

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

	)	
AMERICAN CIVIL LIBERTIES UNION,	)	
and AMERICAN CIVIL LIBERTIES	)	
UNION OF MASSACHUSETTS,	)	
	)	
Plaintiffs,	)	
	)	C.A. No. _____
v.	)	
	)	
UNITED STATES DEPARTMENT OF	)	
JUSTICE, FEDERAL BUREAU OF	)	
INVESTIGATION, and DRUG	)	
ENFORCEMENT ADMINISTRATION,	)	
	)	
Defendants.	)	
	)	

**COMPLAINT**

**INTRODUCTION**

1. This is an action for the production of public records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

2. In January 2019, the American Civil Liberties Union and the American Civil Liberties Union of Massachusetts (collectively, the “Plaintiffs”) submitted a FOIA request (the “Request”) to the U.S. Department of Justice, Federal Bureau of Investigation, and the Drug Enforcement Administration (collectively, the “Defendants”). The Request sought policies, contracts, and other records relating to the Defendants’ use of face recognition programs and other biometric identification and tracking technology.

3. To date, none of the Defendants has released any record responsive to the Request.

4. Production of these records is important to assist the public in understanding the government’s use of highly invasive biometric identification and tracking technologies. These

technologies have the potential to enable undetectable, persistent, and suspicionless surveillance on an unprecedented scale. Such surveillance would permit the government to pervasively track people's movements and associations in ways that threaten core constitutional values.

5. Further, there are serious questions about the reliability of biometric identification technologies (including and particularly with respect to accurately identifying people of color). These technologies therefore elevate the risk that an innocent person will falsely be associated with criminal activity.

6. Through the Request, the Plaintiffs seek to understand and inform the public about, among other things, how face recognition and other biometric identification technologies are currently being used by the government, and what, if any, safeguards are currently in place to prevent their abuse and protect core constitutional rights.

7. The public's interest in the release of the requested information is particularly high in light of the public's need to understand and participate in ongoing legislative activity. In the last few months, lawmakers at the local, state, and federal level have discussed and in some cases implemented prohibitions on the government's use of remote biometric identification technologies.

8. At the municipal level, multiple cities and towns have recently "pressed pause" on the implementation of face and other biometric identification technologies. In May 2019, San Francisco, California became the first city in the world to ban municipal government from using face recognition systems. Oakland and Berkeley soon followed, as did the city of Somerville in Massachusetts. Elsewhere in Massachusetts, the municipalities of Brookline, Springfield, and Cambridge are considering similar prohibitions.

9. At the state level, California's governor in October signed the nation's first state law placing a moratorium on government use of face recognition, prohibiting the technology from being used in conjunction with police body cameras. In Massachusetts, the state legislature's Joint Committee on the Judiciary is also considering a statewide moratorium on government use of remote biometric identification technologies until regulations are established to protect the public's interest. The Committee heard testimony from technical experts and civil rights advocates concerning that proposal just last week.

10. At the federal level, the U.S. Congress has held multiple hearings in recent months to gather information about how government agencies across the United States are using face recognition systems. Massachusetts Representative Ayanna Pressley has co-sponsored federal legislation that would prohibit the use of face recognition technology in federally funded public housing, and Michigan Representative Rashida Tlaib has introduced a bill that would prohibit the use of federal funds for its purchase or use.

11. The Plaintiffs now ask the Court to issue an injunction requiring the Defendants to process the Request immediately and to produce the requested records. The Plaintiffs also seek an order enjoining Defendants from assessing fees for the processing of the Request.

#### PARTIES

12. The American Civil Liberties Union (the "ACLU") is a non-profit corporation with its principal place of business in New York, New York. The ACLU's mission is to maintain and advance civil liberties, including, without limitation, the freedoms of association, press, religion and speech, and the rights to the franchise, to due process of law, and to equal protection of the laws for all people throughout the United States and its jurisdictions. The ACLU also works to extend rights to segments of the population that have traditionally been denied their rights. The

ACLU regularly publishes information and analysis concerning government activities derived from FOIA requests and other sources.

13. The American Civil Liberties Union of Massachusetts, Inc. (the “ACLUM”) is a Massachusetts non-profit corporation with its principal place of business in Boston, Massachusetts. The ACLUM’s mission is to protect, and to educate the public about, civil rights and civil liberties. ACLUM is committed to principles of transparency and accountability in government. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating it to the press and the public is a critical and substantial component of the ACLUM’s work and one of its primary activities.

14. The U.S. Department of Justice (“DOJ”) is a department of the government of the United States of America (the “U.S.” or “United States”).

15. The Federal Bureau of Investigation (“FBI”) is an organization within DOJ.

16. The Drug Enforcement Administration (“DEA”) is an organization within DOJ.

#### JURISDICTION AND VENUE

17. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

18. Venue lies in the District of Massachusetts pursuant to 5 U.S.C. § 552(a)(4)(B), including because it is the district in which ACLUM has its principal place of business.

#### FACTS

19. Since at least 2015, the FBI has operated a Facial Analysis, Comparison, and Evaluation (“FACE”) Services Unit.

20. The FACE Services Unit provides investigative lead support to FBI field offices and operational divisions, among others.

21. The FBI also operates the Next Generation Identification-Interstate Photo System, which is a face recognition service that allows law enforcement agencies to search a database of over 30 million photos.

22. The FBI is currently in the process of purchasing and/or developing additional biometric identification technologies that include not only face recognition, but also voice prints, gait prints, and other forms of biometric identification.

23. On January 18, 2019, the Plaintiffs submitted the Request to DOJ, the FBI, and the DEA. A true and accurate copy of the Request is attached hereto as Exhibit A.

24. Among other things, the Request sought:

- a. Policy directives, guidance documents, legal memoranda, policy memoranda, and training materials concerning the use of face recognition, gait recognition, or voice recognition technology;
- b. Agreements, memoranda of agreement, and memoranda of understanding pertaining to any face recognition, gait recognition, or voice recognition program, including such records concerning the sharing, searching of, or granting access to face or voice recognition systems maintained by state or local agencies;
- c. Records relating to inquiries to companies, solicitations from companies, or meetings with companies about the purchase, piloting, or testing of face recognition, gait recognition, or voice recognition technology and related software and services, including purchase orders, RFPs, licensing agreements, documentation of selection, and contracts;
- d. Records related to any audits of face, voice, and gait recognition system, and records reflecting the system requirements for the accuracy of such systems; and
- e. Records relating to the number of face, voice, and gait recognition searches conducted by the relevant agency, and records reflecting how many times the use of such technology has contributed to any arrests.

25. DOJ has not responded to the Request.

26. On February 5, 2019, the FBI sent Plaintiffs correspondence that acknowledged receipt of the Request, determined that Plaintiffs are entitled to a waiver of search fees as a

“representative of the news media,” deferred decision on a “public interest” waiver of search and duplication fees, denied expedited processing, and “administratively closed” three of the twenty categories of documents sought by the Request. True and accurate copies of this correspondence are attached hereto as Exhibit B. Plaintiffs have not received from the FBI any further correspondence or documents concerning or responsive to the Request.

