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The Commonwealth of Massachusetts
Department of State Police

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November 15, 2018

Ms. Rebecca Murray
Supervisor of Records
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108

RE: SPR18/1492

Dear Supervisor Murray:

The Massachusetts Department of State Police ("Department") has received your October 16, 2018 response to the Department's fee petition. Your response indicated that "the Department has met its burden to explain how the fee is necessary..." and "has also demonstrated the fee is not designed to limit, deter or prevent access to public records" before concluding that "the Department is allowed to charge for the time to segregate and redact the requested records." However, you further requested that the Department provide justification as to why 3 minutes is necessary to review each email.

As a preliminary matter, the final email search conducted by the Executive Office of Technology Services and Security (EOTSS) pursuant to the above referenced request, after de-duplication, produced nearly 9,000 results with varying length and content, including attachments such as Department bulletins, reports, photographs and other documents subject to exemption. As noted in the Department's fee petition, it will take a considerable amount of time to review and redact these documents using multiple statutory exemptions.

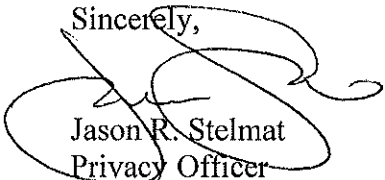
The Department has previously reviewed email records for public records requests and based on those previous experiences, 3 minutes is a very conservative estimate. In the past, when the Department estimated 1 minute per email, the estimate was egregiously inadequate. The result was that the Department did not charge nearly enough for the resources ultimately required for production and the requestor's expectations about the time it would take to produce the records were not possible to meet.

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Furthermore, it should be noted that this public records request centers on the Department's acquisition and use of facial recognition technology as well as the procedures and functionality of the technology. The Department's primary use of this technology is for case investigations, both internally and in conjunction with other law enforcement agencies. Therefore, a large majority of the emails in question will have a nexus to past and pending investigations and may therefore be subject to redaction under M.G.L. c. 4, §7, cl. 26(c) and (f) as well as M.G.L. c. 6, § 172. In order to conduct a proper evaluation of each email, any case referenced within the emails would have to be checked against 4 separate databases to determine the originating agency and case status. If a case belongs to an outside agency, that agency may have to be contacted to determine the status of the case. This process only speaks to the statutory exemption for pending cases. Additional consideration would be made for other exemptions including, but not limited to, M.G.L. c. 4, §7, cl. 26(a) (materials specifically exempted from disclosure by statute), 26(b) (internal rules and practices of the government unit), and 26(d) (inter-agency or intra-agency memoranda relating to policy positions being developed).

Given the nature of the information sought, the review and redaction process will exceed 3 minutes for the majority of emails. However, in an effort to promote the intent of the public records law and to reduce the burden of accessing public records, the Department used great deference when calculating the final cost estimate. Therefore, the Department's good faith estimate of a 3 minute average is both fair and reasonable.

Sincerely,



Jason R. Stelmat
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cc: Kade Crockford