First Amendment Auditor Fact Sheet & Communications Guide

1. Defining: “First Amendment Auditor”
2. Defining: “Public Areas”
3. Behaviors of an Auditor or Member of the Public: What is Permissible and What is Not Permissible
4. Tips to Help You Recognize a “First Amendment Auditor”
5. Providing Notice of a “First Amendment Auditor’s” Presence
6. How to Approach a First Amendment Auditor
7. How to Conduct Yourself Throughout an Interaction with a First Amendment Auditor
8. Talking Points for Common Concerns of First Amendment Auditors
    a. What is your name?
    b. What do you do here? / What is your job title? / What department do you work in?
    c. Am I allowed to film here? What are your policies on recording in this location?
    d. Why are you escorting me?
    e. Am I required to identify myself?
    f. Can I submit a public records request?

Defining: “First Amendment Auditor”

A first amendment auditor is an individual who films or photographs public officials or government employees in public places to test their compliance with the First Amendment of the United States Constitution, which guarantees the right to freedom of speech and the press. Auditors often do this by entering government buildings or other

public spaces and refusing to leave when asked, or by filming public employees in their interactions with the public.

Defining: "Public Areas"

Public areas are those areas of our sites (internal or external) where members of the public can freely and lawfully come and go during normal business hours.

This does include the parking lot, please note that cars parked in the parking lot can be filmed by members of the public. It would be wise to consider that any area of the main office which is not sectioned off by key card access or signage that indicates the area is for authorized personnel only (i.e., the lobby, stairway, elevator, etc.) is a public area.

Behaviors of an Auditor or Member of the Public:
What is Permissible and What is Not Permissible

Members of the public may come into public areas and videotape those generally viewable areas and the public officials (employees) who may be there performing their work functions.

Members of the public may post or share the photos or videos taken as they wish.

Members of the public may request the first name, last name, and title of public employees and have those details provided to them.

Members of the public may not walk behind public counters, or walk down "private" hallways, because those are areas where the public would not generally be allowed without express approval or an escort.

Members of the public may not hold cameras over countertops to see computer screens, documents, or other matters not otherwise publicly viewable.

Members of the public may not use telephoto lenses or enhanced recording devices that would give them access to areas that would not be accessible to normal viewing or hearing.

Members of the public may not arrive and start walking through a protected area without following standard protocols for registering at the front desk.

Tips to Help You Recognize a "First Amendment Auditor"

There are a few things you can look for to recognize a first amendment auditor:

- They will be carrying a recording device, such as a smartphone or a camera.
- They will be filming or recording in a public place, such as a government building, a police station, or a school.
- They may be wearing clothing that identifies them as an auditor.
- They may be asking questions about the auditor's rights to film or record in public.
- They may be confrontational or argumentative.

It is important to note that not all people who carry recording devices in public are first amendment auditors. There are also journalists, tourists, and other people who may be filming or recording for legitimate reasons. However, if you see someone who matches the above criteria, it is likely that they are a first amendment auditor.

It is important to remember that first amendment auditors are exercising their legal rights. If you are approached by a first amendment auditor, it is important to handle the situation calmly and respectfully.

Providing Notice of a "First Amendment Auditor's" Presence

Should you become confronted by a first amendment auditor OR member of the public who is asserting a potential right that you may be unfamiliar with, stay calm and be polite/respectful and immediately contact one of the following individuals:

- Superintendent Steve Frank, ext. 4005
- Upper School Principal, Jennifer Pedersen, ext. 4016
- Lower School Principal, Patrick Hurley, ext. 4008
- Student Services Director, John Bartfield, ext. 4007

Back to Top

How to Approach a First Amendment Auditor

Here is an example of how you can approach a first amendment auditor:

"Hello, welcome to the Woodside Elementary School District, how can we be of service to you today?"

First Amendment Auditors may choose to share with you their identity and their purpose for being present. However, some first amendment auditors may choose not to identify themselves at all. This is because they believe that their right to film or record in public does not depend on their identity. Ultimately, the way that a first amendment auditor identifies themselves is up to them. If you are approached by someone who is filming or recording in public, it is always best to be polite and respectful, regardless of how they identify themselves.

Here are some additional things to keep in mind when approaching a first amendment auditor:

- Do not ask them to stop filming or recording. They have the right to do so in public.
- Do not touch their equipment. This could be considered assault.
- Do not threaten them. This could be considered harassment

How to Conduct Yourself Throughout an Interaction with a First Amendment Auditor

Here are some tips on how to conduct yourself in an interaction with a first amendment auditor:

Stay calm and collected. The auditor is likely trying to provoke you, so it is important to stay calm and collected. Do not engage in arguments or try to argue with them.

Be polite and respectful. Even if you disagree with the auditor, it is important to be polite and respectful. This will help to deescalate the situation.

Answer only necessary questions to perform the public service that we are obliged to provide. The auditor may ask you questions about your rights or about their rights. You do not have to answer these questions. However, if you are asked you are expected, as a public employee, to provide your name, title, and explanations about conducting certain business functions that the individual may be seeking (i.e., public records requests, access to the public restrooms, etc.).

Do not try to stop them from filming or recording. The auditor has the right to film or record in public. You cannot stop them from doing this. However, public restrooms do have an expectation of privacy and recording is not permitted.

Talking Points for Common Concerns of First Amendment Auditors

What is your name?