27. On February 14, 2019, the DEA sent Plaintiffs correspondence that acknowledged receipt of the Request, granted itself a 10-day extension to respond due to “unusual circumstances,” determined that Plaintiffs are entitled to a waiver of search fees as a “representative of the news media,” and denied expedited processing. On April 12, 2019, the DEA sent Plaintiffs further correspondence advising that “your request has been assigned and is being handled as expeditiously as possible.” True and accurate copies of this correspondence are attached hereto as Exhibit C. Plaintiffs have not received from the DEA any further correspondence or documents concerning or responsive to the Request.

#### CLAIM FOR RELIEF

##### Violation of FOIA 5 U.S.C. § 552

28. The foregoing allegations are re-alleged and incorporated herein.
29. Defendants have failed to make reasonable efforts to search for records sought by the Request.
30. Defendants have failed to produce records responsive to the Request.
31. Plaintiffs are entitled to a waiver of all search, review, processing, and duplication fees in connection with the Request.

PRAYER FOR RELIEF

Wherefore, Plaintiffs ask this Court to GRANT the following relief:

1. Order that Defendants shall produce the requested records forthwith, or alternatively on an expedited schedule established by the Court;
2. Enjoin Defendants from charging Plaintiffs search, review, processing, and duplication fees in connection with responding to the Request;
3. Award Plaintiffs costs and reasonable attorney fees in the action; and
4. Grant such other relief as the Court may deem just and proper.

October 31, 2019

Respectfully Submitted,

*/s/ Daniel L. McFadden*  
David Glod (BBO# 676859)  
Nathaniel C. Donohue (BBO# 694274)  
Rich May, P.C.  
176 Federal Street, 6th Floor  
Boston, MA 02110  
(617) 556-3800  
dglod@richmaylaw.com  
ndonoghue@richmaylaw.com

Matthew R. Segal (BBO #654489)  
Daniel L. McFadden (BBO #676612)  
American Civil Liberties Union  
Foundation of Massachusetts, Inc.  
211 Congress Street  
Boston, MA 02110  
(617) 482-3170  
msegal@aclum.org  
dmcfadden@aclum.org

Brett Max Kaufman \*  
Nathan Freed Wessler \* (BBO #680281)  
American Civil Liberties Union Foundation  
125 Broad Street, 18th Floor  
New York, NY 10004  
(212) 549-2500  
bkaufman@aclu.org  
nwessler@aclu.org

\* *Pro hac vice application forthcoming*

# EXHIBIT A



January 18, 2019

***VIA Electronic Submission***

FOIA/PA Mail Referral Unit  
Department of Justice  
Room 115  
LOC Building  
Washington, DC 20530-0001

Federal Bureau of Investigation  
Attn: FOI/PA Request  
Record/Information Dissemination Section  
170 Marcel Drive  
Winchester, VA 22602-4843

Drug Enforcement Administration  
Attn: FOI/PA Unit (SARF)  
8701 Morrisette Drive  
Springfield, Virginia 22152

Re: Freedom of Information Act Request/  
Expedited Processing Requested

To whom it may concern:

This letter constitutes a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552, seeking records about the use of facial recognition and other biometric systems from the Department of Justice (DOJ), Federal Bureau of Investigation (FBI), and Drug Enforcement Administration (DEA). The Request is submitted on behalf of the American Civil Liberties Union and American Civil Liberties Union Foundation (jointly known as “ACLU”), and the American Civil Liberties Union of Massachusetts and its educational arm, the American Civil Liberties Union Foundation of Massachusetts (jointly known as “ACLUM”) (collectively, “Requesters”).

**I. Background**

Since at least 2015, the FBI has operated a Facial Analysis, Comparison, and Evaluation (FACE) Services Unit. According to a 2015 Privacy Impact Assessment available on the FBI’s website, the FACE Services Unit “provides investigative lead support to FBI field offices, operational divisions, and legal attachés” and “may offer face



**LEGAL DEPARTMENT**

National Office  
125 Broad Street,  
18<sup>th</sup> Floor  
New York, NY 10004  
Tel: (212) 549-2644  
Fax: (212) 549-2644  
aclu.org

Susan N. Herman  
*President*

Anthony D. Romero  
*Executive Director*

Richard Zacks  
*Treasurer*

recognition support to federal partners.”<sup>1</sup> The FBI also operates the Next Generation Identification-Interstate Photo System, which a 2016 Government Accountability Office report described as “a face recognition service that allows law enforcement agencies to search a database of over 30 million photos to support criminal investigations.”<sup>2</sup> According to these documents, the FBI has entered into memoranda of agreement with external agencies pertaining to the FBI’s face recognition and analysis programs. As of 2016, per the GAO report, the FBI had entered into at least 16 agreements with state governments to access drivers’ license images, booking photos, corrections photos, or all three, for face recognition search purposes. The Next Generation Identification (NGI) system, according to the FBI’s website, aims to include not just face images but also “future biometric technologies” like voice prints, gait prints, and other forms of biometric identification.<sup>3</sup> The FBI’s website calls NGI “the world’s largest and most efficient electronic repository of biometric and criminal history information.”<sup>4</sup>

Amazon Web Services (AWS) provides cloud services for all 17 United States intelligence agencies, including the DOJ and its component agencies the FBI and DEA.<sup>5</sup> According to recent media reporting, the FBI is testing Amazon’s Rekognition face recognition product, which is part of the suite of software products available on AWS, in a pilot program.<sup>6</sup> In May 2018, the intelligence community awarded Microsoft a contract enabling all 17 agencies to use Azure Government, Microsoft’s cloud service for public entities.<sup>7</sup> Microsoft, like Amazon, offers its customers a face surveillance product that runs on its own cloud service; Microsoft’s face surveillance product is called Face API.<sup>8</sup> Additionally, as of 2015, the FBI has utilized NEC Corporation of America’s “Integra ID

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<sup>1</sup> Ernest J. Babcock, FBI, *Privacy Impact Assessment for the Facial Analysis, Comparison, and Evaluation (FACE) Services Unit*, approved May 1, 2015, <https://www.fbi.gov/services/information-management/foipa/privacy-impact-assessments/facial-analysis-comparison-and-evaluation-face-services-unit>.

<sup>2</sup> Gov’t Accountability Office, *Face Recognition Technology: FBI Should Better Ensure Privacy and Accuracy*, June 15, 2016, <https://www.gao.gov/products/GAO-16-267>.

<sup>3</sup> FBI, *Beyond Fingerprints: Our New Identification System*, Jan. 26, 2009, [https://archives.fbi.gov/archives/news/stories/2009/january/ngi\\_012609](https://archives.fbi.gov/archives/news/stories/2009/january/ngi_012609).

