

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES DIVISION
AND

THE SOUTH CAROLINA STATE LAW ENFORCEMENT DIVISION

**CONCERNING THE SEARCH OF PROBE PHOTOS AGAINST THE
SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLE FACIAL
RECOGNITION DATABASE AND CRIMINAL (MUG SHOTS AND
PROBATION PHOTOS) FACIAL RECOGNITION DATABASE**

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to document the agreed responsibilities and functions of the Parties with respect to conducting searches of the South Carolina State Law Enforcement Division (SLED) facial recognition (FR) photo databases. These databases contain mug shots, probation photos, and South Carolina state driver license (DL) photos. These searches will be performed for the purpose of comparing FBI Facial Analysis, Comparison, and Evaluation (FACE) Services Unit probe photos against photos housed in the South Carolina SLED's Department of Motor Vehicles (DMV) and Criminal FR photo databases and obtaining information that will advance active FBI investigations, apprehend wanted fugitives or known or suspected terrorists, and locate missing persons nationwide. A probe photo refers to the photo of the subject of an active FBI investigation that is submitted for search against a photo repository. The anticipated result of that search will be a photo gallery of potential matches (candidates). These potential matches will be forwarded to the FBI, along with any associated information stored with the photo in the South Carolina SLED's DMV and Criminal FR systems. The FBI FACE Services Unit will then perform comparisons of the candidate photo(s) against the probe photo(s) to determine their value as investigative leads.

II. PARTIES

- A.** The FBI, Criminal Justice Information Services (CJIS) Division, Biometric Services Section (BSS), FACE Services Unit provides investigative support to FBI field offices and headquarters divisions. The CJIS Division, through its Assistant Director, is the FBI's point of contact (POC) for this MOU. For certain day-to-day operations of the activities described by this MOU, the FBI's POC with the South Carolina SLED will be the FACE Services Unit's management and its Management and Program Analysts.

- B. The primary mission of the SLED is to provide quality manpower and technical assistance to law enforcement agencies and to conduct investigations on behalf of the state as directed by the Governor and Attorney General. The South Carolina Information and Intelligence Center (SCIIC), a unit of SLED, is a collaborative effort with law enforcement and multi-disciplinary partners to collect, analyze, and disseminate intelligence products to State, Local, and Federal Law Enforcement personnel and first responders of South Carolina with the goal of maximizing the ability to detect, prevent, and respond to criminal and terrorist activity. The SCIIC is the officially designated Fusion Center for South Carolina. One of the services provided by the SCIIC is the identification of unknown suspects from digital images, using facial recognition technology.
- C. For the purposes of this MOU, the South Carolina SLED SCIIC POC is the Chief of the South Carolina SLED. For certain day-to-day operations of the activities described by this MOU, the FACE Services Unit will contact the South Carolina SLED SCIIC POC.

III. AUTHORITIES

- A. The FBI enters into this MOU pursuant to Title 28, United States Code (U.S.C.) Sections 533 and 534; Title 28, Code of Federal Regulations Section 0.85; Title 42, U.S.C. Section 3771; and Title 18, U.S.C. Chapter 123.
- B. The State of South Carolina is authorized to share DL information with the FBI for authorized law enforcement purposes pursuant to Title 18, U.S.C. Section 2721 (b)(1).
- C. The South Carolina SLED enters into this MOU pursuant to Section 56-1-3380, South Carolina Code of Laws, as amended, and pursuant to a MOU between the South Carolina DMV, established under Section 56-1-5, South Carolina Code of Laws, as amended, and SLED, established under Section 23-3-10 of the South Carolina Code of Laws, as amended, executed on July 30, 2011.

