



June 10, 2019

Sent via email

Primary Records Access Officer
Patricia M. Scanlan
Executive Office of Health and Human Services
One Ashburton Place, 11th Floor
Boston, MA 02108
ehs.rao@state.ma.us

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

Dear Ms. Scanlan,

This is a request under the Massachusetts Public Records Law, G.L. c. 66, § 10, made on behalf of the American Civil Liberties Union Foundation of Massachusetts (“ACLU”).

The ACLU seeks records¹ relating to the Executive Office of Health and Human Services (“EOHHS”) plans for, acquisition of, and/or use of facial recognition² technology.

The request is divided into two parts. In the first part, we request all documents pertaining to the EOHHS’s relationship with local, state, and federal agencies. In the second part, we request all the documents pertaining to the EOHHS’s relationship with private companies.

Part I – EOHSS relationship with local, state, or federal agencies

The ACLU requests all such records created on or after January 1, 2006, including but not limited to:

1. All contracts or MOUs with local, state, and federal agencies referencing or pertaining to facial recognition technology, including but not limited to all EOHHS agreements with the Massachusetts Registry of Motor Vehicles and the Department of Transportation.

¹ 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.

² 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. All audits, annual reports, and other administrative reports referencing facial recognition technology or searches. This request includes but is not limited to 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 the EOHSS misidentified an individual using facial recognition;
3. All training materials, including but not limited to PowerPoint presentations, used to train officials in the use of face recognition tools or capabilities.
4. Any document containing the EOHSS's legal analysis for any use of face recognition technology.
5. Any internal policy referencing or pertaining to the use of face recognition technology or searches, including policies governing how the EOHSS performs facial recognition searches of the drivers license database held by the Registry of Motor Vehicles.
6. All communications between or among members of the EOHSS and employees of the Registry of Motor Vehicles pertaining to facial recognition searches or capabilities.
7. All communications between or among members of the EOHSS and the Registry of Motor Vehicles, including but not limited to emails, policy memos, and official forms.

Part II – EOHSS relationship with private companies

The ACLU requests all such records created on or after January 1, 2016, that show EOHSS relationship with private companies that relate to facial recognition. These private companies include but are not limited to MORPHOTRAK LLC, MORPHOTRUST USA, MORPHOTRAK, INC., MORPHOTRUST USA, LLC., MORPHOTRUST USA, INC., MORPHO USA, INC. These records include but are not limited to:

1. Communications between any representative of the EOHSS and any representative of any private vendor or company offering any facial-recognition product or service.
2. Internal communications between representatives or employees of the EOHSS relating to any facial-recognition product or service.
3. Documents relating to the EOHSS 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;
 - 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 EOHSS.
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 EOHSS and elected leaders or county officials.

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 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,

A handwritten signature in black ink, appearing to read 'Kade Crockford'.

Kade Crockford
Director
Technology for Liberty Program
ACLU of Massachusetts