Should Utah stop police facial recognition searches of drivers' photos?

Gregory Bull, AP Photo File

SALT LAKE CITY — State lawmakers are considering pushing the pause button on police agencies doing facial recognition searches on Utahns' driver's license photos.

Harrison Rudolph, with Georgetown Law's Center on Privacy and Technology, told a legislative committee Wednesday that the best way to protect residents' privacy and civil rights from unwarranted searches is to place a moratorium on the practice.

It is virtually impossible for Utahns to avoid facial recognition because the state Department of Public Safety has the technology on driver's license and state identification card photos, and for most residents, driving is necessary to keep a job or take a child to school, he said.

"Opting out of face recognition is, simply put, not an option. Nor can Utahns wear a Halloween mask each time they step outdoors," according to Rudolph.

Utah Public Safety Commissioner Jess Anderson defended the use of facial recognition as a valuable law enforcement tool. He said there have been no complaints in the 10 years the agency has run the program.

We've never had any issues with it," he said.

That might be because people weren't aware that the state ran facial recognition searches for federal agencies, including the FBI and Custom and Immigration Enforcement and local police departments until Georgetown Law released a report in July.

The Center on Privacy and Technology found that states that offer driver's licenses to undocumented immigrants, like Utah, allowed ICE to electronically analyze driver's license photos. The state refuted the report, saying it does not let federal agencies roam through its database. The Utah Statewide Information and Analysis Center only runs searches upon request for open criminal investigations and to detect driver's license fraud, Anderson said.

The study raised the eyebrows of the governor and legislative leaders, who tasked the Government Operations Interim Committee with reviewing the issue.

After hearing testimony Wednesday, Rep. John Knotwell, R-Herriman, the committee co-chairman, asked legislative staffers to draft two proposals to consider next month. One would put into law public safety policies on the use of facial recognition technology. The other would outline a moratorium.

"There's so many problems with this," said Sen. Jani Iwamoto, D-Salt Lake City.

Rudolph said facial recognition technology gives police unprecedented power, threatens civil rights and liberties, and is prone to error and bias toward women and minorities. The Utah Legislature never expressly allowed public safety to use the technology and it operates with few, if any, regulations, he said.

Sen. Don Ipson, R-St. George, took issue with Rudolph's "innuendo" that police are corrupt and acting outside the scope of their authority.

"This is pretty bold and I'm not sure I'm comfortable," Ipson said.

Rudolph said he's not alleging that police are engaged in widespread surveillance. He said it would be impossible and illegal for police to randomly collect people's driver's licenses or fingerprints.

"Face recognition flips that on its head," he said.

Anderson told the committee that legislative leaders and public safety officials agreed in 2010 that a facial recognition program would be best served under strict department policies rather than state laws. Those policies remain in place, though he said the Georgetown report prompted a "good hard look" that resulted in a draft of new guidelines.

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Public safety also is reconsidering a memorandum of understanding with the FBI for facial recognition services, Anderson said. The FBI wants the state to destroy any evidence it obtains but the state won't do that, he said.

The database contains 2.5 million mostly Utah driver's license photos, including those of residents under age 18, Anderson said. It also contains a one-time download of jail mugshots in 2011. One county sends in about 200 booking photos a month, he said.

Since the Statewide Information and Analysis Center started keeping track in 2015, Utah has run nearly 3,284 searches for federal agencies, 357 for out-of-state police departments and 263 for local law enforcement. Over that time, federal matches were 5.6%, out-of-state 4.2% and local 19%.

The public safety department does not charge a fee to other agencies to do the searches.

The state's driver license division has detected 1,056 cases of fraud, including a driver with multiple DUIs trying to get a license under a different name just Tuesday, Anderson said.

Three politically disparate groups — American Civil Liberties Union of Utah, Libertas Institute and Eagle Forum — all agreed the state should stop doing facial recognition searches for now.

Short of a moratorium, Libertas President Connor Boyack suggested the state impose a fee on federal agencies, limit the database to mugshots and felony crimes and establish a legal standard such as reasonable suspicion or probable cause to conduct a search.