Generally, in the course of our work as public servants we have a duty to provide members of the public (to include First Amendment Auditors) with our names when requested.

If you are asked for your "name" one suggested reply is:

"I'm (First Name Only), is there a service that I can provide for you today?"

"Hi, I'm (First Name Only), how may I help you?"

If you are asked specifically for your "first and last name" you should politely provide both, a suggestion for that reply is:

"I'm (First Name & Last Name), is there a service that I can provide for you today?"

"Hi, I'm (First Name & Last Name), may I ask your name?"

What do you do here? / What is your job title? / What department do you work in?

There are several legitimate reasons for members of the public to inquire regarding our titles and the departments that we serve in. This is a question that we should be prepared to answer appropriately – even if approached by a "First Amendment Auditor" who may not be seeking our services.

If you are asked to name your role or the department in which you serve, consider the following replies:

"My role here at the Woodside Elementary School District is (Your Title). I have the privilege of assisting members of our community with (Description of General Tasks). "

"I serve in the (Your Department). Is there something we can assist you with today?"

What do you make? / What is your salary? / How much is the public paying you to do this job?

"All Woodside Elementary School District salary schedules have been made available online at woodsideschool.us. If you'd like to provide me with your email, I'd be more than happy to send you a direct link."

"Public employee salaries are indeed a matter of public record. Can I assist you in making a public records request?"

Am I allowed to film here? What are your policies on recording in this location?

First amendment auditors are allowed to film anything in plain view in a public place, subject to time, place, and manner restrictions. This includes government officials engaged in their duties, police officers, and private individuals in public spaces. The right to film in public is protected by the First Amendment, which guarantees the right to freedom of speech and the press. The Supreme Court has ruled that this right includes the right to record and distribute images and videos. The best approach to engaging in this line of inquiry is to keep it short and as uninvolved as possible.

A suggestion for this communication has been laid out below:

"You are more than welcome to record in the public areas of this building. May I escort you around our building and share with you what those areas are?"

Should you need to be more specific:

"You are welcome to record in the public areas of this building. However, please note that entries that are only accessible by key card access or designated by signage stating 'Authorized

Personnel Only' are not public areas. Additionally, public restrooms in this facility do maintain an expectation of privacy."

Why are you escorting me?

First Amendment Auditors often prefer to roam public buildings unencumbered by personnel. We do not want the purpose of escorting any member of the public (to include first amendment auditors) to feel restrictive of their permitted movement in a public space. However, not all personnel and fellow members of the public will be comfortable with the behavior of the auditors or understand their rights.

As such, please see below for a communication suggestion regarding this question:

"While you are welcome to film in our public areas, it does have the potential to appear out of the ordinary to personnel and your fellow members of the public. I am here to ensure that all individuals understand the first amendment rights afforded to you in these areas and that they will not interfere in your lawful activity."

Am I required to identify myself?

Generally speaking, first amendment auditors are not required to identify themselves. However, often in the course of our work, we do require the names of individuals to provide the services most often requested by members of the community. First Amendment Auditors do not often wish to provide their names, even if they issue the expectation that public employees furnish their own.

This can feel uncomfortable, however, please see some suggestions for replies below:

"You are not required to provide me with your name to enjoy our public areas."

"At this time, I do not have reason to require you to identify yourself, however if you are here to do business with our office a name may be necessary to best assist you."

Can I submit a public records request?

Anyone can submit a California Public Records Act (CPRA) request, regardless of their citizenship, residency, or purpose for requesting the records. The CPRA is a state law that gives the public the right to access records held by government agencies.

Here are some of the people who can submit a CPRA request:

- **Individuals:** Any individual can submit a CPRA request for records about themselves. This includes records about their education, employment, finances, and criminal history.
- **Journalists:** Journalists can submit CPRA requests for records that are relevant to their reporting. This includes records about government activities, public officials, and businesses.
- **Political organizations:** Political organizations can submit CPRA requests for records that are relevant to their campaigns or activities. This includes records about campaign contributions, voter registration, and election results.
- **Public interest organizations:** Public interest organizations can submit CPRA requests for records that are relevant to their mission. This includes records about environmental protection, civil rights, and consumer protection.
- **Anyone else:** Anyone else can submit a CPRA request for records that are of public interest. This includes records about government spending, infrastructure projects, and public safety.

Of further note, the above individuals are not obligated to provide you with their identity or their contact information in order to make a public records request. While the above can make it difficult to discern how best to handle a public information request with very little information from the requestor, please see a few suggestions on communication below:

"Generally, members of the public prefer to submit Public Records Requests through email. Would you like for me to assist you with that process?"

"Public Records Requests can most expediently be submitted to the appropriate party by emailing a description of the requested information, and your name or contact information to sfrank@woodsideschool.us."

"If you are unable or unwilling to submit a Public Records Request via email, we are still happy to assist you. Would you prefer to write down the information that you are requesting today?"

"You are not obligated to submit a Public Records Request in writing; however, it may help us to better understand and capture the information that you are interested in."

"If you would like me to capture your verbal Public Records Request, would you mind allowing me to read it back to you so that I can ensure I have captured your request clearly and accurately?"

"You are not obligated to provide a name or contact method to issue your Public Records Request, though a contact method would allow us to reach out to you should we need any clarity regarding your request."

"Since you have opted not to provide us with your name or contact information regarding your Public Records Request, how would you like to collect any potential information requested?"