ACLU
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Massachusetts

July 25, 2019

Via Email

Primary Records Access Officer
Michael Halpin
Massachusetts State Police
470 Worcester Road
Framingham, MA 01702
msp.rao@state.ma.us

Re: Public records request related to the use of facial-recognition technology

Dear Mr. Halpin,

This is a request under the Public Records Law, G.L. c. 66, § 10, on behalf of the American Civil Liberties Union of Massachusetts ("ACLUM"). ACLUM seeks records relating to the use of facial recognition[1] technology by Massachusetts State Police ("MSP"), including at the Commonwealth Fusion Center and Enforcement Services Unit and/or Compliance Unit.

Public reporting shows that MSP is currently using facial recognition technology. Specifically, MSP spokesman David Procopio has been quoted as stating that "**[f]acial-recognition technology helps us, in concert with other investigative tactics, to identify unknown suspects in specific crimes, arrest them** and seek justice for their victims. It is a valuable tool that, by helping identify someone who has committed a crime, helps us protect our communities and citizens." (emphasis added).[2]

This request is divided in two parts. First, we request documents pertaining to MSP's use of facial recognition technology as a law enforcement tool. Second, we request documents pertaining to MSP's relationship with public entities as it relates to this technology.

Part I – MSP use of facial recognition technology as a law enforcement tool

ACLUM requests the following records created on or after January 1, 2015, unless another time period is otherwise specified in the specific request:

[1] In this letter, "**facial recognition**" means the automated or semi-automated process by which a person is identified or attempted to be identified based on the characteristics of his or her face.
[2] See Digital rights group: Ban government use of facial-recognition technology, Marie Szaniszlo, July 9, 2019, available at https://www.bostonherald.com/2019/07/09/digital-rights-group-ban-government-use-of-facial-recognition-technology/

1. Records showing what arrests, for what alleged crimes, and on which dates arrests were made in whole or in part based on or as a result of the assistance of facial recognition technology, along with records revealing what role facial recognition technology played in each case.
2. All records indicating, reflecting, or enabling determination of the disposition or current status of any case referenced in response to request no. 1, including records indicating which arrests resulted in convictions or plea agreements, and the sentences or penalties imposed; which cases are still pending before the court; and which were dismissed or resulted in not guilty findings.
3. All records reflecting, containing, discussing, or revealing any training provided to members of MSP with regard to legal issues related to the use of facal recognition technology and/or searches, including issues related to discovery obligations to criminal defendants identified in whole or in part through the use of facial recognition technology.
4. Manuals, policies, procedures, and practices governing the following:
    a. Procedures for identifying "unknown suspects in specific crimes" and how they are used "in concert with other investigative tactics," per Mr. Procopio's statement;
    b. Procedures for using, deleting, or retaining photos of subjects to be identified;
    c. Materials identifying any sources of such photos, such as mobile devices, body cameras, surveillance videos, identification photos, or arrest photos;
    d. 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;
    e. Procedures the agency follows after a positive match, such as requiring independent or in-person verification; and
    a. Permitted uses of the information created from a positive match.
5. All documents pertaining to MSP's purchase of any facial recognition technology, including purchase orders, RFPs, licensing agreements, invoices, and contracts (including non-disclosure agreements).
6. All audits, annual reports, and other administrative reports referencing facial recognition technology and/or searches. This request includes all records containing or pertaining to:
    a. Statistics and other reports that reflect how frequently facial recognition is used;
    b. Statistics and other reports that show the evolution of facial recognition use over time;
    c. Statistics and other reports that show the number of times MSP misidentified an individual using facial recognition;
    d. Statistics and other reports that show the number of criminal offenses that ended in convictions and in which MSP used facial recognition technology.

7. All training materials, including but not limited to PowerPoint presentations, used to train officials in the use of face recognition tools or capabilities.

Part II – MSP's relationship with public or private entities relating to facial recognition tech

ACLUM requests the following records:

1. All policies and procedures governing how the MSP Enforcement Services Unit and/or Compliance Unit perform facial recognition searches of the driver's license database held by the Registry of Motor Vehicles.
2. All contracts or MOUs with local, state, and federal agencies referencing or pertaining to facial recognition technology. This request includes but is not limited to all such agreements with the Massachusetts Registry of Motor Vehicles, Department of Transportation, Federal Bureau of Investigation (FBI) and/or U.S. Immigration and Customs Enforcement.
3. All communications between or among members of MSP Enforcement Services Unit and/or Compliance Unit and employees of the FBI pertaining to facial recognition searches or capabilities, including emails describing or referencing the Registry of Motor Vehicles Enforcement Services Unit.
4. All communications between or among members of the MSP Enforcement Services Unit and/or Compliance Unit and the Registry of Motor Vehicles Enforcement Services Unit, including but not limited to emails, policy memos, and official forms, between February 16, 2017 and the present.

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 deciding which portions to copy. We would 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. In addition, 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 x346 or kcrockford@aclum.org.

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

Sincerely,

Kade Crockford
Director
Technology for Liberty Program
ACLU of Massachusetts