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SEATTLE, WA

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

**SEATTLE POLICE OFFICERS' GUILD (SPOG), a Washington labor organization, SEATTLE PARKING ENFORCEMENT OFFICERS' GUILD (SPEOG), a Washington labor organization; SEATTLE POLICE DISPATCHERS' GUILD (SPDG), a Washington labor organization; LOCAL 17, a Washington labor organization; and TEAMSTERS 117, a Washington labor organization.**

**Plaintiffs,**

**v.**

**CITY OF SEATTLE, a municipal corporation; FELIPE HEMMING, individually; and PINAC NEWS.**

**Defendants.**

No. **16-2-11369-9 SEA**

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF PRECLUDING THE RELEASE OF CITY OF SEATTLE ACCESS CARD PHOTOS OF SEATTLE POLICE DEPARTMENT EMPLOYEES - TO INCLUDE EMPLOYEE NAMES

1  
2 COMES NOW Plaintiffs Seattle Police Officers' Guild; Seattle Police Dispatchers' Guild;  
3 Seattle Police Parking Enforcement Officers' Guild; Professional Technical Employees, Local 17;  
4 and Teamsters, Local 117 - Evidence Warehouse Unit Community Service Officer by and through  
5 their respective counsel noted herein, for their complaint against Defendants City of Seattle, Felipe  
6 Hemming, and Photography is Not a Crime.com ("PINAC") (collectively, "Defendants") state and  
7 allege as follows:

8 **I. PARTIES**

9 1.1 Plaintiffs Seattle Police Officers' Guild, Seattle Police Dispatchers' Guild, Seattle  
10 Parking Enforcement Officers' Guild, Professional Technical Employees, Local 17; and Teamsters,  
11 Local 117 – Evidence Warehouse Unit Community Service Officer (collectively, "Plaintiffs")  
12 represent employees of the Seattle Police Department who hold various positions within the Seattle  
13 Police Department, to include, but are not limited to: police officer, police detective, police  
14 sergeant, dispatcher, parking enforcement officer, administrative specialist, and evidence  
15 warehouse.

16 1.2 Defendant City of Seattle is a Washington municipal corporation. The City of  
17 Seattle incorporates all of its operating departments, including but not limited to the Seattle Police  
18 Department.

19 1.3 Defendant Felipe Hemming requested, among other things, "badge photos" of all  
20 employees of the Seattle Police Department, to include Plaintiffs.

21 1.4 Defendant Photography is Not a Crime ("PINAC") is the online news website that  
22 Defendant Felipe Hemming claims to be an agent of, as it relates to the scope of his request made to  
23

1 the City of Seattle under the Public Records Act of Washington for, among other things, “badge  
2 photos” of all Seattle Police Department employees, including Plaintiffs.

## 3 II. JURISDICTION AND VENUE

4 2.1 This Court has the subject matter jurisdiction over the claims asserted in this action  
5 pursuant to RCW 2.08.010, RCW 7.40.010, and RCW 42.56.540.

6 2.2 This Court has jurisdiction over the Defendants pursuant to RCW 2.08.010, RCW  
7 4.92.010 and RCW 42.56.540.

8 2.3 Venue is proper in this Court pursuant to RCW 36.01.050 and RCW 4.12.025,  
9 pursuant to RCW 4.92.010 because the cause of action arose in King County, Washington, and  
10 pursuant to RCW 42.56.540 because the public records at issue are maintained in King County,  
11 Washington.

## 12 III. FACTUAL ALLEGATIONS

13 3.1 On January 4, 2016, Felipe Hemming (“Mr. Hemming”) emailed a Public Disclosure  
14 Request (RCW 42.56) to the Seattle Police Department. Within that Public Disclosure Request,  
15 Mr. Hemming requested, “... the complete “Photo/Image” files for the entire staff of the City of  
16 Seattle Police Department both sworn and civilian staff and associated data, including...”

17 3.2 Mr. Hemming included eight items within his January 4, 2016 request noted in 3.1  
18 herein, which included: names, badge number, badge photo, birthdays, hire date, position title, unit  
19 name, and hourly salary of each current employee.

20 3.3 Mr. Hemming alleged within his Public Disclosure Request that he is, “...engaged in  
21 bona fide news gathering for photographyisnotacrime.com, an entity in the regular business of  
22 publishing news to the public.”  
23

1           3.4     On April 13, 2016, Seattle Police Department Director of Transparency and Privacy,  
2 Mary Perry (“Ms. Perry”), disclosed to Mr. Hemming, via email, a spreadsheet that included the  
3 following information: Seattle Police Department current employee names, badge numbers, age,  
4 hire date, position title, unit name and hourly salary.

5           3.5     Within the same email noted above (*see 3.4*) Ms. Perry stated, “I will update you  
6 regarding the remainder of your request by May 4 as indicated below.” The remainder of Mr.  
7 Hemming’s request included the requested “badge photos” only.

