

First Amendment Audits

A growing number of public libraries across the country are finding themselves the target of "First Amendment Audits." This trend involves individuals or groups who arm themselves with video cameras and enter libraries and other public spaces (police stations, post offices, etc.) under the auspices of the First Amendment right to free speech in order to record "violations." They claim a right to film in any space accessible to the public, arguing that they're entitled to do so as a taxpayer and citizen journalist. Based on what we have seen, their goal is to create and post videos on the internet (YouTube) that document a claimed violation of the camera person's First Amendment rights. They are also claiming that they are permitted to film and photograph library staff and patrons on the grounds that libraries are "public spaces."

What does the law say?

As stated in previous OLC Communications and the [Guidelines on Public Libraries and Petitioning](#) - the First Amendment does not require the government (public libraries, in this case) to grant access to all those wishing to exercise free speech rights on its property. The courts look to the nature of the government property at issue to determine what access restrictions are appropriate. Federal courts have deemed public libraries to be a "limited public forum," which means public libraries have some discretion to reasonably restrict the exercise of free speech rights *in their buildings* - especially to the extent that the conduct in question would be disruptive to the other patrons or inconsistent with the library's fundamental mission. In most cases, taking photographs and/or recording videos of library staff or patrons without their permission can be prohibited as a matter of library policy.

What if this happens at my library?

1. Get prepared now. Talk with your local law enforcement - they are probably familiar with these types of groups. Make sure your library's Code of Conduct Policy (or other policies) addresses patron use of photography, video, and audio recording within the library. Print copies of the Policy and have them available at your service desks. Train staff on how to handle an "audit."
2. When a person comes in filming, greet the person courteously and maintain a calm demeanor throughout the conversation.
3. Let the person know that you have a Policy and ask them to stop filming. They will probably not comply and tell you that it is their First Amendment right to film in public places.
4. Explain that while the library is a public place, it is considered a "limited public forum" under federal law and refer them to your policy.
5. Hand them a copy of your Policy and point out the appropriate sections that say they cannot film without permission. Do not argue or participate in a back and forth about the policy, federal law, etc. Don't try to explain legal points. Give them the facts, and then ask them to stop.

6. If they do not comply, let them know that you must call the police because they have failed to comply with your request and have violated library policy. They will probably continue to film.
7. Call the police and report that a person has violated library policy, is being disruptive and has failed to comply with a request by staff to stop filming at the library.
8. Wait for law enforcement inside the library. Even if the person filming leaves the library, do not follow them outside. Handle the situation as you would any time you interact with law enforcement.

An example [Code of Conduct Policy](#) from the Euclid Public Library is available on the [OLC website](#).

INSTITUTIONAL MEMBER LIBRARIES: If you have additional questions, please contact either Michelle Francis (mfrancis@olc.org or 614-410-8092 x105) or Jay Smith (jsmith@olc.org or 614-410-8092 x103) at the OLC office.