



---

## INTEROFFICE MEMORANDUM

---

**TO:** ALL STAFF  
**FROM:** CHARLES E. DOODY, TOWN ADMINISTRATOR  
**SUBJECT:** 1<sup>ST</sup> AMENDMENT AUDITS  
**DATE:** 6/28/23  
**CC:** SELECT BOARD

---

In Massachusetts and other states, there has been an increase in persons walking into the Town Halls, municipal offices, lobbies and other public spaces of police stations or other municipal facilities to conduct what have been termed, "First Amendment audits." During these audits, the group members record interactions with general municipal or police personnel in the course of their public duties (whether on a video camera or on a smart phone), and then immediately upload the videos to YouTube or other social media platform. It appears from the video commentary on such interactions that one of the general purposes of such an audit visit may be to create staff overreaction or negative response.

In many cases, personnel confronted by these groups do appear to have overreacted, either by making such First Amendment auditors leave, being aggressive or dismissive, or taking other action inconsistent with first amendment rights. In addition to escalating into a confrontation, such actions also expose the municipality to significant liability.

Town officials and employees are expected to be polite and helpful in the performance of our duties, exercising utmost patience and discretion, even under trying circumstances. Persons conducting a "First Amendment audit" have a right to record in the public areas of Town Hall, i.e., those areas where the public is serviced or welcomed. For that reason, it is extremely important that we be tactful and patient with First Amendment auditors, in the same way we would be in dealing with any other member of the public. To the extent possible, during any such interactions, avoid being sarcastic, short, or defensive.

We ask each department to discuss the possibility of a First Amendment audit and take appropriate steps to be prepared for the same. Such preparation shall include, but not be limited to, the following:

- A. **Review Office Set Up.** Review office space and set up to ensure that "front facing" information does not unintentionally expose matters of personal privacy, documents subject to the attorney-client privilege, or to the exemptions to the Public Records Law. This review should include consideration of what is visible when people are at their desks or counters, and when they leave their desk. Consider adoption of "confidential protocols" to be used routinely, such as placing documents in a file

folder before leaving the desk or requesting screen protectors that only allow the person working at the computer to read the screen. Also, consider rearranging the space so that the computer screen does not face out towards the public area of the office, or even rearrangement of the office furniture.

- B. Demarcate Public Areas of Office.** Post "Employees Only" signs on the doors or access ways to non-public areas. Be reminded that bringing a member of the public into a private office may "convert" that space into a public area. For that reason, be consistent about restricting people from coming "behind the counter" or into a "back" office. If a First Amendment auditor is present, therefore, you cannot offer the auditor, or other customers, the option to enter a private area without allowing the First Amendment auditor to enter that previously "private" space.
- C. Be Mindful of Needs of Other Customers.** If other customers express discomfort about being around the First Amendment auditor, offer to speak with them by phone or invite them to come in another day. Consider having a pre-printed statement similar to the following:

*Be advised that in Massachusetts, persons may record certain public officials in public places as they undertake official business. If such a recording is being made, and you are uncomfortable, please feel free to call the office to address your issue, make an appointment, or come back at a different time. Thank you for your understanding!*

- D. Determine Who Will Provide Services During First Amendment Audit or the Like.** Understand that certain employees may be more comfortable being recorded or dealing with what may appear to be a confrontational situation. Try to identify one or two people who are willing to be taped if such circumstances should arise, and arrange for such persons to provide services at the counter if someone is taping. For the others, it is business as usual - turn away from the cameras and continue the workday.
- E. Business as Usual.** You need not do more or less than you would otherwise. Take notes as appropriate, be receptive to questions, and seek to resolve any issues that are manageable under the circumstances. If applicable, assure a First Amendment auditor, or any other customer, that you will refer their issue/complaint to the relevant department head, or Town management, for appropriate action.
- F. Requests for Records.** If a First Amendment auditor, or any other person, makes a request or a copy of a record, offer the individual the opportunity to commit the request to writing, including contact information, but remember that they are not required to do so. If they don't want to file a written request, you can write up their request, which you would sign and date. If it is reasonable for you to provide the requested record at that time, then do so. If the request is significant and will require work to analyze and respond, and the requester doesn't want to leave their name or contact information, ask for a day and time that they will call you after five business days.

**G. *Complaints about Employees.*** If a First Amendment auditor or any other customer has a complaint against an employee, follow the typical protocol by referring the individual to the relevant Department Head or Town management. It is not anticipated or expected that you will be able to resolve complaints about other employees.

**H. *Identify Yourself.*** If a First Amendment auditor or any other customer requests that you identify yourself and the position you hold, politely provide the information.

**I. *Avoid Escalating the Situation.*** Remember that a confrontational situation is always a risk for the Town and can expose the Town to liability.

- I. Remember that the most popular interactions of this type on the internet are those where the public employee loses their patience, yells, calls the police, or otherwise reacts or overreacts to a person seeking to tape their interaction with a municipal employee during a request for assistance.
- II. To the extent you are able, look *to* diffuse and de-escalate the situation by remaining calm, polite and responsive to the individual.
- III. As a matter of practice, try to manage the situation without being defensive about what you do or how you do it and remember that you are not required by the Public Records Law to answer questions (although customer service is, of course, a priority).
- IV. Do not immediately seek the assistance of the Department Head, Town management, or the Police Department simply because someone records an interaction with an employee in the public areas of Town Hall.
- V. Do seek assistance from a Department Head, Town management, or the Police Department if you believe your well-being or the well-being of another is threatened by the nature of the situation.

**J. *Reporting.*** Please report any interactions of this type to Town management as soon as possible so that we are able to respond efficiently if follow-up is needed.

In summary, remember that your safety is our utmost concern and our first priority. These situations are sometimes uncomfortable, but typically are not unsafe. Our collective tact, diplomacy, and patience will only enhance our Town staff's reputation for courtesy, professionalism, and quality customer service. Your attention to this important matter and cooperation with following the above advice is greatly appreciated.