8           3.6     On April 29, 2016, Ms. Perry sent an email to all Seattle Police Department  
9 employees via a “SPDAll” email to notify them of Mr. Hemming’s request for “badge photos” of  
10 all Seattle Police Department employees. This email included two attachments: 1) a letter  
11 informing the recipient of Mr. Hemming’s request with an explanation of third party notice and the  
12 Seattle Police Department’s position regarding the request, as well as their intent to disclose  
13 responsive records on or about May 14, 2016 and 2) a copy of Mr. Hemming’s request.

14           3.7     The photos the Seattle Police Department intends to disclose and that they have  
15 deemed as responsive to Mr. Hemming’s request for “badge photos” are photos taken/captured  
16 when an individual begins employment with the City of Seattle. The photo is then affixed to an  
17 access card with the individual’s name and City department listed. This card is intended to grant  
18 the individual access to any and all City of Seattle buildings and facilities that the individual’s  
19 access level allows.

20           3.8     The photos the Seattle Police Department intends to disclose are not maintained  
21 within the Police Department or a personnel file; however, the photos are maintained within the  
22 Finance and Administrative Services Department of the City of Seattle.

1 3.9 In addition to the Third Party Notice referenced in 3.5 herein, Ms. Perry has  
2 indicated to Plaintiffs, on behalf of the Seattle Police Department, that the photos at issue will be  
3 disclosed on May 16, 2016, in response to Mr. Hemming's request.

4 3.10 The Seattle Police Department has not received confirmation PINAC that Mr.  
5 Hemming is an agent of their company acting in bona fide news gathering.

6 3.11 PINAC has not responded to Ms. Perry's May 6, 2016 inquiry, submitted via an  
7 entry on the photographyisnotacrime.com website, in which she, among other things, requested  
8 verification from PINAC that Mr. Hemming is a member of the media affiliated with PINAC.

#### 9 IV. CAUSES OF ACTION

##### 10 **Claim Number 1 – Declaratory Judgment Under Chapter 7.24 RCW**

11 4.1 Plaintiffs reallege and incorporate all of the previous allegations contained in this  
12 complaint.

13 4.2 Declaratory judgment is appropriate in this case because all of the elements set forth  
14 in Chapter 7.24 RCW are met: (1) there is an actual, present, and existing dispute; (2) between  
15 parties having genuine and opposing interests; (3) which involves direct and substantial interests;  
16 and (4) necessitates a judicial determination of which will be final and conclusive.

17 4.3 Plaintiffs are entitled to prompt disposition of this matter under the Public Records  
18 Act ("PRA") of Washington (*See RCW 42.56*) and the Uniform Declaratory Judgments Act, chapter  
19 7.24 RCW, as the release of this information will do irreparable harm.

20 4.4 Plaintiffs believe that disclosing employee photos will create immediate and  
21 substantial harm, and that it is necessary to clarify by judicial declaration that the employee photos  
22 are exempt from disclosure under the PRA.

1 **Claim Number 2 – Injunctive Relief Under Chapter 7.40 RCW, RCW 42.56.250, RCW**  
2 **42.56.420, and RCW 42.56.540**

3 4.5 Plaintiffs reallege and incorporate all of the previous allegations contained in this  
4 complaint.

5 4.6 This Court has jurisdiction to enjoin the release of public records exempt from  
6 disclosure if their release “would clearly not be in the public interest and would substantially and  
7 irreparably damage any person, or would substantially and irreparably damage vital governmental  
8 functions.” RCW 42.56.540.

9 4.7 The City of Seattle received a PRA request from Mr. Hemming for the disclosure of  
10 “badge photos” of all Seattle Police Department employees and stated it will disclose the photos in  
11 the absence of an order from this Court enjoining its release.

12 4.8 RCW 42.56.250(8) exempts the disclosure of records of photographs and month and  
13 year of birth in the personnel files of employees and workers of criminal justice agencies as defined  
14 in RCW 10.97.030. The RCW includes the following narrow exception to this exemption: The  
15 news media, as defined in RCW 5.68.010(5), shall have access to the photographs and full date of  
16 birth. RCW 45.56.250(8).

17 (a) The photos in question are in Defendant’s possession because they were  
18 captured as a condition of employment for the Plaintiffs.

19 (b) The photos in question are maintained by the City of Seattle Finance and  
20 Administrative Services Department, not the Seattle Police Department, which is the Department  
21 the Plaintiffs work for.

1 (c) The photos in question are separate and independent from the personnel files  
2 of the Plaintiffs, which are maintained by their employing department, the Seattle Police  
3 Department.

4 (d) The photos in question are intended to be used to grant access and occupancy  
5 to City of Seattle buildings and facilities via the access card the photo is affixed to, which provides  
6 permissions to City of Seattle employees only. Not the public.

7 (e) The photos are not maintained in the Seattle Police Department employees'  
8 personnel files, as required by the RCW 42.56.250(8) in order to satisfy the exception to the  
9 exemption.

10 (f) There is no legitimate public interest in releasing the photos in question.

11 (g) There is no legitimate public concern in viewing photos of all Seattle Police  
12 Department employees. The photos do not show any state action and are intended to be maintained  
13 and affixed to a City owned access prox card that grants access and occupancy to secure City of  
14 Seattle buildings and facilities, which can be later verified if applicable by the retained photo.

