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*Email transmission only*

April 9, 2020

ACLUM

Attn: Emiliano Falcon, Policy Counsel  
211 Congress Street  
Boston, MA 02110

RE: Public Records Request Pertaining to Facial Recognition

Dear Attorney Falcon:

Please be advised that your letter of April 6, 2020 to the Town of Dracut regarding the above-captioned matter, a request under the provisions of M.G.L. c. 66, s. § 10, has been referred to this office for response.

With respect to your request, please be advised that the Dracut Police Department does not have in its possession, custody or control of any 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 2017) (hereinafter Public Records Guide). Further, the Dracut Police Department, to date, is not in receipt of any records being the subject matter of your request. As a result, the Department is unable to respond to the same.

If you have any questions or concerns regarding this matter please feel free to contact this office.

Very truly yours,

  
Peter J. McQuillan