@vlct.org or (802) 262-1929. We can provide additional resources and offer training.

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