



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
One Ashburton Place, Room 2133
Boston, Massachusetts 02108

Tel: (617) 727-7775
TTY Tel: (617) 727-6618
Fax: (617) 727-4764
www.mass.gov/eops

CHARLES D. BAKER
Governor

KARYN E. POLITO
Lt. Governor

THOMAS A. TURCO, III
Secretary

September 27, 2019

VIA EMAIL ONLY

Emiliano Falcon
Technology and Civil Liberties Policy Counsel
Technology for Liberty Program
ACLU of Massachusetts
efalcon@aclum.org

Re: EOPSS Public Records Request

Dear Mr. Falcon,

The Executive Office of Public Safety and Security (EOPSS) is in receipt of your public records request seeking:

1. All communications between or among any representative of the EOPSS and any representative of DataWorks. This includes but is not limited to text messages and emails;
2. All internal communications referencing DataWorks and any of its products or services, including but not limited to those involving facial recognition. This includes but is not limited to text messages and emails;
3. Documents relating to the existing relationship between the EOPSS and DataWorks. This includes but is not limited to documents showing the purchase or use of DataWorks products, systems, or technologies, such as MOUs, purchase orders, RFPs, licensing agreements, invoices, non-disclosure agreement, and other contracts;
4. Materials relating to how DataWorks services and products—including but not limited to those involving facial recognition—function, or function improperly. This includes but is not limited to e-mails, handouts, PowerPoint presentations, advertisements, or specification documents;

5. Training materials related to DataWorks products or services, including but not limited to those involving facial recognition;
6. Policies, procedures, or other internal documents related to the use of DataWorks products or services—including but not limited to those involving facial recognition—and the data they produce;
7. Records relating to any mobile application(s) related to DataWorks products or services, including but not limited to those involving facial recognition; and
8. Records relating to any public process or debate about any DataWorks products or services, including but not limited to those involving facial recognition. This includes but is not limited to meeting agendas or minutes, public notices, analyses, or communications between the EOPSS and elected officials.

In response to your first two requests, the Executive Office of Technology Services and Security (EOTSS) has conducted the searches requested. The search yielded 433 potentially responsive results. Please let me know if you wish to continue with this search or if you wish to narrow your search.

In response to your third request, the responsive records are enclosed herein. Please note that a number of minor redactions were made to redact prices, account numbers, order numbers, vendor codes, contract numbers, agency and company contacts (including position titles and email addresses), and signatures under G.L. c. 4, §7, cl. 26 (b) which exempts from public disclosure records that are related solely to internal personnel rules and practices of the government unit and whose non-disclosure is necessary for the proper performance of necessary governmental functions. Given the lack of case law regarding the application of exemption (b) in Massachusetts, the federal courts interpretation of 5 U.S.C. § 552(b)(2) (hereinafter “exemption 2”), the federal equivalent to exemption (b), is instructive.

Exemption 2 shields from public disclosure information that is “related solely to the internal personnel rules and practices of an agency.” The courts have interpreted the phrase “personnel rules and practices” to include not only “minor employment matters” but also “other rules and practices governing agency personnel.” See *Crooker v. Bureau of Alcohol, Tobacco & Firearms*, 670 F.2d 1051, 1056 (D.C.Cir.1981)(en banc). The information need not actually be “rules and practices” to qualify under exemption 2, as the statute provides, but also exempts matters “related” to agency rules and practices. *Concepcion v. F.B.I.*, 606 F. Supp. 2d 14, 30–31 (D.D.C. 2009)(citation omitted).

EOPSS asserts that the information requested contains internal matters of a substantial nature, the disclosure of which would risk the circumvention of statute and/or agency regulation. Exemption 2 encompasses protection of sensitive internal agency information where public dissemination of same would render the information operationally useless and create an end-run on ongoing law enforcement efforts. To this end, exemption 2 is designed to prevent disclosure that would “benefit those attempting to violate the law and avoid detection.” *Crooker v. ATF*,

650 F.2d 1051, 1054 (D.C. Cir. 1981) (en banc). The disclosure of this information could circumvent the security measures which may allow an individual attempting to violate the law to make a fraudulent attempt to reroute the funds to a third party's account thus jeopardizing public safety.

In response to the remainder of the requests, EOPSS maintains after a diligent search it possesses no additional responsive materials other than those already provided herein.

If you object to EOPSS's response, you may, pursuant to G.L. c. 66, § 10(b) and 950 CMR 32.08(2), appeal its determination to the Public Records Division of the Office of the Secretary of the Commonwealth.

Sincerely,



Arielle Mullaney
Assistant General Counsel