15 (h) Defendant, Mr. Hemming, has not proven that he qualifies as being entitled  
16 to the records because he has not established himself as qualifying as an exception to this  
17 exemption. Specifically, he has not established an agency relationship with PINAC, which he  
18 alleges to be a current agent of within his Public Disclosure Request.

19 (i) Defendant, PINAC, has not verified the status of Mr. Hemming as an agent  
20 of the website.

21 (j) The photos in question are exempt from disclosure as they are maintained  
22 outside the Plaintiffs' personnel files and even if they were maintained by the Department within  
23

1 personnel files, the requester is disallowed access because he has not satisfied meeting the  
2 requirements of the exception detailed in RCW 42.56.250(8).

3 4.9 RCW 42.56.420 exempts from disclosure certain portions of “records assembled,  
4 prepared, or maintained to prevent, mitigate, or respond to those “acts that significantly dispart the  
5 conduct of government or of the general civilian population... and that manifest an extreme  
6 indifference to human life.” The photos in question are just such a record that if used to replicate an  
7 access card could be used to gain access to secure City of Seattle buildings and facilities and are  
8 therefore exempt from disclosure.

9 4.10 Disclosure of the photos in question is not in the public interest and would  
10 substantially and irreparably damage Plaintiffs in a manner for which there is no adequate remedy  
11 at law. Once disclosure, the photos cannot be un-disclosed. Therefore, the Plaintiffs have a clear  
12 legal and equitable right to protect from disclosure the photos in question.

13 4.11 Pursuant to RCW 42.56.540, the Court should enter a permanent injunction barring  
14 the City of Seattle from disclosing the photos in question to the remaining Defendants.

15 **Claim Number 3 – State Constitutional Right of Privacy**

16 4.12 Article 1, Section 7 of the Washington State Constitution prohibits an individual’s  
17 private affairs from being disturbed.

18 4.13 Plaintiffs have a reasonable expectation of privacy in the photos in question, as the  
19 sole purpose of that photo is to identify that individual City of Seattle employee for employment  
20 reasons only, for the narrow purpose of granting access and occupancy to secure City of Seattle  
21 facilities that are otherwise unavailable to the public.

22 4.14 The photos in question, if released, increase the likelihood of any and all safety  
23 threats by providing a substantial step to those who wish to do harm to the employees of the Seattle



1 Police Department. This is further supported by recent threats, both directly and indirectly, to law  
2 enforcement employees across the country and Seattle specifically.

3 4.15 The potential to breach access to secure facilities is increased with the disclosure of  
4 the photos in question, which calls into question an individual's private affairs and their potential  
5 for being implicated into a situation of impersonation and also the safety of all employees.

6 4.16 The PRA does not override constitutional protections. Releasing the photos in  
7 question would violate Plaintiffs' state constitutional right to privacy and therefore, the release of  
8 the photos in question should be enjoined.

9 **Claim Number 4 – Federal Constitutional Right to Privacy**

10 4.17 The United States Constitution also grants individuals the fundamental right to  
11 privacy.

12 4.18 Plaintiffs have a reasonable expectation of privacy in the contents of the photos in  
13 question.

14 4.19 A fundamental principle of the constitutionally protected right to privacy is the  
15 individual interest in avoiding disclosure of personal matters.

16 4.20 The PRA does not override constitutional protections. Releasing the photos in  
17 question would violate Plaintiffs' federal constitutional right to privacy and as such, the release of  
18 the photos in question should be enjoined.

19 **V. PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

21 5.1 A declaratory judgment that the photos in question are exempt from disclosure under  
22 the PRA's exemptions established by RCW 42.56.250(8) and RCW 42.56.420, as well as  
23 constitutional provisions of the State of Washington and United States.

1           5.2     A declaratory judgment that the City of Seattle, as a matter of law, are prohibited  
2 from making available for public inspection and copying the photos in question;

3           5.3     A temporary restraining order and preliminary and permanent injunction under  
4 Chapter 7.40 RCW and RCW 42.56.540, barring the City of Seattle from producing the photos in  
5 question to the PRA requesters;

6           5.4     Leave to freely amend the pleadings to conform to the evidence; and

7           5.5     Such other and further relief as the Court deems just, equitable, or otherwise proper.

8 Dated this 12<sup>th</sup> day of May, 2016.

9  
10 CLINE & CASILLAS, P.S.

11 By: */s/ James Cline*

James Cline, WSBA #16244

12 By: */s/ Jordan Jones*

Jordan Jones, WSBA #49662

13 520 Pike Street, Suite 1125

Seattle, WA 98101

14 Telephone: 206-838-8770

Fax: 206-838-8775

15 Email: JCline@clinelawfirm.com

Email: JJones@clinelawfirm.com

16  
17 SEATTLE POLICE OFFICERS' GUILD

18 By: */s/ Shawna Skjonsberg-Fotopoulos*

Shawna Skjonsberg-Fotopoulos, WSBA # 34586

19 2949 4<sup>th</sup> Avenue South

Seattle, WA 98134

20 Telephone: 206-767-1150

21 Fax: 206-768-1848

Email: Shawna@seattlepoliceguild.org