

Re: ACLU Public Records Request

Emiliano Falcon-Morano

Tue 7/7/2020 8:39 AM

To: Stelmat, Jason (POL) <jason.stelmat@state.ma.us>;

Cc: Kade Crockford <kcrockford@aclum.org>; Jessica Lewis <jlewis@aclum.org>; Taisha Lazare <tlazare@aclum.org>;

Hi Jason,

Thank you for the email. It would be great if you can provide the sample.

Thank you very much.

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](tel:617.482.3170) x402 | efalcon@aclum.org

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

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From: Stelmat, Jason (POL) <jason.stelmat@state.ma.us>

Sent: Thursday, July 2, 2020 2:26 PM

To: Emiliano Falcon-Morano

Cc: Kade Crockford; Jessica Lewis; Taisha Lazare

Subject: RE: ACLU Public Records Request

Hello Emiliano,

The final de-duplicated number of emails was actually 140. I apologize for the delay but I actually took the time to look at each email individually. The vast majority of the emails (approximately 110-120) involved a department member utilizing facial recognition for a specific case and reporting the results. The remainder of the emails were purely administrative such as a user reporting that they could not access the system or department members submitting activity logs. There were zero emails “discussing the decision and the reasons to stop using the FaceMatch feature in Coplink.”

If you would still like to proceed I am happy to provide you with 10 random emails as a sample. However please note that the emails will be heavily redacted as any references to cases and investigations are exempted from disclosure.

Let me know how you wish to proceed.

Thank you,
Jason

From: Emiliano Falcon-Morano [mailto:efalcon@aclum.org]
Sent: Tuesday, June 23, 2020 12:32 PM
To: Stelmat, Jason (POL)
Cc: Kade Crockford; Jessica Lewis; Taisha Lazare
Subject: Re: ACLU Public Records Request

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hello Jason,

Thank you for the email. I understand what you are saying. However, we respectfully disagree with your interpretation of the state regulations that govern access to public records.

First, the regulations include the word "reproducing" in the no-fee first four hours. See 950 C.M.R. 32.07(2) (1) ("An agency records access officer shall not assess a fee for the first four hours of time spent searching for, compiling, segregating, redacting and **reproducing** a requested record." (emphasis added))

Moreover, the Guide Massachusetts Public Records Law is consistent with this reading of the statute and also includes the word "reproducing." See A Guide To The Massachusetts Public Records Law, p.11, March 2020, available at <https://www.sec.state.ma.us/pre/prepdf/guide.pdf> ("Agencies may not assess a fee for the first 4 hours of time spent searching for, compiling, segregating, redacting and **reproducing** a requested record." (emphasis added))

That said, and without limiting ACLUM rights, we agree that you send us a sample set of 10 random emails so that we can take a look at them and decide how to move forward.

Thank you very much.

Stay safe and healthy.

Best,

Emiliano

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

From: Stelmat, Jason (POL) <jason.stelmat@state.ma.us>
Sent: Monday, June 22, 2020 12:52 PM
To: Emiliano Falcon-Morano
Cc: Kade Crockford; Jessica Lewis; Taisha Lazare
Subject: RE: ACLU Public Records Request

I really can't dedicate 4 hours for every single public records request without a further commitment for compensation on these large requests. I've done it in the past for the ACLU as a courtesy. I understand that the first 4 hours of labor for each request is statutorily exempt from a fee. However, most requests are able to be fulfilled in far less time. To utilize the 4 hour rule to seek a sample for each large request does not align with the purpose of the rule.

I'd be happy to provide a sample set of perhaps 10 emails (selected at random) so you can determine your need to obtain the remainder by paying a fee. If you decide to proceed after reviewing the sample of emails, I would not count the time spent in providing the sample against the first 4 hours of labor.

Please let me know if you are amenable to this.

Thank you,
Jason

From: Emiliano Falcon-Morano [mailto:efalcon@aclum.org]
Sent: Monday, June 22, 2020 11:40 AM
To: Stelmat, Jason (POL)
Cc: Kade Crockford; Jessica Lewis; Taisha Lazare
Subject: Re: ACLU Public Records Request

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Thanks, Jason!

