



HR ALERT

Dealing with First Amendment Audits



POOL/PACT HR is publishing this important Alert on Dealing with First Amendment Audits. If you have any questions about how this may impact your employment policies or practices, please contact your HR Business Partner for more information.

More and more frequently, public employees throughout the country are having encounters with individuals conducting “First Amendment Audits.” The purpose of these audits is to test governmental respect for individuals’ First Amendment rights. A citizen conducting a First Amendment Audit will typically approach a public employee without identifying himself or herself and create a video of the resulting interaction.

In these situations, whenever possible, employees should obtain guidance from a supervisor or from upper management before addressing the individual. But that option may not always be available given time and other constraints. Accordingly, this document provides basic information about individuals’ First Amendment rights and guidance for making spot decisions involving First Amendment Audits and similar activity.

Perhaps the most important concept for employees to understand is that *location matters*. The location of the activity largely determines the scope of the individual’s First Amendment rights—and, in turn, how the employee should respond. Generally speaking, there are two types of locations: (1) public areas, and (2) non-public areas.

PUBLIC AREAS:

What is a public area?

A public area is government property on which speech, expression, assembly, or debate has traditionally been permitted. Some examples include public streets, parks, and sidewalks. Public areas also include places the government has designated as accessible for public speech or expression, such as a municipal auditorium, a library meeting room, or the comments section of a public entity’s Facebook page.

What are an individual’s First Amendment Rights in these types of areas?

Individuals have broad rights in public areas. They are free to peacefully speak or express themselves. The government and its employees generally cannot interfere.

Do these First Amendment rights extend to video recording?

Yes. The First Amendment gives individuals the right to film matters of public interest, including filming government employees performing their duties in a public area. Public entities and



Dealing with First Amendment Audits Summary

employees therefore generally cannot interfere with a citizen who is filming governmental operations in a public area.

Are there limits on these rights?

Yes. Governmental entities and their employees can impose reasonable restrictions on the time, place, and manner of the conduct. These types of restrictions are concerned not with *what* the individual is communicating, but rather with *when, where, and how* it is being communicated.

If an individual attempts a First Amendment Audit in a public area, what should an employee do?

The employee should not attempt to prevent the individual from peacefully filming or expressing an idea in a public area. Only if the individual becomes threatening, abusive, disruptive to business operations, or creates a safety or security risk should the employee intervene. In that case, the employee should remain calm and, if possible, ask the individual firmly and politely to stop the behavior. If that does not work or is not practical under the circumstances, the employee should contact law enforcement. The employee should not at any point argue with the individual or attempt to confiscate the video recording device.

Additionally, *the employee should never initiate any physical contact unless necessary to prevent imminent physical harm to the employee or another person.*

What if the employee asks the individual what s/he is doing or what his/her name is, and the individual refuses to answer?

The best course is generally to allow the individual to continue peacefully filming and notify a supervisor. The employee should not intervene as described above unless the individual becomes threatening, abusive, disruptive to business operations, or is creating a safety or security risk.

NON-PUBLIC AREAS:

What is a non-public area?

A non-public area is property that is owned by the government but is neither traditionally used as a place for public expression nor designated for such use. Examples include “employees only” areas of governmental offices, government equipment storage facilities, and other areas where the government has a strong interest in limiting or restricting public activity. Parking lots, waiting rooms, and front desk areas often (but not always) will be considered non-public areas as well.

What are an individual’s rights in a non-public area?

The individual’s rights are more limited in these areas. Governmental restrictions are permissible if they are reasonable and not based on the individual’s viewpoint.



Dealing with First Amendment Audits Summary

What should an employee do if an individual attempts a First Amendment Audit in a clearly non-public area, such as an office marked “employees only?”

The employee should first ask the individual to stop or leave. If that does not work or is not practical under the circumstances, the employee should alert a supervisor and contact law enforcement and wait for law enforcement to respond. *The employee should not attempt to confiscate the video recording device and should never initiate physical contact unless necessary to prevent imminent physical harm.*

What if the First Amendment Audit is occurring in an area the employee is not sure is public or nonpublic?

If the individual is acting peacefully and is not creating a disturbance to business operations, it is best to notify a supervisor and allow the individual to continue and wait until the supervisor or someone from upper management is available to respond. But if the individual becomes a significant disruption or creates a safety concern, the employee may ask the individual to stop or leave and, if necessary, may contact law enforcement.

What if an individual is filming a non-public area from a public area?

