

From "Frank, Leila" <FrankL@sudbury.ma.us>
Subject **RE: ACLU Public Records Request**
To Emiliano Falcon-Morano <efalcon@aclum.org>
Date Thu, 30 Apr 2020 02:59:57 +0000

Mr. Falcon-Morano:

In reply to your email below, I reviewed our response to your records request that I sent on April 21, 2020 with Town Counsel, and we remain satisfied that the exemptions cited in the response are applicable and appropriate. We further note, however, that the two police training manuals that were cited as exempt have very minimal reference to any kind of facial recognition products or services. Therefore, in the interest of disclosure, I have attached copies of three pages from the two manuals in unredacted form. There are no other parts of either manual that are responsive to your April 6, 2020 request. Moreover, as stated in my previous response, the Town does not possess or use any such facial recognition products. With regard to the records withheld under Exemption (f), the emails were received by the Police Department in the context of an active police investigation and are exempt from disclosure.

Thank you,
Leila

LEILA S. FRANK
OFFICE SUPERVISOR/INFORMATION OFFICER
SUDBURY TOWN MANAGER & BOARD OF SELECTMEN'S OFFICE
278 OLD SUDBURY ROAD
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WHEN WRITING OR RESPONDING, PLEASE BE AWARE THE SECRETARY OF STATE HAS DETERMINED THAT E-MAIL IS A PUBLIC RECORD AND THUS NOT CONFIDENTIAL.

From: Emiliano Falcon-Morano <efalcon@aclum.org>
Sent: Thursday, April 23, 2020 2:22 PM
To: Frank, Leila <FrankL@sudbury.ma.us>
Cc: Kade Crockford <kcrockford@aclum.org>; Taisha Lazare <tlazare@aclum.org>; Jessica Lewis <jlewis@aclum.org>
Subject: Re: ACLU Public Records Request

Hello Leila,

Good afternoon. I hope you are staying safe and healthy.

While I wait for the rest of the documents, I want to write to you about the documents you mention in the third paragraph of your response and that the City is shielding from disclosure.

As you may know, and as the recently updated Public Records Guide (See <https://www.sec.state.ma.us/pre/prepdf/guide.pdf>) notes, exemption (b) to the Public Records Law has not been definitively interpreted by the courts here in Massachusetts.

However, this exemption is analogous to the federal FOIA Exemption 2. The U.S. Supreme Court has interpreted this exemption to only apply to 'personnel' matters. And "[a]n agency's 'personnel rules and practices' are its rules and practices dealing with employee relations or human resources." Milner v. Dep't of Navy, 562 U.S. 562, 570 (2011).

Therefore, in this context, the application of Exemption (b) to withhold information related to facial recognition technology training is inappropriate.

As to the ongoing investigation exemption, I am not sure which documents you are trying to point to. However, please note that statutory exemptions are not blanket in nature. See Reinstein v. Police Com'r of Bos., 378 Mass. 281, 290 (1979) (explaining that there is no blanket exemption provided for records kept by police departments and that the exemption for investigatory materials invites a case-by-case consideration). The fact "that **some exempt material may be found in a document or report of an investigatory character does not justify cloture as to all of it.**" *Id.* (emphasis added). It follows that where exempt information is mixed with non-exempt information, the non-exempt portions are subject to disclosure once the exempt portions are redacted. *Id.*, at 287–88 (holding that the June 1978 amendments settled the issue and made clear that the right to access extended to any non-exempt segregable portion of a public record)

If you believe that any portion of the records in your possession is exempt under the public records law, you should still send those records and make the appropriate redactions.

Thank you very much!

Best,

Emiliano

Emiliano Falcon-Morano

Pronouns: he, him, his

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From: Frank, Leila <Frankl@sudbury.ma.us>
Sent: Tuesday, April 21, 2020 11:40 AM
To: Emiliano Falcon-Morano; Kade Crockford; Ta'isha Lazare
Subject: RE: ACLU Public Records Request

Dear Emiliano Falcon:

On April 6, 2020, we received your request pursuant to the Massachusetts Public Records Law for the following records of the Sudbury Police Department:

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, the Department has identified certain records that are responsive, and copies of such records are provided at: <https://sudbury.sharefile.com/f/fo9b2566-e63d-468d-a9c9-2a1b990f044f>. The Town has waived the fees associated with providing these documents. The Town further states that while the records provided, and those withheld below, contain references to facial recognition products or services, the Town of Sudbury does not possess or use any such products or services and has no current intention to do so in the future.

In addition, with respect to your request, the Department is withholding a limited number of records as exempt from disclosure - specifically, Department internal training manuals and certain emails and documents relative to ongoing police investigations. These records are withheld as exempt from disclosure in accordance with Exemptions (b) and (f) to the Public Records Law. G.L. c.4, §7 (26)(b) and (f). Exemption (b) provides that records may be withheld which are "related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding." The Department's position is that withholding of training manuals regarding police operations and investigative techniques is necessary to the proper performance of the Department's governmental function, public safety. Similarly, exemption (f) provides that "investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest" may be withheld. The referenced records regarding ongoing investigations are exempt under Exemption (f) and it would not be in the public interest to disclose them.

You may appeal this response to the Supervisor of Public Records pursuant to 950 CMR 32.08(1)(d). By law, the Supervisor is required to respond within 10 business days of receipt of your appeal. You may also seek judicial review of an unfavorable response by commencing a civil action in the superior court, under G.L. c. 66, §10A(c).

Sincerely,
Leila

LEILA S. FRANK
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From: Emiliano Falcon-Morano [<mailto:efalcon@aclum.org>]
Sent: Monday, April 6, 2020 5:07 PM

To: Kade Crockford <kcrockford@aclum.org>; Taisha Lazare <tlazare@aclum.org>
Subject: ACLU Public Records Request

Good Afternoon,

Please see attached.

Best,

Emiliano

Emiliano Falcon-Morano

Pronouns: he, him, his

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