IV. BACKGROUND INFORMATION

- A. The FACE Services Unit provides a facial recognition service in which FBI Special Agents, or other authorized FBI personnel, submit to the FBI CJIS Division a photo of the subject of an active FBI investigation. These probe photos are compared to photographs in databases authorized for use by the FBI (i.e., FR databases maintained by state motor vehicle departments/agencies, law enforcement, or other government agencies). The South Carolina SLED SCIIC compares the probe photo to its databases, and candidates produced as a result of the searches are sent by the South

Carolina SLED SCIIC to the FACE Services Unit. The FACE Services Unit compares the South Carolina SLED SCIIC candidate photos against the submitted probe photo in an effort to narrow it down to the one or two most-likely candidates. These candidates are then provided to the requesting FBI contributor for use as an investigative lead. The number of candidates produced and provided to the FACE Services Unit as a result of these searches is dependent upon the searching threshold set by the individual agency.

- B. The intent of this service is not to provide a positive identification, but to provide the FBI Special Agent with an investigative lead and analysis to support that lead. The FBI will utilize the South Carolina SLED DMV and Criminal FR photo databases to supplement information provided by existing FBI database searches.

V. SPECIFIC RESPONSIBILITIES

A. The FBI will:

1. Submit probe photos, via Law Enforcement Online (LEO)-to-LEO e-mail, to the South Carolina SLED SCIIC for the purposes of comparing the probe photos with photos in the South Carolina SLED DMV and Criminal FR photo databases. The LEO is accredited and approved by the FBI for Sensitive-but-Unclassified law enforcement information.
2. Manually analyze, compare, and evaluate the returned candidate photo gallery against the probe photo to determine the most-likely candidate.
3. If necessary, request additional biographical information associated with each photo determined to be a most-likely candidate via a secure email communication.
4. Submit the photo(s) of the most-likely candidate(s) to be searched against the FBI's Next Generation Identification Interstate Photo System in order to:
 - a. Locate any additional photos and associated information relating to the most-likely candidate(s).
 - b. Identify additional potential candidates and associated information.

The results of this search will be compared and analyzed against the original probe photo(s). Once the analysis is complete, the one or two

most-likely candidate photos, along with their associated information, will be provided to the requesting agent as an investigative lead.

5. Store photo images and text associated with the DL of the most-likely candidate(s) to the probe in the FBI case management system for record keeping purposes.
6. Immediately destroy all other gallery photos and associated information.

B. The South Carolina SLED SCIIC will:

1. Apply for a LEO e-mail account through the LEO Operations Unit.
2. Compare the FACE Services Unit-submitted probe photo against the South Carolina SLED DMV and Criminal FR photo databases.
3. Return electronic photos and driver's license number and/or personal identification card number of all possible candidates to the FACE Services Unit via LEO e-mail.
4. Upon request, return additional biographical information associated with each photo determined to be a most-likely candidate.
5. Ensure that only authorized South Carolina SLED SCIIC personnel will handle requests submitted by the FBI CJIS Division. Authorized South Carolina SLED SCIIC personnel refers to personnel who are currently trained to perform FR queries against the South Carolina SLED DMV and Criminal FR photo databases for law enforcement purposes. Names of these predetermined South Carolina SLED SCIIC personnel will be submitted to the FBI CJIS Division for the purpose of the FACE Services Unit establishing and maintaining communications contact with those South Carolina SLED SCIIC personnel who will be providing services to the FACE Services Unit.
6. Immediately and permanently destroy all probe photo images, and any associated data submitted from the FACE Services Unit, once the search has been completed and the response has been sent to the FACE Services Unit via LEO. The SLED SCIIC will document the request in its Request and Case Management System to include date assigned, requestor, requesting agency, assigned to, services provided, date completed, and feedback.
7. Ensure that photos received from the FACE Services Unit will not be electronically transmitted by any internal or external South Carolina SLED systems except as necessary to effectuate this agreement.

8. Prohibit the sharing and/or dissemination of any information associated with FBI FACE Services' requests beyond the authorized South Carolina SLED personnel.

