

Good afternoon,

The Department of State Police (Department) hereby petitions the Supervisor of Public Records for approval to assess fees for costs associated with responding to a public records request submitted by Ms. Kade Crockford on July 17, 2018 and, after email and telephone communications, revised on September 27, 2018. Specifically, Ms. Crockford submitted a public records request to the Department seeking the following records created on or after January 1, 2016:

1. Communications between any representative of the Massachusetts State Police and any representative of any vendor offering any facial-recognition product or service.
2. Internal communications between representatives or employees of the Massachusetts State Police relating to any facial-recognition product or service.
3. Documents relating to the Massachusetts State Police's purchasing or use of facial recognition, including but not limited to: purchase orders, RFPs, licensing agreements, invoices, and contracts (including non-disclosure agreements) related to any facial-recognition product or service.
4. Materials relating to how any facial-recognition product or service functions (or functions improperly), including emails, handouts, PowerPoint presentations, advertisements, or specification documents.
5. Manuals, policies, procedures, and practices governing the use or monitoring of a facial-recognition product or service or related information or databases. This request includes, but is not limited to:
 - a. Procedures for using, deleting, or retaining photos of subjects to be identified;
 - b. Materials identifying any sources of such photos, such as mobile devices, body cameras, surveillance videos, identification photos, or arrest photos;
 - c. Policies or procedures relating to the legal standard, if any, (e.g., probable cause, court order, relevance, consent) that is required before using any facial recognition product or service;
 - d. Procedures the agency follows after a positive match, such as requiring independent or in-person verification;
 - e. Permitted uses of the information created from a positive match.
6. Training materials related to any facial-recognition product or service by employees of the Massachusetts State Police.
7. Records related to any mobile application related to any facial-recognition product or service.
8. Records relating to any public process or debate about any facial-recognition product or service, including meeting agendas or minutes, public notice, analyses, or communications between the Massachusetts State Police and elected leaders or county officials.

After discussing specific search terms to facilitate a response to requests #1 and #2, the Department, through the Executive Office of Technology Services and Security (EOTSS), conducted a preliminary search of emails for the designated time period and advised that there are approximately 37,000 emails responsive to this request. In an effort to further narrow the scope, Ms. Crockford requested that the response only include emails originating from Department email addresses ending in "@state.ma.us." A final search was conducted which produced 8,965 emails.

Given that the Massachusetts State Police is a law enforcement agency with various missions ranging from public safety and criminal justice to homeland security and emergency preparedness. As a result, a large percentage of department emails involve highly sensitive matters. Further, given our office's and our agencies' collaboration with other state and federal agencies on criminal investigations and other matters regarding state and national security, the resulting emails undoubtedly contain privileged and exempt information such as CORI data, intelligence and investigative data, personnel, private, and security related information, as well as information related solely to internal personnel rules and practices of government necessary to withhold to ensure the proper performance of the Massachusetts State Police. These categories of information are specifically exempt pursuant to G.L. c. 4, § 7, cl. 26 (a), (b), (c), (f), and/or (n) and are not subject to public disclosure. Accordingly, the information must be segregated and redacted from the email records before the emails are produced to a third party such as the requestor.

As a state agency with the responsibility for maintaining extensive confidential information, the Massachusetts State Police has an obligation to ensure proper procedures are maintained to prevent the dissemination of information which is protected from disclosure by law. Fulfilling such an obligation requires a careful review and segregation of records intended for disclosure. As you are no doubt familiar, segregation and redaction of email messages often involves the application of multiple exemptions to the public records law to a single email or even a single paragraph or sentence of an email. Some information is simultaneously protected by more than one exemption or different exemptions depending on context or the time of disclosure. The fee estimates provided are for the segregation and redaction process as a whole, and in the view of the Department, cannot be split up by exemption. Since the segregation and redaction process is required by law, the Department is entitled to charge a fee for the cost of production and does not view this petition as a necessary prerequisite to charging a fee to the requestor and has communicated its fee estimate to the requestor separately.

Given that there are 8,965 emails which the Department must review and redact, this will impose an onerous burden on the Department which will have to devote limited resources to review and redact these records. Given the volume of information requiring review, the Department's good faith estimate of cost amounts to \$11,106.25. This amount is based upon the following: the Department will be required to review each of the 8,965 emails. The Department estimates, conservatively and in good faith, that it will expend an average of 3 minutes to review each email. Accordingly, the good faith estimate is calculated at (26,895 minutes/60 minutes equals 448.25 hours). After subtracting the standard 4 hours the total is 444.25 hours at a rate of \$25/hour which equals \$11,106.25.

This estimate represents an actual and good faith representation. The cost is necessary, reasonable and is not designed to limit, deter, or prevent access to requested public records.

The Department therefore requests that the Supervisor of Public Records approve the assessment of the above referenced fee.

Thank you,

Jason Stelmat
Privacy Officer
Commonwealth Fusion Center
Department of State Police