



NAVIGATING FIRST AMENDMENT “AUDITORS”

Strategies for Public Agencies

Charlotte Archer, Inslee Best

Today's Discussion

Quick Introduction:

Who are they and what do they want

Stay Calm and Carry On:

How to Prepare your Team and Facilities

- "I own this property!"
Filming on public property
- "I want your index!"
Public records Act
- "You work for me!"
Engagement v. Harassment and doxxing employees

First Amendment "Auditors"

Who are they and what do they want?

Self- Proclaimed "Media"

Self identified and self
promoted reporters

Some have decent general
knowledge of legal rights

Often know where the lines are
drawn

But also know how to push
buttons



Stages interactions with public employees

Goal is to take photos and videos of their interactions with public employees.

Where: sidewalks, parking lots, building exterior, lobby, entryways, or any where they can access.

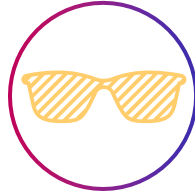
Nationwide phenomenon, including throughout Washington

TACTICS AND GOALS



Dressed to Intimidate

May wear a mask or costume, may carry a weapon



Remain Anonymous

Will use an alias, refuse to provide identification, and refuse to state business



Intentionally Hostile

Tone may be rude, insulting and intentionally provocative



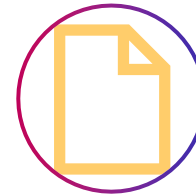
Film on “public” property

Will take steps to assert a right to be anywhere on public property



On-Demand Service

Will demand to speak with public employees on a variety of topics



Public Records Request

Will assert a right make an oral public records requests or demand to review records

Primary Goal: Instigating for Views

First Amendment auditors aim to provoke reactions that can be monetized on social media.

Links



Support The Channel!
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facebook.com/profile.php?id=61556838476451

- Los Angeles, 2019– Auditor shot in the leg by security guard while filming at a church/school
- Littleton, CO, 2020 – Armed men, wearing tactical vests, filmed voters dropping off ballots
- New Hampshire, 2021– Councilmember intervenes and tells Auditor to stop filming who responds “Learn the law, idiot! You work for me!” Councilmember assaults “Auditor” all of it caught on film. City settles claim.

Secondary Goal: Accountability

“This channel was created to contribute to the efforts of the 1st and 2nd amendment auditing community. Specifically, I endeavor to work to hold Our government to account by actively gauging their compliance to our Federal and State Constitutions, and local laws.”

- Pursue “investigations” into agency and employee conduct
- Test agency and employee awareness of issues, including First Amendment rights of free speech and expressive conduct
- Assert right over “public” property visits every type of entity (State, County, City, School District, Special Purpose Districts, Libraries, FAA, Dept. of Corrections).
- Try to “catch” government waste
- Assert general knowledge of rights, including trespass, firearms, and public records laws

Filming on public property

Preparing your staff and facilities



2025-01-06 14:11:56 -0800
AXON BODY 4 D01A4946X
Officer Steinman



Video Debrief

Sasquatch takes on Costco

- Aggressive / Provocative
- Designed to showcase “expertise”
- Followed by complaint that officers were “mean to him”



Video Debrief

IAM Free takes on DOC

- No signs = Unfettered access?
- Designed to showcase “expertise”
- Edited to remove key actions
- Followed by doxxing

Filming on public property

Defining “public” property

- Right to film in public areas where there is no reasonable expectation of privacy

Fordyce v. City of Seattle, 55 F.3d 436 (1995)

Lewis v. State, Dept. of Licensing, 157 Wash.2d 446 (2006)

Filming rights on public property

- Traditional, designated/limited, and nonpublic forum

Traditional: Streets, (city) parks, and sidewalks

Designated: Interior of government buildings

Filming on public property

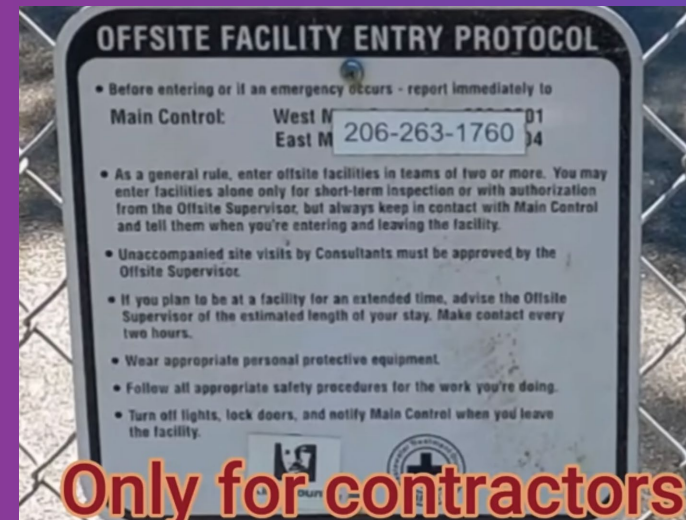
- Can delineate open v. restricted areas:
 - Must be noticed to enforce- unlocked door and absence of signage possible affirmative defense
- Likely can't restrict filming in lobby/front desk
 - Unrestricted expression Hopper v. City of Pasco 241 F.3d 1067 (9th Cir. 2001)
 - Restricted access Freedom Found. v. Washington Dep't of Ecology 840 Fed. Appx. 903 (9th Cir. 2020)
- Can utilize infrastructure / security measures: CCTV cameras, key card access, ambient music



