June 21, 2016

Erin C. Deveney
Registrar
Registry of Motor Vehicles
Massachusetts Department of Transportation

Sent via email

Registrar Deveney,

This is a request under the Public Records Law. G.L. c. 66, § 10.

We are interested in learning about the Commonwealth's plans to allow the Federal Bureau of Investigation (FBI) to use facial recognition technology to match, compare, and/or search Massachusetts driver's images, pursuant to a Memorandum of Understanding (MOU) reportedly under negotiation between your agency, the Registry of Motor Vehicles (RMV), and the FBI.

Background

According to a May 2016 General Accountability Office (GAO) report[1] released to the public on June 15, 2016, Massachusetts is one of 18 states currently negotiating MOUs with the FBI to facilitate FBI access to driver's license images for purposes of facial recognition matching.

It is our understanding that these negotiations involve the FBI's Facial Analysis, Comparison, and Evaluation (FACE) Services Unit. The GAO report states that the FACE Unit "conducts face recognition searches on Next Generation Identification-Interstate Photo System (NGI-IPS) and can access external partners' face recognition systems to support FBI active investigations." As of May 2016, the FBI had signed MOUs with 16 states authorizing the FBI "to request face recognition searches of the states' photo repositories to assist with FACE Services requests." FBI officials told GAO investigators that they had also entered into negotiations with 18 other states – including Massachusetts – to expand their search capability.

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[1] Government Accountability Office, "Face Recognition Technology: FBI Should Better Ensure Privacy and Accuracy," May 16, 2016, GAO-16-267.

Concerns Regarding Facial Recognition

The ACLU has several serious concerns about facial recognition systems.

First, they are often inaccurate. For example, the Massachusetts Department of Transportation already uses facial recognition systems, which, as a 2011 Boston.com article reported, make mistakes.[2] The negative impact of such mistakes are magnified when information collected for one purpose—obtaining legal license to operate a motor vehicle—is used for another—matching images of Massachusetts drivers to people of interest to the FBI. For most people inaccurately identified by facial recognition algorithms at the RMV, the result will be a frustrating inconvenience: they are forced to go to the RMV to fix the problem. But much more serious civil liberties and civil rights violations could follow if the FBI is granted access to the RMV database of driver images. This is particularly disturbing in light of the GAO report's finding that FBI has insufficiently tested its facial recognition systems to determine their accuracy.

Second, facial recognition systems threaten the constitutional right to anonymously criticize the government, and subject people not suspected of criminal activity to law enforcement scrutiny simply by virtue of going outside, posting an image on social media, or obtaining a driver's license. After September 11, 2001, the FBI changed its policies to allow its agents to conduct investigations on Americans absent any suspicion of criminal wrongdoing.[3] Since then, the FBI has investigated activists involved with the Occupy, Black Lives Matter, and environmental justice movements, among many others.[4] Consequently, if the FBI has access to driver's images in the RMV database for use in facial recognition matching or searching, Massachusetts residents may be subjected to FBI facial recognition surveillance because of their constitutionally protected political speech. Massachusetts' residents do not knowingly sign up for such surveillance when they get driver's licenses in the Commonwealth.

Third, both of these concerns are exacerbated by FBI secrecy and failures to implement accountability, auditing, and transparency mechanisms. According to the GAO report, the FBI has failed to conduct (1) audits to ensure FBI officials are conducting facial recognition searches in a manner that comports with Criminal Justice Information Services policy and doesn't violate Americans' privacy, and (2) operational reviews to ensure the system is functioning as intended. The GAO also reports that the Department of Justice, the FBI's parent organization, has failed to publicly describe its plans for facial recognition in a complete and timely manner, as it is required to do through Privacy Impact Assessments (PIAs). These PIAs should have been completed and publicized before implementation of facial recognition systems, not after, and they should have been updated before, not after, DOJ/FBI made changes to the system that could reasonably implicate privacy rights for millions of people across the nation.

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[2] Megan Irons, "Caught in a dragnet," July 17, 2011, Boston.com.

[3] ACLU, "Unleashed and Unaccountable: The FBI's Unchecked Abuse of Authority," September 2013, aclu.org.

[4] See Democracy Now!, "The FBI vs. Occupy: Secret Docs Reveal "Counterterrorism" Monitoring of OWS from Its Earliest Days," December 27, 2012, democracynow.org; Lee Fang, "Why was an FBI Joint Terrorism Task Force tracking a Black lives Matter protest?" March 12, 2015, The Intercept; and Matt Smith, "The FBI Continues to Snoop on Environmentalists," May 14, 2015, Vice News.

Records Sought

For these and other reasons, the ACLU of Massachusetts seeks the following documents under the Massachusetts public records law:

Please send us, at your earliest convenience:

1. All documents describing limitations the RMV seeks to impose on the FBI's access to, use of, or collection of driver images contained in RMV database or files;
2. All communications between the DOT, RMV, or any of their representatives and other agencies or officials within the state government, or with federal agencies or federal officials, pertaining to the FACE Unit;
3. All records documenting public notice of the RMV's ongoing negotiations with the FBI over the FACE Unit MOU;
4. The MOU between DOT/RMV and FBI pertaining to the FACE Unit or any other FBI access to RMV driver images; and
5. The most recent internal audit of the RMV's own face recognition system.

Because this request involves a matter of public concern and because it is made on behalf of a nonprofit organization, we ask that you waive any copying costs pursuant to 950 C.M.R. § 32.06(5). ACLUM is a nonprofit §501(c)(3) organization dedicated to the protection of civil rights and liberties for all persons in the Commonwealth of Massachusetts. As the state's affiliate of the American Civil Liberties Union, ACLUM is part of a nationwide network of advocates dedicated to defending and expanding the civil liberties of all.

If you decide not to waive copying costs, we request that you permit us to examine, at our election, the responsive documents before deciding which portions to photocopy. We would prefer to receive the files electronically if possible.

Should you determine that some portion of the documents requested are exempt from disclosure, please release any reasonably segregable portions that are not exempt. In addition, please note the applicable statutory exemption and explain why it applies to the redacted portions. As you know, a custodian of public records shall comply with a request within ten days after receipt.

Please reply to this request to by contacting Kade Crockford at 617-482-3170 x 346, or at kcrockford@aclum.org.

Thank you for your assistance. We look forward to your response.

Sincerely,
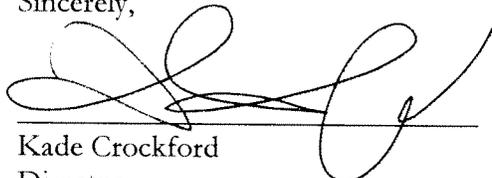
Kade Crockford
Director
Technology for Liberty Program
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