



August 29, 2016

Mike DeWine, Ohio Attorney General
30 East Broad St, 14th Floor
Columbus, Ohio 43215

SENT VIA U.S. MAIL & HAND DELIVERED

Dear Mr. DeWine:

The ACLU of Ohio writes to express our concern regarding the possibility Ohio's OHLEG system, including the facial recognition database, will soon be accessible to the Federal Bureau of Investigation (FBI).

Recent news reports revealed the FBI has been actively obtaining formal permission from numerous states for access to those states' databases. These databases collectively contain millions of photographs from a wide variety of sources including drivers' licenses, criminal mug shots, and corrections photos.

Those same news accounts indicated Ohio is not one of the states currently partnered with the FBI. Accordingly, the ACLU of Ohio submitted a public records request to the Bureau of Criminal Identification (BCI) to determine the extent of negotiations, if any, between the FBI and BCI.

While the results of our records request do not definitively indicate whether or not the FBI and BCI are actively negotiating for FBI access to OHLEG, it does appear that way. For the following reasons, the ACLU of Ohio urges you to reject allowing the FBI to connect to OHLEG.

With regard to facial recognition databases, the federal Government Accounting Office (GAO) recently examined the FBI's use of that technology. The GAO then released a report¹ on May 16, 2016 expressing serious concerns about the FBI's practices. Among the GAO's alarming findings:

¹ "Face Recognition Technology: FBI Should Better Ensure Privacy and Accuracy" - U.S. Government and Accountability Office - May 2016 - <http://www.gao.gov/assets/680/677098.pdf>

AMERICAN CIVIL
LIBERTIES UNION
OF OHIO
4506 CHESTER AVENUE
CLEVELAND, OH 44103-3621
T/216.472.2220
F/216.472.2210
WWW.ACLUOHIO.ORG
contact@acluohio.org



- A failure to adequately determine error rates;
- A failure to test the reliability and accuracy of states' databases;
- Non-existent and non-updated privacy policies, as required under law;
- A lack of audits to ensure compliance with relevant laws and policies; and,
- An overall lack of transparency and notice to the public regarding its use of this technology.

Ohioans deserve to know about such technology, its privacy implications, and the effects it could have on their lives. Yet, as the GAO report demonstrates, the FBI is severely lacking in several fundamental ways that provide such information and confidence.

In addition, the FBI is now pushing to have its massive biometric information-gathering apparatus, the Next Generation Identification (NGI) system, exempt from the federal Privacy Act of 1974². The Privacy Act provides crucial privacy protections and transparency to help Americans understand the implications of government collection and use of personal data. That the FBI is quickly moving to exempt the NGI from this law is extremely troubling and provides even more evidence regarding their view of Americans' privacy concerns.

The FBI's desire to access all of OHLEG, not just the facial recognition, only increases our concern. Indeed, in even just the past few months, the FBI has been involved in several controversies regarding privacy and mass surveillance. These include, but are not limited to:

- Using aircraft to secretly surveil Americans around the country;³
- Using technology, such as Stingray devices, to track, without warrants, Americans' locations via their cell phones;⁴ and,
- Attempting to amend current law to gain greater access to telecommunications records without a warrant.⁵

² "FBI Wants to Exempt Its Huge Fingerprint and Photo Database from Privacy Protections" – Washington Post, 6/1/16 - 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

³ "FBI Behind Mysterious Surveillance Aircraft Over U.S. Cities" – Associated Press, 6/2/15 - <http://bigstory.ap.org/article/4b3f220e33b64123a3909c60845da045/fbi-behind-mysterious-surveillance-aircraft-over-us-cities> and "The FBI Flies Secret Surveillance Planes Under Fake Company Names" – Popular Mechanics, 6/2015 - <http://www.popularmechanics.com/flight/a15835/fbi-surveillance-planes-fake-company-names/>

⁴ "Police Secretly Track Cell Phones To Solve Routine Crimes" – USA Today, 8/24/15 - <http://www.usatoday.com/story/news/2015/08/23/baltimore-police-stingray-cell-surveillance/31994181/>

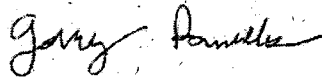
⁵ "Senate Votes Down Proposal To Expand FBI Surveillance Powers" – Reuters, 6/22/16 - <http://www.reuters.com/article/us-cyber-fbi-emails-idUSKCN0Z8160>

Given these recent controversies and the GAO report on the FBI's use of facial recognition, the ACLU of Ohio questions why there should be any consideration to give the FBI even more ability to access personal information, with minimum security and oversight, and with no opportunity for public input. The FBI's ongoing track record of widespread mass surveillance and blatant disregard for laws and policies meant to protect our privacy should, at the very minimum, give Ohio pause.

At a minimum, this issue should be discussed and debated around the state so all Ohioans have an opportunity to weigh in on this rapidly-moving and historically unprecedented expansion of data sharing. As it stands now, the ACLU of Ohio urges you to reject any partnership with the FBI to make available sensitive and personal information via OHLEG.

Should you have any questions or concerns about our position on this matter please do not hesitate to contact us directly.

Sincerely,



Gary Daniels
Chief Lobbyist
gdaniels@acluohio.org



Mike Brickner
Senior Policy Director
mbrickner@acluohio.org

cc: Thomas Stickrath, Superintendent, Bureau of Criminal Investigation