<sup>4</sup> FBI, *Next Generation Identification (NGI)*, <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/ngi>.

<sup>5</sup> Frank Konkel, *The FBI is the Latest Intelligence Agency to Partner with Amazon Web Services*, Nextgov, Nov. 29, 2018, <https://www.nextgov.com/it-modernization/2018/11/fbis-counterterrorism-investigations-now-run-amazon/153133/>.

<sup>6</sup> Frank Konkel, *FBI is Trying Amazon’s Facial Recognition Software*, Nextgov, Jan. 3, 2019, <https://www.nextgov.com/emerging-tech/2019/01/fbi-trying-amazons-facial-recognition-software/153888/>.

<sup>7</sup> Naomi Nix & Ben Brody, *Microsoft Wins Lucrative Cloud Deal with Intelligence Community*, Bloomberg News, May 16, 2018, <https://www.bloomberg.com/news/articles/2018-05-16/microsoft-wins-lucrative-cloud-deal-with-intelligence-community>.

<sup>8</sup> *See* Face, Microsoft Azure, <https://azure.microsoft.com/en-us/services/cognitive-services/face/>.

5 biometric solution software,” which provides facial recognition capabilities, in conjunction with the agency’s NGI system.<sup>9</sup>

The ACLU is concerned about the civil rights and civil liberties implications of the federal government’s use of face recognition and other biometrics to track, identify, and monitor people. If implemented, these capabilities would threaten to grant the government an unprecedented power to pervasively track people’s movements and associations in ways that threaten core constitutional values. We therefore request the following records.

## **II. Definitions**

For purposes of this Request, please apply the following definitions to these listed terms:

“Facial recognition” and “face recognition” mean the automated or semi-automated process of comparing two or more images of faces to determine whether they represent the same individual, and/or the automated or semi-automated process by which the characteristics of an individual’s face are analyzed to determine the individual’s sentiment, state of mind, and/or other propensities including but not limited to level of dangerousness.

“Gait recognition” means the automated or semi-automated process of comparing two or more images or recordings of individuals’ gaits to determine whether they represent the same individual.

“Voice recognition” means the automated or semi-automated process of comparing two or more recordings of human voices to determine whether they represent the same individual.

“Face template” means data corresponding to an image or images of an individual’s face that is unique to that face, for use in a face recognition system.

“Face recognition search” means an automated or semi-automated process whereby an image of a face or a face template (the “probe image”) is compared against a database of face images or face templates in order to attempt to identify the person depicted in the probe image.

“Affect recognition search” means an automated or semi-automated process whereby an image of a face or a face template is analyzed to determine the individual’s sentiment, state of mind, and/or other propensities including but not limited to level of dangerousness.

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<sup>9</sup> *NEC Biometric Solution Becomes First to Provide FBI Rap Back Functionality*, BusinessWire, Aug. 20, 2015, <https://www.businesswire.com/news/home/20150820005061/en/NEC-Biometric-Solution-Provide-FBI-Rap-Functionality>.

“Gait recognition search” means an automated or semi-automated process whereby an image or recording of a person’s gait (the “probe image”) is compared against a database of gait images or recordings in order to attempt to identify the person depicted in the probe image.

“Voice recognition search” means an automated or semi-automated process whereby a recording of a voice (the “probe recording”) is compared against a database of voice recordings in order to attempt to identify the person depicted in the probe recording.

### **III. Records Sought**

Please provide the following records created or received after January 1, 2015:

1. Any policy directives, guidance documents, legal memoranda, policy memoranda, training materials, or similar records concerning the use of face recognition, gait recognition, or voice recognition technology, including but not limited to those records referencing the use of face or voice recognition technology to identify or monitor people engaged in First Amendment protected activity such as protesters and demonstrators.
2. Any face recognition policies, guidelines for running searches, and training manuals pertaining to the FBI’s FACE Services.
3. Any face recognition policies, guidelines for running searches, and training manuals pertaining to the FBI’s Next Generation Identification database.
4. All agreements, memoranda of agreement, memoranda of understanding, or similar records pertaining to any face recognition, gait recognition, or voice recognition program, including any records that concern the sharing of or granting of access to any face images or prints, gait images or prints, or voice recordings or prints, or that concern the sharing, searching of, or granting access to face or voice recognition systems maintained by state or local agencies.
5. All agreements, memoranda of understanding, or similar records pertaining to use of or access to FACE Services or the Next Generation Identification-Interstate Photo System by other federal agencies.
6. A record, broken down by federal agency component, of the number of times other federal agencies have requested access to or assistance from FACE Services or NGI.
7. Records relating to inquiries to companies, solicitations from companies, or meetings with companies about the purchase, piloting, or testing of face recognition, gait recognition, or voice recognition technology and related software and services, including but not limited to communications with vendors, purchase

orders, invoices, RFPs, licensing agreements, documentation of selection, sole source or limited source justification and approval documentation, contracts (including non-disclosure agreements), and other memoranda and documentation. This should include any communications or inquiries about potential use, pilot or purchase of Rekognition, Face API, or other face recognition technology and services from Amazon and Microsoft, as well as any communications or inquiries about potential use, pilot or purchase of facial, gait, or voice recognition technology or services from other companies.

8. Templates or forms for use in submitting images to any face recognition system (which may be known as “submission templates” or by another term).
9. Records related to any audits conducted by the agency or any third party of any face recognition system, voice recognition system, or gait recognition system, including records that reference its accuracy, performance for persons of different race or gender, and/or reliability.
10. Any record reflecting system requirements for accuracy rates or false acceptance rates for any face recognition system, as well as any record reflecting the results of any accuracy testing.
11. Any record reflecting how many photos or face templates your agency can access for purposes of face recognition searches, including if available a list identifying each database, the state or entity that controls that database, and the number of photos per database.
12. Any record reflecting how many of each of the following your agency has conducted (please provide data broken down on a month-to-month basis, if available):
  - a. Face recognition searches
  - b. Affect recognition searches
  - c. Voice recognition searches
  - d. Gait recognition searches
13. Any record reflecting how many times your agency has made or contributed to an arrest of an individual identified through use of each of the following (please provide data broken down on a month-to-month basis, if available):
  - a. Face recognition technology
  - b. Voice recognition technology
  - c. Gait recognition technology
14. Any record reflecting how many times your agency has identified or attempted to identify a person in the custody of your or another law enforcement agency

following that person's arrest using each of the following (please provide data broken down on a month-to-month basis, if available):

- a. Face recognition technology
  - b. Voice recognition technology
15. Any record reflecting how many voice recordings or prints your agency can access for purposes of voice recognition searches, including if available a list identifying each database and the number of voice prints per database.
  16. Any record reflecting how many gait images, recordings, or prints your agency can access for purposes of gait recognition searches, including if available a list identifying each database and the number of gait prints per database.
  17. All communications, including emails, pertaining to the use or potential use of face recognition at protests, demonstrations, or religious locations.
  18. All communications, including emails, pertaining to the ACLU's public comments or advocacy related to face recognition, Amazon's Rekognition, or biometric privacy more generally.
  19. All communications and documents related to the GAO report 17-489T, "Face Recognition Technology: DOJ and FBI Need to Take Additional Actions to Ensure Privacy and Accuracy," including communications and documents related to the decision to adopt or not adopt the GAO recommendations in this report.
  20. All communications, including emails, pertaining to the use of face, voice, or gait recognition to identify people communicating with or suspected of communicating with journalists.