Securing Property

Perform an audit to identify and designate nonpublic areas by:

- Closing and locking the door/gate
- Posting clear signs stating no entry / authorized persons only



Filming on public property

- Trespass- Must be given notice they are not permitted, and property must not be open to the public
- Rules of Conduct- reasonable restrictions on conduct on public property with mechanism for due process
 - Signage for restricted areas (keep in mind windows)
 - Develop plan and train staff
 - Post policies and educate the public
- Loitering– Generally void for vagueness (Spokane v. Neff (2004))

But *should* we engage?

- Goal is to make the most boring video possible
- Consider intervening:
 - Actual threats of violence
 - Restricted area access/after hours access
 - Conduct impacting other customers (remove impacted customer)





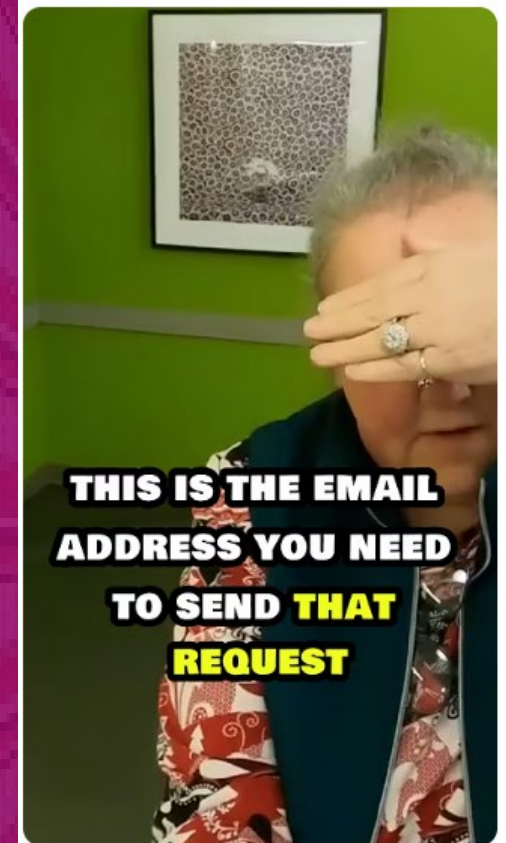
Video Debrief

“Surveilling” a Consulate

- Calm / Professional
- Deferential to asserted credentials
- Officer’s identifying info still posted

"Auditors" using the Public Records Act

"Give me your index!"



Scared Public Servant!
Impossible Records ...

9.3K views



yeah but this is about making a point



Video Debrief

“Surveilling” a Consulate

- Aggressive/Provocative
- Designed to showcase “expertise”
- Seeking ondemand services
- Belittling staff

"Auditors" using the PRA – Key Issues

Are we required to accept in person, oral requests?

- RCW 42.56.080(2) – No official format for public records requests; can recommend form or web page, but can't require
 - Model Rules: WAC 444-030 - "The public records officer or designee may accept requests for public records that contain the above information by telephone or in person."
- RCW 42.56.100– May set reasonable rules
 - Parmalee v. Clark 148 Wn App. 749 (COA Div. I, November 24, 2008)
 - O'Dea v. City of Tacoma 493 P.3d 1245 (COA Div. II, August 24, 2021)– Fair Notice Test
- Strategies:
 - Training ALL public agency staff to identify a request
 - "Not denying request, just directing you to the right person who can help right now"
 - "Most efficient way to get the records you seek is _____."
 - Request is typically related to the encounter (observed phones, bodycam, emails about encounter)

"Auditors" using the PRA – Key Issues

"I demand your records index!"

