



March 21, 2023

May First Movement Technology
440 North Barranca Avenue # 4402
Covina, California 91723

Dear May First Movement Technology:

I represent the Stop LAPD Spying Coalition, a community group that researches policing in Los Angeles. I am writing to explain the legal authorities that support my client's publication of Watch the Watchers (<http://watchthewatchers.net/>, hereafter WTW), a website launched on March 17, 2023.

Watch the Watchers

WTW is a community education project that builds on Stop LAPD Spying's work over the years to publish research and documentation about the Los Angeles Police Department (LAPD). This project does not have any commercial purpose. Instead, its purpose is entirely educational, in particular increasing public awareness and public understanding about public affairs and public spending. The Stop LAPD Spying Coalition is an informal nonprofit association that does not sell products, merchandise, goods, or services. The association's work consists of community education, community-based research, and political participation.

None of the data published on WTW is private. Instead, the data concerns the public duties of public employees during the course of their operating in public: officers' names, official LAPD headshot photographs, LAPD serial numbers, LAPD rank, LAPD email addresses, ethnicity, gender, LAPD division, and year of hire. **Much of this information is apparent any time an LAPD officer appears in public, and all of this information**

– 100% of it – was obtained directly from LAPD through requests submitted under the California Public Records Act.

The WTW website parallels official data portals created by the Los Angeles City Controller, a city agency that publishes a public database of every individual LAPD officer's payroll information, as well as LAPD's own website, which publishes disciplinary records on officers along with select headshot photographs. As with those other data portals, all the data on WTW comes from public records that LAPD is legally required to provide public access to under the California Public Records Act.

Not only do city agencies publish data similar to what WTW indexes, the precise data that my client gathered on WTW was first published online by LAPD itself. LAPD each day publishes all records released in response to California Public Records Act requests on the NextRequest public data portal run by the City of Los Angeles. All of the personnel data displayed on WTW (officers' names, serial numbers, rank, ethnicity, gender, LAPD division, and year of hire) can be viewed in sortable and searchable format on this portal, where LAPD published it: <https://lacity.nextrequest.com/requests/22-12564>.

The WTW website is also similar to other community-generated resources that serve public transparency, including <https://openoversight.com>, a "public, searchable database of law enforcement officers" that displays available photographs, job titles, gender, race, and birth year for officers from several local police agencies across the country; and <https://whosthatcop.org>, which displays the name, serial number, rank, area, sex, ethnicity, base pay, overtime pay, other pay, health benefits, retirement benefits, and total pay of every LAPD officer. WTW supplements those resources.

California Civil Code § 3344

Because WTW does nothing more than index and provide public access to government-produced public records for the purpose of raising public awareness about public affairs, there is zero plausible basis for a violation of California Civil Code section 3344.

California Civil Code section 3344 concerns commercial misappropriation of a person's name or image. In order to establish a violation of the statute, a party challenging the publication of their image must prove each of the

following: (1) that their image was used to advertise or sell something, (2) that this use did not occur in connection with a news, public affairs, or sports broadcast, or with a political campaign, and (3) that the misappropriation was directly connected to the commercial purpose. See Cal. Civil Code § 3344; see also California Civil Jury Instruction No. 1804A, https://www.courts.ca.gov/partners/documents/Judicial_Council_of_California_Civil_Jury_Instructions.pdf.

Not a single one of those elements can be met here, let alone all of them.

Even if the data published on WTW could be considered either private or published for a commercial purpose, the First Amendment establishes an affirmative defense to liability when the public interest served by publication – including “the public interest in the dissemination of news and information consistent with the democratic processes” – outweighs other interests. Gill v. Hearst Publishing Co. Inc. (1953) 40 Cal.2d 224, 228–231. In weighing those interests, “a court must first consider the nature of the precise information conveyed and the context of the communication to determine the public interest in the expression.” Gionfriddo v. Major League Baseball (2001) 94 Cal.App.4th 400, 410. This “public interest must then be weighed against . . . the plaintiffs’ noneconomic interests if the publicity right relied on is rooted in privacy.” Id.; see also California Civil Jury Instruction No. 1806, https://www.courts.ca.gov/partners/documents/Judicial_Council_of_California_Civil_Jury_Instructions.pdf

This “public interest in the dissemination of news and information consistent with the democratic processes” was the legal basis on which LAPD first provided public access to the records published on WTW. That question was already resolved by LAPD when it made the records published on WTW accessible to the public.

Even if that question were not already resolved with regards to the precise records published on WTW, settled California law makes the inquiry straightforward. California law recognizes “substantial public interest” in public access to details about “an officer’s appearance, as disclosed in an official service photograph.” Ibarra v. Superior Court, 217 Cal.App.4th 695, 703–704. On the other side of the balancing, “a peace officer typically has no substantial interest in maintaining the confidentiality of his or her identity

or the fact of his or her employment as a peace officer” and “**no legally recognized privacy interest in their service photographs.**” Id. at 703, 705 (emphasis added).

The significant public interest in public transparency of official records concerning the official conduct of public employees operating in public outweighs any potential privacy interest that an officer might attempt to raise in this context.

47 U.S.C. § 230

Even if there was a basis for raising legally cognizable privacy concerns here – and there is not – Section 230 of the federal Communications and Decency Act of 1996 establishes: “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C. § 230(c)(1).

As applied here, Section 230 ensures that **no internet service provider, web hosting service, or publication platform can be held legally responsible** for statements or actions made on the Watch the Watchers website. Instead, that legal responsibility lies solely with the speaker or publisher.

* * *

Thank you for your time. I am happy to answer questions or share more information if helpful.

Sincerely,

A handwritten signature in black ink, appearing to be 'Shakeer Rahman', with a long horizontal stroke extending to the right.

Shakeer Rahman