



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DEPARTMENT OF UNEMPLOYMENT ASSISTANCE

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October 4, 2021

Emiliano Falcon-Morano
Policy Counsel
Technology for Liberty Program
American Civil Liberties Union of Massachusetts
211 Congress Street
Boston, MA 02110

Dear Mr. Falcon-Morano:

This letter constitutes the revised response of the Department of Unemployment Assistance (DUA) to the American Civil Liberties Union of Massachusetts' (ACLU) public records request sent by email to DUA on August 26, 2021. DUA sent its original response to you on September 10, 2021.

Your request seeks 19 categories of records and information pertaining to automated tools for unemployment insurance identity verification, including but not limited to those that use facial recognition and including but not limited to ID.me. Each request and DUA's response follow, except that there is one response for the first 2 categories of requested records and information.

1. All communications, including text messages and emails, between or among any staff member or representative of the DUA and any representative of any company that manufactures or sells any automated tools (including but not limited to those tools that use facial recognition) for unemployment insurance identity verification, including but not limited to ID.me; [and]
2. All internal communications, including text messages and emails, referencing any company that manufactures or sells any automated tools (including but not limited to those tools that use facial recognition) for unemployment insurance identity verification, including but not limited to ID.me[.]

Response: As we recently discussed, we have agreed to limit these requests to communications about five automated tools for identity verification that DUA uses, including ID.me, FIVS (Fast Identity Verification System), SSA (Social Security Administration) Interface, the National Association of State Workforce

Agencies' (NASWA) Integrity Data Hub (IDH) Identity Verification Tool, and LexisNexis Accurint. We have also agreed, for purposes of DUA providing a time estimate to search for and redact records responsive to these requests, to limit the search for emails to DUA Director Richard Jeffers as the sole custodian and Jordan Harris and Karthik Viswanathan, contractors for the Executive Office of Technology Services and Security (EOTSS), as participants (with the ACLU reserving its right to request an expanded search subject to additional charges permitted under the Public Records Law).

A search has been conducted using the keywords ID.me, FIVS, www.fastenterprises.com, SSA Interface, www.ssa.gov, Integrity Data Hub, www.naswa.org, Accurint, and Lexis-Nexis.¹ There were a total of 1,444 de-duplicated "hits," including emails and attachments. Assuming a rate of review and redaction of 50 hits per hour, DUA's time estimate to review and redact 1,444 hits is **29 hours**. DUA reserves its right to withhold any email or attachment or part thereof that is exempt from production under the public records law. There are no other communications that are responsive to these requests, including text messages, within DUA's possession, custody, or control.

3. Records pertaining to any existing or potential relationship between the DUA and any company that manufactures or sells automated tools (including but not limited to those tools that use facial recognition) for unemployment insurance identity verification, including but not limited to ID.me. These records include but are not limited to MOUs, purchase orders, RFPs, licensing agreements, invoices, non-disclosure agreements, project proposals, and other contracts[.]

Response: In our recent discussions, we have also agreed to limit this category to records pertaining to any existing relationship between DUA and any entity that manufactures or sells or otherwise makes available automated tools for unemployment insurance identity verification.²

DUA has previously provided all documents responsive to this request in its possession, custody, or control that pertain to ID.me, FIVS, and LexisNexis Accurint. DUA is providing with this revised response all documents responsive to this category in its possession, custody, or control that pertain to SSA Interface and the IDH Identity Verification Tool.

4. Records pertaining to the operational effectiveness, accuracy rate, or performance for persons of different races, gender or any other protected characteristics of any automated tool for unemployment insurance identity verification, including but

¹ The keyword "Atlas", relating to a Registry of Motor Vehicles (RMV) database of driver's license photos, was also used in the search. However, as I explained to you in our most recent conversation, DUA will not be providing records pertaining to Atlas because it is not an automated identity verification tool, since it only makes driver's license photos available to DUA for comparison by staff with driver's license photos submitted by claimants to verify their identity. There were no "hits" for Atlas in any case.

