July 27, 2021

Long Beach Technology and Innovation Commission
411 West Ocean Boulevard, 1st Floor
Long Beach, CA 90802
via email: Alejandra.Garcia@longbeach.gov

RE: Agenda Item 2, June 28, 2021 - LACRIS Facial Recognition Best Practices

Dear Technology and Innovation Commission Members,

At the last Public Safety Committee meeting the Long Beach Police Department presented on "privacy considerations and best practices associated with the use of the Los Angeles County Regional Identification System (LACRIS), Facial Recognition System." The LBPD has used facial recognition technology for over a decade in secret, until CheckLBPD uncovered the LBPD's use of facial recognition last November.

Enclosed is a copy of a letter I submitted to that committee regarding the best practices ignored by the LBPD's new facial recognition policy. Facial recognition can be dangerous and a driver of inequity when used incorrectly. The LBPD's facial recognition policy does little to ensure safe and Constitutional use.

In recent history the LBPD has been caught using TigerText disappearing messaging—even for internal affairs investigations. They illegally shared Automated License Plate Reader (ALPR) data with ICE in violation of the Long Beach and California Values Acts for most of 2020 until it was uncovered by the CheckLBPD. The LBPD also used ALPR to target innocent protestors leading to traumatic and potentially deadly encounter in other jurisdictions. CheckLBPD's most recently discovery was a secret LBPD drone program operating without an internal use policy, something the department is still in the middle of correcting.

Given this record of surveillance technology misuse and their record of obfuscation on facial recognition which I detail in the enclosed letter, it would be irresponsible to now trust the LBPD to act responsibly on facial recognition.

Hopefully, the work of this commission will be able to illuminate the dangers of this technology to the City Council and convince them of the need for oversight and regulation of police use of facial recognition.

Sincerely,

Greg Buhl
Lead Investigative Researcher at CheckLBPD.org
greg@CheckLBPD.org

Enclosed: Letter Submitted to Public Safety Committee with LBPD Facial Recognition Policy Attached.

June 22, 2021

Long Beach Public Safety Committee
411 West Ocean Boulevard, 1st Floor
Long Beach, CA 90802
via email: cityclerk@longbeach.gov

RE: Agenda Item 3, June 23, 2021 - Facial Recognition Best Practices

Dear Public Safety Committee Members,

At this month's Public Safety Committee meeting we will be hearing from the Long Beach Police Department on "privacy considerations and best practices associated with the use of the Los Angeles County Regional Identification System (LACRIS), Facial Recognition System." This will likely be in the form of introducing us to the Special Order on Facial Recognition that was drafted last year after CheckLBPD.org uncovered the LBPD's facial recognition program which had operated in secret for over a decade without oversight or policy to ensure safe and Constitutional use.

The LBPD's relatively new Special Order on Facial Recognition, which is attached to this letter, falls far short of best practices. While they did finally adopt much of the LACRIS policy template, which would be doing the bare minimum, they cut parts of the template and made some additions to weaken the policy. The LBPD's new facial recognition policy is as close to best practices as the Queen Mary is to seaworthy.

In this letter I will cover four topics: 1) the facial recognition best practices other agencies have adopted which the LBPD is not following, 2) the denial of the promised open and transparent process on facial recognition, 3) unaddressed equity and racial bias concerns, and 4) the department's history of lack of transparency on facial recognition which has continued into the present.

It is particularly concerning that the department has chosen to ignore specific best practices others have developed to reduce the racial bias still present in facial recognition algorithms. The LBPD has failed to learn anything from the string of wrongful arrests triggered by facial recognition in recent years. Instead they adopted a policy that mirrors the policy the Detroit Police Department recently replaced because it was insufficient to protect civil liberties and Constitutional rights of those misidentified. The flawed Detroit system was designed and run by DataWorks Plus, the same vendor that the LASD uses for LACRIS. This means the LBPD currently uses the same flawed system as Detroit, but with policy and procedures that have already been shown time and time again to be insufficient in actual practice.

