June 28, 2016

Walter Craddock
Administrator
RI Division of Motor Vehicles
600 New London Avenue
Cranston, RI 02920

Dear Administrator Craddock:

I am writing to express our organization's concerns about the State's apparent plans to allow the Federal Bureau of Investigation (FBI) to use facial recognition technology to match, compare, and/or search Rhode Island drivers' images, pursuant to a Memorandum of Understanding (MOU) reportedly under negotiation between the DMV and the FBI. By separate letter, I am submitting an Access to Public Records Act request to obtain information about this MOU, but the purpose of this letter is to urge your agency's reconsideration of any actions in that regard.

According to a May 2016 General Accountability Office (GAO) report[1] released to the public on June 15, 2016, Rhode Island is one of 18 states currently negotiating MOUs with the FBI to facilitate FBI access to driver's license images for purposes of facial recognition matching.

It is our understanding that these negotiations involve the FBI's Facial Analysis, Comparison, and Evaluation (FACE) Services Unit. The GAO report states that the FACE Unit "conducts face recognition searches on Next Generation Identification-Interstate Photo System (NGI-IPS) and can access external partners' face recognition systems to support FBI active investigations." As of May 2016, the FBI had signed MOUs with 16 states authorizing the FBI "to request face recognition searches of the states' photo repositories to assist with FACE Services requests." FBI officials told GAO investigators that they had also entered into negotiations with 18 other states – including Rhode Island – to expand their search capability.

We have numerous reasons for concern about such a collaboration and the use of facial recognition systems in this manner. First, there are serious questions about their accuracy and the rate of false positives generated by the program. The GAO report specific-

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[1] Government Accountability Office, "Face Recognition Technology: FBI Should Better Ensure Privacy and Accuracy," May 16, 2016, GAO-16-267.

ally found that the FBI has insufficiently tested its facial recognition systems to determine their accuracy. The negative impact of mistakes is magnified when information currently collected and analyzed for one purpose – obtaining a legal license to operate a motor vehicle – is used for another: matching images of Rhode Island drivers to people of interest to the FBI. For people inaccurately identified by facial recognition algorithms at the DMV, the result at present is probably a frustrating inconvenience, perhaps requiring an additional trip to the DMV to fix the problem. But much more serious civil liberties and civil rights violations could follow if the FBI is granted routine access to the DMV database of driver images.

Second, facial recognition systems threaten the constitutional right to anonymously criticize the government, and could subject people not suspected of criminal activity to law enforcement scrutiny simply by virtue of going outside, posting an image on social media, or obtaining a driver's license. This is not mere speculation or paranoia. After September 11, 2001, the FBI changed its policies to allow its agents to conduct investigations on Americans absent any suspicion of criminal wrongdoing.[2] Since then, the FBI has investigated activists involved with the Occupy, Black Lives Matter, and environmental justice movements, among many others.[3] Consequently, if the FBI has access to driver's images in the DMV database for use in facial recognition matching or searching, Rhode Island residents may be subjected to FBI facial recognition surveillance because of their constitutionally protected political speech. State residents do not knowingly sign up for such surveillance when they get their driver's licenses at the DMV.

Third, both of these concerns are exacerbated by FBI secrecy and failures to implement accountability, auditing, and transparency mechanisms. According to the GAO report, the FBI has failed to conduct (1) audits to ensure FBI officials are conducting facial recognition searches in a manner that comports with Criminal Justice Information Services policy and doesn't violate Americans' privacy, and (2) operational reviews to ensure the system is functioning as intended. The GAO also reports that the Department of Justice has failed to publicly describe its plans for facial recognition in a complete and timely manner, as it is required to do through Privacy Impact Assessments (PIAs). These PIAs should have been completed and publicized before implementation of facial recognition systems, not after, and they should have been updated before, not after, DOJ/FBI made changes to the system that could reasonably implicate the privacy rights for millions of people across the nation.

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[2] ACLU, "Unleashed and Unaccountable: The FBI's Unchecked Abuse of Authority," September 2013, aclu.org.
[3] See Democracy Now!, "The FBI vs. Occupy: Secret Docs Reveal "Counterterrorism" Monitoring of OWS from Its Earliest Days," December 27, 2012, democracynow.org; Lee Fang, "Why was an FBI Joint Terrorism Task Force tracking a Black lives Matter protest?" March 12, 2015, The Intercept; and Matt Smith, "The FBI Continues to Snoop on Environmentalists," May 14, 2015, Vice News.

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We believe this sort of significant change in the use and sharing of driver license photos deserves public scrutiny. We urge you to refrain from entering into an MOU with the FBI until members of the public and interested advocacy groups have had the opportunity to review it and to weigh in on the benefits and the costs of such a collaboration.

Thank you in advance for your attention to this request, and I look forward to hearing back from you about it.

Sincerely,

Steven Brown
Executive Director

cc: Marcy Coleman, Legal Counsel
       Robert S. Hull, Director, Department of Revenue