

From chieflabonte@berkleyma.us  
Subject **Re: [Berkley MA] ACLU Public Records Request (Sent by Emiliano Falcon, efalcon@aclum.org)**  
To Deborah Pereira <TownClerk@berkleyma.us>  
Date Wed, 08 Apr 2020 13:55:46 +0000

Dear Emiliano Falcon:

On April 7, 2020, we received your request pursuant to the Massachusetts Public Records Law for the following records:

1. All communications, including text messages and emails, between or among any staff member or representative of the police department and any representative of any company that manufactures or sells any facial recognition product, including but not limited to Clearview AI;
2. All internal communications, including text messages and emails, referencing any company that manufactures or sells any facial recognition product or service, including but not limited to Clearview AI;
3. Records evidencing or describing any existing or potential relationship between the police department and all companies that manufacture or sell any facial recognition product, including but not limited to Clearview AI. These records include but are not limited to MOUs, purchase orders, RFPs, licensing agreements, invoices, non-disclosure agreements, project proposals, and other contracts;
4. Records referencing the operational effectiveness or accuracy rate of any of facial recognition service or product. These records include but are not limited to e-mails, handouts, PowerPoint presentations, advertisements, audits, and specification documents;
5. Training materials related to facial recognition products or services;
6. Policies and procedures pertaining to the use of facial recognition products or services, or the data they produce; and
7. Records relating to any public process, meeting, or debate about any facial recognition products or services. These include but are not limited to meeting agendas or minutes, public notices, analyses, and communications between the police department and elected officials.

With respect to your request, please be advised that this Department does not have possession, custody or control of the records requested. The mandatory disclosure provision of the Public Records Law only applies to information that is in the custody of the Department at the time the request is received. As a result, there is no obligation for a Department to create a record for a requester to honor a request. See G.L. c. 4, section 7(26) (defining "public records" as materials which have already been "made or received" by a public entity); see also 32 Op. Att'y Gen. 157, 165 (May 18, 1977) (custodian is not obliged to create a record in response to a request for information); see also A Guide to the Massachusetts Public Records Law, Secretary of the Commonwealth, Division of Public Records, p. 7 (January 2013) (hereinafter Public Records Guide). As a result, the Department is unable to respond to your request.

Please be advised that pursuant to 950 CMR 32.00 and G.L. c. 66, section 10A(a) you have the right to appeal this decision to the Supervisor of Public Records within 90 calendar days. Such appeal shall be in writing, and shall include a copy of the letter by which the request was made and, if available, a copy of the letter by which the custodian responded. The Supervisor shall accept an appeal only from a person who had made his or her record request in writing. Pursuant to G.L. c. 66, section 10A(c), you also have the right to seek judicial review by commencing a civil action in the superior court.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Records Access Officer  
Chief Scott K. Labonte  
Berkley Police Department

Quoting Deborah Pereira <TownClerk@berkleyma.us>:

Received this public records request today.

-----Original Message-----

From: [cmsmailer@civicplus.com](mailto:cmsmailer@civicplus.com) [mailto:[cmsmailer@civicplus.com](mailto:cmsmailer@civicplus.com)]  
Sent: Tuesday, April 07, 2020 11:10 AM  
To: [TownClerk@berkleyma.us](mailto:TownClerk@berkleyma.us)  
Subject: [Berkley MA] ACLU Public Records Request (Sent by Emiliano Falcon, [efalcon@aclum.org](mailto:efalcon@aclum.org))

Hello dpereira,

Emiliano Falcon ([efalcon@aclum.org](mailto:efalcon@aclum.org)) has sent you a message via your contact form (<https://www.townofberkleyma.com/user/50/contact>) at Berkley MA.

If you don't want to receive such e-mails, you can change your settings at <https://www.townofberkleyma.com/user/50/edit>.

Message:

Good Morning,

Please see attached.

Best,  
Emiliano