#### **IV. Application for Waiver or Limitation of Fees**

The Requesters request a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 28 C.F.R. § 16.10(k)(1); *see also* 5 U.S.C. § 552(a)(4)(A)(iii). The Requesters also request a waiver of search fees on the grounds that they qualify as a "representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

- A. *The Request is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the Requesters.*

As discussed above, this Request concerns the agency's use of face recognition technology. Little information is publicly available regarding the uses of face recognition technology by federal law enforcement agencies, so the records sought are certain to contribute significantly to the public's understanding of this topic. For example, the public does not know whether the FBI, DEA, and other federal law enforcement agencies have purchased face recognition technology from private companies and if so, which ones or on what terms. Nor does the public have current information about agreements between federal law enforcement agencies and state and local agencies to share or request access to their respective face recognition systems. The public also lacks information about federal law enforcement agencies' current policies governing the use of face recognition technology, limitations on how and when it can be used, and accuracy rates of the face recognition systems in use or development.

There is broad public interest in this and other information about the purchase and use of face recognition technology by federal law enforcement agencies, as evidenced by the many press reports on the subject in recent months.<sup>10</sup> Moreover, federal oversight bodies, lawmakers, and others have expressed concern about deficiencies in privacy and accuracy safeguards in FBI and DOJ face recognition systems.<sup>11</sup> The information sought

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<sup>10</sup> See, e.g., Eugene Kim, *Shareholders are Pressuring Amazon to Stop Selling Facial Recognition Tech to the Government*, CNBC, Jan. 17, 2019, <https://www.cnbc.com/2019/01/17/amazon-shareholders-pressure-against-selling-rekognition-to-government.html>; Jake Kanter, *Amazon Investors are Cranking Up the Pressure on Jeff Bezos to Stop Selling Facial Recognition Tech to Government Agencies*, Business Insider, Jan. 17, 2019, <https://www.businessinsider.com/amazon-shareholders-submit-resolution-on-halting-rekognition-sales-2019-1>; Danielle Abril, *Coalition Pressures Amazon, Microsoft, and Google to Keep Facial Recognition Surveillance Away from Government*, Fortune, Jan. 16, 2019, <http://fortune.com/2019/01/15/coalition-pressures-amazon-microsoft-google-facial-recognition-surveillance-government/>; Frank Konkel, *FBI is Trying Amazon's Facial Recognition Software*, Nextgov, Jan. 3, 2019, <https://www.nextgov.com/emerging-tech/2019/01/fbi-trying-amazons-facial-recognition-software/153888/>; David Owen, *Should We Be Worried About Computerized Facial Recognition?*, New Yorker, Dec. 17, 2018, <https://www.newyorker.com/magazine/2018/12/17/should-we-be-worried-about-computerized-facial-recognition>; Jay Stanley, *Secret Service Announces Test of Face Recognition System Around White House*, ACLU Free Future, Dec. 4, 2018, <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/secret-service-announces-test-face-recognition>; Adam Mazmanian, *Secret Service Tests Facial Recognition System at the White House*, FCW, Nov. 28, 2018, <https://fcw.com/articles/2018/11/28/white-house-facial-recog.aspx>; Jake Laperruque & Andrea Peterson, *Amazon Pushes ICE to Buy Its Face Recognition Surveillance Tech*, Daily Beast, Oct. 23, 2018, <https://www.thedailybeast.com/amazon-pushes-ice-to-buy-its-face-recognition-surveillance-tech>; Drew Harwell, *Amazon Met with ICE Officials Over Facial-Recognition Systems That Could Identify Immigrants*, Wash. Post, Oct. 23, 2018, <https://www.washingtonpost.com/technology/2018/10/23/amazon-met-with-ice-officials-over-facial-recognition-system-that-could-identify-immigrants>; Jon Schuppe, *Facial Recognition Gives Police a Powerful New Tracking Tool. It's Also Raising Alarms*, NBC News, July 30, 2018, <https://www.nbcnews.com/news/us-news/facial-recognition-gives-police-powerful-new-tracking-tool-it-s-n894936>.

<sup>11</sup> See, e.g., Gov't Accountability Office, *Face Recognition Technology: DOJ and FBI Need to Take Additional Actions to Ensure Privacy and Accuracy*, Mar. 22, 2017, <https://www.gao.gov/assets/690/683549.pdf>; Hearing of House Comm. On Oversight & Gov't Reform, *Law Enforcement's Use of Facial Recognition Technology*, Mar. 22, 2017; Olivia Solon, *Facial Recognition Database Used by FBI is Out of Control, House Committee Hears*, Guardian, Mar. 27, 2017, <https://www.theguardian.com/technology/2017/mar/27/us-facial-recognition-database-fbi-drivers-licenses-passports>.

in this request will contribute significantly to public understanding of the operations or activities of the government.

The Requesters are not filing this Request to further their commercial interest. The ACLU and ACLUM are non-profit 501(c)(3) and 501(c)(4) organizations. Any information disclosed by these organizations as a result of this Request will be available to the public at no cost. The ACLU and ACLUM regularly make information—including information obtained via FOIA requests—available to the public via their websites, electronic newsletters, print publications, and other means. All of these are furnished to members of the public at no cost. Thus, a fee waiver would fulfill Congress’s legislative intent providing fee waivers for noncommercial requesters. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (quotation marks omitted)).

*B. Requesters are representatives of the news media and the records are not sought for commercial use.*

Requesters also request a waiver of search fees on the grounds that the ACLU and ACLUM qualify as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 28 C.F.R. § 16.10(c)(1)(i), (d)(1), (k)(2)(ii)(B). Requesters meets the statutory and regulatory definitions of a “representative of the news media” because they are each an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III).

