

EXHIBIT E



June 17, 2019

Submitted via email to: ice-foia@dhs.gov

United States Immigration & Customs Enforcement
FOIA Office
500 12th Street, SW, Stop 5009
Washington, DC 20536-5009

Re: Freedom of Information Act Request

To whom it may concern,

As a member of the news media, I am making this request under the Freedom Of Information Act (“FOIA”), 5 U.S.C. § 552. Please provide records that are maintained by your agency or for your agency by a government contractor in any format.

Please also note that the personal emails and text messages are not exempt from FOIA when used for official business, even if the agency requires such messages to be forwarded to official accounts. (*See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149-50 (D.C. Cir. 2016)).

Please provide the following records in a digital format:

- Any training, policy, or procedures materials related facial recognition technology from January 1, 2018 onwards.
- Any communications between government officials and representatives of Amazon or AWS regarding facial recognition technology or Rekognition from January 1, 2018 onwards.
- Any procurement or contracting information related to Rekognition or other facial recognition technology, including but not limited to all contract or grant materials, including but not limited to requests for proposals, solicitations, award records, invoices, and licensing agreements from January 1, 2018 onwards.
- Any marketing materials or other information describing facial recognition tools such as Rekognition received by government officials, including but not limited to emails, advertisements, specification documents, and presentations by Amazon, AWS, or any other facial recognition contractors or grantees from January 1, 2018 onwards.
- Any information, including records or analysis, assessing accuracy of facial recognition tools such as those provided by Amazon, AWS, or any other facial recognition contractors or grantees, or plans to audit and review accuracy of facial recognition tools provided by Amazon, AWS, or any other facial recognition contractors or grantees from January 1, 2018 onwards.

“Rekognition” is a service marketed by Amazon subsidiary Amazon Web Services (AWS) and in use by some local law enforcement agencies, as disclosed from news reporting and attested to on Amazon’s web site.

In addition to the records requested above, POGO also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched

and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

I request a waiver of all costs associated with fulfilling this submission pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure of the requested records will further 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, the Project On Government Oversight (POGO). Specifically, POGO intends to use the requested records to highlight for the public federal government interest in real-time facial recognition technology—this technology poses exceptional privacy risks and, in the hands of law enforcement, constitutional concerns. If the request for a fee waiver is denied, please contact me about any incurred expenses prior to supplying the requested records.

Please see the following fee waiver statements.

The subject of the request:

POGO is requesting records which will inform readers about how the federal government’s interest in facial recognition technology being offered by the private sector. We believe these records will allow us to better inform the public about the state of government efforts to use this technology and whether privacy, constitutional, and other concerns are being raised or addressed.

The informative value of the information to be disclosed:

The information to be disclosed is likely to contribute to an increased public understanding of government activities, as it relates to powerful and troubling technological capabilities that federal law enforcement may be considering harnessing. If used, this technology would be externally directed toward the public and the public has a great interest in whether the government is taking steps to utilize this technology. The information released would help the public evaluate federal law enforcement efforts in this arena.

The contribution to an understanding of the subject by the public likely to result from disclosure:

POGO investigates, exposes, and seeks to remedy systemic abuses of power and mismanagement in the federal government. Founded in 1981, POGO is a politically independent, nonprofit watchdog that promotes a government that is accountable to the citizenry. POGO disseminates information about its activities to the public, policymakers, and the media via email, direct mail, and its websites which receives over 100,000 unique views per month. The records provided by your agency will be used for the following activities, which are publicly available: publication by email and on POGO websites; publication in reports and newsletters issued by POGO; publication in the newsletters of affiliated nonprofit organizations; efforts to educate Congress, the Executive Branch, and other policymakers; or in conjunction with other members of the news media.

POGO serves as a highly valuable educational resource on facial recognition technology and the governments use of it. In recent years POGO has published breaking news reports, informational

resources, and policy blog posts on the topic.¹ In March 2019 POGO also published an extensive task force report on government use facial recognition of facial recognition with policy recommendations.² One of the task force members recently testified before the House Oversight Committee for a hearing on facial recognition technology.³

This information will advance what is known about federal law enforcement interest in and use of real-time facial recognition technology and what concerns the government may have about its use.

The significance of the contribution to public understanding:

Disclosure of the records will contribute significantly to the public's understanding of federal government efforts to use real-time facial recognition technology and how advanced, or not, efforts are to use specific technology developed by and marketed by Amazon or other facial recognition contractors or grantees. The requested records are not currently publicly available, and they will bring a unique perspective to the public discussion surrounding government surveillance.

The existence and magnitude of a commercial interest:

POGO does not charge for access to its web site, reports, newsletters, or other publications. In addition, we do not directly profit from increased viewership of our website, as it is advertisement-free.

The primary interest in disclosure:

POGO has no financial interest in the requested information as stated above. The primary interest in disclosure is that of the public interest.

If this request is denied in full or in part, please cite each exemptions pursuant to 5 U.S.C. § 552(b) that justifies each denial. Please bear in mind that the foreseeable harm standard must be met before an exemption applies. If an exemption applies, however, please consider exercising the agency's discretionary release powers to disclose the records. Any such action supports the presumption of "openness" on which FOIA is based upon. Additionally, please release all reasonably segregable portions of the records that do not meet an exemption. 5 U.S.C. § 552(b).

I look forward to your response, including an individualized tracking number, within 20 days of the receipt of this request, unless, in the case of "unusual circumstances," the time limitation is "extended by written notice." 5 U.S.C. § 552(a)(6)(B). I am aware that all fees will be waived if specified time limits are not met. 5 U.S.C. § 552(a)(4)(A)(viii). I have a right to appeal if this request is wholly or partially denied or if the agency fails to respond within 20 days, and that, if successful, a federal district court may assess "reasonable attorney fees and other litigation costs." 5 U.S.C. § 552(a)(4)(E).

¹ See, Jake Laperruque and Andrea Peterson, "Amazon Pushes ICE to Buy Its Face Recognition Surveillance Tech," *The Daily Beast*, October 23, 2018. <https://www.thedailybeast.com/amazon-pushes-ice-to-buy-itsface-recognition-surveillance-tech>; see also, Jake Laperruque, "Unmasking the Realities of Facial Recognition", The Project on Government Oversight, December 5, 2018. <https://www.pogo.org/analysis/2018/12/unmasking-the-realities-of-facial-recognition/>; Jake Laperruque, "About Face: Amazon's Shifting Story on Facial Recognition Accuracy," The Project on Government Oversight, April 10, 2019. <https://www.pogo.org/analysis/2019/04/about-face-examining-amazon-shifting-story-on-facial-recognition-accuracy/>.

² See, Facing the Future of Surveillance, The Project on Government Oversight, March 4, 2019.

https://s3.amazonaws.com/docs.pogo.org/report/2019/Facing-the-Future-of-Surveillance_2019.pdf

³ United States. Cong. House. Committee on Oversight. *Facial Recognition Technology (Part 1): Its Impact on our Civil Rights and Liberties*. May 22, 2019. 116th Cong. 1st sess.

Please do not hesitate to call me at (202) 347-1122 to see if I can clarify the request or otherwise expedite and simplify your efforts. Thank you for your prompt attention to this matter.

Sincerely,

Jake Laperruque
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