The policy the LBPD has adopted is not the product of a genuine desire for the best facial recognition policy or even a good one; it is a policy hastily cobbled together in December after CheckLBPD.org and FORTHE Media uncovered the department's decade-long secret use of facial recognition technology. (checklbpd.org/facial-recognition-part-one/ & FORTHE.org/journalism/lbpd-facial-recognition/).

Missing Best Practices from the LBPD's so-called "Best Practices" on Facial Recognition

While many would rightly argue the best practice for facial recognition is a ban on all police use of facial recognition, there are specific best practices missing from the LBPD's two page facial recognition policy. The LBPD did not try very hard in researching best practices. Georgetown Law Center on Privacy & Technology (an institution whose Perpetual Line-up study on facial recognition is so respected it is cited by facial recognition opponents and supporters alike) has published a model facial recognition policy.

(www.perpetuallineup.org/appendix/model-police-use-policy). Other departments that have had arrests triggered by facial recognition mismatches have developed policies to prevent reoccurrences. The chasm of difference between these policies and the LBPD's shows how far the LBPD is from best practices.

- LBPD policy is missing multi-level, multi-person human review designed to prevent misidentification and counter cross-racial identification problems. Vigilant Solutions, who the LBPD has brought in to conduct facial recognition training for the department, recommends that a 3 to 5 person second-level impartial review board sign off on all matches before armed officers are sent to confront a suspect based on an algorithmic match. The LBPD policy allows a single officer to make a determination on search results on cases they are personally investigating. Lack of impartiality and a single set of eyes is a recipe for disaster, not a best practice. This would not be a major burden on the LBPD; last year in CPRA response the LBPD estimated that only 60 of their 4,000 searches in the last decade have resulted in investigative leads.

- Truly best practices would involve testing departmental personnel for facial recognition acuity and selecting secondary reviewers from those that possess a heightened acuity.

- The policy has no limit on submitting poor quality images which are more likely to be misidentification.

- The LBPD has reserved the right to use live facial recognition video analytics on real time video footage. This is specifically banned by many cities that have otherwise allowed police use of facial recognition because the technology is not capable of performing live matches consistently or accurately. Live facial recognition is specifically banned by LACRIS. It's inclusion in the Special Order was likely influenced by Vigilant Solutions who markets a private system that claims to possess that capability, but is a flawed software they have been struggling to market or even settle on a name for. Rite-Aid and other stores have stopped using live facial recognition because of problems they were generating by identifying the wrong people as shoplifters. Imagine the chaos when the LBPD starts getting alerts saying wanted suspects are spotted by a camera downtown, but 9 out of 10 times they are being sent out on false alerts. This is such a bad idea it could easily get someone killed if enacted. The people of Long Beach should not be used as guinea pigs for Vigilant Solutions' live video facial analytics applications, regardless of how friendly the company and department are since the company hired former-LBPD Lieutenant Chris Morgan as an executive.

- The LBPD does not limit the types of crimes facial recognition can be used to investigate. Detroit PD once had a similar policy. They changed the policy after a mismatch caused their officers to arrest a misidentified Black man at his home, at gunpoint, in front of his crying wife and daughter because a surveillance camera caught a vaguely similar-looking man shoplifting. The risk of a mistaken facial recognition identification is not worth it when the crime would only result in a slap on the wrist. Detroit limits use to serious or violent crimes. Georgetown Law's model policy limits it to felonies.

- No penalty for misuse. After their toothless policy proved worthless the Detroit PD classified misuse of facial recognition as "major misconduct" that would result in dismissal and referral for criminal charges. Detroit's Revised Policy: detroitmi.gov/sites/detroitmi.localhost/files/2019-09/Revised%20facial%20recognition%20directive%20transmitted%20to%20Board%209-12-2019.pdf

- Failure to adequately explain "authorized use" due to the Special Order covering investigatory use and emergency use in a single bullet point despite differing standards for use in these situations.