The ACLU regularly publishes *STAND*, a print magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 900,000 people. The ACLU also publishes regular updates and alerts via email to over 3.1 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to over 4 million social media followers. The magazine as well as the email and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

The ACLU and ACLUM also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,<sup>12</sup> and ACLU

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<sup>12</sup> *See, e.g.*, Press Release, ACLU, New Documents Reveal Government Plans to Spy on Keystone XL Protesters (Sept. 4, 2018), <https://www.aclu.org/news/new-documents-reveal-government-plans-spy-keystone-xl-protesters>; Press Release, ACLU, ACLU Obtains Documents Showing Widespread Abuse of Child Immigrants in U.S. Custody (May 22, 2018), <https://www.aclu.org/news/aclu-obtains-documents-showing-widespread-abuse-child-immigrants-us-custody>; Press Release, ACLU, ACLU Demands CIA Records on Campaign Supporting Haspel Nomination (May 4, 2018), <https://www.aclu.org/news/aclu-demands-cia-records-campaign-supporting-haspel-nomination>; Press Release, ACLU, Advocates File FOIA Request For ICE Documents on Detention of Pregnant Women (May 3, 2018), <https://www.aclu.org/news/advocates-file-foia-request-ice-documents-detention-pregnant-women>; Press Release, ACLU, Civil Rights Organizations Demand Police Reform



and ACLUM attorneys and advocates are interviewed frequently for news stories about documents released through FOIA requests.<sup>13</sup>

Similarly, the ACLU and ACLUM publish reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee.<sup>14</sup> The ACLU and ACLUM also regularly publishes books,

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Documents from Justice Department (Jan. 4, 2018), <https://www.aclu.org/news/civil-rights-organizations-demand-police-reform-documents-justice-department>; Press Release, ACLU, ACLU Files Lawsuits Demanding Local Documents on Implementation of Muslim Ban (Apr. 12, 2017), <https://www.aclu.org/news/aclu-files-lawsuits-demanding-local-documents-implementation-trump-muslim-ban>; Press Release, ACLU, U.S. Releases Drone Strike ‘Playbook’ in Response to ACLU Lawsuit (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, ACLU, Secret Documents Describe Graphic Abuse and Admit Mistakes (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, ACLU, ACLU Sues for Bureau of Prisons Documents on Approval of CIA Torture Site (Apr. 14 2016), <https://www.aclu.org/news/aclu-sues-bureau-prisons-documents-approval-cia-torture-site>; Press Release, ACLU, U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>.

<sup>13</sup> See, e.g., Cora Currier, *TSA’s Own Files Show Doubtful Science Behind Its Behavioral Screen Program*, Intercept, Feb. 8, 2017, <https://theintercept.com/2017/02/08/tsas-own-files-show-doubtful-science-behind-its-behavior-screening-program> (quoting ACLU attorney Hugh Handeyside); Larry Neumeister, *Judge Scolds Government over Iraq Detainee Abuse Pictures*, Associated Press, Jan. 18, 2017, <https://www.apnews.com/865c32eebf4d457499c017eb837b34dc> (quoting ACLU project director Hina Shamsi); Karen DeYoung, *Newly Declassified Document Sheds Light on How President Approves Drone Strikes*, Wash. Post, Aug. 6, 2016, <http://wapo.st/2jy62cW> (quoting former ACLU deputy legal director Jameel Jaffer); Catherine Thorbecke, *What Newly Released CIA Documents Reveal About ‘Torture’ in Its Former Detention Program*, ABC, June 15, 2016, <http://abcn.ws/2jy40d3> (quoting ACLU attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Surveillance*, Guardian, Mar. 17, 2016, <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nathan Freed Wessler); David Welna, *Government Suspected of Wanting CIA Torture Report to Remain Secret*, NPR, Dec. 9, 2015, <http://n.pr/2jy2p71> (quoting ACLU project director Hina Shamsi).

<sup>14</sup> See, e.g., ACLU, *Bad Trip: Debunking the TSA’s ‘Behavior Detection’ Program* (2017), [https://www.aclu.org/sites/default/files/field\\_document/dem17-tsa\\_detection\\_report-v02.pdf](https://www.aclu.org/sites/default/files/field_document/dem17-tsa_detection_report-v02.pdf); Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; Brett Max Kaufman, *Details Abound in Drone ‘Playbook’ – Except for the Ones That Really Matter Most* (Aug. 8, 2016), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; ACLU, *Leaving Girls Behind: An Analysis of Washington D.C.’s “Empowering Males of Color” Initiative* (2016), <https://www.aclu.org/report/leaving-girls-behind>; Nathan Freed Wessler, *ACLU-Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida* (Feb. 22, 2015), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; Nathan Freed Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights* (Oct. 30, 2015), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; Ashley Gorski, *New NSA Documents Shine More Light into Black Box of Executive Order 12333* (Oct. 30, 2014), <https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executive-order-12333>.

“know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.

The ACLU publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. *See* <https://www.aclu.org/multimedia>. The ACLU and ACLUM also publish, analyze, and disseminate information through their heavily visited websites, [www.aclu.org](http://www.aclu.org) and [www.aclum.org](http://www.aclum.org). The websites address civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contain many thousands of documents relating to the issues on which the organizations are focused. The websites also serve as a clearinghouse for news about ACLU cases, including analysis about case developments and an archive of case-related documents. Through these pages, and with respect to each specific civil liberties issue, the ACLU and ACLUM provide the public with educational material, recent news, analyses of relevant congressional or executive branch action, government documents obtained through FOIA requests, and further in-depth analytic and educational multi-media features.<sup>15</sup>

The ACLU website includes many features on information obtained through the FOIA. The ACLU maintains an online “Torture Database,” a compilation of over 100,000 pages of FOIA documents that allows researchers and the public to conduct sophisticated searches of its contents relating to government policies on rendition, detention, and interrogation.<sup>16</sup> The ACLU has also published a number of charts and

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<sup>15</sup> *See, e.g., ACLU v. DOJ—FOIA Case for Records Relating to Targeted Killing Law, Policy, and Casualties*, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-doj-foia-case-records-relating-targeted-killing-law-policy-and-casualties>; *Executive Order 12,333—FOIA Lawsuit*, ACLU Case Page, <https://www.aclu.org/cases/executive-order-12333-foia-lawsuit>; *ACLU Motions Requesting Public Access to FISA Court Rulings on Government Surveillance*, ACLU Case Page, <https://www.aclu.org/cases/aclu-motions-requesting-public-access-fisa-court-rulings-government-surveillance>; *ACLU v. DOJ—FOIA Lawsuit Demanding OLC Opinion “Common Commercial Service Agreements*, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-doj-foia-lawsuit-demanding-olc-opinion-common-commercial-service-agreements>; *FOIA Request for Justice Department Policy Memos on GPS Location Tracking*, ACLU Case Page, <https://www.aclu.org/cases/foia-request-justice-department-policy-memos-gps-location-tracking>; *Florida Stingray FOIA*, ACLU Case Page, <https://www.aclu.org/cases/florida-stingray-foia>; Nathan Freed Wessler, *ACLU-Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida*, (Feb. 22, 2015) <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida?redirect=blog/national-security-technology-and-liberty/aclu-obtained-documents-reveal-breadth-secretive-sting>.

