

Utah lawmakers scrutinize law enforcement's facial recognition scans of state driver licenses

Salt Lake Tribune

9/18/19

https://www.sltrib.com/news/politics/2019/09/18/utah-lawmakers-scrutinize/?fbclid=IwAR2KwQUB8vh5WWWwdwn3i4VSE_fcMCBEiAex6mWD9mYA2OM9ZPUhI9FcxJU

By Lee Davidson

Utah lawmakers said Wednesday that it may be time to hit the pause button on state use of facial recognition technology that allows immigration and law enforcement officials to pore through all Utah driver license photos to identify criminals, witnesses or others of interest.

That came as officials conceded that Utah's system is out of date; prone to

errors, especially with women and people of color; in need of more training for analysts and has no legal standards for operation. The Legislature never passed laws specifically allowing such activities.

"Why not take a pause so that we can solve some of these questions," Marina Lowe, legislative and policy counsel for the American Civil Liberties Union of Utah, asked the Legislature's Government Operations Interim Committee on Wednesday.

Amid such calls, Committee Co-chairman John Knotwell, R-Herriman, asked staff to study and draft bill options that may put the program on hold, or at least codify what procedures should be allowed and followed.

Senate President Stuart Adams and House Speaker Brad Wilson asked the committee to look into the matter after the Washington Post and New York Times earlier this year reported that the FBI and Immigration and Customs Enforcement mined driver license databases in many states, including Utah, analyzing millions of motorists' photos without their knowledge.

As Rep. Marc Roberts, R-Salem, said, "From a legislative perspective, maybe we were caught a little bit off guard that this even existed."

Harrison Rudolph, an associate at Georgetown Law's Center on Privacy & Technology and co-author of the study that led to the national newspaper stories, testified, "Face recognition enables law enforcement agencies to obtain virtually every Utah adult's identity without their knowledge or consent."



He said it essentially puts them in criminal lineups without consent, as technology searches through every photo in the database to identify criminals or others of interest.

Worse, Rudolph said, studies have shown such systems are error prone, especially with women and people of color — leading to possibly misidentifying some innocent people as criminals. He said Utah also is using an old system made by a company no longer in business.

Utah Commissioner of Public Safety Jess Anderson defended use of facial recognition but conceded in questions that the state is using an old system — but is seeking a new one; that analysts could use better training; that the technology does have more errors with women and minorities; and that the Legislature never gave specific, clear permission to use the technology with driver photos.

Anderson complained that news stories made it sound like large, wholesale fishing expeditions are taking place with the database — which he said is not the case.

Anderson said searches are for specific individuals — usually as an agency provides photos of an unknown suspect or others involved in criminal investigations to see if identities can be found through matches in the driver license database.

He added it is not a matter of blind reliance on computers for matches. Once they provide potential matches, analysts go through photos to carefully determine if matches are genuine or not — and a supervisor must also concur with a match.

Anderson provided data showing that matches are found only for 6.4% of requests. “We take this seriously,” he said. “It’s not just a guessing game.”

But Rep. Andrew Stoddard, D-Sandy, who works as a prosecutor, told Anderson, “I don’t think your testimony here today has made me feel any more comfortable with it.”

He wondered if error rates and racial and gender bias could prevent some identifications from being used in court. He noted that the searches are conducted without warrants, and in cases where merely some sort of criminal investigation is ongoing.

Rep. Suzanne Harrison, D-Draper, asked if searches also look through photos of youth ages 16 and 17. Anderson said yes, adding sometimes there may be reasons to try to identify youth or young-looking people.

Rep. Karen Kwan, D-Murray, noted that news stories said immigration officials were mining databases of photos of undocumented immigrants used for driving privilege cards. Utah had previously vowed not to turn over information about immigrants seeking such cards to federal officials, to help ensure that they buy auto insurance and learn driving laws.

She asked Anderson if ICE was using the database to search for illegal aliens. Anderson said that, according to ICE, it was only looking for people suspected of serious crimes such as selling drugs, human trafficking and homicide.

Anderson said photos are not in separate databases for people with driver licenses or driving privilege cards — so it is not possible to use the photo database for wholesale searches to identify the undocumented.

Connor Boyack, director of the libertarian Libertas Institute, suggested that if the state allows searches of the photo database, it should limit them only for use in cases involving felonies —

to help ensure that they are not used to identify people guilty of something as minor as jaywalking.

Anderson urged lawmakers not to shut down the program. He said it has helped identify more than 1,000 people who applied for driver licenses with false identities. He said it did such things as help identify a road fatality recently, and even helped find some bank robbery suspects. Anderson said the Department of Public Safety is willing to work on appropriate codification and rules.