- Insufficient audit policy. The LBPD policy only calls for random audits. In practice, like with their automated license plate reader (ALPR) program, this will mean audits will never occur. The LBPD

would still be sharing license plate reader data with ICE in violation of the LB and California Values Acts if not for CheckLBPD's informal ALPR audit last year that uncovered their "mistake". While I am happy to do what I can using the Public Records Act, the LBPD is denying me--and by extension the public--the most important documents requested that would either show proper or improper use of facial recognition last year. Mandatory annual audits of use should be instituted given the LBPD track record on technology (i.e. TigerText, drones, and ALPR) and their suspicious pattern of facial recognition use in 2020.

- Failure to limit use of private, non-mugshot facial recognition databases, as LACRIS recommends. They have left the door open to reinstituting the use of Clearview AI if they want.

Besides LACRIS, the LBPD also used Clearview AI, a company being sued all over the country and the world for its illegal collection of images from private social media pages to create a database of 3 billion face images. The LBPD was a party to one of the most wide-spread privacy violations involving local police. The department is in no position to act as an authority on "privacy considerations", certainly not as the sole voice invited to speak on the topic.

Despite statements implying the opposite, the LBPD was almost certainly using Clearview AI for investigative purposes. Departmental emails obtained through the California Public Records Act show detectives talking of having "success" with the program after running suspect's images. Records obtained by Buzzfeed News show the LBPD was one of the heavier users of Clearview AI nationwide, with between 100 and 500 searches run in a two-month period.

Denial of Promised Open and Transparent Process on Facial Recognition

In August 2020 the Framework on Reconciliation proposed by Vice Mayor Richardson issued an Initial Report that promised to "Explore the practice of facial recognition technology and other predictive policing models and their disproportionate impacts on Black people and people of color by reviewing evidence-based practices."

When that statement was drafted in August it was not public knowledge that the LBPD had a decade-old facial recognition program, and the civilian stakeholders had no knowledge of an active program. The LBPD participants did not bring the truth about its facial recognition program to the table for the reconciliation process. Apparently, the Framework stakeholder had assumed facial recognition was a future technology that could be addressed as a medium-term two-year goal. Now that the program is public knowledge the LBPD has chosen to forgo the Framework on Reconciliation process and lock in its facial recognition policy in private with this committee acting as a rubber stamp.

At the last meeting Councilmember Uranga raised issues related to equity and racial bias. Those are real concerns that have not been adequately addressed by the LBPD policy. In fact, the LBPD has gone out of its way to make sure the Framework on Reconciliation has been excluded from the process by misleading the stakeholders until the department had internally settled the issue without the public's involvement. You can see the Special Order Chief Luna signed in March was drafted on Dec. 1 2020, two weeks after CheckLBPD publicized the secret, decade-old, program.

Unaddressed Equity and Racial Bias Concerns

Equity and Racial Justice are complicated issues that should be addressed through the established Framework on Reconciliation process or the City's newly situated Office of Equity within the City Manager's Office in a fully transparent process with ample opportunities for meaningful engagement with the community members most affected by these issues and facial recognition technology. In fact, the city's citizen-led Technology and

Innovation Commission has already been asked to support the Framework on Reconciliation process as it relates to facial recognition and should be supported in these efforts.

Before the City gives the green light to LBPD's continued and unchecked use of facial recognition, the inherent equity and racial justice issues associated which must be addressed, including the following:

- There are no procedures for removing mugshots of the wrongfully arrested from LACRIS. While LACRIS's online material does not cover this topic either way, all county level facial recognition programs were established by the same state law as California Identification System (Cal-ID) Remote Access Network (RAN) agencies which share uniform equipment and practices. Riverside's Cal-ID agency is more transparent than LACRIS. Regrading mugshots their policy states:

  "All mugshot images are stored in the DMS indefinitely. Occasionally, images are sealed with a court order or removed for a variety of legitimate reasons (e.g. duplicate, test, inappropriate)." www.riversidesheriff.org/DocumentCenter/View/3744/CALID-FR-Policy?bidId=

  *If this is not clear to you, it means if you are wrongfully arrested you better have enough money for a good private lawyer who can get you a court order for your removal from the database. This is definitely an equity issue as Councilmember Uranga questioned last month. While Long Beach may be in line with state law by participating in this program, it is not in line with the principles of fairness and equity.