If an individual is filming a non-public area (like a school classroom or governmental office) from a nearby public area outside the building, employees should immediately contact a supervisor or, as appropriate, law enforcement. Employees should refrain from approaching or engaging the individual unless necessary to prevent imminent physical harm.

*****This document contains very basic information regarding First Amendment principles and is intended to provide general guidance for public employees. It is not a substitute for legal advice. Whenever possible, individuals and entities should obtain advice from a qualified attorney when formulating policy and dealing with situations carrying First Amendment implications.*****



Dealing with First Amendment Audits Summary Chart

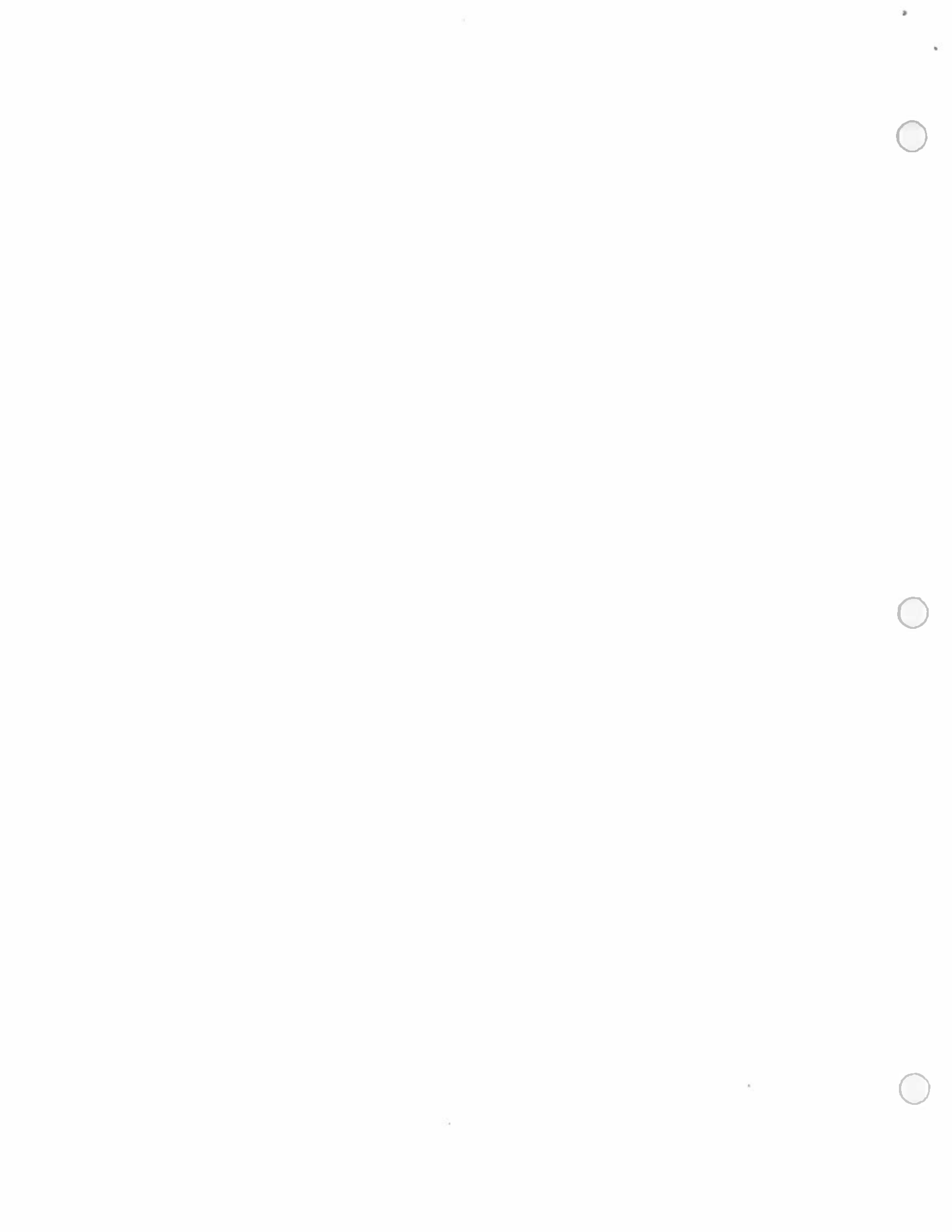
	Public Areas	Non-Public Areas	Not Sure
Description	Government property on which speech, expression, assembly, or debate has traditionally been permitted, and government property designated as accessible for such purposes	Government property which is neither traditionally used as a place for public expression nor designated for such use	Government property where it may sometimes be a close call whether the area is "public" or "non-public"
Examples (not a complete list)	<ul style="list-style-type: none"> Public streets Public parks Public sidewalks Municipal auditorium Library meeting room Comments section of a public entity's Facebook page 	<ul style="list-style-type: none"> "Employees only" areas of government offices Government equipment storage facilities Hallways in a public school Patient-care areas of a public hospital 	<ul style="list-style-type: none"> Parking lots Waiting rooms Front desk areas Walkways on government campuses Bulletin boards
Individual's 1st Amendment rights	Broad: free to peacefully speak or express themselves no matter how unpopular the content; government generally may only impose reasonable time, place, and manner restrictions	Limited: governmental restrictions on speech and public access are permissible if reasonable and viewpoint-neutral	Depends on whether the area is ultimately determined to be public or non-public
Individual's rights to film	May film matters of public interest, including government employees at work in public areas	Filming may be restricted by the governmental entity that owns or leases the property	Depends on whether the area is ultimately determined to be public or non-public
What employee should do	<ul style="list-style-type: none"> Allow individual to peacefully film or express an idea Alert a supervisor or manager 	<ul style="list-style-type: none"> Ask the individual to stop or leave Alert a supervisor or manager 	<ul style="list-style-type: none"> Allow individual to continue if there is no disruption or safety risk Alert a supervisor or manager
What employee should do if individual becomes threatening, abusive, disruptive, or creates a safety or security risk	<ul style="list-style-type: none"> Remain calm If practicable, ask individual to stop the behavior Alert a supervisor or manager Contact law enforcement and wait for them to respond 		
What employee should NOT do in ANY situation	<ul style="list-style-type: none"> Argue with the individual Attempt to confiscate the video recording device Initiate any physical contact unless necessary to prevent imminent physical harm to the employee or another person 		

