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First Amendment Audits

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VLCT has recently received reports of First Amendment Audits taking place in some of our member communities. In light of these reports, we draw your attention to an article from Colorado, Be Aware of First Amendment Audits, and an informative online video by the Utah Local Governments Trust called First Amendment Audits as well as VLCT's Reducing Risk from First Amendment Audits webpage. We'll also hold trainings on the topic in December 2022 and January 2023. Visit the Events Calendar to register.

These audits are essentially tests conducted by knowledgeable individuals **to determine how well public sector employees understand the right of the public to film in public spaces, especially municipal facilities**. The "auditors" actively engage in video recordings of interactions with municipal officials as they walk through public facilities. An audit that generates no resistance to filming in public areas is normally not posted on social media for public consumption. However, an audit that meets with resistance, attempted removal from a public space, or, at worst, a violation of someone's rights, will most likely be posted for the public to see – and may result in a lawsuit against the municipality for violating the auditor's First Amendment rights.

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To help reduce the potential for an adverse outcome related to a First Amendment audit, PACIF recommends the following practices. These are general in nature and should not be considered legal guidance. For specific legal guidance, always consult with your municipal attorney.

1. **Understand and follow the Vermont Public Records Act.** Any request for public records need not be made in writing, and the requestor need not identify themselves nor the reason for the request. If someone wishes to request records and not identify themselves, you make arrangements for them to reappear, or phone back, at a specific time to retrieve the records. The law provides up to three business days in order to review, and potentially redact, records before providing them. This also provides time to consult with your town attorney if you deem it appropriate.
2. **A member of the public has the right to film in any public space.** If the area, room, or building is open to the public, it is also open to filming. To this end, make sure you keep doors to nonpublic spaces closed and locked. Post signs prohibiting public access to secure areas, including delineated private employee parking areas. Be prepared with window covering should someone try to film through a window from outside. Be sensitive to the positioning of computer screens and documents that contain sensitive information.
3. **A First Amendment Audit that meets with little or no resistance rarely makes it to a public viewing platform.** To that end, do not negatively engage with the auditor. Do provide information that is public record, and do identify public employees, but don't make negative comments or try to stop a legal audit. An audit with no controversy is the best audit for the municipality.

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VLCT PACIF's Law Enforcement Consultant, Trevor Whipple, is available to all PACIF members for questions or training. Trevor can be contacted at **802-262-1929** or twhipple@vlct.org.

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