ACLU
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Massachusetts

March 25, 2019

Sent via email

Supervisor of Public Records
Public Records Division
McCormack Building
One Ashburton Place, Room 1719
Boston, MA 02108

To Whom It May Concern:

This is an appeal under the Public Records Law, G.L. c. 66, §10A, made on behalf of the American Civil Liberties Union Foundation of Massachusetts ("ACLU").

On March 7, 2019, I submitted a public records request on behalf of the ACLU (attached as Exhibit A) to the Massachusetts Bay Transit Authority Police Department asking for the following records:

1. Communications between any representative of the Massachusetts Bay Transit Authority Police Department and any representative of any vendor offering any facial-recognition product or service.
2. Internal communications between representatives or employees of the Massachusetts Bay Transit Authority Police Department relating to any facial-recognition product or service.
3. Documents relating to the Massachusetts Bay Transit Authority Police Department 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 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;
    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.

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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 Bay Transit Authority Police Department.
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 Massachusetts Bay Transit Authority Police Department and elected leaders or county officials.

Massachusetts General Laws establish that "[a] custodian of a public record shall, within ten days following receipt of a request for inspection or copy of a public record, comply with such request." G.L. c. 66, §10(b). In turn, Chapter 66, Section 10A establishes that "[i]f an agency or municipality fails to comply with a requirement of section 10 or issues a response the requestor believes in violation of section 10, the person who submitted the initial request for public records may petition the supervisor of records for a determination as to whether a violation has occurred." After this appeal is filed, "[t]he supervisor of records shall issue a written determination regarding any petition submitted (…) not later than 10 business days following receipt of the petition by the supervisor of records." Finally, "[u]pon a determination by the supervisor of records that a violation has occurred the supervisor of records shall order timely and appropriate relief."

In the instant case, the Massachusetts Bay Transit Authority Police Department did not comply with my request. I never received any written response to my request. I therefore respectfully request your office to find that there was a violation of the applicable law and so direct the Massachusetts Bay Transit Authority Police Department to follow the law and respond to my request.

If you have any questions with respect to 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