- The LACRIS database was compiled using decades of racially-biased policing. Major equity issues are created by relying solely on this historic database for face searches to generate future arrests. The only way one can conceivably claim LACRIS is not perpetuating biased policing is if you believe there was never racially-biased policing used in the past.

- Facial Recognition software still has accuracy issues that skew along racial lines and the LBPD has not implemented proper procedures to prevent this algorithmic misidentifications from resulting in wrongful arrest.

There is no good reason to keep the date, time, and general reason for these searches secret; there are a lot of bad reasons. If the committee accepts this secrecy, it is accepting that there truly is no outside oversight of the LBPD.

A History of Lack of Transparency on Facial Recognition Continued into the Present

For over a decade the department chose secrecy on facial recognition over best practices, while showing the maximum disregard for privacy considerations possible. Public records requests published on Muckrock.com show the LBPD denied having responsive documents regarding facial recognition to the Lucy Parsons Lab and the Aaron Swartz Day Police Surveillance Project in requests filed in 2019.

A press inquiry filed after the protests last summer, and obtained through a CPRA request, asked whether the LBPD runs facial recognition on either live video or saved images. The department responded, "the LBCOP does not utilize Facial Recognition." I believe if you were to ask the LBPD representative tonight if facial recognition is ever run on images collected by the cameras of the Long Beach Common Operating Picture you would get a different answer.

One of the most troubling things I uncovered, beyond the lack of policy, is a pattern of use in 2020 that suggests possible misuse of the technology.

LBPD Use of LACRIS Facial Recognition Program

The LBPD went from running an average of 121 searches per year on LACRIS from 2010 to 2019, with a max of 622 in 2019, to running 2,688 searches in the first 10 months of 2020. There has been no explanation offered to explain the increase in LACRIS use other than to point to the looting that took place last summer in Long Beach. However, the estimates for the number of looters in Long Beach was 200 to 300, which does not explain the 2,000+ extra searches.

This use may indicate one of two things: 1) wide-spread use of low quality images of the same suspect (a recipe for misidentifications) or 2) the use of facial recognition on protestors absent reasonable suspicion of a crime as part of the Looting Taskforce or to screen protestors for warrants.

The LBPD could easily put these suspicions to rest by producing the list showing the dates and reasons for searches which can easily be obtained from LACRIS, and which I have been repeatedly requesting as a public record since December. They could also audit their own use, as their new policy says they will do randomly, and release a report explaining the 2020 level of use.

At this week's city council meeting Chief Luna says the LBPD is not out to achieve mass incarceration. A policy that allows facial recognition use for petty crimes and the level of use we saw last year does not support this contention. If they had good reasons to run 2,688 facial recognition searches in 2020 then they should be proud to talk about their investigatory efforts.

True Independence in Policy Making is Needed

At a time when trust in police is at an all time low (the city's own ZenCity social media monitoring showed a 10 to 1 negative sentiment towards the LBPD last summer) the LBPD has continued to show it can not be trusted with self-oversight or policy drafting.

There are multiple committees in Long Beach with expertise the LBPD could have tapped in their drafting of a facial recognition policy. The department chose to bypass experts in equity and technology, as well as an established Reconciliation process that had set a goal of addressing facial recognition. Instead, the LBPD chose to act alone and hastily draft an inadequate policy

In many cities, like Los Angeles, the police do not set their own policies. They use an independent civilian police oversight commission to set policy and then it is the Chief's job is to enforce that policy. It is long past time Long Beach adopted such a commission. Chief Luna's signature on this substandard policy is just another example of how much such a commission is needed.