VI. PRIVACY AND SECURITY

- A. The information involved in this MOU may identify U.S. persons, whose information is protected by the Privacy Act of 1974. The FBI will ensure that all such information will be handled lawfully pursuant to the provisions thereof. Conversely, the South Carolina SLED will comply with its own state's privacy laws.
- B. For purposes of this MOU, Personally Identifiable Information (PII) is defined as information which can be used to distinguish or trace an individual's identity, including any personal information which is linked or linkable to a specific individual. Examples of PII are name, social security number, date of birth, place of birth, citizenship, mother's maiden name, and photographs, fingerprints, and other biometrics.
- C. Each party that discloses PII is responsible for making reasonable efforts to ensure that the information disclosed is accurate, complete, timely, and relevant.
- D. Each party will immediately report to the other party each instance in which information received from the other party is used, disclosed, or accessed in an unauthorized manner (including any information losses or breaches).
- E. All transmissions of probe photos submitted by the FACE Services Unit to the South Carolina SLED SCIIC and responses returned to the FACE Services Unit will be made through a LEO-to-LEO e-mail connection.
- F. The South Carolina SLED SCIIC will ensure user accounts and authorities granted to its personnel are maintained in a current and secure "need-to-know" status.
- G. Both FBI requests and South Carolina SLED SCIIC responses will contain PII, and LEO e-mail is approved and authorized to ensure security of information contained in these transmissions.
- H. All hardcopy facial images determined by the FACE Services Unit not to be a most-likely candidate, along with all associated textual information, will be disposed via confidential trash. All electronic facial images, including those saved on thumb drives, determined by the FACE Services Unit not to be a most-likely candidate, along with all associated textual information, will be deleted.

- I. Photo images of the most-likely candidates will be retained by the FACE Services Unit in the FBI's case management system for record-keeping purposes. All others will be destroyed by the FACE Services Unit.
- J. The information and/or documents provided by South Carolina SLED SCIIC to the FACE Services Unit will contain PII about persons retained in the South Carolina SLED DMV and Criminal FR systems. The FACE Services Unit will use this information for lawful/authorized purposes only.
- K. Each party shall be responsible for the safeguarding of any equipment used by it to access records, and shall limit access to authorized users with a need to know the information and who have been properly instructed as to their duties and responsibilities under this MOU.
- L. Each party shall implement procedures to ensure that such equipment is located in a secure area, and to prevent information, including any printed copies of records, from being viewed by individuals not authorized to see or have access to this information.

VII. EFFECT OF THIS AGREEMENT

- A. This MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable by law or otherwise against any of the parties, their parent agencies, the U.S., or the officers, employees, agents, or other associated personnel thereof. The parties will seek to resolve any disputes regarding this MOU by mutual consultation.
- B. This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds, but rather is a basic statement of the understanding between the parties of the matters described herein. Unless otherwise agreed in writing, each party shall bear its own costs in relation to this MOU. Expenditures by each party will be subject to its budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies. The parties expressly acknowledge that the language in this MOU in no way implies that funds will be made available for such expenditures.
- C. This MOU does not constitute an agreement for any party to assume or waive any liability or claim under any applicable law.
- D. Each party is responsible for ensuring that information it discloses was not knowingly obtained or maintained in violation of any law or policy applicable to the disclosing party, and that information is only made available to the receiving party as may be permitted by laws, regulations, policies, or procedures applicable to the disclosing party.

- E. Each party will provide appropriate training regarding the responsibilities under this MOU to individuals whose information-sharing activities are covered by the provisions of this MOU.

VIII. EFFECTIVE DATE, MODIFICATION, AND TERMINATION

- A. This agreement shall be effective when executed by all of the parties and will continue in effect until terminated. This agreement may be modified at any time by written consent of all parties.
- B. This MOU may be terminated, with respect to any party, at any time upon written notice of withdrawal to all other parties. Any party desiring to withdraw from this MOU will endeavor to provide such written notification to all parties at least thirty (30) days prior to withdrawal. This MOU will be reviewed annually to ensure that the terms remain current, complete, and relevant.
- C. This MOU, in eight distinct sections, is the exclusive statement of the parties with respect to its subject matter and supersedes any and all prior agreement, negotiations, representations, and/or proposals, written or verbal, relating to its subject matter.

FOR THE FEDERAL BUREAU OF INVESTIGATION



David Cuthbertson
Assistant Director
Criminal Justice Information
Services Division

4/4/13

Date

FOR THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION



Mark Keel
Chief
South Carolina State Law
Enforcement Division

4/8/13

Date