The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

March 25, 2019
SPR19/0622

Ms. Kade Crockford
ACLU of Massachusetts
211 Congress Street
Boston, MA 02110

Dear Ms. Kade Crockford:

I have received your letter appealing the response of the Norfolk County Sheriff's Office to your request for records.

I have directed a member of my staff, MacKenzie Nekton, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

Rebecca Murray

Rebecca S. Murray
Supervisor of Records

cc: Kirsten Hughes

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 Norfolk County Sheriff's Office asking for the following records:

1. Communications between any representative of the Norfolk County Sheriff's Office and any representative of any vendor offering any facial-recognition product or service.
2. Internal communications between representatives or employees of the Norfolk County Sheriff's Office relating to any facial-recognition product or service.
3. Documents relating to the Norfolk County Sheriff's Office 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.
    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.

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6. Training materials related to any facial-recognition product or service by employees of the Norfolk County Sheriff's Office
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 Norfolk County Sheriff's Office 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 Norfolk County Sheriff's Office 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 Norfolk County Sheriff's Office 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

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EXHIBIT A

March 7, 2019

Sent via U.S. Mail

Sheriff Michael Bellotti
Norfolk County Sheriff's Office
200 West Street
P.O. Box 149
Dedham, MA 02027

Re: Public records request related to the use of facial-recognition products or services

Dear Sheriff Bellotti,

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 records[1] relating to the Norfolk County Sheriff's Office's plans for, acquisition of, and/or use of facial-recognition[2] 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 Norfolk County Sheriff's Office and any representative of any vendor offering any facial-recognition product or service.
2. Internal communications between representatives or employees of the Norfolk County Sheriff's Office relating to any facial-recognition product or service.
3. Documents relating to the Norfolk County Sheriff's Office's 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.

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[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.

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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 Norfolk County Sheriff's Office.
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 Norfolk County Sheriff's Office 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.

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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