

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>

May 17, 2017

The Honorable Kevin Faulconer
Mayor of San Diego
City of San Diego
202 C Street, 11th Floor
San Diego, CA 92101

Dear Mayor Faulconer:

The Committee is conducting oversight of the use of facial recognition technology by state and local law enforcement agencies. Facial recognition software enables law enforcement to identify a person through a software program that measures unique facial features in a digital image of his or her face. The technology then uses an algorithm to compare these measurements against a database of known photos and provides law enforcement with a list of potential matches. There have been numerous concerns reported regarding the use of this technology, including its prevalence in state and local law enforcement agencies, as well as concern about potential bias and inaccuracies in the algorithms.¹

On March 22, 2017, the Committee held a hearing that examined both the federal government's use of facial recognition technology and the use of this technology between federal, state, and local law enforcement.² Reports indicate that San Diego law enforcement agencies run an average of 560 facial recognition searches of the San Diego Association of Government's Tactical Identification System (TACIDS) each month and that TACIDS contains

¹ See, e.g., GEORGETOWN LAW CTR. ON PRIVACY & TECH., THE PERPETUAL LINE-UP: UNREGULATED POLICE FACE RECOGNITION IN AMERICA (2016), available at <https://www.perpetuallineup.org/>; GOV'T ACCOUNTABILITY OFFICE, GAO-16-267, FACE RECOGNITION TECHNOLOGY: FBI SHOULD BETTER ENSURE PRIVACY AND ACCURACY (2016); Ellen Nakashima, *FBI Wants to Exempt its Huge Fingerprint and Photo Database from Privacy Protections*, WASH. POST, June 1 2016, available at https://www.washingtonpost.com/world/national-security/fbi-wants-to-exempt-its-huge-fingerprint-and-photo-database-from-privacy-protections/2016/05/31/6c1cda04-244b-11e6-8690-f14ca9de2972_story.html; Sam Thielman, *FBI Using Vast Public Photo Data and Iffy Facial Recognition Tech to Find Criminals*, THE GUARDIAN, June 15, 2016, available at <https://www.theguardian.com/us-news/2016/jun/15/fbi-facial-recognition-software-photo-database-privacy>.

² H. Comm. on Oversight and Gov't Reform, *Hearing on Law Enforcement's Use of Facial Recognition Technology* 115th Cong. (Mar. 22, 2017) available at <https://oversight.house.gov/hearing/law-enforcements-use-facial-recognition-technology/>.

an estimated 1.4 million mugshots.³ The San Diego Association of Governments is also one of the only agencies to make their facial recognition policy public.⁴

The large scale recording, retention, and use of biometric information by law enforcement raises serious privacy concerns and may implicate the Fourth Amendment. While this software has the potential to be a powerful tool for identifying dangerous criminals, measures must be in place to avoid unnecessary intrusion into innocent citizens' privacy. We are particularly alarmed by reports that facial recognition technology is less accurate at identifying people of color.⁵ It is crucial to address and combat these inaccuracies in order to safeguard American citizens' privacy and civil liberties.

So that we can better understand the technology, legal standards, and policies governing the use of this facial recognition technology, please provide the following documents and information as soon as possible, but no later than by 5:00 p.m. on May 31, 2017:

1. All policies, guidance, and memoranda referring or relating to the use or potential use of facial recognition technology;
2. All policies, guidance, and memoranda referring or relating to the retention and use of photographs collected by or accessible to law enforcement agencies;
3. All policies, guidance, and memoranda referring or relating to the use of facial recognition technology in conjunction with joint federal law enforcement operations;
4. All policies, memoranda of understanding, non-disclosure agreements, and similar documents entered into with any federal agency, manufacturer, or provider regarding the use of facial recognition technology or the use of information obtained through the use of facial recognition technology;
5. All policies, guidance, and memoranda referring or relating to the use of any federal grants to purchase, develop, test, or deploy facial recognition technology;
6. All documents referring or relating to any allegations of misuse of facial recognition technology; and
7. An inventory of San Diego's facial recognition technology that shows:
 - a. The total number of facial recognition technology systems in possession of or accessible by law enforcement and other authorized city officials;

³ GEORGETOWN LAW CTR. ON PRIVACY & TECH., *supra* note 1.

⁴ Tom Jones, *Use of Facial Recognition Software By San Diego Law Enforcement Increasing*, NBC San Diego (May 5, 2016), <http://www.nbcsandiego.com/investigations/Use-of-Facial-Recognition-Software-By-San-Diego-Law-Enforcement-Increasing--378006081.html>.

⁵ *Facial-Recognition Software Might Have a Racial Bias Problem*, THE ATLANTIC, Apr. 7, 2016, available at <http://www.theatlantic.com/technology/archive/2016/04/the-underlying-bias-of-facial-recognition-systems/476991/>.

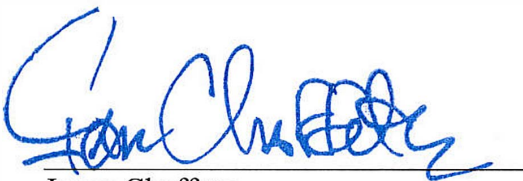
- b. The name and manufacturer of the facial recognition technology;
- c. Date of purchase and dates for any time the technology was updated;
- d. The cost of each facial recognition technology system and the total amount spent in fiscal years 2011–2016 on acquiring and using facial recognition technology; and
- e. Whether the purchase of the technology was funded partly or wholly through a federal grant.

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 note that Committee Rule 16(b) requires counsel representing an individual or entity before the Committee or any of its subcommittees, whether in connection with a request, subpoena or testimony, promptly submit the attached notice of appearance to the Committee.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may investigate “any matter” at “any time” as set forth in House Rule X.

Please have your staff contact Sean Brebbia of the Majority staff at (202) 225-5074, or Tim Lynch and Sean Perryman of the Minority staff at (202) 225-5051, with any questions about this request. Thank you for your attention to this important matter.

Sincerely,



Jason Chaffetz
Chairman



Elijah E. Cummings
Ranking Member

Enclosures

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.

**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
115TH CONGRESS**

NOTICE OF APPEARANCE OF COUNSEL

Counsel submitting: _____

Bar number: _____ **State/District of admission:** _____

Attorney for: _____

Address: _____

Telephone: (_____) _____ - _____

Pursuant to Rule 16 of the Committee Rules, notice is hereby given of the entry of the undersigned as counsel for _____ in (select one):

All matters before the Committee

The following matters (describe the scope of representation):

All further notice and copies of papers and other material relevant to this action should be directed to and served upon:

Attorney's name: _____

Attorney's email address: _____

Firm name (where applicable): _____

Complete Mailing Address: _____

I agree to notify the Committee within 1 business day of any change in representation.

Signature of Attorney

Date