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# Frequently asked questions related to VIDEO-RECORDING IN PUBLIC FACILITIES

We know many community and technical colleges have recently been the targets of “First Amendment Audits,” or private citizens videotaping interactions with public officials, whether during board meetings or the day-to-day activities of college employees. The intended purpose of such audits is to “test” the college’s response and to see if the college employee will violate the person’s First Amendment rights.

This FAQ responds to common questions and serves as a resource for general education purposes; however, it is not intended to be legal advice and colleges are encouraged to reach out directly to their assigned AAG for legal guidance.

**Do First Amendment Auditors have the right to record college employees in the performance of their duties?**

Most colleges are largely open to the public, and auditors may enter any areas that are open to the public, just like anyone else. There is generally no expectation of privacy in public conversations between college employees and other staff, students, or members of the public. Thus, the right to record college employees in the performance of their duties likely extends to work that occurs in areas open to the public.

Auditors do not have the right to access areas of the college that are off-limits to the general public — such as private offices, classrooms, residence halls, and labs — without the consent of a college employee.

**What can college employees do if First Amendment Auditors request, or insist upon, access to a limited access or non-public area?**

College employees should remain calm, respond in a professional manner, and avoid escalating the interaction. Assist the auditor in identifying and locating the employee(s) who can answer their questions or provide requested records, or request that the auditor return to a public space and wait on further assistance, while contacting the specified college employee.

College employees should avoid calling security unless the auditor becomes unreasonably disruptive, physically threatening, or impedes the performance of college business. Profane, repetitive, or abusive language, without more, does not qualify as a sufficient disruption to remove the individual from public spaces. However, colleges should be mindful of their responsibility to protect staff from discriminatory harassment and ensure appropriate support is provided to any college employee who is subjected to profane, discriminatory, or abusive language by an auditor.

**What can colleges do to prepare for a First Amendment Audit?**

* Prepare public-facing employees for these types of encounters and ensure college employees are aware of the public’s right to access public spaces and record individuals in public spaces.
* Urge employees to remain calm, professional, and responsive to auditors, and assist in directing auditors to employees who can provide requested records (e.g. Public Records Officers).
* Have commonly requested documents available for inspection, such as Public Records Indexes, Bylaws and Policies, Board Minutes, and forms for making a public records request.
* Encourage employees to think critically about such encounters ahead of time and what steps they can take to diffuse interactions, e.g. contacting a supervisor to request assistance.
* Prepare college safety and security personnel to ensure they are adequately trained to recognize when they may remove an auditor from public property.
* Talk to your assigned AAG to obtain specific legal guidance.

**What resources are available for more information on this topic?**

MRSC Blog:

<https://mrsc.org/stay-informed/mrsc-insight/april-2023/rights-and-limits-on-filming-in-public-facilities>

AGO Opinion No. 15 – 1998

<https://www.atg.wa.gov/ago-opinions/authority-county-restrict-video-andor-sound-recording-county-meetings>

RCW 9.73.030 – Recording Private Communications

<https://app.leg.wa.gov/rcw/default.aspx?cite=9.73.030>

RCW 42.56.070(3) – Public Records Indexes

<https://app.leg.wa.gov/RCW/default.aspx?cite=42.56.070>

Open Government Resource Manual

<https://www.atg.wa.gov/open-government-resource-manual>