Can you provide us with the emails that result from the first 4 free hours of reviewing? We can then decide if we want more.

Thank you!

Best,

Emiliano

Emiliano Falcon-Morano
Pronouns: he, him, his

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

From: Stelmat, Jason (POL) <jason.stelmat@state.ma.us>
Sent: Friday, June 19, 2020 6:50 PM
To: Emiliano Falcon-Morano
Subject: RE: ACLU Public Records Request

Looks like the search produced around 300 emails. They will deduplicate the results and upload them for me. I would estimate a cost of around \$325-\$375 if you'd like me to provide an official estimate.

From: Emiliano Falcon-Morano [mailto:efalcon@aclum.org]
Sent: Friday, June 12, 2020 11:00 AM
To: Stelmat, Jason (POL)
Cc: Kade Crockford; Jessica Lewis
Subject: Re: ACLU Public Records Request

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Hi Jason,

Thanks. Lets do it from June 1, 2019 - June 12, 2020!

Thanks.

Best,

Emiliano

Emiliano Falcon-Morano

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

From: Stelmat, Jason (POL) <jason.stelmat@state.ma.us>
Sent: Friday, June 12, 2020 10:42 AM

To: Emiliano Falcon-Morano
Subject: RE: ACLU Public Records Request

I will submit the request today. The facial recognition policy was implemented in September of last year so I will set the search date range as January 1, 2019 – June 12, 2020 if you are agreeable to that?

From: Emiliano Falcon-Morano [mailto:efalcon@aclum.org]
Sent: Friday, June 12, 2020 10:36 AM
To: Stelmat, Jason (POL)
Cc: Kade Crockford; Jessica Lewis; Taisha Lazare
Subject: Re: ACLU Public Records Request

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Hi Jason,

Thanks for this email.

It would be great if you can run the email search through EOTSS.

Thank you!

Best,

Emiliano

Emiliano Falcon-Morano

Pronouns: he, him, his

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Technology for Liberty Program
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[617.482.3170](tel:617.482.3170) x402 | efalcon@aclum.org

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

From: Stelmat, Jason (POL) <jason.stelmat@state.ma.us>
Sent: Friday, June 12, 2020 10:17 AM
To: Emiliano Falcon-Morano
Cc: Kade Crockford; Jessica Lewis; Taisha Lazare
Subject: RE: ACLU Public Records Request

Hi Emiliano,

This new request has been assigned to me for handling. As for numbers 2, 3, and 4, MSP is not in possession of any responsive documents. The decision to discontinue the use of FaceMatch in COPLINK was not a very formal one. As previously stated, FaceMatch was not part of the system when we obtained COPLINK. It was given to use later as a free add-on. There were no written orders or directives issued throughout the MSP to stop using FaceMatch. As such, there have been

no disciplines for continued use of COPLINK. We just simply don't use it anymore. Essentially, the FaceMatch feature in COPLINK was not nearly as widely used as the RMV system and provided very little added value over the RMV system. So when we wrote our facial recognition policy we did so for the RMV system and have used that exclusively since. I suppose it's possible that things could change and we could again utilize FaceMatch in the future. But as of right now we believe the RMV system meets our needs.

I'm happy to run an email search through EOTSS with the keywords COPLINK and FaceMatch and provide a cost estimate for reviewing and redacting the results. I anticipate there will be hundreds if not thousands of results. Please let me know how you wish to proceed.

Regards,
Jason

From: Emiliano Falcon-Morano [mailto:efalcon@aclum.org]

Sent: Wednesday, June 10, 2020 11:18 AM

To: Stelmat, Jason (POL)

Cc: Kade Crockford; Jessica Lewis; Taisha Lazare

Subject: FW: ACLU Public Records Request

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Hi Jason,

Thank you for this information.

We are very interested in the MSP decision to discontinue the use of the FaceMatch feature in Coplink. Can you please send us all the records pertaining to that decision. These records include:

1. All communications and emails discussing the decision and the reasons to stop using the FaceMatch feature in Coplink;
2. All official policies, memoranda, directives showing the decision to stop using the FaceMatch feature in Coplink;
3. All official policies, memoranda, directives, communications, or other similar documents by which MSP officers were communicated the decision to stop using the FaceMatch feature in Coplink;
4. All records describing disciplinary or similar proceedings started against officers that continued to use FaceMatch after the decision was made;

Please consider this a formal public records request.

