

Legislature Wants To Regulate Law Enforcement Use Of Facial Recognition Software

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Lawmakers plan to run legislation to address the state Department of Public Safety's (DPS) use of facial recognition software to scan Utahns' driver's license photos.

A nearly 2-hour discussion on the topic Wednesday morning revealed that DPS runs the photo of every Utahn who applies for or renews their driver's license — about 2,000 per day, the department estimates — including minors.



"This technology really demands that legislators consider a pause because of the serious risk that it invades folks' privacy," said Harrison Rudolph with Georgetown Law's Center on Privacy and Technology.

In July, the think-tank, based in Washington, D.C., reported that Utah is one of at least three states that scans its driver license database with facial recognition software to help identify criminal suspects. Besides the regular scans of new pictures, records show that DPS also ran nearly 2,000 searches over a 25-month period, most of which were requested by federal agencies like the FBI and law enforcement agencies in other states.

Out-of-state agencies made most of the requests for facial recognition scans of Utah driver's licenses between December 2015 and November 2017, according to this table included on a handout distributed by the Utah Department of Public Safety at a meeting with lawmakers Wednesday.

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Rudolph contends that law enforcement use of this technology threatens Utahns' constitutional rights to due process and unreasonable searches. He suggested the state place a moratorium on its use or implement rules to oversee it.

“I think it’s entirely appropriate for a legislature to establish [a] higher standard for face recognition technology,” he said.

Several lawmakers from both political parties said Wednesday that they had concerns about the use of the technology and what it may mean for Utahns’ right to privacy. They also worry the software DPS uses is outdated and error-prone. Studies show that facial recognition software is more likely to incorrectly identify women and minorities.

DPS Commissioner Jess Anderson tried to assuage some of those concerns, but the Legislature’s Interim Government Operations Committee will look into opening one or two bill files on the subject at its October meeting.

One bill could create “some structure around facial recognition and the other would be a pause” on use of the technology, said chairman Rep. John Knotwell, R-Herriman, who is resigning from the legislature at the end of September

The commissioner said the criminal search requests are conducted in accordance with “strict” internal guidelines based on an agreement between the state and federal agencies. For example, he said, scans are only conducted if the requesting agency sends an active criminal case number.

But he admitted that the report from Georgetown Law’s Center on Privacy and Technology revealed weak spots in the system and that the agency is looking to update both the software and its agreements with federal agencies.

“When that report came out, we took a good, hard look at our policy. Are there areas we could stiffen up our policy – make it more clear, make it more concise? Yes,” Anderson said.

Since 2011, regular scans of new pictures have identified 1,056 cases of driver's license fraud, Anderson said. Just this week, he said the agency identified someone who changed his name in order to apply for a new driver's license after his previous one was suspended following multiple DUIs.

But lawmakers were unconvinced that the agency should be free to use the technology with no regulation.

“I feel like we need to use technology in law enforcement,” said Rep. Andrew Stoddard, D-Sandy, “but I feel like we need to do so safely while also maintaining peoples’ right to their own privacy.”

In a rare move, the ACLU of Utah, the Utah Libertas Institute and the Utah Eagle Forum all agreed on the issue and encouraged lawmakers to provide more oversight and regulation of law enforcement’s use of facial recognition software.

Marina Lowe with the ACLU of Utah said the state has been “a leader when it comes to addressing where privacy and technology collide.” She cited laws that require a warrant for accessing information like GPS and cell phone location.