



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

April 4, 2019
SPR19/0752

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

Dear Ms. Crockford:

I have received your letter appealing the response of the Medford Police Department 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,

A handwritten signature in cursive script that reads "Rebecca Murray".

Rebecca S. Murray
Supervisor of Records

cc: Lt. Joseph W. Casey

Rastellini, Patricia (SEC)

From: Rastellini, Patricia (SEC)
Sent: Monday, April 08, 2019 3:15 PM
To: 'Kade Crockford'; Mackenzie Nekton; jcasey@medfordpolice.com
Cc: SEC-DL-PREWEB
Subject: RE: Public Records Division Determination SPR19/0624

Good afternoon Ms. Crockford,

We will open a new appeal on your behalf. You'll receive an acknowledgement letter with SPR number shortly.

Regards,

Patricia Rastellini, Office Manager

From: Kade Crockford [<mailto:kcrockford@aclum.org>]
Sent: Thursday, April 04, 2019 3:51 PM
To: Mackenzie Nekton; jcasey@medfordpolice.com
Cc: SEC-DL-PREWEB
Subject: Re: Public Records Division Determination SPR19/0624

Hello,

We were not satisfied with the response from the Medford PD's response to our request, and we sent them a subsequent letter.

Thanks,
Kade

Kade Crockford

Director, Technology for Liberty Program
American Civil Liberties Union of Massachusetts
211 Congress Street, Boston, MA 02110
617.482.3170 x346 | kcrockford@aclum.org
aclum.org | privacysos.org/blog

NSA: I'm a US person.

From: Nekton, Mackenzie (SEC) <mackenzie.nekton@state.ma.us>
Sent: Thursday, April 4, 2019 2:29:32 PM
To: jcasey@medfordpolice.com
Cc: SEC-DL-PREWEB; Kade Crockford
Subject: Public Records Division Determination SPR19/0624

Hello,

Please be aware, the Supervisor of Records has issued a determination relating to an appeal in which you were involved. This determination is attached, and available online at:

<http://www.sec.state.ma.us/AppealsWeb/AppealsStatus.aspx>.

If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.

Best,

MacKenzie Nekton

Office of the Secretary of the Commonwealth

Public Records Division

One Ashburton Place, Room 1719

Boston, MA 02108

617-727-2832

Stewart, Gregory (SEC)

From: Kade Crockford <kcrockford@aclum.org>
Sent: Thursday, April 04, 2019 3:51 PM
To: Mackenzie Nekton; jcasey@medfordpolice.com
Cc: SEC-DL-PREWEB
Subject: Re: Public Records Division Determination SPR19/0624

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If you have any questions, please contact the Public Records Division at 617-727-2832 or pre@sec.state.ma.us.

Best,

MacKenzie Nekton

Office of the Secretary of the Commonwealth

Public Records Division

One Ashburton Place, Room 1719

Boston, MA 02108

617-727-2832

Stewart, Gregory (SEC)

From: Emiliano Falcon <efalcon@aclum.org>
Sent: Thursday, March 28, 2019 2:37 PM
To: jcasey@medfordpolice.com
Cc: SEC-DL-PREWEB; Kade Crockford
Subject: Re: Public records request related to the use of facial-recognition products or services
Attachments: Letter to Medford PD 3-28.pdf; Exhibit B - Medford 3-28.pdf; Exhibit A - Medford 3-28.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Good afternoon,

Please see attached.

Best regards,

Emiliano

Emiliano Falcon

Pronouns: he, him, his

Technology and Civil Liberties Policy Counsel
Technology for Liberty Program
American Civil Liberties Union of Massachusetts
211 Congress Street, Boston, MA 02110
617.482.3170 x402 | efalcon@aclum.org

[Website](#) | [Twitter](#) | [Facebook](#) | [Instagram](#) | [Youtube](#)

ACLU
Massachusetts



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 withheld 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,



Kade Crockford
Director
Technology for Liberty Program
ACLU of Massachusetts

Cc: Supervisor of Public Records



EXHIBIT B

March 7, 2019

Sent via U.S. Mail

Public Records Officer
Medford Police Department
100 Main Street
Medford, MA 02155

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

To whom it may concern:

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 Medford Police Department's plans for, acquisition of, and/or use of facial-recognition² 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 Medford Police Department and any representative of any vendor offering any facial-recognition product or service.
2. Internal communications between representatives or employees of the Medford Police Department relating to any facial-recognition product or service.
3. Documents relating to the Medford Police Department'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.

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.

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 Medford 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 Medford Police Department 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 dark ink, appearing to be "Kade Crockford". The signature is written in a cursive, stylized manner.

Kade Crockford
Director
Technology for Liberty Program
ACLU of Massachusetts



EXHIBIT A

MEDFORD POLICE

100 Main Street
Medford, MA 02155
Emergency:
781.395.1212
Business: 781.391.6404
Fax: 781.395.5177

Lieutenant
Joseph Casey
Professional Services

To: Kade Crockford, Director Technology for Liberty Program ACLU of Massachusetts
From: Lieutenant Joseph Casey
Re: Public records request related to the use of facial-recognition products or services

SPR19/0624

Date: March 27, 2019

As to your request the Department has identified 255 non exempt emails in regards to facial recognition products and or services.

In regards to exempt emails from the Commonwealth Fusion Center regarding Coplink and CrimeNtel products and or services, the emails contain a law enforcement confidentiality notice, not to be distributed without Commonwealth Fusion Center authorization, and are not included with the above emails.

Please respond as to how you wish to proceed with the non exempt records as noted above.

Thank you.

Lieutenant Joseph Casey
Medford Police Department

Cc Commonwealth of Massachusetts Public records Division



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Rebecca S. Murray
Supervisor of Records

April 4, 2019
SPR19/0624

Lt. Joseph W. Casey
City of Medford Police Department
100 Main Street
Medford, MA 02155

Dear Lt. Casey:

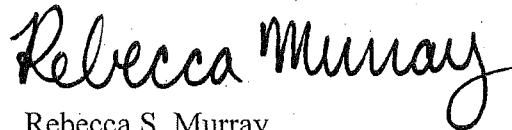
I have received the petition of Ms. Kade Crawford appealing the nonresponse of the City of Medford Police Department (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Ms. Crawford requested:

- “1. Communications between any representative of the Medford Police Department and any representative of any vendor offering any facial-recognition product or service.
2. Internal communications between representatives or employees of the Medford Police Department relating to any facial-recognition product or service.
3. Documents relating to the Medford 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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 - e. Permitted uses of the information created from a positive match.

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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 Medford Police Department and elected leaders or county officials.”

Subsequent to the intervention by a member of the Public Records Division, I learned that the Department had provided Ms. Crockford a response to her request. Accordingly, I will now consider this administrative appeal closed. Ms. Crockford may appeal the substantive nature of the Office’s response within ninety days. See 950 C.M.R. 32.08(1).

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive style with a large, stylized "R" and "M".

Rebecca S. Murray
Supervisor of Records

cc: Kade Crockford