



March 28, 2019

Sent via email

Lieutenant Joseph Casey
Professional Services
Medford Police Department
100 Main Street
Medford, MA 02155

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

Dear Lieutenant Casey,

I am writing in response to the letter (attached as Exhibit A) that I received as an answer to the public records request submitted on March 7, 2019 (attached as Exhibit B). As I explain in the following paragraphs, that letter is unresponsive and unsatisfactory under current legal standards.

First, pursuant to Massachusetts Public Records Law¹ (“public records law”) and its regulations,² the Record Access Officer (“RAO”) must either provide or deny access to the requested records.³ Here, you are the designated RAO.⁴ In your answer, you only considered points 1 and 2 of my request. You did not refer to the other portions of the original request, nor provide records responsive to them.

Second, the public records law states that each person has a right of access to public records.⁵ The law broadly defines “public records” to include “all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee” of any Massachusetts governmental entity.⁶ The general rule is that all public records are public.⁷ The law contains certain limited exemptions that provide the basis for withholding records completely or in part.⁸ However, under the public records law, these exemptions must be strictly and narrowly

¹ See generally G.L. ch. 66.

² See generally 950 Code Mass. Regs. ch. 32.

³ G.L. ch. 66, § 10; 950 Code Mass. Regs. § 32.06.

⁴ See “Central Records”, Medford Police Department, available at <http://medfordpolice.com/services/central-records/>.

⁵ G.L. ch. 66, § 10(a).

⁶ G.L. ch.4, § 7(26).

⁷ *Globe Newspaper Co. v. Police Com'r of Bos.*, 419 Mass. 852, 857 (1995) (interpreting G.L. ch. 66, § 10(c)).

⁸ See generally G.L. ch. 4, §7(26) (a) – (u).

construed.⁹ Statutory exemptions are not blanket in nature.¹⁰ The fact “that some exempt material may be found in a document or report of an investigatory character does not justify cloture as to all of it.”¹¹ It follows that where exempt information is mixed with non-exempt information, the non-exempt portions are subject to disclosure once the exempt portions are redacted.¹²

Third, under the public records law, any denial of requested records must detail the specific basis for withholding any specific record or portion thereof. Among other elements, the notice of denial shall include:

- “4. identification of any records, categories of records or portions of records that the agency or municipality intends to withhold;
5. identification of any specific exemption to the Public Records Law or common law privilege that applies to the withhold record or records;
6. identification of the applicability of each cited exemption or privilege to each portion of the withheld record or records.”¹³

Here, you provided an answer that does not comply with the aforementioned provisions of the public records law and its regulations.

First, your letter does not correctly identify the records you intend to withhold. Instead, you vaguely mention that there are “exempt emails,” without providing any specifics as to their number, features, or nature.

Second, your letter does not mention the specific exemption that would apply to withhold the supposedly “exempt emails,” nor does your letter identify how an exemption would apply to them. Instead, your letter draws a discretionary line between “exempt” and “non-exempt” emails. This is insufficient under the public records law. Your letter does not reference a specific exemption under the public records law to justify why any “exempt emails” or portions thereof ought to be lawfully withheld. Instead, your letter asserts that the “exempt emails” are “from the Commonwealth Fusion Center regarding Coplink and CrimeNtel products and or services,” and that they “contain a law enforcement confidentiality notice” that prevents their distribution “without Commonwealth Fusion Center authorization.” But the public records law does not authorize records holders to withhold public records from requestors on such a basis. The public records law provides a clear mandate to identify one of the available legal exemptions in any case in which a records holder desires to withhold records or portions thereof from a requester.

⁹ Attorney Gen. v. Assistant Com'r of Real Prop. Dep't of Bos., 380 Mass. 623, 625 (1980) (holding that given the statutory presumption in favor of disclosure in G.L. ch. 4, §7(26) exemptions must be strictly construed)

¹⁰ See Reinstein v. Police Com'r of Bos., 378 Mass. 281, 290 (1979) (explaining that there is no blanket exemption provided for records kept by police departments and that the exemption for investigatory materials invites a case-by-case consideration).

¹¹ Id.

¹² Id., at 287–88 (holding that the June 1978 amendments settled the issue and made clear that the right to access extended to any non-exempt segregable portion of a public record)

¹³ 950 Code Mass. Regs. § 32.06.

For all the reasons mentioned above, the response you sent is incomplete and does not comply with state law. I therefore respectfully request that your office (1) promptly answers the unanswered portion of my request and (2) clarifies the issues I raised with respect to the answered portion. Please provide the ACLU with all the public records within your custody. If you believe that your office should deny access to some of them, I request you provide the reasons in a detailed notice that complies with the law. Once we have this information, we will make an informed decision as to how to proceed with the emails, or any other records, that your office identifies.

Please reply by contacting Kade Crockford 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 blue ink, appearing to read 'Kade Crockford'.

Kade Crockford
Director
Technology for Liberty Program
ACLU of Massachusetts

Cc: Supervisor of Public Records