

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

MINORITY (202) 225-5051

<http://oversight.house.gov>

September 6, 2016

The Honorable James B. Comey
Director
Federal Bureau of Investigation
950 Pennsylvania Avenue NW
Washington, D.C. 20535

Dear Director Comey:

The Federal Bureau of Investigation recently asked to exempt its Next Generation Identification (NGI) system from certain Privacy Act requirements.¹ Media reports and privacy advocates have raised questions about the scope of the NGI and the effect these exemptions would have on an individual's right to know whether the FBI possesses his or her biometric information, to request the information be removed, or to correct any inaccuracies within NGI.²

The NGI system is a database of biometrics, including fingerprints, palm prints, facial recognition, and a pilot program for iris recognition.³ In addition to information from criminal matters, the FBI receives biometric information, including fingerprints and photographs, from individuals undergoing background checks for various purposes, including employment and licensing. Under the previous database, most of the fingerprints received for a non-criminal matter were destroyed by the FBI after processing.⁴ With the NGI, however, the FBI will retain these non-criminal fingerprints and add them to a single searchable database consisting of all fingerprints submitted to the FBI.⁵ These non-criminal fingerprints will only be removed at the request of the submitting agency or by court order.⁶

¹ U.S. Dep't of Justice, *Privacy Act of 1974: Implementation*, 81 Fed. Reg. 27288 (May 5, 2016) (Notice of proposed rulemaking).

² Gabe Rottman, *Massive FBI Biometric Database Must be Subject to Appropriate Public Scrutiny*, Center for Democracy and Technology, May 31, 2016, available at <https://cdt.org/blog/massive-fbi-biometric-database-must-be-subject-to-appropriate-public-scrutiny/>; see also, Joshua Eaton, *Tech Civil Liberties Leaders Fight FBI Biometric Program*, CHRISTIAN SCIENCE MONITOR, June 1, 2016.

³ Federal Bureau of Investigation, *Next Generation Identification*, available at https://www.fbi.gov/about-us/cjis/fingerprints_biometrics/ngi.

⁴ Federal Bureau of Investigation, *Privacy Act Assessment Next Generation Identification – Retention and Searching of Noncriminal Justice Fingerprint Submissions*, available at <https://www.fbi.gov/foia/privacy-impact-assessments/next-generation-identification-ngi-retention-and-searching-of-noncriminal-justice-fingerprint-submissions>.

⁵ *Id.*

⁶ *Id.*

The large scale recording, retention, and use of biometric information by law enforcement raises serious privacy concerns. Privacy groups, civil liberty advocates, and private citizens alike have requested additional time to submit comments regarding the FBI's proposed exemption to the Privacy Act.⁷ A recent GAO analysis of the NGI's Interstate Photo System (NGI-IPS) also found the FBI should better ensure the privacy and accuracy of its facial recognition technology systems.⁸ There have also been troubling concerns about the potential for racial bias in the recognition software.⁹ The Committee is interested in learning about the NGI, the NGI-IPS, and the effect of any exemptions to the Privacy Act being considered.

To assist the Committee, please provide the following documents and information as soon as possible, but by no later than 5:00 p.m. on September 20, 2016:

1. All policies, guidance, or memoranda on the use of facial recognition technology, including, but not limited to, internal FBI guidance and guidance or memoranda provided by the FBI to state and local entities;
2. All policies, guidance, or memoranda on the use and retention of images and data collected when using facial recognition technology;
3. Documents referring or relating to the accuracy rate and error rate for the facial recognition technology being used by the FBI and the methodology used to arrive at these rates, including, but not limited to, the source of the rate and the results of any testing the FBI has performed on its facial recognition technology;
4. All memoranda of understanding or non-disclosure agreements with state and local law enforcement agencies regarding the use of the FBI's facial recognition technology or the use of information obtained through the use of facial recognition technology;
5. Documents referring or relating to any allegations regarding potential misuse of the FBI's facial recognition technology;
6. Documents sufficient to show the number of photographs (from any source) contained in the NGI; and
7. Documents sufficient to identify the source of each photograph contained in the NGI.

⁷ See Letter from a coalition of civil rights, human rights, immigrant rights, privacy, and transparency organizations and companies to Ms. Erika Brown Lee, Privacy Analyst, Privacy & Civil Liberties Office, U.S. Dep't of Justice (May 27, 2016), available at <https://www.eff.org/document/2016-letter-fbi-re-NGI>.

⁸ Gov't Accountability Office, *Facial Recognition Technology: FBI Should Better Ensure Privacy and Accuracy* (May 2016) (GAO-16-267).

⁹ *Facial-Recognition Software Might Have a Racial Bias Problem*, The Atlantic (Apr. 7, 2016) (online at <http://www.theatlantic.com/technology/archive/2016/04/the-underlying-bias-of-facial-recognition-systems/476991/>).

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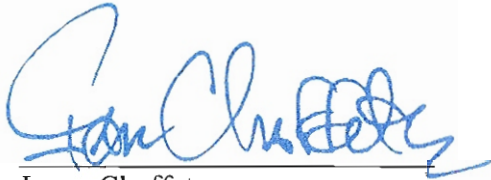
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The Committee on Oversight and Government Reform is the principal investigative committee in the House of Representatives. Pursuant to House Rule X, the Committee has authority to investigate “any matter” at “any time.”

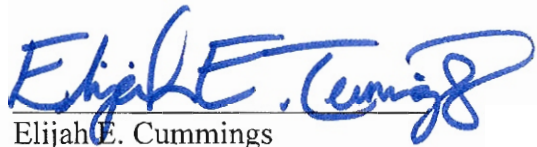
When producing documents to the Committee, please deliver production sets to the Majority staff in Room 2157 of the Rayburn House Office Building and the Minority staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committee’s request.

Please contact Sean Brebbia of the Majority staff at (202) 225-5074 with any questions about this request. Thank you for your attention to this important matter.

Sincerely,



Jason Chaffetz
Chairman



Elijah E. Cummings
Ranking Member

Enclosure

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.