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Building Security:

- A Brief overview of physical security measures.





Fundamentals of Building Security:

o Physical (Environmental) Security Domain

- o** The Physical (Environmental) Security domain addresses the threats, vulnerabilities, and countermeasures that can be utilized to physical protect an enterprise's resources and sensitive information. These resources include people, the facility in which they work, and the data, equipment, support systems, media, and supplies they utilize. Physical security describes measures that are designed to deny access to unauthorized personnel (including attackers) from physically accessing a building, facility, resources, or stored information; and guidance on how to design structures to resist potentially hostile acts.

- The most important physical security features for most facilities typically include:

- Security of doors, gates, and other access points
- Use of video surveillance, both inside and outside
- Presence and effectiveness of lighting
- Potential obstructions created by landscaping or building design
- Use of security guards
- Visitor management policies
- Communication methods

o Security of doors, Gates, fences.

- Basic security infrastructure can strengthen and complement your building entrance and exit protocols. While they might sound simple, gates and fences can do a lot to stop unwanted access to your property – especially if it has lots of outdoor areas or a large parking lot, public building do.
- Even if they don't completely prevent access to the property, gates and fences can act as a powerful deterrent, both by demonstrating that your business takes security seriously and signaling to potential criminals or trespassers that it will be more difficult (and time consuming) to escape your property if they are detected.
- Single Point Entry or limited entry allows organizations to monitor inbound and outbound traffic.
- It is important to have several doors for emergency exits, but alarms at should be set for all doors that have been designated as emergency.



- **Use of video surveillance, both inside and outside**
 - An individual seeing a camera is 50 percent of the value.
 - They are a deterrent because when people know they are on camera, they are much less likely to do something wrong.
- **Presence and effectiveness of lighting**
 - Provides a deterrent to intruders.
 - Low light areas create opportunity.
- **Potential obstructions created by landscaping or building design**
 - Use and placement of physical environmental features, personnel walkways, and activity areas in ways that maximize visibility
- **Use of security guards**
 - Security guards are used for making complex decisions:
 - Checking credentials at entry points.
 - Ensuring company property does not leave facility.
 - Monitor intrusion detection and fire alarm systems.
 - Verify doors and windows are locked.
 - Watching for suspicious activity.
 - **Personnel are the most expensive countermeasure to reduce physical security risks.**
- **Visitor management policies**
 - In addition to gates and fences, an entrance with a manned or remotely monitored security vestibule is a great way to secure entry to a building. If possible, the presence of a single security staff member can make a big difference in deterring unauthorized visitors.
 - Employees should demand ID or badges from individuals entering a secure area, the best defense against intruders is a good security awareness program among workers that gets them to notice what is going on around them.
- **Don't overdo security**
 - Keep in mind that each environment is a dynamic scenario and not all security measures are necessary in all areas.