Thank you very much.

Best,
Emiliano

Emiliano Falcon-Morano

Pronouns: he, him, his

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

From: Stelmat, Jason (POL) <jason.stelmat@state.ma.us>
Sent: Thursday, June 4, 2020 3:34 PM
To: Kade Crockford
Subject: RE: ACLU Public Records Request

It's the latter. The facematch feature is still available in coplink. But we have decided to use the RMV exclusively for facial recognition.

From: Kade Crockford [mailto:kcrockford@aclum.org]
Sent: Thursday, June 04, 2020 3:32 PM
To: Stelmat, Jason (POL); Emiliano Falcon-Morano
Cc: Jessica Lewis; Taisha Lazare
Subject: Re: ACLU Public Records Request

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Thanks Jason, that's helpful. Does this mean the face match feature is turned off for all Coplink users in Massachusetts? Or just that MSP officers have been instructed not to use it?

Thanks,
Kade

Kade Crockford

Director, Technology for Liberty Program
American Civil Liberties Union of Massachusetts
211 Congress Street, Boston, MA 02110
[617.482.3170](tel:617.482.3170) x346 | kcrockford@aclum.org
aclum.org | privacysos.org/blog

NSA: I'm a US person.

From: Stelmat, Jason (POL) <jason.stelmat@state.ma.us>
Sent: Thursday, June 4, 2020 3:24:07 PM
To: Kade Crockford; Emiliano Falcon-Morano
Cc: Jessica Lewis; Taisha Lazare
Subject: RE: ACLU Public Records Request

We no longer use the coplink facial recognition system. We still use the coplink software but we have elected to use the RMV system exclusively for facial recognition.

From: Kade Crockford [mailto:kcrockford@aclum.org]
Sent: Thursday, June 04, 2020 3:21 PM

To: Stelmat, Jason (POL); Emiliano Falcon-Morano
Cc: Jessica Lewis; Taisha Lazare
Subject: Re: ACLU Public Records Request

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Thank you Jason. We will get back to you on the substance of narrowing down the request shortly.

But in the meantime, I'm curious to hear that MSP only uses the RMV system. Are you saying the Coplink system no longer uses face recognition? Or that MSP no longer uses Coplink?

Thank you.

Kade

Kade Crockford

Director, Technology for Liberty Program
American Civil Liberties Union of Massachusetts
211 Congress Street, Boston, MA 02110
[617.482.3170](tel:617.482.3170) x346 | kcrockford@aclum.org
aclum.org | privacysos.org/blog

NSA: I'm a US person.

From: Stelmat, Jason (POL) <jason.stelmat@state.ma.us>
Sent: Thursday, June 4, 2020 11:43:56 AM
To: Emiliano Falcon-Morano
Cc: Kade Crockford; Jessica Lewis; Taisha Lazare
Subject: RE: ACLU Public Records Request

Hi Emiliano,

The de-duplicated number of results from the EOTSS search is 15,706 emails. After 4 hours of work, I have learning the following:

13,406 of those emails appear to have been picked up by the search only because they contain a banner advertising Clearview (I've attached the banner for reference).

Of the remaining 2,200+ emails, it appears that the majority of them are also various forms of advertising that contain a mention of the Clearview product. I've attached a couple of examples for reference. I can provide more if you wish but I assume this is not exactly what you are looking for.

I did find a couple of emails directly related to the use of Clearview. One email appears to be a solicitation directly from Clearview to use their product. Another is an email from an outside agency seeking feedback from other departments that have used Clearview. I'm attaching both emails. There is very little substance in each of these emails.

Please understand that I have not thoroughly reviewed every email. I simply tried my best to provide an overview of the results with 4 hours of work. As previously stated, MSP does not use Clearview. The only facial recognition product we currently use is the Massachusetts RMV system. However, I am happy to provide a cost estimate if you wish to proceed with this request and thoroughly review and redact each email. Please let me know how you wish to proceed.