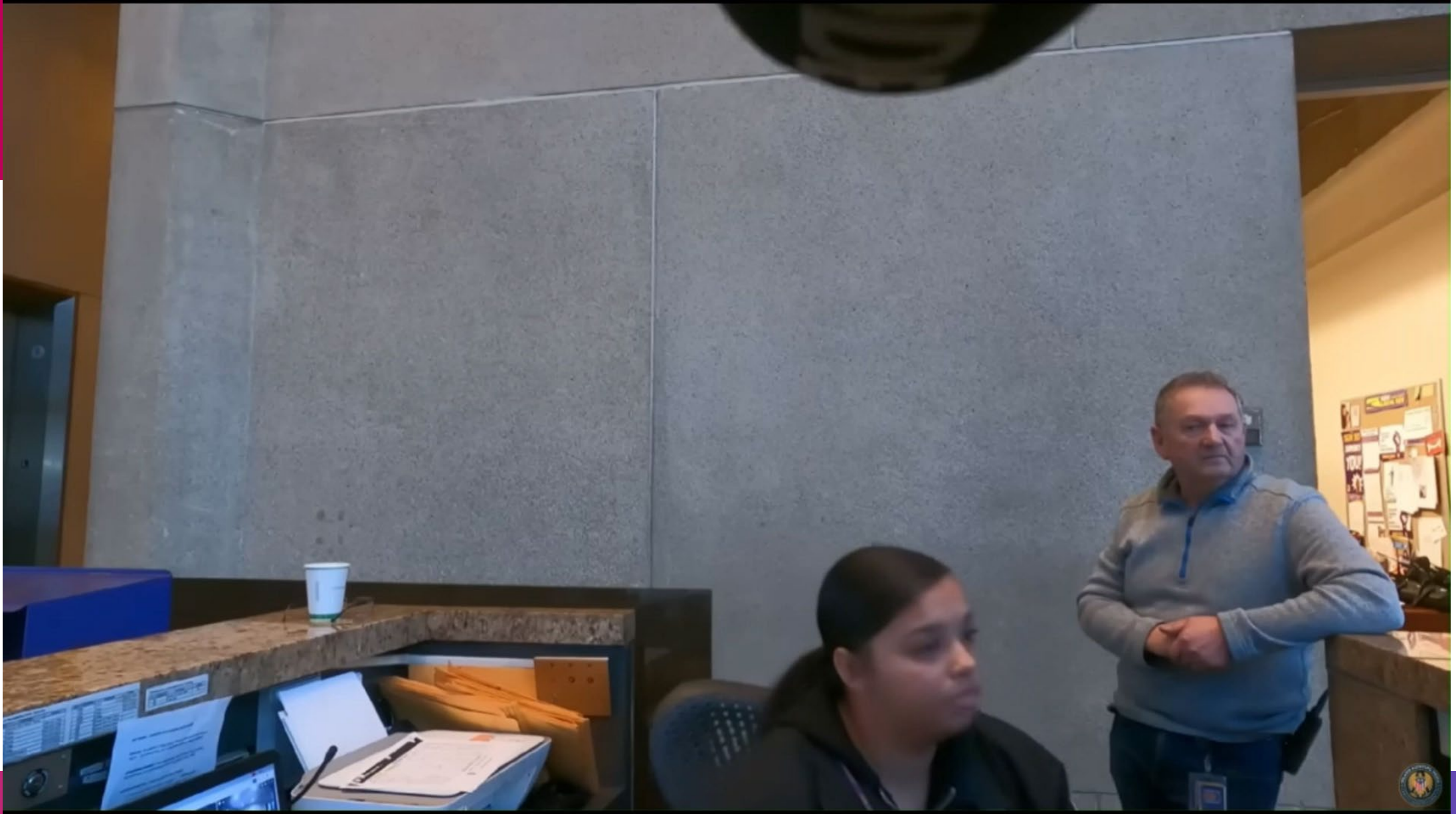
- No right to on-demand review of records (or information) *but see* Model Rules update
- RCW 42.56.070: Requirement for local agencies, can be waived by order of legislative body when unduly burdensome
 - Advancing technology / AI may make an index a reasonably available tool
- What is an "order" and what evidence is needed? Can you embed this in your policies?
 - "An index is unduly burdensome, costly, and would interfere with agency operations due to the diversity of the agency's filing and information systems, budget restraints and the unavailability of staff."
- Is a request for all records that should be on the index a request for identifiable public records?
 - Likely yes, but unlikely to fulfill; not looking for records.

"Auditors" using the PRA - Key Issues

- Do "auditors" qualify as media?
 - Green v. Pierce County, 497 P.3d 499 (2021)
 - Access to Employee information, waiver of fees (don't do it!)

Key Takeaways:

- ✓ Unlikely to litigate: Operating anonymously, and unlikely to reveal identity
- ✓ Easier to make money through videos that show the agency "violating the law", so empower your team on the law!





Video Debrief

Hostility at the UW

- Rude/condescending
- Designed to showcase “expertise”
- Doesn’t know what records he wants
- Seeking ordemand services

"You work for me!"

