



EXHIBIT A

April 3, 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 Massachusetts Public Records Law¹ (“public records law”) made on behalf of the American Civil Liberties Union Foundation of Massachusetts (“ACLU”).

Pursuant to the public records law and its regulations,² after a request is submitted to a governmental agency it is the duty of the designated Record Access Officer (“RAO”) to either provide or deny access to the requested records.³ When an agency “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.”⁴ 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.”⁵ 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.”⁶

On March 7, 2019, I submitted a public records request on behalf of the ACLU (attached as Exhibit A) to the Springfield Police Department (“SPD”) asking for the following records:

1. Communications between any representative of the SPD and any representative of any vendor offering any facial-recognition product or service.
2. Internal communications between representatives or employees of the SPD relating to any facial-recognition product or service.
3. Documents relating to the 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.

¹ See generally G.L. ch. 66.

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

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

⁴ G.L. ch. 66, § 10A.

⁵ *Id.*

⁶ *Id.*

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 SPD.
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 SPD and elected leaders or county officials.

The SPD failed to answer this original request in timely manner. Hence, on March 25, and pursuant to the public records law, I submitted a petition to your office (attached as Exhibit B). I requested you to find that there had been a violation of the applicable law and to direct the SPD to answer my request.

On March 26, Andrea L. Stone, who is Springfield's Public Records Coordinator, sent me an email with the city's response to my request (attached as Exhibit C). The response does not provide any record. Instead, it attaches a letter directed to me. Anthony I. Wilson, Esq., who is Springfield City Clerk and RAO,⁷ signed the letter. The letter states that "[p]ersonnel in the Police Department have advised that there are no records that are responsive to [my] request" and that "[t]he Springfield Police Department does not use facial recognition software, products or services."

I am not satisfied with this answer. The primary purpose of the public records law is to give the public broad access to governmental records.⁸ As I shall demonstrate in the following paragraphs, I have good reason to believe the RAO's response to my records request is incomplete and inaccurate. Specifically, information in the public domain leads me to believe the SPD is in fact in possession of records regarding facial recognition technology.

The Springfield Police "Real-Time Analysis Center" and BriefCam technology

⁷ See City Clerk's Office, available at <https://www.springfield-ma.gov/cos/index.php?id=clerk>.

⁸ See *People for the Ethical Treatment of Animals, Inc. v. Dep't of Agric. Res.*, 477 Mass. 280, 281 (2017) (explaining the purpose of the statute codified in G.L. ch. 66, § 10 that sets forth the conditions under which government entities, through their records custodians, must provide access to public records).

It is public knowledge that the SPD has a “Real-Time Analysis Center” (“Center”).⁹ The Center links “the feeds of 28 video cameras with internal and external views of seven Pride stores within the city” as well as “some 250 video cameras with internal and external views of Union Station.”¹⁰ According to reports, the Center “allows analysts to quickly review footage from traffic cameras at The X or any of several dozen locations around the city.”¹¹

According to its corporate website, BriefCam¹² is the primary software provider powering the SPD Center. BriefCam is a law enforcement vendor that provides “solutions for rapid video review and search, real-time alerting and quantitative video insights.”¹³

In June last year, the *Washington Post* reported that this company was using facial recognition software.¹⁴ The newspaper even mentions the city of Springfield, MA, and its plan to install “1,000 cameras at its roughly 60 public schools.”¹⁵ Shortly after, on November 14, the company announced BriefCam v5.3, the latest version of its software.¹⁶ This announcement confirmed the veracity of the *Post*’s reporting. BriefCam technology provides an “innovative and extensible video content analytics platform” that performs “***highly accurate face recognition***” [emphasis mine] and enhances the software “real-time alerting, search and quantitative analytics capabilities,”¹⁷ the company’s website states.

As established above, the SPD uses BriefCam software.¹⁸ Therefore, it is highly likely that one or both of the following things is true: SPD is either using facial recognition technology or is at least aware of the capabilities of the software the Department is using, and has made a conscious choice not to use the facial

⁹ See Springfield, Mass., Unveils Real-Time Crime Analysis Center, Security Magazine (May 4, 2018), <https://www.securitymagazine.com/articles/88986-springfield-mass-unveils-real-time-crime-analysis-center> and Paul Tuthill, Springfield Police Show Off New Crime Analysis Unit, WAMC Northeast Report (Apr. 30, 2018), <https://www.wamc.org/post/springfield-police-show-new-crime-analysis-unit>.

¹⁰ See Springfield police to dramatically expand video surveillance capabilities, MassLive (Apr. 30, 2018), https://www.masslive.com/news/2018/04/springfield_police_to_dramatic.html.

¹¹ See Springfield Police Real-Time Analysis Center, credited in social media threat arrests, brings digital solutions to crime, MassLive (Apr. 5, 2018), https://www.masslive.com/news/2018/04/springfield_police_real-time_a.html

¹² See BriefCam, Springfield Police Real-Time Analysis Center, credited in social media threat arrests, brings digital solutions to crime (Apr. 6, 2018), <https://www.briefcam.com/company/news/springfield-police-real-time-analysis-center-credited-social-media-threat-arrests-brings-digital-solutions-crime/>

¹³ See BriefCam, The Company, <https://www.briefcam.com/company/about/> (last visited Mar. 28, 2019)

¹⁴ See Drew Harwell, Unproven facial-recognition companies target schools, promising an end to shootings, The Washington Post (Jun. 7, 2018), https://www.washingtonpost.com/business/economy/unproven-facial-recognition-companies-target-schools-promising-an-end-to-shootings/2018/06/07/1e9e6d52-68db-11e8-9e38-24e693b38637_story.html?utm_term=.fdf55bdc8102.

¹⁵ *Id.*

¹⁶ BriefCam, BriefCam Announces Real-Time Face Recognition for Enhanced Situational Awareness (Nov. 14, 2018), <https://www.briefcam.com/company/press-releases/briefcam-announces-real-time-face-recognition-for-enhanced-situational-awareness/>.

¹⁷ BriefCam, BriefCam Announces Real-Time Face Recognition for Enhanced Situational Awareness (Nov. 14, 2018), <https://www.briefcam.com/company/press-releases/briefcam-announces-real-time-face-recognition-for-enhanced-situational-awareness/>.

¹⁸ See BriefCam, BriefCam v5.3 Datasheet, https://cdn2.hubspot.net/hubfs/3916087/Resources/BriefCam_v5.3_datasheet_FINAL.pdf (last visited Mar. 28, 2019).



recognition capabilities BriefCam offers. It is safe to assume that BriefCam, as a vendor, regularly provides information about its products to its customers and potential customers. These communications and marketing materials are, if they exist, public records. Likewise, any records referencing or pertaining to BriefCam's ability to perform facial recognition are public records, and should be sent to the ACLU per my March 7, 2019 request.

For all the reasons mentioned above, I have reason to believe the response the RAO sent is inaccurate and incomplete. I therefore respectfully request that your office (1) finds that there was a violation of the applicable law because the RAO and the SPD withheld documents with no valid reason or without referencing any of the legal exemptions and (2) orders as appropriate relief that the SPD and the RAO follow state law and provide the ACLU with all the records in its possession that relate to facial recognition.

If you have any questions concerning 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,

A handwritten signature in black ink, appearing to read "Kade Crockford". The signature is stylized and somewhat cursive.

Kade Crockford
Director
Technology for Liberty Program
ACLU of Massachusetts