

FIRST AMENDMENT AUDITS BEST PRACTICES

The Safety Director's Office has been made aware that there are individuals and groups of people who are actively participating in what is referred to as 'First Amendment Audits'. They claim to be a social movement that audits government entities to promote transparency and open government. Representatives of the groups will show up at government facilities, video record the facilities' parking lot making a record of all of the vehicles in the parking lot, and check for signs to determine if they can enter protected areas and enter the public area while recording the operations at the facility.

On some occasions, they will question employees, asking for their name and position. They may ask about accessing official government records and about the process that must be followed. When public employees ask questions, the auditors may refuse to answer and simply inform you that you are a public servant and must answer their questions. The attitude and demeanor of some of these people can be unnerving, annoying, flippant, aggressive, and on occasion, they may use foul and abusive language. Unfortunately, many of these audits may become confrontational in nature. Once they have completed the audit, many of the videos are posted online for public review. Some of the videos are edited, and they may audio dub the recordings with comments that are designed to demean or criticize the public employees they audited.

The Safety Director's Office encourages all public employers to prepare for a First Amendment Audit. Research, employee preparation, and training play an important role in preparing for and mitigating cases that could result in litigation. Discuss with employees what can be said, how to respond to these audits, and who they can contact for assistance, and have them attend ***Preparing for First Amendment Audits Training***. They can register to attend by visiting <https://njce.org/safety/safety-webinars/> and viewing the NJCE *Monthly Live Virtual Training Schedules* and clicking on the Class Topic link.

- Encourage your personnel to stay calm and to be professional at all times. Be helpful, but do not go beyond what is required by law.
- Educate employees on what is 'required by law' as it pertains to their job duties, such as Open Public Meeting Act (OPRA), permits and applications for permits, and confidentiality rules for public information.
- Do not allow 'auditors' to enter restricted or secured areas within the building. Be situationally aware; they may try to tailgate you while you are entering a secured area of the facility, claiming that they were not aware that their entry was restricted to a particular office or room. Review signage for restricted areas. Ordinances may be required to support your signage decisions.
- Be prepared for a challenge by the auditor referring to the Americans with Disabilities Act, requesting an accommodation or other actions to obtain information to which they may or may not be entitled.
- Discuss with employees a plan of action for dealing with 'auditors' and other difficult people. Provide guidance on co-workers assisting co-workers, requesting assistance from supervisors, and when to request support from law enforcement.

Work with local law enforcement and agency's attorney to develop procedures and training for employees and supervisors. Consider a tabletop exercise or roleplaying drill for employees to prepare for the 'real thing'.