² Please note that the SSA does not manufacture or sell SSA Interface and NASWA does not manufacture or sell the IDH Identity Verification Tool.

not limited to those tools that use facial recognition. These records include emails, handouts, PowerPoint presentations, advertisements, audits, tests, and specification documents[.]

Response: DUA does not have any documents responsive to this request in its possession, custody, or control.³

5. Records pertaining to accessibility for people with disabilities of any automated tool for unemployment insurance identity verification used by the DUA, including but not limited to those tools that use facial recognition, including but not limited to ID.me. These records include but are not limited to emails, handouts, PowerPoint presentations, advertisements, audits, tests, and specification documents[.]

Response: DUA does not have any records responsive to this category in its possession, custody, or control.⁴

6. Records reflecting system requirements for accuracy rates or false acceptances of any automated tool for unemployment insurance identity verification, including but not limited to those tools that use facial recognition[.]

Response: Under G. L. c. 4, § 7, cl. 26th (g), “trade secrets or commercial . . . information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality[.]” are exempt from production under the Public Records Law. Under G. L. c. 4, § 7, cl. 26th (n), “records relating to . . . cyber security . . . , the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (c) of section 10 of chapter 66, is likely to jeopardize . . . cyber security,” are also exempt from production under the Public Records Law. To the extent any records responsive to this request exist, they contain trade secrets or commercial information voluntarily provided to DUA upon a promise of confidentiality for use in developing governmental policy. In addition, the disclosure of these records would facilitate the filing of fraudulent unemployment claims, thereby jeopardizing DUA’s cyber security. Accordingly, these records are exempt from production under the Public Records Law.

7. Records pertaining to sharing of or granting access to any face images or prints or other documents or individualized information maintained by state or local agencies to any company that manufactures or sells automated tools (including but not limited to those tools that use facial recognition) for unemployment insurance identity verification, including but not limited to ID.me[.]

³ Although DUA believes that there are no documents responsive to this request in its possession, custody or control, DUA is confining its search for emails to the query described in its response to categories 1 and 2 unless you request a broader search. DUA will provide any emails responsive to this request that it finds as a result of that query.

⁴ Please see footnote 3.

Response: To the extent any records exist that pertain to sharing of or granting access to any individualized information maintained by state or local agencies to any company that manufactures or sells automated tools for unemployment insurance identity verification, these records are exempt from production under the Public Records Law for the same reasons stated in DUA's response to the sixth category of requested records and information. DUA otherwise does not have any records responsive to this request in its possession, custody, or control.

8. Training materials pertaining to automated tools for unemployment insurance identity verification purposes, including but not limited to those that use facial recognition[.]

Response: DUA does not have records responsive to this request in its possession, custody, or control.

9. Policies, procedures, guidance documents, legal memoranda or other similar documents pertaining to the use of automated tools for unemployment insurance identity verification, including but not limited to those that use facial recognition and the data they produce[.]

Response: To the extent any legal memoranda responsive to this request exist, they are protected from disclosure under the Public Records Law by the attorney-client privilege. DUA is providing with this revised response all other records responsive to this request in its possession, custody, or control insofar as they pertain to claims for regular unemployment benefits (regular UI). DUA is still determining whether there are any other records responsive to this request in its possession, custody, or control that pertain to claims for Pandemic Unemployment Assistance (PUA).⁵ To the extent there are such records, DUA will provide them within five business days of this revised response.

10. Manuals, guidelines, outlines, and similar records pertaining to how automated tools for unemployment insurance identity verification work, including but not limited to those tools that use facial recognition[.]

Response: To the extent any records responsive to this request exist, they are exempt from production under the Public Records Law for the same reasons stated in DUA's response to the sixth category of requested records and information.

11. Records describing grievance or redress procedures available for people who are refused verification through ID.me[.]

⁵ The last day to file a claim for Pandemic Unemployment Assistance (PUA) is today, October 4, 2021, for weeks ending on or before September 4, 2021.

Response: Within five business days of this response, DUA will provide templates or sample redacted copies of disqualification letters setting forth appeal rights that are sent to claimants whose identity is not verified by ID.me. There are no other records responsive to this request in DUA's possession, custody, or control.

