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MEMORANDUM

To: Deirdre Brennan
From: Julie Tappendorf
David Warner
Subject: Photography & Filming in Libraries and Sample Photo and Video Policy
Date: May 2, 2019

Recently, government entities have been encountering people entering public spaces to take photographs and video/film employees, members of the public, and the library buildings and grounds. As we understand it, the purpose of these “First Amendment Audits,” as they are commonly referred to, is to identify government policies and practices that allegedly infringe on an individual’s constitutionally-protected right to take photographs and videos in public places. Public libraries are a frequent location for these audits, and RAILS has received questions from members about what they can do about this conduct. You asked us to provide some guidance on the legal issues, which are addressed in this memorandum. We have also prepared a sample photo and video policy that libraries may use to regulate these activities consistent with First Amendment and Open Meetings Act protections.

Right to Photograph/Video in Public Spaces

While it may appear unusual to see someone taking photographs or videos inside a public library building, libraries need to be aware that the act of doing so is included within the First Amendment’s guarantee of speech and press rights. Because photographs and audiovisual recordings are a means of disseminating ideas and information, courts have held that they are similar to speech. So, when the government restricts someone from taking photographs or videos, it is potentially interfering with an individual’s First Amendment rights.

This does not mean a library has no authority to prohibit or regulate the taking of photographs and videos. Instead, library regulations (assuming they are content neutral) need to be written in a way that reasonably protects an individual’s right to free speech while also recognizing the privacy interests of staff and patrons and the purposes served by the library.

Summary of Draft Policy

The attached Sample Library Photography and Video Policy (“*Policy*”) is intended to balance an individual’s First Amendment right to take photographs and make videos inside a public library building against the privacy rights of library staff and patrons. It enables library staff to maintain an environment that allows for free access to information and resources without infringing on constitutionally-protected rights.

Under the Policy, permission is not required for a person to take photographs or videos in public areas of the building for personal, noncommercial, use if no specialized equipment is necessary. Libraries do have the right, however, to regulate requests for filming that may require, for example, setting up lights and tripods. Similarly, photographs and videos taken for commercial purposes do not have the same level of constitutional protection and libraries may limit when and where such use is permitted and impose a charge.

Many areas of the library are also off-limits to the taking of photographs and videos such as areas where personal privacy is protected, such as bathrooms and nursing areas, and areas restricted for staff use only. In addition, no one is permitted to take photographs or videos that harass, intimidate or threaten the safety or well-being of staff or patrons.

Photographs and videos of the building exterior and the surrounding library grounds is generally permissible as long as it does not impede access to the library or pose a threat to safety. In addition, the Policy reserves to libraries the right to film its own events and programs.

Note also that the Illinois Open Meetings Act permits individuals to photograph or video meetings of the Board and its subsidiary bodies, so that has been addressed in the Policy. In addition, the Freedom of Information Act exempts from disclosure circulation and order records identifying library users with specific materials so photographs or videos of such information is prohibited under the Policy.

Attachment: Sample Photo & Video Policy