<sup>16</sup> *The Torture Database*, ACLU Database, <https://www.thetorturedatabase.org>; *see also Countering Violent Extremism FOIA Database*, ACLU Database, <https://www.aclu.org/foia-collection/cve-foia-documents>; *TSA Behavior Detection FOIA Database*, ACLU Database, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>; *Targeted Killing FOIA Database*, ACLU Database, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA.<sup>17</sup>

These means of distributing information to the public qualify Requesters as representatives of the news media. *See Nat'l Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Serv. Women's Action Network v. Dep't of Defense*, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *ACLU of Wash. v. Dep't of Justice*, No. C09–0642RSL, 2011 WL 887731, at \*10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington is an entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience”); *ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”); *Judicial Watch, Inc. v. Dep't of Justice*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester).

### **V. Application for Expedited Processing**

Requesters seek expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E); 28 C.F.R. § 16.5(e). There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

*A. The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

Requesters are “primarily engaged in disseminating information” within the meaning of the statute. *See id.* Obtaining information about government activity, analyzing that information, and widely publishing and disseminating it to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. *See ACLU v. Dep't of Justice*, 321 F. Supp. at 29 n.5 (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and

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<sup>17</sup> *Index of Bush-Era OLC Memoranda Relating to Interrogation, Detention, Rendition and/or Surveillance*, ACLU (Mar. 5, 2009), [https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos\\_2009\\_0305.pdf](https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf); *Summary of FISA Amendments Act FOIA Documents Released on November 29, 2010*, ACLU (Nov. 29, 2010), [https://www.aclu.org/files/pdfs/natsec/fafoia\\_20101129/20101129Summary.pdf](https://www.aclu.org/files/pdfs/natsec/fafoia_20101129/20101129Summary.pdf); *Statistics on NSL's Produced by Department of Defense*, ACLU, [https://www.aclu.org/sites/default/files/field\\_document/nsl\\_stats.pdf](https://www.aclu.org/sites/default/files/field_document/nsl_stats.pdf).

distributes that work to an audience” to be “primarily engaged in disseminating information”).<sup>18</sup> As explained above in Section III.B of this Request, Requesters regularly disseminate information to the public via print publications, email newsletters, the ACLU and ACLUM websites, and releases to media outlets.

Requesters plan to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the Requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

*B. The records sought are urgently needed to inform the public about actual or alleged government activity.*

These records are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II); 28 C.F.R. § 16.5(e)(1)(ii). Specifically, they pertain to the government’s use of highly controversial and invasive biometric identification and tracking technologies. As discussed in Sections I and III, *supra*, biometric identity tracking technologies are the subject of widespread public controversy and media attention. The records sought relate to a matter of widespread and exceptional media interest.

Further underscoring the urgency of informing the public about the biometric identification and tracking technologies at issue in this Request is the strong media interest in what little has been revealed publicly about that conduct. *See supra*. Given this media interest and the lack of public information about the basis and need for biometric surveillance technologies at issue, there is an urgent need to inform the public about how the Department of Justice and its component agencies use these tools. Expedited processing is therefore appropriate under 5 U.S.C. § 552(a)(6)(E) and the Department of Justice implementing regulations.

### **Conclusion**

Pursuant to applicable statutes and regulations, the Requesters expect a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii).

If the Request is denied in whole or in part, Requesters ask that you justify all deletions by reference to specific exemptions to FOIA. Requesters expect the release of all segregable portions of otherwise exempt material. Requesters reserve the right to appeal a decision to withhold any information or deny a waiver of fees.

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<sup>18</sup> Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr. v. DOD*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

Thank you for your prompt attention to this matter. Please furnish the applicable records to:

Nathan Freed Wessler  
American Civil Liberties Union  
125 Broad Street, 18th Floor  
New York, NY 10004  
T: (212) 519-7847  
F: (212) 549-2654  
nwessler@aclu.org

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

Sincerely,

A handwritten signature in black ink, appearing to read "Brett Max Kaufman".

Nathan Freed Wessler  
Brett Max Kaufman  
American Civil Liberties Union  
125 Broad Street, 18th Floor  
New York, NY 10004

Kade Crockford  
Daniel McFadden  
American Civil Liberties Union  
of Massachusetts  
211 Congress Street  
Boston, MA 02110

# EXHIBIT B



U.S. Department of Justice

**Federal Bureau of Investigation**  
 Washington, D.C. 20535

February 5, 2019

MR. NATHAN WESSLER  
 AMERICAN CIVIL LIBERTIES UNION  
 125 BROAD STREET  
 18TH FLOOR  
 NEW YORK, NY 10004

FOIPA Request No.: 1427589-000

Dear Mr. Wessler:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the FBI, dated January 18, 2019. For administrative tracking purposes, additional FOIPA Request Numbers may be assigned if it is determined your request seeks records about multiple subjects. You will be notified of any additional tracking numbers if assigned. Below you will find check boxes and informational paragraphs about your request, as well as specific determinations per statute. Please read each one carefully.

- You submitted your request via the FBI's eFOIPA system.
  - We have reviewed your request. Consistent with the FBI eFOIPA terms of service, future correspondence about your FOIA request will be provided in an email link.
  - We have reviewed your request. Consistent with the FBI eFOIPA terms of service, future correspondence about your FOIPA request will be sent through standard mail.
- Your request for a public interest fee waiver is under consideration, and you will be advised of the decision at a later date. If your fee waiver is not granted, you will be responsible for applicable fees per your designated requester fee category below.
- For the purpose of assessing any fees, we have determined:
  - As a commercial use requester, you will be charged applicable search, review, and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(I).
  - As an educational institution, noncommercial scientific institution or representative of the news media requester, you will be charged applicable duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(II).
  - As a general (all others) requester, you will be charged applicable search and duplication fees in accordance with 5 USC § 552 (a)(4)(A)(ii)(III).

Please check the status of your FOIPA request at [www.fbi.gov/foia](http://www.fbi.gov/foia) by clicking on **FOIPA Status** and entering your FOIPA Request Number. Status updates are adjusted weekly. The status of newly assigned requests may not be available until the next weekly update. If the FOIPA has been closed the notice will indicate that appropriate correspondence has been mailed to the address on file.

For questions regarding our determinations, visit the [www.fbi.gov/foia](http://www.fbi.gov/foia) website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following web site: <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing [ogis@nara.gov](mailto:ogis@nara.gov). Alternatively, you may contact the FBI's FOIA Public Liaison by emailing [foipaquestions@fbi.gov](mailto:foipaquestions@fbi.gov). If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Information Management Division





U.S. Department of Justice

Federal Bureau of Investigation  
Washington, D.C. 20535

February 5, 2019

MR. NATHAN WESSLER  
AMERICAN CIVIL LIBERTIES UNION  
125 BROAD STREET  
18TH FLOOR  
NEW YORK, NY 10004

FOIPA Request No.: 1427589-000  
Subject: Facial Recognition

Dear Mr. Wessler:

This is in reference to your letter to the FBI, in which you requested expedited processing for the above-referenced Freedom of Information/Privacy Acts (FOIPA) request. Under Department of Justice (DOJ) standards, expedited processing can only be granted in the following situations.

