22 Mountain Ave., Somerville MA 02143

7/28/2021

Commission on Facial Recognition
Senator Jamie Eldridge and Representative Michael S. Day, Co-Chairs

Public Comment
Government Use of Facial Recognition Technology

Dear Senator Eldridge, Representative Day, and members of the Commission,

I am writing to you as a Massachusetts resident who is deeply concerned about the potential misuse of facial recognition technology in the state. In November 2019, I submitted testimony to Senator Eldridge on this same issue to support the proposed bills at the time: S.1385 and H. 1538 Moratorium on Government Use of Face Surveillance Technologies. Since then, I have been following this issue closely and believe that it is essential for the legislature to act now to strengthen existing facial recognition law to ensure that Massachusetts residents are shielded from discriminatory surveillance.

As someone who used to work as a high school teacher and who currently works as an administrator in higher education, I am particularly concerned how facial recognition technology and surveillance technology in general could be used in schools. I taught high school English for a few years at New Heights Academy Charter School in New York. Most of my students were students of color. I remember having conversations with students about how they felt unfairly targeted by law enforcement because of their race or the neighborhood they were living in. I am very concerned that the type of discrimination that students currently face would be exacerbated by facial recognition technology and other surveillance technology, which is why we need to strengthen our current regulations.

While I think that we should be concerned about how this technology could interfere with the privacy of all MA residents and students, I think it is particularly concerning how such technology could negatively impact residents and students of color. Many studies have shown that facial recognition technology tends to be much better at identifying white people than people of color. For example, the Florida Institute of Technology and Notre Dame performed a joint research study that showed that algorithms used to identify matches of images against a database returned a higher error rate for African-Americans than for white individuals (source: "As cameras Track Detroit's Residents, a Debate Ensues Over Racial Bias" by Amy Harmon in The New York Times). Relatedly, Georgetown Law's Center on Privacy and Technology delivered a report that highlights the problem of cities like Chicago and Detroit using face surveillance technology to aid in police work. The report explains how bias is baked into this process: "African-Americans are simultaneously more likely to be enrolled in face recognition databases and the targets of police surveillance use" (source: "America Under Watch: Face Surveillance in the United States" by Clare Garvie and Laura M. Moy).

In our state, we have started to take some steps to regulate facial recognition technology but the current law falls short of what we need to ensure our students and other state residents have their privacy protected. In December 2020, Governor Baker signed into law "An Act Relative To Justice, Equity And Accountability In Law Enforcement In The Commonwealth," for police reform legislation. The law contains several provisions pertaining to government agencies' use of facial recognition technology, including the creation of this Commission, but we need to strengthen this language to protect against the detrimental impact of facial recognition technology.

In addition to my concerns about the privacy and rights of residents and students, particularly of color, I have a few specific concerns about the existing law:

1. The current law only regulates facial recognition technology as it is used by law enforcement agencies, but it does not address other public agencies. In particular, I am concerned about how such technology might be used in public schools. Recently, I learned about a plan in the Springfield Schools (see article here in the Boston Globe)to allow video footage to be released to law enforcement. While the school is using basic video cameras (as opposed to more advanced facial recognition software), there is still the same issue of students being surveilled and how this information can be used.
2. In addition, the current law does not establish any limitation regarding who can directly use and operate a facial recognition system. The regulations in place are vague in governing the rules for state police requests for facial recognition searches. Having stronger rules in place that further specify when law enforcement can and cannot use facial recognition technology would also set a precedent for greater controls on other surveillance technology and how it is being used in our schools.

Thankfully, lawmakers have addressed these concerns in legislation filed this session. H.135, An Act To Regulate Face Surveillance, sponsored by Representatives Rogers and Ramos, and S.47, An Act To Regulate Face Surveillance, sponsored by Senator Creem, provide for some useful policy solutions to the ones outlined above.

H.135 and S.47 would fix the problems outlined above by accomplishing the following:

1. This law would prohibit all public entities, including public schools, from using and possessing facial recognition technology. While it does not directly address low-tech video cameras being used in schools, this law could pave the way for further legislation. The only agencies that would be allowed to use facial recognition technology (for limited purposes) would be the Registry of Motor Vehicles and the State Police.
2. The new law would also clarify that only the R.M.V. would be allowed to acquire this technology and use it to verify an individual's identity. It would specify that the state police could only access the R.M.V system in the following cases: 1) to execute a warrant issued under probable cause, 2) in case of an emergency involving immediate danger of death, or 3) serious physical injury, and to identify a deceased person.

I encourage you to consider bills H.135 and S.47 when you decide on further regulations of the use of biometric surveillance technology by government entities. We need strong regulations to ensure it doesn't infringe on our civil rights and civil liberties, and this legislation provides an excellent model.

Thank you for your attention and consideration.

Sincerely,

Emily Palmer (local Somerville ACLU Volunteer)
22 Mountain Ave.
Somerville, MA 02143