12. Any/all records related to grievances, complaints, or other redress filed related to Id.me, including any complaints, grievances, or other redress filed, any correspondence returned to the complainant, and any synopsis, reports, plans, or quality improvement documents developed based on a review of complaints[.]

Response: Under G. L. c. 4, § 7, cl. 26th (a), records are not considered public records if they are “specifically or by necessary implication exempted from disclosure by statute[.]” Section 46(a) of G. L. c. 151A, which is known as the Unemployment Insurance Law (see G. L. c. 151A, § 74), provides in pertinent part:

Except as provided in this section, **information secured pursuant to this chapter is confidential and for the exclusive use and information of [DUA] in the discharge of its duties. Such information is not a public record[.]** [Emphasis added.]

Accordingly, claimant-specific information, such as complaints, grievances, or other redress filed and correspondence returned to the complainant, is not a public record within the meaning of G. L. c. 4, § 7, cl. 26th (a) and G. L. c. 151A, § 46(a). With regard to any synopsis, reports, plans, or quality improvement documents developed based on a review of complaints, there are no responsive records in DUA's possession, custody, or control.

13. Records showing availability of Trusted Referees in languages other than English, including languages spoken, means of accessing Trusted Referees in languages other than English, number of Trusted Referees available in languages other than English, and wait times for accessing Trusted Referees in languages other than English[.]

Response: There are no records responsive to this request in DUA's possession, custody, or control.

14. Manuals, guidelines, outlines, and similar records pertaining to the type of evidence, if any, that the DUA must have before pausing an applicant's benefits and requiring them to verify their identity through ID.me[.]

Response: There are no records responsive to this request in DUA's possession, custody, or control.

15. Any records obtained by DUA regarding subcontractors of or licensors to ID.me, including but not limited to MOUs, purchase orders, RFPs, licensing agreements, invoices, non-disclosure agreements, project proposals, or other contracts[.]

Response: There are no records responsive to this request in DUA's possession, custody, or control.

16. Statistics pertaining to

- a. how automated tools for unemployment insurance identity verification, including but no limited to those that use facial recognition, are currently being used by DUA, disaggregated by race, age, gender, ethnicity, and zip code;

Response: Every person who files a claim for regular unemployment benefits regular UI or PUA must have their identity verified to qualify for benefits. For weekly initial and continued claims data for regular UI by municipality or county from the week ending January 5, 2019 to the present, disaggregated by gender, race, ethnicity, and other characteristics, but not by age or zip code, please access: <https://lmi.dua.eol.mass.gov/lmi/ClaimsData#>. DUA estimates that **32 hours** will be required to determine the total number of initial claims for regular UI filed statewide since January 1, 2020, disaggregated by race, age, gender, ethnicity, and zip code. DUA is still determining whether the total number of initial claims for PUA filed statewide since the program began in Massachusetts on April 20, 2020, disaggregated by race, age, gender, ethnicity, and zip code, can be ascertained and, if so, the number of hours that would be required to ascertain this information. DUA reserves its right, for the purpose of determining the total fee that will be charged to provide all records responsive to your public records request that are not exempt from production under the Public Records Law, to increase the total number of hours that will be required to provide these records by the number of hours that would be required to ascertain the information requested in this subpart of category 16 for claims for PUA.

- b. how many people have been wrongfully denied verification due to problems with ID.me and/or phone, internet, or computer access issues;

Response: DUA estimates that **3 hours** will be required to the determine the number of claimants who were unable to use ID.me because of technological issues.

- c. the number of claimants who were asked to use ID.me;

Response: DUA estimates that **4 hours** will be required to determine this information.

- d. the number of claimants who used ID.me;

Response: DUA is providing with this revised response a memorandum from Ryan Schwartzberg of ID.me to DUA, dated September 17, 2021 (the Schwartzberg memorandum). DUA does not have any other records responsive to this request in its possession, custody, or control.

