

February 20, 2020

Emiliano Falcon
Policy Counsel
Technology for Liberty Program
ACLU of Massachusetts
617-482-3170 Ext 402
efalcon@aclum.org

Re: Public Records Request

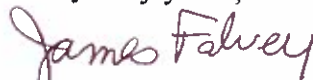
Dear Attorney Goldberg:

I reviewed your request for public records dated February 14, 2020, and received by me on February 17, 2020. Specifically you see records in your letter dated February 14, 2020 regarding Clearview AI, a facial recognition technology start-up and any other facial recognition companies and products for all communications, records, etc. I will attach your letter of request to my response.

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 custody of the Department at the time the request is received. As a result, there is no obligation for a 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 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 10(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 only from a person who had made his or her record request in writing. Pursuant to G.L. c. 66, section 10(c), you also have the right to seek judicial review by commencing a civil action in the superior court.

Very truly yours,



James Falvey,
Deputy Chief of Police
Town of Milford

Falvey, James

From: Pighetti, Michael
Sent: Monday, February 17, 2020 9:58 AM
To: Falvey, James
Subject: FW: ACLU Public Records Request
Attachments: Milford PD PRR ACLU.pdf

Michael A. Pighetti
Chief of Police
Milford, Ma. 01757

From: Emiliano Falcon-Morano <efalcon@aclum.org>
Sent: Friday, February 14, 2020 1:07 PM
To: Pighetti, Michael <MPighetti@milfordpolice.org>
Cc: Taisha Lazare <tlazare@aclum.org>
Subject: ACLU Public Records Request

Good Afternoon,

Please see attached.

Best,

Emiliano

Emiliano Falcon-Morano

Pronouns: he, him, his

Policy Counsel

Technology for Liberty Program

American Civil Liberties Union of Massachusetts

211 Congress Street, Boston, MA 02110

617.482.3170 x402 | efalcon@aclum.org

[Website](#) | [Twitter](#) | [Facebook](#) | [Instagram](#) | [Youtube](#)



February 14, 2020

Sent via email

Milford Police Department
Records Access Officer

Re: Public records request pertaining to facial recognition

Dear Records Access Officer,

This is a request under the Massachusetts Public Records Law, G.L. c. 66, § 10, made on behalf of the American Civil Liberties Union of Massachusetts (“ACLUM”).

Clearview AI (“Clearview”), a facial recognition technology start-up, makes available to law enforcement a product that attempts to match photos of unknown people to images in a database.¹ Clearview AI’s database reportedly contains billions of pictures scraped from social media sites like Facebook, YouTube, and Venmo.² According to newspapers, Clearview AI markets this product to federal, state, and local law enforcement agencies.³ This company is just one of many that market their facial recognition technology to government agencies.

ACLUM has significant concerns about the use of facial recognition in Massachusetts. We therefore seek records pertaining to Clearview AI and other facial recognition companies and products.

Records requested

This request includes but is not limited to the following records created on or after January 1, 2019:

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;

¹ See Clearview AI, available at <https://clearview.ai/>

² The Secretive Company That Might End Privacy as We Know It, Kashmir Hill, The New York Times, Jan. 18, 2020, available at <https://www.nytimes.com/2020/01/18/technology/clearview-privacy-facial-recognition.html>

³ Florida Cops Use This Facial Recognition Tech That Could Be Pulling Your Pics, Allison Ross, Malena Carollo and Kathryn Varn, Tampa Bay Times, Feb. 11, 2020, available at <https://www.tampabay.com/florida-politics/buzz/2020/02/11/florida-cops-use-this-facial-recognition-tech-that-could-be-pulling-your-pics/>

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.

Because this request involves a matter of public concern and is made on behalf of a nonprofit organization, we ask that you waive any fees. ACLUM is a nonprofit §501(c)(3) organization dedicated to the protection of civil rights and liberties for all persons in the Commonwealth of Massachusetts. As the state's affiliate of the American Civil Liberties Union, the ACLU of Massachusetts is part of a nationwide network of advocates dedicated to defending and expanding the civil liberties of all.

If you decide not to waive fees, we request that you permit us to examine, at our election, the responsive documents before determining which portions to copy. We prefer the documents in electronic format.

If you believe that some portion of the documents requested are exempt from disclosure or require redaction, please release any reasonably segregable portions that are not exempt. Also, please note the applicable statutory exemption and explain why it applies to the redacted portions. As you know, a custodian of public records shall comply with a request within ten days after receipt.

If you have questions about this request, please contact me at (617) 482-3170 x402 or efalcon@aclum.org

Thank you for your assistance. We look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Emiliano Falcon', with a stylized flourish at the end.

Emiliano Falcon
Policy Counsel
Technology for Liberty Program
ACLU of Massachusetts