Sincerely,

Greg Buhl
Lead Investigative Researcher at CheckLBPD.org
greg@CheckLBPD.org

Enclosed: LBPD Special Order on Facial Recognition

CITY OF LONGBEACH

Memorandum

Date: March 18, 2021

To: SPECIAL ORDER

From: Robert G. Luna, Chief of Police

Subject: **SPECIAL ORDER – FACIAL RECOGNITION TECHNOLOGY**

Effective immediately, this special order creates policy regarding the use of facial recognition technology within the Long Beach Police Department.

PURPOSE STATEMENT
This policy establishes procedures for the acceptable use of images, information, and tools for the use of facial recognition technology.

DEFINITIONS
Biometric Data – Data derived from one or more intrinsic physical or behavioral traits of humans, to include fingerprints, palm prints, iris scans, and facial recognition data.

Examiner – An individual who has received training in facial recognition system and its features. Examiners have at least a working knowledge of limitations of facial recognition and the ability to use image editing software. They are qualified to assess image quality and appropriateness for facial recognition searches and to perform one-to-many and one-to-one facial image comparisons.

Facial Recognition – The automated searching of a facial image in a biometric database (one-to-many), typically resulting in a group of facial images ranked by computer-evaluated similarity. All facial recognition searches must be corroborated by another examiner.

USE OF FACIAL RECOGNITION
The Long Beach Police Department has authorized trained personnel in the use of approved facial recognition programs to support the investigative efforts of law enforcement and public safety. This technology can be a valuable investigation tool to help the identification of persons unable to identify themselves due to mental or physical incapacitation, deceased persons; or to detect, prevent, and investigate criminal activity.

Authorized department personnel shall not use, or allow others to use, the equipment or database records for any unauthorized purpose. Use of the facial recognition software is restricted to the purposes outlined below.
1. When the examiner has reasonable suspicion the person has committed a crime, or when an individual is unable to provide reliable identification due to a physical or mental

incapacitation or defect, or death, and immediate identification is needed to assist the officer in the performance of their lawful duties.

2. Facial recognition technology shall only be used as an investigative tool to acquire a lead. Any potential lead shall not be used as the sole basis to establish a probable cause arrest or to be considered a positive identification of any subject.
3. The Long Beach Police Department may elect to integrate the use of facial recognition technology with its public safety video surveillance.
4. Facial recognition shall not be used in connection with portable recorders (BWC) (Penal Code 832.19.)

FACIAL RECOGNITION DOCUMENTATION
Any possible match where an investigative lead is generated on the facial recognition software, the examiner shall file a supplemental report on the information they have obtained.

FACIAL RECOGNITION USE FOR IMMIGRATION ENFORCEMENT
Long Beach Police Department examiners are strictly prohibited from using facial recognition to assess immigration status.

FACIAL RECOGNITION REQUEST BY OUTSIDE AGENCIES
Any request by an outside agency to use facial recognition technology shall adhere to our policy, and the requestor shall be instructed that results are only leads and not considered a positive identification.

FACIAL RECOGNITION OVERSIGHT
The results, or disclosure, of any specific face recognition investigation searches shall be provided only to individuals within the Long Beach Police Department or other governmental agencies authorized to have access.

The Long Beach Police Department will not violate First, Fourth, or Fourteenth Amendments and will not perform or request facial recognition searches of individuals or organizations based solely on the following:
1. Their religious, political, or social views or activities
2. Their participation in a noncriminal organization or lawful event.
3. Their race, ethnicity, citizenship, place of origin, age, disability, gender, gender identification, sexual orientation, or other protected classification.

Investigations Bureau will conduct random audits of the use of facial recognition technology to include verification of the purpose for the inquiry.

This special order will remain in effect until it is adopted in the LBPD Policy Manual.

R. Luna

Robert G. Luna, Chief of Police

_3·18·21_

Date

RG:EDH:ed
Department Facial Recognition Technology