

January 27, 2014

Rene Fielding
Acting Director
Office of Emergency Management
City of Boston
1 City Hall Square, Room 204
Boston, MA 02201

Re: Public records request / Urban Areas Security Initiative

Dear Ms. Fielding,

I write to request that you reconsider your denial of a fee waiver related to the Sept. 17, 2013 request made by the ACLU of Massachusetts. In that request, we sought documents pertaining to the City of Boston's Urban Areas Security Initiative (UASI) program. Because release of the documents is in the public interest, and because the estimate is prohibitively high, we request a fee waiver.

By way of background, on September 26, 2013, your office acknowledged receipt of our request. Following an inquiry from then-City Council President Mike Ross' office, your office promptly put together a fee estimate, which you sent to us on October 10, 2013, estimating that it would cost \$2,137.56 to fulfill the request. We sincerely appreciate the speed with which you handled this matter.

Under the public records laws, “[e]very custodian, unless otherwise required by law, is encouraged to waive fees where disclosure would benefit the public interest.” 950 CMR 32.06(5). This request is such a case. The documents are squarely in the public interest, and the high fees make it difficult for a non-profit organization such as the ACLU to obtain those documents to share with the public.

The Sept. 17 letter, which included 15 specific requests for documents, sought information about the ways in which the City of Boston and the Metro Boston UASI region have spent taxpayer dollars granted by the federal Department of Homeland Security. Over the past nine years, the federal government has implemented or expanded various programs that have resulted in an unprecedented degree of information sharing between federal and state law enforcement agencies and in the increased federalization of law enforcement activities, particularly in the field of anti-terrorism. This shift has

included a significant transfer of funds from the federal government to state and local agencies for the purchase of high tech surveillance equipment.

The new environment of information sharing, advanced technological capability, and increased information gathering is of great public concern. Indeed, substantial media coverage has focused on the risks to civil liberties posed by this new environment.¹

Notwithstanding the scale of these changes, little information is publicly available about how these cross-agency programs and technologies function. The documents requested are currently unavailable to the public, yet they would help inform an important public debate about federal-local cooperation, surveillance, and technology. The fee estimate you provided is prohibitively high. Without a fee waiver, it is likely that the public will never learn how millions of its own tax dollars are spent on UASI programs.

While we appreciate the resource and time that it will cost the Mayor's Office of Emergency Management to fulfill the request, we believe this concern is outweighed by the public interest in seeing the documents. A waiver would be consistent with the intent of the public records law, which was enacted "to give the public broad access to government documents." *Harvard Crimson, Inc. v. President & Fellows of Harvard College*, 445 Mass. 745, 749, 840 N.E.2d 518 (2006). A waiver would likewise fulfill the regulation's encouragement that agencies grant fee waivers when release of the information is in the public interest. 950 CMR 32.06(5)

It is our intention to publish the documents received through this request in order to inform a debate about government surveillance, generally, and UASI more specifically. ACLUM has a long track record of uncovering and publishing vital information about government activities in the area of surveillance and intelligence-gathering, especially where these activities impact fundamental liberties.

In recognition of our organization's long history of disseminating information of interest to the public, government agencies have in the past repeatedly granted fee waivers to the ACLU of Massachusetts and the national ACLU.²

¹ See, for example: Shawn Musgrave, Boston police halt license scanning program, December 14, 2013, *The Boston Globe*; Somini Sengupta, Privacy Fears Grow as Cities Increase Surveillance, October 13, 2013, *The New York Times*; Darwin Bond-Graham and Ali Winston, The Hidden Costs of Oakland's Surveillance Center, January 22, 2014, *East Bay Express*; Michael Price, Big Brother's Little Siblings: How local police departments are spying on us now, too, January 2, 2014, *Salon.com*; G. Wayne Miller, Cameras Everywhere: Smile, R.I.—you're on surveillance video, January 18, 2014, *The Providence Journal*; Mike Riggs, My Face, Digitally Recognized, January 17, 2014, *Atlantic Cities*.

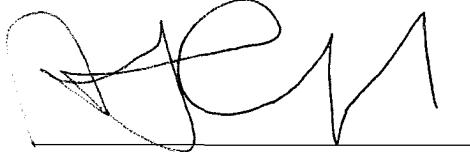
² The following are examples of requests in which government agencies did not charge the ACLU or ACLUM fees associated with responding to a FOIA request: (1) Immigration and Customs Enforcement granted the ACLU of Massachusetts a waiver of all search fees for a request submitted on Jan. 25, 2007; (2) The Office of Science and Technology Policy in the Executive Office of the President told the ACLU that it would waive the fees associated with a FOIA request submitted by the ACLU in August 2003; (3) The Federal Bureau of Investigation did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002; (4) The Office of Intelligence Policy and Review did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002; and (5) The Office of

For the reasons stated above, and in the name of transparency and public accountability, we urge you to waive all fees associate with this request.

We look forward to your response as soon as possible. Please reply to this request to by contacting Kade Crockford at the address above, (617) 482-3170 x346 or through email at kcrockford@aclum.org.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kade Crockford".

Kade Crockford
Director
Technology for Liberty project
ACLU of Massachusetts

Information and Privacy in the Department of Justice did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.