



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

Rebecca S. Murray
Supervisor of Records

April 17, 2019
SPR19/0752

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

Dear Lt. Casey:

I have received the petition of Ms. Kade Crockford appealing the response 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. Crockford 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.
 - 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.”

Prior Appeal

The requested records were the subject of a previous appeal. See SPR19/0624 Determination of the Supervisor of Records (April 4, 2019). Ms. Crockford appealed the non-response of the Department. Subsequently, I found that the Department provided a response to Ms. Crockford.

The Department’s response was provided on March 27th and notified Ms. Crockford that the Department had “identified 255 nonexempt emails in regards to facial recognition products or services” that they would provide. In addition, the Department noted that there were additional responsive emails “from the Commonwealth Fusion Center regarding Coplink and CrimeNtel products and or services” that contained “a law enforcement confidentiality notice, not to be distributed without Commonwealth Fusion Center authorization.” The Department declined to provide these emails.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). “Public records” is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

Under the Public Records Law, the Department is not required to create a record in response to a public records request. See G. L. c. 66, § 6A(d). The duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii).

Current Appeal

Ms. Crockford petitioned this office, unsatisfied with the Department's March 27th response. Specifically, she claimed that Lt. Casey's response did not "mention the specific exemption that would apply to withhold the supposedly 'exempt emails,' nor [did the letter] identify how an exemption would apply to them." This appeal, SPR19/0752 was opened in response.

Ms. Crockford requested that the Department "promptly answers the unanswered portion of [her] request and ... clarifies the issues [she] raised with respect to the answered portion" by providing "the ACLU with all the public records within [the Department's] custody" or clarifying the reasons for withholding exempt records "in a detailed notice that complies with the law."

Subsequent to the intervention by a staff member of the Public Records Division, I learned that a representative from the Department is working to compile the requested records and intends on providing Ms. Crockford with additional responsive records. Specifically, the Department stated that they are "in the process of identifying and reviewing emails received by the department [from] the Commonwealth Fusion Center / COP LINK regarding facial recognition services and products" and that "as soon as that process has been completed [they] will contact [Ms. Crockford] for dissemination."

The Department's response did not contain the specificity required in a denial of access to public records. See G. L. c. 66, § 10(b)(iv). Accordingly, I find that Department must clarify what, if any, exemption(s) the records fall under and how that exemption applies in this specific case. I also encourage the Department and Ms. Crockford to communicate to ensure that all portions of the request are addressed.

Order

Accordingly, the Department is ordered to provide Ms. Crockford with a response in a manner consistent with this order, the Public Records Law, and it's Regulations without delay. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at pre@sec.state.ma.us.

Sincerely,



Rebecca S. Murray
Supervisor of Records

cc: Kade Crockford