



# The State Bar *of California*

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OFFICE OF THE EXECUTIVE DIRECTOR

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SENT VIA EMAIL

March 10, 2022

David Loy, Legal Director  
First Amendment Coalition  
534 Fourth Street, Suite B  
San Rafael, CA 94901  
Email: [dloy@firstamendmentcoalition.org](mailto:dloy@firstamendmentcoalition.org)

RE: State Bar Data Breach

Dear Mr. Loy:

I am writing in response to your February 28 and March 10, 2022 letters, in which you raised concerns that the State Bar, in its February 26 press release regarding the access of and posting online of State Bar records deemed confidential pursuant to Business and Professions Code section 6086.1, either violated or acted inconsistently with the First Amendment.

Your February 28 letter specifically objected to a reference to law enforcement notification related to the access and display of confidential records in that press release. You based your allegations of First Amendment violations on the premise that “the State Bar does not contend the data were unlawfully acquired....” As explained in the State Bar’s March 2, 2022, update about the data breach (see <https://www.calbar.ca.gov/About-Us/News/Data-Breach-Updates>), at the time of the February 26 press release, available information suggested that unlawful access had occurred. Under such circumstances, of course, a law enforcement referral would have been entirely appropriate, and possibly required. When the State Bar later learned that the website operator likely did not unlawfully access the records, the State Bar did not ultimately notify law enforcement. The website operator voluntarily removed access to the records.

Your March 10 letter acknowledges the State Bar’s changing understanding of whether the access was unlawful, but requests that the State Bar to correct any remaining implication that it was unlawful to *publish* the State Bar confidential records.

While we do not agree with any implication or contention that the State Bar acted wrongfully in quickly notifying the public of the data breach issue and preparing to notify law enforcement based on the information available to it at that time, we do agree that it was not correct to state or imply that publication of legally acquired material is unlawful.

Accordingly, we are preparing to update the State Bar's data breach webpage with the following statement:

In its initial February 26 news release, the State Bar expressed concerns that its confidential records may have been accessed unlawfully. In that statement, the State Bar did not distinguish between unlawful access and unlawful publication of the records. This was in error. The State Bar does not contend that publication of records acquired lawfully would be unlawful. We thank the First Amendment Coalition for raising these important distinctions with us.

A similar update will be appended to the February 26 news release on the State Bar's website.

We thank you for raising these important concerns with us. We hope that they have been addressed by the State Bar's planned updates.

Sincerely,



Leah T. Wilson  
Executive Director