

January 18, 2019

VIA Electronic Submission

FOIA/PA Mail Referral Unit
Department of Justice
Room 115
LOC Building
Washington, DC 20530001

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 226024843

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:

ACLU

AMERICAN CIVIL LIBERTIES UNION

LEGAL DEPARTMENT

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New York, NY 10004
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Susan N. Herman
President

Anthony D. Romero
Executive Director

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Treasurer

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

recognition support to federal partners.¹ 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.”² 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 ~~ent~~³ 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.³ The FBI’s website calls NGI “the world’s largest and most efficient electronic repository of biometric and criminal history information.”⁴

“Gait recognition search” means an automated or ~~semi~~ automated process whereby an image

orders, invoices, RFPs, licensing agreements, documentation of selection, sole source or limited source justification and approval documentation, contracts (including nondisclosure 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, or 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 monthly 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 monthly 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 report⁴⁸⁹⁷, "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 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.¹⁰ Moreover, federal oversight bodies, lawmakers, and others have expressed concern about deficiencies in privacy and accuracy safeguards in FBI and DOJ face recognition systems.¹¹ The information sought

¹⁰ 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-pressure-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-amazon-facial-recognition-software/153888/>; David Owen, *Should We Be Worried About Computerized Facial Recognition?*, New Yorker, Dec. 17, 2018, <https://www.nytimes.com/2018/12/17/technology/facial-recognition.html>.

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

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.¹⁴ The ACLU and ACLUM also regularly publishes books,

Documents from Justice Department (Jan. 4, 2018),

“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 educational content on civil rights and civil liberties news through multimedia 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 and www.aclum.org. The websites address civil rights and civil liberties issues in depth, provides feaos, BT 0 scligog, assueeaos,

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

These means of distributing information to the public qualify Requesters as representatives of the news media. *Natl 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 waiver 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 public interest and disseminates it to the public”).