Regards,
Jason

From: Emiliano Falcon-Morano [mailto:efalcon@aclum.org]
Sent: Friday, May 29, 2020 12:58 PM
To: Stelmat, Jason (POL)
Cc: Kade Crockford; Jessica Lewis; Taisha Lazare
Subject: Re: ACLU Public Records Request

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Hi Jason,

Thank you for the email. This sounds good to me.

Thank you very much.

Have a nice weekend.

Best regards,

Emiliano

Emiliano Falcon-Morano

Pronouns: he, him, his

Policy Counsel
Technology for Liberty Program
American Civil Liberties Union of Massachusetts
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[617.482.3170](tel:617.482.3170) x402 | efalcon@aclum.org

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

From: Stelmat, Jason (POL) <jason.stelmat@state.ma.us>
Sent: Friday, May 29, 2020 12:11 PM
To: Emiliano Falcon-Morano
Subject: RE: ACLU Public Records Request

Hi Emiliano,

I think that makes sense. I can order the upload of 15,000 emails from EOTSS. I can set aside 4 hours to review and redact as many emails as possible. I should be able to have those to you by the middle of next week. Based on your review of those emails, we can elect how to proceed with the understanding that the time spent to provide this sample will count as the fee-exempt portion of our response.

Please let me know if this is agreeable.

Regards,
Jason

From: Emiliano Falcon-Morano [mailto:efalcon@aclum.org]
Sent: Friday, May 29, 2020 10:07 AM
To: Stelmat, Jason (POL)
Cc: Kade Crockford; Jessica Lewis; Taisha Lazare
Subject: Re: ACLU Public Records Request

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Hello Jason,

Good morning. Thank you for the email.

I hear what you are saying. However, before addressing the issues that you raise, can you try to work it out and provide us with a sample of the emails? At the end of the day, those would be the fee-exempt emails resulting from the first 4 hours of time spent searching for, compiling, segregating, redacting and reproducing the records.

Thank you very much!

Stay safe and healthy.

Best,

Emiliano

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

From: Stelmat, Jason (POL) <jason.stelmat@state.ma.us>
Sent: Thursday, May 28, 2020 4:48 PM
To: Emiliano Falcon-Morano
Cc: Kade Crockford; Jessica Lewis; Taisha Lazare
Subject: RE: ACLU Public Records Request

Hi Emiliano,

You are correct that my office did not respond within 10 business days of receiving the original request. However, this was not due to any intentional delay on our part. The covid pandemic has created a lot of hardship over the past few months across various agencies including MSP. We are short staffed and doing the best we can to keep up with everything. Even the email searches which are conducted by another agency are taking more time. The Secretary of State's office is aware of the issues and the word from the Supervisor's of Records Office is that we should be sending responses as soon as practicable. Therefore, we are still sending cost estimates on public records requests. Most of the public records requestors are more than understanding given the issues we are facing. You are, of course, free to present the argument to the Supervisor's Office that you believe the delay is unwarranted. They are always fair about hearing both sides before ruling.

That being said, I am happy to generate an official cost estimate in order to obtain an official ruling from the Supervisor's Office. I can do so based on the numbers that we have at this time or we can further refine the search terms in an effort to reduce the number of results. Please let me know your preference. If I do not hear back by the close of business tomorrow I will proceed with the results we have now.

Regards,
Jason

From: Emiliano Falcon-Morano [mailto:efalcon@aclum.org]
Sent: Thursday, May 28, 2020 2:25 PM
To: Stelmat, Jason (POL)
Cc: Kade Crockford; Jessica Lewis; Taisha Lazare
Subject: Re: ACLU Public Records Request

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hi Jason,

Thank you for the email.

The original request was not responded in 10 business days so the MSP cannot charge us for the production of the emails. That said, we want to see a sample of those emails before moving forward with the whole production.

Can you please send us a sample of the emails?

Thank you very much.

Stay safe and healthy.

Best,

Emiliano

Emiliano Falcon-Morano

Pronouns: he, him, his

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[617.482.3170](tel:617.482.3170) x402 | efalcon@aclum.org

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