You have requested expedited processing according to:

- 28 C.F.R. §16.5 (e)(1)(i):** "Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual."
- 28 C.F.R. §16.5 (e)(1)(ii):** "An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information."
- 28 C.F.R. §16.5 (e)(1)(iii):** "The loss of substantial due process of rights."
- 28 C.F.R. §16.5 (e)(1)(iv):** "A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence."

You have not provided enough information concerning the statutory requirements for expedition; therefore, your request is denied. Specifically, you have not described an urgency to inform the public about an actual or alleged federal government activity.

For questions regarding our determinations, visit the [www.fbi.gov/foia](http://www.fbi.gov/foia) website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following web site: <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing [ogis@nara.gov](mailto:ogis@nara.gov). Alternatively, you may contact the FBI's FOIA Public Liaison by emailing [foipaquestions@fbi.gov](mailto:foipaquestions@fbi.gov). If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

David M. Hardy  
Section Chief  
Record/Information  
Dissemination Section  
Information Management Division



U.S. Department of Justice

**Federal Bureau of Investigation**  
Washington, D.C. 20535

February 5, 2019

MR. NATHAN WESSLER  
AMERICAN CIVIL LIBERTIES UNION  
125 BROAD STREET  
18TH FLOOR  
NEW YORK, NY 10004

Request No.: NFP-104152  
Subject: All Communications pertaining to  
Facial Recognition

Dear Mr. Wessler:

This is in response to your Freedom of Information/Privacy Acts (FOIPA) request regarding items 17, 18, and 20 of your request.

The FOIA/FOIPA provides for access to Government records where the records sought are "reasonably described" [Title 5, United States Code, Section 552(a)(3)(A)]. Your letter does not contain enough descriptive information to permit a search of our records. Therefore, your request is being administratively closed. In accordance with Title 28, Code of Federal Regulations, Part 16.3(b), please provide us more specific information.

Examples of specific information which could assist in locating potentially responsive records within a reasonable amount of effort are as follows:

- Complete names of individuals
  - Birth date
  - Place of birth
  - Place of death
  - Location of incident
- Organizations/Events
  - Date of event
  - Time frame
  - Location
- Specific time frame
- Specific location

For questions on how to reasonably describe your request, please email us at [foipaquestions@fbi.gov](mailto:foipaquestions@fbi.gov). You may also visit [www.fbi.gov](http://www.fbi.gov) and select "Services," "Information Management," and "Freedom of Information/Privacy Act" for additional guidance.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following web site: <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing [ogis@nara.gov](mailto:ogis@nara.gov). Alternatively, you may contact the FBI's FOIA Public Liaison by emailing [foipaquestions@fbi.gov](mailto:foipaquestions@fbi.gov). If you submit your dispute resolution

correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified.

Enclosed for your information is a copy of the FBI Fact Sheet.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Information Management Division

Enclosure



## FBI FACT SHEET

- **The primary functions of the FBI are national security and law enforcement.**
- **The FBI does not keep a file on every citizen of the United States.**
- **The FBI was not established until 1908 and we have very few records prior to the 1920s.**
- **FBI files generally contain reports** of FBI investigations of a wide range of matters, including counterterrorism, counter-intelligence, cyber-crime, public corruption, civil rights, organized crime, white collar crime, major thefts, violent crime, and applicants.
- **The FBI does not issue clearances or deny clearances for anyone other than its own personnel or persons having access to FBI facilities.** Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should contact that entity. Most government agencies have websites which are accessible on the internet which have their contact information.
- **An identity history summary check or “rap sheet” is NOT the same as an “FBI file.”** It is a listing of information taken from fingerprint cards and related documents submitted to the FBI in connection with arrests, federal employment, naturalization or military service. The subject of a “rap sheet” may obtain a copy by submitting a written request to FBI CJIS Division – Summary Request, 1000 Custer Hollow Road, Clarksburg, WV 26306. Along with a specific written request, the individual must submit a new full set of his/her fingerprints in order to locate the record, establish positive identification, and ensure that an individual’s records are not disseminated to an unauthorized person. The fingerprint submission must include the subject’s name, date and place of birth. There is a required fee of \$18 for this service, which must be submitted by money order or certified check made payable to the Treasury of the United States. A credit card payment option is also available. Forms for this option and additional directions may be obtained by accessing the FBI Web site at [www.fbi.gov/about-us/cjis/identity-history-summary-checks](http://www.fbi.gov/about-us/cjis/identity-history-summary-checks).
- **The National Name Check Program (NNCP)** conducts a search of the FBI’s Universal Index (UNI) to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to a requesting federal, state or local agency. Names are searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both “main” and “cross reference” files. A main file is an entry that carries the name corresponding to the subject of a file, while a cross reference is merely a mention of an individual contained in a file. A search of this magnitude can result in several “hits” on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine if it is applicable to the individual in question.
- **The Record/Information Dissemination Section (RIDS)** searches for records and provides copies of FBI documents responsive to Freedom of Information or Privacy Act (FOIPA) requests for information. RIDS provides responsive documents to requesters seeking “reasonably described information.” For a FOIPA search, the subject’s name, event, activity, or business is searched to determine whether there is an associated investigative file. This is called a “main file search” and differs from the **NNCP** search.

**FOR GENERAL INFORMATION ABOUT THE FBI, VISIT OUR WEBSITE AT**  
[www.fbi.gov](http://www.fbi.gov)

# EXHIBIT C



**U.S. Department of Justice**  
Drug Enforcement Administration  
FOI/Records Management Section  
8701 Morrisette Drive  
Springfield, Virginia 22152

Case Number: 19-00270-F

FEB 14 2019

Subject: Records concerning DEA's purchase and use of face recognition and other biometric recognition technologies from January 1, 2015 to the present

Nathan Wessler  
American Civil Liberties Union  
125 Broad Street, 18th Floor  
New York, New York 10004  
[nwessler@aclu.org](mailto:nwessler@aclu.org)

Dear Mr. Wessler:

This letter responds to your Freedom of Information/Privacy Act request emailed January 18, 2019, to the DEA.FOIA mailbox, seeking access to DEA records. Your request has been opened and assigned the above case number. Please include this case number when communicating with this office.