- e. the number of claimants who successfully verified their identification via ID.me through its self-verification process without the assistance of a Trusted Referee;

Response: Please see the Schwartzberg memorandum. DUA does not have any other records responsive to this request in its possession, custody, or control.

- f. the number of claimants who did not successfully verify their identification via ID.me through its self-verification process and verified their identification through the assistance of a Trusted Referee;

Response: Please see the Schwartzberg memorandum. DUA does not have any other records responsive to this request in its possession, custody, or control.

- g. the number of claimants who did not successfully verify their identification with ID.me;

Response: Please see the Schwartzberg memorandum. DUA does not have any other records responsive to this request in its possession, custody, or control.

- h. any statistics on the reasons that a claimant was unable to successfully verify their identity via ID.me through its self-verification process, disaggregated if available by race, age, gender, ethnicity and zip code, including the number of claimants who were unable to verify after being prompted to take and submit a selfie;

Response: DUA does not have any records responsive to this request in its possession, custody, or control.

- i. any statistics on wait times for Trusted Referee calls;

Response: Please see the Schwartzberg memorandum. DUA does not have any other records responsive to this request in its possession, custody, or control.

- j. the number of identity verification issues resolved via ID.me;

Response: DUA estimates that **6 hours** will be required to determine this information.

- k. the number of calls to DUA call centers regarding identity verification, regarding ID.me; ...

Response: DUA does not have any records responsive to this request in its possession, custody, or control.

- l. the number of complaints, grievances or other redress filed regarding ID.me, disaggregated by all of the relevant categories, disaggregated by race, age, gender, ethnicity, and zip code.

Response: DUA does not have any records responsive to this request in its possession, custody, or control.

- 17. Records describing how applicants may verify their identities without using the ID.me application, including the number of claimants who have done so and any delay in accessing benefits[.]

Response: DUA does not have any records in its possession, custody, or control that pertain to any delay in accessing benefits encountered by claimants who verified their identities without using the ID.me application. DUA estimates that **3 hours** will be required to provide any other records responsive to this request in its possession, custody, or control.

- 18. Records showing standard notices sent to claimants that they need to verify their identity for unemployment insurance through ID.me and/or describing the steps they must take to verify their identity, including in each language available[.]

Response: DUA is providing, with this revised response, all records responsive to this category in its possession, custody, or control.

- 19. Records pertaining to any public process, meeting, or debate about any automated tools for unemployment insurance identity verification, including but not limited to those that use facial recognition. These include but are not limited to meeting agendas or minutes, public notices, analyses, and communications between the police department and elected officials.

Response: DUA has no documents responsive to this request in its possession, custody, or control.

The total number of hours that will be required to provide all remaining records responsive to this public records request that are not exempt from production under the Public Records Law is 77, excluding the number of hours that may be required to

Paul C. Demakis
October 4, 2021

ascertain the information pertaining to claims for PUA requested in subpart a. of category 16. Again, DUA reserves its rights to add these hours, once their number has been determined, for the purpose of determining the total fee that DUA will charge you for this public records request.

Under the Public Records Law, the first 4 hours of search time are free of charge. Accordingly, if you wish to obtain all remaining requested records that are not exempt from production under the Public Records Law, DUA will charge you \$25 per hour for 73 hours, or \$1,825.

If you wish to reduce the charge by obtaining fewer than all the remaining records not exempt from production under the Public Records Law, please identify and add the time estimates for the categories of records (or subparts of category 16) you wish to obtain, subtract 4 hours, and multiply the result by 25 to determine the total amount of the charge.

In either case, please mail a check for the charge, payable to the Commonwealth of Massachusetts, to me at 46 Commonwealth Avenue, Unit 2, Boston, MA 02116. DUA expects to be able to provide you with the requested records within 10 business days of receipt of payment.

If you wish to challenge any aspect of this response, you may appeal to the Supervisor of Public Records following the procedure set forth in 950 C.M.R. 32.08, a copy of which is available at <http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-source/cmr/>. You may also file a civil action in accordance with G. L. c. 66, § 10A.

Sincerely,



Paul Demakis
Deputy Chief Counsel &
Keeper of the Records