Harassment and doxxing



@AHHCsMrBunny 2 weeks ago

You can work just fine, while citizens are present.



21



Reply



@chas3304 2 weeks ago

That's why Trump is firing all the workers who are rude and crude.



18



Reply

✓ 4 replies



@mr.waynes7555 2 weeks ago

these entitled state, county, city workers are becoming worse daily.....totally crappy individuals.



5



Reply



@inthewebnotoftheweb 2 weeks ago

Ignorance and arrogance is a very bad combination..



7



Reply



@crazyaussie7054 2 weeks ago

Watching this vid at the moment!! These people are absolutely disgraceful!! Huge support from Australia



8



Reply

Harassing and doxing your employees

Defining “harassment”

- Employers are legally responsible for protecting employees from customer harassment Christian v. Umpqua Bank, 984 F.3d 801 (9th Cir. 2020); EEOC v. 98 Starr Road Operating Co., LLC
- Can include harassment occurring outside the workplace, including on social media (Okonowsky v. Garland, 109 F. 4th 1166 (9th Cir. 2024)).
- Does the conduct cross the line into harassment?
 - Focused on delivery of services OR attributes of employee?
 - Actual threat?

Protecting Employees - Doxxing

Doxing refers to the intentional release of an individual's personal identifying information without the person's permission, usually with the intent to retaliate or intimidate.
RCW 4.24.792(6)(c).

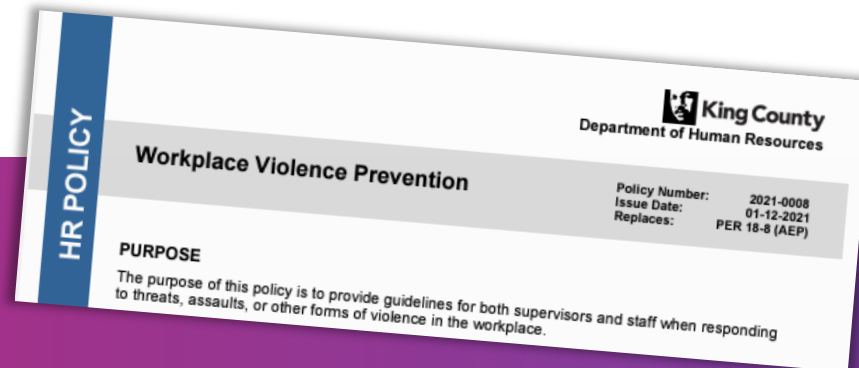
- Name: Jeff Thomas
- Title: Deputy Superintendent
- Phone: (425) 456-4074
- Email: thomasj@bsd405.org

**Please remember, I am not advocating for call flooding, or any form of disruption to governmental services. I also will NEVER CALL FOR VIOLENCE against anyone. PLEASE do not invoke such commentary. That being said, I absolutely feel that the People should seek redress of their grievances, or make compliments, to let Our government know how they are performing if they so choose to do so of their own accord!

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Protecting Employees

- Implement a ZeroTolerance Policy for Violence (and post signage notifying the public)
- Train Employees to Recognize and Respond to Actual Threats, including De Escalation Techniques
 - Identify “front line” employees
- Improve Security- Lighting, cameras, panic buttons, locked doors, parking areas
- Develop a Workplace Violence Prevention Plan



Be Prepared!

- Assume that you will be visited by a “provocateur.”
 - Identify a point of contact (and a backup).
 - Be polite, respectful and helpful.
 - Required to let them film in public areas (but keep in mind windows, etc.).
 - Don’t take the bait. Don’t respond in kind.
 - Disarm with charm. Treat this like a difficult, confused customer and train accordingly.
 - Make it a boring video. Wastes their time and money.

Utilize De Escalation Techniques

- **Remain calm, rational, and professional.** While you can’t control the person’s behavior, how you respond to their behavior will have a direct effect on whether the situation escalates or defuses. Positive thoughts like “I can handle this” and “I know what to do” will help you maintain your own rationality and calm the person down. **Take a break (walk away or switch off with another colleague).**
- **Ignore Challenging Questions.** Engaging with people who ask challenging questions is rarely productive. When a person challenges your authority, redirect their attention to the issue at hand (their request, your need to return to your duties). Ignore the challenge, but not the person. Bring their focus back to how you can work together to solve the problem.
- **Set Limits** Offer concise and respectful choices and consequences. Silence can be a powerful communication tool.



Video Debrief

Investigative Insurgent

- Designed to showcase “expertise”
- Engagement v. Harassment
- Chilling effect on “free speech”
- All restrictions lifted due to pardon

THANK YOU!



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