The records you seek require searches in another office or offices, and so your request falls within "unusual circumstances." *See* 5 U.S.C. § 552(a)(6)(B)(i)-(iii). Because of these unusual circumstances, we are extending the time limit to respond to your request beyond the ten additional days provided by the statute. We have not yet completed a search to determine whether there are records within the scope of your request. The time needed to process your request will necessarily depend on the complexity of our records search and on the volume and complexity of any records located. For your information, this office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests in the same track. Simple requests usually receive a response in approximately one month, whereas complex requests necessarily take longer. At this time, your request has been assigned to the complex track. You may wish to narrow the scope of your request to limit the number of potentially responsive records or agree to an alternative time frame for processing, should records be located; or you may wish to await the completion of our records search to discuss either of these options.

As you are aware, the FOIA provides for three categories of requesters. *See* 5 U.S.C. § 552(a)(4)(A)(ii). The FOIA defines a representative of the news media as a person or entity "that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *Id.* at § 552(a)(4)(A)(iii); *see also Cause of Action v. FTC*, 799 F.3d 1108 (D.C. Cir. 2015). We have determined that you are making this request as a "representative of the news media," therefore; you will not be charged search fees.

Case Number: 19-00270-F

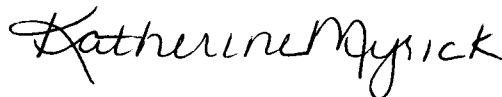
Page 2

We regret the necessity of this delay, but please be assured that your request will be processed as soon as possible. If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact Government Information Specialist Jewell W. Carroll at 202-307-4006, our Customer Service Hotline Representative at 202-307-7596 or mail your correspondence to:

DEA HEADQUARTERS  
ATTN: FOI/PA UNIT (SARF)  
8701 MORRISSETTE DRIVE  
SPRINGFIELD, VIRGINIA 22152

In addition, you may wish to visit our website at [www.dea.gov](http://www.dea.gov) to determine if the information you are requesting is already available to the public. You may contact our FOIA Public Liaison at 202-307-7596 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



Katherine L. Myrick, Chief  
Freedom of Information/Privacy Act Unit  
FOI/Records Management Section





**U.S. Department of Justice**  
Drug Enforcement Administration  
FOI/Records Management Section  
8701 Morrisette Drive  
Springfield, Virginia 22152

FEB 14 2018

Case Number: 19-00270-F

Subject: Records concerning DEA's purchase and use of face recognition and other biometric recognition technologies from January 1, 2015 to the present

Nathan Wessler  
American Civil Liberties Union (ACLU)  
125 Broad Street, 18th Floor  
New York, New York 10004  
[nwessler@aclu.org](mailto:nwessler@aclu.org)

Dear Mr. Wessler:

This letter responds to your Freedom of Information/Privacy Act request emailed January 18, 2019, to the DEA.FOIA mailbox, seeking expedited treatment. Your request has been opened and assigned the above case number. Please include this case number when corresponding with this office.

In your request letter, you request expedited treatment pursuant to the first, second, third, and/or fourth standards enumerated in the Department of Justice's regulations. Expedited treatment pursuant to the first standard will be granted where not doing so "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual." 5 U.S.C. § 552(a)(6)(E)(v)(I). *See also* 28 C.F.R. § 16.5(e)(1)(i) (2015). Under the second standard, you must show that there is "[a]n urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II). *See also* 28 C.F.R. § 16.5(e)(1)(ii) (2015). Under the third standard, you must show that the request involves "[t]he loss of substantial due process rights." 28 C.F.R. § 16.5(e)(1)(iii) (2015). Under the fourth standard, you must show that the subject matter of your request is a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." *Id.* at § 16.5(e)(1)(iv). This office makes determinations regarding the first three standards, while the Department's Director of Public Affairs makes determinations regarding the fourth standard. *See id.* at § 16.5(e)(2).

You have requested expedited processing of your request pursuant to the Department's standard permitting expedition for requests involving "[a]n urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information." 28 C.F.R. § 16.5(e)(1)(ii) (2015). Based on the information you have provided, we have determined that your request for expedited processing under this

Case Number: 19-00270-F

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standard should be denied. This office cannot identify a particular urgency to inform the public about an actual or alleged federal government activity beyond the public's right to know about government activities generally. Please be advised that, although your request for expedited processing has been denied; it has been assigned to a Government Information Specialist in this office.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following website: <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact our Customer Service Hotline Representative at 202-307-7596 or mail your correspondence to the above address.

Sincerely,



Katherine L. Myrick, Chief  
Freedom of Information/Privacy Act Unit  
FOI/Records Management Section



**U.S. Department of Justice**  
Drug Enforcement Administration  
FOI/Records Management Section  
8701 Morrissette Drive  
Springfield, Virginia 22152

Case Number: 19-00270-F

**APR 12 2019**

Subject: Records concerning DEA's purchase and use of face recognition and other biometric recognition technologies, including information related to Rekognition or Face API face recognition technology by Amazon and Amazon Web Services (AWS) and Microsoft, and records pertaining to FBI's FACE services or NGI database from January 1, 2015 to the present

Nathan Wessler  
American Civil Liberties Union (ACLU)  
125 Broad Street, 18th Floor  
New York, New York 10004  
[nwessler@aclu.org](mailto:nwessler@aclu.org)

Dear Mr. Wessler:

This letter responds to your Freedom of Information Act/Privacy Act request dated January 18, 2019, received by the Drug Enforcement Administration (DEA), Freedom of Information/Privacy Act Unit (SARF), seeking access to information regarding the above subject.

Please be advised that your request has been assigned and is being handled as expeditiously as possible. If you have any questions regarding the status of your request, please contact Paralegal Amber L. Freeman at 202-307-6817 or include your case number and forward your correspondence to the following address:

DEA HEADQUARTERS  
ATTN: FOI/PA UNIT (SARF)  
8701 MORRISSETTE DRIVE  
SPRINGFIELD, VIRGINIA 22152

Sincerely,

A handwritten signature in cursive script that reads "Angela D. Hertel".

Katherine L. Myrick, Chief  
Freedom of Information/Privacy Act Unit  
FOI/Records Management Section

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

American Civil Liberties Union & American Civil Liberties Union of Massachusetts

(b) County of Residence of First Listed Plaintiff NY (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Daniel McFadden, ACLU Foundation of Massachusetts, 211 Congress St., Boston, MA, 617 482 3170 (see complaint for complete list)

DEFENDANTS

U.S. Department of Justice, Federal Bureau of Investigation, & Drug Enforcement Administration

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location. Includes categories like Citizen of This State, Citizen of Another State, and Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Freedom of Information Act, 5 USC 552
Brief description of cause: Suit for disclosure of records under Freedom of Information Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE 10/31/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Daniel L. McFadden

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) American Civil Liberties Union et al. v. U.S. Department of Justice et al.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 400, 410, 441, 535, 830\*, 835\*, 850, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820\*, 840\*, 895, 896, 899.
- III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.

\*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES  NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES  NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES  NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division  Central Division  Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME /s/ Daniel L. McFadden

ADDRESS ACLU Foundation of Massachusetts, 211 Congress St., Boston, MA

TELEPHONE NO. 617 482 3170