ACLU
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Massachusetts

April 11, 2019

Sent via email

James F. Walsh,
Executive Director
Massachusetts Sheriffs Association
132 Portland St., 2nd Floor,
Boston MA 02114
james.f.walsh@massmail.state.ma.us

Dear Mr. Walsh,

This is a request pursuant to Massachusetts Public Records Law[1] ("public records law") made on behalf of the American Civil Liberties Union Foundation of Massachusetts ("ACLU").

The ACLU seeks records[2] relating to the Massachusetts Sheriffs Association ("MSA") plans for, acquisition of, and/or use of facial-recognition[3] technology, including but not limited to products and services like Amazon Rekognition, Microsoft Face API, or NEC NeoFace.

Records requested

The ACLU requests all such records created on or after January 1, 2016, including but not limited to:

1. Communications between any representative of the MSA and any representative of any vendor offering any facial-recognition product or service.
2. Internal communications between representatives or employees of the MSA relating to any facial-recognition product or service.
3. Documents relating to the purchase 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 e-mails, 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;

[1] See generally G.L. ch. 66.
[2] Throughout this request, the term "**records**" includes but is not limited to any paper or electronic information, reports, evaluations, memoranda, correspondence, letters, emails, charts, graphs, flyers, meeting agendas, meeting minutes, training materials, diagrams, forms, DVDs, tapes, CDs, notes, or other similar materials.
[3] 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.

   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.
7. Records relating 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 MSA and elected leaders or county officials.
9. Records relating to any image database used for facial-recognition purposes.
10. Records relating to any iris image database used for biometric surveillance or identification purposes.
11. Records relating to the sharing of inmate photos (also known as "mugshots"), including but not limited to records relating to the sharing of inmate photos via a system called "Coplink."

In July 2018, I submitted to the MSA a very similar public records request on behalf of the ACLU (attached as Exhibit A).

On September 7, 2018, you sent me an email with the association's response to my request (attached as Exhibit B). The answer does not provide any record. Instead, it states: "this office does not have any information on this topic." Your response further states that "[t]he Massachusetts Sheriffs' Association has not been involved in any communications with potential vendors, procurement efforts, training or policy development related to facial-recognition technology" and that "[t]his agency is not, nor has been, involved in any planning, acquisition or use of facial-recognition technology."

As the attached email correspondence shows, on February 19, 2019, I voiced my concerns to you about your response, asking for further clarification. Specifically, I stated that you have been "quoted by the press on many occasions going back nearly ten years about MSA's use of facial recognition systems, including the construction of a statewide image database for facial recognition search purposes." You did not answer. On February 25, 2019, I emailed you back to check in on the status of my request. Again, you did not answer.

Pursuant to the public records law and its regulations,[4] after a response to a request is submitted by the Record Access Officer ("RAO"),[5] those "petitions for appeal of a response by a records access officer must be made within 90 calendar days of the date of the response."[6]

[4] See generally 950 Code Mass. Regs. ch. 32.
[5] See generally G.L. ch. 66, § 10; 950 Code Mass. Regs. § 32.06.
[6] G.L. ch. 66, § 10A.

Here, because the time for filing in this case expired,[7] I am submitting this new public records request.

The primary purpose of the public records law is to give the public broad access to governmental records.[8] As I shall demonstrate in the following paragraphs, I have good reason to believe your response to my records request was incomplete and inaccurate. The claims I made in the follow-up emails I sent to you are not without factual basis.

Specifically, information in the public domain leads me to believe the MSA is in fact in possession of records regarding facial recognition technology. As a result, I am filing this public records request again, in the hopes that you will comply with state law and provide me with the records I am requesting.

ACLU's public record requests from 2010

As I mentioned in the attached correspondence, back in 2010, my colleague Laura Rotolo sent two public record requests to the MSA.

We sent the first public records request on June 17, 2010.[9] We sought "documents relating to the recently-unveiled MORIS system" because in the previous days the Brockton Police Department had announced "that it would be implementing a "first-of-its-kind in the world" mobile wireless multi-modal biometric offender recognition and information system (MORIS), funded by a grant from the Plymouth County Sheriffs Office and the Massachusetts Sheriffs Association."

In response to that request, your office sent numerous documents to the ACLU on July 12, 2020.[10] You answered the points of our request and generally provided information and records about the core of our inquiry.

We sent our second public records request on October 21, 2010.[11] We sent that request as a follow-up to your first answer. We were "specifically interested in learning more about the facial recognition system that is currently in place and being expanded to other counties."

Your office responded to that second request on December 1, 2010, again providing responsive documents.[12]

I invite you to look at our requests and your answers, which are posted for the public to view on the ACLU's Data for Justice Project website.

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[7] See G.L. ch. 66, § 10A.
[8] See People for the Ethical Treatment of Animals, Inc. v. Dep't of Agric. Res., 477 Mass. 280, 281 (2017) (explaining the purpose of the statute codified in G.L ch. 66, § 10 that sets forth the conditions under which government entities, through their records custodians, must provide access to public records).
[9] See https://data.aclum.org/wp-content/uploads/2018/06/FR_aclu_MAsheriffrequest.pdf
[10] See https://data.aclum.org/wp-content/uploads/2018/06/FR_agency_MAsheriffresponse.pdf
[11] See https://data.aclum.org/wp-content/uploads/2018/06/FR_aclu_MAsheriffrequest2.pdf
[12] See https://data.aclum.org/wp-content/uploads/2018/06/FR_agency_MSAresponse2.pdf

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Among the responsive records, you sent emails,[13] an MSA Facial Recognition Project implementation agenda,[14] procurement and grant documents,[15] and an Annual Maintenance Agreement and Terms and Conditions of a contract with BI2 Technologies.[16]

Notwithstanding all these records, last September you stated in writing that the MSA: (i) "has not been involved in any communications with potential vendors, procurement efforts, training or policy development related to facial-recognition technology", and (ii) "is not, nor has been, involved in any planning, acquisition or use of facial-recognition technology."

The aforementioned statement appears to be untrue. Documents provided by the MSA to the ACLU demonstrate its inaccuracy. In the spirit of mutual respect, we are therefore submitting our request again, with slight modifications. Please provide the requested records.

Because this request involves a matter of public concern and because it is made on behalf of a nonprofit organization, we ask that you waive any fees. ACLU 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.

Should you determine that some portion of the documents requested are exempt from disclosure, 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 any questions concerning this appeal, you can contact me at (617) 482-3170 x346 or kcrockford@aclum.org.

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

Sincerely,

Kade Crockford
Director
Technology for Liberty Program
ACLU of Massachusetts

[13] See https://data.aclum.org/wp-content/uploads/2018/06/Scan-f002.pdf
[14] See https://data.aclum.org/wp-content/uploads/2018/06/Scan-f0011-4.pdf
[15] See https://data.aclum.org/wp-content/uploads/2018/06/FR_attach_grantinfo.pdf
[16] See https://data.aclum.org/wp-content/uploads/2018/06/FR_attach_plymouthbi2contract.pdf